

REGULATION ON THE FUND OF CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

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REGULATION ON THE FUND OF CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

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ABSTRACT

Objective: The objectives of this research are to study and analyze Act Number 40 of 2007 concerning Limited Liability Companies which does not regulate on the amount of funds for Corporate Social and Environmental Responsibility, and the concept of the regulation of Corporate Social and Environmental Responsibility in *ius* to be established.

Method: This research applies normative legal research by using library research or secondary data consisting of primary, secondary, and tertiary legal resources.

Results and conclusion: Results of research show that of the regulation of Corporate Social and Environmental Responsibility (TJSLP) stipulated in Article 74 of Act Number 40 of 2007 concerning Limited Liability Companies is aimed at implementing sustainable economic development in order to improve the quality of life and environment useful for the company itself, local community, and community in general. Act Number 40 of 2007 does not explicitly regulate the amount of Corporate Social and Environmental Responsibility (TJSLP) which must be prepared by the company. The lawmaker only explicitly mentions that its implementation is performed by taking into account propriety and reasonableness.

Implication: The People's Representative Council (DPR) needs to determine the amount of the Fund of Corporate Social and Environmental Responsibility (TJSLP), so there is legal certainty and it has binding power to every company to be borne with the obligation of Corporate Social and Environmental Responsibility (TJSLP). Currently, there is a vacuum of law because there is uncertainty on the amount of the Fund of Corporate Social and Environmental Responsibility (TJSLP). So it is deemed necessary to regulate Corporate Social and Environmental Responsibility (TJSLP) by the local government through Regional Regulation (Perda).

Keywords: Social Responsibility, Limited Liability Company, Environmental.

REGULAMENTO RELATIVO AO FUNDO DE RESPONSABILIDADE SOCIAL E AMBIENTAL DAS EMPRESAS

RESUMO

Objetivo: Os objetivos desta pesquisa são estudar e analisar a Lei Número 40 de 2007 relativa às Sociedades de Responsabilidade Limitada, que não regula o montante de fundos para a Responsabilidade Social e Ambiental Corporativa, e o conceito da regulamentação da Responsabilidade Social e Ambiental Corporativa no *ius* a ser estabelecido.

Método: Esta pesquisa aplica a pesquisa legal normativa usando pesquisa bibliográfica ou dados secundários que consistem em recursos legais primários, secundários e terciários.

Resultados e conclusão: Os resultados da pesquisa mostram que a regulamentação da Responsabilidade Social e Ambiental Corporativa (TJSLP) estipulada no artigo 74 da Lei nº 40 de 2007 relativa às Empresas de Responsabilidade Limitada visa implementar o desenvolvimento econômico sustentável, a fim de melhorar a qualidade de vida e o ambiente útil para a própria empresa, comunidade local e comunidade em geral. A Lei número 40 de 2007 não regula explicitamente a quantidade de Responsabilidade Social e Ambiental Corporativa

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(TJSLP) que deve ser preparada pela empresa. O legislador apenas menciona explicitamente que a sua implementação é realizada tendo em conta a propriedade e a razoabilidade.

Implicação: O Conselho Representante do Povo (DPR) precisa determinar o montante do Fundo de Responsabilidade Social e Ambiental Corporativa (TJSLP), para que haja segurança jurídica e tenha poder vinculativo para cada empresa a ser suportada com a obrigação de Responsabilidade Social e Ambiental Corporativa (TJSLP). Atualmente, existe um vazio legal porque existe incerteza sobre o valor do Fundo de Responsabilidade Social e Ambiental Empresarial (TJSLP). Por isso, considera-se necessário regulamentar a Responsabilidade Social e Ambiental Corporativa (TJSLP) pelo governo local através da Regulamentação Regional (Perda).

Palavras-chave: Responsabilidade Social, Sociedade de Responsabilidade Limitada, Ambiental.

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1 INTRODUCTION

⁴² The General Explanation of Law Number 40 of 2007 concerning Limited Liability Companies explains that the development of the national economy which is organized based on democracy economy with the principle of togetherness, efficiency that is just, sustainable, environmental awareness, self-sufficiency, and maintaining a balance between progress and The national economic unit aims to realize the welfare of the community. One of the parties that is expected to realize the goals of the state in the welfare of society is the company.

