

# Access Control Based Corporate Social Responsibility As A Model Of Plantation Land Dispute Resolution in East Java<sup>1</sup>

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## Abstract

In this [chapter](#) a new CSR model is introduced in land dispute resolution which involves disputes over plantation ownership between local companies and people. The model provides a reward grant and basic need facilities involving health and education has proven to solve the plantation land disputes in Malang and Blitar East Java province which called as CSR based on access control. In this paper a new CSR model is introduced in land dispute resolution which involves disputes over plantation ownership between local companies and people. The model provides a reward grant have been given to landless farmers for empowering their welfare instead of reclaiming of plantation land both in Malang and Blitar.

This chapter which is based on an [empirical](#) or field research on state and private plantation companies, proposes an Access Control Based CSR Model under a monitoring system to minimize the CSR abuse/manipulation in solving plantation land disputes. The strategy for plantation land dispute resolution by applying Access Control Based CSR Model cannot be generalized as applicable in each different case considering that the management system and risk of each plantation is different from one to another based on its situation and field condition.

Keywords: Land dispute, Plantation, Corporate Social Responsibility, Access Control

## 1. INTRODUCTION

Land dispute is classified as primeval case existing since the beginning of human civilization. In Indonesia this kind of dispute has been inherited among generations even before Indonesia gains its independence; especially land dispute\_which involves the state and people. Nowadays, the efforts to solve problems related to the land are not conducted comprehensively, completely, fairly, and to promote common people's welfare. Even effort that conducted tend to be partial and repressive; for instance, criminalization toward people in

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The writers would like to address their gratitude for consent given by .Achmad Sodiki to use research report data on plantation land case settlement in Blitar regency on 2001/2002 and PHB XV-1 FH-UB research team: Suhariningsih, Istislam, Dianawati, Mei, Beni Anang Prihantoro, and Ratrieka Yuliana to totally modify the article draft. The writer fully responsible on the writing and the writes use their personal perception. The writers email addresses are [imamkoeswahyono@gmail.com](mailto:imamkoeswahyono@gmail.com) and [fachrizal@ub.ac.id](mailto:fachrizal@ub.ac.id)

dispute with the state. In the last decade, there has been a rise in the number of disputes and conflicts which impacts not only the victims of the disputes in a financial or economic way but also the national, social and political stability. Furthermore casualties as seen in mass media like the case of Mesuji and PTPN Cintamanis in Lampung.

National [Land Agency \(NLA\)](#) notes that there are at least 7,491 land cases in Indonesia covering 7,491 hectares land area but only 1,778 cases have been resolved.<sup>3</sup> As comparison, Agrarian Reform Consortium (ARC) (*Konsorsium Pembaruan Agraria, KPA*) confirms that in 1970 to 2000 there are 1,753 land cases which cover 10,892.203 hectares and area and the highest number on the dispute is between farmers and private companies which is 833 cases; while only 966 cases (55.11%) have been resolved and 787 cases (44.89%) are unidentified/unfinished<sup>4</sup>. Meanwhile, the data from the Justice for the Poor Project on Conflict & Dispute Resolution in Indonesia, The World Bank 2011, show that there are approximately 78 reported cases with the highest resolution number in Sulawesi with 76 cases, and in NTB-NTT with 74 reported handled cases.<sup>5</sup>

Plantation companies as one of the parties in the dispute is not issues-free. For instance in East Java, the plantation business in the last fourteen years do not run properly due to the numerous problems that encounter in a daily basis such as stalled production, incompatible plants, low wages and even unpaid ones. Further, plantation issues at stake are the plantation land held by people, plantation land rented by those who hold the agreement on the holder of right to cultivate the land (*Hak Guna Usaha, HGU*), and complicated and massive dispute on land used for HGU which involves many sides. What makes it worse is minimal supervision from the local government (Istislam, 2000). On the other side, HGU holders e.g. State Owned Companies (PTPN XII) and Banaran Private Owned Company (on plantation) neglect their social responsibility to the community or people around the plantation<sup>6</sup>

Ever since the end of the New Order (*Orde Baru*) in 1997/1998, the coming events bring complicated implication either economically, socially, or judicially toward plantation companies due to systematic and massive reclaiming by the people. Data about land cases in East Java, obtained from the Agrarian Reform Consortium (ARC) database (2011), are presented in Table 1:

**Table 1. Land Dispute in 1970-2011 in East Java According to ARC (Bandung)**

No	Province	Number of Case	Land Dispute Area (Ha)	Number of Victim (Family)	Government	State Company	Private Company	Resolution in Record	Resolution Method
1	East Java	169	390,296	187,428	77	31	59	93 (55%)	85 (91,40%) ADR

Source: ARC Bandung in 'Toward Agrarian Reform in Indonesia' leaflet [2011], page 5-6 (data processed)

The data in Table 1. show that the number of cases related to lands owned by the state is the highest. This concerns 77 cases relating to the government and another 31 cases that relate to state plantation companies known as State Plantation Join-Stock Company

<sup>3</sup>Strategic Plan of National Land Agency 2012-2014

<sup>4</sup>KPA Menuju Pembaruan Agraria di Indonesia .4.

