

Inconsistencies of CSR Regulations in the Law Limited Liability Company in Relation to Justice Values

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Abstract: *The discussion in this journal is built on the inconsistencies in the regulations regarding CSR in Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, namely: First, the implementation of CSR is mandatory for companies that carry out their business in the field and/or related to natural resources. Second, the CSR funding system is voluntary. The purpose of this research is to find answers to the implications arising from the main problems mentioned above, namely: First, what are the legal implications in relation to justice from the inconsistency of regulations regarding CSR? Second, what is the ideal concept of CSR regulation? The research method used in this research is: descriptive normative research with a legal approach, legal theory and doctrine, and legal comparison. Research Results and Discussion: First, the implications of inconsistencies in CSR regulations in the Limited Liability Company Law can have an impact on the law enforcement process not being optimal in terms of justice, benefit and legal certainty as well as giving rise to unclear norms in relation to the CSR funding system which results in injustice for the community as the beneficiary CSR. Second, a more ideal concept of CSR regulation is: according to John Rawls' Theory of Justice, if CSR funding sources are calculated from a portion of the Company's profits, and according to Aristotle's theory of justice, then the CSR funding system should be calculated as a percentage of the Company's profits based on the principle of proportional equality between retention rights for Companies and the rights of the community as recipients of CSR benefits.*

Keywords: *CSR; Distributive justice; Proportional Equality; Inconsistency*

INTRODUCTION

Corporate Social Responsibility was initially introduced in the United States using the term Corporate Social Responsibility (CSR) by Howard Robert Bowen, an American economist and President of Grinnel College who received the nickname as the Father

of CSR (as the Father of Corporate Social Responsibility ¹⁾ through his published book in 1953 entitled "Social Responsibilities of the

¹ Archie B. Carroll, Kenneth J. Lipartito, James E. Post, Patricia H. Werhane dan Kenneth E. Goodpaster Frontmatter, *Corporate Responsibility: The American Experience*, 2012, Cambridge University Press, 256

Businessman”

According to Howard Robert Bowen about CSR in his book as quoted by Brent D. Beal:

*The term social responsibilities of businessmen will be used frequently. It refers to the obligations of businessmen [and businesswomen] to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society. This definition does not imply that businessmen as members of society lack the rights to criticize the values. . . . It is assumed, however, that as servants of society, they must not disregard socially accepted values or place their own values above those of society*²

In Indonesia, Corporate Social Responsibility is explicitly regulated for the first time with Law Number 25 of 2007 concerning Capital Investment, where in Article 15 letter a it is emphasized that “Every investor is obliged to carry out corporate social responsibility” Further in the Explanation of the Law, the law is explained :

“What is meant by “corporate social responsibility” is the responsibility inherent in every investment company to continue to create relationships that are harmonious, balanced and in accordance with the environment, values, norms and culture of the local community.”

Furthermore, in the same year, Corporate Social Responsibility was further regulated by Law Number 40 of 2007 concerning Limited Liability Companies, which in Article 74 regulates:

- (1) Companies that carry out their business activities in the field and/or related to natural resources are obliged to carry out

Social and Environmental Responsibility.

- (2) Social and Environmental Responsibility as referred to in paragraph (1) is the Company’s obligation which is budgeted and calculated as Company costs, the implementation of which is carried out by taking into account propriety and fairness.
- (3) Companies that do not carry out the obligations as intended in paragraph (1) will be subject to sanctions in accordance with the provisions of statutory regulations.
- (4) Further provisions regarding Social and Environmental Responsibility are regulated by government regulations.

From the provisions above, there are two legal issues that will be the starting point for the discussion in this journal, namely:

First: The Company’s obligation to implement CSR with funding sources that are budgeted and calculated as costs, so that CSR implementation is absolutely mandatory without considering the financial conditions and scale of a Company.

Second: The calculation of the budget for implementing CSR is floating, that is, it is regulated “based on the Company’s policy” based on the principles of “propriety and fairness.”

