

CHAPTER II

CSR FOR INDONESIAN DEVELOPMENT

Indonesia as a developing country carries out development in various fields. One of the development priorities in Indonesia is the development in the economic field. Economic development requires the participation of all stakeholders. One of the important pillars in economic development is activities carried out by national and foreign companies that carry out their business activities in Indonesia. The activities carried out by the company have a positive and negative impact. The positive impact that occurs is the availability of capital that is strongly needed to encourage the country's economic growth and also open employment that is needed by the community. While the negative impact of the depletion of natural resources, the impact of environmental damage and the creation of social inequality in the community. Therefore, in order to create a harmonious relationship between the community and the company collaboration is needed, where the community receives the benefits of the presence of companies in its area to manage and utilize natural resources.

The discourse about Corporate Social Responsibility has become more prominent after this concept was normatively established in Article 74 of Law Number 40 Year 2007 concerning Limited Liability Companies (Undang-Undang Perseroan Terbatas/UUPT). Previously, similar provisions also contained in Article 15 of Law Number 25 of 2007 concerning Investment (Undang-Undang Penanaman Modal/UUPM). The Company Law changes the terminology of CSR with the

term "social and environmental responsibility". The Capital Market Law prefers to continue to use the term CSR companies are required to be companies that carry out their business activities in the field of and / or related to natural resources. For companies that ignore these obligations, sanctions will be imposed.

The company has an obligation to implement Social and Environmental Responsibility / CSR. The company is no longer an entity that is only selfish or taking profit. CSR is an idea where companies no longer faced responsibilities that are based on a single bottom line, namely corporate value that is reflected in its finances. However, corporate responsibility must be based on social and environment. It has become a fact that the resistance of the surrounding community in various places and time surfaced towards companies that were considered not to pay attention to the social, economic and environmental aspects. Many companies have been protested, their operational licenses have been revoked and even damaged by communities around the company's location due to environmental damage, as the company only pays and exploits natural resources in the area, without taking into account environmental factors. Besides that, the lack of attention and responsibility of the company towards the workforce and the welfare of the surrounding community.

There are two things that can encourage companies to implement CSR, which are from external drivers and from internal drivers. Including the category of external drivers, for example the existence of regulations, laws and the obligatory analysis of environmental impacts. The Government through the Ministry of Environment has implemented a Proper Audit (company performance improvement assessment program). The drivers within the company mainly come from the behavior of management

and company owners (stakeholders), including the level of concern. The responsibility of community development responsibility.

There are four benefits obtained by the company by implementing CSR, First, the existence of the company can grow and be sustainable and get a positive image from the wider community. Second, companies are more likely to gain access to capital. Third, companies can maintain the quality of human resources. Fourth, companies can improve decision making on critical matters (critical decision making) and facilitate management of risk management.⁸

The tension that often occurs between a company and the community or the community around the company is located in general, where there is a lack of commitment and implementation of social and environmental responsibility. Often the company's interests are shared with the interests of the community. Indeed, companies and communities have mutual cooperation which has implications for two forms. First, inside-out linkages, companies have an impact on society through normal business operations. Second, outside-in-linkages, where external social conditions also affect the company. For the community, good CSR practices will increase the added value of the company in an area, because it will absorb labor and improve social quality in the area. Local workers who are absorbed will get protection for their rights as workers. If there are indigenous people / local communities, CSR practices will respect the existence of traditions and local culture.

⁸Muhammad Arief Effendi, *Implementasi GCG melalui CSR*, hal 7

Effective CSR requires an active civic role. At least there are three regions where the community can show its role:

a. Campaign against companies carrying out business practices that are not in line with the principles of CSR through various lobbying and advocacy activities.

b. Develop competence to increase capacity and build institutions related to CSR

c. Develop a multi-stakeholder initiative involving various elements from the community, companies, and government to promote and improve the quality of CSR implementation.

At this time, CSR can be considered as a future investment for the company. The interest of capital owners in investing in companies that have implemented greater CSR, compared to those who do not implement CSR. Through CSR programs effective communication and harmonious relationships can be built between the company and the surrounding community.

A. Law of CSR in Indonesia

In Indonesia, every Sogo Sosha has a Law on Corporate Social Responsibility (CSR), namely Law No. 40 of 2007 concerning limited liability companies. To further strengthen how CSR is regulated, the government established Government Regulation Number 47 of 2012 CSR Limited Liability Company which essentially states that every company has Corporate Social Responsibility (CSR).

1. Indonesian Investment Law

a. Articles that attract foreign investors include:

- UU no. 25 of 2007 concerning Investment, Chapter III Article 4

(2) In determining the basic policy as referred to in paragraph (1), the Government:

- a) provide equal treatment for domestic investors and foreign investors while taking into account national interests;
- b) guarantee legal certainty, business certainty, and business security for investors from the process of managing permits to the expiration of investment activities in accordance with the provisions of legislation; and
- c) open opportunities for development and provide protection to micro, small, medium and cooperative businesses.

- UU no. 25 of 2007 concerning Investment, Chapter V Article 6

(1) The government provides equal treatment to all investors originating from any country that carries out investment activities in Indonesia in accordance with the provisions of the legislation.

(2) The treatment as referred to in paragraph 1 (one) does not apply to investors from a country who obtain special rights based on an agreement with Indonesia.

