

HUMAN RIGHTS DUE DILIGENCE (HRDD) AND HUMAN RIGHTS IMPACT ASSESSMENT (HRIA) BEST PRACTICES TO CORPORATE SHARED VALUE (CSV): A CASE OF BRITISH PETROLEUM TANGGUH PROJECT IN PAPUA

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ABSTRACT

The Tangguh Liquefied Natural Gas (LNG) Project is a planned natural gas development project located in the remote area of Berau-Bintuni Bay in Papua Province, Indonesia. British Petroleum (BP) Tangguh project aims to be the pioneer in producing natural gas. It can be concluded that BP contributes an innovative approach, bearing in mind to sustainable development, cultural preservation and biodiversity conservation. Therefore, in each of its corporate actions, BP always integrates the value of community, partnership, consultation and corporate responsibility. It is mentioned that through experience and observation, BP as an extractive company, have estimated the costs of not finding a better mechanism to adjust to social challenges can be higher than the costs of the uncertainties inherent in the trial of new ideas. However, according to international Non-Governmental Organization (NGO), Down to Earth, BP has conducted a series of human rights violations by exploiting natural resources in Papua and restricting Papuans in enjoying their fundamental human rights. If only the BP keeps this Tangguh project in line with its aim to accommodate concerns from the affected surroundings, thus, will surely bring positive changes in BP's corporate shared value

Keywords: Human Rights Due Diligence best practices, Human Rights Impact Assessment, Corporate Shared Value, sustainable development

INTRODUCTION

The Tangguh LNG Project is a planned natural gas development project located in the remote area of Berau-Bintuni Bay in Papua Province, Indonesia (BP, 2003). It is named Tangguh after the Indonesian word for resilient. It is the initial project under the recent oil and gas regime law in 2001, signed and agreed to more than 30-year contract with a long-term financing of \$ 2.6 billion (Tjia-Dharmadi, 2006). Furthermore, the Tangguh gas fields have the potential to become one

of the world's primary natural gas supplies. It aims to develop Liquefied Natural Gas (LNG) for marine export which is due to commence in 2003 (BP, 2003).

The Tangguh LNG Project contains tapping the Tangguh fields, processing the gas into LNG and loading it for shipment. The tapping of six fields conducted to extract integrated viable reserves of around 144 trillion cubic feet of clean gas. The project consists of two unmanned offshore production platforms that pump gas from the reservoir and then relay it through subsea pipelines to an LNG processing facility in Bintuni Bay, location of Tanah Merah.

In March 2005, the Indonesian Government approved the Tangguh project in Bintuni Bay of West Papua. The LNG gas liquefaction plant consists of two liquefaction trains with a combined capacity of seven million tons per year of LNG (Ajayi, 2012). These liquefaction trains (the units that purify and liquefy gas) are producing at least 7.6 million metric tons of LNG a year (International Council on Mining and Metals, 2012). Whereas the first train began production in mid-June, the second train began to operate in the third quarter of 2009. There are also associated jetties and marine facilities of a tanker terminal to export the gas via tanker to markets in East Asia and North America (Hydrocarbons-technology.com, 2010).

As having 37,16% interest in the project, BP Indonesia has become the operator of Tangguh under a production sharing contract with BP MIGAS (Indonesia regulatory body for oil and gas upstream activities). In October 2007, the project completed its project loan agreement in the total amount of US\$3,5 billion with several international banks to fund the LNG plant development, which had highlighted investors' confidence in the project (BP Indonesia, 2010). Tangguh LNG plant construction started in 2004 and it began exporting LNG in July 2009, with an expected contract period of forty years (Courvisanos, 2010). Its major clients are Chinese, Korean and US energy companies and it is estimated to achieve major revenues by 2016 (BP Berau Ltd., 2005).

As a result of government ignorance, the population in the coastal of Bintuni Bay region was malnourished, surviving on a subsistence economy, and facing a high childhood mortality rate and low life expectancy (BP Berau Ltd., 2005). The villagers in the Project area are from the Sumuri tribe, consisting of 18 clans dispersed among several villages in which the actual location of the Tangguh project was Tanah Merah. The villagers involuntarily resettled next to the neighboring villages of Saengga and Onar in 2004, to create the towns of Tanah Merah Baru and Onar Baru (BP Berau Ltd., 2006).