So, on the one hand, the Government of the Republic of Indonesia has adopted the concept of CSR as a legal instrument in the form of an imperative law (order with sanctions) as regulated in paragraphs (1) and (3) of Article 74 of the Limited Liability Company Law, but on the other hand, The funding system for implementing CSR as regulated in paragraph (2) of Article 74 of the Limited Liability Company Law, continues to adopt the CSR concept which is widely adopted by Anglo Saxon countries, the implementation of which is generally voluntary and ethical as defined by several

International organizations regarding the concept of CSR as follows:

² Brent D. Beal , *Corporate Social Responsibility Definition, Core Issues, and Recent Developments*, 2014, The University of Texas at Tyle, 3

First : *The World Business Council for Sustainable Development*) : “Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large,”³

Second : *International Labour Organization*) :⁴ “CSR is an area of voluntary initiative in which enterprises develop their own approaches that go beyond legally required action to consider the impact of their activities on their workers communities of operation and stakeholders”

From the description above, it is indicated that there are inconsistent CSR regulations in the Limited Liability Company Law, where there are two contradictory regulatory principles, namely in terms of implementation it is mandatory but in terms of funding it is voluntary. Against the background of such a CSR regulatory system, can the concept of CSR regulation in the Limited Liability Company Law realize justice for the Company as the implementer of CSR and the community as the beneficiary of CSR?

METHOD

To answer the problem formulation above, the author uses: a) Type of research: normative, b) approach method: **First**, statutory approach, **Second**, basic and conceptual approach, Third, comparative legal approach. c) Sources of Legal Materials: **first**, primary legal materials: Laws and regulations under the Law. **Second**, secondary legal materials: Literature - literature or books. **Third**, tertiary legal materials: Encyclopedias and dictionaries.

d) Legal Material/Data Collection Techniques: **First**, Literature Study, **Second**, Interviews, Observations. e) Analysis of Legal Materials: Qualitative analysis method.

ANYLISIS AND DISCUSSION

Philosophical Foundations of CSR in Indonesia

According to John Locke, people as individuals basically have natural rights, namely :⁵ the right to life, the right to liberty, and the right to obtain or own the right to property which are innate rights as human beings which cannot be handed over to the authorities when a country is founded through social contact. between the founding fathers of a country and its people.

The natural rights possessed by the people of a country are definitely directly related to the state's territory (earth, water and natural resources) where the country was founded. This is in line with the founding principle that a country must have territory and people in addition to other requirements. Therefore, if we examine further John Locke's social contract which is anti-absolute power of the ruler, when a country is founded and so that the natural rights of its people can be maintained, the main means of supporting these natural rights are the state's territory in the form of land and water. and its natural wealth is not necessarily handed over to be owned by the entrepreneur in question, but is only limited to being controlled by the entrepreneur for the benefit of his people.

It seems that John Locke's philosophical thoughts above are in line with the principle of Article 33 paragraph (3) of the 1945 Constitution, that “the earth and water and the wealth therein are sometimes controlled by

³ Fajar ND, Mukti, 2019, *Regulasi Daerah dalam Pengelolaan Program Tanggung Jawab Sosial Perusahaan*, LP3M UMY, Yogyakarta, 5

⁴ Ibid. 6

⁵Bernard L. Tanya, *Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi)*, CV. Kita, Surabaya, 83

the state and used for the greatest prosperity of the people”. To understand more regarding the meaning of the phrase which reads: “Earth and water and the natural resources contained therein are controlled by the state”, we can refer to the Decision of the Constitutional Court of the Republic of Indonesia Number 3/PUU/2010 in relation to the judicial review of Law No. 25 of 2007 concerning Capital Investment, the Court is of the opinion that the meaning of “Earth and water and natural resources contained in controlled by the state” is: “The state has the authority and is given the freedom to regulate, make policies, manage and supervise the use of the earth and water and the natural resources contained therein with constitutional standards, namely for the greatest prosperity of the people.”

When the state uses its authority to manage the earth, water and natural resources contained therein, either directly through State-Owned Enterprises or indirectly by delegating state power with a state supervision system to manage the earth, water and natural resources contained therein. contained therein to Private Owned Business Entities (Domestic Investment Business Entities or Foreign Investment Business Entities, then philosophically the state is utilizing the Earth, water and natural resources contained therein which are an inseparable part from the natural rights of the Indonesian people, so that every act of utilizing the Earth, water and natural resources contained therein, there is a natural right of the people which is “usurped” by the company so that it is clear that there is a causality relationship between the CSR of a company and the community, whether directly existing relationship of interest with the Company concerned or no direct relationship with the Company in question, which must be returned to the people whose natural rights were “deprived” both in material and non-ma-

terial forms for the sake of the social welfare of the community through CSR programs.

Juridical Basis for CSR Regulation

Mandatory Principles in Implementing CSR

As explained previously, the implementation of CSR is mandatory for companies that carry out business activities in the field and/or related to natural resources without considering the financial condition of the company. In reality, not all companies immediately gain profits when the company starts operating, especially for companies in the micro, small and medium business categories. Thus, the principles of implementing CSR as regulated in the Limited Liability Company Law for Companies that carry out business activities in the field and/or related to natural resources are absolutely mandatory.

