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**MANDATORY CORPORATE SOCIAL
RESPONSIBILITY: LAW AND POLICY IN INDONESIA**

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**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
JULY 2016**

CERTIFICATION OF THESIS WORK

I hereby certify that this thesis is the result of my own research, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at UUM or other higher education institutions.

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ABSTRAK

Kajian ini adalah berkaitan dengan Perlembagaan Kehakiman Bilangan 53/PUU-VI/2008 mengikut Semakan Kehakiman artikel 74 Undang-Undang Perseroan Terbatas Nombor 40/2007. Penghakiman tersebut secara rasmi dan sah mengukuhkan bahawa peruntukan undang-undang mandatori Tanggungjawab Sosial Korporat (CSR) adalah selaras dengan perlembagaan Indonesia. Oleh itu, peruntukan undang-undang mandatori CSR masih menjadi sebahagian daripada Undang-Undang Perseroan Terbatas Nombor 40 /2007. Penghakiman tersebut telah diluluskan pada 2008 tetapi mengambil masa yang agak lama untuk direalisasikan disebabkan Kementerian Keadilan dan Hak Asasi Manusia telah meluluskan Peraturan Nombor 47/2012 kepada Tanggungjawab Sosial dan Alam Sekitar. Peraturan ini hanya dilaksanakan selepas 4 (empat) tahun ianya diluluskan. Dalam tempoh tersebut terdapat perdebatan pro dan kontra dalam kalangan persatuan perniagaan, kerajaan, ahli akademik dan Pertubuhan Bukan Kerajaan berasaskan CSR berkaitan dengan enakmen peruntukan undang-undang mandatori CSR. Kajian ini memeriksa dan menganalisis beberapa isu utama seperti rasional falsafah di sebalik Enakmen undang-undang mandatori, tahap mandatori CSR yang digunakan sebagai garis panduan oleh syarikat pada masa kini dan fungsinya, serta liabiliti dan bidang kuasa badan pengawasan mandatori CSR di Indonesia. Kajian ini menggunakan kaedah penyelidikan kualitatif di mana analisis kandungan digunakan sebagai unit analisis. Beberapa data seperti artikel jurnal, buku, Rang Undang-Undang, dan fail peraturan yang berkaitan dikumpulkan. Selain itu, beberapa data lapangan turut dikumpul melalui temubual yang diperolehi daripada tiga puluh orang sumber utama CSR yang terdiri daripada ahli akademik, Pertubuhan Bukan Kerajaan berasaskan CSR, pegawai kerajaan, syarikat dan wakil-wakil persatuan perniagaan. Hasil kajian adalah seperti berikut: Kerajaan Indonesia perlu mengukuhkan pengawalaturan terhadap CSR dengan meluluskan Akta berkenaan CSR. Penubuhan badan pemantauan CSR juga perlu, manakala peraturan mandatori CSR, pengawalaturan, dan garis panduan juga perlu dikanunkan dan diluluskan oleh pihak kerajaan. Selain itu, Buku Panduan berkaitan CSR Mandatori bagi Indonesia disyor agar diluluskan oleh pihak kerajaan. Sehubungan dengan itu, kajian ini menyediakan beberapa hasil dapatan kajian bagi menyebarkan maklumat yang komprehensif mengenai Enakmen undang-undang mandatori CSR. Selanjutnya, kajian ini mencadangkan piawaian mandatori CSR yang sesuai dengan konteks Indonesia dan fungsi pengurusan yang lebih baik, liabiliti dan bidang kuasa badan pengawasan mandatori CSR di Indonesia. Kajian ini diharapkan dapat memberi manfaat kepada pengukuhan peruntukan undang-undang CSR dan pelaksanaannya bagi penderafan rangka kerja mandatori CSR yang lebih baik di Indonesia.

Kata Kunci : Tanggungjawab Sosial Korporat, Undang-Undang CSR, CSR Mandatori, Polisi CSR.

