

DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE ENVIRONMENTAL LAW TO CREATE COMMUNITY WELFARE

Anis Mashdurohatun
Hermon
Gunarto

ABSTRACT

Local governments cannot "force" the implementation of CSR on companies operating in their areas in order to realize the welfare of the community. This is a big loss for the Regional Government and the surrounding community, because CSR is no longer considered as an obligation but is only carried out voluntarily, especially in Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies does not regulate sanctions if the company neglects the implementation of CSR. This research uses doctrinal research through statutory, conceptual, and political approaches. The data collection in this study was carried out by using library methods, document studies and an inventory of secondary data including primary, secondary and tertiary legal materials. The legal theory used is the theory of Pancasila justice and the theory of the operation of the law. Based on the results of the study, it is found that the implementation of CSR by the local government has not been able to realize the welfare of the community. The Constitutional Court's decision Number 53/PUU-VI/2008 which argues that local governments cannot issue regional regulations relating to CSR, because orders based on Article 74 paragraph (4) of Law Number 40 of 2007 concerning TJSLP Limited Liability Companies are regulated by Government Regulations. The Regional Government must have a role in its implementation by establishing a Regional Regulation on CSR, this is based on the principle of decentralization that Regional Governments have their own regional autonomy as stipulated in Law Number 23 of 2014 concerning Regional Government. The reform of the TJSLP law provides a legal umbrella for the Regional Government to form a Regional Regulation on CSR, then a new normalization must be carried out in Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, because there are still many weaknesses in this article.

Keywords: Development; Law; CSR; Welfare;

INTRODUCTION

Responsibility in the context of realizing community welfare is also mandated to corporations or the business world, which is commonly known as Corporate Social Responsibility (hereinafter written as CSR). This is regulated in Law Number 25 Year 2007 concerning Investment,¹ and Law Number 40 of 2007 concerning Limited Liability Companies.² This was followed up by the issuance of Government Regulation number 47 of 2012 concerning the Social and Environmental Responsibility of Limited Liability Companies.

The development of the CSR concept has created a lot of debate which includes several issues regarding; (1) the purpose of the company is to seek profit or pay attention to social interests; (2) the breadth of the scope of CSR; (3) the regulation of CSR, preferably in the form of mandatory or voluntary; (4) sources of financing for the implementation of CSR. and; (5) tax issues for corporations that implement CSR. Corporations have different role dimensions in each wave. In the second wave, corporations are oriented towards maximizing profits by seeking as much money as possible for the benefit of shareholders. Growth is the value and measure used. The third wave of business aims to create value by printing money and helping solve social problems. The interests that are considered are not only on shareholders, but also on employees, partners, consumers and the government. Meanwhile, in the fourth wave, corporations must have a broader agenda, which aims to serve world (global) affairs.

The Constitutional Court's decision Number 53/PUU-VI/2008 argues that local governments cannot issue regional regulations relating to CSR, because orders based on Article 74 paragraph (4) of Law Number 40 of 2007 concerning TJSLP Limited Liability Companies are regulated by Government Regulations. With the issuance of Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies as the implementing regulation of Law Number 40 of 2007 it is hoped that this will become the legal umbrella for the implementation of CSR in the regions, but in reality it has not been able to accommodate the functions of CSR itself. . There are still many things that need to be stated in PP No. 47 of 2012 so that the implementation of CSR in the regions can actually be implemented and the Regional Government can participate in supervising the implementation of CSR. So that the implementation of CSR can have a positive impact on the community around the company, because those who bear the environmental damage as a result of the utilization and management of natural resources as the company's business activities are the community and the local government itself.

Thus, it is interesting to conduct in-depth research on why the implementation of corporate social and environmental responsibility has not been able to achieve community welfare, and the harmonization of corporate social and environmental responsibility laws to realize community welfare.

¹ Article 15 letter b of Law Number 25 of 2007 concerning Investment states "Every investor is obliged to carry out corporate social responsibility", in the explanation of the article it is stated "What is meant by "corporate social responsibility" is the responsibility attached to every company. investment to continue to create harmonious, balanced, and in accordance with the environment, values, norms and culture of the local community",

² Article 1 point 3 of Law Number 40 of 2007 concerning Limited Liability Companies states "Social and Environmental Responsibility is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment that is beneficial, both for the Company itself, the local community, and the community. in general".

