



Research Article



## Securing State's Asset: Legal Protection of Natural Resources of Oil and Gas

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**Abstract:** The legal framework for oil and natural gas activities in Indonesia is established by Law Number 22 of 2001 concerning Oil and Natural Gas, which was officially published in the State Gazette in 2001. SKK Migas, which replaced BP Migas, is responsible for the management of upstream oil and gas activities based on Cooperation Contracts (KKS). The upstream activities are conducted through Cooperation Contracts (KKS) as specified in Article 6 of the Oil and Gas Law. According to Article 1, number 19 of the Oil and Gas Law, a Production Sharing Contract (PSC) refers to a cooperative arrangement that aims to maximize the benefits from exploration and exploitation activities for the state and ensure the welfare of the people.

**Keywords:** legal protection; production sharing contract; oil and natural gas



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## INTRODUCTION

Oil and natural gas are valuable non-renewable resources classified as strategic assets. Indonesia possesses substantial reserves of oil and gas, with proven and potential reserves amounting to 3,305.7 million standard tank barrels (MMstb) and 3,331.15 trillion standard cubic feet (TSCF), respectively. Since 1970, oil and gas have played a crucial role in Indonesia's economy, with the country previously being the world's leading exporter of liquefied natural gas (LNG) before 2006.<sup>1</sup>

Given the significance of oil, gas, and petroleum as vital commodities impacting the livelihoods of many people and contributing to the national economy, their control is vested in the state. Article 33, paragraphs (2) and (3) of the 1945 Constitution stipulate that the state has authority over essential production sectors that directly affect the welfare of the people. Consequently, the government is granted the Mining Authority to oversee oil and gas exploration and exploitation activities.<sup>2</sup>

The regulatory framework governing oil and gas in Indonesia is outlined in Law Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law). According to this law, exploration encompasses activities undertaken to gather geological data and estimate oil and gas reserves. Exploitation, on the other hand, involves a series of operations

<sup>1</sup> Based on SKK Migas Annual Report 2015. <http://www.skkmigas.go.id/>, [accessed 10/08/2022]

<sup>2</sup> Grahita Chandrarin and others, 'Will Economic Sophistication Contribute to Indonesia's Emission Target? A Decomposed Analysis', *Technological Forecasting and Social Change*, 181 (2022) <https://doi.org/10.1016/j.techfore.2022.121758>



aimed at extracting oil and gas through drilling and constructing infrastructure for transportation, storage, processing, and other necessary activities.<sup>3</sup>

After the formation of the Oil and Gas Law, encouraging the formation of other laws and regulations that can support the implementation of the Oil and Gas Law. Then formed No. 35 of 2004 concerning Upstream Oil and Gas Business Activities which was last amended by PP No. 55 of 2009. The government too has promulgated regulations regarding the form of production sharing contracts through PP No. 79 of 2010 concerning Refundable Operating Costs and Income Tax Treatment in the Upstream Oil and Gas Business Sector (PP Cost Recovery) and the Minister of Energy and Mineral Resources No 52 of 2017 concerning Amendments to the Regulation of the Minister of Energy and Mineral Resources Number 08 of 2017 concerning Sharing Contracts Gross Split Results (Permen ESDM Gross Split).<sup>4</sup> In order to maximize the implementation of the people's welfare and prosperity, oil and natural gas processing requires legal instruments such as contracts, especially Production Sharing Contracts or also called Production Sharing Contracts. Production Sharing Contract or Production Sharing Contracts This is a tool aimed at overcoming problems in the exploration and exploitation of oil and gas mining.<sup>5</sup>

## METHOD

The type of research and approach method used in this paper is an empirical juridical legal research method. By using empirical or non-doctrinal methods, the article as one of the substantive perspectives of this research wants to explain the legal protection of state assets in the management of oil and gas. The qualitative data collected in the data collection process is in a deeper and more focused description. Qualitative data will be presented in the form of verbal words, not in the form of numbers. In this case, verification of the qualitative data will be carried out related to the research topic.

