

CHAPTER 1

INTRODUCTION

A. Background

In this globalization era, the development of science and technology is irreversible and continue to grow rapidly. One of the impacts caused by the era of globalization is the increasingly fierce economic competition. In order for a country to survive, the society also holds the responsibility to manage the economic growth system aside from the government itself. One of the major booster and pillar for the growth of the national economy is the establishment of company. A company is principally established with an aim to gain as much profit as possible. In order to do that, companies are required to be able to take strategic measures to compete in any conditions and also required to have more excellences compared to other companies in order for the company to afloat. In addition, along with the advancement of technology, it enforces companies to utilize information technology as a means to create the competitiveness of enterprises that are increasingly competitive. This competition certainly gives a lot of positive effects, such as job creation, goods or services that are the result of the company's products and tax payments that would increase revenue for the State.

Indonesia as the fourth country that has the largest population which is 260,588,100¹ people who certainly needs a job. With the condition where

¹ Worldometers, "Countries in the world by population (2016)", <http://www.worldometers.info/world-population/population-by-country/>, accessed on 10 November 2016.

new companies are constantly being created this would definitely be a good news for job seekers like in Indonesia to be able to fill the vacancy. However, on the other hand, the company's activities, especially in the industrial sector has led to problems in the environment and the economic level of society within the region. This situation is exacerbated by the lack of response by the company to various demands of society in environmental issues, the welfare of the surrounding community, etc. These negative impacts are causing the environment and community to become the victim due to the company's activities.

The negative impacts caused by the activities of the company is definitely contrary to The 1945 Constitution of the Republic of Indonesia (Undang - Undang Dasar Republik Indonesia 1945), The Preamble to The Constitution, paragraph 4 which reads in Indonesian:

“Kemudian daripada itu untuk membentuk suatu Pemerintah Negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial, maka disusunlah Kemerdekaan Kebangsaan Indonesia itu dalam suatu Undang-Undang Dasar Negara Indonesia, yang terbentuk dalam suatu susunan Negara Republik Indonesia yang berkedaulatan rakyat dengan berdasar kepada Ketuhanan Yang Maha Esa, Kemanusiaan yang adil dan beradab, Persatuan Indonesia dan Kerakyatan yang

dipimpin oleh hikmat kebijaksanaan dalam Permusyawaratan/Perwakilan, serta dengan mewujudkan suatu Keadilan sosial bagi seluruh rakyat Indonesia.

Which if it's translates in English, the provisions above will say:

“Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice, the national independence of Indonesia shall be formulated into a constitution of the sovereign Republic of Indonesia which is based on the belief in the One and Only God, just and humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives and the realization of social justice for all of the people of Indonesia.”²

From the provisions above, one of the goals of it is to improve the public welfare, whereas what often happens was the opposite. Hence, in order to achieve these goals, company as one of the biggest key in the economic development has to take the responsibility to create the public welfare and enhance the life quality of the nation. The companies' mindset that's dominated by prioritizing more on the profit-oriented than the environment-oriented needs to be change. According to Busyra Azheri', a

² WIPO – World Intellectual Property Organization, “The 1945 Constitution of the Republic of Indonesia” <http://www.wipo.int/edocs/lexdocs/laws/en/id/id048en.pdf>, accessed on 10 November 2016

company is no longer as an entity who's selfish and/or exclusivity of the community, but as a legal entity that must adapt to their socio-cultural environment in which it exists and can be held accountable just like the subject of law in general.³ In this case, the responsibility of a company should not only be to the shareholders but also to the society, which therefore a corporate social responsibility should be present in every company.

According to the EU Commission [(2002) 347 final: 5], Corporate Social Responsibility is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.⁴ Over time, companies are encouraged to continue to innovate by changing the order of the business operating system to become more environmentally friendly. Companies who take economic decisions merely looking at the finance performance are no longer relevant. The business run by the company should not only beneficial to the stakeholders, but also for the community around the company and society.

In order for companies be able to perform Corporate Social Responsibility, guidelines are needed for the companies to perform the Corporate Social Responsibility. Some companies that has voluntarily perform Corporate Social Responsibility uses International CSR instruments like the Ten Principles of UN Global Compact, OECD

³ Busyra Azheri, *Corporate Social Responsibility: Dari Voluntary Menjadi Mandatory*, (Jakarta: Rajawali Pers, 2012), p. 5

⁴ David Crowther and Güler Aras, *Corporate social responsibility*, (Denmark: Ventus Publishing ApS, 2008), p. 11

Guidelines or ISO 26000 on Social Responsibility. Companies use these international instruments as there is no formal law that explicitly states about Corporate Social Responsibility or requirements to perform Corporate Social Responsibility. The companies that have performed Corporate Social Responsibility voluntarily by using the international CSR instruments needs to be appreciated as this indicates the initiative to achieve the transparent and accountable CSR program.

