

CORPORATE GOVERNANCE FOR EMPLOYEE'S WELFARE

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ABSTRACT

The debate about Corporate Social Responsibility (CSR) to stakeholders is a fairly lengthy debate in the repertoire of the development of company law. At least there are two fundamentally different views to interpret the corporate social responsibility. The views, Firstly, cling to the belief that the concept of corporate social responsibility is counterproductive in the business world. According to Milton Friedman, a corporation are naturally only have a goal to generate economic objectives for shareholders. A prominent liberal economics is very pessimistic and tend to oppose any attempt to make the company as a social purpose.

Furthermore, in Capitalism and Freedom (1962) Milton Friedman clearly states that in a free society there is one and only one social responsibility of business that utilize the company's resources and engage in activities that aim to maximize profits. If this goal is achieved by the company, it actually functions, and corporate social goals have been achieved, namely to improve the welfare of society. The doctrine of the social responsibility in business, damage the free market economic system. Acknowledging social responsibility that will lead to an economic system leads to the direction of the economic plans of the Communist Countries. In the writings, published in the New York Times Magazine on September 13th, 1970, with the title: "The Social Responsibility of Business is to Increase Its Profits". This reasoning is supported by Joel Bakan, which teaches that if the company gives some of its profits to the community, the company has violated his nature.

Business sustainability can take place in the long term if the company is able to provide an answer to the needs of stakeholders and give them what they need. Second views, with the increasing importance of the role and position of all stakeholders in the Good Governance management of the company, and surely, the second thought, extremely gave rise to the contradicts of the first view.

The second view was expressly acknowledged the existence of corporate social responsibility towards stakeholders. R. Edward Freeman in, "A Stakeholder Theory of the Modern Corporation," offers an alternative to the theory of Friedman. On the view Freeman, Friedman wrong to assume that the main task is the company's executive moral fiduciary issue to their shareholders and that in fulfilling this obligation they act socially responsible. Freeman takes issue with dissention of opinion and the opinion:

- 1. "That the company's managers have a duty to all groups and individuals who own shares (a stake) in or claim on the company (Freeman refer to groups and individuals as 'stakeholders');*
- 2. That there was no stakeholder groups should be given primacy over the other when the company mediate the competition claims of stakeholders; and*
- 3. That company law should be changed to require executives to manage their enterprise in accordance with the principles of the theory of stakeholders, namely, Freeman stated that the executive should be notified (legal / official) to manage their company in the interests of their stakeholders".*

Regardless of whether the stakeholder management leads to improved financial performance, managers must manage the business for the benefit of all of stakeholders. It looked at the company rather than as a mechanism to improve the financial returns of stockholders, but as a vehicle for coordinating of stakeholders interests and view management as having a fiduciary relationship not only for shareholders, but for all of stakeholders.

According to the normative of stakeholders theory, management must give equal consideration to the interests of all stakeholders, while a conflict of interest, to manage the business so as to achieve the optimum balance between them. This, of course, implies that there will be a time while management is obliged to at least partially sacrificing the interests of the stockholders to those of other stakeholders. In line with this thinking, John Hasnas, stated that "management's fundamental

obligation is not to maximize the firm's financial success, but to Ensure its survival by balancing the conflicting claims of multiple stakeholders."

John Elkington in *Cannibal with Forks: The Triple Bottom Line Twentieth Century Business* (1997) says that if a company wants to remain sustained, then he needs to consider not only the interests of the shareholders (profit), but also must pay attention to the welfare of the people which were in it and around (peoples) and environmental sustainability (planet).

Stakeholder theory states that the basic duty of management is not to maximize the financial success of the company, but to ensure its survival by balancing the conflicting demands of various stakeholders. The Company shall be managed for the benefit of stakeholders, customers, suppliers, owners, employees, and local communities. The rights of these groups must be ensured and, further, the group must participate, in some sense, in decisions that substantially affect their welfare.

Apart from the conceptual debate about the Corporate Social Responsibility (CSR). CSR in Indonesia has been acknowledged. Article 88, Law No. 19 of 2003 on State-Owned Enterprises (SOE Act), firmly establish the SOEs can set aside part of its profits for the purposes of development small businesses, cooperatives and community development around the SOE. Then, Act No. 40 Year 2007 on Limited Liability Companies, Article 74, confirms the existence of Corporate Social Responsibility in Limited Liability company in Indonesia.

