

Land Conflict in Palm Oil Land Procurement in Indonesia: Features, Issues and Approaches

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Abstract—Malaysia currently accounts for 39% of world palm oil production and 44% of world exports. Being one of the biggest producers of palm oil, Malaysia has an important role to play in fulfilling the global demand for palm oil. With the growing global demand for palm oil, Malaysian Multinational Enterprises (MNEs) have embarked on the expansion of palm oil plantations by venturing into cross border palm oil plantation ventures including Indonesia. Nonetheless the cross border venture may not an easy project, as the MNEs have encountered unprecedented challenges. Currently, land conflict in palm oil land procurement in Indonesia is one of the main hindrances for Malaysian MNEs implementing investment in Indonesia. This issue if not resolved can lead to the failure of the MNEs' investment and may affect the FDI flows into Indonesia. The main objective of this paper is to explain the issue of land conflicts in palm oil land procurement faced by the Malaysian MNEs in Indonesia. This paper will reveal the approaches that have been taken to address the problems. Qualitative social and legal research methodologies were used in this research. From this, certain information can be generated to show the severity of the problems arising from land conflict in palm oil land procurement in Indonesia and the approaches that have been taken by the stakeholders to deal with the problems. The findings of the research will significantly enhance the performance of the Malaysian MNEs in its internationalization of palm oil plantation ventures.

Keywords—Cross Border Palm oil land procurement; Malaysian Multinational Enterprises (MNEs); Indonesia; Land Conflict Legal Issues; Approaches

1. Introduction

Investment in cross border palm oil plantation ventures in overseas is a big business. It is not a small deal undertaking by investors. In order for the investors to reap profits either in the short term or in the long term, they must know the law governing cross border palm oil

plantation ventures of the foreign lands. Otherwise, they will be in trouble and face losses. Apart from the internal approval of the investor companies such as the approval of the shareholders and feasibility of the undertaking, the investors must also have sufficient funds to embark on the ventures. Knowledge of the laws, policies and regulations of the foreign lands is vital to ensure success and sustainability of their business.

Palm oil plantations and processing have become a strategic primary commodity industry for countries such as Malaysia and Indonesia and some countries in Southeast Asia. This has created the need for large scale land plantation ventures carried out purely for commercialization purpose in order to cope with the global demand for palm oil. For Malaysia Multinational Enterprise (MNEs) involved in cross border palm oil plantation ventures they do faced with problems in the legal sense by the words. These problems are diverse and mostly caused by the absence of legal framework between the host government and the foreign investors.

The unwelcome foreign intrusion into the country's agricultural sectors have no two(2) pronged approaches to help ease the threats relating to foreign direct investment in the agriculture land. There is no doubt that foreign investment can provide key resources for agriculture, including development for needed infrastructure and expansion of livelihood options for local people. However if large-scale land acquisitions cause land expropriation or unsustainable use, then foreign investment in agricultural land can become politically unacceptable. Due to the absence of the two (2) pronged approaches to help address these threats posed by FDI in agricultural land, the authors are of the opinion that this paper is indeed timely and an opportunity to address these threats by way of developing a legal framework for cross border palm oil land procurement between the host government and foreign investors. These threats need to be controlled and

contained through a code of conduct mean for both the host governments and foreign investors by incorporating in the land agreements term such as transparency in negotiation, fair and just contractual terms between the investors and the Indonesian people, respect for existing right, sharing of profits, environmental sustainability and adherence to national trade policies (Von Braun & Meinzen-Dick, 2009). For example, in order to procure the permit of plantation, the foreign investor who intends to invest in Indonesia must comply with their law on environmental since it is their policy to ensure its environment sustainability. Law No. 23/1997 on environmental management requires any business enterprise to take full account of the environmental implications of its business operations. As a pre-requisite obtaining the plantation permit, the investors must have approved documents, comprising Environmental Impact Assessment (EIA) and Environmental Management and Monitoring Plans. Government Regulations No. 27/1999 on Environmental Impact Assessment further determines the criteria for significant environmental impacts. The environment issues that must be in the table such as air pollution, soil erosion, social aspect such as labour, income, land tenure, customary rights and people perception of the proposed projects are the fundamentals that must be strictly adhered insofar as that legal proclamation requires (Wisnu., Heru., Krystof & Petrus, 2011). Thus apart from that, the code of conduct should also address related to land fraud, corruption, security and safety of the Malaysian MNEs in a cross border palm oil plantation ventures in Indonesia.

