



Article History	Received: 12-01-2024	Reviewed: 03-02-2024	Accepted: 02-03-2024	Published: 01-06-2024
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THE CONCEPT OF LEGAL CERTAINTY REGULATION OF CSR PROVISION FOR THE WELFARE OF THE PEOPLE BASED ON LAW NUMBER 40 OF 2007 ON LIMITED LIABILITY COMPANIES

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ABSTRACT

There is a legal vacuum related to the non-regulation of sanctions for companies that do not implement CSR/implement it but do not comply with legal provisions. Both in Law Number 40 of 2007 concerning Limited Liability Companies and regulations at the regional level. Such conditions mean that the realization of people's welfare as the goal of providing CSR cannot be fulfilled. The aim of this research is to analyze the concept of regulating legal certainty in providing CSR for the welfare of the people; To formulate the ideal concept of regulating legal certainty for providing CSR. This type of research is normative legal research. The approach used is a statutory, concept and case approach with qualitative analysis methods. The results of the research show that Firstly, the concept of regulating legal certainty for providing CSR for welfare based on Law Number 40 of 2007 concerning Limited Liability Companies does not provide legal certainty, as do the derivative regulations at the regional level, especially in Berau Regency, Kampar Regency, Semarang City, Kota Pematang Siantar and the Special Region of Yogyakarta, which have not yet explicitly regulated sanctions for companies that have not implemented CSR for the community or these companies have implemented CSR for the community but the implementation has not complied with the legal provisions governing CSR itself. The impact is that the provision of CSR by the company to the community around the company has not provided welfare for the community. Second, the ideal concept of regulating legal certainty in providing CSR for the welfare of the people based on Law Number 40 of 2007 concerning Limited Liability Companies, is the concept of regulating derivative regulations at the regional level, namely regulations as in Aceh Besar Regency Qanun Number 9 of 2019 concerning Social Responsibility and Company environment; as well as Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility which regulates legal sanctions against companies that have not implemented CSR for the community or the company has implemented CSR for the community but the implementation has not complied with the legal provisions governing CSR itself. This ideal concept has demonstrated the success of implementing CSR for the community around the company so that people's welfare can be achieved through the CSR program..

Keywords: CSR, People, Limited Liability Company.

ABSTRAK

Adanya kekosongan hukum terkait tidak diaturnya sanksi bagi perusahaan yang tidak melaksanakan CSR/melaksanakan tapi tidak sesuai ketentuan hukum. Baik dalam Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas maupun peraturan di tingkat daerah. Kondisi yang demikian membuat perwujudan kesejahteraan rakyat sebagai tujuan pemberian CSR tidak Terpenuhi. Tujuan penelitian ini adalah Untuk menganalisis konsep pengaturan kepastian hukum pemberian CSR untuk kesejahteraan rakyat; Untuk merumuskan konsep konsep ideal pengaturan kepastian hukum pemberian CSR tersebut

Jenis penelitian ini adalah penelitian hukum normatif. Pendekatan yang digunakan adalah pendekatan perundang-undangan, konssep dan kasus dengan metode analisis kualitatif. Hasil penelitian diketahui bahwa *Pertama*, Konsep pengaturan kepastian hukum pemberian CSR untuk kesejahteraan berdasarkan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas tidak memberikan kepastian hukum, begitu juga dengan peraturan turunannya di tingkat daerah terutama di Kabupaten Berau, Kabupaten Kampar, Kota Semarang, Kota Pematang Siantar dan Daerah Istimewa Yogyakarta, dimana belum secara tegas mengatur sanksi bagi perusahaan yang belum melaksanakan CSR bagi masyarakat atau perusahaan tersebut sudah melaksanakan CSR bagi masyarakat namun pelaksanaannya belum sesuai ketentuan hukum yang mengatur mengenai CSR itu sendiri. Imbasnya adalah pemberian CSR oleh perusahaan terhadap masyarakat sekitar perusahaan belum memberikan kesejahteraan bagi masyarakat. *Kedua*, konsep ideal pengaturan kepastian hukum pemberian CSR untuk kesejahteraan rakyat berdasarkan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, adalah konsep pengaturan pada peraturan turunan di tingkat daerah yaitu pengaturan sebagaimana dalam Qanun Kabupaten Aceh Besar Nomor 9 Tahun 2019 Tentang Tanggung Jawab Sosial Dan Lingkungan Perusahaan; serta Peraturan Daerah Kabupaten Siak Nomor 1 Tahun 2013 tentang Tanggung Jawab Sosial dan Lingkungan Perusahaan yang mengatur sanksi hukum terhadap perusahaan yang belum melaksanakan CSR bagi masyarakat atau perusahaan tersebut sudah melaksanakan CSR bagi masyarakat namun pelaksanaannya belum sesuai ketentuan hukum yang mengatur mengenai CSR itu sendiri. Konsep ideal yang demikian telah menunjukkan keberhasilan pemberian CSR bagi masyarakat sekitar perusahaan sehingga kesejahteraan rakyat dapat dicapai melalui program CSR tersebut.

Kata Kunci: CSR, Rakyat, Perseroan Terbatas.

INTRODUCTION

According to Krenenburg, a welfare state can be defined as a state not only for rulers or certain groups but for the welfare of all people in the state.¹ The realization of people's welfare in Indonesia is the responsibility of the state, namely the organizer of government which is called the government. Harmonization of the implementation of people's welfare according to the context above is basically not only the responsibility of the regional government but is a shared responsibility that involves the role of the community, especially business actors who own companies.

