

CHAPTER TWO LITERATURE REVIEW

A. DEFINITION AND CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

1. Definition of Corporate Social Responsibility (CSR)

According to some experts and organizations. Corporate Social Responsibility possesses different definition. The World Business Council for Sustainable Development (WBCSD) defines CRS as, continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families; the local community and society at large.¹

In addition to the WBCSD, several versions present the definition of CSR in various formulations, even though until now there has not been the same definition of an entity as follows.² The World Bank is a Global Financial Institution that sees CSR as the commitment of business to contribute to sustainable economic development working with employees and their representatives, the local community and society at large to improve quality of life, in ways that are both good for business and good for development. The following European Union (association of countries

¹ Sefriani, Sri Wartini, 2015, "Corporate Social Responsibility dan Tanggung Jawab Negara Terhadap Hak Ekonomi, Sosial, dan Budaya di Indonesia", *Jurnal Yustisia* Vol. 4, No. 2, p. 270

² Wbcsd, 2001, "Corporate Social Responsibility: Making Framework for Corporate Social Responsibility", WBCSD is a global, CEO-led organisation of over 200 leading business working together to accelerate the transition to a sustainable world, taken from [http: https://www.wbcsd.org](http://https://www.wbcsd.org), accessed on October 29th, 2018 at 13:36 pm

on the continent of Europe) also formulated the definition of CSR in the EU Green Paper on CSR is a concept whereby companies integrate social and environmental concerns in their interaction with their stakeholders voluntarily. Then the CSR Forum presents its formula which means CSR is open and transparent business practices that are based on ethical values and respect for employees, communities and the environment. The last formulation of the definition by Business for Social Responsibility, CSR as operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. The principle of social responsibility is for every decision made and every area of business.

If observed from several CSR formulations above, the WBCSD and the World Bank confirm the same principles as explained in the previous paragraph, so the formulas will be described as follows.

- a. World Bank adds affirmation to the benefit of CSR activities for business and development (in ways that are both good for business and good for development).
- b. In its presentation, the European Union stated that CSR is a concept, in which the company seeks to integrate social and environmental aspects as well as stakeholders based on voluntary in conducting its business activities.
- c. CSR forum in its description emphasizes openness and transparency in the business scope that is based on ethical

values and appreciation for employees, the community, and the environment.

- d. Business for Social Responsibility can be said that every business activity must be implemented ethically, comply with any outstanding rules of law, which CSR is a guideline on every business decision making.³

In addition to the exposure of CSR definitions by previous institutions and organizations, the legislation also states the definition of CSR in the Limited Liability Companies Act (UUPT) No. 40 of 2007 in article 15 letter b from that:

“Social and environmental responsibility is the company's commitment to participate in sustainable economic development to improve the quality of life and the environment that is beneficial for the company itself, the local community, and the Community in general”.

The definition of the Company Law definition is enough to illustrate that the company is a manifestation of sustainable economic development, meaning that there is a separation between social responsibility and environmental responsibility. It means that the definition of CSR definition of the Company Law focuses on social responsibility or in other words the development of community development. Though the ideals of CSR in its scope also discuss environmental aspects not only economically and socially.

³ Busyra Azheri, 2011, *Corporate Social Responsibility: Dari Voluntary Menjadi Mandatory*, Jakarta: Rajawali Pers, p. 21-22

2. Concept of Corporate Social Responsibility (CSR)

Like the previous discussion above, corporations carry out voluntary CSR based on moral values and business ethics, which is based on good or bad in doing business.⁴ The beginning of the industry developed after the industry changes, there are still many companies that stand as organizations seeking profit in various ways. Greek philosophers of Plato, Aristotle, and others in his research like what should regulate human life in state charter, which in it describes as whether economic activity and trade activities must be regulated.

