

The Essence Of Social And Environmental Responsibilities Of Companies In Indonesia (A Study Of Economic-Law)

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Abstract: The object of research in this paper is the essence of Social and Environmental Responsibilities can be carried out effectively and efficiently. In addition, to explore the essence of Social and Environmental Responsibilities, this paper also attempted to analyze the extent to which the substantive law of Social and Environmental Responsibilities may encourage equalization of welfare state. This research is a normative research. Legal materials used in the study is literature materials, the literature relating to the Social and Environmental Responsibilities, Legal System, Economic Democracy, Economic Welfare, Economic Sustainability, Economic Analysis of Law. The results of the research shows that Social and Environmental Responsibilities is a balance point which at that point if it can be managed properly it will deliver in a state close to the relationship balance between the community, the company and the government so that the welfare of nation can begin to be realized. Social and Environmental Responsibilities is a form of follow-up of the real form of Article 33 paragraph 3 of Constitution 1945. For that, it needs to be strengthened its existence in order to understand completely and thoroughly for the welfare of Indonesian people through the good governance of Social and Environmental Responsibilities, so as to realize a good business climate in Indonesia through the creation of a harmonious relationship between the community, the company and the government.

Index Terms: Environmental Law, Legal Protection, Legal Enforcement

1 INTRODUCTION

National development aims to realize a just and prosperous society both in material and spiritual evenly based on the 1945 Constitution of the Republic of Indonesia. As a nation composed of various ethnic and cultural diversity is a right choice and indisputable again from the *founding parents* when deciding to define Indonesia as a legal state. Substantially, a law can never be separated from the spiritual structure of people, or people who support the law. It is related to the culture, the structure of thinking, basic values, faith, and the incarnation of personality, character, and style of society. The existence of legal and law enforcement in a country can show the image of civilization. The arrangement of new legal system was about to be directed to the national legal system with customary law as basic materials. Then adopt, ratify and accept *Customary International Law* into the national law. The Development of Science and Technology that achieved today especially in the field of communication and transport, making the world seem smaller when viewed in terms of international relations. The flow of information goes so rapidly that the conditions and situation in other hemisphere can instantly know by the people who are in a different hemisphere. Today, in the era of industrialization, there is a tension between the need for people-characterized law and justice-spiritualized with the existence of liberal-capitalist character that essentially protects the interests of conglomerate and owners of foreign capital.

The feature of “*rule of law*” in Indonesia seems not higher its development of Indonesian economic order. Though the wisdom of law is a very important part of political development, in addition to one possibility of the “cheapest” and the right to support the development efforts. Contrary to the opinion of Indonesian writers who believe that liberalism is economic cannibalism, should stem the decline, that without the “*rule of law*” and with this the liberal system formulated and then arise economic cannibalism. In Indonesia there are many evidences about it. In the opinion of law-sociology used by Alvin S. Johnson about the existence and role of law asserted that the real social life, the law has a power to regulate, only if already united in a legal framework, especially in the legal system. The incarnation of social reality as a normative fact that can gives birth law, which became the main source or their material source. In the relationship between law and human values, Satjipto Rahardjo stated that the law is not an absolute institution and final, it depends on how people see and use. It is man who is decisive. Indonesia is a country that has abundant natural resources so attract the entrepreneurs who will carry out their business activities. Based on this, the constitution of Indonesia has set the policy in the activities of business, particularly the exploitation of natural resources are owned by the country. The exploitation and management of Indonesia natural resources, aimed at the welfare of the Indonesian people. Not solely for *profit-oriented* (for profit alone) for a handful of parties. In contrast, the reality of what happens when this is precisely the increasing number of business activities/ business conducted by investors who reap many complex problems. In these circumstances, according to the author, there is to be done in understanding the concept of relationship between the stakeholders in the business activities undertaken so far. Ideally, a growing number of business activities conducted in Indonesia should further improve the welfare of the Indonesian people in general and local communities in particular. As an effort towards the people’s prosperity, an effort to measure prosperity is to equalize economy by empowering as well as the minimization of poverty in the country. And also, with the Social and Environmental Responsibilities (CSR), it should create a harmonious relationship between the companies with the

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people who built starting through the programs implemented from the budget of Social and Environmental Responsibilities. The harmony of relation-ship may be the sense belonging and maintain the security and ease in carrying out all activities that are mutually beneficial both for the benefit of society as well as the company's profits that impact *sustainable* to the existence of the company.

