THE PRINCIPLE OF SELF-DETERMINATION FOR OIL AND GAS MANAGEMENT IN INDONESIA

Anshar*, Khairun University
Iin Karita Sakharina, Hasanuddin University
Husen Alting, Khairun University
Ahsan Yunus, Hasanuddin University
Kadarudin, Hasanuddin University

ABSTRACT

The principle of self-determination in international law now can not only be seen as the right of a nation to free itself from the shackles of colonialization, but now the meaning shifts to the right of a sovereign nation or state to choose their own form of state without any intervention or influence from any party. Including how a nation or country can manage its own natural wealth. Oil and gas natural resources is one of Indonesia's natural wealth and plays an important role in the development process to support the country's ideals, namely for the greatest prosperity and welfare of the people of Indonesia. There are several fundamental points in answering the extent to which the principle of self-determination applies to oil and gas management, namely political / constitutional status and autonomy.

Keywords: Oil and Gas Management, Principles of Self Determination

INTRODUCTION

Until now, oil and gas management still plays a very important role to support the sustainability of Indonesia's development, both as one of the mainstays of foreign exchange earners as well as suppliers of domestic energy needs that affect the national economy. Based on this influence, the oil and gas wealth owned by Indonesia can be stated as the most important aspect of the nation's potential. In line with this, George Anderson (2012: 1) states that "natural resources are important to the politics and economics of many countries. Of all resources, oil and gas stand apart in terms of their breadth and depth of impact ". However oil and gas is seen as a strategic natural resource owned by Indonesia. Oil and gas is considered strategic not only because it is the most important energy source, but is also a mainstay source of foreign exchange-producing natural wealth. Because the true wealth of natural resources is a component of the success of a nation's economic development (Hussain, Hassan, A 2020). Along with Adi Libson (2015) that "the real option value in the natural resources sector is of significant economic magnitude".

The issue of the progress and independence of the nation over its natural wealth is closely related to the political and economic history of each country, especially in this case concerning the history of colonialism which tends to exploit natural resources in the colonies. However, when decolonization took place and countries experienced independence, the asymmetrical relationship between newly independent countries and developed countries did not just change. Developed countries with the progress of the international business system carried out by multinational corporations (Multinational Corporations) are effectively able to continue the patterns of exploitation of various natural resources including oil and gas in various parts of the world effectively. To anticipate this, the international legal regime has recognized the rights possessed by each country and nation in the management of natural

resources in the form of full and complete sovereignty. It is stated in several international documents in the form of United Nations General Assembly Resolution concerning permanent control over the wealth of natural resources to be used and utilized freely by the country concerned. One of them is contained in the UN General Assembly Resolution Number 1803 year 1962 which affirmed that oil and gas as fossil energy is the national natural resource of a nation which is held on the basis of permanent sovereignty over the wealth of its natural resources.

Antony Anghie (2007) also mentioned that:

"The formulation of the doctrine of permanent sovereignty over natural resources was one of the principal mechanisms by which the new states hoped to regain control over their own resources and, in this way, promote development.

The formulation of the doctrine of permanent control of natural resource wealth under international law is very important for every country to gain power of control over their own resource wealth. Therefore, the management must be in accordance with the national development interests of the country concerned.

While in several international Human Rights instruments in the form of the General Declaration of Human Rights and 2 (two) other Human Rights covenants which emphasize the principle of the Right of Self-Determination of each country for the management of natural resources in an independent without interference from other parties or countries. Related to this, Antony Anghie (2007) had mentioned:

"Indeed, the idea of permanent sovereignty over natural resources was closely tied to the concept of self-determination, which in itself suggests the close links between political sovereignty and economic sovereignty".

The idea of permanent control of natural resources is very closely related to the concept of self-determination which shows the relationship between political sovereignty and economic sovereignty of a country. Therefore, oil and gas management is a reflection of an acknowledgment of the sovereignty of a nation which must be preserved and its existence. Thus, oil and gas wealth owned by a nation must not be exploited merely for the economic needs of the current generation or only to be enjoyed by other nations. Indonesia as a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia becomes the basic framework in placing natural resource wealth management must be based on law and constitution. The constitution as ius constituendum (Ali, 2010) for a country is the highest legal norm which is a guideline for the implementation of nation and state and a reference in the formulation of legislation as a legal instrument in the state. Because the constitution is a set of basic principles and norms in carrying out an organization that is a derivative of the basic values and philosophies of a country (Hussain, Ahmad, Quddus, Rafiq, Pham & Popesko, 2021).

Furthermore, it is still within the framework of the constitution related to the essence of natural resource management as stipulated in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states: "The earth, water and natural resources contained therein shall be controlled by the State and used for the -great prosperity of the people ". The provisions of this article also in essence want to emphasize a moral and cultural message in the constitution of the Republic of Indonesia in the field of economic life (Ruslina, 2015), especially in the field of natural resource management that is used to the maximum extent for the prosperity of the people (Mahrinasari, Hussain, Yapanto, Esquivel-Infantes, Untari, Yusriadi & Diah, 2021).

From the explanations above, the common thread is that the policies and management of natural resources, especially in the oil and gas management sector, should be intended solely for the greatest use for the prosperity of the people. Strategies and methods are open in various ways, both by direct exploitation, through contractual arrangements of legal relations, as well as collaborating and collaborating with other parties (Purba, 2013: 3-4).

