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# Juridicity of Oil and Gas Management in Indonesia as State Control Right (HMN)

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## ABSTRACT

The writing intends and aims as study material to find out the constitutional basis of oil and gas natural resources which are important and strategic for the right to control the state (HMN) for the greatest prosperity and welfare of the people. Materials and data in this writing were obtained both from the 1945 Constitution, the Oil and Gas Law, and other organic regulations relating to Oil and Gas, Oil and Gas Data in the relevant Ministries. Materials and data were also obtained through reference searches or literature that has relevance to this writing, namely in the form of books and laws and regulations related to the issues raised in this writing. Based on the results of material processing and data tracing of laws and regulations, policies, and references that are relevant to this writing, it is obtained, (1) the state's right to control oil and gas as an important resource and strategy for major contributions to the state budget, national development, and livelihood people

**Keywords:** “The right to control the state, constitutionality, prosperity and welfare”

## 1. INTRODUCTION

Natural resources (SDA) which have strategic value owned by the Indonesian nation as constitutionally listed in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI '45) are the most likely basis for creating prosperity and prosperity for the Indonesian people . The constitutional content of the articles in this constitution is the hope for the Indonesian people as a constitutional right, and on the other hand it is a constitutional obligation for the government in the context of creating welfare and prosperity for the Indonesian people (bestuurszorg).

One of the strategic natural resources owned by the Indonesian nation is oil and natural gas (oil and gas). Oil and gas is a strategic natural resource because of its benefits and uses for the life of the Indonesian people in general, especially for energy needs. However, it needs to be understood together, that oil and gas on the other hand has limitations, and of course as a non-renewable natural resource. For this legal reasoning, it is important that it is directly controlled by the state, so that its management is expected to optimally

provide prosperity and welfare for all Indonesian people [1].

Tracing legal history shows that oil and gas in Indonesia, its legality can be found in Law Number 44/Prp of 1960 concerning Oil and Gas Mining, and Law Number 22 of 2001 concerning Oil and Gas. The two laws mentioned legally have similarities, and differences which of course affect the legal political direction of oil and gas management policies. The direction of oil and gas management policy in this law, *mutatis mutandis*, also has different legal consequences in oil and gas management according to the time it was in force [2].

The legal history approach to regulation of upstream oil and gas business activities in general can be divided into 3 (three) different periods. First, the upstream oil and gas business activities during the 1960 Oil and Gas Law, second, the enactment of the 2001 Oil and Gas Law, and third, based on the Constitutional Court Decision Number 32/PUU.X/2012 dated 13 November 2012 until now. Comparing these three laws can be stated as in Article 1 letter h of the Oil and Gas Law of 1960, which determines the general provisions for mining concessions, or mining concessions (KP). In legal terminology, this KP is the authority of the state to the party appointed as the recipient of the authority to carry out its business activities in the utilization of oil

and gas, and is an effective and efficient provision.

Oil and gas as one of the natural resources is an important and strategic wealth of the nation, fulfilling national energy needs. Oil and gas is a legal object that generates benefits in order to finance national development, and to this day, oil and gas lifting is still the basis for the state budget. It can be said, oil and gas since Indonesia's independence, until now has become the main source of the Indonesian economy. Oil and gas is an important and strategic production branch, as the main source of energy that controls the lives of many people. This basically can be found legally in the Oil and Gas Law of 1960, and Government Regulation in Lieu of Law Number 44 of 1960. However, a fundamental change is needed in accordance with current developments to replace the *Indische Mijnewet Staatsblad 1899 No. 214 jo. Staatsblad 1960 No. 434* as a Dutch colonial provision that is no longer relevant today. The 1960 Oil and Gas Law was valid until the birth of the 2001 Oil and Gas Law in the reform era.

