



## Implementation Of Corporate Social Responsibility In Indonesia In The Perspective Of Legal Theory

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### ARTICLE INFO

#### Keywords:

*Corporate, Sosial, Legal*

Date received : 02 Agustus 2022

Revision date : 04 Agustus 2022

Date received : 06 Agustus 2022

### ABSTRACT

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*Corporate Social Responsibility has been regulated in Law No. 25 of 2007 on investment and Law No. 40 of 2007 on limited liability companies, but in practice it still causes many problems. The first problem is that the regulation does not regulate in detail the implementation of CSR. The second problem is the lack of clarity of the rules and mechanisms for monitoring the implementation of CSR itself. The results of this study indicate that the approach of reflexive legal theory can answer these problems, CSR can be required by the government to every corporation because CSR grows and develops in accordance with the development of business and market reactions, then the rules and mechanisms of supervision by requiring corporations to make reports to the public called social reporting (Social Reporting).*

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### INTRODUCTION

David C. Korten in his book *When corporations Rule the World* (1995) said that in the latter half of the twentieth century there was a tremendous change in human history. The findings achieved by science have led to a very advanced perdaban. Such as the realization of space travel, computers, the sophistication of medicine to daily living equipment. This can all be enjoyed by the community because of the industrialization carried out by the corporation. They produce various daily needs, master services for people's livelihood such as electricity, drinking water, transportation, school institutions, hospitals, manage community finances and other life activities. Corporations have been transformed into institutions that are very dominant in influencing every life of the nation, even exceeding state power. This is what gave birth to the discourse of Corporate Social Responsibility (Corporate Social Responsibility), which became a widely discussed discourse in various studies.

From the perspective of corporate law, this debate began in the 1930s between Adolf Berle and Emerric Dood about the purpose of corporations. Between seeking profit for the sake of ownership (Share Holder) or pay attention to the interests of the general public (Stake Holder)? However, corporate law in various countries still puts the interests of the share holder in the main position. Milton Friedman, the nobel laureate in Economics, said, "there is one and only one social responsibility of business, to use its resources and engage in activities designed to increase it profits".

Along with the Times, awareness and thinking began to emerge that corporations as business institutions were no longer solely seeking profit, but also serving social interests. Bryant Jr. and Susan E. Mehrtens, offer a new paradigm of corporate purpose in the fourth wave that aims to serve the community (serve as global steward). Also the emergence of the concept of triple bottom lines, that the corporation berujuan to seek profit (profit),

Create Social Welfare (people) and preserve the environment (planet). In the last decade or so, Indonesians emerged level of awareness and expect something more from the company or corporation. The company is no longer an entity that only cares for itself or seeks profit (taking profit), but a business entity that is obliged to adapt in overcoming problems or social pressures that arise in society, especially the people who are around the company. This understanding is better known as Corporate Social Responsibility (TJSP).

In the implementation of Indonesian Corporate Social Responsibility, at first it is voluntary, it is only natural that its application is free of interpretation based on their respective interests. Among others: poverty alleviation program welfare improvement, direct subsidy assistance and so on. That if done by the government as an element of the state that has an important role there. Reality shows that these efforts often do not bring results or are sustainable. In addition, although there are several companies that carry out social care actions, either in the form of aid funds or basic necessities for victims of natural disasters, orphanages, and others. Unfortunately, these aids still seem thirsty for publication without touching the root of the problems faced by the community. Often the assistance is only useful for a moment, then the community returns to its original condition.

Corporate Social Responsibility (CSR), regulated in Indonesia, in law 25 of 2007 on investment, and Law No. 40 of 2007 on limited liability companies. This is motivated by the mandate of the 1945 Constitution on the national economy and social welfare 5 in addition based on the principle of sustainable development, in this case the legislative institution, wishes to prevent and reduce environmental damage caused by corporate operations that do not pay attention to the environment of the surrounding community.

Corporate Social Responsibility is also regulated in Article 15 letter b of Law Number 25 of 2007 concerning investment which in its explanation states that: what is meant by Corporate Social Responsibility is the responsibility inherent in every investment company to create a harmonious relationship, balanced and in accordance with the environment, values, morals, norms and culture of the local community. As the frequency and arrangement, in order to have the power set, binding power, and force. Corporate responsibility that was originally a Responsibility (Non-legal responsibility) will turn into a Liability (legal responsibility). In this sense, Corporate Social Responsibility becomes a legal object that can be

bound and enforced, and if not implemented will get sanctions.

