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The Construction of Corporate Social Responsibility to Realize the Welfare of State

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Abstract--- *The purpose of this research is to analyse and formulate the laws construction. Law construction of corporate social responsibility to realize the welfare of state. The effort is to increase the role of local governments in this era of regional autonomy, providing legal certainty in the form of agreements between the company and the public about the implementation of corporate social responsibility, where the role of notary in the creation of an agreement deed in realizing the company's social responsibility is to translate the agreement that will be done by the parties and can accommodate the interests of the parties so as to Legally up to the realized definitive agreement, as well as required the existence of criminal law as a ultimumremidium, this is done through the criminalization of the company's deeds that do not carry out corporate social responsibility and the application of criminal sanctions relevant to the company's characteristics as a corporation*

Keywords--- *Corporate Social Responsibility, Local Government, Notary, Criminal Sanction.*

I. INTRODUCTION

Indonesia as a country has poured a welfare of its people as one of the objectives of the State as contained in the Preamble of the 1945 Constitution of the Republic of Indonesia (CONSTITUTION NRI 1945), 4th paragraph, namely to protect the whole people of Indonesia and the entire homeland of Indonesia and in order to advance general prosperity. Further implementation can be seen from some provisions contained in the CONSTITUTION of NRI 1945 as contained in article 27 paragraph (2), article 28A, article 28H, article 33 and article 34.

One of the efforts made by the State to achieve welfare state is by obligate the company in carrying out corporate social responsibility (TJSP) or Corporate Social Responsibility (CSR). TJSP 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 for the company itself, the local community, and the community in general.

The increasing level of quality of life, social harmonization and the environment also affects the activities of the business world, so it is born a lawsuit against the role of the company to have social responsibility. Here is one of the benefits that can be picked by the company from TJSP activities.

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In this context TJSP activities become mandatory menu for the company, outside the obligation outlined by the law. [1]

The obligation of TJSP is based on several statutory regulations such as Law No. 40 year 2007 concerning incorporate company (UU PT). In article 74 of the incorporate company law mentioned that:

(1) The company that conducts its business activities in the field and/or related to natural resources is obliged to carry out social and environmental responsibility.

(2) Social and environmental responsibility as referred to in paragraph (1) shall constitute the obligation of the company which is considered and accounted as the cost of the company in which the implementation is done by paying attention to the compliance and fairness.

(3) The company that does not carry out the obligations referred to in paragraph (1) is sanctioned according to the provisions of the law.

(4) Further provisions on social and environmental responsibility are governed by government regulations.

As a follow up of the Article 74 paragraph (4) of the incorporate company Law, then come out the Government Regulations Number 47 in 2012 concerning the Guidance of Social and Environment Affairs of Incorporate Company. In the Government Regulation General Explanation explained that "In this Government Regulation, the Company is intended to carry out activities in the area and/or in related with natural sources is obligate to fulfill the social and environment responsibility." The activity in the fulfillment of the obligations of the society and the environment must be estimated and accounted as Corporate cost that conducted with concern by fit and proper.

The legal certainty is one of form of legal protection against certain arbitrary action which means that a certain person will obtain something at a certain time. There needs to be concrete actions and provide legal protection for the society of the creation of corporate social responsibility programs that are right on target and effective. According to Rachmd Budiono, law has the duty to create the certainty of law because it has a purpose to create orderliness. Indicators from the presence of certainty of law in a country will only be in the form of legislation in the country and judge or other law stakeholder in its implementation conducted well. The form of the certainty law given by the court is in the form of a decree of the court which is not disparity. In terms of disparity is different decree for the same cases[2]

Problems of juridical since the establisment of Corporate Law that govern about Incorporate Company especially for the corporate that work or related with natural resource has been found the formulation of TJSP obligation as in the Article 74 paragraph (1) of the Corporate Law. The term of the TJSP is an obligation that imply different perceptions of the holder as companies, society, even government. In the Corporate Law, the formula of the element of obligation is not further explained in the explanation of the Corporate Law itself and also in PP No. 47 In 2012, about the meaning of TJSP, which is mandatory that doesn't has legal implications or mandatory that has legal implications.

[1] A.B. Susanto, Corporate Social Responsibility, (Jakarta; The Jakarta Consulting Group, 2007), page. 7
[2]Abdul Rachmad Budiono, Pengantar IlmuHukum, (Malang: Bayumedia Publishing, 2005), page. 22

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Based on that results, the formulation of the obligation of CSR in the Article 74 paragraph (1) of the Corporate Law has law ambigious that will potentially cause different perceptions in the implementation of CSR. The result shows that the norm is less effective or less binding in achieving the objectives of the CSR, even though it will be affected in slow terms of achieving the objective of state in society welfare.