The company sees that the charity given to the community is a form of providing employment, company products that meet the needs of the community, and payment of taxes to the state. Gradually the community does not only ask the company to provide the goods and services needed. Rather, it asks for (rights) social responsibility. But there is something wrong in the economic context between business people and surrounding communities. Basically, the company also has a negative impact, some real examples such as resource exploitation and damage to the environment around the company's operations.⁵

That is what gave rise to the revival of the concept of Corporate Social Responsibility (CSR) in the past, which was kindness (charity)⁶ can be seen in the 1960s when the whole world or the world community had

⁴ K, Bertens, 2000, *Pengantar Etika Bisnis*, Kanisius, Yogyakarta. p. 33

⁵ *Ibid.*, p. 37

⁶ Aktivitas karitati merupakan suatu aktivitas keagamaan, tradisi, dan adat-istiadat yang merupakan kegiatan tertua. Artinya adalah suatu yang ditunjukkan untuk membangun, memajukan, dan mendukung secara langsung aktivitas terkait

recovered from World War II, and began to move towards prosperity. In that era, the poverty and problems that were ignored began to get the sympathy that was very wide among the circles. These problems have triggered the development of various activities, based on eradicating poverty and underdevelopment by triggering the development of productive sectors of society.⁷

The concept of CSR was first put forward by Howard R. Bowen in 1953 and after that experienced concept enrichment since the period of 1960 until now. The development of the concept of CSR that has occurred over fifty years has changed many CSR orientations. Initially, CSR became a charitable activity, now CSR has been made by a company as one of the strategies to improve the company's image which will also influence the company's performance.⁸

Corporate Social Responsibility in Indonesia began to enter in the 1990s, but long before that embryo regarding CSR was known. Furthermore, the application of CSR is found in the Government Regulation No. 3 of 1983 on Procedures for Establishing Company Service Supervision (*Perusahaan Jawatan* (Perjan), Public Company (*Perusahaan Umum* (Perum) and Limited Liability Company (*Perseroan Terbatas* (Persero). In 2003, the Ministry issued the seat belt concept,

⁷ Yusuf Wibisono, 2007, *Membedah Konsep dan Aplikasi Corporate Social Responsibility*, Gresik: Fasco Publishing, p. 3

⁸ Dwi Kartini, 2009, *Corporate Social Responsibility: Transformasi Konsep Sustainability Management dan Implementasi di Indonesia*, Bandung: RefikaAditama, p. 5

namely a concept of corporate social investment.⁹ The Ministry of Social has the task of developing the concept of CSR. In this phase, the commonly used form of CSR is assisting local organizations and the poor around the company, CSR in this period is only a charity to make it look better, or in other words voluntary.

The development of CSR in the history of Indonesia (especially related to the implementation of CSR in the discretionary responsibilities category) is divided into two understandings, there are:¹⁰ First, the implementation of CSR is indeed a voluntary business practice (discretionary business practice) as the previous paraphrased explanation. Second, after the activation of the company demanded by legislation, which applies in Indonesia, the implementation of CSR is no longer voluntary, but its implementation is regulated by law is mandatory

In the Act of the Limited Liability Company (UUPT) No. 40 of 2007 issued by the government discussed the obligation to implement CSR, in article 74 paragraph (1) which states that:

“Companies that carry out their business activities in the field and/or relating to natural resources must carry out Social and Environmental Responsibility.”

Based on the description of the law, social and environmental responsibility aims to realize sustainable economic development to

⁹ Yayan Sopyan, 2014 "Corporate Social Responsibility (CSR) Sebagai Implementasi Fikih Sosial Untuk Pemberdayaan Masyarakat", *Jurnal, Ahkam*, Vol. 14, No. 1, p. 56

¹⁰ Wilfred Boro Bahy, 2015, "Pengaruh Pengungkapan Corporate Social Responsibility Terhadap Kinerja Keuangan Perusahaan" *Skripsi, Pada Program Studi Manajemen Fakultas Ekonomi Universitas Atma Jaya Yogyakarta*, p. 11

advance the quality of life and the environment that benefits the local community, the company itself, and the community.¹¹ This can create a harmonious relationship with the company to the environment, values, norms, and local wisdom of the local community.

B. THEORY AND CONTROLLING MECHANISM OF CORPORATE SOCIAL RESPONSIBILITY BY THE GOVERNMENT

1. The Reflexive Law Theory

In responding to the problem of limited supervision of the implementation of Corporate Social Responsibility in Indonesia, the limited supervision of the implementation of corporate social responsibility in Indonesia as explained above will be examined through the Reflexive Law Theory approach to find appropriate solutions in resolving conflicts normative that have been happened. The Reflexive Law Theory is used to resolve the deadlock over formal approaches to corporate obligations in the legal system.¹² The Formal law is a form of state intervention in regulating private matters through the environmental legislation, the Consumer Protection Law and so on.

