

# The Administration of Corporate Social Responsibility in the District Regulation in Indonesia

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## Abstract

In Indonesia, Corporate Social Responsibility (CSR) is corporate activity that is regulated by the law. By means of the Investment Law No.25 year of 2007 and the Limited Liability Company Act No. 40 year of 2007, it is regulated that every company in Indonesia is obliged to implement CSR. However, these regulations are not set technically; therefore, some local governments have made guidelines for the implementation of CSR through the District Regulations. The problems of this study are: (1) how is the CSR regulation model in the District Regulation? (2) What are the company's attitude and the company's request towards the CSR regulation in the District? This study uses normative law research method that examines the provisions of the law, as well as empirical legal research method that used to observe the behavior and the attitude of the government and corporate actors. This research took place in several provinces in Indonesia. The results of this research are: First, the CSR regulation in regional area is formulated based on local government authorities. The provisions of these district regulations are customized to the interests of each region, although it still normatively refers to the standard legislation. Second: The Company's attitudes prefer the self-regulated regulations arranged by their respective companies. Additionally, the setting of CSR can make the arrangement of CSR activities in accordance with the District Government program; as a result, it can speed up the community development.

**Keywords:** Corporate Social Responsibility, District Regulation, Self Regulation, Community Development

## Introduction

### Background

In Indonesia, Corporate Social Responsibility (CSR) is a corporate activity that is regulated by law. Through the Investment Law No. 25 of 2007 and the Limited Liability Company Act No. 40 of 2007, every company in Indonesia is obliged to

implement CSR. Once enacted, many companies, both of domestic private companies and foreign companies as well as state enterprises have been implementing various programs of CSR.<sup>1</sup> Implementation of CSR programs is practically done in a variety of areas in which the companies are operated

This situation raised some issues, namely: First: some regions attempt to manage the implementation of CSR in their areas. With regional autonomy possessed authority, some local governments made policy management in their respective regions.<sup>2</sup> But because there are no clear guidelines on laws and government regulations, the respective local governments formulated and shaped their regulations without any standardization. For example, there are some provinces that regulate the management of CSR through regional regulation. While other areas use the Governor Regulation. While there are also areas that are not set a regulation at all, but many companies have implemented CSR programs there. Second: The settlement of the CSR program management raises a variety of practical problems in the field such as the absence of a local institution to supervise the program implementation. The emergence of ambiguities of rights and duties in companies, governments and society program recipients, as well as the un-standardized implementation of CSR evaluation system has led to legal cases that being brought to corruption court.<sup>3</sup>

Those issues arose because the regulations at the national level are not applicable and lack of guidance.<sup>4</sup> It is causing the rise of multiple interpretations in regulations at the local level as well as in the implementation of CSR practices by companies in the society. Therefore we need a standard model of local government policies regarding the management of CSR programs.

### **Research Question**

From the description above, this study will focus on the question of reviewing the implementation of CSR in the regions based on normative and empirical aspects, with formulated problems as follows:

1. How does the concept of CSR and setting in Local Regulation?
2. What kind of practices and wishes of the companies towards the regulation of CSR in the local region

### **Literature Review**

#### **Definition and concept of CSR**

Explaining CSR definitively is the initial issue that must be addressed because the definitions of CSR are very diverse. The diversity of the model definition of CSR is the

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<sup>1</sup> Mukti Fajar ND, *Corporates Social Responsibility in Indonesia*, Publisher: Pustaka Pelajar, 2009, p.281-351

<sup>2</sup> Mukti Fajar ND, *The Problem of Regulation on Corporate Social Responsibility in Local Regulation*, A paper presented in the 30rd Corporate Forum for Community Development (CFCD), Jakarta, PT Indonesia Power, 14 May 2012

<sup>3</sup> Mukti Fajar, *The Deviation of CSR Funding*, *Kedaulatan Rakyat Newspaper*, 10 September 2013

<sup>4</sup> Directorate of Legal Affairs and Human Rights of the Ministry of National Development Planning/National Development Planning Agency. 2005. "Study of Harmonization of Laws and Regulations in Supporting the National Development". Jakarta; Bappenas RI

logical consequence of the nature of the implementation that based on the principle of volunteerism. There is no standard model that can be considered as the main reference, both at global and local levels. But some of them can be used as an explanation. ,

According to The World Business Council for Sustainable Development (WBCSD) definition of CSR is: *"Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."*<sup>1</sup>

Meanwhile, according to Article 15 paragraph (b) of Law No. 25 Year 2007 regarding Investment stated: *"Every investor is obliged to carry out corporate social responsibility"*. Mentioned in the article description what is meant by corporate social responsibility: *" is the inherent responsibility in any investment companies to sustain the harmony of balanced relationship in accordance with the environment, values, norms, and culture of the local community"*.

