

Reconstruction of Corporate Social Responsibility in Realizing Sustainable Development Based on the Values of Justice

Suheni^{1*}, I Gusti Ayu KRH², Anis Mashduroh³

¹Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²Faculty of Law Sebelas Maret University Surakarta, Indonesia

³Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcj.2021.v04i12.001](https://doi.org/10.36348/sijlcj.2021.v04i12.001)

| Received: 28.10.2021 | Accepted: 02.12.2021 | Published: 07.12.2021

*Corresponding author: Suheni

Abstract

The problem in this study is to find weaknesses in Corporate Social Responsibility in Realizing Sustainable Development that is not valued with Justice and how to reconstruct it based on the values of justice. The approach method used in this study is qualitative research, with a sociological juridical approach, and analyzed using descriptive analysis. The conclusion of this study is the weakness of the construction of Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies from the aspect of legal substance, legal structure, and legal culture has implications for the value of justice which cannot be realized in carrying out corporate social responsibility in realizing sustainable development in the form of CSR. Because of that Article, 74 of Law Number 40 of 2007 concerning Limited Liability Companies must be reconstructed so that Corporate Social Responsibility Values Justice which is appropriate and in line with the values of Pancasila justice.

Keywords: Reconstruction, Social Responsibility, Corporations, Justice.

Copyright © 2021 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Indonesia is one of many developed countries in the world that requires corporations, especially those that operate in natural resource management (SDA) to spend funds for Corporate Social Responsibility (CSR). That stated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which was recently upheld by the Constitutional Court to be immediately enacted. On the other hand, in developed countries such as the United States and many western Europe, although CSR is voluntary, CSR-related activities are becoming a concern among the corporations there [1]. Even though it is not mandatory, companies seem to be more morally and socially bound to allocate some of their profits to CSR activities. people in developed countries more aware of such information literate, especially about world issues such as deforestation, environmental pollution, poverty, health, education, global warming, and so on, also contribute to 'forcing' corporations to be more responsive to people, the planet, and profit (3P) itself through CSR.

In developed countries such as the United States and western Europe, although CSR is voluntary, companies seem to be more morally and socially bound

to allocate part of their profits to CSR activities. The problem faced by companies in developed countries is their difficulty in finding CSR activities that are relevant to their position (vision and mission) as a business world. On the other hand, they are rich countries which of course have very few problems of poverty and environmental pollution as a result, corporations have to look for "additional outlets" outside their home countries. This is a strategic opportunity for developing countries to capture the overflow of CSR funds that have not been distributed in the company's home country. For those who have operating offices or activities in developing countries, it will be easier for corporations to spend their CSR funds.

In Indonesia itself, the explanation of Article 15 letter b of Law no. 25 of 2007 concerning Investment states that what is meant by "corporate social responsibility" is the responsibility inherent in every investment company to continue to create harmonious, balanced, and appropriate with the environment, values, norms, and culture of the local community". Corporate Social Responsibility (CSR) is the commitment of the company or the business world to contribute to sustainable economic development by emphasizing the

balance between attention to economic, social, and environmental aspects. In this effort, the company focuses its attention on three things, namely (profit), society (people), and the environment (planet). The company must have an adequate level of profitability because profit is the foundation for the company to be able to develop in maintaining its existence. With adequate profits, the company distributes dividends to shareholders, provides appropriate compensation to employees, allocates a portion of the profits earned for future business growth and development, pays taxes to the government, and provides the expected multiplier effect to the community. Meanwhile, by paying attention to the community, the company can contribute to improving the quality of life of the community, especially the surrounding community. The efforts made by the company to encourage the improvement of community welfare have generally been carried out through ComDev (Community Development) activities and other entrepreneurship. Moreover, the most important thing is for the company to pay attention to environmental conditions both inside and around it, there are still a few who make this effort voluntarily, even to fulfill obligations there are still violations, for example, the threshold of pollutants that are allowed to be discharged into the sewer is still many violate. The company's role in sustainable development through CSR must of course include the three social, economic, and environmental aspects [2].

