

# In violation of the Federation Agreement

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Malaysians must understand that it is a legal duty of the federal government to pay the states the money due to them as laid down in the Acts of Parliament and the various agreements signed since 1957. What the federal government is doing is unconstitutional and a violation of all these agreements.

## THE CORRIDORS OF POWER

Raja Petra Kamarudin

## LAWS OF MALAYSIA

### ACT 144

#### PETROLEUM DEVELOPMENT ACT 1974

Incorporating latest amendment - Act A842/1993

Date of Royal Assent: 30th July 1974

Date of publication in the Gazette: 22nd August 1974

Date of coming into operation: 1st October 1974, [P.U. (B) 501/74]

#### Long Title & Preamble

An Act to provide for exploration and exploitation of petroleum whether onshore or offshore by a Corporation in which will be vested the entire ownership in and the exclusive rights, powers, liberties and privileges in respect of the said petroleum, and to control the carrying on of downstream activities and development relating to petroleum and its products; to provide for the establishment of a Corporation under the Companies Act 1965 or under the law relating to the incorporation of companies and for the powers of that Corporation; and to provide for matters connected therewith or incidental thereto.

#### Section 4. Cash payment by the Corporation

In return for the ownership and the rights, powers, liberties and privileges vested in it by virtue of this Act, the Corporation shall make to the Government of the Federation and the Government of any relevant State such cash payment as may be agreed between the parties concerned. \*\*\*\*\*

In the beginning, Malaya was ruled by the Sultans. Then, Melaka fell to the Portuguese, and then the Dutch, and finally to the British. The British entered into an agreement with the Sultans of Johor and Kedah to rent Singapore and Penang islands respectively. Melaka, Singapore and Penang became the British Straits Settlements.

The other Malay states remained under the various Sultans but were grouped into the Federated Malay States and the Unfederated Malay States with British advisers to advise the Sultans. Whether the advice of the British advisers was mandatory or the Sultans could choose to ignore this advice is still a topic being discussed until today. Some say the 'advice' was mandatory and others say it was not.

In 1957, all the states were invited to join the Federation of Malaya. A Federation Agreement was entered into where it states that defence, foreign policy, the internal security of the nation, and so on, would become federal matters. Other matters like religion and natural resources would remain state matters and would come under the authority of the various states.

This means matters concerning land, water, minerals, timber and anything at all extracted or found within the state boundaries or the economic zone of the states would come under the states. In the 1970s, a world conference was held and it was agreed that the economic zone of each country would be within 200 kilometres from the country's shore.

In 1972, Malaysia discovered oil -- offshore but within the Terengganu economic zone. Some say it was earlier than 1972 but that the government kept it a secret because Terengganu was under opposition control. And since petroleum is a state resource then Terengganu would benefit as laid out in the Federation Agreement.

In 1974, the federal government passed an Act of Parliament turning petroleum into a national resource and no longer a state resource -- in breach of the Federation Agreement. The Prime Minister then was Tun Abdul Razak. This Act of Parliament is called The Petroleum Development Act 1974.

Under the Petroleum Development Act 1974, it says:

An Act to provide for exploration and exploitation of petroleum whether onshore or offshore by a Corporation in which will be vested the entire ownership in and the exclusive rights, powers, liberties and privileges in respect of the said petroleum, and to control the carrying on of downstream activities and development relating to petroleum and its products; to provide for the establishment of a Corporation under the Companies Act 1965 or under the law relating to the incorporation of companies and for the powers of that Corporation; and to provide for matters connected therewith or incidental thereto.

For this purpose, a national petroleum company was set up called Petroleum Nasional Berhad or Petronas for short. And, in return, the states would be paid a percentage of the petroleum revenue as laid out in Section 4 of the Petroleum Development Act, which says:

In return for the ownership and the rights, powers, liberties and privileges vested in it by virtue of this Act, the Corporation shall make to the Government of the Federation and the Government of any relevant State such cash payment as may be agreed between the parties concerned.

In 1976, an agreement was signed between Petronas and ALL the states in Malaysia. The man who drew up this Agreement was Tun Salleh Abas, the then Solicitor-General. In this agreement it states that any and all states where petroleum is found they would be paid 5% of the revenue and that this revenue is to be called ROYALTY.

And, since then, Terengganu, Sabah and Sarawak have enjoyed a 5% ROYALTY from Petronas.

In November 1999, Terengganu fell back into the hands of the opposition. A few months later, in early 2000, the federal government cancelled the ROYALTY payment to Terengganu. It was replaced with GOODWILL MONEY or WANG EHSAN and it was not paid to the state but instead paid to Umno under the charge of Idris Jusoh.

This is clearly in violation of BOTH the Petroleum Development Act 1974 as well as the 1976 Agreement signed between Petronas and ALL the states in Malaysia.

In 2004, Terengganu fell back into the hands of Umno and Idris Jusoh was made the Menteri Besar. However, the ROYALTY was not reinstated. The federal government continued to pay GOODWILL MONEY or WANG EHSAN which the Prime Minister's Department would manage and would decide what to do with the money. How the money was spent was decided by the Prime Minister and not the Terengganu government although the money was supposed to belong to the state.

And that, in a nutshell, and in simple layman's language, is what the whole issue is about. Now, Kelantan is also being offered GOODWILL MONEY or WANG EHSAN instead of ROYALTY. But Kelantan is not talking this lying down like Terengganu did since 2000.

Kelantan is threatening to terminate the 1976 Agreement with Petronas as the action of offering them GOODWILL MONEY instead of ROYALTY violates the Agreement. If this Agreement is rescinded, then the rights over any and all petroleum in the Kelantan economic zone would belong to the state and not to Petronas. And Kelantan would get 100%, not just 5% of the revenue.

Note that this GOODWILL MONEY only applies to Terengganu and Kelantan. Sabah and Sarawak are still paid ROYALTY because those states are Barisan Nasional states. And even though Terengganu is now also a Barisan Nasional state the federal government does not want to revert to the ROYALTY in case the state falls back into the hands of the opposition. So Terengganu too still receives GOODWILL MONEY or WANG EHSAN.

Now, another thing to note is that when the Federated Malay States, the Unfederated Malay States and the Straits Settlements agreed to join the Federation of Malaya, it was agreed that the federal government would give the states loans for development plus grants calculated on the size of the states' population and based on so much per head.

The federal government has just announced it will not give any financial support to states under opposition control. So now, not only are they breaching the Petroleum Development Act 1974 and the 1976 Agreement that Petronas signed

with all the states, but they are also breaching the Federation Agreement as well.

Clearly, the Malaysian government does not honour any of its agreements. And is it any wonder that foreign investors refuse to sign agreements in Malaysia or be subjected to the jurisdiction of the Malaysian courts? Most foreign investors want their agreements signed in Singapore so that they can be subjected to the Singapore courts or opt for international arbitration.

Umno may think it is just politics and that they violate all these agreements in an effort to bring down the opposition state governments. But the foreigners are watching and this does not build the confidence of the foreign investors.

Malaysians must understand that it is a legal duty of the federal government to pay the states the money due to them as laid down in the Acts of Parliament and the various agreements signed since 1957. What the federal government is doing is unconstitutional and a violation of all these agreements.