Furthermore, in Article 1 paragraph 3 of Law No. 40 Year 2007 on Limited Company states: *"Social and Environmental Responsibility is the commitment of the Company to participate in the sustainable economic development to improve the quality of life and environment which is beneficial for the company, local community and other society"*.

Hartman and Desjardins explained that CSR is also part of the decision making system in the company.<sup>2</sup> Regarding that matter, implementation of CSR programs cannot concern only on social interest, without any regard on shareholders' since it will deny the corporate nature of the companies that is morally aimed for profit.<sup>3</sup> In other words, the rights of shareholders (stockholders) on profits must also be prioritized, in addition to the other social interests (stakeholders).<sup>4</sup>

Based on its motivation, companies aim the CSR program to donate, to promote as well as the company's sustainability strategy.<sup>5</sup> Practically, the implementation of the CSR programs is quite diverse in reality. For example: (a) Education; (b) Health; (c) Poverty; (d) Employment; (e) Natural disasters; (f) Public facilities and environment; (g) Empowerment of SMEs; (h) Cultural, sport and Religious.

In this study, CSR is formulated in a broader perspective which refers to: (1) the contribution of the company; (2) aimed at improving quality of life and the

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<sup>1</sup> Phil Watts and Lord Holme, Meeting Changing Expectations, World Business Council for Sustainable Development – Corporate Social Responsibility, p.3, download form [www.wbcd.org](http://www.wbcd.org)

<sup>2</sup> Laura P. Hartman and Joe Desjardins, Business Etiquette: The Decision Making for Self-Integrity and Social Responsibility, Jakarta: Publisher Erlangga, 2008.

<sup>3</sup> K Berten, Introduction to Business Etiquette, Publisher Kanisius, 2000, p.289-305.

<sup>4</sup> Benedict Sheehy, Scrooge -The Reluctant Stakeholders: Theoretical Problems In The Shareholder-Stakeholders Debate", *University of Miami Business Law Review* 14 (Fall/Winter, 2005): 197, lihat juga Jill E Fish, "Measuring Efficiency in Corporate Law : the Role of Share Holder Primacy", *Journal of Corporation Law University of Iowa* 31 (2006) : 647-648

<sup>5</sup> Mukti Fajar, Corporates Social Responsibility in Indonesia, Yogyakarta, Publisher: Pustaka Pelajar, 2009, p.285

environment; (3) in the various fields of social activities; (4) employees or external parties; (5) provide the benefit for the companies and society as well as the environment.<sup>1</sup>

### **Local Government Authority**

The Indonesian government is divided into three levels: central government, provincial government and district government. From the authority aspect, local governments are given the autonomy to manage their own regions. The authority of the government is the main basis for any action and legal acts of every level of government.<sup>2</sup> By the existence of basic legal authority, therefore any actions and legal acts that carried out can be categorized as a legitimate legal action and vice versa.<sup>3</sup>

In Act No. 32 Year 2004 on Regional Government, article 19 verse 2 confirms that the administrator of the local government is the Local Government and Parliament. Article 21 of Act No. 32 of 2004 on Regional Government confirmed the existence of eight rights that belongs to the region in organizing autonomous authority, namely:

- a. Organize and manage the affairs of government.
- b. Selecting the local leaders.
- c. Managing the regional human resources.
- d. Manage the region's wealth.
- e. Pooling the taxes and levies.
- f. Get the profit sharing from the management of natural resources and other resources in the area.
- g. Receiving other legitimate resources of funds.
- h. Receiving other rights set out in the legislation.

