

**International Conference on  
Asian Labour Law**

**March 5-6, 2015**

**Asian Society of Labour Law**

**Japanese Research Association of Asian Labour Law**

## Preface to International Conference of Asian Labour Law

### Greetings to participants

Welcome to the international conference held on 6 & 7 March, 2015 at Aoyama Gakuin University, International Conference Room. This conference is sponsored by Asian Society of Labour Law (ASLL) and Japanese Research Association of Asian Labour Law.

ASLL was organized on November, 2008 at International Islam University at Kuala Lumpur to promote research, education and practice of labour law by serving as a center of activities among labour law scholars and practitioners in Asia and elsewhere and to promote and enhance awareness of and respect for labour law in Asia.

Launch Labour Law Project was active from 2005 to 2007 initiated by Prof. Shinichi Ago (Ritsumeikan University) under the assistance of ILO Asia and Pacific Regional Office to promote ratification of ILO Conventions. Labour Law researchers and legal practitioners in Asia participated in the workshops held at Singapore, Manila, Jakarta, Hanoi, Phnom Penh, Vientiane, Ulaanbaatar, Beijing, Shanghai, Qingdao and Fukuoka. So through the workshops there could be linkage among Asian Labour Law researchers. They wanted to continue the connection. As a result ASLL was organized in 2008.

As an international academic organization International Association of Labour Law and Social Security Law (IALLSSL) was organized in 1958 in Brussel. This organization established Asian Regional Conference from 1980. This regional conference has been only one meeting among Asian Labour Law researchers and legal practitioners. The conference was held in Soul in 1983, Bangkok in 1985, Singapore in 1987, Tokyo in 1990, Hobart in 1996, Manila in 2001, Taipei in 2005. Next conference would be held in Soul in 2014. But this conference in Soul was cancelled. Asian Regional Conference of IALLSSL has not been held for more than 10 years. During these period ASLL was organized to exchange information among Asian Labour Law researchers and legal practitioners. ASLL also has policy to have a partnership with relevant international regional and national societies and organizations. So ASLL wants to have a good relationship with IALLSSL. The Conference of ASLL was held in Kuala Lumpur in 2008, Manila in 2009, Taipei in 2010 and Beijing in 2012.

Japanese Researchers of Asian labour law belonging to Japanese Research Association of Asian Labour Law have researched on Asian labour law under the Grants of Japan Society for Promotion of Science. So this association decided to sponsor this conference jointly with ASLL.

This Conference in Tokyo will focus on “Investigating Characteristics of Asian Labour Law” to clarify the features of Asian labour law in the process of industrialization after independence of Asian countries.

Theme 1: Labour Contract with Definite Term

Theme 2: Labour Disputes Settlement

Theme 3: Recent Labour Law in Asian Countries

Symposium: Labour Law Education in Asia

Theme 1 has been recently discussed all over the world because companies have strategy to reduce labour cost in face of competitive globalization.

Theme 2 has been an important issue to achieve economic development after the Second World War. Labour disputes had been considered to disturb higher productivity. But recently number of labour conflicts are increasing after Asian developing countries have realized economic development. Foreign companies operating in Asia have suffered from serious labour troubles.

In the Theme 3 we will discuss recent movement of Asian labour law. At the beginning we have a plan to discuss how to save informal sector people from poverty. But there are so few papers on informal sector. Therefore we change the theme into “Recent Labour Law in Asian Countries”.

Symposium will provide hints how labour law shall be taught to workers, students and people. Labour law shall be known to present and future working people. But there are many people who cannot know the content of labour law. It is hoped to consider this problem through this symposium.

We are financially supported by Japan Society of Promotion of Science and Research Center of Labour Problems. We express our heartfelt thanks to two organizations.

We hope that this conference will be enriching and stimulating so that participants will take home some of ideas developed here and delivery their own approaches to labour law in their own countries.

Tokyo Conference Organizing Committee

Program of International Conference on Asian Labour Law  
(tentative)

Joint Sponsorship: Asian Society of Labour Law

Japanese Research Association of Asian Labour Law

5 March, 2015 18:00-20:00

Meeting of Executive Council (Aoyama Kaikan) of ASLL

6 March, 2015 Place: Aoyama Gakuin Univ. Building No. 15, Sixth Floor

2015年3月6日

8:00 Registration

9:30 Opening Ceremony

10:00 **Keynote Speech Prof. Kazuo Sugeno 菅野和夫 (JILPT, Japan)**

“Characteristics of Japanese Labour Law”

10:50 Tea Break

11:10 **The First Session “Labour Contract with Definite Term”**

Chairperson Prof. Patricia Salvador Daway (Univ. of the Philippines)

Prof. John Lee & Ms. Sookyung Park (South Korea, Korean Univ. of Foreign Studies)

“Labour Contract with Definite Term in South Korea Focusing on Temporary Workers”

Ms. Zou Tingyun 鄒庭雲 (China, Kyushu Univ.)

「日本における有期労働契約の実態と法規制状況」

(Legal Control and Actual Conditions on Labour Contract with Definite Term in Japan)

Prof. E D. Battad (Philippines, Univ. of the Philippines)

“The Labour Policy on Fixed-Term Employment Contracts in the Philippines”

Prof. Rick Glofcheski (Hong Kong, Univ. of Hong Kong)

“Outsourcing, Sub-contracting and Avoidance of Labour Law Obligations”

Ms. Ike Farida (Indonesia, Attorney at Law)

“Dispatching Labour Law in Indonesia”

12:40 Lunch

**14:00 The Second Session “Labour Disputes Settlement”**

Chairperson Prof. Nik Ahmad Kawal Nik Mahmud (Malaysia)

Prof John Zechariah (India, Mary Memorial School)

“Administration of Industrial Labour Disputes Settlement Machinery in India”

Prof. Liu Cheng (China, Shanghai Normal Univ.)

“A Study on Labour Disputes Mediation in China”

Dr. Lam Thi Thuy Tran (Vietnam, Vietnam Law Univ.)

“Labour Dispute Resolution in Vietnam-Status and Challenges”

Dr. Hoang Thi Minh (Vietnam, Hanoi Law Univ.)

“Performance of Resolution Mechanism for Labour Dispute in Vietnam and Some Proposals”

Ms. Thipmany Inthavong (Laos, Laos National Univ.)

“Labour Disputes Settlement in Lao P.D.R.”

Mr. Hideyuki Wakamatsu 若松英幸 (Japan, Former Secretary General of JCM)

「海外労使紛争解決に向けた JCM の取り組み」

“Labour Disputes Settlement initiated by JCM at Japanese Companies at Asian Countries”

16:00 Tea Break

16:20

Prof. Liu Cheng (China, Shanghai Normal Univ.)

“A Study on Labour Disputes Mediation in China”

Prof. Chey-Nan Hsieh 謝棋南 (Taiwan, Chinese Cultural Univ.)

“The Statutory Requirements of Legal Dues Check-off and its Legal Effect Construed by the Unfair Labour Practice Mechanisms under Taiwan’s Labour Management Disputes Settlement Law and U.S. National Labour Relations Act”

Dr. Abubakar Aminu Ahmad (Nigeria, Bayero Univ.)

“The Role of Collective Bargaining in the Resolution of Industrial Disputes in Malaysia and Nigeria”

18:30 Welcome Party

2015年3月7日

**9:30 Third Session 「Recent Labour Law in Asian Countries」**

Chairperson Prof. Rick Rofcheski (Hong Kong)

Prof Chizuko Hayakawa 早川智津子 (Japan, Saga Univ.)