RESEARCH METHODS

This research is a normative legal research (Soekanto & Mamudji, 2011), using a statutory and conceptual approach (Marzuki, 2010). The data used are secondary data in the form of primary legal materials (international legal instruments), and secondary legal materials (books, journals, research reports, and print and online media news) through library studies. The collected legal materials are then analyzed qualitatively, then presented descriptively in order to answer the problems in this paper.

RESULT AND DISCUSSION

Conditions of Oil and Gas Management in Indonesia

A number of legal bases and the Indonesian constitution which regulates the rights to natural resource management coupled with a number of international legal instruments that support the same thing, it turns out that there are a number of government approaches that do not fully support the ideas and ideals to present the real legal sovereignty in the field of resource management natural resources, especially in oil and gas management. This is because the sovereignty of oil and gas management has now become an issue that has emerged in the midst of our public space conversation. Because at this time the national oil and gas reserves are said to be abundant as if they were empty trees. Facts on the field are found in many cases of scarcity of fuel oil (BBM) which increasingly catapulted commodity prices. Foreign investment in the oil and gas sector, which is also present in Indonesia, is considered often to siphon oil and gas products abroad. The increase in fuel prices in 2013 caused inflation to rise by 6-7%. This condition has implications for rising prices for other goods that weaken the purchasing power and standard of living of the people. These problems further extend the range of national natural resource management problems.

Data from BP Migas in 2012 stated that abundant oil and gas became one of the sources of wealth owned by Indonesia. In 2010, Indonesia's proven oil reserves amounted to 4.23 MMSTB (million stock tank barrels). While Indonesia's proven gas reserves are 108 TSCF (trillion standard cubic feet). According to data from the BP Statistical Review World Energy in 2011, when observed in a global scope, Indonesia's petroleum reserves could contribute around 0.4 percent of the world's total petroleum reserves. While Indonesia's natural gas reserves account for around 1.6 percent of the world's total natural gas reserves. Therefore, it is not surprising since the 1970s, oil and gas has become Indonesia's most important export commodity. Even before 2006, Indonesia had become the largest exporter of LNG (Liquified Natural Gas) in the world for almost three decades (Nugroho, 2011).

Another source from the Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas) said that at the beginning of 2015 the national petroleum reserves were currently only 3.7 billion barrels out of around 27 billion barrels of proven reserves. because previously it had been produced around 22.9 billion barrels. It is estimated that these reserves will last around another 10 years. However, Indonesia actually still has 43.7 billion barrels of oil reserves, but this requires very high funding for exploration and technology (Kompas, 2015: September 7). While Indonesia's natural gas reserves calculated at the beginning of 2015 amounted to 151.33 TSCF, an increase of 1.36 percent when compared to natural gas reserves in 2014 amounted to 149.3 TSCF (Kompas, 2015).

Indonesia as a country that has the largest oil and gas reserves, especially in the Southeast Asian region, makes this country an attraction for world capital owners. Even before Indonesia was formed as a sovereign country, this country had become a highlight of

foreign investors to play a role in the mining sector including oil and gas mining (Syeirazi, 2009). This condition made the Dutch government in the colonial period issued Indische Mijnweet 1899 a kind of law governing mining. This policy grants mining permits through a concession system that is valid for seventy-five years to private companies. Since then multinational companies began to play an active role and participate in exploring and exploiting the Indonesian mining sector and marking the country's entry into the world oil and gas trade network.

The existence of foreign oil and gas companies in Indonesia, which had been present more than a century ago, made the hegemony or domination of foreign oil and gas companies so strong. Around 85.4 percent of the 137 national oil and gas mining working areas are owned by foreign companies. National companies only control about 14.6 percent of the work area and eight percent of them are controlled by Pertamina (Syeirazi, 2009: 51). This makes the presence of foreign oil and gas companies in Indonesia very significant. In the oil sector, one of the foreign oil and gas companies namely Chevron even produces 51 percent of the total oil production in Indonesia. As for natural gas, one of the foreign oil and gas companies namely Total E&P produces 34 percent of Indonesia's total natural gas production (Price water house Cooper, 2012).

Another source said that foreign oil and gas companies operating in Indonesia controlled 76 percent of the working area or upstream oil and gas and the remaining 24 percent were then controlled by national companies. This shows that this percentage value is still smaller when compared to Malaysia with 30 percent and China with 85 percent controlling oil and gas working areas by their own national companies (Tempo, 2015: May 27). The things experienced by Indonesia as above are inseparable from the history and influence of international oil and gas companies which dominate the management of world oil and gas. Leslie E. Grayson (1981) stated that:

"In 1970, about 70 per cent of the world's oil trade was handled by the oil multinationals – Exxon, Royal Dutch/Shell, Mobil, Texaco, Standart of California, Gulf, and British Petroleum. A decade later, the multinational's share has declined to about 50 per cent. Some of the trade no longer handled by the MNCs has moved to the 'spot' market in which both the multinational and national oil companies participate".

Along with statetment above, Daniel E. Vielleville and Baiju Simal Vasani (2008) mentioned :

"Many governments granted generous concessions in the early years to multinational oil corporations in which title to the oil in place was conveyed to the companies, the concession covered large areas, the terms of the concessions were very long (e.g., 60 years or more) and the royalties payable to the government were low".

