



Research Article



The Authority of Oil and Gas Special Task Force as a Company Holder and Implementers of Upstream Oil and Gas Business Activity: a Juridical ViewPoint

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Abstract: In 2001, Law No. 22 of 2001 concerning Oil and Gas was enacted, which aimed to regulate Pertamina's authority in the oil and gas sector, as well as grant rights and authority to other domestic and foreign oil companies. Consequently, this limited Pertamina's ability to explore and exploit new oil fields. This article adopts a normative juridical research method, which seeks to address existing legal issues through this approach. The research method includes the Case Approach, Statute Approach, and Conceptual Approach, which will be utilized by the author. Through this approach, the compatibility between legal provisions and their implementation will be examined. The findings indicate that, according to statutory regulations, the government agency responsible for upstream oil and gas activities in Indonesia was initially the Executive Agency for Upstream Oil and Gas Business Activities (BP Migas), which was later replaced by the Special Task Force (SKK) for Oil and Gas. The Constitutional Court dissolved BP Migas based on the decision that BP Migas solely controlled and supervised oil and gas management, without engaging in direct management activities. This led to a relationship model between BP Migas, as a representative of the state, and business entities, which contradicted the constitutional principle of state control over oil and gas natural resources.

Keywords: upstream oil and gas business activity; oil and gas special task force; legal authority



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INTRODUCTION

The Indonesian constitution emphasizes the obligation of the State to optimize its energy resources for the welfare and benefit of society. Article 33, paragraph (3) specifically states that the State has control over the earth, water, and the natural resources contained within, and these resources must be utilized for the greatest prosperity of the people. Natural resources encompass anything that can be extracted or utilized from nature and holds beneficial value in meeting human needs. They play a crucial role in human life and the formation of civilization.¹

Oil and gas resources, in particular, are significant in this context. They are vital resources that have a direct impact on the livelihoods of many people. However, it is important to note that oil and gas are non-renewable resources with limited stocks. As a result, their management and control are of utmost importance to ensure their optimal utilization and the long-term benefits they can provide to society. Throughout

¹ I. Gusti Ayu Ketut Rachmi Handayani and others, 'Environmental Management Strategy in Mining Activities in Forest Area Accordance with the Based Justice in Indonesia', *Journal of Legal, Ethical and Regulatory Issues*, 21.2 (2018); 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>



different cultures and ethnicities, there exist diverse conceptions and worldviews regarding the control and management of natural resources. These perspectives influence the policies and approaches taken by different societies in managing their resources, including oil and gas.² In this paper, the focus will be on providing a more in-depth discussion about oil and gas resources, exploring their significance, challenges, and the measures taken to maximize their benefits in accordance with the constitutional principles of utilizing natural resources for the welfare and prosperity of the people.

Talking about oil and gas resources, Indonesia is a large oil and gas producing country. There are 60 oil fields, 38 of which have been explored, with reserves of around 77 billion barrels of oil and 332 trillion cubic feet (TCF) of gas.³ Its new production capacity is around 0.48 billion barrels of oil and 2.26 trillion TCF. Indonesia contains a lot of oil and gas wealth. Revenue from the oil and gas sector is enough to contribute to state revenues. In 2006, the national oil and gas sector succeeded in contributing to state revenues of US\$ 22.536 billion, an increase of 17.17% compared to 2005. In 2007 it contributed 34% of the 2007 state budget revenues reaching Rp. 228 trillion. Meanwhile, oil and gas revenues in 2008 were Rp. 303 trillion, contributing 36% of the 2008 state budget revenue. In 2009 it was 251.9 trillion and in 2010 it reached 219.2 trillion.⁴ As we all know, oil and gas are non-renewable and very limited resources. Therefore, it is possible that one day this resource will run out. To avoid scarcity of these materials in the future, therefore this vital resource which concerns the livelihoods of many people must be managed by the government and the private sector who are responsible for the benefit of society.⁵

In 2001, Law no. 22 of 2001 concerning Oil and Gas. The law regulates the limitation of Pertamina's authority as the main player (single player) in the oil and gas sector, as well as granting rights or authority to other oil companies, both domestic and foreign. This causes Pertamina to be unable to explore and exploit new oil fields. Upstream oil and gas (oil and gas) business activities are carried out by the government through an agency or agency that has been given full authority by the government to carry out the upstream oil and gas business activities. Government agencies that carry out upstream oil and gas business activities in Indonesia were initially carried out by the Executive Agency for Upstream Oil and Gas Business Activities (BP Migas), then replaced by the Oil and Gas Special Task Force (SKK).⁶

The background to the dissolution of BP Migas was the issuance of the Constitutional Court Decision Number 36/PUU-X/2012 concerning the Dissolution of BP Migas, as an effort to restore the sovereignty of the State of Indonesia in the oil and gas (oil and gas) sector. The legal politics of the Constitutional Court's decision is an appropriate step, because, with the Constitutional Court's decision Number 36/PUU-X/2012 concerning the dissolution of BP Migas, legal politics is on the right

² Aled Williams and Philippe Le Billon, *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology* (Edward Elgar Publishing, 2017).

