



Measuring the Adoption of CSR in Human Rights Perspective¹

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ABSTRACT

Corporations have become one of the vital actors during its development. Even if the corporations' accomplishments are strongly induced by the interests of the owners of capital, there remains a strong relationship between the advancement of corporate interests with the quality of life of society. Business and human rights have a strong and functional inter-correlation. The emergence of the concept of corporate social responsibility demonstrates a strong desire to designate and ensure the efforts of protection and fulfillment of human rights as a duty and responsibility of corporations. Unfortunately, the adoption of the concept of CSR in Indonesia still finds compelling stagnation, particularly in aggregating and articulating the real interests of society and obligations of the corporation in promoting and fulfilling human rights.

Keywords: *corporate, corporate social responsibility, human rights*

BACKGROUND

The emergence of the concept of Corporate Social Responsibility (*tanggung jawab sosial perusahaan*/hereinafter CSR) showed a strong desire to position and ensure the efforts of protection and fulfillment of human rights as a main duty and responsibility of corporations. It is recognized that CSR allows a significant highlight on the impact of a company's actions on society. Corporations' social activities aim to affirm the existence and continuity of community life by minimizing the negative impacts and maximizing the positive efforts of each company's operations.

The concept and application of CSR in Indonesia is an integral part of the measures of respect and protection of human rights. Even so, the state's obligation in ensuring respect for human rights by corporations through the CSR still leaves room for an issue (Rabert, 2009). Is CSR categorized as optional, voluntary/facultative or imperative, constitutive and obligatory? Then, what is the extent of the role and enforcement power of the state to ensure the implementation of CSR? This is a fundamental issue which must be immediately resolved. This paper discusses the conceptualization of CSR and its relation to universal human rights principles and standards.

Conceptualization of CSR

Even if the word "social" is incorporated in the term CSR, it does not render the CSR merely

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philanthropic and charitable. CSR is in fact strongly committed to the social, economic and environmental aspects, also called the *triple bottom line*. The synergy of these three elements is a vital link to the concept of sustainable development (Lesmana, 2006).

The essence of CSR should be understood as an investment and long-term business strategy that pays tribute to human existence and dignity. In view of this fact, CSR should extend beyond compliance to law or beyond what is required by regulations or applicable laws (Radyati, 2008). The concept of CSR maintains that corporate responsibility does not extend only to owners or shareholders, but also to the relevant and/or affected policy makers by the operations of the company. In establishing and implementing their business strategy, corporations (that implement CSR) will pay attention to the impact on social and environmental conditions, and working on making a positive impact (Utama, 2007).

The development of CSR brings about a rising awareness of the roles, duties and responsibilities of corporations (Paul Lee, 2008). The thought that the corporations solely pursue gains for the owners of capital, as a regular business entity does, would create disastrous havoc in social life. Clearly, the interest of capital owners is to establish a business with an objective of continuity of the future of the corporation (*shareholder theory*) (Duran & Radojicic, 2005). Yet behind the corporate operations, there is the need for continuity of existence and reality of the social life of the wider society (*stakeholder theory*) (Manual & Davor, 2004).

Corporations have a central role in manifesting sustainable development. With a view of this aim, -the main obligations of corporations related to the values and principles of universal human rights- began to be developed. Guidelines for corporate performance improvement could no longer be measured by the achievement of profits per se, but also its success in fulfilling its CSR obligations (ISO, 2006).

The international community expresses appreciation to the emergence of CSR. Even with the United Nations strongly emphasizes the importance of the relationship between human rights and corporations as a part of the non-state actor. CSR is deemed to endorse the consistency in the realization of human rights protection, without which there would not be any CSR, or Mehra puts it, human rights-based CSR Policy (Mehra, 2001; Lazano & Prandi, 2005).