According to Arief Sidharta, legal practitioners in Indonesia often encounter the sentence, “The aim of the law must fulfill three aspects, namely Justice, Certainty and Benefit”. These aspects are often considered as essential goals that must be present in a legal product that will apply in society. Practical law bearers and theoretical law bearers are competing to create legal products that fulfill these three aspects.⁶

This is the case with the regulation of CSR in Article 74 paragraph (1) which requires companies that carry out their business activities in the field and/or related to natural resources to implement CSR. The word mandatory in the provisions of this Law is absolutely mandatory for every company that carries out its business activities in the field and/or related to natural resources. It is said to be absolutely mandatory because this provision applies absolutely to all companies that carry out business in the field and/or related to re-

⁶ Arief Sidharta, *Refleksi tentang Struktur Ilmu Hukum*, Cetakan Kedua, Bandung: Mandar Maju, 2009, 39

sources without exception, even if the company category includes micro and small scale enterprises and their overall profit and loss balance sheet is still minus (loss).

The conditions mentioned above are a consequence of the implementation of the utilitarianism philosophy pioneered by Jeremy Bentham whose core teaching is that in relation to justice, law is a supporter of happiness, (*the greatest happiness principle*)⁷

Furthermore, according to Bentham, that: “What is useful or useful for the benefit of the individual, is what tends to increase happiness. Likewise, what is beneficial to the interests of society (public) is what tends to increase the enjoyment of individuals who are members of society”⁸

Bentham’s theory was later refined by John Stuart Mill that: The greatest benefit or principle of happiness states that certain actions are right if they tend to increase happiness; it is wrong if it tends to result in less happiness. What is meant by happiness is pleasure and the absence of pain... ”⁹

Thus, in relation to justice, Jeremy Bentham took an approach with an emphasis on individual utility, while John Stuart Mill took an approach with an emphasis on general benefit (the greatest good for the greatest number.)¹⁰

The legislators apply the principle of the greatest good for the greatest number in implementing CSR as regulated in the Limited

Liability Company Law without considering the financial condition of the Company in question both in terms of capital scale and the condition of the profit and loss balance sheet. , the most important thing is that CSR must be implemented for the greatest benefit for the greatest number of people (the greatest good for the greatest number.) According to Sudikno Merto Kusomo, this theory is one-sided¹¹ because for the benefit (utility) of many people there are always individuals who have to make sacrifices. The same thing was also conveyed by John Rawls, that classical utilitarianism has damaged the demands of justice by allowing losses for some people to meet the achievements of others or some people will get little so that other people will get a lot.¹²

Next, we will explain the application of the principle of absolute obligation for companies that carry out their business in the field and/or related to natural resources to implement CSR with the allocation of funds budgeted as operating costs of the company concerned in connection with John Rowls’ theory of justice.

According to John Rawls, there are two principles of justice, namely: ¹³

First, establishing equal freedom for everyone to gain access to wealth, income, food, protection, authority, power, dignity, rights and freedom; **Second**, the principle of difference and the principle of equality of opportunity (the difference principle and the principle of fair equality of opportunity), the essence of the difference principle is that social and economic differences must be regulated so as to provide the greatest benefits for those who are less fortunate. Meanwhile, the principle of

⁷ Jeremy Bentham, *An introduction to the principles of morals and legislation*, Oxford, Clarendon Press, 1907, 338

⁸ Tanya, Bernard L., Simanjuntak, Yoan N., dan Hage, Markus Y., *Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi)*, 2007. Cetakan ke 2, CV Kita, Surabaya, 105-106

⁹ Karen Leback, *Six Theori of Justice (Teori-Teori Keadilan)*, 2020, Cet ke dua terjemahan, Yudi Santoso, Nusa Media, Bandung, 14

¹⁰ Jeremy Bentham, *Log.Cit*

¹¹ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, 1988. cet. ke 2, (selanjutnya disingkat Sudikno Mertokusumo I), Liberty Yogyakarta, 61

¹² Leback Karen, *Op Cit*, 25

¹³ John Rawls, *Op Cit*, 72

equality of opportunity refers to equal opportunities for everyone (including those who are most disadvantaged) to achieve prospects of prosperity, income and authority.

Based on the theory of John Rowls mentioned above, the application of the absolute mandatory principle for companies intended to implement CSR with the allocation of funds budgeted as operational costs of the company concerned will clearly have unfair implications for companies whose profit and loss balance sheets are still experienced losses, especially for companies in the micro, small and medium categories, as well as for local communities and society in general in relation to the ability to allocate significant amounts of CSR funds when compared to large scale companies which have enjoyed profits of up to trillions of rupiah.

