

Standardization of CSR as a Legal Obligation in Indonesia

Sabela

Faculty of Law, Bhayangkara Jakarta Raya University, Indonesia

ABSTRACT

The policy requiring CSR especially for companies engaged in the business sector of natural resources has been implemented since 2007 in Indonesia. Previously, the Investment Law had also regulated the obligation to implement CSR as a legal obligation. This article will elaborate on the absence of standard guidelines on CSR mandatory in Indonesia so as to cause legal vacuum and confusion among CSR stakeholders in Indonesia both companies, NGOs and beneficiaries of CSR programs. This article is compiled from a research that uses qualitative research techniques where secondary data collection is done by collecting data and documents in the library while primary data collection is done by interviewing through the distribution of questionnaires to 30 CSR expert persons who come from various scientific backgrounds and professions that are related to the field of CSR. From this research, it was found that Indonesia does not yet have a Standard Guideline on the Implementation of Mandatory CSR Policies, although the policy has been implemented since 2007 through Law No.40 / 2007 on Limited Liability Companies. Then, there are several international organizations that have issued guidelines for implementing CSR programs and their reporting and several ministries have also issued several policies and guidelines regarding the implementation of CSR programs, but neither of them has touched on the implementation of CSR mandatory in Indonesia. Through this paper, it is expected to provide comprehensive information to the public that the importance of standardization and codification of policies and guidelines in the implementation of CSR mandatory programs in Indonesia in order to realize transparent and accountable CSR programs.

Keywords: Standardization, Codification, Mandatory.

INTRODUCTION

Implementation of CSR for companies engaged in the field of natural resources, there will be pros and cons between the government, companies and NGOs. The government and companies are one-sided to reject the policy of implementing CSR as a legal obligation because it can burden the company's operational costs, reduce company productivity and reduce investment interest in Indonesia. Implementing a CSR program must use existing guidelines so that the measure of the success of its CSR program can be evaluated according to the guidelines it uses. Then the voluntary International guidelines must be formalized into Indonesian laws and regulations so that their position becomes clear as a guide that can be used in implementing CSR programs in Indonesia.

LITERATURE REVIEW

Mandatory CSR in Indonesia

Indonesia has applied CSR mandatory as the way to strengthen the implementation of CSR in Indonesia. Mandatory CSR applied for only companies whose operating in the field of natural resources. CSR funds in Indonesia are really potential to be managed properly for the benefits of relevant stakeholders and to support the national economic growth. Huge potential of CSR funds in Indonesia should be managed by providing transparent and accountable policies. Currently, there are no

mandatory CSR guidelines being used by companies who operate in natural resources or related to natural resources. Most of the companies are referring to international CSR guidelines or policies which are voluntary basis. The mandatory CSR legal provision is able to support local economic and providing alternative funding sources for cooperatives, micro, small and medium enterprises when it is well managed and regulated.

International CSR Standardization

Since the enactment of Law No.40 / 2007 which contains provisions regarding the legal obligations of implementing CSR for companies engaged in natural resources, there have been pros and cons between the government, companies and NGOs. The government and companies are one-sided to reject the policy of implementing CSR as a legal obligation because it can burden the company's operational costs, reduce company productivity and reduce investment interest in Indonesia. Nevertheless, there are also oil and gas companies that have implemented CSR programs based on international CSR guidelines such as ISO 26000 on Social Responsibility or Ten Principles of United Nations Global Compact.

The use of voluntary international standards is a step that should be appreciated in order to realize the implementation of a transparent and accountable CSR program. However, other companies that have not used any guidelines in implementing CSR programs are obliged to use existing guidelines so that the measure of the success of their CSR programs can be evaluated according to the guidelines they use. Then the voluntary International guidelines must be formalized into Indonesian legislation so that their position becomes clear as a guide that can be used in implementing CSR programs in Indonesia.

International guidelines in implementing CSR programs should indeed be included in one of the specific Articles in

the Government Regulation on Corporate Social and Environmental Responsibility. With the inclusion of some of the international guidelines in the laws and regulations, companies will not hesitate to use any of the international guidelines which have been recognized as being formally legally recognized by Indonesian laws and regulations. so that the element of legal certainty can be given by the state to its citizens, especially for companies that are very interested in implementing the CSR program.

