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Public Regulation and People's Welfare Orientations of Indonesia's Corporate Social Responsibility (CSR) in the Mining Industry

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Abstract

Corporate Social Responsibility (CSR) is an important topic in the intersections between businesses and the society, being used to address the negative effects of corporate and business activities on the society and environment. Regardless of the variants of its definition and forms, CSR has been used as a form of regulation in many countries including Indonesia. Indonesia's mining industry has a unique CSR regulation in the sense that it is backed by sectoral mining regulations used to protect certain uniquely defined societal interests. Since Indonesia's mining regulation prescribes certain manners of mineral production, mandatory CSR obligations have been created for industry players that will have to be read in the light of public regulation and people's welfare orientations. This paper finds that the expansive use of CSR particularly in the mining regulatory framework will create implications for the international legal commitments undertaken by Indonesia including those under the World Trade Organization (WTO).

Keywords: *Corporate Social Responsibility; Mining Industry; Social Justice; Law Efficiency; Legal Regulation*

Introduction

Corporate Social Responsibility (CSR) is an important topic in the intersections between businesses and the society, being used to address the negative effects of corporate and business activities on the society and environment. There is difficulty of arriving at a common definition of CSR, which is partly caused by the definitional variances employed in different fields of knowledge. At the same time there is the debate as to whether CSR should be voluntary or mandatory, which draws upon what is termed as greenwashing, where firms make CSR claims about their products that make them sell, but the reality suggests otherwise.

This research chooses Indonesia's mining industry as its scope. This is because while Indonesia already has laws on CSR, its CSR regulation is unique in the sense that it is backed by sectoral regulations used to protect certain uniquely defined societal interests. Furthermore, Indonesia mining regulation has now been subjected to scrutiny by international law commentators due to the way the law is used to prescribe certain manners of mineral production including restriction on exports of raw minerals. Given the position of Indonesia as among the world biggest producers of minerals, both metal and non-metal, the restrictions can disrupt global supply of the widely sought after minerals used in strategic industries, such as, information technology and other hi-tech industries.

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CSR is more about self-disciplining and self-regulation. It is therefore important for us to know how mandatory CSR obligations created for industry players in Indonesia's mining sector interact with the more general concept of CSR Regulation.

This paper chooses public regulation and people's welfare as the theories. Based on the theories, the paper will analyse the relevant CSR and mining laws and regulations. The aim of the analysis is to know the possible international regulatory ramifications of Indonesia's approach to CSR in the mining industry.

The Difficulty of Defining CSR

There is a plethora of literature on CSR conceding to the lack of consensus and high degree of complexity and complications in its definition (Font, Walmsley, Cogotti, McCombes, & Hausler, 2012) (Taneja, Taneja, & Gupta, 2011) (Hack, Kenyon, & Wood, 2014) (Sheehy, 2015). Despite that, there must be some common features of what constitutes CSR. It began with the older definition of CSR in the 1950s and 1960s being mere corporate philanthropy (Hack, Kenyon, & Wood, 2014) (Sheehy, 2015) (Banerjee, 2007) (Bowen, 1953), to admission of corporate private interests combined with philanthropy (in 1970s) (Hack, Kenyon, & Wood, 2014), having allowed alternative definitions by pro-free market economists like Milton Friedman (1970) to the time where the social issues were identified i.e. in the 1980s and 1990s until the present whereby those issues are now demanding reordering and prioritization (Hack, Kenyon, & Wood, 2014). CSR may mean corporate players have to sacrifice profit (Sheehy, 2015) or go beyond corporate private interests although CSR can have some influence on firms' financial performances (Tunio, 2021).

CSR also requires firms to be responsible not only to their shareholders but also to their stakeholders who can be the members of the society, workers and the environment. These are among the few but there are complications stemming from the businesses themselves, disciplinary divergences (different meaning of CSR given by economists, political scientists, lawyers etc.), philosophical contestations (especially those involving Austrian/Libertarian economists) and governments' preference of CSR over the more costly public regulation (Sheehy, 2015). These definitional complications have an impact on what form of regulation that can best attain the goals of CSR.