<sup>5</sup>Justice for The Poor Project Report (2011).17

<sup>6</sup>Achmad Sodiki et.al , *Research Report, Penyelesaian Sengketa Tanah Perkebunan (Plantation Land Dispute Solution)* (Parliament A Commission Special Committee Consultant, Unpublished Report, Parliament of Blitar Regency 2001/2002)

(*Perseroan Terbatas Perkebunan Negara*, PTPN XII). The number of cases concerning private companies is 59. PTPN XII covers nine plantation units in Ngawi, Kediri, Malang, Lumajang, Blitar, Jember, Pasuruan, Mojokerto, and Banyuwangi. Based on the data available, most of them show degradation on either land resource, legal status of the object, or financial economics as a result of reclaiming incident. PTPN XII area, in particular, only has 60% plantation land remains as a result of the reclaiming actions. Some other land case examples are those which happened in Gangsar Plantation (Blitar) with HGU decree No. 19/HGU/DA/1973 and No. 20/HGU/DA/1973 dated April 21, 1973 from Internal Affairs Minister, and when the HGU of PTPN XII ends on December 31, 1998. People filed demands for approximately 212 hectares of HGU land area to be redistributed; the fact is, the HGU is used as bank credit mortgage and the plantation workers wages have not been paid for probably five years.<sup>7</sup> There were also cocoa plantation cases in Malang regency and Sumbersekar Plantation cases in Kediri regency. Those plantation HGU management cases have characteristic similarities and differences. The similarities both of land plantation is occupied by reclaimer and lost their commodity in the other side. The difference is the plantation owned by state enterprise the other is owned by private enterprise. Until today (end 2012), there is no compatible legal assurance and justice solutions until today.

This chapter will propose a dispute resolution model for land disputes, especially concerning plantation land, and efforts to solve them conducted by stakeholders, including government, government-owned corporation, company, academia or researcher, through focusing on corporate social responsibility (CSR).

Formulating the model requires many approaches, not only from legal approach but also economy approach especially management, politics, social, cultural, and agricultural perspectives. This kind of approach is known as socio-legal approach. Meanwhile, if CSR is determined as solution for plantation land dispute; it means that the company has to conduct CSR appropriately.

Access Control based CSR is the combination of criminology concepts. Access Control concept is actually used in preventing crime, but the writer modifies the concept to prevent the abuse of CSR policy in the form of share of stocks either by the company or by the people in the plantation land dispute settlement itself. Access Control according to James L. Humphrey is draft concept which is used to lower the opportunity of crime to happen by removing the entrance to the crime target and creating a perception of high risk in committing crime to the intended target<sup>8</sup>

We have conducted empirical research and obtained information about land conflicts from the following data bases: Malang Legal Aid Agency Malang and Blitar Land Office, Legal Bureau PTPN XII Malang, key person of Association of South of Malang Farmers. We have analysed the information and made enquiries with the informant when information was not completely clear. The information obtained, we have categorised. We introduced the following categories: (i) Primary source through indepth interview with several respondents e.g. plantation company directors, head of land office, plantation workers and landless farmers leader, (ii) Secondary source e.g. legal source regarding land and plantation companies, (iii) Tertiary source e.g. news and comments from media regarding land conflicts in Malang and Blitar.

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<sup>7</sup> Suhariningsih *Studi Terhadap Proses Peralihan dan Pengelolaan HGU Kebun di Sumber urip, Kecamatan Doko, Kabupaten Blitar (Study on Transition and Management Process of HGU in Sumber urip, Doko District, Blitar Regency)*, (Unpublished report Faculty of Law Unibraw, Malang, 2005.)

<sup>8</sup> Muhammad Fauzan., *Penerapan Access Control Sebagai Salah Satu Strategi Pencegahan Kejahatan Situasional di Ladang Minyak Duri (the Application of Access Control as One of Strategies to Prevent Situational Crime in Duri Oil Plantation)*. (Criminology Journal of Indonesia Vol.7 No. May 1, 2010)

Furthermore in section 2, the authors will discuss/analyse the concept of CSR. In section 3, we will develop as alternative solution model, based on CSR, for land disputes.

## **2.Setting the Scene Regarding CORPORATE SOCIAL RESPONSIBILITY and Land RECLAIMING**

### **2.1. terminology concerning CSR: new laws in Indonesia**

Corporate Social Responsibility (CSR) is not merely a brand new formula to solve socio-economic and legal problems especially on plantation lands dispute. CSR was a movement promoted in North America and West Europe to change social work performance and multi-national corporation environment (TNC/MNC).

It has capitals in developing countries in the middle of 1990's<sup>9</sup> Regarding the definition, Kemp states that CSR:

*” also called corporate responsibility, corporate citizenship, responsible business and corporate social opportunity is a concept where by organizations consider the interests of society by taking responsibility for the impact of their activities on customers, suppliers, employees, shareholders, communities and other stakeholders, as well as the environment. This obligation is seen to extend beyond the statutory obligation to comply with legislation and sees organizations voluntarily taking further steps to improve the quality of life for employees and their families as well as for the local community and society at large (Melody Kemp,2001: 1).*

According to Suhandari M Putri which cited by Untung, CSR is defined as: “company or business world commitment to contribute in continuous economy development with concern on the company social responsibility and emphasize on the balance of economic, social, and environmental aspects”.<sup>10</sup> From the definitions above it can be concluded that the essence of CSR is a commitment of the economic sector intended to include in the decision-making process the interests of the other stakeholders, such as labor and the community in order to secure or enhance socio-economic life and also the continuity of the environmental capacity. Before the emergence of CSR notion, particularly in Indonesia, in the beginning of 1980's, the New Order government developed a partnership program<sup>11</sup> with major companies (the core), aiming to oblige them morally to provide financial assistance and support the management, production and even post-production of smaller family companies which are known as plasma companies. This method of partnering, which is similar with the business partnerships between regular companies will assist smaller companies to become one day self sufficient

This partnership pattern is similar to business partnership between two or more companies in giving or assisting, so hopefully one day the assisted company can be self sufficient.

