


## Sanctions For Non-Performing Corporate Social Responsibility

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### Abstract

**Introduction:** Companies are legal materials that have a role in national development. Its role can be realized by carrying out corporate social and environmental responsibilities as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. However, many companies neglect this responsibility.

**Purposes of the Research:** The purpose of this study is to analyze the sanctions related to companies that do not carry out these responsibilities.

**Methods of the Research:** The method in this research is normative juridical. In this study also used literature study. In terms of reviewing this research, a judicial basis was used which consisted of Law Number 40 of 2007 and Government Regulation Number 47 of 2012.

**Results of the Research:** Based on the results of the research, it was found that the laws and regulations governing corporate social and environmental responsibility have a legal vacuum, namely that there are no clear sanctions for companies that do not carry out these responsibilities. The urgency of regulation is sanctions because by not regulating sanctions, there is an ambiguity of norms that will lead to legislative law.

**Keywords:** Limited Company; Social Responsibility; Sanctions.

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## INTRODUCTION

The business world is currently experiencing very rapid development. In running a business, entrepreneurs need a container / facility. Limited Liability Company is the preferred form of business entity that is in great demand by the public, so that the number of business entities in the form of limited liability companies is far greater than the number of other forms of business entities. Besides economic considerations, the selection of a Limited Liability Company is motivated by several things, namely: Capital/shares, having assets that are separate from the assets of the shareholders, shareholders have limited responsibility, there is a separation of functions between shareholders and management or directors, have commissioners who function as supervisors, and the highest authority resides in the General Meeting.<sup>1</sup>

The company according to R. Soekardono is the whole action that is carried out on an ongoing basis, carrying out all activities with the aim of making a profit. The activity in question is by way of trading, delivering goods and or services or conducting trade through

<sup>1</sup> Niru Anita Sinaga, "Hal-Hal Pokok Pendirian Perseroan Terbatas Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 2 (2018): 17-58, <https://doi.org/10.35968/jh.v8i2.253>.

trade agreements.<sup>2</sup> Meanwhile, according to Polak, a new company will be categorized as a company if the company has calculated profits and losses that can be estimated and recorded in a bookkeeping. Meanwhile, according to the legislators, the company is an action that is carried out on an ongoing basis and in a certain position with the aim of making a profit.<sup>3</sup>

In Indonesia, before August 2007, historically the arrangement. Company law was first regulated in Article 36 to Article 56 of the Commercial Law Code (KUHD) originating from *Wetboek van Koophandel*. Furthermore, since 1995 Indonesia has Law Number 1 of 1995 concerning Companies Limited. Finally, since August 16, 2007 Limited Liability Company. Final, since August 16, 2007 Law Number 40 applies 2007 concerning Limited Liability Companies.<sup>4</sup> A limited liability company is a company that is a legal entity and is legalized by law. A limited liability company with a legal entity certainly has rights and obligations that must be fulfilled in order to avoid legal sanctions which can also apply if there is an act that violates the law.<sup>5</sup> Then according to Article 1 UUPT No. 40 of 2007 the definition of a Limited Liability Company is a legal entity which is an association of capital, established based on an agreement, conducting business activities with initial capital which is entirely divided into shares and fulfills the requirements stipulated in the Act and its implementing regulations. The existence of companies in the community can provide positive and negative aspects, on the one hand, companies provide goods and services needed by the community, but on the other hand, it is not uncommon for the community to get adverse (negative) impacts from company activities.

The positive side of the company's existence includes the opening of jobs, with many companies or standing industry, and economic development can develop. The negative impact of the existence of a company or industry, among other is the impact on the environment.<sup>6</sup> Regarding corporate social and environmental responsibility, it has been regulated in article 74 of the Company Law. Article 74 reads that: 1) Companies that carry out their business activities in the field of or related to natural resources are required to carry out Social and Environmental Responsibility; 2) Social and Environmental Responsibility as referred to in paragraph (1) is an obligation of the company which is budgeted for and calculated as the cost of the Company, the implementation of which is carried out with due observance of decency and fairness; 3) Companies that do not carry out the obligations referred to in paragraph (1) are subject to sanctions in accordance with the provisions of the laws and regulations.