“Domestic Workers in Japan”

Prof. Patricia Salvador Daway (Philippines, Univ. of the Philippines)

“BPO Workers: The Philippine Experience”

Prof. Nik Ahmad Kamal bin Nik Mahmood (Malaysia, International Muslim Univ)

“Contemporary Labour Law in Malaysia”

10:40 Tea Break

11:10 Mr. Kennichi Kumagaya 熊谷謙一 (Japan, JILAF)

“Labour Law and Change in Mongolian Society”

Prof. Ravi Chandra (Singapore, Singapore National Univ.)

“Alternative of Minimum Wages---The Way of Singapore”

12:00 Lunch

**14:30 Symposium 「Labour Law Education in Asia」**

Chairperson Prof. Ravi Chandra (Singapore, Singapore National Univ.)

Dr. Chokchai Sutawet (Thailand, Mahidol Univ.)

“Strengthening of Labour Relations Law Education

Prof. Tetsuya Doko 道幸哲也 (Japan, Open Univ.)

「日本の労働法教育」(Labour Education in Japan)

Prof. Tadashi Hanami 花見忠 (Japan, Sophia Univ. Attorney)

“Significance of Comparative Study in Labor Law”

Prof. Hieronymus Soerjatananta (Indonesia, Lampung Univ.)

“Multiple Burden of the Labor without Contract in Rubber

Plantation (Assessment of Material Labour Education in Conflict Area at Lampung Province”

17:30 Closing Ceremony

## Content

### Keynote Speech

Prof. Sugeno Kazuo, "Characteristics of Japanese Labour Law"

### The First Session

Prof. John Lee & Dr. Sookyung Park

"Enactment Background and Operation Conditions of Fixed-Term Workers Protection Law in Korea"

Ms. Zou Tingyun 「日本における有期労働契約の実態と法規制状況」(Legal Control and Actual Conditions on Labour Contract with Definite Term in Japan)

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"Administration of Industrial Labour Dispute Settlement Machinery in India"

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### The Third Session

Mr. Ken'ichi Kumagaya "Labour Law and Change in Mongolian Society"

**Symposium**

Prof. Tadashi Hanami, “Significance of Comparative Study in Labor Law”

References: 花見忠「労働法における比較法の意義」

花見忠「国際規範の普遍性——異文化論からの再検討」異文化経営研究 9  
号、2012年12月

Prof. Doko Tetsuya 道幸哲也 「日本の労働法教育」(Doko Tetsuya “Labour Law  
Education in Japan)

Prof. Hieronymus Soerjatisnanta,

“Multiple Burden of Plantation Labour Based on Work Agreement for Free Daily  
Work in the Province of Lampung”

Prof. Khin Mar Yee (Yangon Univ.)

Presentation on “Investing Characteristics of Myanmar-Labour Law”



Asian Labor Law Conference Keynote  
(6 March 2015; Tokyo)

# Characteristics of Japanese Labor Law: The State's Engineering of Labor Relations

Kazuo Sugeno

President,  
Japan Institute for Labour Policy & Training

Professor Emeritus,  
University of Tokyo

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## Introduction

### ☆ Japanese labor law from a static viewpoint:

- A web of well organized statutory rules (See Appendix) & systems supplemented by case law
- Initiatives of the government in their formation; coordination with social partners
- Labor law built on Japanese employment system

### ☆ Japanese labor law from a dynamic viewpoint:

- Drastic socioeconomic changes in Post World War II history (See Figure 1-8); The government's constant efforts to adapt Japan to waves of changes; Labor law policies as major means of socioeconomic engineering by the state ---- **Focus of this keynote**

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## The **1st Period of Economic Recovery 1** (1945—ca. 1954)

### ☆ **Institution of modern labor law systems during post-war desolation:**

- Occupation by Allied Forces (1945—1952)
- Democratization of political and economic systems ⇒ Construction of modern labor law (trade union rights, labor commissions, restriction of private employment services, etc.)
- Establishment of state systems for workers' economic security: labor standards & their inspection system, workers' accident & unemployment compensation, public employment services, etc.

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## The **1st Period of Economic Recovery 2** (1945—ca. 1954)

### ☆ **Government's efforts to establish order in industrial relations:**

- Proliferation of unions and their aggressive drives; radical and massive industrial actions (See Figure 7) under shortage of food and hyperinflation; Restraint of radical and political unionism (reform of Labor Union Act, prohibition of public employee strikes)
- Drastic deflation policy subdued hyperinflation; Korean War stimulated economy; San Francisco Treaty (1950) restored independence

### ☆ **Economic recovery:**

- Modernization of labor law and industrial relations laid foundation for the development of democratic market economy

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## The 2<sup>nd</sup> Period of Rapid Economic Growth 1 (ca. 1955—1973)

- ☆ **Average annual real GDP growth rate: 9.1%** (See Figure 1,2)
  - “No more in post-war era” (1956 White Paper on Economy); “Income doubling policy” (1960-); Tokyo Olympics in 1964; 5.1% growth in 1971 even with Nixon Shock
  - 1955: Start of Spring Wage Offensives; Start of Productivity Increase Movement (its leading principles: employment stability, joint consultation and fair distribution of fruits)
- ☆ **Transformation of Industrial Relations:**
  - 1960: Mitsui-Miike Labor Dispute (the peak of militant unionism, See Figure 7); Both labor & management recognized a high price of bitter & massive confrontation
  - Emergence of more cooperative union leaders & their winning of hegemony in major industries & enterprises

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## The 2<sup>nd</sup> Period of Rapid Economic Growth 2 (ca. 1955—1973)

- ☆ **Worsening labor shortage and establishment of Japanese employment system** (See Figure 2) :
  - Shift to an economy with stable long-term employment and enterprise-based cooperative labor management relations
- ☆ **Start of labor market policies:**
  - Promotion of labor mobility from rural to urban areas (See Figure 4) and from declining to growing industries
  - Institution of public training systems to supply skilled workers to growing manufacturing industries
- ☆ **Improvement of labor standards:**
  - Minimum wage system; Workplace safety and health standards; Workers compensation insurance, etc.

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## The 3rd Period of Economic Growth with Adjustment (1973—ca. 1990) 1

### ☆ State of economy:

- International upheavals: 1973 First Oil Crisis (-1.2% growth and 23% price increase in 1974); Second Oil Crisis (1979); Plaza Accord (1985)
- Absorbed the shocks each time through economic adjustment; attained stable growth (annual growth rate of 4.2%; See Figure 1)
- Indulged in bubble economy in the late 1980s (ibid.)

