

Regulation on Corporate Social and Environmental Responsibility (CSER) in Indonesia: Changing Concept of Corporate Social Responsibility (CSR) from Voluntary to Mandatory

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Abstract

The purpose of this paper is to describe the results of the research on the regulation of Corporate Social Responsibility (CSR) in Indonesia as well as its development, as regulated in Chapter V - Article 74 of Law No. 40 of 2007, using the term Corporate Social and Environmental Responsibility (CSER). The research method employed is legal research, which is analyzed prescriptively, to produce novelty about alterations in the concept and regulation of CSER which is in force Indonesia, changed from voluntary (morale obligation) to mandatory (legal obligation). The existence of the CSER regulation, which has been passed by the Government and House of Representatives, is intended to improve the welfare of society in its environment. Moreover, it is intended to create legal certainty regarding the implementation of CSER for limited liability companies running their business activities in the field of and/or related to natural resources. However, the existence of such regulations is not without problems, which will be discussed in this paper.

Keywords: CSER, Voluntary, Mandatory, Changing Concept

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1. Introduction

At the time of the application of Law No. 40 of 2007 on Limited Liability Companies, the obligation of social and environmental responsibility for limited liability companies shall be subsequently regulated in article 74 Law No. 40 of 2007, which states that:

- (1) Corporations doing business in the field of and/or in relation to natural resources must put into practice environmental and social responsibility.
- (2) The environmental and social responsibility contemplated in paragraph (1) constitutes an obligation of the corporations which shall be budgeted for and calculated as a cost of the Company performance of which shall be with due attention to decency and fairness.
- (3) Companies who do not put their obligation into practice as contemplated in paragraph (1) shall be liable to sanctions in accordance with the provisions of legislative regulations.
- (4) Further provisions regarding Environmental and Social Responsibility shall be stipulated by Government Regulation.

Based on the elucidation of article 74 Law No 40 of 2007 on Limited Liability Companies,, the provision was intended to maintain relations the harmonious, the company balanced, and in accordance with the environment value, the norms, and the culture of the local community. It also that the company having its business activities in the field of natural resources is the company which manages and take advantage of natural resources. It also explains the meaning of "the company having its business activities pertaining to natural resources" is the company which does not manage and don't take advantage of natural resources, but its business activities impact on the function of the ability of natural resources. Meanwhile, what is meant by be imposed with sanction in accordance with the provisions of legislations is charged with all forms of sanctions will be regulated in the legislations which are related.

Based on both of the provisions. It means that all kinds of corporations are subject to CSR in Indonesia before the enactment of the Law No. 40 of 2007. However, after the enactment of Law No. 40 of 2007 and Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of limited liability companies (GR-CSER), it appears that the obligation of CSR not only addressed to all kinds of companies, but only addressed to limited liability companies (Limited liability companies having is business activities in the field and/or pertaining to natural resources).

At the beginning of the enactment of article 74 Law No. 40 of 2007 which requires the implementation of CSER it created pros and cons among enactment. The reason is simple, because the concept of CSR is a form of social responsibility a corporation that is supposed to be performed voluntary by business. Nevertheless in its development, the trend in the regulation of CSR envisaged in the legislation into a duty that is potentially additional burdens for entrepreneurs in addition, with other such as a tax bureaucracy straightly, and others.

Even the rejection of the Constitutional Court's to review article 74 Law No. 40 of 2007 through the decision No. 53 / PUU-VI / 2008, is to stress the implementation of CSER which should be based on the corporate social awareness (voluntary based) now turned into the obligation of business players by the mechanisms of regulation (compliance fee-based). Hence, it is the enactment of GR-CSER, as a delegation regulation article 74 of Law No. 40 of 2007 (that the company is obliged to make CSER as part of its business objectives and should be set aside its budget for CSER program).

Thus, the concept of CSER which becomes legal obligation in Indonesia is actually a morale obligation in countries such as : Singapore (Sri Bakti Yunari 2009), Hongkong (Sri Bakti Yunari 2010) and Australia (Sri Bakti Yunari 2011). Therefore, CSER in Indonesia as a legal obligation is a reflection of corporate culture derived from the desire of Indonesian to create a sustainable economic development in order to increase the quality of life and environment which are useful for the local community and society in general and the company itself in order to establish harmonious relations, in accordance with the environmental value, norms, and culture of the local community.