Companies as one of the economic factors in an area, be it a village, sub-district, district, province or country, are required to generate maximum profit. However, the principle that companies are only profit-oriented has begun to be abandoned ²⁶. The company must also have a social responsibility in relation to its existence in the midst of the community. (Sholihin, 2010)

The company ²⁶ is not only faced with responsibilities that are based solely on obtaining company profits, but also must pay attention to its social and environmental responsibilities because if it is not done then ¹² the environment will impact and influence climate change. (Garcia, Pereira and Silva, 2023) the community thinks that the company does not pay attention to social and environmental aspects and does not feel a direct contribution or even feel a negative impact from the ⁷ operation of a company, then this condition will cause community resistance or social unrest. The company's commitment to contribute to nation-building by paying attention to financial or economic, social, and environmental aspects is the main issue of the concept of corporate *social responsibility* (corporate social responsibility). In countries with a market economic system, the existence of companies is understood to make economic profits. However, apart from that objective, these companies are also required to fulfill certain social responsibilities. Various opinions argue about the relative importance of profitability and social responsibility. There are those who support the opinion that profitability is the main goal of the company and that the social responsibility that must be borne is only that which is included in the legal framework related to the existence of the company. Meanwhile, other parties argue that the company is not just an economic entity, but also a social institution, which is in a social environment and carries a high social responsibility with it. In this view, companies morally have a responsibility to all parties and profitability is only a means to carry out these responsibilities. (Hakim, 2009)

In Indonesia, for example, for cases of negligence committed by PT. Lapindo Brantas Sidoarjo is the main cause of the overflow of hot mud in the Porong Sidoarjo area. When viewed from the side of business ethics, what is done by PT. Lapindo Brantas has clearly violated ethics



in doing business, where PT. Lapindo Brantas has carried out excessive exploitation and negligence to the point of causing a major disaster which resulted in severe environmental and social damage. Massive exploitation by PT. Lapindo Brantas proved that PT. Lapindo Brantas is willing to justify any means to gain profits. And the unwillingness of PT. Lapindo Brantas to be responsible for proving that PT. Lapindo Brantas prefers to protect their assets rather than rescue and repair the environmental and social damage they have caused. (*Banjir lumpur banjir janji*, 2009)

According to Hendrik Budi Untung, CSR is a company or business world's commitment to contribute to sustainable economic development by taking into account corporate social responsibility and emphasizing the balance between attention to economic, social and environmental aspects. (Untung, 2008) Thus, TJSP is a form of corporate responsibility towards the environment both socially and environmentally itself without neglecting the capabilities of the company. Implementation of this obligation must pay attention to the needs and local wisdom of the community around the location of the business activity. CSR is a concept that the company has a responsibility towards consumers, employees, shareholders, communities and the environment in all aspects of the company's operations. A company in carrying out its activities must base its decisions not only on financial (profit) factors such as profits or dividends, but also must be based on current and long-term social and environmental interests.

There is a legal basis *corporate social responsibility* or Corporate Social and Environmental Responsibility in Indonesia is contained in Article 11 paragraph (3) letter p of Law Number 2 of 2001 concerning Oil and Gas (hereinafter referred to as the Oil and Gas Law), Article 2 and Article 66 paragraph (1) Law Number 19 of 2006 concerning State-Owned Enterprises (hereinafter referred to as the BUMN Law), Article 15 of Law Number 25 of 2007 concerning Investment (hereinafter referred to as UUPM), and Article 74 of Law Number 40 of 2007 concerning Companies Limited (hereinafter referred to as UUPT).

In the General Explanatory of Law No. 40 of 2007 submitted:

in a sustainable manner to improve the quality of life and the environment that benefits the Company itself, the local community and society in general.

This provision is intended to support the establishment of harmonious, balanced and in accordance with the environment, values, norms and culture of the local community, it is determined that a company whose business activities are in the field of and/or related to natural resources is obliged to carry out Social Responsibility and Environment. To carry out the Company's obligations, Social and Environmental Responsibility activities must be budgeted and calculated as a Company that is carried out by taking into account decency and fairness. These activities are contained in the Company's annual report. In the event that the Company does not carry out Social and Environmental Responsibility, then the Company concerned is subject to sanctions in accordance with the provisions of the laws and regulations.

