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ASCERTAINING LEGAL CERTAINTY FOR CORPORATE SOCIAL RESPONSIBILITY USING QIYAS: A COMPARATIVE EXPLORATION OF INVESTMENT LAW AND COMPANY LAW IN INDONESIA

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ABSTRACT
Legal certainty for CSR remains elusive in Indonesia. We explore Law No. 40 of 2007 and Law No. 25 of 2007 concerning Limited Liability Companies and Investment. Founded as a welfare state governed by rule of law to bring prosperity to its people, Indonesia's activities in ensuring the welfare of its people is measured through its legal instruments. Legislation in Indonesia is ambiguous on penal mechanisms relating to CSR non-compliance, leaving gaps that present its legal uncertainty for CSR. The Qiyas process of deductive analogy in Islamic jurisprudence, can be instrumental in ascertaining legal certainty for CSR in Indonesia.

INTRODUCTION

As a state that adheres to and applies rule of law, Indonesia prioritizes the law rather than absolutism in turning the wheels of government (Assiddiqie, 2008). The country was founded as a welfare state by its Founding Fathers with its purpose enshrined in the 1945 Constitution's Preamble which reads in part, "Then from that, to form the Indonesian State Government that protects all the people of Indonesia … to advance public welfare, educate the nation's citizens..." (Imansyah et al., 2017).

The idea of the welfare state was formulated in short and abstract phrases like "advancing public welfare, educating the nation's life" in the Preamble of the 1945 Constitution, it is further concreted in the articles of the 1945 Constitution, particularly as stipulated in Chapter XIII on education and culture and Chapter XIV on the economy and social welfare. Objectively it should be noted that the embodiment of the idea of the welfare state mandated by the Preamble of the 1945 Constitution seems

more evident in its articles after being amended. The role of the state in realizing the idea of the welfare state became more concrete and prominent (Imansyah et al., 2017).

Referring to the provisions contained in the 1945 Constitution, Article 1 paragraph (3) provides that 'Indonesia is a State of Law'. So, in all its activities including efforts to realize prosperity, various regulations concerning various fields of life were formed as a legal basis for implementation.

The enactment of the Limited Liability Company Law (UUPT) was a very significant step in the field of business law, this was firstly due to the law's elimination of dualism in the field of corporate law in Indonesia, secondly, the enactment of the Company Law indicates the government's views of the importance of business entities where business transactions do not take place between individuals but between legal entities, and thirdly, the enactment of UUPT has an international dimension, harmonizing with laws and regulations of Indonesia's trading partner countries. A Limited Liability Company (PT) has better value in terms of its own economic and juridical aspects. These two aspects complement each other. The legal aspect provides security guidelines and regulation so that there is a balanced application of the interests of all parties carrying out economic activities. Further exploration of the Company Law reveals articles that regulate corporate social responsibility (CSR) or sometimes referred to as corporate environmental social responsibility.

The term social responsibility originates from the common law world (Kim et al., 2017), it is not identified with the theory of civil responsibility in the Roman-Germanic Law tradition. The term CSR only applies to companies because the company is the dominant commercial institution and deals with environmental and social issues that affect human life. The World Bank Group refers to CSR as a business commitment to contribute to building cooperation with employees and their representatives, their families, the local community and the community in ways that benefit both the business through sustainable economies, generally to improve the quality of life and for development (Ward, 2004). With its own necessity or obligation, CSR is not a marketing gimmick, but rather an integral part of the company's mission and values (Khairandy, 2014).

The existence of Corporate Social Responsibility / Environmental and Social Responsibility in Indonesia still raises big questions regarding its legal certainty in terms of sanctions for those who do not comply with the regulations. In other words, the existing regulations are stipulated in the law, but there is no penal mechanism to enforce the regulations, therefore it is not outrageous for one to assert that in such a situation, the legal certainty of CSR in Indonesia is abstruse.

LITERATURE REVIEW

Corporate Social Responsibility (CSR)

ISO 26000 interprets social responsibility as the responsibility of an organization, for the impact of its decisions and activities on society and the environment, through transparent and ethical behaviour, which is consistent with: sustainable development and community welfare, paying attention to the interests of the stakeholders, applicable law and international norms, and integrated in all organizational activities, in the case of companies covering its activities, products and services (Agudelo et al., 2019).

In principle, CSR aims to make companies able to contribute to the progress or improvement of the welfare of the local community. At this point, it seems clear that

business actors through various business entities that are legal entities or those that are not legal entities are 'requested' to work together with the Government to realize welfare for the community because companies are also morally ethically judged to have social responsibility to the environment and society. This national task is no longer seen as the responsibility of the state solely to carry it out, although it can indeed be studied in more depth as to how far companies can actually be asked to assume these noble responsibilities when compared to state obligations (Jennings, 2019). On the other hand, Ramesh et al. (2018) argue that CSR also actually benefits companies that implement it, for example, CSR is able to create a brand image for companies in a competitive market so that in turn they will be able to create customer loyalty and build or maintain a business reputation. Then, CSR can also help companies to obtain or continue a license to operate from the Government or from the public because the company will be judged to have met certain standards and have social concerns.