Some examples of special cases of CSR fund which are misused in its implementation, namely:

a. In Central Sulawesi, it is suspected that there will be a evil conspiracy on the use of CSR fund from PT Vale Indonesia, which was received on 14 January 2016. It will not be used for sustainable development, but sidetracked. Even with a lot of interest. Based on data that collected by the Front Regional Caring Youth (FPPD) of the Central Sulawesi Province, it was seen from the way of distribution the CSR to the 14 Regional Government Work Unit (SKPD) and Central Sulawesi Province Government Bureau. The fund distribution is not contacted with the substance of importance and needs of society directly. The signaling of CSR fund handover has been carried out in the office of the Vice Governor (deceased), Sudarto. Director of PT ValeIndonesia, Nikolas D. Karter, firmly said that Rp 11.7 billion is part of the company CSR program to help the society of Central Sulawesi and has been planned since 2015. But, based on the agreement signed by Central Sulawesi Province with PT Vale Indonesia, and the CSR that became the responsibility of the company to the people of Central Sulawesi, was changed into *hibah*. With that fact, the provincial government then manages the funds directly. And the management was carried out by using the basis law of *hibah*. CSR fund was also became as an income from the other sectors. After that, the Central Sulawesi government entered that fund in the body of Government Budget Revision in 2016 before being distributed to the SKPD. The management of CSR fund was challenged by a number of Central Sulawesi House Representatives members. They refused the CSR fund was admitted to the Revision of Government Budget in 2016. Because the transition of CSR fund to hibah has no law basis.[3]

b. In Cilegon, Banten Province, CSR fund is Rp. 1,500,000,000, - (a billion and five hundred million rupiahs) which was given by PT Krakatau Industrial Estate Cilegon (KIEC) and PT BrantasAbipraya, which was given at Rp. 700,000,000 (seven hundred million rupiahs) and Rp. 800,000,000 (eight hundred million rupiahs) has already been released by transferring to the account of the Cilegon United Football Club. According to the findings of the Corruption Eradication Commission, this CSR fund is a motive of action on corruption that is intended to be received by the Cilegon mayor and Head of Integrated Licensing and Capital Investment agency of Cilegon City. According to BasariaPandjaita (Commissioner of the Corruption Eradication Commission), all of which were sent were actually being used for the need of the club throughout the year. However, most of it is used in the interests of mayor. The KPK estimated that Rp 1.5 billion was given so the government of the Cilegon easily to start the licensing process of the Transmart construction. One of which is, related to environment effect analysis (amdal)[4]

c. In the Bangka Belitung, it is suspected that the misuses of CSR fund has been given by PT TimahBitung Belitung. PT Timah CSR fund in 2015 was Rp. 27,000,000,000 (twenty seven billion rupiahs), but it was only Rp.

[3]Tempo.co, Kasus Dana TJSP di Sulteng, Ini Penjelasan PT Vale Indonesia, https://nasional.tempo.co/read/827568/kasus-dana-TJSP-di-sulteng-ini-penjelasan-pt-vale-indonesia, accesed in 18 Desember 2017

[4] Abba Gabrillin, Modus Suap Wali Kota Cilegon, Dana TJSP untuk Klub Sepak Bola, http://nasional.kompas.com/read/2017/09/23/19322641/modus-suap-wali-kota-cilegon-dana-TJSP-untuk-klub-sepak-bola, diasksespadatanggal 18 Desember 2017

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17,000,000,000 (seventeen billion rupiahs) received. CSR fund recorded in the file of PT Timah received by NGOs and community/ journalist associations. PT Timah CSR fund reached million rupiah even there is one associations that run in sports got CSR Fund from PT Timah more than 1,000,000,000,- (one billion rupiahs). According to the Attorney General's Office Bangka Belitung, the temporary tug of the CSR fund has been misused by PTTimah CSR officer for self interest and other receiver. [5]

Based on that explanation, so author has interest to search deeper about CSR fund that has characteristic as law obligation according to Indonesia regulation in realize one of Indonesia objective namely welfare the society through the implementation of 5th Sila from Pancasila, Social Justice for All Indonesia People.

II. FORMULATION OF PROBLEMS

How is the legal construction of corporate social responsibility to realize the welfare of state?

III. DISCUSSION

The Law Construction of Corporate Social Responsibility to realize the Welfare of State in Indonesia can be seen in three things, the Role of Local Government in Realizing the Corporate Social Responsibility, the Role of Notary to realize the Legal Certainty in the Implementation of Corporate Social Responsibility, and Optimization of Corporate Social Responsibility Implementation Through Criminalization. Each of these items will be described as follows:

A. the Role of Local Government in Realizing the Corporate Social Responsibility

According to the provisions listed in article 18 paragraph (6) of the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945) mentioning the "Local government has the right to establish local regulations and other regulations to enforce autonomy and assisted work." Local regulation is one of the types of legislation that applies in the Indonesian constitutional system today. Under these provisions, each region is given the authority to make its own regional regulations (PERDA).

