

E-ISSN: [2987-5595](#), P-ISSN: [2987-5609](#)

DOI: <https://doi.org/10.38035/sijal.v1i1>

Received: July 03<sup>rd</sup>, 2023, Revised: July 30<sup>rd</sup>, 2023, Published: August 03<sup>rd</sup>, 2023

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## Reconstruction of Corporate Legal Arrangements in Indonesia Relating to Corporate Social and Environmental Responsibility in the Mining Sector

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**Abstract :** Rule of article 74 UUP has regulation of CSR of Voluntary becomes mandatory. Philosophically that arrangement is based on article 33 paragraphs (3) and (4) of the 1945 Constitution, while from its empirical fact it does not stop from environmental impact and damage which is generated by activity mining of itself. From the results of research also showing that the rule of regulation related to mining area itself contains the principle of CSR.

**Keywords:** corporate social responsibility, Corporate legal, Mining Sector

### INTRODUCTION

Since the 1970s, corporate social responsibility (CSR) has become an important topic among professionals, researchers, NGO activists, and the public. The value of a company, which is reflected only in its financial condition, must be based on the triple awareness and courage to demand the right to social justice, the environment and human rights (HAM) as well as protection law And transparency as well as openness. well informed) information about the business world, especially in the mining sector.

Politically, the demands of the community are very reasonable because only a small group or certain groups enjoy the wealth of natural resources belonging to the Indonesian nation, and this causes various damages and environmental impacts. So Carolyn Marr conveyed it with paradoxical words, namely "Indonesia is very rich and Indonesia is very poor". In this case, Articles 33, 3, and 4 of the 1945 Constitution emphasize that existing natural resources must be utilized to improve the welfare of the community through development that is based on principles as a philosophical basis for managing natural resources. economic democracy.

In fact, the problem is inseparable from the paradigm of the business world, especially the mining industry which still prioritizes *profit orientation*, not to mention leading to *corporate image*. This gives meaning that the company is no longer an entity that is selfish, alienated and or exclusive from the community environment, but a business entity that is required to carry out cultural adaptation to the social environment in which it is located and is responsible for all damage and environmental impacts as a result of the business activities they do. And on the

other hand, the company must realize that a company cannot live, operate and survive and make a profit without assistance from various parties. So that companies that implement CSR consistently in the long term will foster a sense of belonging from the community (*sense of belonging*) to the presence of the company.

Meanwhile, various writings, surveys, and studies show that CSR that is developing in today's business world is not purely based on corporate awareness, but is a demand in facing the flow of globalization and the demands of the free market. This condition is further sharpened by the formation of world economic ties such as WTO, AFTA, APEC, EU and others that include various requirements for competition, such as ISO 14000 and 14001 related to environmental management and ISO 26000 on guidelines for implementation and application of CSR. In addition, the facts show that the rapid flow of social dynamics in society has caused the role of government to decrease, as well as the dominant role of the private sector in the development of a country. However, most companies still adhere to Adam Smith's classical economic doctrine, namely "*profit maximization*". This doctrine is outdated, the paradigm that is being developed now is how companies in their activities are able to create a positive "*corporate image*".

For some large companies, CSR has been implemented as a voluntary activity *that is manifested in the form of philanthropy, charity and others*. So that when the discourse of CSR was to be regulated in UUPT, various responses, resistance and protests arose from various business circles, with the pretext that the business world had implemented it and it was suspected that Indonesia was the only country that explicitly regulated CSR in the provisions of the legislation.

In order for CSR to have regulatory power, binding power and driving power, CSR, which was originally *voluntary*, needs to be increased to *mandatory*. (*legal responsibility*). The government as a regulator has included CSR as a company's obligation in Article 15 of Law Number 25 of 2007 concerning Investment (UUPM), Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). So that companies engaged in and/or related to natural resources must implement CSR in their business activities. This rule has been embodied in such a way in Law Number 4 of 2009 concerning Minerals and Coal (UU Minerba).

Based on this description, the research problem is formulated as follows:

1. How are the principles of corporate social responsibility regulated in the provisions of laws and regulations in the context of corporate law relating to the mining sector?
2. Why are companies engaged in and/or related to natural resources, especially in the mining sector, required to carry out social responsibility (*corporate social responsibility*) in their business activities?

## **METHOD**

### **Research Approach**

The research approach method used is doctrinal or normative research, namely research that examines laws and regulations in a coherent legal system. Through this research, it will be known how the principles of CSR in the provisions of laws and regulations in the context of corporate law in general and mining law in particular.

### **Types and Sources of Legal Materials**

In accordance with the research approach used, namely doctrinal or normative research, the types and sources of legal materials are as follows:

- a. Primary legal materials are related to all provisions of laws and regulations related to the research object, including decisions of the Constitutional Court.
- b. Secondary legal materials are legal materials related to library research in the form of books, journals and data from websites related to the research object.

- c. Tertiary legal materials are legal materials in the form of legal dictionaries and encyclopedias.

### **Legal Material Collection Methods**

The method of collecting primary, secondary, and tertiary legal materials is through document studies. Document studies are conducted by tracing and collecting legal materials both conventionally and through information technology, namely the internet and CD-Rom.

### **Methods of processing and analysis of legal materials**

After the legal materials are collected, they are then processed by structuring, describing, systematizing and analyzing them using the legal reasoning process, namely abstracting the provisions of mining laws and regulations within the scope of corporate law relating to CSR. Then, a principal legal interpretation is carried out, namely an interpretation method to understand the law by seeking the conformity of existing CSR principles and a grammatical interpretation, namely capturing the meaning of laws and regulations word for word.