In fact, Article 74 is more advanced conceptually by putting social and environmental liability in limited liability company as a social mandatory, not just a moral and ethical responsibility. Article 74 has a power that can be enforced against a limited liability company to implement social and environmental liability.

Shifting the paradigm of the management company which is intended only to the interests of shareholders (profit) in the direction of the management of the company, to consider the interests of all stakeholders, and environmental interests, assessed constitutional by the Constitutional Court on legal considerations in the Constitutional Court Decision 53 / PUU-VI / 2008, is explained, That the Indonesian economy system as set forth in Article 33 of the 1945 Constitution:

1. The economy shall be organized as a common endeavour based upon the principles of the family system.
2. Sectors of production which are important for the country and affect the life of the people shall be controlled by the state.
3. The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people.

That understanding individualistic and liberalism in the economy was not fit, even contrary to economic democracy embraced by the nation of Indonesia. Earth, water and natural resources contained in it not only for the prosperity of the few entrepreneurs who have capital, but rather for the prosperity of the people. The economy as a joint venture, not only between employers and the state, but also collaboration between employers and the community, especially the surrounding community. Genuine concern of employers on their social environment will provide a secure business environment for the surrounding community feel cared by the employer, so it will strengthen the fabric of the relationship between employers and society.

Based on the Decision of the Constitutional Court concluded that the Good Governance management company solely devoted to the interests of shareholders, are not in accordance with democratic principles adopted by the State Indonesian economy. Good Governance Management companies must instead be directed to the welfare of the people of Indonesia. Therefore, companies must be managed with due regard to the interests of all stakeholders, no exception labor / employees of the company. Thus, the management of the company to consider the interests of all stakeholders not only a moral responsibility of the company, but it is mandate in the company law. Oriented company management efforts to improve the welfare of all stakeholders, including workers / employees of the company is the embodiment of company's contribution to the mutual obligations between the government and the business community to improve the welfare of the community.

Implementation of the Good Governance management company, for the benefit of stakeholders, did not specifically aimed at corporate responsibility efforts to improve the welfare of employees. Article 74 of the Limited Liability Company Law does not specifically direct the implementation of corporate social responsibility to the interests of employees. However, it does not mean that the discussion of social regulation of corporate governance efforts directed at improving the welfare of the employees concerned becomes unimportant.

The ambiguity of Article 74 of the Limited Liability Company Law actually cause the position of employees as part of an internal stakeholders or primary stakeholders of the limited liability company grow weary and still received less attention. On 4th April 2012, the Government enacted Government Regulation No. 47 of 2012 on Social and Environmental Responsibility Company Limited. As the implementation of Article 74 of the Limited Liability Company Law, Government Regulation 47 of 2012 is focused on regulating the use of a limited liability company expense budget has been earmarked as the cost of social and environmental responsibility. However, this rule did not set out clear, the allocation of the budget, the amount of the budget and the subject use of the budget. Thus, it would be difficult to expect the implementation of this government regulation to improve the lives and welfare of labor as the company's internal stakeholders.

Therefore, regulation of corporate governance is to realize the efforts to improve the standard of living and welfare of labor is still very necessary. The discussion about the need for legislation that directs the corporate governance management to improve the lives and welfare of labor is still relevant and very important thing to do. At least there are some very basic reason the importance of the

discussion of the need for legislation that directs the corporate governance management to improve the welfare of labor in Indonesia, namely:

First, Corporate Governance (CG) management that gives attention to efforts to improve the lives and welfare of employees / workers / labor is not a concern in the legislation governing the company in Indonesia. Legislation current regulating corporate governance is still dominated by the interests of employers in optimizing capital or capital to develop other businesses in order to generate profits and shareholder value. Although social and environmental responsibility has been used as a mandatory under Article 74 of the Limited Liability Company Law, but its application in the narrow scope led to the implementation of social and environmental responsibility under Article 74 of the Limited Liability Company Law is not very significant in efforts to improve the lives and well-being of the company workforce. Law governing companies, such as Act No. 40 of 2007 on Limited Liability Companies Act No. 19 of 2003 on State Owned Enterprises, Act No. 25 Year 2007 on Investment and Act No. 8 of 1995 on the Capital Market is more focused on efforts to the creation of a conducive business climate as a requirement that the business community in Indonesia can compete to face an increasingly competitive global competition. In other words, the main interest underlying the legislation was the interests of shareholders. Public welfare, including welfare of the workers, do not become a major priority of the legislation.

