

THE EXISTENCE OF REGIONAL REGULATION DEALING WITH SOCIAL RESPONSIBILITY BASED ON THE ESTABLISHMENT OF REGULATION

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ABSTRACT

The application of corporate social responsibility is becoming increasingly important, where social responsibility is the company commitment or the business world to contribute the sustainable economic development by paying attention to corporate social responsibility and emphasizing the balance between attention to economic, social, and environmental aspects. However, there is a problem in its application. One of them is a legal instrument or form of legislation that is used related to the regulation of corporate social responsibility. Where, in many areas set in the form of regional regulations. This will then be seen in this paper how the enactment of regional regulations on social responsibility is seen from the principle of establishing good legislation. Based on a review of regional regulation on social responsibility, it is found that the issued of regional regulation dealing with corporate social responsibility violates the principle of establishing laws and regulation, namely the principle of conformity between types and material content. Based on Article 74 paragraph (4) of Law Number 40 Year 2007 dealing with Limited Liability Companies, the regulation on corporate social and environmental responsibility is regulated by Government Regulation, not by regional regulation.

I. Introduction

The implementation of Corporate Social Responsibility (CSR) in companies has become increasingly important with the emergence of the concept of sustainable development formulated by The World Commission on Environment and Development, so that the concept of CSR has also been adjusted and developed within a framework of sustainable development. This is reflected in the definition of TSP given by The Organization for Economic Cooperation and Development (OECD) as: "business's contribution to sustainable development and that corporate behavior must not only ensure returns to shareholders, wages to employers, and products and services to consumers, but they respond to societal and environmental concerns and values". CSR is the commitment of the company or business world to contribute to the development of a

sustainable economy by paying attention to corporate social responsibility and focuses on the balance between attention to economic, social, and environmental aspects.

Even in Indonesia many local regulations have emerged about corporate social responsibility, including Regional Regulation of Tulungagung Regency Number 5 of 2012 dealing with Corporate Social Responsibility, Regional Regulation of Bogor Number 6 of 2016 dealing with Corporate Social and Environmental Responsibility, Regional Regulation of Tabanan Regency Number 6 of 2017 dealing with Corporate Social Responsibility, Regional Regulation of Toba Samosir District Number 7 of 2017 dealing with Corporate Social and Environmental Responsibility, Regional Regulation of Buleleng Regency Number 7 of 2017 dealing with Corporate Social and Environmental Responsibility, Regional Regulation of Magelang City Number 11 of 2017 dealing with Corporate Social Responsibility, and so on.

Seeing this phenomenon, it is necessary to see how the existence of local regulations on corporate social responsibility when viewed from the principles of good legislation.

II. Discussion

2.1 The Principles of Good Regulation

Regarding the principles of good regulation has been submitted by several experts, including the following:

1. Van der Vlies divides principles in the formation of appropriate regulations into formal principles and material principles. Where this division is intended to simply clarify the understanding and does not have its own special meaning. The formal principles include: 1) the principle of clear objectives (*beginsel van duidenlijk doelstelling*); 2) the principle of the right organ / institution (*beginsel van het juiste organ*); 3) the principle of the need for regulation (*het noodzakelijkeheids beginsel*); 4) the principle can be implemented (*het beginsel van uitvoerbaar heids beginsel*), and 5) the principle of consensus (*het beginsel van consensus*). Whereas the material principles include: 1) the principles of correct terminology and systematics (*het beginsel van duidelijk terminologie an duiden delijke systematiek*); 2) the principle of equal treatment in law (*het recht gelijke heids beginsel*); 3) the principle of legal certainty (*het recht zeker heids beginsel*); and 4) the principle of implementing the law in accordance with individual circumstances (*het beginsel van de individuele bedeling*).
2. Lon L. Fuller states that in order to achieve legislation objectives, in forming legislation must pay attention to the principles of legality, namely:
 - a. It cannot contain merely ad hoc decisions;
 - b. Regulations that have been made must be announced;
 - c. There must be no retroactive rules;
 - d. The rules must be arranged in an understandable formulation;
 - e. A system must not contain rules that conflict with one another;
 - f. Rules cannot contain demands that exceed what can be done;
 - g. There should not be a habit of changing rules frequently so that someone will lose orientation;