The implementation of social welfare by business actors is one of them is social and environmental responsibility. According to Article 1 number 3 of Law Number 40 of 2007 concerning Limited Liability Companies, Social and Environmental Responsibility is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment that is beneficial, both for the Company itself, the local community, and society in general.

The definition of Corporate Social Responsibility (CSR) was put forward by Raharjo by concluding that CSR is a form of promise and commitment of a

¹ Isrok dan Dhia Al-Uyun, *Ilmu Negara (Berjalan Dalam Dunia Abstrak)*, Malang: UB Press, 2010), hlm. 23.

company in the scope of the business world to contribute to achieving the goal of creating continuous economic development by paying attention to corporate social responsibility and emphasizing the balance of social, economic and environmental aspects where the company is located.² Kotler and Lee, Corporate Social Responsibility (CSR) seen from its forms include Marketing related to Social Activities (Cause Related Marketing); Corporate Societal Marketing; Corporate Philanthropy; Community Volunteering; Socially Responsible Business Practice.³

The company's Social and Environmental Responsibility is implemented based on Law Number 40 of 2007 concerning Limited Liability Companies. Regulations regarding the company's obligation to implement social and environmental responsibility are contained in Article 74 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, which states that: Companies that carry out their business activities in the field of and/or related to natural resources are required to implement Social and Environmental Responsibility.

Article 5 paragraph (1) of the Minister of Social Affairs Regulation Number 9 of 2020 concerning Social and Environmental Responsibility of Business Entities, which states that "The scope of Social and Environmental Responsibility of Business Entities includes:

- a. Social and Environmental Responsibility within Business Entities/Companies; and
- b. Social and Environmental Responsibility outside the Business Entity/company, namely the area around the business entity/company, nationally.

Based on the provisions of Article 7 of the Regulation of the Minister of Social Affairs Number 9 of 2020 concerning Social and Environmental Responsibility of Business Entities, Social and Environmental Responsibility outside the Business Entity/company in the area around the Business Entity/company includes: Providing priority employment opportunities to the community around the Business Entity according to the needs and requirements of the Business Entity; Providing empowerment, guarantees, protection, or social rehabilitation to those in need of social welfare services around the Business Entity; Assisting with community facilities and

² ST. Raharjo, *CSR: Relasi Dinamis Antara Perusahaan Multinasional D dengan Masyarakat Lokal*, (Bandung: Unpad Pres, 2015), hlm. 4.

³ Dwi Kartini, *Corporate Social Responsibility: Trasnpormasi Konsep Sustainability Management dan Impementasi di Indonesia*, (Bandung: PT Refika Aditama, 2013), hlm. 63.

infrastructure around the Business Entity; and Developing the potential of human resources around the Business Entity.

The target for providing CSR based on the provisions of Article 4 paragraph (1) of the Regulation of the Minister of Social Affairs Number 9 of 2020 concerning the Social and Environmental Responsibility of Business Entities, is "The target for providing CSR for the community is given to individuals, groups, or communities who have lives that are not humanely feasible." The definition of not humanely feasible, according to Article 4 paragraph (2) of the Regulation of the Minister of Social Affairs Number 9 of 2020 concerning the Social and Environmental Responsibility of Business Entities, is poverty, neglect, disability, remoteness, victims of disasters and/or victims of violence, exploitation, and discrimination.

Several literatures that conduct studies on the implementation of CSR by companies and their problems have been conducted and written by several previous researchers which were then used as a literature review in this thesis research as the author describes as follows:

First, an article in the *Aspriasi* journal written by Hartini Retnaningsih, with the title of the article "Corporate Social Responsibility (CSR) Problems in the Framework of Community Empowerment", in the article it is stated that: "The CSR program is an obligation that must be implemented by companies that are oriented towards the interests of the surrounding community, but the fact is that its implementation in Indonesia until now CSR has not run as it should. Many conditions are found in Indonesia where the amount of CSR provided by companies is dominated by inappropriate provision, even in some cases in certain areas this has implications for conflicts between companies and the community around the company"⁴.

Second, an article in the *Equitable* journal written by Andrew Shandy Utama and Rizana with the title "Law Enforcement Against the Implementation of Corporate Social Responsibility in Rumbai District, Pekanbaru". In the article, the author states that: "The implementation of corporate social responsibility (CSR) in Rumbai District, Pekanbaru City, Riau Province is regulated in Article 9 Paragraph (1) of Riau Province Regional Regulation Number 6 of 2012 concerning Corporate Social Responsibility in Riau Province. The substance of the article in question provides confirmation that every company in Riau Province is required to act as an implementer of the Corporate Social Responsibility Program (TJSP). However, in fact, the

⁴ Hartini Retnaningsih, "Permasalahan Corporate Social Responsibility (CSR) Dalam Rangka Pemberdayaan Masyarakat," *Jurnal Aspriasi*, Vol. 6 No. 2 Tahun 2015, hlm. 186.

corporate social responsibility implemented by PT Riau Crumb Rubber Factory has not provided benefits to the wider community, especially the community of Sri Meranti Village, Rumbai District. Where the Corporate Social Responsibility Program (TJSP) carried out by the company is considered not comparable to the various pollution that occurs due to the company's operational activities where the negative impact of the pollution is felt directly by the wider community.⁵