Where noted, Article 43 paragraph (3) Limited Liability Company Law paves the way for efforts to improve the status and welfare of employees through the issuance of new shares that are specifically intended for employees. Through Article 43 paragraph (3) that, it is possible to elevate the position of the employees become shareholders through the Employee Stock Ownership Plan (ESOP). However Thus, the implementation of Article 43 paragraph (3) is highly dependent on the generosity of its shareholders through the Annual General Meeting (AGM), because after all if General Meeting of Shareholders does not decide that the issuance of new shares is specifically intended for the benefit of employees, the new shares shall first be offered to existing shareholders, or better known as the pre-emptive right.

Basically some aspects of corporate governance related to efforts to improve the welfare of the employees as one of the stakeholders can be the rationale, for example: Protection of interests of employees, in various corporate action such as a merger, consolidation, acquisition, and spin-off companies, bankruptcy and liquidation of the company; efforts to increase the value and dignity of employees through improving the status of workers / employees become owners / shareholders as ESOP (Employee Stock Ownership Plan, Profit Sharing etc), is an effort to increase that bipartite collaboration are mutually beneficial.

Secondly, the setting of corporate social responsibility as stipulated in Article 74 of the Limited Liability Company Law, did not provide a strong emphasis on the use and size of the CSR fund for efforts to improve the lives and welfare of employees as internal stakeholders. Article 74 of the Limited Liability Company Law and its implementing regulations as stipulated in Government Regulation No. 47 of 2012 on Social and Environmental Responsibility Company Limited is only intended to regulate the use of budget CSR General Meeting of Shareholders approved the Work Plan and Budget (CBP). Article 74 and its implementing regulations have not sufficiently regulate the practices of companies devoted to the interests of stakeholders, including workers / employees that are outside the company's CSR program budgeted. Article 74 and its implementing regulations are focused on the use of budget CSR for the benefit of local communities and the environment. The fate of the workers / employees still beyond the reach of Article 74 of the Limited Liability Company Law Jo. Government Regulation no. 47 in 2012.

Thirdly, the accommodation is not enough on Principles of ISO 26000 as the standardization of CSR in the Limited Liability Company Law. For example, about 7 Principles of ISO 26000: ISO 26000 principles namely :

1. "Community development;
2. Consumers;
3. Practice Institution healthy activities;
4. Environment;
5. Employment;
6. The Human Rights;
7. Organization Governance (Government Organization) "

Fourth, the welfare conditions of laborers / workers / employees which still a concern in Indonesia. Labor / Workers / Employees or more popular as workers have extremely significant contribution in supporting the Indonesian economy. Besides as a driver of economic state, workers also became one of the major strengths in building civilization. Labours or workers who drive the economic sectors under which incidentally has a tremendous contribution to the State's economy and to balance the savior even balance the State's economic growth.

Ironically a very major role and importance is not getting an adequate appreciation of the government and the business world. Wages received by workers / employees are not comparable / insufficient to meet real needs. When compared with the speed of the increase in the cost of "running" while wages "going nowhere" no increase or even just suffered a setback. Of the Central Bureau of Statistics as overview in 2006 for simple decent life in Jakarta, someone has to spend between Rp 1.5 million to Rp 2 million per month for the purposes of daily life. Compared then to the local minimum wage in Jakarta which only Rp 950.000, - It is clear that it is impossible worker / laborer can live decently.

