

**STATE RESPONSIBILITIES FOR THE MANAGEMENT OF OIL AND GAS
IN THE BORDER REGION****Zulkarnain**

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Telp./Fax: +62-822-96061372 Email: zulkarnainfakhumuntad@gmail.com*Submitted: Apr 06, 2020; Reviewed: Jun 17, 2020; Accepted: Jun 25, 2020***Abstract**

Indonesia's natural resources which are very strategic and have an important role on the national economy include natural resources in the form of oil and natural gas which must be used as much as possible for the prosperity of the people of Indonesia. This is confirmed in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Potential oil reserves in border areas should be given a special share of the results of oil and gas management so that development in the border region is quickly encouraged to match the development of urban areas. Current regulations in the field of oil and gas management (Law Number 22 Year 2001 concerning Oil and Gas) are very liberal and are very far from the mandate of the 1945 Constitution which requires the prosperity of the people. In the implementation of state control over oil and gas management in border areas, the policy aspects can be as follows: Regulation (Regeleensdaad), Management (Bestuurdaad), Management (Behersdaad), and Supervision (Toezichhoudensdaad), Decision / stipulation (Beschikking). This research is a normative legal research that specifically examines the laws and regulations governing natural resource management in Indonesia, with the aim of finding out how the state is responsible for oil and gas management in border areas. The results showed that the results of the management of oil and gas mining managed by business actors in general, and foreign investment companies in particular benefit the company more than the people's welfare. Foreign domination in the exploitation of national energy, especially oil, is due to unfavorable work contracts, weak energy security vision designed by the government, institutional integration in upstream and downstream management, regulations are still ad-hoc and planning is weak, weak control system and good governance (good governance) in the energy sector.

Keywords: *Natural Resource Management; State Responsibility; Welfare State***INTRODUCTION**

The management of oil and gas mining contributes to the country's foreign exchange as well as having an adverse impact on the results achieved both in terms of economic, physical environment,

social environment and sustainable development for the welfare of the people of Indonesia. This is contained in the provisions of Article 33 paragraph (2) and (3) of the 1945 Constitution which states, (2) production branches which are important

to the State and control the livelihoods of many people, are controlled by the State and are used as much as possible for the prosperity of the people; (3) that the earth, water and natural resources contained therein are controlled by the state and are used to the maximum extent of the prosperity of the people and the exploitation of mining products is managed to increase the people's welfare.

P.L. Coutrier¹ provides an understanding of the importance of Article 33 paragraph (3) of the 1945 Constitution. According to him there are two interesting important parts of Article 33 paragraph (3) of the 1945 Constitution, namely: "(1). The natural resources contained in the earth and in the water are controlled by the state and thus implies that ownership of these natural resources is not private property and also not only belongs to the area where the natural resources are found but also "belongs to other Indonesian people ". Implicitly it also means that its use is regulated by the state; and (2) to be used for the greatest possible prosperity of the people, it means to encourage natural resources to be produced so that income can be used for people's prosperity. This

implementation is certainly within the limits of existing rules.

Law Number 22 Year 2001 concerning Oil and Gas further exacerbates the mismanagement of Indonesia's Natural Resources which makes the oil and gas industry fail to be a buffer for national energy security. The increasingly poor management of oil and gas natural resources is characterized by fiscal misdirected regulations, the creation of a complicated new bureaucratic chain, inefficient operational costs (cost recovery) and the existence of mafia games, decreased authority of nationalism in oil contracts and the existence of policies in the oil sector and natural gas without a roadmap. This has an impact on the production (lifting) of oil and natural gas has not increased especially since 2004².

Fiscal regulation which is misdirected is marked by the abolition of the *lex specialis* principle in the Production Sharing Contract (PSC) in Law Number 22 Year 2001 concerning Oil and Gas. Indonesia is the only country that collects taxes at the preproduction stage through Article 31 of Law Number 22 Year 2001 Concerning Oil and Gas, Indonesia applies various kinds of taxes and levies in the exploration period, which includes a

¹ P.L. Coutrier, Hak Penguasaan Negara Atas bahan Galian Pertambangan dalam Perspektif Otonomi Daerah, Makassar, 2001, hal.

