

CSR of Tobacco Industries in Indonesia, the Concept and its Implementation

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Abstract

Cigarettes are the products made from tobacco which contains nicotine and tar that has harmful effects when they are consumed. Nicotine is identified as an addictive substance while tar contains toxic and carcinogenic substance. Furthermore, since the harmful effects of the manufactured products, cigarette companies should have a responsibility to protect the consumers and their environment, so that they are freed from the effects. Various companies' activities which are considered as a company social responsibility, such as sponsoring sport events and arts, are actually a massive promotion attempt and even green camouflage which improve the credibility of the companies as the ones which are not manufacturing harmful products. Based on the fact, the concept of cigarette company social responsibility needs to be reconsidered by differentiating it with other company social responsibilities which have different harmful implications from meanings and realizations.

Key words : CSR, Tobacco Industry In Indonesia, Concept and Implementation

I. Introduction

A. Background

The tobacco sector has been established by the government as one of the 10 major industries in Indonesia. This implies the high number of employee's recruitments and the contribution of industries in the country's income. According to the government's data, the tobacco sector has more than 6 millions employees, included farmers, manufacturing sector, sales and distributions. In 2009, tobacco donated 55trillions rupiah to the country, or 6.4% from the total of the country's income.¹

Based on that data, it gives an impression that the tobacco industries give great contributions to the national income, but the loss caused by cigarettes is higher than the income from the excite tax. For instance, in 2005 the excite tax was 32.6 trillions, but the expense of cigarettes consumptions reached 167 trillions or 5 times from the excite tax.²

From the total of tobacco products, 98% is used for cigarettes. Based on the fact, cigarettes are harmful and addictive products. Cigarettes contain 4000 of chemical substances, and 69 of which are carcinogenic. Several dangerous substances in cigarettes are tar, cyanide, arsenic, formalin, carbon monoxide, and nitrosamine. Besides, there is another surprising fact that in 2005, the early death caused the world by smoking in was up to 5 millions people per year. WHO predicts that in 2030, there will be 10 millions of death caused by smoking in one year, and 70% of which will happen in the developing countries which nowadays already reaches 50%.³ Additionally, cigarettes consumptions give bad impacts not only on health, but also on the economic sector. According to various researches, it's the fact that the Indonesian households tend to sacrifice their essential good spending on housing, education, and health. Even in poor family which has lower monthly outcome per capita from the poverty line in their regencies, sacrifice their needs such as housing, health, food, and other needs for smoking, with the proportion of the poorest family's monthly outcome for cigarettes 12% after rice 22%.⁴

The number of cigarette consumption per day is getting increased. 80% smokers start smoking even when before 19. Commonly, the consumers' decision to buy cigarettes is not based on enough information about the risks of the products, such as addiction and the impact of purchase which is burdened to others.⁵

This condition is caused by the massive advertisements⁶, promotions, and cigarette sponsorships which increase

¹ www.sampoerna.com, last accessed 6 August 2013

² For more information about tobacco fact in Indonesia , tcsc-indonesia.org, last accessed 12 August 2013

³ Ibid.

⁴ Loc.Cit

⁵ Fakta Tembakau dan Permasalahannya di Indonesia : Bunga Rampai, Tobacco Control Support Center (TCSC)-Ikatan Ahli Kesehatan Masyarakat Indonesia (IAKMI)- Pusat Penelitian dan Pengembangan Ekologi dan Status kesehatan, 2009,hlm.61

⁶ Food and drug regulatory agency notes that there are 14.249 cigarette advertisements in electronic media, outdoor advertisements, and printed media (evaluation of cigarette advertisement supervision, year 2006 BPOM (food and drug regulatory agency in Indonesia)). Furthermore, child protection commission states that there are 1530 cigarette industries, (Komnas Anak (child protection commission in Indonesia) 2007). In fact,

the number of adolescent smokers. Cigarette industries in Indonesia still have freedom which is against with other countries because the countries protect children from smoking.

