



LEGAL PROTECTION OF THE NATIONAL OIL AND GAS ENERGY BY LAW NUMBER 22 OF 2001

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Article Info

Article history:

Received Oct 14, 2023
Revised Nov 21, 2023
Accepted Dec 04, 2023

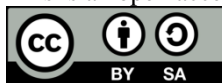
Keywords:

Law
Energy Oil and Gas
National

ABSTRACT

National Oil and Gas Energy for Indonesia so plays an important role in the field of oil and gas industry. Pertamina is the only State Oil and Gas Company submitted the task to manage all activities of the Indonesian Oil and Gas Energy from upstream to downstream and export activities, is the beginning of a political era of international cooperation in the upstream oil and gas activities with the use of system agreement Production Sharing Contract (kps). The purpose of this paper is the settlement of disputes in the mining oil and gas energy is by starting with the principles and definitions, basic law and the law of oil and gas resources that exist in Indonesia, as contained in Act No. 22 of 2001 and aspects of legal protection in the oil and gas energy mining system, and the settlement of disputes in the national oil and gas energy, namely; 1). court; 2). Alternative dispute resolution; view of Islamic law on mining energy as a result of the earth and the results of its use for the welfare of the people in line with the Islamic religion that results or benefits can be used for the welfare of the people

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1. INTRODUCTION

Indonesia is a very strategic region in the world, apart from its natural wealth, history has proven that western countries, where the period of expansion and colonialism characterized world civilization, such as the Dutch, Portuguese and British, competed with each other because it really interested them not only in natural products, spices, etc. spices but also because of the natural resources contained therein.

Until 1924 the Dutch Colonial Government had granted 120 concession areas, 1928 the Dutch Colonial Government amended the Indische Mijnwet to increase the Colonial Government's income, including shortening the concession period from 75 years to 40 years. Concession holders were required to drill wells to release (relinquish) part of their concession areas; pay royalties, increasing the Colonial Government's share progressively up to 20% of the company's net profit. (Milis and Mirza A Karim, 2000: 1)

History has recorded from all sides that the imperialist countries tried to reach the archipelago with various strategies, the technology they had to compete to find an area that had long produced something that they always got from the Middle East, armed with that they so that they can directly trade and buy natural product commodities which ultimately they cannot bear to colonize in order to control an area which contains abundant natural resource potential. Indonesia, which is dominant in the region called the archipelago, is a country that produces a lot of natural products both on land, oceans and those stored in the earth, which according to world geologists still contains many earth products that have not been detected. Natural resources both inside and outside are still unable to be processed and utilized for the welfare of society due to limitations and various existing obstacles.

Justice is social happiness referring to the Thomistic concept, justice is divided into two types, namely distributive justice and commutative justice. Distributive justice is allocating goods to people in accordance (proportionate) with their dignity. (Sucipto Rahardjo, 2000: 262-263). The school of law that teaches the achievement of the greatest happiness for the people is known as a teaching that emphasizes expediency and Utilitarianism. (Lili Rasjidi & Ira Thania Rasjidi, 2002: 60) Jeremy Bentham as mentioned by W. Friedman is an adherent of this school with the motto "the greatest happiness of the greatest number", namely by suggesting the importance of government intervention to create the greatest happiness for the people Lots. (Freidman W, 1960: 274)

natural wealth in the sea and on land which has important economic value for mankind, such as petroleum or what is usually called black gold, which is a major source of important energy because almost all aspects of life activities are supported for mobility in social interactions and are still the prima donna. namely using fuel derived from processed petroleum products without eliminating various other mining materials. Starting from this, it has become a motivation for a number of countries, including Indonesia, which has no doubt about its natural resources that stretch from Sabang to Merauke, to also try to compete and compete with other countries, because income from the oil and gas sector is still dominant.

In an effort to achieve happiness, the interests that must be protected by law are grouped into three groups by Rescoe Pound, namely public, community and personal interests so that this classification can be seen as a flow of utilitarianism (Darji Darmodiharjo and Sidharta, 2004: 85). Oil and gas in Indonesia plays a very important role in the oil and natural gas industry, although in other fields, such as the tax sector, it is also part of the state's revenue and expenditure budget. This will of course become a problem in the future, which from now on, a solution must be found, especially Indonesia's oil and gas and mining products are depleted.

The increase in mining activities is due to the need for these agricultural products which are really needed by humans, which in the end is primarily oil and gas mining both on land and in the seas of the Indonesian territory, which should be adjusted to the guidance of applicable environmental law, namely by paying attention to the harmony of human relationships with God and humans and the surrounding natural environment.

It is time for mining stakeholders to be reminded of the spirit in the spirit of the Constitution which is the basis for applicable law regarding the management of mineral resources which aims for the prosperity and welfare of all Indonesian people. (Rudianto Ekawan, 2009: 4). Bearing in mind that oil and natural gas are mining products that cannot be renewed when they run out, whether they want to or not, this will definitely happen, namely that the holders of executive power, from the president to ministers to regional heads, make policies. The weakness of the state's sovereignty over its natural wealth is compounded by the weaknesses in mining work contracts in Indonesia. (Gede Sandra, 2007: 2)

This line of thinking seems to be in line with what Prof. Djokosutono in the early 1950s, namely: "In 't heden ligt 't verleden, In 't nu wat komen zal" which means, that today is the result of past circumstances and what we do today will determine the future . (Awaloedin Djamin, 2018: 20). The Government of the Republic of Indonesia should be consistent in carrying out reforms regarding comprehensive legal policies in the Oil and Gas Energy sector and in accordance with the MEFP (Memorandum Economic and Financial Policies) scheme. (MEFP Documents, 2001: 4).