## **RESULTS AND DISCUSSION**

### **Understanding or Definition of Corporate Social Responsibility**

Until now, there has been no unified language regarding CSR, this can be seen from the various understandings or definitions of CSR as follows:

- a. *The World Business Council for Sustainable Development (WBCSD)*  
WBCSD formulates CSR as *"The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large to improve their quality of life"*.
- b. *World Bank*  
This global financial institution formulates CSR as *"the commitment of business to contribute to sustainable economic development working with employees and their representatives, the local community and society at large to improve the quality of life, in ways that are both good for business and good for development"*.
- c. *European Union*  
*The European Union* or the European Union as an institution that unites countries on the European continent formulates the definition of CSR in the *EU Green Paper on CSR* as *"..... is a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis"*. Furthermore, *The European Commission* also explained again that CSR is *"Being socially responsible means not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and relations with stakeholders"*.
- d. The CSR Forum also provides a definition of CSR, namely *"CSR means open and transparent business practices that are based on ethical values and respect for employees, communities and the environment"*.
- e. *Business for Social Responsibility*  
Formulating CSR as *"Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. Social Responsibility is a guiding principle for every decision made and in every area of a business"*.  
The same condition also occurs in the context of statutory provisions, such as:
  - a. Explanation of Article 15 letter b of Law Number 25 of 2007 concerning Investment (abbreviated UUPM) which states that "corporate social responsibility is a responsibility inherent in every investment company to create harmonious, balanced and appropriate relationships with the environment, values, norms and culture of the local community".

- b. Article 1 number 3 of Law Number 40 of 2007 concerning Limited Liability Companies (abbreviated as UUP) also emphasizes that "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 which is beneficial, both for the Company itself, the local community, and society in general."

Meanwhile, according to the formulation of *the Trinidad and Tobacco Bureau of Standard* (TTBS), it can be concluded that CSR is related to the values and standards carried out regarding the operation of a company. So that CSR is interpreted as a commitment to doing business ethically, operating legally and contributing to economic growth, along with improving the quality of life of employees and their families, local communities and society more broadly. Then John Elkington's asserted as follows:

*"Corporate Social Responsibility is a concept that organizations, especially (but not only) corporations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation has been to extend beyond their statutory obligation to comply with legislation"*.

This CSR formulation emphasizes more on the concept of a company to heed its obligations to consumers, employees, shareholders, society, and ecology in all aspects of its activities. Then he also emphasized that the obligations in question are much broader than the obligations according to the law to comply with existing laws and regulations.

Meanwhile, Benerjee stated that *"...corporate social responsibility is "too broad in its scope to be relevant to organizations"*. What Benerjee expressed further clarifies that the scope of CSR is very broad for a company (organization) . Based on this, Gobbels, Votaw and Sethi further clarify by stating *"...considered social responsibility a brilliant term: "it means something, but not always the same thing to everyone"*. Likewise, Michael Hopkins in his *Working Paper* which he submitted to *the Policy Integration Department of the World Commission on the Social Dimension of Globalization, International Labor Office, Geneva* in 2004 explained that CSR is:

*"CSR is concerned with treating the stakeholders of the firm ethically or in a responsible manner. 'Ethically or responsibly' means treating stakeholders in a manner deemed acceptable in civilized societies. Social includes economic responsibility, stakeholders exist both within a firm and outside. The natural environment is a stakeholder. The wider aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation, for people both within and outside the corporation"*.

From Michael Hopkins' explanation, it can be concluded that CSR is related to the company's treatment of *stakeholders* both inside and outside the company including the environment ethically or responsibly, by treating *stakeholders* in a way that is acceptable to them. While socially, CSR includes responsibility in the economic field in an effort to create a better standard of living while maintaining the company's profitability.

Certo as an ethics expert defines CSR as *"... managerial obligation to take action that protects and improves both the welfare of society as a whole and the interest of organization ."* Meanwhile, Lawrence, Weber and Post stated that *" CSR means that a corporation should be held accountable for any of its actions affecting people, their communities and their environment. "* Meanwhile Kotler and Lee *"... a commitment to improving community well-being through discretionary business practices and contributions of corporate resources ."* And Wineberg and Rudolph define *Corporate Social Responsibility (CSR)* as: *The contribution that a company makes in society through its core business activities, its social investment and philanthropy programs, and its involvement in public policy .*

The understanding and concept of CSR continues to develop, accounting experts Davis and Frederick in 1992 stated that CSR is an obligation of business organizations or companies to take part in activities aimed at protecting and improving the welfare of society as a whole in

addition to activities aimed at the interests of the organization itself. Then Farmer and Hogue states that "*Social responsibility action by a corporation is action that, when judged by society in the future, is seen to have been maximum help in providing necessary amounts of desired goods and services at minimum financial and social cost, distributed as equitably as possible.*" In this case, Farmer and Hogue emphasize that CSR is a company's commitment to be able to provide what society wants.

From the various understandings or definitions above, it can be concluded that CSR is a company's commitment to carry out obligations based on decisions to take policies and actions by paying attention to the interests of *stakeholders* and the environment in which the company carries out its activities based on applicable legal provisions.

According to the Prince of Wales International Business Forum, there are 5 (five) pillars of CSR activities, namely:

- a. *Building human capital* is related to the company's internal efforts to create reliable human resources, while externally the company is required to empower the community.
- b. *Strengthening economies* is a company is required not to become rich alone while the community around it is poor. The company must empower the surrounding economy.
- c. *Assessing social harmony* is an effort to maintain harmony with the surrounding community so as not to cause conflict.
- d. *Encouraging good governance* means that companies in running their business must refer to *Good Corporate Governance (GCG)*.
- e. *Protecting the environment* is Companies must strive to preserve the environment.

