



International Journal of Applied Business and Economic Research

ISSN : 0972-7302

available at <http://www.serialsjournal.com>

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Volume 15 • Number 15 • 2017

The Model of Sanctions for Violators of Corporate Social Responsibility (CSR) (Study in Indonesia)

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Abstract: The purpose of this manuscript is to explore the need of the legal sanction for Corporate Social Responsibility (CSR) implementation in Indonesia. The regulations regarding CSR are not clearly on regulate of legal sanctions, even tough the existing of legal sanctions is needed to impose the corporate implementing CSR. The method of this research is empiric/nondoctrinal, the primary data is collected by interview, and the secondary is collected by literatures review. This is the first research on CSR that is done in tree areas (Muko-Muko, Surakarta and Panorogo) that proposes the right model of sanctions for CSR's violators. Based on the research result, that CSR in Indonesia actually can essentially be directed at strengthening the people's community to empower their economic life, health, education facilities and infrastructure, but the absence of the legal sanction makes the CSR implementation does not run well. The existence of legal substance of CSR will not succeed if there is no legal sanctions. Many companies will ignore implementation when there are no rules forcing them. This manuscript suggests that the issue of CSR not just as business ethic, but as corporate's obligation. If there is corporate that do not implement, so will be imposed legal sanctions.

Keywords: legal sanction, CSR, implementation

INTRODUCTION

Almost all countries recognize that, the government has a responsibility to prosper the people. That is welfare state (Hacker, Paulpierson, 2002) (Pierson, 1996) (Beckett, 2016) (Pfau-effinger, 2005), (Arts & Gelissen, 2002)(Allan, Scruggs, & Allan, 2016), even the burden of responsibility is contained in their Constitution. It means the state is not depressed alone to prosper the people (Hacker, 2004) (Estevez-abe, 2017), on its implementation government can required all stakeholders such as companies/corporations that have enjoy the country's wealth to participate and to be responsible as well. One form of corporate

responsibilities to the society is social and environment responsibility, popularly called CSR (Umar Hasan, 2014 : 2). CSR is often referred to good image and reputation outside the companies (Mattila 2009). Many corporate executives believe that CSR creates a competitive advantage for firms, thus leading to greater market share (Sheehan *et al.* 2014) (Tobergte & Curtis 2013).

As one of legal subject, the corporation has legal right and obligation, just like *natuurlijke persoon*, to which civil right and obligation inherent; as the legal subject the company is called *recht persoon*. Civil obligation is a legal responsibility that should be complied with and fulfilled. As the legal subject, it of course has some unquestioned legal responsibilities; the more important thing is to address the following questions: does the corporation has moral responsibility as well? In order to has moral responsibility, the company should has moral status or in other words moral behavior. Moral actor (moral agent) can do some action qualified as ethical or unethical (Bartens, K, 2000 : 290). At the international level, the implementation of CSR programs is usually voluntary and driven by various international assessment standards, including ISO 9001 (quality management system), ISO 14001 (environmental management system) and ISO 26000 (social responsibility guidelines). These standards are expected to be a reference for all countries and various parties who develop the concept of CSR.

In Indonesia, those standarts are adopted. The presence of Limited Inc. Law, that is actually the bridge of moral/ethical responsibility and legal responsibility. Although there has been a bridge between the legal and moral responsibilities, the implementation of CSR has not been maximal. For examples are in Indonesia. In Kutai Barat (Kubar) regency, East Borneo, out of hundreds companies in Kubar affiliated with mining, plantation, and wood. In reality, many companies still ignore CSR implementation. Meanwhile, there has been an agreement that the companies are willing to report any CSR activity to Kutai Barat Regency Government, through CSR forum of Kutai Barat. However, that has not been implemented completely (<http://kaltim.prokal.co/read/news/124994-banyak-perusahaan-mengabaikan-csr>). Similarly, Serang Regency, Banten Province, has had Local Regulation about Corporate Social Responsibility. But the limited sanction leads to the less maximum implementation. Many companies in Serang Regency underestimate or even ignore CSR implementation. Out of hundreds companies, many companies do not implement CSR despite its advantage to the public (<http://inilabbanten.com/2016/05/22/di-kabupaten-serang-banyak-perusahaan-abaikan-csr/>).

