

Government Regime in The Oil and Gas Management System

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Abstract

Indonesia is a country that is rich in oil and gas resources, in the Oil and Gas Management System there is a lot of interference by the Government, especially in Indonesia which has the 1945 Constitution (UUD 1945) as the written constitution with the highest position and the Management of oil and natural gas is contained in hierarchy of national legislation. The research method used is normative/doctrinal legal research and the research approach uses a conceptual approach that examines the literature or literature that is closely related to the problem under study.

Keywords : Regime, System, Oil and Gas

INTRODUCTION

Oil and natural gas are non-renewable natural resources and are also important resources for humans, especially in Indonesia, as they are categorized as non-renewable energy. This means that these resources will eventually be depleted due to continuous use or high levels of human consumption.

Oil and gas were first discovered by the Chinese in 347 AD. Using bamboo as a primary tool, the Chinese were able to drill to depths of over 800 feet and successfully extract oil and gas for the first time. In 1594, the Persians discovered oil and gas at depths exceeding 35 meters by simply digging with their hands. Similar efforts were carried out in California in 1850. The extracted oil and gas were refined and used as fuel for lighting.

Between 1809 and 1859, Europe and North America developed drilling techniques using percussion, which involved repeatedly striking the rock. This led to the creation of the world's first oil and gas wells. In 1854, an oil and gas well in Poland began production, marking it as the first well in continental Europe. Meanwhile, the first oil and gas well in North America was established in Ontario, Canada, in 1858. In 1910, the industry experienced its first major accident when an oil and gas drilling operation at Lakeview Gusher suffered a blowout. A blowout occurs when humans lose control over the flow of oil and gas from underground, resulting in millions of barrels of oil being released uncontrollably. This incident is considered the largest accident in the history of oil and gas drilling.

However, between 1920 and 1940, the global oil and gas industry experienced rapid development. This was marked by the commencement of offshore drilling and increased attention to disaster prevention in exploration activities. Later, in 1981, the first offshore oil and gas well was drilled horizontally. This demonstrated that oil and gas drilling did not have to be limited to vertical methods but could also be done horizontally. Today, the oil and gas industry continues to advance.

In Indonesia, in 1871, a Dutch trader named Jan Reerink discovered oil seeps in the Majalengka region, located on the slopes of Mount Ciremai, southwest of Cirebon, West Java. The oil seeped from tertiary rock layers that were exposed to the surface. Based on this finding, Reerink conducted the first oil drilling operation in Indonesia, using a cow-driven pump. A total of four wells were drilled, yielding 6,000 liters of crude oil, which marked the first oil production in Indonesia.

In East Sumatra, in 1880, Aeilko Jans Zijker, a tobacco farmer who had moved from Java, discovered oil seeping to the surface in the Langkat area. He sent an oil sample to Batavia for analysis, which revealed an oil content of 59%. In 1882, Zijker sought funding from the Netherlands to continue his oil exploration efforts. In 1883, he obtained a concession in Telaga Said, Langkat, covering an area of 3.5 square kilometers, from the Sultan of Langkat. During an inspection, he discovered pools of oil mixed with water, which prompted him to begin drilling his first well. Although this well was unsuccessful, his second well, named Telaga Tunggal, struck oil at a depth of 22 meters in 1884, with the main source located at 120 meters.

In 1890, Zijker transferred his concession to NV Koninklijke Nederlandsche Petroleum Maatschappij (KNPM). Zijker passed away unexpectedly in Singapore in December 1890. The company's leadership was taken over by De Gelder, based in Pangkalan Brandan. Additional facilities were established in Pangkalan Susu. The refinery in Pangkalan Brandan was built in 1892 and began production using oil from the Telaga Said field. In 1898, storage tanks and port facilities were constructed in Pangkalan Susu, enabling the crude oil to be processed before shipment. The port of Pangkalan Susu became Indonesia's first oil export port.