Philip Morris, the owner of multinational cigarette company who has H.M Sampoerna cigarette company's shares, also admits that there is a freedom for cigarette industries to advertise and promote their products through outdoor advertisements, electronic, printed media, and as a sponsor in an event. And this has spread out widely in society and even children and teenagers.¹

The tobacco industries not only use intensive marketing strategies, but also do various social activities on behalf of CSR (Corporate Social Responsibility), such as giving scholarships, participating in environmental activities, and other activities. The CSR program of tobacco industries have succeeded in getting society's sympathies including the government and the regulators, so that they do not realize that tobacco industries are doing attempts to build their reputation and it gives an impression that tobacco industries are just the same with other industries which manufacture safe products for their consumers.

This condition makes the government and the regulators difficult to take a step related to the existence of tobacco industries, especially the attempt to regulate the circulation and controlling the tobacco products. Whereas, Constitution regulates Article 28 H clause (1) which says every person has the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and has the right to obtain medical care.

As an example, how difficult it is for the Indonesian government to make policies to ratify Framework Convention on Tobacco Control (FCTC) which is one of the attempts to protect the world from the problems caused by smoking through controlling tobacco.

The regulation in Constitution is a forcing attempt which has to be applied by the government. Besides, the rights are human rights. Smoking is proven as the causer of physical weaknesses, social, economy, and environment, not only for the smokers but also other people.

B. Problems

1. Is the use of CSR concept suitable with the tobacco industries as it is used by other companies?
2. How does the concept and responsibility implementation adjust to the tobacco industries which manufacture addictive and dangerous products for health?

C. Methods

This study uses the non doctrinal law approachment , This paper studies in Socio - Legal approach which conceptualize law as the independent variable and also the dependent variable

II. Discussion

A. The Concept and Implementation in the Tobacco Industries

Corporate Social Responsibility (CSR) has been known since early 1970's. In general, CSR is defined as a set of policy and practice associated with stakeholders, values, the fulfillment of the law, the society's appreciation and their environment; including the commitment of institutions in sustainable development.

The idea of CSR can be "counter opinion" from neoclassical because of its critics. For instance, the critic which says that neoclassical approach may cause economic growth because of natural devastation. As a result, the issue of CSR, which is talking about company's behaviors towards the environment, appears. CSR also requires companies run their business properly by not hiring child labors, gender equality, and the obligation of a company to empower society through the enforcement of local business since there is a critic related to Human Rights and the distribution of prosperity.²

Referring to Article 1 clause 3 of the Law Number 40 of 2007 on Limited Liability Companies, "Environmental and Social Responsibility" means a Company's commitment to taking a part in sustainable economic development in order to improve the quality of life and environment, which will be beneficial for the Company itself, the local community and society in general.

Furthermore, Article 74 clause (1) Limited Liabilities Companies Act regulates, Companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility. Under Article 74 clause (1) states that:

"The definitions of "Companies which perform its business in sectors of natural resources" are companies which perform business activities in management and utilization of natural resources", and "Companies which perform its business activities related to natural resources" are companies which do not manage and utilize natural resources, but their business activities have impact on natural resources capability

advertisements, promotion, and activities sponsored by cigarettes make children and teenagers as their main targets. edukasi.kompasiana.com, accessed 12 August 2013

¹ Loc.Cit.

² Jimmy Tanaya, Corporate Social Responsibilities, editor: D. Savio Wermasubun, The Business Watch Indonesia-Widya Sari Press, supported by NOVIB OXFAM NETHERLANDS, 2004, pg, 58

functions.”

Therefore, according to Article 74 clause (1) of the Law Number 40 of 2007, CSR, which is based on moral responsibility, becomes an obligation which can be justified. Meanwhile, the other companies are still responsible for CSR without any obligations to implement it and necessary implications.

