

Central and Provisional Authorities' Tussles In Cross Border Palm Oil Plantation Ventures in Indonesia: Experiences of Malaysian Multinational Enterprises (MNEs)

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Abstract—Conflict between the Central and Provincial Governments in Indonesia is one of the main hindrances for Malaysian MNEs implementing palm oil investment in Indonesia. This issue if not resolved can lead to the failure of the MNEs' investment and affect FDI flows. The objective of this paper is to discuss the issues arising from conflict between the Central and Provincial Governments in Indonesia faced by the Malaysian MNEs in Indonesia. This paper provides the approaches that have been taken to address the problems. Qualitative and legal research methodologies were used in this paper. From this writing, certain data can be generated to show the severity and gravity of the problems arising from land conflict in palm oil plantation ventures in Indonesia and the approaches that have been taken to deal with the problems. The findings of the research will benefit the Malaysian MNEs in its internationalization of palm oil plantation ventures.

Keywords—Cross Border Palm Oil Plantation Ventures, Malaysian Multinational Enterprises (MNEs), Indonesia, Conflict Between Central and Provincial Governments, Suggestions

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 Malaysian Multinational Enterprise (MNEs) involved in cross border palm oil plantation ventures they do face with hiccups and 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 practical approaches to help ease the threats relating to foreign direct investment (FDI) 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 practical 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 plantation ventures 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, 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 that intends to invest in Indonesia must comply with their law on environment 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 in so far as that legal proclamation requires (Wisnu., Heru., Krystof & Petrus, 2011). Thus apart from that, the code of conduct should also address land fraud, corruption, security and safety of the Malaysian MNEs in cross border palm oil plantation ventures in Indonesia.

2. Methodology

The authors utilized 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. While the authors use legal research methodology to examine the law and legal issues arising from the topic under study.

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 paper *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 on palm oil plantation ventures. The secondary legal literatures

included the available literature on palm oil from the internet sources, Universiti Utara Malaysia Library and Incorporated Society of Planters' Library (ISP) 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, demeanour, 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).

2.1.1 Research Questions

- a. What are the causes and issues of central and provincial governments' conflict in Indonesia in palm oil plantation investment undertaken 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?

2.1.2 Research Objectives

- a. To study the causes and issues of central and provincial governments' conflict in Indonesia in palm oil plantation investment undertaken by Malaysian MNE investors in Indonesia.
- b. To recommend approaches by the Malaysian MNE investors in Indonesia in dealing with the jurisdictional conflicts in palm oil plantation ventures in Indonesia.

3 Results and Discussion

The law of Indonesia can be divided into two (2). Firstly, the central law. Secondly, the provincial and local laws. The central law is governed by the authorities in Jakarta, while the provincial and local laws are managed by the authorities in the provinces and local authorities such as the Governor, Bupatis and Camats (District officers). Due to the separate laws there are issues of coordination between the central authority and the provincial/local

authority (N.H. Abdul Mutalib, personal communication March, 10, 2016; F. Hassan, personal communication, August 8, 2016).

According to the former Governor of Jambi, Hasan Basri, he said that usually the Malaysian investors will go directly to the provincial heads (the bupati) to process their investment applications for palm oil plantation for example to procure the principle permit (Ijin Prinsip) and other provincial permits. There are certain central policies from Jakarta that the provincial head must comply with but this is not mandatory. For instance, the investment condition from BKPM (Badan Koordinasi Penanaman Modal) that the Malaysian investors should only venture on an area of 10 hectares for palm oil plantation. Nonetheless, this may not be followed by the Bupatis. The non-compliance of this policy does not render any legal action be taken against the Bupatis concerned (H. Basri, personal communication, January 16, 2017). Hasan Basri said:

“Yes, the investors will directly liaise with the Bupatis. Normally, investors from Malaysia, will liaise directly with the district authorities. Sometimes the investors need to liaise directly with the provincial authority. The provincial authority will then request the Bupati Muara Jambi to process the application. This may involve application for principle permit...However there are limitations of the Bupatis’ powers. For example, if the power falls under the districts, then the districts will execute it. Likewise the situation in the provinces. Central administration in Jakarta only obtains reports from the districts and provinces”.

