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Legal Certainty of Sustainable Finance Provisions in Relation to Corporate Social Responsibility (CSR) Programs at Financial Services Institutions

Dewi Astari, Puguh Aji Hari Setiawan, Hartana

Postgraduate Directorate-Master of Law, Bung Karno University, Jakarta, Indonesia

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ABSTRACT

Corporate Social Responsibility (CSR) has become an essential element in the operations of companies, particularly financial service institutions, in line with the growing attention to the concept of sustainable finance. This research is motivated by the legal uncertainty in implementing sustainable finance linked to CSR programs, which often face issues such as inconsistent definitions, unclear sanctions, and non-standardized reporting mechanisms across various regulations. The objective of this study is to analyze the regulation of sustainable finance in relation to CSR and evaluate the legal certainty embedded in its implementation by financial service institutions. This study employs a juridical-normative method with an analytical approach to legislation, official documents, and case studies in several companies within the financial services industry.

The results indicate that the regulations on sustainable finance and CSR in Indonesia still face several challenges. Law No. 40 of 2007 on Limited Liability Companies regulates CSR obligations generally but does not impose specific sanctions. Meanwhile, Law No. 25 of 2007 on Investment provides for administrative sanctions but lacks clear enforcement mechanisms. Additionally, the Financial Services Authority Regulation (POJK) No. 51/POJK.03/2017 mandates financial service institutions to develop sustainability action plans and sustainability reports, but its implementation is limited to certain sectors without addressing inclusivity. Existing regulations also fail to optimally provide tax incentives that can encourage consistent CSR implementation by businesses.

The conclusion of this study highlights the need for regulatory harmonization to create legal certainty that supports the implementation of sustainable finance and CSR. This includes aligning definitions, strengthening reporting mechanisms, establishing clear sanctions, and improving oversight. With legal certainty, financial service institutions can be more confident in investing in sustainability projects and executing CSR programs that positively impact society, the environment, and business continuity. This research aims to serve as a reference for policymakers and companies in promoting inclusive social and economic development.

Keywords: Legal Certainty, Sustainable Finance, CSR, Financial Service Institutions

INTRODUCTION

Corporate Social Responsibility (CSR) is an important element in the operations of companies, especially financial services institutions, which plays a role in supporting environmental, social, and corporate governance sustainability. In recent years, the concept of sustainable finance that integrates Environmental, Social, and Governance (ESG) aspects has become a major focus in the financial industry. Sustainable finance aims to direct capital flows to projects that are environmentally friendly and support sustainability. However, the implementation of this concept in Indonesia still faces various obstacles, especially related to the lack of legal certainty. Existing regulations are often not harmonized, both in terms of definitions, reporting mechanisms, and sanctions, creating uncertainty in the implementation of CSR in Financial Services Institutions (FSIs).

Financial Services Institutions (FSIs), especially in the capital market industry, have experienced significant developments. Competition between companies in FSIs has resulted in the economy in Indonesia being more diverse in determining its investment options. The development of the FSI sector as part of a process that has a major influence on national development in economic growth has brought changes to the order of financial management in society. Currently, part of the culture of community financial management has shifted to transactions at non-bank Financial Services Institutions (Mahadiansar, 2020). This has led to new developments in the non-bank financial industry, one of which is the number of financial service actors or companies that manage public funds in the form of investment portfolios.

Financial Services Institution as an entity whose purpose is to generate the maximum possible profit in the form of capital gains or profits (maximize shareholders value). However, with the development of business and the impact caused by the business world, the main objective of the company which was originally entity centric must also be responsible for improving the quality of the community around the company and its environment by paying attention to business ethics practices. (Saputro, 2020).

The main issue raised in this research is how the regulation of sustainable finance in relation to CSR and the extent to which legal certainty can guarantee the success of its implementation. The purpose of this study is to analyze sustainable finance regulations related to CSR programs in Financial Institutions and evaluate legal certainty in their implementation. By understanding the regulatory aspects and legal certainty, this research is expected to provide new insights for companies, policy makers, and academics to improve the governance of CSR and sustainable finance in Indonesia.

Corporate Social Responsibility as an idea of a company that is not only faced with responsibilities based on a single bottom line, namely the value of the company (corporate value) which is reflected in its financial condition (financial) only. But it is also the responsibility of the company to be based on triple bottom lines (Damayanti and Dewi, 2021). What is meant by triple bottom lines are profit, people, and planet. Companies should not only focus on profit, but also on people and planet. Because financial conditions alone are not enough to ensure the sustainability of the company.