The handover of the majority of governmental authority (from the central) to the local government has put local governments as the spearhead of national development in order to create prosperity for the people, fair and equitably. Regarding this matter, the regional's role and support in the implementation of legislation is very strategic, particularly in the establishment of the regional regulations (local laws) and other local regulations in accordance with the provisions of the legislation.<sup>4</sup>

Article 18 verse 6 of the 1945 Constitution states that local government has the right to set of the local regulations and other regulations to implement the regional autonomy and duty of assistance. In this regard, the national legal system gives the

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<sup>1</sup> Michele Sutton, "Between A Rock and Judicial Hard Place Legal Liability Under Kasky v Nike , UMKC Law Review 72 Summer 2004 , ... see also ISO 26000: Guidance on Social Responsibility, Download from [www.iso.org](http://www.iso.org)

<sup>2</sup>Hans Kelsen, 2006, *General Theories on Law and State*, translated by Raisul Muttaqien, Bandung, Nusa Media,

<sup>3</sup> Afan Gaffar and M Ryass Rasyid, *Local Autonomy in the Unitary State*, Yogyakarta: Pustaka Pelajar, 2002, p.233

<sup>4</sup> Jimly Asshiddiqie, *Regarding Laws*, Jakarta, Konstitusi Press, 2006, p.269

attributive authority to the region to establish Local Rules and other regulations. The Local Regulations are expected to synergistically support government programs in the region.

According to article 25 Act No. 32 Year 2004, Regional head has the duties and rights as follows:

1. Lead the management of local government based on policies established with Parliament.
2. Submit the draft of regional regulation.
3. Establish the Regional Regulation which has been approved by parliament.
4. Compile and submit the draft of Regional Regulation on Regional Development and Expenditures Budget to Parliament to be discussed and defined together.
5. Promote the implementation of local obligations.
6. Represent the region in and outside the court, and may appoint legal attorney to represent him in accordance with the legislation.
7. Carry out other duties and responsibilities in accordance with the laws and regulations.

### **Theoretical Approach**

There are at least four legal theory related to CSR. (1) reflexive law theory, (2) social responsibility theory, (3) the Hobbesian Leviathan theory, (4) corporate governance theory. But in this study, reflexive law theory will be used as a main analysis tool for the data obtained in this study. This theory has been chosen for at least three reasons, namely:

Firstly, other theories cannot be used for several reasons, such as:

- a. The core of the Social Responsibility Theory, is to give an obligation for the board of directors and corporate management to maintain the harmony between the interests of shareholders and stakeholders.<sup>1</sup> This theory has become too narrow to discuss the formulation of the problem posed in this study, because it only focused on the liability of directors alone.
- b. Hobbesian Leviathan theory calls for strict control of the government, as well as diminish other efforts. Thomas Hobbes in Leviathan teaches that routine control by the government is very effective in law enforcement.<sup>2</sup> This theory became less appropriate to use, because it puts the government as the most competent in

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<sup>1</sup> Peter Nobel, "Social Responsibility of Corporations, Article on Symposium Corporate Social Responsibility: Paradigm or Paradox", *Cornell Law Review* 84 (July, 1999): 1259. see also Frank René López, "Corporate Social Responsibility in a Global Economy After September 11: Profits, Freedom, And Human Rights", *Mercer Law Review* 55 (Winter 2004): 747. See also Julian Velasco, "The Fundamental Rights Of The Shareholder", *U.C. Davis Law Review* 40 (December 2006): 453

<sup>2</sup> Westlaw Noted, "Finding Strategic Corporate Citizenship: Harvard Law Review, April 2004, p 1973-1974. See also... Thomas Hobbes (1588-1679), *Moral and Political Philosophy*, in the sub-chapter *The Natural Condition of Mankind: Why Should we Obey the Sovereign?*, electronic book version. Downloaded from <http://www.iep.utm.edu/h/hobmoral.htm>

managing the public (corporate). This view would be diminished other alternatives in setting CSR.

c. Corporate governance theory calls for corporate accountability of corporate directors. Accountability is intended for direct accountability to the shareholders in accordance with the law firm.<sup>1</sup> This theory is more likely to observe internal party relations between the management of the corporation and the owner of the company while CSR is also related corporate relationship with external parties.

Secondly, reflexive law theory is used to overcome the deadlock on the formal approach to the obligations of the company in the legal system. Formal legal mentioned is the state intervention in regulating private issues through laws and regulations, such as the Labor Law, Environmental Law, Consumer Protection Act and so forth

It is also explained further that reflexive law theory is the legal theory that explains the limitations of the law (limit of law) in a complex society to drive social change effectively.<sup>2</sup>

Reflexive law theory attempts to suppress the complexity and diversity of the community through the extensive legislation. Reflexive law theory aims to direct the patterns of behavior and encourage the setting itself (self regulation).<sup>3</sup> This legal theory focuses on social processes "regulated autonomy" that is: let the private actors, such as corporations to freely organize itself. On the other side of the reflexive law intervenes social processes by making reference procedures for corporate behavior.

