

## CONSTRUCTING CORPORATE SOCIAL RESPONSIBILITY BASE ON FUNCTION SOCIAL PRINCIPLES OF RIGHTS TO CULTIVATE

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### ABSTRACT

*This research aims to review regulation of corporate social responsibility (CSR) which is contrary to the principle of the social function of the right to cultivate (HGU), and give the prescription settings corporate social responsibility oriented plantation business is prospering the people. This research uses normative legal research methods, with approach statute approach, and conceptual approach. Legal materials were analyzed by syllogism of induction, deduction and interpretation. Results of the study is the first, the rules of corporate social responsibility is not coherent with the principle of the social function of the concession because it is still an instrument for profit. Second, the setting of corporate social responsibility should be oriented towards equitable distribution of benefits from the use of land for plantation.*

Keywords: corporate social responsibility, instruments for profit, the principle of the social function, the right to cultivate.

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### A. Introduction

Basically, corporate social responsibility, as the embodiment of the principle of the social function of the right to cultivate, has the objective to achieve equitable distribution of the benefits of using land for plantations, especially for communities around the garden. Basically the responsibility of plantation companies are seeking the involvement of companies' favor and the social welfare of society, without shunning off its advantages and disadvantages economically. Thus, social responsibility plantations company can be formulated in two form namely:<sup>1</sup>

- a. Positive; perform activities that are not based on the calculation of profit and loss, but was based on consideration for the sake of social welfare.
- b. Negative: not conduct activities economically profitable, but socially detrimental to the interests and social welfare.

Based on the opinion of Kusuma Atmadja Asikin in defining principle of the family in Article 33 paragraph (1) of the 1945 Constitution<sup>2</sup>, the CSR is an instrument to control the plantation companies capitalist ideology is often a stimulant conflict plantations. With their CSR obligations for plantation companies can realize the plantation justice and welfare of the people, as well as well as to break the chains of conflict plantations.<sup>3</sup>

Regulation of the Minister of Agriculture No. 98 / Permentan / OT.140 / 9/2013 on Guidelines for Plantation Business Licensing regulate CSR obligations but not associated with the plantation business permit. Stated in Article 43 plantation companies shall undertake Social and Environmental Responsibility appropriate legislation. At this time there is a difference in the theoretical orientation setting CSR obligations between the State Owned Enterprises (SOEs) and Legal Entity (Company Limited) Private.

### B. Concepts and Principles Indicators Social Function leasehold

Based on the second principle of Pancasila, 'just and civilized humanity', then the principle of the social function of land rights intended for humans who carry out his humanity, which carry out essentially as a human being (monopluralis) optimally, namely the realization of the 'whole person'. Under Article 6 BAL and explanation can be found three indicators of the principle of the social function of the concession, namely:

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<sup>1</sup>A. Sony Keraf dan Robert Haryono Imam, *Etika Bisnis*, Pustaka Filsafat, Kanisius, Yogyakarta, 1993, hlm. 97-98.

<sup>2</sup>Asikin Kusuma Atmadja dalam Febrian dkk, *Pembangunan Hukum dan Konflik Undang-Undang Sektoral*, Laporan Penelitian, Fakultas Hukum Universitas Sriwijaya, Palembang, 2009, p. 58.

<sup>3</sup>Imam Koeswahyono, "Penyelesaian Persoalan Tanah Perkebunan Dalam Perspektif *Socio Legal* (Studi Pada Beberapa Perkebunan di Jawa Timur)", *Hukum dan Pembangunan*, Tahun ke 38 No 4 Oktober-Desember 2008, Jakarta : Fakultas Hukum Universitas Indonesia, p. 550-551

1. Compliance utilization / utilization of land by the state and the nature or purpose of the plantation concession.
2. The intensity of utilization / utilization of land for plantation.
3. Orientation utilization / realization of land use compliance balance of interests between the concession holder Plantations, society, and the preservation of the environment (balance production and conservation).

Three obligations or restrictions to the rights holders to cultivate, as an instrument for the government to control the use of land.<sup>4</sup> If the right holder does not meet these obligations, then based on the principle of the social function of the right to cultivate, the government could take over the abandoned land without compensation and distribute it to the public through the agrarian reform (agrarian reform).