Corporate social responsibility arrangements are regulated in Article 74 of the Company Law which reads:

- (1) Companies that carry out their business activities in the field of and/or related to natural resources are required to carry out Social and Environmental Responsibility.
- (2) Social and Environmental Responsibility as referred to in paragraph (1) is an obligation of the Company which is budgeted for and calculated as the cost of the Company, the implementation of which is carried out with due observance of decency and fairness.
- (3) Companies that do not carry out the obligations referred to in paragraph (1) are subject to sanctions in accordance with the provisions of the laws and regulations.
- (4) Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulations.



The implementing regulation of the provisions of Article 74 UUPT is ¹⁰ Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibilities of Limited Liability Companies. In the General Explanation of PP No. 47 of 2012 states that "In this Government Regulation, c³⁴ompanies whose business activities are in the field of and/or related to natural resources are required to carry out social and environmental responsibility . These activities in fulfilling social and environmental responsibility obligations must be budgeted for and calculated as the costs of the Company which are carried out by taking into account propriety and fairness. Arrangements regarding Cor⁸porate Social and Environmental Responsibility (TJSLP) obligations are regulated in Article 3 PP No. 47 of 2012 which reads:

(1) Social and environmental responsibility as referred to in Article 2 is an obligation for companies that carry out their business activities in the field of and/or related to natural resources on the basis of arkan the Law.

(2) The obligations as referred to in paragraph (1) are carried out both inside and outside the Company's environment.

Article 2 PP No. 47 of 2012 states that ⁸every company as a legal subject has social and environmental responsibility". Explanation of Article 3 PP No. 47 of 2012 it is explained that what is meant by "companies that carry out their business activities in the field of natural resources" are companies whose business activities manage and utilize natural resources. Then ³⁹at is meant by "companies that carry out their business activities related to natural resources" are companies that do not manage and do not utilize natural resources, but their business activities are the impact on the function of the ability of natural resources including the preservation of environmental functions. Furthermore, what is meant by "based on the law" is the law along with the regulations implementing the law regarding natural resources or those related to natural resources, as well as the ethics of running a company, anta other ra: pounding regulations in the field of industry, forestry, oil and natural gas, state-owned enterprises, geothermal business, water resources, mineral and coal mining, electricity, environmental protection and management, prohibition of monopoly practices and business competition unhealthy, human rights, employment, and c⁵⁶umer protection. this can preserve the environment and respect people's behavior, so as to improve the quality of human life towards environmental awareness.(Madime and Gonçalves, 2022) ³⁵

The obligation to carry out corporate social responsibility as stipulated in Article 74 paragraph (2) of the UUPT mentioned above must be budgeted and calculated as company costs. There are no clear provisions so that there is no legal certainty regarding how much funds must be budgeted to carry out corporate social responsibility. Because there is no clear regulation regarding the amount of TJSLP funds so that in its implementation it is possible for a company to only conduct TJSLP once with minimal funds so that the company's obligations regarding TJSLP has been carried out. This is different from the CSR provisions contained in the BUMN Law, which through its implementing regulations, namely BUMN State Minister Regulation No. 5 of 2007 which regulates from the amount of funds to the procedures for implementing TJSLP. As is well known, BUMN's TJSLP is the Partnership and Community Development Program (PKBL). The BUMN Law states that apart from seeking profits, the role of BUMN is to also provide guidance and assistance to weak entrepreneurs, cooperatives and the community. Furthermore, in Article 9 paragraph (1) BUMN State Ministerial Regulation No. 5 of 2007 explains that the source of PKBL funds comes from the company's net profit allowance of 2 percent which can be used for Partnership or Community Development Programs.

Based on the description above, the researcher conducted this research related to setting the amount of funds TJSLP which is regulated in the Compar⁶ Law because the authors assess that there is no clear regulat⁴⁹ yet, it can even be said that there is a legal vacuum regarding the amount of TJSLP funds. Based on the background above, the formulation of the problem is



as follows Why in Law No. 40 of 2007 concerning Limited Liability Companies does not regulate the amount of corporate social and environmental responsibility funds? How does the concept of managing corporate social and environmental responsibility funds in *to establish the right*?

2 METHOD

Types of research in general can be classified into several types, and the selection of these types of research depends on the formulation of the problems specified in the research. In this study, the authors used normative legal research, namely research using library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials as the main data, where researchers do not need to look for data directly in the field.