³ Rahmawati, L. (2014). Management of Oil and Gas Resources from an Islamic Perspective. *Al-Qanun*, Vol. 17, No. (1), p. 105.

⁴ Ibid. p. 128

⁵ Pane Erina and Adam Muhammad Yanis, 'Reconstruction of Mining Policies on Justice in Lampung Province', *Bestuur*, 8.2 (2020), 139 <https://doi.org/10.20961/bestuur.v8i2.42830>

⁶ Habib Shulton Asnawi, 'Politik Hukum Putusan MK Nomor 36/PUU-X/2012 Dalam Upaya Mengembalikan Kedaulatan Negara Dan Perlindungan HAM', *Jurnal Konstitusi*, 2016 <https://doi.org/10.31078/jk1324>



constitutional path, realizing the ideals of a rule of law and democracy for the sake of national and state life. with dignity, as well as the legal politics of the Constitutional Court's decision is a wise choice and a step forward in the field of law, especially the protection of the human rights of the Indonesian people holding the oil and gas sector.⁷

METHOD

Marzuki explained that legal research functions as a process of discovering legal principles, and legal rules, and includes legal doctrines with the final result answering existing legal issues. The type of research that the authors use to compile this article is normative legal research or also known as doctrinal legal research. Along with the development of scientific principles, the term "normative legal research" is now simply called "legal research" because it is enough to explain that research is normative in nature.⁸ Several approaches can be taken in doctrinal legal research or normative legal research. Answers to existing legal problems will be obtained with this approach. The approach consists of a statute approach, case approach, and conceptual approach. The case approach in this case changes the position of the Oil and Gas Special Task Force as a BUMN Holding Company and Executor of Upstream Oil and Gas Business Activities based on a constitutional court decision. The Statute Approach is also known as an approach to legislation or legal products that focuses on the legal issues or problems raised. Through this approach, compatibility will be examined between what is regulated in laws and regulations and their implementation. This approach also examines how consistent a statutory regulation is in its formation and implementation. The laws and regulations in review are related to the legal issues being studied.

RESULT AND DISCUSSION

Company Arrangements Holding in the Oil and Gas Sector

Company holding in principle, according to Article 63 paragraphs (1) and (2) of Law Number 19 of 2003 that a State-Owned Enterprise can be merged, merged with other BUMNs or taken over by other BUMNs. This effort was carried out by PT PGN (Persero) to integrate its business sectors with PT Pertamina (Persero) which will be the first step in establishing an Oil and Gas Holding. In relation to the formation of this holding, according to the judge's considerations in the Supreme Court Decision Number 21P/HUM/2017 it is stated that state equity participation in BUMN shares to other BUMNs which causes BUMN to become a subsidiary of the parent BUMN (Holding) is possible because there is no provision stating that against SOEs that become subsidiaries of the parent BUMN change into Limited Liability Companies.⁹ One example of a large limited liability company in Indonesia is PT Pertamina (Persero) and PT Perusahaan Gas Negara (PGN) (Persero). Which of the two companies is a form of company with state ownership or in the form of (BUMN).

The wealth of the Unitary State of the Republic of Indonesia (NKRI) is spread across various aspects of life. One form of wealth owned by Indonesia is business entities that

⁷ Asnawi.

⁸ Marzuki, PM (2008). Peter Mahmud Marzuki, Legal Research. In Legal Research, Printing 2 (p. 29). Kencana Publisher. pp. 55-56.

⁹ Supreme Court Decision Number 21P/HUM/2017.



are domiciled as state-owned, or commonly referred to as State-Owned Enterprises (BUMN). The legal position of a BUMN here has been recognized in the hierarchy of Indonesian legislation, namely Law Number 19 of 2003 concerning State-Owned Enterprises. Article 1 paragraph (1) Law Number 19 of 2003 concerning State-Owned Enterprises, stipulates that State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or most of which is owned by the state through direct participation originating from state assets. separated. Based on these provisions, it is stated that a BUMN is said as a business entity, it can also be classified as a BUMN, which must be a legal entity. A legal entity has several elements, including¹⁰ (a) The existence of separate assets; (b) Having a specific purpose in its formation; (c) Having its own interests; and (d) The existence of a regular organization.