The mining sector, especially oil and gas is different from other industrial sectors. This is because in this sector requires a very large capital and risk, a fairly long exploration process, high technology which is certainly accompanied by painstaking human resources in the field. This also makes many domestic oil and gas companies not dare to take steps to move forward and compete in the oil and gas industry. In contrast to foreign oil and gas companies that have quite a lot of experience and capital. Even these multinational companies claim to be able to help increase national income by increasing production output along with improving the quality of human resources in the form of education to Indonesian workers so that they have the same competence and expertise owned by foreign workers engaged in the oil and gas industry. Different from the claims of the oil and gas companies, in reality even the oil and gas industry technology is not well transferred to Indonesia which causes the management of oil and gas is still controlled by foreign oil and gas companies (Sumardi, 2012). This makes domestic oil and gas production not well controlled. Evidenced by the departure of Indonesia as a member of the Organization of the Petroleum Exporting

Countries (OPEC) in 2005 (although in 2015 Indonesia was re-incorporated as a member of the Organization of Petroleum Exporting Countries). It was stated that (Hammerson, 2013):

"Indonesia has been an active player ini the international oil and gas industry for more than 120 years, and was once significant international oil-exporting country and a member of the Organization of the Petroleum Exporting Countries (OPEC). Today, Indonesia continues to be a leading exporter of pipeline and liquefied natural gas, but has experienced a fairly consistent decline in oil production since 1998, leading to the country becoming a net oil importer by 2004".

Indonesia, which was once known as an oil and gas exporting country, must accept the fact of being an oil and gas importing country. This is because Indonesia has a need for oil of 1.3 million bpd (barrels per day) while the country's national production is only able to reach 910,000 bpd (barrels per day) according to data from the Ministry of Energy and Mineral Resources of Indonesia in 2010. Therefore, for to cover domestic supply shortages, Indonesia must import oil from other countries (Hussain, Nguyen, Guyen & Nguyen, 2021).

The price of oil which had experienced a very drastic increase in 2003 was a serious warning to countries that were planning their energy security programs, including Indonesia. Hopes of the presence of foreign oil and gas companies to be able to help manage oil and gas in Indonesia turned out not to be going well. The presence of foreign oil and gas companies in developing countries such as Indonesia tends to reveal an imbalance of bargaining power in uniting all interests. It also includes the national interest in the availability of oil and gas which is of course for the needs of all the people.

The history of the oil industry in Indonesia records that dependence on technology and capital on foreign parties is dominant. The trend implies that almost all state policies in the oil and gas management sector from the upstream to downstream levels are co-opted by foreign parties. The ups and downs of oil prices felt by the people of Indonesia are also the influence of international oil market mechanisms. This condition can occur as a direct result of the high level of consumption that is not balanced with the level of production and exploitation of crude oil in Indonesia which requires technology and large capital which can only be assessed through capital investment from international oil and gas companies.

For oil and gas producing countries such as Indonesia, the sovereignty of oil and gas management is the key for a country to be able to achieve the ideals of prosperity for its people and build a more advanced economic civilization. The presence of foreign oil and gas companies which are very dominant is certainly very influential in the presence of complete sovereignty in terms of domestic oil and gas management. This identified the threat and sovereign crisis in the form of foreign intervention in the management of oil and gas. This also makes it seem as if the state does not have the power in terms of 'determining its own destiny' (right of self-determination) in terms of oil and gas management in the country which is intended for the greatest prosperity of the people who in principle are in accordance with the constitutional foundation and supported by the principle basis or rules based on international law.

Implementation of the Right of Self Determination Principle in the Oil and Gas Management Sector in Indonesia

The principle of the right of self-determination has changed since the end of World War II. The right to self-determination is considered as an achievement or outcome in the form of sovereign independence from the colonial government. A significant change is the right of self-determination to change into a concept that has potentially different meanings in the context of a country. Implementation in a country is certainly limited by the sovereignty of the state, the right to self-determination has a role to give aspirations and into the context of a sovereign state. From the point of view of the principle of right of self-determination

stated above, the author focuses more on the understanding of the principle in its internal meaning.

The principle of right of self-determination in the internal sense is interpreted as the right to self-determination by a nation or sovereign state to choose the form of state and its own government, including how the nation or state manages or manages its own form of state without any intervention or influence from which party too. This is in accordance with the opinion of (Baehr, 1999) which defines the right to determine one's own destiny internally which can be interpreted as follows: "internal self-determination refers to the right of people to choose their own form of state and government "What the writer can translate is that:" self-determination refers to the right of people to choose the form of their own state and government "or in other words as internal self-determination regarding the right of a nation to choose the form of their own state and government. Furthermore according to (Baehr, 1999) that "the right of internal self-determination includes the right to a representative government and forms of self-government or autonomy" that the author can translate that: "the right of self-determination includes the right to represent government and various forms of self-government or autonomy ".

In this context, the authors analyze the application of the right of self-determination principle in the internal sense in analyzing the manner and form of Indonesia as a sovereign state in managing its oil and gas wealth. For this reason, in the subject matter of applying the principle of the right of self-determination in relation to oil and gas management in Indonesia, the author uses two indicators, namely: (1) political and constitutional status; and (2) autonomy.