#### C. Social Function principle Pembedanan leasehold in setting CSR for the State Plantation Corporation

Setting CSR for SOE contained in Law No. 19 of 2003 on State-Owned Enterprises (SOEs) Jo Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007 on Partnership Program BUMN with Small Business and Community Development Program, has been coherent with the principle of social function HGU, The principle of the social function HGU contain values that plantation management should be able to balance the interests of plantation companies and the interests of society. There are two CSR program for state-owned plantation companies to realize the equitable distribution of the benefits of the plantation business, namely:

- 1) The partnership program is a program to enhance the ability of small businesses to be strong and independent through the use of funds from the profits of SOEs (BUMN).
- 2) Environmental Development Program is a program of empowerment of social conditions of society by the state through the utilization of funds from the profits of SOEs (BUMN).

Setting two corporate social responsibility (CSR) program for state-owned plantation company is congruent with the theory of ethics with the common good approach. This approach maintain that business, as with other social groups or individuals in society, must contribute to the common good, because it is part of society. Thus the business is mediating institutions.<sup>5</sup> The idea of the common good is also very close to the Japanese concept about Kyosei, which is understood as "living and working together for the common good", which together with the principles of the glory of the man, he is one of the basic principles of "The Caux Roundtable Principles for Business" is famous.<sup>6</sup>

According to Mele, that plantation companies should not be harmful to or parasites on society, but it is purely a positive contributor to the welfare of society. Plantation companies to contribute to the general welfare in a different way, such as creating wealth, providing commodities in an efficient manner and fair, at the same time respecting the dignity and human rights and fundamental of the individual. Additionally, contributing to social welfare and way of harmony, living together in a fair condition, peaceful and friendly, both at present and in the future. This is what underlies the obligation Corporate Social Responsibility (CSR) for plantation companies.<sup>7</sup>

Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007, which regulates the obligations of CSR for the company state-owned plantations close to the theory of ethics, in this case the normative stakeholder theory which states that a company is socially responsible requires attention simultaneously to the legitimate interests of all stakeholders (stakeholders) that corresponds to, and is able to balance the manyinterest and not just the interests of the shareholders of the company.<sup>8</sup> Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007, containing the core normative ethical principles, namely the principle of justice is based on six characteristics Rawls of the principle of fair play (fair game): mutual bene fi t (mutual), justice (fairness), cooperation (cooperation), Sacri fi ce Sacri fi ce (sacrifice), free-rider possibility (free from the possibility of stowaways) and voluntary acceptance of the bene fi ts of cooperative schemes (voluntary acceptance of the benefits of cooperation scheme).<sup>9</sup>

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<sup>4</sup>Stig Enemark, *Managing Rights, Restrictions and Responsibilities in Land*, Paper GSDI-11 Word Conference, Rotterdam, 15-19 June 2009, [http://www.fig.net/council/enemark\\_papers/2009/gsd\\_i\\_rotterdam\\_june\\_2009\\_paper.pdf](http://www.fig.net/council/enemark_papers/2009/gsd_i_rotterdam_june_2009_paper.pdf)

<sup>5</sup>T. L. Fort, "The First Man and the Company Man: The Common Good, Transcendence, and Mediating Institutions", *American Business Law Journal* 36(3), 1999, p. 391-435.

<sup>6</sup>Elisabet Garriga dan Domenec Mele, "Corporate Social Responsibility Theories : Mapping the Territoty", *JournalofBusinessEthics* 53, KluwerAcademicPublishers, theNetherlands, 2004, p. 62.

<sup>7</sup>Domenec Mele, *Not only Stakeholder Interests. The Firm Oriented toward the Common Good*, University of Notre Dame Press, Notre Dame, 2002.

<sup>8</sup>Elisabet Garriga dan Domenec Mele, *op.cit.*, p. 60

<sup>9</sup>R. A Phillips, "Stakeholder Theory and a Principle of Fairness", *Business Ethics Quarterly* 7(1), 1997, p. 51-66.