The study of Corporate Social Responsibility in Indonesia is important because the regulation on Corporate Responsibility in Indonesia and its implementation are still facing problems. These problems can be seen in terms of regulatory oversight of the implementation of Corporate Social Responsibility (Corporate Social Responsibility), today supervision of the implementation of Corporate Social Responsibility in Indonesia does not have a clear mechanism and rules, who should oversee the implementation of Corporate Social Responsibility. The big question is how the law can apply sanctions to violators of the rules if there is no clear mechanism or procedure if the offender violates the rules?, while the supervision system does not exist, as a result, the law cannot see whether the mechanism for implementing Corporate Social Responsibility is right on target according to the program mandated by the legislation and the local community environment or not.

Article 4 of Government Regulation No. 47 of 2012 concerning social and environmental responsibility of limited liability company states : "social and environmental responsibility is implemented by the Board of Directors based on the company's annual work plan after obtaining the approval of the Board of Commissioners or GMs in accordance with the Articles of Association of the company, unless otherwise specified in laws and regulations"

Based on these provisions, supervision of Corporate Social Responsibility is only limited to the Internal organs of the company itself.<sup>9</sup> very inappropriate if you look at the provisions of the Act- Law No. 40 of 2007 concerning limited liability companies, the organs of limited liability companies are the GMs, the Board of Directors, and the Board of Commissioners are required to supervise themselves which in practice have the same purpose to seek the maximum benefit and minimize losses, because in fact the corporation was founded by shareholders to seek profits.<sup>10</sup> therefore, giving the obligation to the corporation to implement CSR is considered contrary to the main purpose of the corporation, which is to seek profit.

Due to the limitations of the rules of the supervision mechanism will have an impact on the implementation of CSR itself, several issues of corporate social conflicts related to CSR that have occurred in Indonesia: PT. Freeport at Jaya Pura; PT. Inti Indrayon in Porsca North Sumatra; PT. Samsung in Pasuruan; PT. Exxon Mobil in Lhoksuewawe Aceh; PT. Newmont in North Sulawesi.<sup>11</sup> PT. Freeport Indonesia, which has been

operating since 1969, until now cannot be separated from prolonged conflicts with local communities as stakeholders, both related to ulayat land, customary violations, and social and economic disparities that occur. 12 cases of Buyat Bay pollution (tailings discharge to the seabed) due to the operations of PT.Newmont Minahasa Raya (NMR) is not only a national issue, but an international one. Conflicts due to environmental pollution and social problems related to the operations of PT. Caltex Pacific (CPI) in the Duri region of Riau Province, the community demanded compensation up to the DPR level. Based on sources from several studies, there are still many companies that run their CSR just to improve the company's image, there are even some companies that do not want to run CSR at all.

It is important to examine how the approach to reflexive law theory (reflexive law theory) in answering the problem of limited supervision of the implementation of Corporate Social Responsibility (Corporate Social Responsibility) in Indonesia. Reflexive law theory is used to overcome the impasse over the formal approach to corporate obligations in the legal system and answer the problem of limited supervision of the implementation of Corporate Social Responsibility (Corporate Social Responsibility) in Indonesia.

## **METHOD**

Legal research requires accurate data obtained through legal approach procedures and field approaches in order to produce research that can be justified. In achieving the purpose of the research mentioned above, it is necessary to use several research methods first, the approach method, the empirical juridical approach method is used and supported by normative juridical research. The approach in this way is carried out considering that in this study starting from the normative aspects governing banking institutions. Second, the types and sources of data used include primary and secondary data. Primary data is data received directly from the public, while secondary data is data obtained library materials.

## **RESULTS AND DISCUSSION**

### **A. Supervision of the implementation (Corporate Social Responsibility) in Indonesia**

Limitations of supervision of the implementation of corporate social responsibility (Corporate Social Responsibility) in Indonesia as described above will be studied through the approach of reflexive Law Theory in order to find the right solution in resolving

normative conflicts that have occurred. The theory of law is certainly different from what we understand by positive law.<sup>16</sup> This needs to be understood in order to avoid misunderstandings, that it seems indistinguishable between the two. There is a philosophical study in the theory of law as Radbruch said that, the task of legal theory is to make clear the values by legal postulates to the highest philosophical foundation. According to Hans Kelsen's theory of law just as science is reducing chaos and increasing unity, the theory of law is a science, not a will or desire.

Reflexive law theory is used to overcome the impasse over the formal approach to corporate obligations in the legal system. Formal law in question is a form of state intervention in regulating private matters through legislation, such as labor laws, environmental laws, consumer protection laws and so on.

The term "reflexive law" was first introduced back in 1982 by Gunther Teubner. In summary, it can be said that rematerialization is the tendency in the field of law from formal rationality to substantive rationality, or separation from legal formality as a logical consequence of the understanding of the welfare state (welfare state) and the regulatory state (regulatory state).