Referring to the theory and some of the literature studies above, based on the literature/documentary study conducted by the author, it turns out that the implementation of social and environmental responsibility, especially corporate social responsibility which is often known as Corporate Social Responsibility (CSR) for the community in the area around the company has not been running properly. The company is a company engaged in the management of Natural Resources such as plantation companies, agro-industry companies, agricultural companies and inland fisheries companies, both companies that are State-Owned Enterprises (BUMN) and Private Enterprises (BUMS). This is as stated in an article in a journal which states that: The implementation of CSR by Limited Liability Companies engaged in the management of Natural Resources in the administrative area of the Republic of Indonesia, especially for the community in the Company's area, is still constrained by several certain obstacles. The failure to implement CSR in accordance with the provisions of the law can cause several problems, namely the needs of the community have not been met in a real and targeted manner, sometimes each company still carries out this CSR not only as its social responsibility but also as a commercial benefit for the company, besides that CSR is only used to improve the image for the Company.⁶

Within the scope of local government authority. This problem also occurs in several regions in Indonesia. Based on the literature/documentary study conducted by the author, the failure to implement corporate social responsibility in the region occurred in Berau Regency,⁷ Semarang City,⁸ Pematang Siantar City.⁹

⁵Andrew Shandy Utama dan Rizana, "Penegakan Hukum Terhadap Pelaksanaan Tanggung Jawab Sosial Perusahaan di Kecamatan Rumbai Pekanbaru", *Journal Equitable*, Vol. 3 No. 1 Tahun 2018, hlm. 3-4.

⁶Gina Bunga Nayenggita, Santoso Tri Raharjo dan Risna Resnawaty, "Praktik Corporate Social Responsibility (CSR) di Indonesia," *Jurnal Focus*, Vol. 2 No. 1 Tahun 2019.

⁷Sonny Sudia, dkk., "Implikasi Social Mapping Terhadap Human Security di Kampung Gurimbang", *Jurnal Ekonomi, Manajemen dan Akuntansi*, Vol. 25 No. 1 Tahun 2023.

According to Article 74 paragraph (3) of Law Number 40 of 2007 concerning Limited Liability Companies, a Company that does not carry out the obligations as referred to in paragraph (1) shall be subject to sanctions in accordance with the provisions of laws and regulations. The obligation in question is the Company's Social and Environmental Responsibility or what we are more familiar with as Corporate Social Responsibility (CSR) as required in provision 74 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies. Then to regulate Corporate Social Responsibility (CSR), Article 74 paragraph (4) of the regulation states that: "Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulation". However, in fact, in the government regulation in question specifically, namely Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, the sanctions in question are not regulated, as are other derivative regulations at the regional level.

The background above has shown that there has been a legal vacuum. A legal vacuum (*rechtsvacuum*) can occur because of a situation where the existing rules are considered incomplete and there are deficiencies that have not accommodated the legal needs of the community and do not guarantee legal certainty.¹⁰ The legal vacuum in question is the absence of legal sanctions for companies in regions that do not carry out their social responsibility obligations for the community in the area around the company based on the provisions of the respective regional legal products that regulate these obligations.

The legal vacuum has implications for the absence of legal certainty for the community regarding the benefits of the Corporate Social Responsibility program that should be provided by the company in accordance with applicable legal provisions in order to realize welfare, especially welfare for the community around the company/legal entity. This affects the level of compliance of the implementation of companies, especially BUMN and BUMS, to carry out their CSR obligations.

⁸ Anita Oktaviana Sibuea, Aminah dan Herni Widanarti, "Tanggung Jawab Sosial Perusahaan (*Corporate Social Responsibility*) Terhadap Lingkungan (Studi Kasus PT. Marimas Semarang)", *Diponegoro Law Journal*, Vol. 5 No. 3 Tahun 2019.

⁹ Apriyadi dan Nova Yudia Winata, "Implementasi Pemberdayaan Ekonomi Sebagai Wujud Program CSR PT Pertamina (Persero) TBBM Pematang Siantar", *Jurnal Anadara Pengabdian Kepada Masyarakat*, Vol.1 No.1 Tahun 2019.

¹⁰ Hario Mahar Mitendra, "Fenomena Dalam Kekosongan Hukum", *Jurnal Rechts Vinding*, Vo. 1 No. 1 Tahun 2018, hlm. 34.

This research is important to do because in the legal product there should be no legal vacuum. against the absence of legal certainty for the community regarding the benefits of the Corporate Social Responsibility program that should be given by the company in order to realize welfare for the community around the company according to the focus of this research. Then with the compliance with the CRR obligations by BUMN and BUMD, the legal objectives are fulfilled. The law in question is the regulation that regulates CSR both at the central and regional legislative levels.

This research attempts to create an ideal concept for the regulation of legal certainty in the provision of CSR for the welfare of the people based on Law Number 40 of 2007 concerning Limited Liability Companies along with derivative regulations at the regional level.