### ☆ Japanese industrial relations in maturity:

- Development of Spring Wage Offensives led by metal & electric appliance industries (See Figure 8): Tripartite social pact in mid-'70s to subdue high wage increases and to stabilize employment
- Establishment of enterprise labor-management cooperation through joint consultation procedures

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## The 3rd Period of Economic Growth with Adjustment (1973—ca. 1990) 2

### ☆ Active labor market policies to stabilize employment:

- Japanese employment adjustment style established: resort to reduction of overtime hours & work days, suspension of new hiring, and lay-offs of temporary workers, etc. through intensive joint consultation
- Subsidy programs by Employment Insurance Law (1974) to assist firms' efforts to maintain employment during economic downturns: helped to maintain stable employment (unemployment rate kept less than 3%: See Figure 2)

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## The 3rd Period of Economic Growth with Adjustment (1973—ca. 1990) 3

- ☆ **Labor law responses to international and structural changes (in the 1980s; some continued during subsequent periods):**
  - Unfair-trading criticism against long working hours; International equality-of-women movement (late '70s and early '80s)
  - Increasing trends of employees in service industries (See [Figure 6](#)) and of older workers in the aging society (See [Figure 3](#))
  - Labor law responses:
    - Promotion of equal employment opportunities for men and women (1985, 1997, ...)
    - Limited legalization of worker dispatching businesses (1985, 1999, 2003, 2012)
    - Promotion of employment of older workers (1986, 1994, 2004)
    - 40-hour work-week & flexible working-hour systems in Labor Standards Law (1987, 1993, 1998, ...)
    - The right to child care and family care leaves (1991, 1995, ...)

## The 4th Period of Economic Downturn 1 (ca. 1990—2012)

- ☆ **Economic downturn (See [Figure 1, 2](#)):**
  - Beginning of 1990s: collapse of Japanese bubble & Soviet regime; intensifying global and Asian competition
  - Waves of shocks: 1997 Asian financial crisis, 2001 IT recession, 2008 global financial crisis, 2011 East Japan Earthquake
  - "Deflation" officially recognized since 2001
- ☆ **Deterioration of labor market (See [Figure 2](#)):**
  - Restructuring and reorganization of enterprises carried out
  - Large-scale employment adjustment with solicitation of early retirement since 1997; unemployment rate rose to 5.4% in 2002; difficulties for new graduates in finding regular employment; rapid increases of non-regular employees (See [Figure 5](#); ca. 20% during 1990-95 ⇒ 26.2 in 2000 ⇒ 34.1% in 2008 ⇒ 37.4% in 2014)

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## The **4th Period of Economic Downturn 2** (ca.1990—2012)

### ☆ **Deterioration of employment relations:**

- Increased pressures & stresses in the workplace; increasing trend of individual labor disputes (over termination of employment, harassment, unpaid wages and overtime premiums, etc.)

### ☆ **Labor law policies as a part of large-scale regulatory reform:**

- Large-scale reform of the post-war regulatory system carried out during late 1990s and early 2000s to enhance free market competition: deregulation of businesses; strengthening rules of fair competition; introduction of shareholder-oriented corporate governance; amplifying dispute resolution systems
- ⇒ Deregulation of private employment services and worker dispatching businesses; systems to resolve individual labor disputes installed in labor administration and judiciary

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## The **4th Period of Economic Downturn 3** (ca.1990—2012)

### ☆ **Protective labor policies also promoted:**

- Subsidy programs to assist firms' efforts to maintain employment even expanded amid continuous recession (unemployment rate remained under 5.5%, See [Figure 2](#))
- New policies to help unemployed and underemployed persons enter regular employment:
  - New rules of labor contract to integrate non-regular workers into regular employment or to improve their working conditions vis-a-vis regular workers (2012)
  - Construction of systems to support persons with difficulties in labor market (long-term unemployed, single mothers, disabled, inexperienced persons, etc.): personal counseling, training-with-benefit programs, specialized employment exchange services, etc. (2007-2012)

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## Present (2013—2015) 1

### ☆ **Great challenges faced by Japan:**

- Deflation: how to return to stable growth
- Decreasing population ⇒ downsizing market and labor-force
- Intensifying global competition; technological changes
- Fiscal debt twice GDP: how to rebalance national finances
- Increasing expenditure on health & pensions: how to reconstruct social security sustainable in a super-aging society

### ☆ **Economic policies of incumbent government:**

- Reflationary financing, fiscal rebalancing and revitalizing economy
- Revitalizing localities suffering from lack of industries, shortage of jobs and declining population
- Active labor policies as a component of economic revitalization (see next page)

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## Present (2013—2015) 2

### ☆ **Expanding and strengthening the labor force:**

- Enhancing labor market participation of women, youth & elderly, etc.
- Utilizing women's power: 30% target for women managers & professionals by 2020
- Promotion of child-care support and work-life balance
- Integrating non-regular employees into regular employment

### ☆ **Enhancing mobility in labor market:**

- Coordinating public and private services for more effective labor market: counseling, matching, training, financial assistance, etc.
- Subsidy programs to support workers' personal initiatives to build or rebuild skills

### ☆ **Policies to improve wages to overcome deflation:**

- Increasing minimum wages (2006: ¥673/h ⇒ 2014:¥780/h)
- Urging labor and management organizations to make wage increases in spring wage negotiations

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## Conclusions: The Government's Continuous Engineering of Labor Relations in Japan

- ☆ **Labor law policies to cope with post-war socio-economic changes (their essence):**
  - Construction of modern labor law systems
  - Stabilization of industrial relations
  - Establishing & reestablishing economic security of workers
  - Active labor market policies: to stabilize employment; to enhance mobility; to assist skill formation; to make matching more effective; to support persons with difficulties, etc.
  - Reforms to adapt regulatory systems to structural changes
- ☆ **Gradual but steady approach through coordination with social partners in tripartite councils**
- ☆ **Still struggling amid great challenges**

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## Appendix: Statutes of Japanese Labor Law

- ☆ **Constitution of Japan (1946):**  
The state's commitment to social security, full employment, fair labor standards and trade union rights (Articles 25 – 28)
- ☆ **The law of trade union rights and labor management relations:**  
Labor Union Act (LUA, 1945 & 1949); Labor Relations Adjustment Act (LRAA, 1946); etc.
- ☆ **The law of labor standards and labor contracts:**  
Labor Standards Act (1947); Industrial Accident Compensation Insurance Act (1947); Minimum Wage Act (1959); Security of Wage Payment Act (1959); Industrial Safety and Health Act (1972); Act on Securing Equal Opportunity and Treatment between Men and Women in Employment (1985); Act on the Welfare of Workers Taking Care of Children or Other Family Members (1991); Labor Contract Act (2007, 2012); etc.
- ☆ **The law of labor market policies and institutions:**  
Employment Security Act (1947); The Act for Promotion of Employment of Persons with Disabilities (1960); Employment Measures Act (1966); Human Resources Development Promotion Act (1969); Employment Insurance Act (1974); Act for Proper Operation of Worker Dispatching Undertakings and Protection of Dispatched Workers (1985); The Act to Stabilize Employment of Older Persons (1985); The Act to Promote Local Employment (1987); The Act to Assist Job-seekers (2011), etc.
- ☆ **The law of labor dispute resolution:**  
LUA & LRAA (labor commissions to adjust & adjudicate labor management disputes); The Act to Promote Resolution of Individual Labor Disputes (2001, administrative advising & conciliation services); Labor Tribunal Act (2004, judicial mediation & advisory judgment procedure)

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**MULTIPLE BURDEN OF PLANTATION LABOUR BASED ON WORK  
AGREEMENT FOR FREE DAILY WORK IN THE PROVINCE OF LAMPUNG  
(Assessment Material for Labours ' Education in The Dispute Land)**

**By: Hieronymus Soerjatisnanta\***

**A. INTRODUCTION**

Plantation labour is an irony in the history of Indonesia, which took place since the colonial period and it continues today, while Indonesia has been independent from occupation. The irony lies in the marginal conditions of plantation labours, while plantation companies gain a tremendous advantage. During the Colonial Period, the oppression of plantation labours is done based on a policy of forced cultivation system (*Cultuur Stelsel*) and labor regulations (Koeli Ordinance of 1880).