Until now, companies are still using international instruments in carrying out CSR programs such as;

- 1) ISO 26000 on Social Responsibility
- 2) Ten Principles of United Nations Global Compact
- 3) RSPO (Roundtable for Sustainable Palm Oil)
- 4) OECD Guidelines for Multinational Enterprises
- 5) United Nations Guiding Principles on Business and Human Rights
- 6) The Equator Principles

The international instruments were also compiled by international organizations including business organizations, NGOs and the companies themselves. These instruments have not become part of international law because they do not officially involve the state in the process of discussion and application. Therefore, one alternative to make it part of the formal laws of each country, then each country that has a clear commitment to transparency and accountability in the implementation of CSR programs and other programs that are in line with the spirit of these instruments can include them into positive law by adopting these guidelines into the regulatory system. As such, these guidelines become part of the formal law in each of these countries. So for companies that want to use one of these instruments as a guide in implementing their CSR programs without hesitation, they can use the instrument officially recognized by the state. In the end, these guidelines have become part of the

mandatory CSR policies because they have been established in Indonesia's positive legal system through legislation. Then the second alternative is to combine all international CSR guidelines with Indonesian national CSR policies and guidelines which then produce a standard guide that accommodates all of these guidelines. Furthermore, the standard guidelines are made a standard for all parties, especially CSR stakeholders in order to implement CSR programs in Indonesia so that each company has the same guideline standards in implementing CSR programs. This can further encourage the principle of openness and accountability in implementing CSR programs in Indonesia.

National CSR Standardization

In addition to international instruments, there are several guidelines for implementing national and sectoral CSR programs that have been prepared by several ministries in Indonesia. Several ministries that are active in preparing sectoral CSR guidelines are the Ministry of Environment, Ministry of Social Affairs, Ministry of Cooperatives and Small and Medium Enterprises and the Ministry of Energy and Mineral Resources.

The four ministries have actively compiled guidelines for the implementation of CSR programs that are sectoral in accordance with the duties and responsibilities of their respective ministries. This is an initiative that should be appreciated as a form of constructive contribution in clarifying the implementation of CSR programs in Indonesia. However, the sectoral guidelines still need to be refined in accordance with the needs of companies and other stakeholders in the field. In fact, these sectoral guidelines still need to be integrated with one another to avoid overlapping arrangements and the realization of harmony and harmonization in the implementation of CSR policies in Indonesia.

Don't let the policies of one ministry and the other ministries contradict each other and overlap so that it adds to the complexity of the implementation of CSR programs in Indonesia in the context of CSR as a legal obligation. Even this condition will confuse CSR stakeholders in Indonesia, both companies, prospective beneficiaries and NGOs active in CSR issues. Furthermore, it is necessary to have an institution or special body appointed by legislation so that it has the authority to issue various policies and conduct monitoring and evaluation of all CSR programs in Indonesia, so that in the future there will be no more policies regarding CSR issued by each ministry. That is for the sake of the realization of a legal entity even though resources regarding social, environmental and economic empowerment aspects still originate from each of these ministries in accordance with their authority and scope of work but when the policy will be applied to the public then only those who issue the policy just one institution. The existence of CSR institutions which are responsible for issuing CSR policies and conducting supervision, evaluation and other tasks is very important because their CSR problems in Indonesia are quite complex and at the same time have a large potential fund.

During this time there are several national guidelines that have been compiled by several related ministries regarding the implementation of CSR in Indonesia. However, these guidelines do not expressly state as part of the implementation of CSR policies as a legal obligation. Even the guidelines compiled by some of these ministries are the implementation of the relevant ministerial laws. Some of the guidelines are:

1. CSR Guidelines in the Field of Environment compiled by the Ministry of Environment of the Republic of Indonesia.
2. Guidelines for the Implementation of CSR in the Field of Environment

compiled by the Ministry of Environment.

3. Company Performance Rating Assessment Program in Environmental Management carried out by the Ministry of Environment

These guidelines must be clearly recognized as contributing to the implementation of CSR in Indonesia in the fields of environment, social and economic empowerment. However, it needs to be stated expressly that the application of the policy is part of the implementation of CSR policies as an obligation as ordered by the Constitutional Court Decision No.53 / PUU-VI / 2008 regarding the rejection of a lawsuit Article 74 of Limited Liability Company Law No.40 / 2007.

Synchronization and harmonization between CSR policies issued by one ministry with other ministries needs to be done immediately and then integration with CSR policy guidelines at the international level. After that the codification of all CSR related policies needs to be done in order to provide a standard guide for all CSR stakeholders in Indonesia in the context of implementing CSR as a legal obligation.

RESEARCH METHODS

This research is a qualitative study where secondary data collection is done by collecting data and documents in the library while primary data collection is done by interviewing through the distribution of questionnaires to 30 CSR expert persons who come from various scientific backgrounds and professions related to the CSR field.

RESULT AND DISCUSSION

CSR Standardization that fits Indonesia Context

Indonesia as a multicultural country has a variety of cultures and local wisdom that have lived for hundreds of years. Local wisdom and local culture are characteristics of each indigenous community in Indonesia. Its existence is also recognized by the constitution so that everyone must respect

the existence of local culture and local wisdom (local wisdom). Therefore, the implementation of CSR programs that use the approach of local culture and local wisdom must be used as one of the references in every CSR guide prepared and issued by ministries / agencies and other organizations.

