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REGULATION OF THE CORPORATE SOCIAL RESPONSIBILITY CONCEPT IN THE COMPANY LIMITED IN INDONESIA LEGAL PRODUCTS

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Abstract

Corporate Social Responsibility (hereinafter written CSR) must be legally enforced by a Limited Liability Company that runs business activities in the field and/or related to natural resources in Indonesia. This provision comes into force since the promulgation of Law No. 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 No. 106, Additional State Gazette of the Republic of Indonesia No. 4756 (hereinafter the Limited Liability Company Law). Taking into the problem, this study aims to explore more deeply about the urgency of regulating the concept of CSR from what was initially voluntary and then becoming a legal or mandatory obligation after the enactment of the Limited Liability Company Law. The type of research used in this study is a type of normative legal research, using the type of legislation approach, approach to Legal Concept Analysis and Historical approaches. Based on the result of the study, it can be concluded that the sustainability of the company will be guaranteed if the corporation participates in the interests of stakeholders and the environment in which the Limited Liability Company conducts its activities becomes one of the urgency of regulating the concept of CSR in Indonesian legal products. The basic factors that make the implementation of CSR activities in Indonesia have not run optimally are that there are still weaknesses in the regulation on the regulation of CSR concepts in Indonesia which include restrictions on companies.

Keywords: Corporate Social Responsibility, Limited Liability Company, Mandatory

1. INTRODUCTION

The increasingly complex social problems in society in recent decades and also the implementation of decentralized systems are two of the various factors that make CSR a concept that is expected to be able to provide new breakthrough alternatives in empowering disadvantaged people (Untung, 2008). Aside from empowering the underprivileged, the concept of CSR is also intended to realize an environmentally sustainable development program. The application of sustainable development in the form of environmental protection and management aims to ensure the fulfillment

of the justice of the present generation and future generations in accordance with the mandate of Law No. 32 of 2009 concerning Protection and Management of the Environment, State Gazette of the Republic of Indonesia of 2009 No. 140, Additional State Gazette No. 5059 (hereinafter written PPLH Law).

CSR is a concept that states that organizations, in this case in particular companies, have various forms of responsibility towards all stakeholders, including consumers, employees, shareholders, communities and the environment in all aspects of the company's operations, including economic, social and environmental aspects. While

the Limited Liability Company is defined as a company formed by business actors to carry out a series of business activities both on goods and services aimed at obtaining profit or profit from an economic perspective. Previously the business profits obtained by a Limited Liability Company were solely intended to fulfill the economic interests of shareholders or in other words the company prioritized its shareholders. Other aspects beyond the economic interests of the company tend to escape attention or even be ignored. Conditions like this if they are left unchecked will cause various kinds of losses both in terms of economic, social and environment.

The concept of CSR has recently become a new color and way for Limited Liability Companies in Indonesia to carry out moral responsibilities to various stakeholders and the environment in order to create sustainable development. Limited Liability Companies are also charged with the obligation to carry out budgeting on CSR as a limited liability company whose implementation is carried out by observing propriety and fairness. The Limited Liability Company that has an obligation to implement the CSR concept is the Company that is limited to running business activities in the field and / or related to natural resources. This is in accordance with the provisions of Article 71 paragraph (1) of the Limited Liability Company Law. Thus, Bottom line Limited Liability Company as a company is no longer a single bottom line, but the company must emphasize a triple bottom line consisting of profit, people, and the planet (Wibisono, 2007).

In accordance with the principle applied in the PPLH Law, it can be said that economic growth is no longer considered an objective that cannot be contested. Conversely, economic growth must be placed within the framework of environmental protection, in other words economic development must be sustainable (Wibisana, 2013). The position of the CSR concept is getting more attention in policy formulation in Indonesia

along with the level of urgency. This must be considered carefully so that the implementation of the concept of CSR in Indonesia can be effective and provide benefits in the development itself both from the economic, social and environmental aspects. Based on the background of the thought, it is then necessary to conduct a study of the Regulation of CSR Concepts in Limited Liability Companies in Indonesian Legal Products. As for the formulation of the problem in this writing is divided into 2 (two) problems which cover what constitutes the urgency of regulating the concept of CSR into Indonesian legal products and also on the form of supervision on the implementation of the concept of CSR in Indonesia.

