

CORPORATE SOCIAL RESPONSIBILITY IN LIMITED LIABILITY COMPANIES IN NATIONAL MINING LAW

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Abstract

Corporate Social Responsibility (CSR) is a social and environmental responsibility that must be implemented by companies in the natural resources sector, including mining, in accordance with Law Number 40 of 2007. This research aims to analyze CSR regulations in Indonesia, especially in the mining industry, and evaluate CSR regulations in the Limited Liability Company Law and Mineral and Coal Law and their derivative regulations. This research also highlights provisions regarding reclamation, post-mining activities, and community empowerment as a form of CSR in the Minerba Law. Using the normative analysis method, it was found that there was a regulatory gap between Minerba Law with PP 78/2010 related to occupational health, which is an important part of social responsibility. Therefore, the implementation of CSR in the mining sector still faces challenges, especially in ensuring that mining companies carry out their obligations consistently. This research recommends harmonization of regulations to strengthen legal certainty and ensure companies implement CSR in a sustainable manner to achieve environmentally sound development and social welfare.

Keywords: *CSR, mining, limited liability company*

A. Background

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Likewise, in the mining aspect, both minerals and coal, as natural wealth contained in the earth which is a non-renewable natural resource, its management needs to be carried out as optimally as possible, efficiently, transparently, sustainably and environmentally friendly, and fairly in order to obtain the maximum benefits for sustainable prosperity of the people.

Law Number 3 of 2020 Concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law 3/2020), regulates that those who can carry out mining activities are business entities, cooperatives or individual companies. Article 1 Number 23 Law 3/2020 defines a business entity as every legal entity operating in the mining sector established under Indonesian law and domiciled within the territory of the Unitary State of the Republic of Indonesia. This means that this is related to the legal aspects of companies regulated in Law

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Number 40 of 2007 concerning Limited Liability Companies (UU 40/2007) which regulates companies with legal entities. Because based on legal regulations in mineral and coal studies, companies established for mining activities must be in the form of a legal entity, namely a limited liability company (PT).

All mining activities regulated in Article 1 Number 1 of Law 3/2020, including exploration activities (including general investigation activities, exploration activities and feasibility study activities), production operation activities (including construction, mining, processing and refining activities (for metallic minerals) or development and utilization (for coal), transportation and sales activities), as well as post-mining activities, can only be carried out by business entities, cooperatives or individual companies that have a mining business permit (IUP), this is stated in Article 38 of the Law 3/2020. With regard to this research, the researcher's research object will be to focus on one of the IUP holders, namely business entities in the mining sector, limited liability companies.

Mining activities carried out by A corporation (company) in the midst of society has both positive and negative impacts. The positive impact of mining business activities is the creation of job opportunities, increasing the country's economic value, infrastructure development, transfer of technology and expertise, and development of remote areas. However, besides that, there are negative impacts from the mining business, namely damage to the surrounding environment which is exploited on a large scale, thereby destroying the ecology, land degradation, social impacts of population movement and economic inequality, health problems, limited natural resources, and economic dependence.²

Based on data obtained from Minerba One Data Indonesia (MODI) Ministry of Energy and Mineral Resources (hereinafter referred to as KEMEN ESDM), to date there are 7554 lists of companies resulting from IUP and IUPK arrangements that meet the provisions.³ With such a large amount, the author is of the opinion that it is necessary to implement CSR in the Pertamina sector, one of the implementers of which is a limited liability company as a legal entity, this is clearly regulated in Article 74 Paragraph (1) of Law 40/2007 which reads "Companies that carry out business activities in the field and/or related to natural resources are obliged to carry out social and environmental responsibilities." Furthermore, in Paragraph (2) "Social and environmental responsibilities as referred to in paragraph (1) are the company's obligations which are budgeted and calculated as company costs, the implementation of which is carried out taking into account propriety and fairness." Paragraph (3) "Companies that

² Eny Suastuti, "Beberapa Kendala Dalam Penerapan CSR (Analisis Pasal 74 UUPU)," *Rechtidee Jurnal Hukum* 9, no. 2 (2014): 203–22.