As time goes by, it happens holding This State-Owned Enterprise aims to improve efficiency so that it does not only focus on operations but also on marketing, funding, and so on. In addition, to create synergies between the original companies, such as creating new downstream industries, increasing the company's economic scale with better competitiveness, improving the capital structure and opening up funding opportunities for business expansion, and creating value creation through improving the capital structure and increasing capacity production.¹¹ Then form holding in the oil and gas sector with the following objectives: (i) utilization and acceleration of domestic natural gas monetization; (ii) increasing the effectiveness of asset utilization along the value chain; (iii) efficiency in domestic natural gas distribution; (iv) integrated infrastructure development; and (v) synergy in optimizing operations and investment.

The concept of holding law that applies to Government Regulation Number 72 of 2016 is in the form of a stock transformation. This is confirmed in Article 2A paragraph (2) which states that in the case of state assets in the form of shares owned by the state in a BUMN as referred to in Article 2 paragraph (2) letter d, it is made state capital participation in other BUMNs so that the majority of shares are owned by other BUMNs. Then BUMN. The company becomes a subsidiary of a state-owned company under the condition that the state is required to own shares with special rights as regulated in the articles of association. This regulation confirms that State Equity Participation originating from state assets in the form of state-owned shares in BUMN or Limited Liability Companies as referred to in Article 2 paragraph (2) letter d to BUMN or other Limited Liability Companies, is carried out by the Central.

Government without going through the Income Budget mechanism and State Spending. On the initiative of regulating state equity participation in this government regulation, after the Extraordinary General Meeting of Shareholders of PT Perusahaan Gas Negara (PGN) (Persero), the government issued Government Regulation Number 6 of 2018 concerning Addition of the Republic of Indonesia's State Equity to the Company's Share Capital (Persero) PT Pertamina which contains: (a) additional state equity participation of 13,809,038,755 Series B shares at PT Perusahaan Gas Negara (Persero) Tbk which has been placed and fully paid by the state; and (b) the addition of state capital participation results in:

¹⁰ Ali Ridho, Op. Cit., p. 303. in Herlien Budiono, 'Directions for Regulation of Law Number 40 of 2007 Concerning Limited Liability Companies in Facing the Global Era', Faculty of Law, University of Parahyangan Bandung, Rechtsvinding Journal, Volume 1 Number 2, August 2012.

¹¹ Toto Pranoto, BUMN Holding Company Concept, Implementation and Benchmarking, Institute of Management, Faculty of Economics and Business, University of Indonesia, Jakarta, July 2017. p.55.



1. the status of PT Perusahaan Gas Negara (Persero) Tbk changed to a company limited;
2. PT Pertamina (Persero) became the shareholder of PT Perusahaan Gas Negara (Persero) Tbk

In addition, the concept of holding that applies in Indonesia has also been implemented in the formation of previous holdings, namely the government has also formed a mining BUMN holding. In the state-owned mining holding, PT Indonesia Asahan Aluminum (Inalum) is the holding company, and the company members consist of, PT Antam Tbk, PT Bukit Asam Tbk, and PT Timah Tbk. The existence of holding companies basically existed before the establishment of the Oil and Gas and Mining holding, including the fertilizer holding (PT Pupuk Indonesia), cement holding (PT Semen Indonesia), Perhutani, and plantations. Based on the results of the formation of the holding, it is known that the position of PT Pertamina (Persero) is the holding company for this oil and gas holding, with the subholding overseeing it, namely PT Pertamina Gas (Pertagas) as a subsidiary of PT Pertamina (Persero) 19, and PT Perusahaan Gas Negara (PGN) (Persero).¹²

That the process of integrating PT Pertamina Gas into PT Perusahaan Gas Negara (PGN) (Persero) is a series of oil and gas holding processes. As a result of the company restructuring through the transfer of rights to these shares, related to the legal status of PT Perusahaan Gas Negara (PGN) (Persero) as a BUMN whose status has changed to non-Persero, PGN will continue to be treated the same as other BUMNs for strategic matters. The status of a Limited Liability Company (Persero) PT Perusahaan Gas Negara Tbk changed to a limited liability company which fully complies with Law Number 40 of 2007 concerning Limited Liability Companies. Thus, the state still has control over PGN, either directly through ownership of Series A Dwiwarna shares.¹³