The sustainability of the company will only be guaranteed if the company pays attention to the social and environmental dimensions. Therefore, the disclosure of social responsibility by companies is expected to make a good contribution to various parties. Both for the community as the object of this CSR, as well as for the company, which of course still requires profit from every action and policy it takes. The funds used for CSR are disclosed in the annual report published by the company. And the funds that have been allocated for CSR will certainly affect the company, especially the company's financial performance (Setyawan, 2023).

The implementation of CSR in Financial Institutions is often not accompanied by a clear supervisory mechanism. For example, Law No. 40/2007 on Limited Liability Companies regulates CSR in general terms without providing strict sanctions, while Law No. 25/2007 on Capital Investment stipulates administrative sanctions but does not provide detailed supervisory guidelines. In addition, Financial Services Authority Regulation (POJK) No. 51/POJK.03/2017 that requires sustainability reporting is still limited in its sector coverage. These regulations have not been optimal in providing tax incentives that can encourage businesses to consistently implement CSR.

This research aims to analyze the regulation of sustainable finance in relation to CSR programs in financial services institutions and analyze the legal certainty related to the implementation of sustainable finance in relation to CSR programs in financial services institutions.

RESEARCH METHODS

This research uses a juridical-normative method that aims to analyze laws and regulations, official documents, and case studies on several financial services institutions related to the implementation of CSR and sustainable finance. This approach allows researchers to assess the consistency of regulations as well as the impact of existing policies on CSR implementation.

DISCUSSION

Sustainable Finance Policy and CSR in Financial Services Institutions

Sustainable finance has become a crucial issue in the financial services sector, especially in a global context that increasingly recognizes the importance of environmental and social sustainability. Sustainable finance encompasses a range of practices that integrate environmental, social and governance (ESG) considerations into financial and investment decisions. In financial services institutions, the application of sustainable finance serves not only as a tool to reduce risk, but also as a means to create long-term value and make a positive impact on society and the environment.

Sustainable finance policies in Indonesia, particularly in financial services institutions, are directed to support the achievement of the Sustainable Development Goals (SDGs). The Financial Services Authority Regulation (POJK) No. 51/POJK.03/2017 is the main foundation, which requires financial services institutions to apply the principles of sustainable finance, including through the implementation of CSR programs that support environmental, social, and governance (ESG) sustainability.

In its business practices, it has not fully supported sustainable business activities but has implemented its principles. Then in the sustainable finance policy report also still calculates related to the economy about the largest financing to companies that have a major impact on the environment. In addition, regarding social, it still calculates employee welfare and other social financing services such as people's business loans and training. Besides that, the environment also still calculates energy saving, water paper and green buildings. From the practice of sustainable finance policy, it can be concluded that the Bank has not fully run well because there are still many weaknesses.

The provision of sustainable finance in relation to Corporate Social Responsibility (CSR) programs in Financial Services Institutions is governed by various regulations applicable in Indonesia. One of the main foundations is Law No. 40 of 2007 on Limited Liability Companies (UUPT), specifically Article 74, which requires companies, including financial services institutions, to carry out social and environmental responsibilities. This includes budgeting for CSR activities that must be implemented with due regard to the principles of propriety and fairness. In addition, Financial Services Authority Regulation (POJK) No. 51/POJK.03/2017 on the Implementation of Sustainable Finance requires financial institutions to develop a Sustainable Finance Action Plan that is integrated with CSR programs, ensuring that social and environmental activities become part of their business operations.

Based on the theoretical perspective, the Triple Bottom Line concept introduced by Elkington (1997) is very relevant, as it requires companies to pay attention to three main aspects, namely profit, people, and planet, in sustainable finance and CSR policies. In addition, Gustav Radbruch's Legal Certainty theory emphasizes the importance of legal certainty for the successful implementation of CSR programs in financial services institutions, ensuring that companies have clear legal guidelines in carrying out their obligations. Previous research, such as that conducted by Mahadiansar et al. (2020), shows that the application of sustainable finance in CSR practices in Indonesia still faces challenges, especially in the deep understanding of Environmental, Social, and Governance (ESG) principles among business actors.

CSR in the context of sustainable finance includes activities such as environmental conservation, community empowerment, and social welfare improvement. PT Insight Investments Management and the Plantation Pension Fund. Both entities have implemented sustainable finance policies through the allocation of funds for CSR programs that focus on mitigating environmental impacts and community development. However, both face challenges in ensuring that CSR implementation not only meets legal requirements, but also provides tangible benefits to society.

Legal Certainty in the Implementation of CSR Programs

The concept of CSR in Indonesia has been regulated in Law No. 25 of 2007 on investment (hereinafter referred to as PM Law), Law No. 40 of 2007 on Limited Liability Companies (hereinafter referred to as PT Law), and Government Regulation No. 47 of 2012 on social and environmental responsibility (hereinafter referred to as

PP TJSL). The regulation related to CSR in Indonesia provides the term Corporate Social Responsibility (hereinafter TJSP) to implement CSR in Indonesia. Whereas in the PT Law and PP TJSL, CSR is implemented as Social and Environmental Responsibility (hereinafter TJSL). Therefore, when discussing CSR carried out by the Company, the term used is TJSL. The reason for using the term TJSL for the company is because the company is a legal entity that has been specifically regulated in the PT Law.