It is also similar to Muko-Muko Regency, Bengkulu Regency. In the regency categorized into retarded one, there are some Sawit companies, but the implementation of CSR has not contributed yet to the improvement of public welfare. For the companies, business is business, like a usual (Khoirul Huda, 2016). CSR is still considered as another part of company management, so that its existence is considered to contribute positively to the company's sustainability. Meanwhile, according to the existing law, the presence of CSR is inherent to company management, so that the activities in CSR are still under company's management control. So is it in Ponorogo Regency, East Java Province. Some companies implement CSR only as the element implemented minimally, without coordinated program with sustainable target (Sumarno, 2016).

In Surakarta City, Central Java Province, the implementation of CSR has been coordinated with Surakarta city government. For example, there has been CSR fund submission to Surakarta City Government to develop Temporary Market for Klewer Market Sellers in Surakarta City reaching billions rupiahs by some banking companies, banking associations and companies. But not all companies are involved in CSR

implementation, so that the potential fund of CSR has not been explored maximally (FX Hadi Rudyatmo, 2016).

In Jakarta, Suprpto and Siti Adipringadi Adiwoso's research on 375 companies in Jakarta found that 166 or 44.27% companies stated that they do not conduct CSR activity and 209 or 55.75% do so. Meanwhile, the form of CSR implemented includes: firstly, kinship activities (116 companies); secondly contribution to religious institution (50 companies); thirdly, contribution to social foundation (39 companies); and fourthly, community development (4 companies) (Suprpto, Siti Adipringadi Adiwowo, 2006).

Indonesian CSR Regulations show that environment has accommodated CSR as moral responsibility, Limited Inc. Law has given obligation to the companies running in natural resource or natural resource-related areas. "The incorporation running its business in natural resource area" is defined as the one the business activity of which is managing and utilizing natural resource. Meanwhile, "the incorporation running its business activity in natural resource-related area" is the one not managing and not utilizing the natural resource, but its business activity impacts on the function of natural resource ability. This law also stated that CSR is the obligation of incorporation budgeted and calculated as the cost of incorporation, the implementation of which is conducted by taking the decency and the fairness into account. Meanwhile, in relation to sanction, it is stated that the incorporation not implementing CSR obligation will be imposed with sanction according to the provision of corresponding legislation. The problem is firstly that there is a limitation of obligation for the companies obligatorily implementing CSR, running their business activity in natural resource or natural resource-related areas. Secondly, the sanction is not governed in detail. As a result, many companies are still reluctant to implement CSR.

The existing regulation finds difficulty when it does not govern the sanction. Anthony Allot suggested effectiveness, that is, "Law will be effective when the objective of its existence and its application can prevent unexpected action (remove disorder/disorganization). Generally, the effective law can realize what has been drafted (Anthony Allot, 1980 : 23). Sanction is always related to legal norm or other norms, such as moral, religion or belief, and modesty norms (Zainuddin, 2008: 43). Through sanction, legal norm can be distinguished from other norms (Hans Kelsen, 1978).

Many regulations in Indonesia have adopted international standard that have pertained to CSR, but the provision of sanction concerning those not implement CSR is not governed firmly and clearly. Considering this, it can be seen that the regulation of CSR in Indonesia is less obvious. Meanwhile, CSR is the parameter of company's commitment to support creating the sustainable development. Whereas, the general rule is understood that for the rule to be enforced, it must contain the provision of sanction within it. If legal sanctions is weak, and less obvious, then the company should be obliged to implement CSR so lazy, they have no measurement. Therefore, there must be an appropriate regulatory models, which can force and familiarize companies to implement CSR well.

RESEARCH METHOD

This paper was based on empirical/sociological legal research. We study the regulations and principle by using the approach of law and social sciences (Irianto & Shidarta, 2009). Approaching the legal issues is in accordance with the fact in social life. The characteristic of research was descriptive evaluative providing a systematic overview of the object to be examined (Sunggono, 2005). The primary data was taken from

interview with Khoirul Huda, Regent of Muko-Muko District, Bengkulu, FX Hadi Rudyatmo, Mayor of Surakarta City, Central Java, and Sumarno, Head of District Development Planning Agency of Ponorogo District, East Java. Secondary data was obtained from the review of literatures pertaining to the material. Secondary data consisted of legal materials such as regulations, books, papers, and other references. Technique of collecting data used was in-depth interview and document study (Neuman, 2006). Technique of analyzing data used was theoretical interpretative one. The analysis was conducted by interpreting the data collected. This paper intended to provide an overview of existing condition, rules and implementation of CSR, especially discussing the urgency of sanction for CSR violators.