In Indonesia, the existence and relevance of CSR is stronger since it has been clearly stated in the Joint-Stock Company Law No. 40 of 2007, in article 74 subsection 1. This provision states that a Company which runs in field or related to natural resources must conduct social and environmental responsibility. Social and environmental responsibility as defined in article 1 subsection 3 of the Law No. 40 of 2007 concerns the company commitment to take a role in the continuous economy development in order to boost beneficial environment and life quality, either for the company, the community, and even for

<sup>9</sup> Melody Kemp., Corporate Social Responsibility in Indonesia Quixotic Dream or Confident Expectation?. Technology, Business and Society Paper No.6, December, 2001., United Nations Research Institute for Social Development, Geneva. v-vi and 1-5).

<sup>10</sup> Hendrik Budi Untung. *Corporate Social Responsibility* (First Edition, Sinar Grafika, Jakarta ,2008). 1

<sup>11</sup> Ibid 3

people in general. Article 74 subsections 2, 3, and 4, state that CSR is “budgeted and accounted as company expense which its implementation is conducted by considering appropriateness and fairness”.

Another regulation which also mentions CSR, is Law No. 25 of 2007 on Capital Investment. Article 15 (b) states that “every investor is obliged to conduct corporate social responsibility.” This Act regulates detailed sanctions for cooperation or individual business which neglect CSR (Article 34). Such as administrative penalties. Even more specific regulation can be found in Law No. 19 of 2003 on State-Owned Enterprise (SOE). This law is explained further by SOE State Minister Regulation No.:Per-05/MBU/2007 which specifies the CSR counterpart fund up to its implementation. It is known that CSR is Partnership and Community Development Program (PCDP) (*Program Kemitraan dan Bina Lingkungan, PKBL*) requirements for SOEs have been interpreted as the development of partnership and community programs. This interpretation can be found in the SOEs law which states that apart from merely collecting profits SOEs must actively guide weak entrepreneurs. The Law also explains that PCDP funding source comes from 2 percent maximum of the company net profit allocation which can be used for either the Partnership or the Community Development program.

An important remark is that SOEs have a very strategic position in the national economy. As business units /business entities particular in the form of limited liability companies with shares fall within the scope of the Law 40/2007 about Limited Liability Companies. However as business entities owned by the state they also obey to the Law 19/2003 about SOEs. Consequently, in its relation to the PCD compliance as required in Law No.19 of 2003 and the responsibility in the application of CSR as stated in Law No. 40 of 2007, it can be concluded that:

The application of PCDP in SOE is regulated in Article 2 and 88 of Law No. 19 of 2003 about SOE as follows:

Article 2 Subsection (1) letter e

*one of the means and purposes of the establishment of SOE is to actively provide guidance and support for the small economy businessmen, KOPERASI, and the community*

Article 88 Subsection (1)

*SOE can set aside partially its net profit for the sake of the nurture of small scale business/ KOPERASI and also for the community around SOE.*

Article 88 Subsection (2)

*Further regulation on the allocation and use of the profit as mentioned on Subsection (1) shall be regulated by the Ministerial Decree.*

Furthermore, on Subsection 5 on Article 1 Law No. 19 of 2003 states that “Minister is the one chosen and/or given the power of authority to represent the government as the State stock holder in Persero (the company is majority owned by the government) and capital owner in Perum (the public company which capital isn’t divided in shares and the entire capital belongs to the state.) under the regulation of the Law.

In conclusion, the implementation of PKBL regulated by the SOE State Minister in the regulation No.:Per-05/MBU/2007 on PKBL is in related to the status of the SOE State Minister as stock holder in SOE.

However, in practice the weakness of this coaching system is in keeping the coaching system continuity, also moral and professional responsibility that the fund given is not a grant but more as stimulus which can be accounted transparently either financially or legally.



What happens from the culture side in relation to the men's mentality is that most money provided as stimulus is considered as grant which later cannot be accounted<sup>12</sup>. The real condition shown by the experience of some people emphasized with the analysis on those who are mentally unprepared to receive numerous amount of money, the lack of socialization on what is actually expected from CSR program, and deviations conducted by CSR executor result in the basic aim of CSR program cannot be achieved yet.<sup>13</sup>

### 2.1. Failures in Land Reclaim Programmes

In this chapter will discuss the failures in land reclaim which had been happen in Indonesia after 1998 which called reformation era's when a massive movement of landless farmers occupied more than a half plantation land areas. Landless farmers were claim that they have rights on plantation land since it belongs to their ancestors without legal evidence e.g. certificate of land. Furthermore, based on several findings of empirical research prove that after they got their land by reclaim power, they have been still poor and finally they sold their land to the landlords.<sup>14</sup>

According to Boedhi Wijardjo and Herlambang Perdana reclaiming is "*resistance acts conducted by oppressed people to gain back their rights fairly*".<sup>15</sup> As planned/systematic and rough mass act, reclaiming brings impact which hardly shakes social, politic, economy and legal foundations of people in Indonesia, especially in East Java.

As a movement, reclaiming has a justification basis on e.g.:

- a. Morality reason that people's behavior can be considered good-bad, right-wrong, correct-incorrect so people can move forward to solve realistic problem. Reclaiming refers to dialectic thinking since colonial period until today. The government stating as an excuse 'in the public interest' immorally takes over people's land.
- b. Injustice and oppressive system reasons, which are also based on historical fact that since the colonial period that extreme disparity on control and tenurial system over natural resources which includes land have occurred. Furthermore, there is disparity in fulfilling economic, social, and cultural rights which intentionally created and preserved by corrupt and authoritarian/repressive political regime.
- c. Normative reason (constitutional juridical) refers to constitutional basis which is Article 33 Subsection (3) of Constitution of Indonesia (UD 1945) that in constitutional political practice, it is proven that the country has been failed to carry people's mandate and also People's Consultative Assembly (Majelis Permusyawaratan Rakyat) (MPR) failure in carrying people's mandate according to Article 1 Subsection (2) of Constitution of Indonesia<sup>16</sup>.