RESEARCH METHOD

The research method used is doctrinal and non doctrinal. This research is qualitative research³, the type of data used is primer and secondary data⁴. Data collection techniques through literature study.⁵ The data collected was analyzed through descriptive analysis.⁶

RESEARCH RESULTS AND DISCUSSION

1. Implementation of Corporate Social and Environmental Responsibility Has Not Been Able to Realize Community Welfare

Indonesia as an adherent of the principle of a welfare state, is mandated by the 1945 Constitution, the foundation of the Indonesian constitution. Therefore, the task of the government is not only in the field of government, but must also carry out social welfare in order to achieve state goals, which are carried out through national development. In running the government, the government must prioritize the interests of the community for welfare. One of them is by making regulations governing private and public relations. Corporate Social and Environmental Responsibility is one that is regulated by the state, in order to provide protection for the community and stakeholders.

ISO 26000 which is an international standard in the field of Corporate Social Responsibility focuses on organizational governance, Human Rights, employment, environment, fair operating / fair operating practices, consumer issues and community development. ISO itself aims to assist various organizational forms in the implementation of CSR, by providing practical guidelines, as well as broadening public understanding of CSR.⁷ Of all the regulations mentioned above, it is not stated explicitly that CSR can be regulated by a regional regulation. This shows that when viewed from a normative point of view, there are no statutory regulations that can be used as a legal umbrella for local governments in carrying out their relation to the implementation of CSR. The linkage of local governments in the regulation of CSR is solely based on the principle of decentralization which is only a general provision.⁸

The multidimensional crisis that is currently engulfing the Indonesian nation has made us all aware of the importance of rethinking the concept of regional autonomy in its truest sense. The idea of reorganizing the regional autonomy system started from the idea of ensuring efficiency, effectiveness, transparency, accountability and democratization of populist values in the practice of administering regional government. Various references that discuss decentralization have the idea that regional autonomy is a consequence of one of the variants of decentralization. Rondinelli boldly states that in practice decentralization has four variants namely deconcentration, delegation, devolution and privatization.⁹ Decentralization as one of the principles of regional government administration in subsequent developments gave birth to the notion of autonomy, which is a right or authority and obligation of an autonomous region to manage and regulate its own household affairs in accordance with applicable laws and regulations.¹⁰

The implementation of CSR, especially for environmental responsibility by companies with the duties and authorities of local governments as stated in Article 63 paragraph (2) and paragraph (3) of Law Number 32 of 2009 concerning Environmental Management and Protection, namely developing and implementing cooperation and partnerships, coordinate and carry out control of environmental pollution and/or damage, conduct guidance and supervision of compliance with the person in charge of businesses and/or activities with respect to the provisions of environmental permits and laws and regulations in the field of environmental protection and management, establish policies regarding procedures for recognizing the existence of legal communities customs, local wisdom, and rights of indigenous peoples in relation to environmental protection and management, awarding and enforcing environmental laws. However, once again, the existence of a link between the local government's role in the implementation of CSR by the companies mentioned above does not mean that the regional government can form a regional regulation on CSR because there is no single normative rule that mandates CSR that can be regulated by a regional regulation.

The implementation of CSR in Law Number 40 of 2007 concerning Limited Liability Companies and Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibilities of Limited Liability Companies does not mention the role of local governments in implementing CSR. In carrying out regional autonomy and co-administration tasks, the regional government establishes a regional regulation related to the implementation of CSR. The linkage in the formation of a regional regulation on CSR is only described in Law Number 32 of 2009 concerning the Environment, there are several links and things that form the basis of the role of local governments in implementing CSR, especially corporate responsibility towards the environment. However, once again, the existence of a link between the local government's role in the implementation of CSR by the companies mentioned above does not mean that the regional government can form a regional regulation on CSR because there

³Esmi Warassih, "Socio-legal Studies, History and Development Dynamics," in The Workshop on Research Methodology Updating Law, 2006, p. 6.

⁴Anis Mashdurohaturun, Indra Yuliawan, Adhi Budi Susilo, Andri Winjaya Laksamana, M. Ali Mansyur. The Effectiveness Of Intellectual Property Rights Protection To Improve Creative Economy Realization In Semarang District. Journal of Southwest Jiaotong University / Vol.56 No.2 Apr. 2021. pp.385-393.