Regulation of CSR in Indonesia is through the Company Law No. 40 of 2007 which mandates companies to participate in sustainable economic development to improve the quality of life and the environment (Aldila and Santiago, 2018). In Government Regulation No. 47 of 2012 concerning Social and Environmental Responsibility of limited liability companies, Article 2 states that: 'Every company as a legal subject has social and environmental responsibility.' This law regulates social and environmental responsibility that aims to create 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 a harmonious, balanced and harmonious company relationship with the environment, values, norms and culture of the local community. For this reason, it is determined that companies whose business activities are in or related to natural resources are required to carry out social and environmental responsibilities. To carry out these corporate obligations, social and environmental responsibility activities must be budgeted and accounted for as company costs are incurred with due regard for propriety and reasonableness. These activities are included in the annual report. In the event that the company does not carry out social and environmental responsibilities, the relevant company is subject to sanctions in accordance with the provisions of the legislation.

Welfare State

A Welfare State or commonly referred to as a prosperous state is an ideal idea of how a country carries out its duties in order to serve citizens towards a harmonious and prosperous order of life (Anttonen, 2019).

In Indonesia, the concept of social welfare is enshrined in Law No. 6 of 1974 Article 2 paragraph 1, in Article 33 concerning the economic system, places the State as the party most responsible for realizing social welfare. These provisions show that social welfare has always been the state’s goal of development in Indonesia by. If the law is to be devoted to justice and the welfare of the people at large, it can only be realized if its implementation is by means of a progressive look at the views of a social welfare state (Budiman, 2019). It can therefore be concluded that a social welfare state includes a general enthusiasm to try, despite arguments and the existence of security guarantees, to prove that legal order must be based on a scale of certain values, which are not formulated with absolute formulas but by paying attention to the interests of the people that change with changing times, circumstances, and changes in national belief (Ismail, 2019).

Good Corporate Governance (GCG) Principles

Good Corporate Governance (GCG) according to the Forum for Corporate Governance in Indonesia (FCGI), is "A set of regulations that establish the relationship between shareholders, management, creditors, government, employees and other internal and external stakeholders with respect to the word rights and their obligations or in other words the system that leads and controls the company (Handoyo and Agustianingrum, 2017).

According to the Organization for Economic Cooperation and Development (OECD) as quoted by Wahyudin Zarkasyi (2008), Good corporate governance is a structural mechanism that driven by stakeholders, shareholders, commissioners and managers, that sets company goals and means to achieve these goals and oversees the performance. The same was noted by Danoshana and Ravivathani (2019) that good corporate governance is 'A set of rules that define a relationship between shareholders, managers, creditors of the government, employees and other internal and external stakeholders in respect to their and responsibilities.'

The implementation of good corporate governance in a company can be seen from the principles of implementing it. In Indonesia, the current rules regarding GCG in State Owned Enterprises (SOEs) are regulated in SOE Ministerial Decree No.: PER-01 / MB0 / 2011 concerning Implementation of Good Corporate Governance in SEOs as amended by SOE Ministerial Decree No.: PER -09 / MBU / 2012. The regulation regarding GCG is not new it was already in existence and more regulation was put in place by issuing the Minister of State Enterprises Decree No. 23 of 1998 which requires transparency among SOE management. Subsequently, Decree Number: KEP-117 / M-MBU / 2002 concerning the Implementation of GCG Practices in SOEs was issued.

The GCG principles referred to in the regulations governing the application of GCG practices in SOEs are five principles. First is Transparency that involves carrying out the decision-making process with openness in disclosing material and relevant information about the company. Then the Principle of Accountability, which requires clarity of functions, implementation and accountability of organs so that company management is carried out effectively. The third is the Principle of Responsibility, compliance in the management of the company with the laws and regulations and sound corporate principles. Fourth, the principle of independence, where a company is managed professionally without conflict of interest and influence / pressure from any party that is not in accordance with the laws and regulations and healthy corporate principles. And finally, fifth, the Fairness Principle, being justice and equality in the weaving of the rights of Stakeholders (stakeholders) that arise based on agreements and laws and regulations.

Qiyas

Varied interpretations of *Qiyas* abound; Al-Qadhi Abi Bakr explained that *Qiyas* is to bring something that is known to something else that is also known in order to establish laws because there is something in common between the two. Ibn Hajib interprets *Qiyas* as to equate a branch law to the principal because of the legal similarity *illat*. Ali Hasballah explained that *Qiyas* is to equate the law of something (which is not specified in the text) with something else (whose law has been determined in the text) on the basis of legal *illat* (Adam 2019). *Qiyas* is also referred

to as an effort to keep the truth. So, the knowledge is right from birth for people who do *Qiyas*, not for scholars in general. *Qiyas* are of two kinds: [1]

(1) Eradicate something with the main case because both have the same reason, so the *Qiyas* in it cannot be different.

(2) Eradicate something with the main case because both have similarities, so that he is attached to the most appropriate or the most similarity, sometimes the perpetrators of *Qiyas* differ in opinion in this case.

Qiyas is one method of *istinbat* (digging) law which is popular among the Shafi'ite schools of thought. In its sequence, the Shafi'ite school places the *Qiyas* in the fourth place after the Qur'an, the hadith and *ijmak*. The Shafi'ite Imam as a pioneer of the mujtahid who uses the *Qiyas* as the only way to explore the law, says that the so-called ijtihad is *Qiyas*. He points out that "ijtihad" and "*Qiyas*" are two words that have the same meaning (Fuad, 2016).