<sup>12</sup> According to Koentjaraningrat, there are three weakness in Indonesia mentality, i.e. shortcut irresponsible, and more talk and less work mentality in Koentjaraningrat., *Kebudayaan, Mentalitet dan Pembangunan*, (Gramedia Jakarta 1974), 1-12

<sup>13</sup> Imam Koeswahyono and Widodo Dwi Putro., *Access to Justice of The Landless Farmers A Case Study of State Owned and Private Owned Plantation Company in Malang and Jember*, (Unpublished Report, BAPPENAS and van Vollenhoven Institute Leiden law School, Jakarta 2010/2011) 3-12

<sup>14</sup> Imam Koeswahyono., *Konflik Agraria di Jawa Timur dan Kemanfaatannya Untuk Pembelajaran Socio-Legal di Fakultas Hukum* (Journal of Legal Issues Volume 36 No.3 July-September, 2007 Faculty of Law Universitas Diponegoro, Semarang)

<sup>15</sup> Boedhi Wijardjo and Herlambang Perdana (Editor)., *Reclaiming dan Kedaulatan Rakyat* (First Edition, Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) and RACA Institute, Jakarta 2001) 37

<sup>16</sup> Compare to the perception of Satjipto Rahardjo (2008) "that Indonesia is supposed to be an Indonesian legal country, a country which is able to felicitate its people, down to its habitat, tradition, values, cosmology, and also Indonesian modern ideals. In that sense, reading Constitution of Indonesia is not like reading regular text, but meaningful reading the moral of the written Constitution. So that the commitment to build the men is done by development from within)" Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (First Edition, Genta Press, Yogyakarta 2008) 100-107

- d. Historical relation and local values reason, that the historical relation between those who perform reclaiming and the reclaiming object is physical and no-physical relation. People who perform reclaiming have been working on the land for long period of time, in fact since the colonial period.
- e. State responsibility reason in fulfilling people's basic needs by referring to the preamble of Constitution of Indonesia. The state is fail to fulfill its obligation which causes structural impoverishment process in large-scale either politically, economically, and socio-culturally<sup>17</sup>

The collapse of the New order in May 1998, the unilateral land reform and the demand of the reclaiming movement for a redistribution of the existing land resulted in a contra productive impact. The question was how the negative impacts of the land reformation could be managed especially those who involve new landlords and disputes of horizontal ownership.

The question is how negative incident post the fulfillment of the reclaiming demand can happen; that is new landlords and horizontal dispute. It seems that hope on prosperity imagined by the reclaiming group will not be fulfilled because of the stagnant and even decreasing social-economic condition<sup>18</sup>. Two of the aforementioned examples are probably just partial evidence to prove that the fight between the supporters of the redistribution claims against their opponents concerns their disputes on the different kind of land, its physical condition and the land cultivation techniques.

The loss of opportunity and inability to cover production cost result in the land right holder to give up and give away the right to a land owner with capital. In the end, the ex-plantation land is owned only by some people who eventually become the new landlords.

Field research conducted by Akatiga team in Keprasan hamlet, Gendis village, Ngrekoso district, Blitar regency on HGU dispute between people and NV Gunung Keloed reveals land reform program according to Agrarian Law failure. 75% of the occupied lands are leased by people in conflict to other people. It means, the real purpose of land reform that farmer can get and cultivate the land are not fulfilled.<sup>19</sup> Furthermore, based on Imam Koeswahyono, 2010/2011 et.al research prove that in Pancursari plantation which status is de jure under PTPN XII have collapsed since the land occupied by reclaimers although they have been still poor.

A progressive legal perspective reframes the fact that reclaiming is indeed intended to change the fortune of farmers with no land and farm workers; however, the impact triggers new horizontal disputes. So the truth is the judicial aim to optimally felicitate as many as people as possible cannot be fulfilled. Latent social shock weakens the purpose of land to be intended for the sake of the farmers' prosperity and the farmer's welfare cannot be fulfilled. If there is anyone to gain the benefit, it would be only some of the land lords or brands used in the process of the farmers' fight. The authors want to emphasize that progressive legal perspective perceives welfare to consider as much men as possible; which means if reclaiming action also results in plantation business sector failure through the loss of land, mass layoffs, national income from plantation export commodity decreases which lead to the

<sup>17</sup> Boedhi and Herlambang., *Reklaiming dan Kedaulatan Rakyat* (n.15) 40-72

<sup>18</sup> Specifically, check KOMPAS newspaper on global recession caused by the collapse of stock market in the US because of Lehman Brothers case on September 15, 2008 page 1, KOMPAS December 11, 2008 page 1, TEMPO November 17, 2008 page A12-13 which showing Justin Wood's prediction of Indonesian economic growth is only 3.7% and according to A Tony Prasetiantono is 5-5.5% that shows the fact that Indonesian economic growth needs serious concern, even in South East Asia region. As an example, in 2009 there was 20,000 layoffs of manufacture industry labor in DKI.

<sup>19</sup> Pinky Chrisantini. , *Berawal Dari Tanah, Melihat Kedalam Aksi Pendudukan Tanah*, (First Edition, Yayasan Akatiga, Bandung ,2007)\_129-140

failure of the economy of the nation to increase degree of life and people's life, isn't it necessary to find a better solution?