- UU no. 25 of 2007 concerning Investment, Chapter V Article 7

(1) The Government will not carry out acts of nationalization or expropriation of ownership rights of investors, except by law.

(2) In the event that the Government carries out nationalization or acquisition of ownership rights as referred to in paragraph 1 (one), the Government will provide compensation in the amount determined based on market prices.

(3) If there is no agreement between the two parties regarding compensation or compensation as referred to in paragraph 2 (two), the settlement shall be carried out through arbitration.

- UU no. 25 of 2007 concerning Investment, Chapter V
Article 8

(1) Investors can transfer their assets to the party desired by the investor in accordance with the provisions of the legislation.

(2) Assets not included in assets as referred to in paragraph 1 (one) are assets determined by law as assets controlled by the state.

(3) Investors are given the right to make transfers and repatriation in foreign currencies, including among others:

- a) capital;
- b) profits, bank interest, dividends, and other income;
- c) funds needed to: purchase of raw and auxiliary materials, semi-finished goods, or finished goods; or replacement of capital goods in order to protect the viability of investment;
- d) additional funds needed for investment financing;
- e) funds for repayment of loans;
- f) royalties or fees to be paid;
- g) income from individual foreign nationals working in an investment company;
- h) proceeds from sale or liquidation of investments;
- i) compensation for losses;
- j) compensation for expropriation;
- k) payments made in the context of technical assistance, fees to be paid for technical and management services, payments made under

project contracts, and payment of intellectual property rights; and

l) proceeds from the sale of assets as referred to in paragraph 1 (one).

- UU no. 25 of 2007 concerning Investment, Chapter X Article 18

(6) For ongoing investments that replace machinery or other capital goods, facilities may be provided in the form of relief or exemption from import duty.

- UU no. 25 of 2007 concerning Investment, Chapter X Article 21

In addition to the facilities referred to in Article 18, the Government provides facilities for services and / or licensing to investment companies to obtain:

- a) land rights;
- b) immigration service facilities; and
- c) import licensing facility.

b. Articles that do not attract foreign investors include:

- UU no. 25 of 2007 concerning Investment, Chapter V Article 8

(4) The right to make transfers and repatriation as referred to in paragraph 3 (three) is carried out in accordance with the provisions of the legislation.

(5) The provisions referred to in paragraph 1 (one) do not reduce:

- a) the authority of the Government to enforce the provisions of legislation that requires reporting of the implementation of funds transfers;
- b) the right of the Government to obtain taxes and / or royalties and / or other Government revenues

- from investment in accordance with the provisions of the legislation;
 - c) implementation of the law that protects creditor rights; and
 - d) implementation of the law to avoid state losses.
- UU no. 25 of 2007 concerning Investment, Chapter X Article 18

(3) Investments that receive facilities as referred to in paragraph 2 (two) are those which at least fulfill one of the following criteria:

- a) absorb a lot of labor;
- b) including high priority scale;
- c) including infrastructure development;
- d) transfer technology;
- e) do pioneer industry;
- f) in remote areas, disadvantaged areas, border areas or other areas deemed necessary;
- g) preserve the environment;
- h) carry out research, development and innovation activities;
- i) partnering with micro, small, medium or cooperative businesses; or
- j) industries that use capital goods or machines or equipment produced domestically.

(5) Exemption or reduction of corporate income tax in a certain amount and time can only be given to new investments which are pioneer industries, namely industries that have broad links, provide high added value and externality, introduce new technologies, and have strategic value for the national economy.

- UU no. 25 of 2007 concerning Investment. Chapter XVI article 33

(1) Domestic investors and foreign investors who invest in a limited liability are prohibited from making agreements and / or statements that affirm that share ownership in a limited liability company is for and on behalf of other people.

2. Regulations and laws regarding the obligation to implement CSR (Corporate Social Responsibility)

CSR is not a new thing regulated in Indonesian laws and regulations. A number of laws and regulations, including sectoral ones, have regulated the CSR. The following are the regulations:

- Law Number 40 of 2007 concerning Limited Liability Companies

The concept of CSR contained in the Limited Liability Company Law also covers the environment. Thus, officially, this Law uses the terms Social and Environmental Responsibility. This law regulates the obligation for companies related to natural resources to carry out social and environmental responsibilities.

Article 74 paragraph 1 (one) reads, "Companies that carry out their business activities in the field of and / or related to natural resources must implement Social and Environmental Responsibilities." If this provision is not implemented, then sanctions will be imposed in accordance with laws and regulations. Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibilities of Limited Liability Companies

- Law Number 25 of 2007 concerning Investment
- Law Number 22 Year 2001 concerning Oil and Gas
- Law Number 4 of 2009 concerning Mineral and Coal Mining

3. Government Regulation Number 23 of 2010 concerning Implementation of Coal Mining Business Activities
 - Law Number 21 of 2014 concerning Geothermal Energy
 - Law Number 13 of 2011 concerning Handling of the Poor
4. CSR (Corporate Social Responsibility) of foreign companies in Indonesia

After the enactment of Law No. 40 of 2007 and Law No. 25 of 2007, the regulation requires every company and foreign investment to carry out social and environmental based responsibilities. Implementation carried out by 8 Japanese foreign companies in Indonesia, namely Mitsubishi, Mitsui & Co., Toyo Menka Kaisha Ltd., Itochu Corporation, Marubeni Corporation, PT. Astra Honda, Yamaha, and Kimia Farma.