Qiyas is to equate the law of a matter that does not have provisions in the Quran and As-Sunnah or Al-Hadith with other things whose laws are referred to in the Qur'an and Sunnah (contained in the books of hadith) because of the similarity of *illat* (causes or reasons). *Qiyas* is a measure, which is used by reason to compare one thing with another. For example, the prohibition of intoxicating drinks is in the Qur'an, what causes the drink to be banned is *illat*, which is intoxication. For intoxicating drinks from whatever the source, they are all taken by the law as forbidden to drink. And to avoid the negative consequences of drinking intoxicating drinks, *Qiyas* stipulates the prohibition of consumption, promotion or trade of all intoxicating drinks.

Legal Certainty

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[1] Imam Asy-Syafi'i, *Ar-Risalah*, diterjemahkan oleh Masturi Irham & Asmui Taman, Jakarta: Pustaka Al-Kaustar,2012,hal.382. (*Translation*: Imam Asy-Shafi'i, *Ar-Risalah*, translated by Masturi Irham & Asmui Taman, Jakarta: Pustaka Al-Kaustar, 2012, p.382)

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Legal Certainty

As a fundamental rule of law, Legal Certainty provides for the law as being clear to those it is being subjected to, as such it offers them with ways of regulating themselves to limit government exercise of legal power over them, thereby offering a degree of freedom and determining the scope of power of the authorities (Fenwick and Wrbka, 2016).

Legality, understood as high accountability of regulations, is a legal autonomous body; legalism, which is a problem. Legalism is a tendency to rely on legal authority at the expense of solving problems at the level of practice that has the application of regulations no longer characterized by a phase of consideration of goals, needs, and consequences. Legalism is detrimental, partly because of the rigors it imposes, and partly because the rules interpreted in abstract, that are aimed at formal obedience that actually hides the distortion of public policy (Philippe and Philip, 2003).

Sanctions are determined by the rule of law; they are the reaction of the rule of law to offense, or the reaction of the community determined by the rule of law, to the perpetrators of a crime. Modern law very rarely regulates a particular action without making the opposite action as a condition for a sanction. In addition, legal definitions which do not determine law as a compelling order must be rejected because (1) only by including elements of legal sanctions can be clearly distinguished from other social orders; (2) coercion is a very important factor as knowledge of social relations and becomes the main character of law; and (3) the existence of sanctions is the main character of modern law in the relationship between law and the state (Asshiddiqie and Safa'at, 2012).

Legalistic conceptions give birth to a polarizing perspective on justice. On one hand, justice is seen as a transcendental moral value that must be followed by every legal decision. Because this justice is abstract and ideal, the meaning of justice cannot be separated from certain subjectivities and interests. Justice that is widely discussed in the discourse of legal philosophy is very difficult to apply in criminal law because it does not have concrete forms and other general standards, justice as a moral value encourages some people to society. On the other hand, justice as a moral value encourages some people to think that justice is impossible to underlie the application of criminal law, including, in a narrower context, criminal conviction. As a result, these people make a firm choice on legal certainty as a basis for the enforcement of

[3] H.M. Rasjidi dalam Mohammad Daud Ali, 2014, *Hukum Islam,* Jakarta: PT. Raja Grafindo Persada, hal.120. (*Translation*: H.M. Rasjidi in Mohammad Daud Ali, 2014, *Islamic Law*, Jakarta: PT. Raja Grafindo Persada, p.120.)

criminal law rather than justice. For this legalist view, criminal law is based on the legal certainty represented in the principle of legality.

It is stated in the Elucidation of the Draft Criminal Code (RKUHP) of the 2010, Article 12 that justice and legal certainty are two legal objectives which are often not in line with one another and difficult to avoid in legal practice. If rule of law meets more demands on legal certainty, the greater the possibility of the aspect of justice. The imperfection of this rule of law in practice can be overcome by giving an interpretation of the rule of law in its application to concrete events. If in the application of a concrete event, justice and legal certainty push each other, then the judge as far as possible prioritizes justice over legal certainty (Asshiddiqie and Safa'at, 2012).

The mark of what will be taken by the legislature in response to the rule of law, is very dependent and controlled by the functioning of the applicable legal regulations, from the sanctions, and from the entire complexity of social, political, and other forces working on them, and from the feedback that comes in. Thus, law and politics are influential and inseparable from the laws that work in society, therefore law is for the community, as is the theory of living law. The functions of law are only possibly carried out optimally, if the law has power and is supported by political power. In order to avoid abuse of power, it should support the realization of the function of law by "injecting" power into the law, for instance in the form of legal sanctions. One of the manifestations of legal legitimacy through political power is manifested in sanctions for violators of the law. Nevertheless, if it has become law, then politics must obey the law, not vice versa. Such is the consequence of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "the State of Indonesia is a State of Law". Thus, law and politics are interdependent and interrelated, but support each other than the law works in society, as it is held in the theory of Chambliss and Seidman (Ismail, 2019).

Law and Justice Discovery

One of the ways in which justice is distributed by the philosopher Aristotle is as found in his book Ethics, where Aristotle divides justice into two groups:

(1) Distributive justice, namely justice in terms of distribution of wealth or other ownership to each member of the community. With this distributive justice, what is meant by Aristotle is a balance between what one gets with what one deserves.