### 3. CORPORATE SOCIAL RESPONSIBILITY MODEL IN PLANTATION LAND DISPUTE RESOLUTION IN EAST JAVA

The close political variable connection especially in the direct election of head of the local government as a result of the application of Law No. 22 of 1999 as it is later changed by Law No. 32 of 2004 about the Local Government where direct election makes land issue is wrongly used by the contestants to gain their constituent support while the land itself actually has its legal de facto and de jure rights<sup>20</sup>. The strong political variable in land dispute in East Java, especially in Malang, following the euphoria of reformation period leads to the implication of the stalled complete and fair solution process.

The data from PTPN XII (one of SOE of plantation's industry) shows source and the realization of the using of PCDP fund between 1998 until the third three-month period in 2008 in total which can be seen in Table 2:

**Table 2. The Realization of PCDP fund by PTPN XII in East Java from 1998 – the 3<sup>rd</sup> three-monthly period in 2008 and December 2012**

No.	Year	Cumulative	Realization of SOECare (BUMN Peduli)
1.	1998	Rp. 496,800,000	Rp.100,000,000,-
2.	1999	Rp.706,000,000	Rp.600,000,000,-
3.	2000	Rp.995,092,000	The Allocation from SOE Care in the Beginning of the Year: Rp.326,069,368
4.	2001	Rp.540,969,492	On the Current Year Rp.540,845,784
5.	2002	Rp.417,501,000	<b>Note:</b> PCDP's fund from 1998 to 2007 is taken from the company's profit allocation but since 2010 up to now approaching to Rp.6 billion.
6.	2003	Rp.404,176,000	
7.	2004	Rp.805,262,921	
8.	2005	Rp.1,028,864,700	
9.	2006	Rp.1,501,249,146	
10.	2007	Rp.2,068,091,000	

Source: Report on Source and Realization of the Use of Community Development Fund PTPN XII (data processed)

<sup>20</sup>According to the Director of PT.Benar Merangkak plantation in Blitar regency on the solution related to plantation land dispute is conducted by giving 2.5% of the company profit on certain season as reward (interview on October 21, 2002 di the director room of PT. BM in Blitar). However, according to the Head of Section of Land Dispute Settlement of Malang regency and the head of Pancuranair plantation in Malang regency, land dispute in Malang regency is considered as difficult case to solve because of the strong interest and argument of each stakeholder. Land issue is used as practical political interest, by neglecting wider social interest e.g. local election (Pilkada) and village level election (Pilkades) (deep interview on 17<sup>th</sup> and 21<sup>st</sup> of October, 2008). Critical study on the application of PCDP can be seen in Bahrul Ilmi Yakup's article in KOMPAS July 31, 2012 page 7 "Mengapa Rakyat Merusak Aset BUMN Perkebunan" (Why People Destroy SOE Plantation Asset). This article shows offer on managing plantation's SOE dispute with the locals by maximizing PKBL fund managed by the SOE Minister Regulation No.05/MBU/2007 because PKBL coverage is larger than CSR. PKBL is intended to manifest the main pillars of development proclaimed by the government: 1. reducing unemployment rate, 2. reducing the number of poor people, 3. boosting economy growth.



The explanation concerning Table 2 gives a description that the implementation of PCDP as mandated by SOE State Minister Regulation No.Per-05/MBU/2007 on SOE Partnership Program with Small Scale Industry and Community Development Article 9 Subsections (1) up to (6) and Article 11 Subsections (1) and (2) require SOE to partially set aside the company's profit on the current year as much as 20% to be given to people in need. The next question will be those who are supposedly receiving the PCDP fund flow, as it is mentioned that PCDP fund will be given to those who really need it and meet the requirement specified by the company hand in the fund. The receiver of PCDP are the poor community surrounding company, landless farmers, rural small scale koperasi which selected by company itself. The essential aim of PCDP distribution is empowering the people not as charity because charity has no mean to educate the people but make them to be dependable to the company giving away the fund.

The party from the Land Office of Malang regency states that CSR model which illustrated below is supposed to be used as one model of HGU plantation dispute solution. According to S, the Section Head of Dispute Settlement in Land Office of Malang regency "what is crucial in HGU plantation is the dispute between the plantation companies with people around the plantation." People around the plantation use various kinds of reasons to take over the HGU land managed by the plantation either privately or under SOE (PTPN XII). CSR cannot be conducted toward plantations in dispute. For that reason, the solution is to choose one from the two options i.e. giving away the land in dispute to the people (land redistribution) or the land remains to be kept by the HGU holder but CSR is performed based on the ideal CSR which can increase people's welfare.

PTPN XII actually has performed CSR but in different name. Before the reformation era, it was known as Corporate Social Responsibility (CSR). Since 2000 CSR became 'PCDP' or known in Indonesian as PKBL. The amount of PCDP depends to the profit of the company. Details on the value of PCDP can be seen in the appendix of this article. In 2007 the allocation of PCDP is 2% for Partnership and 3% for Community Development and rest is for conflict resolution budget.

The determination of PCDP in PTPN XII basically is the result of debate (bargaining) in Shareholders General Meeting (*Rapat Umum Pemegang Saham, RUPS*). Even though it has guidance; the truth shows that the fund is determined by the Boards of Directors and Board of Commissioners.

PTPN XII supervises 14 plantations in East Java, some of them are Airmancur plantation in Malang regency, Kertosono plantation in Lumajang, Sirahkencong plantation in Blitar, Sumbergendu plantation in Kediri, Kalidawir plantation in Malang regency, Banaspati plantation in Malang regency, Wonokitri plantation in Malang regency, and Malangbong plantation in Banyuwangi.

