

CORPORATE SOCIAL RESPONSIBILITY BY FOREIGN DIRECT INVESTMENT IN BLOCK PASE UPSTREAM OIL AND GAS SECTOR, EAST ACEH REGENCY, INDONESIA

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ABSTRACT

This article explains the regulation of CSR and what factors support and hinder the implementation of CSR in foreign direct investment in the upstream oil and gas sector in the Pase Block, East Aceh. The result shows that the implementation of CSR in the Pase Block was not in accordance with Law on Governing Aceh number. 11/ 2006, Qanun Aceh No. 5/2018 on investment, Qanun Aceh Timur Number 12/ 2016 on CSR, Government Regulation number 65/ 2016 on the guideline for CSR and ISO 26000, as well as Production Sharing Contract between parties. The company has not implemented CSR in accordance with the laws and regulations due to the lack of commitment of TPI to implement CSR. As a result, the CSR has not positively impacted the economic growth of the community and the environment around the company.

Keywords: Regulation of CSR, Oil and Gas, Foreign Direct Investment, East Aceh Regency

INTRODUCTION

CSR is a form of social responsibility of a company that affects individuals, communities and the environments where that company operates.¹ The World Business Council for Sustainable Development (WBCSD) define CSR or Company Social Responsibility as “*continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.*”²

The regulation of CSR by implementing Foreign Investment (PMA) in the oil stream and natural gas sector is regulated by the decree of 2007 Constitution No. 25 regarding Investment, 2007 Constitution No. 40 regarding Limited Company. In Aceh, the regulation of foreign investment (PMA) CSR in the oil stream and natural gas sector is regulated by the 2006 Constitution No. 11 regarding the Aceh Government, 2015 Government Constution No. 23 regarding the Join Management of Natural Oil and Gas Resources in Aceh, 2018 *Qanun* No. 5

¹ Lela Nurlalela Wati, *Model Corporate Social Responsibility (CSR)*, Myria Publisher, Ponorogo, 2019. hlm. 12.

² Yusuf Wibisono, *Membedah Konsep dan Aplikasi CSR*, Fascho Publishing, Gresik, 2007, hlm. 7.

regarding Investment, 2016 East Aceh Districts *Qanun* regarding Company Social and Environmental Responsibility as well as Production Sharing Contract (PSC).

The responsibility regulation of CSR implementation were meant to give clear limitation regarding CSR as well as its perpetrator, guarantee the coordinated function in the implementation of CSR based on the Constitutions, reduce the negative effects of company and optimize the positive effects of the company, protecting the natural resources and the environmental function in Aceh, and being the basis for Aceh Government to appreciate the company that implements the well and sustainable CSR program.

This phenomenon could be observed from the existence of oil and natural gas administrator, especially the foreign investment company Triangle Pasa Inc. that have yet to implement CSR properly. This causes the community around the company to bear less of the positive effects of the company, and the environments around the company suffers and are abandoned by the natural oil and gas company.

Based on the description above, the problem to be further discussed in this research are as follows:

1. How did the regulation of CSR in a foreign investment in the oil stream and natural gas sector in Blok Pasa of East Aceh District?
2. What factors that support and hinder the regulation of CSR in a foreign investment in the oil stream and natural gas sector in Blok Pasa of East Aceh District?

RESEARCH METHOD

1. Research Method

This is a normative juridical research. Normative juridical law research is a method of archival law research by researching library archives or secondary data.³ This research is also combined with empirical research.

2. Data Collection Technique

This research collects the data using the following method:

- a. Library research, which is a research done through various literatures, such as books, constitutions, journals, previous research as well as experts forums regarding this research, would be used as the primary legal material in this research.

- b. Field research, a list of questionnaires made based on the formulated problems of this research was given to respondents related to the regulation of CSR of oil stream and natural gas foreign investment in Blok Pase of East Aceh District.

3. Research Data Sources

- a. Primary Legal Material, including:
 - a) 1992 Rio Declaration on Environment and Development;
 - b) 2007 Constitutions No. 40 regarding Limited Company;
 - c) 2007 Constitutions No. 25 regarding Investment;
 - d) 2006 Constitutions No. 11 regarding Aceh Government;
 - e) 2012 Government Constitutions No. 47 regarding Social and Environmental Responsibility of Limited Company.
- b. Secondary legal material, which is legal material that explains the primary legal material. The secondary materials of this research are research reports, scientific writings, journals, papers, and domestic and foreign articles regarding the regulation and implementation of CSR by a company.
- c. Tertiary legal material, which is legal material used to explain the primary and secondary legal material further. The tertiary legal material includes encyclopedias, law dictionaries, Black's Law Dictionary, the Great Dictionary of Indonesian Language and anything else that are related to the regulation and implementation of CSR.

