

## **Overview of CSR for mining companies**

*MKK Mining Team*

Corporate Social Responsibility (“**CSR**”) was first mentioned in Indonesian law in Law no. 40 of 2007, regarding the Limited Liability Company but was set out in very broad terms: no instructions were given as to how to implement it nor were there sanctions for failure to do so. However, the article on CSR referred to natural resource companies. In 2009, Law number 4, regarding Coal and Mineral Mining was issued and, although CSR was not directly cited, mention was made of a ‘development program to empower the local community’. Notably, in Article 108, it is stated that efforts should be carried out to improve the quality of life of the people in the local community.

CSR became more formalized in 2010 when Government Regulation no 23, regarding Implementation of Mineral and Coal Mining (GR 23) was issued. In GR 23, companies were ordered to send reports on their CSR programs every six months to the minister, governor, or regent/mayor, as necessary. Administrative sanctions were set out for failure to do so.

In 2012, Government Regulation number 47, regarding Corporate Social Responsibility for Limited Liability Companies was issued, which went into depth on how CSR was to be incorporated into company operations. This regulation notably stated in Article 4 paragraph (1) that the CSR program should be part of the annual work plan with the agreement of the Board of Commissioners or by way of approval at the AGMS.

According to Government Regulation 23 (**GR 23**), Chapter XII, regarding Development and Empowerment of the Community in the IUP Area Article 106 (1), the holders of IUP and IUPK had to establish a CSR program to develop and empower the local community in the IUP and IUPK work area. A program should be drawn up (basic principles and philosophy), and the project owner should have documentation of its CSR activities as evidence of compliance with the law. Even though the project owner’s parent company or founders may have their own preferred charities or areas of intervention (i.e. education, health, etc.), any CSR project should be carried out in coordination with the local authorities and their needs. The legal basis for this principle is in GR 23, as follows:

*(2) The program referred to in paragraph (1) shall be carried out in consultation with the government, the provincial government, district/city government as well as local communities.*

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It follows that local authorities should be consulted with in preparation of the program. Evidence thereof should be provided in the form of minutes of meetings, official request letters for any and all requests for CSR programs (which should be archived accordingly). The project owner should also pay heed to the principle of establishing the program in the area where the actual project will be established; thus, even though the head office may be in Jakarta, the CSR program must benefit those in the direct vicinity of the mining project; this is not only in the interests of community relations, but is also mandated explicitly in GR 23:

*(4) Community development and empowerment referred to in paragraph (1) shall be prioritized for communities in and around WIUP and WIUPK that have been directly affected by mining.*

### **Conclusion**

Establishing a professional, world-class CSR program is in the interests of every mine owner; it is not only a matter of compliance with the law, but also a matter of making a positive impact on society as a whole. CSR is what one may term a ‘developing area’ in the law; project owners and managers would thus do well to keep themselves apprised of changes in the law and keep abreast of regulatory developments. More and more, CSR is not seen as a goodwill gesture, but as an obligation of natural resource companies that should not be taken lightly.

## **The Company Regulation and religious leave**

*MKK labor team (with research by Miranda Mamahit, S.H.)*

When preparing a Company Regulation (**CR**), it is important for a company to stipulate the terms and conditions for employees to take time off for religious duties. With regard to pilgrimages, according to Law no 13 of 2003 on Manpower (**Law 13**), Article 93 paragraph (2) point e UU No. 13 of 2003, employees have the right to take time off work for this purpose. Let us look at what the rights of the employee and the obligations of the employer are in this matter.

In fact, it is mandatory for employers to give paid leave to employees who wish to go on a pilgrimage. In article 6 paragraph (4) PP No. 8 of 1981, regarding Wage Protection, it is stipulated that workers are allowed paid leave to undertake a pilgrimage. However, in the elucidation of article 6 paragraph (4), we note that an employer is only obliged to give an employee paid leave in this manner once, and if the employee chooses to subsequently go on another pilgrimage, the employer is not obligated to give him paid leave therefor. Furthermore, Law 13 also states that this obligation on the part of the employer only applies if the pilgrimage in that religion is mandatory in nature. If the pilgrimage is not mandatory and/or not specifically called for in the employee's religion, then the matter can be governed by the company's CR or Collective Labor Agreement (CLA), as the employer's obligation in this regard ends after leave for the first pilgrimage has been taken.

### **Conclusion**

To avoid misunderstandings with employees and for the sake of transparency and certainty, it is thus best to set out the company's policy with regard to leave for religious purposes in the CR while taking into account the legal basis set out above.

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## ***Legal News***

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### **OJK circular tackles fraud**

*MKK insurance team*

The OJK recently issued OJK Circular Letter No. 46/SEOJK.05/2017, regarding Fraud Control. Fraud control refers to the strategy of an insurance company or Sharia unit in controlling fraud which is designed to identify and check potential cases of fraud and implemented in the form of a fraud control system. Fraud control functions include aspects of (i) active management control, (ii) organization and accountability, (iii) control and monitoring and (iv) education and training.

Further, there is also a reporting obligation, whereby insurance companies or Sharia units are required to submit reports to the OJK on the application of their fraud controls and anti-fraud strategies as well as on occurrences of fraud. This can be carried out online through the data communication network system of the OJK.

#### **Analysis**

Fraud is in the news and certainly is a hot topic. As a result, managers should make efforts to tighten up their fraud controls. Does your company have internal infrastructure to deal with fraud? Does it have a whistleblower program? Simply reporting fraud is not sufficient if there is no follow-up. Following up may be done internally or it may include involving the OJK, the professional association and even other external authorities.

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