Even after independence of Indonesia, plantation labours are still in injustice and marginal situation. The welfare of plantation laborers does not parallel with the development of the plantation which contributed significantly to the economic growth in Indonesia. The conditions of plantation labors were not prosperous. On the contrary, there has been a denial of the rights of people and labors through land grabbing, the intimidation of people who refused to give up their land rights, criminalization, and the bureaucrats and the court measures which are actually siding with the plantation companies, and the exploitation of labor. Therefore, it can be understood if the expansion of the plantation business generated a lot of land tenure conflicts between companies and communities.

The history of plantation labours can not be released from oppression, exploitation and deprivation of the rights of labours. In fact, on the dispute with the plantation company, the people lost their constitutional rights to obtain basic services organized by state. Public land disputes often put them in a difficult position. On the one hand, they are opposing parties on land dispute with the company, and on the other hand, they have to be subject unto, because they work as daily labors. In this position, it requires a more comprehensive advocacy process for plantation Labors. Advocacy is not only done with the problem of labor relations, but also to the conflict / dispute of land that they face.

This paper presents three subjects at study sites in Lampung Province. First, outlining the history and dynamics of plantations during the colonial period, New Order (*Orde Baru*) and the Reformation Era (*Era Reformasi*) in relation to the social impacts of plantation and labour positions. Second, outlines the working relationship between labor and the plantation company in areas experiencing land disputes based on the positive law Indonesia system. Third, outlines the important issues of educational material plantation labours in areas experiencing conflict / dispute of land.

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\* Hieronymus Soerjatisnanta, is a lecturer at the Faculty of Law, University of Lampung. Teaching philosophy of law, administrative law, and labor law since 1986. Active in advocacy- of labour rights and agrarian conflicts in Province of Lampung. Authors are grateful to Oki H Wahab, Fathoni and Sahrul Sidin that help in writing this paper. As a former member of the Fact Finding Team (TGPF), I dedicate this article to the Moro-Moro people's struggle to obtain the rights that have been ignored by the state.

## B. HISTORY AND DYNAMICS OF LABOUR LAW IN PLANTATION SECTOR

Kartodirdjo & Suryo (1991) states that "the history of plantation development in developing countries, including Indonesia, are inseparable from the history of colonialism, capitalism and modernization".<sup>1</sup> Furthermore, also noted that prior to colonial rule, there are four kinds of agricultural systems that have been long known, namely Shifting cultivation system, wet rice cultivation systems, garden systems, and cleaning systems field. However, the colonial government more require cultivation and upland farming systems (plantations) as a more favorable system which produces plants that are sold in the world market.

Plantation business massively after VOCs increased political power of a trading company into a territorial ruler. Political power is allowed van den Bosch (Governor General VOC) make policy change required delivery system (ground rent) into a system of compulsory cultivation of commercial crops (*cultuur stelsel*).<sup>2</sup> Implementation of the forced cultivation system predominantly implemented in Java Island. Types of compulsory plants which must be planted by the people are coffee, sugar, pepper, tobacco, tea, and cinnamon.

Implementation of the forced cultivation system in the regions, basically often not in accordance with the written provisions. The practice of forced cultivation system implementation using native rulers as intermediaries so many irregularities. Meanwhile, the plantation labor deployment to places far from their homes and forced labor (*kerja Rodi*) in factories without wages, it weighed heavily on people's lives.

Towards the end of the 19th century, the colonial government expanded its plantation business into outside Java, especially on the Sumatra Island, with commodities that have favorable prospects, such as: tobacco, rubber, tea, coffee and palm oil. Plantation business is always related to labor issues. Without the sufficient number of labours, the vast plantation will not bring favorable results. To overcome the problem of lack of labour, then the planters brought in the labours from other areas.

Recruitment of plantation laborers usually through agents plantation companies. At the beginning of its development, the plantation labours brought from South China through labor agents in the Malay Peninsula. However, because of the barriers, the companies recruited the labours from Java who are employed in eastern Sumatra, since 1870.<sup>3</sup> Anthony Reid, presents the development of contract labors who came from outside of regions in the following table;<sup>4</sup>

**Table 1. Labours from Outside Region**

Labours	1884	1900	1916	1920	1925	1939
Chinese	21.136	58.516	43.689	23.900	26.800	25.934
Javanese	1.771	25.224	150.392	212.400	168.400	239.281
Indian	1.528	2.460	-	2.000	1.500	1.019

Plantation labours brought in from outside the area bound by the contract system. This systems typically bind future labours working for three years, with the cost of transportation and housing borne by the planters. After the contract was completed, the labours must return to their home areas at the expense of planters or extend the contract of employment in accordance with their wishes. Thus, explicitly and ideal, the contract system actually seems democratic and not burdening all parties, but in reality –as will be

seen later—it remains shackled contract system and greatly suppress the fate of plantation labours.

The contract system is not able to guarantee the welfare of labours, especially after the enactment of labor legislation (Koeli Ordinantie) in 1880. This regulation is known as *sanctie poenale* times, because the substance of regulation as an instrument of fraud, suppression, oppression and injustice for labours. "Koeli Ordinantie" better protect the interests of the planters to protect the rights and interests of labours. Under the regulation, it was determined that after the completion of the labor contract system should be returned to the place of origin or extend the contract.

In the context of the history of labour law, this rule was known as the era *Poenale Sanctie*<sup>5</sup>, which stipulates that "every contract labour (*koeli kotrak*) who left his job, which is run, and which ignores its obligations could be fined or sentenced to prison". Sanctions in question, namely: a) those who refuse to work, be punished with hard labor for a month; b) those who fled, when get caught, chained and beaten with rods; c) as well as those who take the fight and riots, imposed a fine of 100 guildens or even hanged. These make the plantation labours are powerless, resigned, and suffering.<sup>6</sup>

Colonial plantation system change in traditional agricultural farm system. The plantation system embodied in the form of large-scale agricultural enterprises and complex, capital-intensive, extensive use of land, labor organizations large, detailed division of labor, the use of hired labor, labor relations neat structure, and the use of modern technology, specialization, system administration, and bureaucracy, as well as the planting of cash crops for the world market. The system is fundamentally impact the changes to the characteristics of the traditional plantation system. Specific characteristics of the change can be seen from the comparison, as presented in the following table:<sup>7</sup>

**Table 2. Comparison of Large Scale Plantation Companies and Smallholder**

Items	Plantation Company	Smallholder
Performer	Investors are just as investors and helped to establish direct plant	Go to work planting directly plants
Hectarage	Large scale which is usually above 25 ha	Not too broad, mostly less than 10 ha
Orientation	For the needs of the market and profit	To provide for the family needs
Capital	<i>Financial (capital intensive)</i>	Labor (Solid works)
Plants developed	Plants that sell well in the market	Plants that are well known and can meet the needs of the household

The process of changing the system to the plantation business in Indonesia plantation system not only bring technological and organizational changes in the agricultural production process, but also related to changes in policy and the capitalist system.

Law No. 18 Year 2004 on The Plantation, formulate estate development functions include:

- a) The economic function, namely to increase the prosperity and welfare of the people and the strengthening of regional and national economic structure;

- b) ecological function, namely to increase soil and water conservation, carbon sequestration, oxygen supply, and buffer protected areas; and
- c) socio-cultural functions, namely as an adhesive and unifying the nation.

