

CHAPTER ONE

INTRODUCTION

A. Background

The existence of the company has become a dominant business institution. The company influences national economic development. The company's activities have provided employment, provided products and services needed for people's lives, increased sustainable economic development, increased national technological capacity and capability, and realized community welfare in a competitive economic system.¹

A company is always in the community and the company can only live, grow and develop if it receives support from the community because basically, the community is the main supplier of the company's needs and also as the user of the products (goods and services) of the company. Thus, the existence and survival of the company is very dependent and determined by the attitude of society towards institutions/agencies concerned. Therefore, it is questionable how far a company can provide valuable benefits to the community environment.²

Every country has the same goal, to prosper the lives of its citizens. As stated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). The Fourth Paragraph of the Preamble of the 1945 Constitution states that the objective of the Republic of Indonesia is

¹ Andrew Shandy Utama, 2018 "Implementasi Corporate Social Responsibility PT Riau Andalan PULP and Paper terhadap masyarakat di Kabupaten Pelalawan", Jurnal Selat: *Fakultas Hukum Universitas Lancang Kuning*, Vol. 5, No. 2, p. 124

² Hartono, S. Redjeki, 2000, *Kapita Selekta Hukum Ekonomi*, Jakarta: CV Mandar Maju, p. 4

to protect the entire nation of Indonesia and all of Indonesia's blood. Another objective is to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice.

To realize one of these goals, the way that can be done is with the help of one of the pillars of economic development, namely the company. As it is known that the pillars of economic development in a country consist of three elements, namely the government, society and companies. Companies that have the role as mentioned above also have the responsibility to realize social welfare and improve the quality of life of people in a country. One of them is by implementing Corporate Social Responsibility (here in after referred to as CSR) in a company.

CSR is gaining popularity again in the early 20th century. CSR, which began to be debated in the 1990s, has become an idea that has taken many people, from the academic community, non-government organizations, to business actors as stated by Rosita Candra Kirana.³ Conceptually, corporate social responsibility or commonly called CSR is an approach where companies integrate social care in business operations and their interactions with stakeholders based on the principle of volunteerism and partnership. But empirically this CSR has been implemented by companies in the form of

³ Rosita Candra Kirana, 2009, "Studi Perbandingan Pengaturan Tentang Corporate Social Responsibility Di Beberapa Negara Dalam Upaya Perwujudan Prinsip Good Corporate Governance", Tesis, Program Pasca Sarjana Universitas Sebelas Maret Surakarta, p. 11, taken from <http://www.adisulistiyono.staff.uns.ac.id>, accessed on October 29th 2019, at 16:27 pm

activities based on voluntary.⁴ CSR is also a flow towards organizations, especially companies that have responsibilities to interested parties such as consumers, shareholders, communities, employees, and the environment. where it is, connected with various aspects of the company's operations aimed at the welfare of economic, social, and environmental aspects. In other words CSR is the role of the company's contribution to the goal of sustainable development.⁵

Indonesia is a member of the international organization, ISO (International Standardization Organization) which has approved ISO 26000: Guidance Standard on Social Responsibility, in September 2004. The preparation of ISO 26000 is based on CSR standards as a guideline for all forms of organizations both private and public. In understanding the ISO 2600 there are seven key issues⁶ that has been matured on CSR, namely: a) Community Development; b) Consumers; c) Healthy Institution Activities; d) Environment; e) Employment; f) Human rights; g) Government Organizations.

From the seven key of issues above are applied by multinational companies or large companies listed on the stock exchange as a guideline to

⁴ Matias Siagian, Agus Suriadi, 2010, *Tanggung Jawab Sosial Perusahaan CSR Perspektif Pekerjaan Sosial*, Medan: FISIP USU PRESS p. 65

⁵ Suparman, 2013, "Coorporate Social Responsibility: Bentuk Tanggung Jawab Sosial dan Kepedulian Perusahaan dengan Masyarakat", *Jurnal Interaksi*, Vol. II No.2, p. 70

⁶ ISO Center Indonesia, 2015 "ISO 26000 Sebagai Standar Global dalam Pelaksanaan CSR" taken from <https://isoindonesiacenter.com/sekilas-tentang-iso-26000/> accessed on Thursday, February 1st, 2018 at 16:17 pm.

improve the reputation only among the people of Indonesia for example, such as PT Freeport Indonesia, Pertamina, Unilever⁷, and so on.