In its relation to CSR or PCDP, PTPN XII creates some programs, from livestock procuring and rearing rolling system assistance program up to road and mosque construction and scholarship program. PTPN XII until today still operates PCDP by involving all of plantations in its area. A concrete example of the road construction program is when people around the plantation plan for road construction and propose for the plan through PCDP, the proposal will be discussed internally by PTPN XII and if the proposal is considered to be feasible then the proposal will be granted.

PTPN XII has been running CSR well and it is an obligation not a charity or philanthropy<sup>21</sup>. This is based on SOE Minister Regulation No KEP-236/MBU/2003. CSR fund is taken from the profit percentage, in that so the value of CSR every year is different for it depends on the profit gain by the company. CSR fund allocation details are as followed:

- 3% profit allocation is intended for Community Development ( as grant → no returned fund)
- 2.5% profit allocation is used for Partnership program (as soft loan for people around the plantation who need it. When the credit is repaid, the remaining fund will be added in CSR Partnership cumulative fund so that every year more people can receive the CSR fund).

The intended recipients of CSR fund (based on category created by PTPN XII) are:

- Freelance or part-time worker
- People outside the plantation in the radius of 30 km, especially small scale businessmen like craftsmen, merchant, or live stock raiser

In reality, there are plenty of CSR fund receivers for Partnership programs who do not use the fund like what it is stated in the proposal to PTPN XII. For instance, the fund is used for consumptive activity such as getting motor vehicle which then stalls the fund rolling system.

Furthermore, CSR model on private plantation company basically is similar to the one from PTPN XII SOE. CSR has been conducted by the private plantations for quite a long time. Gangsar plantation in Blitar provides facilitation for its worker such as mosque, road, crops planting between HGU plots, and many more.

Based on Law 40/2007 about Limited Liability Companies, the Private Plantation Company has its own system which is known as Reclassification System to fulfill CSR. The categories are as followed:

- Plantation Class I: obligated to conduct CSR
- Plantation Class II: obligated to conduct CSR
- Plantation Class III: unobligated to conduct CSR

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<sup>21</sup> Compare this with HGU development which in the end the land will be taken by the people and conducted in some ways, which are:

1. Approach based on the end of the period of HGU Pattern I 100% shares of HGU Koperasi – 2020 manages the renewal phase for 75-85 years, Pattern II 65% shares of Koperasi which manage the extension phase for 50-60 years, Pattern III 20% shares of Koperasi manages new HGU for 25-35 years
2. The approach based on plantation class I and II follows pattern III, plantation class II follows pattern II with 65% shares of Koperasi (Cooperatve/union), and class IV and V follows pattern I with 100% shares of Koperasi
3. The approach on >80% land utilization follows pattern III, 50-79% land utilization follows pattern II, and 50% land utilization follows pattern I
4. Optimalization on private land HGU utilization <25 ha through coaching
5. The establishment of joint secretariat according to the Head of NAB Regulation No.211-VIII-2000 dated June 28 ,2000, monitoring
6. The establishment of investment team according to Dirjen Bun Regulation No.349/VII-DIR/2000 dated June 8, 2000
7. President Director of PTPN hearing with Commission III People's Representative Council
8. National Workshop on Plantation: To Build the 21<sup>st</sup> Century Plantation (Agus Pakpahan,2000: 26-30)

- Plantation Class IV and V: almost bankrupt company (compare to Agus Pakpahan<sup>22</sup>, 2000: 26-27)

Referring to the reclassification system, it means only Plantation Class I and II which are able and obligated to conduct CSR. In reality, every private plantation has different issues like giving some money or give a part of their commodity e.g. cloves, coffee, corn, paddy to the landless farmers and each tries to find its own solution which is lead to CSR.

The problem which will arise later is the category of people intended by CSR is unclear because every plantation company and people around it has different starting point or perspective. Furthermore, what is needed to be promoted is interaction between the company and the people through people's empowerment for those in 30 km radius for Class I private plantation. In this way, positive mutual interaction between private company and the people around the plantation to fulfill CSR can be accomplished. The standard value of CSR is not determined in private plantation, but the standard relies more on the reclassification system itself. CSR fund is usually taken from the profit of the company.

From the people's side, people around Ngadilangkung plantation in Kediri regency for instance, deplore the failure of the plantation company in running its business. When the plantation was still active or productive, Ngancar Plantation Company gave some supports to people around the plantation, either to those who work in the plantation or not. The support is shown through the building of mosque and the village hall. In 2010 Ngadilangkung plantation is bankrupt and no longer able to give anything to people around the plantation since they hadn't been funds. It's funds became null after stake their workers who worked without anything to do since they lost their land because of reclaiming movement. However, people still can use some vacant area for sporting activity such as soccer field which is used by the youth who live around the plantation.

People around Wonokitri plantation also confirm that they receive supports from Wonokitri plantation in Konten district. The supports include cattle provision such as cow and goat, capital loan, and road construction. People around the plantation never ask for

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<sup>22</sup> Agus Pakpahan study shows that to manage plantation for people welfare there is a concept named *To Build the 21<sup>st</sup> Century Plantation: Turning Back the Historical Current and Wave* which vision is to "manifest efficient, productive, and with high competitiveness plantation for the sake of maximum welfare of people fairly and continuously through optimal and continuous resource management." The operational of the vision can be described as programs below:

- a. Farmer must be the main agent in on-farm business by increasing its capability/ business scale;
- b. Giving high incentive to plantation businessmen who continuously improve the technology or management used;
- c. Giving incentive to plantation business which develop the knowledge, technology, and human resources quality
- d. Developing financial institution specifically to support plantation business;
- e. Developing marketing institution as media of plantation commodity market development;
- f. Completing acts and regulations which are able to support investment in plantation;
- g. Developing the infrastructure
- h. Increasing people's pride toward plantation domestic goods;
- i. Consistently applying industrialization politics which based on agro industry and agribusiness development (Agus Pakpahan, 2000: 17-20).