Because today's death rate is decreasing, human life spans are increasing in a sense due to improvements in daily diets that are more nutritionally adequate, consumerist and instant styles in big cities, individualistic, materialistic and capitalist. In this case, the Government's real role in relation to oil and gas energy must of course be more optimal, such as by making policies through statutory regulations, eliminating waste of oil and gas energy from downstream to upstream, providing firm and clear sanctions.

Indonesia recognizes the separation of regulations between natural resources that are "under the earth" in the form of excavated mining materials and provisions that regulate plants that are on the surface of the earth or land in the jurisdiction of the Republic of Indonesia. Mining minerals can be differentiated between mining materials originating from carbon or from oil and gas and general mining materials which are hard.

Indonesian petroleum is the same age as Indonesia has been known since the era of European occupation until now, since the discovery of oil sources in Java, Sumatra and Kalimantan, Sulawesi, Papua and various regions in Indonesia which are very rich in natural resources, especially oil and gas. Oil and gas regulations during independence have contributed to state income in this sector, through various nationalizations of foreign companies, the business sector in this field has become nationalized capital.

Pertamina is the only State Oil and Gas Company which is given the task of managing all Oil and Gas Energy activities in Indonesia from upstream (exploration and exploitation) to downstream (development of refinery operations, collection, transportation and trading or fuel distributorship in the country) as well as sales activities. country (exports), the formation of Pertamina was also the beginning of an era of political international cooperation in upstream oil and gas activities using the Production Sharing Contract (KPS) agreement system.



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This cooperation system, with regard to exploration and exploitation activities, is increasing rapidly, both in geological basins on land (geological basins) and offshore. Upstream oil and gas activities are dominated by International Oil Companies (IOC), mainly multi-national companies (Multi National Companies, MNC) or also known as The Mayors, as Pertamina contractors." (Suyitno Patmosukismo, 1991: 2). The influence of globalization in various lives is unavoidable, encouraging changes starting from the influence of globalization in the formation of national law as well as experiencing and facing legal harmonization and modernization. The birth of a new oil and gas law has colored national legal reform, as an administrative law in the oil and gas sector, management and supervision have become new issues, especially the birth of an independent state body.

Pertamina as an Indonesian state-owned company has the authority to manage oil and gas natural resources and investment in the oil and gas industry which carries out permanent business activities in the upstream and downstream activities of the oil and gas energy industry in Indonesia in connection with the mandate given by Law Number 22 of 2001 concerning oil and gas, while management and Relations with upstream contractors are carried out by BP Migas and downstream by BPH Migas.

With regard to globalization, both directly and indirectly it will have a liberalizing impact in the oil and gas industry sector. Article 33 of the 1945 Constitution is the basis for making legislative regulations, especially in the oil and gas sector. Indeed, in the 1945 Constitution, it is the will of the founders of this country as well as the constitutional mandate for the government. Focusing solely on achieving people's welfare. The government only focuses on the goals expected by the founding fathers of this nation, namely achieving the welfare of the Indonesian people alone, although up to now this has not been realized, but has not yet found appropriate ways to become an independent nation, and even appears to be using other methods. which is contrary to the spirit of nationalism.

This government policy is evident in the opening up of foreign investment through Law of the Republic of Indonesia Number 1 of 1967 which was later amended twice, the last being Law of the Republic of Indonesia Number 15 of 2007 without providing adequate restrictions so that the achievement of people's welfare is increasingly close. . One of the negative impacts of the implementation of foreign investment in the oil and gas energy sector is that Pertamina is no longer the only strategic state-owned company in the oil and gas sector. It is fitting and appropriate for the Government to carry out complete and total institutional integration in the management and utilization of Indonesian oil and gas under Pertamina, certainty law for the sake of justice is realized.

Based on the description of the problem above and in an effort to provide an explanation, the problem that the author formulates in this writing is as follows:

- a. How are disputes resolved in oil and gas energy mining?
- b. What is the view of Islamic law regarding oil and gas energy mining?

2. RESULT AND DISCUSSION

A. Understanding Oil and Gas Law

1. Definition of the meaning of oil and gas (oil and natural gas)

The term mineral comes from the English translation, namely Mineral. Minerals are ores of gold, silver, copper, tin, iron, tin, white metal, zinc, iron, sulphide, chromium, manganese, tungsten, molybdenum, arsenic, nickel, cobalt, uranium, phosphate, graphite, coal, crude oil, asphalt, natural gas, sulfur, topaz, barite, alunite, fluorite, asbestos, limestone, dolomite, silicon, peldpar, pyrophyllite, talc, clay stone, and ground seeds. (Salim HS, Jakarta, 2010: 39)

Petroleum comes from the English translation, namely Crude oil, while the term natural gas comes from the English translation, namely natural gas. The definition of petroleum can be found in article 3 letter i of The Petroleum Tax Code, 1997, India, article 3 letter i reads as follows: "Petroleum means crude oil existing in its natural condition i.e. all kinds of hydrocarbons and bitumens, both in solid and in liquid form, in their natural state or obtained from natural gas by condensation or extraction, including distillate and condensate (when commingled with the heavier hydrocarbons and delivered as a blend at the delivery point) but excluding natural gas".

In this definition, there is not only an explanation of the meaning of petroleum but also about its form, type and method of obtaining it. Petroleum in this definition is constructed as crude oil. The form is solid and liquid, the type is hydrocarbon and bitumen. The way to obtain it is by condensation (condensation), excavating, and drying. Natural gas means liquefied gas, dry gas and other hydrocarbon gases in their compounds, including sulfur, carbon dioxide, nitrogen and helium produced from oil wells or gas wells, excluding liquid hydrocarbons, which are condensed or extracted from gas and liquefied at normal temperature and pressure conditions, but includes gas residues remaining after condensation or extraction processes of liquid hydrocarbons and from gases.