Plantation policy orientation distinguishes sharply between large estates (SOEs and private) with smallholders. The policy implication of this duality has to provide convenience to the "big", and the pressure for the "small". The differences were not infrequently cause economic conflict evolved into a social conflict. Smallholder which covers about 80% of the national estate and facilities still do not get adequate protection from the government.

In the last ten years, tree crops to be excellent for the development of the Indonesian economy. Plantations are an economic powerhouse. Field plantation continual increase in the volume of exports, namely palm oil, rubber, cocoa, coconut, cashew, tea and coffee. Highest export volume of palm oil, average growth per year, is: 21.42%, 11.74% palm oil, coffee 11.56%, 11.50% cashew nuts, cocoa and rubber 11.30% 8.21 %. While the value of agricultural commodity exports in general has increased over the 2001-2005 period by an average of 18.8%.<sup>8</sup>

The social impact of plantation development in Indonesia is the emergence of conflicts and land disputes between communities and plantation companies. The Agrarian Reform Consortium (KPA) states that in 2013 the agrarian conflict tends to increase. Throughout 2013, the NAC noted 369 agrarian conflicts with 1.281.660.09 hectare land area reaches 139 874 families involved. The agrarian conflict dominated the field of 180 cases (48.78%) with an area of 527,939.27 hectares.

Conflicts and land disputes tinged with criminalization, physical or psychological violence, until the killing of a human soul. Sawit Watch, an NGO concerned with oil palm plantations, for example, notes that in 2010 there were 106 people criminalized by oil palm plantation companies. While the National Human Rights Commission complaint data for land conflicts in 2011, reached 603 complaints. During 2011, ELSAM indicate that there have been 151 events with a background of land conflicts between citizens with corporate and state institutions in various forms. Many conflicts that led to the violence apparatus in the form of assault, shootings, clashes, killings and a number of other acts of violence.

Until the recent time, cases of land disputes are still very high. The Agrarian Reform Consortium (KPA) reported that in 2013, victims of the conflict increased drastically. When in 2012, there were 3 people who died, in 2013 recorded 21 people dead. In addition, there were other victims, which 30 people were shot, 130 suffered persecution and 239 people arrested. The perpetrators of violence in the predominantly agrarian conflicts throughout 2013 as many as 47 cases of police, security companies 29 cases, and the TNI 9 cases.

On the other hand, the social impact of plantation development is the issue of plantation labours, where many labours are treated with inappropriate. Conditions of plantation labours in Indonesia is a clearly and brightly irony. The rapid rate of growth of plantation development does not affect the good labor situation. The issue of labours' rights, such as labour relations, labor protection, wages, and welfare, are the normative issues which often occur dispute with the company. Normative rights of labours are often denied by the company due to a weak bargaining position. In general, the working relationship between labours and the company is daily labours. The Sawit Watch

indicates that approximately 70% of labours who work in the fields of oil palm plantations is a freelance labours.

Protection, wages, and welfare of labours is a fundamental issue that requires state alignments in various forms of policy and advocacy of civil society. State policy is often more aligned with the planters. As a brief overview, it can be argued the political orientation of the new order of labor laws that tend to repression of labours, manifested in the form:<sup>9</sup>

- a) Authoritarianism in Pancasila Industrial Relations. Political Ideology of the New Order Labour regulates labor relations with employers and the government is based on Pancasila Industrial Relations (HIP). As the implications of the principles of the conflict HIP labours and employers is considered contrary to the ideology of the state and not in accordance with the mindset integrality, so in reality HIP implemented through violence;
- b) Unification of Labor Organization intended to exercise control and control of labor organizations through government intervention, repression, restrictions on the right to strike, etc.;
- c) Labor Dispute Settlement System Unjust;
- d) Military Intervention in Labor Disputes;
- e) Employees' Social Security Policy which is not transparent;
- f) The minimum wage policy as a political cheap labor and the gap between the blue color with white color.

Nowadays, labor relations are governed by Law No. 2003 on employment. This law has the disadvantage that, such as:<sup>10</sup>

- a) Inconsistency of labor regulations. Another inconsistency between the provisions of Article 56 subsection (2a) to Article 59 subsection (2) which set the Employment Agreement Specific Time (PKWT). Article 88 subsection (3), which regulates basic minimum wage. Then, Article 1, point 15 in Article 66 subsection (2a) which regulate labor outsourcing. Inconsistencies chapters resulted in the ineffectiveness of clauses that govern the rights of association and the right to social security for labours PKWT and outsourcing.
- b) The difference in the perception of minimum wages caused by the basis for calculating the minimum wage tend to be controversial. Minimum wage is too high often perceived by employers, so in practice the minimum wage is often understood becomes the maximum wage.
- c) The ambiguity in the provisions concerning PKWT that cause labours employed on the basis of employment agreement for an unspecified time (PKWTT) less legal protection when compared with those employed on the basis of employment agreement for an unspecified time (PKWTT). In addition, the use of temporary labours in the weakening position of trade unions due to the high turnover of labours.

### **C. WORKING RELATIONSHIP BETWEEN LABOR AND PLANTATION COMPANIES IN THE AREA OF CONFLICT / DISPUTE LANDS**

The discussion in this section is done by taking the agrarian conflicts in forest areas of production plants Register 45, Mesuji Regency, Lampung, and focused on Oil Palm and rubber Plantation Labours. Agrarian conflict has lasted a long time, and at the end of 2011 became a national issue because there are many massacres (9 deaths). Then, the

government established the Joint Fact Finding Team (called TPGF) and they have formulated the findings and recommendation solution.

TGPF indicate that the conflict covers three distinct areas of conflict and each of them stands alone, ie:

- a) Register-45, Regency Mesuji, Lampung Province; forest land disputes of production plants managed by PT Sylva INHUTANI with indigenous peoples, local communities and immigrants.
- b) Sri Tanjung Village, Regency of Mesuji, Province of Lampung: land disputes of palm oil company (PT BSMI and PT LIP) with Sri Tanjung Village and Nipah Kuning Village of Mesuji Regency).
- c) Horizontal conflict in the oil palm plantation company (PT SWA) in Sodong village, Subdistrict Mesuji, Regency of Ogan Komering Ilir, Province of South Sumatra.

In this paper, only two cases will be reviewed (a and b), as the case c is outside the Province of Lampung.

The important findings of TGPF are that 2 cases (a and b) are relevant to the discussion of this topic, as follows;

**a) Case Findings of Register-45**

- Agrarian conflicts emerge from the expansion of production of PT Sylva INHUTANI from the previous 33,500 into 43,100 / 42 762 ha in the "Orde Baru" era. This regional expansion policy that takes indigenous peoples land of "Talang Gunung" and "Talang Batu" village.
- The notion of human rights violations in the case of Made Aste death.
- There were violations committed by PT Sylva INHUTANI HPHTI Lampung as licensees in Production Forests Register 45 (especially on the Talang Gunung, Talang Batu, and Pelita Jaya Village).
- Found the documents of financing that Integrated Forest Protection Team, especially in register 45 has been funded by PT Sylva INHUTANI.
- There are indications of the involvement of security guards' funded PAM PT Sylva state company to deal with conflict in Register-45.
- There are disobedience of fundamental rights of the community (Moro-Moro village) by the local government, in this case is the constitutional rights of citizens for a dozen years.