CSR can be defined as regulation (Sheehy, 2015). It refers to international regulation so that CSR has been understood as a form of global regulation. Global interdependencies have pushed states and firms to coordinate "regulatory responses beyond national boundaries" (Baldwin, Cave, & Lodge, 2012). On top of being merely global, CSR is part of the international private law regime (Sheehy, 2015). CSR is more than compliance, and there is also the saying that social responsibility begins where law ends (Davis, 1973) hence it being associated with the importance of the private dimension of rules or private power within the context of corporate citizenship where businesses could protect citizens from government failures (Matten & Crane, 2005) (Sheehy, 2015). Soft law instruments are important reflecting in codes (Baldwin, Cave, & Lodge, 2012). These codes such as the Global Compact, the Kimberley Process etc were developed by international institutional initiative

but some influential private player among businesses or trade associations or even a single body like KPMG, could also set standards (Sheehy, 2015) at the demand of civil society so that businesses do not to pursue their private business interests alone (Baldwin, Cave, & Lodge, 2012).

Mandatory CSR as A Concept

When we talk about soft law it is the one under international law (Zerk, 2006) (Sheehy, 2015), although there can be differential paradigms drawing upon the divergence between state-centric traditional international and more fluid modern approach that blurs between private and public international law. Yet there have been CSR-embodying national initiatives such as the national standards on palm oil production. Having been associated with private regulation or soft law, CSR has suffered from weak enforcement (Baldwin, Cave, & Lodge, 2012) but the role of hard law institutions for labour protection such as the ILO should not be understated because in the case of palm oil, labour abuses allegations have led to problems for Malaysian palm exports to the US.

There are pros and cons of voluntary versus mandatory CSR. CSR underscores behaviour that firms go beyond compliance so that they are supposed to do things for the broader ends voluntarily that responsibility is discretionary and that government has a "minimal role" (Dentchev, Balen, & Haezenck, 2015).

Yet mandatory rules do not guarantee that private firms do not go around those rules which is a practice known as `grey zone' (Gatti, Seele, & Rademacher, 2019) or prevent exaggeration and self-promotion by companies so that voluntary CSR can balance against non-transparent and non-credible communication by companies (Lock & Seele, 2016), and improve regulatory efficiency through tailor-made regulation because companies know better what they have and want (Sheehy, 2015). However, companies and firms made claims that their product are green or socially responsible but they do not walk the talk (Walker & Wan, 2012) (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR, 2019). This is known as greenwashing. Voluntary CSR measures have been found to be inadequate against unfair CSR and greenwashing (Waagstein, 2011) (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR, 2019), and this is backed by introduction of CSR laws and regulations containing mandatory CSR dimension in many jurisdictions of a developed economy such as the EU and the developing one such as Indonesia (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR, 2019).

There have been calls for third party involvements combining the efforts of pressure groups among civil society demanding standards and regulation, self-regulation bodies (including independent rating bodies) and "federal regulations" (Kirchhoff, 2000) (Huang & Chen, 2015) (Polonsky & Garma, 2010) (Feinstein, 2013) (Gatti, Seele, & Rademacher, 2019) that can enhance the trustworthiness of CSR itself (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition

of CSR, 2019). Third party involvements are seen in independent audit and strong policing systems which have already created effect in state actions against false environmental advertising and labelling (Kirchhoff, 2000) (Huang & Chen, 2015) (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR, 2019).

