



## Authority of the aceh oil and gas management agency in the design of oil and gas revenue sharing contracts

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### Abstract

Article 33 paragraph (3) of the 1945 Constitution which reads, "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people" This Law gave birth to Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh in the formulation of Article 33 paragraph (3) of the 1945 Constitution there are several concepts of state control, The branches of production that are important and control the livelihood of the people, namely: the earth, water and the natural resources contained in it (Natural Resources) are controlled by the state, and are used to the greatest extent for the prosperity of the people. The Aceh Oil and Gas Management Agency (BPMA) is a Government Agency formed to carry out Management, as the Gross Split Profit Sharing Contract was introduced by the Government of Indonesia with the Regulation of the Minister of Energy and Mineral Resources No. 8 of 2017 concerning Gross Split Profit Sharing Contracts. Then, several articles were amended by the Minister of Energy and Mineral Resources Regulation No. 52 of 2017 concerning Amendments to the Regulation of the Minister of Energy and Mineral Resources No. 8 of 2017 concerning Gross Split Profit Sharing Contracts which is the first fundamental change made by the Government of Indonesia after decades of using the conventional profit sharing contract mechanism that uses *the Cost Recovery mechanism*.

Various problems also arise in relation to the use of profit-sharing contracts. Problems such as the complexity of bureaucracy and transparency of *the Cost Recovery mechanism*, low investment in exploration and exploitation activities are natural factors such as the decline in the production rate of large wells that are mature (old) in Indonesia making the Government seem forced to look for other alternatives to profitsharing contracts which from this gave birth to the Aceh Government regulation on a special mandate for the Joint Management of Oil Natural Resources and Natural Gas in Aceh is based on Article 160 of Law Number 11 of 2006 concerning the Government of Aceh (UUPA) and Government Regulation No. 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh. Aceh Province has authority through the formation of a Special Agency, namely the Aceh Oil and Gas Management Agency (BPMA) The research method used in this study is a type of normative juridical research, the data obtained is primary data through a comparison of contract models based on the identity and authority of the Aceh Special Authority based on the Aceh Government Law and secondary data through literature research.

Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh as a determination of the Profit Sharing contract can also affect the authority of BPMA as an oil and gas manager in Aceh which must be in line with several legal sources: Constitution of the Republic of Indonesia Article 33 paragraph (3) regarding state control over natural resources including water and used as much as possible for the benefit of the people, which against the mechanism of the concept of the Oil and Gas Cost Recovery Profit Sharing Contract operating costs incurred in the implementation of the PSC Cost Recovery contract are reimbursed or borne by the government whose share of oil and gas production received by the State and oil and gas companies. The purpose of implementing the two forms of Oil and Gas Revenue Sharing Contracts is related to risk and profit considerations, where the existence of Cost Recovery is a consequence of the income and risk transferred to the KKKS by the government.

**Keywords:** Aceh oil and gas management agency, natural revenue sharing contract design

### Introduction

For a country, energy is like blood in the human body. All joints of life ranging from household activities, transportation, agriculture, offices, telecommunications, industry, to tourism also require energy, both in the form of primary energy (oil, gas and coal), as well as in the form of secondary energy (electricity, fuel oil, LPG).

Throughout the history of oil and gas business in Indonesia, there are three models of cooperation contracts between the government and contractors, namely: (a) Concession System, (b) Work Contract System, and (c) Profit Sharing Contract System. Through the concession system, contractors are given the flexibility to manage oil and gas, from exploration, exploitation/production to oil and gas

sales. The government is not involved in the management of mining operations at all, including in selling the petroleum produced.<sup>1</sup> Article 33 paragraph (3) of the 1945 Constitution, regulates in principle the country's economy to be built consists of 5 paragraphs with a formulation in which the economy is arranged as a joint venture based on the principle of kinship, branches of production that are important for the state and that control the lives of the people are controlled by the state As for the earth, water and natural resources contained in it are controlled by the state and used as much as possible for the prosperity of the people, The national economy is held based on the principle of economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight,

independence and with maintaining the balance of progress and national economic unity as well as further provisions regarding the implementation of this article are regulated in the legislation<sup>[2]</sup>.