This paper argues an additional note that one of the obligations of the licensee HPHTI (PT Sylva INHUTANI) is not to be disturbing and should acknowledge the existence of people who have settled in the region of the Register-45. Both Talang Gunung and Talang Batu village had been existed since 1917 and the Pelita Jaya village is a transmigration village undertaken by the government. However, due to the expansion of forest area registers 45, these villages have been evicted.

While the Moro-Moro village peoples (which includes: Moroseneng, Morodewe, Moromakmur, shavings and Sukamakmur) began to enter the forest area in 1997, because the land was abandoned. Based on the Census of 2010, there were 1,018 households, with a total population of 3,359 inhabitants, which occupies an area of approximately 4000 hectares. Their presence in the region was not recognized either by the company or local government. As a consequence, they do not get the

most basic services, especially Citizenship Card (called KTP), educational services, health care and even their participation to vote in elections. Conflict in the forest area of Register-45 has been running very long marked by intimidation, violence, criminalization, and the neglect of the constitutional rights of the peoples.

**b) Findings in the case of oil palm plantations (PT BSMI and LIP) vs. Sri Tanjung village:<sup>11</sup>**

- The conflict has been emerging in the process of land acquisition as a prerequisite to obtain the concession of PT BSMI and plantation licenses that have taken the land of rural communities through a partnership, but the rights of society as a partner, not be realized for more than 18 years.
- The existence of elements of marines military and police to help security since 1997. In one shift, personnel security for the plantation area is approximately 10-15 personnel.
- In the handling of citizen action, it has been discovered facts about the use of force by the police, and the use of firearms and bullets in the control of public action, which resulted in the death of citizens.

Conflicts occurred in both two locations have lasted very long and TPGF recommendation could not be realized, so that the problem of the conflict has not been completed, until today. Reality conflict / dispute between the company land continues, but on the other hand, many peoples of the community were working in the company. Actually, there are no definitive data about the number of people who become parties to the dispute of land, as well has been working in the company as daily labours. However, it can be argued that there were more than 100 members of PPMWS<sup>12</sup> were working as labours of tapping rubber latex of PT Sylva INHUTANI.

The same thing has been going on in the village of Sri Tanjung and Nipah Kuning. At least, I have met with 25 respondents from the two villages who work in the oil palm plantation company (PT BSMI or PT LIP), and once they have been fighting for land rights, which has been controlled by the company.

Their position as the party who has been in conflict with the company land issues, while they also have been working in the company, often also be a problem. These problems, one of which, is the suspicion of other community members who rate them as a corporate spy. This would have the potential to create a horizontal conflict among them. While as labours, their bargaining positions were weakened, especially they didn't make direct communication with the company, but by the Supervisor. Picture of the employment relationship can be described as follows:

**a) Rubber Plantation Labours**

One of main commodity of PT Sylva Inhutani is rubber. Rubber plantation of PT Sylva INHUTANI currently about 8 years old for the youngest, and 15 years for the oldest. To produce a latex rubber, the company has hired laborers are usually called oldest. To produce a latex rubber, the company has hired laborers are usually called "Supervisor" (*Mandor*). One task of the Supervisor is recruiting the labours for the type of work varies according to the needs of the company. Thus, labor relations only with the supervisor, and without written agreement bond. The supervisor has full authority to hire,

terminate, determine Wages, and determine the terms of employment. A the supervisor may terminate labor at any time without the severance or other of labor rights.

The labours were already being derived from the public around the area Registers-45 and from outside. A supervisor will oversee approximately 10,000 rubber trees with an area of approximately 20 ha. The area is done by approximately 20 people power tappers, so that a labour has been responsible tap about 500 trees a day.

Status of the working relationship between the labours with the company tapping rubber latex is daily labours. Based on interviews with tapping labours who work in the company, which works with provisions, as below:

- Minimal work as much as 27 days each month. The labours who only work under the 27 days up to a minimum of 20 days, the company can do the termination to the labour.
- Work hours of tapping during 04.00 AM to 08.00 AM for the tap (*nderes*) the rubber trees. Then, on 09:00 AM until 10.00 AM is time to collect the latex as the tapping results. Furthermore, the liquid of rubber latex was collected and brought to the "rubber weighing" up to approximately 12.00 AM. After the weighing process was finished the new labours is going to their homes.
- The Salary system of tapping labours is calculated based on the accumulated deposits of liquid rubber latex which is deposited every day. Companies usually set the level of liquid latex production that must be paid to post as much as 50 kg per person per day.
- The cash count of accumulation salary and its administration done every 15 days. In addition to the deposit amount is based on the accumulation of liquid rubber everyday company imposed a system of quality assessment rubber (DRC) to calculate the water content of the rubber that paid each labour. For good DRC levels reached 28-30 given IDR 1,300 per kg. For bad DRC reached number 25 was given a price of IDR 1,000 per kg. So, for example, a labour with a 15-day production rate of 50 kg per day, ie a total production reached 750 kg with a good DRC multiplied by IDR 1,300 to the income received every 15 days is IDR 975,000. Number of water content (DRC) is influenced by weather factors / season, if the dry season, the water content (DRC) relatively stable and well. But on the rainy season the water content (DRC) tends to deteriorate.
- The Company does not provide assurance of safety and health as well as tools / work facilities such as boots, flashlight head, work coats, knives, plastic bags.
- The daily labours are not members of labour unions that formed the company.
- In the production process, the labours have to bring their own tools such as knives and plastic containers for rubber tapping. Commonly, every labour usually takes 6 plastic bags each day to accommodate and bring the latex to the weighing post. With the price of IDR 4,000 per plastic, it means that every day they have to pay IDR 24,000.
- The company allocate as much as 0.5 kg of rice per person per day, this rice quota will be accumulated and taken once a month. So every tapping labour will get as much as 15 kg of rice. This amount is not sufficient for the needs of a small family that requires 20-25 kg of rice per month. The condition is almost same wether experienced by each labour tapping PT. Sylva including labours who live in the



mess/ housing company, the difference is only because they are placing at the shelter provided by company.

### **b) Oil Palm Plantation Labours**

Based on interview with labours working in PT BSMI and PT LIP, obtained a description as follows;

- Status of the working relationship between labor and the company is as daily labours. Labours working under the supervision of a Supervisor (coordinator).
- Labour burden of cutting sheath, the sheath smoothed cut, cut stems of palm, palm fruit picking, transporting oil palm fruit, collecting and compiling the results and coding the oil palm fruit. That whole process is done under the strict supervision of the plantation Supervisor.
- An average Supervisor manages approximately 100-200 hectares with the total labor force of approximately 20 people.
- Wages below the minimum Province Wage (Provincial Minimum Wage in Lampung is Rp.1.581.000, -) with 7 hours per day working.
- Daily labours do not receive the guarantee of safety and occupational health.
- Daily labours are not members of labour union formed by company.

In the context of land disputes, on a Fact Finding Team entry point<sup>13</sup> in the realization of their rights have been violated by the state. However, they also need to understand about how positive law and government policies are often inconsistent. Therefore, they should understand the following things:

#### **a) Agrarian Policy**

An important aspect that needs to be understood by the public is access to agrarian resources. They have the right to manage it, as stipulated in Law No. 5 of 1960 on Agrarian; Law No. 18 of 2004 on Plantations; and Law No. 19 of 2004 on Forestry. They also need to understand their rights and obligations as a party in a partnership between the company and the community, which is a cooperation scheme that is often used by the government.