Political and Constitutional Status

Determination of political and constitutional status relating to the management of oil and gas wealth in a country is part of the embodiment of the principle of the right of self-determination in the internal sense. The right to self-determination internally refers to the right of a nation to choose their political status in a country. International legal arrangements regarding the right of self-determination (right of self-determination) internally to determine political status are listed in Article 1 (1) of both the Covenant on Civil and Political Rights (ICCPR) and the Economic Social and Cultural Rights (ICESCR), which states that: "All nations have the right to self-determination. Based on this right they are free to determine their political status and free to pursue their economic, social and cultural progress. While, it is also importat to see what have mentioned in Article 2, has an important value for the full understanding of the Covenant and must be considered to have a dynamic connection with other provisions contained in the Covenant. This article explains the nature of the general legal obligations which must be conducted by the parties to the Covenant(Sakharina, 2020) while Indonesia is already became one of the State party to the Covenant

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social and Cultural Economic Rights (ICESCR), confirm the same thing in the process of self-determination for the fulfillment of civil, political, economic, social and cultural rights for individuals and groups. The two Covenants have been ratified by Indonesia through Law Number 11 Year 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights and Law Number 12 of 2005 concerning Ratification International Covenant on Civil and Political Rights (Sakharina, 2020).

In Indonesia the right to self-determination is internally within the existing People's Consultative Assembly (MPR), which will have an impact on the exercise of its authority to amend and establish the 1945 Constitution as regulated in Article 2 paragraph (1) The 1945 Constitution. Determining the political status and content of the constitution through

amending and enacting laws is a reflection of the will of the people of a country by having the desire to make their own choices whether it be the government system, ideology, and other basic rights. Including how the state regulates and manages the wealth of natural resources such as oil and gas resources. The methods of this form of determination are part of the right of self-determination internally within the framework of a country through the will of its people represented in an assembly which in Indonesia is represented in the state institution of the MPR / DPR.

Oil and gas is one of the strategic natural resources that is not renewable (non-renewable) controlled by the state and is a vital commodity because it involves the interests of the lives of many people. Because of this very important role, oil and gas management must be able to provide maximum prosperity and welfare for the people in accordance with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia.

From the perspective of the implementation of oil and gas resource management in Indonesia it is directed only to pursue investment and export values. This gives an understanding that the Indonesian government policy in the field of oil and gas resource management is only market label oriented with the absence of a strategy to reserve oil and gas resources for the people's needs in the future. This can be observed in the development of cooperation contracts between the government and investors / contractors (KKKS) who have experienced several generations where each generation has different principles.

Normatively the management of oil and gas in Indonesia is directed towards the achievement of prosperity and welfare of the people, but in reality at the beginning of the New Order government until the end of the regime in 1998 it was noted that it had consumed 75% of Indonesia's oil reserves without a balanced policy of implementing the sustainability of oil and gas reserves for the period who will come (Qurbani, 2012). There are even data that in the period 1969-1970, Indonesia's petroleum production amounted to 284 million barrels. Where from the amount of petroleum production there were 241.3 million barrels exported and there was a difference of 42.7 million barrels which were not exported to the international market to be utilized to meet domestic oil supply needs (Amalia, 2014).

From data above, can be interpreted that the oil and gas management policy prioritizes an increase in export value rather than domestic domestic needs. In other words, the partisanship of international market demand takes precedence over meeting the availability of oil and gas reserves for the people of Indonesia for the foreseeable future. This condition is further exacerbated by the policy of raising domestic oil and gas prices as a consequence of the free market economy in the international oil and gas business where Indonesia is a business actor and oil and gas producing country at that time. The government's policy to raise oil and gas prices several times is still considered far from the goal of achieving prosperity and welfare of the people of Indonesia.

The new era of oil and gas management in Indonesia is entering a new stage when the enactment of Law Number 22 Year 2001 concerning Oil and Gas. The foundation of the legal umbrella of oil and gas management still places that all forms of oil and gas business activities will be directed solely for the interests of the prosperity and welfare of the people of Indonesia. However, various opinions state that Law Number 22 Year 2001 regarding Oil and Gas is liberal because it is an economic concept derived from the International Monetary Fund (IMF). This is in line with M. Kholid Syeirazi's explanation which states that the law is a statutory regulation product of the Washington Consensus agenda that goes through a Letter of Intent (LOI) signed by the Government of Indonesia and the IMF (Syeirazi, 2009).

Among the economic reform agendas set out in the LOI include the energy sector reform program. Energy sector reforms are listed in the agreement letter F (The Energy Sector) in the Memorandum of Economic and Financial Policies (Letter of Intent) dated January 20, 2000. Three items of IMF directives to the Indonesian government to improve the energy sector, especially oil and gas. Energy sector reform in Indonesia means that energy

price reform and institutional reform of energy management. Reform in this sector is not only an entry point for the elimination of fuel subsidies (BBM), but also provides a great opportunity for multinational companies to enter the upstream and downstream oil and gas industries in Indonesia (Syeirazi, 2009).

The enactment of Law Number 22 Year 2001 concerning Oil and Gas also marks the era of the system of cooperation contracts between the government and the investors / contractors (KKKS) which consists of various kinds of exploitative principles. This is related to the study of oil and gas law in the perspective of international treaties which the author will elaborate further in the next discussion. Cooperation contracts between the government and foreign investors in the management of oil and gas are included in the category of international agreements. International agreements are the main source in international law. International treaties have become an important instrument in order to harmonize relations between countries, between countries and international organizations, and between international organizations. It is difficult to imagine what life would look like in the modern international community without international agreements. Based on the constitution in Indonesia, in the formulation of Article 11 of the 1945 Constitution, the president with the approval of the DPR can make agreements with other countries. Not only agreements with other countries, but the intent contained therein covers all agreements made by the government on behalf of the state, both between countries and between Indonesia and international institutions or multinational corporations (Romokoy, 2011).