The nature of legal research is in line with the nature of legal science itself. The science of law has the nature of a prescriptive science, meaning that as a prescriptive science, legal science studies the purpose of law, legal concepts, and legal norms. (Marzuki, 2009) In this study the authors will provide an overview of the corporate social responsibility funding or budgeting system and its relation to taxes. In this study the researchers used a type of research that could be said to have a legal vacuum because there is no definite regulation regarding the amount of social and environmental responsibility funds. companies regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

In this study there are 2 (two) approaches used, namely the statutory approach (*statute approach*) and conceptual approach (*conceptual approach*).

Statutory approach or juridical approach (*statute approach*) namely research on legal products such as laws, other regulations including internal regulations of law enforcement agencies as well as regulations other supporting regulations. A normative legal research that uses a statutory approach because what will be examined are various legal rules which are the focus as well as the central theme of a research. (Ibrahim, 2010) conceptual approach (*conceptual*) is an approach used to obtain scientific clarity and justification based on legal concepts originating from legal principles. (Marzuki, 2009)

In normative legal research, legal material is the main source of material. Legal materials here consist of primary legal materials, secondary legal materials and tertiary legal materials.

The researcher collected legal materials through document study (library study) covering primary legal materials, secondary legal materials and tertiary legal materials, namely by conducting an inventory and identification of a number of laws and regulations, legal documents, legal records, scientific work results and reading material/literature originating from legal science in the form of books, articles, journals and research results that are related to the subject matter of this research.

3 RESULTS AND DISCUSSION

3.1 Setting the Amount of Corporate Social and Environmental Responsibility Funds in Law Number 40 of 2007

Corporate social and environmental responsibility (TJSLP) is an ongoing commitment by the business world to act ethically and contribute to the economic development of the local community or society at large, along with improving the standard of living of workers and their families. In other words, CSR is understood as a way for a company to achieve balance or integration of economic, environmental or social issues and at the same time be able to meet



the expectations of shareholders and stakeholders. From the above understanding, it can be understood that TJSLP must target three things, namely profit, people and planet (triple bottom lines in TJSLP).

This statement is in line with what was stated by John Elkington who said that TJSLP went through *the Concept of Triple Bottom Line*, that companies ⁴⁷ want to continue their business must pay attention to 3P namely *Profit, People, dan Planet*. In carrying out its business activities, the company is no longer only faced with responsibilities that are based on *single bottom line*, namely the economic aspect that is realized in conditions of profit only (profit), but companies must also pay attention to and be involved and show their social responsibility by paying attention to fulfilling the welfare and quality of society, especially the surrounding community (*people*), as well as contribute actively in preserving the environment (planet-earth). (Widjaja and Pratama, 2008) ¹⁰

Juridically, the existence of the TJSLP concept in Indonesia can be found ¹⁰ in several laws and regulations, such as:

1. Law Number 40 of 2007 concerning Limited Liability Companies.

(1) According to Article 1 point 3 UUPT, 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. This TJSLP is regulated in Article 74 of the Company Law which reads that companies that carry out their business activities in the field of and/or related to natural resources are required to carry out Social and Environmental Responsibility.

(2) Social and Environmental Responsibility is an obligation of the Company which is budgeted for and calculated as the cost of the Company whose implementation is carried out with due regard to decency and fairness.

(3) Companies that do not carry out their obligations are subject to sanctions in accordance with statutory provisions.

(4) Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulations.

Furthermore, in the Elucidation of Article 74 UUPT it is said in paragraph (1) that this provision aims to continue to create harmonious, balanced and compatible Company relations with the environment, values, norms and culture of the local community. What is meant by "Companies carrying out their business activities in the field of natural resources" are companies whose business activities are managing and utilizing natural resources. utilize natural resources, but its business activities have an impact on the ability function of natural resources. Then in paragraph (3) it is explained that what is meant by "subject to sanctions in accordance with the provisions of laws and regulations" is subject to all forms of sanctions regulated in relevant laws and regulations. Social ⁴ and Environmental Responsibility which aims to realize sustainable economic development in order to improve the quality of life and the environment that benefits the Company itself, the local community and society in general. This provision is intended to support the establishment of harmonious, balanced and in accordance with environment, values, norms and culture of the local community, it is determined that a company ¹⁸ whose business activities are in the field of and/or related to natural resources is ⁸ liged to carry out Social Responsibility and Environment. (Madaan *et al.*, 2023) To carry out the Company's obligations, Social and Environmental Responsibility activities must be budgeted and calculated as a Company that is carried out by taking into account decency and fairness. These activities are contained in the Company's annual report. In the event that the Company does not carry out Social ²⁹ and Environmental Responsibility, then the Company concerned is subject to sanctions in accordance with the provisions of the laws and regulations.