DISCUSSION

CSR, Care and Obligation of Corporation

CSR is one of actual topic closely related to corporate legal and business ethic issues as an activity aiming to get high profit, but it should think of the interest of society surrounding, because the company is actually the part of society (Tjager, 2002: 144), between company and society should be exist communicate well, Communicating what is important to improve social responsibility (Eriksson & Svensson 2015), the positive politeness strategies are capable to establish common grounds communication in order to maintain friendly and harmonious relationships with others (Alam & Prashant, 2007). Business ethic is one of important business entity. CSR is a business ethic , that the managers of corporations should be responsive to an elastic list of stakeholders (Philip, 2003). There are significant business ethics content as well as ethical implications in the writings of each of the three management theorists ; Frederick Taylor; Chester Barnard; and Peter Drucker. (Schwartz 2007). The increasing of the good level of personal leadership, then he will be able to spur business ethics by getting better and being responsible anyway (Dion 2012).

As an institution and a legal subject all at once, the company is inseparable from the society. Company or corporate has rights and obligations. Corporate is legal entity that corporate's veil can be lifted when it should be responsible the law or courts (Nyombi 2014). The shareholders are the owners of their shares only and not of the corporation which is a separate legal person. The law, on the other hand, regards the corporation as a separate legal entity with rights and liabilities of a natural person (Zubair Abbasi 2009). Recalling the close relationship between company and society, ideally there should be a harmonious relationship between company and society, particularly surrounding society (Yoserwan, 2006: 215). Arthur, Cato, Keenoy, & Smith say that CSR has been judged as a superficial response at the level of public relations to concerns about the deleterious consequences of global-marketplace activity, particular the failure of commitment to employees and the environment (Arthur, Cato, Keenoy, & Smith, 2013 : 36).

Carroll (1979) said that "CSR is the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time" (Yosefa Sayekti, 2015 : 411). World Bank Describes CSR as follows "socially responsible companies consider the full scope of their impact on communities and the environment when making decisions, balancing the needs of stakeholders with their need to make a profit". CSR implementations depends on the surplus of corporate profitability, profit as a fetter to authentic social responsibility (Simeon Scott, 2007). The more profits that corporate has, the more can reasonably allocate to CSR efforts (Hicks 2010).

The establishment of harmonious relationship between company and surrounding society becomes the Corporate Social Responsibility or CSR. John Elkington brings up an idea through “3P’s” concept (profit, people, and planet) as outlined in his performance book “*Cannibals with Fork: The Triple Bottom Line of 21st Century Business*” (John Elkington, 1998). This concept shows that to build a sustainable business, the relationship between profit, people, and planet is inseparable from each other. Elkington (1998) argues “that to be a sustainable a company should developing “win-win-win” strategies to simultaneously benefit to the company, its customers and the environment” (John Elkington, 1998). In an sustainable development context, true success is attained by a company through the achievement of overall organisational objectives without compromising the balance of the relationship between profit, people, and planet (Cronjé & Wyk 2013).

The characteristic of modern constitutional state is that its constitution contains sovereignty in political and/or economic areas. Therefore, there are two types of constitution: the constitution containing political sovereignty only and the constitution containing political and economic sovereignty (Asshiddiqie, 1996: 41-58). In the presence of firm constitution about national economic regulation, the existence of CSR becomes more important to be explained in Indonesian positive law. So far, the problem of corporate social responsibility is still limited to the value practiced as one of ethics in economy (business). Recalling that the principle of CSR is only an appeal, its application is still very weak practically. Only few companies make CSR one of Social Investment programs, even many companies consider it as additional burden with no relation at all to the company’s product or service producing process, and furthermore CSR is considered as high cost economic.