In East Java, NV Doordsche Petroleum Maatschappij (DPM) was established in the Netherlands in 1887 by Adriaan Stoop to develop oil fields in Surabaya. Stoop acquired a concession covering 152.5 square kilometers. The Kruka field became the oldest in the area, and the Djabakota field produced approximately 8,000 liters of crude oil. Stoop built the

Wonokromo refinery between 1890 and 1891 to process the crude oil. This refinery was the oldest in the Dutch East Indies. In 1893, lubricant production commenced at this refinery. Subsequently, numerous concessions were developed in Java, including Gunung Kendeng, Bojonegoro, Rembang, and Jepon, totaling around 30 fields. In conjunction with these developments, a refinery was also established in Cepu in 1894. In 1899, Jan Stoop drove a gasoline-powered car from Surabaya to Cepu.

In East Kalimantan, oil and gas management began when the Sultan of Kutai granted a concession to Jacobus Hubertus Menten in 1888. In 1893, the Sanga-Sanga field commenced production, and Shell constructed the Balikpapan refinery in 1894. Commercial production began in 1897. The first oil shipment took place in 1898, with Shell tankers transporting oil to Singapore. In 1905, KNPM discovered oil in Tarakan. Following the merger of KNPM and Shell in 1907, candle production began in Balikpapan in 1908. In the same year, gaslifting technology was implemented in the Kampung Minyak field. In 1913, a drum and can factory was established in Balikpapan. In 1925, aerial photography was introduced for oil exploration, and in 1929, Shell introduced electric well logging.

South Sumatra, oil exploration was driven by Dominicus Antonius Josephin Kessler and Jan Willem Ijzerman. They both founded NV Nederlandsche Indische Exploratie Maatschappij (NIEM) in 1895, to manage existing concessions in the Banyuasin and Jambi areas. As the number of their concessions increased, in 1897 NV Sumatra–Palembang Petroleum Maatschappij (SPPM) was formed, which was still part of KNPM. Furthermore, a mini refinery was built in the Bayung Lencir area. Another discovery, namely in the Lematang Ilir and Muara Enim areas, South Sumatra, was later formed NV Muara Enim Petroleum Maatschappij (MEPM). JW Ijzerman also then built a fairly large refinery in Plaju, along with the construction of a pipeline network connecting Muara Enim with the Plaju Refinery.

Oil and Gas Management System, In Indonesia, the 1945 Constitution (UUD 1945) serves as the written constitution with the highest position and Oil and gas management is contained in the hierarchy of national laws and regulations, where the 1945 Constitution gives a mandate to the state which is equipped with state control rights as an instrument to achieve one of the highest goals of the establishment of the Unitary State of the Republic of Indonesia (NKRI), and the mandate is contained in Article 33 paragraph (3) of the 1945 Constitution which states that “Land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”.

Regulations regarding the control and management of oil and gas in Indonesia in the reform era began on November 23, 2001 with the enactment of Law Number 22 of 2001 concerning Oil and Natural Gas (hereinafter referred to as Law No. 22/2001 concerning Oil and Natural Gas) (State Gazette of the Republic of Indonesia Year 2001 Number 136, additional State Gazette of the Republic of Indonesia Number 4152). This law product becomes the legal basis for the establishment of the Oil and Gas Business Activities Implementing Agency (BP Migas), which plays an important role as a regulator of upstream oil and gas exploration and exploitation business activities (Sutedi, 2010).

The formation of the Oil and Gas Business Activities Implementing Agency (BP Migas) was born from the mandate of Article 4 paragraph (3) of Law Number 22 of 2001 concerning Oil and Natural Gas, BP. Migas as the holder of power in the mining sector that forms an implementing body based on work cooperation contracts upstream oil and gas business, for 11 (eleven) years BP Migas as the holder of the mining sector, it turns out that BP. Migas made mistakes in managing oil and gas business, and issued work contract policies that seemed to favor and benefit private legal entities. So that on November 13, 2012 BP. Migas was disbanded based on the Constitutional Court Decision Number 36/PUU-X/2012 concerning the Examination of Law Number 22 of 2001 concerning Oil and Natural Gas on November 13, 2012.