4. Data Analysis

The data were analyzed based on the acquired legal materials by normative qualitative method, which is by analyzing the legal material consisting of national and international law instruments by understanding, studying and compiled systematically, which would then be outlined using constitutional regulation, law theory and doctrine.

RESEARCH RESULT AND DISCUSSION

1) Corporate Social Responsibility Regulation on Foreign Investment of Oil Stream and Natural Gas Sector in Blok Pase of East Aceh District.

The oil stream and natural gas sector of Blok Pase in East Aceh District were managed by a foreign investment of Triangle Pase Inc, a subsidiary of Triangle Global Energy, an Australian company based in Perth, Australia. As part of the Province of Aceh, which has the privilege to manage its resources, the management of natural oil and gas in Blok Pase of East Aceh District was done based on national and international regulation as well as Aceh region regulations.

CSR responsibility by Foreign Investment (PMA) in Aceh were specially regulated in the 2018 Aceh *Qanun* No. 5 regarding Investment in the 10th chapter stated that an investment requires a corporate social responsibility and further read on the 11th chapter that the investor was responsible for providing community development funds regulated based on the constitutions.

CSR was also regulated in 2015 Government Regulation No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh in the 43rd Chapters verse (2) that stated that Joint Work Contracts of oil and gas administration must follows specific rules as followed: a) state revenue; b) Work Area and its return; c) obligation to disburse funds; d) ownership transversal of production results of oil and natural gas; e) timeframe and conditions of contract extensions; f) dispute resolution; g) obligation to provide natural oil and/or natural gas for the Nation needs; h) conclusion of contract; i) post-exploration and exploitation obligation; j) workplace safety; k) environmental management; l) transferal of rights and obligations; m) required reports; n) field expansions plans; o) prioritizing domestic goods and services uses; p) community development; and q) prioritizing Indonesian workforce.

The 43rd chapter verse (2) show that the implementation of CSR must be written in the joint venture contract which would then be implemented as an obligation for the party in the joint venture contract of the oil and natural gas management.

The management of oil and natural gas in Blok Pase of East Aceh District were done through a Production Sharing Contract (PSC), which were agreed by Triangle Pase Inc, that stated a series of rights and obligations like, operational action funds use, workforce, stock sharing between Acehnese Developmental Regional Government (PDPA) and Triangle Pase, Inc (TPI), community developments funds allocation, a representative of Acehnese government in a branch company managing Pase workforce, obligations to provide Acehnese government

through the production of oil and gas in the Pase work force, dispute resolutions and other PSC substances.

A joint venture contract for oil stream and natural gas business in Indonesia were regulated and supervised by Specialized Work Unit of Oil Stream and Natural Gas Business (*SKK Migas*). However, the regulation and supervision in Aceh were done by the Acehnese Oil and Gas Management Agency (*BPMA*) which is a Special Acehnese Government Agency.

The formation of BPMA was regulated by the 2015 Government Constitution No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh. One of the functions of BPMA was stated in chapter 14 subsidiary (f) of the 2015 Government Constitution No. 23, which was to give work plan and funding approval for Work Force / Permanent Business Entity. In order to perform that functions, BPMA must consider these factors: a) long-term planning; b) action facility achievements; c) back-up development and production efforts of oil and natural gas; d) technicalities of action and equity of funds of every planned action; e) efficiency efforts; f) approved development plan; g) time constraint and the expiration of the Cooperation Contract; h) workforce safety and environmental development; i) the use and development of the workforce and industrial relation guidance; and j) development of the surrounding community and environment. With those considerations, the implementation of CSR by an oil stream and natural gas company in Aceh was regulated directly by the BPMA.

The implementation of CSR by an oil stream and natural gas company in Aceh was done officially based on the decree of the 2016 Governor Regulation No. 64 regarding the Directive of Company Social and Environmental Responsibility in Aceh. As stated in chapter 9 verse (1), a business company in / related to natural resources must implement company social and environmental responsibility (CSR). Therefore, Triangle Pase, Inc. as a foreign investor in managing gas in Blok Pase of East Aceh District is obligated to prepare a CSR company fund and implement CSR as stated and regulated by the constitution.³

The District of East Aceh also has an individual constitution regarding the company social responsibility (CSR), which is the 2016 East Aceh District *Qanun* No. 12 regarding the Company Social and Environmental Responsibility. This *Qanun* regulates all of the oil and natural gas management companies in Blok Pase. The formation of this *Qanun* is to give

assurance and legal guarantee of the implementation of social and environmental responsibility programs in the District of East Aceh, giving direction to all companies and all related parties in the District of East Aceh to fulfilled an international standard and optimizing the role of the business in improving the development of the district.