The phenomenon of a trend to apply CSR as mandatory, compliance is not only exist in Indonesia, because formerly several countries in Europe such as England and France also have implemented CSR as compliance based. Even England had set up CSR as compliance based in 2003 through The 2003 Corporate Responsibility Bill, in response to the failure of the implementation of The White Paper on Modernizing Company Law, governing about transparency or accountability of company to stakeholders at that time (Illias Bantekas 2004). French also set CSR in normative through Nouvelles Regulations Economique (NRE) (see *legifrance gov* 2001). NRE is a rule that requires the company to report (public disclosure) for all companies have been recorded in the issue of the environment, national labor relations, domestic and international the local community and others. In addition to the study conducted by Tineke Lambooy, of the development of CSR in Indonesia (Tineke Lambooy 2014), an Australian CSR expert, Bryan Horrigan has expressed his phenomenal opinion about 'the movement of CSR trends that is regulated in the 21st century, including in Australia' (Bryan Horrigan 2007) and in Asian countries such as Indonesia and India. As well as the Indian state which has made CSR as mandatory in Chapter IX on Account of Companies, Article 135 (section 135) of The Companies Act 18/2013, enforced on August 29, 2013. Currently, the Article 135 Companies Act 18/2013 has been amended in 2017 by the Companies (Amendment) Act 1/2018 dated January 3, 2018. (Nava Subramaniam *et.al.* 2017); (Nayan Mitra & René Schmidpeter 2017); (Sandeep Gopalan & Akshaya Kamalanth 2015); (Col. PS Sandhu *et.al.* 2014; Lee Ashley 2014)

Actually, the concept of CSER in Law No. 40 of 2007 in Indonesia show how important CSR is for the survival of the business world especially for the company whose field of business related to natural resources. However lack of coordination in the process of the formation of laws and regulations, it was lack of coordination and involvement of expert in laws and limited access the role of society to participate in the process of the formation of legislation weakness. As a result, there is a weakness. There also weaknesses in the implementation of GR-CSER.

This paper presents the existing weaknesses in the regulation of CSER as results of the study of the authors entitled: "An Inventory of CSR Regulation as a Legal Obligation for Corporation in Indonesia" (Sri Bakti Yunari & Siti Nurbaiti 2012). It is expected to present an overview of the regulation of CSR as a legal obligation in Indonesia together existing problems, the change paradigm of CSR from voluntary to mandatory. Consequently, it can become the inspiration for others countries who want to apply CSR as the legal obligation.

2. Research Method

The methodology of research applied in this study is legal research method (Peter Mahmud 2005), considered as doctrinal research (Anwarul Yaqin 2007) applying a library-based research, then focusing on reading and analyzing the primary and secondary materials, related to setting CSER in Indonesia. Besides, the analyzing of CSER regulation in Indonesia is performed to produce a legal reasoning (Ellsworth, Phoebe C 2005), as a prescription in solving legal issues faced. The CSER law materials are in the form of legislation, references, research results and articles, obtained from library studies in Indonesia, subsequently prescriptively analyzed, employing 'statute and concept approach as an instrument of learning and knowledge'. It is the process of identifying the rules which govern an activity and finding materials which explain or analyze those rules (Terry Hutchinson 2002). Furthermore, legal research is conducted to obtain legal reasoning on weaknesses of CSER regulation in Indonesia.

3. Result and Discussion

3.1. The Premise of CSER as Legal Obligation for Corporations in Indonesia

The concept of CSR in Indonesia has become legal obligation, it binds the companies to implement it. The term means: Corporate Social Responsibility (CSR) for Corporate/Investor (a term used by Law No. 25 of 2007 on Investment in article 15 b). Corporate Social and Environmental Responsibility (CSER) for corporations/limited

liability companies (a term used by Law No. 40 of 2007 on Limited Liability Companies, Article 74 and GR-CSER). Additionally, Partnership and Community Development Program (PCDP) specifically for State Owned Enterprises (SOEs) as a term used by the State Own Enterprises (The Minister State Owned Enterprises Decree of PER-09/MBU/07/2015, PER-03/MBU/12/2016, and PER-02/MBU/7/2017).