In a legal evaluation model developed by Nonet and Selznick.<sup>22</sup> Nonet and Selznick analyzed a model of the law-making process that imposes rules centered on the "internal dynamics" of the legal system. With this model, the rules of law are only in the reinforcements that regulate in the legal environment itself. This means that the rematerialization of the law only improves the condition of the law, regardless of whether the law has a direct or indirect impact on various problems such as the economy, society, and culture. Strengthening centered on this law will strengthen the existing legal form on the side of the legislator itself so that the tendency that will arise is that the law is difficult to be accepted as a whole by the community because the orientation contained in this model only makes the law as an autonomous product. Therefore, Teubner's neo-evolutionary approach to reflexive law is directed to a single perspective of the process of legal and social change. According to him, Nonet and Selznick's theory of using law does not include much community intervention so that law only develops without society. Through the rematerialization of law, it is necessary to make changes in law and society that are evolutionary in nature where law can cooperate with social, economic and political

organizational images in a society. Thus, the relationship between legal and social structures will help to understand the transformations in society.

When examined in detail, it will be possible to obtain similarities and differences in the ideas of Luhman and Habermas with Nonet and Selznick. What they have in common is that they both carry a pattern of change/ evolution. The difference is that the legal changes offered by Nonet and Selznick rely on the internal variables of the legal system, while Habermas and Luhman emphasize the external inter-relation between law and social structure. And Teubner tried to bring the two opinions together.

Reflexive law theory is used as an analytical knife to provide solutions to the problems of limited supervision of the implementation of Corporate Social Responsibility (Corporate Social Responsibility) in Indonesia. Reflexive law theory is a legal theory that explains the existence of legal limitations (limit of law) in a complex society to effectively direct social change. To overcome the various limitations of the law was born the theory of reflexive law.

Reflexive law theory attempts to suppress the complexity and diversity of society through extensive legislation. Reflexive law theory aims to direct behavior patterns and encourage self-regulation. This legal theory focuses on social processes in a "regulated autonomy" that is: allowing private actors, such as corporations to freely regulate themselves. On the other hand reflexive law intervenes in social processes by making reference procedures for corporate behavior.

Gunther Teubner said that there has been an evolution of law that produces 3 types of law, namely: formal, substantive, and reflexive.<sup>27</sup> formal law is a form of authorization the government regulates through legislation. This type has obstacles for the government to intervene in private matters. Meanwhile, substantive law is a form of state intervention in the desired goals and results, although more permissive (loose) than formal law, the focal point of substantive law emphasizes the desired results of regulation.<sup>28</sup> but the substantive law has two obstacles to be applied in a complex society, namely; cognitive limitation and normative legitimacy. Gunther Teubner called it the " crisis of the interventionist state". This crisis is the result of the inability of substantive law to meet the demands of the changing problems of society. If forced to follow changes in society, it will bring too many legal products that will actually trouble people's

understanding. Related to CSR, the meaning of process-oriented social responsibility is related to the concept of corporate social response. Social response refers to "the capacity of a corporation to respond to social pressures".

### **B. The Concept Of Social Reporting In Monitoring The Implementation Of Corporate Social Responsibility**

In terms of monitoring the implementation of CSR, Reflexive law theory is a legal theory that seeks to encourage corporations to reassess the practices they have done by providing up-to-date information. In controlling corporate behavior, reflexive law theory requires the existence of social accounting, auditing and reporting called social reporting a social Report is a form of brief report on the social impact of ethical corporate behavior on the interests of society or stakeholders.

The purpose of regulation based on Reflexive law theory is not to cause corporations to "defensive compliance", but to encourage proactive and responsive management of social issues. The social report should be a kewajian for all companies of a certain size. Both for public and private corporations, in order to obtain a significant impact on stakeholders. However, the costs for CSR and creating a social Report may be too great for small companies.

Furthermore, in terms of monitoring the implementation of CSR, David Hess offers Reflexive Law Theory as an approach to find a way out for CSR regulation. The corporation is given the obligation to organize itself in regard to social issues and provide reports in regard to social issues and provide reports to the community, and furthermore, let the community will provide its assessment. Article 60 paragraph (1) of Law No. 40 of 2007 concerning limited liability companies, has required the board of directors to submit an annual report to the GMS after being reviewed by the Board of Commissioners. The report, according to Paragraph (2), must contain several things. Where one of them is a report on the implementation of social and environmental responsibility. However, the article does not provide an obligation for the company to provide reports to the general public.

This idea is actually nothing new. In Good Corporate Governance (GCG), it is regulated on the principles of good corporate governance, the principles are<sup>34</sup>: (1) transparency; is the principle of information disclosure, both in the decision - making process and in disclosing material and relevant information in the company. (2) accountability; is the clarity of the function, structure, system and accountability of

the company's organs so that the management of the company becomes effective. (3) Responsibilities; Is conformity in the management of the company to the principles of a healthy Corporation and the applicable laws and regulations; (4) Independence; is a state in which the company is managed professionally without conflict of interest and the influence of pressure from any party that is not in accordance with the principles of a healthy Corporation and the applicable laws and regulations. (5) equality and fairness; Fairness is a fair and equitable behavior in fulfilling the rights of stakeholders arising under the agreement or legislation.

