

Deviation Concept of CSR Regulation in Indonesia (Article 74 of Law 40 of 2007 on Limited Liability Company)

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Abstract

The concept of CSR was originally a moral concept. CSR in Indonesia is the concept of law as set out in Law No. 40 of 2007 on Limited Liability Company, in particular on Article 74 which provides that the company is carrying on business activities in the field and / or related to the natural resources required to implement the Social and Environmental Responsibility. This concept has strayed from the original concept of corporate social responsibility is not put on the orientation of the physical environment, but the social environment as a form of corporate environments (business environment).

Keywords: Concept of CSR, Act 40 of 2007, Limited Liability Company.

1. Introduction

The concept of CSR was originally a moral concept. CSR in Indonesia is the concept of law as set out in Law No. 25 of 2007 on Investment, in particular on article 15 and in Law No. 40 of 2007 on Limited Liability Company, in particular on Article 74.

The Company is conducting its business activities in the field and / or related to the natural resources required to implement the Social and Environmental Responsibility as stipulated in Article 74 paragraph (1) of Law No. 40 of 2007 on Limited Liability Company. Social and Environmental Responsibility as referred to in paragraph (1) an obligation of the Company are budgeted and accounted for as an expense of the Company that the implementation is done with regard to the appropriateness and fairness, as specified in Article 74 paragraph (2) of Law No. 40 of 2007.

Normative facts above indicate the presence of legal issues that require research and study, namely: why the deviation occurs in the regulation of the concept of corporate social responsibility (Article 74 of Law No. 40 of 2007)?

2. Methodology

This type of research is a normative legal research and policy oriented research.¹ This study intends to examine the correlation between the construction of norms and norm conformity with the concept of reality as content objects arranged (consistency); completeness substance norm (coherency) and unprotected substrate element norm conformity with the characteristics of the object are arranged in setting corporate social responsibility in Indonesia. This study uses the approach of law (statute approach), conceptual approaches (conceptual approach), and functional legal approach (functional normative approach) with specialization in policy -oriented approach to law (policy - oriented approach or policy - oriented research).² The results of the study were analyzed using analysis methods of deduction and analysis of substantive legal norms. Analysis of substantive legal norms using constructive analysis and contextual analysis of the norm or construction norms and norm context analysis.

3. Results and Discussion

3.1. The Concept of CSR

Many of the terms and definitions of Corporate Social Responsibility, the following will be presented some terms and definitions of Corporate Social Responsibility.

Corporate Citizenship, the term was introduced by Joseph W McGuire in 1963. Corporations should pay attention to political issues, social welfare, education, "happiness" of labor and other social problems throughout.

¹Ida Bagus Wyasa Putra, Legal Theory to Orientation Policy (Policy - Oriented Theory of Law) : Problems Solving in the Legislative Process Indonesian context, " Legal Theory Lecture Materials Science Doctoral Program of Law and Master of Law Graduate Program, Udayana University " (Denpasar : Udayana University , 2012), p.17. Myres S. McDougal and W. Michael Reisman, *International Law in Policy-Oriented Perspective*, dalam R. St Johnston and J. Macdonald Douglas, *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*, (Martinus Nijhoff Publishers, The Hague, 1983), p. 103.

² Ibid.

Therefore, the corporation must act in "good" as good citizens.¹ When compared with the business environment proposed by David P. Baron, the concept of Corporate Citizenship can be categorized as the company's attention to the non-market environment as part of the business environment.

Social obligation and social responsibility, first introduced by Prakash Sethi, in the 1970s. Social obligation is corporate behavior that is driven by market interests and legal considerations. Corporate social responsibility is a behavior that is not only emphasizes the economic and legal aspects, but align with the social obligation norms, values and expectations of the performance that is owned by the social environment.²

Regarding the definition of CSR or Corporate Social Responsibility (CSR), there are several formulas given by, among others:

The World Business Council for Sustainable Development (WBCSD) defines CSR as "the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large to improve their quality of life".³ CSR is the continuing commitment of the companies to behave ethically and contribute to economic development while improving the quality of life of workers and their families and the local community as well the broader community to improve their quality of life.

