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CONCEPTUAL PAPER

From Duty to Gift: Corporate Social Responsibility and Philanthropy under Article 74 of the Company Law

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ABSTRACT

When a company in Indonesia gives money to a school, a mosque or a flood fund, is it doing a legal duty or making a gift? The question matters for how such giving is planned, reported and judged. This conceptual paper argues that Indonesian law answers it in three layers, and that the layers should be kept apart. Article 74 of Law No 40 of 2007 on Limited Liability Companies makes social and environmental responsibility a duty only for companies whose business is in or related to natural resources; Government Regulation No 47 of 2012 says that every company has such responsibility, and the Elucidation calls the general responsibility a moral commitment; and the Regulation leaves every company free to do more than the law requires. The paper adds a fourth question for Muslim-owned companies, since the Zakat Law makes zakat on business assets a separate religious duty. It proposes a simple framework of four kinds of company giving, duty, general responsibility, voluntary gift and zakat, and it draws questions for research on how companies label and report their giving. The paper is conceptual and offers no data.

Keywords: corporate social responsibility; corporate philanthropy; Company Law; zakat; Indonesia

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1. Introduction

A company that gives is easily called philanthropic. In Indonesia the same act may be called corporate social responsibility (CSR, in Indonesian law *tanggung jawab sosial dan lingkungan*, TJSL), a charitable gift, or, for a company owned by Muslims, zakat. The labels carry different meanings. A duty must be done, budgeted and reported, and it can be sanctioned if it is not done. A gift is a free choice. Zakat is a religious obligation with its own rules about who may receive it.

This paper is a conceptual one. It does not report evidence about what companies do. It asks how the law divides company giving into kinds, and it argues that the division matters for the study of corporate philanthropy, because a study that counts all giving as one thing will mix duty with choice. The paper uses the texts of Article 74 of Law No 40 of 2007 on Limited Liability Companies and of Government Regulation No 47 of 2012, which implements it, together with the provisions of Law No 23 of 2011 on Zakat Management that concern business entities.

2. Source and Approach

The paper reads the legal texts, in their official copies read on 2 November 2026, and builds a framework from them. It uses the Elucidation to the Government Regulation where the text itself is silent. It does not review the large literature on CSR, it does not discuss the debate on whether CSR should be compulsory, and it does not examine later amendments, such as those made in the legislation on job creation. Its claims are about what the texts say and what concepts follow from them.

3. Layer One: A Duty for Some Companies

Article 74 has four paragraphs. The first makes social and environmental responsibility a duty (*wajib*) of a company whose business is in or related to natural resources. The second says that the responsibility is a duty of the company that is budgeted and counted as a cost of the company, and that it is done with attention to propriety and reasonableness. The third imposes sanctions under the relevant legislation on a company that does not perform it. The fourth leaves the detail to a government regulation.[1]

The Regulation says more. A company whose business is in natural resources is one that manages and uses them; one whose business is "related" to them neither manages nor uses them but affects their capacity, including the protection of the environment (Elucidation to Article 3(1)). The duty is carried out by the directors on the basis of an annual work plan that contains the activities and the budget needed and that the board of commissioners or the general meeting approves (Article 4). The cost counts as a cost of the company, with attention to propriety and reasonableness, which the Elucidation defines in terms of the company's financial ability and the risk of responsibility that follows from its business (Article 5). The activity is reported in the annual report and accounted for to the general meeting (Article 6), and a company that does not carry out the duty is sanctioned under the relevant law (Article 7).[2]

The first layer is therefore narrow in who is bound and broad in what the company must do about it: plan, budget, report. A company giving money under it is doing something that the law requires, and its giving can be asked for and checked.

4. Layer Two: A General Responsibility

The Regulation also says, in Article 2, that every company, as a legal subject, has social and environmental responsibility. The Elucidation explains that every company, as the form of human activity in business, has a moral commitment to keep its relations with the environment and local community harmonious and balanced, in accordance with the values, norms and culture of that community.[3] This is a statement of

[1]Law No 40 of 2007 on Limited Liability Companies, Article 74(1)–(4).

[2]Government Regulation No 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies (State Gazette 2012 No 89), Articles 3–7 and the Elucidation to Articles 3 and 5.

