

Implementation of Corporate Social Responsibility by a Public Legal Entity (A research on BPJS Employment Banda Aceh)

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Abstract: Currently in Indonesia, Corporate Social Responsibility (CSR) is not only done by the company, but also by a public legal entity. A little more unique because it is essentially only a company that was originally required by the State to carry out this activity. This method of research is juridical-empirical. Based on ISO 26000, BPJS Employment is one of the public legal entities in Indonesia and has been ratified the provisions on CSR obligations for all business entities and include them in the legislation and various irregular Including the Government regulation number 99 year 2013 on the management of employment social security assets, in particular article 64 letter b. Ideally, in understanding the context of the CSR cannot be confused with "charity", there must be a special source of funding and Certainly must be clear. However, it is different from the BPJS employment Branch Banda Aceh where the allocation of funds is sourced from employees, not from Surplus received. The allowance of this fund certainly leads to personal Sympathy, not on the basis of CSR obligations. The consequences received are socially and legally, such activities cannot be referred to as "obligations " on the company's legal basis but rather to the "humanitarian" side and more appropriately called "volunteering ".

Keywords: CSR, Public Legal Entity,ISO 26000

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I. INTRODUCTION

The company's existence is ideally beneficial to the surrounding community, so it is expected the implementation of CSR in addition to empowering local people, also as an effort to keep operational in the company running smoothly without interruption. CSR is a commitment of the company or business world to contribute to the development of sustainable economies by observing and focusing on the balance of attention to economic, social, environmental aspects (Suhandari M. Putri, 2008 :1)

The emergence of CSR obligations in Law No. 40 year 2007 About Limited Company raises various polemic, especially for business in Indonesia. The CSR is voluntarily enforced (voluntary) in American and European countries, apparently in Indonesia its implementation is mandatory in accordance with statutory regulations. This led to various circles interested in raising this topic into research objects.

ISO 26000, which is the international CSR implementation guideline, defines CSR as: *“Responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to sustainable development, health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization and practiced in its relationships”* (ISO 26000: 2010 (Guidance on Social Responsibility)).

It should be understood that the establishment of ISO 26000 was initiated when in June 2004 held pre-Conference and Conference for Developing countries, subsequently in the year 2004 of October, New York Item Proposal or NWIP distributed to the entire country Member, then voting in January 2005, of which 29 states agreed, while 4 countries did not. In this case, there are developments in the arrangement, from CSR or Corporate Social Responsibility to SR or Social Responsibility only. This change, according to the shadow committee from Indonesia, is because the ISO 26000 guidelines are intended not only for corporations but for all forms of organizations, both private and public.

It is considered in line with the purpose and function of Indonesian State which is not another according to Barda Nawawi Arief is to social defence and to social welfare, where only “Pancasila” which is the philosophy of the nation, and a tool to be able to achieve a goal because in It contains lofty values that are upheld by the Indonesian nation as a view of life and philosophy of the nation (Putusan Mahkamah Konstitusi No.53/PUU-VI/2008, 2008 :92).

As the development progresses, CSR is no longer only run by legal entities that rely on its business vision on profit, but also run by nonprofit community organisations, including Non-Governmental Organizations (NGOS). The form of activities is not derived from the allocation of funds that they have but in the form of cooperation partnership with other companies and is usually made in the form of an agreement called a Memorandum of Understanding (MoU), with Provisions of the company have a CSR fund allocation. What they do can be mentoring, training, and other activities by partnering with companies who have both agreed in carrying out such partnerships in the form of CSR (Tim Teknis Pengembangan Sanitasi, 2010:11).

The concept of CSR proved to be different interpretation, depending on the formulation in each legislation. Legal practitioners generally recommend that the concept of CSR in any legal rule can be synced, because of the confusion of the CSR properties that can be interpreted as "mandatory", "voluntarily", or "limitative mandatory" (Riana Susmayanti, 2014:303-471). This has an impact on the emergence of legal dualism that must be construed explicitly (textual) or implied (contextual).

Based on the background that has been explained above, there is a problem that the writes want to be researched is whether the CSR on public legal entities (BPJS employment) is a legal obligation or moral obligation in Indonesia?