⁵Sugiyono, Understanding Qualitative Research, Equipped with Sample Proposals and Research Reports, Alfabeta, Bandung, 2015, pp. 25.

⁶Anis Mashdurohaturun, Yuris Tri Naili, Teguh Prasetyo, Amin Purnawan, "Regulating The Management Of Private Higher Education Based On The Values Of Justice", Journal Of Legal, Ethical And Regulatory Issues; Vol. 24, Iss. 5, (2021): 1-9.

⁷Rahmatullah, 2011. CSR and Local Government Interests, Proceedings of the National Symposium on Regional Autonomy. Serang : FISIP Untirta and State Administration Laboratory FISIP Untirta. pp 200.

⁸Ade Yuliani Siahaan. 2017. Juridical Analysis of the Role of Local Governments in the Implementation of Corporate Social Responsibility. Thesis of Master of Law Study Program, University of North Sumatra. Medan. pp. 111.

⁹Christine S. T. Kansil, 2004. Pemerintahan Daerah di Indonesia, Hukum Administrasi Daerah, Jakarta:Sinar Grafika., pp. 56.

¹⁰Faisal Akbar Nasution. 2009. Local Government and Sources of Local Original Revenue. P.T. SOFMEDIA. Jakarta. pp. 10.

is no single normative rule that mandates CSR that can be regulated by the regional government with a regional regulation. As a matter of fact, the regional government continues to form a regional regulation that regulates CSR, the spirit of regional autonomy and the welfare of the local community is established. The company's lack of seriousness in designing and implementing the CSR program is also the basic reason for the local government to form a regional regulation.

There are several regional regulations that have been established by each regional government in Indonesia, after the decision of the Constitutional Court Number 53/PUU-VI/2008 on Law Number 40 of 2007 concerning Limited Liability Companies where the Legal Considerations of the Constitutional Court in letter d That has been regulated TJSLP is based on Article 74 paragraph (4) of Law Number 40 of 2007 concerning Limited Liability Companies, it is clear that local governments cannot issue Regional Regulations relating to CSR, because the Law's orders based on Article 74 paragraph (4) are imperative, namely only regulated by Government Regulation. Local governments cannot establish, or regulate in relation to TJSLP. Although this decision of the Constitutional Court that was read out in court was not meant to test the authority of the Regional Government in the field of CSR, otherwise known as CSR. In essence, those who argue that local governments cannot issue regional regulations relating to CSR, include the following: Jambi City Regulation Number 1 of 2016 concerning Corporate Social Responsibility, Makassar City Regulation Number 2 of 2016 concerning Corporate Social & Environmental Responsibility, Surakarta City Regulation Number 2 of 2015 concerning Corporate Social Responsibility, Magelang City Regulation Number 11 of 2017 concerning Corporate Social and Environmental Responsibility, Buleleng Regency Regulation Number 7 of 2017, Murung Raya Regency Regulation Number 3 2016 concerning Social and Environmental Responsibility Companies in Murung Raya Regency, East Java Provincial Regulation Number 4 of 2011 concerning Corporate Social Responsibility, West Kalimantan Provincial Regulation Number 4 of 2016 concerning Management of Corporate Social Responsibility in West Kalimantan Province. These regulations cannot run effectively.

In carrying out this CSR program, there are several obstacles faced by local governments in realizing ethical business performance such as corporate social responsibility, namely:¹¹

- a. The mentality of business people, especially if the top management is morally low, so that it has an impact on all business performance;
- b. Cultural factors of the people who tend to view business work as a profession full of deceit and greed and work only for profit; and
- c. The factors of the political system and the power system applied by the rulers create an economic system that is far from moral values.

Furthermore, other obstacles that come from within the company that occur continuously are as follows which are in line with the results of Robby I. Chandra's¹² research, entitled 'Ethics of the Business World':

- a. Leadership within the company, company leaders who are not responsive to social problems, should not be expected to care about social activities.
- b. Enterprise management system in a broad sense. That is, larger and more established companies have more potential to contribute than smaller and less established companies. The maturity of the company's management in managing the company is a benchmark / perspective on the implementation of CSR.
- c. Corporate culture in this case includes various levels and aspects of behavior, namely production methods, skills, attitudes towards discipline and punishment, habits, values placed on various activities, beliefs held, decision-making processes, and rules.