Other data illustrate the inequities of life of workers / laborers are presented in the research of AKATIGA. Government efforts to create a conducive investment climate and invite as many foreign and domestic investors to encourage government to implement two basic strategies namely run low wage policy and apply the principles of liberalization, flexible and decentralized in matters of employment. The low wages of workers / labor, used as an attraction to invite investors. Investment Coordinating Board

(BKPM) includes wage / cheap labor in Indonesia, the minimum limit of the highest labor costs in Java (Rp. 1.3344 million, - per month - USD 147 per month) is still lower than the wages of workers in Thailand (USD 240 per month), even if the wages in Java are raised 50%. Labor wages is used as a negotiating tool in the management of the automotive component industry in Indonesia with Trade Unions is the main attraction of Indonesia to invite investors. Further explained that political cheap labor has proven to create life difficult labor because the average value of the minimum wage in Indonesia Rp 892.160, - only afford about 62.4% of real expenditures of workers / laborers.

Fifth, handed efforts to improve the welfare of employees through legislation in the field of employment was inadequate. During this time, the problem is always delivered on labor welfare legislation in the field of employment.. As described above, that the cheap labor led to the welfare of workers / laborers which not feasible. It is proved that the issue of lifting the standard of living and welfare of the workers / laborers can not be left solely to the legislation in the field of employment. Efforts to improve the standard of living and welfare of the workers / laborers need to be supported by the corporate governance management system which can support the improvement of the standard of living and welfare of workers / employees, either in the form of optimal utilization of corporate social responsibility and stewardship corporate governance rules, which can support the improvement of the standard life and welfare of the workers / employees.

Sixth, the limited liability company law can be used as an instrument for efforts to improve the welfare of employees through corporate governance management arrangements that can improve the lives and well-being of employees. Thus, despite the existence of legislation in the field of employment, legislation governing its managed stylist, for example the Limited Liability Company Law, the Law on Enterprises, Investment Law, Capital Market Law and its implementing regulations can be used as an instrument to direct more attention to the behavior of the company interests of stakeholders, including workers / employees. In such a context, the role of the State through the Government as law makers is necessary, so that the problems of workers welfare / employees are not solely left to the market mechanism with the argument of economic liberalization and globalization. In addition to the government party, the Company is a good alternative receptacle to resolve the problem, because the company provides a receptacle mutual benefit to work, learn, gain experience fitting, both in levels: Employee, Self-employed, Employer, and Investor (ESEI).

Under conditions of the wise, the state described as a referee in a football game. He had no right to strike or hold the ball. That needs to be done is for the football game is running smoothly and there is no cheating. Is this value has been realized?, And how it is with the role of the entrepreneur as the manager of the largest natural resource ?. The reality is that entrepreneurs can not immediately meet the standards of stakeholders, so that what is referred to as welfare is commensurate discourse. From the first, issues workers / employees being widely reported, but from the beginning anyway this issues is not resolved, resulting in gaps. To note in common, is that one of the drivers in the business in the last decade of this century in addition to the profitability of an investment in the form of people.

Keywords: Good Corporate Governance Management, Corporate Social Responsibility, Stakeholders, Interdependency.

Introduction

Therefore, ideas about improving the standard of living and welfare of workers / employees through provisions in the limited liability company Good Corporate Governance (GCG) management draft law can be concluded and recommended as follows:

1. Setting the company management (corporate governance) is needed to improve the welfare of workers because it is a mandatory in The Constitution of Indonesia (Indonesian: Undang-Undang Dasar Republik Indonesia 1945, UUD '45) is the basis for the government of the Indonesia.
2. The Preamble to the constitution contained in paragraph (4), especially the phrase "promote the general welfare" and "the intellectual life of the nation", then Article 33 paragraph (1) states: "The economy is structured as a joint venture based on family principles. This is what distinguishes the Indonesian economy from, the capitalist economy and communist economies. Meaning of the phrase "promote the general welfare" includes but is not limited to improving the welfare of workers.

In addition, consideration of the importance of the law that directs the management of the company in an effort to improve the standard of living and welfare of workers is due to labor as stakeholders are entitled to a job and a decent living for the sake of prosperity. In other words, labor welfare is important to note because the welfare of labor laws affecting stability in the company where workers are working. Affect the stability of the law means that an employee, if the well-being of himself and his family is not guaranteed even though he had been working, then the resulting output in the job becomes not good, work is interrupted, the result is also disrupted.