2 IDENTIFICATION OF THE ISSUE

As the background described above, the object of research in this paper is the essence of Social and Environmental Responsibilities can be carried out effectively and efficiently. In addition to explore the essence of Social and Environmental Responsibilities, this paper also attempted to analyze the extent to which the substantive law of Social and Environmental Respon-sibilities may encourage equalization of welfare for the people.

3 METHOD OF RESEARCH

This research is normative research and supported by secondary data. Legal materials used in the study is literature materials, the literature relating to the Social and Environmental Responsibilities, Legal System, Economic Democracy, Economic Welfare, Economic Sustainability, Economic Analysis of Law of Richard Posner. The data collecting in some ways; First, observation, the data collection was done by using direct observation of activities carried out by the respondents in performing their duties as the caretaker of state; Secondly, through documentation study or literature study, the technique of data collection is done by studying the journals, reports, and other documentation or written text that is concerned with the legal system and other relevant information. To analyze the data obtained in this study further processed and analyzed through qualitative analysis. This analysis is done by using the theoretical basis as analysis tool in explaining the phenomena that are the focus of this research.

4 RESULTS AND DISCUSSION

Actually, social and environmental responsibilities in Indonesia have been in effect since 2007, as stipulated in Article 74 of Act No. 40 of 2007 concerning Limited Company. But along the way, seems not yet understood completely and thoroughly by each party, so even been enacted for more than 14 years, has not had a good impact for both people and government. In the company also sometimes face some problems that occur due to lack of harmony in the pattern of interaction between the company and the people that actually would not occur if the companies want to implement the Social and Environment Responsibilities are obedient and submissive as orders in stipulated in the legislation and law systems in Indonesia. In this research will be a discussion about the essence of Social and Environmental Responsibilities, it is conducted as a means to explore things that are fundamental so that we can have a strong foundation as a foothold from the holding of Social and the Environment Responsibilities within the legal system in Indonesia. For more systematically described the essence of Social and the Environmental Responsibilities, it will be described from the study of economic democracy, economic prosperity and economic sustainability as follows:

4.1 The Essence of Social and Environmental Responsibilities: A Perspective of Economic Democracy

A state that embraces economic democracy is a combination form between the state system that performs activities based on the people, by the people and for the people to achieve prosperity economically. The principle of family in the Indonesian economy has been governed constitutionally. The idea of economic democracy is listed explicitly in the constitution as the supreme law of our country. The Constitution of the Republic of Indonesia 1945 does contain the idea of political- and economic democracies at the same time. It means, in the highest authority in our state is the people, both in politics and economy. The entire political and economic resources controlled by a sovereign people. Certainly, in a democratic system that built is not all directly controlled by the people. Some major parts are represented by the state, in this case to (i) MPR, DPR, DPD, and President in affair to arrange the directions and stated-official formulation, and (ii) to the President and other executive institutions in affairs to implement the directions and policies of the state, and (iii) indirectly to the judiciary in affair to prosecute the violations of directions and policies of the state. In implementing this mandate, the executive, legislative and judicial should be decision-making always reflect the majority of people will. For executives, in efforts to implement their duties to provide services to the people make approaches that aim to improve the quality of service so that the welfare of public is increasingly realized. For legislature, as the incarnation of people as representatives of people to absorb the people's aspirations as constituents. Likewise, for judiciary as representative of people in carrying out tasks in the field of law enforcement. Therefore, law enforcement is not solely devoted to certainty should not be left its justice, as well as its usefulness, this can be achieved when the judiciary is always hear the will of people to explore the local wisdom in the community and to explore the values that develop in the society. As an effort to achieve the people's welfare, besides implemented through the third of power as mentioned, in our constitution also regulates an economic system implemented in Indonesia, which we know as "*economic democracy*". It is an option to achieve the achievement of people's welfare effectively, because the development of the country's economy through the bases of economic activities that exist in the community as a special character in Indonesia and the creativity of nation people are being developed to improve the employment opportunities will be solutions for the improvement of country's economy, so in this case, the parted of state to the people economy as the economic democracy becomes mandatory for the government's duty to encourage economic conditions that will drive the quality of human resources to always get out of poverty, lower crime rates, adherence to the law so that prosperity can be realized. Article 33 paragraph (1) of the 1945 Constitution states, "the economy is structured as a joint effort based on the principle of kinship". Such, the importance of this article for four times amendment the Constitution 1945, this article is retained. Article 33 of Constitution 1945 asserted, "the national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmentally sound, independence, and maintaining the progress balancing and national economic unity". By constitution, it is very important in terms of economic

