



Reconstruction of 10% Interest Participation Management Based on the Economic Democracy System

Alfian Nur Salsabila

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jalan Ir. Sutami 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
alfiannursalsabila@gmail.com

I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jalan Ir. Sutami 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
ayu_igk@staff.uns.ac.id

Lego Karjoko

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jalan Ir. Sutami 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
legokarjoko@staff.uns.ac.id

Abstract—This research aims to identify the arrangements and reconstruction of the management of 10% interest participation in the oil and gas sector. The formulation of the problem studied is how to reconstruct the management of interest participation in the oil and natural gas sector by regionally owned business entities (BUMD) that is fair and in line with the economic democracy system. The research method used a normative legal research. The results of the research show that the current regulation regarding the management of 10% interest participation has not been implemented optimally and comprehensively, so that by reconstructing the management of interest participation to be more integrative and in line with the economic democracy system, it will have positive implications for regions where exploration and exploitation activities have been carried out. Reconstruction of the management of interest participation will be more equitable for oil and gas producing regions and prioritize joint efforts based on the principle of kinship for the prosperity of the people.

Keywords—*Reconstruction, Interest Participation, Management, Economic Democracy System*

I. INTRODUCTION

As non-renewable resources, the preservation of oil and natural gas (oil and gas) are foremost for the monetary security of the world and society and is the main driving force for the petrochemical business [1]. Indonesia is a country which promising oil and gas wealth. In 2022, Indonesia's reserved petroleum which is recorded at 4.17 MMSTB (Million Stock Tank Barrel) and it's gas reserved at 54.83 TSCF (Trillion Standard Cubic Feet) [2]. Meanwhile, Indonesia still also has 20.39 potential basins that can be offered to investors. The implication is that on a macro and micro scale, an immense effect on the economy of the country is imminent [3].

These potential basins will later be carried out by exploration and exploitation activities by contractors to prove whether or not they have the potential to contain new oil and gas reserved. It is recorded that in 2022, 84 (eighty four) contractors have become implementers of oil and gas exploration and exploitation in Indonesia with an average of 612,418 BOPD (Barrel of Oil Per Day) [2]. This attainment is close to production results in 2021 which is 658,540 BOPD [4].

Apart from this, Indonesia also has succeeded in trading oil and gas overseas. Regarding exports of liquefied natural gas (LNG), Indonesia exports LNG with a total export volume of 444,014,485 MMBTU (Million British Thermal Units) in 2022 with the main destinations such as China, the Republic of Korea and Japan [2].

Indonesia's potential in managing the oil and gas sector and it's success deserve appreciation, because it has boosted the country's economy. This success should circumstantially has a positive impact on the area where the exploration is conducted and exploitation itself. As it is known, oil and gas as a non-renewable strategic natural resource contained within Indonesia's mining jurisdiction is a national wealth controlled by the state, which in this case is managed by the Central Government.

In this case, the provincial government plays a part, despite the fact that they are not more dominant than the focal government in regards to the administration of oil and gas in their area. Provincial legislatures cannot figure out which lawful subjects or financial backers can be given positions to investigate and take advantage of oil and gas in their area, including declaring themselves. However, the Central Government, the Regional Government will be given a Profit Sharing Fund and Interest Participation Offer (IP) of 10% in the upstream oil and gas industry. In this deliberation, the focus is on managing 10% interest participation by the Regional Government.

IP is the right of the working area to receive a share of management by the contractor based on the operating agreement with a specified percentage [5]. IP takes the form of participation of business entities including Regional Owned Enterprises (BUMD) and permanent business forms in upstream oil and gas management through the transfer of IP [6].

Followed by the issuance of Regulation of the Minister of Energy and Mineral Resources Number 37 of 2016 concerning Provisions for Offering Participating Interest of 10% (Ten Percent) in Oil and Gas Working Areas, regulating the ability to accommodate BUMD participation a maximum of 10% (ten percent) in IP after the Cooperation Contract (KKS) is signed. This is confirmed in Article 2 of Regulation of the Minister of Energy and Mineral Resources Number 37 of 2016, which states that: "*Since the approval of the field development plan, the first field to be produced will be located on land and/or offshore waters up to 12 (twelve) nautical miles of a Working Area, Contractors are required to offer 10% IP to BUMD.*"

Based on the explanation, the contribution of BUMD, which is a provincial delegation in the oil and gas sector whose management is through IP 10%, can actually provide many benefits, including generating capital income for BUMD so that it will increase regional income. Apart from that, BUMD can also obtain information and be involved in supervising oil and gas blocks as project workers. In fact, not everything has been implemented well as it is stated in the Minister of Energy and Mineral Assets Number 37 of 2016.

