

LEGAL RECONSTRUCTION OF CORPORATE SOCIAL RESPONSIBILITY: PREVENTING AN ENVIRONMENTAL CONFLICTS

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Abstract

The conflicts between companies and communities have a massive impact and even cause national instability so that it becomes counter-productive with development goals. In this regard, this study examines why there are many environmental conflicts between companies and communities, why many companies do not implement CSR, and how the legal reconstruction of CSR that can prevent environmental conflicts. This study aims to find out why there are so many conflicts between companies and the community? To find out why many companies do not implement CSR? and how to reconstruct CSR regulations in order to prevent environmental conflicts between companies and communities. The approach method used a normative juridical approach. The results of this study show that conflicts between companies and communities are frequent and difficult to resolve because the current CSR regulations provide opportunities for companies to exploit natural resources and override the protection of human resource interests that should be the subject of development rather than the object of development. Many companies do not implement CSR because CSR regulations are still appealing and there are no criminal sanctions, and there is no legal unification. Therefore, it is necessary to reconstruct CSR regulations in order to prevent environmental conflicts.

Keywords: *Conflicts; CSR; Environmental; Construction; Legal.*

A. INTRODUCTION

Corporate Social Responsibility (CSR) is a form of accountability that must be done by a company to all parties in it by implementing a program that has benefits. Large companies have implemented many CSR, while medium and small companies, there are still many that have not implemented. Although many large companies have implemented CSR, but it has not been on target.

The implementation of CSR programs by companies in Indonesia has not had an optimal impact. The existence of CSR implemented by the company has not been able to significantly improve the development of the quality of life of the people in the surrounding environment or communities affected by the establishment of the company. This condition often causes conflicts between companies and the community.

A total of 50 cases of conflict in various levels of escalation in Riau during 2019. Meanwhile, in 2020 there were 31 cases even in the era of the covid pandemic, where people worked more at home.¹ In West Kalimantan, 69 conflicts between companies and communities have been identified in the past two decades.² There are 12 conflicts between companies and communities in Central Kalimantan consisting of various problems, including environmental pollution, destruction of swamps, lakes and rivers, and corporate indifference to the community.³

An historically, Corporate Social Responsibility (CSR) was formed to organize large multi-national companies to pay attention to and develop resources in the company's surrounding environment.⁴ As explained, according to Rosiana et al. CSR is a form of accountability to fix social and environmental problems affected by the company's operational activities so that CSR is used to clarify the contribution of companies needed to manage the environment sustainably.⁵ This opinion is also in line with Amaladoss & Manohar which wrote that CSR is described as an ongoing commitment from the company to build the economy and improve the quality of life of the people, workers, families, and communities that inhabit the location around the company so that CSR can be said to be a responsibility that should be in every company.⁶ CSR is also explained as a commitment to eliminate/minimize adverse effects of society but still provide great benefits for the company so that CSR requires corporate social contributions to provide benefits.⁷ According to Schaefer et al., there are four different domains of CSR: customer-oriented, employee, environmental and philanthropic.⁸

According to Fatma et al., CSR is also described as a tool for companies to improve reputation and provide a good image for the

1 Muslihin Effendi, *Konflik Perkebunan Sawit Masih Tinggi*, Riau, 2021.

2 Aseanty Pahlevi, *Upaya Petani Bertahan di Tengah Proyek Infrastruktur*, Kalimantan Barat, 2020.

3 Yusie Marie, *Asap Pekat Berbahaya Terus Selimuti Palangkaraya*, Kalimantan Tengah, 2019

4 Gelbmann, U., Comparative analysis of innovative CSR tools for SMEs. *International Journal of Innovation and Sustainable Development*, 2010. Sheehy, B., Defining CSR: Problems and Solutions, *Journal of Business Ethics*, 2014;

5 Rosiana, G. A. M. E., Juliarsa, G., & Sari, M. M. R., Pengaruh Pengungkapan CSR terhadap Nilai Perusahaan dengan Profitabilitas sebagai Variabel Pemoderasi, *E-Jurnal Akuntansi Universitas Udayana*, 2013.

