

Reconception of mandatory-based corporate social and environmental responsibility in Indonesia

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Abstract. The Legal Concept of Corporate Social and Environmental Responsibility (CSER) in Law Number 40 Year 2007 (Company Law), as set forth in the general provision Article 1 (3) of Company Law evidently is a definition (*begripsbepalingen*) of voluntary basis, because it comes from the concept of CSR used by western countries based on World Bank's guidelines. Hence, it is certainly contrary to the legal concept of CSER that is perceived to be mandatory in the Company Law. Therefore, the concept of CSER as an implementation of a legal principle in a norm, so as not to cause legal issue, at the normative level as well as at implementation level, must be consistent and need reconception. The purpose of this reconception of CSER is to find a new concept of mandatory-based CSER. The methodology of research used is legal research (doctrinal research), based on secondary legal material acquired analysed prescriptively by statute, conceptual and comparative approach. The research outcome is resulting in a discussion of reconception of a legal responsibility-based Corporate Social Liability (CSL) with sustainable local community empowerment oriented, so as to create legal certainty at the normative level and implementation in Indonesia.

Keywords : legal concept, normative level, reconception

1. Introduction

The regulation of Corporate Social Responsibility in Indonesia, as stipulated in Article 15 item b Law No. 25 of 2007 on Investments (hereinafter referred to as Law No 25 of 2007) [1]. The term "Corporate Social Responsibility" (known as CSR), states that : "Every investor shall have obligations: to implement corporate social responsibility". It's mean *a responsibility mounted in every investment company to keep creating relationship which is in harmony, in balance and suitable to the local community's, values, norms, and culture*. If the investor does not perform CSR obligations, the business entity or individual business may be subject to administrative sanctions, in the form of: written warning, restrictions on business activities, freezing of business activities and / or investment facilities; Or revocation of business activities and / or investment facilities.

Similarly, Article 1 item 3, Law No. 40 of 2007 on Limited Liability Company (hereinafter referred to as Law No. 40 of 2007). The term Corporate Social and Environment Responsibility (known as CSER), states that: CSER is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment which is useful to both the Company itself, the local community, and the society in general. Then in Article 74 Law No 40 of 2007, states that : (1) The Company having its business activities in the field of and/or related to



natural resources, shall be obliged to perform its Social and Environmental Responsibility. (2) Social and Environmental Responsibility as referred to in paragraph (1) shall constitutes the obligation of the Company which is budgeted and calculated as the cost of the Company, implementation of which shall be performed with due observance to the reasonableness and fairness. (3) The Company which fails to perform its obligation as referred to in paragraph (1) shall be imposed with sanction in accordance with the provision of regulation. (4) Provision regarding Social and Environmental Responsibility shall be further regulated with a Government Regulation. As the implementation regulation of article 74 Law No 40 of 2007, so the government issued the Government Regulation No. 47 of 2012 on Social and Environmental Responsibility for Limited Liability Company (hereinafter referred to as GR No. 47 of 2012) [2].

Based on the three regulations of CSR (Law No. 25 of 2007; Law No. 40 of 2007 juncto the Government Regulation No. 47 of 2012 and Law No. 19 of 2003 juncto the Regulation of the Minister of State-Owned Enterprises No. PER-03/MBU/12/2016), the provisions of CSR in these three regulations in Indonesia have raised some legal issues, namely conflict of norms and vague of norms. Conceptually, CSR in Indonesia has not been interpreted and understood as mandatory, especially CSER concept as stated in Article 1 item 3 Law No 40 Years 2007, states that : “Environmental and Social Responsibility” means a Company’s commitment to taking part in sustainable economic development in order to improve the quality of life and environment, which will be beneficial for the Company itself, the local community and society in general.

Philosophically, if the grammatical interpretation is interpreted, it is desired by Article 74 UUPT, that TJSL is a mandatory obligation, which is explicitly stated in Article 74 paragraph (1) containing the word ".... mandatory. ... ", as well as in Article 74 paragraph (2) and paragraph (3) also contains the word " obligation ". Where the word "must" literally means "to be done; Should not be abandoned ", whereas the word "obligation" is defined as (something) that is required; Something to be done; must". In other words "obligation" is anything that is considered as a necessity that comes from outside to be implemented by an individual as a member of a citizen, to gain recognition of the right in accordance with the implementation of the obligation.