Related to the search results of various literature and research related to this title, there are some studies that have been done by other authors, but only limited to certain subject matter, especially Companies in the form of Persero. While the problem in this research has not been answered by previous researchers anywhere in the object of public legal entity studies, among them is "legal analysis of the Corporate Social Responsibility (CSR) arrangement in law Number 40 year 2007 about the limited liability company", with problems related to the concept of CSR in the company's business ethics, the role of the company, the community, and the government as a tripartite partnership in its implementation and CSR arrangements in the law Number 40 year 2007 about limited liability company. (Ika Safithri, 2008:14), in year 2013, Arini Dian Purwaningtyas research thesis with the title "Implementation of Corporate Social Responsibility PT. Sari Husada Yogyakarta in obtaining green PROPER". The thesis examines the problem of CSR implementation in the company is associated with the company performance Rating Program (PROPER). (Arini Dian Purwaningtyas, 2013:9), year 2017, M Syahri Ramadhan S conducting research under the title "Legal analysis of the position of Corporate Social Responsibility (CSR) funds relating to the property of limited liability company". The problems researched are about the position of the CSR funds that are being redefined and the legal sanction and can the community have rights to the CSR funds. (M Syahri Ramadhan S, 2017:9).

In this study the method used was the Yuridist empirical research method. This research uses the type of empirical research. Empirical legal research is a positive legal research regarding the behavior of community members in community living relationships. (Asri Wijayanti, 2011 :97)

II. LITERATURE REVIEW

Legal entity is a legal subject that manifestations not look like a human being, but has the right and obligation and can do legal acts such as natural person. The simple division of the legal entity, expressed by Chidir Ali (Chidir Ali, 1999 : 18), which divides the legal entity into two sections according to the Law Group is public Law and private Law Group, which can be explained as follows:

1. Public Legal Entity
2. Private Legal Entity

Public law is a legal entity established by the ruler (state) and has public authority. This opinion is based on the provisions of article 1653 of the civil law stating that the legal entity must be established by law. While the private/civil legal entity is a legal entity established on the will of the individual. Public legal entities are possible to establish civil legal entities such as foundations, limited liability company and others.

BPJS employment is a Non-structural institution (abbreviated LNS) that is established through certain legislation to support the implementation of State and government functions, which can involve the elements of Government, and civil society, and is financed by the State budget. According to Dr. Drs. Chazali H. Situmorang, Apt, M.Sc., BPJS employment belongs to the category of LNS because it meets the following criteria: (Tim Penyusun Buku Saku, 2014)

1. Formed under the Law of BPJS Act;
2. Perform specific/specific tasks that are mandated specifically by the State that is conducting social security programs in the field of employment;
3. Is independent, liable to the President; and
4. Using the budget fund.

BPJS Employment in organizing social security programs in connection with other public legal entities (Ministries/institutions). The working relationship is partnership, coordination, consultative, Synergy, and joint working. Therefore, there is no ministry/institution that can control, regulate, and intervene BPJS employment, unless there is a special assignment from the president. In Law No. 24 of year 2011 on Social Security

Administering Agency (BPJS), in the general provisions of paragraph 6, mentioning "social Jaminana organizer Agency is a legal entity established to hold Social Security program". The formulation of a public legal entity is explicitly in Act No. 40 year 2004 about the National Social Security System (SJSN) in article 7 (1) "BPJS as intended in article 5 is a public legal entity under this Act. (2) BPJS as intended in paragraph (1) shall be liable to the President".

Although it changed the status of its legal entity from a limited liability company to a public legal entity and has its own laws regarding its regulation, BPJS manpower remains committed to organizing the CSR Program based on Government number 99 year 2013 on employment Social Security Assets management, and internationally according to ISO 26000. In article 64 letter b Government regulation number 99 year 2013 mentions all forms of activities related to liabilities and assets must be implemented in accordance with the provisions of legislation in the form of benefits of additional services for Participants and in the form of CSR at the latest until June 30, 2015 whose funding is allocated completely from the surplus of BPJS employment. In further provisions also stated CSR implemented by BPJS employment should be aligned with the function of the agency at the longest 1 July 2015.

Equating the charity action with CSR is also now widely done, both by the company and the mass media, including that done by BPJS Employment Branch Banda Aceh. In fact, that the majority of companies are doing The only of these is the only means of helping others to reduce their suffering. There is nothing wrong with the noble act, but equation to CSR is certainly wrong. The generic name for the action of helping a fellow man is philanthropy, which is often also done by the company. In more advanced conditions, namely the consideration of optimum usability and the greatest impact on the company's reputation of the Giver, the philanthropy action was named strategic philanthropy. Looking at its history, many corporate social action starts from philanthropy, then becomes a strategic philanthropy, just then CSR.