system applied in Indonesia in the form of economic democracy that is applied completely and thoroughly so that the ideals to achieve a fair prosperous can be evenly distributed to all peoples so that the gaps in the economy can be minimized by applying this economic democracy. The existence of economic democracy requires a system with a basis of kinship, it means applying a foundation as human beings who are essentially brotherly in performing the activities of economic with the principles of *check and balances* between one and others to constantly evaluate, rewards for the achievement in economic development programs and provide punishment for those who violate an agreement that has been stipulated in an internal rules in the form of Statutes and Bylaws and the legislation. In relation to the Social and Environmental Responsibilities, the role of company in Indonesia has a positive influence for the people economic development for the Indonesian people. Companies with Social and Environmental Responsibilities can work with local government to encourage the rise of the people's economy so that people can escape from poverty. Through economic democracy, it is expected activities that bring peoples to the welfare of society through economic development activities of the people, by the people and for the people. That is the economic activities of the people is a form of activity that can be raised and developed on the desire and ability of people, while by the people is an economic activity that is developed at the same time play an active role in its development by the people and for the people is a form of results of a public economic activities that aim for the welfare of people itself, this activity is a form of mutually beneficial conditions for both governments and companies as well as people economic conditions in a sustainable way. As mentioned above, shows that economic democracy is characterized by people who are empowered evenly so that between them create a social life that is not happening social-inequalities that can lead to the birth of social problems caused by social envy. Economic democracy can create a condition of mutually society interaction and not monopolized for certain elite group that centralized, in this case the government has a crucial role to shape the community involved in the development of fair and equitable manner. The role of government in this case can be optimized by arranging a form of regulation that can be in the form of legal products that can manage systems and can support the quarantine of economic democracy in good and maximal. This suggests that in order to expand their duties in business, in the field of business should not be left the existence and even attempting to develop a small-, medium and large businesses to further improve product quality. Private companies or State Owned are also expected has a role in development, especially economic equality through Social and Environmental Responsibilities program, or better known as *Corporate Social Responsibility*, abbreviated CSR. With the Social and Environmentally Responsibilities which was developed in the community would be able to minimize the occurrence of social inequalities which will have an impact on mutual envy for fellow human beings exist. Apart from that the roles of large companies or State Owned by maximize the Social and Environmental Responsibilities there will be communities that can live in harmony between communities and communities, commu-nities with company, as well as company with company as the spirit of Article 33 in the Constitution 1945.

4.2 The Essence of Social and Environmental Responsibilities: A Perspective of Economic Welfare

Welfare is an expectation for every human being living on earth, by this, the need to support their existence can be fulfilled. So that, a variety of scientific studies converging on one destinations that can be achieved on the welfare of mankind. And also, the science of law to explore the issue of welfare, this science requires other sciences to explore the achievement of welfare through the legal system. A science that can help to achieve this welfare is economics that examines the efforts to achieve human well-being amid the limitations of existing resources. In this case we need to describe the state that leads to social welfare for its citizens. The *social welfare state* is a state system that actively provides assistance programs of political, economic, and humanity of its citizens. If without such assistance, citizens are not able to achieve it, so that it has become the right of citizens guaranteed by the law, so that in that country reached a prosperous society, for which contrary to the concept of *free-market* state that allows citizens to compete based on the principle *free fight liberalism*. It can even be said that the concept of *social welfare state* or call it "*welfare state*", actually is a rewrite of the theory of social contract between government and its citizens, to engage in the social contract the principles of protection and welfare assistance by the state against its citizen. Because the concept of *welfare state* has a main focus on the participation of government in the "*public welfare*", this concept is closely related to the concept of democracy that also spoke about the government "for the people". The concept of welfare state as a form of government parted to keep the achievement of welfare. The parted is done because in the community the welfare equitable became problems that are not easy to solve. Economic disparities is an important things to be addressed by the government, certainly through programs that can foster the people economy so that the welfare can be felt with the economic program by looking the capabilities and expertise of communities through sustainable economic activities. If viewed in terms of the intensity of state involvement in social welfare programs, as stated by Titmus (1958), the welfare state can be divided into two categories as follows:

a. Residual Welfare State

Residual welfare state systems provide a limited role for the state in implementing its social welfare programs. In this case, the state plays a role only when the family and market fails to perform its functions. In addition, the state is only performing its duties towards society which of course belong to the marginalized groups.

b. Institutional Welfare State

Institutional welfare state include the provision of a guarantee by the state on a broad scale and universal institutionally include all populations within a broad policy basis and vital for a welfare of the people.

In the United States, the concept of *rule of law* is longstanding and also emphasize its implications in the field of economic, for example the development of the theory of constitutional law regarding clauses "*contract*", "*property*", and "*taking*" in its constitution. But inter-nationally, the significant growth in this field is especially after the organizational meeting of international legal experts, namely the International

Commission of Jurists in New Delhi, India in 1959 that attended experts from 53 countries. On the one hand, the congress established, the concept of protection of human fundamental rights remains requires conventional *safeguards* for the implementation of the rule of law, such as how to prevent and control the government not act arbitrarily against people, but on the other hand, the congress also emphasized the importance for a country to establish and maintain law and order in order to maintain viable social and economic life of people.

4.3 The Essence of Social and Environmental Responsibilities: A Perspective of Economic Sustainability

This paradigm is reflected in some principle of declaration includes Principle 1 of Rio Declaration states unequivocally that human beings are the main concern of sustainable development. While Principle 4 of this declaration states:

“In an effort to realize a sustainable development, environmental protection aspects must be an integral part of the development process and therefore this cannot be viewed separately from the meant process.”

This principle has been reaffirmed that the protection of environment as a part of development process is an indicators for the achievement of sustainable development. Above principle has also been stated in the Principle 13 of Stockholm Declaration 1972 where this process is now practiced in many countries. Meanwhile, other indicators in an effort to achieve sustainable development can be seen in principle 5, which states:

“Every country and nation should be able to cooperate in the effort to eliminate poverty which is a major requirement in achieving sustainable development, with the purpose to reduce disparities in living standards that exist and to meet the needs of majority of people in this world”.

This principle appears that the fight against poverty is a priority that takes precedence and the main requirements in order to achieve sustainable development. However, this effort should be made by applying the international cooperation principle that has entered a new stage in the development of international environmental law. In the Rio Summit, this principle has been developed further and known as *global partnership*. Furthermore, wastefulness of natural resources is one of the symptoms that develop at this time. The pattern of high consumption and production patterns are not useful seem to have much to do and this is contrary to the concept of sustainable development. Therefore Principle 8 states:

“To realize sustainable development and improve the better life quality for mankind, countries should reduce and eliminate the production and consumption patterns are unsustainable and take a good policy in the field of demography.”

Based on the principles in this Declaration, then a few products of the result of Earth Summit 1992 has also applied the principles of international law on sustainable development.