6 Amaladoss, M. X., & Manohar, H. L., Communicating Corporate Social Responsibility - A Case of CSR Communication in Emerging Economies, *Corporate Social Responsibility and Environmental Management*, 2013.

7 Yoo, D., & Lee, J., The Effects of Corporate Social Responsibility (CSR) Fit and CSR Consistency on Company Evaluation: The Role of CSR Support. *Sustainability (Switzerland)*, 2018. Kim, Y., Lee, S. S., & Roh, T, Taking Another Look at Airline CSR: How Required CSR and Desired CSR Affect Customer Loyalty in The Airline Industry, *Sustainability (Switzerland)*, 2020.

8 Schaefer, S. D., Terlutter, R., & Diehl, S, Talking about CSR matters: employees' perception of and reaction to their company's CSR communication in four different CSR domains, *International Journal of Advertising*, 2020.

company.⁹ Quoting from Yoo & Lee, reputation is shown by various forms of CSR activities that provide benefits to the community such as charity activities, the use of materials that support greenery and provide facilities that empower the community. In this context, community communities, companies, and governments are three important components in implementing sustainable and responsible CSR.¹⁰ Deepening the discussion about CSR, according to Marnelly, CSR has three main topics shown by; 1) CSR has a voluntary role in helping to overcome social and environmental problems; 2) CSR can also be defined as a philanthropic organization (philanthropy) in which the company sets aside as its profits for charity and helps empower the community, repair environmental damage and stop excessive exploitation; and 3) CSR has an obligation to pay attention to the needs of the community and alleviate the humanitarian and environmental crisis that has been increasing for some time.¹¹ Therefore, Wang & Zhang (2020) concluded that CSR encourages companies to not only seek profit but also have a sense of responsibility for the sustainability of society in the future.¹²

The study of the conflict between companies and society in general can be classified into two things. As the first, the economic and social aspects that give an idea that the implementation of CSR is currently not fully able to solve the problem of economic and social inequalities as a result of the establishment of a company.¹³ Second, environmental aspects that give the idea that some companies in their operations cause pollution and environmental damage (the results of Yusie Marie's research). Of the several issues about CSR in Indonesia, not many have touched on the regulation. It should be that regulations governing CSR should also be the object of study, because regulation is the basis for companies in implementing CSR.¹⁴

The purpose of this study is to find out why there are so many conflicts between companies and the community? To find out why many companies do not implement CSR? and how to reconstruct CSR regulations in order to prevent environmental conflicts between companies and communities.

B. RESEARCH METHODS

This research used the method of normative juridical approach. The data collection technique used primary and secondary data. The primary data in the research was the results of previous research and regulations

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- 9 Fatma, M., Rahman, Z., & Khan, I., Building company reputation and brand equity through CSR: the mediating role of trust, *International Journal of Bank Marketing*, 2015.
 - 10 Yoo, D., & Lee, J., The Effects of Corporate Social Responsibility (CSR) Fit and CSR Consistency on Company Evaluation: The Role of CSR Support. *Sustainability (Switzerland)*, 2018.
 - 11 Marnelly, T. R., Corporate social responsibility (CSR): Tinjauan teori dan praktek di Indonesia, *Jurnal Aplikasi Bisnis*, 2012.
 - 12 Wang, Y., & Zhang, Y., Do state subsidies increase corporate environmental spending? *International Review of Financial Analysis*, 2020.
 - 13 Hartini Retnaningsih, The Problem on Corporate Social Responsibility (CSR) for Community Empowerment, *Aspirasi*, Vol. 6, No. 2, 2015, page 179.
 - 14 Yusie Marie, *Asap Pekat Berbahaya Terus Selimuti Palangkaraya*, Kalimantan Tengah, 2019.

governing CSR. While the secondary data of this study was books and journals about CSR and about conflicts between companies and the community. Data selection was based on the focus of research. The sorting of data was carried out based on the purpose of research.