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Gunther Teubner said that there has been a law's evolution that produced three types of laws, namely: formal, substantive, and reflexive.<sup>5</sup> Reflexive Law emerged in response to the crisis of the interventionist state. On one side, reflexive law frees the private sector to determine their own policies, and on the other hand, this law intervene reflexive social processes by establishing procedures that guide the behavior of the subjects.<sup>6</sup>

Reflexive law is basically a procedural law, and therefore, can be considered as self-regulation. Reflexive law seeks to influence decision-making processes and communication with the required procedures. However, the final decision remains in

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<sup>1</sup> Cynthia A. Williams, "Corporate Social Responsibility In An Era Of Economic Globalization, Symposium: Corporations Theory and Corporate Governance Law", *U.C. Davis Law Review* 35 (February 2002) : 713 .see also Henry Hansmann dan Reinier Kraakman, "The End of History for Corporate Law", *Paper no 280, Business Discussion Paper Series* (Boston : Harvard Law School, 2000), hal. 7-10

<sup>2</sup> David Hess, "Social Reporting: A Reflexive Law Approach To Corporate Social Responsiveness", *Journal of Corporation Law*, 25 (Fall 1999): 42

<sup>3</sup> Ibid.hal 43

<sup>4</sup> Ibid., hal. 50

<sup>5</sup> Ibid., hal. 48

<sup>6</sup> Ibid., hal 50

the private sectors. The aim is to encourage the processes of independence self-reflexive in corporations about the impact of their actions on society.<sup>1</sup>

To assess CSR, reflexive law theory is the theory of law that seeks to encourage corporations to reassess whatever practices they have done by providing cutting-edge information called social reporting. Social reporting is a form of a brief report on the social impact due to the corporate behavior ethically on the interests of the public or stakeholders.<sup>2</sup>

In many ways, the social report is the same as social performance of the corporation. Although similar to the company openness that is often disputed, but it is a very important part to be delivered.<sup>3</sup>

Peter Pruzan from Copenhagen Business School provides a very useful description of social reports stating the basic characteristics. According to him, a social report provides standard on how well an organization revive the existing values that are made together with the stakeholders, where the organization is committed also to apply for the organization itself. A social report share a process of dialogue in which the values are integrated into an organization. The social reports also provide an extensive overview of the organization relationship with stakeholders, and thus have the opportunity to thrive and survive in the long term.<sup>4</sup>

The purpose of the regulation that is based on reflexive law theory is not to make the corporation to do the defensive compliance, but to encourage the proactive and responsive management to social issues.

Social reports should be an obligation for all companies at a certain proportion. Both, for public and private corporations in order to obtain a significant impact on stakeholders. However, the costs for CSR and create a social report may be too large for small firms.<sup>5</sup>

The legislators need to consider the cost burden on companies that are smaller, as well as they also need to consider the impact of the companies in the community. A social report should be an annual requirement for all companies that meet the standard requirements.<sup>6</sup>

The importance of the corporate to conduct social reporting is related to the implementation of CSR. First, this report will encourage companies to systematically reflect the impact of their actions on the bigger community. Secondly, this

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<sup>1</sup> Ibid., hal 51

<sup>2</sup> Ibid., hal 64

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Section 12 (g) dari the Securities Exchange Act of 1934 di Amerika Serikat mempersyaratkan semua korporasi dengan 500 atau lebih *stakeholders* dan lebih dari 5 juta dollar assetnya untuk registrasi ke Securities Exchange Commission dan memenuhi semua persyaratan untuk melakukan keterbukaan (informasi), Ibid., hal 66

<sup>6</sup> Ibid.,hal 67,

requirement is to provide information to the public whether to reward or to punish a company based on the company's social performance.<sup>1</sup>

On the other hand through the social reporting procedures, companies also obtain information about the current expectations of the market on responsible corporate behavior.<sup>2</sup>