Gunther Teubner said that there had been a legal evaluation which resulted in 3 types of law, there are: formal, substantive, and reflexive.¹³ The Formal law is a form of government authorization regulating through legislation. This type has problems for the government to intervene in

¹¹ Yayan Sopyan, *Loc. cit.*, p. 12

¹² Mukti Fajar, ND, 2013, *Tanggung Jawab Sosial Perusahaan di Indonesia*, Jakarta: Pustaka Pelajar, p. 29

¹³ *Ibid.*, p. 30

private matters. Meanwhile, the substantive law is a form of state intervention on desired goals and outcomes although this law is more permissive than the formal law, the focal point of the substantive law emphasizes the desired results of regulation. However, the substantive law has two obstacles to be applied in a complex society, namely; cognitive limitation and normative legitimacy. Gunther Teubner mentions the term "crisis of the interventionist state". This crisis is the result of the inability of substantive law to meet the demands of the ever-changing issues of society. If forced to follow the change in society it will bring up too many legal products that will be complicated the understanding of society. Related to CSR, the meaning of social responsibility is oriented to the process which has associated with the concept of corporate social responsibility. Social response refers to "the capacity of a corporation to respond to the social pressures".

Furthermore, the Reflexive Law Theory is a the legal theory that explains the existence of limits of law in complex societies to effectively direct spatial change.¹⁴ The Reflexive Law Theory tries to emphasize the complexity and diversity of society through the extensive legislation. The Reflexive Law Theory aims to direct behavior patterns and encourage self-regulation.

Until now, there has been no the organic regulation which is a derivative of various laws that are binding in the form of implementing

¹⁴ *Ibid*, p. 29.

the regulations regarding CSR. When viewed from its implementation, CSR tends to be carried out under the concept of self-regulation. Even though the Reflexive Law Theory gives freedom to corporations in carrying out CSR programs, there must still be transparency in the company's financial statements. Based on the Reflexive Law Theory, the report is also submitted to the general public in the form of social reporting so that the public can perform a more objective assessment of corporate CSR performance

Gunther Teubner said that there had been an evolution of law that resulted in three types of law, namely: formal, substantive, and reflexive. The Reflexive law emerged in response to the interventionist state crisis. On one hand, reflexive laws free the private sector to determine their policies, and on the other hand, these laws intervene reflexive social processes by establishing procedures that guide the behavior of the subject.¹⁵

The Reflexive law is a procedural law, and can be considered as self-regulation. The Reflexive law seeks to influence the decision-making process and communication with required procedures. However, the final decision remains in the private sector. The goal is to encourage self-reflective independence processes in companies regarding the impact of their actions on society.¹⁶ To assess CSR, the Reflexive law theory is a

¹⁵ Mukti Fajar ND, 2015, "The Administration of Corporate Social Responsibility in the District Regulation in Indonesia", *European Journal of Social Sciences Education and Research*, Vol. 2, Issue 4, p. 211

¹⁶ *Ibid.* p. 212

law theory that seeks to encourage companies to reassess any practice they have done by providing the latest information called social reporting. Social reporting is a form of brief reporting on social impacts due to ethical company behavior on the interests of the public or stakeholders.¹⁷

Peter Pruzan from Copenhagen Business School provides a very useful description of social reports that state the basic characteristics. According to him, social reports provide standards on how well an organization revives existing values that have been created together with stakeholders, in which the organization is also committed to applying for the organization itself. Social reports share a process of dialogue in which values are integrated into the organization. The social report also provides a broad overview of the organization's relationships with stakeholders and thus has the opportunity to develop and survive in the long run.¹⁸

The purpose of regulation based on the Reflexive law Theory is not to make the company perform compliance, but to encourage proactive and responsive management of social problems. Social reports must be an obligation for all companies with a certain proportion. Good, for public and private companies to have a significant impact on stakeholders. However, the costs for CSR and making social reports may be too large for small companies. The Lawmakers need to consider the burden of costs on smaller companies, and they also need to consider the impact of the