C. RESULT AND DISCUSSION

1. The Facts About The Conflict Between Companies And Communities

There are at least three patterns of conflict that occur. *First*, conflict due to social and economic disparities, as happened to PT Freeport in Jaya Pura. PT Freeport since its establishment in 1967 until now is still in conflict with the local community.¹⁵ The problems of the prolonged conflict, among others, boil down to the problem of social and economic inequalities. Local people assume that the gold taken by PT Freeport is a natural wealth that should belong to local residents. Therefore, there is turmoil when the local community is still below the poverty line.

Second, conflicts related to pollution and environmental damage, as happened to PT Newmont Minahasa. PT Newmont's conflict with the community began from the disposal of tailings from PT Newmont Minahasa Raya's operations to the seabed, which resulted in pollution in Buyat Bay.¹⁶ Conflicts like this also occurred in Kubang Jaya Babakan Pari Sukabumi, between PT Aqua with the local community. The conflict occurred due to water exploitation by PT Aqua which resulted in Kubang Jaya village drought, experiencing water difficulties both to meet daily life and for agriculture.¹⁷

Third, conflict is related to land tenure. Conflicts such as this third form included PT Silva Inhutani (SI) with the local community. The conflict was triggered when PT SI gained the right to manage an area of 43 thousand hectares, some of which belonged to residents.¹⁸ Conflicts also occurred between PT Barat Selatan Makmur Investindo (BSMI) in Mesuji. The conflict began when PT BSMI obtained the right to manage 10,000 hectares of core gardens and 7,000 hectares of plasma plantations in the Mesuji area. As for the problem because some of the land given to PT BSMI is the land of residents.¹⁹

15 The Council on Foreign Relations, *Indonesia Commission: Peace and Progress in Papua*, CFR Inc, New York, 2003, page 51.

16 Down to Earth, *New Pollution Study Corners Newmont*, Sulawesi, 2004.

17 Bahrina Almas et.al, Water Trade From an Islamic Business Ethics Perspective: Evidence form Indonesia, *Advances in Social Science, Education and Humanities Research*, Atlantis Press, page 297.

18 I Ketut Seregig, Efforts to Achieve Legal Justice in Social Conflict Resolution in Register 45 Mesuji Lampung, *Jurnal Dinamika Hukum*, Vol. 19, Issue 2, Mei 2019, page 469.

19 The Institute for Policy Analysis of Conflict (IPAC), *Mesuji: Anatomy of An Indonesian Land Conflict*, Jakarta, August, 2013, page 15.

2. CSR Regulations have not been Unified

One way to resolve these conflicts is to implement CSR by companies against local or affected communities. This is based on the results of research, that the emergence of conflict due to the dissatisfaction of the local community with the contribution of companies that are not in accordance with community expectations.²⁰ Conflicting societies argue that companies only seek profit, even by exploiting natural resources without taking into account the conditions of the society in which the company is located or operates. So basically the conflict arises because the company has not implemented CSR as it should.²¹

Until now CSR has not been specifically regulated in one regulation and is still spread across several laws and regulations. The laws and regulations on CSR are in Act No. 40 of 2007 concerning Limited Liability Company (PT), Act No. 25 of 2007 concerning Investment, Act No. 22 of 2001 concerning Oil and Gas, Act No. 4 of 2009 concerning Mineral and Coal Mining, Act No. 21 of 2014 on Geothermal. Meanwhile, in addition to the law, namely Act No. 47 of 2012 concerning Social and Environmental Responsibility of PT and Act No. 23 of 2010 concerning the Implementation of Mineral Mining Business Activities. Looking at the important role of CSR, it should be regulated in one special regulation.²²

3. CSR Regulations are Appealing, There are No Criminal Sanctions

There are several things that need to be considered in the regulation on CSR, because it becomes counter-productive in conflict resolution. The results showed that CSR regulation is still an appeal because it is not included sanctions in the regulation.²³ The non-inclusion of sanctions resulted in its enforcement cannot be forced because there is no coercive tool. This shows the weak regulation of CSR, so it cannot completely resolve the conflict between the company and the community.²⁴

4. CSR regulations have not regulated the form and amount to be paid

Another form that causes counter production in conflict resolution is the amount and form of CSR that must be given to local communities

20 Mukti Fajar, The Problems of Corporatae Social Responsibility in Indonesian local regulations, *The Wseas Transactions on Environment and Development*, Vol. 15, 2019, page 7.