The Tangguh project contributes an innovative approach to sustainable development, cultural preservation, and biodiversity conservation. Primarily, a reference of key principles in mind related to this Tangguh project includes community, partnership, consultation and corporate responsibility (BP Berau Ltd., 2005). Through experience and observation, BP as a resource extraction company has found that the costs of not finding a better mechanism to adjust to social challenges can be higher than the costs of the uncertainties inherent in the trial of new ideas. Arguably, Courvisanos (2010) also concluded that from observing and experiencing the consequences of corruptive extractive activities in similar environments and through an evolution of corporate norms, BP had conducted conscious steps to alter its corporate strategies to accommodate the project's political surroundings. Moreover, alterations and modifications in the institutional framework regarding extractive industry has directed to the phenomenon

of BP's submitting an institutional void within the region, playing a quasi-government role as a mediator between conflicting parties and disseminates public goods (Courvisanos, 2010).

Since acquiring a significant interest in the Tangguh LNG Project with the purchase of Atlantic Richfield (ARCO) in 2000, BP has actively communicated to project-area communities, project stakeholders (including NGOs and members of civil society in Papua), and international experts in order to anticipate, manage and mitigate potential negative socio-economic and environmental impacts of the Project. These impact management efforts rank highly among the primary criteria that will be determined by BP's senior leadership to approve the project's formal commencement, or 'sanction' (BP Berau Ltd., 2005).

To name a few, these below programs are contained in the integrated Environmental and Social Impact Assessment (AMDAL) of the Tangguh Project, which is a legally binding document once approved by the Indonesian Government (the State Minister of the Environment formally approved the AMDAL on October 25th, 2002). These include a Workforce Management Program (WMP); a Recognition Program for Directly Affected Villages (RPDAV); a Program for Other Stakeholders' Interests (POSI); a Procedure for Conflict Resolution (PCR); an Indigenous People's Development Plan (IPDP); a Land Acquisition and Resettlement Action Plan (LARAP); and a Public Consultation and Disclosure Plan (PCDP). All of these programs are organized by the Tangguh Project's Social Responsibility Policy, which covers diverse issues in relation to the Project's ethical performance (BP Berau Ltd., 2005).

Concerning human rights, the Social Responsibility Policy states that this project supports the principles of the UN Universal Declaration of Human Rights, as well as the US State Department's Voluntary Principles on Security and Human Rights (BP Berau Ltd., 2005). All employees and contractors will be trained to concern human rights policies (Lapiņa *et al.*, 2012), and the importance of treating each other, particularly the local communities, with dignity and respect. The company will take severe disciplinary sanction against any employee or contractor for any human rights violations, and shall report any violation in due course, to the proper authorities immediately (Silo, 2016). The project will work actively to uphold human rights throughout the operation and support areas and consult widely with local, national, and international organizations on how this can be most effectively achieved (BP Berau Ltd., 2005).

Also, in early 2001, BP asked two prominent human rights experts to undertake a human rights assessment in Tangguh Project area and the potential effects of the Project's presence. BP has standard practice for its business units operating in challenging areas, either politically or socially, to include more comprehensive social aspects into Environmental Impact Assessments, or in certain cases, to exercise Social Impact Assessments. However, Tangguh Project

is the pioneer to conduct an assessment focused solely on human rights. Massarani *et al.* (2007) conducted the HRIA. Both are former Deputy Assistant Secretaries in the U.S. State Department's Bureau of Democracy, Human Rights, and Labor and have comprehensive additional relevant experience in the private and nonprofit sectors; as such, they are widely recognized for their experience and judgment on human rights issues in particular (BP Berau Ltd., 2005).

METHODS

The methods used in this qualitative research are case study and descriptive analysis. Guba and Lincoln (1981) described case study types that are factual. The types are factual, interpretative, and evaluative. Each case study must outline the purpose, then, depending on the type of case study and the actions proposed by the researcher, he/she could determine the possible products of the study. In summary, the purposes of case study research may be exploratory, descriptive, interpretive and explanatory (Mariano, 2000).

Courvisanos (2010) argued that the project's scope, location, and timing demanded new forms of legal and commercial due diligence, new structural approaches and innovative solutions for a variety of lender and sponsor groups, whereby the loan structuring had to be in line with previous trustee financings. In this context, the decentralization process between Jakarta, and the central governmental authorities and local governments required amendments to the revenue-sharing arrangements. Also, there were political and geographical issues regarding the location of this project in West Papua. Additionally, off-taker risks arose from the gas sales to certain frontier-market off-takers such as China and Mexico. The project's legal structure will serve as a precedent for future national LNG projects in Indonesia (Tjia-Dharmadi, 2006). Learning and innovation have now become the means of securing a competitive advantage, improving company performance and adapting to unpredictable environments. (Courvisanos, 2010).