From the five pillars it shows that CSR is much broader in scope compared to *community development*. The most fundamental difference is seen from the scope of CSR which includes 3BL and takes place sustainably. Monitoring and evaluation of the program are very much needed so that activities are right on target, even reports (*reporting*) as a reflection of *output* are used as *feedback*.

### **Principles of Corporate Social Responsibility**

Given the broad scope of CSR, it is not wrong for business actors to implement CSR according to their level of understanding and needs. However, as a reference in implementing it, we can refer to the basic principles of CSR as stated by a CSR expert from the University of Bath, England, namely Alyson Warhurst, who explained that there are 16 (sixteen) principles that must be considered in implementing CSR, namely:

- |                              |                                  |
|------------------------------|----------------------------------|
| a. Company Priorities        | i. Research                      |
| b. Integrated Management     | j. Principle of prevention       |
| c. Repair Process            | k. Contractors and suppliers     |
| d. Employee Education        | l. Emergency preparedness        |
| e. Review of                 | m. Transfer <i>best practice</i> |
| f. Products and Services     | n. Making donations              |
| g. Public Information        | o. <i>Disclosure</i>             |
| h. Facilities and Operations | p. Achievements and reporting    |

On the other hand, *the Organization for Economic Cooperation and Development (OECD)*, at the meeting of OECD member ministers in France in 2000, formulated CSR principles for transnational companies including:

- a. Contributing to economic, social and environmental progress based on the view to achieving sustainable development.
- b. Respecting human rights affected by the company's activities, in line with government obligations and commitments in the countries in which the company operates.

- c. Encourage local capacity building through close collaboration with local communities. Including business interests. In addition to developing corporate activities in domestic and foreign markets in line with the needs of trade practices.
- d. Encourage the formation of *human capital*, especially through the creation of job opportunities and facilitating training for employees.
- e. Refrain from seeking or accepting exemptions beyond those legally permitted relating to environmental, occupational health and safety, labor, taxation, financial incentives and other issues.
- f. Promote and uphold the principles of *Good Corporate Governance* (GCG) and develop and implement good corporate governance practices.
- g. effective *self-regulation* management system practices to foster relationships of mutual trust between the company and the local communities in which it operates.
- h. Encourage employee awareness in line with company policies by disseminating information about those policies to employees including through training programs.
- i. Refrain from engaging in acts of discrimination *and* indiscipline.
- j. Develop business partners, including suppliers and subcontractors, to implement company rules that are in line with the guidelines.
- k. Abstain from all inappropriate involvement in local political activities.

Meanwhile, according to ISO 26000 on CSR, there are 7 (seven) CSR principles as corporate behavior based on standards and behavioral guidelines in the context of certain situations. The seven principles are:

- a. Accountability; this can be seen from the organization's behavior related to society and the environment.
- b. Transparency; this can be seen from decision making and activities that have an impact on other parties (*stakeholders*) .
- c. Ethical behavior ; this relates to the ethical behavior of the company over time.
- d. *Stakeholders* ; this relates to appreciation and considering the interests of *stakeholders* .
- e. Rule of law; relating to respect and compliance with the provisions of applicable laws and regulations.
- f. International norms; especially relating to respect and appreciation of international norms, especially relating to norms that are more supportive of sustainable development and social welfare, and
- g. Human rights; related to understanding the importance of human rights (HAM) as a universal concept.

In addition to expert opinions, OECD, and ISO 26000, as a guideline in implementing CSR, we can also refer to the Global Compact (GC) declared by the United Nations (UN) in 2000. GC groups CSR principles into 4 (four), namely as follows:

*a. Human Rights :*

*Principle 1:* The Company supports and respects the protection of international declarations on human rights;

*Principle 2:* Not to be involved in human rights abuses.

*b. Labor Standards :*

*Principle 3:* The Company upholds the freedom to assemble and deliberate;

*Principle 4:* Elimination of all pressure on the workforce;

*Principle 5:* Elimination of child labor;

*Principle 6:* Elimination of discrimination in respect of employment and occupation.

*c. Environment :*

*Principle 7 :* The company supports the prevention of environmental damage;

*Principle 8 :* Taking the initiative to promote environmental responsibility;

*Principle 9 :* Encourage the development of environmentally friendly technologies.

d. *Anti-Corruption* :

*Principle 10*: Companies must combat corruption in all its forms, including extortion and bribery.

### **Corporate Social Responsibility Principles in the Scope of Company Law in the Mining Sector**

If the provisions of laws and regulations within the scope of corporate law in the mining sector are analyzed using CSR principles according to Alyson Warhurst, *the Organization for Economic Cooperation and Development* (OECD), ISO 26000, and the Global Compact (GC), the following can be seen:

#### **a. Environmental Management Law**

In line with the provisions of Article 1 number 2 of Law Number 23 of 1997 concerning Environmental Management (hereinafter abbreviated as UUPLH) states that "environmental management is an integrated effort to preserve the function of the environment which includes policies on the arrangement, utilization, development, maintenance, restoration, supervision, and control of the environment". Environmental management must be carried out based on the principle of environmental preservation with an integrated approach with spatial planning and protection of environmental elements. This is in line with the Stockholm Declaration, the Rio Declaration, and the Johannesburg Declaration. If this principle is associated with the CSR principle in the UUPLH, it can be inventoried as follows:

1. Every person who carries out a business and/or activity is obliged to provide correct and accurate information regarding environmental management (Article 6 paragraph (2) UUPLH in conjunction with the Decree of the Head of the Environmental Impact Management Agency Number 8 of 2000 concerning Community Involvement and Openness of Information in the Environmental Impact Analysis Process). This provision is in line with the principle of " *access to information*". This provision is in line with the principle of openness (*disclosure*) in CSR.
2. Every business plan and/or activity that is likely to have a large and significant impact on the environment must have an environmental impact analysis (Article 15 paragraph (1) UUPLH in conjunction with Regulation of the Minister of State for the Environment Number 8 of 2006 concerning Guidelines for the Preparation of Environmental Impact Analysis). This provision is in line with the principle of " *environmental impact assessment and informed decision making*". This provision is in line with the *disclosure principle* in CSR.
3. Every person responsible for a business and/or activity is required to manage waste resulting from the business and/or activity (Article 16 paragraph (1) UUPLH in conjunction with Government Regulation Number 82 of 2001 concerning Water Quality Management and Water Pollution Control in conjunction with Government Regulation Number 41 of 1999 concerning Air Pollution Control in conjunction with Government Regulation Number 19 of 1999 concerning Control of Marine Pollution and/or Destruction). This provision is in line with the environmentally friendly principles in CSR.
4. Every person responsible for a business and /or activity is required to manage hazardous and toxic materials (Article 17 paragraph (1) of the Environmental Law in conjunction with PP Number 74 of 2001 concerning Management of Hazardous and Toxic Materials). This provision is in line with the principle of " *prevention of environmental harms*". This provision is in line with the principle of developing environmentally friendly technology in CSR.
5. In order to improve business and/or activity performance, the government encourages business and/or activity managers to conduct environmental audits (Article 28 UUPLH in conjunction with Decree of the Minister of Environment Number 30 of 2001 concerning

Guidelines for the Implementation of Mandatory Environmental Audits ). This environmental audit itself is related to the principle of accountability in CSR.

### **b. Employment Law**

Employment issues have been regulated in such a way in Law Number 13 of 2003 concerning Employment (UUK) , especially related to workers' rights on the one hand and their obligations and responsibilities of employers on the other hand. All of that has a correlation with the CSR principle which can be seen in several of the following articles:

- a. Article 12 paragraph 1 of the UUK emphasizes that "employers are responsible for improving and/or developing the competence of their workers through job training". This training provision is in line with the principles of education and *human capital* known in the principles of CSR.
- b. Article 80 of the UUK relating to the obligation of employers to provide sufficient opportunities for workers/laborers to carry out worship required by their religion. This provision is in line with the principle of Human Rights (HAM) in the religious meaning of CSR.
- c. Article 91 paragraph 1 of the UUK states that wage regulations set by agreement between employers and workers/laborers or workers' unions/labor unions may not be lower than wage provisions set by applicable laws and regulations. This provision leads to the application of the principle of transparency in CSR.
- d. Article 100 paragraph (1) of the UUK emphasizes that in order to improve the welfare of workers/laborers and their families, employers are required to provide welfare facilities. This provision is in line with the principle of *human capital* in CSR.
- e. Article 109 of the UUK relating to company regulations that are prepared by and are the responsibility of the company. This provision is in line with the GCG principle in CSR.
- f. Article 151 paragraph (3) of the UUK emphasizes that termination of employment between employers and workers/laborers can only be carried out after receiving a determination from the industrial relations dispute resolution institution. This provision is in line with the principle of obeying the law in CSR. According to Article 151 paragraph (1) of the UUK, termination of employment is the last legal effort, after various previous settlement efforts have been made between employers, workers/laborers, workers/labor unions, and the government.

### **c. State-Owned Enterprises Law**

According to Article 2 paragraph (1) letter e of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law), one of the objectives of establishing BUMN is to "actively provide guidance and assistance to entrepreneurs in the weak economic class, cooperatives and the community". For this reason, the government packages BUMN involvement as a government effort to strengthen the partnership program, so through the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2007 concerning the Partnership Program of State-Owned Enterprises with Small Businesses and the Community Development Program. Meanwhile, the source of funds for the Partnership Program and Community Development Program (PKBL) as explained in Article 9 of the Regulation of the Minister of State-Owned Enterprises is as follows:

(1) Partnership Program funds come from:

- a. The maximum after-tax profit allocation is 2% (two percent);
- b. Loan/margin/profit sharing administration services, deposit interest and/or current account services from Partnership Program funds after deducting operational costs;
- c. Transfer of Partnership Program funds from other BUMNs, if any.

(2) The funds for the Community Development Program (BL) come from:



- a. The maximum after-tax profit allocation is 2% (two percent);
  - b. Interest on deposits and/or current account services from BL Program funds.
- According to the provisions of Article 11 of the Regulation of the Minister of State-Owned Enterprises, it is stated that Partnership Program Funds are provided in the form of:
- a. Loans to finance working capital and/or purchase of fixed assets in order to increase production and sales;
  - b. Special loans to finance the funding needs of implementing the activities of Fostered Partners which are additional and short-term loans in order to fulfill orders from Fostered Partners' business partners.
  - c. The coaching burden includes the following:
    1. To finance education, training, internships, marketing, promotions and other matters relating to increasing the productivity of Fostered Partners as well as for studies/research relating to the Partnership Program;
    2. The coaching burden is in the form of a grant and the maximum amount is 20% (twenty percent) of the Partnership Program funds distributed in the current year.
- Meanwhile, the scope of the BL Program includes:
- a. Assistance to victims of natural disasters;
  - b. Educational and/or training assistance;
  - c. Assistance for health improvement;
  - d. Assistance for the development of public infrastructure and/or facilities;
  - e. Assistance for religious facilities; assistance for environmental conservation.

