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The Meaning of Corporate Social Responsibility as a Legal Obligation in Limited Company Law: An Indonesian Case Study

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The purpose of this study is to analyse and determine the meaning of corporate social responsibility as a legal obligation to the company according to Article 74 of Law No. 40 of 2007 concerning Limited Liability Companies (UUPT). This type of legal research is doctrinal research using the short term (statute and pro) and short concept (conceptual and pro). From the results of the research, it can be found that philosophically the existence of corporate social responsibility (CSR) as stipulated in Article 74 paragraph (1) of Law Number 40 the Year 2007 concerning Limited Liability Companies. This is very closely related to the goals and functions of the Indonesian state in a form that is expressly stated in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia, one of which is to advance public welfare. All the Indonesian Nation is guided by Pancasila as the Nation's Life View. The Indonesian people will not be able to achieve the goals they have dreamed of without the noble values that they uphold as a way of life, namely Pancasila. In this case, the implementation of CSR obligations is carried out to realise the objectives and functions of the state under Pancasila. Socially, the existence of CSR is a legal responsibility that is based on the values of benefits that will be accepted by the community. CSR can be used as a means to empower the poor. Even the implementation of CSR to the community through the utilisation of potential social capital can be used as an alternative to empowering the poor in Indonesia. The concept of CSR as referred to in Article 74 is the implementation in Article 33 paragraph (4) of the 1945 Constitution. Normalising CSR in Article 74 paragraph (1) of the PT Law which is then strengthened by Decision of the Constitutional Court No. 53/PUU-VI/2008 is a legal obligation accompanied by sanctions. Normalising CSR as a legal

obligation accompanied by sanctions for violators is intended not only to regulate (aanvullend recht) but rather to force (dwingend rechr) to give more power to regulate, tie up, and force the responsibility of the company than the original responsibility (non-legal responsibility) becomes a liability.

Keywords: *Corporate social responsibility, legal obligations, welfare*

Introduction

One of the objectives of the Indonesian country was to improve public welfare (Andersen, 2012). One of the legal policies adopted to realise people's welfare is by requiring companies to carry out corporate social responsibility (CSR) as mandated in Article 74 of Law Number 40 the Year 2007 concerning Limited Liability Companies (UUPT). Bowem (1953) defines CSR as the obligation of the authorisation to formulate policy, make a decision, or follow a series of actions that are desirable in the area. The definition was later refined by Davis (1960), he states that decisions and business actions are taken at will, or at least as much as, beyond the economic or technical interests of the company (Totok, 2014). The World Business Counseling for Sustainable Development (WBCSD) is an association of international companies in defining corporate social responsibility and business development and their community of society at large (Isa & Busyira, 2011) (the commitment of the world USA to continually act ethically, operate legally and contribute to economic improvement, be with the increase in the quality of life at the local level).

The philosophical problems of this paper can be seen in terms of ontologies, epistemologies, and auxologists (Jujun, 1990). Ontologically, looking at the birth of Article 74 of the Company Law, which regulates the obligations of every Limited Liability Company to carry out social and environmental responsibilities. The existence of CSR is closely related to the responsibility of the state in the framework of prospering the people. However, due to the existence of the State has limited capabilities, especially in the management of natural resources, the management of natural resources is delegated to the private sector (the Company). Epistemologically, the way of prospering the people by applying the CSR has not been effective because the meaning of the word "mandatory" contained in Article 74 of the Company Law still has the meaning that lacks certainty whether it is voluntary or mandatory. Likewise, axiologically because the word "mandatory" in Article 74 of the Company Law is not understood as a mandatory by all companies, the objectives, and benefits to be achieved by the CSR concept have not been able to be felt to the maximum by many people, even the community around the company has not been able to accelerate the realisation of community welfare.

Theoretically, the problem that arises is that legal means as a tool to achieve the aims and objectives of the country aspired to through sustainable development have not been able to realise the welfare of the people. The implementation of CSR has been voluntary so far, in reality, it has not yet provided a sense of social justice to all stakeholders so that other accountability concepts that are more binding and forceful are needed. Problems of juridical have been invited by the Company Law, which is related to the Company in general, specifically in the form of several companies, specifically in the form of a specific formula. (1) of the PT. The establishment of the CSR is an obligation to imply different perceptions of the holder of many companies; unfortunately, even the government. In the PT Law, the element of obligation is not explored even further in the explanation of the PT Law itself and even in PP No. 47 In 2012, about the number of CSRs, which is mandatory that has legal implications.