## RESULT AND DISCUSSION

### *Legal Protection of State Assets in Oil and Gas Management*

Legal arrangements regarding oil and natural gas cover the area of study of state institutions as legal political makers, the location of legal politics, factors (internal and external) that influence the development of oil and gas legal politics, as well as the level of application in the form of implementing legal products. In implementing legal politics, regulation regarding oil and gas is aimed at meeting the needs and welfare of the people, so that the formation of law is built on the values that develop in society.<sup>6</sup>

Law Number 22 of 2001 concerning Oil and Gas which was promulgated in the State Gazette of 2001 Number 136 Supplement to the State Gazette Number 4152. As

<sup>3</sup> Shochrul Rohmatul Ajija, Arivia Fikratuz Zakia, and Rudi Purwono, 'The Impact of Opening the Export Promotion Agencies on Indonesia's Non-Oil and Gas Exports', *Heliyon*, 7.8 (2021) <https://doi.org/10.1016/j.heliyon.2021.e07756>

<sup>4</sup> Vonna, Zakia. 'Peran dan Fungsi Notaris dalam Pembuatan Kontrak Bagi Hasil Minyak dan Gas Bumi Di Indonesia.' *Jurnal Hukum & Pembangunan*. 40 (1), . (2020), p 202

<sup>5</sup> Lego Karjoko and others, 'Indonesia's Sustainable Development Goals Resolving Waste Problem: Informal to Formal Policy', *International Journal of Sustainable Development and Planning*, 17.2 (2022), 649–58 <https://doi.org/10.18280/ijssdp.170230>

<sup>6</sup> Arif Setiawan, Aryo Wibowo, and Fadhila Rosyid, 'Analisis Pengaruh Ekspor Dan Konsumsi Batubara Terhadap Pertumbuhan Ekonomi Indonesia', *Jurnal Teknologi Mineral Dan Batubara*, 16.2 (2020), 109–24 <https://doi.org/10.30556/jtmb.vol16.no2.2020.1081>



for the background to the formation of the Oil and Gas Law, Law Number 8 of 1971 concerning Pertamina is considered no longer relevant to developments in oil mining and natural gas.<sup>7</sup> In this case, the Oil and Gas Law has changed the role of Pertamina no longer as a policy maker, regulator, and business actor but only as a business actor.

Based on the Oil and Gas Law, an Oil and Gas Implementing Agency (BPMigas) was formed based on Government Regulation (PP) Number 42 of 2002. BP Migas is a government agency that carries out upstream oil and gas business activities in Indonesia. However, BP Migas was disbanded and then replaced with a Special Task Force (SKK) for Migas based on Constitutional Court Decision Number 36/PUU-X/2012 concerning the Dissolution of BP Migas.<sup>8</sup> The dissolution of BP Migas is an attempt to restore state sovereignty in the oil and gas sector.

Constitutional Court Decision Number 36/PUU-X/2012 states that BP Migas only has the function of controlling and supervising oil and gas management and does not carry out direct management.<sup>9</sup> SKK Migas as a substitute for BP Migas has the duty to carry out activity management upstream oil and gas business based on Cooperation Contracts (KKS). SKK Migas plays an important role in maintaining energy supply security, namely oil and gas in the long term, and this role is a tough task amidst the ability to supply oil and natural gas to meet the increasingly limited national energy needs.<sup>10</sup>

SKK Migas has the authority to sign other agreements which are still related to the PSC, this is stated in the provisions of Article 86 paragraphs 5 and 6 of PP No. 35 of 2004 jo. PP No. 34 of 2005 jo. Article 1 Presidential Regulation No. 95 of 2012 jo. Article 1 and Article 2 paragraph 1 of Presidential Decree No. 9 of 2013.<sup>11</sup> In addition, SKK Migas also has several tasks regulated in the provisions of Article 90 PP No. 35 of 2004 jo. PP No. 34 of 2005 jo. Article 1 Presidential Regulation No. 95 of 2012 jo. Article 1 and Article 2 paragraph 1 of Presidential Decree No. 9 of 2013: (1) Give consideration to the minister on his policies in terms of preparation, bidding of work areas and KKS; (2) Carry out the signing of the KKS; (2) Review and submit a field development plan that will be produced for the first time in a work area to the minister for approval; (3) Give approval for the field development plan as referred to in letter c; (4) Provide approval of work plans and budgets; (5) Carry out monitoring and report to the minister regarding the implementation of KKS; and (6) Appoint sellers of the state's share of oil and gas that can provide large profits for the state.<sup>12</sup>

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<sup>7</sup> Qurbani, Indah. 'Politik Hukum Pengelolaan Minyak dan Gas Bumi Di Indonesia.' *Arena Hukum*. 6 (2), (2012). p 118

<sup>8</sup> Manurung, Rachel and others. 'Kedudukan Hukum Satuan Kerja Khusus Migas Sebagai Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi Bagi Tata Kelola Ketahanan Energi Nasional.' *Administrative Law & Governance Journal*. 5 (2), (2022), p 138

<sup>9</sup> Faisal Kurniawan, Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak Dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak, *Jurnal Hukum dan Peradilan*, Vol. 2 No. 3, November 2013, p 76.