The implementation of GCG also serves to foster investor confidence and the market in general towards the company. Another function is to control the behavior of the company's managers so that they do not act only in their own interests. But also must pay attention to the interests of shareholders and stake holders. This practice has been carried out in various countries, even expressly has been paraded on the implementation of CSR. For example, The New York Stock Exchange has the Dow Jones Sustainability Index (DJSI) for company stocks that are categorized as having a Corporate Sustainability value with one of the criteria being CSR practices. The London Stock Exchange owns The Socially Responsible Investment Index (SRI Index) and the Financial Times Stock Exchange (FTSE) has owned FTSE4Good since 2001.

Every corporation, especially corporations that go public, has often carried out a financial Audit process to see the financial health of the company. In CSR, the idea arises that corporations conduct "social audits" to see the effectiveness and credibility of their CSR programs. Corporations are not enough to include only the collection of information about the company's finances, but also aspects of the environment and even the socio-economic conditions of the community. Social workers, consultants or policy analysts usually conduct these social audits.

Although the idea is quite relevant, Edi suharto explained that the social audit process requires a strong commitment from key people, such as the CEO and Board of Director of the audited organization. In its implementation, social audit also requires the involvement of stakeholders, including workers, clients, volunteers, founders, contractors, suppliers and local occupations related to the company's operations. Social auditors typically work with shareholders and stakeholders to design, collect, coordinate, and analyze information. The research methods used involve surveys, interviews,

bookkeeping and even case studies. Some problems in social audit lies not only in the complexity of its formulation,

but also in its implementation. Social Audit involves environmental and social aspects that are relatively more difficult to formulate and define than financial aspects. This social Audit requires experts who have comprehensive competence in the field of environmental and social, as well as the ability to apply as a research method

The main difficulty in designing an audit system for a standard CSR program is to formulate the right variables and indicators that can be applied to all sectors. The two main conditions that need to be met are<sup>39</sup>: (1) the definition of the various categories must be applicable to all companies, industries, and even social systems that allow comparative analysis. (2) categories to classify the sustainability of the company's activities within a certain period of time so that historical comparisons can be made. In line with Edi Suharto, Ikhsan and Ishak stated that information about social responsibility can be known if the company applies social accounting. Social accounting in this case means the identification, measuring and reporting between the business and its environment. The environment here includes natural resources, the community in which the business operates, the people employed, customers, competitors and other companies and groups that deal with the business. Social accounting plays a role in generating information about social costs and benefits. It's just that it's hard to determine which are the social costs and benefits themselves and then quantify all the items relevant to those social costs and benefits.

As a guide, global reporting Initiative emphasizes the importance of six principles that need to be considered in making a social audit in good CSR reporting, namely: <sup>41</sup> (1) Accuracy: information must be complete and detailed enough to be assessed by stakeholders clearly, precisely and accurately. (2) Balance: balance that reflects the positive and negative aspects of CSR activities undertaken. (3) Comparability: the aspects or variables used and reported must be consistent so that they can be compared between times. (4) Clarity: information should be available in a form that is easily understood and accessible to stakeholders. (5) Realibility: information must be consistent and reliable that is collected, recorded, analyzed, and presented in a manner or methodology that can be accounted for. (6) Timeliness: reports are made regularly and available on time to stakeholders and other parties in need.

Based on reflexive law theory, CSR can be required by the government to every corporation. Because CSR grows and develops in accordance with business developments and market reactions, the rules and mechanisms applied are to require corporations to make reports to the Public (Social Reporting).

Furthermore, let the community provide rewards and punishment, such as boycotts or anti-corporate campaigns that do not run CSR. It will be effective if people have equal power to bargaining, as do international NGOs in developed countries, Green Peace for example. Yanti Koestor from Indonesia business link agrees with the opinion only, whether the relationship between the community and the corporation has been balanced. He said " " I agree with the idea. But it depends on the type of society and the company whether it is able/Ready or not to face each other. If the attitude adopted is "partnership" there should be no problem. But it may take time to change the mindset of society and corporations about CSR."

## CONCLUSION

Reflexive law theory is a legal theory that explains the existence of legal limitations (limits of law) in a complex society to effectively direct social change. To overcome the various limitations of the law was born the theory of reflexive law. in terms of monitoring the implementation of CSR, Reflexive law theory is a legal theory that seeks to encourage corporations to reassess the practices they have done by providing up-to-date information. In controlling corporate behavior, reflexive law theory requires the existence of social accounting, auditing and reporting called social reporting a social Report is a form of brief report on the social impact of ethical corporate behavior on the interests of society or stakeholders.

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