Floating CSR Funding System

As explained previously, the funding system for implementing CSR is as regulated in the Limited Liability Company Law, that the CSR funding system is budgeted and calculated as Company costs, the implementation of which is carried out by taking into account propriety and fairness. The use of the phrase "propriety and fairness" in the explanation of Article 5 paragraph (1) of Government Regulation Number 47 of 2012 states that what is meant by "propriety and fairness" is the Company's policy, which is adjusted to the Company's financial capabilities, and potential risks that result in liability. social and environmental issues that must be borne by the Company in accordance with its business activities which do not reduce obligations as stipulated in the provisions of laws and regulations related to the Company's business activities.

The use of the phrase "propriety and reasonableness" which is an abstract legal principle in a concrete article in a Legislative

Regulation is a wrong action. This is as stated by Sudikno Mertokusomo, that "legal principles are not concrete legal regulations, but are basic thoughts that are general in nature or constitute the background of concrete regulations that exist in and behind every legal system that is manifested in statutory regulations and judges' decisions which is a positive law and can be found by looking for general characteristics in these concrete rules."¹⁴

Furthermore, Sudikno Mertikusumo emphasized :¹⁵

"Because legal principles are abstract, they are generally not stated in concrete regulations or articles. If concrete regulations can be directly applied to concrete events, then the legal principle is due to its nature abstract is not applied directly to concrete events."

Thus, the regulation regarding the amount of funds budgeted and calculated for the implementation of CSR as regulated in Article 74 paragraph (2) of the Limited Liability Company Law is based on the subjective views of the stakeholders of a Company, so that it is no longer based on the subjective views of the state (Legislator or maker). Constitution). Meanwhile, according to Sudikno Mertokusomo, according to ethical theory, the aim of law is justice,¹⁶ and that the essence of justice is the assessment of a treatment or action by reviewing it with a norm according to the subjective view of the state as the maker of the law.¹⁷

Further regarding the normative

¹⁴*Ibid*, h. 32-33

¹⁵Sudikno Mertokusomo *Penemuan Hukum (Sebuah Pengantar)*, cet. ke 5, Liberty, Yogyakarta, 2007, (hereinafter abbreviated as Sudikno Mertokusomo II), 7

¹⁶Sudikno Mertokusomo, *Op Cit* h. 57

¹⁷Sudikno Mertokusomo I, *Op Cit*, h. 57

formulation in Article 74 paragraph (2) of the Limited Liability Company Law, if it is referred to the principles for the formation of Legislative Regulations as regulated in Article 5 of Law Number 12 of 2011 in conjunction with the Elucidation of Article 5 letter g of Law No. 13 of 2022, namely the principle of clarity of formulation, that every statutory regulation must meet the technical requirements for drafting statutory regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so that it does not give rise to various kinds of interpretations in its implementation.

From the description above, an understanding can be drawn up that a statutory regulation contains vague norms if the statutory regulation is formed by ignoring: first, the principle of clarity of purpose, second, the principle of being able to implement it and third, the principle of clarity of formulation.

From the description above regarding the regulations regarding CSR in the Limited Liability Company Law, the following are indicated:

First: the occurrence of inconsistencies in CSR regulations where in paragraph (1) Article 74 of the PT Law states that CSR is mandatory, while the provisions in paragraph (2) which regulate the CSR funding system based on Company policy have actually lost the mandatory nature in the implementation of CSR as stated in confirmed in the previous paragraph which then becomes voluntary by the regulations in the following paragraph.

Second: the norms on the principles of decency and fairness are the Company's policy rules as regulated in paragraph (1) Article 5 of Government Regulation Number 47 of 2012, which actually creates a blurring of norms in relation to statutory orders for the implementation of CSR and its funding

system;

Third: The regulations in paragraph (2) of Article 72 of the PT Law in conjunction with paragraph (1) of Article 5 of PP Number 47 of 2012 are not in accordance with the principles of forming statutory regulations as regulated in Article 5 of Law Number 12 of 2011 in conjunction with the Elucidation of Article 5 letter g UU no. 13 of 2022, there are 7 (seven) principles for the formation of statutory regulations ¹⁸ one of the principles is: clarity of formulation.