CSR is not only the attempt of showing an organization’s caring about social and environmental issues, but it can also support the realization of sustainable development by balancing economic aspect and social development supported with the protection of living environment. The increasing amount of power that corporations wield within society has become a growing concern for many people (Cronjé & Wyk 2013). But, the desire of companies to prove their commitment to their local community through sponsorship can often seem artificial (Arthur *et al.* 2013). In the attempt of responding to the change and of creating trust relationship, the attempt the organization (particularly business organization) takes currently is to design and to develop a series of program leading to a social responsibility form.

This program becomes a parameter of organization’s care by expanding socially to the public. Care and this expansion is not the framework of distributing “wealth/property”, thereby pleasing many parties, but emphasizing more on empowering the community in order to care about social domain along with the organization.

Many factors becoming the reason of why CSR is so important in organization setting are (Sulistyaningtyas, 2006):

- a) Globalization stream providing a description about the disappeared border between many areas in the world thereby generating universality. Thus, it is very possible for multinational companies to develop everywhere as the globalization chain;
- b) Consumer and investor as the primary public of profit organization needing representation about organization’s responsibility for its social and environment issues;
- c) As the part of organizational ethics, and organizational responsibility is required to manage the organization well (called good corporate governance);

- d) The public in some states considers that organization has fulfilled the standard organizational ethics, when the organization cares about environmental and social issues;
- e) Social responsibility at least can reduce the crisis potentially occurring in the organization;
- f) Social responsibility is considered as improving the organization reputation.

The Urgency of Sanction Application In CSR Implementation

Corporation plays important roles in a state's growth, such as improving and creating job opportunity, in this case making the people prosperous as well. That means, if CSR is implemented well, so economic will grow. There are many factors that influence economic growth. The Kauffman Index of Entrepreneurial Activity (KIEA) as the measure of entrepreneurial activity. Based on standard growth regressions using real per capita gross state product, real per capita personal income and employment growth, the independent role that entrepreneurial activity may have on state economic growth (Hafer 2013). Actually, economic depends on market not to the state, but state as a regulator. That the antagonism between state and market is real, which has characterized the twentieth century, is a relatively new phenomenon (Reinert 1999).

It is because when a corporation improves and creates job opportunity, it means that it makes the community having opportunity of getting reasonable job in order to meet their living need. Business competition between one corporation and another becomes tighter in the presence of a variety of products offered to the public (Setiyono, 2009 : 63).

As the economy progresses, what is prohibited is the offense against the people welfare. The intended offense includes the corporation's way of getting profit for either personal or group interest by means of breaking the law, either directly or indirectly harming others. Corporation plays an important role to support the growth of people welfare by fulfilling the social responsibility, as the one doing activity in the area surrounding corporation should pay attention to the surrounding society. Corporation should participate and maintain the people's economic welfare and safeguard environment from damage resulting from corporation activity. Corporation has an obligation in the attempt of preventing living environment pollution from occurring due to corporation activity. Therefore, there should be a policy in managing living environment by corporation over the activities it does. Preventive and managerial attempt requires the participation of all stakeholders including corporation, government and society (community). In order to create a balanced and harmonious relationship, there should be a good relationship between society and corporation. One of activities that can improve the relationship between the corporation and the public without conflict is to implement CSR; so in the presence of CSR, the corporation can involve the community in CSR activity. That CSR is about ensuring that the company takes into account the interest of other stakeholders (Mujih 2007). Here CSR is defined as the corporation's commitment to contributing to a sustainable economic development by considering corporate social responsibility emphasizing on economic, social, and environment aspects.

Corporation not implementing CSR will impact on the surrounding society and environment. In addition, when the corporate does not implement CSR, it means that the corporation breaks the rule obliging the corporation to implement CSR. Corporation takes some attempts to maximize economic benefits. However, the objective of corporation is not only to get profit but also to have moral commitment to build local community, because the community can require the corporation to responsible socially. The

importance of penal sanction regulation in relation to the corporation not implementing CSR is viewed from the corporation's evil, the corporation's greed in getting as much as possible profit regardless CSR aspects including economic, social and environmental ones. In addition, the corporation's evil can be seen from its greed in recruiting local people. Therefore, it can be seen as a return to local people as the corporation has run its business around the people's settlement, so that the corporation should fulfill three aspects of CSR. It is intended to create the balance between what the corporation does and the utilization of both natural and human resources taken by corporation in the attempt of conducting corporation activity. In addition, the corporation's social sensitivity in conducting its business activity should be taken into account. It is different from other countries such as United Kingdom, Canada, and France in which the corporations have had feeling of participation in the importance of environment and the presence of social sensitivity so that there should be a regulation on obligation concerning the obligation of CSR implementation generating the sanction against those breaking it.