The laws and regulations related to the implementation of CSR are (1) Law no. 19 of 2003 concerning State-Owned Enterprises, in Law no. 19 of 2003 concerning BUMN Chapter I in General Provisions Article 2 paragraph 1 (e), it is stated: The purpose and objectives of establishing a BUMN are: to actively participate in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and the community; (2) Law no. 40 of 2007 concerning Limited Liability Companies, Article 66 paragraph 2 (c) stipulates that the Annual Report must contain at least: a report on the implementation of Social and Environmental Responsibility. Article 74 paragraphs 1-4 also contain provisions for implementing CSR; (3) SOE Minister Regulation No. PER-05/MBU/2007, this regulation contains matters regarding the Partnership and Community Development Program (PKBL) of SOEs and their activities, regulations that must be met, and their reporting. This regulation is a reference for SOEs to implement the Partnership and Community Development Program (PKBL) since 2011, the Ministry of Environment (KLH) has been encouraging CSR in the environmental sector as an effort to realize harmonization between companies and the environment. The environmental CSR developed consists of seven areas of activity, namely Clean Production, Eco-Office, Waste Management with 3R (Reduce, Reuse, Recycle), Natural Resources and Energy Conservation, Renewable Energy, Climate Change Adaptation, and Environmental Education (PLH).

Development activities will always produce benefits and risks. The environment as a medium will always accept the risk of unwanted by-products of development activities in the form of waste. This situation will ultimately reduce the quality of natural resources. Therefore, since the 1970s the government has given great attention to environmental management efforts, which was followed by the promulgation of Law Number 23 of 1997 concerning Environmental Management.

The government that favored the interest of corporations instead of their people has received a lot of attention and protests in various regions. It can be seen from the rejection of the people who are ignored in the construction of PLTU 2 in the Cirebon Regency. Corporate packaging for the sake of investment and attracting investors to enter by shrouding the interests of electricity supply which ignores In the interests of the people, the regional government (Provincial) RTRW is easily changed unilaterally by the government, as stated by the President Director of Cirebon Energi Prasarana Heru Dewanto said, PLTU Cirebon Unit II is one of the 35 thousand Megawatt (MW) projects, where the acceleration of the project is regulated in Regulation President Number 4 of 2016. According to Article 31 of the regulation, it is possible to change the RTRW for projects that are part of the electricity strategic program, which means that the president can amend and cancel Provincial and Regency or City Regional Regulations. Based on that Heru, West Java BPMPT finally gave an environmental permit for PLTU Cirebon Unit II [3].

The regulation regarding corporate social responsibility in realizing sustainable development based on the value of justice should have been able to be achieved and enjoyed by the community. If Article 71 of the Company Law is carried out consistently, but in its implementation, CSR is only enforced after the corporation gets a profit, although in Article 74 paragraph (2) it is stated that the Social and Environmental Responsibility as referred to in paragraph (1) is the obligation of the Company which is budgeted and calculated as the Company's expenses, the implementation of which is carried out with due regard to propriety and fairness. This means that the planning and implementation of CSR should be carried out since the environmental permit is submitted by the corporation concerned. This problem is what urges the author to study it further into research with the main problem as follows:

1. Why is Corporate Social Responsibility in Realizing Sustainable Development Not Valued with Justice?
2. How is the Reconstruction of Corporate Social Responsibility in Sustainable Development that Values Justice?

METHOD OF RESEARCH

The method used in this study is a descriptive method with a qualitative approach and sociological

juridical approach using primary data and secondary data, using the Theory of Legal Protection, and Theory of Justice as Grand Theory; Corporate Responsibility Theory and Legal System Theory as Middle Theory; and Progressive Legal Theory as Applied Theory [4]. The issue that will be studied and will be researched is about reconstructing Corporate Social Responsibility in Realizing Sustainable Development Based on the Value of Justice, then finding new theories [5] in the field of corporate law, especially those related to corporate social responsibility based on the value of justice, providing a real picture of the reconstruction of Corporate Social Responsibility In Realizing Sustainable Development Based on the Value of Justice.

