

# Politics Legal Protection Of Local Workers In The Acquisition Of Foreign Private Oil And Gas Companies By State Companies (Case Study: Muara Badak Pt. Pertamina Hulu Sanga-Sanga (PHSS))

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**Abstract:** PT. Pertamina (Persero) is again managing the Sanga-Sanga Block from Vico Indonesia (VICO), a United States oil company. The management of the Sanga Sanga Block in East Kalimantan was handed over by SKK Migas from Vico Indonesia (VICO) to a subsidiary of Pertamina (Persero), namely Pertamina Hulu Sanga Sanga (PHSS) starting August 7, 2017. The purpose of this research is to examine the political aspects of the legal protection of local workers in the field of employment for companies and to find out how the ideal concept of protecting local workers in the takeover of foreign private oil and gas companies by Pertamina. This study uses a sociolegal research approach which will focus on analyzing the theoretical and empirical nature of law and its relationship with society by linking various factors such as social, economic and political that influence the development of law and the legal process. The benefit of this research is to find out the legal politics of local workers in the takeover of the management of the oil and gas company PT. Vico Indonesia by Pertamina on the condition of the local workforce, and found issues related to employment which became a crucial issue as long as the Vico Indonesia company was in Muara Badak and every process of the transition period from the Vico Indonesia company to the state company, namely Pertamina.

**Keywords:** East Kalimantan, Labor, Sanga-Sanga Block, Law.

## INTRODUCTION

The management of the Sanga-Sanga Block will be carried out after the Vico Indonesia operator contract based on the *Production Sharing Contract* (PSC) ends on August 7, 2018. The handover of the Sanga-Sanga Block to PHSS will be followed by a process of settling rights and obligations, especially regarding the *clean and clear settlement agreement* finance, taxes, *over under lifting*, *inventory* and *capital assets*. In order to maintain the operational continuity of the Sanga-Sanga Block after August 7 2018, SKK Migas, Pertamina Hulu Sanga-Sanga and Vico Indonesia have finalized the *mirroring* of existing procurement contracts in the work area. The Sanga-Sanga Working Area has seven fields namely Badak, Rice, Lampake, Patchouli, Mutiara, Pamaguan and Semberah.

The company takeover process based on Law Number. 40 of 2007 concerning limited liability companies. Takeover is a legal action carried out by a legal entity or individual to take over company shares resulting in a change of control over the company. Law Number. 40 of 2007 Article 1 paragraph 11 Acquisition is a legal act carried out by a legal entity or individual to take over the shares of a company which results in the transfer of control over the company. Then further elaborated in Article 125 paragraph 1 the acquisition is carried out by taking shares that have been issued and/or will be issued by the Company through the Directors of the Company or directly from the shareholders. The Limited Liability Company Law allows for takeovers to be carried out directly from the shareholders and there is no obligation to draw up a takeover plan.

Even so, violations against workers still often occur which are carried out intentionally by the company, and the Manpower Office as the person in charge of supervising and investigating does not take too many judicial actions even

though it has been reported but does not carry out further investigations. The reasons for supervisors and investigators are that the Manpower Office is institutionally not supported by sufficient and capable human resources, a budget, and a wide scope of work, coupled with inadequate legal instruments, and political intervention by the Regional Head, as well as a conspiracy of supervisors/investigators with employers.

One of the most highlighted problems in the Muara Badak sub-district is the high unemployment rate. Regulations on the absorption of local workers are expected to be able to reduce unemployment and increase regional economic growth, reduce the poverty rate, which in turn increases people's welfare, especially in Muara Badak District. The phenomenon of the high number of workers from outside the region to East Kalimantan Province has an impact on Muara Badak District, the Regional Government should respond through policies to protect local workers in order to empower local workers and reduce unemployment. It is better if the East Kalimantan Provincial Government and DPRD must be firm in fighting for the fate of local workers, through Legislation in the form of Regional Regulations, so as to provide greater opportunities for local workers to be able to participate in obtaining and entering the job market.

The occurrence of rights violations and other injustices is an affirmation of the weak performance of labor inspectors/inspectors in Muara Badak. Even though empirically labor inspection has the task of guaranteeing law enforcement so that work relations can run proportionally and democratically. Social and political matters have continued to occur since the transition period and since it took place until now nothing has changed, PT. VicoIndonesia and Pertamina Hulu Sanga-Sanga only changed their names, there was no success in building aspects of employment and healthy behavior between the government and the company. It's always the level of workers and the community who are always at a disadvantage in policy making between the Government and Pertamina Hulu Sanga-Sanga, employees and those who are already working, even if they are local residents, always get injustice and uncertainty.

