

Political Legal Management of Oil and Natural Gas Resources According to Article 33 of the 1945 Constitution for the Maximum Prosperity of the People

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Abstract

Political law is a fundamental policy that governs the State in the field of law, derived from the prevalent societal values to attain the desired goals of the State, which encompasses both ius constitutum and ius constituendum. The legal politics of managing oil and gas resources in Indonesia at a certain period have varying effects on the envisioned social welfare. This study aims to examine: 1) the legal politics of managing oil and gas resources in Law Number 22 of 2001 on Oil and Gas; 2) the implementation of regulations and policies for managing oil and natural gas resources to achieve the highest possible prosperity for the people; and 3) the suitability of the legal political concept of managing oil and natural gas resources in efforts to realize the highest possible prosperity for the people.

This research employs a legal research approach with a typology of normative legal research or doctrinal research to develop arguments, theories, or new concepts as practitioners in addressing current issues. The nature of the research adopted in this study is descriptive-analytical. The normative juridical approach is utilized to respond to legal issues in this research, utilizing the statutory approach, historical approach, and conceptual approach. The research data were gathered through document studies, as well as interviews, and then analyzed qualitatively juridically.

The results indicate that the legal political concept of proper management of oil and natural gas resources in realizing the maximum prosperity of the people can be accomplished through several strategic modifications, including a) a new paradigm of oil and gas management; b) changing the oil and gas institutional scheme; c) changing the oil and gas management scheme; d) altering the oil and gas exploitation contract scheme; e) changing the structure of the oil and gas industry; f) enhancing the utilization of domestic oil and natural gas; g) increasing the role and capacity of State-Owned Enterprises in oil and gas management; h) implementing the domestic market obligation scheme and oil and gas export policy; and i) establishing an oil and gas fund scheme.

Keywords: *Legal Politics, Oil and Gas, Welfare.*

1. Introduction

The existence of the oil and gas sector plays a fundamental role in national interests, not only has it been mandated normatively by the 1945 Constitution of the Republic of Indonesia, but it can also serve as a source of revenue for the state budget in providing stimulus for regional economic development, especially in areas where exploration, production, refining, or distribution of oil and gas take place. Oil and gas are one of the

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non-renewable strategic natural resources and vital commodity that affects the lives of many people. The oil and gas industry plays a crucial role in realizing national sovereignty, independence, and energy security to support sustainable national development (Academic Text of the Draft Law of the Republic of Indonesia on Oil and Gas, 2021). Moreover, the oil and gas sector also has a significant role in the national economy, and its management must maximally provide prosperity and welfare to the people. Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia stipulate that vital production sectors for the country and those that affect the lives of many people are controlled by the state. Similarly, the land, water, and natural resources contained therein are owned by the state and utilized to the fullest for the prosperity and welfare of the people.

The state's regulation of the oil and gas sector in the 1945 Constitution of the Republic of Indonesia is essential to be translated into a policy that governs the management of oil and gas. The policy of managing oil and gas through legislation reflects the state based on the rule of law (*rechtsstaat*) rather than on mere power (*machtsstaat*) (A.V. Dicey, 1915). In analyzing oil and gas policy, Robert C. Wood mentioned that the state, in formulating oil and gas policy, should at least bring up five interconnected pieces of information: issues, alternatives, actions, results, and policy achievements.

The reality of oil and gas policies in the past few decades has been largely focused on export and investment policies, while policies related to oil and gas reserve management standards and strategies for the future needs of the people have received less attention. This can be seen in various production-sharing contracts that have been made by applying different principles but with the clear aim of exploiting oil and gas. There is a lack of protection for the rights of local communities and weak mitigation efforts to address the impacts caused by these activities. According to research conducted by the Jaringan Advokasi Tambang (Mining Advocacy Network) (JATAM), 75% of Indonesia's oil and gas reserves were depleted during the administration of President Soeharto (JATAM Magazine, 2005).

Law Number 22 of 2001 on Oil and Natural Gas (Law 22/2001), which replaces Law Number 8 of 1971 on Oil and Natural Gas (Law 8/1971), also adopts the same production sharing contract system. However, in Law 22/2001, the term used is the profit-sharing system. Although the state administration officials have changed repeatedly, the oil and gas policy still has not aimed to promote the welfare of the people as mandated in the 1945 Constitution. Article 33 of the 1945 Constitution is the foundation for the implementation of the national economy. It contains moral and cultural messages in building the national economic system. Article 33 of the 1945 Constitution is not only about providing guidance on the structure of the national economy and the authority of the state in regulating economic activities, but also reflects aspirations, beliefs, and consistent efforts of the government leaders in making policies.

Based on the legal-political approach utilized by Mahfud MD, the relationship between politics and oil and gas policy can be divided into three models. First, policy in terms of managing oil and gas is categorized as "*das sollen*," with energy policy being the determinant factor in politics. This means that all variants of both political interests and economic agendas must comply with oil and gas laws. Second, as "*das sein*," politics is the determinant factor in law because, in fact, law is a product of politics. Thus, the existing law is nothing more than the crystallization of various competing political desires. Third, politics and law are inter-determinant because politics without law will be authoritarian, while law without politics will be paralyzed.