This research is legal. Peter Mahmud Marzuki (2007) says that the aim of legal research is the process of finding legal insurance, legal principles, as well as legal doctrines, to be a legal issue in the face of the law. Legal issues that are examined in this research are corporate social responsibility as a legal obligation to create a welfare state. Based on the background that has been explained above, the purpose of this paper is to analyse how do you interpret corporate social responsibility as a legal obligation to create a welfare state?

Methods

This type of research is normative legal research. The research approaches used include the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach (Bambang, 2000). Types of legal materials in this study consist of primary, secondary and tertiary legal materials. Primary legal material consists of statutory regulations, official records or minutes in the making of laws and regulations, or court decisions. A secondary legal document is a legal material that explains the primary legal material to assist in analysing the problem—tertiary legal material in the form of the Big Indonesian Dictionary and the Law Dictionary.

The analysis technique in this study is a qualitative juridical analysis, which refers to research materials that lead to theoretical studies of concepts, norms, or legal norms, legal materials or research objects are not only described as they are but also given an argument about how the final tax collection that has fulfilled the element of justice.

Results and Discussion

The welfare state, according to Black's Law Dictionary, is "A nation in the which the government undertakes social various insurance programs, such as compensation

unemployment, old-age pensions, family allowances, food stamps, and aid to the blind or deaf." (Bryan, 1999). A Country called as the State of prosperity the Government if Government it performs a number of social programs like replacing the amount of loss for the unemployment, the benefits of the elderly, the benefits of the family, it will only be granted and provide the cost of the deaf to the deaf and the deaf. In Indonesia, the concept of CSR is a legal obligation that must be implemented by companies. This was confirmed by the Constitutional Court Decision above *judicial review* Article 74 of the Company Law by several companies, including the Chamber of Commerce and Industry (Kadin), the Indonesian Young Entrepreneurs Association (Hipmi), and the Association of Indonesian Business Women (Iwapi), arguing that Article 74 paragraph (1) of the Company Law is contrary to Article 28D paragraph (1), Article 28I paragraph (2), and Article 33 paragraph (4) of the 1945 Constitution. The petitioners are of the opinion that Article 74, which requires CSR for the company, has:

a. contrary to the principles of CSR which is volunteerism;
b. double burden the company, namely the obligation to pay taxes and bear the costs of CSR; and,
c. eliminating or at least denying the concept of economic democracy which is cantered on the efficiency of justice as stipulated in Article 34 paragraph (4) of the 1945 Constitution.

The government believes that there are some basic problems and weaknesses when formulating CSR into legal responsibilities, including:

a. interpreting CSR as a legal obligation can prove, the understanding of the Government of CSR is solely due to the opportunity for financial resources that can be immediately provided by companies to fulfil obligations under applicable regulations. Understanding CSR is only limited to financial resources will reduce the intrinsic and fundamental meaning of CSR itself. As a result, CSR activities will become legal normative and formal obligations that ignore several prerequisites that enable the realisation of CSR's basic meaning, namely as a basic choice, freedom, and willingness to act;
b. changing the basic principles of voluntary CSR into mandatory. Such actions, for whatever reason, will negate or at least minimise the choice of space and medium changing the basic principles of voluntary CSR into compulsory. Such efforts, for whatever reason, will negate or at least minimise the choice of space and medium and the opportunity for the community to measure the degree of meaning in practice. The next consequence is that CSR will be limited to efforts to prevent negative impacts on the company's presence in the surrounding environment. The development of CSR activities in Indonesia increasingly shows the synergy of CSR programs with several Government objectives.

c. a change in CSR as an action based on ethical responsibility into legal obligations will potentially direct the CSR program only to formalities to fulfil an obligation;
d. Indonesia is the only country in the world to regulate CSR as a legal obligation that must be carried out by a corporation whose basic principles are voluntary; and,
e. placing CSR as a legal obligation creates confusion as CSR itself is already an act that exceeds what is required by applicable laws and regulations (beyond legal compliance). The implementation of CSR that exceeds compliance with laws and regulations means that it has "infinite" limits that cannot be reached by laws and regulations that are normalised into obligations. The corporation itself can determine the upper limits it wants to achieve, and its implementation is done voluntarily.