3. The legal provisions firm in Indonesia, Act No. 40 Year 2007 on Limited Liability Company (hereinafter the Private Company Law) does not yet support the company in the direction of improvement of the standard of living and welfare of workers / employees as the Company Law present formulation is similar to the substance in countries that follow the common law system and due to the application of the Company Law was the doctrine of piercing the corporate veil as set

out in Article 3 paragraph (1), which states that: "Shareholders are not personally responsible for the words that are made on behalf of the Company and is not responsible for any losses exceeding the company's shares owned".

In addition to the doctrine of piercing the corporate veil contained in the Private Company Law, there is also the doctrine of fiduciary duty contained in Article 97 paragraph (3), which states that: "Every member of the board of directors personally fully responsible if the person concerned is guilty or negligent carry out their duties in accordance with the provisions referred to in paragraph (2)".

Thus, Private Company Law is not only dominated by the understandings of civil law tradition, but also the doctrines of the western system of law which formulated into it. The mandatory private company law in Indonesia do not support the management of the company in the direction of improvement of the standard of living and welfare of the workers / employees. Also due to Act No. 40 Year 2007 on Limited Liability deal with employers, while Act No. 13 of 2003 on Labour Law addressing labor issues, but should have been the motor of labor welfare exist in the Private Company Law. If the labor welfare listed in the vein of the Private Company Law, the welfare issues will be resolved soon.

Of course, the compensation must be accompanied by incentives or relief from the Government because it is actually through the preamble of the paragraph (4) Jo. Article 33 paragraph (3) of the 1945 Constitution, promote the general welfare is the duty of the state. But, of course, can be delegated to companies which implement CSR programs which concerned with improving the welfare of workers, e.g, the Cooperative enterprise professionally handled by the professionals or implement by professional management.

4. Company Liability, which can direct the management of the company in an effort to improve the lives and welfare of workers / employees was the company liability(private company) that have legal certainty in improving the welfare of its workforce by implementing good corporate governance management to implement Corporate Social Responsibility which can be done to the inside (internal) and to outside (external) companies.

CSR conducted into the inside (internal) company was CSR that aims to create a harmonious relationship between employers and employees by improving the welfare of its own labor. Meanwhile, CSR conducted to outside (external), was company CSR aims to establish a relationship with the surrounding environment in the communities where they operate.

Thus, the company liability which can direct the good corporate governance management in an effort to improve the standard of living and welfare of its workforce was company liability that requires for each limited liability company to apply the principle of good corporate governance management and CSR implemented in internal and external of the company, with regard to the main issues, is the impact of the company's existence.

Improvement on workers welfare in the Private Company Law must meet the stages levels of the basic needs of a human life which is guaranteed by the 1945 Constitution, namely: clothing, food and shelter, which are included in a decent living for workers. In other words, the Private Company Law must increase the welfare of the labor force of a secure job, social secure, and secure income.

Based on the above conclusions, take a few things that should be implemented, namely:

1. To improve the welfare of workers needed Private Company Law, which adheres to the principles of good corporate governance management. Labors welfare is important to be considered because the welfare of labors, affecting stability and sustainability of the company where workers will work all out, having the inner sense of ownership (SoO), and will impact sustainable growth of the company (Profits), the labors (Peoples) job secure, income secure, social secure and the environment (Planet).

The option to improve the welfare of the workforce for the private company law is to implement Good Corporate Governance Management and implementing CSR, in and outside the company.

2. Company should build the Cooperation, managed by professional, and by professional management company, it can be ascertained that the cooperation gain further advantages and will be distributed to each shareholder (worker/labor) as an additional income. Furthermore, all labors have double status, which in the company as worker/labor, and in the cooperation as an owner.
3. Departing from Private Company Law characterized by western law and the legal system does not yet support the company towards the improvement of the standard of living and welfare of labor, it should be associated with the revision of Article 74 paragraph (1) which requires companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility. Instead, Article 74 paragraph (1) that requires the entire company incorporated limited liability company to implement CSR in order to support the government to promote the general welfare.

Furthermore, Article 74 paragraph (2) The Environmental and Social Responsibility contemplated in paragraph (1) constitutes an obligation of the Company which shall be budgeted for and calculated as a cost of the Company performance of which shall be with due attention to decency and fairness.

