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JURIDICAL ANALYSIS OF CREDIT FINANCING MODELS AS IMPLEMENTATION OF CORPORATE SOCIAL RESPONSIBILITY

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ABSTRACT

The modern business model is not only based on the company's internal interests to get the maximum profit materially, but also to have an impact on the environment in which the company operates in a sustainable manner. This action became known as corporate social responsibility. This concept is based on a philanthropic understanding through the charity principle, namely the company provides appropriate assistance to the community without expecting reciprocity for the assistance provided. However, in practice, in Indonesia, through the Regulation of the Minister of State-Owned Enterprises Number Per-05/MBU/04/2021 concerning the Social and Environmental Responsibility Program for State-Owned Enterprises, one model of corporate social responsibility practice is permitted with a financing model for micro and small businesses; of course this creates problems because of conceptual and practice conflicts in corporate social responsibility. Therefore this study will discuss the juridical analysis in the provision of collateral loans as a model for implementing corporate social responsibility. This study uses normative research methods, by analyzing various related laws and regulations. The approach used in this study is a statutory and conceptual approach. This study found that the financing model in corporate social responsibility contradicts the original intent concept of corporate social responsibility. Therefore this study will discuss the juridical analysis in the provision of collateral loans as a model for implementing corporate social responsibility. This study uses normative research methods, by analyzing various related laws and regulations. The approach used in this study is a statutory and conceptual approach. This study found that the financing model in corporate social responsibility contradicts the original intent concept of corporate social responsibility. Therefore this study will discuss the juridical analysis in the provision of collateral loans as a model for implementing corporate social responsibility. This study uses normative research methods, by analyzing various related laws and regulations. The approach used in this study is a statutory and conceptual approach. This study found that the financing model in corporate social responsibility contradicts the original intent concept of corporate social responsibility. The approach used in this study is a statutory and conceptual approach. This study found that the financing model in corporate social responsibility contradicts the original intent concept of corporate social responsibility. The approach used in this study is a statutory and conceptual approach. This study found that the financing model in corporate social responsibility contradicts the original intent concept of corporate social responsibility.

KEY WORDS

Corporate social responsibility, financing, collateral loans, philanthropy, original intent.

Social and environmental conditions are certainly one of the factors that need to be considered and considered by entrepreneurs when setting up a company in an area. This is because the operation of a company will have a positive or negative impact on society. Companies can contribute to the community's economy, but on the other hand they can have a negative impact on people's lives, such as environmental problems. Departing from this unrest, the concept of Corporate Social Responsibility (CSR) emerged as an effort by the government so that a company does not only focus on profit alone but also needs social and environmental responsibility.



CSR is a concept that emphasizes that companies must show concern for the interests of society more broadly than just the interests of the company. In Article 74 Paragraph 1 of Law No. 40 of 2007 concerning Limited Liability Companies, it is stated that CSR is Social and Environmental Responsibility (TJSL) if the operation of a company is related to natural resources. Regarding the CSR mechanism, it is further regulated in Government Regulation No. 47 of 2012 which stipulates that the implementation of TJSL is carried out by the directors based on the results of the General Meeting of Shareholders (GMS) on the company's annual work plan.

One of the Limited Liability Companies that carries out CSR programs is PT. Timah Tbk which is a State-Owned Enterprise (BUMN) engaged in the tin mining industry which has been listed on the Indonesia Stock Exchange since 1995. To carry out CSR, PT. Timah Tbk has a program to fund Micro and Small Enterprises in the area where PT Timah Tbk operates. The program is implemented through loans using the collateral credit method for the surrounding community as working capital and/or purchase of fixed assets with the aim of increasing business activities and helping Micro, Small & Medium Enterprises (MSMEs) referred to as Cooperatives whose interest is 6% per year.

What was done by PT Timah Tbk by providing loans through the form of collateral credit is a form of implementing the TJSL program by financing micro and small businesses as contained in Article 10 Paragraph (1) letter a of the Regulation of the Minister of State-Owned Enterprises Number Per-05 /MBU/04/2021 Regarding the Social and Environmental Responsibility Program for Owned Enterprises which reads as follows:

"(1) Implementation of the BUMN TJSL Program can be carried out in the form of: financing and fostering micro and small businesses;"

In the Regulation of the Minister of State-Owned Enterprises Number Per-05/MBU/04/2021 Concerning Social and Environmental Responsibility Programs for State-Owned Enterprises, it does not further explain the mechanism or concept of what kind of financing is meant. If the financing is carried out through the provision of collateral credit, PT Timah Tbk does as is done by other financing institutions, so that PT Timah Tbk carries out other business activities outside of the main business activities of PT Timah Tbk through the provision of collateral loans which will later benefit from the interest set. that is 6%.