³ MODI Kementerian Energi dan Sumber Daya Mineral, "Daftar Perusahaan Hasil Penataan IUP Dan IUPK Yang Memenuhi Ketentuan," n.d., available at: <https://modi.esdm.go.id/portal/dataPerusahaan>, accessed on 7 October 2024.

do not carry out the obligations as intended in paragraph (1) will be subject to sanctions in accordance with the provisions of statutory regulations.

B. Identified Problems

Based on the description above, 2 issues arise that will be discussed, namely: what is meant by Corporate Social Responsibility? How to set up Corporate Social Responsibility in the national mining sector?

C. Research Methods

The research method used in this study is normative, using secondary data in the form of primary legal materials of laws and regulations related to CSR, namely Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 4 of 2009 concerning Mineral and Coal Mining, and its amendments, namely Law Number 3 of 2020 and related legal regulations under it in the form of PP, Permen, etc. Then secondary legal materials in the form of books, journals and websites. The problem approach used in this study is the statute approach which is then described qualitatively.

D. Research Findings and Discussions

1. Corporate Social Responsibility

The beginning of the emergence of the CSR concept was the public's distrust of companies. The term CSR began to be used in the 1970s and became increasingly popular, especially after the presence of a book by John Elkington entitled *Cannibals with Forks: The Triple Bottom Line in 21st Century Business* In 1998, Elkington classified CSR into three focuses, namely 3P, an abbreviation of profit, planet and people. According to Elkington, good companies do not only seek economic profits (profit) but also has concern for environmental sustainability (planet) and community well-being (people).⁴

CSR is a regulatory obligation for companies to provide a portion of their profits to help communities around the company's area. The aim of CSR is to help communities around mining locations, both in the fields of education, health, poverty alleviation, infrastructure and human resource development.⁵ Social responsibility is conceptualized as a commitment from the business world to continuously act ethically, operate legally, and contribute to economic improvement, along with improving the quality of life of employees and their families. Also, at the same time improving the quality of local communities and society at large.⁶ CSR is a business commitment to operate legally and contribute to improving the quality

⁴ Gina Bunga Nayenggita, et.al, "Praktik Corporate Social Responsibility (CSR) Di Indonesia," *Focus: Jurnal Pekerjaan Sosial* 4, no. 1 (2019): 61–66.

⁵ Hendrik Budi Untung, *Corporate Social Responcibility* (Jakarta: Sinar Grafika, 2009), p. 89.

⁶ Salim HS, *Hukum Penyelesaian Sengketa Pertambangan Di Indonesia* (Bandung: Pustaka Reka Cipta, 2013), p. 275.

of life and partnership responsibilities of employees and their families, government, local community companies, and the wider community. CSR can be carried out by truly empowering local communities according to the needs of the surrounding community.⁷

The development of a country is not only the responsibility of the government, every human being plays a role in realizing social welfare and improving the quality of life of society. The business world plays a role in encouraging healthy economic growth by also considering environmental factors. Now the business world no longer only pays attention to company financial records alone (single bottom line), but rather includes financial aspects, social aspects and environmental aspects, usually referred to as triple bottom line. The synergy of these three elements is the key to the concept of sustainable development (sustainable development).⁸

Corporate Social Responsibility (CSR) as an effort by the company to improve its image in the eyes of the public by creating charity programs both external and internal. External programs by carrying out collaboration (partnership) by involving all stakeholders to show the company's concern for the community and the surrounding environment. Meanwhile, internally, we are able to produce well, achieve maximum company profits and improve the welfare of our employees.⁹

Following Related resumes Part III: ISO 26000 - Seven Core Subjects for Social Responsibility (*Definitions, Principles, and Action Suggestions*):¹⁰

a. Organizational Governance

Organizational governance refers to the way business is run, including accountability, transparency, ethical behavior, and consideration of stakeholder interests. The recommended course of action is to establish a corporate culture that values these principles, respects the law, and uses resources efficiently.

b. Human Rights

Human rights are the respectful treatment of all individuals. Businesses must avoid discrimination and protect the rights of vulnerable groups. The recommended action is to carry out due diligence on the human rights impacts of business activities, and

⁷ *Ibid*

⁸ Afdal Kurnia et al., "Sustainable Development And Csr," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 6, no. 3 (2020): 231-237, p. 232, available at: <https://doi.org/10.24198/jppm.v6i3.26211>.