The researcher critic: plantation industry development must be maintain through legal mainframe which also followed by consistent law enforcement so there will not be people's land take over without compensation or low compensation. A side from that, careless plantation commodity development without obeying Act No. 26 of 2007 on Spatial Planning especially the Regional Landscaping Plan, Lot Landscaping (Government Regulation No. 16 of 2004), and Law No. 41 of 1999 on Forestry must be prevented. Study conducted by some NGOs on plantation industry development either in Java and out of Java results in deforestation and extreme environment degradation; a quoted in Rimbo Gunawan et.al., 1998., *Industrialisasi Kehutanan dan Dampaknya Terhadap Masyarakat Adat, Kasus Kalimantan Timur (Forestry Industry and the Result to the Indigenous People, East Kalimantan Case)*. First Edition, Yayasan Akatiga, Bandung, pl.19-73.

more. The people are very loyal to the plantation company because they are aware that the company has given so much for them.

The same condition can also be seen in people around Gangsar plantation in Blitar who are also very loyal to the company. The people are the plantation workers who work together so that the plantation can rise again. People do not ask anything beyond the company's feasibility of being the plantation worker. They only need permanent income by working in the plantation company and the company takes a good care of them by providing facilities that can increase their income. People are permitted to plant crops between HGU plots, and they can use the crops to support their daily life. The conclusion of these section is the CSR program of different company and different situation depend on empirical situation, capability of each plantation company, characteristics of farmer community in those areas.

#### **4. ALTERNATIVE MODEL OF ACCESS CONTROL BASED CORPORATE SOCIAL RESPONSIBILITY IN THE FORM OF SHARES OF STOCK**

Formulating the model requires many approaches, not only from legal approach but also economy approach especially management, politics, social, cultural, and agricultural perspectives. This kind of approach is known as socio-legal approach. Meanwhile, if CSR is determined as solution for plantation land dispute; it means that the company has to conduct CSR appropriately.

Furthermore, CSR concept in the form of shares of stock cannot be taken as part of CSR if it is only narrowly seen as social responsibility of the company in the form of profit share, while economically there is a distinction on the concept of profit and share. However, the writers think that in settling plantation land dispute which involves the company and the people, progressive effort from all of the sides is needed so that the dispute will not getting more and more complicated. The assurance on profit acceptance with economy value as the replacement on the people's rights over the land in the form of CSR in narrow meaning refers to the reward only makes the people's status to be fragile. It is different from when CSR is given broader meaning as the company's responsibility to make sure there is profit by putting those who are in dispute to work together with the company as share holders. This kind of CSR definitely has to be performed under a close supervision where the writers choose the Access Control concept to prevent the abuse

Technically, the share of stocks, especially for private plantation company is quite easy; it is carried out by offering some stocks to people who have land conflict with company directly as compensation on the plantation land dispute. However, for state owned plantation company there are some additional rules which require careful attention and willingness from the Directors to stay out of the dispute and maintain working on the Plantation HGU together with the people in the form of share of stocks. Article 1 Subsection (2) of Law No. 19 of 2003 on SOE providing opportunity for the people to obtain the stocks is also known as privatization. However, SOE share of stocks is not easy. Article 79 Subsection (2) Law No. 19 of 2003 on SOE states that privatization including partial privatization must involve committee which consists of the President and SOE State Minister and its ranks. Its also for partial privatisation. Progressive and good willing of the government to solve the plantation land dispute is needed to solve the problem as soon as possible with CSR strategy in the form of share of stocks

Access Control based CSR strategy in the form of share of stocks can be classified into three, organized, mechanical and natural<sup>23</sup>:

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<sup>23</sup> Anas Abou El Kalam, et all Organization based access control [www.orbac.org/publi/OrBAC/OrBac.pdf](http://www.orbac.org/publi/OrBAC/OrBac.pdf). Accessed 28 December 2012

1. Organized: the establishment of unit or special section to run and responsible for CSR.
2. Mechanical: the labeling on the good or bad status of the SOE and company which runs CSR in effort to settle the land dispute.
3. Natural: CSR in the application stands as important stepping of a SOE and company. It does not only act as stepping or foundation but also as paradigm followed by the SOE and company in running CSR. The foundation can be:
  - a. Law, by recognizing that CSR is ordered based on Act, it is the company's obligation to run it. So that, without looking at the condition or ability of the company, every company must follow the regulation, which is to perform CSR. What matter are only how much fund to be spent and the model of CSR to be performed. What is included here is how to decide the value of CSR so that the company fulfills its obligation as declared by the regulations.
  - b. Philanthropy, which refers to the company charity over the people. The company does not consider CSR merely as regulated obligation, but more about charity toward people in need.<sup>24</sup>
  - c. Education, the company provides educational support for the people.
  - d. Empowering, this refers to people around the plantation empowerment so that they can be more self-sufficient and prosperous. People will not only receive consumptive support but also the infrastructure one and skills which can help them to improve their life quality.