Of course, there are many other branches that do not follow the plot. To be affirmed is that the carciñoaction is a form of "primitive" of the corporate social action which until now is still important — and will continue to be important — to do, but is now deemed to be no longer sufficient.

Is that the concept of responsibility is a concept that can actually be implemented voluntarily? It seems to assert that the obligation is voluntary is "contradictio in Terminis" or both are conflicting terms. The "right", responsibility is mandatory. However, it should be acknowledged that among the strongholds that the CSR was mandatory or voluntari, it is now more inclined to the victory of the Voluntari fortress. One reason is that companies do want such conditions.

III. CORPORATE SOCIAL RESPONSIBILITY ; LAW OR MORAL

The difference between social responsibility is an obligation in Indonesia and social responsibility as a voluntary deed in other countries, indicating that the company's legal awareness in Indonesia, should be encouraged by Company's legal devices that enable the company to grow rapidly, hence the function of Indonesia's state as a welfare state, the role of state and government or society, including through the company's deed As a basic document of the company. (Bachsan Mustafa, 2016 :33)

1. CSR is a law.

This view is essentially born from pressure from various parties to the business world. There are at least two reasons that concern many parties towards business activities (Isa Wahyudi, 117).

First, the growing multinational companies can even defeat the power of the country. There is a fact that the wealth of 200 big companies in the world is far greater than the wealth of 182 countries, so it should be a company as the dominant institution, in every decision should be seen in the framework of responsibility for the benefit of Social. So no one feels at the disadvantage of the attitudes and decisions taken by the company.

Secondly, that the earth is getting old and outdated, its supporting power is decreasing, if it continues to be exploited without regard to its sustainability, it will inflict harm to mankind. Therefore, it takes regulation to lead the company's behavior in acting and act based on ethics and morality so that it is able to realize the concept of sustainable development. Both reasons have strengthened many parties that CSR is one of the solutions in the effort to succeed sustainable development. Therefore, the CSR paradigm must be changed from voluntary to a mandatory legal obligation. This paradigm change also as a form of corporate responsibility for the impact of the business activities that they do during this time.

2. CSR is a moral

Corporate social responsibility is voluntary, this view is at least based on four reasons:

- a. The company's goal to seek profit : The company was established by shareholders to seek profit. Providing obligations to corporations to implement CSR is deemed contrary to the main objectives of the corporation.

- b. CSR is a Moral obligation in business ethics : CSR concept is derivated from the concept of business ethics. Business ethics talks about corporate ethical behaviors in operating that are measured through moral aspects, i.e. good or bad aspects. An ethical act requires the conscious, freedom, and willingness choices to take and determine an action. It is a Code of Conduct, which is the obligation that must be self imposed obligation, and not part of the legislation on corporate governance. Based on this this view considers CSR's activities to be voluntary.
- c. CSR implementation contrary to private ownership rights ; The technical implementation of CSR is to provide some company property to the community. The implementation of CSR using the company's property with reasons for the benefit of the general public may be deemed to have violated and not respect the principles of private rights. The concept of proprietary rights is the absolute right individualistic where the law should provide protection. Personal property must be fully secured by the laws of the country as sacred rights of private property.
- d. Not in accordance with the principles of efficiency in business ; In addition to the conflict with private ownership, CSR implementation by most businesses is always considered to be able to make the company's operations inefficient. Efficiency is the foundation of any business activity, i.e. by utilizing limited resources to maximize profits. (Mukti Fajar MD, 2008 : 43)

CSR, essentially stems from a personal sense of responsibility for a business world environment, emerging from sensitive personal to others. The flavor arises and develops as a must-do given the gap of the sharp socio-economic situation, between the elements of labor with elements of owners and managers in the business world.

Departing from this situation, the birth of the environmental social responsibility concept is on the subject of moral obligations. From the moral obligations that move between welfare in a particular environment, it also raises a concept that must be realized is shared welfare. It is just reaching out to the common welfare of the respective corporate environment. The welfare of the finite, the more widespread that is followed by the same movements so that it becomes a positive concept that is an institutional responsibility.

The above concept becomes very humane for the workforce, the future of the company. (<http://ditjenpp.kemenkumham.go.id/>). However, new developments have been developed over natural and environmental awareness. The concept as outlined above becomes something based on human wisdom, not only a moral obligation, but an obligation that aims towards achieving the welfare of its citizens, consciously to organize things related to CSR.