### **Formulation of the problem**

Based on the background description of the problem formulation as follows:

1. How is the legal politics of protecting local workers?
2. What is the ideal concept of protecting local workers?

### **Research purposes**

The purpose of this study is to examine the political aspects of the legal protection of local workers in the field of employment for companies and to find out how the ideal concept of protecting local workers is in the takeover of foreign private oil and gas companies by Pertamina. Based on the things described above, the research will focus on how appropriate legal protection and its effective application so that the protection of workers can run well. Finding issues related to manpower which are crucial issues both in terms of laws and regulations, which regulations are implemented, which regulations have not been implemented, and what must be done in the future or *das sein and sollen*.

### **Benefits of research**

The benefit of this research is to find out the legal politics of local workers in the takeover of the management of the oil and gas company PT. Vico Indonesia by Pertamina on the condition of the local workforce, and found issues related to employment which became a crucial issue as long as the Vico Indonesia company was in Muara Badak and every process of the transition period from the Vico Indonesia company to the state company, namely Pertamina.

Based on the things described above, the research will focus on how the ideal concept of proper legal protection and its effective application so that the protection of local workers in Muara Badak District can work well. Examine the concept and application of appropriate and fair law in the context of legal protection for workers and economic sustainability in Muara Badak.

## **LITERATURE REVIEW**

### **Theoretical basis**

Another connection between the Limited Liability Company Law and the Oil and Gas Law is regarding social and environmental responsibility, this is considering that the exploration and exploitation of oil and gas has social and environmental impacts. Arrangements regarding social and environmental responsibility in the Limited Liability Company Law are regulated in Article 74 which states that companies that carry out their business in the field of and/or related to natural resources are required to carry out social and environmental responsibilities.

The complexity of the problems in oil and gas mining activities requires a management policy that can accommodate various interests in society, including the interests of investors (contractors) who have invested in the oil and gas sector.

However, in the process of managing it, the interests of the state are the basis and priority of policies for managing the oil and gas sector in the future. This is in accordance with what is mandated in Article 33 of the 1945 Constitution.

From das sollen's point of view, law must be able to control and manipulate the development of society, including political life. Roscoe Pound with law as a tool of social engineering, it is natural that there is a desire to put law as a determinant of the direction of society's journey because with that the function of law to guarantee and protect the interests of society will become more relevant. But from realists like Von Savigny, law always developed according to the development of society. This means that the law, like it or not, becomes an independent variable over external circumstances, especially its political situation. Accommodate company or corporate complaints Employees, contractors, local communities, and other parties can express their concerns or complaints and pay attention to the interests of all elements or even provide input to the company/corporation that will be very useful for its progress and development. This will certainly greatly help companies to identify negative impacts and avoid escalating disputes.

Etymologically, legal politics is a translation into Indonesian from the term Dutch law, which is a combination of 2 (two) words, namely recht and politiek. In Indonesian, Recht is defined as law which comes from the Arabic "hukm" which means judgment, decree, order, government, power, punishment and others. Meanwhile, according to Muh. Mahfud. MD formulated that legal politics is a legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals.

### **Covenant Theory**

In a theory of agreement, basically the state has the right to impose punishment on a citizen who has promised collectively to obey the laws made by the state. What forms the basis of this agreement theory is the existence of community agreements held by them with others to form a state so that someone obeys the law because of attachment.

What often happens is that workers are forced to accept the contents of an agreement, be it a work agreement or other provisions, and when a worker feels aggrieved by the contents of the agreement, he has to bring his own matter to the authorities and there it will be processed in a long time and is complicated because Labor access is very limited and is always the victim. The Manpower Law and Kepmenakertrans KEP.100/MEN/VI/2004 concerning provisions for the implementation of work agreements for a certain time do not stipulate provisions for administrative, criminal or civil sanctions for companies that employ workers on a contractual basis in permanent jobs, as a result employers cannot enforced by labor inspectors, in the end the workers are always harmed even though they are often carried out according to the correct legal provisions. This action is an exploitation of workers, which doesn't just stop there, where parties from the company also often do not fulfill their responsibilities even though the employees have done a good job. Entrepreneurs should fulfill their obligations to workers but this is not the case, in fact Law Number. 2 of 2004 opens space for workers to submit complaints to the industrial relations court to obtain their rights, although this mechanism requires a long and tedious process.

Since the transition period from PT.Vico Indonesia to PT.Pertamina this was not implemented until now by the company, the promises of the community and workers' representatives were not kept to oversee the policies contained in the minutes of the transition team with the Pertamina company, making labor conditions worse and worse. apprehensive. It has become a habit that workers from Muara Badak will not get a profitable place or position because opportunities are always covered up and not conveyed to the outside, there is a habit that is being eliminated that job vacancies information should be provided both online and openly. well, for example the Regional Government, in this case the Sub-district, must be notified so that the Sub-District can either orally or in writing or by disseminating information in the form of leaflets that are displayed in public places in Muara Badak. Information on job vacancies for residents around Muara Badak is not open and it is always difficult if someone asks the company about this.