One fundamental measure of success for oil and gas policy is directed towards national interests through the contribution of the oil and gas sector to the state budget/APBN. The management of oil and gas is intended for the greatest prosperity of the people and its flow to the people through state budget/APBN should be measurable. So far, the

contribution of Pertamina's revenue to oil and gas in state budget/APBN has been relatively small. Based on Pertamina's net income of 24 trillion, only 7 trillion enters state budget/APBN. This is different from the management of oil and gas in Malaysia where Petronas is able to contribute 40% of oil and gas revenue to state budget/APBN. Therefore, the contribution of oil and gas to state budget/APBN has not yet shown a significant amount. The management of oil and gas needs to be continuously developed in a sustainable manner.

2. Method

This study is a Normative Legal Research. The focus of this research is on the materials that will be used in the study. The materials studied in normative legal research are literature or secondary sources. Literature refers to materials that are sourced from primary and secondary sources. The object of the study is conducted through an investigation of an inventory of legislation related to the management of oil and gas resources and research on the practices of some policies for the management of oil and gas resources in Indonesia, in a normative way. The methods used include the Statute Approach, Historical Approach, and Conceptual Approach.

The primary data source for Normative Legal Research is literature data. The legal materials studied and analyzed in Normative Legal Research consist of 1) Primary Legal Materials; 2) Secondary Legal Materials; and 3) Tertiary Legal. The data sources used in this study are public legal materials such as archive data, official data from government agencies, and other data such as court decisions or jurisprudence from the Supreme Court.

The data collection method used in this dissertation includes document studies, interviews, Forum Group Discussions (FGD), and seminars. Data analysis is conducted through descriptive qualitative analysis. The qualitative analysis refers to legal norms found in statutes and court decisions, as well as norms that are living and evolving in society. The qualitative approach is used for both primary and secondary data, including the content and structure of positive law, which is an activity conducted by researchers to determine the meaning or interpretation of legal rules that are the subject of legal issues.

3. Discussion

3.1. Oil and Gas Management in Several Countries

The management of oil and gas resources around the world involves various approaches that could serve as references for adjusting the management of oil and gas in Indonesia. Here are some alternative forms of oil and gas management.

In different countries, there are three structural models governing the oil and gas sector based on industry conditions and business factors.

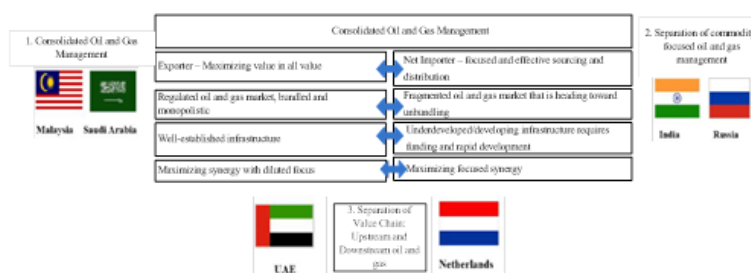


Image 1. Several Forms of Oil and Gas Management around the World (Source: Booz & Co (2014))

The first alternative is consolidated oil and gas management, as seen in Malaysia and Saudi Arabia. The second alternative is commodity-focused oil and gas management conducted separately. The third alternative occurs in countries with midstream industry conditions, leading to separate oil and gas management according to the value chain between upstream and downstream.

3.2. The Legal Policy of Oil and Gas Resource Management in Law Number 22 of 2001 on Oil and Gas

The fundamental principles of oil and gas mining in the Republic of Indonesia are regulated in Article 33 paragraphs (2) and (3) of the 1945 Constitution. Based on this article, the management of land and water resources as well as the natural wealth that lies beneath them are in the hands of the state and carried out to the fullest extent for the benefit of the people. With the enactment of Government Regulation in Lieu of Law Number 37 of 1960 on Mining, the concession system in mining management is no longer used because it is considered to provide excessively broad and strong rights to concession holders, thus it is replaced by Mining Authority.

After the enactment of Government Regulation in Lieu of Law Number 44 of 1960 on Oil and Gas Mining, it became increasingly clear that the management of oil and gas mining was carried out by the State, with State-owned Enterprises as the Executor or Holder of Mining Authority. Mining Authority is the authority given to State-owned Enterprises to carry out oil and gas mining activities. The implementation of Article 33 Paragraph 3 of the 1945 Constitution was then realized in Government Regulation in Lieu of Law Number 44 of 1960 on Oil and Gas Mining. With the enactment of this law, the concession system legally ended, and the Contract of Work system between the Indonesian Government and Foreign Companies began.

In accordance with Article 6 of Government Regulation in Lieu of Law Number 44 of 1960 on Oil and Gas Mining, the Minister of Finance may appoint a contractor for state-owned companies to carry out work that has not been or cannot be carried out by the state-owned company. The purpose is to ensure that all holders of oil and gas mining concessions at that time are transferred to become contractors of state-owned companies. The provisions of Article 6 are implemented through the agreement of a Contract of Work which changes the status of foreign oil mining companies at that time to Contractors of State-Owned Companies.

Based on this system, ownership of the oil is in the hands of the state while management is entrusted to foreign companies. The position of foreign companies is as Contractors. The contract period is set for 20 years. The cost of production is limited to 66 2/3%. The profit-sharing ratio is 86:14. The right to fixed assets remains with the contractor before it is fully depleted. Under this agreement, foreign companies are obliged to provide training for Indonesian workers to prepare their skills for the future.