Concerning the above legal proposition, the Constitutional Court through Decision No. 53 / PUU-VI / 2008 rejects the request for testing. Before considering the constitutionality of the norms petitioned for a petition by the Petitioners, the Constitutional Court first stated the following matters.

a. That there is a relationship between social interests and business interests and legal obligations that business interests can address with "to evade", "to comply", or "to cooperate". The company will avoid its social responsibility when the legal provisions governing social responsibility create injustice (to evade). Someone who is faced with an unjust law results in no moral obligation to obey it. Companies must obey and comply with legal provisions because the law is conceived as an order or state policy. There is no alignment between governed and governed (*to comply*). The company must cooperate with the state to prosper the people (*to cooperate*).
b. Social and Environmental Responsibility (TJSL) is a state policy that is a joint responsibility to cooperate (to cooperate) between the state, business people, companies, and the community. Not the other way around is to find loopholes of weaknesses in the legal provisions which are then exploited to avoid (to evade) these responsibilities. TJSL is an affirmative regulation which according to the argument of the flow of natural law not only demands to be obeyed but requires cooperation between stakeholders;
c. Whereas TJSL, as formulated in Article 74 a quo, is *malum* in se, not just *malum prohibitum*. Article 74 of Law 40/2007 is a provision that directly has an impact on health and safety at a high level, therefore demands moral and spiritual compliance to cooperate and not merely obey or avoid it or even exploit weaknesses to benefit from not implementing these provisions when these actions will increase the risk that must be borne by human life both now and in the future (just saving principle). The greater the legal provisions containing the contents of morality, the greater the social responsibility to work together to make it happen;
d. That the destruction of natural resources and the environment in Indonesia has reached a very alarming level, both for present and future generations. Therefore, the role of the

state with the right to control over the earth, water, air, and natural resources contained therein, including the right to regulate, cultivate, maintain and supervise, is intended to build a good and sustainable environment aimed at all stakeholders that must not be reduced or even ignored;

e. That the state, the community and companies engaged in the exploitation and use of natural resources should be held accountable both morally and legally for the negative impacts of environmental damage. In addition, it is no longer time for domestic and foreign investors to behave like closed and isolated entities and alienated from society, such as the colonial era. Still, it should build good harmonious relations with the surrounding community, to provide maximum benefits for the prosperity of the people. With the principle of Pareto superiority, it means to build and benefit without sacrificing the interests of others;
f. Companies realise that the survival also depends on the company's relationship with the community and the environment in which the company operates. This is in line with the principle of legitimacy (legitimacy principle) that the company has a contract with the community to carry out its activities based on the values of justice and how the company responds to various interest groups to legitimise the company's actions. The disharmony between the company's value system and the community value system can cause the company to lose its legitimacy, thereby threatening the survival of the company itself. Disclosure of TJSL information in annual reports is one way for companies to build, maintain, and legitimise company contributions from an economic and political perspective.

Based on the description above, the Constitutional Court of the Republic of Indonesia through Decision No. 53 / PUU-VI / 2008 consider that:

a. Normalising Social and Environmental Responsibility (TJSL) into a legal obligation is a legal policy (legal policy) forming a law to regulate and implement TJSL with a sanction;
b. CSR was initially born in the UK and Europe which is voluntary, but after in Indonesia, specifically, Law 40/2007, the voluntary nature of CSR was increased to be mandatory;
c. The relationship between morals and ethics with the law is gradual, where the law is the formalisation or legalisation of moral values;
d. It must be differentiated between state tax levies and company funds for TJSL. The tax levy is used for national development, while the TJSL funds are used for the communities surrounding the company and the restoration of the environment in which the company is located so that both of these cannot be generalised. Whereas TJSL according to the provisions of Article 74 paragraph (2) of Law 40/2007 is a company obligation that is budgeted and calculated as a company expense "the implementation of which is carried out with due regard to propriety and fairness";

e. The regulation of TJSL with legal obligations has more legal certainty compared to voluntary CSR. Normalising TJSL will be able to avoid various interpretations from companies;
f. The corporate TJSL listed in Article 74 of Law 40/2007 is carried out based on propriety and reasonableness. This principle reinforces the principle of legitimacy which states that it has become a social obligation for companies that are in the midst of society to break away from the principles that are individualistic, isolated, and unwilling to know about the surrounding community.
g. Normalising CSR in Article 74 of Law 40/2007 has reflected social justice. John Rawls connects the concept of justice with two fundamental values of social order, namely freedom and equality. Everyone has the same right to get the most fundamental guarantee of freedom.

