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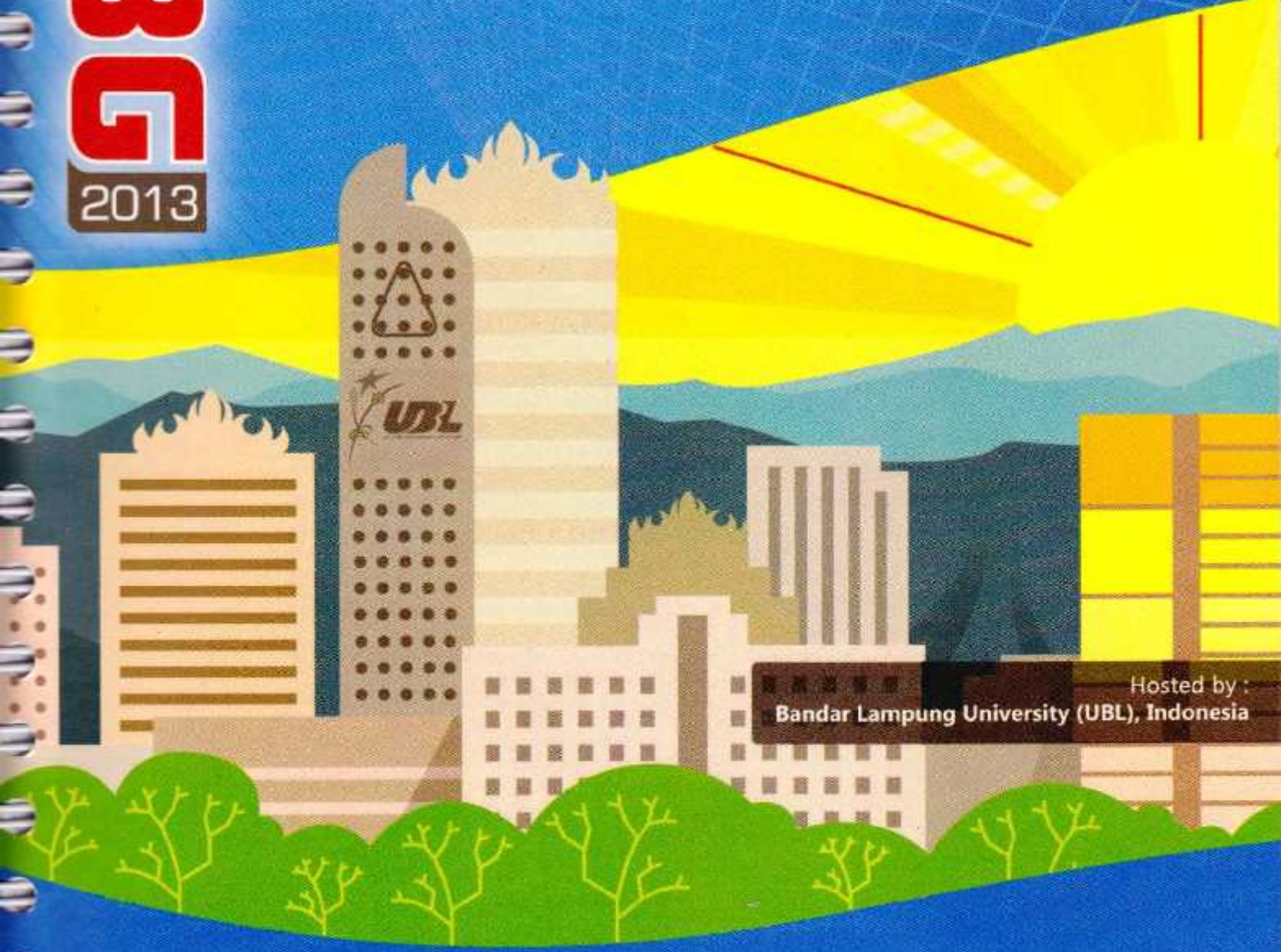
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THE FIRST
INTERNATIONAL CONFERENCE ON
LAW, BUSINESS
& GOVERNANCE

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
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THE FIRST INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013
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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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Table Of Content

Preface.....	ii
International Advisory Board	iii
Steering Committee	iv
Organizing Committee.....	vi
Table of Content	ix

Keynote Speakers :