Implications of Norm Vagueness in CSR Implementation

As a result of the blurred norms in the regulation of the amount of CSR fund allocation as regulated in paragraph (2) of Article 74 of the Limited Liability Company Law, this has had an impact on the quality of CSR implementation, because in any case mandatory CSR implementation cannot possibly be carried out effectively if only supported by a voluntary funding system. Below, information will be displayed in tabular form regarding the implementation of CSR by several companies belonging to the large business category whose business activities are in the field and/or related to natural resources and also whose business activities are in the field of non-natural resources, as follows:

¹⁸Principles Of Formation Of Legal Regulations, Pasal 5 UU Nomor 12 Tahun 2011, Dalam membentuk Peraturan Perundang-undangan harus dilakukan berdasarkan pada asas Pembentukan Peraturan Perundang-undangan yang baik, yang meliputi:

- a. kejelasan tujuan;
- b. kelembagaan atau pejabat pembentuk yang tepat;
- c. kesesuaian antara jenis, hierarki, dan materi muatan;
- d. dapat dilaksanakan;
- e. kedayagunaan dan kehasilgunaan;
- f. kejelasan rumusan; dan
- g. keterbukaan.

No.	COMPANY NAME	Nett Profit 2022	CSR Fund 2022	%
1	PT. PUPUK KALIMANTAN TIMUR, Tbk	14,59 T ¹⁹	60,85M ²⁰	0,42
2	PT. GOLDEN ENERGY MINES. Tbk	10,44 T ²¹	73,05M ²²	0,70
3	PT. KALTIM PRIMA COAL. Tbk	8,33 T ²³	74,8 M	0,89
4	PT. ADARO MINERALS INDONESIA Tbk	5,036 T ²⁴	6 M ²⁵	0,12
5	PT. ADARO INDONESIA, Tbk	3 T ²⁶	10 M ²⁷	0,33
6	PT. ANEKA TAMBANG, Tbk	3,805 T ²⁸	124,47 M ²⁹	3,27
7	PT. BANK CENTRAL ASIA, Tbk	40,7 T ³⁰	143,1 M ³¹	0,35

¹⁹Kompas. com, <https://money.kompas.com/read/2023/03/30/121000726/pupuk-kaltim-bukukan-laba-rp-1459-triliun-pada-2022>, Accessed : November 15, 2023

²⁰Top Business Jakarta, edisi 05 Maret 2022, www.topbusiness.id/60964/pupuk-kaltim-jalankan-csr-berbasis-iso-26000.html, Accessed November 15, 2023

²¹Sustainability Report 2022 PT. Golden Energy Mines Tbk, 17, <https://www.goldenenergymines.com/download/611/>, Accessed December 20, 2023

²²*Ibid*, h. 36.

²³Liputan 6, 21 Maret 2023, <https://www.liputan6.com/saham/read/5248348/menelaah-kinerja-bumi-resources-usai-perhitungkan-kontribusi-kaltim-prima-coal>, Accessed December 11, 2023

²⁴Laporan Keberlanjutan 2022, <https://www.adarominerals.id/app/webroot/upload/files/ADMR%20-%20Sustainability%20Report%202022.pdf>, 8, Accessed December 14, 2023

²⁵ *Ibid*, 9

²⁶Bisnis com Jakarta, 03 Maret 2023, <https://market.bisnis.com/read/20230303/192/1633700/penyebab-adaro-adro-raih-laba-rp432-triliun-pada-2022-melesat-175-persen#:~:text=Bisnis.com%2C%20JAKARTA%20%E2%80%93%20Emiten,25%20miliar%20pada%20tahun%20sebelumnya>, Accessed December 11 2023

²⁷Apahabar Banjarmasin, 20 September 2022, <https://banjarmasin.apahabar.com/post/jomplang-dprd-tabalong-tolak-dana-csr-adaro-hanya-rp10-miliar-l8b3ddzs>, Accessed Desember 11, 2023

²⁸PT. Aneka Tambang, Laporan Keberlanjutan 2022 / Sustainability Report, 12, <https://antam.com/downloads/sustainability-report-2022>, Accessed December 11 2023

²⁹PT. Aneka Tambang, Laporan Keberlanjutan 2022 / Sustainability Report, 14, <https://antam.com/downloads/sustainability-report-2022>, Accessed Desember 11, 2023

³⁰Kompas.com, <https://money.kompas.com/read/2023/01/26/170948626/naik-296-persen-laba-bersih-bca-2022-capai-rp-407-triliun>, Accessed November 15, 2023

³¹BCA Laporan Tahunan, <https://www.bca.co.id/id/tentang-bca/Hubungan-Investor/laporan-presentasi/Laporan-Tahunan>, Accessed November 15, 2023