CSR is intended as a means for companies to contribute to the Company Manpower and family for the community around the company conducts its business environment and the wider community to improve their quality of life. With the improvement of their quality of life, then the workers will work with calm and passion for improving the quality and quantity of production of goods and services companies. If people around the corporate environment and attention given by the company's contribution to improving the quality of their lives, the people around the company will feel comfortable and happy in the existence of the company in the midst of their environment. Because they are considered by the company's life, then they will also be maintaining the security and comfort in the company conducts its business. Nor has the wider community contribution given by the company, of course, will help to promote and where possible will participate and promote the company's business.

World Bank to formulate CSR as "the commitment of business to Contribute to sustainable economic development working with employees and their representatives, the local community and society at large to improve quality of life, in ways that are both good for business and good for development".⁴ CSR as a commitment of the Company to contribute to building a sustainable economy in cooperation with workers and their representatives, local communities and wider society to improve the quality of life, which is beneficial for the company and development.

Although the companies that contribute to workers and their representatives, local communities and the wider society, it does not mean the company will not benefit from the company's contribution. CSR concept put forward by the World Bank in line with the CSR concept put forward by the WBCSD (The World Business Council for Sustainable Development).

The European Union as an institution of society in the countries of continental Europe to formulate the notion of CSR in the EU Green Paper on CSR as " a concept whereby is companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basic ". More The European Commission also reiterated that CSR is "Being socially responsibility means not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and relations with stakeholders ".⁵ CSR as a concept whereby companies, integrating environmental and community concerns in their business operations and in their interaction with stakeholders (stakeholders) them on a voluntary basis. CSR is becoming a social responsibility in the sense that not only meet the expectations of the law but also more fulfilling and lead to more investment in human resources, the environment and relations with stakeholders. CSR in the European Union declared as an investment in human resources, because CSR is intended for improving the quality of human life in the environment around the company, whether it is human labor companies, communities around the company, or the wider community.

CSR Forum also gives the formulation the notion of CSR is "open and transparent CSR mean business practices that are based on ethical values and respect for employees, communities and environment".⁶ CSR means open business practices and transparent based on ethical values and respect for employees, communities and the environment. In line with the formulation and WB WBCSD CSR, CSR by CSR Forum also pay attention to the

¹ Bambang Banu Siswoyo, Implementation of Corporate Social Responsibility (CSR) Urgency and Issues, Inauguration Speech in Management Sciences at the Faculty of Economics, Presented in Open Session Senate State University of Malang (UM) Wednesday, November 7, 2012, p.6-12.

² *Ibid.*

³ Busyra Azheri, Corporate Social Responsibility Voluntary be mandatory, Jakarta: PT. Raja Grafindo Persada, 2012, p.20. www.wbcd.org. Corporate Social Responsibility: Making Framework for Corporate Social Responsibility, Washington, 2001.

⁴ *Ibid.*

⁵ *Ibid.*, p.21.

⁶ *Ibid.*

people around the company in the sense that the company's internal corporate employees and external company in the sense that the community around the company conducts its business and the wider community.

Business for Social Responsibility CSR formulated as "Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. Social responsibility is a guiding principle for every decision made and in every area of a business".¹ Implementation of CSR as a business as a means to meet or exceed the expectations of ethical, legal, commercial and public that part of the business community. Social Responsibility as a principle which directs every decision made and every area of the business. Even according to the BSR (Business for Social Responsibility) CSR is a guiding principle. As a principle which must be followed in any decision-making and implementing the company's business activities, of course, CSR should be defined as a company expense.

John Elkington asserts as follows: "Corporate Social Responsibility is a concept that organization, especially (but not only) corporations, have an obligation to Consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations".² John Elkington is more emphasis on the extent to which the concept of a company to ignore its obligations to consumers, workers, shareholders, communities, and ecological in all aspects of its activities. Although John Elkington incorporate ecological aspects in corporate social responsibility, which became known as the triple bottom line or 3P (Profit, People, Planet), but never touched on natural resources as a substitute for the environment (Planet).

Certo defines CSR as "... the managerial obligation to take action that Protects and improves both the welfare of society as a whole and the interest of organization."³ CSR as a managerial obligation to take action to protect and improve the welfare society as a whole and the attention of the company. Certo requires company executives or the Board of Directors (managerial) to execute a Corporate Social Responsibility measures to protect and improve the welfare of people around the company.

Lawrence, Weber and Post states that "CSR means that a corporation should be held accountable for any of its actions Affect people, their communities and their environment."⁴ CSR means that a company must be accountable for all his efforts and influence for people, their communities, and their environment. CSR is implemented by the company should be accountable to the people environment around the company.

