

A Comparison of Corporate Social Responsibility (CSR) Settings in Indonesia and China

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ABSTRACT

This study aims to compare mandatory-based CSR arrangements that apply in two countries, Indonesia and China. Where mandatory based Corporate Social Responsibility arrangements in Indonesia have been regulated through Law No. 40/2007 juncto Government Regulation No. 42/2012, Law No. 25/2007 and Law No. 19/2003 with sectoral laws and delegation regulations using the terms Partnership and Community Development Program (PCDP), Corporate Social Responsibility (CSR) and Corporate Social and Environmental Responsibility (CSER). Meanwhile, mandatory-based Corporate Social Responsibility arrangements in China have been accommodated in The Peoples Republic of China's Company Law of 2005 along with sectoral laws and other Codes of Ethics using the term CSR, which in China is known as "qiye shehui zeren". This study is qualitative by using a legal research method based on a statutory and comparative approach, which is analyzed prescriptively to find the novelty of this paper in the form of similarities and differences in CSR arrangements that apply in Indonesia and China. This study is also expected to enrich the research results and references on the comparison of CSR regulations in countries.

Keywords: Comparison, China, CSR, Indonesia, Settings.

1. INTRODUCTION

Normatively, by using a statutory and comparative approach [1][2] in this article, the author will study the similarities and differences in the regulation of Corporate Social Responsibility (CSR) as mandatory in Indonesia and China as the novelty of this study. There are many publications on CSR in China and CSR in Indonesia, but specifically, there are no articles that discuss the comparison of CSR arrangements in the two countries. Hence, this study is considered attractive to add references for stakeholders, academics, and practitioners, especially business people, to understand CSR regulation as mandatory in both countries.

The regulation of CSR as mandatory in Indonesia has been going on for more than fourteen years, since its enactment in Law No. 25/2007, Law No. 40/2007 juncto Government Regulation No. 47/2012, Law No. 19/2003, and Regulations of Delegation, the Sectoral Law and 117 of Local Regulation in Indonesia. Nowadays, the existence of the regulation of legal obligations is considered ineffective because there are still many weaknesses in the implementation and substance of the regulation. In addition, with the implementation of Corporate Social and Environmental Responsibility

(CSER), there are still many obstacles and are prone to misuse. Based on the research results, in 2014, only about 2853 (26.93%) companies had implemented CSR, out of a total of 10,594 companies in the form of corporate in Indonesia. [3]

Conceptually, the existence of CSR as mandatory in Indonesia is inseparable from the concept of CSR as voluntary, which Western countries have echoed. Based on a single bottom line, namely corporate value, which is realized in its financial condition only, and must consider the concept of "3P" (Planet, Profit and People), known as the Triple Bottom Line.[4][5][6][7] In its development, the concept of Corporate Social Responsibility as mandatory is not only applied in Indonesia but also in China and India.[8][9] Based on the author's research, China is the first country to regulate Corporate Social Responsibility in its corporate law. Then followed by the state of Indonesia to implement the same thing in 2007, Corporate Social Responsibility is mandatory through Law No. 40/2007 concerning Limited Liability Company juncto Government Regulation No. 47 of 2012. [10][11][12][13][14] Then followed by the state of India implementing the same thing in 2013, as stated in

Chapter IX, Article 135, Companies Act 18/2013 and amendment juncto Companies Rules India, 2014. Corporate Social Responsibility setting is mandatory for any company incorporated under Indian law, with a classification based on the Company's net worth. [15][16][17][18][19].

China as a country that implements a legal system that refers to Confucism, Taoism, and Buddhism, [8][9] China has made Corporate Social Responsibility mandatory in China's 2006 Company Law, [8][9] which was amended in 2013 (Company Law of the People's Republic of China - Revised in 2013). The regulation of Corporate Social Responsibility in the China Company Law of 2006 is substantially regulated in Article 5. This means that the State of China has imposed Corporate Social Responsibility legal obligations for companies in the form of Limited Liability Companies, including SOEs. Because at the same time, the China Company Law of 2006 has included the substance of SOEs into the amendments to the Company law.[20][21][22][23] Since the Corporate Social Responsibility provisions were implemented in China, there have been 169 Corporate Social Responsibility cases that Chinese courts decided.[9] What are the similarities and differences in the substance of the regulation of corporate social responsibility in Indonesia and China? It is essential to know that business people in Indonesia and China who are collaborating or investing can understand and anticipate applying the law to both countries.