² Juajir Sumardi, Kedaulatan Migas Indonesia, Arus Timur, 2017, Makassar, Hal.5

15% (fifteen percent) import duty and Value Added Tax of 10% (ten percent) of the value of capital goods imported from abroad. This condition has been the cause of the decline in attractiveness for investment in the oil and gas sector in Indonesia so that the new exploration activities will not develop in the potential of oil and gas resources in Indonesia³.

Law No. 22/2001 concerning Oil and Gas introduces a new institution called the Implementing Agency for Oil and Gas. But its functions and duties are relatively limited because of the legal status aspect of this institution in the form of a State-Owned Legal Entity. As a legal status in the form of a state-owned legal entity, this institution is not a business entity so it cannot fulfill the requirements (eligible) to conduct business transactions with other parties especially with companies. As a State-Owned Legal Entity, business transactions are conducted with third party intermediaries. The Executive Agency for Upstream Oil and Gas Business Activities as a State-Owned Legal Entity is a controller of the management of oil and gas operations but is not a State-Owned Enterprise directly involved in production activities. This condition has triggered a material test through Judicial

Review to the Constitutional Court which ended at the dissolution of the Executive Agency for Upstream Oil and Gas Business Activities and for the time being its role and function was carried out by the Special Oil and Gas Working Unit, which has recently had a position and authority. It has also been questioned and created new legal issues⁴.

Inefficient cost recovery in upstream oil and gas operations occurs because so far there has never been an audit of the price of fuel oil and the basic cost of oil and natural gas production, both to the Indonesian National Oil Company (Pertamina) and foreign corporations such as Exxon Mobile, Chevron, Shell, British Petroleum, and others. Until now, only what is known is the comparative price or the price difference between the price of domestic fuel oil and the world oil price, especially the price of fuel oil in Singapore. Therefore, the determination of the price of fuel oil marketed in the country is largely determined by the price mechanism based on MOPS plus Alpha.

Provisions on Oil and Gas have also reduced national sovereignty in contracts that tend to place the state and the contractor in an equal position. *Pacta sunt servanda* dogma is manifested in an inter-

³ Ibid

⁴ Ibid

national arbitration mechanism to resolve industrial disputes. In the PSC (Production Sharing Contract) standard clause which is valid for 37 years (1964-2001) prior to the birth of Law No. 22/2001 on Oil and Gas, the Government is protected from the possibility of being dragged into international arbitration and is guaranteed that whatever the contents of the contract do not will obstruct the Government's right to assert its national interests. In the old PSC there was always a clause: "The laws of the Republic of Indonesia shall apply to this Contract"; No terms or provisions of this Contract, including the agreement of the Parties to submit to arbitration hereunder, shall prevent or limit the Government of the Republic of Indonesia from exercising its inalienable rights. This clause is lost in the Cooperation Contract after the enactment of Law No. 22 of 2001 concerning Oil and Gas⁵.

National energy policy which tends to be sectoral and is oriented only to the aspect of income, not national energy security. The issue of oil and gas and energy seems to be only the affairs of the Ministry of Energy, Mineral Resources or the Ministry of Finance. Therefore Indonesia experiences the paradox of plenty; is in the shadow of an energy crisis in the mid-

dle of barns and abundant sources of oil and gas energy. In addition, the discourse or idea for the establishment of an oil and gas endowment fund (petroleum fund) is still far from being realized. Though this idea is important as an effort to develop fuel energy produced or derived from plants or plants. Because natural oil and gas resources are nonrenewable energy sources⁶.

In relation to the management of border areas which are only considered as the outermost lines of defense of the country, it will lead to the consequences of the approach used in managing borders, namely only the security approach. Whereas in some neighboring countries, it has used welfare and prosperity approaches side by side in the development of its border areas. With such conditions so that at the local level the problems faced by communities in border areas are: isolation, backwardness, poverty, high prices of goods and services, limited infrastructure and public service facilities (infrastructure), low quality of human resources in general, and the spread of population which is uneven.

Issues In Border Areas

⁵ Ibid, Page 7

⁶ Ibid, Page 7

The various issues that need serious attention from the government for border areas are the unclear spatial planning and utilization of natural resources, border areas as disadvantaged areas, geographical constraints, inconsistencies between planning and implementation, unclear authority and coordination, lack of human resources, poverty, limited infrastructure, weak law enforcement, utilization of natural resources is not optimal, the occurrence of uncontrolled exploitation of natural resources.