¹⁷ *Ibid*, p. 122

¹⁸ *Ibid*, p. 122

company in society. Social reports must be an annual requirement for all companies that meet the standard requirements.¹⁹

2. Controlling Mechanism of CSR by the Government

CSR is part of business activities. In the economic liberalization system, business activities are based on free-market mechanisms. This mechanism, in theory, requires the minimum role of government. This means that government intervention to economic activity should not be too strict. Business interactions let it be submitted to market law, as Adam Smith said that market performance would regulate every economic transaction to find a balance (market equilibrium) carried out by the invisible hand.²⁰

However, history records that the free market system is not forever able to create a balance and welfare of the public. Businesses that are too free often create negative impacts such as social imbalance and the bankruptcy of the economic system.

The CSR regulations at the local level generally contain more guidance on what companies must do in fulfilling their CSR obligations. Provide scope under the needs and requirements of each region. In the Special Region of Yogyakarta, for example, CSR will focus on social, environmental, health, education, *koperasi* and micro businesses, and infrastructure. A similar scope was given by other cities that required

¹⁹ *Ibid.* p. 122

²⁰ Fadia Fitriyanti dan Mukti Fajar N.D, 2008, “Pengawasan Pemerintah Terhadap Kewajiban Corporate Social Responsibility Di Daerah Istimewa Yogyakarta (Studi Pada PT. Telkom dan PT. Sari Husada)”, *Jurnal Media Hukum*, Vol 15, No 2, p. 215

companies to participate in partnerships with micro businesses and *koperasi*, direct assistance to the community, and the improvement of capacity. Most of the Local Regulations require companies to participate in improving the quality of life of communities through partnerships with micro-businesses and *koperasi*. This is also encouraging companies to conduct various training to increase the capacity of the community in entrepreneurship. Besides, the Local Regulations generally, stipulate that companies can provide direct assistance to the community in the form of scholarships, subsidies, social grants, assistance, social services, and social protection.²¹

This is in line with the view of Mukti Fajar N. D that one of the scopes of implementation of CSR is the development of local communities, Community development explicitly in CSR is measured based on the improvement in the quality of life of the community, referring to the value of fairness and equality of opportunity, choice of participation, reciprocal, and togetherness. Community development is carried out by empowering and included in the field of education.²²

Related to the supervision of CSR Implementation, Each region has a committee that acts as a monitoring and evaluation mechanism for the implementation of corporate CSR. The Local Government formed a Corporate Social and Environmental responsibility forum (FTJSLP) to

²¹ Mukti Fajar ND, 2019 “The Problems Of Corporate Social Responsibility Regulation In Indonesian Local Regulations”, *Wseas Transactions On Environment And Development*, Vol. 15, p. 2

²² *Ibid*, p. 2

carry out the company's social and environmental responsibility (TJSLP) program implementation facilities with the function of assisting in facilitating program planning, coaching implementation facilities, monitoring, and evaluation of implementation.

The mechanism and procedures for implementing TJSLP are determined based on FTJSLP mapping:

- (a) Preparation of plans and determining programs of TJSLP;
- (b) Signing the TJSLP program *koperasi* document if it involves a third party;
- (c) Implementation of the program of TJSLP;
- (d) Monitoring and evaluation of the TJSLP program with FTJSLP;
- (e) Reporting the results of the implementation of the TJSLP program to FTJLSP

All stages in the mechanism and procedures are carried out coordinatively between the company and FTJSLP at least once a year.²³

Likewise, the supervision carried out by the Local Government, In supervising the CSR obligations, the local government formed the Corporate Social Responsibility Forum (Forum TJSP) with a task that includes:

- (a) Arrange the rules of the CSR Forum;

²³ Sec. 28 Pra, (1) and (2) Local Regulation of Central Java No. 2 of 2017 on Corporate Social and Environmental Responsibility

- (b) Arrange the CSR program in a planned, integrated, harmonious and efficient manner based on data obtained from the Local Government through the CSR Forum Secretariat;
- (c) Coordinate and synchronize CSR programs with the Local Government programs; and
- (d) Reporting the implementation of CSR which is submitted every year to the Local Government with a copy to the Chairperson of DPRD.