In practice it turns out that Article 11 of the 1945 Constitution does not determine the juridical form of the DPR's agreement, so there is no obligation for the DPR to provide it with laws. Following several explanations of the president's letter to the DPR, shows the government's willingness to free themselves from the shackles of the DPR with the DPR's 'approval' obligation. Over all agreements made by the president with other countries. This means that for some agreements it is enough to simply inform the DPR, and there is no need for DPR approval procedures. Because if the making of an agreement is always done with the approval of the Parliament, as desired in Article 11 of the 1945 Constitution, then according to the government's opinion, it will reduce the smoothness in making agreements with the state or other parties (Romokoy, 2011).

Quoting the opinion of A. Hamid S. Attamimi (Bakhri, 2013), that the government under the 1945 Constitution, which is not responsible to the DPR, in dealing with various types of agreements wants to show its legitimacy, that even though Article 11 of the 1945 Constitution states so However, in practice there is an international agreement which is a portion of the DPR in ratifying it, although with a note, that the latter was submitted by the president to the DPR to be known. The agreements that must be realized to the Parliament for approval, prior to being ratified by the president, according to item 4 of the president's letter, are agreements that usually take the form of treaty containing the following material: political matters or matters that can affect the agreements friendship, alliance agreements, agreements on changing territories or setting boundaries. Such ties, which are such that they affect the direction of foreign policy, can occur so that such ties are included in economic and technical cooperation agreements or foreign money loans. The matters are according to the 1945 Constitution or according to other laws.

In particular the inclusion of the word 'only' in the last sentence of the 2826 presidential letter according to A. Hamid S. Attamimi argues, 'is it only to be known?'. Because if it adheres to Article 11 of the 1945 Constitution which states that with the approval of the DPR, then all of the ratification / ratification must be made by the president submitted to the DPR, not only for the DPR to know. But what is true and proper is to be known (without words only). In practice, it turns out that in making international agreements, it is not always necessary to refer to Presidential Letter No. 2826. According to Sri Setyaningsih Suwardi, in international

agreements relating to money loans, many were ratified by a presidential decree (Romokoy, 2011).

Each oil and gas contract with a foreign corporation, which involves oil and gas natural resources, should not only be sufficiently conveyed to the DPR, but must then be assessed by the DPR, whether it can benefit the state or can only harm the state, on the contracts represented by state body, representing the state towards the interests and livelihoods of many people. Therefore, according to the author, this should be known and even must be endorsed by the DPR as an institution representing the Indonesian people.

Therefore, every oil and gas legal contract involving the state with the mastery of the lives of many people, namely the people of Indonesia, cannot be released directly by a state body that is a representation of the Indonesian people, in this case the DPR. The DPR is not only the party who simply accepts attachments and contract documents but further evaluates them, and even gives their approval, because oil and gas contracts have the potential to harm state finances and cause environmental effects and social hazards and vulnerabilities to the community. The DPR must move its contracting function, not only to the government as the holder of the mining authority, but all the contracting parties.

While empirical experience with oil and gas contracts always does not bring happiness to the community in the broadest sense. Even more so to the suffering of the surrounding community, due to the indifference of foreign investors or foreign corporations. The strengthening of the DPR's control function is actually based on empirical experience, that large industries in the oil and gas business, involve a large number of state financial plans, therefore not enough regulation by the government as a mining authority, but also arrangements in oil and gas contracts, must rationally obtain approval of the DPR, so that the regulatory and supervisory position in the oil and gas business sector is better, rational and objective.

Autonomy

Like the opinion of Peter R. Baehr (Nowak, 2005) before that the right to self-determination includes the right to represent the government and various forms of self-government or autonomy. Determining freely their political status can be achieved by means of autonomy granted by the state and given to the appropriate people to participate in the decision making process. This right to self-determination is based on elements of democracy. Autonomy is a form of the right to self-determination internally in the context of the Unitary State of the Republic of Indonesia (NKRI) through several enactments of regional government laws and for the time being, Law Number 23 of 2014 concerning Regional Government is in force.

Regional autonomy is a form of the system of handing over government affairs and delegation of authority to the regions under it. Regional autonomy is the right, authority and obligation of the region to regulate and manage their own households in accordance with applicable laws and regulations. At the lowest level, autonomy means referring to the embodiment of free will inherent in human beings as a most valuable gift from God (Piliang, 2003). Free will is what drives humans to actualize themselves and explore all their best potential to the maximum. Starting from the autonomous individuals who then form a community and become a superior nation. With autonomy, each component of the order will have the freedom to actualize according to the capacities, competencies and characteristics of each facing the pressures received from its environment. Autonomy will open space for freedom for each component of the order to improve the quality of its existence, in the sense of stimulating them to always articulate their aspirations and fight for opportunities to improve the quality of their voice and choice. This dynamic will strengthen autonomy and in turn will improve the quality of the overall order (Rumadan, 2016).