RESEARCH RESULT AND DISCUSSION

1. The Reason Corporate Social Responsibility in Realizing Sustainable Development Not Valued with Justice

The regulation on Corporate Social Responsibility can be seen in Article 1 point 3 and Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies. Implicitly, Article 1 point 3 can be interpreted that the concept of Corporate Social Responsibility is a form of corporate philanthropy or corporate generosity and the company's commitment to contribute to the progress or improvement of the welfare of the local community. Meanwhile, Article 74 of the PT Law creates inconsistencies with the provisions of Article 1 number 3 of the Law on Limited Liability Companies. This can be seen from the differences in the basic concept of social responsibility as stated in Article 1 point 3 of the Limited Liability Company Law which was originally "*social responsibility (moral obligation)*", to become a legal obligation with the imposition of sanctions for the company that not implement it, as stated in Article 74 of the Limited Liability Company Law.

In addition, there are different terms used in providing an understanding of Corporate Social Responsibility, in Article 15 letter b of Law Number 25 of 2007 concerning Investment, the term used is Corporate Social Responsibility. Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies uses the term Social and Environmental Responsibility.

Article 95 letter d of Law Number 4 of 2009 concerning Mining, uses the term community development and empowerment.

Article 1 point 6 and Article 1 point 7 Regulation of the Minister of State for State-Owned Enterprises Number PER-05/MBU/2007 of 2007 concerning Partnership Program of State-Owned Enterprises with Small Businesses and the Community Development Program junto Regulation of the Minister of State for State-Owned Enterprises No. PER-08/MBU/2013 concerning the Partnership Program of State-Owned Enterprises with Small Business and

Community Development Programs, the terms used are partnership programs and community development programs. The difference in these terms results in multiple interpretations, resulting in the company's independence in implementing Corporate Social Responsibility in the field.

In Indonesia, Corporate Social Responsibility activities have developed positively along with the development of democracy, an increasingly critical society, globalization, and the era of the free market. However, only a small number of companies have implemented Corporate Social Responsibility, as the results of a survey conducted by Suprpto in 2005 on 375 companies in Jakarta showed that 166 or 44.25% of companies stated that they did not carry out Corporate Social Responsibility activities, 209 or 55.75% stated that they did Corporate Social Responsibility activities in the form of activities as follows: family activities (116 companies), donations to religious institutions (50 companies), donations to social institutions (39 companies), and community development (4 companies). The survey results also state that the Corporate Social Responsibility carried out by the company is very dependent on the wishes of the management [6].

The obligation to implement Corporate Social Responsibility is not merely to comply with laws and regulations. As regulated in Article 15 letter b and Article 34 of Law Number 25 of 2007 concerning Joint Investment, Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, and Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies but logically there is a law of cause and effect, which is when the company's operations have a detrimental impact, there will be a much greater negative response from the community and the environment who are harmed.

Article 74 of the 2007 Limited Liability Company Law has ended the debate about whether or not CSR or Social and Environmental Responsibility (TJSL) is mandatory for limited liability companies, but according to the author's legal substance, there is no legal certainty that requires objective laws that apply to every company. The person must be clear and adhered to. Here it is emphasized that legal certainty also concerns the certainty of legal norms. The certainty of this legal norm must be created by the legislators based on the principles of legality, propriety, and justice [7]. Legal certainty in legislation contains an understanding in terms of legal substance and legal norms so that the legislation made is fair and useful.

The legal uncertainty of the legal substance in Article 74 paragraph (2), regarding "*Social and Environmental Responsibility (CSR) as referred to in paragraph (1) is the obligation of the Company which is budgeted and calculated as the Company's costs, the*

implementation of which is carried out with due regard to propriety and fairness". Substantially, this article does not have legal certainty as to when the CSR begins to be carried out by the Company (Corporation), whether since the Corporation has applied for a permit to establish its company in a place in the territory of the Republic of Indonesia, or since the Corporation has been producing and generating profits, or in the sense of Another CSR is only issued by the Corporation after making a profit.