The myriad of threats looming for FDI in Indonesia are real and predominantly amongst them are the existence of some laws which are not within their knowledge or not being advised for, which to some great extent would affect the management of the companies themselves. Since there is no legal guide model for the investors who plan to invest in the palm oil plantation for example in Indonesia, they might jump the gun and wrongly believe that like other investment that they have had an experience replicate the same and execute the same old management system. Based on Ady Pratikto from Price Water House Coopers (PWC) Indonesia in 2010 had set the threshold that in particular for foreign investment there shall be limit on foreign shareholding in a plantation companies. The Presidential Decree no. 77/2007 and 111/2007 regarding Lines of Business Closed and Open with Requirement for Investment stipulate that foreign investors can have up to a 95% shareholding in a plantation companies, including palm plantation companies. The remaining 5% share must be allocated to Indonesian shareholders. Like other lines business, even though the 95% shares would form a majority of the company, foreign investors often would

like to ensure that they fully control the management of company. In the past, this could be done by having an arrangement between the shareholders which said that the Indonesia shareholders agreed to hold the 5% shares on behalf and in the interest of the foreign shareholders. However, on 26 April 2007, by the issuance of Investment Law No. 25/2007, the government principle stated its intention to avoid the existence of a company which is legally owned by a party but materially and substantially owned by another party consequented upon nominee arrangement. Therefore, in Article 33 of the Investment Law, the Government proscribed a law wherein such an arrangement is against the law and shall be illegal and considered a nullity under the law currently enforced. The sham nominee arrangement is no longer sustainable as ownership and centred of a company is now untenable without of course infracting the investment Law (Ady, n.d).

In the converse, the threats are perceivable from the land law issues pertaining to the cross border palm oil plantation venture for plantation activities in Indonesia is the myopically flaws in the land law stems from the many uncertainties of the law itself which leave for much desired rooms for wanton interpretations. A study by Buntoro Rianto of PWC Indonesia in 2010, land issue is one of the main things in relation to plantation area in Indonesia. This is due to the conflict with local communities regarding the ownership of the land caused by lack of the clarity as to land status and the legal ownership of land. Despite efforts taken by the government, communities and other stakeholders, this land problem has been a perennial classic issue for years in Indonesia. Therefore, investors need to perform due diligent check on land status prior acquiring the land to avert any possible future land problems. Another land issue is the limitation on the ownership of the land area by the plantation company. The Ministry of Agriculture through Article 12 of its Regulation No. 26/Permenten/OT.140/2/2007 regarding Guidance on Licensing Plantation Business stipulates that a plantation company can have a maximum of 100,000 hectares in plantation area or twice that if the plantation area is located in Papua. In practice, however, the limit is subject to a conditions precedent especially in the case of a new plantation company acquiring same for its own plantations set up. This is due to another regulation issued by the State Minister of Agriculture/National Land agency, No. 2/1999 in year 1999, regarding Location Licenses. Based on the above National Land Agency regulation, a plantation company must obtain a Location License from the Land Office prior to acquiring land for the plantation area. These regulations, however, stipulate that a palm plantation that in Papua province and 100,000 hectares throughout Indonesia. Consequently, a plantation

company that operates in one province can only have a maximum of 20,000 hectares based on regulations No. 2/1999 instead of 100,000 hectares area based on regulations No.26/Permenten/Ot.140/2/2007. Furthermore, the limitation in regulation No.2/1999 applies not only to individual palm oil plantation companies but also to other palm plantation companies which constitutes a group of companies (Rianto, n.d.).

2. Methodology

The authors utilized two (2) pronged methods of respectively qualitative and legal research methodologies. Qualitative research methodology is used as the authors wish to do qualitative research over selected and accessible cross border palm oil plantation ventures carried out by Malaysian MNEs in Indonesia.

This paper focuses on the accessible Malaysian MNEs on upstream (opening up land and plantation of palm oil) cross border palm oil plantation in Indonesia. The data sources that were used in this *inter alia* are from accessible files, primary and secondary legal literatures and interviews with relevant persons in Malaysia and Indonesia in respect of the land law, investment law, and environmental law on palm oil plantation ventures. The secondary legal literatures included the available literature on palm oil from the internet sources, Universiti Utara Malaysia (UUM) library and Incorporated Society of Planters' Library in Kuala Lumpur. Observation is used to extract and conclude certain issues and ideas which are obvious and discreet that can be generated indirectly through the file review, primary and secondary sources and textual analysis from the aforesaid data sources. Through observation also the authors can comprehend the work process, culture, behaviour, intention, demeanor, reaction, hidden phenomena, issues, philosophy and the world-views of the respondents who are being the subjects to the interviews and research (Yin, 2003; Silverman, 2000).

The authors conducted analysis over the data generated from the exercise of various research methodologies from the above mentioned sources and data via file review, interview and observation. The analysis will focus on the fact, issues and problems in land conflicts in Indonesia which currently exist and plague cross border palm oil land procurement by Malaysian multinational enterprises (MNEs).