2. METHOD

The study in this research is qualitative [24], using legal research methods [25] or known as doctrinal research [26][27] with statuta and comparative approach.[28][29] As well as using secondary legal materials that are analyzed prescriptively.[27] Prescriptive analysis was conducted to solve the legal issues contained in the rules of corporate social responsibility that apply in Indonesia and China, as a review process in finding similarities and differences in the rules of corporate social responsibility that apply in Indonesia and China.

3. RESULT AND DISCUSSION

3.1 Regulation of Corporate Social Responsibility in Indonesia.

Currently, the regulation on corporate social responsibility, explicitly under positive Indonesian law, is spread across several laws, using different terms. First, with the term "Partnership and Community Development Program" (PCDP) as a form of CSR for SOEs, it is regulated in Law No. 19/2003 concerning State-Owned Enterprises (SOEs), in particular Article 2 paragraph (1) letter e and Article 88 along with the

delegation regulations, through the Minister of SOEs Regulation PER-09/MBU/07/2015 and amendments. Second, the regulation of CSR for investment companies, as regulated in Article 15, Law No. 25/2007 concerning Investment, using the term "Corporate Social Responsibility" (CSR). Third, the regulation of corporate social responsibility for limited liability companies, using the term "Corporate Social and Environmental Responsibility" (CSER), as stated in Chapter XV Article 74 No. 40/2007 concerning Limited Liability Companies juncto Government Regulation No. 47/2012 concerning Social and Environmental Responsibility - Limited Liability Company. Furthermore, implicitly, the norms governing CSR are also found in several sectoral laws, such as Law No. 41/1999 concerning Forestry, Law No. 22/2001 concerning Oil and Gas, Law No. 7/2004 concerning Water Resources, Law No. 4/2009 concerning Minerals and Coal, Law No. 11/2009 concerning Social Welfare and Law No. 32/2009 concerning Environmental Protection and Management. Furthermore, there are currently more than 117 regional regulations that have regulated CSR at the regional level. [3].

Based on the discussion, CSR substance in Indonesia has become a mandatory legal obligation nationally and even at the local level. Referring to the Partnership and Community Development Program arrangement as a form of Corporate Social Responsibility for SOEs, the arrangement is more emphasized on the coaching program for SOEs fostered partners towards Micro, Small & Medium Enterprises (MSMEs) and the environmental development program for the surrounding each community of which SOEs have standardized implementation and reporting in the SOE's annual report to the government and the public. Meanwhile, CSER in Article 74 of the Company Law, normatively it contains four important points: (1) Corporate Social and Environmental Responsibility is mandatory for companies whose business activities are in the field of and/or related to natural resources; (2). Corporate Social and Environmental Responsibility funding is budgeted as the Company's expense; (3). The amount of funding is based on propriety and fairness; (4). Limited liability companies that do not implement Corporate Social and Environmental Responsibility are subject to sanctions that refer to the sectoral law that regulates them. This also applies to investment companies that are in the form of a limited liability company. Referring to the article, which has been published in several journals [10][12][30], it can be stated that the scope of Corporate Social and Environmental Responsibility is specifically for limited liability company which is limitedly applicable only for limited liability company that carries out business activities in and or related to natural resources, including investment companies. Meanwhile, the scope

of the Partnership and Community Development Program applies to SOEs Trustees. [10][31]

Regarding the Corporate Social and Environmental Responsibility program that the Company must implement, it is not regulated in the Company Law. In principle, Corporate Social and Environmental Responsibility is carried out primarily according to its business activities for the benefit of the community around the Company. The right ideas as a form of Corporate Social and Environmental Responsibility program that corporations can implement in realizing a welfare society. It can be in the form of programs that are oriented towards meeting the community's basic needs in the form of clothing, food, housing, education, and health. As for SOEs, the Partnership and Community Development Program activity programs that can be implemented in practice can be a Partnership Program only or the Community Development Program only, or the Partnership Program and Community Development Program, which are carried out together. In practice in several SOEs, the form of the Partnership and Community Development Program program is to provide soft loans/loans for assisted MSMEs, besides that it can be in the form of assistance for natural disasters and non-natural disasters, including those caused by epidemics, education, training, infrastructure, and educational facilities, improvement of health, development of infrastructure and/or public facilities, facilities of worship, nature conservation, or social assistance for poverty alleviation, including for electrification, provision of clean water facilities, provision of sanitation facilities, home improvement for the poor, nurseries for agriculture, animal husbandry and fisheries, or business equipment. [32]