Based on these provisions, it can be seen that the CSR principles contained in these BUMN provisions place more emphasis on the principle of obeying the law.

#### **d. Investment Law**

The philosophical basis for the formation of regulations in the economic sector includes Law Number 25 of 2007 concerning Investment (UUPM), namely Article 33 paragraph (4) of the 1945 Constitution, which states that "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental awareness, independence, and by maintaining a balance between progress and national economic unity." This principle of economic democracy basically contains the meaning of how to make the Indonesian nation a country that is able to prosper its people. This concept by *the founding fathers* is called a welfare state .

The concept of a welfare state <sup>1</sup>adopted by Indonesia itself in principle refers to economic democracy which is used as a series of planned and institutionalized activities aimed at improving the standard and quality of human life. All of this can be seen from the concept of *social welfare*, and *economic development* which James Midgley calls *the "antithetical nation"*. <sup>2</sup>*Social welfare* is related to prioritizing the interests of others (*altruism*), social rights, and asset retribution. In other words, the concept of *social welfare* emphasizes its social aspects. While *economic development* is related to the growth of capital accumulation, and economic profit (capitalist concept). Therefore, CSR as a combination of socialist and capitalist concepts becomes an inseparable part of investment.

Judging from the substance of UUPM, there are several articles which are essentially related to CSR, namely:

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<sup>1</sup>In some countries, the concept of *welfare state* includes all processes and activities to improve the welfare of citizens and implement social service systems and social protection schemes for disadvantaged groups. See Edi Suharto, 2006, *Welfare State and Reinventing Depsos*, paper, Seminar on Reviewing the Relevance of *Welfare State* and Breakthroughs Through Decentralization of Autonomy in Indonesia, Wisma MMUGM, July 25, 2006, page 5.

<sup>2</sup>James Midgley, 2003, *Growth, Redistribution, and Welfare*, Towards Social Investment, in Dhaniswara K. Harjono, 2007, *Investment Law*, Rajawali Press, Jakarta, page 67.

- a. Article 3 paragraph (1) of the UUPM concerning the principles of investment which consist of the principles of legal certainty, the principle of openness, the principle of accountability, the principle of equal treatment and not distinguishing between countries of origin, the principle of togetherness, the principle of fair efficiency, the principle of sustainability, the principle of environmental insight, the principle of independence, and the principle of balance of progress and national economic unity. These principles of investment are in line with the principles of CSR, namely openness (*disclosure*), accountability, non-discrimination, sustainability, and environmental insight.
- b. Article 10 of the UUPM relating to employment which emphasizes the obligation to prioritize Indonesian workers, the obligation to improve the competence of Indonesian workers through job training and companies employing foreign workers are required to provide training and transfer technology to Indonesian workers. This provision emphasizes the principle of CSR in the form of *human capital* and education.
- c. Article 15 of the UUPM relates to investment obligations, where every investor is obliged to:
  - a. Implementing the principles of good corporate governance;
  - b. Carrying out corporate social responsibility;
  - c. Making reports on investment activities and submitting them to the Investment Coordinating Board;
  - d. Respecting the cultural traditions of the community around the location of the investment business activity; and
  - e. Comply with all provisions of laws and regulations.

By emphasizing corporate social responsibility as an obligation of investors, Article 15 of UUPM has laid the legal foundation for changing the paradigm of CSR from *voluntary* to *mandatory*. However, the provisions of Article 15 of UUPM contain several CSR principles, namely *Good Corporate Governance (GCG)*, *disclosure*, ethical behavior, and obedience to the law.

- d. Article 17 of UUPM relates to the obligation of every investor engaged in a business sector related to non-renewable natural resources to allocate part of their funds for the restoration of their business location so that it meets environmental standards. This provision is in line with the principle of environmental awareness in CSR.
- e. Article 34 of UUPM relates to sanctions for business entities or individuals who do not carry out their obligations including CSR. With the provisions of sanctions, it is increasingly strengthening that CSR is no longer *voluntary*, but is a legal obligation (*legal responsibility*) for all business entities and individuals, thus reflecting the principle of obeying the law.

#### **e. Limited Liability Company Law**

CSR referred to in UUPT in terminology is different from CSR in UUPM, because UUPT uses the terminology of social and environmental responsibility (TJSL). This provision can be seen in the formulation of Article 1 number 3 of UUPT and the title of Chapter V which only consists of 1 (one) article, namely Article 74 which consists of 4 (four) paragraphs, namely as follows:

- a. Article 74 paragraph (1) of the Company Law emphasizes 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. This provision emphasizes the principle of being environmentally aware in CSR. This can be seen from the imposition of TJSL obligations only on companies that carry out activities and/or related to natural resources. So that in terms of grammatical meaning, companies that do not carry out and/or relate to natural resources are not required to implement TJSL in their business activities.

- b. Article 74 paragraph (2) of the UUPT states that TJSL is a Company obligation that is budgeted and calculated as the Company's costs carried out by paying attention to propriety and fairness. The words "propriety" and "fairness" are meaningful terminology in legal principles that require strict interpretation. This provision is in line with the principle of accountability in CSR.
- c. Article 74 paragraph (3) of the Company Law emphasizes that companies that do not carry out the obligations as referred to in paragraph (1) are subject to sanctions in accordance with the provisions of laws and regulations. This provision further emphasizes that TJSL has been stated as an obligation in the sense of *liability* because it is followed by sanctions for companies that do not implement it. This provision is in line with the principle of obeying the law in CSR.