To implement government affairs which is the regional authority, regional head and Regional House of Representatives as the organizer of local government makes regional regulation as the basis of legal for the region in organizing regional autonomy in accordance with the conditions and aspirations of the community and the peculiarities of the area. The Local Regulation made by the region is only valid within the boundaries of the jurisdiction of the concerned region. Nevertheless, Local Regulation stipulated by the region shall not contradict the provisions of the higher level legislation in accordance with the hierarchy of legislation. In addition, Local Regulation as part of the regulatory system should not contradict the public interest as stipulated in the rules of drafting Local Regulation.[6]

The main objective of local regulations is to empower the community and realize regional independence, and the establishment of local regulations must be based on the principle of general legislation, among others; Favoring the

[5] Romli Muktar, Terkait Korupsi Dana TJSP PT Timah, Perhimpunandan LSM Penerima Akan Diperiksa Penyidik, https://forumkeadilan.com/daerah/terkait-korupsi-dana-TJSP-pt-timah-perhimpunan-dan-lsm-penerima-akan-diperiksa-penyidik/, accesed in 18 December 2017

[6] General Explanation Number 8 Law Number 23 of 2014 about Local Government.

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interests of the people, a high level of human rights, environmental and cultural insight.[7] Independence in autonomy does not mean the region can make legislation or decisions that are detached from the national legislation system. Regional legislation is an integral part of the unitary national legislation system. Therefore, there should not be any regional level legislation contrary to higher statutory regulations or the public interest. [8]

The emergence of local government role in CSR program at least bring up 4 (four) possibilities, namely:

A. The effect of the local government seeks to divide the burden on development responsibilities to the company as a consequence of the company's permission to conduct its business;

B. Attempts to obtain funds from third parties to support regional development.

C. Local government seeks to manage one-stop CSR program in coordination by local Government through forum board CSR and deliberation plan for regional development.

D. The company is less serious in designing and implementing the CSR program so that it is far from the appropriate and successful principles.

Not optimal company in carrying out the activity of CSR is one reason why the government publishes Local Regulation. There are several indicators that can be used as a measure of the company's seriousness in conducting CSR activity. Including: [9]

A. Not all companies have standard operational procedures (SOP) regarding CSR.

B. Not all companies have special departments or divisions that deal with CSR since CSR's activities are still trapped by the public Relations (PR) division or Human Resources Development (HRD).

C. The company does not focus on preparing human resources (SDM) who have capacity to manage CSR.

In Indonesia, especially in South Kalimantan, there are several Local Regulation about CSR which has been made both by provincial government and Regency/city government, such as:

a. Local Regulation South Kalimantan Province Number 1 Year 2014 about Corporate Social and Environment Responsibility
b. Local Regulation Kotabaru District Number 19 Year 2013 about Incorporate Company Social and Environment Responsibility;
c. Local Regulation Tapin District Number 7 Year 2014 about Corporate Social Responsibility;
d. Local Regulation Banjar District Number 16 Year 2014 about Corporate Social Responsibility;
e. Local Regulation Balangan District Number 19 Year 2014 about Corporate Social Responsibility;
f. Local Regulation Barito Kuala District Number 3 Year 2015 about Corporate Social and Environment Responsibility In Barito Kuala District region .
g. Local Regulation Tabalong District Number 7 Year 2015 about Corporate Social and Environment Responsibility;

[7]Rozali Abdullah, Pelaksanaan Otonomi Luasdengan Pemilihan Kepala Daerah Secara Langsung, (Jakarta: PT. Rajagrafindo Persada, 2005), page. 131
[8]Bagir Manan, Sistemdan Teknik Pembuatan Peraturan Perundang-undangan Tingkat Daerah, (Bandung: LPPM Universitas Bandung, 1995). page. 8
[9] Rahmatullah, TJSP dan Kepentingan Pemerintah Daerah, http://www.rahmatullah.net/2011/05/TJSP-dan-kepentingan-pemerintah-daerah.html, access on 28 December 2018

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h. Local Regulation Tanah Bumbu District Number 5 Year 2016 about Corporate Social Responsibility;
i. Local Regulation Banjarbaru City Number 13 Year 2016 about Corporate Social Responsibility;
j. Local Regulation Banjarmasin City Number 14 Year 2016 about Corporate Social Responsibility to Society;
k. Regulations of Bupati Tanah laut Number 76 Year 2015 about Corporate Social and Environment Responsibility.