2. METHOD

The type of research used in this study is a type of normative legal research using primary and secondary legal materials. The embodiment of legal principles and rules in primary legal materials can be in the form of basic regulations or legislative regulations. Secondary legal materials used in this study are books relating to corporate law, legal journals, articles and other scientific works related to CSR. All legal materials obtained in the study will be collected and grouped according to each variable to be analyzed qualitatively. The type of approach used in this study consists of a legislation approach, which is carried out by examining the laws and regulations relating to CSR; Approach to Legal Concept Analysis, which is carried out to find legal notions / legal concepts about CSR; and the historical approach used to understand the philosophy of the rules about CSR (Diantha, 2017). The results of this study will be presented in descriptive analytical form.

3. RESULT AND DISCUSSION

The Urgency of Regulating the Concept of Corporate Social Responsibility in Indonesian Legal Products

Before Law No. 25 of 2007 concerning

Investment, State Gazette of the Republic of Indonesia of 2007 No. 67, Additional State Gazette of the Republic of Indonesia No. 4724 (hereinafter written in the Investment Law) and the Limited Liability Company Law promulgated, the implementation of CSR in Indonesia is voluntary, so the programs implemented by companies are not sustainable. Talking about corporate responsibility, in principle this responsibility can be distinguished into responsibility in the meaning of responsibility and responsibility in the meaning of liability (Sari, 2016). The difference between the two is that if there is no explicit arrangement regarding these responsibilities in a legal norm, then they are included in the meaning of responsibility. Conversely, if the responsibility has been regulated in a legal product, then it is included in the meaning of liability.

If the responsibility in the meaning of responsibility as mentioned above is then related to the complexity of the demands of the development of the business world today, then the intended responsibility is related to business ethics. That the development of business ethics in the community gave birth to a concept called CSR. So based on the opinion of Busyra Azheri, CSR can be interpreted as a commitment of a company or business organization in making policies and actions while still taking into account the interests of stakeholders and the environment in which companies and business organizations carry out their activities based on applicable legal provisions (Azheri, 2012).

A broader definition of CSR is stated by the World Business Council for Sustainable Development as a global association of about two hundred companies that are specifically engaged in sustainable development, that CSR is expressed as a continuing commitment by the business world to act ethically and contribute to the economic development of the local community or the wider community, together with the improvement in the

standard of living of the workers and their entire family. The opinions of Kotler and Lee quoted from the writings of Rahmatullah Trianita Kurniati state that CSR programs are usually directed at showing a greater role in the company's presence in the community and not just showing generosity (Kurniati, 2011).

Based on some of the above meanings, it can further be explained that what is meant by CSR is a social responsibility that is borne by companies or business organizations in accordance with applicable legal provisions in order to protect the environment and improve the welfare of the people who are around the company's activities. This reflects that CSR is essentially a value or soul that underlies the company's activities in general, because CSR is a comprehensive foothold in economic, social, welfare and environmental aspects. So it is not ethical if the values of the CSR concept are only applied to empower local people, on the other hand the welfare of the employees in them is not guaranteed, or the company is not disciplined in paying taxes.

The practice of CSR activities in companies in Indonesia has begun to exist and develop from the 1990s. According to the CSR Study Circle, in Indonesia such activities are more limited to extractive companies that are more focused on health activities, safety, and the environment. However, for the term CSR itself, it has only become popular and has been widely heard among large companies in Indonesia in 2000.