“HALF-HEARTED” ADOPTION OF CSR

Within the national context, the birth of Law No. 40 Year 2007 regarding Limited Company (hereinafter Company Law) is a new phenomenon in the articulation of interests and obligations of the corporation towards the survival of society. Article 1 number 3 of the Company Law sets out that, "the social and environmental responsibility is the commitment of the Company to participate in sustainable economic development to improve the quality of life and environment that are useful, for the company itself, the local community, and society at large. The Company Law statutes also state, the reporting of the implementation of social and environmental responsibility is to be assigned as an important part in every annual report of directors submitted for the Annual General Meeting of Shareholders.

The provision of social and environmental responsibility is stipulated in Chapter V Article 75 of Company Law, which states that social and environmental responsibility is an obligation of a company, in which the financing of such activities is to be included in the expense budget of the company, to be implemented following the principle of appropriateness and fairness. In fact, the implementation of social and environmental responsibility is categorized as imperative while sanctions are applied for non-compliance. To further assert the commitment of the implementation of social and environmental responsibility of Company Law, enforcement regulations are to be drafted. Unfortunately, to date the enforcement of regulations related to Company Law have not materialized.

In addition, the commitment to social responsibility and the environment still needs to be reviewed, especially if associated with the implementation of protection and fulfillment of human rights. Before Company Law, Law Number 25 Year 2007 was enacted regarding investment is now known as Investment Law. In contrast to Company Law, the provisions of Investment Law contain the nomenclature of "corporate social responsibility." However, it is only listed in one article, namely Article 15 of Investment Law which states "every investor is obliged to: ... b. Carry out corporate social responsibility. The explanation states, "corporate social responsibility is a responsibility inherent in any investment company to continue creating a relation, which is harmonious, balanced, and which is in accordance with the environment, values, norms, and culture of local people."

Under this provision (Article 15), the vague meaning of corporate social responsibility is more clarified. Apart from the different nomenclature, even after three years of Investment and Company Law, the framework of corporate social responsibility implementation based on the Investment Law version and the social and environmental responsibility (*tanggung jawab sosial dan lingkungan*) of Company Law version is not seen. Ironically, both of the responsibility laws are categorized as essential parts of the obligations of companies and investors. So it is safe to conclude that normative rules on social (and environmental) responsibility in Company Law and Investment Law do not necessarily mean that they are applicative.

This normative nature is still hampered by numerous multiple interpretations on implementation of corporate responsibility. This fact is obvious in the provisions of Company Law. It has also been mentioned that the obligation to conduct environmental and social responsibility is inherent in the companies whose only business activities relate to natural resources. Then, what is the reference and guidance in implementing the two models/laws of responsibility?

Referring to Company Law and Investment Law, it is obvious that both these laws lack any legal certainty. Could the two models of responsibility be categorized as CSR, in which it acts as a general concept in line with international practices. This is a fundamental question that requires confirmation from the regulators in Indonesia. If all the "rules" that can be relied on to guide the implementation of CSR do not yet exist, then the relativity in the concept of the two models has become increasingly powerful as it is very possible to have variations of the policy without any audit as a consequence of different interpretations and the will of each business actor.

This uncertainty is bound to escalate, when both central and local governments, unilaterally play a role in trying to resolve this issue without a firm normative and comprehensive reference (Kiroyan, 2007). The shadow of unconstitutionality of "CSR" à la Indonesia is the only certainty that can be achieved to date, as given its complexity, and that it is heavily infiltrated with anomalies and politicization (Lazano & Prandi, 2001).

CONCLUSION

CSR is intelligently engineered to meet the duties and obligations of the corporations to contribute to develop more dignified lives of the society. CSR is highly committed to the principles and universal human rights standards. Indeed, regulations in Indonesia are expected to provide the framework and strong legal certainty of the CSR with an aim to implement the regulations.

Within the human rights framework, corporations must realize the duties and responsibilities to make better society life based on humanity and dignity. Therefore, the regulations and policies over CSR must be arranged and interspersed with the human rights-based approach (HRBA) perspective (OHCHR,

2006). HRBA focuses on claims and thus duties and mechanisms which can then promote respect and adjudicate the violation of rights (Uvin, 2004).

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