RESULTS AND DISCUSSIONS

The low level of development in this region had proven the negligence of Indonesian Government's approach to development in Papua for the majority of its history - the people's needs were denied even though its resources fuelled the development of the rest of the Indonesian state (Courvisanos, 2010).

However, there are three central issues that have been in discussion of local and NGO related to Tangguh Project, those are the potential demolition of local ways of life, migrant invasion, and corruptive arrangements with public security forces (BP Berau Ltd., 2006). These three central issues are possible triggers for violent conflict resulting from resources exploitation and the hindering of development efforts by BP, its consultants, community partners and the

media. Thus, these concerns have set up the main focus of the BP's commitments before the beginning of its Tangguh Project (Vidal, 2008).

In its extensive commitment to social programs, BP has exercised roles typically attributed to governments, and even funds projects to help strengthen local and provincial governments. It also must be ascertained whether this transnational corporation has helped achieve what local governments have been unable to do, that is, enhance development in the indigenous community, or if the company has overstepped its boundaries and risks causing conflict in doing so (Vidal, 2008).

Taken into consideration, a disappointing response to interview requests was encountered from human rights and legal activist NGOs. Additionally, there has been a noticeable decrease in NGO and media coverage on BP's Tangguh Project since the mid-2000s by the time the project commenced (Vidal, 2008). NGO output since recently has been either based on preceding NGO research (Cook, 2010), or in response to BP reports. It means that the pile of information about the plant obtains from a number of sources connected to BP and is a limitation of the study that is admitted at the beginning (Down To Earth, 2009).

Gare A. Smith and Bennett Freeman in their HRIA presentation to BP, provided conclusions and recommendations which was categorized into three themes, concerning Fundamental Human Rights, Balancing Human Rights and Security, and Supporting Papuan Civil Society and Governance. In their conclusion, the Tangguh project affects significantly to human rights issues to not only the fundamental freedoms of locals living in the Bintuni Bay area but also BP's corporate reputation and brand image to its leverage worldwide (Smith, 2002).

Furthermore, they found difficulties in assessing whether a transnational corporations, having their operations in an inhabited area with indigenous peoples, has effectively and fairly balanced between their commercial corporate actions and the community interests, in particular, when there was experience in the past of exploitation and inherent injuries to the lifestyles of the indigenous people. Further, the complication was found as this project would be launched in a politically polarized province, dealing with uncertain future. In addition, Pertamina/BP's ability to effectively involve the participation of local communities in their sphere of influence would suggest critical influence as to the project's operational success and the security of its assets and people. If the local communities could benefit from it, they will support to maintain and sustain it, however, if not, and even their culture and livelihoods are damaged by the project, then it will be much more complicated to ensure the project's long-term success and to secure BP's image. To the greatest extent possible, this human rights respect should be integrated and applied to acknowledged policies, management guidelines, and implementation plans that should be undertaken

within the context of prevailing custom mechanisms and systems, to promote awareness of the affected stakeholders in terms of respecting and enforcing their rights. Also, Pertamina should be transparent and accountable in every factors of the project that deals with human rights of indigenous communities. In addition, Pertamina will also need to develop effective monitoring compliance mechanisms regarding international human rights standards undertaken by both internal management and an independent external monitor. Finally, the most valuable asset that Pertamina can develop is trust. When developing and securing vital assets determines company's compliance with human rights, then the sustainability success of the project for both the involving companies and local Papuans would be realized (Smith, 2002).

In Smith and Bennett's report related to fundamental human rights, provides recommendations in particular relevant rights e.g. indigenous rights, basic human rights, and labor rights. Their recommendations to BP are as follow: always involve the potentially affected stakeholders in transparent, open and continuous discussions and documentations at local, regional and national level; establish and pay a 'fair' price for land, based on the value of comparable land owned by subsistence cultures elsewhere in Papua; help local and provincial governments develop guidelines to demarcate the boundaries of traditional lands; pay compensation for trees felled and for loss of fishing grounds; encourage central government to secure incomes as outlined under Special Autonomy; establish laws regarding the sale and use of communal land and squatting on indigenous lands in order to limit immigration; conduct training courses to challenge existing assumptions regarding racial discrimination; provide local Papuans preference in securing senior positions (Down To Earth, 2003).