For that reason, there should be an emphasis for Indonesian people to implement this CSR, because the regulation about CSR for corporation will affect positively the sustainability of state economy, people welfare, and corporate business. The emphasis on the importance of CSR regulation concerns the obligation of CSR that should be implemented by corporation and the sanction against the corporation not implementing it.

In addition, the effect of good CSR implemented by corporation on the society is that CSR can help deal with the social societal problems. CSR is a business commitment to implement activities ethically and to contribute actively to sustainable development by means of cooperating with the stakeholders. The business realm's active role is required in the attempt of alleviating poverty and empowering the community. The strategic planning of CSR will make this program the social investment to empower the society in order to support economic and social life independently and sustainably. CSR contribution can be the contribution to sustainable economic development, cooperating with employees, employee families, local communities, and public to improve the quality of life by means of acceptable way to business and development. However, CSR can also be beneficial to the corporation here, for example, maintaining and boosting its reputation and brand image, acquiring license to operate socially, reducing the risk of business, expanding the access to resource for business operation, opening broader market chance and the relationship with stakeholders, reducing cost related to waste disposal, improving the relationship with regulator, improving the employees' spirit and productivity, and opportunity of getting reward (Hendrik Budi Untung, 2009).

Originally, the support to CSR implementation is moral support, the corporation's awareness resulting from its existence amid environment and society where it runs its business so far, and even economic exploitation. This awareness changes into the voluntariness to give positive reward or business ethics. Because they realize that when the companies develop more, the social gap and environmental damage may occur as well at that time. The existence of business ethics voluntariness is basically the part of the attempt of reducing this negative effect, even when they can restore the original better condition. Many private companies now develop CSR not as a cost but as investment.

CSR is a mechanism for the corporation to integrate voluntarily the attention to environment and social aspect into its operation and interaction with stakeholders, exceeding the organization's responsibility in law area. According the World Business Council for Sustainable Development (WBCSD), Corporate

Social Responsibility is revealed in the report called Sustainability Reporting. Sustainability reporting is the one concerning economic, environmental and social responsibility, effect and sustainability (sustainable development). Sustainability reporting includes the reporting on economic, environment and social effect on the organizational performance. The report should be a high-level strategic document putting issue, challenge, and opportunity of Sustainable Development bringing it toward its core business and industrial sector. The problem is that not all companies see and implement CSR as business and social investment for the sake of sustainable development/business, so that many companies does not or still implements CSR reluctantly.

The government regulation can change voluntariness into obligation. The legal obligation can be implemented effectively when other legal subsystems not accommodated well. Considering Lawrence Friedman's theory, there are three legal subsystems that can ensure whether or not a rule can be implemented effectively: legal substance, structure, and culture (Lawrence M. Friedman, 2009 : 2). This article will discuss the legal substance subsystem. There are some footholds to reinforce the legal substance foundation: John Austin and Hans Kelsen's arguments.

According to John Austin's legal theory, law is the instruction of the state ruler. The essence of law lies on the element of instruction. The law is considered as a permanent, logical and closed system. Some laws derive from God and some others are made by human beings. The man-made law is divided into: actual and non-actual laws. The actual (positive) law has four elements: instruction, obligation, sanction, and sovereignty. The non-actual law is the one not fulfilling the requirement to be law; therefore the law without sanction is not-actual one (W. Friedman, 1998). Hans Kelsen's Pure Law Theory concentrates themselves to the law only and attempts to free the science from foreign sciences' intervention such as psychology and ethics. Justice should be identical with legality, justice as the legal objective should be escorted in written manner in normative regulation (Muslehuddin, 1991 : 29). Normative regulation, in this context use the hard law approach, not soft law (Trubek & Trubek, 2005), constituting the law substance can be implemented well when it contains law certainty substantially. Law certainty can be seen from two perspectives: the certainty in the law itself and the certainty due to law (law-induced certainty). The certainty in law is defined as a legal norm that should be formulated with the sentences containing different interpretation. In the implementation of law, different interpretations lead to law uncertainty. Meanwhile, law-induced certainty is defined as the certainty is due to the law itself. Law ensures the acquisition of a certain right or the loss of a certain right.