The implementation of CSR programs is carried out because there are regulatory policies, there are people involved in its implementation, and there are institutions that carry out these activities or programs. Therefore, the implementation of CSR cannot be separated from the role of stakeholders in its implementation where these stakeholders can be said to be part of the human organization and humans in the organization.

In this case, the authors classify into two parts based on some literature, namely primary stakeholders and secondary stakeholders. According to Bernard [8], primary stakeholders consist of company owners, company employees, customers, and suppliers, without whom the organization cannot survive. While the secondary stakeholders consist of non-governmental organizations (NGOs), activists and academics, the community, and the government, whom they can influence the company or are affected by it.

For the implementation of CSR programs to run well, stakeholders should be able to play an optimal role. However, in reality, some of the stakeholders, both primary and secondary, are not doing as they should, for example, the company is reluctant to carry out CSR activities where these activities only harm the company because of the costs incurred. The government's role, in this case, is less than optimal, both from regulatory issues that ease the company and the lack of supervisory functions carried out, as well as people who do not enjoy CSR optimally due to the above factors. The incompatibility of stakeholders in implementing CSR programs according to the author's opinion is due to the weakness of the legal substance of Article 74 paragraph (2) of the Company Law,

The weakness of the legal substance of Article 74 paragraph (2) of the Company Law, due to the absence of legal certainty when a corporation can disburse its CSR for sustainable development, has implications for the weakness of the legal structure. Legal structure related to Corporate Social Responsibility (CSR) for both central and local governments, as well as externally and internally corporate stakeholders.

The realization of CRS as an effort to carry out sustainable development is handed over to the relevant stakeholders, so it is not clear whether the Corporation has disbursed its CSR or not, for example, the social environment or the community around the Palimanan

Cement Factory that do not feel any CSR funds are disbursed from the Corporation in their environment. Meanwhile, according to the stakeholders of the corporation, CSR has been issued.

Based on the description above, it can be concluded that the weakness of the legal substance of Corporate Social Responsibility (CSR) which does not have legal certainty, not only does not have the value of justice but also has the potential for the emergence of crimes of misuse of CSR funds by the structure, in the case of the Government or Local Government. , Corporate stakeholders as well as other relevant stakeholders, such as the existing village and/or NGO.

2. The Reconstruction of Corporate Social Responsibility in Sustainable Development that Values Justice

Social and Environmental Responsibility (CSR) as stipulated in Article 74 of the Limited Liability Company Law. This article regulates the legal obligations that must be carried out by a company because CSR in the provisions of Article 74 paragraph (1) of the Limited Liability Company Law has been stipulated as a legal obligation. This is due to the many highlights of the business world in running their business, such as ethics that must be carried out in business, paying attention to the balance of the environment to the surrounding environment is an important effort for business people to carry out CSR, not as a mere moral obligation whose implementation is voluntary. However, Article 74 paragraph (1) does not explain in detail how the form of CSR is desired by lawmakers. Obligations only for the company that carries out their business activities in the field and/or related to natural resources are obliged to carry out Social and Environmental Responsibility. This phrase is discriminatory, and inaccurate because there is not a single large corporation and even street vendors who are not related to the use of natural resources, for example, the use of natural resources. wrap meatballs from plastic, plastic comes from natural resources even though it does not directly exploit natural resources, but the resulting waste results in damaging natural resources.

Article 74 paragraph (2) of the Company Law, stipulates that the Social and Environmental Responsibility as referred to in paragraph (1) is an obligation of the Company which is budgeted and calculated as the Company's expenses, the implementation of which is carried out with due regard to propriety and fairness. CSR funding by companies whose expenses can be calculated as company costs. The cost of the company, in this case, is intended as a social investment that makes an important contribution to the sustainability of the company itself, it is not regulated when it is carried out by the corporation, because in the absence of clarity on the implementation of CSR, the corporation can easily delay the implementation of CSR [9].