Problems encountered in oil and gas mining activities when in the border region, not only in the upstream oil and gas activities, but also in downstream oil and gas activities. The complexity of the problems in oil and gas mining activities requires a management policy that can accommodate various interests in the community, including the interests of investors (contractors) who have invested in the oil and gas sector. However, in the process of management, it is the national interest that becomes the basis and priority of oil and gas sector management policies in the future.

Portraits of Indonesia's border regions are always shaded with a variety of issues in the form of economic, social, cultural limitations and inequalities and

underdevelopment in development. When in fact the management of the border region has a very strategic role. This is based on the consideration of the characteristics of activities that take place in the border region, namely among others as a front that can influence sovereignty and in state jurisdiction both on land and at sea, as well as having an impact on the security and defense conditions of the country's borders.

Various government policies, especially policies regarding the development of the border region, have not been carried out in an integrated management implementation by integrating all sectors related to one of the errors of the New Order's policy in dealing with border issues, namely the government using a security approach merely by ignoring the welfare approach so that many border residents have economic dependence on neighboring countries. In fact, on the other hand the regional autonomy regime is also one of the obstacles in the realization of community development at the border due to the existence of regional autonomy legal instruments that are not infrequently overlapping and weak in their implementation, providing guarantees of protection and fulfillment of the rights of education, health and housing in the border region so

that a number of villages that have been left behind in border areas are increasingly left untouched by policies oriented towards community rights, specifically the right to education and health.

There are still many regional authorities that have not been decentralized because of sectoral regulations and laws that have not yet been adjusted to the law on regional government. This has led to various problems, including in terms of authority, management of Regional Revenues and Expenditures Budget, management of a particular area, regional executive and legislative relations, arrangements for sharing natural resources and tax, and others. In addition, it also creates overlapping authority between the central, provincial and regional levels resulting in various problems and conflicts between various parties in the implementation of a regulation, for example regarding education, health, workers, public works, land, investment, and forestry and mining. Even the presence of the National Border Management Agency (BNPP) at the central level, at the regional level, the Management Agency for the Border Areas, Inland and Disadvantaged Areas (BPKP2D), which coordinates border management at the national and regional levels also still cannot function optimally, due to regional

handling and management borders are still partial and ad hoc, so they are not comprehensive and are only seen as "fire fighters".⁷

In addition, the regional autonomy legal instrument also does not necessarily guarantee a significant involvement of regional governments in the development policy formulation and management of border areas, so what has happened so far is that some border areas are still handled ad hoc, temporarily and partially and are more dominated by approaches security through several committees, so that it has not given optimal results. Cooperation committees handling border issues that currently exist in the Kalimantan region for example are the General Border Committee (GBC) of the Republic of Indonesia - Malaysia⁸

The disparity in the economic and social conditions of the people, especially the border regions, also impacts on the right to health education, which has an impact on the number of poor people, which is relatively the most. In addition, the distribution of population in the border area is more concentrated in the capital of regencies and watersheds where the ac-

⁷ Yahya Ahmad Zein, *Hak Warga Negara di Wilayah Perbatasan, Perlindungan Hukum Atas Pendidikan dan Kesehatan*, Liberty Yogyakarta, Yogyakarta, 2016, Hal.18

⁸ Ibid

cessibility of trade and communication is relatively easier, while in the interior areas in the border area are generally relatively less because the inland areas on the border are areas that are isolated with facilities and transportation infrastructure is very limited so this will further lead to gaps.⁹

Foreign Domination In National Energy Management

Foreign domination in the exploitation of national energy, especially oil, is due to unfavorable work contracts, weak vision of energy security designed by the government, institutional integration in upstream and downstream management, regulations are still ad-hoc and planning is weak, weak control system and good governance (good governance) in the energy sector.