The principle of justice, cooperation, Sacrifice, free-rider possibility and voluntary acceptance of the benefits of cooperative schemes seen in Article 9 of the Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007 stated that funds the partnership program and environmental development program derived from the preliminary profit after maximum tax of 2% (two percent). Furthermore, in Article 11, otherwise funds the partnership program is given in the form:

- 1) Loans to finance working capital or the purchase of fixed assets in order to increase production and sales;
- 2) special loans to finance the funding requirements of business activities Partners that are short-term loans and in order to meet orders from business partners Partners;
- 3) Development Expenses:
  - a) To finance the education, training, apprenticeship, marketing, promotions, and other matters concerning the improvement of productivity Partners as well as for studies / research related to the partnership program;
  - b) Cost of coaching is a grant and a maximum amount of 20% (twenty percent) of the partnership program funds disbursed in the current year;
  - c) Expense guidance can only be provided to or for the benefit Partners.

Whereas the scope of environmental development assistance program SOEs include aid for victims of natural disasters, aid education and /or training, the improvement of health, aid the development of infrastructure and/or public facilities, religious facilities help, support nature conservation.

The principle of mutual benefit, justice, cooperation seen in Article 12 of the Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007, which determines the amount of loan administration services partnership program per year at 6% (six percent) of the loan limit. If the loan / financing is given based on the principle of buying and selling the projected margins generated synchronized with a margin of 6% (six percent). If the loan / financing is given based on the principle of profit sharing ratio for the results to SOE Trustees is ranging from 10% (10: 90) up to a maximum of 50% (50: 50). Furthermore, in Article 30, otherwise Performance Partnership Program is one indicator of the rating of the Trustees of SOEs. This provision is coherent with the views of John Rawls that justice lies in *kepemihakan* proportional to those who are most disadvantaged, but *kepemihakan* should not make others suffer, and also may not create concerned is a parasite.<sup>10</sup>

Thus Act No. 19 of 2003 Jo Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007, which regulates the obligation CSR for plantation companies owned by the State according to the indicators third social function HGU Plantation, namely the use / land-use establishment of the balance of the fulfillment of interests between Plantation concession holder, society.

Act No. 19 of 2003 Jo Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007, which regulates liability for the company's CSR state-owned plantations coherent with the legal theory of Thomas Aquinas because both these regulations rational and reasonable, and is intended for kindness and common prosperity.<sup>11</sup> According to Fuller, the two rules are created to maintain the existence of social life of human action or a group of other men who seek to undermine the existence. So moral, which is part of the natural law, is something that is operational.<sup>12</sup> Law is an ethical method to create and guarantee social relationships. The second law is expressive, which each contain rules aim to realize the values of law.<sup>13</sup>

Act No. 19 of 2003 Jo Regulation of the Minister of State Enterprises No. Per-05 / MBU / 2007 coherent with the view of Jhering<sup>14</sup>, because the two rules do pooling the interests of plantation companies and communities around the gardens for the same purpose, namely the realization of fully human.

#### **D. Principle of Social Function Dysfunction leasehold in setting CSR For Private Companies**

Regulating CSR for private plantation company regulated in Act No. 25 of 2007 on Investment and Act No. 40 Year 2007 regarding Limited Liability Company. Act No. 25 of 2007 states that every investor is obliged to implement corporate social responsibility, called:

1. Creating the safety, health, comfort and welfare of workers.
2. Ensuring environmental sustainability. Investors exploiting natural resources that are not renewable gradually must allocate funds for the recovery location that meets the standards of environmental feasibility.

Elucidation of Article 15 b of Act No. 25 of 2007 states "corporate social responsibility" is a responsibility attached to each fixed capital investment company to create harmonious relations, balanced, and in accordance with the environment, values, norms, and local culture. This provision is close to the unifying theory, which saw the business integrate with social demands. Business

<sup>10</sup>Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, 2010, p. 95.

<sup>11</sup>Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *op.cit.*, p. 61.

<sup>12</sup>Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2012, p. 125.

<sup>13</sup>Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2012, p. 125.

<sup>14</sup>Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *op.cit.*, p. 108-109.

depends on society's existence, continuity and growth. Social demand is generally regarded as the way in which people interact with businesses and provide legitimacy and a certain prestige. As a result, the company's management should consider social demands, and integrating these things in such a way that businesses operate in accordance with social values. Thus, the contents of the business responsibility is limited in space and time in each situation depends on the values that exist in society at the time, and was present through the functional role of the company.<sup>15</sup>

The provisions relating to CSR in the Act No. 40 of 2007 can be found in Article 74 paragraph (1) judges that companies running business in the field and / or related to the natural resources required to implement social and environmental responsibility. According to the elucidation of Article 74 paragraph (1), this provision aims to keep creating harmonious and balanced relationship in accordance with the environment, values, norms, and local culture. This provision refers to the unifying theory.