Regional autonomy is a manifestation of the desire to regulate and maximize all the maximum potential of the region which aims to improve the welfare of the people in the area. Regional autonomy is seen as important because autonomy is an essential requirement where regions have the desire to regulate their own households. Regional autonomy provides opportunities to compete in a healthy and open way for all levels of society and also between regions. For this reason, autonomy needs to be strengthened with clear regulations and mutually agreed guidelines to guarantee social order and prevent social insecurity that has adverse impacts such as national disintegration (Rumadan, 2016).

The development in several oil and gas working areas in Indonesia at this time many will begin production and some will end the management contract period. With the expiration of the contract period, the working area must be returned to the state and if the working area still has the potential to produce oil and gas, it will be considered as a new work area. With regard to new work areas or work areas considered new, the government needs to prepare various management schemes.

In connection with the transfer of oil and gas contracts that expire, Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities as amended several times, the latest by Government Regulation Number 55 of 2009 concerning Second Amendment to Government Regulation Number 35 of 2004 concerning Business Activities Upstream Oil and Gas, gives Pertamina the privilege to apply for a bid to work on the relevant work area. In addition to Pertamina, the transition of oil and gas contracts also opens up opportunities for Regionally Owned Enterprises (BUMD) to participate in the exploitation of oil and gas resources in their regions. According to the provisions stipulated in the aforementioned government regulations governing the obligation of oil and gas contractors to offer a participating interest of 10% to BUMD. Derivating from the government regulation, the Minister of Energy and Mineral Resources Number 37 of 2016 concerning Provisions on the Offer of Participating Interest of 10% (Ten Percent) in the Oil and Gas Working Area regulates in more detail the opportunities for regional government participation through BUMD in oil and gas management in their respective regions.

Related with the transfer of oil and gas contracts that expire, Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities as amended several times, the latest by Government Regulation Number 55 of 2009 concerning Second Amendment to Government Regulation Number 35 of 2004 concerning Business Activities Upstream Oil and Gas, gives Pertamina the privilege to apply for a bid to work on the relevant work area. In addition to Pertamina, the transition of oil and gas contracts also opens up opportunities for Regionally Owned Enterprises (BUMD) to participate in the exploitation of oil and gas resources in their regions. According to the provisions stipulated in the afforementioned government regulations governing the obligation of oil and gas contractors to offer a participating interest of 10% to BUMD. Derivating from the government regulation, the Minister of Energy and Mineral Resources Number 37 of 2016 concerning Provisions on the Offer of Participating Interest of 10% (Ten Percent) in the Oil and Gas Working Area regulates in more detail the opportunities for regional government participation through BUMD in oil and gas management in their respective regions.

Prior to the enactment of the Minister of Energy and Mineral Resources Regulation No. 37 of 2016 concerning Provisions on the 10% Participating Interest Offer (Ten Percent) in the Oil and Gas Working Area, the definition of participating interest was not found in Indonesian legislation, but for a comparison can be observed in the Code of Federal Regulations of the United States of America, Title 17, Commodity and Securities Exchange, states that participating interest is (Setiawan, 2016):

The right of participation in the oil or gas or in the proceeds from the sale of oil or gas, produced from a specified track or tracts, or well(s), which right is limited in duration to

the terms of an existing lease and is subject to any portion of expense or development, operation, or maintenance.

Participating interest according to the definition above is the right to be included to participate in an oil and gas exploitation (production) activity in a work area, where the rights are limited by a certain period of time and by agreed terms and conditions, therefore the owner of the right has the right to get a share of the results (profit) from sales or the oil and gas industry generated, but still accompanied by an obligation to bear some of the burden of development, operation or maintenance (operational costs) in accordance with the amount of rights. Definition of participating interest it is strengthened in a more concise description by the law by Charlote J. Wright and Rebbeca A. Gallun that: "Participating interest means the percentage of the costs and risks of conducting an operation under the Agreement that the party agree, or is otherwise obligated to pay and bear" (Setiawan, 2016).

The two definitions of participating interest above, it can be concluded that what is meant by participating interest is the right to take precedence or the main opportunity to participate in an oil and gas industry production movement. However, according to the author's understanding, participating interest is not an unconditional participation right or like the privilege (golden right and share) that is usually given by a company to parties that are prioritized or get a share of the ration because of special expertise or other factors that do not require capital participation. In the concept of participating interest, owners of oil and gas working areas remain burdened with various obligations to pay an amount of participation value that is agreed in accordance with the agreement and in due time is entitled to a share of profits in accordance with the percentage of participation.

From the discussion about participating interest stated above, the author draws several important points from the concept of participating interest, including the following: a. there is a prioritization of rights in the form of opportunities to participate given on a limited basis; b. still accompanied by an obligation to pay for participation in the form of capital; c. subject to the master contract; d. still bear the risks such as the occurrence of losses; and e. but are still entitled to a portion of the profit as a percentage of participation.

From the outline description of participating interests that the authors suggested above, it can be made clear that the concept of participating interest actually has a goal in assigning real roles and parts to each region for the purpose of prospering the people residing in oil and gas producing regions. This limit should minimize the possibility of misunderstanding from the regions. But so far there has been an understanding among local governments that participating interest is interpreted as giving or 'gifts' from the central government to oil and gas producing regions that are given away unconditionally or without obligation. It should be noted for each oil and gas producing region that oil and gas industry activities, especially upstream oil and gas business activities are capital intensive activities (higt capital), on expertise (high skills) with very high risk (high risk) with a very long period of time. Therefore, the contractor with the production sharing contract system is very careful in calculating profit and loss. In the contractor's calculation, the first and foremost opportunity to participate is already a 'gift' which is of high economic value to an area. Because the contractor before reaching this stage has spent a lot of energy and costs in exploration activities, the activity is carried out without any guarantees except the belief that its efforts will produce oil and gas in the amount of meeting economic targets. If it turns out that the working area fails to produce oil and gas then the loss will be borne by the contractor himself. So participating interest is a blessing for the region and therefore this is the time for producing regions with all their power and ability to build capacity and ability to take advantage of this opportunity by forming BUMDs.