In order to give CSR guidelines, ISO 26000 is arranged to define CSR:¹

“Responsibility of an organization for the impacts of its decision and activities on society and environment, through transparent and ethical behavior that contributes to Sustainable Development, health and the welfare of society, takes into account the expectation of stakeholders; is in compliance with applicable law and consistent with international norms of behavior; and is integrated throughout the organization and practiced in its relationship”

In the following discussion, the characteristics of products manufactured by the tobacco industries and their activities on behalf of CSR are discussed first to examine the appropriateness of the industries to implement CSR in their businesses.

As Article 113 of the Law Number 36 of 2009 Health Law rules, tobacco and products with tobacco content are addictive which should not disrupt and endanger the health of individuals, family, society and environment.

Addictive substances are active substances which work biologically and cause addiction for the consumers. The addiction is difficult to overcome and even gives negative effects to consume more and more. Meanwhile, if the consumers want to give up consuming the substances, they may undergo exhaustion or physical pain. In fact, even though tobacco and tobacco products are addictive and have tremendous potentials for humans' health, the research proves that there is an increasing number of smokers.

Hence, according to Article 113 of the Law Number 36 of 2009 on Health Law, it can be drawn a conclusion that considering the tremendous impacts, thus, tobacco products are not normal or regular ones. Considering that the products are not regular ones, the tobacco industries conduct many kinds of campaigns to convince the Law makers and society through normalization strategy as if they have a right to market their tobacco products as normal and legal ones. Therefore, as “legal industries”, they have a right to sell their normal and legal products as well as other industries.

The product normalization is conducted by advertising many kinds of advertisements using subliminal advertising². It is characterized by the utilization of strong emotional elements and the establishment of irrational relationship among one's self, the advertised products, and the implementation of CSR programs. The cigarette industries intervention in making health policies for society is also intensively conducted.

Based on the facts above, it can be clearly seen that even though CSR programs which are done by tobacco industries are included into positive actions and even they seem to take a half responsibility of the country to fulfill the needs of society, the programs can not be considered as CSR programs and activities. That is because they do not meet the factors in the definition of CSR since the products harm and bring sufferings to the consumers and the unethical business behavior as well. This CSR activity can be categorized as “green camouflage”³ which is one of public relation firm's deceptions.

This point of view is based on the argument that CSR tobacco industry programs should be implemented to reduce the addictive substance of nicotine in tobacco. However, in fact, this implementation has not been applied since tobacco industries make us of the nature of addictive to maintain their existence in business. Besides, it should prevent health risks from the harmful substances contained in cigarette smoke.

On the other hand, related to the implications of various business strategies done by tobacco industries towards the increasing numbers of tobacco consumers, cigarette industries argue that it's the smokers themselves who make a decision to buy cigarettes based on their own knowledge (informed decision).

This argument is based on the economic theory which says consumers has an authority to use their money however they want to. Their usage is based on their knowledge of harms and benefits that they will get and it's the consumers who take a risk as a consequence to the purchase.

Consumer sovereignty is the key of neo-classic economy that suggests, in perfect competition, consumers who push the market by expressing their needs and wants as a demand. Then, firms give response to their demands by supplying goods and services that are needed. This forms an idea that consumers are the kings or in other words

¹ www.iso.org, last accessed September 2013

² Subliminal advertising is an advertising technique done by exposing individuals in product images, trade names or other trade product stimulations which an individual do not realize that he/she is exposed. Liza Marielly, Subliminal Advertising cited from Dina Kania, *Iklan, promosi dan Sponsor Rokok: Strategi Menggiring Anak Merokok*, Anyer, 19 June 2009

³ “Green Camouflage”, as part of competition strategies, is done by announcing to society that there is a radical change in corporate cultures through the creations of programs for convincing stakeholders that the company has changed its attitudes to be a better one.

they have ultimate control over the market.¹

If it is linked with tobacco consumption, these two assumptions can not be applied for the tobacco product consumers because there are three things which differentiate this from other products, as follows:²