The government must be aware of the erroneous attitude and direction of its policies to prevent draining of natural resources by foreigners. The government needs to realign the basics of its economic policies in accordance with the mandate of Article 33 of the 1945 Constitution. The constitution requires the state to take a dominant role in the management of natural resources so that its results can be utilized as much as possible for the welfare

of the people. The Constitution emphasizes its rejection of liberalization by prohibiting foreign / private control of the country's strategic assets.

The constitution calls for the economy to be organized as a joint effort based on the principle of kinship, by creating a climate of fair and non-lethal business competition, protecting the economic life of the people, and ensuring the growth and development of local economic potentials. The government must launch a fundamental improvement program and be consistent in implementing it. Conspirative & corrupt behavior of the authorities with entrepreneurs (including foreign) must be eliminated. Management and utilization of natural resources for the greatest prosperity of the people must be realized mainly through state-owned enterprises and regionally-owned enterprises.

METHODS

The research method used in this study is legal research using a normative approach. Sources of legal material include primary legal material and secondary legal material. The source of primary legal material was taken from the search for official government documents in the form of laws, regulations, and legislation, also monograph of the session on the dis-

⁹ Ibid

cussion of legislation. Sources of secondary material in the form of all publications about the law relating to the object of this research, including textbooks, legal dictionaries, and legal journals. The analysis technique used is a systematic interpretation by abstracting or concretizing the content of the regulation that related to the topic to find a relatively renewable concept in structuring legal regulations in Indonesia.

ANALYSIS AND DISCUSSION

Form Of State Responsibility To Secure State Interest In Management Oil And Gas

The purpose of control by the State is that national wealth can be utilized as optimal as possible for the prosperity of all Indonesian people. Therefore, individuals, communities, and business actors who have rights to a piece of land are only given rights to the surface, but do not have rights to control or ownership of the natural resources contained below, including oil and gas resources. Basically, the implementation of control of natural resources by the State is carried out by the Government in the form of Mining Authorization. Mining Authority is the authority granted by the State to the Gov-

ernment to carry out oil and gas exploration and exploitation activities.¹⁰

Linking the concept of the welfare state with the function of the state according to Friedman, found a critical study by Tri Hayati as follows¹¹: 1). The state's right to control stated in article 33 of the 1945 Constitution positions the state as a regulator and guarantor of people's welfare. The functions of the state cannot be separated from one another, which means releasing a business field of natural resources to cooperatives, the private sector must be accompanied by special forms of regulation and supervision, because it realizes the greatest prosperity of the people can still be controlled by the state. 2). The state's right to control in article 33 of the 1945 Constitution, justifies the state to exploit natural resources related to public utilities and public services. On the basis of philosophical considerations (the basic spirit of the economy is joint effort and kinship), strategic (public interest), political (preventing monopolies and oligopolies that harm the country's economy), economy (efficiency and effectiveness), and for the sake of general welfare and prosperity as much as possible people.

¹⁰ Suyitno Patmosukismo, *MIGAS :Politik, Hukum & Industri*, PT. Fikahati Aneska, Jakarta, 2011, Hal.65

¹¹ Tri Hayati, dkk, *Konsep Penguasaan negara di sektor Sumber daya Alam berdasarkan pasal 33 UUD 1945*, Sekretariat Jenderal MKRI dan CLGS FHUI, Jakarta, 2005, hlm.17

The linkage between state control rights and benefits for the greatest prosperity of the people will realize the state's obligations as follows: 1. All forms of utilization (earth and water) and the results obtained (natural resources), must significantly improve the prosperity and welfare of the people; 2. Protect and guarantee all people's rights contained in or on the earth, water and certain natural resources that can be directly or indirectly enjoyed by the people; 3. Prevent all actions from any party that will cause people to not have the opportunity or lose their rights in enjoying natural resources. The three obligations above explain all guarantees for the purpose of the state's right to control natural resources while at the same time providing an understanding that in those rights, the state only carries out (*bestuursdaad*) and management (*beheersdaad*) not to conduct *eigensdaad*.¹²

The basic thoughts of understanding are controlled and exploitation of natural resources cannot be separated from the rationale at the time of compilation of that article. In the minutes of the Session of the Indonesian Independence Preparatory Agency for Investigation (BPUPKI) on May 28-August 22, 1945 and the appen-