4.4 Social and Environmental Responsibilities at Companies in Indonesia

The company as a business entity and legal entities as well as bearers of social and environmental responsibilities, certainly has a philosophical foundation that led to the legal system in Indonesia provides a form of accountability that must be carried by company is not only responsible to shareholders alone but accountable also to the community as a social entity which is located nearby. In terms of social and environmental responsibilities raised in article 74 of Limited Company Act in Indonesia is actually as a progress in the economy legal system in Indonesia. This happens because according to the opinion of researchers, that the company which is based on Ac No. 1 of 1995 concerns Limited Liability put that company is only responsible to shareholders merely as an attempt to make a profit (*profit-oriented*) while the activities of organization in the field of social is foundation-shaped. In the development of Act No. 40 of 2007 concerns Limited Company is a form of amendment of Act No. 1 of 1995 concerning the Company. In Act No. 40 of 2007 concerns Limited Liability provide a fundamental change to the liability of company which was originally as a *profit-oriented* institution into an institution that not only pursue profit but also pay attention to the local community in the form of social and environmental responsibilities. In this regard, company in Indonesia is invited through the law to not only pursue profits alone but able to maintain the condition of local community in around the company's activities through equality and harmonious of relation for both the company and local community and also the government. It is not just beneficial for the company itself because the support of local community on the existence of companies that care about the community, but for the government can also have partners in order to enhance the progress of various fields such partners is the company's consistent to social and environment responsibilities, for the community also can benefit other than to feel recognized by the company as well as the empowerment program established when the disturbing problem of society as a result of the company's operations will be quickly resolved with good communication between the community, the company and the government. In Article 74 of Act No. 40 of 2007 concerns Limited Company directed that the company is not individualistic and are in a vacuum when its existence is at the community that consists of a variety of social stratification in life can be made possible social unrest. If a legal subject in *natuurlijke person* alone in its existence should not interfere with the public interest in the form of activities that disturb society, then as legal subjects in *rech person/legal entity*, the company has naturally encouraged to implement their obligations is also responsible for the social and environmental as form activities that have no impact on public unrest and disturb the public order. Government as part of the state institutions that one authority is to give permit to the existence of a corporation actually give a mandate in its management to the company that has the permissibility, of course that will provide benefits to the broad community is not merely to seek profit. In the granting of these permits actually has a philosophical meaning can be described as a country which is owned by the people who then handed over its management to the government to do the management as well as possible by giving permit for anyone legal subjects who intend to carry out the management in order to do a good activity and does not interfere the existence of society. If there are parties who

have allowed and then conduct deviations that could disrupt and threaten the existence of people's welfare, the government as representing the community in the management was entitled to make the revocation of the permit that has been granted previously. Actually, in the view of philosophical, the social and environmental responsibilities have an important role that the law as the *law is a real tool of social engineering* and it is real in the legal system in Indonesia. This is due to the presence of company in the community are directed into a company that understands the problems of surrounding community through a meeting can be held on a regular basis in order to address the problems experienced by the community and the limitation of by assist optimization of company's role to address the problems experienced by the community. If this is done well then the company would be able to carry out its activities properly without impressed exploitation alone but of social responsibility and the environment can be formed a strong company in terms of carrying capacity of the local community, local government and the company itself can carry out sustainable activities. The company did not implement the social and environmental responsibilities in fact he was starting to stop their activities because the lack of public support and government automatically will of course be constrained activity when public demonstrations, closing of road access, and others. In this regard, social and environmental responsibilities is a form of legal system development in Indonesia that actually helps the company to maintain its presence by taking into account the existence of communities and attention to the problem faced by the government. So, improperly when social and environmental responsibilities that raised through legislation that is additional burden, social and environmental responsibilities is a form of legal system development through the courtesy of business through the development of carrying capacity of local community and local government.

5 CONCLUSION

In essence, Social and Environmental Responsibilities is a balance point which at that point if it can be managed properly it will deliver in a state close to the relationship balance between the community, the company and the government so that the welfare of nation can begin to be realized. Social and Environmental Responsibilities is a form of follow-up of the real form of article 33 paragraph 3 of Constitution 1945. For that, it needs to be strengthened its existence in order to understand completely and thoroughly for the welfare of Indonesian people through the good governance of Social and Environmental Responsibilities, so as to realize a good business climate in Indonesia through the creation of a harmonious relationship between the community, the company and the government. In terms of strengthening the existence of Social and Environmental Responsibilities as a form of realization of the state's role in achieving prosperity, it need to be clarified in a rule related to the Social and Environmental Responsibilities, starting from planning, implementation, monitoring and evaluation. Social and Environmental Responsibilities as a program that must be done needs a clear barometer in its determination through the Social and Environmental Responsibilities by determine the percentage of minimum specified as a budget to implement the Social and Envi-ronmental Responsibilities program, if this is not done then which had been said as a liability will be void simply by

implementing certain programs that do not have the rules of justice when viewed with the proportionality of a condition of the company.

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