#### **b) The Ignorance of Fulfillment of Constitutional Rights**

The peoples must understand the positive law that guarantees the fulfillment of their constitutional rights, namely;

- The right of education: it is guaranteed in Act 20 of 2003 on Education, which regulates the "Compulsory-Learning" 6 years. Compulsory education is the responsibility of the government and local governments to fulfill.
- Right to Identity; this is guaranteed by Law No.23 of 2006 on Inhabitant Administration. This law guarantees the administrative services for vulnerable populations, such as the Moro-Moro community conditions.
- The right to health care; guaranteed by Law No. 36 of 2009 on Health.
- They should also have to understand that their rights are also guaranteed by Law No. 39 of 1999 on Human Rights.

### **c) Conservation Efforts**

The peoples need to understand that they live in the forest containing a conservation function. therefore, a need for increased capacity of public knowledge about the conservation efforts. Such efforts have being was done by PPMWS since 2006 through the program "Struggle Homeland", whose meaning is, that in managing the forests they live in, they have to protect soil and water by planting a tree, so that the functions of the forests where they live can be maintained.<sup>14</sup>

### **d) Training of mediation and negotiation**

Mediation training is needed in terms of elimination of violence that often occur. It must be recognized that people often take action to voice their rights. in addition, they face eviction by the government. In order for such action does not become anarchic, it takes a mediator and negotiator.

The fundamental issue of the working relationship between the peoples and the company is how to improve their bargaining position to their rights, so that the company fulfill these rights, and the improvement of the terms and conditions of employment. Therefore, they must understand the labor laws that guarantee the rights and obligations of the parties, especially Law No. 13 of 2003 on Manpower. At the very least, the labours must understand the substantial aspects of employment contracts; Protection, labours' wages and social security; Safety and occupational accidents; and the rights of association of labours as described below:

#### **1) The employment contract;**

Important facts about why the employment contract needs to be understood, is because there are problems with the system of labor relations and their position as a daily labour related to the guarantees of the fulfillment of the rights and obligations of the parties. Article 50 of Law No. 13 of 2003 regulates the employment relationship as the "Employment relation exists because of the existence of a work agreement between the entrepreneur and the labour / labourer". An Employment agreement is the basis for the parties to know about what the working conditions, rights, and obligations. Labours and firms are the parties to the employment agreement. The problem that arises then is whether the process of recruitment and termination of employment can be done by the supervisor?

Factually, the bonding laborers working with the company simply based on unwritten agreements, is a violation. As a daily labour, work can be categorized as a bond covenant given time, as stipulated in Article 56, namely:

- (1) *A work agreement may be made for a specified time or for an unspecified time.*
- (2) *A work agreement for a specified time shall be made based on:*
  - a. *A term; or*
  - b. *The completion of a certain job.*

Certain time employment agreement must be made in writing, in accordance with Article 57 Subsection (1) and Subsection (2) which states;

- (1) *A work agreement for a specified time shall be made in writing and must be written in the Indonesian language with Latin alphabets.*

- (2) *A work agreement for a specified time, if not made in writing is against what is prescribed under subsection (1), shall be regarded as a work agreement for an unspecified time.*

The term "daily labour" basically unknown in the setting of Law 13 No. 2003. Article 59 Subsection (1) of Law No. 13 of 2003 which regulates the type of work that can be tied to a specific time employment agreement does not include "daily labour" as a criterion. The arrangement of the article is as follows;

- (1) *A work agreement for a specified time can only be made for a certain job, which, because of the type and nature of the job, will finish in a specified time, that is:*
- a) *Work to be performed and completed at once or work which is temporary by nature;*
  - b) *Work whose completion is estimated time which is not too long and no longer than 3 (three) years;*
  - c) *Seasonal work; or*
  - d) *Work that is related to a new product, a new activity or an additional product that is still in the experimental stage or try-out phase.*

Characteristics of this type of work in oil palm plantations and rubber plantations as didiskripsikan above, does not include criteria such article. The setting of daily labours can be laid down in Decision of Minister Of Manpower And Transmigration Of The Republic Of Indonesia The Decision Of The Minister Of Manpower And Transmigration Of The Republic Of Indonesia Number: Kep.100 / Men / Vi / 2004 Concerning Stipulation On Implementation Of Work Agreement For Specified Period Of Time. This provision expands employment agreement setting a specific time, which is regulated in Article 59 Subsection (1) of Law No. 13 of 2003. And the exceptions of Agreements certain time as stipulated in Article 11 of the Ministerial Regulations, which specify as follows:

*The work agreement for free daily work which meets the requirements as meant in Article 10 subsection (1) and subsection (2) are exempted from the requirements on the working period in the common PKWT.*

Terms and daily labours criteria stipulated in Chapter V, Article 10 which determines that:

- (1) *For certain works which hare change a blein the case of time and work volume and the wages are based on attendance, can be done with work agreements for free daily work.*
- (2) *Work agreement as meant in subsection (1) can be made in the condition that the labour/ laborer perform the work less than 21 (twenty one) days in 1 (one) month.*
- (3) *If the labour/laborer performs the work for 21 (twenty one) days or more, for 3 (three) months consecutively or more, therefore the work agreement for free daily work is changed into PKWTT.*

The type and volume of work in oil palm and rubber plantations are fixed and the volume is measured by the extent of the area that became the responsibility of a supervisor. In terms of wages, labor rubber tapping is based on the target. Labours

tapping rubber latex must work 27 days per month and oil palm plantation labours have to work 6 days per week and 7 hours per day, so that the provisions of Subsection (2) are not met. Thus, it can be argued that this type of work does not meet the criteria to be bound by the non-permanent agreement. Conditions of employment are not only detrimental to labours, but also contrary to the ministerial regulation.

Article 10 Subsection (3) is intended to protect labours, but in reality it is not effective. Many labours have been working for decades without a written employment agreement. The practice is also not in accordance with the provisions of Article 12 ministerial regulations which specify that:

- (1) Entrepreneur who employs labour/laborer for the work as meant in Article 10 is under obligation to make a written work agreement for free daily work with the labour/laborer*
- (2) The work agreement for free daily work as meant in subsection (1) can be made in form of a list of labours/laborers who perform the work as meant in Article 10, at least consists of:*
  - a. name/address of company or job provider*
  - b. name/address of labour/laborer*
  - c. type of work,*
  - d. amount of wage or other compensation*
- (3) List of the labours/laborers as meant in subsection (2) is submitted to the authorized local manpower institution 7 (seven) days at the latest since the employment of the labours/laborers.*

The provisions of Article 12 Subsection (2) is actually weakening the position of labours, and inconsistent with Subsection (1), and contrary to Article 57 Subsection (1) of Act 13 of 2003, which provides that a certain time employment agreement is in writing. Violation of laws and regulations may continue for supervisory functions under the authority of local governments to the employer's obligation is not performed. In Article 13 of the ministerial regulation is set on the employer's obligation to record a certain time employment agreement, but for daily laborers, just note the list of labours.