During this time, there was also a consolidation of state-owned companies in the oil and gas sector, which was done to increase the efficiency and performance of these state-owned companies. PN. PERMIGAN was then dissolved, and subsequently, PN PERMINA was given the task of managing oil and gas production, while PN PERTAMIN was responsible for distributing oil and its products domestically. The peak of this consolidation was the merger of PN PERTAMINA and PN PERMINA into PN PERTAMINA, which was later renamed PERTAMINA under the Law Number 8 of 1971 on Oil and Gas Mining Companies.

The form of Contract of Work, compared to the concession system, puts the state in a more dominant position over foreign oil companies, which previously could own mineral interests. However, many argue that the Contract of Work is actually just a new form of concession. This is because, in the Contract of Work, only rights related to mineral resources controlled by the state are granted, while mining and economic rights are still

controlled by the contractors. Management under the control of contractors, as in the concession system, will continue to keep the Indonesian government in the shadow and make it difficult to set strategies for crude oil price determination, exploration decisions, and development plans, as well as provide training for Indonesians. Therefore, the Indonesian government considered that the Contract of Work would only harm Indonesia's interests and thus required a change.

The production sharing contract or other forms of cooperative agreements in exploration and exploitation activities are expected to provide greater benefits to the state, and the resulting revenue should be utilized to the greatest extent possible for the welfare of the people. The Upstream Oil and Gas Business activities can be carried out by (a) State-Owned Enterprises; (b) Regional-Owned Enterprises; (c) Cooperatives, Small businesses; and (d) Private enterprises, which may be in the form of corporations or permanent establishments.

3.3. The Implementation of Regulations and Policies for the Management of Oil and Gas Resources towards the Greatest Prosperity of the People

The implementation of oil and gas resource management in Indonesia can be seen from the period when regulations were established and government policies were issued.

1. A New Paradigm in Oil and Gas Management

The paradigm shift that occurred during the peak period of crude oil production directly shaped the oil and gas management scheme and the current pattern of oil and gas consumption regulation. Considering the strategic value and added value that could be obtained if oil and gas are utilized domestically, this paradigm should be changed to view oil and gas as strategic tools for sustainable national development. This means that oil and gas policy should be oriented towards promoting oil and gas utilization for industry and national economic growth (GDP) through reliable oil and gas energy supply (sustainability of supply). Taking into account the reality of the gas industry as described above, future awareness must also be developed about the limitations of the national oil and gas natural resources (depletion), so that a more efficient and intelligent consumption pattern can be developed. This paradigm shift and regulatory form must be implemented before it is too late.

However, in implementing the new paradigm, and taking into account the current reality in Indonesia – where the country is experiencing a state budget deficit, the shift of function of oil and gas from being a source of national revenue with a commodity approach to one that is a source of energy for industrial needs and national economic growth (GDP) cannot be easily done. Indonesia still needs oil and gas as a source of national revenue to overcome the annual budget deficit, which averages at 2-2.5% of GDP. Therefore, comprehensive planning and gradual implementation are needed so that the utilization of oil and gas domestically can be optimized.

The change in oil and gas politics through the revision of the Oil and Gas Law requires a regulation that can optimize the utilization of oil and gas as a source of state revenue as well as a source of energy and raw materials for domestic industries. In the future, the utilization of oil and gas should be done by determining the optimum point of oil and gas function: 1) as a source of state revenue with a commodity approach, and 2) as a source of raw materials for industry and sustainable development (energy source). As one solution to minimize the function of oil and gas as a commodity due to the current state budget deficit, the country should adopt a strategy to convert fossil fuels to natural gas and other alternative fuels according to the concept of energy mix in a comprehensive and sustainable manner. This solution is in line with the reality that Indonesia's oil and gas reserves are not as large as those of Saudi Arabia or Russia, so Indonesia cannot solely rely on oil and gas to meet national energy needs. However, Indonesia has a large energy portfolio such as oil, natural gas, coal, geothermal, biomass, and others, so meeting

energy needs in Indonesia requires an approach with an energy mix strategy. By increasing the contribution of other energy sources in meeting national energy needs, the utilization of oil and gas as a sustainable development capital and energy needs for industries can be achieved.

The other implication of this new paradigm is the need for stricter management of oil and gas exports and domestic utilization. The Export License Scheme, as implemented in the United States (US), for instance, could be assimilated/considered in the future management of oil and gas. This scheme stems from the paradigm that prioritizes domestic needs, where exports are considered a last resort. The policy for oil and gas exports (upstream production) must be monitored and restricted, for example, through strict and highly selective licensing by the President and/or Parliament.

Meanwhile, stricter monitoring of domestic utilization of oil and gas entails (1) surveillance of the Domestic Market Obligation (DMO) policy that focuses on ensuring its realization/implementation in accordance with the commitments made. To minimize such circumstances, the DMO concept requires refinement by introducing provisions that ensure realization guarantees, such as developing natural gas infrastructure, including LNG or gas pipeline construction, which should be stated at the outset and be part of the production gas agreement's requirements. (2) Regulation on the allocation of oil and gas utilization prioritizing sectors that have the highest value-added, such as the petrochemical and fertilizer industries or other related sectors. Several alternative regulatory concepts for optimizing domestic utilization may be considered for assimilation into the oil and gas management policy in the future.