- h. There must be a match between the regulations that are promulgated and their daily implementation;
3. Purnadi Purbacaraka and Soerjono Soekanto introduce the following principles of legislation:
 - a. The law is not retroactive (non retro active);
 - b. The law made by a higher authority has a higher position (lex superior derogate lex inferior);
 - c. Specific laws override general (lex specialis derogat lex generali) laws;
 - d. The latter law invalidates the previous law (lex posteriori derogat lex priori);
 - e. The law cannot be contested; and
 - f. The law as a means to the maximum extent possible to achieve spiritual and material welfare for the community or individuals, through renewal or preservation (the principle of welvaarstaat).
4. Hamid S. Attamimi, in his dissertation formulated principles specifically for Indonesian law. These principles include:
 - a. Formal principles, with details: 1) Clear objectives; 2) The principle of the need for regulation; 3) Appropriate organ / institution principle; 4) Principles of proper loading material; 5) The principle can be implemented; and 6) Principles can be recognized.
 - b. Material principles, with details: 1) Principles are in accordance with Indonesian legal ideals and the country's fundamental norms; 2) Principle in accordance with the basic laws of the country; 3) The principle is in accordance with the principles of the state based on law; and 4) The principle is in accordance with the principles of government based on the constitutional system.

In addition to the principles of establishing good laws and regulations as stated by several experts above, in Article 5 of Law Number 12 of 2011 dealing with Formation of Laws and Regulations, the principles of establishing legislation are also regulated consisting of: clarity of objectives, appropriate institutional or forming organs, compatibility between types and material content, workability, usefulness and usefulness, clarity of formulation, and openness. The principle of forming these laws and regulations can be categorized as a formal principle because it is related to the process of forming laws and regulations. In addition, Article 6 of Law Number 12 Year 2011 dealing with Formation of Regulations and Regulations also regulates the material content of a statutory regulation or material principle, consisting of: shelter, humanity, nationality, family, kinship, monarchy. Ika, justice, equality in law and government, order and legal certainty, and balance, harmony, and harmony.

The explanation of each of the principles of legislation both the principle of establishing the laws and regulations in Article 5 and the material principles of the contents of the legislation in Article 6 are as follows:

1. The principle of establishing legislation:
 - a. What is meant by "the principle of clarity of purpose" is that each Formation of Legislation must have a clear purpose to be achieved.
 - b. What is meant by "the right institutional principle or forming official" is that each type of statutory regulation must be made by a state agency or an official legislator forming the law. These laws and regulations can be

canceled or null and void if they are made by unauthorized state institutions or officials.

- c. What is meant by "the principle of conformity between types, hierarchy, and material content" is that in the Formation of Regulations and Regulations must really pay attention to the appropriate content material in accordance with the type and hierarchy of the Regulations.
- d. What is meant by "principle can be implemented" is that each Formation of Regulations and Regulations must take into account the effectiveness of these Regulations in the community, both philosophically, sociologically, and juridically.
- e. What is meant by "the principle of usefulness and usefulness" is that each of the Laws and Regulations are made because they are truly needed and useful in regulating the life of society, nation and state.
- f. What is meant by "the principle of clarity of formulation" is that each statutory regulation must meet the technical requirements for the drafting of legislation, systematic, choice of words or terms, as well as clear and easy-to-understand legal language so that it does not cause various interpretations in its implementation.
- g. What is meant by "the principle of openness" is that in the Formation of Legislation starting from planning, drafting, discussion, ratification or stipulation, and legislation is transparent and open. Thus, all levels of society have the broadest opportunity to provide input in the formation of legislation.

2. The Principle of Material of Regulations

- a. Letter a What is meant by the "principle of protection" is that every Material of Regulatory Content must function to provide protection to create public peace.
- b. What is meant by "the principle of humanity" is that each Material of Regulatory Content must reflect the protection and respect for human rights and the dignity and dignity of each Indonesian citizen and population in a proportional manner.
- c. What is meant by "nationality principle" is that each Material of the Content of the Regulations must reflect the diverse nature and character of the Indonesian people while maintaining the principles of the Unitary State of the Republic of Indonesia.
- d. What is meant by "the principle of kinship" is that each Material of Regulatory Content must reflect deliberation to reach consensus in every decision making.
- e. What is meant by "the principle of literacy" is that each Material of Regulatory Content is always paying attention to the interests of the entire territory of Indonesia and Content of Regulatory Content made in the regions is part of the national legal system based on the Pancasila and the 1945 Constitution of the Republic of Indonesia .
- f. What is meant by "the principle of unity in diversity" is that the content of laws and regulations must pay attention to the diversity of the population, religion, ethnicity and class, special conditions of the region and culture in the life of society, nation and state.
- g. What is meant by the "principle of justice" is that every Material of Regulatory Content must reflect proportionally justice for every citizen.