In Indonesia, the awareness to perform corporate social responsibility has been made mandatory, it was indicated by the Company Liability Act Number 40/ 2007 (*Undang-Undang Perseroan terbatas no.40 tahun 2007*) which took effect on August 16, 2007. This law regulates that companies who carry out activities related to natural resources are required to conduct corporate social responsibility. However, according to the survey that was made by *Harian Kompas* regarding the practice of corporate social responsibility in 2007, only about 30% of all companies operating in Indonesia, and its own operations more focused on philanthropy and charity in order to help victims of natural disasters, whereas the activities of corporate social responsibility is an ongoing joint commitment of all stakeholders of the company to jointly responsible for social problems.⁵ Considering that corporate social responsibility is not merely about philanthropy or charity, nursing and protecting the environment in order to hinder it from damage or disaster should be more

⁵ *Harian Kompas*, "Hasil Survei Corporate Social Responsibility", 4 Agustus 2007 in Busyra Azheri, *Ibid.*, p. 7

prioritized. Indonesian government also take a better concern regarding this as national laws are amended with adding Corporate Social Responsibility in it.

Aside from Indonesia, Malaysia as one of the developing countries has also just started performing Corporate Social Responsibility in 2006. There isn't any formal law that explicitly states that companies have to perform Corporate Social Responsibility mandatorily. But with the initiative of Bursa Malaysia -- known as the Malaysian Stock Exchange, Public listed companies are now required to disclose their CSR initiatives in their annual financial reports. Bursa Malaysia definitely plays a significant role in Corporate Social Responsibility as they're the first to make all public listed companies (PLCs) to perform CSR in their companies. Furthermore, since then, Malaysia Government also started to focus more on the Corporate Social Responsibility by announcing the plan like 10 Malaysia Plan and other guidelines that will be further discussed on this final project.

Ever since it was made mandatory by both countries pros and cons are coming in regards of this CSR. Those that disagrees that CSR should be made mandatory is because it can burden the company's operating costs, reduce productivity and weakens the investors that has invested in those country. While those who agrees that CSR should be mandatory found that it will certainly help to protect the environment and also to help the sustainability development of the country. So with the arguments if CSR should be mandatory or voluntary and as both countries are fairly new in performing Corporate Social Responsibility, it makes the Writer interested

to have this topic for the undergraduate final project. Thus, as from the background explained above, the title of this undergraduate final project will be **“Corporate Social Responsibility in Indonesia and Malaysia: Mandatory or Voluntary?”**

B. Research Questions

From the research backgrounds that have been described above, the problems and questions that can be formulated in this research are:

1. How is the law in Indonesia and Malaysia that governs about the Corporate Social Responsibility?
2. What are the advantages and disadvantages in performing Corporate Social Responsibility in Indonesia and Malaysia?

C. Research Objectives and Benefits

1. Research Objectives

The objectives of this study and research is to answer the research questions and problems, namely to:

1. Ascertain the law in Indonesia and Malaysia that governs about the Corporate Social Responsibility.
2. Search for and analyze arrangements regarding the advantages and disadvantages in performing Corporate Social Responsibility by the mining companies in Indonesia and Malaysia.

2. Research Benefits

The writer hopes that this study and research would give the following benefits:

1. Theoretical Benefits

a. Academics

This research can be used as a reference for academics, especially for those doing research on the Corporate Social Responsibility by the companies in Indonesia and Malaysia. This research is also a study in the field business law, particularly on the study about the development and performance of Corporate Social Responsibility as well as to develop an advanced research on the comparative law basis.

The writer hopes that this study be able to provide benefits in the development of knowledge in the field of law science in general and business law in particular

b. The Writer

This research is expected to give the writer a better understanding in regards of the Corporate Social Responsibility of the companies in Indonesia and Malaysia and business law in general.

c. Knowledge and Repertoire to Library Materials

This research is expected to be useful and be an additional repertoire to library material on the law science in the faculty of law of *Universitas Internasional Batam*.

2. Practical Benefits

a. Citizen of Indonesia and Malaysia

The benefits for the citizen of Indonesia and Malaysia is to increase knowledge and information about the Corporate Social Responsibility in their respective countries. Through an understanding process, citizen is hoped to help the Corporate Social Responsibility program done by the companies

b. Company

To get a better understanding of the laws by both countries regarding CSR and able to understand the needs of the stakeholders so that the help given is in accordance with the needs.

c. Government

For Indonesia, to maintain the laws that has been made regarding CSR and this research is expected to give contribution to the country.

For Malaysia, to create law that explicitly concerns about CSR, also focus more on the CSR program.