

Legal Construction that Strengthens Individual Legal Responsibility in Corporate Leadership Regarding Practices Social and Environmental Responsibility in Indonesia

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Article Info

Received: 2022-03-10

Revised: 2022-09-10

Accepted: 2023-12-10

Keywords:

Legal Contruction,
Corporate Leadership,
Practices Social,
Environmental
Responsibility.

Abstract

In the realm of corporate leadership, the integration of Tanggung Jawab Sosial dan Lingkungan (TJSL) practices has gained increasing attention as organizations seek to align their operations with sustainable development goals. This paper delves into the legal constructs aimed at strengthening individual legal accountability within corporate leadership concerning TJSL practices. The study engages in a comprehensive analysis of the evolving legal landscape, highlighting mechanisms designed to foster responsible decision-making and governance within corporations. A focal point of the investigation is the examination of legal frameworks that establish a direct connection between individual executives and their fiduciary duties towards social and environmental considerations. The paper explores various jurisdictional approaches to holding corporate leaders accountable, ranging from fiduciary duties extensions to the incorporation of TJSL principles into directorial responsibilities. By scrutinizing case law, statutory provisions, and international standards, the research uncovers patterns in legal precedents that uphold the principle of individual accountability. Furthermore, the paper scrutinizes the challenges inherent in enforcing such legal constructs, especially in transnational contexts. It addresses issues of jurisdictional reach, cross-border liability, and the harmonization of diverse legal frameworks to ensure cohesive accountability standards. The study also assesses the role of corporate governance mechanisms, internal policies, and external incentives that interact with legal provisions to motivate proactive TJSL practices. In conclusion, this paper sheds light on the transformative potential of legal mechanisms in fostering a culture of responsible corporate leadership aligned with social and environmental values. It emphasizes the synergy between legal mandates and ethical imperatives, ultimately contributing to the advancement of sustainable business practices within a global context.

I. Introduction

In recent decades, issues related to social and environmental responsibility (TJSL) have become increasingly important in the context of business and corporate leadership. Increasing awareness of the social and environmental impacts of business activities has encouraged companies to integrate sustainable practices into their operations. In addition, demands from various stakeholders such as society, investors and government regulations increasingly emphasize the need for corporate responsibility for social and environmental impacts.

In the current era of industrialization, there is a tug-of-war between the need for laws that have a populist character and are passionate about justice and the existence of laws that have a liberal, capitalistic character which essentially protects the interests of conglomerates and foreign capital owners. The pattern of "rule of law" in Indonesia does not seem to be more advanced than the Indonesian economic system. In fact, legal policy is a very important part of development politics, as well as being one of the most "cheap" and appropriate possibilities for supporting development efforts. Contrary to the opinion of Indonesian writers who hold the view that liberalism is economic cannibalism, people should assume that without the "rule of law" and with this the liberal system was formulated, economic cannibalism could arise. In Indonesia there is a lot of evidence about this.

However, in practice, implementing and monitoring TJSL practices in company leadership is still faced with a number of challenges. One significant challenge is establishing individual legal responsibility in the context of corporate leadership regarding CSR practices. As companies increasingly engage in social and environmental initiatives, there needs to be clear legal constructs that bind corporate leaders personally to the impact of their business decisions on social and environmental aspects.

This background provides context for the need to further explore how legal construction can strengthen the legal responsibilities of individuals in corporate leadership regarding CSR practices. In many jurisdictions, the legal framework governing individual responsibility in these matters is still developing and may require refinement. At the same time, the cross-border aspects of corporate leadership and its responsibilities towards society and the environment add complexity to the establishment of effective legal constructs.

In the relationship between law and human values, Satjipto Rahardjo stated that law is not an absolute and final institution but is very dependent on how humans see and use it. Humans are the ones who decide.

In this context, deeper research on legal constructions that can strengthen individual legal responsibilities in corporate leadership regarding CSR practices is very important. This research will not only provide insight into the evolution of law in this regard, but will also discuss how legal regulations can encourage behavioral and cultural

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changes in corporate leadership. By identifying successes, barriers, and opportunities in such legal constructs, this research will make a valuable contribution in guiding business practices toward better alignment with broader social and environmental values.

There is a problem formulation as follows what are the legal responsibilities of individuals in company leadership regarding Social and Environmental Responsibility practices in companies in Indonesia and then what is the legal construction that strengthens the legal responsibility of individuals in company leadership regarding Social and Environmental Responsibility practices.