The definition of natural gas in article 3 letter g of The Petroleum Tax Code 1997 in India is very broad because this definition explains the elements of natural gas and the production process which includes condensation

and extraction. Another definition is that contained in Law Number 22 of 2001 Article 1 paragraph (2): "Natural Gas is the result of natural processes in the form of hydrocarbons which, under conditions of atmospheric pressure and temperature, are in the gas phase obtained from the Oil and Gas mining process." Article 1 paragraph (3): "Oil and natural gas are petroleum and natural gas". Petroleum is the result of natural processes in the form of hydrocarbons which under atmospheric pressure and temperature conditions are in the form of a liquid or solid phase, including asphalt, mineral wax or ozokerite and bitumen obtained from mining processes but, including coal or other hydrocarbon deposits in solid form obtained from activities. which are not related to oil and gas activities.

The main elements of oil and natural gas are hydrocarbons, hydrocarbons are organic compounds where each molecule only has the elements carbon and hydrogen, carbon is a non-metallic element that is found in abundance in nature, while hydrogen is a colorless, odorless, tasteless gas. , suffocating, but not toxic, found in nature in compounds with oxygen. Hydrocarbons can be classified into 5 types, namely: 1. Paraffins, 2. naphthenes, 3. aromates, 4. monoolefins; and, diolefins.

2. Principles and Basis of Oil and Gas Law

The principle of forming good regulations (Beginselen van behoorlijke wetgeving) is a legal principle that provides guidelines and guidance for pouring the contents of regulations into an appropriate form and structure, using appropriate methods, and following the formation process and procedures that have been determined in Indonesia. In Law Number 10 of 2004 article 5, states: In forming laws and regulations it must be based on the principles of forming good laws and regulations including;

- a. clarity of purpose,
- b. appropriate institutions or forming organs,
- c. suitability between the type and material of the load,
- d. can be implemented,
- e. usefulness and usefulness,
- f. clarity of formulation, openness. (Purnomo Yugiantoro, 2000: 27-28)

The function of the principles for forming good legal regulations serves as a basis for testing in the formation of legal rules (formal testing). as well as as a basis for testing applicable legal regulations (material review). The principles of forming appropriate legislative regulations function to provide guidelines and guidance for pouring the contents of regulations into a form and structure that is in accordance with the predetermined formation process and procedures. The principles adopted in the implementation of oil and gas business activities in Law Number 22 of 2001 in article 3 are; People's economic principles; Principle of integration; Principle of benefit; principles of justice; Principle of balance; Principle of equality; The principle of shared prosperity and welfare of the people at large; Security principles; Principle of safety; Principle of legal certainty; Environmentally conscious principles. (Saiful Bakhri, 2012: 91)

Indonesian Oil and Gas Legislation is Law Number 22 of 2001 concerning Oil and Natural Gas, provisions which further regulate Government Regulation Number 42 of 2001 concerning the Establishment of the Agency for Implementing Upstream Oil and Gas Business Activities, Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities and Government Regulation Number 34 of 2005 concerning Amendments to Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities, Ministerial Regulations and Ministerial Decrees. Downstream Oil and Gas Government Regulation Number 67 of 2002 concerning the Regulatory Body for the Supply and Distribution of Oil and Gas Fuel and Business Activities for Transporting Gas by Pipeline, Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities as well as implementing implementing regulations such as Presidential Regulations, Presidential Instructions, Minister of Energy and Mineral Resources Regulations , Decree of the Minister of Energy and Mineral Resources, Decree of the Director General of Oil and Gas. Regarding oil and gas in particular and upstream and downstream oil and gas business activities in general, it refers to Law Number 22 of 2001 and other provisions regarding oil and gas. These include, among other things, technical requirements and administrative requirements in carrying out upstream and downstream oil and gas business activities, control and exploitation, business permits for management, transportation, storage, commerce, state revenues, the relationship between oil and gas business activities and land rights, guidance and supervision, implementing agencies and oil and gas regulator.

The broader and deeper sources of law that underlie or form the basis of oil and natural gas law in Indonesia today include:

- a. General
 - 1) Article 33 paragraphs (1) and (2) Fourth Amendment to the 1945 Constitution;
 - 2) Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) regulated in CHAPTER II UUPA, concerning land rights;



- 3) Law Number 32 of 2009 concerning environmental management;
- 4) Law Number 8 of 1998 concerning Consumer Protection;
- 5) Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition;

b. Special

- 1) Law Number 22 of 2001 concerning Oil and Natural Gas;
- 2) Republic of Indonesia Government Regulation Number 42 of 2002 concerning Implementing Bodies for Upstream Oil and Gas Business Activities;
- 3) Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities;
- 4) Republic of Indonesia Government Regulation Number 67 of 2002 concerning the Regulatory Body for the Supply and Distribution of Oil Fuel and Business Activities for Transporting Natural Gas by Pipeline;

So with regard to all of that, namely what regulates the rights and obligations as well as the legal relationships of the parties concerned, referring to the provisions as above. Must adhere to the principles and provisions regulated in our country's laws and treaties, international agreements, existing jurisprudence in Indonesia, other provisions in the field of oil and gas mining energy, especially customary and recognized in Indonesia and internationally. .