On the issue of human rights and security, the company should urge to limit the utilization of TNI (Indonesian armed forces) and Brimob (special forces police) deployments and, if necessary, obtain approval for this position from the US and UK governments; develop a written policy related to the provision of state security forces; use the International Committee of the Red Cross (ICRC) for security force training; deliberate past human rights records of military personnel deployed in the region, raise specific cases at the highest levels, seek investigations and liability for abuses occurred in the project area and open access for NGOs investigating alleged violations; and provide a local security and human rights call center for emergency use (Down To Earth, 2003).

BP's lengthy responses to these issues are varied, but they extensively contain confirmation that the concerns are already being taken into account and been conducted as recommended by the report in due course, or are being addressed in a way that is considered more appropriate. From the HRIA and BP's responses, in my opinion, it seems clear that the complexity of issues in Papua is vary and diverse, interrelated not only to the direct affected stakeholders

but also indirect effects of Tangguh project, whereby they should take into serious account if BP would like to have its project run sustainable. Further emphasized in International Council on Mining and Metals (ICMM), the recommendations issued by the two human rights experts in this project were determined to put international human rights standard as the benchmark rather than conditions in local context of the project area (Down To Earth, 2003).

Another assessment of Tangguh project is the first report of the Tangguh Independent Advisory Panel (TIAP) which was established by BP in early 2002 to provide external advice to BP's senior decision-makers on the non-commercial aspects of the Tangguh project. US Senator George Mitchell is the chairman of TIAP, also includes Lord Hannay from the UK, former ambassador Sabam Siagian from Jakarta, and the Reverend Herman Saud from West Papua. The TIAP report is wider in scope than the HRIA, in researcher's my opinion, it can be considered as a HRDD to include community development, security, training, and employment of Papuans and the environment. The Panel reports that Tangguh is "both welcomed as a new model for international corporate conduct and feared because of Papua's past experience" (with Freeport) (Down To Earth, 2003).

The TIAP report does not address some of the critical questions raised by Down To Earth (DTE) in a meeting with its members in April 2002 regarding land and resource rights and the conflict between Indonesian state law and customary law. In fact, the Panel avoids this crucial issue by stating that BP's compliance with Indonesian law is outside the scope of the Panel's inquiry; the right to decline the project lies in the hand of the local peoples. Neither the TIAP report nor the HRIA report summary recommendations resolve these essential questions. The whole TIAP mission is based on the understanding that the project will go ahead and that the question is how to do it best, not whether to do it at all (Down To Earth, 2003). There is no discussion of the project in particular to women both in the TIAP report or the HRIA summary. This is a devastating problem. Recent studies have emphasized the fact that women suffer imbalance negative impacts from extractive industries (Down To Earth, 2003).

The TIAP team ranks security as possibly "the most difficult and sensitive issue for BP", as their military's legal obligation to secure 'vital national assets' on the one hand TNI (armed forces) may place financial demands on BP on the other hand which then resulting in the military corruption. The team was told that up to 80% of TNI revenues had been derived from businesses and protection of facilities (Down To Earth, 2003).

It is also by no means assured that the revenue split in favor of Papua is secure since Jakarta determines to undermine Special Autonomy by splitting Papua into three provinces (Down To Earth, 2003). Even if Special Autonomy does survive, Papua gets 70% of revenues for the first 25 years only, after which it is reduced to 50%. Since Tangguh has an estimated

lifetime of at least 30 years, this has clear implications for Papua's future income (Down To Earth, 2003).

The Asian Development Bank (ADB) loaned as much as US\$30 million for the Tangguh's Liquid Natural Gas (LNG) project harms and adversely impacts the Indigenous Peoples of Soway, Wayuni, and Simuna in West Papua. This ADB-supported project failed to ensure communities' involvement in the project and the bank's commitment to good governance and transparency. There are no documents or information available in Bahasa or their local dialects and ironically, an essential element of people's participation in informed decision-making processes as preached by the ADB (Friends of the Earth Asia Pacific, 2009).

A leader sent by Papua Baptist Church Leader, Priest S. S. Yoman to BP, in July explains clearly to what is happening on the ground. An excerpt of the leader exposed the realities experienced of West Papua people and condemned BP of its lies, saying that BP had publicly stated that whatever happen in the 'project area' are all alright, having built a new village and trying cautiously not to disturb shrimp fishing in our waters. Also, there is a program of smiling Papua climate impacts of the ADB's business, but BP, on the contrary, does not reveal that outside of the 'project area,' Papuans are assassinated like pigs by the authorities from Jakarta and Jayapura.