Based on Article 74 paragraph (1) the limited liability company law stipulates that companies that carry out their business activities in the field of and/or related to natural resources must implement TJSI, this provision aims to continue to create relationships a company that is harmonious, balanced and in accordance with the environment, values,

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<sup>2</sup> R. Soekardono, *Hukum Dagang Indonesia* (Jakarta: Dian Rakyat, 1993).

<sup>3</sup> Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (Bandung: Citra Aditya Bakti, 1999).

<sup>4</sup> M. Teguh Pangestu and Nurul Aulia, "Hukum Perseroan Terbatas Dan Perkembangannya Di Indonesia," *Jurnal Business Law Review* 1, no. 3 (2017): 21–39.

<sup>5</sup> Tantimin, "Pertanggungjawaban Korporasi Terhadap Pencemaran Lingkungan Hidup: Studi Pada PT Horizon Bandar Bahru Di Batam," *Journal of Judicial Review* 19, no. 2 (2018): 190–206.

<sup>6</sup> Sandi Gumilar, Hadiyanto A. Rachim, and Lenny Meilanny, "Tanggung Jawab Sosial Perusahaan (CSR) Studi Efektifitas Program PT. Pertamina Sehat (Sehat Ibu Dan Anak Tercinta)," in *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, vol. 4 (Bandung: Departemen Kesejahteraan Sosial Fakultas Ilmu Sosial dan Ilmu Politik Universitas Padjadjaran, 2017), 235–40, <https://doi.org/10.24198/jppm.v4i2.14291>.

norms, and culture of society. While in terms Article 15 letter (b) of the Investment Law stipulates that every investor must carry out Corporate Social Responsibility. Not quite enough Corporate Social Responsibility is an inherent responsibility in every investment company to stay create harmonious, balanced, and appropriate relationships environment, values, norms, and culture of the local community. Besides that, pursuant to Article 74 paragraph (3) of the Limited Liability Company Law it regulates that the Company does not carry out these obligations will be subjects to sanctions in accordance with the laws and regulations invitation. Whereas in Article 34 paragraph (3) of the investment Law which stipulates that business entities or individual businesses are not carry out the obligatons as referred to in Article 15 will be subject to administrative sanctions and other sanctions in accordance with statutory provisions. In the provisions above, which regulates regarding CSR shows that CSR is an obligation for every company in carrying out its business activities. However regarding legal sanctions againts the company if not carrying out CSR obligations has not been clearly regulated in the laws and regulations. Both criminal sanctions and civil sanctions.

Implementation of social and environmental responsibility as regulated in the law on limited liability companies, but there are still various cases of companies that do not carry out social and environmental responsibility. One example is what happened in the city of Bengkulu. Of the 60 companies that are members of the Corporate Social and Environmental Responsibility Forum (TJSLP), only 19 companies have implemented CSR or Corporate Social Responsibility (CSR). This means that the majority or 41 companies have not implemented their CSR in accordance with the TJSLP Regional Regulation stipulated by the BU Regency Government. The Head of North Bengkulu Regional Development Planning Agency (BU) who is also the Secretary of the TJSLP Forum Suharto Handayani said, of the 19 companies implementing TJSLP, 17 of them carried out CSR in the form of assistance in handling Covid-19. While the other two are still carrying out physical development.

## METHOD

The method in this research is normative juridical. In this research method using literature study.<sup>7</sup> In analyzing this research, the juridical basis and the theoretical basis are used. The juridical basis used is Law Number 40 of 2007 concerning Limited Liability Companies and Government Regulation Number 47 of 2012 concerning corporate social and environmental responsibility. Then the theoretical basis used is the Development Law Theory by Mochtar which states that law should be able to change people's behavior patterns and create peace.