1. Leadership Style, Climate, Commitment and Corporate Performance – Andreas Budihardjo	I-1
2. The Great Paradox of Good Governance in Indonesia - Andrik Purwasito	I-8
3. Local Autonomy and Inter-Sector Performance-Based-Governance in Lampung Province – Ari Darmastuti	I-15
4. Urgency of Regulatory Priorities Watershed in Order To Conduct an Integrated Watershed Administrative Law In Indonesia – I Gusti Ayu Ketut Rachmi Handayani.....	I-22
5. The Strategic Development Model of Organizational Dynamic Capabilities at Private Higher Education Institutions Using Soft System Methodology – M Yusuf S Barusman.....	I-29
6. Governance, Business and The Environment - Maliah Sulaiman	I-39
7. Good Governance and The Rule Of Law - Nik Ahmad Kamal Nik Mahmud	I-45
8. The Legal Protection of Geographical Indications in Indonesia Towards The Asean Economic Community - Wahyu Sasongko.....	I-56
9. Bank Indonesia Law Relations With The Financial Services Authority (FSA) in Indonesian Banking Supervision - Zulfi Diane Zaini	I-63
10. Application of Factor Analysis to Public Sector Integrity in Indonesia - Warsono, Armen Yasir, Dian Kurniasari, Widiarti, Ridwan Saifuddin	I-69
11. Strengthening Creative Economic Resources Through Designing Appropriate Regulatory Model in Managing and Optimising Cultural Property- Hayyan ul Haq.....	I-76

Invited Speaker

12. The Direction Of Future Management Accounting Research In The Asia Pacific Region - Grahita Chandrarin	I-77
---	------

Paper Presenter :

Law :

1. Indonesian Marriage Legal System Construction In Order to Protect Children From Marriage Law That is Not Recorded - Amnawaty	II-1
2. Urgently of Harmonization of National Legislation on Juvenile Criminal Justice Towards International Standards: A Review of Rules of Deprivation of Liberty of Child Offender - Antonius Ps Wibowo.....	II-14

3. The Urgency of Total Economic Value Aspect in Food Security Regulation In Order to Engage Asia's Trade Area (Indonesia Case Study) - Anugrah Adiastuti	II-25
4. Strike as The Last Resort In Dispute Settlement Between Workers and Employers - Arinto Nugroho	II-30
5. Politics of Land Law For Indonesian Farmers (Towards the Bill of Land in Indonesia) - Elita Rahmi	II-35
6. State Role In Building People's Economy Amid Economic Globalization - Elly Nurlaili	II-40
7. Legal Protection of Traditional Crafts Tapis Lampung Based Local Wisdom in The Era of Globalization- Erlina B	II-45
8. Perda Progressive : an Alternative To Fulfillment of Poor People Rights of Health in Local Autonomy - H.S. Tisnanta, Agus Triono	II-52
9. The Comparison Between Indonesian Constitutional Court and Russian Constitutional Court - Lintje Anna Marpaung.....	II-58
10. The Politics of Islamic Criminal Law in Indonesia (A Critical Analysis) - Mohamad Rapik.....	II-67
11. Learning Environmental Rights, Finding Green Future: The Road to Ecojustice - Muhammad Akib, Fathoni	II-73
12. The CSR of Tobacco Industries: The Concept And Its Implementation – Nanik Trihastuti	II-80
13. The Comparison Of The Indonesian Ppatk Role With Other Countries Financial Intelligence Unit (FIU) - Nikmah Rosidah	II-86
14. Benefits Of Ratification Of The Madrid Protocol (Protocol Relating To The Madrid Agreement Concerning The International Registration Of Marks) For The Protection Of Intellectual Property Rights In Indonesia - Risti Dwi Ramasari.....	II-92
15. Equitable Law of Democracy Political Policy Against The Election of Incumbent - S. Endang Prasetyawati	II-99
16. Narcotics Crime as A Phenomenon of Transnational Organized Crime - Zainab Ompu Jainah	II-110
17. Safety Net of The Financial System in The Perspective of Indonesian Banking Law - Zulfi Diane Zaini	II-115
18. National Land Law Reform in Facing Globalization - Darwin Ginting	II-122
19. Land Dispute Settlements Insocial Philosophy Perspectives (A Case Study in PTPN VII of Bergen Unit Business in South Lampung Regency) - Herlina Ratna S.N.	II-130
20. Analysis of Regional Expansion as Implications of Regional Autonomy Implementation - Indah Satria	II-137
21. Normative Judicial Analysis of Dissolution of Political Parties Towards Democratic System in Indonesia - Rifandy Ritonga	II-141
22. Limitations Of Legal Ability In Dispute Resolution Of Consumer Protection - Tami Rusli.....	II-147