21 Waagstein, P. R., The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications, *Journal of Business Ethics*, Vol. 98, No. 3, 2011, page 458.

22 Zainal, Rabin Ibnu, Mandated CSR in Indonesia: Institutional and Stakeholder Perspectives, *Thesis*, RMIT University, 2015, page 89.

23 Waagstein, P. R., The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications, *Journal of Business Ethics*, Vol. 98, No. 3, 2011, page 455.

24 Zainal, Rabin Ibnu, Mandated CSR in Indonesia: Institutional and Stakeholder Perspectives, *Thesis*, RMIT University, 2015, page 95-100.

or affected parties have not been regulated. This often leads to misunderstandings. On the company side, it already feels that it is running CSR, while on the community side, it assumes that the company has not done so. This is because what the company does has not been impacted or not on target because its shape and magnitude are not significant compared to the impact / loss felt by the community.²⁵ It can be said that the unresolved conflict between the company and the community due to regulatory uncertainty, so it has not been able to resolve the conflict as expected. CSR regulations do not require all companies to carry out their obligations.²⁶

5. CSR regulations do not require all companies to carry out their obligations

In CSR regulations do not require all companies to carry out CSR. CSR regulations currently only require Limited Liability Companies that use natural resource raw materials in their operations that carry out CSR. At the praxis level, the impact caused by the establishment of a company is not only the impact of the natural environment, but also the impact of the social environment. Therefore, there are problems in society in dealing with social impacts because regulations do not regulate.²⁷

The No. of conflicts that occur between companies and communities is motivated by several things. *First*, regulations on CSR are spread in various regulations. The spread of regulation raises a gap for companies to interpret themselves as forms of CSR.²⁸ It also raises the opportunity for companies to manipulate. *Second*, the absence of formulations about the form and amount of CSR provides space for companies to get around the budget and it has an impact on the amount allocated to the community.²⁹ *Third*, the absence of sanctions makes companies not bound to implement CSR.³⁰ *Fourth*, provisions that do not require all companies to implement CSR are regulations that are not based on the understanding that the impact caused by a company is not

25 Hartini Retnaningsih, The Problem on Corporate Social Responsibility (CSR) for Community Empowerment, *Aspirasi*, Vol. 6, No.2, 2015, page 179.

26 Zainal, Rabin Ibnu, page 97.

27 Mukti Fajar, The Problems of Corporatae Social Responsibility in Indonesian local regulations, *The Wseas Transactions on Environment and Development*, Vol. 15, 2019, page 3.

28 Mukti Fajar, Tanggung Jawab Sosial Perusahaan dan Penerapannya pada Perusahaan di Indonesia, *Book Review*, Pustaka Pelajar, Yogyakarta, 2010, page 117.

29 Zainal, Rabin Ibnu, Mandated CSR in Indonesia : Institutional and Stakeholder Perspectives, *Thesis*, RMIT University, 2015, page 104. Mukti Fajar, Tanggung Jawab Sosial Perusahaan dan Penerapannya pada Perusahaan di Indonesia, page 116.

