

PRESERVATION OF ENVIRONMENTAL FUNCTIONS BY THE IMPLEMENTATION OF CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENT IN WEST SUMATRA

by Dr. Rembrandt Sh., M.pd

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Rembrandt, SH. MPd.

Andalas University (Indonesia)

ABSTRACT

Environmental issue is not only a matter of human physical environment nor human biological problem, but also a moral issue. World Industries is often a major culprit in environmental degradation, since very greedy in exploiting natural resources. When traced, perhaps one reason is the lack of concern and responsibility of management and owners of the company towards society and the environment at the company site. Investors simply dredge and exploit the natural resources that exist in the area, regardless of environmental factors. In addition, almost little or no corporate profits are returned to the community, especially intended for environment conservation. Precisely that is the case, the community is marginalized even in its own area.

Keywords: *Environmental Conservation, Corporate, Corporate Social Responsibility and the Environment*

1. INTRODUCTION

Environmental¹ issues are of most crucial in human life. Consequently, the linkage between corporate responsibility and the enforcement of environmental law may serve as a guarantee on the sustainability of human life. Environmental issues are not only in terms of human physical or biological issues, but also serve as moral issues.

The basic concept of such responsibility is still in the private domain and in development, is coming to a broader domain, i.e. collective domain. Maignan and Ferrel state that CSR as a business acts in socially eponible manner when its decision and action for balance diverse stakeholder interests. The Corporate Social Responsibility (CSR) has become a recent talk, triggered by the new provision in the Law No. 40 of 2007 on Limited Corporation (Limited Corporation Act) which regulate such substance. Basically, Article 74 of the Act mentions that each Limited Corporation in the field or related to natural resources is bound to conduct corporate social and environmental responsibility.^[1]

^[1] There are two kinds of environmental issues, i.e. environmental pollution and environmental destruction. Article 1 point 12 and 14 of Law No. 32 of 2009 states that environmental pollution is the entry or the inclusion of living creatures, substances, energy and/or other components into an environment through human activities by which the quality of the environment degrades into a certain level that causes the environment to defunct from its allotment. Meanwhile, environmental destruction is an act that may cause direct or indirect change towards the physical or biological treats that causes the environment fail to function in supporting sustainable development.

Law No. 32 of 2004 contains the legal vision to accelerate the welfare of the people by means of improvement, services, empowerment, and participation of the society, and improvement of regional competitiveness by considering the principles of democracy, equality, justice, privileges, features and speciality of regions in the system of the Unitary State of Indonesia. In achieving such goals, regional government needs to re-engineer the management of government and development to implement effective government.

Under the circumstances, the province of West Sumatra attempts to accelerate the welfare by developing business opportunities especially for micro & small entrepreneurs, and cooperatives as this sector absorbs manpower. Yet it is not easy to empower those entrepreneurs due to the limitation to access of capital.

Industries are often times deemed as the culprit in the environmental destruction due to their hunger in exploiting natural resources.^[2] Upon further in-depth observation, the cause of this is the lack attention and responsibility of the management and corporate owners towards the surrounding society and environment. Investors harass and exploit the existing natural resources in an area disregarding the environmental factors. Moreover, very little – if any – even none of the corporate's profit are returned to the society. It has been a common practices that locals are marginalized in their own area.

In West Sumatra, the area of protected forest covers ± 923,246 hectares, wildlife reserve area of 24,592 hectares, natural conservancy area of 36,624.93 ha, tourism natural park area of 861,802 hectares, and national park area of 554,280 hectares.^[3]

Referring to the data of the Forestry Agency of West Sumatra, forest area of West Sumatra is 2,464,094 hectare with the following detail: conservation forest 773,343 hectare, protected forest 923,246 hectare, limited-production forest 216,223 hectare, production forest 429,281 hectare and convertible production forest 212,910 hectare.^[4] Today, the forest area is occupied by custom-based society (*masyarakat hukum adat*) and such occupation is passed hereditarily.