According to Amirizal as stated in Abdul R. Saliman's book, one of the functions of business law is as a source of information that is useful for business practitioners, to understand their rights and obligations in business practices, so that the nature and behavior of activities in the business sector can be realized, fair, reasonable, healthy and dynamic (guaranteed by legal certainty).⁸ As with this function, business law will regulate how business organizations work under statutory regulations. One of the business organizations in Indonesia is a Limited Liability Company which is part of a legal entity.

The Article 74 of Act No. 40 of 2007 on Limited Liability Companies (hereinafter referred to as UUPT) which explains that "Companies that carry out their business activities in or related to natural resources are required to carry out social and environmental responsibilities". This provision aims to create a harmonious, balanced and harmonious Company relationship under the environment, values, norms, and culture of the local community.

The definition of Social and Environmental Responsibility also stated in the Company Law in the Article 1 paragraph 3 states the meaning of Social and Environmental Responsibility is the Company's commitment to participate in sustainable economic development to improve the quality of life

⁷ T. Romi Marnelly, 2012 , "Corporate Social Responsibility (CSR): Tinjauan Teori dan Praktek di Indonesia", *Jurnal Aplikasi Bisnis*, Vol. 2 No. 2, p. 54

⁸ Abul Rasyid, Saliman, 2011, *Hukum Bisnis Untuk Perusahaan*, Jakarta: Kencana, p. 9

and the environment that is beneficial, both for the company itself, the local community and the community in general.

However, whether the contribution of CSR is clear and especially for middle-bottom companies, it is not too concerned with the principles of CSR, even though it has been required in several laws in Indonesia.⁹ Because there is no detailed and clear regulation on UUPT and other Regulation that has discussed CSR obligations.

The scope of supervision and implementation of CSR control is held by the government as the role has been determined by the Act, but in practice, the government refused to comply with the obligations.¹⁰ In the Government Regulation Article 6 No. 47 of 2012 on the Social and Environmental Responsibilities of Limited Liability Companies (TJSPLT) can be found that: "the implementation of social and environmental responsibilities is contained in the annual report of the Company and is accountable to the Annual General Meeting (RUPS)".¹¹ But the monitoring system regarding CSR is good and running smoothly. There are still several problems regarding waste pollution, forest fires, and over-exploitation which have a fatal impact on the environment.¹²

⁹ *Ibid*, p. 56.

¹⁰ Firdaus, 2014, "Normativitas Corporate Social Responsibility Antara Idealitas dan Realitas", *Jurnal Ilmu Hukum*, Vol. 4 No. 1, p. 191

¹¹ Act. 6 on Government Regulation Number 47 of 2012

¹² Puspita Ayu Lestari, 2016 "Pengaruh Good Corporate Governance Terhadap Luas Pengungkapan Corporate Social Responsibility", *Skripsi Sarjana Ekonomi pada Jurusan Akutansi Fakultas Ekonomi dan Bisnis Universitas Lampung*, p. 1

Of the various regulations that discuss the report on the implementation of CSR only found in the Article 6 of the Government Regulation No. 47 of 2012 on Social and Environmental Responsibilities of Limited Liability Companies (TJSPLT), from the annual report can prove whether or not a CSR program is implemented in this case the annual CSR report is not only required in administrative form but the government must oblige in clear, intact, and detailed form.¹³ It can be explained that the implementation report on CSR is currently still weak as explained before; therefore there are still many gaps that must be filled, to cover up the shortcomings of the issue of CSR supervision itself.

One example of the provisions on CSR funding has been regulated in the Article 74 paragraph (2) of Law no. 40 of 2007 on Limited Liability Companies, as follows:

“Social and Environmental Responsibility is a corporate obligation that is budgeted and calculated as a Company expense whose implementation is carried out with due regard to propriety and fairness.”¹⁴

The above clause does not explicitly mention a certain nominal regarding the presentation of costs that must be budgeted or calculated by the company so that, there is no clear reference to the preparation of funds by the

¹³ Pujiyono, Jamal Wiwoho, Triyanto, 2016 , “Model Pertanggungjawaban Hukum Pelaksanaan Corporate Sosial Responsibility (CSR) Untuk Meningkatkan Kesejahteraan Masyarakat” *Jurnal Yustisia*, Vol. 5 No. 1, p. 46

¹⁴ Sec. 7 Act. No. 40 of 2007 on limited liability companies

company to carry out CSR.¹⁵ Therefore there are still many gaps that need to be filled, to cover the deficiencies of the CSR oversight problem itself.