This happened to the Regional Government of Bangkalan Regency which has not received benefits from the presence of one of the contractors, PT Pertamina Hulu Energi West Madura Offshore (PT PHE WMO) for the oil and gas management it carries out in the Bangkalan Regency work area [7]. In fact, SKK Migas on August 15 2018 sent a letter to PT PHE WMO to make a 10% IP offer which contained a notification so that PT PHE WMO could carry it out 60 days after the letter was received.

However, on September 14, 2022, was the signing of the opening of the data room between the Director General of Oil and Gas, Ministry of Energy and Mineral Resources, PT PHE WMO, PT Petrogas Jatim Utama as BUMD which belongs to the Provincial Government of East Java, and PT Petrogas Jatim Adipoday as BUMD which belongs to the Regional Government of Bangkalan Regency, focuses on managing 10% IP in accordance with the mandate of Regulation of the Minister of Energy and Mineral Resources Number 37 of 2016.

Based on this, non-compliance was discovered by a number of contractors who did not make 10% IP offers to the East Java Provincial Government and the Bangkalan Regency Regional Government within the specified time period [7]. This is a loss for the East Java Provincial Government and the Bangkalan Regency Regional Government, because the contractor did not comply with the 10% IP offer, so that the East Java Provincial Government and Bangkalan Regency Regional Government did not obtain economic benefits from the exploration and exploitation carried out by the contractor so far.

Apart from this, the determination of the IP amount at 10% which is equalized for each exploration and exploitation for each Regional Government is considered less profitable and does not provide a fair effect for the region as the party that controls the work area where oil and gas exploration and exploitation is carried out. Mobil Cepu Ltd for example, in 2022, will produce an average of 165,891 BOPD, besides, Energy Equity Epic (Sengkang) Pty. Ltd., on average has produced 1 BOPD [2]. The provision of IP to regions by the two contractors is still subject to an offer of 10% to BUMD to express interest and approval for the management of the IP, even though the results and content of oil and gas that have been explored and exploited in an area are different.

Thus, it is deemed necessary to re-examine the 10% IP offering model that has been implemented at this time, so that equitable welfare and prosperity of the people can be realized through proportional IP management by BUMD based on the economic democracy system adopted by the Indonesian nation. According to Sri-Edi Swasono, building the people's economy requires 'partiality', an ideological attitude that takes sides to glorify the people's sovereignty. However, in developing the people's economy, taking sides is not the only justification. People's economic development is an appropriate strategy for developing the national economy [8].

II. LITERATURE REVIEW

A. Utility Theory

A principle of Jeremy Bentham's—the greatest happiness of the greatest number of people—became the technical term for utilitarianism. For individuals, this idea becomes the standard for both private behavior and public policy [9]. According to Jeremy Bentham, happiness is a moral or ethical activity that everyone can experience since happiness is a universal emotion that should be unbiased and accessible to all [10].

What tends to make people happier is that which is useful or appropriate for their particular interests. According to this, anything that contributes to make society's members happier is also in line with the interests of the community. All human life organization, including the formation of laws, must begin with this. Benefits to human happiness must be the foundation of all laws. If law can produce happiness, it is genuinely useful in promoting it [11].

B. Justice Theory

The importance of justice as the cornerstone of any legal system was reinstated by Gustav Radbruch. As a proponent of Neo-Kantianism who was greatly impacted by the Baden school, Radbruch attempted to resolve the conflict between "matter" and "form," or between Sein and Sollen. Sein and Sollen, "matter" and "form," are seen by Radbruch as two sides of the same coin. "Matter" enlarges "form," and "form" shields "matter." That is a fair way to sum up Radbruch's views on justice and the law. The "material" that legal regulations must contain is the value of justice. In the meantime, laws serve as a "form" that must defend the principles of justice [11].