In order to carry out the mandate of oil and gas natural resources management as stipulated in Article 33 paragraph (3) of the 1945 Constitution and the Helsinki MoU and Article 160 of the Aceh Government Law (UUPA) affirms that the government and the Government of Aceh jointly manage oil and gas natural resources located on land and sea in the area of Aceh's jurisdiction, to carry out the management as referred to in paragraph (1) the Government and the Government of Aceh may appoint, or forming an implementing body that is jointly determined, a cooperation contract with other parties to carry out exploration and exploitation in the context of oil and gas management can be carried out if the entire content of the cooperation contract agreement has been mutually agreed upon by the Government and the Government of Aceh, Before conducting talks with the Government regarding the cooperation contract as referred to in paragraph (3), the Government of Aceh must obtain the approval of the DPRA on the provisions further regarding matters as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by Government Regulations<sup>[3]</sup>.

The Aceh Oil and Gas Management Agency (BPMA) is a Government Agency formed to carry out the Management, Control and supervision of Cooperation Contracts (KKS) with Business Entities/Permanent Business Entities in Upstream Oil and Gas Business activities located in the Jurisdiction of Aceh both onshore and offshore *starting* from 0 to 12 nautical miles<sup>[4]</sup>. The authority of BPMA in determining the profit-sharing contract greatly affects other authorities, by determining the profit-sharing contract will determine how the authority is owned or even eliminate the authority itself.

### **Results and discussion of the authority of the aceh oil and gas management agency in designing oil and gas revenue sharing contracts**

The Profit Sharing Contract implemented between the Government of Indonesia and the KKKS is a civil contract that contains a public element (government to business). However, it is still implemented with a business to business mechanism, because the Government of Indonesia in this case needs a business entity that is a representative or extension of the state in conducting business contracts with KKKS. The business contract between the Government and the KKKS is not necessarily a means for the KKKS to transfer oil and gas ownership from the Government to the KKKS, because the Oil and Gas Revenue Sharing Contract that is implemented is only a legal relationship that emphasizes the position of the KKKS as a partner of the Government in helping to manage oil and gas. In addition, the presence of KKKS, especially in the form of Foreign Investment (PMA), is expected to be able to increase Indonesia's economic competitiveness as one of the developing countries.

The Profit Sharing Contract came into effect in 1964 until now. The principle in this contract is the distribution of oil and gas products between the implementing agency and the business entity or permanent business form in accordance with the agreement of both parties. In the Profit Sharing Contract system, contractors are obliged to finance

exploration business activities in the form of work programs and minimum funds to finance the first six-year program. In addition, contractors are also required to hand over part of the profits in the form of production they receive to meet domestic fuel oil (BBM) needs, pay taxes, and prioritize goods and services from within the country. Along with its development, various problems also arise in relation to the use of profit-sharing contracts. Problems such as the complexity of the bureaucracy and the transparency of the *Cost Recovery mechanism*, low investment in exploration and exploitation activities are natural factors such as the decline in the production rate of large mature wells in Indonesia that make the Government seem to be forced to look for other alternatives to profit-sharing contracts<sup>[5]</sup>.

Based on the mandate of Government Regulation (PP) of the Republic of Indonesia Number 23 of 2015, BPMA has the task of implementing, controlling, and supervising the cooperation contract for upstream business activities so that the extraction of state-owned oil and gas natural resources located on land and sea in the area of Aceh's authority can provide maximum benefits and revenues for the state for the greatest prosperity of the people. which has the following functions:<sup>6</sup> carry out negotiations and make cooperation agreements in the field of Oil and Gas carried out by the Government and the Government of Aceh, carry out the signing of Cooperation Contracts, review the field development plan that will be produced for the first time in a Working Area, submit the results of the study on the field development plan that will be produced for the first time in a Working Area that has been approved by the Governor to the Minister, giving approval for the next field development plan and giving approval for the work plan and budget of the Business Entity/Permanent Business Formation. As the regulator of Aceh's oil and gas management, BPMA is located at Jalan Stadion H Dimurthala number 8, Kota Baru, Banda Aceh. The inauguration of the BPMA office was carried out on Monday, January 7, 2019. BPMA is needed to encourage the participation of the Aceh Government in oil and gas management in order to provide greater benefits for improving the welfare of the people of Aceh. BPMA was first led by Marzuki Daham who was inaugurated by the Minister of Energy and Mineral Resources (ESDM).<sup>7</sup>