BP Migas has been officially disbanded, the president issued Presidential Regulation Number 95 of 2012 (Presidential Regulation No. 95/2012) concerning the Transfer of the

Implementation of Duties and Functions of Upstream Oil and Gas Business Activities and the Minister of Energy and Mineral Resources issued the Decree of the Minister of Energy and Mineral Resources Number 3135K/08/MEM/2012 concerning the Transfer of Duties, Functions, and Organization in the Implementation of Oil and Gas Business Activities in Indonesia. With this regulation, a new institution was formed with duties and functions like BP Migas, namely: Temporary Implementing Work Unit (SKSP) for Upstream Oil and Gas Business Activities. In addition, the second regulation was issued by the Minister of Energy and Mineral Resources related to the Constitutional Court Decision Number 36/PUU-X/2012 and Presidential Regulation No. 95/2012, namely: Decree of the Minister of Energy and Mineral Resources Number 3136/K/73/MEM/2012, and issued together with the Decree of the Minister Number 3135K/08/MEM/2012. These two regulations are related to the transfer of structural positions. The institutional form of SKSP in the form of a Special Work Unit for Implementing Upstream Oil and Gas Business Activities (SKK Migas) has so far been considered similar to BP Migas, which was confirmed by Presidential Regulation Number 9 of 2013 (Presidential Regulation No. 9/2013) concerning the Implementation of Upstream Oil and Gas Business Activities Management two months after Presidential Regulation No. 95/2012.

The existence of SKK Migas after the disbandment of BP Migas is considered to have ignored the Constitutional Court Decision Number 36/PUU-X/2012 dated November 13, 2012. This is because the position of SKK Migas is not as a State-Owned Legal Entity (BHMN) like BP Migas, but becomes a Special Work Unit under the Minister c.q. The Minister of Energy and Mineral Resources, so that the position of the parties in the contract becomes unbalanced. These contracts at first glance show two legal subjects with different capacities. The issuance of Presidential Regulation No. 9/2013 as a follow-up to the Constitutional Court Decision Number 36/PUU-X/2012 raises various questions regarding the status of SKK Migas. This is because if examined more deeply, there is not a single article stating that SKK Migas is a legal entity that has the legal capacity as a subject in a civil contract. In addition, the state's right to control in oil and gas management is essentially carried out by Pertamina as a State-Owned Enterprise that has been given authority and has the main task in the field of oil and gas management. Policies and regulations have been made by the Indonesian Government which give power to SKK Migas. However, with the issuance of Presidential Regulation No. 9/2013 concerning the Implementation of Upstream Oil and Gas Business Activities Management, SKK Migas is formed with a similar right figure as BP Migas. The state's right to control has decreased from the sovereignty possessed by the state.

The tendency of contradiction or conflict threatens legal certainty in the management of oil and gas resources in Indonesia. According to Radbuch, there are at least four fundamental things that relate to the meaning of legal certainty (Notohamidjojo 2011). First, the law is positive and positive law is legislation. Second, the law is based on facts (reality). Third, facts must be formulated in a clear way to avoid errors in meaning and to make them easy to implement. Fourth, positive law should not be easily changed. Therefore, legal certainty is certainty about the law itself. In this context, the existence of BP Migas which was replaced by SKK Migas is both considered by the Constitutional Court to degrade the meaning of state sovereignty and the right to control the state in the management of oil and gas resources in Indonesia so that the government as a representative of the state tends to be unable to use these strategic natural resources for the greatest prosperity of the people as mandated by article 33 paragraph (3) of the 1945 Constitution. The implication is that the management and exploitation of oil and gas resources in the Indonesian reform era is carried out by the Government through the Ministry of Energy and Mineral Resources which formed BP Migas (2001-2012), which was later replaced by SKK Migas (2013-2020), which in fact is not a legal entity equivalent to the state, but only an institution under the ministry with a limited scope of

sovereignty and state control rights.