30 Retno Cahyaningati, Analysis of The Relationship Between Corporate Social Responsibility and Good Corporate Governance on Fee Audit and Firm Value, *International Journal of Entrepreneurship and Business Development*, Vol. 5, No. 5, March 2022, page 280.

only the impact of the natural environment, but also the social environment.³¹

This research shows that the conflict between companies and society occurs due to the gap between the expectations and reality of each party. The data shows that there are three factors that trigger conflict. *First*, conflict due to social and economic disparities, as happened to PT Freeport in Jaya Pura. Conflicts arise when local people are still below the poverty line.³² *Second*, conflicts related to pollution and environmental damage, such as those occurred in PT Newmont Minahasa which resulted in pollution in Buyat Bay,³³ and PT Aqua Golden Mississippi's conflict with the people of Kubang Jaya Babakan Pari Sukabumi which resulted in water difficulties both to meet daily life and for agriculture.³⁴ *Third*, conflict is related to land tenure, as happened to PT Silva Inhutani (SI),³⁵ and PT Barat Selatan Makmur Invesindo (BSMI) in Mesuji with the local community. The problem is that some of the land or land used by the two companies is citizen land.³⁶

The regulation has not been able to maximally resolve the conflict because CSR has not been specifically regulated in one regulation.³⁷ CSR regulations have not included sanctions for those who do not run, so there are no coercive tools in their implementation. In addition, the amount and form of CSR that must be given to local communities or affected parties has not been regulated.³⁸ In addition, it is not mandatory for all companies to implement CSR. Regulation only requires limited liability companies that use natural resource raw materials in their operations that carry out CSR. Some of these things are an indication of weak regulation on CSR which results in unresolved conflicts as expected.³⁹

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- 31 Mukti Fajar, The Problems of Corporatae Social Responsibility in Indonesian local regulations, *The Wseas Transactions on Environment and Development*, Vol. 15, 2019, page 8.
- 32 International Crisis Group, *Indonesia: Resource and Conflict in Papua*, Asia, September 2002, <https://www.crisisgroup.org/asia/south-east-asia/indonesia/indonesia-resources-and-conflict-papua>. The Council on Foreign Relations, *Indonesia Commission: Peace and Progress in Papua*, CFR Inc, New York, 2003, page 51.
- 33 Down to Earth, *New Pollution Study Corners Newmont*, Sulawesi, 2004.
- 34 Bahrina Almas et.al, Water Trade From an Islamic Business Ethics Perspective: Evidence form Indonesia, *Advances in Social Science, Education and Humanities Research*, Atlantis Press, page 297.
- 35 The Institute for Policy Analysis of Conflict (IPAC), *Mesuji: Anatomy of An Indonesian Land Conflict*, Jakarta, August, 2013, page 4. Ketut Seregig, Efforts to Achieve Legal Justice in Social Conflict Resolution in Register 45 Mesuji Lampung, *Jurnal Dinamika Hukum*, Vol.19 Issue 2, Mei 2019, page 469.
- 36 The Institute for Policy Analysis of Conflict (IPAC), *Mesuji: Anatomy of An Indonesian Land Conflict*, Jakarta, August, 2013, page 15.
- 37 Waagstein, P. R., The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications, *Journal of Business Ethics*, Vol. 98, No. 3, 2011, page 456.
- 38 Mukti Fajar, Corporate Social Responsibility in Indonesia: Regulation and Implementation Issues, *Journal of Legal, Ethical and Regulatory issues*, Vol. 21, Issue. 2, 2016, page. 8.
- 39 Mukti Fajar, page 9. Retno Cahyaningati, Analysis of The Relationship Between Corporate Social Responsibility and Good Corporate Governance on Fee Audit and Firm Value,

CSR rule making in Indonesia is currently one of the triggers for conflicts between companies and local communities. This is because based on regulations, the company argues that it has carried out its responsibilities as stipulated in the regulations, while the community feels that what the company has done is still far from the sense of justice that the community expects.⁴⁰ People assume the existence of the company makes his life more difficult.⁴¹

The meaning of this research is to inform policymakers that there has been injustice in economic development, especially in the business world because it is more in favor of companies or business actors with less attention to the interests and protection of people's rights.⁴² One of the tools of government control in development is the establishment of a rule or regulation.⁴³ As a welfare state, The State is obliged to facilitate so that development can continue to run by achieving its goals.⁴⁴ Facilities that can be provided by The State include the establishment of a law or regulation because Indonesia is a state of law, so everything must be based on the law.⁴⁵ For this reason, there needs to be rules or laws as a means of social control and social engineering. This research provides an overview and direction of how legal reconstruction should be carried out, especially the reconstruction of CSR regulations.⁴⁶

Based on the results of this study, what policymakers must do is to immediately reconstruct the law by considering rechtsidea as stated by Gustav Radbruch that in forming the law must be based on 3 values, namely the value of legal security, expediency, and justice.⁴⁷ Based on the value of certainty, policymakers are expected to reconstruct CSR regulations must be in one provision of the law so that there is legal

International Journal of Entrepreneurship and Business Development, Vol. 5, No. 5, March 2022, page 280.