Likewise, in the Special Region of Yogyakarta based on Local Government Regulation and Governor's Regulation so that the distribution of CSR funds can be used appropriately. The local regulation for the implementation of CSR fund distribution itself has been stated in the regulations of the Local Regulation of the Special Region of Yogyakarta No. 6 of 2016 on the Implementation of Corporate Social and Environmental Responsibility.

Where the contents of the regulation are as follows:

- 1) Providing legal certainty in the distribution of CSR funds in the Special Region of Yogyakarta Province.
- 2) Providing a legal basis in establishing joint bodies or institutions which will later manage CSR in the jurisdiction of the Province of the Special Region of Yogyakarta Province.
- 3) Providing clear direction to any company that can and must channel CSR funds because it is our shared responsibility.
- 4) Providing a legal basis for sanctions against companies that do not want to participate in running CSR programs in the territory of the Special Region of Yogyakarta Province.

¹⁵ Mukti Fajar, ND., 2010, *Tanggung Jawab Sosial Perusahaan di Indonesia*, Yogyakarta: Pustaka Pelajar, p. 303

- 5) This regulation also contains an obligation for all companies to set aside a portion of their profits to contribute directly to the welfare of the community.

In principle, CSR is a form of social responsibility as a manifestation of Good Corporate Governance. In this case, CSR is defined as an obligation of the company to formulate policies, make decisions and implement actions that benefit the community. However, the facts in the field show a different reality as explained by Fajar in his research which explains that CSR policies by local governments, especially in Yogyakarta and Central Java in general, are still very weak, which for the Special Region of Yogyakarta in the form of the Local Regulations while Central Java uses the Governor's Decree. Recognizing the existence of weaknesses in CSR policy, the two regions proposed to make stronger the legal rules with the Local Regulations. For Central Java, the proposed draft of the Local regulation has arrived at the DPRD Special Committee. While for the Special Region of Yogyakarta it is still under study in related institutions.¹⁶

The author will examine the implementation of CSR in the Special Region of Yogyakarta Province, by using two-sample companies, namely Bank of BPD DIY Syariah and PT Mowilex Cat.

B. Problem Formulation

Based on the background of the problems that have been described above, the problems that arise and need to get answers in research are How

¹⁶ Fajar, Suryono, dan Muallidin, 2015, *Model Kebijakan Pemerintah Daerah dalam Pengelolaan Program Tanggung Jawab Sosial Perusahaan Berbasis Regulasi Daerah*, Yogyakarta: Universitas Muhammadiyah Yogyakarta, p. 7

CSR implementation by companies based on the Local regulation of the Special Region of Yogyakarta No. 6 of 2016 on Management of Corporate Social and Environmental Responsibilities.

C. Objective of Research

Referring to the background of the problem and the formulation of the existing problems, the research aims to determine the implementation of CSR by companies based on the Local regulation of the Special Region of Yogyakarta No. 6 of 2016 on Management of Corporate Social and Environmental Responsibilities. In the Special Region of Yogyakarta.

D. Benefit of Research

1. Theoretical Benefit

This research was shown by researchers to contribute to the development of legal science, especially regarding the application aspect of rules related to the implementation of CSR activities by business actors. It is also hoped that this research can be used as a reference for developing a system for managing CSR activities in the regions.

2. Practical Benefit

a. For the Researcher

It is hoped that it can improve the knowledge, especially in reviewing and recognizing the role of local government in the enforcement of administrative law against business actors in carrying out CSR obligations.

b. For the Country

For the state as a regulator, this research is expected to be used as input in taking policies related to the rules of CSR making.

c. For the Community

For the community, it is hoped that this research can be used as a reading that can improve the education of the community about obligations regulatory in implementing CSR.