The basic reason of Corporate Social and Environmental Responsibility (CSER) in Limited Liability Companies Law is to create sustainable economic development in order to increase the quality of life and environment that are useful for the local community and society in general and the company itself in order to establish relations the harmonious, the company balanced, and in accordance with the environment value, the norms, and the culture of the local community. Where a proposal known as CSR in the discussion of the draft law on Investment has been supported by “Partai Keadilan Sejahtera” in the house of representatives factions, which are ultimately approved for legalized as Investment Law on March 29, 2007 (see minute of meeting draft investment law 2006). As for the proposal is supported by the following reasons:

- a. the recognition of and respect for the community, so as not to utilized exploited for commercial purposes;
- b. the obligation of investor to get involved in the development of the local community while maintaining local wisdom.

Similarly, the concept of social and environment responsibility (CSER) in the discussion of the draft Limited Liability Companies law 2006, which are controlled by legislation in the House of Representatives faction – Republic of Indonesia, because of some considerations (see minute of meeting draft Limited Liability Companies law 2006), as follows:

- a. First, CSR concept as long as it is voluntary is not able to move the company's proven to be more caring towards society and the environment, because of the company's Indonesia 22.7 million, it is estimated that only 10% of CSR program has been running in earnest. Therefore, in a manner required (mandatory). Then all companies carry out CSR can be forced, so open a level playing field to all. If State-owned Enterprises only can be encouraged to do a mandatory CSR with the Partnership and Community Development Program, why not private business entities.
- b. Second, the voluntary approach in the management of CSR funds are very diverse, often gives rise to a debate between the company and the community. The company claims to have done with the CSR, building roads and bridges in residential community around, but at the same time also pay salaries of its employees under the minimum wage as well as polluting the environment. Consequently, within legislation in the legislation, it will be available a standard implementation and reporting of the implementation of CSR in each company, so that the public will be able to oversee the implementation of with ease.
- c. Third, the powers around the private business in the era of globalization has grown so strong and the role of the State is increasingly minimal. In some respects, the conditions of this kind can be very alarming if must be off. The Government as the regulator must ensure private business sector does indeed give you the benefits of short term and long term for the continuity of the national economy.

Based on the noble consideration finally the existence of setting CSER as the legal obligation in article 74, Law No. 40 of 2007 on Limited Liability Companies was passed. The existence of article 74 is based on Hans Kelsen “stufen theory” (Hans Kelsen 2012), the existence of the article is in accordance with 1945 Constitutions, specifically article 33 (4) stipulation that: “The national economy organized by the principle of mutuality of economic democracy, fairness, efficiency, environmentally sustainable, independence, as well as by maintaining a balance, progress, and unity of the national economy”. Therefore, article 74 Law No. 40 of 2007 is created under the delegation of article 33 (5) of the 1945 Constitutions (See the Decision of the Constitutional Court of Republic of Indonesia No. 53 /PUU-VI/ 2008).

In conclusion based on article 74 (3) the elucidation of Law No. 40 of 2007 on limited liability company is to enforce or in accordance with the provision of article 33 (4) of the 1945 Constitutions. Also known as the provision has given certainty and justice for the company or companies to try and find neither profit nor for people and the environment protection, to obtain sustainability and an absence of sustainable development to the optimal public welfare.

3.2. Definition CSER in Law No. 40 of 2007

Based on Article 1 (3) Law No. 40 of 2007 on Limited Liability Companies, corporate social and environmental responsibility (CSER) means: “the commitment of any company to participate in sustainable economic development in order to improve the quality of life and the environment is beneficial, both for the company itself, the local community, or society in general”. The definition of CSER under Law No. 40 of 2007 is the same as that declared by World Bank concept that: “Corporate Social Responsibility (CSR) is the commitment of businesses to contribute to sustainable economic development, disclosed, working with their families, the local community and society at large to improve their quality of life”.

Basically definition of CSER, as formulated in the general provisions of articles 1 (3) Law No 40 of 2007, is function as a general provision/ as the basic interpretation for the same term in the following articles of the

law. It is according too legislation formation rules (Maria Farida Indrati S 2008) Article 74 Law No. 40 of 2007 stipulated different sense from what is stipulated in the general provision. In the general provision is stipulated on “the commitment of the company towards CSER (a voluntary), mean while in article 74, Law No 40 of 2007 it is stipulated as a obligation of company towards CSER. This is the inconsistency (contradictio in terminis).