#### **f. Minerba Law**

The philosophy of mining management is inseparable from Article 33 paragraph (3) and (4) of the 1945 Constitution relating to the concept of state control and the principle of economic democracy in its management. So that in the section on remembering the Minerba Law it is emphasized that minerals and coal contained in the legal territory of Indonesian mining are non-renewable natural resources as a gift from God Almighty which have an important role in fulfilling the needs of many people, therefore its management must be controlled by the State to provide real added value to the national economy in an effort to achieve prosperity and people's welfare in a just manner.

The explanation of the Minerba Law also implicitly suggests that the management and exploitation of natural resources is in accordance with the legal concept of "causality", where the sustainability of companies engaged in mining depends on the maintenance of the natural resources themselves. Conversely, if the carrying capacity of natural resources is damaged, destroyed, and or no longer exists, it will have a direct impact on people's income, so that they will consider the company as the cause. For more CSR principles in the Minerba Law, it can be seen from the following provisions:

- a. Article 2 of the Mineral and Coal Mining Law emphasizes that in the management of mineral and coal mining, there must be reference to 4 (four) principles, namely:
  - 1. Benefit, justice and balance;
  - 2. Adherence to the interests of the nation;
  - 3. Participatory, transparency and accountability; and
  - 4. Sustainable and environmentally conscious.

This principle reflects the CSR principles which include the principles of *human capital*, transparency, accountability, sustainability and environmental awareness.

- b. Article 65 paragraph (1) of the Minerba Law requires every mining business to meet administrative requirements, technical requirements, environmental requirements, and financial requirements. Meanwhile, the obligation of IUP and IUPK grantors is to include CSR principles in the permit requirements (Article 39, Article 78, and Article 79). This provision is more directed at the application of *GCG principles*.
- c. Article 96 relates to the implementation of good mining engineering principles, which IUP and IUPK holders are required to implement. This provision is in line with the GCG Principles in CSR.
- d. Article 97 relates to the affirmation that "IUP and IUPK holders are required to guarantee the implementation of environmental standards and quality standards in accordance with the characteristics of a region". The implementation of the standardization principle can be measured based on the AMDAL and/or UKL/UPL made by the IUP and IUPK applicants. This provision is in line with the environmentally aware principle in CSR.

- e. Article 99 and Article 100 relate to reclamation plans and post-mining plans. Both provisions require post-mining management based on the principle of *disclosure* and the principle of implementing environmentally friendly technology.
- f. Article 106 states that IUP and IUPK holders must prioritize the use of local labor, goods, and domestic services. This provision relates to the application of the *human capital principle*.
- g. Article 107 of the Minerba Law emphasizes that in production operations, business entities holding IUP and IUPK must involve local entrepreneurs. This provision is angry at the application of the principle of partnership with SMEs in CSR.
- h. Article 108 of the Minerba Law requires IUP and IUPK holders to prepare community development and empowerment programs in consultation with the government, regional governments, and communities, as well as social institutions. This provision is related to Article 39 paragraph (1) letter j and paragraph (2) letter n, Article 78 letter j, and Article 79 letter m of the Minerba Law, and is also an "essential" provision in the Minerba Law, namely CSR which is interpreted in the form of *community development* . This provision is in line with the principles of *disclosure* and accountability in CSR.
- i. Article 145 paragraph (1) of the Minerba Law relates to the rights of communities directly affected by negative impacts from mining business activities, namely in the form of compensation and filing a lawsuit in court. This provision is in line with *the stakeholder concept* principle in CSR .

The 14 (fourteen) CSR principles contained in the provisions of laws and regulations within the scope of company law in the mining sector refer to CSR principles according to Alyson Warhurst, *the Organization for Economic Cooperation and Development* (OECD), ISO 26000, and the Global Compact (GC) which are based on grammatical interpretations and can be seen in the following table:

**Table : 3**  
**Principles of Corporate Social Responsibility in**  
**Provisions of Corporate Law Legislation**

No	Provision	Chapter	Substance	CSR Principles
1	Law Number 23 of 1997 concerning Environmental Management Law No. 32 of 2009 concerning Environmental Protection and Management (LN 20 0 9 No. 140, abbreviated as UUPPLH).	Article 6 paragraph (2)	Obligation to provide information	Disclosure
		Article 15 paragraph (1)	Preparation of AMDAL	Disclosure
		Article 16 paragraph (1) and	Management of waste resulting from business and/or activities	Developing environmentally friendly technologies
		Article 17 paragraph (1)	B3 Management	Environmentally friendly technology
		Article 28	Environmental audit	Accountability