In the provisions of Article 74 UUPT it is considered that there are still problems. This can be seen in the sentence "mandatory for companies that carry out their business activities in managing or relating to natural resources", here TJSLP tends to be considered only an obligation for companies that carry out business activities related to natural resources only, while companies outside the effort is not obligatory. The next problem is regarding the CSR budget which is carried out by paying attention to decency and fairness, while the proper and fair value of a company is not the same as other companies, so this limitation of fair and reasonable value cannot be used as a concrete reference for companies in implementing the CSR program. The third problem is that there is unclear sanction for those who do not implement it, the provisions of the sanctions referred to are not explained in reference to which Regulation. This resulted in legal uncertainty for the government and law enforcement officials to enforce these sanctions.

2. Government Regulation Number 47 of 2012 concerning Limited Corporate Social and Environmental Responsibility.

This government regulation implements the provisions of Article 74 UUPT. In the General Explanation of PP No. 47 of 2012 it is explained that in this Government Regulation it is regulated regarding social and environmental responsibility which aims to realize sustainable economic development in order to improve the quality of life and the environment that beneficial to the local community and society in general as well as the Company itself in the context of establishing a harmonious, balanced relationship between the Company, and in accordance with the environment, values, norms, and culture of the local community.

Under this Government Regulation, companies whose business activities are in the field of and/or related to natural resources are required to carry out social and environmental responsibility. These activities in fulfilling social and environmental responsibility obligations must be budgeted for and calculated as the costs of the Company which are carried out by taking into account propriety and fairness.

The social and environmental responsibility arrangements are intended to:

- a) increasing the Company's awareness of the implementation of social and environmental responsibility in Indonesia;
- b) meet the development of legal needs in society regarding social and environmental responsibility; and
- c) Strengthen social and environmental responsibility arrangements that have been regulated in various laws and regulations in accordance with the Company's business activities.
- d) The implementation of social and environmental responsibility is prepared by taking into account decency and fairness.
- e) The implementation of social and environmental responsibility must be included in the Company's annual report to be accountable to the GMS.
- f) Affirmation of the provisions for the imposition of sanctions for companies that do not carry out social and environmental responsibility.
- g) Companies that have played a role and carried out social and environmental responsibility can be given awards by the authorized agencies.

TJSL according to the Elucidation of Article 15 letter b of Law no. 25 of 2007 is the responsibility attached to every investment company to continue to create relationships that are harmonious, balanced and in accordance with the environment, values, norms and culture of the local community.

UU no. 25 of 2007 stipulates strict sanctions for companies that do not implement TJSL. In Article 34 of Law no. 25 of 2007 states that if investors do not carry out their obligations to implement TJSL, then based on this regulation investors can be subject to administrative sanctions in the form of:



- ²⁰
- a. written warning;
 - b. restrictions on business activities;
 - c. freezing of business activities and/or investment facilities; or
 - d. revocation of business activities and/or investment facilities. ²⁹

Philosophically, corporate social res²³ponsibility in Indonesia, referring to the 1945 Constitution of the Republic of Indonesia, fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, states that the purpose of the Republic of Indonesia is to "... protect all Indonesian people and all Indonesia's bloodshed and to promote public wel⁴¹fare, educate the nation's life, and participate in carrying out world order...". Thus, realizing the general welfare is the responsibility of the state. The realization of these goals requires the efforts of all people (including companies) to achieve them. This does not mean th⁶¹at the state delegates its obligations or responsibilities to the community or companies, but the role of companies is also important in the country's economic development. This potential can be exploited to accelera⁷te the realization of the country's goals. (Dewi, 2015)

The essence of the existence of the Principles of Corporate Social and Environmental Responsibility (TJSLP) is in order to strengthen the company's ability to adapt to its environment, community and stakeholders related to it, both locally, nationally and globally. In its implementation, it is expected that elements of the company, government and society interact and support each other, so that CSR can be realized in a comprehensive manner, so that when making decisions, carrying out decisions, and accountability can be carried out together.