[3]Government Regulation No 47 of 2012, Article 2 and its Elucidation.

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principle, not an enforceable duty: the duty of Article 3 is limited to natural-resource companies. Between the two lies the second layer, a general responsibility that has a moral weight but no sanction.

5. Layer Three: The Voluntary Gift

The Regulation then protects freedom to give. Article 8 provides that the duty does not prevent a company from taking part in social and environmental responsibility beyond what is required of it, and the Elucidation says that a company can do more than it is obliged to do. The same article allows the authorities to give awards to companies that do.[4] Here is the third layer: the voluntary gift. A company that gives beyond its duty, or one that is not bound by the duty at all, gives in this layer. It is free in the amount, in the recipient and in the time, and the law encourages it.

6. A Fourth Question: Zakat of the Company

For a company owned by Muslims, a fourth question arises. The Zakat Law defines zakat as property that a Muslim or a business entity must give to those entitled to it under Islamic law, and it says that zakat on property (*zakat mal*) includes property owned by individual payers or business entities, among them commerce, industry, mining and income.[5] The Elucidation explains that a business entity here means one owned by Muslims, whether it has legal personality, such as a firm, or not, such as a limited liability company.[6] Zakat is thus a duty of a different kind: it arises from religion and is given to defined recipients, and the Zakat Law sets the rules for those who manage it. It is not the same as the duty of Article 74 and not the same as a free gift.

7. A Framework of Four Kinds of Giving

Table 1 puts the four kinds together. It is a way of asking, for any gift that a company makes, what kind it is.

Kind	**Basis**	**Who is bound**	**Planned, budgeted and reported?**	**Sanction**
Legal duty (TJSL)	Law No 40 of 2007, Article 74; Regulation No 47 of 2012, Articles 3–7	Companies in or related to natural resources	Yes: annual plan and budget, cost of the company, annual report, accounted for to the general meeting	Under the relevant legislation
General responsibility	Regulation No 47 of 2012, Article 2 and Elucidation	Every company	No specific rule	None stated; a moral commitment

[4]Government Regulation No 47 of 2012, Article 8 and its Elucidation.
[5]Law No 23 of 2011 on Zakat Management, Articles 1(2) and 4(2)–(3).
[6]Elucidation to Law No 23 of 2011, Article 4(3).

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Kind	Basis	Who is bound	Planned, budgeted and reported?	Sanction
Voluntary gift	Regulation No 47 of 2012, Article 8	Any company that chooses to give	No specific rule; awards possible	None
Zakat of the company	Law No 23 of 2011, Articles 1 and 4	Business entities owned by Muslims, with the religious conditions	Distribution to those entitled, through the Zakat Law's system	Under the Zakat Law

Table 1. Four kinds of company giving in Indonesian law. Source: the texts cited, summarised for this paper.

The table suggests two points. First, a single gift can belong to more than one kind, and a company may count it as one in its accounts and think of it as another. A payment by a mining company to a village may be a performance of the duty, or a gift beyond it, and the law offers no test for which. Second, a gift that is a duty is one the law lets the public ask about, because it must be planned and reported, whereas a free gift is a matter for the company alone unless it chooses to report it.

8. Questions for Research

The framework leads to questions that can be studied with data. Do companies in natural resources label their giving as duty, and do they report it in the way that Article 6 requires? How do companies that are not bound by Article 74 describe their giving, and do they separate it from marketing? Do Muslim-owned companies separate zakat from other giving, and how do they choose recipients? Where one gift serves two purposes, how does the company account for it? A study of annual reports and of company statements on giving, using the four kinds as a coding scheme, would be a first step.

9. Conclusion

Company giving in Indonesia is not one thing in law. It is a duty for some companies, a moral responsibility for all, a free gift where the company chooses, and, for some owners, zakat. The paper argues that research and reporting on corporate philanthropy would gain from keeping these kinds apart, because each is planned, judged and justified differently. The framework is conceptual and untested, and its value will be shown by whether it helps to read what companies say about their giving.

References

Government Regulation No 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies (State Gazette 2012 No 89), with its Elucidation.

Law No 23 of 2011 on Zakat Management (State Gazette 2011 No 115), with its Elucidation.

Law No 40 of 2007 on Limited Liability Companies (State Gazette 2007 No 106), Article 74.

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