8	(PERSERO) PT TELEKOMUNIKASI_ INDONESIA,	25,86 T ³²	124,76 M ³³	0,48
9	PT. ASTRA INTER NASTIONAL	28,9T ³⁴	400 M ³⁵	1,38
10	PT.INDOFOOD SUKSES MAKMUR	6,4 T ³⁶	315,3 M ³⁷ (termasuk sumbangan representasi, jamuan dan biaya Direksi)	4,93
11	PT. PERUSAHAAN ROKOK TJAP GUDANG GARAM,Tbk	2,8 T ³⁸	46,3 M ³⁹	1,65
12	PT. BARITO PACIFIC,TBk	480 M ⁴⁰ (\$32 Juta x Rp. 15.000)	25,25M ⁴¹ (\$ 1,683 Juta x Rp. 15.000) (biaya CSR, Lingkungan, dan penanganan Covid 19)	5,25

³²PT. Telkom Indonesia, (Laporan Keuangan Telkom Tahun 2022) https://www.telkom.co.id/sites/wholesale/id_ID/news/telkom-sukses-tutup-2022-dengan-pendapatan-konsolidasi-rp147,31-triliun-dan-laba-bersih-operasi-sebesar-rp25,86-triliun-1933, Accessed November 15, 2023

³³*Ibid*

³⁴Bisnis.com 27 Februari 2023, <https://market.bisnis.com/read/20230227/192/1632272/astra-international-asii-cetak-laba-bersih-rp289-triliun-di-2022-usulkan-dividen-rp552-per-saham>

³⁵Sindos news.com, <https://otomotif.sindonews.com/berita/1008901/120/astra-alokasikan-dana-rp400-miliar-untuk-kegiatan-csr>, Accessed Desember 11, 2023

³⁶Databox, 28 Maret 2023, <https://databoks.katadata.co.id/datapublish/2023/03/28/laba-indofood-berkurang-rp13-triliun-pada-2022>, Accessed December 12, 2023

³⁷Laporan Keuangan Konsolidasi 2022,

³⁸Laporan Tahunan PT. Gudang Garam Tbk Tahun 2022, 03, https://www.gudanggaramtbk.com/media/uploads/files/GGRM_AR_2022_FINAL.pdf, Accessed December 11, 2023

³⁹*Ibid*, 71

⁴⁰Laporan Posisi Keuangan Konsolidasian / Consolidated Statements Of Financial Position 31 Desember 2022, PT. Berito Pacific,TBk, https://idnfinancials.s3-ap-southeast-1.amazonaws.com/financial-statements/BRPT/2022/FY_2022_BRPT_Barito+Pacific+Tbk.pdf, Accessed December 19, 2023

⁴¹*Ibid*

From the information table regarding the realization of CSR for the 2022 financial year period by several companies in the Large Business category shown above, several things can be explained as follows:

First, the realization of funds for implementing CSR from several companies whose businesses are in the field or related to natural resources actually spend relatively small amounts of CSR funds (under 1% of total net annual profits);

Second, some companies post CSR costs combined with costs from other activities so that the amount of funds allocated for CSR is not transparent.

As a result, the amount of funds allocated for CSR is not strictly regulated, causing the implementation of CSR by companies in Indonesia to still focus on quantity rather than quality of activities in order to be free from applicable legal sanctions as regulated in paragraph (3) of Article 74 of the Limited Liability Company Law.

As a comparison material in regulations regarding the implementation of CSR by other countries which strictly determine the source of funding and the amount of allocation of CSR funds, namely the Republic of India. Based on Article 135 of the Companies Act 2013, it requires businesses that have net assets of more than Rupees 500 crore or approximately the equivalent of 71 million US Dollars or if calculated in Rupiah value, around Rp. 1,065 trillion, or a turnover of more than Rs. 1000 crore or approximately equivalent to 142 million US Dollars or if calculated in Rupiah value, around: Rp. 2,130 trillion or net profit exceeding Rs. 5 crore or approximately equivalent to 714,000 US Dollars or if calculated in Rupiah value around: Rp. 10,710 Billion in the last financial year to

use a minimum of 2% (two percent) of their average net profit for any activity provided in the list prepared by the government relating to CSR programs in India ⁴²

Expenditures of funds from companies for CSR in India are bound by several provisions, namely: **First**, the amount of funds spent on CSR initiatives cannot be taken by corporations as expenditure for business or professional purposes. **Second**, there are no exceptions or tax breaks for companies that implement CSR. **Third**, the allocation of funding for CSR is in the hands of the company committee. The committee must be a Board of Directors committee consisting of three or more directors and this committee will determine the company's CSR policy. Fourth, companies that spend CSR funds in accordance with their CSR policy are required to record these expenditures every year in their annual reports. Fifth, companies must give preference to local areas around where they carry out their operations. Sixth, all CSR activities must be disclosed on the company website. Seventh, failure to comply with prescribed CSR expenditures must be authorized by the Board of directors in their CSR report.⁴³