RESEARCH METHODS

This research is descriptive in nature with a normative research type, namely: a process of finding legal rules, to answer the legal issues faced.¹¹ This is in accordance with the character of perspective in legal science. This normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in the problems faced.¹² Data was collected secondary by conducting several research steps by reviewing based on primary, secondary and tertiary legal materials related to the research object. Primary legal materials in this study were obtained from the 1945 Constitution of the Republic of Indonesia; Law Number 40 of 2007 concerning Limited Liability Companies; Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies; Regulation of the Minister of Social Affairs Number 9 of 2020 concerning Social and Environmental Responsibility of Business Entities; Riau Province Regional Regulation Number 6 of 2012 concerning Corporate Social Responsibility in Riau Province; Kampar Regency Regional Regulation Number 3 of 2012 concerning Corporate Social Responsibility; Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility; Badung Regency Regional Regulation Number 6 of 2013 concerning Corporate Social Responsibility; Semarang City Regional Regulation Number 7 of 2015 concerning Partnership and Environmental Development Programs as Corporate Social Responsibility in Semarang City;

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media Group, 2006), hlm. 35.

¹² *Ibid.*

Regional Regulation of the Special Region of Yogyakarta Number 6 of 2016 concerning the Implementation of Corporate Social and Environmental Responsibility; Regional Regulation of Berau Regency Regional Regulation of Berau Regency Number 6 of 2018 concerning Corporate Social and Environmental Responsibility; Qanun of Aceh Besar Regency Number 9 of 2019 concerning Corporate Social and Environmental Responsibility; Regulation of the Mayor of Pematang Siantar Number 16 of 2018 concerning Corporate Social and Environmental Responsibility in Pematang Siantar City.

Furthermore, the approach used in this study is the legislative approach, the concept approach and the case approach. In addition, the data obtained in this study will be analyzed qualitatively. While the conclusion is drawn inductively.

RESULTS AND DISCUSSION

Explanation of Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, it is stated that Corporate Social Responsibility/CSR has the objective of "realizing sustainable economic development to improve the quality of life and the environment that is beneficial for the local community and society in general as well as the Company itself in order to establish harmonious, balanced, and appropriate Company relations with the environment, values, norms, and culture of the local community".

Economic development in the CSR concept can be done through community empowerment. Community empowerment efforts in the era of globalization need to be carried out in three major areas, namely economics, politics, and culture. In this case, the implementation of CSR must be able to capture what the real needs of the community around the company are so that the right formulation can be formulated to empower them. Therefore, CR must be implemented with full responsibility, especially for the community around the company's environment.

The Concept of Legal Certainty Arrangement for the Provision of CSR for the Welfare of the People Based on Law Number 40 of 2007 concerning Limited Liability Companies.

State governance towards the realization of people's/community welfare in the economic sector must be well organized. The smooth implementation of government and development depends on the perfection of the state apparatus as the main factor in the success of government and development. Where in this case Corporate Social Responsibility/CSR can be used as an

integrated management instrument with government programs in improving community welfare. The right Social Responsibility policy can build harmony in corporate communication with government policies and improving community welfare.¹³

In order to realize the welfare of the people, development in the economic sector is needed evenly. Development must include the role of the community as the main actor and as a party that will feel the development. One indicator of the success of economic development is economic growth. The main objective of implementing economic development is to increase the number of goods and services and expand opportunities and employment for the community. The implementation of economic development ideally can involve all levels of society and government in the scope of regional development by mobilizing all available resource support and designing and building the regional economy.¹⁴

Regional economic development must pay attention to the people's economy/community economy is a fundamental goal that must be realized first in efforts to achieve people's welfare. Basically, the measure of welfare is not based on individual income but rather communal as the study of legal philosophy according to Jeremy Bentham's theory, which states that: "The greatest happiness for the greatest number", meaning that some people feel the benefits and feel happy with certain policies or conditions, such things can be called general welfare. However, on the other hand, if society is in a state of the greatest happiness for the smallest number, then it can be interpreted that general welfare cannot be realized so that the state in such a condition is burdened with the responsibility to be able to change it into common welfare.¹⁵

Considering the function of the state from the aspect of state administrative law, it is a legal bureaucracy, as stated in the legal doctrine that: On the one hand, HAN can be used as a legal instrument by the government in order to carry out regulations, services and protection for the community, on the other hand, HAN contains normative rules on how government is run,¹⁶ or as Sjachran Basah said, that: one of the core essences of HAN is to enable state administration to carry out its functions, and protect

¹³ Budi Untung, *CSR dalam Dunia Bisnis*, (Yogyakarta: Andi Offset, 2014), hlm. Xiii

¹⁴ Sudati Nur Sarfiah, Hanung Eka Atmaja, dan Dian Marlina Verawati, "UMKM Sebagai Pilar Membangun Ekonomi Bangsa", *Jurnal REP*, Vol. 4 No. 2 Tahun 2019, hlm. 138.

¹⁵ Jeremy Bentham, *The Theory of Legislation*, (Bombay: NM. Tripathi Private Limited, 1979), hlm. 23-24.

¹⁶ SF Marbun dan Mahfud MD, *Pokok-Pokok...*, *Op. Cit*, hlm. 45.

state administration from committing wrongful acts according to law. For that reason, the state through its bureaucrats, namely the government, automatically has a role as a maker of legal products. Therefore, the role of the state in making legal products related to CSR must accommodate the welfare needs of the people and provide certainty that the CSR responsibility of the company can be implemented in the field where strict sanctions are needed to realize it.