Business

1. Accountability And Financial Performance of Local Government in Indonesia – Aminah, Lindrianasari	III-1
--	-------

2. Competitive Advantage; The Affecting Factors and Its Impact on Selling-In Performance (Studies on Patronage Outlets PT. Indosat Semarang) - Ana Kadarningsih	III-7
3. Bankruptcy Analysis of Banking Companies in Indonesia Period 2001-2012 (Using the Altman Z-Score Model)- Andi Sanjaya, Lindrianasari, Aminah.....	III-20
4. The Influence of Audit Committee Quality and Internal Auditor Objectivity Toward The Prevention of Fraudulent Financial Reporting(A Survey in BUMN of Indonesia) - Angrita Denziana	III-26
5. Performance Measurement of Management Study-Program Based on Balanced Scorecard from Students' Perception – Ardansyah, Ayu Ichda Mardatila.....	III-32
6. E-Business : At A Glance Indonesia Online Shop Agent - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	III-37
7. Brand Awareness Strategy: Role of Blackberry Messenger (Case in Sumber Tiket Murah Travel: PIN 2144C41F) - Dian Pane, Baroroh Lestari.....	III-40
8. Analysis of Corporate Social Responsibility Implementation And Social Audit at PT Semen Padang - Elvira Luthan, Sri Dewi Edmawati	III-50
9. Tourism Investment, Supply and Demand in Indonesia: Impact and Factor Analysis -Faurani Santi, Rina Oktaviani, Dedi Budiman Hakim, Reni Kustiari.....	III-61
10. The Effect of Job Satisfaction and Organizational Justice on Organizational Citizenship Behavior with Organization Commitment as The Moderator - Fauzi Mihdar.....	III-75
11. The Economic of Umar Bin Khatt b Policy in Modern Economic Policy - Hendri Hermawan Adinugraha	III-83
12. The Influence of Corporate Governance Implementation toward Bank Performance (Empirical Study on Banks Listed in Indonesia Stock Exchange) - Heriyanni Mashitoh, Irma.....	III-90
13. The Factors That Influence The Firm Performance In The Furniture Industry Jepara - Mahmud,Guruh Taufan H, Ida Farida.....	III-102
14. The Implication of Opportunistic Behavior Towards a Financial Report Conservatism : A Study of Banking Company Go-Public at BEI - Novi Darmayanti, Nur Suci Mei.....	III-110
15. Innovation Strategy With Environment Variable Antesenden Internal, External And Environmental Partnership Strategy For Their Impact On The Sustainable Competitive Advantage (Survey on Small Business in Pangkalpinang city) - Reniati and Dian Prihardini Wibawa	III-118
16. The Infuence of Cash Flow Information Toward Stock Return - Reza Kurniawan	III-126
17. The Influence of Internal Control toward Production Cost Control Efectivity - Sarjito Surya.....	III-132
18. The Influence of Management Information System to Management Control System - Sihar Tambun, Vienda A. Kuntjoro.....	III-138
19. Identifying Indonesia-Uruguay Bilateral Trade Opportunities:A Revealed Comparative Advantage Approach - Sulthon Sjahril Sabaruddin, Riris Rotua Sitorus	III-145
20. Redesign the Competence Business Strategy of SME's in Dealing with ASEAN Economic Community (AEC) Trade Liberalization 2015 Case Studies: SME's Creative Industry Sector in Bandung - Teddy Fauzi	III-153

21. Service Innovation: In Highly Competitive of Hotel Industry - Widjaja Hartono	III-157
22. The Impact of Liquidity, Profitability And Activity Ratio To The Probability Of Default For Banking Companies Listed in Indonesia Stock Exchanges For The Period 2006 To 2012 - William Tjong, Herlina Lusmeida	III-164
23. Using Altman Z-Score Model and Current Status Of Financial Ratio to Asses Of Consumer Goods Company Listed in Indonesia Stock Exchange (IDX) - Yoppy Palupi Purbaningsih,	III-169
24. Analysis of Factors Affecting Foreign Direct Investment Mineral Mining Sector in Indonesia Period 2009-2012 - Zeflin Anggal, Purwanto	III-176
25. Implement of M-Government to Improve Public Services - Ahmad Cucus, Yuthsi Aprilinda	III-181
26. The Development of Productivity Performance Models: Based on Self-efficacy, Trust, Systems Quality, and Information Quality. Study on Information Systems of PT Pindo Deli Paper Products - Indah Kartika Sandhi.....	III-187