2	Law No. 11 of 2020 concerning Job Creation (Job Creation Law) has amended dozens of laws, one of which is Law No. 13 of 2003 concerning Manpower.	Article 12 paragraph (1)	Job training	Education and <i>Human Capital</i>
		Article 80	Prayer time	Human Rights (HAM)
		Article 91 paragraph (1)	Wage arrangements are determined by agreement between employers and workers/laborers or workers/laborers unions.	Transparency
		Article 100 paragraph (1)	Entrepreneurs are required to provide welfare facilities	<i>Human Capital</i>
		Article 109	Responsibility for making company regulations	GCG
		Article 151 paragraph (3)	Termination of employment can only be carried out after a determination by the PPHI institution.	Law abiding
3	Law Number 19 of 2003 concerning State-Owned Enterprises	Article 2 paragraph (1) letter e	Actively participates in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives and the community	Law abiding
4	Law Number 25 of 2007 concerning Investment	Article 3 paragraph (1)	Principles of investment	Openness , accountability, non-discrimination, sustainability , environmentally friendly
		Article 10 paragraphs (1), (3) and (4)	Regarding employment	<i>Human capital</i> , education and training
		Article 15	Obligations of investors	GCG, ethical behavior, law abiding
		Article 16	Investors' responsibilities	Accountability, ethical behavior, environmentally conscious and law-abiding
		Article 17	Obligation to allocate funds for environmental restoration	Environmentally aware
		Article 34	Sanctions	Law abiding
5	Law Number 40 of 2007 concerning Limited Liability Companies	Article 74 paragraphs (1), (2), (3), and (4)	Regulations on Social and Environmental Responsibility	Environmentally aware, accountable and law abiding

6	Law Number 4 of 2009 concerning Minerals and Coal	Article 2	Principles of mining management	<i>Human capital, disclosure, accountability, sustainability, and environmental awareness</i>
		Article 65 paragraph (1)	The obligation of mining permit holders to fulfill various requirements	GCG
		Article 96	Implementation of good mining principles	GCG
		Article 97	environmental standards and quality standards	Environmentally aware
		Articles 99 and 100	Obligation to carry out and provide reclamation funds	<i>Disclosure and environmentally friendly technology.</i>
		Article 106	prioritizing the use of local labor, domestic goods and services	<i>Human capital</i>
		Article 107	Involving SMEs	Partnership
		Article 108	<i>Community development</i>	<i>Disclosure and accountability</i>
		Article 145 paragraph (1)	The community's right to demand compensation	

**4. Reasons Why Companies Engaged in and/or Related to Natural Resources, Especially in the Mining Sector, Are Required to Implement Corporate Social Responsibility**

In Indonesia, CSR activities have only been rampant in recent years, and these activities are carried out out of charity *and* philanthropy *motives* that are *voluntary*. However, when the DPR rolled out the CSR discourse in the discussion of the RUUPT, the business world began to be disturbed because the CSR paradigm which was originally *voluntary* shifted to *mandatory*, so that rejection from various world circles including KADIN with several business associations conducted *a judicial review* to the Constitutional Court (MK) against the provisions of Article 74 of the UUPT with lawsuit Number 53/PUU-VI/2008. The lawsuit itself was based on the provisions of Article 28D paragraph (1), Article 28I paragraph (2) and Article 33 paragraph (4) of the 1945 Constitution. Based on the Constitutional Court's decision dated 15 Arip 2009, it rejected the lawsuit.

When viewed in the minutes of the birth process of the terminology of Article 1 number 3 of the UUPT, there was a very fierce debate between factions and the government, finally resolved through *lobbying* during the IV session of the 2006-2007 session in the working committee meeting of Commission VI of the Indonesian House of Representatives . In the minutes, it was clearly revealed that the RUUPT submitted by the government to the DPR did not find a single article related to CSR. On the initiative of the National Awakening Faction (FKB), it was proposed that the RUUPT also include CSR so that it is in line with the philosophical basis of economic democracy, namely Article 33 paragraph (4) of the UUD. Based on this philosophy, we can draw a common thread as to why only companies that operate and/or are related to natural resources are required to implement CSR or TJSL, namely as follows:

- a. Based on the principle of sustainability, this principle means that the management of natural resources is not only to be enjoyed by one generation or a particular generation, but its management must be able to be inherited and enjoyed by future generations.
- b. Based on the principle of environmental awareness, this principle means that in national economic development, environmental aspects must be a concern for every business actor, so that every business activity can minimize its impact on the environment.

However, when viewed from *the law making process*, the concept of CSR in UUPT is inseparable from the actions and demands of the community and NGOs for reasons as explained previously. And on the other hand, the facts show that there are many companies that only carry out operational activities but pay little attention to the social and economic rights of the surrounding community, such as the conflict between the Papuan community and PT. Freeport Indonesia, the conflict between the Aceh community and Exxon Mobile which manages natural gas in Arun, environmental pollution by Newmont in Buyat Bay, and so on.

In addition, global developments show a change in the corporate paradigm, namely that so far companies have only been viewed as economic instruments, but in line with global demands, companies must be viewed as social institutions. And companies do not only accommodate *shareholder interests*, but also *stakeholder interests*. Therefore, corporate management cannot solely prioritize profits but also prioritizes 3BL.

When viewed from the implementation of CSR in several developed countries, such as England, the Netherlands, Canada, and the United States where CSR has become a legal assessment by the capital market authority which is stated in the form of *a public report*, in addition to the assessment of the public itself. It turns out that companies that implement CSR in their business activities get *rewards* in the form of competitive advantages, so that its stock price strengthens on the stock exchange compared to companies that have behaved ethically. Based on this argument, it is appropriate that CSR, which was originally a non-legal responsibility (*responsibility*), be changed into a legal responsibility (*liability*).

Considering the constitutional mandate and based on empirical facts from the impact of development so far as recognized by the government in the 2004-2009 RPJMN, it is very rational for CSR to be regulated in the legal system in the field of corporate law. This is done as an effort to realize the goals of economic development based on the principles of togetherness, efficiency, justice, sustainability, environmental awareness, independence, and maintaining the balance of progress and national economic unity as an effort to realize community welfare. Based on these considerations, CSR provisions were formulated in the UUPT as part of the obligations of companies in Indonesia. Then in the explanation of the UUPT it is emphasized that the provisions regarding CSR are intended to support the establishment of harmonious, balanced relationships, and in accordance with the environment, values, norms, and culture of the local community.