The proposed model is integration of mandatory obligations and voluntary CSR that draws upon the concept of CSR as regulation regardless whether it is "private, self-regulated" or "publicly imposed" (Gatti, Seele, & Rademacher, Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR, 2019). This requires a shift from CSR being limited to "internal management tool" to "a broader understanding of the business and society relationship" (Gatti, Vishwanath, Seele, & Cottier, 2018) (Gatti, Seele, & Rademacher, 2019), with such relationship being the thrust of CSR regulation. What is specific for CSR to take will be shaped by each specific social system characterized by specific values, norms and regulations (Gatti, Seele, & Rademacher, 2019).

The **Social Justice Foundation of Indonesia's CSR Law**

Indonesia recognizes the existence of social interest in vicinity area of any industries particularly the mining industry because the people in the vicinity of the mining activities easily feel the negative impact of such activities (Kotler & Lee, 2005) (Nuswantara & Pramesti, 2020). Various legal instruments have required private entities to pay attention to the social environment affected by the mining businesses. The Indonesian regulations governing CSR could cover wide area including social assistance development and social finance empowerment.

The legitimacy of CSR is in company's commitment to improve people's welfare (Nuswantara & Pramesti, 2020) which is reflected in the centrality of social justice in the eyes of Indonesian constitution and law (Andrini, 2016). This is despite that companies resort to CSR merely to avoid surveillance or restrictive conduct of local community and local government (Kang & Hwang, 2018) (Nuswantara & Pramesti, 2020).

The Emphasis of Indonesia's CSR Rules on Mining Activities

Basically, the CSR provisions are regulated under the Company Act No. 40/2007 (Andrini, 2016) (Gayo & Yeon, 2014). The Act emphasizes mandatory responsibility for industry players which are running business in natural resources field. Article 74 (1) and (2) Company Act No. 40/2007 provide that all natural resources companies and other related entities are imposed with obligations to make social and environment responsibility annually which is considered as part of its work planning. Even Article 2 of Government Regulation (PP) No. 47/2012 on Companies Corporate Social Responsibility expresses that not only is it compulsory for the resources companies to apply that obligation, but the regulations also order any companies to have responsibility to implement protection of society. There has been argument that for natural resource-related industries, the concept applied is Corporate Environmental and Social Responsibility (CESR) instead of CSR, both of which have different mechanics (Andrini, 2016).

For example, CSR funding is from net profit while CESR is taken from companies' operational costs. This difference has been criticized as part of mediocrity in the implementation of CSR mandatory obligations in Indonesia as there is lack of clear provision on sanctions in the statute providing for mandatory CSR obligations on companies (Art 74 of the Company Act) (Andrini, 2016).

The lack of sanction, hence the arguable incompleteness of Indonesia's mandatory CSR law was interpreted otherwise by the Indonesian Constitutional Court when ruling on the constitutionality of the Company Act provision providing for mandatory CSR that sanction of CSR rules can be provided by sectoral laws (Pengujian Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 2009) (Andrini, 2016) (Azheri, 2011). This judicial interpretation leads to the debate as to whether there should be discrete sanctions for CSR as mandatory CSR obligations imposed on companies should be armed with effective sanction mechanisms in the event of non-compliance. In fact, the debate has gone beyond sanctions in which compliance to environmental regulations as a mere pre-condition to obtaining business permits or licences has been questioned as to whether it fulfils the well-accepted "beyond compliance" or "above minimum requirements" element of CSR (Andrini, 2016) (Azheri, 2011).

Additional provisions are being applied for state owned enterprises regarding the State-Owned Enterprise Act (SOE Act) No. 19/2003. Article 2(1)(e) clearly describes establishment of government's companies should grant support for vulnerable group, including society and small medium enterprises. Then, it could be implemented in which Article 88 (1) provides the state company may render their net profit for empowerment of SMEs and social assistance. In this term, the provisions are interpreted through State-Owned Enterprise Minister Regulation No. 9/2015 concerning Cooperation and Society Program of SOE which stipulates that the fund may be provided for financial assistance and infrastructure developments such as health, education and other public facilities for people surrounding the company activities.