This places the state, represented by BP Migas and then SKK Migas, in an unequal position with private legal entities in the upstream oil and gas business. The concept of the relationship between the state and private legal entities¹ in oil and gas management is considered by the Constitutional Court to be inappropriate or contradictory to the meaning of Article 33 paragraph (3) of the 1945 Constitution, which results in the under-realization of oil and gas management for the greatest prosperity of the people.

Based on the conflict, the management of oil and gas resources identified under BP Migas (2001-2012) and SKK Migas (2013-2020) in the Indonesian reform era, limits the problems in this study to the oil and gas resource management system managed by BP Migas and SKK Migas and what the relationship between the state and private legal entities is in the oil and gas resource management system. In this case, these two main aspects are examined from the perspective of the theory of state sovereignty, the state's right to control, and legal certainty to empirically determine whether the oil and gas resource management system during the BP Migas and SKK Migas contract regime is in accordance with or contrary to the meaning of article 33 of the 1945 Constitution. This raises conflicts that identify the oil and gas resource management system in Indonesia, especially during the last two decades of the reform era (2001-2021).

RESEARCH METHODS

The research method used in this study is normative legal research, which can also be referred to as doctrinal legal research. The approach methods used consist of a conceptual approach, where the concept approach examines literature or library materials that are closely related to the problems being studied. The legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. The analysis of legal materials used in this study is a normative/prescriptive analysis of all legal materials using legal reasoning. In accordance with the research legal issues obtained, the legal reasoning method used is the method of harmonization or synchronization, especially by using the principle of legal preference. The conclusion in this study will use the deductive method or general to specific as the main reference and the inductive method as a support.

RESULT AND DISCUSSION

The exploitation of oil and natural gas resources in the archipelago continued during the Japanese occupation from 1942-1945 in accordance with the occupation's objectives. One of Japan's goals in occupying the Dutch East Indies was to control natural resources, especially oil, to support Japan's war efforts and its industries (Ricklefs 2001). This occupation led to the fall of the Dutch colonial government to Japan, including oil and gas assets in various regions of the Dutch East Indies. Thus, as Mills and Karim (2010) pointed out, long before Indonesia's independence, the contestation between foreign interests over oil and gas resources was already part of Indonesia's history. Since the Proclamation of Independence in 1945, Indonesian independence fighters successfully seized and took control of oil and gas fields, as well as refineries and distribution of these assets from the Japanese Army military. After independence, the Indonesian government was mandated by the 1945 Constitution to control land, water, and natural resources contained therein and branches of production that are important to the state and which control the livelihoods of many people as referred to in Article 33 of the 1945 Constitution (Mills & Karim, 2010).

The Soekarno era during the period 1945-1965 implemented a strategy of managing and utilizing oil and gas resources with a concession system. In this government, a work agreement or work contract system was implemented in the management and utilization of oil and gas, which was still continued during the New Order government period until the enactment of Law

No. 8/1971 concerning the State Oil and Natural Gas Mining Company known as Pertamina in Indonesia. The enactment of Law No. 44 Prp/1960 concerning Oil and Natural Gas Mining is one of the most strategic policies issued by the Indonesian Government in the Soekarno era in taking over the management and utilization of oil and gas resources in accordance with the mandate of Article 33 of the 1945 Constitution. In this case, the government plays a role as a representative of the state with the authority to control. If the state is not yet able to manage it, the state is allowed to hand over the implementation of that power to those who can carry it out, as long as the state can guarantee the relationship between the Indonesian people and the eternal territory and the position of the Republic of Indonesia which is given the right to control these national assets.