¹² Pan Mohammad Faiz, *Penafsiran Konsep Penguasaan Negara berdasarkan pasal 33 UUD 1945 dan putusan Mahkamah Konstitusi*, Jakarta, Oktober 2006

dix "Concerning the Free Indonesian Economy" for the mining business there are four important issues, namely:

- a. Understanding mastered must be interpreted to be able to unite the country with all the people,
- b. Companies (corporations) that control the lives of many people, government participation must be even greater,
- c. State businesses in mining are entities that are accountable to the Government.
- d. Company leaders do not have to be bureaucratic, because the company and bureaucracy are two very contradictory things.¹³

To realize the aims and objectives of utilizing Oil and Gas natural resources to support the realization of welfare based on the directives in the points mentioned above, it has been poured into a positive law concerning Oil and Gas Mining namely Law No. 22 of 2001. To explain the basic framework of natural resource management policies, according to the spirit of article 33 of the 1945 Constitution the essential meaning of economic democracy in accordance with Pancasila is the joint control of almost all national economic potential by the State. National economic potential is grouped into three groups.

¹³ Suyitno Patmosukisme, Hal.68

First is the economic potential for the utilization of resources above the surface of the earth and water; second, the national economic potential for the utilization of earth and water resources; and third, the national economic potential for the utilization of wealth resources in the earth and water. Based on paragraph (3) article 33 of the 1945 Constitution, the national economic potential of the earth's resources, water, and natural resources therein is controlled by the State, so that only the potential national resources on earth and water that may be allowed can be controlled by Non-State. However, if certain branches of production are important and control the livelihoods of many people, they must still be controlled by the State (paragraph 2).¹⁴

In cooperation with foreign investors, there are three principles that need to be regulated, namely management authority, status of foreign investors and the form of cooperation. The elaboration of the principle of exploitation will continue to be in the hands of state-owned companies. With this management authority, the state company has the power to carry out its main management principles related to work plans and budgets including management of human resource development.

The investor's status is as a contractor responsible for operations including work safety and environmental protection. And in accordance with the Constitution that all natural resources in the work area concerned are still controlled by the state. Waiver of oil and gas rights to investors or foreign oil companies is determined after passing the point of export or the point of transfer of rights ("point of transfer right"). This principle is also based on the constitution which states that the relinquishment of the right to exploit natural resources must be legally complied with the conditions of use, that is, natural resources must have come out of the bowels of the earth and prices have been determined. In connection with this provision, the determination of the price of each transfer of rights is determined on the basis of the price at the export point / point of delivery known as the "free on board" system (FOB).

Whereas related to quite diverse forms of cooperation, elaborated as follows:

As explained earlier, in the world there are two streams that underlie mining law (Anglo Saxon and Continental), this underlies the forms of cooperation in the oil and gas mining business. There are two known forms of cooperation, namely

¹⁴ Suyitno Patmosukisme, Hal.69

Concession Contracts and Production Sharing Contracts, KPS. The fundamental difference between the two is the problem of Mining Authorization and its consequences related to the management of its activities.¹⁵

In the concession, management is in the hands of the Contractor who pays royalties and taxes. Whereas in a Production Sharing Contract (or KPS), management is in the hands of a state company that receives a share of the results including tax. In addition to the two main forms of this contract there are other forms of contract namely Service Contract.

The definition of control by the State of natural resources is related to the understanding of the right to control the state. Including Oil and Gas has the characteristic that reserves as property in accordance with Corporate law.¹⁶ This means that property in this case in the form of Oil and Gas reserves is a corporate asset and in the capital market relationship ownership status has a relationship with collateral reserves. The relinquishment of reserves to another party can be interpreted as releasing sovereignty. That is why in memory of the explanation

of Law No. 44 / Prp / 1960 in the exploitation of oil and gas mining, the state must be able to guarantee that there is always a lasting relationship between the Indonesian nation and its territory.

To be able to carry out optimal activities, it is necessary to pay close attention to the laws and regulations related to oil and gas industry activities including the Laws on Energy, Finance, Investment, Environment, Spatial Planning, Agriculture, Forestry, Prohibition of Monopolistic Practices and Unfair Business Competition, Regional Autonomy, Central and Regional Fiscal Balance, and others.