To support the findings and the data analysis through qualitative case study, multiple evidences, chain of evidence data and triangulation methods were used. This is to ensure the research process analysis and research findings become comprehensive, trustworthy,

credible, valid, rigorous and reliable (Yin, 2003; Silverman, 2000). In respect of legal analysis the authors referred to its primary resource namely: the laws relating to land, investment, and environment of Indonesia that affect the land procurement for palm oil plantation ventures.

Substantial part of the primary data sources were elicited from interviews with key decision makers and relevant persons in the authorities in Malaysia and Indonesia. These persons are:

- 1) Dato' Azmi Haji Ali being with the principal partner of Messrs Azmi and Co., Advocates and Solicitors, Kuala Lumpur;
- 2) Mr Septiansyah Q Riza an Indonesian lawyer in Jakarta, Indonesia;
- 3) Mr. Sofyan Djalil being the Minister Of Land and Spatial Planning Of Indonesia in Jakarta, Indonesia;
- 4) Mr. Ir Saduddin, Taufik And Budidaya Of Dinas Perkebunan Of Jambi (Department Of Plantation, Jambi), Indonesia;
- 5) Mr. Hasan Basri, Former Governor of Jambi, Indonesia;
- 6) Dr. Suyitno And Ana Silviana of University of Diponegoro, Semarang, Indonesia;
- 7) Dr. Martin Roestamy, of Djuanda University of Bogor, Indonesia;
- 8) Mr. Edy Rosmawanto and Nasrul Hadi, of Gabongan Pekebun Kelapasawit Indonesia (GAPKI) In Jambi, Indonesia;
- 9) Mr. Kailani, being the Assistant Bupati (District Officer), Muaro Jambi, Jambi, Indonesia;
- 10) Mr. Nor Hazlan Abdul Rahim of Association Of Palm Oil Investors of Malaysia In Indonesia (APIMI) in Jakarta, Indonesia;
- 11) Mr. Ahmad Lutfi Abdull Mutalip of Messrs Azmi & Co, Kuala Lumpur;
- 12) Dr. Fadhil Hassan of GAPKI, Jakarta, Indonesia; and,
- 13) Tuan Haji Daud Amitzin, being the Chairman Of Incorporated Society Of Planters (ISP) In Kuala Lumpur.

The scope of this paper involves cross border palm oil land procurement implemented by Malaysian MNEs in Indonesia particularly in Sumatera, Indonesia. The law that is discussed is the land law of Indonesia.

Some interviewed verbatim excerpts of the interviewees are included in this report in order to avoid bias and prejudice if the authors were to extract the gist of the interviews only. It is submitted that, the true verbatim transcription will give the stakeholder readers of this writing a better sense of the speakers' emotional state, as well as potential subtext behind the words spoken (corners, n.d). Poland defines verbatim audio transcription

as the word-for-word reproduction of verbal data, where the written words are an exact replication of the recorded (video or audio) words. With this definition, accuracy concerns the substance of the interview, that is, the meanings and perceptions created and shared during a conversation. And also how these meanings are created and shared during the conversation. So verbatim transcription of research data not only attempts to capture the meaning(s) and perception(s) or the recorded interviews and focus group discussions, but also the context in which these were created (Weloty, n.d; Poland, 1995). The authors revealed the names of the interviewee respondents to disclose the identities of the study and the individuals. Disclosure produces two (2) helpful outcomes. First, the reader is able to recall any other previous information he or she may have learned about the same case – from previous research or other sources – in reading and interpreting the case report. This ability to integrate a new case study with prior research is invaluable, similar to the ability to recollect previous experimental results when reading about a new set of experiments. Second, the entire case can be reviewed more readily, so that footnote and citations can be checked, if necessary, and appropriate criticism can be raised about the published case (Yin, 2003).

2.1.1 Research Questions

- a. What are the causes and issues of land conflicts in palm oil land procurement by Malaysian MNE investors in Indonesia?
- b. Why and how the causes and issues occurred?
- c. What are the approaches that are used by the Malaysian MNE investors in Indonesia to deal with the issues in the land conflicts?

2.1.2 Research Objectives

- a. To study the causes, issues and approaches in dealing with land conflicts in palm oil land procurement by Malaysian MNE investors in Indonesia; and,
- b. To recommend approaches by the Malaysian MNE investors in Indonesia in dealing with the land conflicts in palm oil land procurement in Indonesia.