⁹ Ursula Uci Rosalinda, et.al., "Literature Review Pengaruh Gcg, Csr Dan Ukuran Perusahaan Terhadap Kinerja Keuangan Perusahaan," *Jurnal Ekonomi Manajemen Sistem Informasi* 3, no. 6 (2022): 667-673, <https://doi.org/10.31933/jemsi.v3i6.1108>.

¹⁰ ECOLOGIA, "Global Guidance Standard on Social Responsibility," in *Handbook for Implementers of ISO 26000*, 2011, p. 27-32, available at: <https://www.ecologia.org/isosr/ISO26000Handbook.pdf>, accessed 8 October 2024.

- ensure vulnerable groups, such as women and minorities, are not treated unfairly.
- c. Labor Practices (Employment Practice)
Employment practices include fair treatment of workers, including welfare, training, occupational safety and social dialogue. Recommended actions are to fulfill legal obligations towards workers, provide good working conditions, and encourage skills development and work-life balance.
 - d. Environment
Businesses have a responsibility to reduce environmental damage and protect natural resources. Recommended actions are reducing pollution, using sustainable resources, protecting the natural environment, and implementing product life cycle management.
 - e. Fair Operating Practices
Businesses must promote fair operating practices with respect for the law, transparency and honesty. Recommended actions are to avoid bribery, promote social responsibility in the value chain, and treat suppliers and consumers fairly.
 - f. Consumer Issues
Businesses must protect consumer rights, provide safe products and be honest in advertising and marketing. Recommended actions are to promote sustainable consumption, reduce negative health impacts, and provide customer service and privacy protection.
 - g. Community Involvement and Development
Businesses must support the development of local communities by contributing to the local economy and respecting local laws and cultural traditions. The recommended actions are to involve the community in decision making, support social initiatives, and create jobs and educational opportunities in the surrounding community.

These seven core subjects provide guidance for businesses to become more socially and environmentally responsible.

CSR is one part of corporate responsibility, so whether requested or not and whether there are regulations related to CSR implementation, the company will continue to carry out CSR activities for the local community. Law 40/2007 regulates social and environmental responsibility which aims to realize sustainable economic development in order to improve the quality of life and the environment which is beneficial for the company itself, the local community and society in general. This provision is intended to support the establishment of corporate relationships that are harmonious, balanced and in accordance with the environment, values, norms and culture of the local community. So it is determined

that companies whose business activities are in the field or related to natural resources are obliged to carry out social and environmental responsibilities.¹¹ Corporate social responsibility (CSR) can be defined as a form of company concern for the company's external environment through various activities carried out in the context of environmental protection, community norms, development participation, and various other forms of social responsibility.¹² In accordance with the government mandate to support environmental promotion through corporate social responsibility (CSR). Corporate social responsibility (CSR) can be used as an alternative method that must be developed to demonstrate the process of responsibility for various social and environmental issues.¹³

2. Corporate Social Responsibility in the National Mining Sector

Article 1 Number 3 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Law 40/2007), defines social and environmental responsibility as a company's commitment to participate in sustainable economic development in order to improve the quality of life and a beneficial environment, both for the company itself, local communities and society in general. Then, Article 74 Paragraph (1) of Law 40/2007 requires companies carrying out business activities in the field and/or related to natural resources to carry out social and environmental responsibilities. Social and environmental responsibility is a company obligation that is budgeted for and calculated as company costs, the implementation of which is carried out by paying attention to propriety and fairness. Companies that do not carry out their obligations as intended may be subject to sanctions in accordance with the provisions of statutory regulations.