Governance

1. Controlling for Agricultural Land Conversion District in West Java Province Tasikmalaya - Ade Iskandar	IV-1
2. Local Handicraft Development Policy Implementation - Ani Heryani	IV-5
3. Designing IT Governance Approach Standard ISO 38500 for Indonesia Higher Education - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	IV-9
4. Potential Thematic Campaign for Lampung Tourism - Hasan Basri	IV-12
5. Globalization and Its Effect on Democracy - Ida Farida	IV-17
6. Bureaucracy Communication and Government Organizational Culture - Khomsahrial Romli	IV-23
7. Creative Economic Development Mode Through Business Learning Group For The Purpose of Ending The Poverty - Soewito, Suwandi	IV-29
8. Child Protection Strategies at Agrarian Conflict Area (A Case Study at Moro-Moro Village, Register 45, Mesuji Regency) - Wijatnika	IV-36

THE CSR OF TOBACCO INDUSTRIES: THE CONCEPT AND ITS IMPLEMENTATION

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Abstract

Cigarettes are the products made from tobacco which contains nicotine and tar that has harmful effects when they are consumed. Nicotine is identified as an addictive substance while tar contains toxic and carcinogenic substance. Furthermore, since the harmful effects of the manufactured products, cigarette companies should have a responsibility to protect the consumers and their environment, so that they are freed from the effects. Various companies' activities which are considered as a company social responsibility, such as sponsoring sport events and arts, are actually a massive promotion attempt and even green camouflage which improve the credibility of the companies as the ones which are not manufacturing harmful products. Based on the fact, the concept of cigarette company social responsibility needs to be reconsidered by differentiating it with other company social responsibilities which have different harmful implications from meanings and realizations.

The Key Words : CSR, Tobacco Industry

1. BACKGROUND

The tobacco sector has been established by the government as one of the 10 major industries in Indonesia. This implies the high number of employee's recruitments and the contribution of industries in the country's income. According to the government's data, the tobacco sector has more than 6 millions employees, included farmers, manufacturing sector, sales and distributions. In 2009, tobacco donated 55trillions rupiah to the country, or 6.4% from the total of the country's income.¹

Based on that data, it gives an impression that the tobacco industries give great contributions to the national income, but the loss caused by cigarettes is higher than the income from the excite tax. For instance, in 2005 the excite tax was 32.6 trillions, but the expense of cigarettes consumptions reached 167 trillions or 5 times from the excite tax.²

From the total of tobacco products, 98% is used for cigarettes. Based on the fact, cigarettes are harmful and addictive products. Cigarettes contain 4000 of chemical substances, and 69 of which are carcinogenic. Several dangerous substances in cigarettes are tar, cyanide, arsenic, formalin, carbon monoxide, and nitrosamine. Besides, there is another surprising fact that in 2005, the early death caused the world by smoking in was up to 5 millions people per year. WHO predicts that in 2030, there will be 10 millions of death caused by smoking in one year, and 70% of which will happen in the developing countries which nowadays already reaches 50%.

Additionally, cigarettes consumptions give bad impacts not only on health, but also on the economic sector. According to various researches, it's the fact that the Indonesian households tend to sacrifice their essential good spending on housing, education, and health. Even in poor family which has lower monthly outcome per capita from the poverty line in their regencies, sacrifice their needs such as housing, health, food, and other needs for smoking, with the proportion of the poorest family's monthly outcome for cigarettes 12% after rice 22%.

The number of cigarette consumption per day is getting increased. 80% smokers start smoking even when before 19. Commonly, the consumers' decision to buy cigarettes is not based on enough information about the risks of the products, such as addiction and the impact of purchase which is burdened to others.

¹ www.sanpoerna.com

²Fakta Tembakau di Indonesia, tcsc-indonesia.org

This condition is caused by the massive advertisements, promotions, and cigarette sponsorships which increase the number of adolescent smokers. Cigarette industries in Indonesia still have freedom which is against with other countries because the countries protect children from smoking.