Article 74 paragraph (3) of the Limited Liability Company Law which regulates corporations that do not carry out their obligations as referred to in paragraph (1) will be subject to sanctions following the provisions of the legislation. However, Article 74 paragraph (3) does not regulate sanctions for not implementing CSR, this will certainly have an impact on many companies who will ignore this CSR provision if there are no rules that force it and will become an obstacle in implementing this CSR provision in practice in the field.

Article 74 paragraph (4) of the Limited Liability Company Law states that further provisions regarding social and environmental responsibility are regulated by government regulations. As for the PP referred to by Government Regulation Number 47 of 2012. The PP does not explicitly regulate what the legal sanctions are. Article 2 of PP Number 47 of 2012 states that every company as a legal subject has social and environmental responsibilities. Article 3 paragraph (1) states that the social and environmental responsibility as referred to in Article 2 is an obligation for the Company that carries out its business activities in the field of and/or related to natural resources based on the Law. Its obligations are carried out both inside and outside the environment. Article 4 paragraph (1) states that social and environmental responsibilities are carried out by the Board of Directors based on the Company's annual work plan after obtaining approval from the Board of Commissioners or the GMS following the Company's articles of the association unless otherwise stipulated in the laws and regulations. Paragraph (2) The annual work plan of the Company as referred to in paragraph (1) contains the activity plans and budget required for the implementation of social and environmental responsibilities. Article 5 paragraph (1) Companies that carry out their business activities in the field of and/or related to natural resources, in preparing and stipulating activity plans and budgets as referred to in Article 4 paragraph (2) must pay attention to propriety and fairness. Paragraph (2) The realization of the budget for the implementation of social and environmental responsibilities carried out by the Company as referred to in paragraph (1) is calculated as the Company's expenses. Article 6 The implementation of social and environmental responsibility is contained in the annual report of the Company and is accountable to the GMS.

Article 7 reads that the Company as referred to in Article 3 which does not carry out its social and environmental responsibility is subject to sanctions following the provisions of the legislation. Article 8 paragraph (1) Social and environmental responsibility as referred to in Article 3 does not prevent the Company from participating in carrying out social and environmental responsibilities as referred to Article 2. Paragraph (2) Companies that have participated in carrying out social and environmental responsibilities in this Government Regulation nor is it regulated regarding the form of sanctions or types of sanctions for companies

that do not implement this CSR concept. The understanding of the CSR concept regulated in this PP is in line with the understanding of CSR as regulated in Article 74 paragraph (1) of the Law on PT. In addition, Article 74 paragraph (1) of the Limited Liability Company Law doesn't explain in detail how the form of CSR is desired by lawmakers. The problem of costs that arise as the implementation of CSR in Article 74 paragraph (2) states that CSR funding by the company can be calculated as company costs. The cost of the company in this case is intended as a social investment that makes an important contribution to the sustainability of the company itself.

Based on the weakness of the substance above, there are structural weaknesses. The provisions of Article 74 of the PT Law in conjunction with PP 47 of Article 1 point 3 of the Company Law stated that every company is obliged to apply the principles of good corporate governance and carry out corporate social responsibility, so it is a commitment from the company to participate in sustainable economic development. In addition, the purpose of the inclusion of the CSR concept in the three articles of legislation is to create harmony between the company and the surrounding environment, and ultimately CSR is the moral responsibility of the company which is then made into a legal obligation.

The definition of a company that enforces its activities related to natural resources is a company that does not manage and does not utilize natural resources, but its activities have an impact on the ability to function of natural resources. CSR is a company moral responsibility which became a legal obligation in the provisions of Article 74 of the PT Law in conjunction with PP 47 of 2012 and Law Number 25 of 2007 concerning Investment. The Investment Law states that every company must apply the principles of good corporate governance and carry out corporate social responsibility [10]. The purpose of the inclusion of the CSR concept in the three laws and regulations is to create harmony between the company and its surrounding environment. The regulation of legal sanctions for the implementation of CSR is progress because the rules regarding social and environmental responsibility are new things that are forcing business actors to carry out CSR. With the provisions of this legal sanction, the company is required to have a social responsibility that is not only based on the company's generosity or based on morals alone, but it is an obligation for the company in carrying out its business activities to maintain harmonious social relations and keep the environment from being damaged, and if it is not implemented, it will be subject to sanctions following the provisions of Article 74 paragraph (3) of the Law on PT. For this reason, it is considered necessary to carry out reconstruction in Article 74 of Law 40/2007

