



## **STATE RELATIONSHIP WITH PRIVATE LEGAL ENTITIES ON OIL AND NATURAL GAS MANAGEMENT IN INDONESIA**

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### **Abstract:**

*Indonesia has Undang-Undang Dasar Negara Republik Indonesia 1945 (UUD NRI 1945), Chapter 33 (3) UUD NRI 1945 give a mandate to the state that is equipped with the right to control the state as an instrument to achieve one of the highest goals of establishment Negara Kesatuan Republik Indonesia (NKRI), that is: promote the general welfare. The state represented by BP Oil and gas and then SKK Oil and gas, is in an unequal position with private legal entities in the upstream oil and gas business. The concept of the relationship between the state and private legal entities in the management of oil and gas is deemed by the MK to be inappropriate or contrary to the meaning Chapter 33 (3) UUD NRI 1945, which causes the lack of realization of oil and gas management for the greatest prosperity of the people. Management of oil and gas resources that are not in line or contrary to meaning Chapter 33 (3) UUD NRI 1945 can cause the goal of the greatest prosperity of the people not to be achieved. In the management so far, it is difficult to realize the nature of the constitutional management of oil and gas resources, this occurs because the Government of Indonesia as the representative of the state is apparently unable to maintain state sovereignty and adequate state control rights in the presence of foreign contractors involved in the management of oil and natural gas resources. through cooperation contracts due to ignoring priorities to government agencies such as independent BUMN. BUMN must dominate the management of oil and gas as strategic natural wealth in Indonesia, so that state sovereignty and the right to control the state can be used for the greatest prosperity of the people without third party intervention.*

### **Keywords:**

Private legal entity, country, oil and natural gas

### **1. Introduction**

Indonesia has Undang-Undang Dasar Negara Republik Indonesia 1945 (hereinafter referred to as UUD NRI 1945) as a written constitution with the highest position in the hierarchy of national laws and regulations, Chapter 33 (3) UUD NRI 1945 state that: "Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat"(Nizammudin, 2016). Chapter 33 (3) UUD NRI 1945 give a mandate to the state which is one of the goals of the state, which is stated in the opening of UUD NRI 1945 Pragraph 4, that is: "...melindungi segenap dan seluruh tumpah darah Indonesia, memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa dan ikut serta dalam ketertiban dunia yang berdasarkan perdamaian abadi dan keadilan sosial....".

There is a paradigm shift in sustainable economic development, which lays down the basic constitution Chapter 33 (3) UUD NRI 1945 by means of the explanation of the article being deleted and there being no further explanation

of the article, especially regarding the concept of 'controlled by the state'. This means that with the abolition of the explanation of the article, the prohibition on private parties or individuals from participating in managing natural resources will also be removed. This degrades the Chapter 33 (3) UUD NRI 1945 meaning, that is: the message of exercising the right to control natural resources is not prohibited from being handed over to third parties, both private parties and individuals. (Arba et al., 2016).

The existence of BP Oil and gas which has been replaced by SKK Oil and gas is equally considered by the MK to degrade the meaning of state sovereignty and the right to control the state in managing oil and gas resources in Indonesia so that the government as the representative of the state tends to be unable to use these strategic natural resources. For the greatest prosperity of the people as mandated in Chapter 33 (3) UUD NRI 1945 (Wicaksono, 2015). The implication is that the management and exploitation of oil and gas resources in Indonesia in the reform era is carried out by the Government through the Ministry of Finance ESDM that create BP Oil and gas (2001-2012), which was later replaced with SKK Oil and gas (2013-2020), which incidentally is not a legal entity equivalent to the state, but only an institution under a ministry with a limited scope of sovereignty and state control rights. (Salsabila, 2021).

The state, represented by BP Oil and gas and later SKK Oil and gas, is in an unequal position with private legal entities in the upstream oil and gas business. The concept of the relationship between the state and private legal entities in the management of oil and gas is deemed by the Constitutional Court to be inappropriate or contrary to the Chapter 33 (3) UUD NRI 1945 meaning, which causes the lack of realization of oil and gas management for the greatest prosperity of the people. Based on the description of the problem of managing oil and gas resources identified under BP Oil and gas (2001-2012) and SKK Oil and gas (2013-2020) in Indonesia during the reform era, the researcher limits the problem of this research to the nature of resource management. oil and gas under BP Oil and gas and SKK Oil and gas in terms of Chapter 33 (3) UUD NRI 1945 and how the relationship between the state and private legal entities in the management of oil and gas resources. (Jaelani, 2015).