The above facts and issues are further extended and elaborated by Nor Hazlan Abdul Mutalib and supported by Dr. Fadhil Hassan and Mr Septianshah Q Riza (N.H. Abdul Mutalib, personal communication, March, 10, 2016; F. Hassan, personal communication, August 8, 2016; S.Q. Riza, personal communication, April 25, 2017; R. Lopulisa, personal communication, April 25, 2017). According to Nor Hazlan Abdul Mutalib:

“District autonomy involves the powers of the regional Governor or the district Bupati. **The Bupati is the one who has full control of the businesses and regulations in the district...While the Governors are the ones who control the region...So, Bupatis have the power to issue permits for businesses especially in plantation venture...That is why I always advise our Malaysian companies especially our GLCs who wish to invest in Indonesia not to associate themselves with the politicians. That’s very dangerous... Then, if there is a problem and that the Bupati is not in the same political party with Jokowi (the President), they (Malaysian investors) will be in a big trouble because they (the Bupatis) are the ones who have full control over the businesses in the district, they (the Bupatis) are the ones who give you the permits”** (emphasis added).

The above Nor Hazlan Abdul Mutalib’s statement was also supported by the former Governor of Jambi – Hasan Basri. Hasan Basri said:

“**The one who is having more power is the Bupati ...** That is what has been practised so far in Jambi. **The Bupati knows better on important matters and law governing palm oil plantation in the districts...This will involve issuance of principle permit”** (emphasis added).

Land conflicts between the local people and the palm oil operator investors in Indonesia will ensue if there are conflicts between the approval of the Bupatis (District Officer) and the approval of the Forestry Department. For an example in the case of Sime Darby Plantation, who operated palm oil plantation venture through its subsidiary - PT Minamas, in Jambi Sumatera had to suffer losses due to the act of local people who bulldozed one thousand (1,000) acres of their palm oil plantation land on the pre-text that the requisite approval from

certain authority was not obtained. According to Dr. Fadhil Hassan of Gabungan Pengusaha Kelapa Sawit Indonesia (GAPKI) the social and land conflict between the palm oil operators and the local people involve acts of deliberate sabotage. Examples of sabotaging acts are closure of roads leading into the estates, causing damage to the palm oil trees and theft of fresh fruit bunches (FFBs) in oil palm estates (F. Hassan, personal communication, August 8, 2016; Jambang & Ijang, 2016; S. Q. Riza, personal communication, personal communication, April 25, 2017). To the extreme the inequitable acquisition for plantation lands by corporate plantation operators connotes land grabs and conflicts that led to bloodsheds, death, severe injury, violent and protracted conflicts as happened in Mesugi, Lampung, Sumatera in 2011 (S. Djalil, personal communication, May 12th, 2017; Susan & Wahab, 2014). The conflicts and issues in Mesugi are still unsettled even until today. This is also the excerpt from an interview with Dr. Suritno and Ana Silviana of the Faculty of Law, University of Diponegoro, Semarang (Suritno & A. Silviana, personal communication, April 28, 2017):

“Dr. Suritno: However, according to my my friend’s dissertation, in Mesugi, the local people are still having a right over the land. Similarly the plantation operator does have a right over the land. The disagreement of their respective rights over the land is still unsettled until today.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Is the conflict still hot?

Dr. Suritno: yes, still.

Ana Silviana: **Yes, still hot. Even though the situation in Mesugi seems to be normal and quiet today, but the anger that can lead to ongoing conflict has not yet wiped out.**

Associate Professor Dr. Nuarrual Hilal Md Dahlan: the operator does not want to go to the ground, as they may be hit and injured by the anger local people

Dr. Suritno: Yes.

Ana Silviana: However, businesses on the ground still remain.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: The land on which the local people occupied cannot be used.

Dr. Suritno: Yes.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Are the local people still occupying the land?

Dr. Suritno: Yes. Still.”

Other examples of land conflicts involving palm oil plantation ventures are in Kutai and Pekan Baru, Sumatera involving people of Talang Mamak (Jacobson, 2015; Suritno & A. Silviana, personal communication, April 28, 2017; Potter, 2015).

Normally in dealing with land conflicts that can hinder the due development of palm oil planation, the Malaysian palm oil operators would consult with the authorities such as the politicians and the armed forces to settle the issue or reduce their losses, rather than commencing any legal actions in court – Pengadilan Negeri (A. Mohd Ali, personal communication, February 4, 2017; Nor H. Abdul Mutalib, personal communication, March, 10, 2016; Morel, Friedman, Tulloch & Calderott, 2016). According to the former Jambi Governor, Hasan Basri:

Hasan Basri: The role of Bupatis is big in settling disputes in land. This involves carrying out negotiation with the stakeholders, the investors and the land owners.

...

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Thus, the Bupatis and the Governors should be careful when dealing with this issue.

Hasan Basri: correct.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: If anything wrong in settling the disputes, the position of the Bupatis and the

Governors may be affected.

Hasan Basri: Correct. It should be borne in mind that, not all issues are due to the local people land owners. The investors are sometimes should be blamed for the disputes. They make the local people land owners looked stupid. For example in respect of unfair distribution, arrangement and implementation of the palm oil plantation to the local people land owners.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Are there frauds?