Furthermore, for Corporate Social and Environmental Responsibility funding arrangements, in Law No. 40 of 2007 juncto Government Regulation No. 47 of 2012, it is determined that Corporate Social and Environmental Responsibility funding comes from the Company's costs, with the amount of Corporate Social and Environmental Responsibility funds based on "Reasonableness and Fairness," the amount of which is left to the Company's policy and does not have a size/standard as well as the amount of the percentage determined in the Corporate Social and Environmental Responsibility funds/budget (Article 74 paragraph (2) juncto Article 5 paragraph (1) and its explanation of Government Regulation. Likewise, in its implementation, it is felt that it has not provided maximum benefits to the community around the Company. It is proven that only 11.68% of companies currently have implemented Corporate Social and Environmental Responsibility.[3] Regarding funding in the SOEs Law juncto Article 8 paragraphs (1) and (4) of the Minister of SOEs Regulation No. PER-03/MBU/12/2016, the norm for the Partnership Program and Community Development Program funding in

SOEs comes from providing a portion of the SOEs net profit and/or the budget, which is calculated as expenses. SOEs, whose Partnership Program and Community Development Program funds are determined at a maximum of 4 (four) % of the projected net profit of the previous year, which is definitively determined at the time of approval of the annual report.[33]

Moreover, the regulation on sanctions if Corporate Social and Environmental Responsibility is not implemented in Article 74 Law No. 40 of 2007 juncto Article 7 of Government Regulation No. 47 of 2012 does not explicitly regulate. According to Article 74 paragraph (3), the sanctions that can be applied refer to the sanctions rules in the related sectoral law. Based on the analysis results, the sanctions, if the Company does not implement Corporate Social and Environmental Responsibility, can be subject to administrative sanctions in the form of revocation of business licenses and compensation. It can also be subject to essential criminal sanctions in the form of imprisonment and fines, as well as additional criminal sanctions in the form of disciplinary actions, including obtained from a criminal act, and/or closure in whole or in part of the Company, and/or repair due to a criminal act, and/or obliged to do what was neglected without rights, and/or eliminate what was neglected without rights, and/or put the Company under curatele a maximum of 3 (three) years.[33]

3.2 Regulation of Corporate Social Responsibility in China

The discussion of CSR arrangements in China will begin with the use of terms in China which use terms as used by western countries, namely Corporate Social Responsibility or "qiye shehui zeren." CSR in China is an enterprise that should be certain responsibilities to its stakeholders in its various business activities to maintain sustainable development in economic, social, and environmental aspects. In other words, apart from earning profit for its owner, a business enterprise shall also integrate concerns of all stakeholders in the business decisions." [34]

The origins of the initial concept of CSR in China occurred during the economic reforms in the late 1980s and early 1990s, which expanded to the influx of foreign investment and "sweatshop" employment practices, which sparked a global consumer movement throughout the mid-1990s.[8] This has impacted global brand holding companies in China who have started implementing labor and environmental audits, even for the first time, using Mandarin to conduct such audits that meet Chinese legal standards. In practice, this certainly exceeds the level of compliance set by law enforcement in China. Over the past decade, CSR in China has emphasized sustainable environmental

sustainability and has included its regulation in the Company Law of China No. 42 of 2005, which was enforced on October 27, 2005. Its revised version is hereby promulgated and shall go into effect as of January 1, 2006. The regulation of CSR is as stated in Article 5, which states: "In its operational activities, a company shall abide by laws and administrative regulations, observe social morals and commercial ethics, persist in honesty and good faith, accept supervision by the government and the public, and assume social responsibility." [37] According to Article 5, corporations in running their business must comply with social morality and business ethics, act in good faith, and carry out social responsibilities. So, the Chinese government's actions to regulate CSR in the company law have increased CSR awareness for companies. This law reconstructs existing norms and changes the social meaning of moral actions into legal actions. The government's efforts to increase global expansion through CSR have increased the interest of leading Chinese and local companies to commit to implementing CSR as an essential part of competitiveness in Western markets. [8]