However, the program to improve people's welfare through Corporate Social Responsibility (CSR) implemented by the government from the legislative aspect still raises legal problems that have an impact on the implementation of the obligation of Corporate Social Responsibility (CSR) by Limited Liability Companies, both BUMN, BUMD and BUMS. The issue of CSR in Indonesia is triggered by regulatory factors where the legal sanctions are not detailed and detailed in Law Number 40 of 2007 concerning Limited Liability Companies as the legal umbrella (umbrella act) of Limited Liability Companies. So it can be said that the obligation to implement CSR for companies in Indonesia does not yet have legal certainty. Meanwhile, in order to achieve CSR success, it is not enough to only be based on existing knowledge or experience from company management. But there must also be regulations or legal provisions that regulate so that there is legal certainty for companies to carry out CSR activities in Indonesia, especially the sanctions regulations therein.¹⁷ Where there is no strict regulation of sanctions related to companies that have not implemented CSR or have implemented it but not in accordance with legal provisions. The impact is that companies have not implemented CSR obligations properly as we can see below:

First, Several companies in the form of Limited Liability Companies in Gurimbang Village, Berau Regency are trying to implement CSR stages. One of them is PT Berau Coal, which is a BUMS engaged in the management of Natural Resources in the form of coal. This company conducted mapping to find out the socio-economic conditions of the local community in order to find out what CSR programs are appropriate to be given to the community. This is as stated in a journal which states that: In terms of the potential of Natural Resources, Gurimbang Village, Berau Regency can be categorized as an area that has a number of very valuable Natural Resource potentials and can be used as the main capital in the process of implementing development

¹⁷ Mhd. Taufiqurrahman dan Hendryanto Sitepu, "Kewajiban Perusahaan Dalam Pelaksanaan Tanggung Jawab Sosial (*Corporate Social Responsibility*)", *Jurnal Retenrum*, Vol.1 No. 02 Februari 2020, hlm. 66.

programs. Identification of potential is one of the important steps that need to be carried out comprehensively in every effort to solve problems in an area. The community and its environment can be said to have a number of potentials that can be explored and utilized in order to improve their living conditions. Based on the mapping/social mapping in Gurimbang Village, several aspects were identified that could be utilized as community strengths so that later the right program would be given by the company to improve the welfare of the community. However, until now the planning stage carried out through the mapping program has not been realized in its CSR program until now. Then, the legal sanctions for non-implementation of CSR are not clear in Law Number 40 of 2007 concerning Limited Liability Companies, made worse by the fact that the sanctions referred to in Berau Regency Regional Regulation Number 6 of 2018 concerning Corporate Social and Environmental Responsibility have not been regulated.¹⁸

It should be noted that in addition to Law Number 40 of 2007 concerning Limited Liability Companies not regulating sanctions for the implementation of CSR that has not been carried out in accordance with legal provisions/not implementing CSR at all, Berau Regency Regional Regulation Number 6 of 2018 concerning Corporate Social and Environmental Responsibility also does not regulate this matter.

Second, the implementation of the concept of corporate social responsibility (CSR) by PT Marimas Semarang has not been maximized and has not become the highest priority and main determinant in sustainable development, especially for the people of Semarang City. PT Marimas' concern for the environment, especially in terms of waste management, is still very lacking because the problem of waste from PT. Marimas's business results has not been resolved properly. The impact is damage to the environment around the company and a decrease in the welfare of the surrounding community due to the losses suffered by the community due to the waste.¹⁹

It should be noted that in addition to Law Number 40 of 2007 concerning Limited Liability Companies which does not regulate sanctions for the implementation of CSR which has not been carried out in accordance with legal provisions/not implementing CSR at all, Semarang City Regional

¹⁸ Sonny Sudia, dkk., *Implikasi Social...*, *Loc. Cit.*.

¹⁹ Anita Oktaviana Sibuea, Aminah dan Herni Widanarti, *Tanggung Jawab...*, *Op. Cit.*, hlm. 1.

Regulation Number 7 of 2015 concerning Partnership and Environmental Development Programs as Corporate Social Responsibility in Semarang City.

Third, The target of CSR in the company's surrounding environment is intended for individuals, groups, or communities who have lives that are not humanely feasible. These provisions are regulated in the Regulation of the Minister of Social Affairs Number 9 of 2020 concerning the Social and Environmental Responsibility of Business Entities. However, in its implementation, PT Pertamina TBBM Pematang Siantar seems to be selective in developing local potential through the Sejahtera Goat Milk Group, Sidorukun Ice Cream Group, and Ulos Mulana Business Group. Several communities with decent livelihoods and material well-being in the business group are also given assistance, even though there are still many other business groups around the company that are more deserving of CSR Entrepreneurship program assistance. So that improving the standard of living of the community and economic development based on local potential in its implementation only has a positive impact on beneficiaries who on average do not deserve assistance and are already materially sufficient. One of the inhibiting factors in the implementation of CSR in this area is that there have been no legal sanctions for companies that do not implement CSR or have implemented CSR but not in accordance with legal provisions.²⁰

It should be noted that in addition to Law Number 40 of 2007 concerning Limited Liability Companies not regulating sanctions for the implementation of CSR that has not been carried out in accordance with legal provisions/not implementing CSR at all, the Mayor of Pematang Siantar Regulation Number 16 of 2018 concerning Social Responsibility and Corporate Environmental Development in Pematang Siantar City also does not regulate these provisions.