- h. What is meant by "the principle of equality in law and government" is that each Material of Regulatory Content may not contain things that are differentiating based on background, among others, religion, ethnicity, race, class, gender, or social status.
- i. What is meant by "the principle of order and legal certainty" is that every Material of Regulatory Content must be able to realize order in society through guaranteed legal certainty.
- j. What is meant by "the principle of balance, harmony and harmony" is that every Material of Regulatory Content must reflect the balance, harmony and harmony between the interests of individuals, society and the interests of the nation and state.

According to Yuliandri, the principles of the formation of good laws and regulations are legal principles that provide guidelines for pouring the contents of the regulations into the appropriate form and structure, in the proper use of the method, and following the established process and procedure of formation. This means that in the process of forming laws and regulations it must meet the principles of the formation of formal laws and the principles of the formation of material laws and regulations.

2.2 Regional Regulation on Corporate Social Responsibility in Terms of the Formation of Laws and Regulations

If examined based on formal principles of laws and regulations in Article 5 of Law Number 12 of 2011 dealing with Formation of Laws and Regulations, the regulation of corporate social responsibility in the form of regional regulations violates or does not reflect the principle of conformity between types and material content and institutional principles or appropriate forming organs.

The application of the principle of conformity between the types and material content of a statutory regulation can be seen from the material content of the statutory regulations. To see its application in regional regulations, surely the contents of regional regulations must be seen based on the provisions of Article 14 of Law Number 12 of 2011 dealing with Formation of Regulations. In this article it is regulated that the content of regency / city regency content contains: a. Material content in the context of carrying out regional autonomy and co-administration tasks; b. Material content to accommodate the special conditions of the area; and / or c. further elaboration of higher legislation.

The content of regional regulations in the context of carrying out regional autonomy and co-administration tasks comes from the division of functions in Law Number 23 of 2014 concerning Regional Government. Where based on the division of functions, the regional government obtains concurrent functions consisting of mandatory functions related to basic services, mandatory functions that are not related to basic services, and optional affairs. Based on the division of functions, related to the regulation of corporate social responsibility is not given to the regional government as a matter of regional government affairs. Thus, in terms of implementing regional autonomy and co-administration tasks, corporate social responsibility is not the subject of regional regulations.

Relating to the content material in order to accommodate the special conditions of the region, it means that the regional regulation as a regulation

that abstracts the values of the people in the area that contains the material content of the values identified as regional special conditions. In this case, Corporate Social Responsibility is not a specific regional condition, but is a national policy that has been regulated in various laws and regulations.

Related to the content of regional regulations as a further elaboration of the higher statutory regulations, it is necessary to look at the higher statutory regulations governing corporate social responsibility. Corporate social responsibility is actually regulated in Law Number 40 of 2007 dealing with Limited Liability Companies. Article 1 number 3 of Law Number 40 Year 2007 dealing with Limited Liability Companies states 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 that is beneficial, both for the Company itself, the local community, and society in general.

Further arrangements regarding social responsibility are regulated in Chapter V Social and Environmental Responsibility Article 74 which contains the following:

- (1) The Company which carries out its business activities in the field and / or related to natural resources must carry out Social and Environmental Responsibility.
- (2) Social and Environmental Responsibilities as referred to in paragraph (1) are the Company's obligations that are budgeted and calculated as the Company's costs, the implementation of which is carried out with due regard to propriety and fairness.
- (3) Companies that do not carry out the obligations as referred to in paragraph (1) will be subject to sanctions in accordance with the provisions of the legislation.
- (4) Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulation.

If the provisions concerning social responsibility are observed and assessed with the content of regional regulations as a further elaboration of the higher legislation, it must be seen whether Law Number 40 of 2007 dealing with Limited Liability provides further elaboration instructions on social responsibility in the form of regional regulations or not.