This is certainly contrary to the concept of TJSL as stipulated in Article 74 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies which states that TJSL is an obligation of the company which is budgeted for and calculated into company costs which are carried out properly and fairly. In other words, if a company conducts business activities through the provision of collateral credit, this is not included in the provisions of Article 74 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies because budgeting and calculating costs incurred by the company are not a commitment in community development, but through business motives.

This is also justified by the opinions of several experts regarding the voluntary aspect of CSR implementation. According to Bayu Tri Cahya, the implementation of CSR is carried out using a voluntary approach which emphasizes the company's moral obligation to contribute to social society (Bayu Tri Cahya; 2014). Voluntary implementation was also conveyed by the World Business Council for Sustainable Development which stated that sustainable commitment from the business community is carried out with ethical behavior and contributes to economic development (Natufe; 2001). The phrase "making donations" certainly refers to the voluntary actions of business people to contribute to the community's economy.

That way, CSR programs carried out through collateral credit have violated both normatively and conceptually. With this program, of course, the basis is not voluntary and cannot be said to be a social commitment as referred to in Article 1 number 3 of Law Number 40 of 2007 concerning Limited Liability Companies.

In this way, there are issues related to the suitability of CSR provision by the company as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies in the form of collateral credit. based on the explanation of the background above, the author seeks to



identify and analyze the above issues whether they are appropriate and regulated by positive law in Indonesia.

METHODS OF RESEARCH

This study uses normative research methods by analyzing and elaborating various statutory provisions related to CSR. The approach used in this study is a statutory and conceptual approach. Data collection was carried out by means of a literature study using secondary data to strengthen the research results.

RESULTS AND DISCUSSION

Corporate Social Responsibility: Historical and Conceptual Studies. When reviewing the early history of the birth of CSR, it can be traced to the mass of Ancient Mesopotamia in 1700 BC which was marked by an order given by King Hammurabi to execute builders, innkeepers, and also farmers whose existence caused death or big problems for the local community at that time. at that time. This review is an ancient CSR concept that can be related to the development of CSR in the last century (Abdul Aziz Alhammadi; 2018).

Today's modern CSR concept that is known and used in various countries is a concept that was born in the 1950s. The concept of CSR was born because of the awareness that inspires that companies have an obligation to carry out company activities in accordance with the values contained in society. That way, the company has a responsibility to ensure that the company's activities do not have an impact on the community environment. In other words, CSR seeks to integrate a sense of social and environmental concern in every company activity. The interaction between the company and the community is based on a voluntary attitude.

This CSR was coined by Howard R. Bowen who gave the idea of CSR in his article entitled social responsibilities of the businessmen. Bowen interprets CSR as the obligation of entrepreneurs to encourage the formation of policies that must be linear with the values that exist in society. Bowen's view shows that corporate entities must always implement company policies that are in harmony with the values that exist in society (Howard R. Bowen; 1953).

There are various factors that influence the development of the concept of CSR at the beginning of the concept. The most basic thing is awareness related to reciprocity between the community and the company. In addition, companies have started to apply the charity principle and stewardship principle. These two big principles underlie the company to apply the concept of CSR in implementing its activities.

This is because the two concepts are very philanthropic in the implementation of the company. Within the charity principle there is the concept that business people must always do good to society. In this way, the company has established and bridged good relations with the community. The values that underlie charity are actually inspired by the principles of universal goodness found in social life, the general assumption is that people who have more wealth must give some of it to people who are less fortunate in terms of wealth (Ismail Solihin; 2009).

Furthermore, in the stewardship principle referred to in this concept that companies conducting business activities in community areas have obtained approval from the community to become the party that manages the resources in the community environment. With large capital strength and large human resources, of course the company has a big advantage. So that in this case, with the strength and potential of a large company in developing the community, the company should have an obligation to make a large contribution to society.

The philanthropic concept in CSR is agreed upon by many groups, such as Friedman who stated that CSR is a company's responsibility in using all its resources for activities that are channeled to the community from the accumulated profits obtained. This view shows that companies must always care about society in providing a portion of their profits to advance society (Aguinis H., Glavis A; 2012).



In terms of corporate ethics, Jones said that CSR is part of the ethics of the company. Ethics is intended as moral values, beliefs, and rules that determine how organizational stakeholders treat one another in an organizational environment. Jones stated that a company will be called ethical when the organs within the company also apply good ethical standards. There are several things to see if a company has ethical values or not, namely among others, making decisions or acting on the basis of standard values that apply to the environment concerned, being willing to communicate the decision to all parties related to the decision, (Campbell Jones; 2005).