The management of oil and gas in the future, besides having the aforementioned new paradigm, must also have a vision of creating sustainable national energy security. Therefore, the Oil and Gas Law must also contribute to and support the creation of a foundation for national energy security in the future. Some forms of regulations that can be considered to be implemented in achieving this condition include:

- a. Regulations regarding the development of national strategic oil and gas reserves;
 - b. Regulations on the development of oil and gas funds;
 - c. Policies on the development of oil and gas infrastructure, outside of crude oil refineries; and
 - d. Other policies/regulations.
2. Oil and Gas Institutional Scheme

Indonesia needs to analyze the institutional form of oil and gas management in the future by considering empirical practices of institutional forms in other countries, as well as fundamental changes in institutions in Indonesia. The recommended institutional form for Indonesia's oil and gas management is a Model of Ministerial Authority. The selection of the Ministerial Authority Model is based on considerations of political aspects and institutional capabilities, as shown in Table 1.

Table 1. Determination of Indonesia's Institutional Form Based on Political Aspects and Institutional Capabilities.

Parameter	Assessment
Political Competition	<p>High</p> <ul style="list-style-type: none"> • A highly pluralistic political environment • Political influence has led to increased bureaucracy and decreased transparency in the financial flows of oil and gas management by the National Oil Company (NOC) when regulation and commercial functions are conducted by NOC. <p>→ It is imperative that regulation and commercial functions be</p>

Parameter	Assessment
	separated
Institutional Capability	<p>Low</p> <ul style="list-style-type: none"> • The government is constantly striving to encourage the development of technical and corporate capabilities in State-owned Enterprises • The national urgency in managing oil and gas needs immediate attention • Lack of synchronicity in the national oil and gas development planning document • Weak monitoring and control of policy implementation • Regulation of oil and gas management is essential ➔ The function to formulate policy should be combined with the function to regulate.

The Ministerial Authority Model is in line with the demand for adjusting the regulatory function model from a Market Mechanism to Assignment and Control based on the results of the 2004 Constitutional Court Judicial Review. Consideration of the regulatory function model is shown in Table 2. In countries that are non-liberal or focused on state-owned enterprises, many regulatory functions for monitoring policy implementation are carried out by the government (Source: Renewable Energy & Energy Efficiency Partnership).

Table 2. Adjustment of Required Regulatory Function Model

Changes/Challenges	Implication	Required Adjustments
Pricing of fuel oil and gas from based on fair and reasonable business competition to be regulated/set by the Government.	Change from market mechanism to government regulation.	Changes in the regulatory function model from Market Mechanism to Assignment and Control: <ul style="list-style-type: none"> - Regulations must be formulated in detail, regulatory compliance standards must be clear, sanctions in the event of regulatory, duties and authorities' violations between related parties must be clear. - The regulatory function is carried out by the Government to facilitate the control of policy implementation.
The stagnation in the development of downstream natural gas infrastructure, the disparity in prices between management areas, and the decreasing competitiveness of the industry.	<ul style="list-style-type: none"> - It hinders the increase and expansion of domestic gas utilization. - It hinders the conversion of fossil fuels to natural gas, which could reduce the burden of electricity and LPG subsidies 	Policies that accelerate the urgency of downstream infrastructure development to increase the utilization of natural gas through improvement/change that can be immediately implemented (Assignment and Control Model) include: <ul style="list-style-type: none"> - Integrated gas development planning at the national level - Assignment of infrastructure development, - Division of roles between state-owned and non-state-owned enterprises in the management of natural gas as wholesalers (state-owned) and

Changes/ Challenges	Implication	Required Adjustments
		retailers (non-state-owned) - Division of zones/regions for infrastructure development and gas management. With the regulatory function carried out by the government (Ministry of Energy and Mineral Resources), challenges in terms of coordination among stakeholders can be minimized because all are under the guidance, coordination, and supervision of the Ministry of Energy and Mineral Resources.

Furthermore, the Figure below illustrates the recommended institutional system for managing oil and gas in Indonesia. The operational strategy for this institutional system should support the following three concepts: a) national energy sovereignty; b) national energy resilience; c) national energy self-sufficiency.