## RESULTS AND DISCUSSION

The 1945 Constitution states that the Republic of Indonesia is a democratic legal state (demokratische rechtstaat) and at the same time is a democratic state based on law (constitutional democracy) which are inseparable from one another. The concept of a rule of law state, besides meaning not a state of power (Machtstaat) also implies the recognition of the principle of supremacy of law and the constitution, the adherence to the principle of

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<sup>7</sup> David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463-78, <https://doi.org/10.31604/jips.v8i8.2021.2463-2478>.

separation and limitation of powers according to the constitutional system regulated in the constitution, the existence human rights guarantees in the constitution, the existence of the principle of an independent and impartial judiciary that guarantees equality of every citizen in law, as well as guarantee justice for everyone including against the abuse of authority by those in power.<sup>8</sup> According to Gustav Radbruch, one of the goals of law is to achieve legal certainty. Legal certainty is interpreted as a situation where the law is certain because there is concrete power for the law in question.<sup>9</sup>

The existence of legal certainty is a form of protection for justice (seekers of justice) against arbitrary actions, which means that someone will and can get something that is expected in certain circumstances. This statement is in line with what Van said Apeldoorn that legal certainty has two aspects, namely the ability to determine the law in concrete matters and legal security. This means that the party seeking justice wants to know what is the law in a certain matter before he starts cases and protection for justice seekers.<sup>10</sup> Regarding the regulation regarding limited liability companies, Indonesia already has regulations, namely daitur in Law Number 40 of 2007 concerning Limited Liability Companies. The existence of a limited liability company is essentially an economic activity institution that has a function besides carrying out business activities as well as a democratic economy. The company must have aims and objectives as well as business activities that do not conflict with the provisions of laws and regulations, public order, and/or decency.<sup>11</sup>

A limited liability company is one of the pillars of national economic development, it needs to be given a strong legal basis to further spur national development which is structured as a joint venture based on the principle of kinship, while still upholding the principles of fairness in doing business.<sup>12</sup> In carrying out its business activities, a limited liability company has a set of obligations as stipulated in Law Number 40 of 2007. One of its obligations is regarding corporate social and environmental responsibility. Social and Environmental Responsibility is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment that is beneficial, both for the Company itself, the local community, and society in general.

This is regulated in article 74 of Law Number 40 of 2007 which states that companies that carry out their business activities in the field of and or related to natural resources are required to carry out social and environmental responsibility. This article emphasizes that companies carrying out their business activities in the natural resources sector are required to carry out corporate responsibilities. Then in Article 74 paragraph (3) of the law on limited liability companies it is explained that in the event that the company does not carry out corporate social and environmental responsibility, then the company concerned is subject to sanctions in accordance with the provisions of the relevant laws and regulations. However, the law on limited liability companies does not explain in detail the sanctions in

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<sup>8</sup> Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat," *Fiat Justitia: Jurnal Ilmu Hukum* 5, no. 2 (2011): 141-52, <https://doi.org/10.25041/fiatjustitia.v5no2.56>.

<sup>9</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, no. 1 (2019): 13-22, <https://doi.org/10.14710/crepido.1.1.13-22>.

<sup>10</sup> Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993).

<sup>11</sup> Johari Santoso, "Perseroan Terbatas Sebagai Institusi Kegiatan Ekonomi Yang Demokratis," *Jurnal Hukum Ius Quia Iustum* 7, no. 15 (2000): 194-203, <https://doi.org/doi.org/10.20885/iustum.vol7.iss15.art15>.