Furthermore, the Local Government established the Secretariat of the CSR Forum to facilitate the Implementation of the TJSP forum, consisting of the local governments, elements of universities, and non-governmental organizations. the tasks and functions of the CSR forum secretariat include:

- (a) Facility for implementing CSR activities;
- (b) Facility for arranging CSR forum rules;
- (c) Prepare the data and information in the context of carrying out CSR activities;
- (d) Communication facilities between the CSR Forum and the Local Government to realize the integration of CSR programs; and
- (e) Monitoring and evaluating the implementation of CSR Forum activities.

Furthermore, the Local Regulation is governed that the company must stipulate that CSR is an integral part of the management policy and

the company's development program. This rule is a form of the Local government intervention on the supervision of CSR implementation in Regency. This arrangement is in line with the theory of commitment and partnerships among stakeholders for the implementation of CSR proposed by Dwi Kartini, this theory explains that stakeholders are a strategic part in implementing CSR. Companies that are able to work together and satisfy a stakeholder matrix with predetermined scales will create an effective CSR work system that benefits each party. Stakeholder identification is very important, because if the stakeholders have been validated according to the company's strategy on CSR, then a work program will emerge.

C. GENERAL REVIEW OF LOCAL REGULATIONS

1. Definition of the Local Regulation

Article 18 paragraph (1) of the 1945 Constitution states that the Unitary State of the Republic of Indonesia is divided into provincial regions and the provincial regions are divided into regencies and cities. In each of the provinces, regencies, and cities they have Local Governments, which are regulated by law. The Local Government is regulated in the Law Number 22 of 1999 concerning the Local Government²⁴. The existence of a the Local regulation is a form of

²⁴Soebono Wirjosoegito, 2004, *Proses & Perencanaan Peraturan Perundangan*, Jakarta: Ghalia Indonesia, p. 14

granting the authority of the central government to the regions in managing their households because in the implementation of the Local Government it is very necessary to have further regulations in the form of the Local Regulations. According to the Law No. 32 of 2004 on the Local Government, the Local regulation is the Legislation that is formed jointly between the DPRD and the Regional Head both Provincial and Regency / City.

The Local regulations. The regulation determined by the regional head with the approval of the Regional House of Representative Council (DPRD) in the name of implementing the regional autonomy. The Local regulations are made based on law or further description of the higher legislative regulations. To implement the Local Regulations and with the power of the other legislation in force.

The district head determines the decision of the regional head. Meanwhile, according to Bagir Manan, Regency/City of the Local Regulations are laws and regulations established by Regency/City DPRDs and endorsed by Regent/Mayor governing the interests of the community or governmental order which is the function of Regency/City government in the field of autonomy and the task of guiding.²⁵ The Local Regulations consist of:

²⁵ *Ibid.*

- a. The Local Regulations of Provincial, which apply in the Province of the Province with the approval of the Governor.
- b. Regency/City the Local Regulations, which apply in the Regency/City. Regency/City the Local Regulations are formed by Regency/City DPRD with the mutual agreement of the Regent/Mayor. Regency/City Regulations are not sub-ordinate to the Provincial Regulation.

The Local Regulations are one form of the legislation that is part of the development of the national legal system. The Good Local regulations can be realized if supported by appropriate methods and standards so that they meet the technical formation of the legislation, as regulated in the Law Number 12 of 2011.

2. Constitutional Basic for the Local Regulations

Article 18 Paragraph (6) of the 1945 Constitution stipulates, "A regional administration shall have the right to adopt regional regulations as well as other rules to implement autonomy and the duty of assisting". The arrangements of the Local Regulations are part of the power of the local legislation activities in the framework of the Local Government, relating to the Local autonomy and assisted work.

3. The Formation Basis of the Local Regulation

As one type of the legislation in Indonesia, the Local regulations in its formation are subject to the principles and techniques in the preparation

of the legislation that has been determined. The most important thing in the formation of the legislation includes the foundation. The basis referred to here is the footing, the reason or background why the legislation must be made.

The foundation used in compiling tough and the high quality legislation includes:²⁶

a. Juridical Basis

Juridical Basis Is the legal provisions that become the basis of authority (bevoegheid competentie) of the legislators. Whether the authority of an official or entity has the legal basis specified in the legislation or not. This is very important to mention in the legislation because an official/an unauthorized body (onbevoegheid) issues regulations. This foundation is divided into two:

1. In terms of formality this foundation gives authority to certain agencies to make the certain regulations;
2. In terms of material as a legal basis govern certain things.