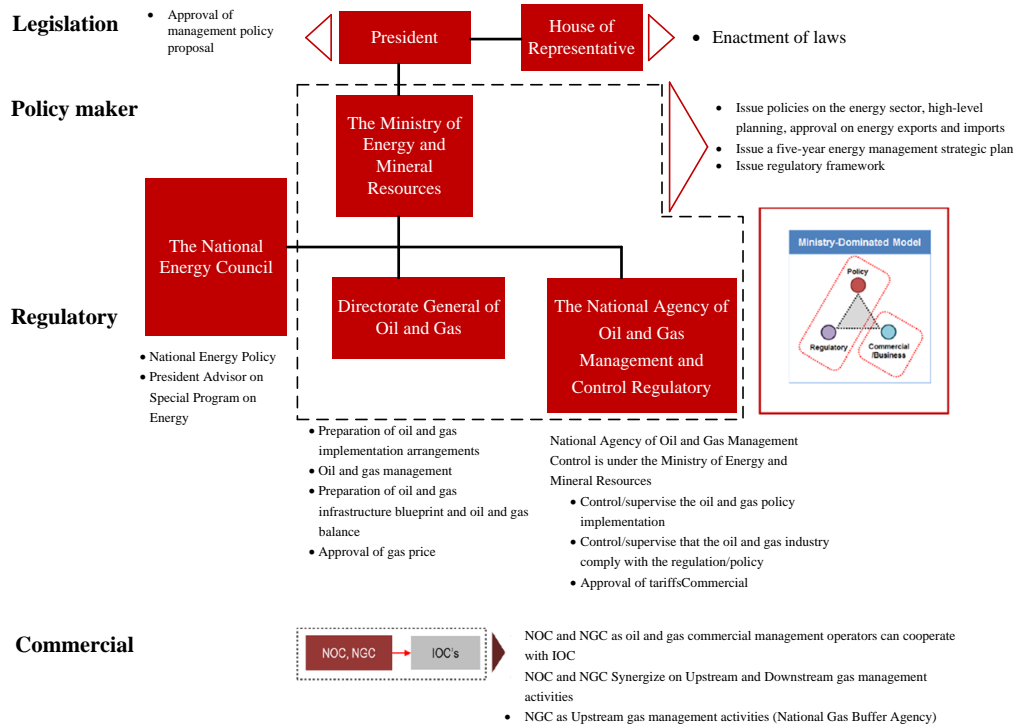


Figure 2. Recommended Institutional System for Managing Oil and Gas in Indonesia

3. Oil and Gas Management Scheme

To facilitate the determination of the oil and gas management system to be applied, the following is an identification of the facts and analysis in oil and gas management in Indonesia currently, using Booz & Co's (2014) framework. Evaluation parameters are based on industry conditions and business factors in oil and gas management. Based on this evaluation, product-focused oil and gas management is needed, which is carried out separately by state-owned enterprises for oil and gas. With this focus, it is hoped that concentration on resource allocation and the ability to fulfil tasks in each field, which is significant, can be achieved. Consolidated upstream and downstream management poses several challenges because the need to meet the urgency of national energy will require

significant resources, a large portfolio of specific capabilities, different issues, and conflicting interests that will make the conversion more difficult.

Based on the magnitude of tasks in the oil and gas sector, the first conclusion that can be drawn is that Indonesia needs explicit management that demonstrates separation of focus for crude oil and natural gas separately by commodity. Then, another aspect to be evaluated is whether this focus is conducted comprehensively throughout the value chain. Considering the natural management of oil and gas, there are differences in their characteristics, both technically, commercially, and industrially. However, in terms of upstream activities, both still have similarities and can still be integrated. This is considering the fact that there are associated and non-associated gas forms. In some cases, such as the Shale Gas case in the United States, the economy of shale gas is helped by simultaneous crude oil extraction, which actually becomes the main goal of exploration/production. Thus, optimization of upstream management must be able to accommodate the supportive conditions between crude oil and natural gas simultaneously.

The difference in management will be highly visible in the commercialization stage between crude oil and natural gas downstream. Every gas well that will be produced must already have a buyer due to the natural characteristics of natural gas commodities that differ from oil and the absence of an international gas market like crude oil. Therefore, the regulation of upstream oil and gas activities should be integrated. From the point of commercialization to downstream, an explicit separation between crude oil and natural gas needs to be done.

4. Scheme for Oil and Gas Contracting

The scheme for oil and gas contracting in Indonesia that reflects the concept of State Sovereignty can be in the form of Contract of Work with risk clauses and Profit-Sharing Contracts (PSC). With the proposed institutional system of the Indonesian State-Owned Oil and Gas Enterprise as the commercial executor and the need to have growth capabilities as a business entity, the PSC needs to explicitly differentiate the state's portion and State-Owned Oil and Gas Enterprise portion. This regulatory form can be implemented by applying a royalty system on total gross production as a modification of FTP. With this form, the state will receive its portion first, and there will be explicit allocation of direct and indirect state revenues, as well as the portion that can be managed by State-Owned Oil and Gas Enterprise.

The need to allocate revenue to Indonesian State-Owned Oil and Gas Enterprise is aimed at building the capacity and flexibility in developing business and acquiring Oil and Gas supplies outside of Indonesia. The control and management of the portion of Indonesian State-Owned Oil and Gas Enterprise can be carried out through the provisions of income tax for this state-owned enterprise. This will result in indirect state revenue. An illustration of the proposed revenue sharing is as follows.

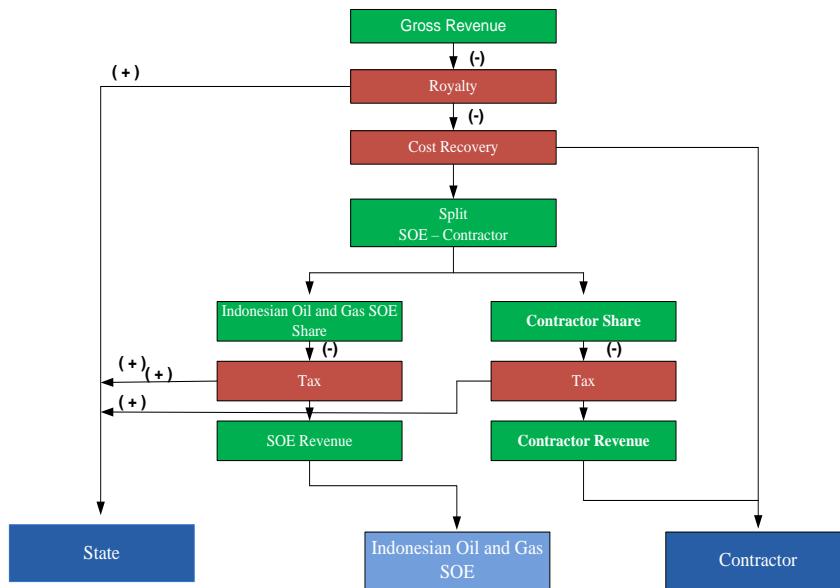


Figure 3. Illustration of proposed royalty as the battery limit for the state and Indonesian State-Owned Enterprise, and taxes as a control allocation to Indonesian State-Owned Oil and Gas Enterprise.