Local government that does not have local regulation about CSR from 13 regencies/cities in South Kalimantan only 3, namely the Hulu Sungai Selatan Regency, Hulu Sungai Tengah District and Hulu Sungai Utara Regency. As for the regency of Tanah Laut CSR is not regulated in local regulation but is governed in the rules of the Regent Regulation.

B. The Role of Notary to Realize Legal Certainty in the Implementation of Corporate Social Responsibility

The legal profession in a society is regarded as a respectable profession (Officiumnobile) because it is a profession that upholds noble values such as the value of justice, truth and legal certainty. They are required to work with moral, intellectual and professional integrity as part of their activities. This profession has a very important role in society, especially in the activities of creating the law, implementing the law, supervising the implementation and if there is a violation can be a restoration or law enforcement.

Society in general as well as the community in the business world need a (figure) whose ability to be reliable, reliable whose signature and the seal provides assurance and strong evidence, an impartial expert and an advisor who does not have deformed (onkreukbaar or unimpeachable) who quiet and make a treaty that can protect them in future to come. If an advocate defends a person's rights when a struggle arises, a notary should try to prevent the difficulties from occurring. [10]

One of notary's functions is to fulfill the needs of the community, by arranging in writing and authentically the legal relations between the parties that bind themselves, and the sincerity of the parties that bind themselves, so in this case the responsibility of notary is not only based on the law, but also based on moral. The authority of the department given to the notary is intended for public or public interest and not for the sole purpose of personal interest.

The concept of Notariat arises from the need in the association of human beings, who require evidence for him concerning the legal relationship of the law that exists and/or occurs among them, an institution with its servants assigned by the public power (OpenbaarGezag) for where and when the law requires such or required by the community, making written proof tools that have an authentic power. [11]

According to A.W. Voors notary function in the field of business, namely: [12]

A. Contract creation between the parties, in which case an action begins and ends with a deed, such as a sale and purchase agreement, in which case the notary has been skilled with the models in addition to knowing and understanding the law.

[10]Tan Thong Kie, Studi Notariat Buku 1, (Jakarta : PT. Ichtiar Baru Van Hoeve, 2000), page. 162
[11]G.H.S Lumban Tobing, Peraturan Jabatan Notaris, (Jakarta: Erlangga, 1999) page.2
[12]Tan Thong Kie, Op. Cit, page. 165

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B. The creation of a contract that thus starts something and is the basis of a relationship that is valid for a long period of time. In this case it is necessary from a notary of a sharp vision of the material and its ability to look far ahead, whether there is danger and what is possibility.

C. Pursuant to article 15 paragraph (1) of LAW No. 2 of 2014, it is said that "the notary public made an authentic deed of all deeds, covenants,.....". Based on the authority, notary has a role in supporting the realization of CSR programs that have been poured by the entrepreneurs with the community through a deal in a treaty.

To be said a agreement with the power of law, the agreement must:

A. Agreement in the form of authentic deed

An agreement made in the form of an authentic deed fulfills the provisions, i.e. the deed must be made "in the presence of" a general official. The word "in the presence" indicates that the deed is classified into a Partij deed, and the general official in the deed is notary. In the Partij deed, the parties have managed to reach a certain agreement, then they come to the notary to make a treaty which is set in the form of authentic deed.

B. The act shall be made in the form prescribed by the law

Pursuant to article 1868 of the Civil Code, an authentic Deed of statutory form must meet certain formalities. In the practice of notariat, certain form of notary is commonly used consist of three parts:

1) Head of Act.

Consists of the title deed, the day and date of the deed, the name of the notary, the place of his position, as well as the comparator (the name of the complainant, his office and residence, along with a description of whether he acted for himself or as the representative/authority of the other person and for what he acts, as a trustee or authority).

2) Deed entity

Mentioning any provision or agreement as required by the complainers as long as not contrary to law, public order and morality. The deed entity consists of premisse (preliminary information submitted by the complainers) and clauses (usually outlined in the form of articles containing the agreement that must be complied by the parties).

3) End of deed/conclusion

It is a form that contains the place where the deed was made and inaugurated and mentions the name, position and place of residence of the complementary witnesses who witnessed the creation of the deed (witness Instrumentair). Later in this section it is mentioned that the deed was read to the complainers and the witnesses, and was subsequently signed by the complainers, the witnesses and the notary public.

C. The notary shall have the authority to make the deed

A notary authorized only to make a deed which was assigned to him, because not all deeds can be made by a notary. The authority to make a deed of agreement is in the hands of a notary, because the other general officers are not allowed to make the deed. The notary is not authorized to make a deed for himself, his wife or husband, a blood family or a semitic family from the notary itself in a straight line without restriction of degrees and lines to the third degree. In addition, a notary is only authorized to make a deed within the area prescribed to him as long as he still holds his position as a notary.