The juridical foundation of the drafting of legislation includes 3 things, i.e:

²⁶ Bagir Manan dalam W. Riawan Tjandra dan Kresno Budi Harsono, 2009, *Legal Drafting Teori dan Teknik Pembuatan Peraturan Daerah*, Yogyakarta:Universitas Atmajaya, p. 25-28

- 1) Authority of the legislator;
- 2) Conformity of form and type of the Laws and the Regulations with the material regulated;
- 3) Must follow certain procedures for making the legislation.

In a statutory foundation, this juridical basis is placed in the preamble section "remembering".

b. Sociological foundation

The sociological foundation is the legislation that is made must be understood by the community under the fact of life. This means that the law established must be under the living law in society. In this condition, the Legislation cannot be separated from social phenomena that exist in society. By looking at the social conditions that occur in society in the context of drafting the Legislation, there is not so much direction from the powerful institutions in implementing them.

c. Philosophical Basis

Philosophical basis. Is philosophical basis or views or ideas that become the basis when pouring the desires and policies of the Government into a plan or the state regulation draft. A formulation of the legislation must obtain justification (rechvaardig) that can be accepted and studied philosophically. Justification must be by the ideals of truth (idee der waarheid), ideals of justice and ideals of decency. Thus the legislation is said to have a philosophical basis (philosophical

grondflag) if the formulation has justified a philosophical study. In the context of the Indonesian state which is at the core of this philosophical foundation is Pancasila as a national value system for the state life system.

d. Political foundation

The political foundation is the policy line that forms the next basis for the policy and direction of the governance of the country. This can be expressed on the political line as currently stated in the program of the National Legislation, and the Regional Legislation, and also the National Development Program. As the direction policy of the Government that will be implemented during his future administration. This means giving direction in making the Legislation that will be made by the body or the authorized official.

D. Local Regulation of the Special Regulation of Yogyakarta No. 6 of 2016, on the Management of Corporate Social and Environmental Responsibility

Local Regulation of the Special Regulation of Yogyakarta No. 6 of 2016, article 1 contains the following:

1. Corporate Social and Environmental Responsibility referred to as TSLP is the responsibility inherent in every company to keep creating harmonious, balanced, and appropriate relationships with the environment, values, norms, culture of the community, to participate

in the implementation of sustainable economic development in order to improve the quality of life and the environment that is beneficial, for the company itself, the local community, and society in general.

2. Implementation of Corporate Social and Environmental Responsibility is the process of carrying out Corporate Social and Environmental Responsibility in synergy with local development programs.
3. Corporate Social and Environmental Responsibility Forum, hereinafter referred to as TSLP Forum, is a corporate communication forum in the context of carrying out corporate social and environmental responsibility established by the Regional Government of the Special Region of Yogyakarta as a forum for coordination, communication, and synchronization of TSLP implementation.
4. Company is an individual or entity that runs a business that includes a limited liability company, limited liability company, other company, the State-Owned Enterprise (BUMN), or the Regional-Owned Enterprise (BUMD) under whatever name and form, firm, joint venture, and *koperasi*.

The purpose of the Local Regulation of the Special Region of Yogyakarta No. 6 of 2016 contained in article 3 consists of:

1. For the realization of clear boundaries regarding social responsibility and the environment of the company and its parties;

2. The implementation of TSLP which is harmonious, balanced and in synergy with the development programs in the regions and districts/cities;
3. Protecting the company from avoiding levies by unauthorized parties; and;
4. As a basis for the Local Government to give appreciation to companies that have implemented TSLP programs.

While the scope of CSR implementation is regulated in article 5 of the Local Regulation of the Special Region of Yogyakarta No. 6 of 2016 as follows:

1. The scope of TSLP includes financing assistance programs for the implementation of social welfare, poverty alleviation, recovery compensation/or improvement of environmental function and financing Assistance program for the improvement of quality economic growth and the program based on the welfare which is aligned with Programs of local government.
2. The scope based on paragraph (1) applies in areas that directly or indirectly receive the impact of the company's operational activities.