Meanwhile, there are other relevant regulations providing the same thing that any business activities that affect the surrounding areas are subject to the obligation to implement CSR. Article 15 and 16 of the Investment Act No. 25/2007 require both domestic and foreign investors to reserve financial savings allocated for social life and protection of the environment. At the same time, the Act imposes special obligation for non-renewable resources industries which should prepare special allocation for the recovery of the affected areas as a result of the business activities as enacted in Article 17 of the Act. In light of oil and gas field, the companies conduct social responsibility regarding to the contract concluded between the government and the company concern which consist of some provisions as accordance with Article 11(3) of the Oil and Gas Act No. 22/2011.

As the Company Act focuses on the CSR of mineral resources industries, the Indonesia Mining Act No. 4/2009 and its revision under Act No. 3/2020 add clearer provision for the company concerned which conduct mining exploitations. Article 95 (d) of the Act No. 4/2009 and Article 108 (1) and (2)

of the Act No. 3/2020 reiterate mining licence holders should support development of the people in vicinity through empowerment programs.

According to the Act No. 3/2020, the Minister of Energy and Mineral Resources (MEMR) has authority to regulate the amount of fund allocated for those programs. This provision distinguishes from the Company Act and Government Regulation No. 47/2012 which do not regulate specifically on the mandatory aspects of social responsibility. Then, it is further explained by the Government Regulation (PP) No. 96/2021 on Mining Activities. Article 179 (1) of the regulation orders those licensees should make blueprint which describe work planning for development and empowerment within mining areas. On the other hand, Article 179 (2) requires the licensees to consult with related authorities particularly local authorities which are deemed to have greater understand situations on the ground.

In addition, the MEMR has passed detailed regulation pertaining to CSR which regulates on technical application within the conduct of the licensee's social responsibility. The Regulation of MEMR No. 25/2018 on Mineral Business deepens mandatory obligation of the licensee as regulated by the mining activities regulation. It provides that CSR must be within work plan and budget of the particular company. Under Article 38(7) Regulation of MEMR No. 25/2018, in cases of insufficient fund to implement realisation of CSR programs affecting the company's effort to reach the targets stipulated, the program should be brought to next financial year with increased allocation. The Minister Regulation requires CSR programs to be implemented from the beginning of exploitation until completion of mining activities. This regulation actually simplifies the previous regulation that had been provided in the MEMR Regulation No. 41/2016 which stipulates that the local government should create CSR blueprints to guide the mining company in making their CSR planning. Article 38 (1) of the MEMR Regulation No. 25/2018, gives authority to the Central Government to approve any of the programs for social development and empowerment responsibility.

Studies have found the higher foreign ownership in mining companies, the higher corporate disclosure undertaken by them (Sunreni, 2018) (Nuswantara & Pramesti, 2020). The same goes to size in which the bigger the size of mining companies in Indonesia, the more CSR disclosure occurs (Deitiana, 2015) due to the greater complications in their business (Nuswantara & Pramesti, 2020). On the issue of size, the study by Deitiana (2015) positively shows that size has influence on CSR disclosure of mining industry listed in Indonesia stock exchange but variables such as profitability, public ownership, leverage and market capitalization have no effect on CSR disclosure [32].

Private Regulation vs Public Regulation

Mandatory CSR provisions, found in the Company Act of Indonesia have been challenged for not having clear rules on sanctions. Sanction is an important aspect in law. However, as the Indonesian Constitutional Court rules, CSR sanctions can still be possible through extraneous means including mining law and regulations. This approach however has been challenged for CSR embraces the "beyond compliance" idea. Regardless, the debate on the legal appropriateness of mandatory CSR law in Indonesia has

to be brought to another level with attention being paid to the conceptualization of CSR regulation as "international private law regulation".