<sup>12</sup> I Putu Wisnu Dharma Pura and I Nyoman Budiana, "Kebebasan Penetapan Modal Dasar Perseroan Terbatas Oleh Para Pihak Berdasarkan Peraturan Pemerintah Nomor 29 Tahun 2016," *Jurnal Analisis Hukum* 1, no. 1 (2018): 32-51.

question. In addition, the implementing regulations regarding corporate social and environmental responsibility also do not explain the types of sanctions given. The implementing regulation in question is Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies. Article 3 reads that social and environmental responsibility as referred to in Article 2 is an obligation for companies that carry out their business activities in the field of and/or related to natural resources.

Then in article 7 it reads that the Company as referred to in Article 3 which does not carry out social and environmental responsibilities is subject to sanctions in accordance with the provisions of the legislation. Based on this government regulation, it can be seen that it has not been clearly regulated regarding the types of sanctions that will be given to limited liability companies that do not carry out corporate social and environmental responsibility. In fact, it does not even regulate the type of violation or the category or form of good corporate social and environmental responsibility and what is expected according to laws and regulations. This of course creates a legal vacuum and causes many companies to carry out corporate social and environmental responsibility in an unsustainable and transparent manner. This also means that companies cannot be forced to carry out corporate social and environmental responsibility because there are no sanctions for companies that do not do so.

As in the Big Indonesian Dictionary, emptiness is empty or emptiness, similarly in the legal dictionary, emptiness also means vacancy or emptiness. Judging from this, therefore, a legal vacuum in a narrow sense can be interpreted as an empty state or it can also mean the absence of regulations, so in positive law there is a legal vacuum as well can be interpreted as an empty statutory regulation.<sup>13</sup> The consequences that occur when there is a legal vacuum in laws and regulations, or there is no regulation governing a situation, namely the absence of legal certainty which can later lead to chaos in the legal order in society, because people experience confusion about what arrangements should be applied in behaving in daily life.<sup>14</sup> Setting sanctions in a product of legislation is very important. Sanctions are an important part of legislation. The regulation of sanctions in the body of statutory regulations is intended so that all provisions that have been formulated (arranged) can be implemented in an orderly manner and are not violated.<sup>15</sup> The Law on Limited Liability Companies does not specifically stipulate sanctions for companies that do not carry out corporate social and environmental responsibility. This is a legal vacuum. With the existence of a legal vacuum, the law, in this case, namely statutory regulations, has not been able to provide a sense of legal certainty for the community. Based on Law Number 13 of 2022 concerning Legislation, it states that norms containing sanctions are norms whose nature is an obligation and or a prohibition. Based on this, it can be seen that as long as the regulation regarding corporate social and environmental responsibility does not yet have

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<sup>13</sup> Gamal Abdul Nasir, "Kekosongan Hukum & Percepatan Perkembangan Masyarakat," (*Jurnal Hukum Replik* 5, no. 2 (2017): 172-83, <https://doi.org/10.31000/jhr.v5i2.925>).

<sup>14</sup> Luh Putu Damayanti Damayanti, "Kekosongan Hukum Pengaturan Sanksi Dalam Peraturan Kepala Daerah (Studi Kasus UU 12/2011 Dan UU 23/2014)," *Sabda Justitia* 1, no. 2 (2023): 7-17.

<sup>15</sup> Sri Nur Hari Susanto, "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi," *Administrative Law and Governance Journal* 2, no. 1 (2019): 126-42, <https://doi.org/10.14710/alj.v2i1.126-142>.

clear sanctions arrangements, it can be said that corporate social and environmental responsibility is not an obligation that must be carried out by the company.