Oil and gas is stipulated as a matter which is the authority of the Central Government, not shared with Provincial Regions and Regency / City Regions as in the fields of forestry, maritime affairs, and other energy and mineral resources in accordance with Article 14 of

Law Number 23 Year 2014 concerning Regional Government . However, as an effort to increase regional participation in the framework of autonomy, oil and gas management opens access to benefits to the upstream and downstream regions. On the upstream side through participating interest, on the downstream side through the oil and gas Production Sharing Fund (DBH).

As mentioned above, that participating interest is the proportion of exploration and production ownership in an oil and gas working area determined based on the amount of capital investment. The purpose of participating interest is to provide opportunities for the regions to be involved in oil and gas management so that they can obtain maximum results for the welfare of the community. Provisions regarding participating interests are regulated in Article 34 of Government Regulation No. 35/2004 concerning Upstream Oil and Gas Business Activities:) to Regionally Owned Enterprises ". The consequence of participating interest is the provision of funds to support production operations.

Oil and gas is a capital-intensive and high-risk business sector. Very large funds are needed to support upstream oil and gas activities. Ten percent (10%) of total upstream oil and gas investment is often still a very large number, which cannot be met by regional finance. To support funding, BUMD cooperates with private investors. As funders, private investors dominate the proportion of the majority of revenue sharing, while BUMD holds a minority portion. For example (Anshar, 2018), in the case of the Cepu Block, the composition of share ownership is 45% ExxonMobil, 45% PT Pertamina EP Cepu (PEPC), and 10% from the local government. Because the location of the Cepu Block is in contact with two districts and two provinces, 10% participating interest is divided by composition: East Java Provincial Government (2.2423%), Central Java Provincial Government (1.0910%), Bojonegoro Regency Government (4.4847%), and the Blora Regency Government (2.182%). Local government shares are managed by four BUMDs namely PT Petrogas Jatim Utama Cendana (BUMD Jawa Timur), PT Sarana Patra Hulu Cepu (BUMD Jawa Tengah), PT Asri Dharma Sejahtera (BUMD Bojonegoro), and PT Blora Patragas Hulu (BUMD Blora).

Provision of large amounts of funds is a big problem for BUMDs, especially for newly formed BUMDs. The four BUMDs that are members of the Cooperation Agency are cooperating with private partners to provide funds. The Bojonegoro Regency Government which holds the largest participating interest portion of the region is 4.4847% shares or equivalent to Rp2.7 trillion, for example, cooperating with PT Surya Energi Raya (SER) for fundraising. As a provider of funds, SER gets a 75% profit share. While BUMD Bojonegoro, PT Asri Dharma Sejahtera (ADS), got the rest. SER turned out to partner with third parties as investors, namely China Sonangol International Holding Ltd. Production since 2009, ADS has not been able to get dividends immediately. Revenue generated must be used first to pay debts. This means that the 25% share of ADS's net cash flow is expected to only be received in 2016 when the Cepu Block oil production reaches its peak (Anshar, 2018).

Cooperation with private investors is also carried out by other BUMDs. PT Petrogas Jatim Utama Cendana (PJUC), BUMD The East Java Provincial Government cooperates with PT DSME E&R, with a 51%: 49% share composition. PT Sarana Patra Hulu Cepu (SPHC), BUMD The Central Java Provincial Government is collaborating with PT Usaha Tama Mandiri Nusantara with a 25%: 75% share composition. PT Blora Patragas Hulu (BPH), BUMD of Blora Regency in collaboration with PT Anugrah Bangun Sarana Jaya with a composition of 33.8%: 66.2%. In turn, the goal of regional empowerment in the management of oil and gas is not achieved because the profit sharing is actually more attractive to the private sector. The inability of regions in raising funds led to a phenomenon called fronting, namely the private sector under the guise of BUMD. What appears in front is the BUMD, but the one holding the control behind it is the private sector as the supplier of capital. The Corruption Eradication Commission (KPK) has warned of potential regional financial losses

from the transfer of participating interest to the private party. To prevent this potential abuse, the KPK has written to the President and recommended the government to make a policy alternative, namely the use of a 10% profit sharing formula for regional governments / BUMD without having to deposit operational capital in the management of the oil and gas block working area. The government is asked to help local governments or BUMDs provide profit-sharing funds in the form of bank loans, BUMDs as well as funding and investment instruments from central government agencies.

CONCLUSION

From the discussion of the two indicators above (political & constitutional status and autonomy) it can illustrate how Indonesia as a sovereign country in the management of oil and gas has implemented the principle of the right of self-determination in the internal sense as a principle in international law. Even though the application of the principle of the right of self-determination in the internal sense, Indonesia has not fully been able to establish itself as a sovereign and independent country in the management of its oil and gas wealth. This can be observed in the political and constitutional dimensions related to oil and gas management regulations. External influences such as interference from international monetary institutions (IMF and World Bank) in the process of drafting oil and gas laws on the basis of a Letter of Intent so as to influence the orientation of oil and gas management which is more business-based with international free market regulations.