Based on the provisions of Article 74 paragraph (4) of Law Number 40 Year 2007 dealing with Limited Liability Companies, it is clearly stated that "Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulation". So as such, further elaboration on corporate social responsibility is in the form of government regulations not by regional regulations.

In addition to not reflecting the principle of conformity between types and material content, the Regional Regulation on Corporate Social and Environmental Responsibility also does not reflect the appropriate institutional principles or forming organs. This is because based on the provisions of Article 74 paragraph (4) of Law Number 40 Year 2007 dealing with Limited Liability Companies clearly stated that "Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulation". So that the appropriate institution or organ to form legislation related to corporate social responsibility is the government not the regional head together with the Regional House of Representatives.

2.3. Regional Regulation of Corporate Social Responsibility in Terms of Material Content of Regulations and Regulations

If examined based on the formal principles of the laws and regulations regulated in Article 5 of Law Number 12 of 2011 concerning Formation of Laws and Regulations, the regulation of corporate social responsibility in the form of regional regulations violates or does not reflect the principles of nationalism and order and legal certainty.

The principle of archipelago means that every material content of the Legislation is always concerned with the interests of the entire territory of Indonesia and the Material of the Legislative Regulations made in the regions is part of the national legal system based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. others that the content of local regulations must not conflict with the laws and regulations that are hierarchically above it.

If the Regency Regulations regarding Corporate Social and Environmental Responsibility do not reflect the principle of the archipelago because it is contrary to national level regulations, namely Law Number 40 of 2007 dealing with Limited Liability Companies. One conflicting provision is related to companies that are subject to corporate social and environmental responsibility. Based on the provisions of Article 74 paragraph (1) of Law Number 40 of 2007 dealing with Limited Liability Companies in conjunction with Article 3 paragraph (1) of Government Regulation Number 47 of 2012 dealing with Social and Environmental Responsibility of Limited Liability Companies that "the Company which carries out its business activities in the field and / or relating to natural resources are required to carry out social and environmental responsibility". In other words, that which is subject to social responsibility is a company whose business activities are in the field of natural resources and / or related to natural resources.

Whereas in the Regional Regulation on Corporate Social Responsibility it is not regulated that what is imposed by corporate social and environmental responsibility is a company engaged in the field of natural resources and / or related to natural resources. In addition, the regional regulation also does not state with certainty that what is imposed with social responsibility is limited liability companies but companies, so that all companies in the form of limited liability companies or not are also subject to corporate social and environmental responsibility.

Due to the Regional Regulation on Corporate Social and Environmental Responsibility, the material is contrary to the laws and regulations above, of course, it is automatically not in accordance with the principle of the archipelago, in essence, that all laws and regulations that are formed are part of the national legal system.

The next principle that is not reflected in the Regional Regulation on Corporate Social Responsibility is the principle of order and legal certainty. This principle means that the material content of each statutory regulation must be able to realize order in society through guaranteed legal certainty.

Regulations regarding corporate social and environmental responsibility create legal uncertainty. This is due to the existence of several laws and regulations governing corporate social and environmental responsibility. The community or in this case companies in the area become

confused with which laws and regulations will be implemented in relation to corporate social responsibility. Do implement the provisions in the law with the implementing regulations or follow local regulations.

These things certainly will not reflect order, especially the law order. Where those who often violate the law or do not comply with the existing laws and regulations are actually the makers of the laws and regulations themselves.

III. Conclusion

Corporate social responsibility is indeed mandatory for companies related to the environment and natural resources and these obligations must be implemented properly. However, in its application there are errors including the use of legal instruments or regulations that are not appropriate. What often happens, where the regions set a Regional Regulation on Corporate Social Responsibility.

This is certainly contrary to the principles of good legislation, such as the principle of conformity between types and material content, the principle of literacy, and the principle of order and legal certainty. Where, the principle of conformity between types and material content is violated because the material on corporate social responsibility should be governed by government regulations rather than by regional regulations. In addition, regional regulations on corporate social responsibility violate the principle of archipelago, because these local regulations contradict higher laws and regulations. So that the potential does not result in order and legal certainty as the function of the legislation should be.

In the future, regional governments are expected to be more careful in carrying out their duties and functions, especially related to the formation of regional regulations. In order not to stipulate regional regulations that do not constitute the authority or material content of a regional regulation. So that there are no more local regulations that conflict with higher laws and regulations.

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