Similarly, the difference between the meaning of the word "obligation" and "commitment" is manifested in the form of legal consequences, where an "obligation" will have legal consequences which may be enforced to the business actor and will be penalized if not exercised by law And the government), whereas "commitment" is an act or a will that has no legal effect, but rather a moral consequence, because the act or intention to execute it comes from within (the business actor) and has no legal effect. Grammatically the word "commitment" has a different meaning from the word "mandatory" or "obligation", in other words the concept and norm of TJSL contained in UUPT, conceptually is an inconsistent, non-synonymous (*contradictio in terminis*), overlapping and has led to a conflict of concepts, which ultimately lead to legal uncertainty within the norm.

Consequently the concepts in the three regulations of CSR contradict each other. Because the understanding of concept of CSR as set forth in the elucidation of Article 15 item b Law No 25 Years 2007 differs from the concept of CSER as regulated in Article 1 item 3 Law No. 40 Years 2007, as well as if compared with the concept of PCPD in Article 1 item 6 and 7 the Regulation of the Minister of State-Owned Enterprises No. PER-03/MBU/12/2016, which according to the authors, tends to lead to conflict of concept. Similarly, the regulations of CSR norms have caused conflict of norm, since they incorporate different norms sectorally. For consistency purposes between CSR Law No. 25 year 2007, Law No. 40 Year 2007 and the Regulation of the Minister of State-Owned Enterprises as mandatory in Indonesia, then a uniform and harmonious concept is needed so that legal norms that regulate CSR for all companies in Indonesia do not cause vague of norm.

Based on the above problems, this paper proposes the need for reconception of CSR as a legal obligation in the form of uniform of concept that will cause harmonious legal norm to govern in the form of CSR norm of mandatory nature in Indonesia. What is actually the idea of reconception of legal obligation-oriented CSR in the sense of *liability* not *responsibility*, will be discussed in this paper as a form of CSR legal obligation with legal consequences because of its mandatory nature.

2. Research Method

The applied type of research is legal research or doctrinal research secondary legal material obtained from library research of primary, secondary and tertiary legal material, to be prescriptively analysed [2] on any and all laws And regulations governing CSR as well as relevant sectoral laws. The method of approach used in this research is statute, conceptual and comparative approach [3], which is done by analyzing all the concepts related to the legal issues of CSR.

3. Results and Discussion

3.1. The Regulations of CSR in Indonesia.

The phenomenon of mandatory CSR in a global context is not a new thing, especially in European countries, such as France through *Nouvelles Regulations Economique* (NRE) Tahun 2001 [4], then England, through The 2003 Corporate Social Responsibility Bill [5] have applied it. Similarly, in Asian countries, like India, CSR has been mandated in the Indian Companies Act 2013 - section 135[6]. Including the state of Indonesia, has regulated CSR as mandatory since the 1980s specifically for State-Owned Enterprises (SOEs), while CSR for Private-Owned Enterprises has been mandated since 2007, through Law no. 25 of 2007 on Investments (Article 15 item b) and Law No. 40 Year 2007 on Limited Liability Company (Article 1 item 3 and Article 74) juncto Government Regulation No. 47 of 2012 on CSER for Limited Liability Company [7].

The regulations governing CSR in Indonesia are regulated in [7]:

- 1) Explicitly: Law No. 19 of 2003 on State-Owned Enterprises (Articles 2 and 88) juncto Regulation of The Minister of SOEs No. 03/MBU/12/2016, Law No. 25 of 2007 on Investment (Article 15 and elucidation); Law No. 40 of 2007 on Limited Liability Company (Article 1 item 3 and Article 74) and Government Regulation No. 47 of 2012 on Social and Environmental Responsibility for Limited Liability Company [7].
- 2) Implicitly: Law No. 4 of 2009 on Mining; Law No. 11 of 2009 on Social Welfare; Law No. 32 of 2009 on Environmental Management; Law No. 41 of 1999 on Forestry; Law No. 22 of 2001 on Oil and Natural Gas; Law No. 27 of 2003 on Geothermal; Law No. 7 of 2004 on Water Resources [8].