### **Research Method**

This research uses the normative legal research method that analyze the perspective of the theory, principles and provisions of the law regarding the regulation of CSR in the region.<sup>3</sup> Research materials that needed is a wide range of legal documents originating from regulations, books and scientific articles. This is conducted by the library research. Collected secondary data will be analyzed by juridical prescriptive. Furthermore, this research will also carried out with some kind of empirical legal research, a research that will examine the facts of the implementation of CSR in the region, both explicit and implicit events such as the attitude and the will of the company for the arrangements of CSR area<sup>4</sup>. This process will be carried out by field research. This research will be conducted in several provinces in Indonesia. In addition to observe directly, the data also obtained through interviews with respondents, ie: the representative of the company and local government officials concerned. Collected primary data will be analyzed with a qualitative approach.<sup>5</sup>

### **Discussion**

#### **The Concept of CSR And Setting In Local Regulation**

CSR obligations in Indonesia in the *Investment Law 2007* and *Limited Liability Company Act of 2007* set only few provisions so that it becomes not applicable. This has encouraged local governments to further regulate CSR obligations in local legislation in detail with the hope that it can be a technical guideline in the implementation of CSR programs in the local area. It empirically obtains a variety of different opinions. The government agrees with the idea to organize CSR in the local legislation. It is because of the fact that the companies operate and give impacts to the local area. So it is logical if the government formulated rules. However, unlike the business community, they argue that it is ready sufficient that CSR is regulated at the central government regulations in general terms. Detailed regulation at the local level will make the implementation of CSR programs be bounded, whereas the problems in each area are different. Another opinion from the company's representative stated that it is acceptable that the government regulate CSR in their own region. Nonetheless it must also be understood that some big companies have national and

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<sup>1</sup> Ibid.,hal 67 - 68

<sup>2</sup> Ibid., 68-69

<sup>3</sup> Peter Mahmud Marzuki, *Legal Research*, Jakarta, Publisher Kencana. 2005

<sup>4</sup> Harkristuti Harkrisnowo, 2004, *Handout of Legal Research Method*, Doktorat Program Post Graduate Universitas Indonesia

<sup>5</sup> Anslem Strauss dan Juliet Corbin, *Basic of Qualitative Research*, Translater Muhammad Shodiq, Yogyakarta, Pustaka Pelajar 2003, ...see also , John W Cresswell, *Research Design, Qualitatif and Quantitative Approachhes*, (London: SAGE Publication),hal. 20 -21 see also Norman K Denzin and Yvonna S Lincoln, *Handbook of Qualitative Research*, California , SAGE Publications Inc, 1994



international scale, in which its CSR policies are determined by the center management. Therefore it becomes harder for companies and governments to do the synchronization.<sup>1</sup> Meanwhile, in the government side, the issue of whether the provincial government (Regional Level 1) or the district/city governments (Regional Level 2) which will effectively regulate it, still emerges.

There are two things that become the background of why the local government regulate the CSR in local legislation.<sup>2</sup> First: Local government normatively has the legal authority to regulate it. Based on Article 25 of the Act No. 23 Year 2014 on Local Government that the head of the local government has the duty and authority to: (1). *Lead the implementation of local government based on policies established with DPRD (Regional House of Representatives).* (2). *Propose a draft and establish Local Regulations which was already approved along with DPRD (Regional House of Representatives).* This authority has the objective and the obligation for the duty of local government. In Article 2 of the Local Government Act, several local duties are mentioned related the issues of CSR regulation, which are:

1. To improve the quality of people's life.
2. To improve basic services of education.
3. To provide health care facilities.
4. To provide viable social facilities and public facilities.
5. To develop social security system.
6. To preserve the environment.
7. To preserve socio cultural values.

*Secondly*, some regions see that by regulating CSR in the region, the regions may get benefit. The development process of the region can be accelerated by involving the companies synergistically. Some government duties can be shared with business people, especially relating to social and environmental issues.

Some regions have different rules formats. Some are regulated by the Governor Regulation, the Decree of the Governor and some are regulated by Local Regulation. For the Special Region of Yogyakarta, for example, it still temporarily uses the Governor Decree of the Special Region of Yogyakarta No. 397/KEP/2012, but it is only to the extent on the regulation of CSR forum in the region. Whereas in West Java, it uses Governor Regulation of West Java No. 30 Year 2011 which regulates the Facilitation of CSR. Meanwhile, in East Java, it regulates the CSR through Local Regulation No. 4 Year 2011.