Article 74 explains that the provisions related to social and environmental responsibility aim to continue to create corporate relationships that are harmonious, balanced and in accordance with the environment, values, norms and culture of local communities, as well as what is meant by companies that carry out their business activities in the field of resources. Natural is a company whose business activities manage and utilize natural resources as well as a company that does not manage or utilize natural resources, but whose business

¹¹ Hutrin Kamil and Agus Dermawan, "Judicial Analysis of the Application of Analisis Yuridis Penerapan Produk Hukum Corporate Social Responsibility Dalam Pembangunan Daerah," *Verfassung: Jurnal Hukum Tata Negara* 1, no. 1 (2022): 47–68, p. 61., available at: <https://doi.org/10.30762/vjhtn.v1i1.161>.

¹² *Ibid*, p. 63.

¹³ Riyan Ardi Cahya, "Implementasi CSR (Corporate Social Responsibility) PT. Semen Baturaja (Persero) Tbk Sebagai Upaya Dalam Pembinaan Lingkungan dan Kemitraan," *JIM: Journal Of International Management* 1, no. 01 (2022): 43–56, p. 43., available at: <https://doi.org/10.62668/jim.v1i01.270>.

activities have an impact on the functioning of natural resource capabilities.

Furthermore, in the implementing regulations, namely Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies (hereinafter referred to as PP 47/2012), in Article 2 it is explained that every company as a legal subject has social and environmental responsibilities, and this social and environmental responsibility is an obligation for companies that carry out their business activities in the field and/or related to natural resources.

With regard to the mining sector, legal regulations apply in the mining sector starting from laws to ministerial regulations which the researcher will describe sequentially. The first rule is related to legislation, in this case Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law 3/2020). The Minerba Law does not recognize the term social and environmental responsibility or CSR like Law 40/2007 but instead recognizes CSR with the terms reclamation, post-mining activities and community empowerment. This is stated in Article 1 Number 26, Article 1 Number 27 and Article 1 Number 28 of Law 3/2020.

Article 1 Number 26 defines reclamation as an activity carried out throughout the mining business stages to organize, restore and improve the quality of the environment and ecosystem so that it can function again according to its intended purpose. Article 1 Number 27 defines post-mining activities, hereinafter referred to as post-mining, as planned, systematic and ongoing activities after some or all mining business activities to restore natural environmental functions and social functions according to local conditions throughout the mining area. Then, Article 1 Number 28 defines community empowerment as an effort to improve community capabilities, both individually and collectively, to improve their level of living. Furthermore, Article 74 classifies reclamation and post-mining activities as environmental management.

The implementation of reclamation and post-mining activities must be carried out until it reaches a 100% success rate, this is regulated in Article 123A of Law 3/2020. Failure to carry out reclamation efforts and post-mining activities will result in legal consequences in the form of revocation of the IUP (mining business permit) and/or IUPK (special mining business permit), apart from these administrative sanctions, there will also be criminal sanctions with a maximum prison sentence of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah), in addition to criminal sanctions, former IUP or IUPK holders may also be subject to additional criminal penalties in the form of payment of funds in the context of implementing reclamation and/or post-mining

obligations which are its obligations, this is strictly regulated in the provisions of Article 161B Paragraph (1) and Paragraph (2) of Law 3/2020. When viewed in relation to the legal politics of Law 3/2020, one of the aims of making amendments to Law 4/2009 is to strengthen policies related to environmental management in mining business activities, including the implementation of reclamation and post-mining.