Indonesian society which is known as a humanist and cultured society has a different social structure from European and American societies. Therefore the approach of local culture and local wisdom is a necessity in order to support the success of CSR programs that will be implemented in a particular area. Then, community involvement in every CSR program implemented also needs to be considered as one of the most important components in every program implementation.

The specific culture possessed by each indigenous community in Indonesia makes Indonesia a country that must be managed based on a different approach from one community to another. The existence of these indigenous peoples who are also part of the prospective beneficiaries of CSR programs must be heard for their opinions and aspirations in relation to the targets, objectives and benefits of the CSR program for them. So there is no impression that the CSR program is a cash distribution program and does not have a direct impact on the progress of the community in the area.

The number of standards and guidelines in implementing CSR programs that are both international and national as well as the CSR guidelines that are still separate between ministries and other ministries, coupled with the presence of local cultural characteristics and local wisdom in the midst of the social structure of Indonesian society, the codification of the CSR guidelines absolutely necessary to do in order to achieve a standard CSR guide that accommodates all the interests, input, and thoughts and aspirations of various elements of society both companies, governments, beneficiaries and the international community in a codification

called the Indonesia Guiding Principles on CSR, Business and Human Rights.

Therefore, strategic steps need to be taken by NGOs engaged in CSR advocacy and potential beneficiary communities to realize a standard of CSR that accommodates various existing interests. Then the standard is included in the legislation so that it becomes legally recognized and adhered to by all parties, especially CSR stakeholders in Indonesia.

Synergy and Harmonization of CSR Standardization in Indonesia

The existence of CSR guidelines that are still scattered in their respective forms both at the level of international organizations and at the ministry level makes the implementation of CSR programs not yet run optimally. The persistence of the ministries' egos and the formation of an implementing agency and supervisor of CSR programs have encouraged each ministry to issue CSR program policies in accordance with the authority of their respective ministries. On the one hand, the initiative to compile the CSR guidelines should be appreciated but on the other hand the lack of synergy, synchronization and harmonization between the ministries makes it seem as if the CSR policy runs independently.

This condition must be ended immediately by compiling a standard guideline that applies to all CSR stakeholders and establishing an institution or giving a mandate to an existing institution to implement, issue, monitor and evaluate CSR programs in Indonesia. One stop CSR office policy is absolutely necessary in order to accelerate the distribution of CSR program funds and measure the level of success of programs implemented by various companies from various industrial sectors.

Synchronization and harmonization of CSR policies is needed in order to avoid overlapping policies and avoid confusion among CSR stakeholders due to the diversity of CSR policies in Indonesia.

What is certain is that Indonesia, as one of the developing countries, has implemented CSR policies as a legal obligation so that all parties are required to comply with and adhere to these policies. One of the steps to implement the policy is by issuing guidelines for the implementation of CSR programs as a legal obligation, without the existence of these guidelines, CSR stakeholders, especially companies will be confused in implementing their CSR programs for fear that if implemented later it is not in accordance with the intent, purpose and spirit of CSR policies as a legal obligation. Even if it is not implemented at all, then the company will be deemed to be obedient and obey the laws and regulations in Indonesia.

The dilemmatic situation continues to be experienced by companies since the issuance of CSR policy as a legal obligation in 2007. Even companies feel as the party most charged in implementing CSR policies as a legal obligation. Therefore they demand tax incentives or other forms of incentives that can be provided by the government in order to reduce the burden of their production costs. Until now the government has issued a special tax reduction incentive policy for several activities namely; contribution to national disaster management, research and development, educational facilities, sports coaching, and other social infrastructure development costs. However, the tax reduction policy is not in the context of implementing CSR policies as a legal obligation so the Government Regulation needs to be adjusted to the spirit of CSR policy as a legal obligation. Then, mechanisms and procedures as well as reporting on the implementation of tax deductible activities must be carried out transparently and accountably accompanied by stringent requirements. This is to anticipate that these donations should not be used as a land of corruption and misused by the company or other parties.

Synchronization and harmonization not only with CSR policies, but also

synchronization and harmonization between the work programs of the central and regional government as well as the aspirations of the beneficiary community. Harmonization of work programs between CSR programs that want to be run with government work programs both central and regional and the wishes of the community is the first step in the realization of successful program implementation.

Then synchronizing and harmonizing both policies and programs will lead to good synergy among various CSR stakeholders in a particular program area. Synchronization and harmonization of policies and programs will only occur if the laws and regulations governing the implementation of CSR programs are very clear about these obligations and are then set out in the standard guidelines for implementing CSR mandatory programs in Indonesia.