The arrangements for companies regarding TJSLP re⁴gulated in Article 74 of the Company Law, aim to realize sustainable economic development in order to improve the quality of life and the environment that is beneficial to the Company itself, the local community, and society in general. This provision is intended to support the establishment of harmonious, balanced, and in accordance with the environment, values, norms and culture of the local community, so it is determined that a com¹⁸pany whose business activities are in the field of and/or relate⁸ to natural resources is obliged to carry out social responsibility and environment. To carry out the Company's obligations, social and environmental responsibility activities must be budgeted and calculated as the Company's costs which are carried out with due regard to ¹⁴efficiency and fairness. These activities must be included in the Company's annual report. And in th¹¹event that the Company does not carry out its social and environmental responsibility, then the Company concerned will be subject to sanctions in accordance with the provisions of the laws and regulations.

3.2 The Concept of Regulating the Amount of Corporate Social and Environmental Responsibility Funds in the Ius Constituendum

As previously explained, Article 74 paragraph (2) UUPT does not clearly state ⁹the amount of TJSLP funds and only provides guidance that the amount of funds in the implementation of TJSLP must pay attention ³to decency and fairness. This situation will make the company have a different perception of the provi⁴³sions of Article 74 paragraph (2) of the UUPT. For example, in 2019 PT. Arutmin Indonesia in Asam-Asam Village, Jorong District, Tanah Laut Regency, South Kalimantan Province has allocated CSR funds through the Community Empowerment Development Program (PPM) of 1% of the profits it received in 2018. The form of PPM includes social services for cataract surgery, provision of Clean Water for the Community, Construction of the Pabilahan Bridge, Construction of the Batu Kapit Bridge, Construction of a Lemongrass Distillation Factory, Development of Educational Facilities at Teluk Kepayang Vocational School, Development of Tunas Arsia Kindergarten, Construction of a CSR House and Lake Bintang Tourism Object in the Karuh PIT Postmining Land. (Hastuti, 2019)



PT Adaro Indonesia's CSR programs cover the economic, educational, health and socio-cultural fields. In 2010, the total CSR funds allocated for Balangan Regency amounted to Rp. 14,762,142,857, - PT Adaro Indonesia's TJSP Education Program and partners in Balangan Regency are allocated Rp. 1,335,000,000, - as well as a special tutoring project for National Examination preparation for class IX (MTs/SMP) and class XII (MA/SMA) students in the amount of Rp. 3,000,000,000, - so that the total allocation for TJSP for education in Balangan Regency is Rp. 4,335,000,000,-. The allocation for education is 29.36% of PT Adaro Indonesia's total TJSP allocation in Balangan Regency, which is Rp. 14,762,142,857, -. (Juhaidi, 2012)

PT Adaro Indonesia's TJSP distribution and allocation are largely indirect for the educational process. Distribution and allocation The majority of the TJSP programs are given to TK/RA facilities, TKA/TPA, higher education scholarships, as well as Primagama third parties. The direct distribution to schools was only to SDN Sungai Ketapi, SMPN 3 Parangin, and SMPN 4 Halong which received an allocation for the CSR program in 2010. From the table it can also be seen that CSR funds were distributed to non-school/madrasah institutions, namely kindergartens and Kindergarten/TPA and Primagama Tutoring in the amount of Rp. 4,240,000,000,- or 97.81% of the total education CSR funds of Rp. 4,335,000,000, - while the direct funds for schools/madrasas amounted to Rp. 95,000,000,- or 2.91% of the total CSR allocation for PT Adaro Indonesia's education. (Juhaidi, 2012)

In particular, the dynamics of the development of the TJSLP concept in Indonesia can be viewed from two different perspectives:

1. The implementation of TJSLP which is based on the nature of volunteerism (*voluntary*). In Indonesia, several companies have actually been carrying out this voluntary social activity for a long time, even though they did not call it CSR. In fact, these activities basically approach the CSR concept which represents the company's participation and concern for social and environmental aspects. Here the implementation of CSR comes more from the company's initiative and is not an activity that is required to be carried out by the company by law.
2. TJSLP whose implementation is *mandatory* because it has been or is based on applicable laws and regulations, both for BUMN and BUMS (Company) companies. Legal obligations that are *mandatory* to perform TJSLP This is explicitly regulated in Article 88 paragraph (1) of the BUMN Law, Article 15 of the Investment Law, and Article 74 paragraph (1) of the Limited Liability Company Law and its implementing regulations. Implicitly a legal obligation to implement TJSLP can also be found in various laws and regulations, including in the Law on Prevention and Management of the Environment and the Ruling of the Constitutional Court of the Republic of Indonesia Number 53/PUU-VI/2008.

The company believes that the CSR program is an investment for growth and sustainability (*sustainability*) business. This means that CSR is no longer seen as a cost center (*cost center*) but profit center (*profit center*) in the future. The logic is if TJSP is ignored, then an incident occurs, so the cost to cover the risk is far greater than the value that is intended to be saved from the CSR budget allocation itself. Not to mention the non-financial risks that adversely affect the corporate image and public trust in companies. Thus, CSR is no longer just a patch activity that, if forced, can be sacrificed for the sake of achieving efficiency, but CSR is the soul of the corporation. CSR has entered into the heart of corporate strategy. TJSP is addressed strategically by carrying out CSR initiatives with a corporate strategy. In this way, CSR initiatives are conceptualized to improve the corporate competitive context in the form of the quality of the business in which the corporation operates.



According to Saidi and Abidin there are four models of CSR patterns in Indonesia: (Machmud, 2015)

1. Direct involvement, the Company runs the CSR program directly by organizing its own social activities or making donations to the community without intermediaries.
2. Through foundations or corporate social organizations, the Company establishes its own foundation under the company or group. This model is an adoption of a model that is commonly applied in companies in developed countries.

Funding arrangements TJSPL which is clearly contained in Law no. 19 of 2003 concerning SOEs, which through its implementing regulations, namely the Regulation of the Minister of State for SOEs No. 5 of 2007 which regulates from the amount of funds to the procedures for implementing CSR. As is well known, CSR owned by BUMN is the Partnership and Community Development Program (PKBL). The BUMN Law states that apart from seeking profits, the role of BUMN is to also provide guidance and assistance to weak entrepreneurs, cooperatives and the community. Furthermore, in Article 9 paragraph (1) BUMN State Ministerial Regulation No. 5 of 2007 explains that the source of PKBL funds comes from the company's net profit allowance ⁵⁴ 2 percent which can be used for Partnership or Community Development Programs. One of the goals of law is to fulfill legal certainty. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law can be implemented properly. Of course legal certainty has become an integral part, this is prioritized for written legal norms. Because of certainty In essence, this is the main purpose of law. This legal certainty becomes the regularity of society is closely related to the certainty itself because the essence of order will cause a person to live with certainty in carrying out the activities needed to carry out the activities of the life of the community itself. (Mertokusumo, 2009) The embodiment of legal certainty can be done by including something in statutory regulations. In 2016 the DPR conducted a study in the context of making a law that specifically regulates corporate social responsibility. In the academic text it is said that to support CSR activities, it is necessary to arrange funding. As for this bill, it is directed that CSR funds be calculated as costs and budgeted for in the Company's work plan and budget. The budgeting and calculation of CSR funds is carried out by taking into account the propriety and fairness determined through the decision-making mechanism of the company concerned. Meanwhile, accountability³³ or the use of CSR funds is carried out through the company's decision-making mechanism. (*Naskah Akademik RUU tentang Tanggung Jawab Sosial Perusahaan.*)

When there is a legal vacuum due to uncertainty about the amount of TJSPL funds by the DPR, it is also necessary to regulate about TJSPL by the ² regional government through Regional Regulations. According to the provisions contained in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia states that "The regional government has the right to establish regional regulations and other regulation² to carry out autonomy and co-administration tasks. "Regional regulations are one of the types of laws and regulations that apply in ² the current Indonesian constitutional system. Based on these provisions, each region is given the authority to make its own regional regulation⁹ (Perda).