The emphasis on private law in such regulatory definition of CSR can lead to contradiction as regards the law being applied in Indonesia because CSR there draws heavily from public regulation. In fact, critiques of existing CSR law in Indonesia lament that the incomplete CSR legal sanctions should not occur because *panca sila* (the five pillars that become the basis of Indonesia's state) should envisage more intrusive state control into the implementation of CSR programs and activities. Mandatory CSR is supposed to result in solid rules but the obligations created by CSR may need to complement public regulation by inducing companies to do greater benefits to the society, and at the same time prevent misuse.

To achieve complementarity though is not easy. A research conducted by Research Center for Governance, Institutions and Organisations of the National University of Singapore (NUS) Business School reveals that companies in Indonesia are lacking in meeting their CSR obligations compared to their counterparts in Thailand (Suastha, 2016). The research was conducted based on survey of 100 companies in Indonesia, Malaysia, Singapore, and Thailand (Suastha, 2016). The research ranked Thailand first followed by Singapore, Indonesia, and Malaysia (Suastha, 2016). The appraisal was based on specific standards set by Global Reporting Initiative informed by a multitude of economic, environment, and social factors. Malaysia being ranked behind Indonesia is telling given the more advanced economy that the former has than the latter (this however must take into account the greater speed of Indonesia's economic growth currently suggesting that Indonesia may surpass Malaysia in the future).

The situation reported in the above report was caused by lower understanding of CSR by those companies (Andi, 2021). A chairman of a mining association in Indonesia said that majority of mining companies in Indonesia did not understand what CSR obligations meant for them. It was claimed that only 13 of its members participate in a CSR implementation project (Tempo.co, 2012). However, the MEMR explained that mining CSR allocation is for development of remote areas (Tempo.co, 2012). The mixing of public and private regulatory aspects of CSR should be taken seriously in terms of improving implementation or enforcement of CSR obligations by and on companies. This is because private regulation and public regulation entail different legal consequences. In terms of regulatory strategy, public regulation is very much associated with the command and control strategy while private regulation is friendlier to the incentive-based strategy or disclosure requirements.

Indonesia national police reported that the institution was handling 240 mining cases. Previously, the police revealed that the mining cases reached 403 cases in 2013, then they went down to 317 cases in 2014 (Primadhyta, 2018). Majority of the cases related to violation of licenses either in the forms of abuse of power or procedure violation. The cases also related with officer's abuse of power, apart from conflicts with local residents (Primadhyta, 2018). As there were eleven mining companies found to have engaged in environment pollution between 2017 and 2018, various sanctions have been imposed on the companies concerned which evaded obligation prescribed by the rules of law

(Amelia, 2019). For this term, those companies had affected by jail and fine sentences (Amelia, 2019). All these show the significance of the command and control strategy.

The command and control strategy is rooted in the original sovereign law or rule-making function of the State that imposes rules and sanctions on the relevant subjects of law. This is where "legal authority and the command of the law is used to pursue policy objectives" (Baldwin, Cave & Lodge 2012, p. 106). Standards imposed on the regulatees are backed by criminal sanctions, with certain conduct being prohibited or otherwise demanded, and certain conditions being made mandatory if any firm wants to enter the market (Baldwin, Cave & Lodge 2012, p. 106).

The incentive-based strategy on the other hand uses wealth such as grants and subsidies to influence conduct and address mischief in society (Baldwin, Cave & Lodge 2012, p. 106). For instance, a polluting act or its perpetrator does not face sanction but is given economic incentives to reverse the harmful effects of the act concerned. Tax reliefs given to companies as a result of their CSR activities are examples of incentive-based regulatory regimes, and such reliefs are already part of mandatory CSR rules in Indonesia on top of the allowances conferred on CSR-enforcing companies to include CSR disbursements as part of production cost (Sabela & Yeon, 2013).