The problem of the concept of regulating the legal certainty of providing CSR for the welfare of the people along with the problems in the field that have an impact on the failure to implement CSR obligations for companies or have been implemented but not in accordance with legal provisions, the author will analyze above. Especially what happened in Berau Regency, Semarang City and Pematang Siantar City with Limited Liability Companies along with derivative regulations in each region or from the perspective of the Welfare State Theory (Welfaestaate), Good Governance Theory and Legal Certainty Theory. With the following analysis results :

²⁰ Apriyadi dan Nova Yudia Winata, *Implementasi Pemberdayaan...*, *Op. Cit*, hlm. 79.

First, In essence, the welfare state seeks to free its people from dependence on market mechanisms in order to obtain welfare by providing the right to the welfare of its people which can be obtained through social policy instruments which are the state's obligation to provide. However, in reality, through central and regional legislative programs, both the central government and regional governments have implemented a concrete form of the abstract concept of the welfare state. This is in the form of legal policies related to the regulation of corporate obligations, especially companies with legal entities, to provide CSR for the welfare of the community around the company in particular and the community in general.

Second, in the theory of Good governance it is stated that: UNDP defines good governance as the application of political, economic and administrative power to manage a nation's affairs at all levels. While the World Bank defines it as a way of government authority used in managing economic and social resources for community development. Related to the problems in this thesis research, it can be analyzed that the application of political and administrative power of the government, both local and central governments, is applied in the management of economic and social resources for community development through authority in the field of legislation, namely the regulation of the company's CSR obligations for the people, in this case the community around the company in particular and the community in general.

However, in the implementation of CSR companies for the community in these areas, in fact, there are still problems where CSR has not been implemented by the company and some have been implemented by the company but are not in accordance with legal provisions, so that the increase in people's welfare reviewed from the economic and social sectors in the concept of Good Governance has not been achieved optimally. Therefore, if viewed from the level of success of the implementation of the company's CSR program for the community in these areas, it can be stated that the government, especially the local government (the local government of Berau Regency, Kampar Regency, Semarang City, Pematang Siantar City and the Special Region of Yogyakarta) has not achieved Good Governance.

Moreover, if the measure of Good Governance achievement in the economic and social resource management sector, is assessed from the application of political and administrative authority in this case the politics of law-making in the realm of state administration in the field of legislation, there are still shortcomings that have an impact on the less than optimal implementation of the company's CSR program for the community in the

regions, especially the regional government (regional government of Berau Regency, Semarang City, Pematang Siantar City). Where based on the description above, we know that both the main regulations at the central level, namely Law Number 40 of 2007 concerning Limited Liability Companies and regional regulations made by the regional governments of Berau Regency, Semarang City, Pematang Siantar City have not expressly regulated sanctions for companies that have not implemented CSR for the community or the company has implemented CSR for the community but its implementation has not been in accordance with the provisions of the law governing CSR itself. This means that the central government in general and the regional government in particular in the regions concerned have not achieved Good Governance.

Third, in a theory of legal certainty, Sudikno Mertokusumo stated that: Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed..²¹

Related to the problems in this thesis research, it is known that there are legal regulations that are not firm and clear and clear in Law Number 40 of 2007 concerning Limited Liability Companies. Then in several regional regulations, namely the Berau Regency Regional Regulation, Berau Regency Regional Regulation Number 6 of 2018 concerning Corporate Social and Environmental Responsibility; Semarang City Regional Regulation Number 7 of 2015 concerning Partnership and Community Development Programs as Corporate Social Responsibility in Semarang City; Pematang Siantar Mayor Regulation Number 16 of 2018 concerning Corporate Social Responsibility and Community Development in Pematang Siantar City, which does not regulate sanctions for companies that have not implemented CSR for the community or the company has implemented CSR for the community but its implementation has not been in accordance with the legal provisions governing CSR itself. So according to the author there is no legal certainty.

The absence of legal certainty has an impact on a guarantee that the law cannot be implemented in a good way. The law referred to in this thesis research is the law that regulates the company's CSR obligations to the community both in central and regional regulations. Then the absence of

²¹ Asikin zainal, *Pengantar Tata Hukum Indonesia*, (Jakarta: Rajawali Press, 2012), hlm. 23.

sanctions for failure to implement the company's legal obligations makes the community, especially the company/Limited Liability Company, assume that the regulations regarding the legal obligations imposed on it do not have to be obeyed.

The Ideal Concept of Legal Certainty Arrangement for the Provision of CSR for the Welfare of the People Based on Law Number 40 of 2007 concerning Limited Liability Companies.

Although CSR is a company's duty, it does not mean that the state can just let go. The government needs to continue to monitor and provide guidance and enforce the law for companies that do not comply with Law No. 40 of 2007 concerning Limited Liability Companies. In this case, the government needs to maintain goodwill to bring the company closer to the community where they operate.²²

Meanwhile, the legislative function organizer, namely the People's Representative Council at both the central and regional levels, also needs to use its authority as a legislator and supervisor in order to maintain the continuity of the CSR program for the benefit of the community, in the following ways: Continuously appealing to the government to pay attention to CSR issues; Ensuring that CSR is carried out properly by companies, and taking action against companies that do not comply with CSR provisions; continuing to open space and accommodate aspirations for both companies and the community around the company regarding CSR programs in their area.²³

To regulate its society through laws made for the sake of creating security and order in the life of society, nation and state. Even if necessary, the state can enforce its power in order to use physical violence in forcing the community to comply with the laws of the commands it issues.²⁴ The legal compliance enforcement referred to above is in the form of regulating legal sanctions against violations of legal obligations. Legal sanctions are also a form of legal accountability for existing legal obligations. Legal accountability is necessary when sanctions are not only imposed on the direct perpetrator of the crime (delinquent) but also on individuals who are legally related to him.²⁵ Therefore, it is necessary to regulate firm sanctions for the implementation of

²² Hartini Retnaningsih, *Permasalahan Corporate...*, Loc. Cit.