Kotler and Lee stated that CSR is "... a commitment to improve community well-being through discretionary business practices and contributions of corporate resources."⁵ CSR is a commitment to improve the welfare of society through business practices and policies contributions of corporate resources. CSR is a company's commitment to the welfare of society by utilizing the resources owned by the company.

Danette Wineberg and Philip H. Rudolph gave the definition of Corporate Social Responsibility (CSR) as: The contribution that a company makes in society through its core business activities, its social investment and philanthropy programs, and its engagement in public policy "⁶ CSR as a corporate contribution made in the community through activities the main business, social investment and philanthropy programs and involvement in public policy.

Corporate Social Responsibility is the commitment of the company or business to contribute to sustainable economic development with attention to corporate social responsibility and focus on the balance between attention to aspects of economic, social, and environmental.⁷

The concept of CSR which has been described above, none mention the existence of Natural Resources as part of Corporate Social Responsibility. Attention companies in organizing Corporate Social Responsibility has always focused on improving the quality of life or well-being of the people in the environment surrounding the company, including the company's workforce and their families , communities around the company and outside the company public at large. It shows the concept of social responsibility and environmental provisions set out in article 74 of Law No. 40 of 2007 on Limited Liability Company , has been out of the concept of corporate social responsibility that has been widely accepted and implemented by the Company Limited. Although there are several formulations of corporate social responsibility governing the environment, but the environment is set in the concept of corporate social responsibility is a social environment, nonmarket environment, and not the natural environment, especially with regard to natural resources. In addition, environmental issues, natural environment, and natural resources are already many laws and regulations that govern them. While the social environment, especially corporate social responsibility is not a lot of laws and regulations that govern them. While there are some laws that regulate corporate social responsibility, the settings are not clear, even the

¹ *Ibid.*

² *Ibid.*, p.25. John Elkington in Teguh Sri Pembudi, CSR A Necessity, the Social Investment, Jakarta: Puspinsos 2005.

³ *Ibid.*, p.26.

⁴ *Ibid.*, p.27.

⁵ *Ibid.*

⁶ Danette Wineberg & Phillip H. Rudolph, *Corporate Social Responsibility-What Every In House Counsel Should Know*, in ACC Docket, 2004, p.72.

⁷ Suhandari M. Putri, *Schema CSR, Kompas*, 4 Agustus 2007, in Hendrik Budi Untung, *Corporate Social Responsibility*, (Jakarta: Sinar Grafika, 2009), p.1.

concept of setting it wrong, so it cannot be executed properly and of course setting goals will not be achieved. Formulation of Corporate Responsibility can be seen in the table below:

Table1: Formulation of Corporate Social Responsibility

NO	NAME	Formulation
1.	The World Business Council for Sustainable Development	improving the quality of life of the workforce and their families as well as of the local community and society at large to improve their quality of life
2.	World Bank	contribute to sustainable economic development working with employees and their representatives, the local community and society at large to improve quality of life
3.	European Union	Being socially responsibility means not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and relations with stakeholders
4.	Corporate Social Responsibility Forum	CSR mean open and transparent business practices that are based on ethical values and respect for employees, communities and environment
5.	Business for Social Responsibility	Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. Social Responsibility is a guiding principle for every decision made and in every area of a business
6.	John Elkington	Corporate Social Responsibility is a concept that organization, especially (but not only) corporations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations
7.	Certo	managerial obligation to take action that protects and improves both the welfare of society as a whole and the interest of organization
8.	Lawrence, Weber and Post	CSR means that a corporation should be held accountable for any of its actions affect people, their communities and their environment
9.	Kotler and Lee	a commitment to improve community well-being through discretionary business practices and contributions of corporate resources
10	Danette Wineberg and Philip H. Rudolph	The contribution that a company makes in society through its core business activities, its social investment and philanthropy programs, and its engagement in public policy

Under some formulations of corporate social responsibility that has been described above, it can be formulated that CSR is a Limited Liability Company Commitment budgeted costs for social events for stakeholders consisting of its workforce, the community around the company and the wider community for the sake of life better or welfare together in order to keep the non-market environment for the sustainability of the company's business.