The other strategy i.e. the disclosure requirement strategy seeks to remedy shortcomings from information deficit or asymmetries which adversely affect inferior interest groups including consumers. Here information is used (Baldwin, Cave & Lodge, 2012, p. 106). Through disclosure requirement, regulation does not intrude into production, price, output etc but it requires the supply of certain correct information on "price, composition, quantity, or quality" to consumers or to other stakeholders including the public (Baldwin, Cave and Lodge 2012, p. 119). CSR reporting by firms or companies is an important tool in CSR system in many countries including Indonesia but in that country, it is part of mandatory CSR (Arena, Liong, & Vourvachis, 2018, p. 5). This further aggravates the element of force in CSR law in Indonesia, whereas the original idea behind disclosure requirement is that the State should not interfere with or increase the cost of production. Meanwhile it is hard to induce companies and firms to disclose the optimum quantity and quality of the relevant information needed to achieve the goals of CSR. An empirical study shows that as the CSR system adopted mandatory rules, evidences from Indonesia and Malaysia that the quality of information supplied by companies and firms decreased compared to voluntary CSR disclosure (Arena, Liong, & Vourvachis, 2018).

The employment of public regulation style of CSR in Indonesia is not a question of choice, especially in a strategic sector such as mining. As it becomes difficult for public regulation to complement private regulation, it is possible for Indonesia to try both the command and control strategy and the incentive-based regimes. However, market rules that require social delivery on market players can produce unintended consequences in the mining industry which is capital intensive where the presence of big corporations including foreign investors is felt.

It is worth looking at Indonesia's legal measures regulating production in mining. The 2009 Mining Law (Mining Act No. 4/2009) requires holders of

mining business permits (IUP) and contracts of work (IUPK) to increase the added value of mineral and coal resources in carrying out mining, processing, and purification activities as well as in making use of mineral and coal. There is also a production obligation under the 2009 Mining Law imposed on the permit and contract holders to process and purify the output of domestic mining. Though these laws and regulations sought to increase participation of Indonesians in the more value-added downstream industries, they ended up producing market surplus of semi-processed or fully processed ores. This could spur foreign direct investment and this has been proven by companies such as Tesla moving their business to Indonesia. However, since this only advantages big and foreign companies who monopolize the relevant technology, prices of those minerals are required by law to be pegged to international market prices including those published by London Metal Exchange and London Bullion Market Association (Article 2(3) and Article 6(7) of MEMR Regulation No. 11/2020). There is a social rationale in this because without such enforced pricing, smaller industries may be lured to sell their output at very low prices.

People's Welfare within Indonesia's CSR

Indonesia's CSR regulation of the mining industry employs broader definition of social responsibility. The responsibility is beyond the usual content of CSR, namely the environment, interest of workers and vulnerable groups. Rather, it embodies the responsibility to protect the interest of the entire people of Indonesia, which still caters for responsibility towards collective groups among the deprived, usually small holders, microenterprises, poor farmers and sellers at traditional marketplace. The social responsibility can be argued to be responsibility of all mining companies towards the society (in Indonesia) as a whole so that when the Indonesian mining law restricts certain freedom on production on mining companies, it seeks to promote the welfare of the people. Further, such restrictions do not apply to "community" miners. Is this approach consistent with the international practice of CSR?

Mandatory CSR is understood internationally more as a weapon against greenwashing so that the use of public regulation is rather to top up the inadequacies of voluntary CSR. There should be no one size fits all approach in CSR whose content should be developed by those familiar with the need of all stakeholders. In fact, CSR has to consider social peculiarities of each country. CSR can stem from private and public institutions even if it involves international or global normative process. For example, through hard law instruments such as the ILO, pressure is being levelled on companies that leverage from lower labour standards in developing countries hence lower production costs. In fact, such pressure is also felt by the government of those countries.

The question now is, can people's welfare and its accompanying objectives be translated into standards to be followed globally. Being global regulation, CSR revolves around international standard setting which has long been dominated by the developed world. The source to international regulation be it soft law or hard law has to be first discovered before the notion of people's welfare can feed into the international standards aspect of the CSR regulatory eco-system. If such notion can be found in any document that lays down international standards

on one matter or another, the task to be performed can be made easier.