Program synergy can be done through partnerships between government, companies, NGOs and beneficiaries. Before the program synergy is implemented, the first and most important thing is policy synergy. With the synergy of policies, each of the scattered guidelines can be put together and complement each other. Important to consider are the limitations of rights, obligations, and responsibilities in implementing CSR mandatory programs both between government, companies, NGOs and the community. With these clear boundaries, the division of tasks and responsibilities between government, companies, NGOs and the community becomes clear and firm. Unlike today where companies, NGOs and beneficiaries are in confusion and ambiguity in developing, implementing and monitoring and evaluating CSR programs because they do not have standard, clear and firm guidelines.

For example, on one hand the company incurred the cost of building public infrastructure in a remote area with large costs but on the other hand, the company was also charged with various taxes, quotations, and levies with large

amounts too, so that the company's presence became a dilemma in carrying out the CSR program. It is as if the company feels that the duties and responsibilities of the government in building public infrastructure are borne by the company even though on the other hand the company is also required to pay large amounts of taxes and fees. That is one small example of the many examples of the chaotic system of implementing CSR programs in Indonesia. The company is faced with an uncertain condition so that what ultimately happens is the implementation of a CSR program that is careless without going through careful planning and merely releasing its obligations from implementing the program.

Then, the mentality and culture of the community must also be changed by no longer assuming that CSR funds are cash funds that will be distributed free to the community as part of compensation for the operation of a company in their area. The community must view CSR funds and programs as part of a partnership between the company and the community in order to improve relations between the company and the community through the implementation of CSR programs in the environmental, social and economic empowerment fields. Therefore, to realize all the ideal concepts mentioned above, we need a CSR mandatory guidelines that can be used as a guide for all CSR stakeholders in Indonesia in implementing CSR mandatory programs, especially in the fields of business related to the exploitation of natural resources.

Codification for the Implementation of CSR Mandatory

Codification of international and national policies and guidelines related to CSR is absolutely necessary in order to realize a transparent and accountable national CSR implementation system. As stated above, there are several international organizations that have issued guidelines for the implementation of CSR programs and their reporting, as well as several ministries in Indonesia which have also issued

guidelines related to the implementation of CSR in accordance with the scope of work of their ministries. Coupled with several other ministries such as the Coordinating Ministry for People's Welfare, the Ministry of Disadvantaged Regions and the Ministry of SOEs which also issued several policies related to the implementation of CSR programs in accordance with their authority. So, with the diversity of policies and guidelines that causes confusion and confusion for companies in distributing CSR funds, NGOs in overseeing the implementation of CSR programs and beneficiaries in receiving benefits from the CSR program.

The codification of CSR policies is a strategic step in order to improve the governance of the implementation of CSR programs in Indonesia so that the future implementation of the program can be better and integrated from upstream to downstream. So that the opportunity for irregularities in program preparation and distribution of funds is reduced and if possible there are absolutely no irregularities. To achieve these ideal conditions, it is necessary to have a legal umbrella or political policy from the government to direct and facilitate the formulation of the codification of CSR policies in Indonesia. With the codification of the policy, CSR stakeholders in Indonesia and even other groups can comprehensively know about CSR policies in Indonesia by accessing only one data source. Unlike today, where CSR policies are very diverse and sectoral issued by ministries in accordance with their respective authorities.

CONCLUSION

Based on the results of this research, it was found that Indonesia does not yet have a Standard Guideline on the Implementation of Mandatory CSR Policies, although the policy has been implemented since 2007 through Law No. 40/2007 on Limited Liability Companies. Then, there

are several international organizations that have issued guidelines for implementing CSR programs and their reporting and several ministries have also issued several policies and guidelines regarding the implementation of CSR programs, but neither of them has touched on the implementation of CSR mandatory in Indonesia. Through this paper, it is expected to provide comprehensive information to the public that the importance of standardization and codification of policies and guidelines in the implementation of CSR mandatory programs in Indonesia in order to realize transparent and accountable CSR programs.

REFERENCES

1. Act No. 40/2007 on Limited Company Liability
2. Act No. 25/2007 on Investment
3. Government Regulation No. 93/2010
4. Government Regulation No. 47/2012 on Social and Environmental Responsibility
5. ISO 26000 on Social Responsibility
6. Ten Principles of United Nations Global Compact
7. RSPO (Roundtable for Sustainable Palm Oil)
8. Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises
9. United Nations Guiding Principles on Business and Human Rights
10. The Equator Principles
11. CSR Manual on Environment by Ministry of Environment Republic of Indonesia
12. Technical Guidance on CSR Manual on Environment by Ministry of Environment Republic of Indonesia
13. Corporate's Ranking and Appraisal Program on Environmental Compliance (PROPER) by Ministry of Environment of Republic of Indonesia.

How to cite this article: Sabela. Standardization of CSR as a legal obligation in Indonesia. *International Journal of Research and Review*. 2020; 7(5): 261-267.