3.2. CSR Regulation in Indonesia

CSR (Corporate Social Responsibility) is a component of the calculation of cost and benefit analysis (Cost and Benefit Analysis) in the administration of the company. Corporate social responsibility is a cost that must be budgeted and expended by the company to maintain a social environment for the sustainability of the company as the company benefits. The greater the social responsibility of the company budgeted and implemented, the more prosperous the company's social environment, which will benefit the company's sustainability.

CSR Company Limited Future Indonesian law is based around the company's obligation to budget as a Limited Liability company costs, and implemented as a joint venture between the state, employers and the public, especially the surrounding communities, protecting the environment in the form of non-market (social, cultural and security) in addition to conducting business in a market environment based on a family basis to promote the general welfare, the intellectual life of the nation for the sake of business continuity and sustainable development company, with penalties for companies that do not carry a Limited Liability Company and Limited Liability company award for that has done it .

CSR arrangements in Article 74 of Law No. 40 of 2007 on Limited Liability Company which only requires CSR for Limited Liability Company which carries on business in the field or in connection with the Natural Resources incompatible with the concept of CSR (Corporate Social Responsibility) Company Limited by legal ideals Indonesia. It should therefore be amended to restore the concept of CSR to the original concept that requires CSR for all companies' limited liability company doing business in Indonesia.

A legal norm should be constructed based on the source and context. A norm must be sourced, must comply, and

must not conflict with the source. Test to determine the level of Conformity, conformity, and consistency with the norms of a legal norm is called VALIDITY TEST source. A norm must also be constructed based on the needs of the context, based on the expectations and interests of the community where the law will be applied. Test to determine the fulfillment or not the fulfillment of the needs, interests, and expectations called CONTEXT TEST.¹

Validity Test includes: (a) test of the legal basis of the establishment of the authority, (b) a test of conformity with recourse law (derived/not sourced); appropriate/not appropriate- test consistency (consistency); complete/incomplete absorption material-test coherence (coherency), (c) horizontal consistency test - a test of harmonization (harmonization), and (d) test the vertical value . Besides, such a scientific test, validity test also includes technical test norms, include: (a) test the logic of norms, (b) structural test norms, and (c) test the completeness of the organization component/material/substance norm, and (d) clarity test formulation of norms. Test the validity of this construction has undergone mixed with the test of norms under Roscoe Pound Legal Theory, which emphasizes the Test Substance Norm.

Context Test includes testing the response to the expectations of society where the law will be enforced. Response to expectations test include construction of norms test based on: (a) test of the suitability value, and (b) fulfillment of the interests / needs test.²

The Indonesian government requires every limited liability company which carries on business in the field of natural resources or related to natural resources shall be allocated corporate social responsibility and the environment as a corporate expense. It is set forth in the Act No. 40 of 2007 on Limited Liability Company , in Article 74 determines : (1) the Company is conducting its business activities in the field and / or related to the natural resources required to implement the Environmental and Social Responsibility ; (2) Social and Environmental Responsibility as referred to in paragraph (1) an obligation of the Company are budgeted and accounted for as an expense of the Company that the implementation is done with regard to the appropriateness and fairness , (3) the Company does not execute the obligations referred to in paragraph (1) subject to sanctions accordance with the provisions of laws and regulations , (4) further provisions on Social and Environmental Responsibility is regulated by the government .

The regulation of Social and Environmental Responsibility are required for limited liability Company operating in the field and / or related to the natural resources shall be regulated further in Government Regulation No. 47 Year 2012 on Environmental and Social Responsibility Company Limited.

Social and environmental responsibilities set out in Article 74 of Law No. 40 of 2007 when tested for validity and test context, as can be seen in the table below:

Table 2: Validity and Context Test Of Article 74 Law No.40 OF 2007

No.	Testing	Results
I.	Validity	Valid
I.1.	consistency test	Is consistent
	a. The authority	of Article 5 paragraph (1), and Article 20 of the Constitution of the Republic of Indonesia Year 1945
	b. conformity with resource	Article 33 of the Constitution of the Republic of Indonesia Year 1945.
	c. Conformity	In accordance.
I.2.	coherence test	Coherent.
	- Completeness	Complete absorption material.
I.3.	harmonization of test	Harmonic.
	- Consistency horizontal	Not in harmony, not in line with Law No. 25 Year 2007 on Investment Company Limited which obliges all who invest in Indonesia to implement Corporate Social Responsibility.
I.4.	Not Contrary test	Is at odds with the vertical, i.e. the values contained in the Constitution and the principle of fairness in ideology.
II.	Context	in context
II.1.	test of the suitability	of appropriate value
II.2.	test of the fulfillment	Not able to meet the needs / interests of society and the Limited Liability Company.