3 Results and Discussion

According to Dato' Azmi Ali the Managing Partner of Azmi & Associates, a law firm in Kuala Lumpur and who was the former director of Sime Darby Berhad (interview with Dato' Azmi Ali via skype on 4 February 2017), that

an investor in palm oil plantation ventures overseas must get the necessary green light in accordance with the articles and memorandum of association of the company (Constitution of Company). Further, there are certain agencies in the local country that the investor must get the necessary approvals for example from Bank Negara Malaysia (BNM), Securities Commission and other relevant bodies. According to him there is no specific and clear law governing cross border palm oil plantation. Cross border palm oil plantation investment is a huge project that requires adequate expertise and investment to face the challenges and ensure its success. According to him there are three (3) types of law. The first one is the internal laws. Internal laws regulate the decision of the company investors. For an example Sime Darby Berhad, being a Malaysian MNE, acquired a major acquisition of New Britain Palm Oil Limited in Papua New Guinea. The acquisition was completed in 2015. The acquisition involved 200,000 hectares of land, plantation land, owned by New Britain Palm Oil Limited. The company was formerly 31% owned by Kulim Berhad being the subsidiary company of Johor Corporation. The company was listed on London Stock Exchange. According to him 20% share of New Britain Palm Oil limited was owned by the Papua New Guinea government. While 9% or 11% was owned by the management company. Sime Darby bought this company at roughly MYR 6.5 billion (USD 1,593,723,376.75). This acquisition illustrates the requirement to obtain internal approval of the Sime Darby Berhad's Board of Directors. This approval relates to corporate law, the then Bursa Kuala Lumpur rules and Securities Commissions' rules. The acquisition transaction of New Britain Palm Oil Limited was only subject to the internal approval as the worth of the acquisition was RM 6.5 billion (USD 1,593,723,376.75) and this was not a major exercise, warranting the approval of the shareholders. Once the internal approval has been obtained the investors need to know the source of funds that will be used to finance the acquisition. It can borrow funds to finance the acquisition. In respect of Sime Darby Berhad in acquiring New Britain Palm Oil Limited, the raising of the fund by Sime Darby Berhad was done by dollars financing. This involved multi currency dollar financing arranged by 3 or 4 banks. The banks that involved were: CIMB Bank Berhad, Maybank Berhad, Standard Chartered Berhad and HSBC Bank Berhad. This type of financing required the approval of Bank Negara Malaysia. After having secured internal approval, the major law relating to the investment fund is the exchange control. Thus Bank Negara's approval needs to be obtained, apart from the approval of Securities Commission (Ali, Personal Communication, February 4, 2017).

According to Dato' Azmi there is no required internal approval for Sime Darby Berhad to buy asset and property outside Malaysia. Thus, Sime Darby Berhad need not require approvals from the Ministry of Commodity, Ministry of Primary Industries, Ministry of International Trade and Investment (MITI), and other government agencies, except Bank Negara Malaysia which controls the amount of internal money that goes out Malaysia (Ali, Personal Communication, February 4, 2017).

The third law is the law relating to the place where the assets are situated. This means, the domestic laws in Indonesia. For examples the Indonesian land laws, environmental law and investment law. One of the examples of Indonesian land law is the right to use land (Hak Guna Usaha - HGU) (Ali, Personal Communication, February 4, 2017).

According to Dato' Azmi Ali, there are many laws and legal issues that Malaysian MNEs must beware before investing into Indonesia in palm oil plantations. For instance, the environmental law, land ownership law, corporate law and how the MNEs intend to govern the structure of the venture after acquisition. Sometimes in dealing with the issues in Indonesia, the MNEs need to use money. Dato' Azmi Mohd Ali said (Ali, Personal Communication, February 4, 2017):

“We need to be really careful on the laws in the host country. ... You need to do a proper investigation into the kind of laws. Environmental laws, ownership laws, corporate law, how do you intend to govern the structure I mean after you have done the acquisition...So, the Chinese companies, they invested much earlier 1970s...I don't know how they solved the problem. They must have a strong partner, my suspect was that, they used money and ... pay the government officers you know, to solve the problem That is what I have suspected ... they must have created the budget ... So, I think the main legal issue is the ownership issues of the company in Indonesia and by extension the partnership land and the status That must be something that you've got to do up-front.... Various other issues relating to operation, ownership, land title, employment, various issues.... There was one power granted local of government to provide licences. Thus, the local authority has got more power...” (emphasis added).

3.1 Land Conflict in Palm Oil Plantation Ventures in Indonesia

In addition to the above, according to Dato' Azmi, as foreign palm oil land procurement is not a small deal, it requires a competent Board of Directors, legal officers, finance officers, human resources offices and sufficient logistics and funds. Without these, the acquisition may fail and cannot ensure sustainability of the acquisition in the foreign lands. The Malaysian MNEs will face many issues including on the interpretations of the laws, manipulations, environmental hazards, issues on costs, bureaucracy, unwelcome culture, and others. For instance, these happened in the acquisition of Eagle Plantation by FELDA. According to Dato' Azmi Ali, the purported acquisition of Eagle Plantation does not benefit FELDA and does not make FELDA the majority shareholder who can control the management, affairs and future direction of Eagle Plantation (Ali, Personal Communication, February 4, 2017).