40 Hartini Retnaningsih, The Problem on Corporate Social Responsibility (CSR) for Community Empowerment, *Aspirasi*, Vol. 6, No. 2, 2015, page 179.

41 Hartini Retnaningsih, page 18.

42 Laurensia Andriani, Mandatory Corporate Social Responsibility in Indonesia, *Mimbar Hukum*, Vol. 28, No. 3, 2016, page 515-521.

43 Zainal, Rabin Ibnu, Mandated CSR in Indonesia: Institutional and Stakeholder Perspectives, *Thesis*, RMIT University, 2015, page 104. Mukti Fajar, Tanggung Jawab Sosial Perusahaan dan Penerapannya pada Perusahaan di Indonesia, page 105.

44 Laurensia Andriani, Mandatory Corporate Social Responsibility in Indonesia, *Mimbar Hukum*, Vol. 28, No. 3, 2016, page 521.

45 Laurensia Andriani, page 522.

46 Mukti Fajar, Corporate Social Responsibility in Indonesia: Regulation and Implementation Issues, *Journal of Legal, Ethical and Regulatory issues*, Vol. 21, Issue 2, 2016, page. 4.

47 Sieckmann, J.-R, Reconstructing Relativism. An Analysis of Radbruch's Philosophy of Law. *ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy*, Vol. 95, No. 1, 2009, page 17. <http://www.jstor.org/stable/23680982>

unification.⁴⁸ In addition, in carrying out legal reconstruction, you should include criminal sanctions to be effective in its implementation.⁴⁹

With regard to the value of expediency, then in carrying out legal reconstruction should be required to do CSR are all companies, not only companies that use raw materials natural resources, because in fact the impact caused by a company is not only the impact of the natural environment but also the social environment.⁵⁰ As for accommodating the value of justice, in carrying out reconstruction should be included the amount / value and form of CSR that better meets the sense of justice for both parties.⁵¹ Based on the results of this study, it is expected that CSR regulation reconstruction can be carried out by paying attention to the values that live in society. As Tamanaha argued with Mirror Thesis that the law should be based on values believed to be true by the community.⁵²

D. CONCLUSION

Based on the results of the study, that conflicts between companies and communities are frequent and difficult to resolve because regulations on CSR are now not based on sustainable development. This is because the current CSR regulations provide opportunities for companies to exploit natural resources and override the protection of human resource interests that should be the subject of development rather than the object of development. Many companies do not implement CSR, because CSR implementation orders are still appealing. There are no firm sanctions for companies that do not implement CSR. There must be a reconstruction of CSR regulations that regulate the amount of CSR for each company, not only companies that use natural resources. In addition, there must be regulations that affect CSR, not only appeals and regulations governing criminal sanctions for companies that do not implement CSR.

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49 Laurensia Andriani, Mandatory Corporate Social Responsibility in Indonesia, *Mimbar Hukum*, Vol. 28, No. 3, 2016, page 515. Mukti Fajar, Corporate Social Responsibility in Indonesia: Regulation and Implementation Issues, *Journal of Legal, Ethical and Regulatory issues*, Vol. 21, Issue. 2, 2016, page. 8.

50 Mukti Fajar, The Problems of Corporatae Social Responsibility in Indonesian local regulations, *The Wseas Transactions on Environment and Development*, Vol. 15, 2019, page 8

51 Ibid

52 Brian Z Tamanaha, Law and Society, *Legal Studies Research Paper Series*, St. John's University School Of Law, February 2009, page 4.

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