⁴²Adhip Ray, Sustainalbe Brand, *Mengapa Dunia Bisnis Harus Menggunakan India sebagai Model Tanggung Jawab Sosial Perusahaan*, Februari 2022, <https://sustainablebrands.com/read/walking-the-talk/why-the-business-world-should-use-india-as-a-model-for-corporate-social-responsibility>, Accessed January 18, 2024

⁴³Anupama Goel and Himangshu Rathee, *CSR Policies in Different Countries: A Comparative Analysis*, Springer Nature, Published: 23 August 2022, <https://www.intechopen.com/chapters/83098>, Accessed January 05, 2024.

Implementation of CSR and Justice for the Company and Society

The aim of implementing CSR as regulated in Law Number 40 of 2007 concerning Limited Liability Companies Article 1 number 3 states that: “Social and Environmental Responsibility is the Company’s commitment to participate in sustainable economic development in order to improve the quality of life and a beneficial, good environment. for the Company itself, the local community and society in general.”

So the aim of implementing CSR is to improve the quality of life in the economic sector both for the Company itself and also for the community based on the orders of the law. Thus, the implementation of CSR must also be in line with the objectives of the law, and according to Sudikno Mertokusomo, in accordance with ethical theory, that the aim of the law is justice.⁴⁴ Thus, the implementation of CSR must be able to realize proportional justice for both parties, namely the Company as the implementer of CSR and the community as the recipient of CSR benefits.

In relation to proportional justice for the parties under certain conditions, Aristotle explained about “equality” in relation to distributive justice, that there are two kinds of equality, namely : ⁴⁵

Firstly, Numerical Equality, namely: a way of treating other people, or the distribution that results from it, is numerically equal when it treats all people as indistinguishable, thus treating them identically or giving them the same amount of goods per capita. This is not

always fair.

Second, Proportional Equality, namely: a way of treating other people or a distribution is proportional or relatively equal if that way treats all relevant people according to their rights.

So, Aristotle’s proportional distributive justice in relation to the CSR funding system is equality in accordance with their respective rights between the Company as the CSR implementer and the community as the party entitled to receive benefits from CSR activities with a proportional composition, namely adjusted to profits. from the Company in question.

Furthermore, in connection with Aristotle’s “proportional equality” above, according to Hans Kelsen, the principle

Aristotle’s distributive justice is conveyed in “the form of a mathematical formula”.⁴⁶

Thus, if the principle of distributive justice from Aristotle is to be applied in the CSR funding system, then the source of funds calculated from the profit/profit of a company must be measurable with certainty in a mathematical formula, namely in the form of a number (numerical) in comparison with the amount of profit/profit from a company. Company.

In relation to Aristotle’s distributive justice, Hans Kelsen added that the mathematical formulation of Aristotle’s distributive justice can only be applied if positive law determines which rights should be given to citizens, and which differences between citizens are relevant. . Equality of justice is equality

⁴⁴Sudikno Mertokusumo *Mengenal Hukum (Suatu Pengantar)*, 1988. cet. ke 2, (selanjutnya disingkat Sudikno Mertokusumo I), Liberty Yogyakarta, h. 57

⁴⁵Ensiklopedia Filsafat Stanford, *Kesetaraan Proporsional*, <https://plato.stanford.edu/entries/equality/#PropEqua>, Accessed January 10, 2024

⁴⁶Hans Kelsen, What is Justice ? *Justice Politic, and Law in the Mirror of Science (Dasar-Dasar Hukum Normatif, (Prinsip-Prinsip Teoritis untuk Mweujudkan Keadilan dalam Hukum dan Politik)* cet. III, 2014, terjemahan Nurulita Yusron, Nusa Media, Bandung, h. 148

before the law, which means just legality, right according to the law.⁴⁷

If paragraph (2) of Article 74 of the Limited Liability Company Law in conjunction with paragraph (1) of Article 5 of Government Regulation Number 47 of 2012 concerning the floating CSR funding system is reformulated in accordance with distributive justice with the principle of proportional equality between the Company as a CSR actor and the community as the relevant party is entitled to receive benefits

CSR is based on a definite formula (not based on the principles of decency and fairness) regarding the percentage of funds for CSR which must be calculated from the profits/profits of a company, then there will be no blurring of norms in the regulation of CSR implementation and CSR implementation will be able to realize justice, Benefits and Legal Certainty for parties interested in implementing CSR in Indonesia.