As the guardian of the ideal of justice, law, in the opinion of Gustav Radbruch, serves as a gauge of the fairness of the legal system. Furthermore, the foundation of law as law is the value of justice. Justice is therefore a normative as well as a fundamental aspect of law. Because it serves as the transcendental precondition for all honorable positive laws, it is normative. It serves as both the moral cornerstone of the legal system and the standard for a just one. Positive law is derived from justice. It is also fundamental because, in order for a law to be a law, fairness must be a prerequisite. An ordinance does not have the right to become law if it is unjust [11].

C. Theory of Economic Democracy

As per Article 33 of the 1945 Constitution of the Republic of Indonesia, economic democracy is characterized by an economy that is grounded in the ideals of unity and kinship. Indonesian economic democracy that prioritizes societal interests through collectivism and community awareness. Society as a whole actively participates in economic development through economic democracy. An economic democracy bases its economic system on the idea of kindred, which includes the function of the government [12].

The principles of economic democracy are considered to be the outcome of the Indonesian nation's founding fathers' efforts to create a well-balanced democracy. To create a social structure that is based on the ideas of balanced democracy, the popular sovereignty principle must be combined with economic and political democracy. It is envisaged that in this way, a robust social democratic culture will emerge and serve as the social foundation for Indonesia's development. This democratic ideal, which is mutually desired, serves as the foundation for the formulation of numerous provisions pertaining to Indonesia's economic and social welfare [13].

III. RESULT AND DISCUSSION

The existence of the oil and gas sector is limited, but its role as the main energy source has not been replaced until today. The oil and gas sector continues to attract attention throughout the world, including Indonesia. Based on the spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia, since independence Indonesia has been determined to control the oil and gas sector to improve people's welfare. This is also the basis for implementing the oil and gas sector with the aim of providing a positive impact, especially economic benefits for parties in the sector.

The oil and gas sector will not be immediately abandoned, because this sector is also one of the main pillars of the Indonesian economy. The oil and gas sector, which was initially designed to produce maximum benefits in the form of state revenues which later develop into one of the engines driving supporting activities, such as banking, hotels, transportation and so on. This also has an impact on the regions where oil and gas exploration and exploitation activities are carried out.

IP is a scheme regulated by the State hence contractors can provide offers to regions, in this case the BUMD which has been appointed to be the manager of the IP. IP is an excellent opportunity for regions, because it invites regions to play their role in the oil and gas sector [14]. Current arrangements, as regulated in Regulation of the Minister of Energy and Mineral Resources Number 37 of 2016 *jo*. Decree of the Minister of Energy and Mineral Resources Number 223.K/MG.01/MEM.M/2022 concerning Implementing Provisions for Offering Participating Interest of 10% (Ten Percent) to BUMD in Oil and Gas Working Areas is 10% of cooperation contract mutually agreed between the contractor and BUMD.

In this regard, it appears that the regulations are in accordance with Article 33 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which explains that "*The economy is structured as a joint venture based on the principle of kinship*". This is a trigger so that the Indonesian nation's economic activities are always based on joint efforts based on the principle of kinship.

This statement is in line with Mubyarto's opinion that the people's economic system is Indonesia's national economic system which is based on kinship, people's sovereignty, has Pancasila morals, and shows serious support for the people's economy. The prosperity of society takes priority over the prosperity of individual people [14].

In this regard, people's prosperity in managing IP can be realized if it is based on:

A. Regional Seriousness in Managing IP

As explained above, it has been proven that PT PHE WMO has not carried out compliance in making IP offers to BUMDs which have been appointed to manage IP in the 2018-2023 time period. This is of course very detrimental for the region, because it does not receive economic benefits for BUMD which can be transformed into various forms of programs aimed at improving the welfare and prosperity of the people.

Based on this, it can be seen that the regions, in this case BUMDs, are lacking in emphasizing and following up on oil and gas exploration and exploitation activities in their working areas. Of course, if this is not followed up immediately, it will have a negative impact on the region, because it will not be able to obtain its right to manage IP through the BUMD that has been determined.

This also happened in Sumenep Regency, where the BUMD that had been appointed to manage IP was the Sumekar Regional Company. The management of IP has been carried out since 2018, but until now there has been no clarity, because there is no understanding regarding its economic value [7].

Within this long period of time, supervision and coordination should be carried out regularly and intensely in order problems that have not yet been solved can find a mutually beneficial meeting point between the parties, in this case, between the regions through BUMD and contractors.