Apart from being regulated in law, reclamation and post-mining obligations are also regulated in Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (hereinafter referred to as PP 96/2021), where in applying for a mining business permit, IUP holders are required to fulfill one requirement regulated in Article 26 Paragraph (2) PP 96/2021 is in the form of environmental requirements, namely environmental documents and environmental approvals issued by the authorized agency in accordance with regulatory provisions legislation and reclamation plan documents and post-mining plans (Article 39 PP 96/2021). In the mining sector, reclamation and post-mining activities are classified into technical and environmental aspects as regulated in Article 119 Paragraph (9) Letter b PP 96/2021. More detailed provisions related to the administration and process of reclamation and post-mining can be reviewed in Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining (hereinafter referred to as PP 78/2010) where in the explanation of this PP the reasons for the issuance of the legal product in the form of PP 78/2010 are explained. 2010 as an effort to create sustainable development, mining business activities must be carried out with due regard to environmental principles, transparency and community participation. Mining activities, if not carried out properly, can have a negative impact on the environment, especially significant disturbances in the balance of the land surface.

Environmental impacts due to mining activities include: decreased land productivity, increasingly dense soil, erosion and sedimentation, land movement or landslides, disruption of flora and fauna, disruption of public health, and changes in microclimate. Therefore, it is necessary to carry out reclamation activities and post-mining activities that are appropriate and integrated with mining activities. Reclamation activities must be carried out as early as possible and do not have to wait for the entire mining process to be completed. Best practices for environmental management in mining require a continuous and integrated process at all stages of mining activities which includes some or all stages of activities in the context of research, management and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities. Proper planning and

implementation is a series of sustainable and environmentally sound mining management that will reduce negative impacts resulting from mining business activities.

Furthermore, related to community empowerment, it is clearly regulated in the provisions of Article 108 Paragraph (1) of Law 3/2020 where it is ordered that IUP and IUPK holders are obliged to prepare community development and empowerment programs. Furthermore, in Paragraph (2), IUP and IUPK holders are required to allocate funds for implementing community development and empowerment programs, the minimum amount of which is determined by the Minister. To prepare community development and empowerment programs, consultation with the Minister, Regional Government and the community must be carried out. If reclamation and post-mining are included in the technical and environmental aspects, then community empowerment as regulated in Article 199 Paragraph (9) Letter a PP 96/2021 is included in the business aspect, which consists of production performance, financial performance, reporting performance, marketing performance, community development and empowerment performance, and performance at the domestic component level and increasing the use of domestic production. More comprehensively, Chapter XIX PP 96/2021 regulates community development and empowerment, in Article 179: "(1) IUP and IUPK holders are obliged to prepare a master plan for community development and empowerment programs around the WIUP and WIUPK based on the blueprint (*blue print*) determined in accordance with the provisions of statutory regulations. (2) The community development and empowerment program as intended in paragraph (1) must be consulted with the minister, provincial regional government, district/city regional government, and the community. (3) The community development and empowerment program as intended in paragraph (1) is prioritized for communities around WIUP and WIUPK. (4) IUP and IUPK holders are obliged to allocate funds for the implementation of community development and empowerment programs, the minimum amount of which is determined by the minister." Furthermore, Article 180 Paragraph (1) "IUP and IUPK holders are required to submit plans and costs for implementing community development and empowerment programs as part of the annual RKAB to the minister for approval."

Apart from the Law and PP, regulations related to community empowerment are also contained in the Minister of Energy and Mineral Resources Regulation Number 25 of 2018 concerning Mineral and Coal Mining Businesses (hereinafter referred to as PERMEN ESDM 25/2018) in only one article, namely Article 38 PERMEN ESDM 25/2018 which reads as follows: "(1) Holders of Exploration IUP, Exploration IUPK, Production Operation IUP, and Production Operation IUPK are required to prepare a master plan for

community development and empowerment programs guided by the blueprint (*blue print*) determined by the governor. (2) The preparation of the master plan for the community development and empowerment program as intended in paragraph (1) is carried out simultaneously with the preparation of feasibility studies and environmental documents in accordance with statutory regulations. (3) The community development and empowerment master plan as intended in paragraph (1) contains community development and empowerment program plans during the production operation period up to the post-mining program. (4) Funding for the annual community development and empowerment program comes from the operational costs of Production Operation IUP and Production Operation IUPK holders. (5) Financing for the annual community development and empowerment program as intended in paragraph (4) must be managed directly by the holder of the Production Operation IUP and Production Operation IUPK. (6) In the event of an increase in production capacity, holders of Production Operation IUP and Production Operation IUPK are obliged to increase development and community empowerment costs program. (7) In the event that the realization of the costs of the community development and empowerment program is not achieved, it must be added in the following year. (8) The Minister determines guidelines for implementing community development and empowerment."