The CSR regulation in Article 74 paragraph 1 of the Limited Liability Company Law states that the implementation of CSR is mandatory with the threat of sanctions if it does not implement CSR for companies that carry out business activities in the field and/or related to natural resources, whereas in Article 74 paragraph 2 which regulates the CSR funding system is voluntary and based on the principles of decency and fairness. Thus, there has been an inconsistency in the regulation of CSR implementation, where the mandatory nature of implementing CSR is not supported by a firm and clear funding allocation system, but is only voluntary from the Company based on the principles of decency and fairness, so that the concept of CSR regulation in Article 74 of the Law

-The law on Limited Liability Companies has given rise to the following legal implications: **First**, the norming of the principles of propriety and fairness which are embodied in "Company policy" in the provisions of its Implementing Regulations (Government Regulations Number 47 of 2012) has given rise to unclear norms regarding the meaning of the principle of "propriety and fairness" which has implications for a law enforcement process that is not optimal in terms of justice, benefit and legal certainty.

As a result of the blurred norms in the provisions regarding the amount of allocation of CSR funds, the realization of CSR funds is only based on the subjective views of the stakeholders in a company, not based on the subjective views of the legislator (state), and as a result the realization of the quantity of CSR funds from the Company in general is not commensurate with the profits that have been made, especially by companies that are members of a large holding company, so that CSR implementation is more focused on quantity rather than quality in relation to the CSR program being implemented, and this condition clearly does not provide justice for the community as the recipient CSR benefits.

Second, to realize the ideal CSR concept based on the value of justice, a reformulation of the CSR regulatory concept must be carried out, namely:

a. Regulations that require a company to implement CSR absolutely without considering the financial condition and business category of a company are the basic idea of the utilitarianism philosophy pioneered by Jeremy Bentham and perfected by John Stuart Mill, who is famous for his slogan "The greatest good for the greatest number ." According to John Rawls, classical

⁴⁷ *Ibid*, 149

utilitarianism has damaged the demands of justice by allowing losses for some people in order to meet the achievements of others or some people will get a little so that others will get a lot. According to John Rawls' principles of justice, namely the difference principle and the principle of fair equality of opportunity, social and economic differences must be regulated so as to provide the greatest benefits for those who are less fortunate. Meanwhile, the principle of equality of opportunity designates equal opportunities for everyone (including those who are most disadvantaged) to achieve prospects of prosperity, income and authority.

In accordance with John Rawls' theory of justice mentioned above in relation to the implementation of CSR, it will provide more justice for the Company as the implementer of CSR and for the community as the recipient of CSR benefits, if the source of CSR funding is taken from a portion of the Company's profits/profits.

b. The floating CSR funding system has created inconsistencies in CSR regulations between the implementation of CSR which is absolutely mandatory for companies that run their businesses in the field and/or related to natural resources and the voluntary CSR funding system based on the principles of decency and fairness, which has resulted in blurred norms in the meaning of the principles of decency and fairness in relation to the regulation of the CSR funding system.

According to Aristotle's theory of distributive justice, one form of justice can be expressed as proportional equality, namely a way of treating other people or a distribution that is proportional or relatively equal if the way it treats all relevant people in accordance with their rights expressed in comparison

with a mathematical formula. . So, to realize justice both for the Company itself as a CSR implementer and for the community as recipients of CSR benefits, the CSR funding source should be taken from a portion of the profits/profits of a Company and the CSR fund allocation system must be determined in terms of a clear percentage figure so that implementation CSR is not just to fulfill the formalities of the provisions of the Law that regulates CSR, but the implementation of CSR can be used as a means for the Company to participate in sustainable economic development in order to improve the quality of life and the environment which is beneficial, both for the Company itself, the local community, and society in general.

CONCLUSION

First, in the future, CSR implementation should be conditionally mandatory for all companies with restrictions based on certain criteria for a company, including company status (public/public company), capital capabilities (micro, small, medium and large businesses). and its annual revenue and profit/profit. **Second**, it requires all companies listed on the stock exchange to disclose to the public their CSR implementation so that the public can act as a social control over the CSR activities of public/open companies.

Third, the program for CSR should not only be aimed at recovery measures for social and environmental impacts caused by business activities in the field and/or related to natural resources, but the regulation of CSR must be holistic so that it touches all social and environmental aspects in society by referring to soft law from the results of non-binding international conventions, including: ISO 26000, ILO and others.

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