These different formats of rules are due to several things. *First*, the source of such regulation is different. Regulation which is based on the Investment Act 2007 and the Limited Liability Company Act 2007 is more appropriate to use the Local

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<sup>1</sup> The result from an interview with Rio and Andaru, the company representatives who become the members of the CSR Forum, on 11 - 12 June 2015

<sup>2</sup> The result from an interview with Ibu Susie and Ibu Henny, Deputy of Social Service of the Province of Central Java, 11 June 2015

Regulation. While the one which is based on Social Welfare Act 2009 is more appropriate to be regulated by Governor Decree because it only regulates the working mechanism of the CSR Forum. In addition there is few area which regulates it based on State Own Corporation Act in the form of Local Regulation because it only regulates Partnership Program and Environment Building of the state-owned company operating in the local region. Partnership Program and Environment Building are another names of CSR.

*Second*, legal format differences in the regulation of CSR in the local region is also due to the readiness of governments, companies and communities to regulate CSR. In the local region whose legal instrument is not yet ready, it usually uses Governor Decree of the CSR Forum in advance. If later it is ready, then they regulate it further in the Local Regulation.

In the working process of making academic paper and Local Regulations Draft in the Province of Riau, City of Batam,<sup>1</sup> and Province of Central Java,<sup>2</sup> describes in more detail about the importance of the local region to regulate the implementation of CSR based on the owned authorities. The provisions of Local Regulation Draft of CSR should arrange the important issues which are not regulated in the regulations previously, such as: (1). Rights, Obligations and the CSR Implementer Company; (2). Program, the Execution Location and Targeted Society; (3). Mechanisms and Implementation Procedures, (4). The Location of the Execution; (5). Financing and Procedure of Funding Distribution; (6). CSR Forum; (7). Facilities/Incentives for companies; (8). Evaluation and Reporting; (9). Community Engagement, and; (10). Sanctions.<sup>3</sup>

Normatively, various conditions can be regulated in local regulation, provided they do not conflict with the above regulations. Either basic norm (*Grundnorm*), the constitution, the central regulations (Act) or other regulations.<sup>4</sup> If structurally the hierarchy of the laws are maintained, then it is legitimate normatively and has the force of law to be applied.<sup>5</sup> In addition, local regulation may regulate the operation of the rules above as far as it does not violate the authority of local government.

Some of the issues arranged above have got full support from the government, companies and society. Others experience a long debate, and a small portion is rejected. Issues which have easily got the agreement from all parties are: Right and obligations, incentives, Reporting and CSR Forum. While the issue of: Mechanism of work, location, sanctions and the act of determining programs are not easily agreed upon because of technical problems. For example: the company wants the location of

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<sup>1</sup> Mukti Fajar and Nanik Prasetyoningsih, Academic Paper on Local Regulation Planning on CSR in the Province of Riau and Batam, year 2011

<sup>2</sup> Mukti Fajar and Erwin Indrayanta, Academic Paper on Local Regulation Planning on CSR in the Province of Central Java, year 2014

<sup>3</sup> The Bill of the District Regulation of CSR Province of Central Java, 2014

<sup>4</sup> Hans Kelsen, Pure Theory of Law, Bandung: Nusamedia; 2006, p. 243-252

<sup>5</sup> Hans Kelsen, *ibid*, p. 216- 222

the implementation of CSR programs take priority in the area around the company (ring 1), while the government and the people want the location is based on the government's development programs and the needs of people which may be far away from where the company is located. The mechanism of work also experienced a long debate. The government wants the implementation of CSR programs in accordance with the government, while the company is often in a situation that must respond to the wishes of the people quickly. Related to sanctions, it is also not easily formulated, but eventually it can be decided that the violation of the local regulation on CSR will be subject to administrative sanctions through licensing mechanisms. The issue of financing was rejected by the company. The government wants to regulate the amount of financing for certain CSR through a percentage of company profits. The numbers which are asked only about 2-3 per cent, but this will obviously make the company indirectly reveal their financial condition. It is a taboo for the company.