The tobacco industries not only use intensive marketing strategies, but also do various social activities on behalf of CSR (Corporate Social Responsibility), such as giving scholarships, participating in environmental activities, and other activities.

The CSR program of tobacco industries have succeeded in getting society's sympathies including the government and the regulators, so that they do not realize that tobacco industries are doing attempts to build their reputation and it gives an impression that tobacco industries are just the same with other industries which manufacture safe products for their consumers.

This condition makes the government and the regulators difficult to take a step related to the existence of tobacco industries, especially the attempt to regulate the circulation and controlling the tobacco products. Whereas, Constitution regulates Article 28 H clause (1) which says every person has the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and has the right to obtain medical care.

As an example, how difficult it is for the Indonesian government to make policies to ratify Framework Convention on Tobacco Control (FCTC) which is one of the attempts to protect the world from the problems caused by smoking through controlling tobacco.

The regulation in Constitution is a forcing attempt which has to be applied by the government. Besides, the rights are human rights. Smoking is proven as the causer of physical weaknesses, social, economy, and environment, not only for the smokers but also other people.

2. PROBLEMS

1. Is the use of CSR concept suitable with the tobacco industries as it is used by other companies?
2. How does the concept and responsibility implementation adjust to the tobacco industries which manufacture addictive and dangerous products for health?

3. DISCUSSION

3.1 The Concept and Implementation in the Tobacco Industries

Referring to Article 1 clause 3 of the Law Number 40 of 2007 on Limited Liability Companies, "Environmental and Social Responsibility" means a Company's commitment to taking a part in sustainable economic development in order to improve the quality of life and environment, which will be beneficial for the Company itself, the local community and society in general.

Furthermore, Article 74 clause (1) Limited Liabilities Companies Act regulates, Companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility.

Under Article 74 clause (1) states that:

"The definitions of "Companies which perform its business in sectors of natural resources" are companies which perform business activities in management and utilization of natural resources" and

"Companies which perform its business activities related to natural resources" are companies which do not manage and utilize natural resources, but their business activities have impact on natural resources capability functions."

Therefore, according to Article 74 clause (1) of the Law Number 40 of 2007, CSR, which is based on moral responsibility, becomes an obligation which can be justified. Meanwhile, the other companies are still responsible for CSR without any obligations to implement it and necessary implications.

In order to give CSR guidelines, ISO 26000 is arranged to define CSR:³

"Responsibility of an organization for the impacts of its decision and activities on society and environment, through transparent and ethical behavior that contributes to Sustainable Development, health and the welfare of society, takes into account the expectation of stakeholders; is in compliance with applicable law and consistent with international norms of behavior; and is integrated throughout the organization and practiced in its relationship"

In the following discussion, the characteristics of products manufactured by the tobacco industries and their activities on behalf of CSR are discussed first to examine the appropriateness of the industries to implement CSR in their businesses.

³ www.iso.org

As Article 113 of the Law Number 36 of 2009 Health Law rules, tobacco and products with tobacco content are addictive which should not disrupt and endanger the health of individuals, family, society and environment.

Addictive substances are active substances which work biologically and cause addiction for the consumers. The addiction is difficult to overcome and even gives negative effects to consume more and more. Meanwhile, if the consumers want to give up consuming the substances, they may undergo exhaustion or physical pain. In fact, even though tobacco and tobacco products are addictive and have tremendous potentials for humans' health, the research proves that there is an increasing number of smokers.

Hence, according to Article 113 of the Law Number 36 of 2009 on Health Law, it can be drawn a conclusion that considering the tremendous impacts, thus, tobacco products are not normal or regular ones.

Considering that the products are not regular ones, the tobacco industries conduct many kinds of campaigns to convince the Law makers and society through normalization strategy as if they have a right to market their tobacco products as normal and legal ones. Therefore, as "legal industries", they have a right to sell their normal and legal products as well as other industries.

The product normalization is conducted by advertising many kinds of advertisements using subliminal advertising⁴. It is characterized by the utilization of strong emotional elements and the establishment of irrational relationship among one's self, the advertised products, and the implementation of CSR programs. The cigarette industries intervention in making health policies for society is also intensively conducted.

Based on the facts above, it can be clearly seen that even though CSR programs which are done by tobacco industries are included into positive actions and even they seem to take a half responsibility of the country to fulfill the needs of society, the programs can not be considered as CSR programs and activities. That is because they do not meet the factors in the definition of CSR since the products harm and bring sufferings to the consumers and the unethical business behavior as well. This CSR activity can be categorized as "green camouflage"⁵ which is one of public relation firm's deceptions.