Related to the role of the state that is given legal rights in controlling natural resources, Muhammad Yamin¹⁷ has interpreted the meaning of being controlled by the state with the right to regulate and / or administer all matters related to objects or assets controlled by the state which have the aim to improve and enhance production through cooperatives. This understanding is in general almost the same as the formulation set by the Finance and Economic Committee formed by the Indonesian Independence Research Investigation Agency (BPUPKI), chaired by Mohammad Hatta, by formulating the definition of state-controlled as follows:

¹⁵ Suyitno Patmosukisme, Hal.70

¹⁶ Sutadi Pudjo Utomo, Sistem Administrasi Mineral, Makalah disampaikan pada simposium persiapan penyusunan PP mengenai Keseimbangan Keuangan Pusat dan Daerah, Bandung, 1997

¹⁷ Aminuddin Ilmar, Hak Menguasai Negara Dalam Privatisasi BUMN, Hal.5

- a. The government must be a supervisor and regulator based on the people's safety;
- b. Increasing number of companies and increasing number of people who benefit their basic life because of the greater participation of the government;
- c. Land must be under state control; and
- d. Large mining companies are run as state enterprises.

Bagir Manan¹⁸ detailed the definition of state control rights if understood in general, including matters outside the earth, water and space as well as natural resources contained therein, the main element of state control is to regulate and administer (*regelen en besturen*). Within this framework of understanding it can be said that in that control, the state only conducts *bestuurdaad* and does not conduct *eigensdaad*. Regarding the state doing *bestuusdaad* not explained further, because it is an interesting thing to study in an effort to find the meaning and substance of the concept of state tenure rights.

The simple formulation of article 33 paragraph (3) of the 1945 Law of the Republic of Indonesia, expressly also

mandates the interests of the people nationally not locally as follows:

- a. The earth and water and the natural resources contained therein, including minerals, are controlled by the state. Understanding mastered by this country, is the creation and intellectual ingenuity of the founding father, because if mandated by being controlled by the Government, then meaning can be mastered both by the central government and by local governments. Until the mandate for the greatest prosperity of the people can be just the prosperity of the people locally (in the area) where the excavated material is located.
- b. In juridical sense, the mandate of the constitution which only gives power to the state, even this is not "derivative", which means it cannot be re-authorized to anyone, let alone done only by being based on a form of law. The juridical effect will be null and void, because it is against the higher provisions, namely the constitution.
- c. The definition of, used for the greatest prosperity of the people as the mandate of the constitution means:
 - 1) that the use of minerals, is only one goal, namely for the greatest prosperity of the people of Indone-

¹⁸ Bagir Mannan, *Hubungan Antara Pusat dan Daerah Menurut UUD NRI 1945*, Pustaka Sinar Harapan, Jakarta 1994, Hal.38

- sia and not for the prosperity of the local people. If what is meant by the prosperity of the local people is of course to be formulated in the form of "people's prosperity";
- 2) that only the state can carry out the prosperity of the people nationally, because this is indeed the responsibility of the state;
 - 3) concerning the way to utilize natural resources for the greatest prosperity of the people, both in the body and in explanation of the 1945 Constitution of the Republic of Indonesia, not explicitly explained and explained. This means that to take advantage of this natural wealth, opportunities are open for cooperation with the state, not with the regional government. In this case the state acts as the "Right Holder" of the people in accordance with the mandate of the constitution;
 - 4) it needs attention, whether the right of control of this country, has an understanding including also can be implemented by the state (State-Owned Enterprises)
- d. In order to use the minerals for the greatest prosperity of the people. Basically, state rights are in accordance with the mandate of the constitution, only given in the form of tenure rights (elaboration from being controlled by the state). While the ownership of minerals remains in the entire people or nation of Indonesia.
- e. The existence of the terms as much as the people's prosperity as a consequence of the words "controlled by the state" and "used", "used" is the purpose of the word "controlled" so that the two have a causal relationship. Thus it can be understood that the word "used" as a result of "state control". The two aspects of the rule cannot be separated from each other, both of them constitute a systematic whole. The state's right to control is an instrument, while the maximum prosperity of the people is used as an objective. The term broad-based people's prosperity is a continuation or normalization of several terms in paragraph IV of the Preamble of the 1945 Constitution.
- The main role of the state referred to in the concept of the welfare state is very closely related to the state's right to control state assets and resources which must be carried out in accordance with its func-

tions according to W. Friedman,¹⁹ among others as follows:

1. The state's right to control positions the state as regulator and guarantor of people's welfare. The functions of the state cannot be separated from one another, which means releasing a business field on natural resources to cooperatives, the private sector must be accompanied by special forms of regulation and supervision, therefore the obligation to realize the greatest prosperity of the people can still be controlled by the state .
2. The right to control the state, giving legitimacy to the state to exploit natural resources related to public utilities and public services. On the basis of philosophical considerations (the basic spirit of the economy is joint effort and kinship), strategies (public interest), politics (preventing monopole and oligopoly that harms the country's economy), economy (efficiency and effectiveness), and for the sake of general welfare and for the prosperity of the people.

In the implementation of state control, there are aspects of the policy as fol-

¹⁹ Tri Hayati, Et. All, Konsep Penguasaan Negara di Sektor Sumber Daya Alam Berdasarkan Pasal 33 UUD 1945, Jakarta, SekJen MKRI dan CLGS FHUI, 2005, Hal.17

lows:²⁰ a. Regulations (Regeleensdaad), b. Management (Bestuursdaad), c. Management (Beheersdaad), and d. Supervision (Toezichhoudensdaad), e. Decision / stipulation (Beschikking).

The five forms of state control in the decision are the functions of policy and regulation, management and supervision must be interpreted in stages based on their effectiveness to achieve the greatest prosperity of the people. Then the form of control of the state ranks first and the important thing is that the state carries out direct management of natural resources so that the country gets greater profits.

Thus it can be concluded that the mandate of the constitution is for the state to carry out direct management of natural resources that control the lives of many people. Mineral and coal resources as non-renewable natural resources, including natural oil and gas resources which must be managed directly. Direct management by state organs, namely through state-owned enterprises.

The author holds the same view with Subianto Tjakrawerdaja²¹, pengelolaan minyak dan gas bumi berdasarkan

²⁰ Putusan MKRI, Juni 2011

²¹ Subianto Tjakrawerdaja adalah pengamat koperasi dan mantan Menteri Koperasi Pada Pemerintahan Suharto, Lihat dalam Subianto Tjakrawerdaja, Menunggu UU Induk Mengenai Perekonomian Nasional, Reform Review (Jurnal untuk Kajian dan Pemetaan Krisis), Volume II Nomor 1 April-Juni 2008, hlm. 40.

Pasal 33 UUD 1945 Oil and gas management based on Article 33 of the 1945 Constitution must contain seven constitutional features, namely: first, the economy aims to achieve the common prosperity of all people, this is explicitly explained in the explanation of Article 33 of the 1945 Constitution. Second, the people's participation in ownership, the production process and enjoy the results. This is in accordance with the formulation contained in Article 33 paragraph (1) and paragraph (4) of the 1945 Constitution. Third, in accordance with the principle of Article 33 paragraph (4) of the 1945 Constitution namely equitable efficiency, the economy needs to be implemented using a just market mechanism based on in fair competition and the role and authority of the state for investment in the event of market failure. Fourth, the role of the State must be guaranteed, as mandated by Article 33 paragraph (1) and paragraph (3) of the 1945 Constitution, especially in terms of national economic planning, in forming and enforcing the implementation of the Act, and in terms of carrying out service programs and community empowerment, tax exemption, provide subsidies and others. Fifth, State-Owned Enterprises as one of the main pillars of economic activity control the important branches of produc-

tion and which control the lives of many people. This is clearly stated in Article 33 paragraph (2) of the 1945 Constitution. Sixth, cooperatives as pillars of the people's economy must be realized in the spirit of togetherness with State-Owned Enterprises and private companies, as well as people's economic business entities. Seventh, the national economy must be an embodiment of an equal partnership between cooperatives, state-owned enterprises and the private sector. This principle is contained in Article 33 paragraph (1) of the 1945 Constitution. These constitutional characteristics should be translated into a whole set of laws and regulations on oil and gas management²².