Finally, in some Local Regulations which is already legalized continue to provide freedom for the company along with the government and the public to determine the program in accordance with the interests of all parties. This is in accordance with the principle of self-regulation in the reflexive law theory.<sup>1</sup> Similarly, the obligation to report to the public on the CSR activities carried out by each company gets the full support from the business person. Social reporting desired meaning of reflexive law theory can be realized through the mechanism of CSR policies in the local region. The existence of CSR forum as an institution which manages the implementation of CSR in the local region is very important. The institution is not part of the governance structure. However, its membership represents government, companies and public. Of the planning, the determination of the program, budget and cost up planning, to conducting evaluation process will be undertaken by the forum. Here the principle of self-regulation gets its effective place, without having the form of *repressive* policies.

In some local regions, the establishment of the forum is based on the Governor Decree. While in other areas, it has been included in the articles of institution in Local Regulations. Normatively, the existence of CSR Forum is formed by legal sources from the Regulation of the Minister of Social Affairs No. 13 Year 2012. Such Forum has a fairly broad functions, namely: a. to formulate the concept of policy; b. to monitor the implementation of CSR; c. to conduct surveillance; d. to evaluate the implementation ; and e. to give advice and consideration to the implementer of CSR forum.

On the other hand, the forum which is established through that regulation narrows its scope of work. It is because the forum only does the duty for social activity as one part of the duty of Ministry of Social Affairs. The priority of its CSR work program includes: a. income generating for poor families; b. social empowerment for families with socio-psychological problem and socio-economic problems; c. vocational training for drop out teenagers, for women prone to socioeconomic problem, and

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<sup>1</sup> David Hess, op cit.

others; d. assessment and development of a model program of social responsibility on the business world; e. unlivable home renovation; f. social rehabilitation for disabled people (with disabilities); g. social rehabilitation of women with social problem; h. social rehabilitation for juvenile delinquents; i. social protection for neglected children; j. *Home Care* for the elderly; k. empowerment for Remote Indigenous Communities ; l. relief for victims of natural and social disasters; and m. social protection for victims of violence. In fact, CSR can have a very broad program depend on the social problems faced in the region of the operating company both in terms of relief and empowerment. Its scope could be internal party like the employees and the external parties such as consumers, small business partners, surrounding communities, and even the surrounding environment.<sup>1</sup>

While, some local regions establishes the CSR Forum based on Local Regulation which is normatively has no legal reference. However, it already becomes the customary practices in the field. Many CSR Forums were formed by a group of companies with community involvement. The forums were named Corporate Forum for Community Development (CFCD). The model of this forum becomes a sociological reference in the preparation of the institutional in Local Regulation. With such model, the existence of the forum becomes more flexible and broad in its work space so that the various work programs of CSR can be reached.

Some issues related to institutional of those CSR Forum are on costs and budgets. In the Regulation of the Minister of Social Affairs No. 13 Year 2012 it is mentioned that the source of financing for the forum is the Regional Budget (*APBD*), which is taken from the budget for Social Service. The amount of funding is very minimal, so it is unable to sustain the activities of the CSR Forum. Therefore, in various discussion with members of the forum and the Government in some regions appeared an initiation that the forum can be financed from some part of CSR. This provision refers to the Regulation of the State Minister for State Owned Enterprises No. Per-05/MBU/2007 on the Partnership Program between State Owned Enterprise with the Small Business and Community Development Program. In the regulation, it is mentioned that the implementer can obtain a financing from the CSR funds of 5% for the assistance programs and 10% for the community development activities.

### **Practices and Wishes of the Companies towards the Regulation of CSR in the Local Region.**

This study conducts observation and interviews with several companies that have implemented CSR in the Province of Special District of Yogyakarta and Central Java.

Judging from the intention and purpose of companies in implementing CSR in Indonesian, they do not even have any motives. Initially they only respond to requests from the local community who have social problems and need help in terms of funding or facilitation. Margaria Group, for example, a company operating in Province of

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<sup>1</sup> Mukti Fajar ND, Corporate Social Responsibility in Indonesia, Yogyakarta, Pustaka Pelajar: 2009

Yogyakarta, already implemented CSR long before the birth of the laws that make CSR as legal obligations.