Apart from this, management in the oil and gas sector can be seen that there are still many foreign investors carrying out exploration and exploitation in Indonesia. This is because in reality efforts to transform potential economic power into real economic power cannot be fully implemented with one's own strength. Several obstacles such as low levels of public savings, capital accumulation that is not yet effective and efficient, inadequate skills, management capabilities and technology often create gaps between needs [16].

Therefore, by participating in BUMD in the oil and gas sector, it is hoped that they will be able to gain knowledge, apply it and later it can be a provision to be able to manage the oil and gas potential in their region. This is like Kutai Kartanegara (Kukar) through PT Mahakam Gate Raja Migas (MGRM), Samarinda through PD Warehousing and Various Businesses (PDPAU), Balikpapan through Perumda Manuntung Sukses, Bontang through Perusda Various Businesses and Services (AUJ), and PPU through Perumda Benuo Taka Energy (PBTE) [7].

B. Proportionality of IP Amount with Regional Oil and Gas Potential

As explained at the beginning, based on Regulation of the Minister of Energy and Mineral Resources Number 37 of 2016 *jo.* Decree of the Minister of Energy and Mineral Resources Number 223.K/MG.01/MEM.M/2022 concerning Implementing Provisions for Offering Participating Interest of 10% (Ten Percent) to BUMD in Oil and Gas Working Areas, the amount of the IP value offered by the contractor to the region, in this case the BUMD is 10% of the cooperation contract mutually agreed between the contractor and the BUMD.

This was done without considering the different oil and gas potential in each region. This means that the 10% value is determined to apply generally to an area where, after exploration and exploitation activities, abundant or minimal oil and gas potential is found. This tends to result in injustice in terms of acceptance of IP management for regions with abundant potential to utilize their oil and gas resources to improve the welfare of the people within the geographical area of the BUMD.

In this term, it would be better if the amount of IP management could be adjusted based on the principle of proportionality related to the potential or not of an area where oil and gas exploration and exploitation activities have been carried out. This means that the IP amount is not fixed at 10% and can change according to the potential or not of the area. The principle of proportionality can provide minimum and maximum limits on the value that can be proposed by regions by considering the principle of mutual benefit for the parties.

As explained in the previous discussion, the Regional Government through the BUMD that was formed is given the authority to manage IP 10% of exploration and exploitation activities in the oil and gas sector carried out by contractors with the hope that there will be a symbiotic mutualism between the contractor and the Regional Government as the party that controls the oil and gas sector work area. done. The aim of managing this IP is to provide positive benefits, especially in the economic aspect, to communities located in the geographical area of the Regional Government.

Regarding the current management of the 10% IP to the Regional Government, it reflects, although not fully, the economic democratic system agreed upon as the economic system of the Indonesian nation. This is as explained in the two factors that should be implemented so that IP management can be directed towards people's prosperity.

IP management by considering these two factors will also be in accordance with Mohammad Hatta's thoughts, which stated that all people's economies must be based on cooperatives. On the basis of this cooperative, little by little the people's economy can be improved until it is established as the foundation of the Indonesian economy. The principles are: (a) an economy with a social character; (b) want cooperation; (c) work together; (d) democratic in nature; (e) based on kinship; (f) for humanitarian purposes; and (g) developing economic people to improve people's welfare [17].

With this firmness, it is hoped that the development of economic law, especially in terms of IP management in the oil and gas sector, can produce economic legislation that not only serves the free market and responds to the desires of conglomerates or transnational companies, but prioritizes the principle of kinship (*ukhuwah*) or brotherhood) for the prosperity of the people [18].

IV. CONCLUSION

Reconstructing the management of interest participation in the oil and gas sector by BUMD which is fair and in line with the economic democracy system can be carried out by implementing: (a) regional seriousness in managing IP; and (b) proportionality of the IP amount to the oil and gas potential of the region. If these two factors are implemented correctly and according to the objectives, then IP management will be more equitable for oil and gas producing regions and in accordance with the economic democracy system, namely prioritizing joint efforts based on the principle of kinship for the prosperity of the people.

This means that oil and gas producing regions will be able to obtain the amount of IP management that is in accordance with the potential of oil and gas resources in their working area, and the results of the IP acquisition can then be managed well and wisely by the BUMD which has been appointed to accelerate development, social equality and prosperity people who are in the geographical area of the BUMD.

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