In the context of CSR in financial services institutions in Indonesia, the application of legal certainty plays a very crucial role. Corporate Social Responsibility is a social responsibility undertaken by companies to make a positive contribution to society and the surrounding environment. However, in the absence of clear and firm rules, the implementation of CSR often faces obstacles, such as lack of clarity regarding the budget that must be provided and the form of CSR activities that need to be carried out. This can cause companies to hesitate to carry out their responsibilities, especially if there are legal risks involved. Therefore, legal certainty is needed to provide clear direction for companies on how they should fulfill their social obligations.

The application of legal certainty to CSR in financial services institutions in Indonesia can be seen in various regulations governing the obligation of financial institutions to carry out CSR programs, especially in supporting sustainable finance. For example, the Financial Services Authority (OJK) issued OJK Regulation No. 51/POJK.03/2017 on the implementation of sustainable finance for financial services institutions, issuers, and public companies, which requires these institutions to prepare sustainability reports and implement CSR programs as part of their commitment to environmental, social, and governance (ESG) aspects. This rule aims to ensure that financial services institutions do not only pursue financial returns, but also pay attention to the social and environmental impacts of their operations.

However, in practice, there are a number of challenges that result in this legal protection not being effectively realized. First, ambiguities in the formulation of POJK 51 may cause uncertainty among FSIs as to how this obligation should be implemented. For example, the lack of clarity regarding the criteria that must be met for a project to be considered sustainable may hinder strategic investment decisions. FSIs may hesitate to invest aggressively in green projects for fear of legal consequences or sanctions if the project does not meet standards that have not been clearly established.

Secondly, in the context of expediency theory, the legal protection that is supposed to be present through this policy may lead to a feeling of 'indecision' among FSIs. This occurs when there is an understanding that although they are obliged to implement sustainability principles, if the outcome of such decisions does not provide clear benefits both financially and reputationally, then FSIs will choose to avoid risks and take the safer path, which is often not in line with sustainability objectives.

Third, in relation to the business processes of FSIs, the absence of legal certainty can impact their core business. Expected sustainable finance activities can even be seen as a burden if not accompanied by adequate incentives or support. In this case, the filtering between regulatory compliance and the need to maintain short-term profitability can be a significant obstacle in carrying out the sustainability mission.

In this context, it is important for regulators to clarify and reformulate existing provisions in order to guarantee effective legal protection and at the same time support the goal of sustainable economic development.

Some regulatory issues that affect legal certainty include:

1. Overlapping Regulations: Law No. 40 Year 2007 on Limited Liability Companies and Law No. 25 Year 2007 on Capital Investment have different provisions related to CSR, creating ambiguity for companies.

2. Non-uniformity of Sanctions: POJK No. 51/POJK.03/2017 stipulates sustainability reporting obligations without strict enough sanctions, while the Investment Law stipulates administrative sanctions for CSR violations.

3. Lack of Oversight Mechanism: There is no institution specifically tasked with ensuring financial services institutions' compliance with CSR implementation, resulting in weak policy effectiveness.

Legal certainty demands clear, consistent and enforceable rules, which remains a challenge in the context of CSR regulation in Indonesia. Regulatory harmonization is proposed as a solution to address the overlap and non-uniformity in the implementation of CSR and sustainable finance policies.

CONCLUSION

This study concludes that legal uncertainty in the regulation of CSR and sustainable finance in Indonesia hinders the effective implementation of both concepts. There are several inconsistencies in the regulations, such as unclear sanctions, and non-uniform reporting mechanisms. In addition, limited tax incentives and inadequate supervision also contribute to the weak implementation of CSR by financial services institutions.

Harmonization of CSR Regulations

It is necessary to harmonize the definition of CSR in various laws and regulations so that there is no confusion in its interpretation. This can be done by clarifying that CSR is an obligation that has a positive impact on society and the environment.

Determination of Firm and Consistent Sanctions

The government needs to establish clear and consistent sanctions for companies that do not implement CSR, in order to create a deterrent effect and ensure more effective CSR implementation.

Strengthening Tax Incentives

The government needs to expand the scope of tax incentives that are more favorable to companies that implement CSR, including increasing the tax deduction limit for CSR costs.

Improved Monitoring and Reporting

Supervision of CSR implementation should be improved, with more uniform reporting across sectors, to ensure that CSR programs actually provide benefits to society and the environment

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