The land distribution and permitting system in Indonesia dates to the Suharto regime, during which the president cemented the loyalty of his political allies by issuing them forest concessions, preferring forest resource use for industrial purposes rather than subsistence or indigenous claims. Following the removal of Suharto, the country began the process of government decentralization, including the monitoring and management of forest resources. One manifestation of this entrenched patronage system is former government bureaucrats ending up on plantation company advisory boards (Hassan, Personal Communication, April 25, 2017; Morel, Friedman, Tulloch, Caldecott, 2016).

Government-sponsored land expansion projects for new plantations have taken place intensively since the Suharto era, particularly through the introduction of nucleus-plasma schemes that divide land between dominant state-owned enterprises and smallholder farmers (Mondaq, n.d.). It was assumed that the scheme allowed national players to increase their industrial productivity while allowing grassroots actors to take part in welfare creation and enjoy redistribution of profit (Hapsari, n.d.)

In the Post-Suharto Era, there has been stronger national policy framework for privatization and liberation that allows foreign companies to invest in the upstream, especially since the introduction of the new Plantation Law in 2004 and Investment Law in 2007. The sector has since then experienced more rapid capital restructuring as a result of these political developments, combined with a massive influx of foreign direct investment supported by international financial institutions (Hapsari, n.d.).

These farmers whose lands are subject to the partnership arrangement with plantation operator companies, are not the main holders of land use rights. They work mainly as labourers, as land use rights are licensed to plantation operators. Government regulation allows the renewal of plantation business licensing up to ninety five (95) years, leaving very limited space for land restructuring after communities' access to land use is re-allocated to operators at the early establishment of the plantation. Farmers usually receive income by working as plantation labourers during the processes of seeding, planting, maintenance and harvesting. Apart from that, they must find their own sources of livelihoods to meet the needs of their household (Hapsari, n.d.)

The existence of MNEs in palm oil plantation in Indonesia shows that it upgrades the level of livelihood of the local people and provides them with employment and welfare. These include life necessities such as water, access road, electricity, general welfare wellbeing and local children education. These are evident in an interview with Assistant Bupati of Muarajambi, Jambi on 16 January 2017 at the office of Muarajambi Bupati Office (Kailani, Personal Communication January 16, 2017).

In Keude Truman, Indonesia, a forest land turned into a palm oil plantation caused encroachment of forest lands. As a result, a civil suit was commenced and a court in Jakarta will rule on a class-action lawsuit filed against the Aceh government's land use plan. The encroachment affects the nationally protected leading to the exploitation and damage by agribusiness and extractive industries, such as rouge palm oil plantation ventures (Mongabay, n.d.; Conflict Palm Oil to Factory Farms: The True Cost of Tyson's Cheap Food, One Green Planet, n.d.).

The issue is how the big scale plantation venture comes in term with the local community whose lands are subject to the plantation venture can provide opportunity, creation of jobs, elevating the economic conditions, providing infrastructures and welfare of the people? It is evident that in South East Asia, the palm oil industry had contributed very little to the South East Asian economy. In Africa land procurement for palm oil plantation is made through lease with the government but without getting consent from the local community or communication is made after consent from the government has already obtained, neglecting the livelihood of the local community's rights. (The Guardian, n.d.; Mongabay, n.d Manila Bulletin, n.d).

There is also an evidence that shows local farmers are unfamiliar with the conditions of contracts that are supposed to protect their rights in relation to palm oil plantation foreign investor companies. The details of the

contracts are not subject to corporate disclosure policy, which also include exploitation of information to the expense of the local farmer labourers by the plantation operators. This is unsurprising if the accumulation of economic benefit from oil palm planting and its redistribution system is highly dominated by political decisions taken by plantation operators, leaving farmers with a very limited space to voice their grievances. These led to complicated relationship between large plantations and local smallholders, particularly the plasma/inti scheme in Indonesia. In this scheme the company is required by law to provide a proportion of their land for smallholders. However in some cases it is unclear how many plasma plots are actually provided to local community (Reworking Palm Oil Welfare from the Grassroots in Indonesia, n.d.; Morel, Friedman, Tulloch, & Calderott, 2016). This is supported by a statement of the Minister of Land and Spatial Planning - Sofyan Djalil via an interview between Nuarrual Hilal Md Dahlan and him on 12th May 2017 at Jakarta. According to him (Sofyan Djalil) there are cases that have led to conflicts with the operators due to unfair treatment and unfair contract terms between the operators and the local people (Djalil, Personal Communication, May 12, 2017).

According to the former Governor of Jambi, Hasan Basri, he said that there are partnership undertaking between the Malaysian MNEs and the local people. This is a way to resolve conflicts with the local people whose lands have been used and possessed by the foreign investors for palm oil plantation. The partnership ratio is normally 70:30 or 60:40 between the palm oil investors and the local people. This is further corroborated by Bapak Kailani, Deputy Bupati of Muarajambi (Kailani, Personal Communication January 16, 2017).