3. Sources of Oil and Gas Law.

In legal science, legal sources are always divided and differentiated into:

1. Material Legal Sources;
2. Formal sources of law;

The material sources of oil and gas (oil and gas) law are basically all conditions of general life or the average of the wider community which in reality prove that oil and gas law needs to be immediately created, formed and enforced to regulate the implementation of the mechanism for activities of objects and management infrastructure. oil and gas in Indonesia. The formal sources of oil and gas (oil and gas) law are basically all (formal) forms of regulations and legislation whose contents contain oil and gas law provisions as laws that apply or are confirmed to be generally applicable, whether in the form of a law, or customs whose contents have been formed as applicable regulations, or as jurisprudence, or in the form of treaties or doctrines.

The formation of oil and gas (oil and gas) law is first based on material legal sources which implicitly contain levels of value and historical elements as challenges to the realities of human life from time to time. The structure of social life of each particular nation, outlook on life, religion, belief factors and philosophy or philosophy of the nation concerned in facing various national and international problems and in finding ways to solve these problems.

Furthermore, all the elements mentioned above will determine all the methods and procedures for the formation of oil and gas legal regulations according to their formal forms, if all the insights and views contained in the material sources of oil and gas law have been formed as written or legal provisions. formal, then its appearance can be realized in the following possibilities, namely; (A. Ridwan Halim, 1997: 125)

1. Manifest or appear directly, which can be further divided into the following two possible children.
 - a. In a written legal regulation whose contents are specific to regulation with all its consequences as can be seen clearly in Indonesia are:
 - 1) Law Number 22 of 2001 concerning oil and natural gas along with PP Number 42 of 2002 concerning the Executing Agency for Upstream Oil and Gas Business Activities which is the implementation and PP Number 36 of 2004 concerning Downstream Oil and Gas Business Activities.
 - b. In a written regulation that does not specifically focus on oil and gas regulation, but rather the truth is spread in various laws and regulations that regulate oil and gas as one of the possibilities that could occur, such as regulations regarding proportional calculation of each portion, for example in the case of :
 - 1) Sharing of profits or profits and covering desires originating from joint shares in an oil and gas object;
 - 2) Separation of rights and obligations between oil and gas companies;
2. It does not materialize directly but can only be concluded through various legal interpretations, namely logical interpretation or grammatical interpretation, or sociological interpretation, or systematic interpretation, and so on, but all of this is still drawn or derived from legal provisions that already exist in writing.

4. Oil and Gas Legal Protection

a. Oil and Natural Gas (Oil and Gas) Legal Perspective

Legal protection is a protection effort given to legal subjects, regarding what can be done to defend or protect the interests and rights of those legal subjects. (Wirjono Prodjodikoro, 1983: 20). Oil and gas is a business sector that is international in nature, where it will be interconnected with the interests of external parties which greatly determine the course of this industry, such as:

- 1) In terms of technology use, most of the technology used in this industry is imported technology from abroad;
- 2) There is an international crude price determination by OPEC, so that the oil and gas industry is a cartel business controlled by a group of players represented by OPEC and the seven sisters who have become super majors, the rest are national oil companies and independent petroleum producers.

Indonesia is currently in a transition period from the restructuring of the oil and gas industry, where the structure of the oil and gas industry is changing from natural monopoly by Pertamina to a market mechanism in accordance with the spirit of Law Number 22 of 2001. It is hoped that new players will appear in the oil and gas industry. in Indonesia.

This change in legislation governing the oil and gas industry will automatically have a big impact on implementation in the field because for approximately 40 years the oil and gas industry has only been allowed to be carried out by state companies, namely Pertamina, which has a dual role as regulator and player. .

By transferring the function of having exclusive authority to mine to BP Migas, currently Pertamina acts as a production sharing contractor, but Pertamina can be said to be a specialist contract of production sharing because it has its own operations, which in its operation are collaborated with third parties in the form of technical assistance contracts. and joint operation body. The role as downstream regulator was reduced no later than 4 years after the enactment of Law number 22 of 2001. Pertamina normatively acts as a profit-oriented business entity in running downstream core business without being burdened with government duties in terms of fuel supply and service. domestically, especially for remote areas.

b. Authority of Government Agencies in Oil and Gas Business Activities

As a country that is blessed with an abundance of natural resource wealth that stretches from the west to the east, the government prioritizes this wealth as a source to maximize the prosperity of the people, one of which is by focusing on the oil and gas sector. In this case, natural oil and gas resources have a role as:

- 1) Domestic energy sources;
- 2) Source of state revenue and foreign exchange;
- 3) National industrial raw materials;
- 4) Technology expert platform;
- 5) Supporting regional development;
- 6) Create jobs, and;
- 7) Driving growth in the non-oil and gas sector

So that the role of oil and natural gas is carried out well, Law Number 22 of 2001 regulates institutional duties in the oil and gas sector, namely:

- 1) The government (Ministry of Energy and Mineral Resources cq. Directorate General of Oil and Natural Gas), is tasked with carrying out policy, regulatory, guidance and supervision tasks in the implementation of oil and natural gas control;
- 2) The Oil and Gas Implementing Agency (BP Migas), tasked with carrying out the task of controlling the provisions in cooperation contracts for upstream oil and gas business activities;
- 3) Oil and Gas Regulatory Agency (BPH Migas, tasked with allocating fuel supplies and distribution as well as setting tariffs for natural gas transportation via pipeline).

As non-renewable natural resources, oil and gas are included as national wealth controlled by the state, with the aim that this wealth can be utilized for the prosperity of all Indonesian people, whether individuals, communities or business actors, even though they have rights to plots of land on the surface but do not has the right to control or own the oil and natural gas contained below it. State control is carried out by the government as the holder of mining authority and then the government forms an implementing agency as an institution that exercises control over upstream oil and gas business activities based on a cooperation contract signed by the implementing agency and the contractor. Apart from being a controller, the implementing agency is together with the Department of Energy and Mineral Resources/Directorate General of Oil and Gas and other related departments as a supervisor.