This of course has a negative impact because the company's role in sustainable development in society is quite important because the company's role is not only in the economic field. Saidi and Abdin also stated that a company does not only have economic responsibilities, but also legal, ethical and philanthropic responsibilities. First, the economic responsibility in question is to generate profits. Profit is the main foundation of the company, thus referring to economic added value as a prerequisite for the company to continue to live and develop. Second, legal responsibility. In the process of seeking profit, companies must not violate established policies and laws. Third, ethical responsibility. Companies have an obligation to carry out obligations to carry out good, correct and fair business practices. Community norms need to be a reference for corporate organizational behavior. Fourth, philanthropic responsibility. In addition to making a profit, complying with the law and behaving ethically, the company is required to make a contribution that can be felt directly by the community. The goal is to improve the quality of human life and the environment.<sup>16</sup>

Pursuant to Article 34 paragraph (1) of the Law on hiding capital, it stipulates that the Agency business or individual business as referred to in Article 5 who do not fulfill the obligations found in Article 15 may be subject to administrative sanctions. Administrative sanctions here is a form of coercion from the administration of the state (government) against citizens in the event that there are orders, obligations, or prohibitions regulated in laws and regulations invitation issued by the state admnistration (government). In addition to the administrative sanctions above, sanctions civil law in this case can not be imposed because it has not been regulated clearly in the capital hiding law, so there is a blurring of norms of the legal product. This can be seen in Article 34 paragraph (3) capital hiding law which stipulates that "In addition to sanctions administrative, business entity or individual business may be subject to sanctions other responsibilities in accordance with statutory provisions invitation".

Likewise in Article 74 paragraph (3) of the Limited Liability Company Law, not yet set clear legal sanctions imposed for companies that do not carry out CSR obligations either admnistrative sanctions and civil sanctions. In explanation Article 74 paragraph (3) of the Limited Liability Company Law stipulates that sanctions are imposed not a sanctions because the company does not carry out CSR according to the law on limited liability companies, but rather sanctions due to the company ignore CSR so that the company violates relevant regulations in the social and evvironmental fields apply. Based on this, it can be seen that the actual role of the company in carrying out corporate social and environmental responsibility should be a norm of obligation that must be carried out by the company because the company's role is not only to earn profits, but also to improve the quality of life of the surrounding community.

However, the law on companies does not yet specifically regulate the imposition of sanctions for companies that do not carry out this company's social and environmental responsibility. if referring to Gustav's theory of legal certainty, the law on companies does

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<sup>16</sup> Herlina Astri, "Pemanfaatan Corporate Social Responsibility (CSR) Bagi Peningkatan Kualitas Hidup Manusia Indonesia," *Aspirasi: Jurnal Masalah-Masalah Sosial* 3, no. 2 (2012): 151-65, <https://doi.org/10.46807/aspirasi.v3i2.265>.

not yet have concrete legal force because there is a legal vacuum with no sanctions regulated for companies that do not carry out the company's social and environmental responsibility.

Then if traced, corporate social and environmental responsibility or usually referred to as corporate social responsibility (CSR) has the meaning of a business commitment to act ethically, operate legally and contribute to improving the quality of life of employees and their families, local community, and the wider community. The CSR concept involves active and dynamic partnership responsibilities between government, companies and local communities.<sup>17</sup> The next understanding of CSR is based on the idea that not only the government through the establishment of public policies, but also companies must be responsible for social problems. Businesses are encouraged to take a pro-active approach to sustainable development. The concept of CSR is also based on moral arguments.<sup>18</sup> Based on this understanding of CSR, it can be seen that actually CSR is a company's commitment to maintaining the quality of the environment and the quality of life of the local community which should be carried out voluntarily and full of commitment. However, this commitment is ultimately regulated in a statutory regulation and becomes an obligation for the company.

If referring to the concept that the function of law is in development, the law must be able to create patterns of community behavior so that it is able to support, maintain and maintain the success of the ongoing development. In this case, it can refer to the Development Law Theory by Mochtar. According to Mochtar, law is part of social norms, but not the only one. In addition to law, human life in society is also guided by human moral principles, religion, decency, decency, and customs. Between law and other social norms, he said, there is a close intertwining relationship, one strengthening the other. As one of the social rules, the law is called Mochtar aims to maintain and create order (order) society. The purpose of order from the law shows that law functions as a tool to maintain order in society. This kind of function is called by Mochtar as a conservative function, meaning that it is maintaining and maintaining what has been achieved. Such a function is indeed needed in every society, including a society that is currently developing, because there are outcomes that must be maintained, protected and safeguarded. However, in a developing society, which is characterized by change, law does not have a conservative function. He must also be able to assist the process of social change, so that the change takes place in an orderly and orderly manner.