Social and environmental responsibility in accordance with Article 74 paragraph (2) of Act No. 40 of 2007 is the obligation of the company's budgeted and accounted for as cost of the company's implementation is done with due regard to decency and fairness. Article 74 paragraph (3) determine, for the company that do not carry out their obligation to implement social and environmental responsibility are penalized in accordance with the provisions of the legislation. The explanation of this verse mentions the term "sanction in accordance with the provisions of regulations" are subjected to any form of sanctions provided for in the relevant rules and regulations.

Under the provisions of Article 4 paragraph (1) Governmet Regulation No. 47 of 2012, the company's social responsibility undertaken by the directors of the company based on the annual work plan after approval by the board or the AGM. With such provision, the meaning of Article 4 paragraph (1) is fully devolved whether being socially responsible company is required or not to the company's internal (board or AGM). This article also disarm the power of the state to force the company that does not include the budget of social responsibility the company to the list of cost. Thus, Governmet Regulation No. 47 of 2012 has a meaning that Article 4 paragraph (1) is fully devolved whether the obligations of social responsibility the company is required or whether the internal liability. Thus, in practice if the board or the AGM does not approve of the implementation of the company's social responsibility, because they think there are no sanctions if it does not implement them.<sup>16</sup>

Article 5 Governmet Regulation No. 47 of 2012 specifies that the company's social responsibility in melaksanakan must pay attention to decency and fairness means the company's social responsibility is not done carelessly, but must consider the scale of the company's business and the risks caused by the business. However, this article is supposed to be as the implementing regulations of Act No. 40 of 2007, but does not regulate in detail the limits of decency and fairness. In other words, this provision did not define a standard that can serve as a guide for budgeting fair and reasonable for the implementation of the company's responsibility.<sup>17</sup>

Article 7 Governmet Regulation No. 47 of 2012 sanctions against the company which does not carry the social responsibility of the company, with reference to the legislation in the field of natural resources and related natural resources.<sup>18</sup>

Act No. 40 of 2007 Jo GR No. 47 of 2012 regarding the financing of CSR close to the theoretical instrumental approach to maximizing the shareholder value. The approach is quite well known is the approach that takes a direct contribution to maximizing shareholder value as the supreme criterion for evaluating a specific social activity of the company. Every investment in social demands will result in increased shareholder value have to do, act without cheating and fraud. Conversely, if the social demand only charge the company then it should be rejected.<sup>19</sup> Friedman gives an example of investment in the community as follows. It will be a long-term interest of the company which is a major employer in a small community to devote resources to providing amenities to that community or to increase the government in the area. Which makes the company easier to attract desirable employees, also can reduce the wage bill or lessen losses from theft and sabotage or have other worthwhile effects.<sup>20</sup>

In General Explanation of Government Regulation No. 47 of 2012 declared aim of setting up social responsibility and the environment is to achieve sustainable economic development to improve the quality of life and the environment that are beneficial to the local community and society in general as well as the company itself in the framework of relations of the Company which are harmonious, balanced and in accordance with the environment, values, norms, and local culture. This provision is oriented on the theory of ethics with a sustainable development approach. Brutland Report states that sustainable development seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs.<sup>21</sup> Although the report was initially onlyinclude environmental factors, the concept of sustainable development has since

<sup>15</sup>Elisabet Garriga dan Domenec Mele, *op.cit.*, p. 57-58.

<sup>16</sup>Ridwan Khairandy, *Hukum Perseroan Terbatas*, FH UII Press, Yogyakarta, 2014, p. 508.

<sup>17</sup>*Ibid.*, p. 509-510.

<sup>18</sup>*Ibid.*, p. 510-511.

<sup>19</sup>Elisabet Garriga dan Domenec Mele, *op.cit.*, p. 53.

<sup>20</sup>M. Friedman, "The Social Responsibility of Business is to Increase its Profits", *New York Times Magazine*, September 13th, 1970.