From the perspective of corporate ethics, it can be seen that there is a company's obligation to not only act ethically internally but also externally, namely in the environment where the company is located. From the point of view of corporate ethics, CSR has minimized the negative impact of the company's existence, which of course has a residual impact on the environment in society.

In another view, CSR is discretionary which in a broad sense means something that needs to be done, and if it is not done it will result in self-harm. This view was put forward by Philip Kotler who, if it is understood that the losses that companies get for not carrying out CSR are due to the lack of a close relationship with the community (Philip Kotler; 2004). The view that considers that CSR is not just limited to discretionary is conveyed by the World Business Council for Sustainable Development which states that CSR is not just discretionary, but a commitment that is a necessity for good companies as an improvement in the quality of life so that the company remains standing and of course beneficial for the environment around the company. stand up.

CSR in two perspectives has various mutual benefits when examined more deeply. The benefits of CSR for companies include maintaining and boosting the company's reputation and brand image, then obtaining a license to operate socially, reducing company business risk expanding access to resources for business operations, opening wider market opportunities, reducing costs, improving relations with stakeholders, improve relations with regulators, increase employee morale and productivity, as well as opportunities to get awards (Hendrik Budi Untung; 2008).

As a voluntary action, the company does not always suffer losses due to implementing CSR. As the benefits listed above, this shows that CSR has various advantages for companies. This voluntary action on CSR was put forward by Azheri who stated that CSR has a prerogative meaning, namely voluntary, therefore the company interprets it as philanthropy, kindness and something that does not have to be done. However, if viewed from a human rights perspective, this is a company's obligation for the welfare of the people, so efforts must be made (Azheri; 2012).

By its voluntary nature, the company may not take the slightest advantage from these activities materially. CSR must be based on selfless values in building society. The things that will reduce the implementation of CSR are when CSR is considered the same as expanding opportunities to take advantage of society (Sprinkle, G. & Maines; 2010).

Conceptual Disparities in Financing Models in the Implementation of Social and Environmental Responsibility in Laws and Regulations. In the legal system in Indonesia, provisions regarding CSR are better known as TJSL. TJSL is contained in Law Number 40 of 2007 concerning Limited Liability Companies. TJSL is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and a beneficial environment, both for the Company itself, the local community, and society in general.

The provisions for the implementation of TJSL are obligations to companies engaged in the natural resources sector. This means that the company in its business seeks everything related to natural resources, such as a mining company. This TJSL, which in the framework of Indonesian law is a liability of the company which must be budgeted for and calculated into the costs of the company and its implementation is based on decency and fairness.

The implementation of TJSL is also contained in Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies. In a company, the responsibility for implementing TJSL is the board of directors based on the



company's annual work plan which has received approval from the board of commissioners or the GMS in line with the company's articles of association. So TJSL cannot be carried out suddenly, but must be planned in the company's annual work plan.

In being accountable for the implementation of TJSL, the company must include it in the company's annual report which will later be accounted for on the agenda of the general meeting of shareholders. However, in practice there is a bias in this responsibility, because until now there are no regulations governing the national legal framework related to TJSL.

There are no provisions for sanctions against the implementation of TJSL in Indonesia, if it is considered logically then this can be justified. Bearing in mind that the TJSL provisions are based on a voluntary attitude so that in practice companies cannot be forced by the existence of criminal rules that force companies to implement them.

According to Swanson, the company's voluntary actions in carrying out CSR are based on several things, namely the very utilitarian nature of companies, namely CSR can be used to increase profits, increase investment returns, and increase sales volume. Then according to him, companies carry out CSR because there are statutory provisions that regulate it so that companies are forced to follow it. According to Swanson, this approach is a negative approach. The next third motivation is related to the internal desire of the company to have a positive impact on society to improve the environment. This third principle becomes a positive approach that arises from the company's desire to establish closeness with the community (Swansons; 1995).

The voluntary principle in implementing TJSL certainly cannot be considered a burden by the company. This is because the implementation of TJSL does not burden the company in terms of budgeting and expenses for implementing TJSL. However, interestingly in Indonesia, this voluntary nature through the Minister of State-Owned Enterprises Regulation Number PER-05/MBU/04/2021 Concerning Social and Environmental Responsibility Programs for State-Owned Enterprises is biased. Bias in its voluntary nature can be seen in Article 10 of the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/04/2021 concerning the Social and Environmental Responsibility Program for State-Owned Enterprises which allows financing and fostering micro and small businesses. To do this, the company must establish a special funding program for micro and small businesses.