Meanwhile, from a theoretical study, the change in the CSR paradigm from *voluntary* to *mandatory* is in line with Roberto Mangabeira Unger's statement as quoted by Eka Wenast, which states that in a "post-liberal" society, private organizations are increasingly recognized and viewed as institutions that have power, whereas according to traditional doctrine power is viewed as the prerogative of the government. Neo-liberals do not apply criticism to the government, but instead focus on the power of the government itself. Where companies have the primary responsibility to determine and apply social responsibility standards systematically and in line with the efforts of the community, consumers and government". So philosophically, the theory of social responsibility is radical and conservative in terms of its programs, but has a liberal view of public rights. And in a democratic society, the community governs, for that democratic companies must listen to the voices of *stakeholders* (*market place of ideas*).

When CSR is associated with corporate activities, it can be said that CSR emphasizes more on corporate concern for the interests of *stakeholders* in a broad sense rather than just

corporate interests. Thus, the concept of social responsibility emphasizes more on corporate responsibility for its actions and business activities that have an impact on certain people, society, and the environment in which the company carries out its business activities. Negatively, this means that the company must carry out its business activities in such a way that it does not have a negative impact on certain parties in society. While positively, this means that the company must carry out its activities in such a way that it can create a better and more prosperous society.

Likewise, when referring to the concept of a modern legal state, in addition to requiring every action of the state/government to be based on law, the state/government is also given a broad role, task and responsibility to improve the welfare of its people. This is in line with the change in the CSR paradigm from *voluntary* to *mandatory* in the management of mineral and coal wealth in Indonesia, as mandated by Article 33 paragraph (3) and (4) of the 1945 Constitution which is stated in the Minerba Law. This policy is inseparable from the function of the state in the economic sector as expressed by W. Friedman, namely covering 4 (four) things, namely:

- a. As a guarantor (*provider*) of people's welfare.
- b. As a regulator .
- c. As an entrepreneur .
- d. As an umpire .

Of the four functions of the state in the economic sector, the most essential function lies in the regulatory function . If the function as a regulator is wrong or misplaced, it will have an impact on the other three functions. Therefore, in carrying out the regulatory function, the government must pay attention to moral norms that will be posited into the form of legal norms by positioning positive freedom that is *accountable* to its *stakeholders* .

## CONCLUSION

From the results of research conducted on Corporate Social Responsibility Regulations *in* the Mining Sector in the Context of Corporate Law in Indonesia, the following conclusions can be drawn:

1. That the provisions of laws and regulations within the scope of corporate law relating to CSR regulations in the mining sector, namely the Environmental Management Law, the Manpower Law, the State-Owned Enterprises Law, the Capital Market Law, the Limited Liability Company Law, and the Mineral and Coal Mining Law, which substantially contain CSR principles in accordance with the context of their regulations. The CSR principles in these various provisions refer to the views of Alyson Warhurst, *the Organization for Economic Cooperation and Development* (OECD), ISO 26000, and the Global Compact (GC) which total 14 (fourteen) principles, namely accountability, openness (*disclosure*), transparency, *human capital*, education, training, ethical behavior, non-discriminatory, environmentally friendly, environmentally friendly technology, *Good Corporate Governance* (GCG), sustainability, law-abiding, and Human Rights (HAM).
2. That the basis for requiring companies engaged in and/or related to natural resources to implement CSR is inseparable from its philosophical provisions, namely Article 33 paragraph (3) and (4) of the 1945 Constitution. However, in terms of its implementation, the underlying philosophy is inseparable from the implementation of development based on the principles of economic democracy, especially in relation to the principles of sustainability and the principles of environmental awareness. Both principles emphasize how existing natural resources can be passed on to future generations.



In addition to the philosophical basis, it is also supported by empirical facts that show the existence of various conflicts between companies and the surrounding community as well as environmental damage and impacts due to company activities.

### Suggestion

In connection with the results of the research carried out, several things can be suggested as follows:

1. The government must immediately amend the laws and regulations in the scope of corporate law by including CSR clauses explicitly by synchronizing the relevant provisions. Although substantially the principles of CSR have been accommodated in it, it is still vague, open to multiple interpretations and inconsistent.
2. The government must immediately issue the PP as regulated by Article 74 paragraph (4) of the UUPT and Article 109 of the Minerba Law. The substance of the PP related to Article 74 of the UUPT must at least contain details about the business sector in the sense related to natural resources, the reporting system because it is included as a company cost, the measure of propriety and appropriateness, and the concept of rewards and punishments. While the substance of the PP related to Article 109 of the Minerba Law must explain the meaning of community development and empowerment, what its forms and patterns are, and what *the reward and punishment concepts* are.
3. The government should immediately establish a commission and/or agency related to independent supervision, assessment, evaluation, law enforcement, and development and socialization of CSR. This commission or agency should be directly under the Minister of Finance.
4. For entrepreneurs, they must try to open their eyes and ears to look at and understand CSR comprehensively. Don't see CSR as a cost, but make CSR an investment in an effort to gain competitive advantage *and* in facing global competition by referring to certain standards, such as ISO 9000 for *quality management systems*, ISO 14000 for *environmental management systems*, and OSHA 18000 for *health and safety management*, and ISO 26000 for *corporate social responsibility management*.

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