2. MATERIALS AND METHODS

This Research is on the Preservation of Environmental Functions directly pertaining to the operation of corporations in the form of social and environmental responsibility, totally focused on the principles of social and environmental responsibility implemented by those corporations. The social and environmental responsibility policy is related to the principles of justice for the society of West Sumatra that is known for its strong customs in the use of natural resources, and the concept of social and environmental responsibility that supports the preservation of environment in order to achieve the objectives of welfare state. The methods that has been used for this manuscript juridical normative from the study of constitution law with sociologic juridical approach to cultivate the data from the field.

^[2] AB Susanto, *Corporate Social Responsibility; Pendekatan Strategic Management dalam TJSPL* (Corporate Social Responsibility; The Approaches of Strategic Management in CSER); Jakarta; Erlangga, 2009, p 6.

^[3] Source: Forestry Agency of West Sumatra, 2011.

^[4] *Ibidem*.

3. RESULT AND DISCUSSION

3.1. Process of the Establishment of Social and Environmental Responsibility in Law No. 40 of 2007 on Limited Corporation (*Perseoran Terbatas*, PT)

Pros and Cons on the additional liability of a corporation to conduct social and environmental responsibility, according to the practitioner of business, is that it is deemed as a new liability in the form of cutting profit. The pros and cons reached the boiling point when the Limited Corporation Act was approved by the House and enacted by the Government. The core question is: should this social responsibility be strictly regulated in detail where the nominal of the responsibility is stipulated, and further, is the provision of Law No. 25 of 2007 on Investment suffice the necessity as this Investment Act also regulates that corporations is given the liability of social and environmental responsibility.

State-owned enterprises have even been held liable by Law No. 19 of 2003 on State-owned Enterprises (Article 88) to conduct Fostering of Surrounding (*Bina Lingkungan*) in the form of fostering small enterprises/cooperatives and the community in the surrounding of the state-owned enterprises. And by means of Package of January 1990, the Minister of Finance oblige state-owned enterprises to spare 1-5% of their nett profit for the *Bina Lingkungan* Partnership Program.

CSRE programs were only in the surface without touching the core problems faced by the community. In many cases, corporations assumed themselves as the party that understood the community's problems while the community was considered as a marginalized group that suffered so it would need the aids from the corporations.

3.2. Lawsuit to the Constitutional Court

Law No. 25 of 2007 on Investment and Law No. 40 of 2007 on Limited Corporation, the mandatory CSRE provisions in the two Bills made the corporations grew restless and uncomfortable. This led to the gathering of several associations in the realm of business, especially those related to natural resources exploration and mining. They rallied in the hope to annul the provisions from the Bill of Limited Corporation Act that almost reached its completion in the legislation process in the House of Representatives. The objection of the corporations were based on the assumption that such provision would provide business with an additional obligation as a complement to tax and other costs.

Petitioners mentioned that Article 74 and its elucidation were in contrast to the 1945 Constitution, as well as several other Articles, i.e.:

- 1) Article 22 A on the procedures for the establishment of law;
- 2) Article 28 D point (1) on legal certainty;
- 3) Article 29 I point (2) on discriminatory treatment;
- 4) Article 33 point (4) on the efficiency of justice.

The core of the petition to the Constitutional Court was filed under the claim 'aggrieved' since Petitioners claimed that the presence of Article 74 created multiple encumbrance to the corporations.

The petition was then processed by the Constitutional Court through a judicial review trial. The trial concluded – as stipulated in the Constitutional Court Decision No. 53/PUU-

VI/2008 – the following^[5]:

- 1) Petition filed by Petitioners I, II, and III is unacceptable;
- 2) The petition for formal judicial review petitioned by Petitioners IV, V, and VI towards Article 74 points 1, 2, 3 of Law no. 40 of 2007 on Limited Corporation and their Elucidations is rejected;
- 3) Complete rejection for the petition of judicial review petitioned by Petitioners IV, V, and VI;
- 4) Article 74 points 1, 2, and 3 of the Law No. 40 of 2007 on Limited Corporation and their Elucidations (State Gazette of the Republic of Indonesia No. 106, Supplementary State Gazette of the Republic of Indonesia No. 4756) are not in contrast to Article 28D point (1), Article 28 I point (2) and Article 33 point (4) of the 1945 Constitution of the Republic of Indonesia.