The permissibility of financing by companies on behalf of TJSL is biased because in matters of financing, companies still make a profit from financing activities. This makes financing in TJSL activities just like other business activities that also benefit, but the difference here is that financing is camouflaged in TJSL activities. Another bias is that the permissibility of financing to BUMN companies in TJSL activities has obscured the position of the TJSL implementing company with regard to its position which is not a financing company.

This bias is due to the existence of special permits in carrying out financing based on Article 12 of the Financial Services Authority Regulation Number 47/POJK.05/2020 concerning Business and Institutional Licensing of Financing Companies and Sharia Financing Companies which states that companies carry out business activities after obtaining a business license from the financial services authority. The business license was obtained from the submission of an application by the Directors to the financial services authority based on the provisions contained in the Financial Services Authority Regulation Number 47/POJK.05/2020 concerning Business and Institutional Licensing of Financing Companies and Sharia Financing Companies.

This indicates that to become a financial institution requires a special license related to financing issued by the financial services authority. The form of financing within the TJSL framework is not voluntary because it is mixed with business activities to make a profit. Implementation of TJSL with this financing model certainly does not reflect CSR which is voluntary in nature. Therefore this certainly needs to be reviewed considering that the original intent of the CSR concept was the principle of volunteerism based on the charity principle.

The concept of CSR which is based on charity is agreed upon and strengthened by McGuire's statement which states that social responsibility is more important than economic responsibility and corporate legal responsibility. McGuire argues that corporations must pay



attention to various aspects including community welfare, education and the happiness of the people around them. McGuire said that the organization's social activities must show that business organizations must act as corporate citizens, which means that there must be social sensitivity from the company to the surrounding community environment (McGuire; 1986).

The implementation of TJSL in state-owned enterprises through financing shows that this implementation is very far from the original intent of Bowen's concept of CSR. The approach taken by Bowen in the concept of CSR is business responsibility, social responsiveness, and social service, all of which are carried out voluntarily (Howard R. Bowen; 2013). TJSL by taking advantage through loan interest, cannot be said to be a company's effort in budgeting TJSL funds but can be said to be a fund to gain other business benefits.

The approach taken will of course also be different, if implementing TJSL using a financing model. The implementation of TJSL with a voluntary model, namely by providing assistance, will certainly prioritize a utilitarian approach because the assistance provided must of course be given according to the needs of the community. In contrast to the implementation of TJSL with a financing model, of course the approach used is a profit and loss approach because after all the financing carried out by the company will provide the company with profits through the interest it provides.

Ackerman and Bauer in stating that responsibility in CSR becomes a process of accepting obligations that emphasize the provision of benefits that are philanthropic in nature. Through CSR, one can also see the responsiveness of the company towards the environment which, according to Ackerman and Bauer, is the characterization of CSR. Therefore departing from Ackerman and Bauer's view, the financing model eliminates the characterization of CSR as a form of philanthropic responsibility and shows appropriate responsiveness in corporate decision making to help the community (Ackerman R; 1976).

The development of the CSR paradigm at this time must be directed through refreshment towards the concept of CSR as a view that encourages business activities in achieving higher goals, namely humanitarian goals and benefits compared to material gains. The application of the CSR concept that aims to improve people's living standards in a sustainable manner must be carried out with high will. That way the impact of CSR can be more felt on the community (Archie B. Carroll; 2021).

These humanitarian goals when associated with the implementation of TJSL with a financing model are of course contradictory. The financing model will only change the view of the public towards state-owned companies is not to help the community but as a finance company in general which only provides loans to the public through financing instruments implemented based on the Minister of State-Owned Enterprises Regulation Number PER-05/MBU/04/2021 concerning Responsibility Programs Social and Environmental State Owned Enterprises.

This will certainly reduce the meaning of the CSR concept which is philanthropic in nature so as to push back the CSR concept that are philanthropic, the financing model should be abolished. Simply put, maintaining a financing model in TJSL will make the implementation of TJSL increasingly biased between voluntary movements or being a business movement.

There are at least several reasons for changing the deep financing model TJSL, firstly, the financing model is not in line with the original intent concept of CSR, secondly, the financing model in TJSL is biased in practice towards the implementation of the company's business because it also takes advantage of the implementation of TJSL, and thirdly, the TJSL financing model will give birth to problems related to the form of a company that is not in the form of a company financing.

CONCLUSION

The application of TJSL with a financing model will only create a bias between CSR practices and business interests. However, in the financing model there is interest which is



an advantage for the company in implementing TJSL. In fact, if we examine the roots of the CSR concept, the nature of CSR is philanthropic, one of which is based on the charity principle, so that this makes the financing model in TJSL contrary to the original concept of CSR. The financing model in the implementation of TJSL will also obscure the business position of companies that do not have financing business licenses, even though it is based on the Financial Services Authority Regulation Number 47/POJK.

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