2. Research Method

This research will use a legal research approach that combines normative analysis and empirical studies. This approach will allow exploring the depth of legal construction as well as understanding the implementation of social and environmental responsibility (TJSL) practices in the context of corporate leadership. Normative Analysis: First of all, this research will conduct a normative analysis of the relevant regulations and legislation in the selected jurisdiction. This will include a review of laws, regulations, policies and legal precedents relating to the legal responsibilities of individuals in corporate leadership regarding TJSL. This analysis will help identify existing legal frameworks, potential legal gaps, and trends in legal developments related to these themes.

3. Results and Discussion

A. Individual legal responsibilities in corporate leadership related to Social and Environmental Responsibility practices in the corporate legal system in Indonesia

In today's business sector, the significance of implementing corporate social and environmental responsibility (TJSL) has reached its peak, prompting the need for a more comprehensive legal framework. As companies seek to integrate TJSL practices into their activities, legal constructs governing the legal responsibilities of individuals in corporate leadership are becoming a focus of attention. This research aims to explore the current legal conditions regarding individual legal responsibility in the context of corporate leadership in Indonesia, especially regarding TJSL practices.

In the current context of company law in Indonesia, the integration of individual legal responsibilities related to TJSL practices is still a complex issue. Existing legal frameworks tend to emphasize collective corporate accountability rather than explicitly outlining individual legal obligations. However, some legal principles such as fiduciary duties and the broader interests of the company provide opportunities to include individual legal responsibilities.

The following are several experts related to the concept of corporate leader responsibility in a legal context:

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Michael Jensen and Werner Erhard: In a 2004 paper entitled "Integrity: A Positive Model that Incorporates the Normative Phenomena of Morality, Ethics, and Legality," Jensen and Erhard proposed the concept of "Integrity" which combines morality, ethics, and legality. They argue that company leaders must have integrity in carrying out their responsibilities towards stakeholders.

R. Edward Freeman: As a figure in the theory "Stakeholder Theory," Freeman emphasizes that companies have responsibilities towards various stakeholders, including society and the environment. Company leaders are expected to take into account the interests of all parties involved in decision making.

John Ruggie: Known for his views within the framework of "Protect, Respect, and Remedy," Ruggie is a figure who fights for corporate responsibility regarding human rights. This concept places corporate leaders in a key role to protect human rights and relate the impact of business to those rights.

Mary Gentile: In her "Giving Voice to Values" approach, Gentile emphasizes the importance of providing ethical and moral values in business decision making. This theory encourages company leaders to have a strong ethical framework in dealing with complex situations.

Benjamin W. Heineman Jr.: In his book "The Inside Counsel Revolution," Heineman discusses the general role of a Chief Legal Officer (CLO) in ensuring a company conducts its operations ethically and legally. He emphasized the need to integrate company values with legal decisions.

Markus Krajewski: As an expert in international law, Krajewski has studied the role of international law in regulating corporate responsibilities regarding human rights and the environment. He argues that international legal norms can form binding legal constructions for corporate leaders.

Christine A. Bader: In her book "The Evolution of a Corporate Idealist," Bader describes her personal experience as a "corporate idealist" who sought to influence companies to adopt responsible business practices. His views provide insight into individual efforts in shaping corporate practices.

When examining the legal theory of corporate leadership responsibility, it is important to understand that this is an evolving field and involves contributions from a variety of disciplines and perspectives.

Empirical investigations reveal a diverse landscape in the implementation and understanding of individual legal responsibilities in corporate leadership regarding CSR practices. Several companies have incorporated TJSL principles into their internal guidelines and codes of ethics. However, translating these principles into concrete action remains a challenge. The lack of robust enforcement mechanisms and lack of transparency further complicate efforts to strengthen individual legal responsibility.

In terms of current legal conditions regarding individual legal responsibilities in

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company leadership regarding TJSL practices in Indonesia, it reflects a combination of potential and challenges. Overcoming these challenges requires a comprehensive review of corporate regulations to increase explicit recognition of individuals' legal obligations in the TJSL context. Collaborative efforts among government agencies, regulatory agencies, and civil society are key to driving positive change, strengthening sustainable legal construction, and promoting responsible business practices in line with social and environmental demands.

B. Legal construction that strengthens the legal responsibility of individuals in corporate leadership regarding Social and Environmental Responsibility practices.