Law certainty is identical with legality principle. In civil law system tradition, according to Roelof H. Haveman, there are four legality aspects applied tightly: *Lex Scripta/statutory/law*, *Lex Certa/bestimmtheitsgebot*, *Non retroactivity and analogy* (Roelof, H. Heveman, 2002 : 50). Nevertheless, the writer does not agree with the emergence of analogy as the precondition, because analogy can generate different interpretation. *Lex Scripta* means that without the law governing the prohibited action, the action cannot be said as the crime. *Lex Certa* means that the legislators should define clearly without vagueness (*nullum crimen sine lege stricta*), so that there is no ambiguous formulation. The word non-retroactive means that legislation formulating the crime cannot be enacted retroactively.

From the explanation above, the weakness of substance in CSR regulation is the lack of sanction, so that before the regulation is implemented, it has generated apathy. As a result, the data obtained from this research shows that the companies in various Indonesian areas have implemented CSR less maximally,

even in some areas, many companies have not implemented it. To them, CSR is cost, thereby reducing net/profit.

An effective model of legal sanction regulation for the corporations violating the CSR: *Imposition of Penal Sanctions and/or Financial Penalties*

The existence of law, as an instrument, is desirable and inherent to every society's social life. The law is needed to realize, to restore, and or to maintain the harmonious mutual life order. The harmonious condition is created when the organized society is established. Legal norm contains command and prohibition aiming to make individual members of society maintaining the harmonious mutual life or vice versa. When the commanded action is not implemented or the prohibition is broken, sanction can be the guardian to restore the orderliness or harmony in the social societal life. In the implementation of CSR, the command of CSR implementation has been clear, but the sanction is very limited because of limited command parameter. There is no standard on sanction parameter imposed. There are some models of sanction regulation procedure: the CSR audit reinforcement and the clarity of Legal Sanction Imposition Model for CSR offender.

The reinforcement of CSR audit

The implementation of CSR is no longer a voluntary moral calling for the company. The regulation in Indonesia has obliged the companies to implement CSR. However, the parameter has not been determined. Such the parameter should be started with determining standard audit reporting of social performance/CSR implementation to the company. Actually, corporates should be report their CSR implementation. CSR audit can classify the four financial-economic classes of corporate performance: market return measures; market risk measures; accounting-based performance measures; and accounting-based risk measures (DiSegni *et al.* 2015). The content of CSR reports issued by the companies is also describing the CSR introduction process (Ditlev-Simonsen, 2010). There are many ways to report the CSR implementation, that in India most of the banks are using CSR practices in their operations and communicating all this information with the help of their websites (Fatma & Rahman 2014). Martin Freedman stated that there are three approaches in social performance reporting (Marc J.Epstein, Martin Freedman, 1994) :

- 1) Social audit: measuring and reporting economic, social, and environmental effect of the socially oriented programs in the company's operating activity. Audit is started with organizing the corporate social activity and then auditor will estimate and measure the effects of such the activities.
- 2) Social report: is the reporting of CSR activity by company. The manifestation of Social report is the one containing All of CSR activities, Cost of All of CSR activities, Programs, aims, and benefits of All of CSR activities.
- 3) The social disclosure in Annual Report. Social disclosure is the disclosure of information on corporate activity related to the corporate social environment. Social disclosure can be conducted through various media including annual report, interim report, prospectus, announcement to stock exchange or through mass media. The companies tend to disclose information related to its activity and the effect generated by the companies.

The problem is who is authorized to make audit. Audit should be conducted by independent institution obtaining license from the government to supervise and to audit the implementation of CSR by corporations. To prevent the moral hazard from occurring, a tight and measurable rule/standard should be developed to get license from government and this institution should always be controlled and evaluated periodically by government. This audit institution should determine instrument and proportion of CSR obligation based on 2 (two) categories: based on the proportion of corporation's profit and the proportion of CSR budget and based on the CSR's objective: to promote or to empower the community.