In connection with the reason of the applicant stating that the change like CSR in moral responsibility becomes a legal obligation in the laws and regulations, the same thing has negated the concept of economic democracy as regulated in Article 33 paragraph (4) of the 1945 Constitution, in particular, the phrase efficiency of justice. According to the Petitioner, the parameter of success of a company from the perspective of TJSL is to prioritise moral and ethical principles, namely achieving the best results, without harming other community groups. Therefore, the change of TJSL as an action based on ethical responsibility becomes a legal responsibility that will direct the CSR program only to the formality of fulfilling obligations and can lead to new forms of corruption. Concerning the petitioner's reasons, the Constitutional Court believed that the basic principles of the economy in Indonesia were democratic. CSR regulation with a legal obligation is a way for the Government to encourage companies to participate in community economic development.

In addition to the reasons stated by the Constitutional Court, there are three other arguments as raised by Pall A. Davidsson who support the Normalisation of CSR as a legal obligation accompanied by sanctions are as follows (Sefrriani, 2015).

a. To integrate the economy with human rights, European societies have learned from history that economics, politics, and freedom of law cannot be separated at all. Industrial collaboration with NAZI in Germany during World War II gave the fact that private economic power was no less dangerous to human dignity than the military. Therefore, it is essential to integrate the economy with human rights protection, promote human welfare through economic integration with social factors. In the form of binding legal provisions.
b. The voluntary norms that submit CSR program planning to the company prove to be ineffective, only being a means for promotion, advertising, and public relations. Poor people in developing and underdeveloped countries who expect to benefit from CSR

programs designed by the company have only had the bad effect of environmental damage due to company activities. CSR voluntarily failed to change the company's behaviour towards human rights, instead undermined the country's sovereignty

c. It is difficult to accept the argument that CSR will lose its characteristics as social responsibility if it is regulated in legal norms that are mandatory, binding and accompanied by sanctions because as if the law does not have social and moral values. This is unacceptable because social and morals are at the core of many legal rules. Both are like two sides of the same coin that cannot be separated. For example, legal obligations given to parents against their children do not eliminate social and moral obligations. European societies already have a tradition of integrating social problems into their business law. Regulations on environmental protection, minimum wages, and work safety are examples of legislation.

In addition to the Constitutional Court ruling, the existence of CSR as a legal obligation has also been stated in Article 3 paragraph (1) of Government Regulation Number 47 the Year 2012 concerning Social and Environmental Responsibility of Limited Liability Companies that reads "Social and environmental responsibility as referred to in Article 2 becomes an obligation for the Company which carries out business activities in the field and/or related to natural resources based on the Law Article 2 PP No. 47 of 2012 reads "Every Company as a legal subject has social and environmental responsibility".

With the provision of CSR as a legal obligation can change the views and behaviour of business actors. Hence, CSR is no longer meant merely as a moral demand but is convinced as a corporate obligation that must be implemented. This awareness gives the meaning that the company is no longer a selfish, group or exclusivity identity of the community, but a business identity that is obliged to make cultural adaptations to the social environment. So that it is not excessive if in the future CSR must be interpreted not merely as a responsibility because it is voluntary, but must be done as an order in the sense of accountability accompanied by sanctions.

Responding to the existing conditions, that the law as a product of political policy is not always a condition sine qua non for the purpose to be achieved. This shows the law has certain capacity limits to accommodate the values that grow and live in the community. Therefore Roscoe Pound states that the main legal task is "social engineering". In this doctrine, it is said that the law must be developed by changing social values. For this reason, it is better to formulate existing interests in society, namely personal, community and general interests (Mas Soebagio & Slamet Supriatna, 1992).

In other words, CSR is a company's commitment to stakeholders in a broad sense. Rather than just for the benefit of the company or company alone. This means, even though morally

and ethically is good, it is permissible and justified by a company or company to seek, pursue the maximum profit, but that does not mean the company or company is justified to obtain maximum profit but to exclude and sacrifice the interests of other parties involved, for example, the social environment, culture, and society in general. If this is the case, it is appropriate that CSR is no longer interpreted as a movement or moral demand. But it can develop into a corporate obligation (mandatory) that must be implemented. That the awareness of the company or company to carry out CSR obligations can give the meaning that the company is no longer a group or entity that is selfish. Behave and be characterised by exclusivity from the community. But instead, as an entity that is obliged to carry out cultural adaptation to its social environment, so according to the Government, it is appropriate and natural if CSR is no longer manipulated only as a voluntary responsibility, but must be carried out as mandatory in terms of liability. And therefore, if the company or company does not implement, it must be subject to sanctions Article 74 paragraph (3) of the Limited Liability Company Law.