The establishment of a cost recovery limit, considering the conditions of existing wells and findings such as marginal wells, is necessary to prevent concerns about low revenues and depletion due to cost recovery. The application of a royalty system, share composition, or other fiscal provisions is based on the level of production difficulty and the resulting production level. For example, differentiation of the PSC for deep-sea conditions with a grouping of certain depths, as in Malaysia and Timor Leste PSCs, to obtain appropriate regulations that correspond to the challenges. This is also to create incentive schemes or stimulus for exploration and exploitation in new areas. Synergy with the policy of the obligation to sell to the domestic market for production results in an effort to maintain contractor revenue levels with an Economic of Scale approach (see the section on DMO and Export License).

5. Oil and Gas Industry Structure

The Oil and Gas Law has undergone several Judicial Reviews, which have changed the structure of the oil and gas industry. On the upstream activities, the changes include the role and institutional structure of the commercial function of the oil and gas industry, from controlling and supervising upstream activities by a state-owned enterprise to managing upstream activities by another proposed entity, a ‘Special State-Owned Enterprise’. In reviewing the structure of the upstream oil and gas industry, the government must engage in direct management of the oil and gas business, not just control and supervision of upstream activities. These provisions alter the structure of the upstream oil and gas industry, as shown in Figure 5.8. In the PSC system, for example, the form of cooperation between the Principal and Agent is defined (Kristen Bindemann, 1999). The Principal is the owner of the oil and gas, while the Agent is the party that provides capital and technology for the exploration and exploitation of oil and gas.

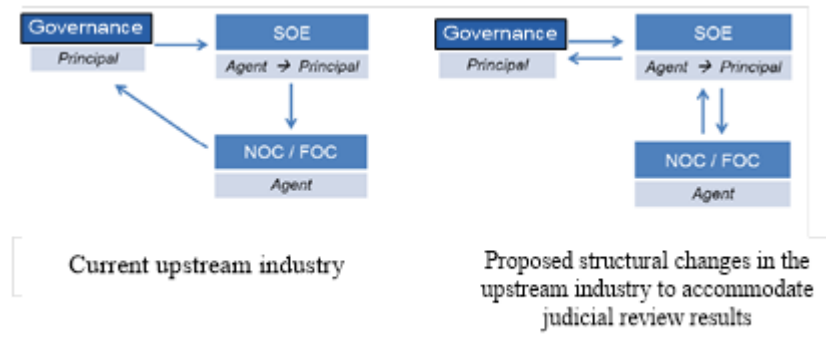


Figure 4. Cooperation between Principal – Agent under PSC system

Remarks:

SOE = State-Owned Enterprise as the owner of oil and gas from the Government

NOC = National Oil Company conducting direct oil and gas exploration and exploitation

FOC = Foreign Oil Company

As the holder of the State's oil and gas mining authority, the government has delegated its power to State-Owned Company (SOE) - Indonesian Oil and Gas SOE, to manage upstream oil and gas activities (the government acts as the Principal and SOE acts as the Agent). To carry out this management, SOE then collaborates with NOCs/FOCs as parties that provide capital and technology for oil and gas exploration and exploitation (SOE acts as the Principal and NOC/FOC acts as the Agent). Referring to the current upstream industry structure, the results of oil and gas management by NOCs/FOCs will be directly handed over to the government, where SOE is responsible for implementing and controlling these activities. There is a proposal to change the upstream industry structure to transform the role of SOE into a direct oil and gas manager. Under this proposal, the results of oil and gas management by NOCs/FOCs are handed over to SOE. SOE is responsible for ensuring the achievement of the country's targets in oil and gas management, transferring knowledge and technology to enhance the country's bargaining power in future negotiations with NOCs/FOCs. The government oversees oil and gas management carried out by SOE by placing its representative on the company's management board.

In the aforementioned structure with the presence of the Indonesian oil and gas SOE company, there are important considerations to be taken into account regarding the implementation of Production Sharing Contracts (PSCs). As a state-owned enterprise, the company must possess the ability to achieve good corporate performance through business development or efficient operations to optimize revenue. Thus, to ensure that the revenue from the management of the national oil and gas resources is not mixed with the company's own spending, it requires a clear mechanism for revenue sharing among the state, the Indonesian oil and gas SOE, and the involved oil contractors.

The specific form of this revenue-sharing arrangement will be further determined and analyzed with regard to the modification of the PSC scheme.

a. Downstream gas industry structures

Based on several models of gas industry structures, determining the most suitable gas industry structure for Indonesia requires an evaluation and analysis of the prerequisites for each model. By identifying the current conditions of Indonesia's gas industry and its alignment with the philosophy of gas management according to the constitution, one alternative framework for selecting a downstream gas industry structure is presented below.