In implementing CSR activity, there is no standard or certain practices considered as the best ones. Every corporation has unique characteristics and situation affecting how they consider the social responsibility. Every company has the diverse condition in the term of the awareness of various issues related to CSR and what has been done in implementing CSR approach (A.B. Susanto, 2007 : 73). However, the dull administration sanction makes CSR implemented less vigorously. Corporation implements it minimally. For that reasons, the regulation should be encouraged by imposing Criminal Sanction and or Fine. The urgency of criminal sanction imposition when the company did not implement CSR is when it is viewed from the location of the corporation's evil, the corporation's greed in getting as much as possible profit regardless the "3P" aspects in CSR. Meanwhile, the fine sanction is imposed as the result of audit calculation due to the CSR not implemented by company (Pujiyono, 2016).

Administrative sanction has not been effective

On Limited Inc. Law that discussing about CSR, it is mentioned the sanction imposed to those not implementing the activity. However, the sanction imposed to those not implementing CSR is delegated to the corresponding legislation, the rule concerning the sanction is fragmented so that further regulation should be considered in the legislation. The existing sanction is still administrative in nature, enacted to the corporations not implementing CSR. For example, when the provision of CSR is not implemented, administrative sanction will be imposed, consisting of written warning, business activity limitation, suspension, or retraction of business license and/or investment facility.

Administrative sanction results from the relationship between government and citizen, and stipulated by previous ruler, but can be implemented directly by the administration. The difference of Administrative sanction and Criminal Sanction is that Administrative sanction is intended to the prohibited action; this sanction is repatoir-condemnatoir in nature and the procedure is implemented directly by the State Administration Officials directly without judicature. Meanwhile, Criminal Sanction is intended to the perpetrator of crime; it is condemnatoir in nature, and it should be managed through judicature process (Elektison Somi, Helda Rahmasari, Wida Pebrianti, 2011 : 11).

The application of administrative sanction in addition to be highly dependent on the authorized officials also has weaknesses in which it is very vulnerable to lawsuit through State Administration Court. As a result of potential lawsuit filed to the State Administration Court, many officials that should imposed sanction to the corporations violating the implementation of CSR do not impose it bravely. For example, some cases of corporation not implementing or implementing CSR minimally are: Lumpur Lapindo in Porong, conflict between Papua people and PT Freeport Indonesia, conflict between Aceh people and Exxon Mobile managing petroleum gas in Arun, environmental pollution by Newmont in Teluk Buyat and etc (<http://www.bukumonline.com/berita/baca/hol18664/csr-kegiatan-sukarela-yang-wajib-diatur>). The imposition

of administrative sanction still reduces less optimally the number of corporations not implementing CSR well. Most administrative sanction has inadequate compulsive power.

Breakthrough in Criminal Sanction: Criminal Sanction has compulsive power

The fundamental difference between law and moral is: that law is a compelling order, a norm order attempting to realize certain behavior by giving organized compelling action socially to the opposite behavior, while moral is a social order not having such the sanction. The sanction of moral order is only agreement for the behavior consistent with the norm and disagreement to the behavior in contradiction with norm, and no compelling action applied as sanction (Hans Kelsen, 1978).

The various regulations governing CSR in Indonesia are always winged. The regulation pointed at other regulations as implementation. Whereas the pointed regulation is also unclear and pointed to another regulation, so that the circle makes the existence of regulation become just exist. The main regulation, namely Limited Inc. Law, likewise implies sanctions that are unclear as to the requirements of the implementation, it also refers to other regulations as reference of implementation. While the designated regulations are also increasingly do not regulate technically and clarity, so the expected sanctions may apply, it becomes biased.

Maximum sanction for corporations that do not implement CSR is administrative sanctions, but the administrative sanction applied is considered as less effective to make the corporation aware of the importance of CSR implementation for the balance or harmony between corporation and society so that the criminal sanction as ultimum remidium is necessary to create the law certainty. The importance of imposing criminal sanction to those not implementing CSR is viewed from the strategic function or role to corporation as the legal subject of CSR executor. Corporation has strategic role in implementing or not implementing CSR. When CSR is not implemented, the environment harmony is disrupted by irreversible exploitation made the corporation. Just like social harmony, the existence of CSR as the part of society welfare improvement will not be brought into reality. CSR is a means of maintaining the environmental and social harmony.