(2) Corrective justice, namely justice that aims to correct unjust events. In this case justice in the relationship between one person and another is a balance (equality) between what is given and with what he receives.

One notion of legal justice is a constant decision of citizens to give the state the right of the state, while each individual adjust their actions to the common interests of the state. Therefore, this notion of legal justice is actually a prototype of social justice, although there are those who try to place social justice as the fourth justice, in addition to cumulative justice, distributive justice, and legal justice. Although justice has been sorted out theoretically like that, in reality the separation between them is not possible. In fact, it could theoretically be said that distributive justice is actually a foothold of what is called social justice. The concept of distributive justice itself was first popularized by the great philosopher Aristotle. In principle, typical of distributive justice which then forms the basis of the concept of social justice can be formulated as follows (Fuady, 2010):

Legal development, which is essentially a change in the legal system towards the good, is not only focused on the reality of law as a product of the implementation of legal norms produced, but also includes the principles of law and legal values that underlie it so that the law has a basis of validity in a society. The enactment of the rule of law in Indonesia is formed in public relations in accordance with the ideal ideals and noble wishes of the makers of the 1945 Constitution (Rizka et al., 2017).

The development of national law in Indonesia is basically an effort to develop a national legal system based on the soul and personality of Indonesia. The implementation of the development of Indonesian national law is the establishment of new rules of law to regulate various fields of community life. The development of national law is directed at meeting the legal needs of the community in order to create a just and prosperous society. The development of Indonesian national law is not an autonomous process, but a heteronomous and holistic process. The heteronomous process in the development of national law means that the development of the law is related to other development sectors.

Planning models that see planning functions as the mechanics to change a state are known as mechanistic action models or social engineering, society is not a sub-system that is subordinated, but rather an independent subsystem (Widyastuti and Absori, 2018).

The legalistic approach generally adopted by Indonesian law emphasizes the existence of legal certainty, because it has an impact on fulfilling a sense of justice for the community in general with the presence of a company around it. For companies, if only a few comply to CSR as regulated while others do not, then naturally the sense of justice is not fulfilled.

On the other hand, in Law Number 25 of 2007 concerning Investment, obligations are stated accompanied by a penal mechanism relating to Social and Environmental Responsibility / CSR, this applies to Investors both as individuals and / or entities, so legal certainty in this regulation is clear.

As a solution, efforts to find legal certainty can be through *Qiyas* (deductive analogical reasoning) applied to the regulations and Law Number 40 of 2007 concerning Limited Liability Companies as *furu'* (that which is based), Act Number 25 of 2007 concerning investment as the *Asl'* (default rule), and social and environmental responsibility / CSR as *illat* (the basic feature of a transaction that causes relevant law to be applied).

Based on the above insights, this study examines the implementation of *Qiyas* in finding the legal certainty for corporate social responsibility (CSR), with the comparative study of the Company Law No. 40 of 2007 and Investment Law No. 25 of 2007 of the Republic of Indonesia.

In deciphering the focus of this study prompted for a normative analysis of the provisions of CSR in Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 25 of 2007 concerning Investment. We also ascertain if the legal certainty of CSR in Indonesian law through *Qiyas* can be attained.

METHODOLOGY

The study systematically, methodologically, and consistently examined written legal material, principles and systems using the normative juridical approach. The descriptive analytical method was used to describe and expound on the legal uncertainty in CSR regulations with the aim of deciphering content pertinent to the

object of this research so as to explore ideal aspects, that were then analysed based on legal theory and Law Number 40 of 2007 concerning Limited Liability Companies, Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility, Law Number 25 of 2007 and Decision of the Constitutional Court Number 53 / PUU-VI / 2008.

Data collection involved extraction of required material from the primary and secondary data sources through searching, studying, recording and interpreting matters related to the object of research (Supranto, 2003). Data Analysis followed the descriptive approach where the contents and structure of positive law, was carried out to deduce the meaning of the content (Ali, 2017).

DISCUSSION

Normative Analysis of Provisions for CSR in Indonesian Laws And Regulations

Indonesia as an independent and sovereign country certainly has goals to be achieved, as stated in the 1945 Constitution that include among others, protecting all Indonesian people, promoting general welfare, educating the nation, and joining in carrying out the world order. To realize these goals, it is necessary for the government to have an active role as the custodian of the law and its regulator with the responsibility of ensuring that the regulations and policy are able to solve problems in people's lives as well as ensuring that the social justice is able to accommodate all forms of community activities including the economy.

Institutions have several provisions that allow them guarantees of a sense of security to conduct economic ventures; likewise, institutions have obligations regarding their social and environmental responsibilities. The classical corporate theory where CSR is interpreted as the responsibility of managers and directors to shareholders does not include the obligation of management to pay attention to the interests of other company constituents, which limits the application of CSR in which the company seems to be only concerned with its own interests (Khairandy, 2014).

Contemporary CSR concepts hold that a company must also have responsibilities to stakeholders such as workers, suppliers, the community, and the environment in which the company carries out its activities. Regarding Corporate Social Responsibility regulated by the current Indonesian law. [4]

Social and environmental responsibility 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 a harmonious, balanced, and compatible company relationship with the environment, values, norms and culture of the local community (Article 74 paragraph (1) of Law Number 40 Year 2007). Companies whose business activities are in the fields and / or related to natural resources are required to carry out budgeted social and environmental responsibilities and are calculated as corporate costs carried out with due regard for propriety and fairness. This should be reflected in a company's annual report as provided for in Article 74 paragraph (2) of Law Number 40 of 2007 (Abdulkadir, 2010).