A company's social and environmental programs in the District of East Aceh consist of several programs; 1) social and environmental development programs, which aim to preserve environmental function and directly help the community around the area. Environmental development programs include physical environmental development, social, environmental development, and small business and union development, 2) partnership between small businesses and the union, a program aiming to improve and develop independent community businesses in the targeted area. A partnership program between small businesses and the union consists of, research and assessment of needs; improvement of community social economy institution; business training, monetary governance and function management training, business development training, as well as increasing product quality, design, packaging, marketing, networking and company classification improvement; improving management and productivity quality; and improving innovation growth and creativity, 3) direct program for the community such as, grants appropriate to quality of the company; awards like scholarships for the community with appropriate academical qualification but were challenged economically; subsidy in the form of community developments projects funding, implementation of public facilities or small scale financial aid, social aid in form of money, goods or services for orphanage and nursing houses, disaster victims and socially challenged welfare community, social services, such as educational service, sports and social worker compensation; and social protections like giving work opportunities for national/regional athlete and disabled member of the community.

Triangle Pase, Inc. (TPI), an oil and natural gas management company in Blok Pase of East Aceh District, implements the social and environmental responsibility programs according to the regulation set by the Acehnesse government. The implementation of CSR/TJSLP by TPI were done based on the TPI Work Program and Budget (WP&B) that were

³ Hasil wawancara dengan Afrilian Perdana, Staf Bidang Bantuan Hukum BPMA di Banda Aceh, tanggal 10 Januari 2022.

approved by BPMA. However, certain areas in the implementation of CSR TPI have their own constitution.⁴

In the implementation of CSR, Triangle Pase, Inc (TPI) did not have its own CSR forum; the implementation of CSR by TPI was done through a forum formed by the Acehese Government. For as long as TPI has operated, they have implemented some CSR programs as follows: 1) road construction from Blang Seunong village to Pantee Labu village (January 2017), 2) participating in the repainting of Pantee Bidari Districts Office (July 2017), 3) aiding floods victims in Pantee Bidari districts (December 2017), 4) Participating in the opening of Lubok Pusaka Village Islamic Center (March 2018), 6) Giving donations with the value of 190 (one hundred and ninety) of medical equipment to two hospitals in North Aceh and East Aceh (December 2020).⁵

2) Factors of CSR Implementation for Foreign Investment in Oil Stream and Natural Gas in Blok Pase of East Aceh District

A supporting factor of CSR implementation for foreign investorss in the oil stream and natural gas sector in Blok Pase of East Aceh District is the commitment of CSR funds allocation from the acting company; in this case, Triangle Pase, Inc. The CSR fund guarantee of Triangle Pase, Inc could be seen in the joint venture contract of oil and natural gas management through the allocation of community development funds in the company Work Program and Budget (WP&B) supervised by BPMA.⁶ CSR could not be implemented based on the fund's availability alone; several factors came from inside and outside of the company.

In allocating the CSR funds, Triangle Pase, Inc. faces a couple of hindering factors like the faraway location of settlements; some settlements were located in hills causing difficulties of access for the company where the road becomes extremely slippery when raining and becomes extremely dusty when it's hot, as well as the Covid-19 pandemic and the village inaccuracy (unclear) administrative and transparency.⁷ Those hindering factors cause the implementation of CSR by Triangle Pase, Inc. not to be maximal. Therefore, cooperation is

⁴ Hasil wawancara dengan Razali Jakfar Public Relation Manager Triangle Pase Inc, tanggal 16 Februari 2022.

⁵ Triangle Pase Inc Press Release, <https://www.triangleenergy-indo.com/en/>, diakses pada tanggal 12 Februari 2022.

⁶ Hasil wawancara dengan Razali Jakfar, Public Relation Manager Triangle Pase Inc, tanggal 16 Februari 2022.

⁷ *Ibid.*

needed between the company and the local government, from the districts to the local village figures.

Those hindering factors could be handled if Triangle Pase, Inc have a separate forum that manage the company CSR funds as stated on the 2016 East Aceh Districts *Qanun* No. 12 regarding Company Social and Environmental Responsibility consisting of company elements and important community element so that the implementation of CSR could be done to its goal of improving the economy and welfare as well as protecting the surrounding environments. Other than that, the company must have a strong commitment to allocate the CSR funds and implements it consistently with the surrounding community's aspiration.