Then, further in Article 62 it is also ordered that when the Minister of Energy and Mineral Resources Regulation 25/2018 comes into effect, holders of KK (work contracts, namely agreements for mineral mining) and PKP2B (coal mining concessions, namely agreements for coal mining) are obliged to carry out provisions regarding community development and empowerment including the preparation of master plans for community development and empowerment programs in accordance with statutory provisions.

However, there is an opinion that the regulations related to CSR in Law 3/2020 have experienced a setback in the regulation of corporate social responsibility in the mineral and coal mining sector due to the addition of mining permits, namely rock mining permits (SIPB), where this permit will open up new space in mining management, contains new provisions that endanger the community's living space because all activities ranging from general investigations to mining are included in the community's living space, only monitoring the safety aspects of mining only eliminates the health aspects of mining work, paving the way for criminalizing communities who reject the existence of mining in their area.¹⁴ This

¹⁴ Lelisari, et.al., "Kemunduran Pengaturan Tanggung Jawab Sosial Perusahaan Dalam Sektor Pertambangan Mineral Dan Batubara," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 2 (2021): 404–21, <https://doi.org/10.29303/ius.v9i2.907>.

can be found in Article 96 of Law 4/2009 and Law 3/2020, the differences are as follows:

Article 96 of Law 4/2009 reads: "In implementing good mining engineering principles, IUP and IUPK holders are required to carry out:

- a. mining safety provisions
- b. mining operations safety
- c. occupational health management and monitoring of the mining environment, including reclamation and post-mining activities
- d. efforts to conserve mineral and coal resources
- e. management of mine waste from a mining business activity in solid, liquid or gas form until it meets environmental quality standards before being released into environmental media."

Then in its amendment, Article 96 of UU 3/202 reads: "In implementing good mining engineering principles, IUP or IUPK holders are required to carry out:

- a. mining safety provisions
- b. management and monitoring of the mining environment, including reclamation and/or post-mining activities
- c. mineral and coal conservation efforts
- d. management of mine waste from a mining business activity in solid, liquid or gas form until it meets environmental quality standards before being released into environmental media."

From these two clauses, it can be seen that in Law 3/2020 the phrase related to occupational health is removed, as occupational health is an important part of CSR. The legal implications can be seen in the implementation of PP 78/2010 where this PP is an implementing regulation of the provisions of Article 101 of Law Number 4 of 2009 concerning Mineral and Coal Mining.

Article 101 of Law 4/2009 reads: "Further provisions regarding reclamation and post-mining as intended in Article 99 as well as reclamation guarantee funds and post-mining guarantee funds as intended in Article 100 are regulated by government regulations."

When we look at Article 99, it reads: "(1) Every IUP and IUPK holder is required to submit a reclamation plan and post-mining plan when applying for a Production Operation IUP or Production Operation IUPK. (2) Implementation of reclamation and post-mining activities are carried out in accordance with post-mining. (3) The post-mining land designation as intended in paragraph (2) is included in the land use agreement between the IUP or IUPK holder and the land rights holder."

Then Article 100 reads: "(1) IUP and IUPK holders are required to provide reclamation guarantee funds and post-mining guarantee funds. (2) The Minister, governor, or regent/mayor in accordance

with their authority may appoint a third party to carry out reclamation and post-mining with guarantee funds as intended in paragraph (1). (3) The provisions as intended in paragraph (2) apply if the IUP or IUPK holder does not carry out reclamation and post-mining in accordance with the approved plan."

Meanwhile, the amendment to article 101 of Law 3/2020 reads: "Further provisions regarding the obligation to manage and monitor the mining environment including reclamation and/or post-mining activities as intended in Article 96 letter b, preparation and submission of reclamation plans and/or Post-mining plans as intended in Article 99, and reclamation guarantee funds and/or funds Post-mining guarantees as intended in Article 100 are regulated by or based on Government Regulations."