3.2 Unclear Land Ownership and its Boundary Leading to Fraudulent Claim and Disputes

Possession and procurement of land for palm oil plantation involving lands of the local people and indigenous (being contract farmers to partnership scheme with private and state-owned corporations) also may pose certain problem. This problem occurred due to the fact that most boundary and ownership of lands in Indonesia are not evidenced in writing and recorded by qualified persons. Most of the ownership and boundary of the lands are done through evidence of verbal information, supported by witnesses, through the information gathered by the Village Head (Pak Lurah), Camat and the Bupati (District Officer). Due to this unsystematic land ownership and no clear boundary signs evidencing ownership and possession, it can lead to fraudulent claims by irresponsible parties. Normally this land boundary

issue and dispute is settled through the intervention of the politicians and the administrator – Bupati (who head Kabupaten (District) – Land District Officer), Camat or the governor. In other words, the settlement of boundary land disputes in Indonesia is through political approach, not legal. The local people do not resort to court's process as they worry they would suffer losses and could not get any benefit as there is no evidence of ownership and possession. Further, it is evident that legal and judicial system is unreliable as there are cases where judges and lawyers settle the cases through unofficial agreement outside of court unprofessionally. These information had been obtained from Nor Hazlan Abdul Mutalib (Abdul Mutalib, Personal Communication, March 10, 2016; Suritno & Silviana, Personal Communication, April 28, 2017).

The unclear ownership of lands, unclear boundary of lands and fraudulent claims over lands for development including for palm oil plantation ventures is also evident through an interview with Mr. Ahmad Lutfi Abdull Mutalip, being the Managing Partner of Messrs. Azmi & Associate, Kuala Lumpur on 31 January 2017 (Abdull Mutalip, Personal Communication, January 31, 2017; Riza, Personal Communication, April 25, 2017). According to Dr. Martin Roestamy of Djuanda University, Bogor, Indonesia (Roestamy, Personal Communication, April 25, 2015). There is an evidence showing that some Malaysian MNEs have crossed the Indonesia border to carry out palm oil plantation in Kalimantan. In other words, the MNEs had fraudulently changed the boundary limit in the bordering boundary line in Sarawak and Kalimantan. In the opinion of the authors this may be due to the unclear boundary line between Malaysian area and the Indonesia area, not because of any advertent intention to encroach Indonesia land for palm oil land procurement.

The above problems on land registration, land ownership, indefeasibility of title and land law are also admitted by Mr. Sofyan Djalil, being the Minister of Land and Spatial Planning Indonesia (Djalil, Personal Communication, May 12, 2017; Suritno & Silviana, Personal Communication, April 28, 2017). According to Mr. Sofyan Djalil, previously in Indonesia, just after independence, there was no law that governed the land boundary and ownership. In 1945, after the independence, there were less than 200 people having in possession of universities' degree. Before that, there were many Dutch managers but after independence, there were not allowed to live and work in Indonesia. The country was controlled by Indonesia people who had low level of education. The administration elite groups were good administrators but the problem was the ground administrators who lacked necessary skills and educations. Then there was a revolution in 1960s. The government was taken by Pak

Harto (the then President Suharto). Pak Harto administration was very effective but unfortunately he did not emphasize the importance of legal framework and legal governance. Until today administration in Indonesia is based on discretion of the administrators, not based only pure law. As a result, the law and its functions are unclear. This is the big challenge that Indonesians is facing. This issue is being worked out by the government. Sofyan Djalil believes that the administration of a government must first be initiated based on the concept of moral. According to him, in Indonesia there are no gazette reserve lands. This approach is new and it is still in the process of implementation in Indonesia. Nonetheless for agriculture lands, there is a law that prescribes the duration for lease example 25 years. After the expiry of 25 years, it may be renewed (Djalil, Personal Communication, May 12, 2017; Suritno & Silviana, Personal Communication, April 28, 2017).

According to Nasrul Hadi and Edy Rosmawanto of GAPKI, Jambi, disputes that are brought to the court (Pengadilan Negeri) are scarce. Many land disputes between the local people and the palm oil company operators are resolved through negotiation (musyawarah). The local people preferred to settle the disputes with the investors through negotiation attended by the local heads (bupati and camat) rather than bringing the disputes to court for settlement. This is due to the lack of evidences that can support their claims. On part of the investors they are not interested to go to court as this usually takes a long time to settle and that this may hinder their smooth investment activities on palm oil plantation. The disputes involve compensation to the land owners whose lands are affected by the palm oil plantation ventures and land procurement. According to Edy Rosmawanto, in respect of some scenarios, that have caused land conflicts in Indonesia are as follows:

“According to the first preliminary interim land investigation, a land was owned by A. Later, when it came for plantation operation and in the course of plantation, there is a new evidence that shows the land belonged to B, not A. This leads to a dispute. Surely, this dispute will be dealt with by the village head (Kepala Desa). However, the court decided that the palm oil investor won as there was a contract between the investor and A. Hence, B will not get any compensation.”