Figure 5. Framework to Determine Downstream Gas Industry Structures

Taking into account the specific conditions of Indonesia's natural gas industry, it is understood that the country is still in a development phase. The limitations of existing gas infrastructure have resulted in the need to limit the utilization of produced natural gas. Indonesia currently requires accelerated development of infrastructure to increase natural gas utilization. Therefore, the downstream natural gas industry structure chosen must be able to accommodate these needs while still reflecting the philosophy of natural gas management as mandated by the constitution, i.e., state ownership. Based on the evaluation of several natural gas industry models, the most suitable model for Indonesia's specific conditions is model 2: Competition among producers. The following figure illustrates the proposed downstream natural gas industry structure based on Model 2.

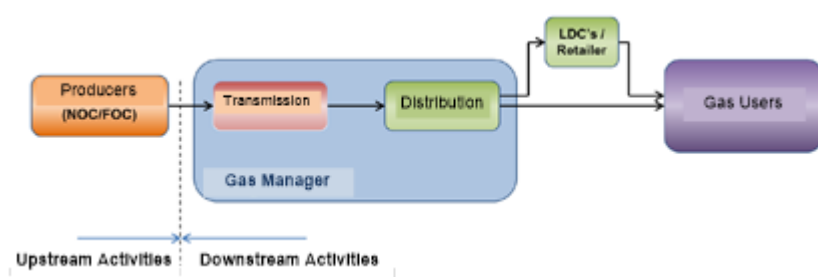


Figure 6. Proposal/Recommendation for Gas Industry Structure

Gas production from all gas supply sources in Indonesia is managed by the gas operator (SOE Gas Company) responsible for delivering gas to gas users in accordance with the supply profile and market set by the Government. The gas operator performs an aggregation function of various gas supplies, then aggregating the gas price for industry/gas users. This aggregation function is carried out according to Government regulations.

The role of Regional-Owned Enterprises, Private Enterprises, Cooperatives, and small businesses is to build infrastructure and distribute gas to a particular distribution area such as industrial or commercial areas managed by the area operator (Local Distribution Company or retailer). The retailer distributes gas from the gas operator to gas users located in their distribution area only.

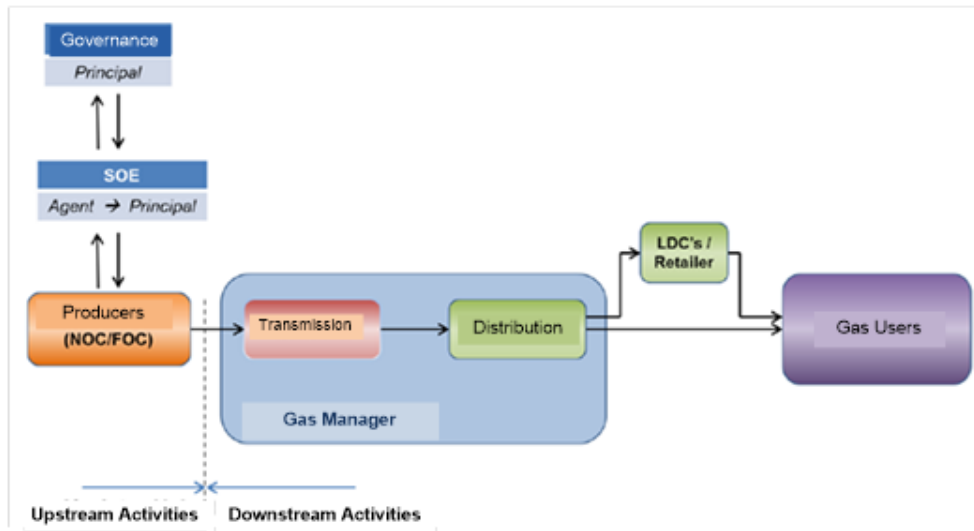


Figure 7. Proposal/Recommendation for Upstream and Downstream Gas Industry Structure

The proposal represents a combination of the upstream and downstream gas industry structure proposals discussed above. In this merger, the Ministry of Energy and Mineral Resources plays a crucial role in ensuring that gas management activities throughout the business chain run in accordance with national policy, including the optimization of the role of oil and gas as strategic tools.

6. Master Plan for National Gas Distribution Infrastructure Development

Based on the planning of domestic natural gas demand and supply in the Indonesian natural gas balance, it is necessary to develop the Indonesian Master Plan for Natural Gas Distribution Infrastructure Development that will be used by the government for integrated management that synergizes between supply planning, infrastructure planning, and demand growth planning. The synergy of these aspects is illustrated in the following figure.