With the transfer of rights to shares between PT PGN (Persero) and PT Pertamina (Persero) which is stated in Government Regulation Number 6 of 2018 concerning the Addition of Republican State Equity Participation into PT Pertamina's Company Share Capital, as a form of Article 4 of Government Regulation Number 43 of 2005 concerning Mergers, Consolidations, Acquisitions, and Changes in the Form of Legal Entities for State-Owned Enterprise's jo. Article 3 paragraph (1) Government Regulation Number 44 of 2005 that the merger, consolidation, and acquisition of SOEs are stipulated by government regulations.¹⁴

Special Task Force for Oil and Gas as the Executor of Upstream Oil and Gas Business Activities

The legal position in the perspective of State Administrative Law (HAN), its legal position also enters into public law or TUN Law which is a special part of state constitutional law relating to the implementation of government affairs by TUN

¹² 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/ijstdp.170230>

¹³ Anggita Rezki Amelia, "Ministry of SOEs Choose Acquisition Scheme to Join PGN and Pertagas", <https://m.katadata.co.id/berita/2018/04/11/kementerian-bumn-lect-skema-aquisitionfor-join-pgn-dan-pertagas>, 11 April 2018, visited on 8 October 2022.

¹⁴ Hanung Budya and Muhammad Yasir Arofah, 'Providing Cleaner Energy Access in Indonesia through the Megaproject of Kerosene Conversion to LPG', *Energy Policy*, 39.12 (2011), 7575–86 <https://doi.org/10.1016/j.enpol.2011.02.061>



bodies or officials that are not regulated by norms of civil law or criminal law. Legal standing or so-called *locus standi* has the meaning that a situation when a legal subject or legal object is considered to meet the requirements to submit an application for the settlement of a dispute that occurs. The legal position in the perspective of State Administrative Law, State Administrative Law is included in public law and is part of Constitutional Law. The existence of SKK Migas in Indonesia is something new.¹⁵

The decision of the Constitutional Court Number 36/PUU-X/2012 concerning the Dissolution of the Executive Agency for Upstream Oil and Gas Business Activities (BP Migas), stated that BP Migas was dissolved by the Constitutional Court (MK) because according to the Constitutional Court's considerations, BP Migas only had a control function and also supervision over oil and gas management, but does not carry out direct management, the consequence is that the model of the relationship between BP Migas as a representative of the state and Business Entities and Permanent Business Entities in oil and gas management is reduced to the meaning of state control over oil and gas natural resources, and thus it is contrary to the rules Article 33 of the 1945 Constitution. The implementation of the management of upstream oil and gas (oil and gas) business activities carried out by BP Migas has changed, with the Ruling of the Constitutional Court Number 36/PUU-X/2012 concerning the Dissolution of the BUMI Upstream Oil and Gas Business Executing Agency (BP Migas), BP Migas was replaced by SKK Migas on the grounds that in order to ensure the continuity of the Upstream Oil and Gas Business activities, it is necessary to regulate transfer of duties and functions of controlling and supervising upstream oil and gas business activities.¹⁶

CONCLUSION

The diversity of abundant resources in Indonesian territory is regulated by the constitution to prevent any arbitrary actions by any party. According to Article 33, paragraph (3) of the constitution, the state has control over the land, water, and natural resources found therein, and they must be utilized for the greatest prosperity of the people. Natural resources encompass anything that can be extracted or utilized from nature and holds value in meeting human needs. They play a crucial role in human civilization and are vital for the livelihoods of many people. However, oil and gas, being non-renewable resources, have limited stocks. In 2001, Law No. 22 of 2001 concerning Oil and Gas was enacted. This law aimed to limit Pertamina's authority as the sole player in the oil and gas sector and grant rights or authority to other domestic and foreign oil companies. Over time, restructuring occurred within the state-owned enterprise, with the objective of improving efficiency and focusing not only on operations but also on marketing, funding, and other aspects. This restructuring involved the transfer of rights to shares between PT Perusahaan Gas Negara (PGN) and other state-owned enterprises. Consequently, the legal status of PT Perusahaan Gas Negara (PGN) (Persero) changed from a state-owned enterprise to a limited liability company (Persero) in accordance with Law No. 40 of 2007 concerning Limited Liability Companies. Additionally, the Constitutional Court issued Decision No. 36/PUU-X/2012, leading to the dissolution of the BUMI Upstream Oil and Gas Business Executing Agency (BP Migas), which was then replaced by SKK Migas. This transition aimed to ensure the continuity of upstream oil and gas business activities.

¹⁵ Djarot Sulistio Wisnubroto and others, 'Indonesia's Experimental Power Reactor Program (RDE)', *Nuclear Engineering and Design*, 404 (2023) <https://doi.org/10.1016/j.nucengdes.2023.112201>

¹⁶ Op. cit.p. 142



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