The factual reason in the consideration of the 2001 Oil and Gas Law explicitly states that reform is a factor that is expected to be able to direct national development so that it can achieve more prosperity for all Indonesian people. Thus, oil and gas requires reform in accordance with its role

as one of the important and strategic natural resources to provide added value for national economic growth. The factual basis for considering this reform period is the Oil and Gas Law 1960, Law 15 of 1962 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 1962 concerning Obligations of Oil Companies to Meet Domestic Needs, and Law Number 8 of 1971 concerning Oil Companies. The State Oil and Gas Mining needs to be replaced. This is because it is not in accordance with the conditions at this

## 2. DISCUSSION

Prosperity and welfare of the people are constitutionally the obligation of the state, which in this case is the government as the executor of state administration. The government as referred to in Paragraph IV of the 1945 Constitution of the Republic of Indonesia is obliged to create the welfare and prosperity of the people. Likewise, the relation in this case is Chapter I of the 1945 Constitution concerning form and sovereignty, in Article 1 Paragraph (2), determines constitutionally that sovereignty is in the hands of the people and implemented according to the Constitution [4]. The concept of popular sovereignty, in accordance with the Indonesian constitution, is also implemented by modern democratic countries. J.J Rosseau, who is known as a thinker on popular sovereignty, believes that the king who rules only as a representative

time. The legislators consider the need for new provisions that can create oil and gas business activities that are independent, reliable, transparent, competitive, efficient and environmentally sound, and develop development and a national role [3]. In accordance with the juridical and factual basis as stated above, the problem in this paper is the constitutional basis for oil and gas natural resources which is important and strategic for the right to control the state (HMN) for the greatest prosperity and welfare of the people.

of the people, while full sovereignty is in the hands of the people and cannot be shared with the government. This opinion has become a strong theoretical basis for many countries, so that it can be said that the 20th century was the century of popular sovereignty [5].

With this people's sovereignty, the people who are sovereign, however, represent their power to the state. The state then divides or separates power into legislative, executive and judicial institutions. Sovereignty of the people as the general will (*volonte generale*) by Rousseau [6]. The king rules as a representative, but full sovereignty is in the hands of the people, and cannot be shared with the government. Sovereignty as one of the conditions for the establishment of a state. The condition for the establishment of a country is the

existence of a sovereign government, so that in this way, the government in a country must have supreme and unlimited authority [7].

The Constitution in Indonesia explicitly stipulates that the independence of the Indonesian nation is compiled in a Constitution of the Republic of Indonesia which is formed in an Indonesian state structure which is people's sovereignty based on Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity and Democracy led by by the wisdom of representation and by realizing social justice for all Indonesian people. In this regard, Chapter I of the Preamble of the 1945 Constitution concerning form and sovereignty, Article 1 Paragraph (2) and (3) stipulate [8], Sovereignty is in the hands of the people and implemented according to the Constitution, and the State of Indonesia is a state of law.

Subsequent provisions constitutionally determine that the power of state government is exercised and held by the president [9], as the personification of the implementation of state sovereignty originating from people's sovereignty. The basis of legality in laws for the government is legislation by the DPR as regulatory, budgeting authority, and control (controlling) [10]. The President in carrying out laws is given the authority to issue

government regulations to implement laws as they should [11].

### *2.1. State Sovereignty*

The state carries out its duties and functions, and its authority must have a juridical basis, legality and legitimacy. This is the legal basis for the government in acting to determine policy directions, realizing state goals, as state sovereignty [12]. The word "state" has been used since the days of Ancient Greece, where in Aristotle's (384-322 BC) *Politica*, the notion of the state has been used, as a union of families and villages to achieve the best possible life [13]. The term polis refers to a city-state, which functions as a place where citizens live together with the government, and is a stronghold for security against enemy attacks [14]. State by Aristotle occurs by the natural nature of each individual as a social being to live together [15].

The development of the modern state by George Jellinek states as an organization of power from a group of people who have inhabited a certain territory [16]. George Wilhelm Friedrich Hegel himself saw the state as a moral organization that emerged as a synthesis, namely individual freedom and universal freedom. The state according to Roelof Krannenburg from his point of view as an organization which arises because of the will of a group, or by its own nation [17]. Compare also with the opinion put forward by Roger H. Soltau, the state is a

means, or as a regulatory authority, controlling common problems on behalf of its people [18].