Triangle Pase, Inc. also has faced difficulties regarding CSR with the PDPA (Acehnese Local Company Development). Whereas PDPA sue Triangle Pase, Inc for a breach of the Blok Pase management Production Sharing Contract (PSC). This happened because Triangle Pase, Inc did not execute its obligations of allocating the CSR funds as stated in the Joint Venture Agreement (JVA) between the PDPA and Triangle Pase, Inc., which resulted in its branch company the Aceh Pase Global Engery (APGE). The JVA could be separated from the Production Sharing Contract (PSC).

PDPA accuses Triangle Pase, Inc. did not fulfil its obligations of allocating the CSR funds for community development in the amount of US\$1.1 million and funds for road construction in the amount of US\$4.8 million dollars.⁸ The CSR fund allocations for community development should have been made apparent in 2010 based on the Triangle Pase, Inc. CSR, causing PDPA to suffer from material value of US\$ 781,467 (seven hundred eighty-one thousand and four hundred sixty-seven US dollar).

Therefore, PDPA sues Triangle Pase, Inc via the Indonesian National Arbitration Agency (BANI) to fulfill their obligations according to the Joint Venture Agreement (JVA) validated on the 23 of April 2013 and pay the amount of loss of the materials to the PDPA. Triangle Pase, Inc. responded by stating that the obligations to allocate funds for community development and road constructions were the obligations of APGE and not Triangle Pase, Inc. However, the APGE never executed the operations because APGE were not registered in Indonesia;

⁸ *Ibid.*

therefore, they are not part of a valid legal body and can not operate because they don't have a joint venture contract with the SKK Migas.

Following the constitutions, the CSR funds allocations were an obligation for an operating company in line with the company's yearly work plan. Making it impossible for APGE to allocate CSR funds as obligated in the Blok Pase management joint venture agreement (JVA).

As a dispute resolution agency, the Indonesian National Arbitration Agency (BANI) declared that Triangle Pase, Inc. is innocent and PDPA must pay arbitration funds of Rp. 490,303,550 (four hundred ninety million three hundred and three thousand five hundred and fifty rupiahs) or an equivalent of AU\$47,380 (forty-seven thousand and three hundred and eighty Australian dollars).⁹

This would't have happened if the PDPA directive communicated intensively with Triangle Pase, Inc and other related services in realizing the JVA and the PSC in managing Blok Pase, BPMA as the supervising agency for the joint venture agreement of the oil and natural management in Aceh should be more strict and diligent in supervising the joint venture agreement of Blok Pase management to realized the Blok Pase management as stated in the joint venture agreement (JVA) or the production sharing contract (PSC).

CONCLUSION

The regulation of Corporate Social Responsibility in oil and natural gas management in Blok Pase by the foreign investor in East Aceh District were regulated in the 2006 Constitutions No. 11 regarding the Acehese Government, 2007 Constitutions No. 25 regarding Investment, 2007 Constitutions No. 40 regarding Limited Company, 2015 Government Constitutions No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh, and 2018 *Qanun* No. 5 regarding Investment, 2016 East Aceh District *Qanun* No. 12 regarding Company Social and Environmental Responsibility as well as Production Sharing Contract (PSC). Those constitutions obligate foreign investors managing oil and natural gas to regulate and implement CSR. However, Triangle Pase, Inc. have yet to fully implement them as obligated by those constitutions. This forces the PDPA to take up legal action against Triangle Pase, Inc. to the BANI, who were then rejected all of PDPA demands.

⁹ *Ibid.*

In the process of CSR implementation in East Aceh District, the incompetence of the Acehese Government, BPMA, East Aceh District Government and related services that supervise it was shown. The devoid of a strong commitment from the company to allocate the CSR and implement it in the surrounding community programs. The Acehese Government should make specialized regulations regarding the implementation of CSR for foreign investor (PMA) in the sector of oil stream and natural gas as detailed and assertively as possible while still regarding the ISO 26000 standee for the improvement of economy and continued development of the surrounding community. PDPA was also advised to undertake legal actions to the BANI ruling so that the CSE funds could be allocated as they should. Regarding the hindering factors that cause the hindrance to the CSR funds allocations, the Acehese government, BPMA, East Aceh District government and related services should work cooperatively in supervising the implementation of CSR to make sure the CSR funds are allocated in accordance with the needs of the surrounding community.

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