Hasan Basri: Fraud. The local people land owners have not yet get their promised benefits from the investors, but the lands have been controlled by the investors.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Thus, in this situation how to deal with this fraud issue?

Hasan Basri: The persons in power will deal with it. They will act as negotiator.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Have the issues been brought to court?

Hasan Basri: As of my knowledge, the land disputes are yet brought to court. Only involve negotiation. Normally the aggrieved land owners will complain to the persons in power. They organize demonstrations and then their claims/complains will be forwarded to the persons in power for settlement. This is the trend.

...

Associate Professor Dr. Nuarrual Hilal Md Dahlan: The persons in power will resolve it accordingly. Not through court.

Hasan Basri: Not through court. According to my experience, there is no land dispute brought to court.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Courts here

normally function as what?

Hasan Basri: Here the courts involve with criminal and civil cases. Civil cases mean cases that involve land encroachment (perang paksa tanah), land fraud (pemalsuan), even though land cases will include civil cases also. This is because the Indonesian society is not like Malaysian society. Generally their education is still low. Thus they do not want to involve in court.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: The settlement is more political?

Hasan Basri: Political. If the dispute were brought to court, it means both parties will suffer (kalah jadi abu menang jadi arang). Money still loss. Sometime, we who reported too will suffer monetary losses. Thus, a lot of tussle if the dispute were brought to court. Society will suffer. They will shout and organize demonstrations etc.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: Thus, the resolution of the major disputes will be disposed by the Bupati, Governor in humanistic way. By family settlement way. Involves consolation.

Hasan Basri: Correct. Because if we are to study in respect of law, they (the local persons) are weak. This is because the village lands do not have title grants and evidence of ownership. However, instinctually the ownership of land based on village stories is correct. Their forefathers did not rely on any legal foundation to prove land ownership. No documentation. This is complicated. Normally in villages ownership of land is dependent on local stories. Generally, this does not provide them with any responsibility and rights. Villages normally do not talk lies. They are seemed sincere.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: In Malaysia,

documentation is every important to prove land ownership. If there is no proof, no witnesses brought to court, the parties may lose. Further, the process of examining evidences is a long process and in depth” (emphasis added).

3.1 Approaches To Deal With The Issues And Ensure Sustainability Of Cross Border Palm Oil Plantation Ventures in Indonesia

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

3.1.1 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 (H. Basri, Personal Communcation, July 16, 2017; A. Ali, Personal Communication, February 4, 2017; Kailani, Personal Communication January 16, 2017).

3.1.2 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. There was a MOC (Memorandum of Cooperation) in 2009 in Kuala Lumpur, where the parties discussed on RSPO

(Roundtable on Sustainable Palm Oil). The cooperation involved major players in palm oil plantation ventures such as Sarawak Oil Palm Owners Association (SOPOA), FELDA, MPOA (Malaysian Palm Oil Association), MPOB (Malaysian Palm Oil Board), MPOC (Malaysian Palm Oil Council) and agriculture department of Indonesia, GAPKI, APKASINDO (Assosiasi Pekebun Kecil Indonesia). The purpose of this group is to ensure that the investment and ventures in palm oil in Indonesia succeed and sustainable. (Abdul Mutalib, Personal Communication, March 10, 2016). In addition there is IMPOG (Indonesia Malaysia Palm Oil Group) being 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, 2016).

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 proprietaryship, human rights, child labour, derogatory smear compaigns against palm oil, RSPO and wildlife preservation and protection (S. Djalil, Personal Communcation, 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 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 father 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 recognized 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).

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

Malaysian MNEs only need to take over or acquire 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. 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 Plantation 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; N.H. Abdul Mutalib, Personal Communication, March 10, 2016).

4. Conclusion

This paper shows that there are laws governing cross border palm oil plantation ventures in Indonesia. This paper proves that in carrying out palm oil plantation ventures in Indonesia by Malaysian MNEs is a big and serious 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 the issue of conflict between the provincial, district and central authority in Indonesia that lead to land 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 law system and land registration in Indonesia is not systematic, and incoherent. This leads to the unclear boundary, lack of registration, uncertainty of ownership and finally corruption. Thus, it is incumbent upon Malaysian MNEs who wish to undertake palm oil plantation ventures to avoid problems arising from this aspect. Very often, good relationship and connection with the people in power for example the 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 resolve disputes and deal with problems in their undertaking business of palm oil plantation ventures in Indonesia.

Acknowledgments

This paper is a result of a completed research entitled "Developing a Legal Guide Model for Cross Border Palm Oil Plantation Ventures: A Case Study of FELDA Global Ventures Holdings Berhad (FGV)", funded by the Fundamental Research Grant Scheme (FRGS) of the Ministry of Higher Education, Malaysia.

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