Sometimes the disputes are resolved through prevalent customary practices among the local people (adat)(Sumanto, 2018; Sopian, 2015). According to Ir. Saduddin this practice is a way to settle disputes arising from among the local people who practice certain customs (Saduddin, Personal Communication, January 17, 2017).

In addition to the above, the Ministry of Land and Spatial Planning may, if warranted, intervene to resolve the land disputes. According to Mr. Sofyan Djalil, the Ministry officers will become the mediators in resolving the land procurement issues. Usually the issues involve 'inti' and 'plasma' of the palm oil plantation. The issues vary. It may involve conflict among the native people and conflict between the city people and the agriculture people (Djalil, Personal Communication, May 12, 2017). An example of a salient example of severe bloody land procurement conflict in Indonesia involving palm oil plantation ventures is the current land procurement conflict in Kutai, Indonesia (Jacobson. 2015).

To overcome the above mentioned problems, apart from having competent legal teams from Indonesia and Malaysia in dealing with the problems in palm oil land procurement, Malaysian Multi-National Enterprises (MNEs), it is common for Sime Darby Plantation to get support from persons in power and the Indonesian armed force (TNI–Tentera Nasional Indonesia/ABRI–Angkatan Bersenjata Rakyat Indonesia) to stop the act of the irresponsible parties in Indonesia who attempt to physically destroy their new procured plantation estate lands. Nonetheless, in one occasion, they (Sime Darby Plantation) had to suffer a loss of one thousand (1,000) acres of palm oil trees and could not get compensation from the trespassers. According to Sime Darby Berhad, going to court to settle the issue was not helpful and not feasible due to the possible future constraints of relationship with the parties in Indonesia. Not even arbitration is a suitable option, as this may further cause damaging future relationship with the Indonesian authorities. Normally, Sime Darby Berhad will get assistance through Government to Government (G2G) way, apart from the abovementioned approach to deal with the problems (Ali, Personal Communication, February 4, 2017; Hassan, Personal Communication, April 25, 2017; Morel, Friedman, Tulloch, Caldecott, 2016).

3.3 Approaches to Deal With the Issues and Ensure Sustainability of Cross Border Palm Oil Plantation Ventures

Upon pondering the above issues and challenges that are faced by the Malaysian MNEs in cross border palm oil plantation ventures, the followings are vital points that the Malaysian MNEs should aware and adopt to ensure success and sustainability of their investment.

3.3.1 Create A Good And Favourable Political Connection With The President,

Governor, Bupati, Camat (District Officers) and The Indonesian Army

The above method is proven and effective to deal with the severe problems and caused further losses to the Malaysian MNEs. This was the views of the former Governor of Jambi (Hasan Basri), Assistant Bupati of Muarojambi (Kailani) dan Dato' Azmi Ali (Hasan Basri, Personal Communication, Julai 16, 2017; Ali, Personal Communication, February 4, 2017; Kailani, Personal Communication January 16, 2017).

3.3.2 Get Help Through APIMI (Association of Plantation Investors of Malaysia in Indonesia), Indonesia Malaysian Palm Oil Group (IMPOG) and Council of Producing Oil Palm Countries (CPOPC)

To lessen the problems of the Malaysian investors APIMI was established headed by Datuk Franki Anthony of Sime Darby Berhad. There was MOC (Memorandum of Cooperation) in 2009 in Kuala Lumpur, where the parties discussed on Round Table Sustainable Palm Oil (RSPO). The cooperation involved major players in palm oil plantation ventures such as Sarawak Oil Palm Owners Association (SOPOA), FELDA, Malaysian Palm Oil Authority (MPOA), Malaysian Palm Oil Board (MPOB), Malaysian Palm Oil Council (MPOC) and agriculture department of Indonesia, GAPKI and APKASINDO (Assosiasi Pekebun Kecil Indonesia). The purpose of this group is discuss and resolve any issues and disputes arising from palm oil land procurement in Indonesia by Malaysian investors in order to ensure that the investment and ventures in palm oil in Indonesia succeed and sustainable. (Abdul Mutalib, Personal Communication, March 10, 2016). IMPOG is an establishment composing of Indonesia and Malaysia Palm Oil operators signed by 5 parties, involving Tan Sri Bernard Dompok, Minister of Plantation Industries and Commodities, Malaysia. The purpose of IMPOG is to carry out joint collaboration on marketing, production, sharing information with Indonesia. Collaboration started since the last 5 years ago. This method of dispute resolution is also verified by Dr Dian Sukmajaya of ASEAN Secretariat (Sukmajaya, Personal Communication, March 10, 2016; Indonesia and Malaysia Palm Oil Group, n.d)

According to Mr. Sofyan Djalil, Malaysia and Indonesia have established and cooperated to form Council of Palm Oil Producing Countries (CPOPC). Both countries also have invited other countries in Africa and Asia to join this group. Among the purpose of this group is to face the challenges and issues raised by the European and the US against palm oil production by these countries for example on the issues of environment, land conflicts, land proprietorship, land procurement, human rights, child

labour, derogatory smear campaigns against palm oil, RSPO and wildlife preservation and protection (Djalil, Personal Communication, May 12, 2017).