Another key point is that the judicial review petition was filed due to the responsibility of corporations as subject of law. Whenever there is an act of environmental destruction, corporations will be held liable by law.

Jimly Asshidiqie reveals that good norms of law stood on the five basis of legal enforceability, i.e. philosophical, sociological, juridical, political, and administrative basis. The philosophical, sociological, juridical, and political basis are absolute, while the administrative basis is elective as it depends on the necessity.^[6] Meanwhile, according to another legal expert M. Solly Lubis,^[7] there are only three basis in the establishment of law, i.e.:

- 1) Philosophical basis; the philosophical base on which views or notions that become the goal upon the formulation of passion and wisdom (of government) into a workplan or draft of governmental regulation;
- 2) Juridical basis; is the legal provisions that becomes the ground for law (*rechtsgrond*) for the establishment of regulation;
- 3) Political basis is the political guidelines that become the next basis for further policies and directives for the management of state governance.

In contrast to the aforementioned legal basis, the annex of Law No 12 of 2011 on the Establishment of Law states that the basis for the establishment of law includes philosophical, juridical, and sociological basis.

In the view of not disregarding the imperativeness of the aforementioned philosophical, sociological, political, and administrative basis, juridical basis in the process of the establishment of law is of high importance due to the fact that juridical basis indicates the following:^[8]

^[5] Decision of the Constitutional Court of the Republic of Indonesia No. 53/PUU-VI/2008, p. 100.

^[6] Jimly Asshiddiqie, *Perihal Undang-Undang...*, (On the Law...) *Op.Cit.*, p. 170.

⁷ Solly Lubis, in Sophia Hadyanto (editor), *Paradigma Kebijakan Hukum Pasca Reformasi* (Paradigms of Policies of Law after the Reformation), in the commemoration of the 80th birthday of Prof. Solly Lubis, Sofmedia, Jakarta: 2010, p. 190.

⁸ Dudu Duswara Machmudin, *Op.Cit.*, pp. 85-86.
Bagir Manan, in Sophia Hadyanto (editor). *Op.Cit.*, p. 191.

- a) The compulsion from the makers of regulations, where any form of regulation must be established by authorized officials;
- b) The compulsion of accord between the form of types of regulation;
- c) The compulsion to follow certain procedures, or else, the regulation may be declared null and void or unenforceable (not legally-binding);
- d) The compulsion of being in accord to higher law.

According to Jean Bordin and George Jelinek,^[9] the highest power remains in the state and the state regulates the life of its people. The State as the highest organization of a nation, according to Van Vallen Hoven,^[10] is given the power to rule everything and is authorized to establish law. Consequently, the responsibility to regulate the society lies in the state. This is in line with the views of John Locke,^[11] who sees that one of state's power is the creator of law (legislative). The creator of law is a process conducted by government's tool and must qualify to certain requirements. The tool of the government that stipulates law is the authorized tool to stipulate regulations that are generally in effect, and the stipulation of legal establishment is conducted through a predetermined procedures.^[12] Then, according to Van Der Pot,^[13] stipulation of law or legal provisions must be will defect-free, in line with the form that stipulated by the regulation as the basis of stipulation, and in line with the contents and objectives stipulated by the regulation as the basis of stipulation.

3.3. The Presence of Law No. 47 of 2012

Unfortunately, points (1) and (2) are confunded by point 3 that says 'Corporations failing to exercise the obligations as stipulated by Point (1) are subject to the sanctions supplied by regulations'. Point (3) is not a continuation or reinforcement of the mandatory concept of allocating budget for CSRE program as mandated by point (2), but more to a provision on the obligation of corporations to comply with regulations on corporate responsibility as specified by other Laws.