In carrying out government affairs which are the authority of the Region, the regional head and the DPRD as administrators of the Regional Government make Regional Regulations as the legal basis for the Region in implementing Regional Autonomy in accordance with the conditions and aspirations of the people and the peculiarities of the Region. Perda made by the Region only applies within the jurisdictional limits of the Region concerned. However, regional regulations stipulated by the regions may not conflict with the provisions of laws and regulations that have a higher level in accordance with the hierarchy of laws and regulations. Besides that, regional regulations as part of the system of laws and regulations may not conflict with the public interest as stipulated in the rules for drafting regional regulations. This is as



explained in the General Elucidation number 8 of Law Number 23 of 2014 concerning Regional Government.

Regions carry out Regional Autonomy originating from the authority of the President who holds government power. Considering that the ultimate responsibility for administering government is in the hands of the President, the logical consequence is that the authority to cancel regional regulations is in the hands of the President. It is inefficient if the President immediately rescinds the Perda. The President delegates the authority to cancel Provincial Perda to the Minister as assistant to the President who is responsible for Regional Autonomy. Meanwhile, for the cancellation of Regency/City Perda, the President delegates his authority to the governor as the Representative of the Central Government in the Region. To avoid arbitrariness in cancelling regional regulations, the Provincial Government can submit objections to the cancellation of provincial regulations made by the Minister to the President. Whereas Regency/City Regional Government can submit objections to the cancellation of Regency/City Regional Regulations made by the governor as the representative of the Central Government to the Minister. From the administration of Regional Government, the decisions made by the President and the Minister are final. (*Naskah Akademik RUU tentang Tanggung Jawab Sosial Perusahaan*, no date)

4 CONCLUSION

Arrangements for Corporate Social and Environmental Responsibility (TJSLP) which in Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies aims to realize sustainable economic development in order to improve the quality of life and the environment that benefits the Company itself, the local community and society at large. This provision is intended to support the establishment of harmonious, balanced, and in accordance with the environment, values, norms and culture of the local community, so it is determined that a company whose business activities are in the field of and/or related to natural resources is obliged to carry out social responsibility and environment. To carry out the Company's obligations, social and environmental responsibility activities must be budgeted and calculated as the Company's costs which are carried out with due regard to decency and fairness. These activities must be included in the Company's annual report. And in the event that the Company does not carry out its social and environmental responsibility, then the Company concerned will be subject to sanctions in accordance with the provisions of the laws and regulations. However, in reality Law no. 40 of 2007 does not explicitly regulate the amount of CSR funds that must be provided by the company. Legislators only state clearly that the implementation is carried out with due observance of propriety and fairness. This means that the amount of TJSLP activity funds must pay attention to decency and fairness in its implementation.

Provision TJSLP as a legal obligation in Law no. 40 of 2007 is meaningless if it does not clearly regulate the amount of funds TJSLP and legal sanctions that can force companies that do not comply TJSLP. For the sake of compliance with the rules regarding TJSLP and achieving the goals and benefits of TJSLP, it is necessary to have legal certainty regarding the amount of TJSLP funds and strict sanctions for companies that do not implement CSR. Funding arrangements TJSLP which is clearly contained in Law no. 19 of 2003 concerning SOEs, which through its implementing regulations, namely the Regulation of the Minister of State for SOEs No. 5 of 2007 which regulates from the amount of funds to the procedures for implementation. In Article 9 paragraph (1) BUMN State Ministerial Regulation No. 5 of 2007 explains that the source of funds for the Partnership and Community Development Program (another term for TJSLP according to the BUMN Law) comes from the company's net profit allowance of 2 percent which can be used for Partnership or Community Development Programs. The DPR



should have dared to determine the amount of TJSLP funds so that there is legal certainty and binding nature to every company burdened with CSR obligations. The measure that can be used is what percentage of profits earned in the previous year which is then budgeted in the company's work plan in the next year. What about companies that do not experience profits (profits). Because these companies continue to operate and have an impact on the environment, companies that do not have profits are still burdened TJSLP, but the percentage is different. When there is a legal vacuum due to uncertainty about the amount of TJSLP funds by the DPR, it is also necessary to regulate about TJSLP by the regional government through Regional Regulations. According to the provisions contained in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia states that "The regional government has the right to establish regional regulations and other regulations to carry out autonomy and co-administration tasks.

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