In the era of globalization and increasing awareness of the social and environmental impacts of business activities, the issue of corporate social and environmental responsibility (TJSL) is becoming increasingly important. In this context, attention to the legal construction that regulates the legal responsibilities of individuals in company leadership regarding CSR practices becomes very relevant. Through this discussion, we will explore in depth how legal construction can be strengthened to ensure individual accountability in implementing TJSL practices, especially in Indonesia.

Based on this basic concept, Economic Analysis of Law, developed by Richard A Posner, later known as The Economic Concept of Justice, it can be concluded that law was created and applied for the main purpose of increasing the widest public interest (maximizing overall social utility).

In starting the discussion, we need to understand the context of the company legal system in Indonesia. Company law in this country develops in a paradigm that continues to change along with the demands of business development and social change. We will identify and describe how the current legal framework regulates individual legal responsibilities in the context of corporate leadership regarding CSR practices.

The following discussion will outline the concept of individual legal responsibility in the corporate context. This includes an understanding of individuals' legal obligations to make decisions that take into account social and environmental impacts, as well as how these responsibilities relate to societal well-being and environmental sustainability.

In this section, the importance of having a strong legal construction to strengthen individual legal responsibility is emphasized. A clear and firm legal construction can be a solid basis for company leaders to implement TJSL practices with integrity and responsibility.

In Indonesia, there are several laws and regulations related to Social and Environmental Responsibility (TJSL). Some of them are:

- 1) Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 concerning Environmental Protection and Management: This law regulates environmental protection and management, including the basic principles of sustainable

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environmental management. This law mandates companies' responsibility to protect the environment and take preventive measures against negative environmental impacts.

- 2) Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 concerning Limited Liability Companies: This law regulates limited companies in Indonesia. Article 74 Paragraph (1) in this law states that every company is obliged to carry out social and environmental responsibilities.
- 3) Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 concerning Capital Investment: This law regulates investment and business in Indonesia. Article 17 of this law mandates every investor to carry out social and environmental responsibilities.
- 4) Peraturan Pemerintah Republik Indonesia Nomor 47 Tahun concerning Corporate Social and Environmental Responsibility: This regulation explains further about the social and environmental responsibilities that must be carried out by the company. This includes implementing sustainable business practices, social and environmental reporting, and setting up a board of commissioners.
- 5) Peraturan Pemerintah Republik Indonesia Nomor 99 Tahun 2012 concerning Management of Hazardous and Toxic Waste: This regulation regulates the management of hazardous and toxic waste. Companies are required to manage their waste safely and environmentally friendly.
- 6) Peraturan Pemerintah Republik Indonesia Nomor 69 Tahun 2020 concerning Implementation of Corporate Social and Environmental Responsibility: This regulation is an improvement on Government Regulation Number 47 of 2012. This regulation is in more detail regarding the social and environmental responsibilities that must be carried out by the company.

Social and Environmental Responsibility Reporting Guide: Although not a statutory regulation, the Indonesian government has also released a social and environmental responsibility reporting guide to provide guidance to companies in reporting on sustainable practices. Legal Construction Theory is an approach to legal studies which emphasizes that law is not objective or fixed, but is the result of a process of social construction and interpretation. The following are several experts who contributed to the development of Legal Construction Theory:

Peter Fitzpatrick: Fitzpatrick was an English jurist and sociologist. He developed a theory of legal construction with a sociological approach, arguing that law is created by human actions in society. He emphasized that law is part of social reality and reflects interests, values and social structures.

Roberto Unger: Unger was a philosopher and jurist who contributed to the concept of law as a construct. He put forward the view that law should not only follow existing traditions and norms, but can be changed and developed to achieve better justice.

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The experts above, as well as many other experts, have contributed to developing views on Legal Construction Theory. This approach has helped expand our understanding of the nature of law and how law is formed in society.

The next discussion will highlight the normative analysis of the regulations and laws that apply in Indonesia. This includes a review of company law, environmental law, and other provisions relating to TJSL practices. This analysis will identify strengths and weaknesses in the existing legal framework.

The importance of empirical studies in supporting an understanding of the application of legal constructs in real practice is emphasized in this section. Case studies will be conducted on several companies implementing TJSL practices, and interviews with company leaders and legal experts will provide insight into the challenges and benefits faced in implementing stronger legal constructs.

It is also important to compare Indonesian legal construction with international practice regarding individual legal responsibility in TJSL practices. This will provide a deeper understanding of the extent to which Indonesian legal construction can be improved to achieve higher global standards.