1. Consumers are not completely aware of disease risks and early death caused by their decision to buy tobacco products. This happens since the symptoms of the diseases come out approximately 20-25 years after the first consumption.
2. Most of beginner smokers are youngsters who have not had an ability to filter the right information of smoking impacts. Also, they do not realize the strong and addictive effect of nicotine which may cause a person can hardly give up smoking.
3. Passive smokers also have to take a risk because of cigarette consumption, such as physical damage, economical problems such as they have to spend money on buying cigarettes due to addiction and health problems.

By doing an intensive marketing through advertisements and being sponsors in many events, or creating a close relationship with consumers, tobacco industries have helped to create “demands”. Then, companies will not be responsible of any problems caused by their products and will leave the responsibility to consumers.³ In advertising tobacco products/ cigarette, it can be clearly seen that companies make use of trend of youngsters by using “rhetorical and figurative language” (such as figurative words or words or new jargons) which are up to date and used by those communities. This strategy works well to make them beginner smokers and even beats the “evocation of fear” strategy which is done by attaching the physical harms of smoking in smoking advertisement.⁴

As a result, it will be difficult to claim “cafeat emptor” to cigarette consumers since the addictive substances of tobacco products already make the consumers addicted, so that they have to buy it continuously.

From the fact, it can be concluded that tobacco industries have utilized the society who do not understand about the concept and CSR implementation. Thus, it’s not proper for tobacco industries, if they are considered as responsible industries.

B. The Concept and The Responsibility Implementation of a Company which is Suitable with Tobacco Industries.

If it is referring to Article 74 clause (1) of the Law on Limited Liabilities Companies above, it is clear that tobacco industries are not the industries which have to implement CSR programs as an obligation. Besides, cigarette industries are not the proper industries to use CSR concept as it is done by normal industries.

Based on that study, it’s important to look for specialized responsibility which can be implemented in tobacco industries. That is the social responsibility of a company has to contribute to the continuous development, health, and society’s welfare. Since CSR is an impact management, the concept of responsibility for tobacco industries has to be reformulated into one form of responsibility in order to overcome the impacts of its products.

Tobacco industrial responsibility has to be based on the concept of “Corporate Citizenship”⁵, a legal citizenship in companies, which shows that there are companies’ rights and obligations as an integral part of community in a country. Good Corporate Citizenship is encouraged more to do reconciliation with social discipline. It is aimed at giving contribution for society and its management is internalized by companies’ policies. The “Corporate Citizenship” activity is conducted through funds or other resources which their benefits can be taken by society in general.

The implementation of this responsibility concept will not succeed without any government regulations. Even though tobacco is legal and used widely, addictive and harmful substances in it have burdened health service system since they are the causers of diseases and death due to smoking. Therefore, it’s a must for the government to control and manage their circulation.

In fact, the effort, which is to control the cigarette consumption, has not succeeded yet since this effort has to deal with the aggressiveness of cigarette industries which always try to give guarantee for the existence of industries by doing many marketing strategies and influencing policies.

From the theoretical aspect, the attempt in assuring the existence of industry and mainly profit improvement is a form of power. In order to gain profits and higher authorities, companies are trying to influence decision makers for the sake of barriers to market entry (barriers to entry), which can be created because of created reasons. In

¹ Andrew Crane and Dirk Matten, *Business Ethics*, 2nd edition, oxford university Press., 2007, P. 339-340

² World Bank 1999, *Curbing the Epidemic Chapter 3* <http://www1.worldbank.org/tobacco/pdf/indonesian.pdf>

³ Jeed Greer dan Kenny Bruno, *Kamuflase Hijau : Membedah Ideologi Lingkungan Perusahaan-Perusahaan Transnasional*, Penerjemah Soediro, yayasan Obor Indonesia, Jakarta, 1999, Hlm. 25

