



In the past, various groups in society believed that the business and social worlds were two separate and opposing poles. They assumed that business was definitely in contradiction to social matters, and were of the thinking that social and public interests would always harm business operations.

Today, this perception of conflict has changed. Many countries have begun to seek a point of equilibrium by enhancing the social side of business and adapting social tolerance in business practices.

At the macro-political level, balance or harmony between business, state and public dimensions constitutes an ideal, which all nations are eager to pursue. This equilibrium is based on the new awareness that business, social and political institutions should be mutually supportive and complementary, in such a way that justice can be more extensively enjoyed by different groups in society. One of the paths to such balance is embodied in the phenomenon and concept now called corporate social responsibility (CSR).

CSR can be approached from at least two perspectives. First, it is the need to promote human rights and involve rights protection and advancement in development and business policies.

Second, it stems from the belief of the business community itself, which empirically has come to the awareness that profits can be maximized only if companies affirm their commitment to establish good relations with various stakeholders including the social realm.

As a legal subject, companies should also become social entities that show concern for people and the environment, so they will not be alienated. As a legal subject they are bound by all laws, written as well as unwritten (customary law).

It is worthwhile to note that the discourses on corporate responsibility are frequently connected with tougher debates on corporate accountability. Both basically share the same features but we can find their differences.

Corporate responsibility refers to all attempts to make companies voluntarily responsible due to ethical and social considerations. This concept has been developed by the UN through the UN Global Compact and the International Chamber of Commerce (ICC). In this way, CSR depends greatly on initiatives and goodwill, but is seen as legally non-binding. Therefore, methodologically CSR is reached by way of persuasive and educative endeavors.

Meanwhile, corporate accountability is related to all corporate obligations to act pursuant to law and social norms, otherwise the companies concerned will face consequences in compliance with relevant provisions, which may end up in a court case. In this concept, the aspect of law and punishment is more emphasized. This approach is mostly adopted by NGOs, which witness many firms' environmental pollution as well as violations of communal rights and fundamental rights.

In the doctrine of international law, corporate responsibility as linked with state responsibility is considerably debated. The general view is that the state can be held responsible for certain acts done by any non-state organ, for reasons of omission by the state.

In addition, there is another approach from the perspective of the positive obligation of the state, especially in the context of international human rights law. This has to do with the state's positive obligation arising from the enforcement of the Civil and Political Rights Covenant (1966). It obliges the state to make all attempts to prevent rights violations, and to investigate and punish people involved in rights abuse, including companies.

Over the last few years, rights violations by companies have been taken to national and regional

courts. The African Human Rights Commission, for example, in 2001 was faced with an action against the oil company, Shell, in Nigeria for exploiting oil in Ogoniland and ignoring and violating rights with regard to health, the environment and food as well as the local community's rights -- which resulted in the disruption of foundations of livelihood in Ogoniland.

The other case involved Unocal Inc., which, together with Myanmar Oil Gas Enterprise in Myanmar, was accused of practicing forced labor and exploiting child workers, in addition the eviction of local people. The case of the National Coalition Government of the Union of Burma against Unocal was heard in a court in California.

Based on the facts, various theories on corporate complicity and rights violations have been developed. Thus far, there are several forms of complicity that can be accounted for:

First, direct complicity, meaning that a company is directly responsible because it commits or orders rights violations.

Second, indirect complicity, meaning that a company is indirectly responsible for rights violation.

Third, beneficial complicity, meaning that a company is aware of rights violation and takes no steps to end it because it benefits from the situation.

One of the basic aspects of CSR in Indonesia that has not been well understood or practiced in Indonesia is the mechanism of human rights audit. Several companies have had their human rights audit handled by independent third parties. This audit may be able to reveal to some extent the respect shown by companies for human rights.

A human rights audit is conducted by an independent agency, covering the theme of whether a company is already in agreement with the policy and mechanisms on human rights legislation, including an evaluation of the corporate procedure used for its acceptance or settlement of human rights compliance -- as a main feature indicating corporate responsibility.

In Indonesia, parallel to the increasing public understanding of human rights, various business practices with the potential to violate rights are being spotlighted, particularly the abuse of nature conservation rights and labor rights.

At the academic level, upholding rights is already understood such as in the case of ExxonMobil, which was tried in a court in Washington D.C. (2001) for alleged rights violations along with the Indonesian government and military.

Nonetheless, it is not complete to deal with corporate responsibility and corporate accountability without speaking also of the scope of state responsibility. This is necessary because in reality, all companies are located within state territories so that the state is an actor responsible for regulation and punishment.

Only a few discourses on state responsibility have taken place in Indonesia. Such discussions are now being popularized by various groups, including the government and NGOs. At this point, both the government and businesspeople should start preparing all the proper instruments for their adjustment to this global trend.

Consequently, one of the requirements arising from this trend is the (central and regional) government role in formulating regulations so that human rights compliance can go hand in hand with its benefits: Taxes, fees, employment, contributions and community development.

The Jakarta Post, Wednesday, 2 March 2005