Labor relations can be seen here, there are those who control and those who are controlled, there are those who are harmed and there are those who benefit, which since the transition period from PT.Vico Indonesia to PT. Pertamina Hulu Sanga-Sanga is already in conflict and is becoming something that cannot be negotiated because it is stated in an agreement that is not immediately discussed in detail with the employees. When someone protests this, this will be used as a reference that should not interfere with production activities or company activities and is often considered an unlawful act because it leaves the system.

### **Justice Theory**

The principle of justice here relates to justice that should be done by employers in terms of giving compensation or rights for what has been done by a worker, fairness in choosing workers and also fairness can be seen from the point of view of workers who must carry out their obligations based on work agreements efficiently and honestly, does not make a difference in the recruitment of workers and does not disqualify local people from obtaining the right to work.

John Rawls in his book *Theory of Justice* argues that justice is the main virtue in social institutions, as is truth in a system of thought, and as the main policy of mankind, truth and justice cannot be contested. John Rawls is an adherent of the system of political liberalism. Political liberalism is a result of the construction of various political understandings. This construction is based on the observation that the political culture of a plural society is not only a combination of shared agreements on several basic beliefs, but is also colored by turmoil and conceptual contradictions. The state should be neutral. Neutrality becomes a benchmark for the state in carrying out its functions as a result of a social contract from the form of the original *position*. Every citizen must receive equal treatment from the state.

Involving local workers in work and providing special employment opportunities according to their abilities, the ability of local residents of Muara Badak to work is enough to guarantee that oil and gas companies in Muara Badak can run effectively by involving local people on a large scale without rejecting other experts from outside the estuary Rhinoceros with the requirements that have been met, this aims to increase the economy of the surrounding area and make it productive to manage areas that have good natural resource potential. This also creates security and peace in an area because if we look at it in everyday life as more local people work it will reduce unemployment and crime rates and make social activities as community development with local companies.

## **METHODS**

### **Research Approach**

This study uses a sociolegal research approach which will focus on analyzing the theoretical and empirical nature of law and its relationship with society by linking various factors such as social, economic and political that influence the development of law and the legal process. The reason why the author chose the sociolegal approach in this research is because this research will try to analyze in detail related to labor problems during the transition period of PT. Vico Indonesia to a state company, namely Pertamina Hulu Sanga-Sanga. Researchers will explore existing facts through a sociolegal approach, especially with field study method (field research).

### **Data source**

Primary data sources will be obtained from field studies (field research) through observations and interviews conducted, while secondary data sources will come from literature studies related to pre-existing data.

### **Data analysis**

Data analysis will be carried out qualitatively in order to describe the answers to the research questions which are:

#### **First Problem Formulation (RM 1)**

The results of the research will be used to discuss a number of matters that specifically focus on aspects of policy in terms of substance, structure, and culture of the local workforce in Muara Badak. Analyze the impact of the various problems that occurred during this transitional period.

#### **Second Problem Formulation (RM 2)**

The results of the research will be used to identify general descriptions and ideal concepts for government policies in efforts to protect local workers. Identify various possible policies, strategies and programs that can be made or implemented by the Government based on strategic concepts and principles of transformation. In addition, it is used to express the views of the parties in dealing with the various labor and natural resource fluctuations that have occurred in Muara Badak.

### **Location**

Muara Badak PT. Pertamina Hulu Sanga-Sanga (PHSS).

### **Time Allocation**

The research will be carried out for 6 (six) months with the stages of preparing research designs, research design seminars, data collection through field research (field research), data analysis, preparation of reports and publications.

## **RESULTS AND DISCUSSION**

### **Politics of Labor Protection Law**

Legal politics is an implementation policy that is fundamental in determining the direction, form and content of the law to be formed and what will be used as criteria for punishing something, according to legal expert Padmo Wahjono. Meanwhile, according to Rahardjo defines legal politics as the activity of choosing and the method to be used to achieve certain social and legal goals in society.

Labor is everyone who is able to do work to produce goods and/or services both to meet their own needs and for the community. Article 1 number 1 Law Number 13 of 2003 concerning Manpower What is meant by Employment is matters relating to the workforce before, during and after the working period.

Based on the provisions of Law Number 13 of 2003 concerning Manpower, Articles 5 and 6 Every worker has the same opportunity without discrimination to get a job. Every worker/laborer has the right to receive equal treatment without discrimination from employers, based on these provisions indicating that they do not specifically regulate local workers. The absence of special arrangements regarding local workers can be seen in Law Number 21 of 1999 concerning Ratification of ILO Convention No. 111 Concerning Discrimination In Respect Of Employment And Occupation (ILO Convention Concerning Discrimination in Employment and Occupation).