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The authentic deed is a sufficient proof tool, and if there is already an authentic deed then there is no need to be added proof again. Sufficient evidence is also called a perfect proof, this means that all content of the deed shall be deemed correct, except when submitted evidence of binding resistance. As deed function in general, notarial deed has two functions, namely: [13]

A. Formyl function (Causa formalities)

The formyl function of a deed means that for complete or perfect (not for the validity of) a legal act, it must be a deed for the act of the law. The parties who commit the act of the law. The parties who commit a legal action must make it in writing, whether authentic deed or deed under the hand.

B. Evidence tool function (Probationis Causa)

From the beginning, the parties deliberately made a deed (authentic or under-hand) for a later proof. The written nature of a covenant does not make the validity of a treaty, but for the deed to be made can be used as a tool of evidence in the event of a dispute arising out of the day.

The role of notary in the creation of a deed of agreement in realizing CSR is to translate the agreement to be done by the parties and can accommodate the interests of the parties so as to provide a guarantee or legal origin until the realization of the definitive agreement. It is intended to be the will of the parties that are poured in a notarial deed is truly a manifestation of a legal deed and can serve as the strongest evidence in the event of a dispute or denial of the agreement. Because any covenant made by the parties is always a potential conflict. Disputes are sometimes inevitable due to misunderstandings, violations of legislation, disagreements, conflicts of interest or the onset of losses in either party.

C. Optimization Corporate Social Responsibility Implementation Through Criminalization

Policy of criminal law or the renewal of criminal law is in the background by various aspects of policy especially social policy, criminal policy and law enforcement policy. The fact of the renewal of criminal law is a policy-oriented approach and a value-oriented approach as well. This resulted in the consequences that renewal of criminal law (reform) is part of the political policy of criminal law (penal policy). [14]

To use the means of criminal law (penal), Nigel Walker as quoted by Barda Nawawi, reminded of the "Principles of Limitation" (thelimiting Principles) that deserve attention, among others: [15]

A. Don't criminal law be used solely for the purpose of retaliation;

B. Do not use criminal law to commit unharmful deeds.

C. Do not use criminal law to achieve a goal that can be achieved more effectively with other lighter means.

D. Do not use criminal law if the loss or danger arising from criminal is greater than the loss/danger of the act itself.

E. Criminal law does not contain prohibitions that do not have strong support from the public.

[13]Sudikno Mertokusumo, Hukum Acara Perdata Indonesia, (Yogyakarta: Liberty, 1998), page.122

[14]Barda Nawawi Arief, MasalahPenegakanHukumdanKebijakanHukumPidanadalamPenanggulanganKejahatan, (Jakarta: Kencana Prenada Media Group, 2010), page. 29

[15]Ibid. page. 75-76

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The criminalization policy is to determine the act of non-criminal acts as a criminal act in a statutory law. In fact, the criminalization policy is part of the criminal policy by using criminal law means, and therefore includes part of the criminal law policy. [16]

To tackle the crimes needed various means as a reaction that could be given to the perpetrators of criminal or non-criminal sanctions, which can be integrated with one another. Moreover, criminal means are considered to be relevant to tackle crimes, which means a political conception of criminal law, which is to hold elections to achieve the results of criminal legislation that suits the circumstances and situations at a time and for the future. [17]

Two thought points in the criminalization policy using the means of penal (criminal law), namely the determination of the problem: [18]

A. What acts should be made a criminal offence.

B. What sanctions should be imposed on the violator.

Starting from the subject matter above, Sudarto argues that in dealing with the central problem of the first (letter a) above, it is worth noting a few things, namely: [19]

A. The use of criminal law should pay attention to the purpose of national development, namely to realize a fair and prosperous society that is evenly materil and Sprituil based on Pancasila. In this regard, the use of criminal law aims to address crimes, for the welfare and shelter of the community;

B. Deeds that are undertaken to be prevented or addressed by criminal law must be "undesirable deeds", i.e. deeds that bring losses (Materil and or Sprituil) to the citizens;

C. The use of criminal law should also take into account the principle of "cost and outcome" (cost benefit principle);

D. The use of criminal law must also pay attention to the capacity or ability of the working power of the law enforcement agencies, namely lest there is a burden on the task (overbelasting).

In addition to the provisions above, it is also worth noting that the report from the results of the National Criminal Law Reform Symposium held in August 1980 in Semarang that recommends that to establish criminalization policy should be considered General criteria, namely: [20]

A. Whether the deed is disliked or hated by the public for harm, or can harm, bring victims or can bring victims

B. Whether the cost of criminalization is balanced with the results to be achieved, meaning the cost of making legislation, supervision and enforcement, and the burden borne by the victims, perpetrators and perpetrators themselves must be balanced with the situation Order of law to be accomplished;

C. Whether or not to increase the burden of law enforcement agencies that are unbalanced or tangible cannot be carried by its capabilities.