According to Nina Elsdwastand, General Manager of Margaria Group, she says:<sup>1</sup>

*"Margaria Group not only always emphasize on providing the best quality at every transaction made, but also continuously keep developing CSR programs so that it can also provide benefits to people in need. Now CSR is a commitment of Margaria Group to provide benefits to the community and the embodiment of social responsibility to the community"*

As well as mentioned by Lusiana, General Manager of Natasha Group:<sup>2</sup>

*"We do not have any special expectations and wishes with the implementation of CSR. We have done it before the governments regulates it. The relations with the surrounding community who need help is only a form of spontaneity. So we do not think about the reciprocal benefits. The most important thing is that we can help others".*

The companies have been carrying out various CSR activities in each province. If it is seen from their business, CSR work program is more likely to philanthropy (pure assistance) without any element of community development. CSR activities which they have been done were in relation to the aid for education, health facilities, disaster relief, and religious activities. For instance, Natasha Group has regular annual programs such as: 1) Natasha care of cancer patients; 3) natural disasters reliefs for earthquakes, floods and landslides victims. Similarly with Margaria Group, they have a CSR program "*Karena Kita Peduli (Because We Care)*" which is routinely held annually. In the Health Sector: 1) The facilitation of cancer surgery and other diseases for the surrounding communities; 2) The medical help of the employee's family. In the environment field, they carry out Biopori plants program, preserving the environment, and building places of worship. In the educational field, Margaria Group provides many scholarships and provides equipment for schools and books. Regarding the form of that CSR program, company determines based on the internal policy along with the public demand. Self-regulation process is used based on the agreement between companies and community groups.

So far they have said that the program was going well and provided benefits to the community. While from the corporate side, they do not pay much attention in the beneficial feedback from the program. They did it without the specific intent to gain "profits" for the company. Only sometimes they take advantage of the activities by putting the brand name of the product, but it also never taken into account of the marketing impact. The most essential part is these companies implement CSR purely to provide for the good of society.

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<sup>1</sup> The result from an interview with Nina Elsdwastand, General Manager of PT Margaria Group in Yogyakarta in May 2014

<sup>2</sup> The result from an interview with Lusiana, General Manager of PT Natasha Group in Yogyakarta in May 2014

From the side of the company, social reporting is not yet used to enhance the corporate image. Report of activities is still used for internal purposes only.

Although it has been carrying out CSR before there are rules, of side of the company it has expectations and wishes of the regulation of CSR<sup>1</sup>. *First*, businesses people generally agree with the willingness of the government to regulate CSR in Local Regulation. It is considered to provide legal certainty and clearer guidelines. In addition, the regulation is expected by businesses people in order to encourage companies that have not implemented to take part. CSR activities which can be carried out together will eliminate the feeling of unfairness. The regulation is also expected to create a synergistic situation and to get optimum results. Consequently, the social problems in an area can be overcome by governments, companies and communities together. *Secondly*, there are several things that become the concern of the businesses people with the idea that of CSR regulation, namely regarding the uniformity of the form prescribed by the government. The Government can prioritize a program that should be carried out by company, but often this would be a barrier. It is because CSR program depends on the conditions and factual situation demanded by the public. It can be different with the government's program. Society will only lead to disappointment. Besides other things which is undesirable is the decision of the amount of the fund of CSR. Although the funding is not big in percentage, for the business people this idea would be a burden. They prefer to be left alone by the principles of fairness and decency. Another thing that becomes the problem for the company is about the location determined by the government. If the location is far from the company's operational area, it is not exactly beneficial. It is because the company hopes that by implementing CSR it will get a return in the form of a good attitude of the people around it. This can be overcome with government's reward to make announcements about companies that have implemented CSR, so that the people around the company can judge, although not directly feel the benefits.

## Conclusions

From the above discussion, it can be summarized as follows:

1. Based on its authority, Local Government is entitled to regulate CSR in the Local Regulation, as a form of giving guidance from the Central Government Regulations. The things that are arranged in the Local Regulations include: (1). Rights, Obligations and the CSR Implementer Company; (2). Program, the Execution Location and Targeted Society; (3). Mechanisms and Implementation Procedures, (4). The Location of the Execution; (5). Financing and Procedure of Funding Distribution; (6). CSR

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<sup>1</sup> The result from an interview with Rio and Andaru, the company representatives who become the members of the CSR Forum, on 11 - 12 June 2015

- Forum; (7). Facilities/Incentives for companies; (8). Evaluation and Reporting; (9). Community Engagement, and; (10). Sanctions.
2. Many companies that have implemented CSR routinely before the regulations are based on the intention to do good to the society. The idea of CSR regulation in the Local Regulation was welcomed by the business people because it will provide legal certainty and give hope to optimal results. There are some issues that still considered problems such as programs, and location and financing, because it will become an obstacle.

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