<sup>10</sup> Manurung, Rachel et al. Op Cit. p.140

<sup>11</sup> Faisal Kurniawan, Op City, p. 78

<sup>12</sup> Abdul Kadir Jaelani, Resti Dian Luthviati, and Muhammad Jihadul Hayat, 'Permits for the Transfer of Agricultural Land Functions to Non-Agriculture in the Land Purchasing and Sale Process', in *International Conference on Environmental and Energy Policy (ICEEP 2021)* (Atlantis Press, 2021), pp. 216–19 <https://doi.org/10.2991/assehr.k.211014.046>



### *The Concept of Oil and Gas Production Sharing Contracts in Indonesia*

The oil and gas business activities consist of upstream business activities and downstream business activities. Upstream business activities are activities that include exploration and exploitation. The downstream business activities include processing, transportation, storage, and trading. Upstream business activities are carried out through Cooperation Contracts (KKS) as stated in Article 6 of the Oil and Gas Law. In Article 1 number 19 of the Oil and Gas Law, KKS is a production-sharing contract or a form of cooperation in exploration and exploitation activities that is more profitable for the state and the results are used for the greatest prosperity of the people. However, the Oil and Gas Law does not explain further about Production Sharing Contracts.<sup>13</sup>

The Production Sharing Contract is stated in Article 1 point 4 of Government Regulation No. 35 of 2004 concerning Upstream Oil and Gas Business Activities. Production Sharing Contracts are cooperation contracts in the implementation of upstream business activities based on the principle of production sharing. The Production Sharing Contract is an instrument for implementing upstream business activities used by the government.<sup>14</sup> In this case, the government is a contra subject and a regulated contract, namely that it has determined the clauses that must be in the Production Sharing Contract. Arrangements regarding the clauses that must be in the Production Sharing Contract are contained in the Oil and Gas Law, Government Regulation No. 42 of 2002 concerning the Implementing Agency for Upstream Oil and Gas Business Activities (PP BP Migas) jo. Presidential Decree No. 95 of 2012 jo. Presidential Decree No. 9 of 2013, and Government Regulation No. 35 of 2004 concerning Upstream Oil and Gas Business Activities (PP Upstream Oil and Gas Business Activities) jo. PP (Government Regulation) No. 34 of 2005 concerning Amendments to Government Regulation No. 35 of 2004.<sup>15</sup>

There are two types of contracts in the Civil Code, namely contracts named (nominaat) and unnamed contracts (innominaat). Oil and Gas Production Sharing Contracts Included in anonymous contracts. Basically, the Oil and Gas Production Sharing Contract is guided by the laws and regulations governing Oil and Gas. The contractual relationship between the government and the private sector is a relationship to transfer risk so that the government cooperates with oil and gas management investors.<sup>16</sup> Oil and Gas Production Sharing Contracts can be categorized as economic development contracts, as the contents of the contract contain: (1) a Long period of time; (2) The value of the contract is quite large; (3) The object of the contract is not solely for profit, but has a purpose for social interests; (4) The object of the contract is subject to government monopoly; (5) Applicable and selected laws are

<sup>13</sup> Arief Rahman and others, 'Pathways to Reduce Indonesia's Dependence on Oil and Achieve Longer-Term Decarbonization', *Renewable Energy*, 202 (2023), 1305–23 <https://doi.org/10.1016/j.renene.2022.11.051>

<sup>14</sup> Faisal Kurniawan, Op Cit. hlm 78

<sup>15</sup> Simamora, Y. Sogar, Prinsip Hukum Kontrak dalam Pengadaan Barang dan Jasa oleh Pemerintah, *Yogyakarta: Laksbang PRESSindo*. (2009) p 55

<sup>16</sup> Benny Lubiantara, 'Ekonomi Migas: Tinjauan Aspek Komersial Kontrak Migas,' Jakarta: Grasindo, (2012) p. 10-11.





the national laws of the host country; (6) There are public administrative requirements; and (7) The object concerns the interests of the people at large.<sup>17</sup>