Reference can be made to international law documents that stand for developmental rights of States such the one on permanent sovereignty over natural resources. It has to be stressed that such exercise is not purely academic because conflicts between companies and local residents are part of the major problems in CSR implementation in Indonesia. These local residents have different economic and social needs from indigenous communities and other vulnerable groups but they may have dependency on the environment even if the dependency can also harm the environment like the case of community agricultural practices that endanger the habitat of orang utans.

The notion of people's welfare is not purely communitarian. It also has elements of nationalism. This prompts the need to inquire into the interaction between mandatory CSR in Indonesia with Indonesia's obligations concerning trade liberalisation and investor protection because the nationalistic elements can be construed as protectionism or mistreatment of foreign investors, whether or not such construction is legally appropriate. Regarding investor protection, mandatory CSR requirements can affect the profitability of investment ventures hence bring investor claims on issues like fair and equitable treatment to the fore.

In the context of General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the nationalistic fervour of people's welfare can push a policy to be discriminatory or a disguise of international trade restriction violating principles of GATT/WTO. The 2009 Mining Law has a resource-nationalist tone in which its objective is to conserve resources for the benefit of the Indonesian people (Andrini, 2016). The requirement on miners to build smelters for example is not to control international and domestic prices (UNCTAD, 2017) but to diversify its economy in terms of climbing the value ladder, hence it remains to be argued to be inconsistent with international regulation, particularly the World Trade Organization (WTO) (Siahaan, Sagio, & Purwanti, 2021) (Widiatedja, 2021). There is less regulation in WTO regarding exports compared to imports, hence the export restriction may benefit from such laxity. However, there should be different legal consequences between export tax and total or partial ban because the latter can easily fall under the prohibition of quantitative restriction (QR) under Article XI of the General Agreement on Tariffs and Trade (GATT) (Matsushita, 2011) (Widiatedja, 2021). The ban on exports, or the dictating on mineral production and processing may also be subject to the rules prohibiting local content requirement or illegal subsidization.

CSR can fill the gaps left by GATT/WTO rules (Andersen, 2019) but mandatory CSR rules can invoke non-economic welfare arguments including sustainability which are difficult to find ways into the WTO unless those arguments create rights and duties enshrined in the agreements. Secondly, can social and commercial considerations mix in CSR? Production restriction under the Indonesian mining law is not purely social. One of its main objectives is to improve value added in Indonesian mining sector, and further develop downstream metal and other related industries, including batteries for electric vehicles.

There are `General Exceptions' to trade liberalization obligations (Article XX of the GATT). Among the exceptions are, first, a restriction is necessary to protect human, animals or plants, and second, a restriction is related to conservation of natural resources. However, reliance on such economic factors rather than purely social or environmental considerations by Indonesia can complicate things if the country wants to rely on those exceptions whose burden of proving is already heavy.

Conclusion

The analysis above conceptualizes that Indonesia embraces public regulation and people's welfare orientations of CSR for its mining industry. It is still premature to judge whether the public regulation and people's welfare orientations of Indonesia CSR create more benefits than costs. In this regard, empirical analysis is needed, something which is outside the ambit of this paper. However, in the eyes of international public regulation, upholding such orientations may create risks in terms of international law compliance. In accordance with international law rules on treaties, the fact that the orientations define Indonesia's statehood or that they are constitutionally entrenched does not absolve Indonesia from international law breaches especially those of treaties that Indonesia is a party to. Therefore, it is not surprising that Indonesia has been taken to international (i.e. WTO) dispute settlement for measures (e.g. automobiles and halal measures) found to be inconsistent with WTO treaties. Another case has been filed against export ban on nickel and bauxite ores.

In addressing such risks, we have to take a few steps back. The risks emerge because of CSR taking the "route" of public regulation. If there is no way of going around it, the public welfare considerations need to be tested through international adjudication.

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