3.2. Weakness of CSER Concept in Law No. 40 of 2007.

As mentioned in the background, although the terms and concepts used for CSR in Indonesia vary, but one thing that needs to be underlined is that the terms of CSR, CSER and PCDP are not the same as the term and concept CSR in the western countries. Especially with the CSER in Law No. 40 of 2007, as affirmed in the Decision of the Constitutional Court Number 53/PUU-VI / 2008, stating that: "... The regulation of social and environmental responsibility as referred to Article 74 Law No. 40 of 2007 is different from the concept of CSR, As known and understood and implemented by the business community so far.... ". According to the government statement, there is a very basic difference between the concept of CSER in Law No. 40 of 2007 and CSR which has been applied to the Western world, namely as follows:

Firstly, CSER is legally obliged only to the Limited Liability Company conducting business activities in the field of natural resources and or related to natural resources. However, CSR as a whole is mandatory to all forms of the company in general. *Secondly*, the cost of CSER is charged to the company's operational expenses, the amount of which is determined based on reasonableness and fairness. While the cost of CSR implementation is taken from the company's net profit. *Thirdly*, the violation of the CSER shall be liable to sanctions in accordance with the sanctions as provided in the sectoral laws governing them. While sanctions violation of CSR is only a moral sanction.

In order for consistency to the term, the uniformity of concepts and legal norms that will regulate the CSR mandatory, it is necessary to create a reconception of sustainable CSR that is oriented towards legal responsibility. The idea is called by the author of the term Corporate Social Liability, which is then abbreviated as "CSL", as a renewal of the concept of CSR is known for this. So the context of the word Responsibility in the CSR writer replace with the word Liability to be CSL, as a form of CSR that is mandatory in Indonesia.

Literally, CSL can be interpreted as a social obligation that connects between companies and all stakeholders, including customers, employees, communities, owners or investors, government, providers, and even rivals. On the basis of this understanding, then logically the appropriate term for mandatory CSR is CSL. So, when it comes to CSR mandatory reconception to CSL, this idea is deemed appropriate because liability is more likely to lead to social responsibility for corporations legally, which the word liability can also be interpreted as legally responsible.

Normatively, the arrangement of CSER in Law No. 40 of 2007 juncto Government Regulation No. 47 of 2012 on Social and Environmental Responsibility for Limited Liability Company, still has some weaknesses, especially related to activity arrangement and budget of CSER and unfussy sanction implementation. However, the formal juridical existence of the rule of law on the CSER has had binding power as a law (genus), although in terms of procedures for the establishment of legislation, the regulation of CSER has not fulfilled the principles of the establishment of good legislation. As well as impact on the implementation of CSER in practice that tends not to be sustainable, so that created a concept that leads to the concept of sustainable [11].

Therefore, The Legislator are willing to make CSR mandatory, then the appropriate paradigm in the mandatory context of the concept of CSR is initiated more precisely when using the word or liability term not responsibility. Therefore, the idea to then make CSR concept into CSL is considered as a reference in fixing the prevailing regulations in the field of CSR in Indonesia, which is more in line with the philosophy of the Indonesian nation based on the principle of kinship economy, this is very different from the concept of CSR Prevalent and adopted by Western countries which tend to be based on the principle of capitalist and liberal economy.