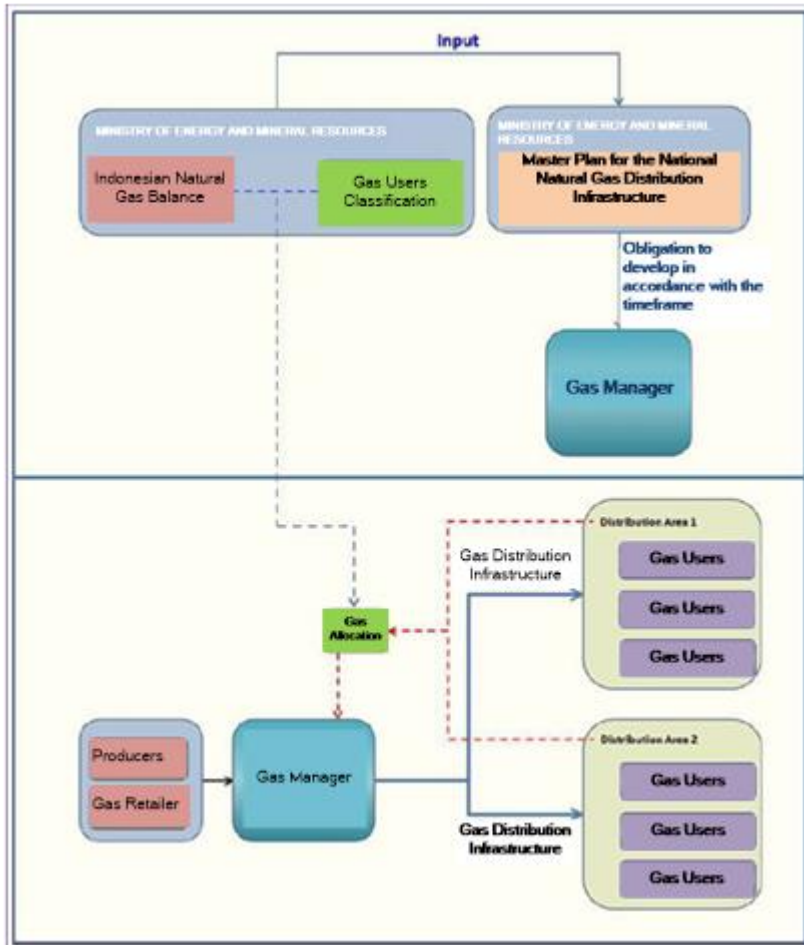


Figure 8. Master Plan for Natural Gas Distribution Infrastructure Development

The infrastructure development concept in Figure 8 reflects the synergy of Indonesia's natural gas supply, market, and infrastructure, which is under the government's planning. The infrastructure development is compiled into a master plan roadmap as a guideline for realizing the government's policy in distributing domestically produced natural gas to domestic gas users, with its management (infrastructure development and gas portfolio management) carried out by the Gas Manager.

In accordance with the constitutional context, where the state must carry out the management aspect, the management of domestic natural gas must be carried out by a state-owned enterprise. Referring to infrastructure development models worldwide, it is necessary to define an infrastructure development concept that is suitable for the Indonesian context. A special condition in Indonesia is that the government does not have enough resources to provide the minimum flow guarantee (for volume risk mitigation) required for the feasibility of infrastructure development by business entities, resulting in the risk of infrastructure development being borne by the business entities. The tendency towards infrastructure development models like this is based on market dynamics (without a roadmap) that consider the level of economics.

However, a development model without a roadmap would contradict the government's responsibility to provide the infrastructure itself, as the economic scheme would only target attractive areas. The most ideal infrastructure development model to meet Indonesia's needs is bundled service and exclusive rights, especially during the infrastructure development phase for investment assurance, with a roadmap for infrastructure development assigned to the state-owned gas manager. The government formulates the direction of infrastructure development based on supply and market

profiles, as well as allocation determinations. Therefore, the government can control infrastructure development according to the required roadmap to achieve gas management goals, and the gas state-owned enterprises obtain investment assurance through inter-business chain subsidies whose value is monitored by the government.

4. Conclusion

Based on the discussion presented above in this article, it can be concluded that:

1. Article 33 of the 1945 Constitution serves as a constitutional basis for the management of oil and gas in Indonesia, based on the concept of state ownership. The state functions as a regulator, manager, and supervisor, as well as maintains its relationship with the economy. The existence of the legal system for oil and gas that has been formed since before Indonesia's independence gives a particularistic nuance to legal reasoning in Indonesia. The periodization of the political and legal development of oil and gas in Indonesia has emphasized different approaches. Debate on the philosophical basis for the formation of legislation in the management of oil and gas is based on what ideology the state uses in managing the economy. The adopted ideology becomes the main basis for managing oil and gas to achieve the welfare of the people. Law Number 22 of 2001 on Oil and Gas is the fourth and final phase of the political and legal development of oil and gas in Indonesia to date. The consideration for the formation of Law Number 22 of 2001 is because Law Number 8 of 1971 on State Oil and Gas Mining Companies is considered no longer suitable for the development of oil and gas mining.
2. Domestic oil and gas management in the world is carried out using various alternative approaches. (a) Oil and gas management can be consolidated, as conducted in Malaysia and Saudi Arabia; (b) oil and gas management is carried out separately with a focus on products (by commodity); and (c) oil and gas management is carried out separately according to the value chain between upstream and downstream, occurring in countries with 'in-between' industrial conditions.
3. The concept of political and legal management of oil and gas resources that is appropriate in efforts to realize the greatest prosperity of the people can be achieved by making several strategic changes as follows: (a) New Paradigm of Oil and Gas Management; (b) Changing the Institutional Scheme of Oil and Gas; (c) Changing the Scheme of Oil and Gas Management; (d) Changing the Oil and Gas Business Contract Scheme; (e) Changing the Structure of the Oil and Gas Industry; (f) Developing a National Gas Distribution Infrastructure Master Plan..

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