<sup>21</sup>World Commission on Environment and Development, *Our Common Future*, Oxford University Press, Oxford, 1987.

expanded its scope not include the consideration of the social dimension as inseparable from the development.<sup>22</sup> To achieve ecological sustainability requires the accounting firm, which showed a net gain overall, to the triple bottom line / three-line basis which would include economic, social and environmental enterprises.<sup>23</sup>

In contrast to the state-owned plantation company, setting CSR obligations for private plantation company is not coherent with the principle of the social function of the right to cultivate. This is evident from the provisions of Article 74 of Act No. 40 Year 2007 Jo Article 5 of Regulation No. 47 of 2012 which determines the CSR funds calculated as the cost of plantation companies that are carried out with due regard to decency and fairness. Regulation No. 47 of 2012 specifies only the obligation to carry out CSR involves both inside and outside the plantation companies, but do not set it in detail. CSR is not clear arrangement raises the interpretation of ambiguous among private plantation company that they have their own system, known reclassification system in order to meet CSR. Pengkelasannya as follows: class I and II estates shall implement CSR, while estates class III, IV, and V are not mandatory CSR.<sup>24</sup>

#### E. Settings for Plantation Company CSR Principles-Based Social Function of Right to Cultivate

Based on the principle of the social function of the concession, the settings CSR obligations for plantation companies refers to the theories of ethics with the common good approach. For indicator refers to the normative stakeholder theory, in this case Rawls's view of the six characteristics of the principle of fair play (fair game), namely mutual benefit (mutual), justice (fairness), cooperation (cooperation), sacrifice, free-rider possibility (free from the possibility of stowaway) and voluntary acceptance of the benefits of cooperative schemes (voluntary acceptance of the benefits of cooperation scheme).<sup>25</sup>

Based on the principle of the social function of the concession, the settings can adopt CSR Act No. 19 of 2003 on State-Owned Enterprises Minister for State Enterprises Jo Regulation No. Per-05 / MBU / 2007 on SOE Partnership Program with Small Business and Community Development Program.

Based on the principles of justice, cooperation, Sacrifice, free-rider possibility and voluntary acceptance of the benefits of cooperative schemes, the regulation fund partnership programs and environmental development program derived from the preliminary profit after tax of at least 2% (two percent) and a maximum of 25% (twenty-five percent).<sup>26</sup> Fund of partnership program is given in the form:

1. Loans for the construction of the garden;
2. Loans to finance working capital or the purchase of fixed assets in order to increase production and sales;
3. special loans to finance the funding requirements of business activities Partners that are short-term loans and in order to meet orders from business partners Partners;
4. Development Expenses:

While the scope of the aid program for environmental development company include:

1. Health facilities for the community: Building, medical personnel and medicines.
2. The educational facilities for the community: Building and educators.
3. Facilities for public worship.
4. Facilities Roads and bridges for the society.
5. The sports facilities to the public.
6. Facility art and culture to the public.
7. Scholarships for society.
8. Support the company in mutual aid society activities.
9. Support the company in the event of customary/religious communities.

#### F. Conclusions

1. Regulating the corporate social responsibility for private plantation company is not coherent with the principle of the social function of the right to cultivate for funds for corporate social responsibility calculated as the cost of the company.

2. Based on the principle of the social function of the concession, the settings of corporate social responsibility obligations for plantation companies refers to the theories of ethics with the common good approach. For indicator refers to the normative stakeholder theory, in this case Rawls's view of the six characteristics of the principle of fair play (fair game), called mutual benefit (mutual), justice (fairness), cooperation (cooperation), sacrifice, free-rider possibility (free from the possibility of stowaway) and voluntary acceptance of the benefits of cooperative schemes (voluntary acceptance of the benefits of cooperation scheme).

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<sup>22</sup>Elisabet Garriga dan Domenech Mele, *op.cit.*, p. 61.

<sup>23</sup>*Ibid.*, p. 62

<sup>24</sup>Imam Koeswahyono, *op.cit.*, p. 544

<sup>25</sup>R. A Phillips, *loc.cit.*

<sup>26</sup>Amount 25% get from Article 1 paragraph (4), point b PMPA No. 2 Year 1964 about Revision PMPA No. 11/1962.

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