R. Djokosoetono put forward the state as a human organization, which is under the same government [19]. Soenarko argues that the state is a community organization that has a certain area, whose power is fully applied as a sovereignty. With regard to the area is meant as an area with certain boundaries, both because of nature, and based on international agreements [20]. The state is a collection of people according to Padmo Wahyono's opinion who agree to unite and submit themselves in an organization according to the agreed law. Independent territory that is recognized by other countries, and has sovereignty [21].

## 2.2. *Juridicity of Oil and Gas*

According to R.P Kosoemadinata, oil and gas is a common opinion in society, which was previously called kerosene (oil that comes from the ground). Kerosene/crude oil (petroleum, from the word petro which means rock, and oleum means oil), which is found with natural gas, is called oil and gas (oil and gas) [24]. Oil and gas as a non-renewable natural resource is a fuel which means one of the most important sources of energy for human life.

Indonesia has large natural resources, one of which is oil and gas. Mastering the livelihood of many people, and is an important and strategic resource in

Still in line with Bagir Manan's opinion, the state is an agency (lichaam), and its government is a means of completeness of the state (organan). The state (public legal entity, *publiek rechtspersoon*) or the government which is an organ of the state [22]. Based on the various thoughts or doctrines of these experts, the state is the highest organization that has common goals, certain areas, is based on law, has a government, and its existence is recognized by other countries. The state with its territory and power has requirements, namely primary (people, territory and sovereign government). This requirement is a unified terminology, and if one of the conditions is not met, then the meaning as a state is incomplete [23] development. This link with the strategic importance of oil and gas, so that it is controlled by the state, provides prosperity and welfare for the people [25]. Oil and gas plays a role as added value in national economic growth [26]. The Reserve Replacement Ratio (RRR) in 2019, which is a measure of oil and gas reserves, is 188% from the previous target of 100%. Oil and gas lifting is 1,899 thousand BOEPD, equivalent to 95 of the 2018 state budget target of 2,000 BOEPD. The realization of oil lifting is 742 thousand BOPD, equivalent to 93% of the 2018 State Budget target, which is 800 thousand BOPD. The realization of natural gas lifting is 1,157

thousand BOEPD, equivalent to 96% of the 2018 State Budget target, namely 1,200 thousand BOEPD. The return on operating costs (cost recovery) is US \$ 3.5 billion, equivalent to 35% of the 2018 state budget target, namely US \$ US \$ 10.1 billion (unaudited). Oil and gas investment of US \$ 3.2 billion is equivalent to 23% of the 2018 target of US \$ 14.2 billion. Upstream oil and gas revenues of US\$ 5.5 billion are equivalent to 46% of the 2018 State Budget target of US\$ 11.9 billion [27].

The data above shows the size or important role, and the strategic role of oil and gas as one of the natural resources in Indonesia, which in the context of the constitution is controlled by the state and used as much as possible for the welfare and prosperity of the people. Oil and gas is an important and strategic natural resource concerning the livelihoods of many people which constitutionally must be used fairly as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia [28].

Law Number 22 of 2001 concerning Oil and Gas states, Petroleum is the result of natural processes in the form of hydrocarbons which under atmospheric pressure and temperature conditions are in the form of liquid or solid phases, including asphalt, mineral wax or ozokerite, and bitumen obtained from the mining process. , but does not include coal or other solid

hydrocarbon deposits obtained from activities not related to oil and gas business activities. Natural gas is the result of a natural process in the form of hydrocarbons which, under conditions of atmospheric pressure and temperature, are in the form of a gas phase obtained from the mining process of oil and natural gas.

Oil and gas in this case has a strategic and important function as the second consideration of the Oil and Gas Law. It was stated, Oil and natural gas have a very important function for the development of a just and prosperous society, compared to other mineral materials. Oil and natural gas production are production branches that are very important for the state and affect the livelihood of many people, both directly and indirectly. Oil and natural gas have a special meaning for national defense. Included in this case, oil and gas contain international aspects.

In consideration of the Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law 2001) it is said that national development must be directed towards the realization of people's welfare by carrying out reforms in all areas of national and state life based on Pancasila and the 1945 Constitution. Oil and natural gas is a non-renewable strategic natural resource controlled by the state and is a vital commodity that controls the livelihoods of many people and has an

important role in the national economy so that its management must be able to optimally provide people's prosperity and welfare. Oil and gas business activities have an important role in providing real added value to an increasing and sustainable national economic growth.