Apart from the above platforms Malaysian MNEs may also seek help from Council of Palm Producing Countries (CPOPC) in resolving disputes on land procurement matters in Indonesia. CPOPC is an intergovernmental organization for palm oil producing countries. The Council was established on 21 November 2015, thanks to genuine awareness of the need of mutual cooperation among palm oil producing nations. Indonesia and Malaysia, the world's biggest palm oil producers, are the founding fathers of the Council as well as the current members. The two countries recognized significant contribution of palm oil sector in generating export revenue, raising the income level of rural small farmers, addressing poverty, creating employment and new business opportunities. As the two countries further accepted that palm oil is an important component of the global food supply chain, they recognize a few situations, primarily those relating to sustainable practices and trade impediments. Taking into account the given opportunities and challenges, the two countries desired to strengthen cooperation and collaboration by establishing the CPOPC. The Council is now inviting other palm oil producing countries from Africa, Central America and Asia-Pacific. The Council seeks to unite world's palm oil producers. The Council, furthermore, represents the priorities, interests, and aspirations of the palm oil nations as developing world (Council of Palm Oil Producing Countries, 2017).

3.3.3 Opt For Take Over, Merger And Acquisition Of Indonesian Palm Oil Companies.

Malaysian MNEs only need to take over or acquire and procure the existing Indonesian palm oil companies after they have operated the plantation for some time. Thus, Malaysian MNEs will not face the above land related problems that occurred at the initial stage of the palm oil plantation development and land procurement. This is the method used by many Malaysian MNEs for examples PT Minamas Gemilang Plantation at Jambi, Pecconina Baru - Riau, New Britain Palm Oil Ltd (NBPOL) in Papua New Guane by Sime Darby Plantation, acquisition of PT Eagle High Plantations Tbk (Kalimantan) by Felda Holdings, acquisition of PT Citra Niaga Perkasa, PT Temila Agro Abadi and PT Landak Bhakti Palma by Felda Global Venture Holdings Berhad in West Kalimantan, acquisition of PT Persada Kencana Prima by TH Planatation acquisition of PT Eagle High Plantations Tbk (Kalimantan) by Felda Holdings (Sime Darby Plantation, 2017; Reuters, 2014; FGV, n.d.; The Sun Daily, 2016; TH

Plantation Annual Report 2014, Cultivating Growth Annual Report, 2014; Abdul Mutalib, Personal Communication, March 10, 2016).

3.3.4 *Others include adequate funding, sufficient knowledge of the local law and hiring of local people and expertise to deal and ensure success of the cross border palm oil plantation ventures (Ali, Personal Communication, February 4, 2017).*

4. Conclusion

This paper shows that there are laws governing cross border palm oil land procurement in Indonesia. This paper proves that in carrying out palm oil plantation ventures and land procurement in Indonesia by Malaysian MNEs is not an easy task. The knowledge of land law, legal system and the Indonesian culture need to be comprehended by the palm oil investors. Apart from these, the MNEs must have sufficient funds to cover their costs and expenditure. Otherwise, the purported venture may fail and the MNEs will suffer losses. This paper discusses palm oil land procurement issues that are frequently faced by the Malaysian MNEs in implementing palm oil ventures in Indonesia. In the opinion of the authors, the most important issue that Malaysian MNEs should be aware is that land law system and registration in Indonesia is not systematic, and incoherent. This leads to the unclear boundary, lack of registration, uncertainty of ownership and finally corruption. The legal system and judicial stance also are unclear, particularly the laws, its application and the inadequate expertise of the judiciary in land law and its intricate issues in Indonesia. Thus, it is incumbent upon Malaysian MNEs who wish to undertake palm oil plantation ventures and land procurement to avoid problems arising from this aspect. Very often, good relationship and connection with the people in power for example the central and regional authority and the armed forces are needed to support and sustain their palm oil operation. Apart from these, the existence of APIMI, IMPOG and other round-table discussion and negotiation with the Indonesian authority and stakeholders will help Malaysian MNEs to resolve disputes and deal with problems in their undertaking business of palm oil plantation ventures and land procurement in Indonesia.

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