The form of Oil and Gas Production Sharing Contracts in Indonesia is a private written deed drawn up between SKK Migas and a business entity and/or permanent business entity for further written notification to the House of Representatives.<sup>18</sup> As stipulated in Article 6 paragraph (1) in conjunction with Article 11 paragraph (1) of the Oil and Gas Law in conjunction with Article 24 paragraph (1) PP Migas Production Sharing Contracts must contain the following requirements:<sup>19</sup> (1) Ownership of natural resources remains in the hands of the government until the point of delivery; (2) Operational management control rests with SKK Migas; (3) All capital and risks are borne by the Business Entity or Permanent Establishment; (4) The Minister of Energy and Mineral Resources determines the form and main terms of the contract; (5) PSC through SKK Migas can propose changes to the terms and conditions of the contract to the Minister of Energy and Mineral Resources; and (6) Other technical and general provisions as general clauses in a contract.

The beginning of the implementation of the PSC was an offer by the Minister of Energy and Mineral Resources regarding the Work Area to a business entity or Permanent Establishment (BUT). Bidding is carried out by means of auction stages or in the form of direct appointments to business entities or permanent establishments. The next stage, namely pre-contractual, is the stage where the government gets contractors who are in accordance with the qualifications, finances, and expertise as managers of upstream business activities for the Work Area offered.<sup>20</sup> In the opening and comparison of contracts, it is regulated regarding the date the contract was made, the identities of the parties, and the legal standing of the parties. The identity of the contracting party must be clear because according to Article 1315 *juncto* Article 1340 of the Civil Code that a contract is legally binding only for the parties to the contract.

Furthermore, it includes the background regarding the formation of contracts such as considering considerations in a law. In the body of the contract, article by article is regulated regarding the definitions and scope of the contents of the contract. The scope of the contract in this case aims to provide boundaries for the parties. As in Article 27 *juncto* Article 28 PP Migas stipulates the term of the oil and gas production sharing contract with a maximum period of 30 (thirty) years and can be extended for a maximum of 20 (twenty) years for each extension.

Dispute resolution that may occur between SKK Migas and business entities and/or permanent establishments is not regulated in the Oil and Gas Law or PP Migas. Dispute resolution can be pursued through litigation and non-litigation or alternative dispute resolution (APS). Where the litigation path is a last resort when previous efforts did not find a bright spot. Article 38 PP Migas stipulates that the Oil and Gas Production Sharing Cooperation Contract is subject to and applies Indonesian law. However, there are no laws and regulations that specifically regulate the dispute settlement mechanism for Oil and Gas Production Sharing Contracts. So that the parties can

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<sup>17</sup> Sulista Sulista and Fadhila Achmadi Rosyid, "The Economic Impact of Tin Mining in Indonesia during an Era of Decentralisation, 2001–2015: A Case Study of Kepulauan Bangka Belitung Province", *Extractive Industries and Society*, 10 (2022) <https://doi.org/10.1016/j.exis.2022.101069>

<sup>18</sup> Vonna, Zakia. Op Cit. p. 211

<sup>19</sup> Ibid

<sup>20</sup> Sang Ayu Putu Rahayu, 'Legal Principles in Cooperation Contracts for Upstream Oil and Gas Business Activities,' *Journal of Juridical Law*, 32,2 (2017). p. 338,



implement the principle of freedom of contract so that the parties can determine their own mechanism to be pursued.<sup>21</sup>

## CONCLUSION

Law Number 22 of 2001 concerning Oil and Gas serves as a legal framework to safeguard state assets in the management of oil and natural gas resources. The dissolution of BP Migas, a government institution responsible for upstream oil and gas activities, was carried out to restore state sovereignty in the oil and gas sector. SKK Migas, as the successor to BP Migas, plays a crucial role in ensuring long-term energy supply security amidst the growing challenge of meeting the nation's increasingly limited energy demands.

Upstream business activities are conducted through the use of Production Sharing Contracts (PSCs) in exploration and exploitation operations. PSCs serve as instruments for implementing upstream activities and are regulated by the Oil and Gas Law and BP Migas's regulations. However, there are no specific laws and regulations pertaining to dispute resolution in PSCs. As a result, the resolution of disputes between the government and business entities or permanent establishments under the Oil and Gas PSC is subject to Indonesian law, granting the parties the freedom to settle disputes through litigation, non-litigation processes, or arbitration.

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<sup>21</sup> Vonna, Zakia. Op Cit. p. 214



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