The Indonesian people through the state have an important and strategic role in managing oil and gas, especially with regard to state revenues in the state budget, of course apart from oil and gas sector tax revenues. Oil and gas as a natural resource that belongs to the Indonesian people and is controlled by the state is the main source of energy needs, both for development and for society in general. Nevertheless, oil and gas revenues have continuously decreased in quantity, and at the same time oil and gas demand has increased. Even so, the strategic position of oil and gas still has a major influence on the existence of the nation [29].

Article 33 Paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, especially Paragraph (2) emphasize that the state controls and production branches which are important to the state and which affect the livelihoods of many people. Paragraph (3) of article 33 the important point is that the state controls the land, water and the natural resources contained therein, and this control is intended to be used as much as possible for the prosperity of the people. Article 33 UUD

NRI '45 terminologically in the constitution is natural resources belonging to all Indonesian people [30]. Oil and gas as important and strategic natural resources belong to the people of Indonesia, and are controlled by the state. where the right to control this country is used for the common interest in the form of welfare for all Indonesian people. In other words, the constitutional meaning of the state's right to control cannot be left to the workings of the market mechanism, because this important and strategic natural resource can be controlled and controlled by the market which has an impact on people's lives, including the state which in the end is controlled by only a handful of people [31].

The elucidation of the 1960 Oil and Gas Law explicitly states that oil and gas is a gift from God, given specifically to the nations that He wills, because not all countries have oil and gas wealth in the earth where it is located. Oil and gas must be used in a responsible way. Oil and gas is a necessity of life for humans (the people), and is the main support in development to achieve prosperity for all people. The state with all the sovereign attributes it bears must go directly and take responsibility.

The general elucidation of the 1960 Oil and Gas Law also explicitly states that the use of oil and gas should not be left to the free market because if this vital and strategic oil and gas is handed over to the

market, where the state and people's needs are controlled by the market. The adage "who controls oil and gas controls the country" is not wrong. That is, a state that fails to take care of oil and gas, thus, oil and gas becomes a source of disaster for the nation [32].

In accordance with the provisions of Article 33 Paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, there are legal instruments (legality) related to the right to control the state (HMN), with the implementation of the

### 3. AUTHOR'S CONTRIBUTION

The contributions of those of us involved in the process of making this scientific article are as follows.

1. Hasnawi Haris: conducted initial observations of the object of research with the aim of obtaining basic information regarding the issues to be examined within the jurisdiction of oil and gas management in Indonesia as the state's right to control.
2. Nurharsya Hanafie: conducted initial observations of the object of research with the aim of obtaining basic information regarding the issues to be examined within the jurisdiction of oil and gas management in Indonesia as the state's right to control. Furthermore, the authors conducted preliminary research by collecting research-related references.
3. Herman: conducted initial observations of research objects with the aim of obtaining

oil and gas business by the state as an important production branch and control the people's lives [33]. The legal instrument is the oil and gas mining power of attorney (KP) [34]. The state is a public legal entity that holds the right to control oil and gas, surrender its authority in carrying out activities, and utilize oil and gas, namely handing over its authority to the legal subject receiving the KP. Legal subjects who carry out direct authority. This legally means, KP is a derivative of HMN for oil and gas [35]

basic information regarding the issues to be examined within the scope of jurisdiction of oil and gas management in Indonesia as the state's right to control. Furthermore, the authors conducted preliminary research by collecting research-related references. then, conduct an in-depth analysis by dissecting laws which then look for problem points in oil and gas management.

4. Syarifuddin: conduct initial observations of research objects with the aim of obtaining basic information regarding the issues to be examined within the jurisdiction of oil and gas management in Indonesia as the state's right to control. Furthermore, the authors conducted preliminary research by collecting research-related references. then, conduct an in-depth analysis by dissecting laws which then look for problem points in oil and gas management.

Then then formulate a comprehensive analysis so that the results of the research can be concluded.

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