[16]Barda Nawawie Arief. Bunga Rampai Kebijakan Hukum Pidana. (Bandung : PT Citra Aditya Bakti, 2008), page. 2-3
[17]Sudarto.Hukumdan Hukum Pidana. (Bandung : Alumni, 1983), page. 109
[18]Barda Nawawi Arief. Kebijakan Legislatif : Dalam Penanggulangan Kejahatan Dengan Pidana Penjara. (Semarang :Undip, 2000), page.35
[19]Sudarto.Op. Cit, page. 44-48
[20]National Criminal Law Reform Symposium Report. 1980. Semarang. www.bphn.com. Accessed on 26 January 2019

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D. Whether these deeds impede or obstruct the ideals of the Indonesian nation, so it is a danger to the whole community.

Companies that do not carry out their obligations in the form of social and environmental responsibility should constitute a deed that can be sentenced. In addition, it is also worth considering to use criminal law, which is written by Marshall B. Clinard and Peter C. Yeager: [21]

A. the level of public loss.

B. level of involvement by corporate managers

C. duration of offence.

D. frequency of violations committed by corporations.

E. evidence of committing a crime.

F. evidence of extortion, as in the cases of bribery.

G. the many cases of violations committed by corporations that have been disclosed by the media.

H. precedent in law.

I. history of serious violations committed by corporations.

J. potential for prevention or handling.

K. the existence of evidence indicating violations committed by the corporation.

According to Moeljatno that in the sense of criminal deed does not include criminal liability. Because the criminal act only refers to forbidden and it is threatened with a criminal. As for then whether the person doing the deed was sentenced as regulated (enacted) in the Law (criminal) is very dependent on whether in doing this deed he has a mistake (no criminal principle without Errors).[22]Moeljatno's views correspond to Rupert Cross and P. Asterley Jones who wrote that the principle (principle) of criminal law is embodied in the saying of the actus non acit reum, nisi mens sit rea, where an act does not make a person Responsible for the deed unless it is in error. [23]

L.B. Curzon in his writing titled "Criminal Law" presents three reasons for which it is a strict liability, namely: [24]

A. It is very essential to ensure compliance with certain important regulations necessary for the welfare of the community.

B. Proof of the existence of mens rea will be difficult for violations related to the welfare of the community.

C. The high level of social hazards posed by the action concerned.

The Hoge Raad also argues that "it is sufficient to declare a person to be convicted of a breach, if the person materiel or has manifestly behaved as formulated in a provision Without the need to reconsider whether or not the behavior of the person could be blame ". [25]

In this strict liability Contek, M. Yahya Harahap gives the view that there are several benchmarks that can be used as a basis in implementing strict liability, among others: [26]

[21]Muladidan Dwija Prayitno. Pertanggungjawaban Pidana Korporasi. (Jakarta :Kencana, 2010), page. 20
[22]Moeljatno, Asas-asas Hukum Pidana. (Yogyakarta : Liberty, 1980), page. 104
[23]Rupert Cross dan P. Asterley Jones. An Introduction to Criminal Law. (London : Butterworth & Co, Seventh Edition, 1972), page. 35
[24]HamzahHatrik.AsasPertanggungjawabanPidanaKorporasidalamHukumPidana Indonesia. (Bandung : Alumni, 1996), page. 13-14
[25]Ibid, page. 14

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A. Does not apply generally to all types of criminal acts, but is very limited and of course especially concerning anti social crimes or that harm social.

B. Such acts are strictly against the law (unlawful) as opposed to the mandatory and legal prudence.

C. Such conduct is strictly prohibited by law as it is categorized as a highly potential activity or activity that contains dangers to public health, safety and morals.

D. The act as a whole is done by not conducting a very reasonable prevention.

The vicarious liability is a criminal liability charged to someone for the actions of others. At the concept of RKUHP 2008, this vicarious liability is governed in article 38 paragraph (2) which reads "In the event determined by the law, any person can be held accountable for the crime committed by another person". The explanation of this passage confirms: "The provisions of this verse are an exception to the uncriminal principle without error. The birth of this exception is the smoothing and deepening of the regulative principle of moral juridical in certain things that one's responsibilities are deemed to be extended to his subordinate actions that do the work or deed for them or within the bounds of his command. Therefore, although a person in reality does not commit a criminal offence but in the case of criminal liability it is deemed to have a mistake if the deeds of others who are in such position constitute a criminal offence. As an exception, these Terms of use shall be restricted to certain events that are expressly determined by the law to be unarbitrarily used.