## **2) Protection, wages and the welfare of labours.**

Bases on the reality as described above, the important aspects that need the attention of the labours, are:

*Working Time; in general, working time provided for in Article 77 of Law No. 13 of 2003 which set as follows:*

- (1) Every entrepreneur is under an obligation to observe the provision concerning working hours.*
- (2) The working hours as mentioned under subsection (1) cover:*
  - a. 7 (seven) hours a day and 40 (forty) hours a week for 6 (six) workdays in a week; or*
  - b. 8 (eight) hours a day, 40 (forty) hours a week for 5 (five) workdays in a week;*
- (3) The provisions concerning the working hours as mentioned under subsection (2) do not apply to certain business sectors or certain types of work.*

Based on this regulation, laborers must understand the implications for overtime or consequences become the employer's obligation with respect to the provisions of Subsection (3).

### 3) Safety and Health at Work

An overview of how plantation laborers as described above illustrates the threat to labor. Labourers must understand the setting of safety as stipulated in Article 86 Subsection (1) of Law No. 13 of 2003 which provides that:

*Every labour/ labourer has the right to receive protection on: a. Occupational safety and health; b. morality and decency; and c. Treatment that shows respect to human dignity and religious values.*

Protection of health and safety is a labor rights and the duty of employers to fulfill. Under the provisions of Article 99 of Law No. 13 of 2003, each labor and his family are entitled to social security and an obligation for employers to comply. However, daily laborers do not get social security, such as health care insurance, accident insurance and life insurance.

### 4) Wages

Wages are labor rights to be paid by the employer and the wage income meets a decent living for humanity, which is contained in the wage policy. The Labour should understand well about the substance of wage policy as set out in Article 88 subsection (3) of Law No. 13 of 2003, namely:

- (3) *The wages policy that protects labours/labourers as mentioned under subsection (2) shall include:*
- a. Minimum wages;*
  - b. Overtime pay;*
  - c. Paid-wages during the absence;*
  - d. Paid-wages because of activities outside of his job that he has to carry out;*
  - e. Wages payable because he uses his right to take a rest;*
  - f. The form and method of the payment of wages;*
  - g. Fines and deductions from wages;*
  - h. Other matters that can be calculated with wages;*
  - i. Proportional wages structure and scale;*
  - j. Wages for the payment of severance pay; and*
  - k. Wages for calculating income tax.*

Wages system used in the law is the minimum Wages, but in fact, shows that Wages received by labor is still below the minimum Wages. In addition, the labor are still burdened with the obligation to provide work tools that should be the employer's obligation.

### 5) The right of Union.

Reality shows that labours are not unionized as described above. The Labour do not understand that by of Union, their bargaining position would be better/stronger. PPMWS

and organization that has been done so far aimed at the defense of their rights over the land in dispute. While their rights as labours into their personal affairs. labor rights of association is guaranteed by Law No. 13 of 2003 and Act No. 21 of 2000. The Labour must understand that the purpose of Union:

- Protect and defend the rights and interests of labours
- Improve conditions - terms and conditions - working conditions through collective agreements with management / entrepreneur
- Protect and defend the labours and their families will be a social situation in which they experience pain conditions, lost and without (layoffs).
- Keeping management / entrepreneur listen and consider the union voice or opinion before making a decision.

The important thing is that the union should be part of the organization that has been done to prevent the rivalry and suspicion they were not working in the company.

#### **D. CONCLUSION**

Based on a brief description of land disputes and conditions of the employment relationship between the company, it can be concluded important points related to these two problems, namely;

##### 1) Land disputes.

- Agricultural Policy;
- Fulfillment of constitutional rights were ignored;
- Conservation efforts;
- Mediation training;

##### 2) Work relationship

- Employment contract;
- Protection, labours' wages and social security;
- Safety and occupational accidents;
- Labours' right to organize.

Those two aspects are indeed a different problem, but there is a point wedge issues that put society must bear the double burden. On the one hand, they have been facing land dispute with the company, while on the other hand, they have being working in the company. In such conditions, the bargaining position of labours in the company has become increasingly weak. Therefore, it takes steps and efforts to improve the bargaining position of labours through increased capacity to understand, as well as a decisive step in solving the problems they face.

## E. ENDNOTES:

<sup>1</sup> Sartono Kartodirdjo dan Djoko Suryo, 1991. *Sejarah Perkebunan Indonesia: Kajian Sosial – Ekonomi*. Aditya Media, Yogyakarta. (Indonesia Plantation History: Social – Economy Study)

<sup>2</sup> Dutch definition which means 'cultivating rule'. This definition refers to cultivating rule at the Reign of Govenour General, Van Den Bosch.

<sup>3</sup> Jan Breman, Koelies, *Planters en Koloniale Politiek* (Leiden: KITLV Uitgeverig, 1992), pp.119-27

<sup>4</sup> Anthony Reid, "Early Chinese Migration into North Sumatera" in Jerome Ch'en and Nicholas Tarling (ed), *Studies in Social History of china and southeast Asia* (London: Cambride University Press, 1970), p.293.

<sup>5</sup> Iman Soepomo, 1982, *Pengantar Hukum Perburuhan*, Jakarta: Penerbit Djambatan

<sup>6</sup> Jan Breman, Koelies, *Planters en Koloniale Politiek* (Leiden: KITLV Uitgeverig, 1992), p.173.

<sup>7</sup> Wajah Baru Agrarische Wet -Dasar dan Alasan Pembatalan Pasal-pasal Kriminalisasi oleh Mahkamah Konstitusi, Elsam-Sawit Watch-Pilnet, 2012, p.18

<sup>8</sup> Rencana Strategis Pembangunan Perkebunan 2005-2009, Departemen Pertanian Direktorat Jenderal Perkebunan Republik Indonesia (Plantation Development Strategic Plan 2005-2009, Ministry of Agriculture Directorate General of Plantation of the Republic of Indonesia)

<sup>9</sup> YLBHI, 1998, *Pokok-Pokok Pikiran YLBHI tentang Reformasi Politik Perburuhan Nasional*, Jakarta: YLBHI.

<sup>10</sup> See *Ringkasan Eksekutif Hasil Penelitian 5 (lima) Perguruan tinggi yang do bentuk dalam rangka menjawab keberatan Asosiasi Pengusaha Indonesia (APINDO) dan Serikat Buruh terhadap UU 13 Tahun 2003 tentang Ketenagakerjaan* (Executive Summary of Research 5 (five) Colleges are established in order to answer the objections of the Indonesian Employers Association (APINDO) and the Trade Union of the Act 13 of 2003 on Manpower)

<sup>11</sup> Excerpted from the report of the Joint Fact-Finding Team. The conflict has been emerging in the process of land acquisition as a prerequisite to obtain the concession. This conflict has not fully resolved, and accumulated with other conflicts that have emerged after the issuance of a license granted to the company plantations. Process-top waiver-owned land for plantation interests conducted by the company and facilitated by the state bureaucracy at the local level have some problems related to: (1) the transparency of the process of waiver by the Supervision and Control Committee established by the local government, (2) determination of the nominal huge compensation (3) clarity of boundaries has.

<sup>12</sup> PPMWS is an acronym of the "Persatuan Petani Moro-Moro Way Serdang", (Union of Farmers of Moro-Moro Way Serdang) which is a body of Moro-Moro struggle citizens.

<sup>13</sup> The most important point is the recognition of the Fact Finding Team on the rights of indigenous peoples and local communities on the land that there were forests Register-45 that should be returned. As for the Moro-moro community is the fulfillment of their constitutional rights were ignored and open access opportunities to participate manage regional registers with certain requirements.

<sup>14</sup> Interview with Sahrul Sidin (the Chairman of PPMWS) and Eko Badai (PPMWS activist)