The Researcher thinks that whenever there is a legal issue on the account of the corporations wrongdoings, corporations will excuse themselves by claiming that the profit they obtain by destroying the environment is also shared to the society, and that means, the beneficiary society also share the moral and legal responsibility.

Article 4 point (1) of the GR No. 47 of 2012, CSRE is to be conducted by the board of directors of corporations based on annual workplan after consented to the board of trustees or the Shareholders' Annual Meeting (*Rapat Umum Pemegang Saham*, RUPS). It means, Article 4 point (1) let corporations to decide whether or not they will make CSRE mandatory activities to corporations' internal mechanism (board of trustees or RUPS).

⁹ In Soehino, *Ilmu Negara* (General Theories of State), Liberti, Yogyakarta: 1998, pp. 154-155.

¹⁰ In Notonagoro, *Politik Hukum dan Pembangunan Agraria* (Politics of Law and Agrarian Development), Bina Aksara, Jakarta: 1984, p. 99.

¹¹ In Faisal A. Rani, *Fungsi dan Kedudukan Mahkamah Agung Sebagai Penyelenggaraan Kekuasaan Kehakiman Yang Merdeka Sesuai dengan Paham Negara Hukum*, (Function and Position of the Supreme Court to Exercise the Independent Judiciary Power in Line with Rule of Law) Syiah Kuala University Press, Banda Aceh: 2009, hlm. 24.

¹² In Abdul Latif and Hasbi Ali, *Op.Cit*, p. 63.

¹³ *Ibidem*, p. 68.

3.4. Implementation in West Sumatra

As of August 14 of 2015, a regulation was issued in the form of Regional Ordinance. The Ordinance is No. 7 of 2015 on the CSER. The name is different from the name specified by Law NO. 40 of 2007 and GR No. 47 of 2012. It is not clear why the name is different in the ordinance. Lawmakers say that CSER emphasises more on the corporate' responsibility towards the environment which means that each activity of corporations that use natural resources must be held liable to the social surrounding of the corporation, including the human beings.

Upon a deeper look on the Academic Paper for the formulation of the Bill of Ordinance on CSER, the basis of paradigm of the establishment of the ordinance, point 2 states that the natural resources that have been exploited so far have nearly come to depletion as renewal measures are impossible due to the natural constraints.^[14]

The basis for the establishment of the ordinance is that two-thirds of the nature' condition in West Sumatra consists of protected areas and its cultivation shall need further studies, No. 27 of 2012 on Environmental Clearance as the substitution of GR No 27 of 1999 on AMDAL (*Analisis Mengenai Dampak Lingkungan*, Analysis on Environmental Impact).

The data from the Economics Bureau of West Sumatran Provincial Government indicates that the total amount of CSR contributed by several state-owned enterprises in West Sumatra reach a total of Rp. 56,668,877,275^[15]. West Sumatra is a region where customs are still strong, where its people are dominantly persevering in the utilization of land. Land tenure is highly crucial to the entire agrarian system as this will determine the distribution of welfare amongst the people. I. Mockhael Hager^[16] describes that basically the law that the accepted law is not prepared to reflect the traditional culture and the majority of aspiration of the people. Yaswirman^[17] mentions that not all oral laws may be called custom law. Islamic law is not written either as there had been no promulgation. The Researcher discovers that the concept of land tenure according to custom law in several ethnic groups of Indonesia is in many cases similar to the principles of land tenure according to Islamic law. Some of the features include that land is a unique resource of economy, where there is no kind of absolute tenure, inclusivity as its nature, the prohibition to sell the land as market commodity, and that human is much more important than land.