We have faced many problems, from poverty, education, and health. We have not utilized optimally, TJSLP funds. The company's commitment, during the pandemic, will use it for economic improvement.

Thus, the implementation of CSR by the local government has not been able to realize the welfare of the community. The Constitutional Court's decision Number 53/PUU-VI/2008 which argues that local governments cannot issue regional regulations relating to CSR, because orders based on Article 74 paragraph (4) of Law Number 40 of 2007 concerning TJSLP Limited Liability Companies are regulated by Government Regulations. The Regional Government must have a role in its implementation by establishing a Regional Regulation on CSR, this is based on the principle of decentralization that Regional Governments have their own regional autonomy as stipulated in Law Number 23 of 2014 concerning Regional Government.

2. DEVELOPMENT OF CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY LAW TO REALIZE COMMUNITY WELFARE.

In the provisions of Article 18 paragraph (2) and paragraph (6) of the 1945 Constitution which regulates Regional Government, it is stated that the Provincial, Regency, and City Governments regulate and manage their own government affairs according to the principles of autonomy and assistance tasks¹³ as well as local governments. has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks¹⁴, then Article 18 paragraph (5) of the 1945 Constitution also states that regional governments carry out autonomy to the fullest extent, except for government affairs which are determined by law as central government affairs.

In the attachment of Law Number 23 of 2014 it has been clearly divided the affairs of the concurrent government. The division of concurrent government affairs under the authority of the central government and local governments, which is related to CSR in the attachment of Law Number 23 of 2014.

Based on the division of government affairs as described in the table, the implementation of CSR should not only be a matter for the central government because in certain regions there are companies whose locations are not cross-provincial/country

¹¹ Erni R. Ernawan. 2007. Business Ethics: Business Ethics. CV. Alfabeta. Bandung. pp.106

¹² Robby I Chandra. 1995. Business Ethics. Kanisius, Yogyakarta. pp. 69-70

¹³ Article 18 Paragraph (2) of the 1945 Constitution.

¹⁴ Article 18 Paragraph (6) of the 1945 Constitution.

and their business activities do not have a broad impact. The author views that local governments should have the authority to form local regulations related to CSR, and it is necessary to make some changes in the formulation of Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies. Thus, it is necessary to develop the law, especially in Law 40 of 2007 concerning Limited Liability Companies. The fifth precept of Pancasila states that social justice is for all Indonesian people, and the Preamble to the 1945 Constitution of the Republic of Indonesia mandates the state to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order based on freedom, lasting peace and social justice. In the implementation of social welfare, it is necessary to have the widest possible role of the community, including individuals, families, religious organizations, social organizations, non-governmental organizations, professional organizations, business entities, social welfare institutions, as well as foreign social welfare institutions for the purpose of carrying out targeted social activities. integrated and sustainable.¹⁵ For the role of business entities in the implementation of social welfare, it is in line with the goal of CSR which is the company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment that is beneficial, both for the company itself, the local community and society in general.¹⁶

Islam has the same view towards CSR. Islam has the principle of balanced responsibility in all its forms and scopes, between body and soul, between individuals and families, between individuals and society, and between one society and another. CSR refers to the obligations of a company to protect and contribute to the community where the company is located. A company assumes social responsibility in three domains¹⁷: organizational actors, the natural environment and social welfare of the community.

Whereas there are several shortcomings that have not been regulated in Article 74 of Law Number 40 of 2007 including:

First, it does not mention at all the role of local governments regarding the company's obligation to implement CSR, even though the closest and most appropriate government agency in supervising and fostering CSR activities is the regional government.

Second, in paragraph (1), the obligation of CSR is only borne by companies that carry out their business activities in the field and/or related to natural resources. In the explanation of paragraph (1) it is stated that what is meant by "Companies that carry out their business activities in the field of natural resources" are companies whose business activities manage and utilize natural resources. Whereas what is meant by "Companies that carry out their business activities related to natural resources" are companies that do not manage and do not utilize natural resources, but their business activities have an impact on the function of natural resource capabilities. In reality, many companies do not operate in the field and/or relate to natural resources, for example, those whose business activities are in the fields of transportation, technology, pharmacy, insurance, warehousing and so on. If environmental responsibility cannot be imposed on a company whose business activities are not in the field of and/or related to natural resources because it does not utilize and/or have an impact on the function of the ability of natural resources, the company should still be subject to social responsibility obligations, because CSR concept consists of two elements, namely social responsibility and responsibility to the environment.