The two main aspects are examined from the perspective of the theory of state sovereignty, state control rights, and legal certainty to find out empirically whether the management of oil and gas resources during the BP Oil and gas contract regime and the Oil and gas SKK is in accordance with or is contrary to the meaning Chapter 33 (3) UUD NRI 1945. This is the main problem that was identified and prompted researchers to conduct a critical study of the relationship between the state and private legal entities in the management of oil and gas resources in Indonesia, especially during the reform era of the last two decades. (2001-2021). The type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. (Michael, 2020).

## **2. Research Results and Discussion**

### **2.1. The Nature of Management of Oil and Gas Resources in the Perspective of Chapter 33 (3) UUD NRI 1945**

Understanding the meaning of the state and government system contained in the UUD NRI 1945 cannot be separated from the philosophy of the founding fathers in Indonesia in Badan Persiapan Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI). Formed by the Japanese military government on March 1, 1945, the idea of the state foundation of the founding fathers of the nation is very important to be able to understand the existence and sovereignty of an independent Indonesia. The basic state thought in BPUPKI from the beginning had anticipated differences in views, especially between Islamic nationalist groups and secular nationalist groups, especially a small committee consisting of 9 members whose task was to prepare the "Pembukaan Hukum Dasar". The initiators of BPUPKI have differences in viewing religion and state issues, especially in the context of the country's economy, but the two groups finally reached an agreement as outlined in the Draft Preamble document known as the Jakarta Charter and signed by its members on June 22, 1945 in Jakarta. Regarding the state basis, the formulation of the precepts of Pancasila is not exactly the same as what was stated by Ir. Muhammad Yamin and Ir. Sukarno.

In the context of the country's economy, of course, these differing views have serious implications for the right to control the state on behalf of the people in managing and utilizing the strategic resources of the Indonesian nation, as stated in Chapter 33 UUD RI 1945, between different nationalist groups. With a focus on state sovereignty and the welfare of the people, BPUPKI lays down the philosophical foundations of the national economy based on the interests of the people. (Prakoso, 2015).

Relating to the study of the nature of the management of oil and gas resources, ratio legist from Chapter 33 UUD NRI 1945 can be found in the philosophical foundations of the founding fathers of the state, who explicitly determined the Indonesian state law and economic policy based on the principle of popular sovereignty through the realization of state sovereignty through the government's role in strategic national natural wealth management, in this case oil and gas resources. for the greatest prosperity of the people. The philosophical foundation of the founding fathers of the nation contained in Chapter 33 UUD NRI 1945 has a very deep meaning and should be respected by state and government administrators since 1945 until the present reform era (1999-2021). If at present you want to realize people's sovereignty, state sovereignty, and the harmonious relationship between these two sovereigns with the right to control the state associated with private legal entities in the management of natural resources, ideally state administrators explore the meaning of ratio legist Chapter 33 UUD NRI 1945 (Bobby, 2016).

If the state cannot manage and utilize strategic national resources for the greatest prosperity of the people, the sovereignty of the state through the right to control the state in a government regime is questionable. In practice so far, the management of oil and gas resources in Indonesia has undergone fundamental changes along with the changing government regime, both in the Old Order, New Order, Reform Era, and the Era of the Work Regime (Sarifudin, 2019). When examined more deeply in UU RI 22, 2001 about Oil and Natural Gas emphasized that the control and exploitation of strategic national natural resources such as oil and gas are in the hands of the state. As referred to in Chapter 4 (1), oil and natural gas are non-renewable strategic natural resources contained in the Indonesian mining jurisdiction as national assets controlled by the state. Control by the state is held by the government as the holder of the Mining Authority, which forms the Implementing Body. (Sibarani, 2018).

This agency has mining rights to carry out oil and gas business activities, which consist of upstream business activities covering exploration and exploitation and downstream business activities, including processing, transportation, storage, and trading. State control rights in oil and gas management at that time tended to be handed over to foreign companies through a cooperation contract mechanism. Within the framework of the privatization, other problems also arise related to the weakness of the state in commercial contracts due to the formation of unequal relations between the state as a public legal entity represented by BP Oil and gas which was eventually replaced by SKK Oil and gas and the foreign private legal entity.