The sound of Article 99 after the amendment to Law 3/2020 reads: "(1) IUP or IUPK holders are required to prepare and submit a reclamation plan and/or post-mining plan. (2) The implementation of reclamation and post-mining is carried out in accordance with the post-mining land designation. (3) In the implementation of reclamation carried out throughout the mining business stages, the IUP or IUPK holder is obliged to:

- a. meet the balance between land to be cleared and land that has been reclaimed;
- b. carry out management of the final ex-mining hole with the widest limits in accordance with the provisions of statutory regulations.

(4) The holder of an IUP or IUPK is obliged to hand over land that has been reclaimed and post-mining to the rightful party through the Minister in accordance with the provisions of statutory regulations."

Then Article 100 of UU 3/2020 reads: "(1) IUP or IUPK holders are required to provide and place Reclamation guarantee funds and/or Post-mining guarantee funds. (2) The Minister may appoint a third party to carry out Reclamation and/or Post-mining with guarantee funds as intended in paragraph (1). (3) The provisions as intended in paragraph (2) apply if the IUP or IUPK holder does not carry out Reclamation and/or Post-mining in accordance with the approved plan."

The loss of the element of "work health management and monitoring of the mining environment, including reclamation and post-mining activities" brings juridical consequences for the implementation of PP 78/2010 because this PP is the implementing regulation of Article 101 in Law 4/2009, for Article 101 the status has been changed so that its contents following the clauses contained in Law 3/2020.

After checking on the BPK RI portal via JDIH BPK *Database Regulations*, until now there have been no amendments related to PP 78/2009 with the statement that the regulatory status is “not yet available”¹⁵. This means that until now there has been no effort to change or revoke this PP with new regulations. This has the consequences of not being able to apply the rules effectively, legal uncertainty, the potential to give rise to disputes, weaknesses in law enforcement and indications of delays in legal protection for the parties involved if a dispute arises. In line with this, the implementation of PP 78/2010 will cause polemics, because it is based on legal principles *the later law override the earlier law* which means the new legal rules override the old legal rules. With the amendment of Article 101, it is indicated that there will be legal uncertainty regarding PP 78/2010, where we all know that the health element has been removed in the amendment to the new mineral and coal law, namely Law 3/2020. This will also have implications for other legal regulations below which must be in line with legal regulations. Above all, this is also related to legal principles *the higher law should be repealed by the former law* which means higher regulations override lower regulations. The author believes that the health aspect as part of CSR is a very vital part of life, therefore there is still a need for a review of CSR regulations in the mining sector in order to achieve the objectives of the law itself, namely providing justice, legal certainty and providing maximum benefits and maintain the safety of the entire Indonesian nation.

E. Conclusions

Corporate Social Responsibility (CSR) is a company's commitment to being socially and environmentally responsible in carrying out its operations. CSR involves a balance between achieving economic benefits (profit), environmental sustainability (planet), and social welfare (people), which is known as the triple bottom line concept. Companies that implement CSR try not only to focus on financial achievements, but also pay attention to the impact of their activities on society and the environment.

CSR regulations in the mining sector are regulated through several different regulations, including the Limited Liability Company Law which explicitly requires companies operating in the natural resources sector to implement CSR as part of their social and environmental responsibility. However, in the Mineral and Coal Law and the regulations under it, namely PP 96/2021 and Minister of Energy and Mineral Resources Regulation 25/2018, the term CSR is not mentioned directly, but is regulated through the concepts of reclamation, post-mining activities and community

¹⁵ JDIH BPK RI, “Government Regulation (PP) no. 78 of 2010 Reclamation and Post-Mining,” n.d., available at: <https://peraturan.bpk.go.id/Details/5102>, accessed on 8 October 2024.