The division of labor in Muara Badak District is as follows:

1. The closest here are those belonging to the Muara Badak District area, who have an ID card for the Muara Badak area, Kutai Kartanegara Regency with educational level specifications consisting of several categories, high school, equivalent, and those who have completed university level education, be it bachelor, master, and so on and ready to work. For example, villagers in Muara Badak District,
2. Those outside the Muara Badak sub- district, or outside Kutai Regency Kartanegara and has an ID card outside Muara Badak , Kutai Kartanegara Regency with educational level specifications consisting of several categories, high school, equivalent, and those who have completed university level education, be it bachelor, master, and so on, and are ready to work. For example, from Samarinda, Balikpapan, and so on,
3. Those who are outside the district and province of East Kalimantan, and have KTP areas outside Muara Badak, Kutai Kartanegara Regency with specifications for educational levels consisting of several categories, high school, equivalent, and those who have completed university level education, be it S1, S2, and so on, and ready to work. For example from Jakarta, Bandung, and so on.

### **Ideal Concept of Local Workforce Protection**

Based on the results of the discussion that has been described, several conclusions that can be given are based on the results of the research concluded from the final recapitulation of the research respondents stating that the implementation of Regional Regulation Number 18 of 2013 concerning Placement of Local Workers was not carried out properly. The issuance of the Regional Regulation of Kutai Kartanegara Regency regarding Placement of Local Workers, because it saw the phenomenon of the development of the business world in Kutai Kartanegara Regency, but entrepreneurs did not optimize the local workforce, because there were no strong regulations to regulate it.

Obstacles to Regional Regulation Number 18 of 2013 concerning Placement of Local Workers are 60% and 30% for non-local workers, especially for companies that have just been established after the Regional Regulation was promulgated/validated. However, for companies that have been operating long before the regional regulation was enacted/enacted. Not only that, workers who have been employed from the start cannot simply be replaced, unless it is appropriate, such as entering retirement age, resigning or for other reasons. In such circumstances, then the company can recruit local workers at PT. Pertamina Hulu Sanga-Sanga In addition to the shortage of previously recruited workers.

Office of Social Affairs and Labor on the analysis of the factors that influence the implementation of Regional Regulation Number 18 of 2013 concerning Placement of Local Workers in Kutai Kartanegara Regency, namely companies in Kutai Kartanegara district, especially companies that do not know and understand the Policy of Regional Regulation Number 18 of 2013 concerning Placement of Local Workers in the Regency Kutai Kartanegara, it is necessary to socialize all companies and entrepreneurs operating in Kartanegara district by the local government, especially companies so that all parties can understand the meaning and meaning and purpose of the Regional Regulation.

There is a need for sanctions for entrepreneurs or companies domiciled in Kutai Kartanegara district who do not carry out what has been required in the Regional Regulation. The sanction can be in the form of revocation of permits for companies that do not want to employ local workers in their companies. The Office of Social Affairs and Labor is increasing the role and function of the Vocational Training Center in providing skills for local workers , especially for local workers in Muara Badak District in Kutai Kartanegara district, so that later they are able to compete in the labor market.

There needs to be good communication between the Kartanegara district Social and Labor Service, for example by holding meetings both held by the Kutai Kartanegara district Social and Labor Service and by employers, discussing and seeking solutions relating to the problem of recruitment and placement of workers local government so that good communication will establish good cooperation or coordination. The Office of Social Affairs and Manpower takes a strict policy for every company domiciled in Kutai Kartanegara Regency to comply with the Regional Regulations that have been made, and if they do not comply, the company will be subject to sanctions.

## CONCLUSION

Law Number. 23 of 2014 concerning Regional Government requires companies that are established in an area to comply with existing regulations in that area in order to participate in complying with the rule of law. Regional Regulation of Kutai Kartanegara Regency Number. 18 of 2013 concerning the Implementation of Manpower which regulates prioritizing the employment of local workers in companies. The Regional Government through the Office of Manpower and Transmigration has an important role in increasing the capacity of the local workforce in order to improve the quality and competence of the local workforce, but this has not been implemented properly.

Besides that, the company thinks that local workers do not have competence in working for the company because they do not have the experience that the company needs. There is no transparency regarding the recruitment of new workers so that outsiders from Muara Badak can easily work with administrative completeness facilitated by the government and companies. This certainly violates Regional Regulation Number 18 of 2013 concerning the Implementation and Protection of Local Workers. So that job opportunities for local residents disappear by itself.

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