In practice, the applicable positive law is influenced by the model of a government regime at a certain time period. With the spirit of anti-Western capitalism, the management of oil and gas resources during the Old Order emphasized the policy of expropriation or nationalization of oil and gas business assets managed by foreign companies. (Kadir and Murray, 2019). This implies that the law is a tool of social engineering (law is a tool social engineering).

## **2.2. Relations between the State and Private Legal Entities on Oil and Gas Management in Indonesia**

The difficulty in realizing the nature of the constitutional management of oil and gas resources occurs because the Government of Indonesia as the representative of the state is apparently unable to maintain adequate state sovereignty and state control rights in the presence of foreign contractors involved in the management of oil and gas resources through cooperation contracts due to ignoring priorities for government agencies such as independent BUMN. BUMN must dominate the management of oil and gas as strategic natural resources in Indonesia, so that state sovereignty and the right to control the state can be used for the greatest prosperity of the people without the intervention of third parties. (Ansari, 2018).

In the study of constitutional discussions, that the sovereignty of oil and gas management in Indonesia can be started from the constitutional arrangements regulated in Chapter 33 (3) UUD RI 1945 which affirms that: "Bumi, air, dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan sebesar-besar untuk kemakmuran rakyat". Based on the constitutional mandate, there are two main elements in the management of the earth, water and natural resources (including oil and gas) in Indonesia, namely the elements "controlled by the state" and "the greatest prosperity of the people".(Michael, 2022) These two elements become the spirit of every natural wealth management, including oil and gas owned by Indonesia.

Furthermore, in the history of oil and gas regulation in Indonesia, there are several regulations that have been and are still in effect. It is divided into several phases of the government regime, namely:

- a. Regime colonial Indies-Dutch: Indische Mijwet 1899;

- b. Regime Government Old Orde: Undang-Undang Chapter 44, 1960 about concerning Oil and Gas mining.
- c. Regime Government New Orde: Undang-Undang Chapter 8, 1971 about Oil and Natural Gas mining company (Pertamina); and
- d. Regime Reform Era government: Undang-Undang Chapter 22, 2001 about Oil and Natural Gas.

The Oil and Gas Management Regime that is currently enacting regulations concerning the management of oil and gas in Indonesia, indicates that Indonesia is a country capable of realizing a form of sovereignty in terms of state control over oil and gas wealth to make regulations, in which the regulation regulates in detail the form and method. work of each institution appointed by the state in the field of oil and gas management. Still cannot be separated from the influence of other parties who have a big interest in the oil and gas wealth owned by Indonesia. Moreover, in the enactment of UU RI Chapter 22, 2001, which is still in effect, has received several highlights such as the nature of this law which supports the liberal economy of the international oil and gas industry to the extent that it limits the role of national companies (Pertamina) to be dominantly involved in oil and gas management. For this reason, it can be said that state control in terms of oil and gas management in the form of state sovereignty has not been fully optimized because there are still forms of intervention from outside parties in terms of dictating the form of regulations in the field of oil and gas management.

### 3. Conclusion

The essence of oil and gas management seen from the perspective of Chapter 33 is as a form of state control over the state's constitutionally owned national natural wealth, which cannot be limited only by the fact that the wealth is needed by other countries, as well as the nature of managing oil and gas resources as a form of the means of achieving people's welfare, this becomes the basis for understanding that the earth, water and natural resources contained therein are controlled by the state, which means that they cannot be controlled by private legal entities liberally, with the intention that state-owned natural resources can be used to achieve the greatest prosperity of the people, not the economic benefits of the group.

Management of oil and gas resources, that the state has a higher position than private legal entities (unequal) so that it has the authority to control. The existence of the state represented by the government can actually create an equal relationship between the state and legal entities in which the state grants authority to state companies and state-owned enterprises so that they can maintain the position of state sovereignty and adequate state control rights, and private legal entities can generate profits steadily. provide the greatest benefit to the prosperity of the people in accordance with the nature of Chapter 33 (3) UU RI 1945 which realizes the greatest prosperity of the people.

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