empowerment. This shows that CSR in the mining sector focuses more on aspects of environmental restoration and improving the welfare of communities around mining areas. Regulations regarding CSR in the Mining and Coal Law and its derivative regulations, such as PP 96/2021 and ESDM Ministerial Decree 25/2018, have comprehensively regulated companies' responsibilities in carrying out reclamation, post-mining activities and community empowerment programs. However, there is a gap between the Minerba Law and PP 78/2010 regarding occupational health, which is an important part of social responsibility. Therefore, the implementation of CSR in the mining sector still faces challenges, especially in ensuring that mining companies carry out their obligations consistently. The obligation to prepare and implement community development and empowerment plans as well as reclamation and post-mining implementation must be followed by strict supervision and strict sanctions for companies that violate them.

REFERENCES

Book

- ECOLOGIA. "Global Guidance Standard on Social Responsibility." In *Handbook for Implementers of ISO 26000*, 27–32, 2011. <https://www.ecologia.org/isosr/ISO26000Handbook.pdf>.
- EHS, Salim. *Hukum Penyelesaian Sengketa Pertambangan Di Indonesia*. Bandung: Pustaka Reka Cipta, 2013.
- Untung, Hendrik Budi. *Corporate Social Responsibility*. Jakarta: Sinar Grafika, 2009.

Scientific Work

- Ardi Cahya, Riyan. "Implementasi CSR (Corporate Social Responsibility) PT. Semen Baturaja (Persero) Tbk Sebagai Upaya Dalam Pembinaan Lingkungan dan Kemitraan." *JIM : Journal Of International Management* 1, no. 01 (2022): 43–56. <https://doi.org/10.62668/jim.v1i01.270>.
- Hutrin Kamil, and Agus Dermawan. "Analisis Yuridis Penerapan Produk Hukum Corporate Social Responsibility Dalam Pembangunan Daerah." *Verfassung: Jurnal Hukum Tata Negara* 1, no. 1 (2022): 47–68. <https://doi.org/10.30762/vjhtn.v1i1.161>.
- Kurnia, Afdal, et.al., "Sustainable Development Dan Csr." *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 6, no. 3 (2020): 231. <https://doi.org/10.24198/jppm.v6i3.26211>.
- Lelisari, et.al., "Kemunduran Pengaturan Tanggung Jawab Sosial Perusahaan Dalam Sektor Pertambangan Mineral Dan Batubara." *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 2 (2021): 404–21. <https://doi.org/10.29303/ius.v9i2.907>.
- Nayenggita, Gina Bunga et.al. "Praktik Corporate Social Responsibility (CSR) Di Indonesia." *Focus: Jurnal Pekerjaan Sosial* 4, no. 1 (2019): 61–66.
- Suastuti, Eny. "Beberapa Kendala Dalam Penerapan CSR (Analisis Pasal 74 UUP)." *Rechtidee Jurnal Hukum* 9, no. 2 (2014): 203–22.
- Uci Rosalinda, et.al., "Literature Review Pengaruh Gcg, Csr Dan Ukuran Perusahaan Terhadap Kinerja Keuangan Perusahaan." *Jurnal Ekonomi Manajemen Sistem Informasi* 3, no. 6 (2022): 667–73. <https://doi.org/10.31933/jemsi.v3i6.1108>.

Website

- JDIH BPK RI. "Peraturan Pemerintah (PP) No. 78 Tahun 2010 Reklamasi Dan Pascatambang," n.d. <https://peraturan.bpk.go.id/Details/5102>.
- MODI Kementerian Energi dan Sumber Daya Minera. "Daftar Perusahaan Hasil Penataan IUP Dan IUPK Yang Memenuhi Ketentuan," n.d. <https://modi.esdm.go.id/portal/dataPerusahaan>.

Legislation

- Law Number 40 of 2007 concerning Limited Liability Companies
- Law Number 4 of 2009 concerning Mineral and Coal Mining



Law Number 3 of 2020 Concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining
Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies
Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities
Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining
Minister of Energy and Mineral Resources Regulation Number 25 of 2018 concerning Mineral and Coal Mining Businesses