The world “commitment” in the general provision indicates voluntary, while the world obligation on article 74, Law 40 of 2007 indicates mandatory. It creates uncertainty of law and in contrary to The Principle of Justice Efficiency (see the decision of Constitutional Court’s No. 53/PUU-VI/2008. In the case of a class action lawsuit between companies represented by Association of Indonesian Women, the Indonesian Chamber of Commerce and Industry, the Central Executive Board of the Indonesian Employers Association, PT. Lili Panma, PT. Aspac Centra Centertex Tbk and PT. Three Pillars Creation versus the Government of Republic Indonesia). It is also against 1945 Constitutions as Indonesian Grund-norm, especially Article 28 D (1) and article 28 I (2) of the 1945 Constitutions. All of the in harmonies are the resulted of lack in coordination and involvement of interested parties in the creation of the law. It also lack of community participation.

3.3. Regulation of CSER as The Legal Obligation for Corporate in Indonesian Legislation

Currently, in Indonesia, CSR is governed explicitly and implicitly in 17 laws in addition to Article 74, Law No. 40 of 2007 and Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies. The 17 laws, 12 (twelve) were in acted before Law No. 40 of 2007, and 5 (five) were in acted after Law No. 40 of 2007 (Sri Bakti Yunari & Siti Nurbaiti 2012). Below is the classification:

a. Twelve (12) Laws in acted before Law No. 40 of 2007.

There are twelve laws governed explicitly and implicitly CSR, the obligation of corporation towards CSR and the sanction such as:

- (1) Law No. 5 of 1984 on Industry, article 3 (1) and article 21 (1). The sanction is stipulated in article 27;
- (2) Law No. 7 of 1992 on Banking juncto Law No. 10 of 1998, article 12 and article 29. The sanction is stipulated in article 29 (2b)
- (3) Law No. 5 of 1999 on Anti Trust and Unfair Competition, article 2 and article 3. The sanction is stipulated in article 47;
- (4) Law No. 8 of 1999 on Consumer Protection, article 2. The sanction is not stipulated;
- (5) Law No. 39 of 1999 on Human Rights, almost all articles governed CSR. The sanction is not stipulated;
- (6) Law No. 41 of 1999 on Forestry, article 23, article 30, article 31 (1), article 67 (1) and article 68 (1), (2). The sanction is stipulated in article 78 (4) and article 80 (1), (2);
- (7) Law No. 22 of 2001 on Oil and Natural Gas, article 40 (1), (6). The sanction is stipulated in article 56, and article 58;
- (8) Law No. 13 of 2003 on Employment, article 135. The sanction is not stipulated;
- (9) Law No. 19 of 2003 on State Owned Enterprises (SOEs), article 2 and article 88. The sanction is not stipulated;
- (10) Law No. 27 of 2003 on Geothermal, article 2, article 3 and article 29. The sanctions is stipulated in article 38 (2), article 39 and article 40;
- (11) Law No. 7 of 2004 on Water Resources, article 2, article 3, article 4 and the article 24, article 52 and article 82. The sanctions is stipulated in article 96 (1), (2);
- (12) Law No. 25 of 2007 on Investment, articles 15 and 16. The sanctions is stipulated in article 34.

b. Five (5) Laws in Acted After Law No. 40 of 2007.

There are five (5) laws governed explicitly and implicitly CSR, the obligation of corporation towards CSR and the sanction, such as:

- (1) Law No. 4 of 2009 on Mining, article 70, article 95, article 107, article 108 (1) and article 125 (1). The sanction is stipulated in article 96 (1), (2);
- (2) Law No. 11 of 2009 on Social Welfare, article 3(d), article 32 and article 36 (1). The sanction is not stipulated;
- (3) Law No. 30 of 2009 on Electricity, article 2 and article 42. The sanction is stipulated in article 48;
- (4) Law No. 32 of 2009 on Environmental Protection and Management, article 3, article 14, article 22, article 34, article 36 article 44, article 45, article 47, article 49, article 53 (1), (2), article 54, article 67 and article 68. The sanction is stipulated in article 77 until article 82, article 87, article 91, article 109 until article 114, article 116, article 118 and article 119;
- (5) Law No. 13 of 2011 on The Poor, article 31, article 36 article 38 and article 41. The sanction is stipulated in article 43.