Third, the types of sanctions are not clearly regulated in paragraph (3), although in the explanation it states that what is meant by "sanctioned in accordance with the provisions of the legislation" is being subject to all forms of sanctions regulated in the laws and regulations related to natural resources. natural resources or related to natural resources, as well as ethics in running a company, among others: laws and regulations in the fields of industry, forestry, oil and gas, state-owned enterprises, geothermal business, water resources, mineral and coal mining, electricity, environmental protection and management, prohibition of monopolistic practices and unfair business competition, human rights, employment, and consumer protection, but the types of violations and crimes have been determined by the legislation in question. This still does not provide space for the local government to carry out its role as an effort to prevent the company's negligence in carrying out CSR obligations. Violation of the obligation to implement CSR should be determined in the form of administrative sanctions as a form of "reprimand" by the local government against the individual, because in principle CSR will continue to be implemented if there is no disruption/impact from business activities, as long as the company operates during that time it also carries out the obligations of CSR.

Fourth, it does not regulate the provisions for awarding awards to individuals who have carried out CSR obligations. With the award, it can motivate the company to seriously carry out the obligations of CSR, this is in accordance with the reward and punishment system.

Fifth, although further provisions on CSR are regulated by government regulations, these government regulations do not regulate the procedures for budgeting or financing CSR. It is better if the TJSLP budgeting or financing is regulated by the central government, so that the regional government in formulating a regional regulation on TJSLP does not need to re-regulate the TJSLP budgeting or financing, because this will burden the company and it is feared that it will be "arbitrary" by the regional government.

To simplify and clarify the legal development of Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies.

CONCLUSION

The implementation of CSR by the local government has not been able to realize the welfare of the community. The Constitutional Court's decision Number 53/PUU-VI/2008 argues that local governments cannot issue regional regulations relating to CSR, because orders based on Article 74 paragraph (4) of Law Number 40 of 2007 concerning CSR Limited Liability Companies are regulated by Government Regulations. The Regional Government must have a role in its implementation by establishing a Regional Regulation on CSR, this is based on the principle of decentralization that Regional Governments have their own regional autonomy

¹⁵ General explanation of Law Number 11 of 2009 concerning Social Welfare

¹⁶ Sentosa Sembiring. Loc.Cit.

¹⁷ Dharmawati. Corporate Social Responsibility in Islamic Perspective in Mazahib Online Journal Volume 12, Number 2, 2014 (Samarinda: Faculty of Sharia IAIN). Case. 131 (<https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/387/304>, accessed on 27 September 2020)

as stipulated in Law Number 23 of 2014 concerning Regional Government. Legal Development of Corporate Social and Environmental Responsibility to Realize Community Welfare. With the reconstruction of the TJSPLP regulations, the supervision of the local government in the CSR program is maximized for the interests and welfare of the local community. The development of laws are more community-oriented, which must be reflected through optimizing community involvement in the series of local regulations formation. Involving the community in the formation of the CSR regional regulation is one way to realize the elements that exist in democracy as a state system in Indonesia. The obligation of CSR from the company is only to determine the costs to be incurred in the company's budget in accordance with the capabilities it measures itself, and these funds can be used for an activity that is not necessarily directly related to its business or the social or environmental impacts caused by its business. Under such conditions, in general, CSR is finally reduced to mere donations or monetary contributions. Hence, the authors consider the local government supervision in supervising the CSR program. The role of local governments is entirely to improve the welfare of their respective local communities, in accordance with their regional culture and traditions, and also to carry out regional autonomy. The basis for legal development combines the function of CSR with the 5th principle, namely Social Justice for All Indonesian People and Article 18 paragraph (2) and paragraph (6) and Article 18A paragraph (2) of the 1945 Constitution. Regulation on Corporate Social and Environmental Responsibility which currently has not accommodated the role of the Regional Government related to CSR in the regions for the welfare of the community. The objective of reconstruction is to provide a legal umbrella for local governments in carrying out their roles related to CSR.

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Anis Mashdurohatun
Sultan Agung Islamic University
Email: anism@unissula.ac.id

Hermon
Sultan Agung Islamic University

Gunarto
Sultan Agung Islamic University