This point of view is based on the argument that CSR tobacco industry programs should be implemented to reduce the addictive substance of nicotine in tobacco. However, in fact, this implementation has not been applied since tobacco industries make us of the nature of addictive to maintain their existence in business. Besides, it should prevent health risks from the harmful substances contained in cigarette smoke.

On the other hand, related to the implications of various business strategies done by tobacco industries towards the increasing numbers of tobacco consumers, cigarette industries argue that it's the smokers themselves who make a decision to buy cigarettes based on their own knowledge (informed decision).

This argument is based on the economic theory which says consumers has an authority to use their money however they want to. Their usage is based on their knowledge of harms and benefits that they will get and it's the consumers who take a risk as a consequence to the purchase.

Consumer sovereignty is the key of neo-classic economy that suggests, in perfect competition, consumers who push the market by expressing their needs and wants as a demand. Then, firms give response to their demands by supplying goods and services that are needed. This forms an idea that consumers are the kings or in other words they have ultimate control over the market.⁶

If it is linked with tobacco consumption, these two assumptions can not be applied for the tobacco product consumers because there are three things which differentiate this from other products, as follows:

1. Consumers are not completely aware of disease risks and early death caused by their decision to buy tobacco products. This happens since the symptoms of the diseases come out approximately 20-25 years after the first consumption.

⁴ Subliminal advertising is an advertising technique done by exposing individuals in product images, trade names or other trade product stimulations which an individual do not realize that he/she is exposed. Liza Marielly, Subliminal Advertising cited from Dina Kania, Iklan, promosi dan Sponsor Rokok: Strategi Menggiring Anak Merokok, Anyer, 19 June 2009

⁵ "Green Camouflage", as part of competition strategies, is done by announcing to society that there is a radical change in corporate cultures through the creations of programs for convincing stakeholders that the company has changed its attitudes to be a better one.

⁶ Andrew Crane and Dirk Matten, Business Ethics, 2nd edition, oxford university Press,, 2007, P. 339-340

2. Most of beginner smokers are youngsters who have not had an ability to filter the right information of smoking impacts. Also, they do not realize the strong and addictive effect of nicotine which may cause a person can hardly give up smoking.
3. Passive smokers also have to take a risk because of cigarette consumption, such as physical damage, economical problems such as they have to spend money on buying cigarettes due to addiction and health problems.

By doing an intensive marketing through advertisements and being sponsors in many events, or creating a close relationship with consumers, tobacco industries have helped to create “demands”. Then, companies will not be responsible of any problems caused by their products and will leave the responsibility to consumers.⁷

As a result, it will be difficult to claim “cafeat emptor” to cigarette consumers since the addictive substances of tobacco products already make the consumers addicted, so that they have to buy it continuously.

From the fact, it can be concluded that tobacco industries have utilized the society who do not understand about the concept and CSR implementation. Thus, it’s not proper for tobacco industries, if they are considered as responsible industries.

3.2. The Concept and The Responsibility Implementation of a Company which is Suitable with Tobacco Industries.

If it is referring to Article 74 clause (1) of the Law on Limited Liabilities Companies above, it is clear that tobacco industries are not the industries which have to implement CSR programs as an obligation. Besides, cigarette industries are not the proper industries to use CSR concept as it is done by normal industries.

Based on that study, it’s important to look for specialized responsibility which can be implemented in tobacco industries. That is the social responsibility of a company has to contribute to the continuous development, health, and society’s welfare. Since CSR is an impact management, the concept of responsibility for tobacco industries has to be reformulated into one form of responsibility in order to overcome the impacts of its products.

Tobacco industrial responsibility has to be based on the concept of “Corporate Citizenship”, a legal citizenship in companies, which shows that there are companies’ rights and obligations as an integral part of community in a country. Good Corporate Citizenship is encouraged more to do reconciliation with social discipline. It is aimed at giving contribution for society and its management is internalized by companies’ policies. The “Corporate Citizenship” activity is conducted through funds or other resources which their benefits can be taken by society in general.

The implementation of this responsibility concept will not succeed without any government regulations. Even though tobacco is legal and used widely, addictive and harmful substances in it have burdened health service system since they are the causers of diseases and death due to smoking. Therefore, it’s a must for the government to control and manage their circulation.