If the control of oil and gas management is not fully held by the government, then efforts to increase state and regional revenues by optimizing oil and gas exploitation for the greatest prosperity of the people will not be fully realized. The state is responsible for obtaining costs used to finance development, and to realize this function, the state / region is obliged to carry out productive activities that can provide income to finance development. Where one of the strategies that can be done is to optimize the exploitation of oil and gas whose exploitation rights are fully controlled by the state and their use for the maximum prosperity of the people.

REFERENCES

Ali, A. (2010). Revealing legal theory and judicial prudence, Jakarta: Kencana.

Libson, A. (2015). "*Is the deadweight actually dead? real option value and taxation of oil and gas", 45*(3), 3, Seton Hall Law Review, New Jersey: Seton Hall University School of Law.

Anghie, A. (2007). Imperialism, sovereignty and the making of international law, Cambridge: Cambridge University Press.

Anshar. (2017). "State control over oil and gas as a form of sovereignty over natural resources in the perspective of contemporary international law", *IUS Journal, 5*(2), Mataram: Masters Program in Law, University of Mataram.

Vielleville, D., & Vasani, B. (2008). "Sovereigty over natural resources versus rights under investment contracts: Which One Prevails?", *Transnational Dispute Management Journal, 5*(2).

Romokoy, D. (2011). Practices of the indonesian constitutional convention, comparative studies in England, the United States and the Netherlands, Jakarta: Media Prima Aksara.

Amalia, D. (2014). "State responsibility in oil and gas management", *Scientific Journal of Phenomena, 12*(1), Samarinda: IAIN Samarinda.

Ruslina, E. (2012). "The meaning of article 33 of the 1945 constitution in the development of Indonesian Economic Law", *Journal of the Constitution, 9*(1), Jakarta: The Constitutional Court of the Republic of Indonesia.

Anderson, G. (2012). Oil and gas in federal systems, Canada: Oxford University Press.

Hussain, S., & Hassan, A.A.G. (2020). The reflection of exchange rate exposure and working capital management on manufacturing firms of Pakistan. *Journal of Talent Development and Excellence, 12*(2s), 684-698.

Hussain, S., Ahmad, N., Quddus, A., Rafiq, M., Pham, T.P., & Popesko, B. (2021). Online Education Adopted by The Students of Business Science. *Academy of Strategic Management Journal, 20*, 1-14.

Mahrinasari, M.S., Hussain, S., Yapanto, L.M., Esquivel-Infantes, S.M., Untari, D.T., Yusriadi, Y., & Diah, A. (2021). The impact of decision-making models and knowledge management practices on performance. *Academy of Strategic Management Journal, 20*, 1-13.

Nugroho, H. (2011). A Mosaic Of Indonesian energy policy, Bogor: Press.

Qurbani, I. (2012). "Legal politics of oil and gas management in Indonesia", *Journal of Arena Hukum*, *6*(2), Malang: Faculty of Law Universitas Brawijaya.

Sakharina, I., Daud, A., Hasrul, M., & Assidiq, H. (2020). Urban poor living: Accessing their ecosob rights in Indonesia, *International Journal of Psychosocial Rehabilitation*, 14757192.

Piliang, I. (2003). Regional autonomy; evaluation and projection, Jakarta: Harkat Bangsa Foundation in collaboration with the Partnership for Government Reform in Indonesia.

Rumadan, I. (2016). Oil and gas investment legal policy in the context of regional autonomy implementation, Yogyakarta: Genta.

Sumardi, J. (2012). Transnational company and franchise law, Makassar: East Stream.

----------, 2017, Academic Movement for Indonesian Oil and Gas Sovereignty, Makassar: East Flow.

Setiawan, J. (2016). "*Participating interest in the masela working area (Blok)*, *Journal of Legal Communication*, *2*(2), Buleleng, Bali: Faculty of Law and Social Sciences Universitas Pendidikan Ganesha Singaraja.

Grayson, L. (1981). *National oil companies*, Norwich: John Wiley and Sons.

Syeirazi, M. (2009). Under a Foreign flag, liberalization of the oil and gas industry in Indonesia, Jakarta: Pustaka LP3ES Indonesia.

Hammerson, M. 2013). Oil and gas decommissioning: Law, policy and comparative practice, London: Globe Bussines Publishing Ltd.

Marzuki, P. (2010). Legal research. Jakarta: Kencana Prenada Media Group.

Baehr, P. (1999). Human rights (Universality in Practice), Macmillan UK: Palgrave.

Soekanto, S., & Mamudji, S. (2011). Normative legal research. Jakarta: Rajawali Press.

Bakhri, S. (2013). Oil and gas for the people, Jakarta: Grafindo Khazanah Ilmu.

Purba, S. (2013). "*Achieving energy sovereignty by realizing oil and gas governance based on the constitution",* Paper presented at the National Seminar on Energy Studies Center-Gadjah Mada University, Yogyakarta.

Hussain, S., Nguyen, Q.M., Nguyen, H.T., & Nguyen, T.T. (2021). Macroeconomic factors, working capital management, and firm performance—A static and dynamic panel analysis. *Humanities and Social Sciences Communications, 8*(1), 1-14.