The description of the CSR concept above then opens the mind about the importance of the concept to be included in legal products as a rule that must be adhered to by companies or business organizations. As for the urgency of the regulation of CSR programs in Indonesian legal products that, the damage that occurs in the economic, environmental and social sectors in the community can be improved towards the better only if the government together with companies in Indonesia are aware and have high

attention. the importance of this program for the continuity of the nation and the company, because CSR programs can be a turning point of sustainable development. The financial condition alone is not enough to guarantee the value of the company grows and develops sustainably. Corporate sustainability will be guaranteed if the corporation also takes into account social and environmental dimensions.

The importance of regulating other CSR concepts in Indonesian legal products is based on several things, including that in 1992, the Earth Summit in Rio de Janeiro Brazilia emphasized the concept of sustainable development as a matter of concern, not only by the state, but also by the corporation. In 2002, the World Leaders in Yohannesburg proposed and gave birth to the concept of social responsibility to fulfill the two previous development paradigms of economic growth and environment sustainability. All three become the basis for companies to implement the concept of Corporate Social Responsibility in running their corporations. At a meeting of the UN Global Compact in Geneva, Switzerland in 2007, companies were asked to demonstrate the application and implementation of healthy business responsibilities and behaviors known as the CSR concept (Decision of the Constitutional Court of the Republic of Indonesia No. 53 / PUU-VI / 2008).

Apart from that, the urgency of changing the concept of CSR from moral responsibility and voluntary to legal obligations imposed on Limited Liability Companies in Indonesian legal products can be examined from the opinion of the Constitutional Court (hereinafter written by the Constitutional Court). Court Decision No. 53 / PUU-VI / 2008 which states that the normalization of CSR becomes a legal obligation is a legal policy as a law maker to regulate and implement CSR with a sanction. The regulation of CSR with legal obligations has more legal certainty when compared to CSR that is voluntary. CSR normalization will be able to avoid diverse

interpretations of the company, this is intended to have control, binding capacity, and the driving force for companies to implement CSR, whereas voluntary CSR arrangements are not strong enough to force companies to implement CSR programs, so that by improving the status of voluntary CSR it becomes a legal obligation that has the power to force it is expected to be able to contribute in order to improve the welfare of the community.

Application of Corporate Social Responsibility Activities in Indonesia

The application of the concept of CSR in Indonesia today must be recognized as not running optimally, but in the development of the era of information technology and the insistence of globalization, the company's demands to implement CSR cannot be avoided. Therefore, the urgency to realize CSR towards each company should not only arise from legal obligations, but also must be accompanied by an awareness that the implementation of CSR will have a positive impact on the company in the long term. Based on this description, CSR obligations should be adjusted to the capabilities and creativity of each company and the needs of the local community by first being jointly formulated between 3 (three) interested parties namely the Government, the business community and the local community, and then implemented by each company, because each company has the characteristics of the environment and society that are different from one another (Decision of the Constitutional Court of the Republic of Indonesia No. 53 / PUU-VI / 2008).

Along with the lack of clarity in the arrangements regarding the implementation of the CSR concept, several ministries such as the Ministry of Social Affairs, Ministry of Environment, Ministry of Cooperatives and Small and Medium Enterprises until the Ministry of Energy and Mineral Resources have been active in developing national and sectoral CSR program guidelines in accordance

with the duties and responsibilities of their respective ministries as constructive contributions in order to clarify the implementation of CSR programs in Indonesia (Sefriani & Wartini, 2017). Guidelines for implementing CSR programs as referred to above are among others elaborated in the Guidelines for environmental CSR prepared by the Ministry of Environment of the Republic of Indonesia; The Guidelines for Implementing the Environmental Sector CSR compiled by the Ministry of Environment and the Corporate Performance Rating Program in Environmental Management carried out by the Ministry of Environment (Sabela & Yeon, 2015).