²³ *Ibid.*

²⁴ Arief Budiman, *Teori Negara, Kekuasaan dan Ideologi*, (Jakarta: PT Gramedia Pustaka Utama, 1996), hlm. 3.

²⁵ Hans Kelsen, *General theory Of Law and State*, (New York: Russell & Russel, 1961), hlm. 98.

CSR as a company's responsibility, such as in Aceh Besar Regency and Siak Regency, as the author describes below:

First, in Aceh Besar District. The existence of sanctions for Limited Liability Companies that do not carry out CSR in accordance with legal provisions makes the Limited Liability Company, especially PT Pertamina (Persero) Fuel Terminal Krueng Raya, comply and carry out CSR obligations in accordance with legal provisions. In addition, they carry out CSR because PT Pertamina (Persero) Fuel Terminal Krueng Raya also gets benefits such as the Company can improve decision making when critical things happen (critical decision making) and manage risk management that may occur properly and improve relations with stakeholders and the local government.²⁶

Regarding the regulation of legal sanctions for companies that do not implement CSR in the administrative area, namely in the form of administrative sanctions, this is contained in Article 17 paragraph (2) of Aceh Besar Regency Qanun Number 9 of 2019 concerning Corporate Social and Environmental Responsibility, which states that: Every company that does not carry out the obligations as referred to in paragraph (1) may be subject to administrative sanctions in the form of reprimands, written warnings, announcements in the mass media, freezing of business/activities, revocation of business/activity permits.

Where paragraph (1) referred to is Article 17 paragraph (2) of Aceh Besar Regency Qanun Number 9 of 2019 concerning Corporate Social and Environmental Responsibility, which states that: Every company domiciled/carrying out activities/business within the Aceh Besar Regency area is required to implement TJSPLP.

Second, in Siak Regency. PT Sinar Siak Dian is one of the Wilmar Group companies located at which runs its business by providing fresh oil palm fruit bunch production in the manufacture of various types of cooking oil. This is reinforced by a statement in a journal stating that: The Corporate Social Responsibility program implemented by PT. Sinar Siak Dian Permai consists of education, health, environment, religion and infrastructure improvement. The role of the CSR program towards the community has been successful. The benchmark/indicator of success in question can be seen from the increasing welfare of the people of Siak Regency, especially the people of Kerinci Kiri

²⁶ *Ibid*, hlm. 28.

Village as a community living around PT. Sinar Siak Dian Permai.²⁷ Where this success cannot be separated from the consistency and clarity of the regulation of the Company's CSR obligations for the community, specifically Limited Liability Companies in Siak Regency, accompanied by legal sanctions if the company does not carry out these obligations.

This is reinforced by the results of the author's literature/document study from a journal which states that: The existence of sanctions for Limited Liability Companies that do not carry out CSR in accordance with legal provisions makes the Limited Liability Company, especially PT. Sinar Siak Dian Permai, comply and carry out CSR obligations in accordance with legal provisions. In addition, they carry out CSR because PT. Sinar Siak Dian Permai also gets benefits such as obtaining permission to operate from a social aspect, minimizing the company's business risks and increasing the company's development and growth.²⁸

The regulation on the CSR obligations of companies (in this case Limited Liability Companies) for the community is contained in Article 6 paragraph (1) of Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility, which states that: Every Company as a legal subject has social and environmental responsibility.

The provisions regarding sanctions against companies, in this case Limited Liability Companies, which do not carry out the Company's CSR obligations for the community, are contained in Article 23 paragraph (1) and paragraph (2) of Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility, with the following description of the article:

1. Article 23 paragraph (1) of Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility, which states that: Companies that do not implement Social and Environmental Responsibility/TJSL will be subject to administrative sanctions."
2. Article 23 paragraph (2) of Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility, which states that: "Administrative sanctions as referred to in paragraph (1) are in the form of:

²⁷ Ayu Pusptasari, Danang Manumono dan Arum Ambarsari, "Peranan Corporate Social Responsibility PT. Sinar Siak Dian Permai Terhadap Partisipasi Masyarakat Sekitar Perkebunan," *Jurnal Masepi*, Vol. 3 No.1 Tahun 2019, hlm. 1.

²⁸ *Ibid*, hlm. 6.

- a. Written warning; dan
- b. Other forms of sanctions in accordance with regulations.