In fact, the effort, which is to control the cigarette consumption, has not succeeded yet since this effort has to deal with the aggressiveness of cigarette industries which always try to give guarantee for the existence of industries by doing many marketing strategies and influencing policies.

In line with the “no harm” principle in Commutative justice, everyone has to refrain his/herself and not to take one’s rights and interests as the same as he/she does not want his/her rights and interests to be taken. This principle is based on the appreciation to humans’ dignity, their rights, as well as the right to live.⁸

Thus, in social interaction, if there is a certain party whose rights or interests are taken, the country is suggested to follow up the party and restore the equality between the two parties. It is also applied in business, so that the country is demanded to handle and restore the inequality and the injustice by sanctioning or giving penalty fairly.⁹ Based on the consideration above, the government should put themselves in a right place by taking actions towards cigarette industries which truly harm their consumers.

As a part of the country, in creating “good corporate citizenship”, companies have to obey all the regulations. For instance, they do not advertise their products considering its impact on the increasing

⁷Jeed Greer dan Kenny Bruno, *Kamufase Hijau : Membedah Ideologi Lingkungan Perusahaan-Perusahaan Transnasional*, Penerjemah Soediro, yayasan Obor Indonesia, Jakarta, 1999, Hlm. 25

⁸ A. Sonny Keraf, *Etika Bisnis : Tuntutan dan Relevansinya*, Kanisius, Yogyakarta, 1998, p. 140

⁹ *Ibid.*, p. 141-142

numbers of cigarette consumption. Besides, the country has to spend a lot of fund to cope with the impacts of cigarette consumption, so that companies have to pay the excise tax as high as possible.

If referring to the Law Number 39 of 2007 on Customs, the excise tax is the country's levy for particular goods which have specialized characteristics, which their consumption needs to be controlled, their circulation needs to be watched over, their usage can give negative impacts on society or environment, and their usage requires the country's levy for justice.

As a result, the excise tax is not ordinary taxes, but it's the country's levy which is meant to control the cigarette consumption. Thus, the tobacco tax should be able to control the cigarette consumption. In this case, the excise is "sin tax".

By applying the excise tax in tobacco products, it means that actually the government has realized that tobacco is a unique and harmful product and can not be considered as an ordinary product, just like ethyl alcohol and drinks which contain ethyl alcohol.

The income of the country which is got from the excise tax is actually from smokers. Even though the companies pay more than they should, however, eventually the excise tax will be added in every butt of cigarette which has to be paid by the smokers. Therefore, it's truly wrong that the companies claim that the cigarette companies have been contributed in the income of the country.

According to the Law Number 39 of 2007 on Customs, there should be funds for (DBHCT), the Provincial and the Regency government. The funds are allocated for five (5) provinces, with the composition of 30% is for the producer provinces, 40% is for the producer regencies, and 30% is for the other regencies.

By implementing the regulation above, it is not fair because there are only five provinces which get the funds whereas the bad effects of smoking for health impact all the smokers, active and passive smokers in Indonesia. Furthermore, the fund allocation, which is got from the excise tax, is not maximally used for overcoming the bad effects of smoking even though the effects are really huge.

In addition, DBHCT gives an impression that cigarette industries have been responsible for overcoming health's problems. However, in fact, most of the funds will go back to those cigarette industries by allocating the funds for the development of basic materials and industries.

Finally, in line with the utilitarianism ethic, it says the discretions and actions which are right and proper from the ethic's point of view are the ones which will bring great benefits for as many people as possible, or the other way around, will bring as few disadvantages as possible for few people. Therefore, the government should be able to create it through policies and regulations which will bring benefits for their society, and to test whether those policies and regulations will create welfare and happiness for their society.

4. CLOSING

The discussion above can be drawn a conclusion that the concept and the various forms of company social responsibilities (CSR), which is conducted by the tobacco industries, is only an indirect promotion attempt which cause the increasing of the sales products. CSR for tobacco industries is also not an obligation which can cause sanctions, if it is not applied. However, it doesn't mean that tobacco industries are free not to get involved in the social responsibility.

The social responsibility still has to be done by the tobacco industries, especially in overcoming the impacts which come out from their products. This implementation of responsibility needs the government's intervention. The tobacco industries are the business entity which has a major purpose to gain profits, so that the unethical attempts which are related to tobacco business can be prevented.

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