What is different is that the implementing agency carries out supervision based on the signed KKS, while the Department of Energy and Mineral Resources/Directorate General of Oil and Gas and other related departments carry out supervision regarding the regulation of upstream oil and gas business activities. Apart from that, what is different is the supervision carried out by the Department of Energy and Mineral Resources/Directorate. General Oil and Gas covers the stages before the cooperation contract and after the cooperation contract ends, while the implementing agency is before the contract and during the implementation of the cooperation contract.

Based on the explanation above, it can be concluded that the differences are that the functions of the Implementing Body and the Directorate General of Oil and Gas are management, control and supervision of cooperation contracts, while technical policy, guidance, supervision, determination of general policy, granting permits, standardization, operational safety, Environmental protection is the function of the Directorate General of Oil and Gas.

c. The Relationship Between Oil and Gas Business Activities and Land Rights



The provisions governing the relationship between oil and natural gas business activities and land rights are regulated in articles 33 to 37 of Law Number 22 of 2001 concerning oil and natural gas. Oil and natural gas business activities carried out within the Indonesian mining jurisdiction include:

- 1) Land area;
- 2) Waters; And
- 3) Indonesia's continental shelf.

Places where oil and gas business activities are not permitted are:

- 1) Burial places, places that are considered sacred, public places, public facilities and infrastructure, nature reserves, cultural reserves, and land belonging to indigenous communities;
- 2) State defense fields and buildings and the surrounding land;
- 3) Historical buildings and state symbols;
- 4) Buildings, residences, or factories along with surrounding yard land, except with permission from government agencies, community approval, and individuals related to these matters.

Business entities or permanent establishments that intend to carry out their activities by moving buildings, public places, public facilities and infrastructure as intended in numbers 1 and 2 after first obtaining permission from the competent government agency. Rights to work areas do not include rights to land on the surface of the earth. However, if a business entity or permanent establishment intends to use parcels of private land or state land within its relevant working area, it is obliged to first conclude a settlement with the right holder or land user on state land in accordance with the provisions of the applicable laws and regulations.

This settlement can be carried out by deliberation and consensus in ways such as:

- 1) Buy and sell;
- 2) Exchange;
- 3) Adequate compensation;
- 4) Recognition; or
- 5) Other forms of compensation to rights holders or land users on state land (article 34 of Law No. 22 of 2001).

A working area is a certain area within the Indonesian mining legal area for carrying out exploration and exploitation. Since there was a settlement regarding the status of land used by a business entity or permanent establishment, the rights and obligations of both parties have arisen since then. The obligation of land rights holders is to allow business entities or permanent establishments to carry out exploration and exploitation of the land concerned on condition that:

- 1) Before the activity begins, first show the cooperation contract or a valid copy thereof and notify the purpose and place of the activity to be carried out; And
- 2) Settlement or settlement guarantees are carried out first, which are approved by the land rights holder or land user on state land (article 35 of Law No. 22 of 2001 concerning oil and natural gas)

For business entities or permanent establishments that have been granted working areas, plots of land that are used directly for oil and gas business activities and their security areas are granted use rights in accordance with the provisions of the applicable laws and regulations, the obligations of the business entity or permanent establishment are maintaining and guarding the plot of land.

The granting of working areas covering large areas on state land, parts of land that can be used for oil and gas business activities can be given to other parties by the Minister in charge and whose responsibilities include the agrarian or land sector by prioritizing local communities after receiving a recommendation from the Minister (article 36 of Law No. 22 of 2001 concerning oil and gas). Provisions on procedures for settling the use of private land or state land are regulated by Government Regulations (article 37 of Law No. 22 of 2001 concerning Oil and Gas).

B. Dispute Resolution in Oil and Gas Energy Mining.

1. Form of Dispute Resolution

Translation of dispute resolution from English is Alternative Dispute, dispute or conflict is a competitive behavior between two people or groups, conflict occurs when two or more people compete to achieve the same goal or obtain limited resources. A dispute resolution pattern is a form or framework for ending a dispute or dispute that occurs between parties. Dispute resolution patterns can be divided into two types, namely:

- 1) Court;
- 2) Alternative dispute resolution;

Dispute resolution through the Court (litigation) is a pattern of dispute resolution that occurs between disputing parties where the dispute is resolved by the court. The decision is binding, the litigation system has advantages and disadvantages in resolving a dispute. The advantages are as follows:

- 1) In taking over decisions from the parties, litigation at least to a certain extent guarantees that power cannot influence the results and influence the results and can guarantee social order;
- 2) Litigation is very good for finding errors and problems in the opposing party's position;
- 3) alaitigation provides a standard for fair procedures and provides ample opportunities for the parties to have their statements heard before making a decision;
- 4) litigation brings community values to the resolution of personal disputes;
- 5) In the litigation system, judges apply community values contained in the law to resolve disputes.

This litigation not only resolves disputes but more than that it also guarantees a form of public order which is stated in the law explicitly or implicitly, but on the other hand litigation has drawbacks (drawbacks), namely: (Garry Goodpaster, 1995: 6)

- 1) Forcing the parties to extreme positions;
- 2) Requires defense (advocacy) for any intention that influences the decision;
- 3) Really raise all issues in a case, whether in substance or producer, for the sake of common interests and encouragement of the parties to carry out real, extreme and often marginal investigations;
- 4) Time-consuming and increases financial costs;
- 5) Proven facts form the framework of the problem, the parties are not always able to express their true concerns;
- 6) Do not attempt to repair or restore the relationship between the parties in dispute;
- 7) Not suitable for polycentric disputes involving many parties, many problems and several solutions.