[4] See Law Number 40 Year 2007, Article 1 Item 3. [*Original*−Lihat dalam Undang-Undang Nomor 40 Tahun 2007, Pasal 1 Butir 3.]

The law regulates social and environmental responsibility with the aim of realizing sustainable economic development in order to improve the quality of life and the environment which is beneficial for the company itself, the local community and society in general. This provision is intended to support the establishment of a harmonious, balanced environment where the values, norms and culture of the local community are taken into consideration, so it was determined that a company whose business activities are in, and / or related to the natural environment are required to carry out Social and Environmental Responsibility. To carry out the Company's obligations, Social and Environmental Responsibility activities must be budgeted and calculated as company costs incurred with regard to propriety and fairness.[5]

Social and environmental responsibility is carried out by the Board of Directors based on the Company's annual work plan after obtaining approval from the Board of Commissioners or GMS in accordance with the Company's articles of association, unless otherwise stipulated in legislation. Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies states in part that:[6]

(1) A Company which carries out its business activities in the field and / or related to natural resources must carry out Social and Environmental Responsibility.

(2) Social and Environmental Responsibilities as referred to in paragraph (1) are the Company's obligations that are budgeted and calculated as the Company's costs, the implementation of which is carried out with due regard to propriety and fairness.

(3) Companies that do not carry out the obligations as referred to in paragraph (1) will be subject to sanctions in accordance with statutory regulations.

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

Of all the verses contained in the article it is only obligatory for a company to carry out Environmental and Social Responsibility but the sanctions for noncompliance are not specifically stated. In paragraph (3) above there is a clause that states that sanctions will be regulated by statutory regulations in this case clarified through paragraph (4) as Government Regulation. This in terms of enforcing CSR is ambiguous.

Based on the Indonesia Stock Exchange data there are 675 companies listed in the company profile data list. In addition, in 2018, Indonesia ranked first with the largest number of new listed company shares in the ASEAN region with as many as 57 listed companies and number second in funds collected through IPO (Initial Public Offering) shares in the ASEAN region, which had total IPO funds shares collected amounting to 1 Billion US dollars.

According to data from the Ministry of Industry through its website there are a total of 9692 registered limited liability companies. Forbes named some Indonesian

[5] Explanation of Law Number 40 Year 2007 concerning Limited Liability Companies in Christian Orchard War, 2017, *Nationalism in the Nationalization Company: Towards the Professionalism of State Owned Enterprises (BUMN) Plantations*, Jakarta: Bhuwana Ilmu Populer, p.356 [*Original*−Penjelasan Umum Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dalam Christian Orchard Perangin-angin, 2017, *Nasionalisme di Perusahaan Nasionalisasi: Menuju Profesionalisme Perusahaan BUMN Perkebunan,* Jakarta: Bhuwana Ilmu Populer, h.356.]

[6] See Law Number 40 Year 2007, Article 1 Item 3. [*Original*−Lihat dalam Undang-Undang Nomor 40 Tahun 2007, BAB V, Pasal 74.]

companies like Gudang Garam, BCA, Indofood and Alfamart as being worth several billions of US dollars each, but the question is; to what extent is the community prosperous? This will not be easily answered, given that the community's right in the CSR of companies is not properly considered as article 74 of the Company Law regulating CSR does not provide its legal uncertainty.

There is cause to believe that the compilers of the Company Law in the Legislature (DPR) made the CSR regulations with very little knowledge of the concept. This is evident from the unclear definition of CSR and its stakeholders. They also seemed to not understand the debate about the voluntary and mandatory nature of CSR. The worst is that the input of interested parties or those with CSR knowledge was not sought, so the CSR obligations in the Company Law seem to be the work of the DPR without any public, stakeholder or expert consultation (Nugroho, 2014).

If you trace the other regulations referred to in paragraph (4) above, which are the *lex specialis* of Law Number 40 Year 2007, its *das sollen* specifically regulates sanctions in the event that they do not implement social and environmental responsibility in Government Regulations (PP) Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, Article 3 states that:

'Every Company as a legal subject has social and environmental responsibility.'

Then in chapter 7 it is stated that:

'The company referred to in Article 3 which does not carry out social and environmental responsibility is subject to sanctions in accordance with the provisions of the legislation.'

So far it can be seen that what is stated in Law Number 40 of 2007 and also Government Regulation Number 47 of 2012 which is the *lex specialis*, is at the level of the ideals of the legislators, because it is proven that both the laws a quo and the regulations below them do not regulate sanctions, so in this case legal certainty is ignored.

The provisions of a Government Regulation (PP) cannot add or reduce the provisions of the relevant Act. One of the provisions stipulated in Article 74 paragraph (2) of the Company Law is that the implementation of Social and Environmental Responsibility is carried out with due regard to propriety and fairness. It is not easy to determine or measure propriety and fairness. One understanding of propriety and fairness that can be applied is in accordance with the financial capability of the company and potential risks that result in responsibilities that must be borne by the company in accordance with its business activities. This kind of thinking deserves to be considered for inclusion in the implementing regulations of the Company Law in order not to cause multiple interpretations in its implementation (Daniri. 2018).