⁴ Leon Schiffman & Leslie Lazar Kanuk, *Perilaku Konsumer (Consumer Behaviour)*, seventh edition, translated by Zoelkifli Kasip, PT Indeks, 2008,pg. 278

⁵ Corporate Citizenship is a concept which believes that companies as ‘a’ citizen, so that it has greater rights and obligations rather than a short-term goal, which is about maximizing profits.

addition, it also can be created by having a close relationship with decision makers to give subsidies, licenses, or by applying high import duty for foreign competitors. Normally, government regulates an industry with the aim of assuring the economic system, so that it can run properly based on public interest. Another goal is that overcoming market failures. However, in fact, the regulation is done based on the insistence of pressure groups.¹ In relation to the strategy done by tobacco industries, this attempt is also conducted by influencing decision makers and insisting the government to regulate the industries based on their own business. In this business, pressure groups are from various societies, such as a group of cigarette industry businessman, tobacco farmers, or other professions which do not agree with the government's policy in all levels, both in central and regional. It is because they want the government to issue regulation or policy which will give benefits for their business.

It is in accordance with "Economic Theory of Regulation", which is commonly known as "Capture Theory of Regulation" developed by George Stigler (1971). The regulation says that 'regulation is the result of pressure group action and results in laws and policies to support business and protect consumers, workers, and environment, with the basis of motivation which says, "Business wants regulation because it protects them from the risks of dynamic competition".²

As the evidence of this statement, Indonesia can hardly decide to ratify WHO Framework Convention on Tobacco Control (WHO FCTC) even though Indonesia participates actively in making this convention's scheme. Besides, Indonesia is the only country which does not ratify FCTC³ in Asia-Pacific

In line with the "no harm" principle in Commutative justice, everyone has to refrain his/herself and not to take one's rights and interests as the same as he/she does not want his/her rights and interests to be taken. This principle is based on the appreciation to humans' dignity, their rights, as well as the right to live.⁴

Thus, in social interaction, if there is a certain party whose rights or interests are taken, the country is suggested to follow up the party and restore the equality between the two parties. It is also applied in business, so that the country is demanded to handle and restore the inequality and the injustice by sanctioning or giving penalty fairly.⁵ Based on the consideration above, the government should put themselves in a right place by taking actions towards cigarette industries which truly harm their consumers.

As a part of the country, in creating "good corporate citizenship", companies have to obey all the regulations. For instance, they do not advertise their products considering its impact on the increasing numbers of cigarette consumption. Besides, the country has to spend a lot of fund to cope with the impacts of cigarette consumption, so that companies have to pay the excise tax as high as possible.

If referring to the Law Number 39 of 2007 on Customs, the excise tax is the country's levy for particular goods which have specialized characteristics, which their consumption needs to be controlled, their circulation needs to be watched over, their usage can give negative impacts on society or environment, and their usage requires the country's levy for justice.

As a result, the excise tax is not ordinary taxes, but it's the country's levy which is meant to control the cigarette consumption. Thus, the tobacco tax should be able to control the cigarette consumption. In this case, the excise is "sin tax".

By applying the excise tax in tobacco products, it means that actually the government has realized that tobacco is a unique and harmful product and can not be considered as an ordinary product, just like ethyl alcohol and drinks which contain ethyl alcohol.

The income of the country which is got from the excise tax is actually from smokers. Even though the companies pay more than they should, however, eventually the excise tax will be added in every butt of cigarette which has to be paid by the smokers. Therefore, it's truly wrong that the companies claim that the cigarette companies have been contributed in the income of the country.