Communities in disputes tend to immediately submit their cases to formal courts, such a tendency shows legal centralism; that justice is a product distributed exclusively by the state. Courts must be studied in relation to other normative system arrangements, and must be seen as part of the legal system because justice can only be found in official courts or forums sponsored by the state but also in primary social institutions such as the family, neighborhood, workplace, kinship relations, business relations and so on, as social institutions of a system of local norms and rules in accordance with the traditions maintained by the local community. (Ihromi. T.O, 1993: 25)

The litigation process requires limiting disputes and issues so that judges or other decision makers can be better prepared to make decisions. Dispute resolution through alternative dispute resolution (ADR) is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment (article 1 number 10) Law Number 30 of 1999 concerning arbitration and alternative dispute resolution).

The problem is why parties use ADR to resolve disputes that arise, "legally minded" countries, the US and Japan, indicate that dispute resolution through non-litigation is preferred. (Idrus Abdullah, 2001: 54) The tendency to avoid conflict, especially through the courts, can be seen further in Japan, where the litigation system is seen as unsuitable for resolving disputes. Litigation has been deemed morally wrong, causing a "distance" between state law and prevailing social reality. By referring to consensus and the tendency to avoid conflict in Japanese society, litigation is not suitable for resolving disputes and is even seen as endangering harmonious relations.

Litigation is considered to have failed to integrate the people with their local norms and has increased the popularity and function of mediation (chotei), as well as improving relations or conciliation (kankai) as an institution for resolving disputes outside the court in contract practice in Japan. If you pay attention, it is clear that the institutions that are often used by the public, both in the business community, in the United States and Japan, are non-litigation institutions (outside the courts).

In the literature, it is stated that there are two patterns of dispute resolution, namely as follows:

- 1) The binding adjudicative procedure, which is a procedure in dispute resolution where the judge in deciding the case binds the parties. This form of dispute resolution can be divided into five types, namely: litigation, arbitration, mediation-arbitration and adjudication;
- 2) The non-binding adjudicative procedure, which is a dispute resolution process in which a judge or person appointed decides a case that is not binding on the parties. Dispute resolution using this method is divided into several types, namely: conciliation, mediation, minitrial, summary jury trial, neutral expert fact-finding, early expert neutral evaluation. (AAG Peter and Siswobroto. ed, 2004: 49)

The two dispute resolutions are different from one another, the difference lies in the binding power of the decision produced by the institution, if the binding adjudicave procedure the decision produced by the institution that decides the case is binding on the parties whereas in the non binding adjudicative the decision procedure is The result is not binding on the parties, meaning that with the decision the parties can agree or reject the contents of the decision. The similarity between the two dispute resolution patterns is that they both provide a decision or solution in a case.

2. Dispute Resolution regarding Violations of the Work Contract



The dispute resolution pattern in the field of work contracts has been determined in the work contract. In article 21 of the work contract made between the government of the Republic of Indonesia and PT Newmont Nusa Tenggara, two ways of resolving disputes that arise are determined, namely through conciliation and arbitration. Conciliation is an effort to bring together the wishes of disputing parties to reach agreement and resolve the dispute. The conciliation applied in resolving this dispute will take place in accordance with UNCITRAL regulations in resolution 35/52 approved by the United Nations General Assembly on December 4, 1980. entitled "Conciliation Rule of the United Nations Commission on the International Trade Law" meanwhile the arbitration rules used in resolving this dispute are the UNCITRAL Arbitration rules contained in resolution number 31/98, approved by the UN on 15 December 1976 entitled "Arbitration Rules of the United Nation Commission on International Trade Law" meanwhile the language used in resolving this dispute is English.

The reasons for using arbitration settlement are:

- 1) Quick turnaround;
- 2) Confidentiality is maintained;
- 3) Lower costs;
- 4) Freedom, trust and security;
- 5) Expertise;
- 6) Sensitivity of the arbitrator; And
- 7) Implementation of decisions is younger.

Resolving disputes or problems as above is commonly referred to as using ADR (Alternative Dispute Resolution). In Indonesia, provisions regarding ADR have been regulated in Law Number 30 of 1999 concerning alternative dispute resolution arbitration.

3. Settlement of Disputes Regarding Violations in Production Sharing Contracts (KPS)

In Article 22 of the PSA Law of Russia, a method for resolving disputes that arise between the Russian government and investors in relation to the implementation of production sharing contracts is determined. This provision stipulates that dispute resolution will be through Russian courts or international arbitration based in Paris. In article 29 of the Pakistan Offshore Production Sharing Agreement Model, two patterns have been determined in resolving disputes that occur between Government Holdings (PVT) Limited Pakistan and contractors, these two patterns include:

- 1) Conciliation; And
- 2) arbitration.

Conciliation is regulated in article 33 paragraph (1) of the United Nations and The International Chamber of Commerce (ICC), conciliation is an attempt to bring together the wishes of disputing parties to reach an agreement and resolve the dispute, whereas according to Oppenheim conciliation is a process of resolving disputes by submitting them to a commission of people tasked with describing or explaining the facts and (usually after listening to the parties to try to reach an agreement), making recommendations for a solution, but these decisions are not binding. (Huala Adolf and Chanderawulan, 1995: 186)

The essence of conciliation as stated above is the resolution of disputes to a commission and the decisions made by the commission are not binding on the parties. This means that the parties can agree or reject the contents of the decision. Conciliation is regulated in articles 29.1 to 29.2 of the Pakistan Offshore Production Sharing Agreement Model. In the article it is determined that the parties will use the best means to end peacefully all disputes, damages, differences of opinion regarding the terminology, interpretation and implementation of the contract. The parties can appoint an expert to resolve the dispute. The requirements for an expert are:

- 1) Independent and impartial;
- 2) Have international qualifications and experience;
- 3) have no conflict of interest over nationality, personal relationships or due to commercial considerations with any of the parties;

An appointed expert will act as an expert and his decision will be binding on both parties. The costs and expenses of an expert will be borne jointly by all parties. There are two provisions used by the parties in resolving disputes by arbitration, namely:

- 1) International Center for Settlement of Investment Disputes (ICSID); And
- 2) the Rules of Arbitration of the International Chamber of Commerce (the "Chamber Rules")

The International Center for Settlement of Investment Dispute (ICSID) is an arbitration institution whose function is to resolve foreign investment disputes between countries and citizens of other countries. The formation of this institution was initiated by the world bank and established on October 14 1966 in the United States with its head office in Washington, United States. The use of this provision is based on considerations because the conciliation

method cannot be resolved peacefully by the parties, relating to questions, debates, conflicts or complaints regarding damages, compensation from the parties relating to the terms of this agreement. ICSID's jurisdiction concerns disputes that directly arise from investment between countries participating in the convention or contracting states. Article 293 applies only to disputes between interest owners and foreign workers, between interest owners, foreign workers and the President. Disputes involving Pakistani companies or Pakistani companies and the President, Arbitration will be conducted according to the Arbitration Act of 1940.

Mediation is a dispute resolution through a third party, which can be an individual (businessman) or an institution or professional or trade organization. The mediator will actively participate in the mediation process, in the Ecuador Production Sharing Contract only one provision regulates the pattern of dispute resolution using mediation institutions, namely article 21.1, while the rest regulates dispute resolution by arbitration institutions, it is further stipulated that if the parties do not agree on the implementation of the contract This, the parties can ask the mediator. Regarding the mediator's methods of resolving disputes, the provisions do not explain in full the essence of resolving disputes through mediation institutions is resolving disputes using parties. The condition is that the third party must be neutral.

If the parties cannot resolve the problem through mediation, the parties can bring the problem to an arbitration institution as regulated in the international Center for the Settlement of Differences Relating to Investments (CIADI). In article 21.2.1. up to 21.2.6 Ecuador's Production Sharing Contract regulates matters of a general nature. These things are presented below:

- 1) The place of arbitration is the city of Quito;
- 2) The law used is based on the law applicable in Ecuador;
- 3) The language used is Spanish;
- 4) The parties involved in the issue can request and withdraw the same issue;
- 5) The arbitrators are given the authority to take preventive measures and request assistance from authorized officials for the execution process;
- 6) The honorarium for the arbitrators is paid in United States dollars.

In Law number 22 of 2001 concerning Oil and Gas, we do not find any article that regulates dispute resolution, if there is a dispute between the Implementing Agency and the Business Entity or Permanent Establishment regarding the substance of the Production Sharing contract. The dispute resolution pattern has been determined and stated in the production sharing contract made by the parties. We can find this dispute resolution pattern in the contract standards regarding production sharing contracts made between Pertamina and contractors. This is outlined in section

This consultation is regulated in section XI.1. Consultations between Pertamina and contractors can be carried out at certain periods or times, the aim of which is to:

- 1) discuss developments in oil and gas operations;
- 2) make new considerations or new policies; and or
- 3) possible risks that will be faced in the future.

The dispute resolution pattern regulated in section XI.2 can be carried out in two stages, namely the peace and arbitration stages. In the peace stage, the parties must explain and discuss the disputes that arise between them, they look at the interpretation of the substance of the contract and the implementation of the contract, they still try to resolve the issue peacefully if Pertamina and the contractor cannot resolve it through arbitration. Dispute resolution patterns It is stated in the contract standards regarding production sharing contracts made by BP Migas and contractors that disputes arise between BP Migas and the reason that BP Migas or contractors cannot carry out their performance properly in accordance with the substance of the production sharing contract made by the parties.

The International Chamber of Commerce (ICC) is an institution based in Paris, namely a non-profit organization whose function is to increase world trade cooperation, oppose protectionism, and set international trade standards through increasing broad international economic policies, reducing trade obstacles. internationally as well as various means for exchanging views or ideas between entrepreneurs, apart from that the ICC provides business services through organs or institutions, one of which is the Court of Arbitration (arbitration court) in Paris, which was formed in 1923.

The procedures that must be followed by parties wishing to resolve disputes through the ICC arbitration institution are as follows:

1. Submission of request
Requests can be submitted directly or through the national commission to the arbitration secretariat (article 3 paragraph 1).
2. Secretariat
The Secretariat will send this lawsuit document to the defendant to answer accordingly (article 3 paragraph 3).



3. Defendant's answer

Within 30 days of receipt of the lawsuit documents, the defendant must make comments regarding the number of arbitrators, selection procedures and their appointment. At the same time, you must make a rebuttal and complete it with relevant documents. Within the same time limit the proposal must also be sent to the secretariat. If the defendant fails to comply with these provisions, the secretariat will notify the arbitration body in accordance with the arbitration rules of the ICC.

4. Counter claim

If the defendant wishes to simultaneously submit a counterclaim at the same time (article 5 paragraph 2 arbitration rule of ICC) the defendant must also send such objection to the secretariat (article 5 paragraph 1 arbitration rule of ICC)

5. Inspection

The examination of the case by the arbitration judge is carried out immediately after the parties have fulfilled the preliminary requirements and procedures.

6. Decision

The examination will end with a decision being made in six months (article 18 arbitration rule of ICC). The decision signed by the judge will be notified to the parties by the secretariat.