What is most surprising is the environmental assessment documents of Tangguh, which were summarized and reviewed by the ADB stated that the project will produce 7,5 million tons LNG per year and will emit 25,57 million tons of CO₂ per year. However, the ADB shall conclude that the Tangguh project is in accordance with the ADB's energy policy which supports clean energy development through private sector participation, showing that ADB is falsely defining LNG, a fossil fuel, as environmental-friendly 'clean fuel' to promote to other countries in the region, especially in China and Korea (Friends of the Earth Asia Pacific, 2009).

TIAP was set up in 2002 and given the remit of helping BP achieve its potential to become 'a world class model for development.' With its latest report (7th TIAP report) and a round of Stakeholder meetings, the current committee of 4 members has completed its tenure. They have recently shown signs of fatigue: perhaps years of trying to perform the nigh-on impossible task of matching big business with sustainable development (Down To Earth, 2009).

One response by TIAP member Lord Hannay to a question regarding the Integrated Community-Based Security system (ICBS), showed clearly how this current panel appears to have lost its objectivity. John O'Reilly himself, a former BP manager in Indonesia and Colombia, raised issues over the increased presence of the Indonesian military in Bintuni Bay and the attached human rights risks. He asked if and how lessons will be learned from past experiences both here and elsewhere at BP. In a letter to Tony Hayward,

the Chief Executive of BP, a number of NGOs present at the TIAP meeting asked for clarification on this issue and pointed out that similar concern had been expressed by the TIAP panel itself. The letter said that there is always the risk that human rights will be threatened if the Indonesian Armed Forces (Tentara Nasional Indonesia/TNI) decides to intervene in a heavy-handed manner in response to a particular incident or situation for whatever reason.

BP's rhetoric and the reality of the on-the-ground situation in Papua were highlighted by Y. C. Warinussy from LP3BH at the TIAP meeting. Yan emphasized about the significance for BP to improve its communication with the local community and to have a real dialogue with local communities (rather than a managed one). He highlighted that human rights violations in Papua region are endemic. He warned that, despite money and programs available for the directly affected villages, without greater clarity and real dialogue there was a strong risk that BP would become a source of conflict rather than a source of development.

BP and TIAP were both misleading on the question of customary law and indigenous Papuans' perceptions that they are the rightful owners of the natural resources in their areas, including the gas reservoir. Lord Hannay claimed that BP was restricted by Indonesian law and therefore could not get involved in claims relating to customary land. The gap between indigenous views of the reality in Papua and those of the government and multinationals like BP remains a principle cause for ongoing conflict (Down To Earth, 2009).

Despite the controversy regarding the HRIA and TIAP from BP, the initial development of HRDD (Aust, 2014; Sherman, 2010) and HRIA (Harrison, 2011), applicability to the BP business core could be considered as the attempts toward reshaping and redefining its CSV Kreckova (2015). In creating CSV into actions requires a comprehensive effort that involves across a company. There are ten common building blocks that hinder the corporation from creating CSV, as follows: defining a vision of the company as a tool for CSV; develop a powerful strategy which identifying a clear focus and describing ambitious goals; manage delivery to leverage assets and expertise from internal and external company; measure efforts for high performance by measuring key indicators of performance; address issues at scale; communicate progress to both external and internal stakeholders; adopting a shared value agenda sometime requires a major mindset alteration within a company; work from the inside out and the top down, to engage senior management earlier to the process of CSV; it takes time to embed a shared value approach, therefore, tracking records is essential to keep initiatives on track and reflecting progress; the process requires change managers more than program managers (Bockstette, 2011) .

CONCLUSIONS

It can be concluded that when BP contributes an innovative approach, it bears in mind to sustainable development, cultural preservation, and biodiversity conservation. Therefore, each corporate action always integrates the value of community, partnership, consultation and corporate responsibility. However, according to international NGO, Down to Earth, BP has conducted a series of human rights violations by exploiting natural resources in Papua and restricting Papuans to enjoy their fundamental human rights. If only the BP sticks to exercise this Tangguh project in line with its aims before the project started, to accommodate concerns from the affected surroundings, which will surely bring positive changes in BP's corporate shared value.

From the mentioned discussion, the applicability of HRDD and HRIA is not only to bring corporations into compliance of human rights standard but also to secure corporate sustainability which is in the end creating CSV. In addition, this article is in the agreement of the company's performance improvement through HRDD and HRIA application since it could also bring positive implications to its business leverage.

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