Based on the inventory results and analysis against setting CSR is in the legislation governing CSR, sectoral then there are 5 (five) legislations which are not regulating the sanctions on companies that were not to perform its obligation CSR, namely: Law No. 8 of 1999 on Consumer Protection; Law No. 39 of 1999 on Human Rights; Law No. 13 of 2003 on Employment; and Law No. 19 of 2003 on State Owned Enterprises (SOEs) and Law

No.11 of 2009 on Social Welfare.

3.4. Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies as Delegated Regulation of Law No. 40 of 2007

Government Regulation No. 47 of 2012 on Social And Environmental Responsibility of Limited Liability Companies (GR-CSER), on June 4 April 2012, is the delegated regulations. There is no significant change in the implementation of the law in the country. This is the effect of the absence of provisions governing sanction. It was caused by provision in the GR-CSER is still not regulate matters of which has been stipulated by article 74, Law No 40 of 2007 on sanctions, supervisions, as well as the implementation of CSER.

The main provisions in elucidation of GR-CSER are as follows:

- (1) CSER conducted by company is carried out under the law;
- (2) This was done by CSER company that runs its business activities in the field of:
 - a. Natural resources and/or;
 - b. With regard to natural resources are carried out both within and outside of the company's environment and implemented on the basis of the annual work plan, which contains a plan of activities and budget needed for its implementation
- 3) The implementation arranged with regard to appropriateness and fairness, and must be contained in the annual report to be reported to the general meeting of shareholders;
- 4) An affirmation setting the imposition of sanctions the company which fails to perform CSER;
- 5) For those who play a role and execute CSER can be awarded by the authorized agency.

GR-CSER contains only 9 (nine) article, the core of the GR-CSER is only in 3 (threes) article, namely article 2, article 3 and article 7. In Article 2 stipulated that : each corporation is subject to social and environment responsibility. Article 3 (1) and (2) GR-CSER stipulated that: social and environmental responsibility as referred to in article 2 of GR-CSER, is mandatory for the corporate having its business activities in the fields of and / or related to natural resources based on the act. Its obligation as referred to in article 3 (1) GR-CSER exercised both inside and outside of the corporate.

Furthermore, in Chapter 7 GR-CSER stipulated that corporation referred to in article 3 which do not carry out social and environmental responsibility are penalized in accordance with the provisions of laws and regulations. The corporate that runs its business in and/or pertaining to natural resources are complied to implement CSER, if not performing will be penalized in accordance with the provisions of the legislation. Hence, with the promulgation the Government Regulation, CSER implementation conducted by the corporate, no longer based upon social consciousness (voluntary based), but rather is based upon liability (compulsory based).

The corporate is obliged to make social and environment responsibility as part of their business, operation and must put aside of the budget corporation to execute program of social and environment responsibility. The corporate is the one having its business activities in the fields and / or related to natural resources. Meanwhile, what is meant by the corporate having its business activities pertaining to natural resources is the corporate which does not manage and don't take advantage of natural resources, but its business activities impact on the function of the ability of natural resources, including the preservation of the environmental functions.

Legislation means all laws and delegated legislation on natural resources or pertaining to natural resources, and ethics, to run the corporate they are: legislation in the fields of industry, forestry, oil and gas, state-owned enterprises, geothermal power, water resources, mineral and coal mining, electricity, environmental protection and management and anti trust and unfair competition, human rights, employment, and consumer protection.

Legislation on social and environmental responsibility by corporations under GR-CSER still have weaknesses, there are:

a. Activities and budget CSER given by the corporate must consider, reasonableness and fairness as referred to by article 5 (1) GR-CSER;

Article 5 (1) GR-CSER that stated: "the corporate having its business activities in the fields and / or related to natural resources in forming and sets the plan activities and budget as intended under article 4 (2) GR-CSER must consider reasonableness and fairness. In its explanation further otherwise that that mean reasonableness and fairness the policies of the corporate, adapted to financial capability of the corporate, and potential risk resulting in social and environmental responsibility shall be borne by the corporate, according to business activities not reduce obligation as stipulated in the provisions of legislations associated with business activities the corporate.