ABSTRACT

This research is related to Constitutional Court Verdict Number 53/PUU-VI/2008 on Judicial Review of Article 74 of Company Liability Act Number 40/2007. The verdict officially and legally stipulates that mandatory CSR legal provision be made consistent with the Indonesian constitution. Therefore, the mandatory CSR legal provision is still part of Act Number 40/2007 of Limited Company Liability. The verdict was passed in 2008 but its realization was delayed since the Ministry for Justice and Human Rights passed Regulation Number 47/2012 on Social and Environmental Responsibility. This regulation is only executed four years after the regulation was released. During that period there was pro and contra debates among business associations, the government, CSR academics, and CSR based NGOs on the enactment of mandatory CSR legal provision. This research examines and analyzes the following key issues: (1) the philosophical rationale behind the enactment of mandatory legal provision, (2) the mandatory CSR standard of guidelines currently used by corporations, and (3) the functions, liabilities and jurisdiction of the mandatory CSR surveillance body in Indonesia. Using a qualitative approach, this study applies a content analysis as an analysis tool. Relevant data from journal articles, relevant books, Bill, and rules and regulations were collected. Additionally, some field data were collected from the interviews with thirty key CSR resource persons. These respondents consisted of academics, CSR-based NGOs, government officials, corporations, and business association representatives. The findings are as follows; the government of Indonesia should strengthen regulation on CSR by passing an Act on CSR, the establishment of CSR surveillance body is necessary, mandatory CSR rules, regulations, and guidelines are also important to be codified and passed by the Government and Indonesia Manual on Mandatory CSR is encouraged to be passed by the Government. Accordingly, this research significantly provides some recommendations on a comprehensive information dissemination of the enactment of mandatory CSR. It also suggests a proper mandatory CSR standard be outlined to suit the Indonesian context and complexity, and that better management functions, liabilities, and jurisdictions of the mandatory CSR surveillance body be strengthened in Indonesia. It is hoped that the findings would benefit the implementation of mandatory CSR legal provision and the drafting of a better mandatory CSR legal framework in the country.

Keywords: Corporate Social Responsibility, CSR Law, Mandatory CSR, Policy CSR.

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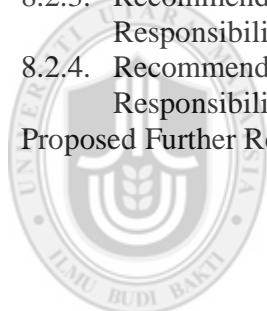
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List of Abbreviations

CSR	: Corporate Social Responsibility
KADIN	: Indonesia Chamber of Commerce and Industry
IWAPI	: Indonesian Business Women Association
HIPMI	: Indonesian Businessmen Association
BPK	: Supreme Auditor Agency
BPKP	: Financial and Development Auditor Agency
BKPM	: Indonesian Investment Coordination Board
TJSL	: <i>Tanggung Jawab Sosial dan Lingkungan/Corporate Environmental and Social Responsibility</i>
PKBL	: <i>Program Kemitraan dan Bina Lingkungan (Partnership and Community Development Program)</i>
FDI	: Foreign Direct Investment
PT	: <i>Perseroan Terbatas/Limited Company</i>
SOE	: State Owned Enterprise
BAPEPAM-LK	: <i>Badan Pengawas Pasar Modal dan Lembaga Keuangan/Indonesia Financial Institution and Stock Exchange Supervisory Body</i>
OECD	: Organization for Economic and Cooperation Development
ISO	: International Certification Organization
DPR	: Dewan Perwakilan Rakyat/The People's Representative Council
DPRD	: Dewan Perwakilan Rakyat Daerah/Regional Peoples's House of Representative
UDHR	: Universal Declaration of Human Rights
UNDRIP	: United Nations Declaration on the Rights of Indigenous Peoples
REDD	: Reducing Emission from Deforestation and Degradation

ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
MEAs	: Multilateral Economic Agreements
TNCs	: Trans National Corporations
AMAN	: <i>Aliansi Masyarakat Adat Nusantara</i> /Customary Community Alliance of Archipelago
FPIC	: Free and Prior Informed Consent
CSO	: Civil Society Organization
NGO	: Non-Governmental Organization
GLC	: Government Linked Companies
CSD	: Corporate Social Disclosure
MERA	: Malaysian Environmental Reporting Award
MESRA	: Malaysian Environmental and Social Reporting Award
APIP	: State Internal Supervisory Apparatus
EP	: Equator Principles
EPA	: Equator Principles Association
EPFIs	: Equator Principles Financial Institutions
IFC	: International Finance Corporation
EHS	: Environmental, Health and Safety
WBDID	: World Bank Development Indicators Database
WBPPAH	: World Bank Pollution Prevention and Abatement Handbook
PROPER	: Company's Performance Appraisal Programme in Environmental Management
UKL-UPL	: Environmental Management Tools-Environmental Protection
AMDAL	: Environmental Impact Assessment

PRIA	: Principles for Responsible Investment Association
PRI	: Principles for Responsible Investment
ESG	: Environmental, Social and Governance
UNEP	: United Nations Environmental Programme
UNGPBHR	: United Nations Guiding Principles on Business and Human Rights
TAC	: Technical Advisory Council
SC	: Stakeholder Committee
GAG	: Governmental Advisory Group
GRI	: Global Reporting Initiatives
PPSSES	: Policy and Performance Standard on Social and Environmental Sustainability
UNGC	: United Nations Global Compact
GCLN	: Global Compact Local Networks
LCG	: Local Community Group
CFCD	: Corporate Forum for Community Development
BPK	: Supreme Audit Agency
BPKP	: Development and Financial Auditor Agency
CPA	: Certified Public Accountant
BUMD	: Local Government Owned Enterprise
SKPD	: Province/District/City Implementation Unit
APBN	: National Annual Revenue and Expenditure Budget
APBD	: Province/District/City Annual Revenue and Expenditure Budget
APIP	: Government's Internal Inspector.
KPK	: Corruption Eradication Commission

DPR	: National House of Representative
DPD	: National Senate Council
SKK MIGAS	: Special Task Force for Upstream and Gas Business Activities Republic of Indonesia
WALHI	: Indonesian NGOs Forum for Conserving Environment
WUP	: Mining Area License
WPR	: Mining Community Are License
WPN	: Mining Province License
WIUP	: Mining Business Area License
IUP	: Mining Busines License
PAD	: Local Government Revenue
NPWP	: Taxpayer Identification Number
MK	: Constitutional Court
RUPS	: Annual General Meeting of Shareholders

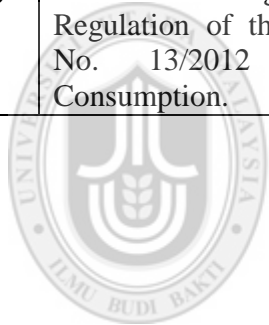
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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The notion of modern corporate social responsibility (CSR) was first marked by a book on the social responsibility of businessmen.¹ The author establishes that a businessman should be socially responsive to the people living around his or her business operations.² Further, CSR is defined as “the social responsibility of business comprising of economic, legal, ethical, and discretionary expectations (which later referred as philanthropic) that a society has of organizations a given point in time.”³ The European Union defined CSR as “a concept whereby companies integrate social and environment concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”

Subsequently, the World Business Council for Sustainable Development (WBCSD) states that CSR is a continuing commitment by businesses to behave ethically and contribute to economic development. It is also a commitment to improve the quality of life of the workforce and their families as well as of the local community and society at large. CSR practitioners define CSR as the ways companies manage their business processes to produce an overall positive impact on society.

The mandatory CSR legal provision has been considered by legislative members to be included in the new Limited Company Liability Act due to

¹Howard B. Bowen, *Social Responsibilities of the Businessmen*, [New York, Harper & Row, 1953], 17.

²Ibid

³Archie B. Carroll, “A Three-Dimensional Conceptual Model of Corporate Social Performance,” [New York, Academy of Management Review, Vol. 4, 1979], 497.

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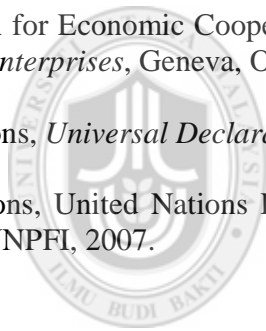
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