In relation to criminal liability against perpetrators who ignore the social and environmental responsibility as stated in article 74 of law number 40 year 2007, then the question is whether the corporation can be reaffirmed criminally? This question is found, as in article 74 of Law No. 40 year 2007 does not expressly declare that the corporation is the subject of criminal law that can be accounted for criminally. Article, only refers to the provisions of the law. Therefore in article 74 paragraph (1) of Law No. 40 year 2007 Specifies: "The company that conducts its business activities in the field and/or related to natural resources must carry out social and environmental responsibility", even the explanation of Article 74 paragraph (3) of Law No. 40 year 2007, stating that "the meaning" is sanctioned in accordance with the provisions of the legislation "is subject to any form of sanctions stipulated in the relevant legislation ', Then the provisions of the close legislation, among them is Law No. 32 year 2009 on Protection and Environmental Management (hereinafter called UUPPLH) (Government Gazette year 2009 number 140, dated October 3, 2009).

As for the question now is whether UUPPLH has firmly set the corporation as the subject of criminal law? In article 1 the figure 32 UUPPLH mentioned that "every person is an individual or a business entity, both a legal entity and a legal person". Furthermore, how are the criteria of anyone who can be accounted for by criminal? Article 116 UUPPLH states:

(1) Where environmental crimes are conducted by, for, or in the name of a business entity, criminal prosecution and criminal sanctions are dropped to:

A. Business entity; and/or

[26]F.A. Abby. Perkembangan Wajah Pelaku Kejahatan Pada Era Global dan Implikasi Yuridisnya. Dalam Orientasi No. XXVII. Januari 2000, page. 31

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B. The person who gave the order to commit the criminal offence or the person acting as the leader of the activity in the crime.

(2) If the Environmental criminal act as referred to in paragraph (1) shall be done by the person, which is based on work relationship or based on other relationship acting within the work entity, the criminal sanction is dropped against the warrant or leader in the criminal act without regard to the criminal offence itself or jointly.

Based on UUPPLH that the corporation can be held criminally. While under the limited liability company law and the law in other areas of natural resources (such as forestry law, water resources law and oil and gas law) is not strictly stipulated in the corporate criminal liability in the event of not implementing the CSR.

Other aspects that need to be considered also in order to provide legal protection due to faults from corporations are victims. The problem of the victim's interest from a long time had less attention, but the object of attention was still more focused on how to give punishment to the perpetrators of criminal acts, and it is still attached to the phenomenon of mere retaliation.

Meanwhile the interests of victims of criminal acts have been represented by tools State i.e. police and prosecutors as investigators, investigators, prosecutors, but the relationship between the victims of criminal acts on the one party with the police and the Prosecutor on the other party is symbolic, while the relationship between the defendant with his legal counsel in principle is purely in the legal relationship between the service user and the The police and prosecutors acted to perform state duties as deputy victims of criminal acts and or society, while legal advisors acted on the direct power of the defendants acting on behalf of the defendant himself.[27]

Seen from the corner of Human Rights (HAM), the problem of victims of criminal interest is part of the general human rights issue. Universal's principles as contained in The Universal Declaration of Human Right and The International Covenant on Civil and Political Rights acknowledge that all persons are equal to the law and are entitled to the same legal protection without The treatment or attitudes of any discrimination. Every act of violation of human rights is guaranteed by the provisions of national legislation.

Article 9 paragraph (5) of the Covenant above is based on the principle of injunctive that outlines that "anyone who has been the victim of the unlawful arrest or detention shall have enforceable right to compensation". The above formulation is then backed by convention against Interstate Organized Criminal act (United Nations Convention Against Transnational Organized Crime,2002), which in article 25 gives the principle that countries should Taking appropriate measures in the form of means of providing relief and protection to victims of violations covered by the Convention.

The various principles outlined above have a value that can support the viktimologist aspect, as it can serve as a strong foundation for the formulation of the law later on for the sake of the victims of criminal acts in the formulation of governance For each country regarding the rights of victims of a legal offence treatment. [28]

[27]Parman Soeparman.Kepentingan Korban Tindak Pidana Dilihat Dari Sudut Viktimologi. Dalam Varia Peradilan, Majalah Hukum TahunKe XXII No. 260 Juli 2007, page. 50.