The greatest prosperity of the people is the goal of every management and use of national natural resources. This goal is seen as an interest that cannot be ignored, because besides constituting the mandate of the constitution, it is also coveted by every citizen and is the responsibility of the state as a consequence of the right to control the country itself. Therefore, every exploitation and use of natural resources is adjusted to the goal (*doelmatig*).

²² Agus Lanini, *Kedaulatan Negara Atas Sumber Daya Mineral Dalam Pengaturan Penanaman Modal Asing Bidang Pertambangan Di Indonesia*, Tadulako Law Review, Volume 1, Issue 1 June 2016, Faculty of Law, Tadulako University, hlm.6-7.

State Control Of Oil And Gas Management

The existing forms of oil and gas management cooperation so far can be classified in four forms, namely:

- a. Concession Agreements (Cas);
- b. Joint Venture Contracts (JVCs);
- c. Services Contracts (SCs); and
- d. Production Sharing Agreements (PSAs).

Table 1
Comparison of ownership, control and risk in Concession Agreements (CAs) and Production Sharing Agreements (PSAs)

	Cas			PSAs		
	wner ship	on-trol	is k	wner ship	on-trol	is k
I nternational Oil Company (IOCs)	es	ull	ul	hare d	ull	ul
H						

ost State	o	o	o	hare d	o	o R is k
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Table 2
Comparison of ownership, control, and risk in the form of Service Contract (SCs) cooperation

	PSC			RSC		
	wne rshi p	on-tro l	is k	wne rshi p	on-tro l	is k
I nternational Oil Company (IOCs)	o	o	o	o	o	xplo ration
ost State	ull	ull	ll R is k	ull	ull	ll Risk

To provide an overview of the differences in each form of international cooperation in the management of oil and

gas as described above, it can be stated table 1.

As for the oil and gas management agreement using a service contract, a comparison table can be made between the pure service contract and the service contract with risk as in table 2.

Sedangkan untuk perjanjian pengelolaan minyak dan gas dengan menggunakan kontrak jasa (service Contract) dapat dikemukakan tabel perbandingan antara kontrak jasa murni dengan kontrak jasa dengan risiko sebagaimana dalam tabel 2.

CONCLUSION

Based on the description in the discussion section, the following conclusions can be made:

The right to control by the state must be in accordance with the objectives of the Welfare State as directed by the 1945 Constitution, Article 33 paragraph (3). The right of state control positions the state as a regulator and guarantor of people's welfare. The functions of the state cannot be separated from one another, which means releasing a business field of natural resources to cooperatives, the private sector must be accompanied by special forms of regulation and supervision, therefore the obligation to realize the

greatest prosperity of the people can still be controlled by the state. State control is interpreted as the people collectively constructed by the 1945 Constitution giving a mandate to the state to carry out policies (regulations) and management measures (bestuurdaad), regulation (regelensdaad), management (beheersdaad), and supervision for the purpose of the maximum prosperity of the people. The five forms of state control in the decision are the functions of policy and management, regulation and management and supervision must be interpreted in stages based on their effectiveness in order to achieve the magnitude of the people's prosperity.

Reccomendation

1. State responsibility for oil and gas management in border areas is not optimal. This can be seen clearly in Law Number 22 Year 2001 Concerning oil and natural gas which does not favor the prosperity and welfare of the people. None of the provisions that can be used as a basis for local governments for additional funds from the management of oil and gas in oil-producing areas that cause the backward-paced border regions. Both infrastructure development and education, health and other development.

This is one of the mismanaged factors in managing Oil and Gas.

2. Border areas which are underdeveloped have not received special attention in development so that these areas are the same as other regions in Indonesia where the development has begun to be established. In fact, the border areas are the frontline which are directly related to the developing border countries. Aside from being the frontline, there are also many oil and gas resources that can contribute to national income. Therefore, regulations are needed in the oil and gas sector specifically for border areas in order to accelerate development.
3. Based on oil and gas governance practices carried out in several countries as stated above, then in the context of renewing the laws governing oil and gas in Indonesia, it should be able to make the practices taking place in several of these countries as a comparison material to be able to do the regulation of oil and gas governance in Indonesia which is more beneficial to the State and can provide optimal contribution to the greatest prosperity of the people as mandated by the 1945 Constitution of the Republic of Indonesia.

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