In 2008, a material test was carried out on Article 74 of Law Number 40 of 2007, the reason of the Petitioners submitting the material test was related to legal uncertainty in Article 74 of the quo in the Law. Yet we understand that, the law must remain grounded in the ideal, which is the goal of the law itself, namely expediency, justice and legal certainty. Legal certainty is what leads to how the law produces welfare in society. When this legal certainty is ignored, then of course the welfare of the people aspired will only be a dream that will not be realized.

Thus, from all the provisions in the above regulations, we can understand that the implementation of CSR for now is only in the form of moral and social sanctions,

regulations have no clear rules regarding any sanctions whether administrative or fines for companies that are not implementing CSR. Therefore, it is important to add well defined sanctions in CSR regulations.

Finding Legal Certainty of CSR Through Qiyas

Although in the preamble section of Law Number 40 of 2007 concerning Limited Liability Companies, it is explained that the national economy is based on economic democracy with the principle of togetherness, equitable efficiency, sustainability, environmentally friendliness, independence, and by maintaining a balance of progress and national economic unity, needs to be supported by strong economic institutions in the context of realizing community welfare, based on the principle of kinship. Law Number 40 Year 2007 regarding Limited Liability Companies has not provided a sense of justice for both workers / labourers and the surrounding community (Is, 2016).

The foundation of the CSR perspective stems from moral values, that the Company lives and is in the midst of community life. Therefore, the life and smooth running of the Company's business activities are highly dependent and related to the environment and the community concerned. The company must have a concern for the community where it operates. Because the law is not clear, there are many uncertainties; many things are not formulated clearly / explicitly in the Act (Arif, 2011).

Quoting a study by the Marine Management Organization (MMO) regarding CSR, it is stated as thus (MMO, 2014): [7]

"CSR can help an organisation to show it is socially responsible and environmentally sustainable. To be considered as socially responsible, a company's activities should benefit society. To be considered environmentally sustainable, a company's activities should not harm the environment."

Although the discourse on Revision of Company law in Indonesia has been on-going since 2016, any substantial changes to accommodate CSR legal certainty are yet to be realized.

The deductive analogical nature of *Qiyas* can be a practical method of addressing the issue of unclear laws by using provisions of existing laws to cater to a new situation that are not provided for in the existing laws

In this case *Qiyas* can be used as a method of catering to the currently uncertain components of laws regulating CSR. The term *Qiyas* linguistically means to equate. Understanding *Qiyas* linguistically gets us closer to understanding *Qiyas* in terms of equating branches of something to its mainstream. By definition, *Qiyas* is explained by different scholars with different interpretations. Al-Qadhi Abi Bakr referred to *Qiyas* as: 'passing a ruling on something based on something else known to established laws because there is something in common between the two things.' (Yusup, 2015)

Table 1. Results of the Implementation of the *Qiyas* Method

Problem	Corporate Social Responsibility

[7] Marine Management Organization, 2014, *Corporate Social Responsibility Strategy.*Aaccessed on 12 January 2020, through the official website of the British government, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318170/csr.pdf

<table>
<tr><td rowspan="4">Pillars of Qiyas</td><td>Origin
(old events that have legal provisions)</td><td>Law Number 25 of 2007 concerning Investment
Article 15 letter (b) states that:
'Every investor is obliged to:
a. apply the principles of good corporate governance;
b. carry out corporate social responsibility;
c. make reports on investment activities and submit them to the Investment Coordinating Board;
d. respect the cultural traditions of the communities around the location of investment business activities; and e. comply with all statutory provisions.'</td></tr>
<tr><td>Far'u
(new events for which there is no legal status)</td><td>Law Number 40 of 2007 concerning Limited Liability Companies
Article 74:
(1) Companies that do not carry out the obligations as referred to in paragraph (1) will be subject to sanctions in accordance with the provisions of the legislation.
(2) Further provisions regarding Social and Environmental Responsibility are regulated by Government Regulation.</td></tr>
<tr><td>Law
(original existing legal norms)</td><td>Article 34 paragraph (1):
(1) Business entities or individual businesses as meant in Article 5 that do not fulfil the obligations as specified in Article 15 may be subjected to administrative sanctions in the form of: 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.</td></tr>
<tr><td>Illat
(the nature of the law which forms the main guideline for the stipulation of original law)</td><td>Sanctions that explain legal certainty for the Company to immediately implement Corporate Social Responsibility</td></tr>
<tr><td colspan="3">Conclusion of the Legal Results of Qiyas</td></tr>
<tr><td colspan="3">Corporate Social Responsibility regulated in Act Number 40 of 2007 concerning Limited Liability Companies through Article 74 is classified as far'u because there are no sanctions relating to legal certainty therein. So that when aligned its position to be abrogated by Law Number 25 Year 2007 concerning Investment as Origin as well as Law through Article 15(b) and Article 34, the same illat is obtained as sanctions that clarify legal certainty for the company to immediately implement Corporate Social Responsibility. Thus, the Qiyas results obtained a new law, are that if a company does not implement CSR, administrative sanctions can be in the form of: a) written warning; b) restrictions on business activities; c) freezing of business activities and / or investment facilities; and d) revocation of business activities and / or investment facilities as previously stipulated in Article 34 of Law No. 25 of 2007 concerning Investment.</td></tr>
</table>