The regime of Law No. 11/1967 and Law No. 8/1971, In the consideration of Law No. 8/1971 concerning the State Oil and Natural Gas Company, oil and natural gas are strategic materials, both for the state's economy and for the interests of national defense and security. Since its establishment by Government Regulation No. 27 of 1968 (State Gazette of the Republic of Indonesia 1968 Number 44), the National Oil and Natural Gas Mining State Company (P.N. Pertamina) was seen as experiencing significant business development and progress so that the Indonesian Government at the beginning of the New Order government considered it necessary to provide a new working basis to improve the ability and guarantee further efforts to manage oil and gas resources. In carrying out these oil and gas business activities, Pertamina can cooperate with contractors through profit-sharing contracts as stipulated in Article 12 paragraph (1) of Law No. 8/1971 concerning the State Oil and Natural Gas Mining Company. With the magnitude of state sovereignty through Pertamina as a public legal entity, Pertamina has succeeded in reaping very large profits in the management and utilization of strategic national assets, in this case the oil and gas sector, and some of which can be used to support economic development during the New Order (1966-1998).

The regime of Law No. 22/2001 concerning Oil and Natural Gas affirms that the control and exploitation of strategic national natural resources such as oil and natural gas are in the hands of the state. As referred to in article 4 paragraph (1), oil and natural gas are strategic non-renewable natural resources contained in the Indonesian mining legal area as national wealth controlled by the state. And basically, Law No. 22/2001 concerning Oil and Natural Gas from the beginning was based on the consideration of implementing national development, which is directed at efforts to realize the welfare of the people based on Pancasila and the 1945 Constitution. In this law, oil and natural gas in Indonesia are understood as strategic non-renewable natural resources controlled by the state and become vital commodities that control the livelihoods of many people.

The regime of Law No. 23/2014 and Law No. 11/2020, the law on regional government regulates various aspects of regional government authority, including in upstream oil and gas business activities in the form of exploration and exploitation in marine areas, as regulated in article 18 paragraphs (1) and (3) of Law No. 32/2004 concerning Regional Government. However, the authority of regional governments in managing upstream oil and gas business activities is no longer valid after Law No. 23/2014 concerning Regional Government was enacted. In strengthening state sovereignty and the state's right to control and to improve the welfare of the people, article 14 paragraph (3) of Law No. 23/2014 concerning Regional Government abolishes the authority of regional governments in exploration and exploitation activities of oil and gas resources in marine areas.

In implementation, there is involvement from regional governments in determining working areas, although article 14 paragraph (3) of Law No. 23/2014 concerning Regional Government mentions government affairs in the field of energy and mineral resources as referred to in paragraph (1) concerning oil and gas management becoming the authority of the central government. So it can be concluded that the enactment of Law No. 23/2014 concerning

Regional Government does not make the regulation of regional government authority in upstream oil and gas business activities clear. In its regulation, there is still a vagueness of norms (vague van het norm) of authority in upstream oil and gas business activities in Indonesia (Bria & Heller, 2006). Thus, article 12 paragraph (1) of Law No. 22/2001 concerning Oil and Natural Gas is contrary to article 14 paragraph (3) of Law No. 23/2014 concerning Regional Government, and this legal uncertainty can cause ineffective implementation of this law.

So that in the management so far, the difficulty in realizing the constitutional system of oil and gas resource management occurs because the Indonesian government as a representative of the state has not been able to maintain state sovereignty and adequate state control rights in the face of foreign contractors involved in oil and gas resource management through cooperation contracts due to ignoring priorities to government agencies such as independent SOEs. SOEs must dominate the management of oil and gas as strategic natural wealth in Indonesia, so that state sovereignty and state control rights can be used for the greatest prosperity of the people without third party intervention (Ansari, 2018).

CONCLUSION

Each government regime has several oil and gas management systems as a form of realizing state sovereignty which refers to the concept of supreme power in the sense of government sovereignty, people's sovereignty, and legal sovereignty. Government in the right of state sovereignty and sovereign rights shows the unlimited sovereign rights of the state. These sovereign rights demonstrate the state's ability to have an important and different role to guarantee the sovereignty of the state itself, so that the Government Regime in the oil and gas management system is inseparable from the laws and regulations so that the expression of state sovereignty as an objective fact and apart from the government bodies that exercise the sovereign right itself.

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