Article 74 of Law No. 40 of 2007 on Limited Liability governing Social Responsibility and Environmental Company Limited have been prepared on the authority granted by the Constitution of the Republic of Indonesia

¹ Ida Bagus Wyasa Putra, *Op.cit*, p.50.

² *Ibid*.

Year 1945 in particular Article 5 (1) and Article 20 . Also derived from the Constitution of the Republic of Indonesia Year 1945, especially chapter 33. The formulation of Article 74 of Law No. 40 of 2007 on Limited Liability governing Social Responsibility and Environmental Company Limited is in accordance with the Principles of the ideas contained in Article 33 of the 1945 Constitution. Article 74 of Law no. 40 of 2007 in accordance with the basic idea of economic democracy as stipulated in Article 33 of the Constitution of 1945 which NRI production is done by all, for all under the leadership and members of the public viewing, although limiting the application of social and environmental responsibility only on the Limited Liability Company which is run business activities in the field and / or related to natural resources. Article 74 of Law no. 40 of 2007 in accordance with the basic idea of economic democracy contained in Article 33 of the Constitution NRI in 1945, Article 74 of Law no. 40 of 2007 is consistent, organized by the authority granted by and rooted in the Constitution.

Article 74 of Law No. 40 of 2007 on Limited Liability governing Social Responsibility and Environmental Company Limited also meet the test of coherence as it absorbs the full principal ideas contained in Article 33 of the Constitution NRI in 1945. Does not meet the test because they do not meet the harmonization of horizontal consistency. Article 74 of Law No. 40 of 2007 is not in line with Law No. 25 Year 2007 on Investment Company Limited which obliges all who invest in Indonesia to implement Corporate Social Responsibility.

Article 74 of Law No. 40 of 2007 also does not conflict with the vertical value, i.e. the value contained in the Basic Law and the principle of fairness in ideology. In real life system, in the form of justice reveals, at least three forms, namely: (a) in human relationships the individual giving to others who are entitled to everything the other party or the other party should be accepted, so that the resulting state of mutual giving and receiving (equity exchange), (b) In connection with the individual human society. Provide and implement everything that advance the prosperity and welfare of the community together as absolute goals (social justice), (c) In the relationship between the community and its citizens. Society , by means of its control , and load your sharing pleasure together with evenly and uniformly , according to the nature and level alignment spiritual and physical differences of its citizens , both as individuals and groups , to establish your common - sense principle of equal average (fairness in sharing) . The third form of justice that must be implemented by giving protection to the weaker party, because justice requires the protection of the weaker party.¹

Article 74 of Law No. 40 of 2007 in accordance with the values contained in the principle of fairness in ideology. But the formulation of Article 74 of Law No. 40 of 2007 is not able to meet the needs / interests of society and the Limited Liability Company.

Based on the test results, the formulation of Article 74 of Law No. 40 of 2007 on Limited Liability governing Social Responsibility and Environmental Company Limited is able to meet the test of the validity or valid and meets the test context. But the formulation of Article 74 of Law No. 40 of 2007 on Limited Liability governing Social Responsibility and Environmental Limited Liability Company which determines the course of its business in the field and / or related to the natural resources required to implement Social Responsibility and Environmental Science scientifically applicable law, but needs to be changed by returning to the basic concepts of corporate social responsibility and obliging to all limited liability company doing business in Indonesia.

4. Conclusion

Based on the research and analysis of these results, it can be concluded that the deviation of the concept of corporate social responsibility in Article 74 of Law No. 40 Year 2007, which only requires limited liability company conducting its business activities in the field and / or related to natural resources carry out responsibilities corporate social Responsibility for Law makers only see from the side effects caused by the presence of the Limited Liability Company and is not seen in terms of the concept of corporate social responsibility.

5. Recommendations

Based on the above conclusions, it can be recommended that the formulation of Article 74 of Law No. 40 of 2007 on Limited Liability Companies should consider the concept of corporate social responsibility and changed the formula "Limited Liability Company shall implement Corporate Social Responsibility".

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