Related to the ideal concept of regulating the legal certainty of CSR for the welfare of the people which is already in accordance with regional regulations in Aceh Besar Regency and Siak Regency, the author analyzes from the perspective of the Welfare State Theory (Welfarestaat), Good Governance Theory and Legal Certainty Theory. With the following analysis results:

First, In a Theory of the Welfare State (Welfarestaat), it is stated that: In essence, the Welfare State (Welfarestaat) tries to free its people from dependence on market mechanisms in order to obtain welfare by providing the right to welfare for its people which can be obtained through social policy instruments which are the state's obligation to provide.²⁹

Related to the problems in this thesis research, the state makes social policies through legislative institutions in the form of laws and regulations both at the central and regional levels so that the welfare rights of its people can be implemented. Where the laws and regulations in question are Law Number 40 of 2007 concerning Limited Liability Companies; Aceh Besar Regency Qanun Number 9 of 2019 concerning Corporate Social and Environmental Responsibility; and Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility.

In order to support the legal weaknesses at the central level, namely Law Number 40 of 2007 concerning Limited Liability Companies, the regional government of Aceh Regency and the regional government of Siak Regency have made regulations at the regional level. The aim is that the obligation to implement CSR by companies towards the community/people can guarantee the enforcement of these legal obligations supported by the regulation of sanctions in them in regional level regulations. So that the abstract concept of the Welfare State (Welfarestaat) really becomes concrete because the people get social welfare rights through CSR organized by companies in this case Limited Liability Companies, both BUMN and BUMS. This means that the regional government is careful so that the regional government is able to realize the Welfare State (Welfarestaat). The regional governments in question are the regional government of Aceh Besar Regency and the regional government of Siak Regency. While the regulations in question are Qanun Aceh Besar Regency Number 9 of 2019 concerning Corporate Social and

²⁹ Moh. Mahfud MD, *Dasar dan, Loc. Cit.*

Environmental Responsibility; and Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility.

Second, Mardiasmo, stated that: good governance is a concept of approach that is oriented towards public sector development towards good governance.³⁰ The achievement of good governance is influenced by the quality of public services by upholding the General Principles of Good Governance.

Related to the problems in this thesis research, the development of the public sector is delegated to Limited Liability Companies through a legal policy at the central and regional levels that regulates the company's CSR obligations for the community, especially the community around the Limited Liability Company in order to realize the welfare of the people. Such public services can also be said to be realized by the government in the field of legislation.

Where in order to support the effectiveness of the implementation of the obligations of the Limited Liability Company, the regional government builds the public sector through legislation to realize the welfare of the people which is not perfectly accommodated by the central government in Law Number 40 of 2007 concerning Limited Liability Companies which does not regulate legal sanctions for failure to implement the company's CSR obligations to the community around the company. Either it is not implemented at all or it is implemented but its implementation is not in accordance with the laws and regulations. So the regional government of Aceh Besar Regency and the regional government of Siak Regency accommodate it in the substance of the regulation of legal sanctions in Qanun Aceh Besar Regency Number 9 of 2019 concerning Corporate Social and Environmental Responsibility; and Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility. So according to the author's analysis, it can be said that the regional government of Aceh Besar Regency and the regional government of Siak Regency have provided public services in the field of social welfare properly through the laws mandated in Limited Liability Companies in the administrative areas of the two regions.

Third, In a theory of legal certainty, Sudikno Mertokusumo stated that: Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a legal aspect

³⁰ Mardiasmo, *Perpajakan*, Edisi Revisi, (Yogyakarta: Andi, 2009), hlm. 67.

that can guarantee the certainty that the law functions as a regulation that must be obeyed.³¹

Related to the problems in this thesis research, the author analyzes that legal certainty can be implemented well when there is a lack of legal regulations at the central level, namely Law Number 40 of 2007 concerning Limited Liability Companies, which is perfected by derivative regulations in each region in order to optimize the achievement of people's welfare at the regional level. The derivative regulations are Qanun Aceh Besar Regency Number 9 of 2019 concerning Corporate Social and Environmental Responsibility; and Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility in the form of sanctions regulations, namely in the form of administrative sanctions in both regulations. So that the legal certainty of guaranteeing the implementation of the company's CSR obligations for the community around the company in Aceh Besar Regency and Siak Regency is real. The author also analyzes that the existence of these sanctions regulations in Aceh Besar Regency and Siak Regency has a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed by Limited Liability Companies.

CONCLUSION

1. The concept of regulating legal certainty in providing CSR for welfare based on Law Number 40 of 2007 concerning Limited Liability Companies does not provide legal certainty, as well as its derivative regulations at the regional level, especially in Berau Regency, Kampar Regency, Semarang City, Pematang Siantar City and the Special Region of Yogyakarta, which have not explicitly regulated sanctions for companies that have not implemented CSR for the community or the company has implemented CSR for the community but its implementation has not been in accordance with the legal provisions governing CSR itself. The impact is that the provision of CSR by companies to the community around the company has not provided welfare for the community.
2. The ideal concept of regulating legal certainty in providing CSR for people's welfare based on Law Number 40 of 2007 concerning Limited Liability Companies, is the concept of regulation in derivative regulations at the regional level, namely the regulation as in Qanun

³¹ Asikin zainal, *Pengantar Tata...*, *Loc. Cit.*

Aceh Besar Regency Number 9 of 2019 concerning Corporate Social and Environmental Responsibility; and Siak Regency Regional Regulation Number 1 of 2013 concerning Corporate Social and Environmental Responsibility which regulates legal sanctions against companies that have not implemented CSR for the community or the company has implemented CSR for the community but its implementation has not been in accordance with the legal provisions governing CSR itself. Such an ideal concept has shown the success of providing CSR for the community around the company so that people's welfare can be achieved through the CSR program.

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