Considering the criminal sanction governed in the Indonesian Penal Code, it can be said that the basic punishments that can be imposed are: death sentence, imprisonment, jailing, and fine. However, the punishment that can be imposed to corporations, based on Article 10 of Penal Code, is only fine. As Barda Nawawi Arief suggested, although corporation is recognized as a legal subject that can act on corresponding to the law and can be asked for accountability, the accountability contains some exception (Barda Nawawi Arief, 1990 : 37) :

- 1) In the cases that cannot be done by the corporation, such as raping and counterfeit oath.
- 2) In the cases in which the only punishment that cannot be imposed to corporation is imprisonment or death sentence.

Although corporation is the legal subject that can be imposed with sanction/punishment, imprisonment, death sentence, and jailing cannot be imposed to the corporation not committing crime. The sanction that can be imposed to corporations is fine, additional punishment in the form of the announcement of court decision, additional punishment in the form of closing entire or a part of corporation, the retraction of

all/some of certain facilities that has been or can be obtained by the corporation under the control of the authorized. Criminal sanction has compulsive power because it is stipulated by court and is executorial in nature.

CONCLUSION

CSR support the realization of sustainable development by balancing economic aspect and social development supported with the protection of living environment. In Indonesia the enactment of Limited Inc. Law has changed the moral obligation in the implementation of CSR in Indonesia into legal responsibility. There are several regulations that regarding the implementation of CSR, but all of these regulations, there are no mention of the penal/criminal sanctions to the corporation that do not implement CSR. Sanctions that exist in these regulations are only administrative penalties, even tough administrative sanctions are applied in case of infringement, less optimum than the losses suffered by the community. There should be a penal sanctions which serves to give deterrent effect, in addition that penal sanctions also serves as a tool to prevent violations in the future. This method effectively used as a sanction in the case CSR is not implemented by corporations.

The need for corporate penal sanction become important because of some neccessarry things, namely; corporations in the lives of people have an important role, CSR has a great impact on society, the administrative sanctions lacked the strength to force because the sanctions are applied lightly and there is still a violation of the implementation of CSR by corporations, and penal sanctions also have the power to force. Beside the exixting of the penal sanctions, fee penalty imposed also important to restore social and environment that losses incurred by the corporation as a result of not implementing CSR.

There are some models of sanction regulation procedure, the CSR audit reinforcement and the clarity of Legal Sanction Imposition Model for CSR offender, including ; Social audit, social report, The social disclosure in Annual Report. Administrative sanction has not been effective to force corporation implement CSR well, so penal/criminal sanction become ultimum remidium, beside fined.

At the end as a recommendation, we propose :

1. Government and Legislative must be active and immediatly to changes the CSR regulations, especially the Limited Inc. Law, so that CSR not only incur obligations to the corporation that operations with natural raw materials or the surrounding nature. Implementation of CSR should be compulsory for all active corporation as a legal entity.
2. The government regulation can changes voluntariness into obligation. The legal obligation can be implemented effectively when other legal subsystems not accommodated well.
3. The government should appoint an official agency to audit the implementation of CSR as an integral part of evaluate up to give rewards or impose sanctions.
4. The imposition of penal sanctions should be done because it has forced power and imperative
5. The imposition of financial penalties should also be treated as a means for recovery of natural and social circumstances due to non-implementation of CSR

ACKNOWLEDGEMENTS

With the completion of this research paper, we would like thank to:

1. Khoirul Huda, Regent of Muko-Muko District, Bengkulu
2. FX Hadi Rudyatmo, Mayor of Surakarta City, Central Java
3. Sumarno, Head of District Development Planning Agency of Ponorogo District, East Java
4. Rector of Universitas Sebelas Maret
5. Head of Research and Public Service Institutions, Universitas Sebelas Maret
6. Dean of Faculty of Law Universitas Sebelas Maret

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Interviews

Khoiril Huda, Bupati Muko-Muko, Bengkulu Regency. Interview was conducted on August 12, 2016.

Sumarno, The Head of District Development Planning Agency of Ponorogo Regency, East Java Province. interview was conducted on July 23, 2016.

FX Hadi Rudyatmo, Surakarta Mayor, interview was conducted on July 9, 2016.