A sentence, reasonableness and fairness this could result in an interpretation of the broad even gristle revolt committed by the corporate having its business activities in the fields of natural resources or pertaining to natural resources, because it can open up the opportunity for the corporate not to perform its obligation as mandated by Law No 40 of 2007 and GR-CSER itself. It means a sentence reasonableness and fairness can be multi interpretations which cause the vague of norms. This is possible, for some of the corporate could

not carry out CSER according to what is mandated in law and order as depending from the ability of corporate financial and potential risks of the corporate itself. If the corporate considers inappropriate the reasonableness and fairness, then those corporations do not need to perform their obligations to carry out its social and environment responsibility, both inside and outside the corporate. The implication is the obligation to run social and environmental responsibility are determined by the legislation can be a voluntary based.

b. Sanctions, prescribed in article 7 GR-CSER;

Actually sanction in GR-CSER is just reaffirmed article 74 (3) Law No. 40 of 2007, which later reaffirmed in article 7 GR-CSER: ‘the corporate no confidence social and environmental responsibility get sanction in accordance with prevailing regulation. Sanction meant in this article all sorts of sanctions regulated in the legislations sectoral related. The problem after discussed and analyzed, apparently from 17 legislation sectoral related fields which regulates CSR, there are 5 (five) legislation referred to by article 74 (3) Law No. 40 of 2007 juncto GR-CSER this which does not mention sanction for the corporate which fails to perform their obligations, namely Law No. 8 of 1999 on Consumer Protection, Law No. 39 of 1999 on Human Rights, Law No. 13 of 2003 on Employment, Law No. 19 of 2003 on State-Owned Enterprises and Law No. 11 of 2009 on Social welfare. Thus, the corporate breach of CSER as referred to by 5 (five) of the Laws, if it does not implement the CSER no sanctions to be applied. As delegated regulations of Law No. 40 of 2007, should prescribed sanction, so that the law can be well enforced. Since there is no provision on sanction, it is considered in contrary to the principle of Justice Efficiency, as delegated by Grund-norm in 1945 Constitutions. It also can cause uncertainty in its application.

4. Conclusion

The premise of CSER as the legal obligation in Indonesia is a result of the people’s untrust towards the good faith corporations. Hence, it is considered necessary to protect the rights of citizens, in the form of social responsibility of the corporate. CSER is required as a form of recognition and respect for the customary rights. It should not be used for commercial interests and responsibilities of investors to engage in the development of the local community to maintain local wisdom. Whereas the CSER obliged as a form of corporate concern for society and the environment. Thus, it is with the mandatory approach, the management of the fund will have a standard implementation of CSR and reporting are clear in their respective corporations, this could facilitate supervision. In addition, the Government as the regulator must ensure private business sector does indeed give you the benefits of short term and long term for the continuity of the national economy. Similarly, the existence of a hierarchy of CSER settings, in Indonesia, both legislations vertically and horizontally using Stufen Theory, then norm setting in Law No. 40 of 2007 article 74 does not conflict with the Constitutions. Even the existence of Law No. 40 of 2007 is indispensable in order to execute the command of the Article 33 paragraph (4) of The 1945 Constitutions.

Inconsistency or *contradictio in terminis* arises in Article 1 (3) Law No. 40 of 2007 with article 74 (1), in the world “commitment” in the general provision indicates voluntary, while the world obligation on article 74, Law 40 of 2007 indicates mandatory. Under article 28 D (1) and article 28 I (2) 1945 Constitutions it is against the Principle of “Justice Efficiency”, therefor substantially the provision of CSER in Law No. 40 of 2007 is not in accordance with 1945 Constitutions.

Regulation of CSER as a legal obligation in the laws and regulations in Indonesia, which has been set up in Article 74, Law No. 40 of 2007 on limited liability companies following its implementation regulation under Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of limited liability companies, as well as in 17 (seventeen) other sectoral legislation, which consists of 12 (twelve) regulation before the birth of the Law No. 40 of 2007 and the 5 (five) after the birth of the Law No. 40 of 2007 regulation. It still has shortcomings, where from 17 (seventeen) of the Laws, 5 (five) of them don't govern sanctions for corporations which do not carry out obligations of CSER. Therefore, of course, may give rise to legal uncertainty in its application. Besides, understanding on the implementation of CSER in the Government Regulation No. 47 of 2012 that states should due observance to the reasonableness and fairness, of course can give rise to understanding of different instructions; in other words can generate multi interpretations which cause the vague of norms in the application. Because indicator of reasonableness and fairness submitted to it each of the corporate without supervision and yardstick clear good related forms or magnitudes CSER by law. Can provide opportunities for the corporate for not need to carrying out their obligations to implement social and environmental responsibility either in or out the corporate. The implication is an obligation to run social and environmental responsibility prescribed by statute (compulsory based) can become voluntary based.