Boedi Harsono^[18] mentions that land tenure rights is the rights that authorizes to do 'something' on certain lot of land. The rights may be exercised as individual or communal (in the case of a custom-based society), and in West Sumatra the term 'tanah ulayat' (communal land) is familiar.

¹⁴ Academic Paper of the Bill of Ordinance on CSER of West Sumatra, 2015, p. 3

¹⁵ *Op cit*, p. 25

¹⁶ I. Machael Hager, *The Rule of Law in Developing countries dalam BF Sihombing*, Gunung Agung Jakarta, 2004, p. 67

¹⁷ Yaswirman, *Hukum Keluarga; karakteristik dan prospek Doktrin Islam dan Adat dalam Masyarakat patrilineal Minangkabau* (Law on Kinship; characteristic and prospects of Islamic and Custom Doctrines in the Patrilineal Society of Minangkabau, Raja Grafindo persada, Jakarta, 2011, p.8

¹⁸ Boedi Harsono, *Jual Beli Tanah dan Hukum Adat Dalam Hukum Tanah Nasional* (Sale and Purchase of Land and Custom Law in National Agrarian Law), Pustaka Peradilan; 1997, p. 27

Busshar Muhammad^[19] expresses that *Beschikingsrecht* or communal rights stipulates that the society that is not the members of custom-based society may not enjoy/cultivate the land that belongs to a community.

In his book, *Politeia*, Plato described a just state due to the balanced regulation in the life of the state as each element did their best according to respective skills and duties.^[20] In the same sense, Aristotle in his book, *Politika*, wished that the establishment of law must be guided by the sense of justice; the sense that is considered good and proper for people who live together. The well-know saying is *Iustitia est constans et perpetua voluntas ius suum cuique tribuere* which means that the part or the rights of each person is not always similar.^[21] Justice according to Aristotle is divided into two groups, i.e.:

- a) Distributive Justice;
- b) Corrective Justice.^[22]

The share, as regulated in the Limited Corporation Act, must consider the society in the corporations' surroundings and be responsible to the preservation of environmental functions. The responsibility seemed to have been ignored as no clear provisions to determine who is responsible for the environment. Meanwhile since 2005 up to 2013, West Sumatra has been collecting CSRE funds from corporations as much as Rp. 237,781,841,455^[23]. This seemingly large fund is distributed to help the surrounding society in the form of Community Development and some small share of the fund is used for the preservation of environmental functions

4. CONCLUSION

The Research concludes that:

1) The birth of Law No. 25 of 2007 on Investment and Law No. 40 of 2007 on Limited Corporation, then Regional Ordinance No. 7 of 2015 on CSRE creates uncertainty of law. State-owned enterprises think that they are provided with additional compulsion and the society will be marginalized since their land/area will be exploited for production process, while the share of profit and society's rights is highly obscure.

2) The establishment of law/regulation of CSRE will create a sense of injustice for the society, especially the society inhabiting the corporate' surrounding area. Government as the authority of the use of CSRE distribute the CSRE allocated funds into other areas/activities, providing improper/obscure use of the fund.

A revision towards the Limited Corporation Act, State-owned Enterprises Act, and some other subordinating regulations is crucial. It will be even better if the issues pertaining to

¹⁹ Bushar Muhamad, *Pokok Pokok Hukum Adat* (Principles of Custom Law), Pradnya Paramita, Jakarta, 2000, p. 103

²⁰ Hujibers, Theo, *Filsafat Hukum* (Philosophy of Law), Kanisius, Yogyakarta, 1995, p. 23.

²¹ *Ibidem*, p. 24.

²² Bernard L Tanya in Dr Jazim Hamidi et al, *Teori dan Politik Hukum Tata Negara* (Theories and Politics of Constitutional Law), Total Media, 2009, p. 340.

²³ Data from the Economics Bureau of West Sumatran Provincial Government, 2014.

CSER are accommodated in a separate Act, namely Corporate Social and Environmental Responsibility Act. This would serve the sense of justice and the principle of legal certainty.

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