1. Article 74 paragraph (1) needs to be reconstructed into *"Companies that carry out their business activities are obliged to carry out corporate social*

responsibility through a fair and sustainable balance of economic, environmental and social,"

2. Article 74 paragraph (2) needs to be reconstructed into *"The company's responsibilities as referred to in paragraph (1) are the company's obligations which are budgeted and calculated as the company's costs, which have been planned since applying for a permit, and their implementation since the beginning of its operation. a corporation is carried out by taking into account the needs of local communities, programmed, integrated, open and requires companies to make an annual report on Corporate Social Responsibility which is publicly published to the public."*
3. Article 74 paragraph (3) needs to be reconstructed into *"Companies that do not carry out the obligations as referred to in Paragraph (1) are subject to administrative sanctions and other sanctions that can be regulated in-laws and regulations relating to the company."*
4. Article 74 paragraph (4) needs to be reconstructed into *"The Government is obliged to provide compensation to companies that carry out the responsibilities as stipulated in paragraph (2) by providing compensation to companies for their efforts to maximize Corporate Social Responsibility, which will be further regulated through government regulations."*

CONCLUSION

1. The construction of corporate social responsibility in realizing sustainable development still has weaknesses, from the aspect of substance Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies has no fair value, because CSR is only applied to corporations that carry out their business activities related to natural resources, and do not yet have legal certainty, because the time of CSR provisions to be implemented does not have a specified time, the weakness of the legal substance aspect has implications for structural weaknesses, which is external and internal stakeholders have the potential to abuse the CRS given by the Corporation, the cultural aspect of the weakness of the substance and structural aspects are not following the culture national law and Pancasila values. So it can be

concluded that the weakness of Article 74 of Law Number 40 of 2007 from the aspect of legal substance, legal structure, and legal culture has implications for the value of justice which cannot be realized in carrying out corporate social responsibility in realizing sustainable development in the form of CSR.

2. Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies must be reconstructed so that Corporate Social Responsibility Values Justice is appropriate and in line with the values of Pancasila justice.

REFERENCES

1. DeCotis, P. A. (2021). Corporate Social Responsibility. *Climate and Energy*, 37(9), 21-25.
2. Suyud, W. U. (2013). Model Corporate Social Responsibility Bidang Lingkungan, Kementerian Lingkungan Hidup, Jakarta, p. iv.
3. CNN Indonesia. (2017). BMPT jabar ajukan banding putusan proyek PLTU Cirebon II, Taken from <https://www.cnnindonesia.com/ekonomi/20170425100905-85-209890/bmpt-jabar-ajukan-banding-putusan-proyek-pltu-cirebon-ii>, on 8 July 2020.
4. Peter, M. M. (2006). Penelitian Hukum, Prenada Media, Jakarta, p. 5.
5. Pratama, T. G. W. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514.
6. Indroharto. (1984). Rangkuman Asas-asas Umum Tata Usaha Negara, Jakarta, p. 212-213.
7. Mardikanto, T. (2014). CSR (Tanggungjawab Sosial Korporasi). Bandung: Alfabeta, p. 172.
8. McCabe, B. (1992). Are Corporations Socially Responsible? Is Corporate Social Responsibility Desirable?. *Bond Law Review*. 10.53300/001c.5215.
9. Al jenaibi, B. (2019). Analyzing and Developing Corporate Social Responsibility: The Business Case for Corporate Social Responsibility. *International Journal of Smart Education and Urban Society*. 10.104018/IJSEUS.2019040102.
10. Potocan, V. (2021). Technology and Corporate Social Responsibility. *Sustainability*, 13(15), 8658.