As a mandatory existence of CSR in China as well as in Indonesia, it is implicitly regulated in other sectoral laws, such as: The PRC's Circular Economy Promotion Law in 2008; The PRC's Law on Work Safety in 2002; Guidelines for the State-Owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities in 2007; Implementation Outline of the Harmonious Development Strategy for the 12th Five-Year Plan to the State-Owned Enterprises Directly under the Central Government in 2011; The Twelfth Five-Year Plan for National Economic and Social Development of the PRC in 2011–2015 Part VI: Green development - Construct Energy Conservation and an Environmentally Friendly Society; Employment Promotion Law of the PRC in 2007; Labor Contract Laws of the PRC in 2007; Social Insurance Law of the PRC in 2010; The 12th Five-Year Plan for the Environmental Health Work of National Environmental Protection in 2011; Main Points of Pollution Prevention and Control Issued by Ministry of Environment Protection of PRC; Guidance to Business Credit Building on the 12th Five-Year Period in 2011; Shanghai Municipal's Local Standards of CSR in 2009; Miscellaneous - CSR Guide to Chinese Industrial Enterprises and Industry Association - second version in 2011. [8] Furthermore, there are also other regulations promulgated by the local stock market authority, namely: the Environmental Information Disclosure Act Regulation (for trial implementation) in May 2008, the guidelines for the Disclosure of Environmental Information for companies listed on the Shanghai Stock Market in May 2008, and the guidelines for social responsibility for companies listed on the Shenzhen Stock Market, 2006. Similarly, the Shanghai and

Shenzhen stock markets have developed guidelines for the annual corporate social responsibility report. Hence, China is committed to implementing CSR by making standards / Codes of Ethics from each major industry such as the China Textile Industry, which has developed CSC9000T, as a sector localization, CSR standards, guidelines, and norms, where the local CSR Standards were developed in Shanghai and Nanjing. The National Standards Committee investigates efforts to enforce the ISO 26000 CSR guide standard nationally, as in Hong Kong. [35]

As the scope of CSR implemented in China, it applies to all companies, including SOEs, in the form of CSR programs that include product safety, environmental protection, labor rights, human rights, community development, corruption, and so on; it also suggests that companies should consider not only the interests of shareholders but also those of other stakeholders (e.g., employees, consumers, suppliers, and local communities). CSR requires companies to provide the number of goods, services, and employment and the quality of life for those whose interests are affected by corporate activities. Simultaneously in China issued regulations on (a) ensuring safety for employees, neighboring communities, consumers, and the environment; (b) promote transparency in management decision processes, in financial and business transactions, and in the allocation of contracts; (c) improve business mechanisms and practices that are conducive to a circular economy; and (d) foster care and consumer awareness, power-sharing and training. [8]

Furthermore, regarding the supervision of CSR implementation in China, it is carried out by the State-Assets Supervision and Administration Commission of State Council, which has issued an Opinion Guide on the Implementation of Social Responsibility by the Central Company, Outlines of the Implementation of the Harmonious Development Strategy by the Central Enterprises for the 12th Five Years Period, and started the study and preparation of the Direction of Management Social Responsibility for Central Enterprises. Hence, the Ministry of Commerce issued a Social Responsibility Directive for the Overseas Contract Engineering Industry to normalize the operations of companies overseas. Similarly, the National Authorization and Oversight Commission released Guidelines for Implementing Social Responsibilities. Furthermore, the Banking Supervision Commission has also issued an Opinion to Strengthen Bank Social Responsibility among Financial Organizations. Even the Ministry of Commerce (MOFCOM), as a CSR policymaker, has prepared further CSR regulations in its conceptual development. Gradually, the government also implemented Corporate Social Responsibility Projects in a global context in stages, such as the Sino–Germany in 2007, the China–Sweden project in 2008. [8]

Regarding the sanctions for companies that do not carry out CSR in China, it has not been explicitly regulated in the 2006 China company law, because on the one hand, there are experts who consider the provisions of CSR as a moral obligation, on the other hand, make CSR a legal obligation, the same as in Indonesia. However, until the end of February 2018, 169 cases related to CSR were decided in the Chinese Court. It was recorded that SOEs were involved in 35 out of 169 cases, representing about 20% of CSR cases in China. In each case, it does not directly refer to CSR violations but is more related to violations of fiduciary duty and piercing the corporate veil, where CSR violations are used as one of the arguments. So that the sanctions applied by judges in cases submitted to Court are in the form of compensation and administrative sanctions, by first being given the opportunity for mediation before further processing in the Court. [9]

4. CONCLUSION

In principle, the regulation of CSR as mandatory in Indonesia and China has similarities with the regulation of CSR provisions in the company laws of each country. Where CSR is compliance that must be an obligation for every Company. However, normatively it tends to be that the CSR arrangements imposed by the two countries have some differences, especially regarding the scope, form of the program being carried out, as well as the form of supervision and sanctions that are applied if there is a violation in the implementation of CSR in practice.

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