Basically, formal *Qiyas* provisions are used to find law in Islam namely by looking for legal equality through the Qur'an and Hadith texts, but in this case the author tries to make a breakthrough of new thinking in the science of law to solve a problem through Islamic means. The provisions of *Qiyas* in this case must be a text of the Qur'an and Hadith, try to be replaced with the provisions of the Act, this is one of the main implementations of Responsive law. In the end, using the *Qiyas* method is expected to answer the need for legal certainty over CSR in Indonesia; the main motive desired is how to bring prosperity in society collectively between the company and the state. On the one side, the country will be alleviated by the legal certainty of CSR, on the other hand, the company will carry out its obligations to the surrounding social and natural environment, in all this, there is only one big goal, which is the realization of the welfare state through legal instruments with legal certainty.

CONCLUSION

Based on the discussion of the results of the normative juridical review in finding legal certainty of corporate social responsibility (CSR), it can be taken that CSR has been regulated in Indonesian laws and regulations through Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies plus Government Regulation Number 47 of 2007 concerning Social and Environmental Responsibility but unable to offer certainty for the law to effectively enforce the implementation of CSR in Indonesian companies. This is because there is no single article in the Act or the relevant Government Regulations regulating sanctions in case CSR companies are noncompliant with the aw on the matter. For the case of Law No. 25 of 2007 concerning investment, it already provides legal certainty for investors both as individuals and as business entities in implementing CSR, as evidenced by the existence of Article 15 (b) and Article 34 paragraph (1) which strengthens the foundation of the implementation of CSR for investors.

The *Qiyas* method used to find legal certainty for CSR taken from Islamic law is exploration (*istinbat*) of law that is popular among the Shafi'ite schools. *Qiyas* is used to compare things with other things that have something in common. In this case *Qiyas* as a method is applied to equalize elements in the CSR law, in this case Law Number 40 of 2007 concerning Limited Liability Companies as *furu'*, and taking law number 25 of 2007 concerning Investment as its *Asl*, which is an old law that has sanctions for violations of CSR and complemented by the provision of legal norms through Article 34 of Law Number 25 of 2007 as the *illat* of corporate social and environmental responsibility.

SUGGESTIONS

To the legislators, the revision of Law No. 40 of 2007 concerning Limited Liability Companies which had been stopped should revived and taken as a priority of the national legislation program so that the revision could proceed. The revision in question relates to Article 74 which regulates CSR, by inserting elements like fines or administrative sanctions as is in Article 35 of Law No. 25 of 2007 concerning Investment.

To law enforcers, particularly District Court Judges and Constitutional Justices, they can consider referring to the legal discoveries in this study, to appropriately handle and resolve legal matters pertaining to CSR like lawsuits, injunctions or judicial reviews through the *Qiyas* method.

REFERENCES

- Abdulkadir M. (2010). Hukum Perusahaan Indonesia. Bandung: PT. Citra Aditya Bakti, hal.141.
- Adam. P. (2019). Hukum Islam. Jakarta: Sinar Grafika.
- Agudelo, M. A. L., Jóhannsdóttir, L., & Davídsdóttir, B. (2019). A literature review of the history and evolution of corporate social responsibility. International Journal of Corporate Social Responsibility, 4(1), 1.
- Aldila, M. R., & Santiago, F. (2018, September). CSR Implementation Concept of Mining Company in Indonesia According to Applicable Law and Theory. In 2018 International Conference on Energy and Mining Law (ICEML 2018). Atlantis Press.
- Ali, Z. (2017), Metode Penelitian Hukum, Jakarta: Sinar Grafika.