References

Anwarul Yaqin. (2007), *Legal Research and Writing*, Malayan Law Journal Sdn Bhd-Lexis Nexis, Kualalumpur.
Bryan Horrigan. (2007), ‘21st Century CSR Trends – An Emerging Comparative Body of Law and Regulation

- on Corporate Responsibility, Governance, And Sustainability'. 4 *MqJBL*.
- Col.P.S. Sandhu et.al. (2014), 'CSR in India A Review', *Social Science International* 30 2 : 263-280.
- Ellsworth, Phoebe C. (2005), *Legal Reasoning, The Cambridge Handbook of Thinking and Reasoning*, K. J. Holyoak and R. G. Morrison Jr. (editor), Cambridge Univ. Press., New York, 685-704.
- Hans Kelsen. (2012), *General Theory of Law and State*, Harvard University Press, Cambridge.
- Illias Bantekas. (2004), 'Corporate Social Responsibility in International Law', *International Law Review*, 22 Boston University, 309 22.
- Lee Ashley. (2014), 'India's New Companies Act to Change S', *International Financial Law Review*, London.
- Maria Farida Indrati S. (2008), *The Science of Legislation Techniques*, Publisher Kanisius. Yogyakarta.
- Nava Subramaniam et. al. (2017), 'Governance of Mandated CSR: Evidence from India Government-Owned Firms', *Journal of Business Ethics* 143, 543-563
- Nayan Mitra & René Schmidpeter. (2017), *CSR in India - Cases and Developments After the Legal Mandate*, 1st edn, Springer International Publishing Switzerland. <eBook ISBN 978-3-319-41781-3, DOI 10.1007/978-3-319-41781-3, Hardcover ISBN 978-3-319-41780-6, Series ISSN 2196-7075
- Peter Mahmud Marzuki. (2005), *Legal Research*, Kencana Prenada Media Group Publisher, Jakarta.
- Sandeep Gopalan & Akshaya Kamalnath. (2015), 'Mandatory CSR as a Vehicle for Reducing Inequality : an Indian Solution for Piketty and The Millennials', *Journal of Law and Social Policy*, 1 Northwestern 10.
- Sri Bakti Yunari & Siti Nurbaiti, (2012), 'CSR Regulation After the Enactment of Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies', *Business Law Journal*, Volume 31 No. 5, Jakarta.
- Sri Bakti Yunari et.al.. (2012), 'An Inventory of Enactment CSR as a Legal Obligation for the Corporations in Indonesia', *The Reports of Research, Grants Competition Research*, Funded by The Ministries of Research, Technology and Higher Education Republic of Indonesia.
- Sri Bakti Yunari, (2009), 'A Study on The Enactment and Implementation of Corporate Social Responsibility in Indonesia and Singapore', *Reports of Research*, Faculty of Law, Universitas Trisakti, Jakarta.
- Sri Bakti Yunari, (2010), 'The Enactment of Corporate Social Responsibility in Hongkong (Comparative Studies with the Enactment of the Corporate Social Responsibility in Indonesia)', *Reports of Research*, Faculty of Law, Universitas Trisakti, Jakarta.
- Sri Bakti Yunari, (2011), 'The Enactment of Corporate Social Responsibility in Australia (Comparative Studies with the Enactment of the Corporate Social Responsibility in Indonesia)', *Reports of Research*, Faculty of Law, Universitas Trisakti, Jakarta.
- Terry Hutchinson. (2002), *Researching and Writing in Law*, Law Book Co Pyrmont, Sydney.
- Tineke Lambooy, Afifah Kusumadara et.al. (2014), 'CSR in Indonesia – Legislative Development and Case Studies', Konstitusi Press, Jakarta.
- The Decision Constitutional of Court Republic of Indonesia No. 53/PUU-VI/2008.