Besides, access control can also be defined as: "The management of who goes where and when. Persons are uniquely identified through specific identity and will be able to enter only at assigned door and days or time."<sup>25</sup>

If the above definition is connected to land dispute settlement through CSR, there are three important components to consider:

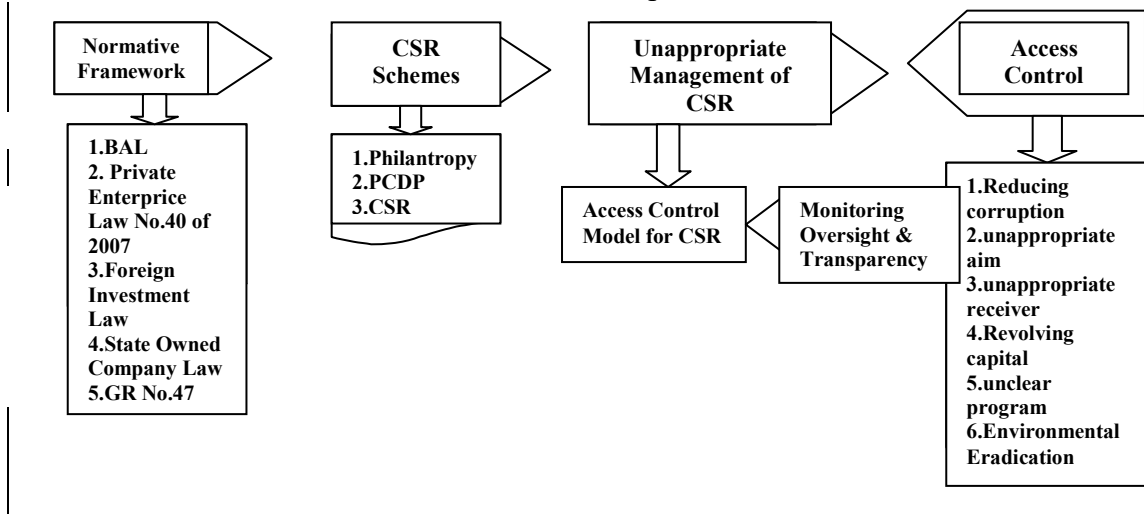
1. Who, this refers to those who will be given the rights to manage and use CSR in the form of share of stocks
2. Where, this refers to accurate place to apply CSR model
3. When, this refers to determining the time when either the people or the company can access CSR as alternative solution for land dispute.

<sup>24</sup> Compare with Amelia Fauzia et.al.Center for the Study of Religion and Culture (CSRC) National Islamic University (UIN) Syarif Hidayatullah Jakarta and Asia Foundation,2005, Filantropi Dalam Masyarakat Islam (Philanthropy in Islam Community )p.1-12 stated that based on survey which conducted by The Centre for the Study of Religion and Culture (CSRC) National Islamic University of Syarif Hidayatullah Jakarta reveal funds from zakat, infaq and sadaqah (ZIS which mean fund which given from Moslem people who have much money based on their believe which mentioned in Holy Qur'an up to Rp (IDR) 19,3 billion per year haven't been effectively used for empowering poverty. In the other side, Waqf asset which get from Islam community approaching to Rp (IDR) 590 billion. On the contrary only 2 up to 7% of Waqf funds have been maintaining for productive economy, workers training, woman and unemployment empowerment and maintaining public health.,

<sup>25</sup> David Ferraiolo and Richard Kuhn , Role-Based Access Controls National Institute of Standards and Technology Technology Administration U.S. Department of Commerce Gaithersburg, Md. 20899 USA



### Model of Access Control on CSR Based on Emphirical Research



The explanation above shows that control refers to management in the form of limitation based on certain needs, criteria, and authority. The subject of CSR is Plantation Company and the aim is people around the plantation. The problem is who can be considered as people around the plantation who can be the recipient of the social care? The targets of social care are the plantation workers and people who live around the plantation. Another problem is how to define “around the plantation”? The reality is, people around the plantation can be determined as those who physically live nearby the plantation because the plantation company provides the settlement for them or they clearly are part of the company. On the other hand, some people define “close” or “around” the plantation based on the socio-cultural relation between them and the plantation. For the later type of group of people, who can make the determination? The company or people themselves? This determination is recognition to who actually defined as people around the plantation and also to prevent legal suit (from those who assume to have close relation with the company). This is crucial to define especially when it is related to the performance of CSR as regulatory obligation, because with the obligation there will be people’s right (people demand to the company to perform CSR).

Based on Access Control based CSR concept in the form of share of stocks, it can be assumed that plantation land dispute settlement cannot be considered to be equal between one case to another because the management, the managerial system, and risk of each plantation are different. This is important to make sure the effective role of CSR in plantation land dispute settlement processes.

### 5. CONCLUSIONS

Referring to the former explanation, the conclusions are :

1. CSR model is supposedly used as one of a model to solve HGU plantation dispute;
2. Access Control based CSR model is a combination of criminology concepts. As a matter of fact, Access Control concept is used to prevent crime, but the writers modify the concept in purpose to prevent CSR policy abuse in the form of share of stocks both by the company and the people during the settlement of the plantation land dispute;
3. The Access Control based CSR model in the form of share of stocks is typical from one case to another because of the difference in management system, and risk of each plantation. It means that CSR model in each plantation company have conditionally characteristic e.g. between state owned plantation company is different model with

private owned plantation company. Furthermore, how much budget will be given to landless people it depends on how the enterprise get profit from their business. Access control model will give more guarantee not only how some fund will be receive properly to the poor and marginalised people in the other hand. In the other side will also guarantee how the funds of CSR will manage more properly or not corrupted by the administrator of company.

## **6. RECOMMENDATIONS**

1. It is recommended that the study to find solution on plantation land dispute is conducted on multidisciplinary (socio-legal) approach, because normative approach has not been able to solve plantation land disputes;
2. To completely solve the plantation land dispute fairly what is needed is mutual willingness of the shareholders by putting forward the principle of consensus and fairness;
3. The monitoring on CSR program implementation by state/local government owned enterprises or by private companies is under responsibility of not only the state or local government, but also the share holders, the Directors, and people to prevent the abuse and manipulation on the program.

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