Theoretically, the company as a legal entity has 2 responsibilities, namely responsibility in the sense of liability and responsibility in the sense of responsibility. Corporate responsibility in the sense of liability seen from the perspective of corporate management can be divided into 2 (two), namely (Alauddin, 2012):

a. Corporate responsibility is internal
Corporate responsibility arising from legal relations with shareholders or investors and with workers or workers. All that cannot be separated from the structure of the company itself.

b. Corporate responsibility is external
Corporate responsibility arising from the legal consequences of its activities, both towards third parties and the environment in which the company operates. The principles of liability arising from the legal consequences of a company's business activities can be grouped into two, namely responsibilities arising from agreements and responsibilities arising from the law.

While the meaning of corporate responsibility in the sense of responsibility is according to Pinto more aimed at the deciding indicators for the birth of a responsibility, which is a standard that has been determined in an obligation that must be obeyed. So, the principle of responsibility in the sense of responsibility places more emphasis on an act that must or must be done consciously and ready to bear for any risk or any consequence of an action that is based on morals. In other words, responsibility is a responsibility in a broad sense, that is, the responsibility that is only accompanied by moral sanctions. A clearer difference between responsibility in terms of liability and responsibility can be seen in the table below:

Table 1: Comparison of the Meanings of Liability and Responsibility

No	Substance	Liability	Responsibility
1	Basic responsibility	Stipulated in certain legal rules	Stipulated in ethical and moral values
2	Demands for accountability	Carry out achievements as stipulated by law	Carry out achievements voluntarily in accordance with the vision of the subject
3	Form of sanctions	Certain compensation and achievements agreed upon	Moral sanctions
4	The nature of accountability	Juridical liability	Social or public responsibility

(**Resource:** Busyra Azheri, Corporate Social Responsibility dari Voluntary menjadi Mandatory, (Jakarta: Raja Grafindo Persada, 2011), page. 90)

Normalising CSR in PT Law as a legal obligation accompanied by sanctions for violators is intended not only to regulate *(aanvullend recht*) but rather to force (*dwingend rechr*) to give more power to regulate, tie up, and force the responsibility of the company from the original responsibility (initial responsibility non-legal liability) becomes a liability. This shows the seriousness of the Indonesian government in implementing international human rights instruments that set the State as the central task bearer. The state must be able to protect, fulfil, respect, and also advance the welfare of its citizens through the laws and regulations that are made and not to prevent the enjoyment of the welfare of the Indonesian people hindered by the company's activities.

Normalising CSR as a legal obligation accompanied by legal sanctions is carried out by the Government of Indonesia as a sovereign State, to show its seriousness in implementing human rights obligations to the State even if it is not under what is practised by other States which only regulate it as something that is voluntary and its implementation is handed over to companies. Something different from international practice is not necessarily a bad thing. What Indonesia has done makes CSR as a legal obligation accompanied by sanctions may be a reflection of the new legal needs because the old legal practice is not sufficient anymore. The actions of transnational companies that are increasingly concerned about the fulfillment and protection of the human rights of the surrounding community can no longer be only overcome by voluntary rules. If what is done by Indonesia has a positive impact and is followed by other countries, it is not impossible that what was initially considered to be an anomaly or violation is recognised and followed into a new legal method. As a sovereign country, Indonesia has the right to regulate its laws that are not dependent on the laws and cultures that apply in other countries.

Conclusion

The meaning of corporate social responsibility in Article 74 paragraph (1) of Law Number 40 the Year 2007 concerning Limited Liability Companies as a legal obligation accompanied by sanctions is based on Minutes of Session Forming Limited Liability Company Law, Decision of the Constitutional Court No. 53 / PUU-VI / 2008 and supported by several expert opinions. The normalisation of corporate social responsibility as a legal obligation accompanied by sanctions for violators is intended not only to regulate (*aanvullend recht*) but rather to force (*dwingend rechr*) to give more power to regulate, tie, and force the responsibility of the company than the original responsibility (responsibility non-legal liability) becomes a liability.

It is recommended that there be explicit confirmation by the legislators regarding the position of corporate social responsibility in Article 74 paragraph (1) of the PT Law as a legal obligation accompanied by sanctions both civil sanctions, administrative sanctions, and criminal sanctions. This is so that every company can carry out its obligations in corporate social responsibility programs as mandated by law. This affirmation can be included in the Elucidation of Article, which regulates the company's social responsibility obligations.

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