3.3. *The CSR Concepts according Laws, doctrine and International institutions.*

To support the idea of uniformity of the legal concept of CSR, by applying the statute and conceptual approach, obtained some concepts of CSR as follows:

- 1) In Laws and Regulations in Indonesia, as follows:
 - a) Elucidation of Article 15 item b Law No. 25 of 2007;
 - b) Article 1 item 3 and Article 74 Law No. 40 of 2007;
 - c) Article 1 item 6 and 7 of the Regulation of the Minister of State-Owned Enterprises Number: PER-09 / MBU / 07/2015 on PCDP.
- 2) Other concepts of Doctrine and international institutions, such as:
 - a) Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and for development [12], [13].
 - b) Corporate Social Responsibility is a business acts in socially responsible manner when its decision and account for and balance diverse stake holder interest [15].
 - c) A concept where by companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis [9].
 - d) Aligning a company's activities with the social, economic and environmental expectations of its "stakeholders" [16].

Furthermore, by comparative approach, some concepts of corporate social responsibility are used as reference by countries, based on comparative study with Hongkong, India, Netherlands and Taiwan countries, conducted in 2010-2014 as follows:

- a) CSR is An organic link between enterprising, profit-making and social development, that is conducted as a win-win solution in areas where a company requires something from society that cannot be bought and requires investment through a business plan [17].
- b) CSR maybe defined as the obligation of the companies to protect and enchance the norms and values held by the society within which it operates. CSR is concept whereby corporate organizations consider the interests of society by taking responsibility for the impact of their activities on customers, suppliers, employees, shareholders, community and others direct and indirect stakeholder as well as the environment [18], [19].

- c) A firm takes on a visible role in the society which goes beyond the core business and beyond what the law requires and which leads to added value for the company and the society [20].
- d) CSR is the way in which business consistently creates shared value in society through economic development, good governance, stakeholder responsiveness and environmental improvement. Put another way, CSR is an integrated, systemic approach by business that builds, rather than erodes or destroys, economic, social, human and natural capital” [21], [22].

3.4. *Formulation Reconception of CSR based on Mandatory.*

Based on the above concepts, the formulation or definition used as a mandatory CSR concept will be, at least 3 (three) main points that form an understanding or concept of CSL [19] as follows:

- a) As an artificial person, the corporation or corporation is not independent and isolated, the company or corporation cannot claim that they have no responsibility for the economic, environmental or social circumstances.
- b) The existence and sustainability of the company or corporation is determined by all stakeholders and not just shareholders. The stakeholders consist of shareholders, customers, suppliers, clients, customers, employees and their families, local communities and those involved either directly or indirectly with the company (the local community and general society).
- c) Implementing CSL means also carrying out the duties and daily activities of a company or corporation, as a container to gain profit through the business carried on and or managed by it. So this means CSL is an integrated part of business activity, so CSL means also run the company or corporation to gain profit.
- d) Thus, the concept of CSR as a legal responsibility must meet the following elements:
 - e) social responsibility is an obligation to all companies without exception;
 - f) social responsibility applies to any company established under Indonesian law;
 - g) social responsibility is aimed at creating a harmonious, balanced relationship between the company and the environment;
 - h) CSR is implemented by taking into account the values, norms and culture of local communities;
 - i) CSR should be oriented towards sustainable economic development to improve the quality of life of local communities.

Based on of the idea of reconception, it is expected to create a legal norm of CSR which is sustained as mandated by Articles 33 and 34 of the 1945 Constitution and the purpose of holding CSER in Article 74 Law No. 40 of 2007. Therefore, as a follow-up, it is necessary to make a legal model of CSL that is expected as a follow-up study.

4. Conclusion

The need for uniformity of terminology and reconception of the concept of CSR comprehensively in order to achieve the purpose of the implementation of CSR in Indonesia, as mandated in article 33 and 34 the 1945 Constitution and Law No 40 of 2007. Hence it is expected that a sustainable model of CSR law for company can be established at the level of norms and implementation. The application of the concept of CSR in the regulation of Law No. 25 of 2007, Law No. 40 of 2007 and its implementing regulations, as well as The Regulation of the Minister of State-Owned Enterprises No. PER-03/MBU/12/2016 concerning PCDP mandatorily in Indonesia causes inconsistency, therefore the idea of changing corporate social responsibility (CSR) concept into corporate social liability (CSL) as a form of mandatory corporate social responsibility is deemed important to create a sustainable model of CSR law in accordance with the principle of sustainable economy as the philosophy of the Indonesian nation.

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