From this description it can be seen that the concept of development law from Mochtar Kusumaatmadja actually wants to explain the role or function of law in a developing society, or in Indonesia it is known as national development. In a society that is currently developing, the law should not only maintain order, but also direct social change and development to take place in an orderly and orderly manner.<sup>19</sup> Besides that, it is also necessary to build a legal culture pay attention to the legal awareness of the people so that the law formed can be effective. The law must have the ability to create justice, provide

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<sup>17</sup> Ashar Maulana Religia, "Permasalahan Hukum Tanggung Jawab Sosial Perusahaan (Corporate Social Responsibility) Di Indonesia," *University of Bengkulu Law Journal* 4, no. 2 (2019): 183-97, <https://doi.org/10.33369/ubelaj.4.2.188-201>.

<sup>18</sup> T. Romi Marnelly, "Corporate Social Responsibility (CSR): Tinjauan Teori Dan Praktek Di Indonesia," *Jurnal Aplikasi Bisnis* 2, no. 2 (2012): 49-59.

<sup>19</sup> M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan," *Undang: Jurnal Hukum* 1, no. 2 (2018): 363-92, <https://doi.org/10.22437/ujh.1.2.363-392>.

equal opportunities and the law must help determine the interests of society and be committed to true justice. Based on the Development Law Theory, the law in this case, namely the law on limited liability companies which regulates social and environmental responsibility or usually referred to as CSR must be able to realize the function of law in development which has the meaning that the law on limited liability companies must be able to create a pattern of behavior in society. The community in question is a limited liability company that plays a role in carrying out social and environmental responsibility of the company.

The pattern of behavior that is created is a pattern of behavior that consciously and voluntarily carries out corporate social and environmental responsibility as the meaning of CSR is because actually CSR emphasizes the philanthropic aspect, namely the human impulse originating from universal norms and ethics to help others and fight for social equity. This is what should be achieved through the law on limited liability companies, that the law should be able to change the pattern of behavior of limited liability companies to realize the importance of carrying out CSR and can voluntarily do so.<sup>20</sup> However, in reality, limited liability companies are not aware of and even neglect corporate social and environmental responsibilities as stipulated in the law on limited liability companies. Therefore, to realize the success of CSR, CSR is increasingly expanded in the form of policies in the sense that CSR must be at the stage in the form of norms of obligation in a statutory regulation. However, this is also not manifested in the law on limited liability companies.

## CONCLUSION

Limited Liability Company is a legal entity that has a role in national development, one of its roles can be realized from the implementation of corporate social and environmental responsibility as stipulated in law number 40 of 2007. However, in these laws and regulations there is still a legal vacuum, namely that it is not regulated in detail regarding sanctions imposed on companies that do not do it. In addition, the laws and regulations also do not explain in detail the forms of social and environmental responsibility that can participate in national development. Therefore, there are recommendations in this study, namely first, it is necessary to hold a judicial review of government regulation number 47 of 2012 concerning corporate social and environmental responsibility. This needs to be regulated at the level of government regulations because this is the implementation stage. By setting sanctions in government regulations, government regulations that act as law can be able to change the pattern of behavior of limited liability companies in complying with social responsibility as stated by the Theory of Development Law. According to this theory, the law should play a role in changing patterns of behavior and maintaining order.

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<sup>20</sup> Marthin, Marthen B. Salinding, and Inggit Akim, "Implementasi Prinsip Corporate Social Responsibility (CSR) Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Journal of Private And Commercial Law* 1, no. 1 (2017): 111-32.



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