- Anttonen, A. (2019). The welfare state and social citizenship. In Unresolved Dilemmas (pp. 9-32). Routledge.
- Arief, B. N. (2011). Pendekatan keilmuan dan pendekatan religius dalam rangka optimalisasi dan reformasi penegakan hukum (pidana) di Indonesia. Badan Penerbit, Universitas Diponegoro.
- Asshiddiqie, J. and Safa'at, M. A. (2012). Teori Hans Kelsen Tentang Hukum, Jakarta: Konstitusi Press.
- Assiddiqie, J. (2008). Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformai Cetakan ke2. Jakarta: BIP.
- Budiman, H. (2019). Rekonstruksi Kebijakan Daerah Di Bidang Tata Ruang Untuk Meningkatkan Kesejahteraan Masyarakat Yang Berkeadilan (Doctoral dissertation, Universitas Islam Sultan Agung).
- Daniri, M. A. (2018). Tanggung Jawab Sosial Perusahaan. Jurnal Legislasi Indonesia, 6(2), 1-12.
- Danoshana, S., & Ravivathani, T. (2019). The impact of the corporate governance on firm performance: A study on financial institutions in Sri Lanka. SAARJ Journal on Banking & Insurance Research, 8(1), 62-67.
- Fenwick, M., & Wrbka, S. (2016). The Shifting Meaning of Legal Certainty. In Legal Certainty in a Contemporary Context (pp. 1-6). Springer, Singapore.
- Fuad, A. M. (2016). Qiyas Sebagai Salah Satu Metode Istinbat Al-Hukm", Mazahib Jurnal Pemikiran Hukum Islam, 15(1), 43.
- Fuady, M. (2010. Dinamika Teori Hukum, Bogor: Penerbit Ghalia Indonesia, hal.121.
- Handoyo, S., & Agustianingrum, W. B. (2017). GCG Role and Audit Quality in Reducing Earnings Management Action in Indonesian Manufacturing Firms. Jurnal Keuangan dan Perbankan, 21(3), 436-445.
- I.D.G. Palguna. (2019). Welfare State vs Globalisasi: Gagasan Negara Kesejahteraan di Indonesia, Depok: Rajawali Perss.
- Imansyah, R. G. C., Kuncoro, D. S., & Sari, I. R. (2017). Model Perizinan Industri Berbasis Kearifan Lokal (Studi Kasus Eksistensi Suku Samin dalam Konflik Izin Lingkungan Pabrik PT. Semen Indonesia). Prosiding Seminar Nasional "Perizinan sebagai Instrumen Peningkatan Kesejahteraan Masyarakat di Era Industrialisasi (Citizen Friendly), Fakultas Hukum UMS 2017.
- Is, M. S., & Shi, M. (2016). Hukum Perusahaan di Indonesia. Prenada Media.
- Ismail, D. E. (2019). Hukum Tata Ruang: Rekonstruksi Menuju Pemukiman Indonesia Bebas Kumuh. Yogyakarta: UII Press.
- Jennings, M. M. (2019). The Social Responsibility of Business Is Not Social Responsibility: Assume That There Are No Angels and Allow the Free Market's Touch of Heaven. Berkeley Bus. LJ, 16, 325.
- Khairandy, R. (2014). Hukum Perseroan Terbatas. Yogyakarta: FH UII Press, hal.493
- Kim, H., Park, K., & Ryu, D. (2017). Corporate environmental responsibility: A legal origins perspective. Journal of Business Ethics, 140(3), 381-402.

- Marine Management Organization−MMO. (2014), Corporate Social Responsibility Strategy. Accessed on 12th January 2020, through the official website of the British government, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318170/csr.pdf ,
- Nugroho, E. K. (2014). Politik Hukum Pembaharuan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Kajian Pasal 74 beserta Penjelasannya). Jurnal Hukum Ius Quia Iustu, 3(21).
- Nugroho, E. R. (2014). Politik Hukum Pembaharuan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Kajian Pasal 74 beserta Penjelasannya). Jurnal Hukum IUS QUIA IUSTUM, 21(3), 485-506.
- Penjelasan Umum Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dalam Christian Orchard Perangin-angin, 2017, Nasionalisme di Perusahaan Nasionalisasi: Menuju Profesionalisme Perusahaan BUMN Perkebunan, Jakarta: Bhuwana Ilmu Populer.
- Philippe Nonet and Philip Selznick. (2003). Hukum Responsif: Pilihan di Masa Transisi. Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa) [S.l.]: Ford Foundation. Transleted by Rafael Edy Bosco; ed.:Bivitri Susanti
- Ramesh, K., Saha, R., Goswami, S., & Dahiya, R. (2019). Consumer's response to CSR activities: Mediating role of brand image and brand attitude. Corporate Social Responsibility and Environmental Management, 26(2), 377-387.
- Ridwan Khairandy, 2014, Hukum Perseroan Terbatas, Yogyakarta: FH UII Press, h.490.
- Rizka, R., Khudzaifah Dimyati, S. H., Absori, S. H., Lamsudin, R., & SC, S. M. M. (2017). Hukum Rekayasa Reproduksi Indonesia Berbasis Transendental (Doctoral dissertation, Universitas Muhammadiyah Surakarta).
- Supranto, J. (2003). Metode Penelitian Hukum dan Statistik. Jakarta: PT. Rineka Cipta.
- Ward, H. (2004). Public sector roles in strengthening corporate social responsibility: taking stock. Washington, DC: World Bank.
- Widyastuti, F. R., & Absori, S. H. (2018). Penyelesaian Sengketa Lingkungan Hidup (Studi Kasus PT. Rayon Utama Makmur (RUM) di Kabupaten Sukoharjo) (Doctoral dissertation, Universitas Muhammadiyah Surakarta).
- Yusup, A. (2015). Analisis Pendapat Imam Abu Hanifah tentang Akad Istishna'dan Relevansinya pada Bank Syari'ah Mandiri Kantor Cabang Bandung (Doctoral dissertation, Fakultas Syari'ah Universitas Islam Bandung (UNISBA).
- Zarkasyi, M. W. (2008). Good Corporate Governance Pada Badan Usaha Manufaktur Perbankan dan Jasa Keuangan Lainnya. Bandung: Alfaeta.

LEGISLATION

- Undang-Undang Nomor 40 Tahun 2007, BAB V, Pasal 74. (Law Number 40 of 2007, Chapter V, Article 74.)

- Undang-Undang Nomor 40 Tahun 2007, Pasal 1 Butir 3. (Law Number 40 of 2007, Article 1 Item 3).
- Undang-Undang Nomor 25 tahun 2007 tentang Penanaman Modal. (Law Number 25 of 2007 concerning Investment).
- Undang-Undang Nomor 47 tahun 2012 tentang Tanggung Jawab Sosial dan Lingkungan Perseroan Terbatas, Pasa 3. (Law Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies, Article 3).
- PUTUSAN Nomor 54/PUU-VI/2008. (DECISION Number 54 / PUU-VI / 2008)