[28]Arif Gosita. Viktimologidan KUHAP. (Jakarta :Akadmika Presindo, 1986), page. 14

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Developments in national law, were initially not so responsive to the interests of victims. But with various international congresses discussing the problem of Viiktim, it seems that attention to victims of criminal acts began to lift. As there are at least 3 (three) international meetings on the same theme: Congress in Geneva discusses "new form and dimensions of crime; Congress in Caracas in 1980 follow up on crime and the abuse of power, offenses and offenders beyond the reach of law; Then then spied in Milan 1985 discussing victim of crime, which it connect the new dimentions of criminality and crime prevention in the context of development, Convention and Non conventional Crime, illegal abuse of economic and public power. [29]

The dimension of compensation for the sufferings of the victim is associated with the restitution system, which in viktimology sense is related to the repair or restoration of physical, moral, property and victim rights that are leave by criminal acts. [30]

The main character of this restitution is indicative of the makers ' responsibility for the prosecution of criminal restitutise actions in criminal cases, which in viktimology sense relates to the repair or restoration of physical harm, property and rights resulting from a criminal offence. In the case of compensation, the compensation is requested on the basis of the application, and if the claim must be paid by the community or country, while the restitution is required by the victim in order to be at the end of the court and if it is accepted the claim should be paid by Perpetrators of criminal acts. Because the nature of the difference is still not realized in reality, it is often no difference between the two payments, because most importantly, the attention to the victim first, then following the form of payment for losses Victims. [31]

According to Jennifer J. Llewellyn and Robert Howse, restitution as a common law concept is broadly the idea that gains or benefits gained or enjoyed in an incorrect way should be returned. The correct strength or basis of the restitution, because it is more in the sufferer or victim of evil. Thus, the victim is on the return of losses to victims. This means, with the restitution of having put real sufferer on the limelight of an attempt to give the best for the victim.[32]

The concept that requires the perpetrators to compensate victims of criminal acts, in fact is not new, because when tracked to history thousands of years ago, the public is accustomed to the term pay salt for salt debt, meaning the victim can determine the ways (indemnity) that must be done by the perpetrators of the deeds he has committed to the victim. These damages include not only in the form of money, but also other additional demands such as apologies. In its development, the State or government takes responsibility in solving the problem of crimes committed by the perpetrator to the victim, so that the crime is no longer regarded as an assault on the victim, but rather regarded as an assault on the country. In many respects, however, restitution has been forgotten. In fact, it was a case for the society primitive in resolving crime cases between the perpetrators and victims. [33]

[29]Ibid.
[30]Parman Soeparman. Op. Cit, page. 52
[31]Bambang Poernomo. Hukum Dan Viktimologi, (Bandung: Universitas Padjadjaran, 2001), page. 3.
[32]M. Arief Amrullah. KorbandanRestitusi.www.restitusi.com Accessed on 27 January 2019.
[33]Ibid.

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In relation to the provisions of article 74 of the limited liability company, basically the concept of restitution can be applied, i.e. if the company that conducts its business activities related to natural resources, there is destruction or environmental pollution, then the responsibility is not enough by only restoring the state of the environment to its original state, but also the responsibility to the surrounding communities. That responsibility is actually part of the correctional process. Based on this point of view, restitution is not merely addressed to the people who have been harmed, but at the same time also helped harmonise between the company and the surrounding community.

IV. CONCLUSION

The legal construction of corporate social responsibility for the realization of the welfare state should be undertaken by increasing the role of local governments in this era of regional autonomy. Another legal construction in order to carry out corporate social responsibility is to provide legal certainty in the form of agreements between the company and the public about the implementation of corporate social responsibility. The role of notary in the creation of a deed of agreement in realizing the corporate social responsibility is to translate the agreement to be done by the parties and can accommodate the interests of the parties so as to provide a legal assurance or certainty until the realization of the definitive agreement. Lastly, to further guarantee the social responsibility of the company by the company as a legal obligation accompanied by sanctions, it is necessary to the existence of criminal law as Ultimum remidium. This is done through the criminalization of the company's deeds that do not carry out corporate social responsibility and the application of criminal sanctions relevant to the company's characteristics as a corporation.

It is recommended the need for legal politics from the legislator about the existence of a particular article on sanctions against companies that do not carry out corporate social responsibility to provide more legal certainty in the enforcement of violations of corporate social responsibility. The article is both a sanction in the field of civil law, administration and more specifically in the field of criminal laws. The arrangement of sanctions in the field of criminal law can be realized through the arrangement of the formulation/formula of criminal acts of corporate social responsibility and the sanctions of its criminal. For example, "any person who does not carry out the company's social responsibility as referred to in article..... Threatened with the longest imprisonment of prison for ..... and fines at most Rp ..... " Other provisions must also be governed by the management and corporate criminal liability as well as the type of sanctions or actions that can be applied to companies that violate the CSR criminal article for example if it is conducted in the name of the corporation, then the criminal threat of fines plus a third, damages, revocation of temporary permits, takeover of management of the company

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