BPJS Employment Branch Banda Aceh seems to be slightly erroneous in the implementation of CSR, where the funds on behalf of the CSR activities are entirely derived from sincerity (voluntary) each employee and employees. On the one hand, BPJS employment headquarters which is based in the capital of the country, Jakarta has set "Unit management " which authorized to receive the proposal of activities and budgets of the branch office, but not executed so that arise Error in the usage of CSR.

In fact, the head office has served in accordance with the reflection of the theory of organs pioneered by Otto von Gierke (1841-1921), where the organs of the legal entity is formed through the tools of the curvature of the board and its members and so on. (Jimly Asshidiqie, 2006 : 69)

As a sampling that writers get from the field, in the years 2012 to 2014 in order to improve the health of the surrounding communities, BPJS which was once still named PT. Jamsostek (Persero) has conducted a free mass circumcision as much as 225 packages to underprivileged children. Different from this moment when it is turned into a public legal entity. Currently, the package of health enhancement in particular in the free bulk circumcision package is no longer available. (Sri Mulyani, BPJS Ketenagakerjaan Banda Aceh : Interview)

The circumcision package was once one of the flagship. Of course, because the funds allocated and used are derived entirely from the company surplus. Very different from now, especially in Banda Aceh branch office where the allocation of funds comes from the pockets of employees. Following the enclosed CSR tables are implemented over the last five years.

Table 1
BPJS CSR Implementation Data of Banda Aceh Employment Branch

No.	Year	Type of activity
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1	2019	The preservation of Gampong Lampulo Natural School Fence
2	2018	Giving Mukena & Al-Quran to Masjid Lhoknga
3	2017	feeding the milk bottles to the children's Hospital in Banda Aceh
4	2016	complimentary turndown to home cancer stop Banda Aceh
5	2015	submission of compensation to Ulee Kareeng orphanage which is experiencing fire

Source: General and Human resources BPJS employment of Banda Aceh Branch

The activity is very not compared to any CSR activities that had been conducted before the legal entity is transformed. Not only like the free mass circumcision as it has been stated above, but there are also many other activities that are varied that may now certainly can not be done by only relying on the volunteerity of each Employees only.

Table 2

CSR Data PT. Jamsostek (Persero) Banda Aceh branch before transforming into BPJS 2012-2015

No.	Programs	2012	2013	2014	2015
1	Cash advance loan (PUMP)	6	-	7	6
2	Ambulance assistance to hospitals/polyclinics	4	-	-	-
3	Medical equipment Assistance to polyclinics	-	-	100	-
4	Free health Services	-	-	-	-
5	Scholarships	100	321	150	-
6	Home Renovation Loan	1	-	11	-
7	Ordinary loans	-	-	7	-
8	Health Enhancements	10	15	200	-
9	Facilities & Public infrastructures	-	-	-	-
10	Natural disasters	-	13	-	-

Source: Field of membership of BPJS

The above tables were obtained directly from the research site where the results clearly showed:

1. There is a fairly striking activity gap when CSR is executed only by relying on employee voluntary money, not from a specific allocated budget, for example from a surplus.
2. When CSR is judged not only as an obligation or moral only, then there are many other activities that can be done to the community.

Based on the research conducted, the authors only want to share a small amount of implementation gaps conducted by the current public legal entity and not in accordance with the applicable laws, norms, or regulations, and in this case BPJS Employment of Banda Aceh.

Despite violating the procedures of CSR implementation, so far there is no clear legal consequences that are governed by other laws or regulations. But socially, it is certainly getting a "weak recognition" for the performance of a legal entity that is less effective and benefits not as good as the first. Similarly, in law number 40 year 2007 about the limited liability company clearly obliging companies to conduct CSR, also has not clearly regulated sanctions that occur if not executed. It is no wonder that there are legal gaps for the company or legal entity to make mistakes or fraud in their execution, because in terms of rules that are sufficient to "oblige", but not "adequate" in terms of sanction Law.

IV. CONCLUSION

Based on the description of the research as stated above, it can be concluded that CSR on public legal entities is not a legal obligation, but it is definitely a moral obligation including in Indonesia. But for BPJS employment CSR has become a legal obligation because it adopts ISO 26000 and ratified it in law, government regulation number 99 year 2013 on the management of employment social security assets to the rules of directors. But based on the nature of his CSR, BPJS can be deduced still adhering to a limitative mandatory (limited liability) because of the change in the form of a legal entity that seeks profit to be nonprofit due to transformation from limited company to legal entity Public.

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