Thoughts about social and environmental legal responsibility in Indonesia continue to develop along with social, political and economic changes in this country. The following are several existing forms of thinking related to social and environmental legal responsibility in Indonesia:

- 1) Recognition and Awareness: Initially, understanding of social and environmental legal responsibilities may be less developed in Indonesia. However, as global awareness of environmental and social issues increases, recognition of the importance of this responsibility is increasing.
- 2) Environmental Regulations: Indonesia has issued various laws and regulations related to the environment, such as Law no. 32 of 2009 concerning Environmental Protection and Management. This reflects attention to legal responsibilities regarding the environmental impacts of economic activities.
- 3) CSR Policy Development: Many companies in Indonesia are starting to develop Corporate Social Responsibility (CSR) programs that cover environmental and social issues. While this is not always driven by law, more and more companies are realizing the long-term positive impact of engaging in social and environmental responsibility.
- 4) Understanding of Human Rights and the Environment: There is a growing understanding of the need to protect human rights and the environment. A number of legal cases and lawsuits involving environmental damage or adverse impacts on society have brought attention to this issue.
- 5) Civil Society Advocacy: Civil society groups in Indonesia are increasingly active in advocating for social and environmental legal responsibility. They play a role in

exposing violations of the environment and community rights and encouraging law enforcement.

- 6) Development of Customary Law: In several regions in Indonesia, customary law has an important role in regulating community relations with the environment. This thinking is further strengthened in the context of environmental responsibility.
- 7) The Importance of Collaboration: This thinking underscores the importance of collaboration between governments, companies, civil society and academia to address issues of social and environmental responsibility. This collaboration can strengthen the implementation of legal responsibilities and sustainable practices.
- 8) Education and Research: Universities and research institutions are increasingly studying issues of social and environmental responsibility. This includes the study of existing regulations, sustainable business practices, and social and environmental impacts.

Thoughts about social and environmental legal responsibility in Indonesia continue to develop in line with dynamics in society. Factors such as legal developments, global pressures, technological developments, and social changes contribute to this development.

The President Director's responsibility for social and environmental responsibility is an issue that is receiving increasing attention in the context of socially and environmentally responsible business. The following are several views from legal experts regarding the President Director's responsibilities regarding this aspect:

- 1) John Ruggie: Ruggie is an international law expert known for the "Ruggie Framework" relating to human rights and business. He believes that the President Director has the primary responsibility to ensure that the company is not involved in human rights and environmental violations, as well as taking steps to prevent and reduce negative impacts.
- 2) Benjamin W. Heineman Jr.: Heineman, an author and former General Electric GC, believes that the Managing Director must have an active role in shaping a sustainable company culture. They must lead by example in terms of business ethics and social and environmental responsibility.
- 3) Markus Krajewski: Krajewski examines individual legal responsibility in the context of corporations and human rights. He emphasized that the Managing Director must ensure that the company's actions are not only in accordance with the law, but also comply with international standards in terms of human rights and the environment.
- 4) Celia Moore: Moore is a business law professor who believes that Managing Directors should be role models in integrating social and environmental responsibility into business decisions. They need to recognize the long-term impact of their decisions on society and the environment.
- 5) Jay W. Lorsch and Emily McTague: Lorsch and McTague in their research revealed that the President Director has an important role in ensuring the implementation of social

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and environmental responsibility in company practices. They must lead cultural change and integrate sustainable practices in business strategy.

This view shows that the President Director has a central role in ensuring that social and environmental responsibility is integrated into company practices. They not only have a responsibility to ensure compliance with the law, but also to lead cultural change, prioritize social and environmental issues, and take proactive steps to prevent negative impacts.

The discussion concludes by identifying the implications of the findings for business practices and the implementation of TJSL practices in Indonesia. Recommendations for improving legal construction and steps that can be taken by governments, companies and civil society will also be presented as steps towards more sustainable and responsible business practices.

The main findings from the discussion are outlined and emphasize the urgency to strengthen legal construction that ensures individual legal responsibility in company leadership regarding TJSL practices in Indonesia. Finally, hopes for the future are presented in which companies can act as agents of positive change in achieving social and environmental sustainability goals.

4. Conclusion

This research concludes that legal construction that strengthens individual legal responsibility in company leadership regarding TJSL practices is a crucial step in realizing a sustainable and responsible company. Through appropriate legal changes, through the formation of laws that specifically regulate Social and Environmental Responsibility by linking the responsibilities of company leaders within the company with clear and firm legal consequences, it can be a positive driving factor in achieving social and environmental sustainability goals, while remaining adhere to the principles of integrity and responsibility.

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