According to the Law Number 39 of 2007 on Customs, there should be tobacco tax revenue-sharing for the Provincial and the Regency government. Based on the agreement of Minister of Finance, the budget is allocated for five (5) provinces, with the composition of 30% for the producing provinces, 40% for the producing regencies, and 30% is for the other regencies.⁶

By implementing the regulation above, it is not fair because there are only five provinces which get the funds whereas the bad effects of smoking for health impact all the smokers, active and passive smokers in Indonesia. Furthermore, the fund allocation, which is got from the excise tax, is not maximally used for overcoming the bad

¹ Deliarnov, *Political Economy*, Erlangga Publisher, Jakarta, 2006, p. 57

² *Loc.Cit.*

³ FCTC is an international convention which has been applied since 27 February 2005. FCTC aims at protecting the current and future generation from the destruction of health, social, environmental, and economic consequences which are caused by cigarettes and the exposure to its smoke. Article 3 FCTC

⁴ A. Sonny Keraf, *Etika Bisnis : Tuntutan dan Relevansinya*, Kanisius, Yogyakarta, 1998, p. 140

⁵ *Ibid.*, p. 141-142

⁶ PMK No. 85/PMK.07/2009

effects of smoking even though the effects are really huge.

In addition, DBHCT gives an impression that cigarette industries have been responsible for overcoming health's problems. However, in fact, most of the funds will go back to those cigarette industries by allocating the funds for the development of basic materials and industries.

A good reputation is important for cooperation, but society wants them to have integrity and know how to behave properly. Integrity has two meanings. First, it is the quality of being honest, upright, ethical and uncompromising about values and principle; and integrity also means the quality of being integrated. In addition to being honest, upright and ethical, we want to be understood as both consistent and in tune with the societies and communities in which we live and make our living.¹

In general, business doers do not want to be bound, free from overwhelming regulations, and allowed to compete freely with foreign producers. Although this attitude can be right if it is seen from the economic point of view, but this can not be right because there is a "Social Contract" between business and society.

In relation to the business sector, according to Daniel V. Davidson et.al, social contract theory says that:

"business can only exist because society allows it to exist and that business must satisfy the demands of the society if it is to be allowed to continue. If business does not satisfy the demands of society, society will change the rules of the game, and in so changing the rules, the permission that business now has may will be revoked. Society to day expects, and demands more from business than mere profits".²

Finally, in line with the utilitarianism ethic, it says the discretions and actions which are right and proper from the ethic's point of view are the ones which will bring great benefits for as many people as possible, or the other way around, will bring as few disadvantages as possible for few people. Therefore, the government should be able to create it through policies and regulations which will bring benefits for their society, and to test whether those policies and regulations will create welfare and happiness for their society.

III. Conclusion

The discussion above can be drawn a conclusion that the concept and the various forms of company social responsibilities (CSR), which is conducted by the tobacco industries, is only an indirect promotion attempt which cause the increasing of the sales products. CSR for tobacco industries is also not an obligation which can cause sanctions, if it is not applied. However, it doesn't mean that tobacco industries are free not to get involved in the social responsibility.

Social responsibility still has to be done by tobacco industries, mainly in order to overcome the impact of their products. This implementation of responsibility needs government's intervention in the forms of regulation or strict supervision since tobacco industries is a business entity which primarily aims at gaining profits. Thus, unethical efforts can be prevented in relation to tobacco industry's businesses.

The implementation of CSR can not be instantly given to the awareness of a company. The mechanism of a competition in free market has to be used to "force" business to do business practices responsibly. It is our duty to chance CSR paradigm, not only from "unintended consequence" to "intended action", although this may be seen as a utopian.³

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¹ Peter Schwartz and, Blair Gibb, *When Good Companies Do Bad Things*, John Wiley & Sons, Inc., Canada, 1999, P. 1

² Daniel V. Davidson, et.al., *Comprehensive Business Law*, Principle and Cases, Kent Publishing Company, Boston, Massachusetts, pg. 1270

³ As a consequence, CSR will be beat by the main purpose of a company, which is to maximize profits. Meanwhile, as a goal, CSR will be the main priority of a company in running a business without neglecting the next goal, which is about gaining profits. In this case, profits have a role as a means to maintain and develop the company.

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