Should be the budget to implement CSR with funds set aside 2% of each fiscal year's profit of the company made. Such as the Community Development Partnership Program (CSR) which set by the Minister of SOEs RI at 2% of the company's budget for each financial year.

Moreover, Article 74 paragraph (3) which states that: Companies who do not put their obligation into practice as contemplated in paragraph (1) shall be liable to sanctions in accordance with the provisions of legislative regulations.

The provisions of Article 74 paragraph (3) is not clear in what form of sanctions. Preferably, the Private Company Law was revised in particular Article 74 paragraph (3) becomes more certain sanctions. As for companies that do not implement CSR, the sanction imposed on him was an administrative sanction of revocation of their business licenses. Where it is known that permit is a breather for companies to do business. In the absence of the business license, the company can not do business as usual.

Regarding Article 74 paragraph (4) Further provisions regarding Environmental and Social Responsibility shall be stipulated by Government Regulation.

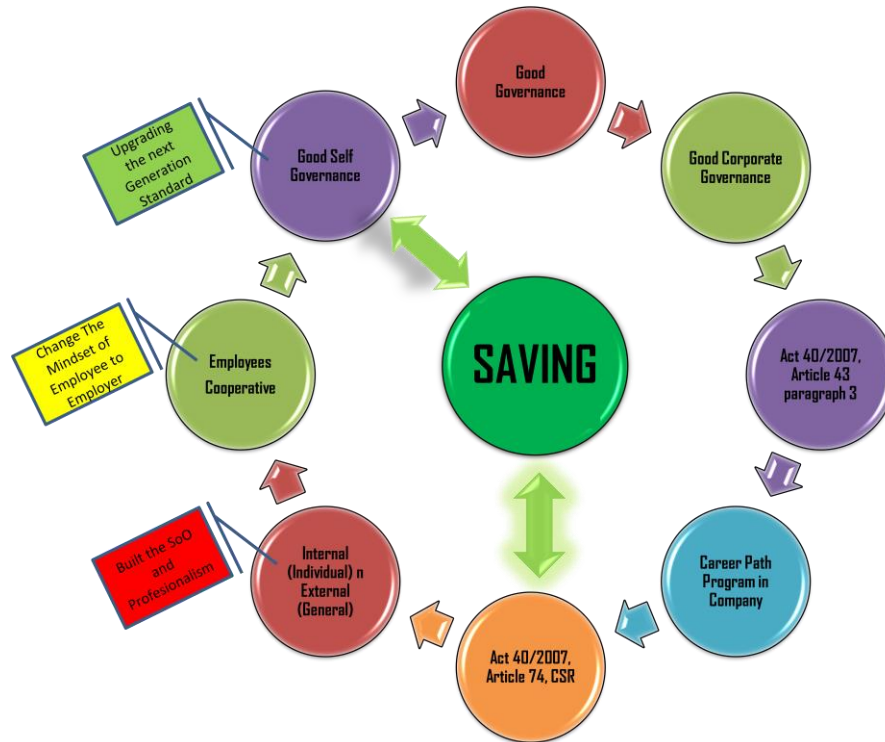
Article 74 In this case, government regulations concerning the order of Article 74 paragraph (4) is the Government Regulation No. 47 of 2012 on the Social and Environmental Liability. Government Regulation (Peraturan Pemerintah) no. 47 year 2012 also does not specify the sanctions, if the company does not implement CSR. This is to say that the Government Regulation no. 47 year 2012, does not have binding legal force, in other words, the penalty does not expressly and clearly stated, Explanation of Article 74, Government Regulation No. 47 In 2012, the mere mention of sanctions for non-application of CSR, the company will be penalized in the form set out in the relevant legislation.

4. Necessary to build CSR Forum under the Minister of Industry, involve the executive boards of the councils of employers, employees, academic experts and government agencies Environment Agency.
5. The Private Company Law, Article 43 paragraph (3) gives hope to the employees to own stock, but the need for the implementation of GCG within career ladder program, so that employees clearly in taking a career ladder to reach the top position when they retire and get a chance to have a right to share in the dedication services company.
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Fig. 1 The Domino Effect of The Employees Welfare



7. Fig.2 The Domino Effect of the GG (Good Governance) – GCG (Good Corporate Governance) – GSG (Good Self Governance)



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