The implementation of CSR carried out by companies must be in accordance with the initial objectives of the birth of this concept, namely in order to build reliable human resources, increase wealth or alleviate people from poverty, maintain corporate relations with surrounding communities, support clean corporate governance and preserve the environment. All of that needs to be done to realize community welfare. Although the government has included regulations on CSR in legal products in the form of laws and regulations, there are still many CSR activities that are not optimal in providing assistance for community empowerment to date. The reach of CSR programs in Indonesia is still uneven and cannot reach all levels of society. CSR is carried out only for the purposes of certain parties and still does not reflect the nature of sustainability. The implementation of CSR that has a partnership pattern is not done well since the beginning. As a result, making various important decisions in the context of implementing the program is often carried out unilaterally by the company.

As for the basic factors that make the implementation of CSR activities in Indonesia have not run optimally, that is because there are still weaknesses in the regulation on the regulation of CSR

concepts in Indonesia which includes (Pujiyono, Wiwoho, & Triyanto, 2016):

That the provisions of the Limited Liability Company Law limit the company in relation to CSR activities. Article 74 paragraph (1) of the Limited Liability Company Law stipulates that companies that are obliged to implement CSR are companies that carry out their business activities in and / or related to natural resources. Likewise in other regulations, it is stated that CSR is closely related to natural resources and the environment. Whereas many companies that get large profits actually do not have direct linkages with natural resources, while the contribution of these companies to the environment and society is urgently needed. For example, multi-media companies, computers, Information and technology (IT), and others. So that regulations regarding the obligation of companies to implement CSR are not only limited to extractive companies, but also to non-extractive companies.

That the regulations regarding CSR in Indonesia are still weak sanctions. Weaknesses in the Limited Liability Company Law can also be seen from not clearly stipulating sanctions. In the Company Law it delegates sanctions in other related laws, so that it creates uncertainty. In Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility also does not specifically regulate this sanction. Another weakness is regarding the basis of the assessment of sanctions in various regulations on CSR not regulated. Administrative sanctions contained in the Investment Law are still difficult to measure. Many companies are ignorant of society and the environment but are difficult to impose sanctions. As an example of a number of cases, PT Lapindo Brantas, which allegedly caused a mudflow inundation in Sidoarjo, has not yet been resolved. PT Freeport Indonesia is ignorant of the welfare of the Papuan people, etc.

The things mentioned above should have taken serious consideration

considering the company has a strategic role in encouraging the growth of the level of community welfare. The effort is carried out by increasing and creating employment and other assistance to the state and society through CSR activities. So far the law in Indonesia requires companies to implement CSR. Companies that do not carry out CSR will still have an impact on the community, due to the lack of contribution of the company in improving community welfare. In addition to this, it is clear that companies that do not carry out CSR obligations mean violating the provisions of the law. The company has an effort to maximize economic benefits. But on the other hand companies must contribute to improving community welfare and environmental health through CSR programs. However, obligations without sanctions mean that it will also be difficult to implement. CSR will only be a moral guideline to be implemented voluntarily, not an obligation as the company's main business. For this reason, regulation of sanctions in implementing CSR is important.

4. CONCLUSION

That the sustainability of the company will be guaranteed if the corporation participates in the interests of stakeholders and the environment in which the Limited Liability Company conducts its activities becomes one of the urgency of regulating the concept of CSR in Indonesian legal products. The other urgency of the application of this concept, which emphasized the concept of sustainable development as a matter of concern at the 1992 Earth Summit in Rio de Janeiro Brazil. Furthermore, there was a request that the company demonstrate the implementation and implementation of healthy business responsibilities and behavior known as the concept of CSR at the UN Global Compact meeting in Geneva, Switzerland in 2007. Finally according to the decision of the Constitutional Court No. 53 / PUU-VI / 2008 the regulation of CSR into a legal

obligation is intended to have the power of control, binding capacity, and driving force for companies to carry out CSR in order to improve public welfare and the application of sustainable economic development.

That the application of the concept of CSR in Indonesia today must be recognized as not running optimally. The basic factors that make the implementation of CSR activities in Indonesia have not run optimally are that there are still weaknesses in the regulation on the regulation of CSR concepts in Indonesia which include restrictions on companies that are required to carry out CSR activities in accordance with the Limited Liability Company Law and also because of weak sanctions.

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