The decision is final, the meaning of final is that the decision is the final decision and no appeal or cassation may be held as with the litigation process in the court process. In Law number 22 of 2001 the parties in a production sharing contract are the Implementing Agency and the Agency Business or Permanent Establishment, if there is a dispute between the two, the law used is Indonesian law because both parties are legal entities established according to Indonesian law and they are subject to Indonesian law, however, if there is a dispute between the permanent establishment and the implementing agency, the parties use regulations in the ICC because this permanent establishment is a foreign company operating in Indonesia.

There are 5 theories that discuss the law used in resolving disputes that occur between parties where the parties do not include the legal system used, these five theories are *lex loci contractus* (the law that applies, namely where the contract is signed), *lex fori* (the law where the judge who decides the case), *lex rea sit* (the applicable law is the law where the object of the contract is located), the most characteristic connection (the applicable law is the law that has characteristics in the contractual relationship), the proper law (the most appropriate law taking into account the objective and logical assuming the contract was made legally). (Munir Fuady, 2003: 57)

Although the production sharing contract model made between oil and gas companies and contractors has determined a dispute resolution pattern, namely by using mediation, conciliation, arbitration with reference to various international conventions, the model contract does not fully regulate procedures and conditions. in resolving disputes based on international conventions.

C. View of the Islamic Legal Concept regarding Oil and Gas Energy Mining.

The Islamic view regarding oil and gas energy as a product from within the earth whose results and use are for the welfare of the people in a country which is in line with the Islamic religion that things where the results or benefits can be used for the welfare of the people or society should naturally be managed by the state is not privatized so that its existence can always be stable and the public can use it at an affordable price. In fact, one day when the Prophet Muhammad SAW found that in a market there were people selling primary necessities at very high prices so that the community or people could not afford to buy them, the Prophet ordered his companions to regulate them so that the prices of primary necessities did not soar high. so that prices can be more adjusted to people's purchasing power.

General policies for the benefit, welfare and prosperity of the people must be carried out so that the values of needed commodities can be well controlled so that economic stability can be maintained in the life of the state because it is related to the main energy that is really needed by society. Energy needed by society The main thing is that oil and gas energy is a very important existence in a country, especially for Indonesia, whose economic level and needs really require oil and gas energy to support the pillars of national and national life. The government as the institution mandated to run the wheels of government should make policies relating to national energy, especially oil and natural gas energy, of course it must or at least provide benefits that can be felt by the Indonesian people. Therefore, as mandated in the law The 1945 Constitution concerns the economy and prosperity of the people, article 33 states that matters relating to the interests of the people are managed as well as possible so that they can be utilized for the Indonesian people in accordance with the 1945 Constitution.

Therefore, oil and gas energy as an agricultural commodity which is one of the pillars of the national economy should be managed by the state whose aim is to be used as well as possible for the welfare of the Indonesian people, supported by command policies that can optimize the use of energy sources. Indonesia's national oil and gas sector

appropriately, effectively, efficiently, comprehensively. As contained in the Qur'an, Surah Yunus and Surah Al Hadid, verse 25, it explains with generalizations how general interpretation regarding the natural conditions of the earth is presented for nothing other than that it can be utilized as well as possible. for the benefit of humans on this earth so that humans always think about the existence of Allah SWT, Surah Yunus verse 101: Say it! Pay attention to what is in space and what is on earth. and explanations and warnings are not useful for the believers. (H Oemar, 1984: 363).

Surah Al Hadid 25: Indeed, we have sent our messengers with clear information and we have sent down with them books and scales (of justice) so that people can establish justice. And we created iron which has great strength and many benefits for humans. And Allah wants to prove who helps Him and assists His messengers, even though Allah is not visible. Indeed, Allah is All-Powerful, All-Mighty.

From these two letters it is clear that everything in the earth and sky belongs to Allah SWT and in the bowels of the earth there are minerals in the form of iron. In the Science of Tafsir Al Qur'an there is such a thing as interpreting, namely one form of object can be analogous to another object in the womb. The verse above, which is written with the noun iron, can be explained more broadly, namely iron is a product excavated from mining, the meaning of excavated mining goods is that it can be expanded to include excavated products from the bowels of the earth with advances in technology and human science which currently continue to develop. So, minerals in the bowels of the earth can be found and utilized, not just iron but a variety of minerals, including oil and gas energy, which are the main commodities supporting the economy, especially for Indonesia.

Oil and gas is still the prima donna for the State Revenue Budget apart from other sectors. Reflecting on the Prophet's way of responding to events in the market, in Islam it is certain and proper that oil and natural gas energy must be managed and used for the benefit and welfare of society because of its role. and its existence as energy needed for the survival of the Indonesian nation and state.

3. CONCLUSION

In accordance with the discussions contained here, the author tries to conclude as is, so that it is hoped that the problem of Indonesia's national oil and gas energy policy will become clearer.

1. Dispute resolution for oil and gas energy issues can be resolved in 2 ways, the first through litigation and the second through non-litigation (outside of court) or what is often called alternative dispute resolution, each of which has unique characteristics in its implementation.
2. In Islamic law regarding oil and gas energy, it already exists but is still generalized or equated with iron as both minerals from the bowels of the earth, but its position and priority in Islam as an energy is taught in the Qur'an and As sunnah.

4. SUGGESTIONS

1. With regard to legal protection regarding oil and gas energy in Indonesia, clear and concrete regulations must be made so that implementation does not overlap and is in line with the 1945 Constitution, especially Article 33 and its implementation so that law enforcement can be enforced so that investors receive benefits. legal certainty.
2. In relation to resolving disputes in national oil and gas energy, both between government agencies, contractors and stakeholders in the world of mining, it must be adapted to current developments in the era of globalization without having to abandon the nation's identity as an independent nation and not dependent on the state other.

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