The concept of Production Sharing Contract (PSC) was initiated by Dr. Ibnu Sutowo who at that time served as the President Director of PERMINA, as a form of protest against the Contract of Work system which according to him was no different from the Concession system. In this concept, the government and the private sector share the production results, not the oil sales revenue. In accordance with what is stated in the current Oil and Gas Law that, Upstream Business Activities are carried out by Business Entities or Permanent Business Formations based on Cooperation Contracts with Implementing Agencies. The Gross Split scheme was first implemented in Indonesia through the Regulation of the Minister of Energy and Mineral Resources No. 8 of 2017 concerning Gross Split Profit Sharing Contracts. Then several articles were amended into the Regulation of the Minister of Energy and Mineral Resources No. 52 of 2017 concerning Amendments to the Regulation of the Minister of Energy and Mineral Resources No. 8 of 2017 concerning Gross Split Profit Sharing Contracts. Actually, the concept of the Gross Split scheme is not new to the oil and gas world because many have discussed this scheme before. However, in Indonesia

this scheme only took effect in 2017 which according to Ministerial Regulation No. 8 of 2017, what is meant by the Gross Split Profit Sharing Contract is a Profit Sharing Contract in upstream oil and gas business activities based on the principle of gross production distribution without a mechanism for reimbursement of operating costs.<sup>8</sup> Oil and Gas Revenue Sharing Contracts that are currently run in Indonesia are categorized into innominaat contracts (unnamed contracts), which are contracts that arise, grow, and develop in society after the Civil Code. Thus, an Oil and Gas Revenue Sharing Contract is a contract born from an agreement that is sourced from an unnamed contract that has an obligatoir nature, that is, it is intended to give and do something.

### **Research solution on the function of authority of the aceh oil and gas management agency in designing oil and gas revenue sharing contracts**

Like contracts in general as regulated in Article 1338 of the Civil Code, Oil and Gas Revenue Sharing Contracts have consequences or consequences for the parties who bind themselves, namely in the form of a contract valid as a law for the parties and the contract cannot be changed without the agreement that the two parties will carry out their contractual obligations, Contract law in Indonesia views the pattern of legal relations in oil and gas revenue sharing contracts involving the government and the law or business form is still included in the category of private law even though the government through SKK Migas is one of the parties and in its preparation also applies the conditions regulated outside the Civil Code, namely the requirements in the Oil and Gas Law, but this does not override the general provisions in the Civil Code as a guideline in determining the validity of the oil and gas revenue sharing contract. So that it is possible that if the contract of cooperation of civil law subjects of different countries will have an element of agreement that adopts from the contractual understanding of the country concerned.

Regarding the content and provisions of the Oil and Gas Revenue Sharing Contract, Article 26 of the Oil and Gas Regulation stipulates that the Contract must contain at least the main provisions, namely: State revenue, Working Area and its return, obligation to spend funds, transfer of ownership of oil and gas products, term and conditions for contract extension, dispute resolution, obligation to supply Petroleum and/or Natural Gas for domestic needs, expiration of contracts, post-mining operations, occupational safety and health, environmental management, transfer of rights and obligations, necessary reporting, field development plans, prioritization of the use of domestic goods and services, development of surrounding communities and guarantees of indigenous peoples' rights, prioritization of the use of Indonesia's workforce<sup>[9]</sup>.

Based on these authorities, BPMA can regulate the business of upstream oil and gas business activities with the aim of, among other things, to ensure the effectiveness of the implementation and control of exploration and exploitation business activities in a successful and highly competitive and sustainable manner over oil and gas through an open and transparent mechanism. Determining the type of profit-sharing contract also affects BPMA's authority in controlling contractors.

### **Conclusion**

Based on the above reasons, the Profit Sharing contract that is most in accordance with the BPMA Authority based on the UUPA which is imbued by Islamic law is the Cost Recovery Profit Sharing contract. Article 13 of Government Regulation Number 23 of 2015 states that Supervision by BPMA includes Exploration and Exploitation activities including field processing activities, transportation, storage and sale of own production products as a continuation of Exploration and Exploitation activities carried out by Business Entities or Permanent Business Formations. BPMA as a regulator can be more flexible in negotiations, control over revenue sharing, supervision over expenditures, and post-exploration supervision. The Cost Recovery Profit Sharing Contract gives more authority to BPMA and this can increase Autonomy as mandated by the UUPA. BPMA's authority can increase in cost recovery profit-sharing contracts because it can be influential in policy making and safeguarding the interests of the community and local development so as to increase efficiency and certainty for the community through good management of oil and gas resources in Aceh. This contract model must be carefully designed to ensure compliance with applicable regulations, the application of Islamic sharia principles and the fulfillment of BPMA's special authority in oil and gas management in Aceh. The determination of centralized profit-sharing contracts can reduce BPMA's local autonomy by limiting flexibility in designing contract terms, reducing control over the company's revenue sharing and expenditure, and reducing BPMA's influence in policymaking and local community involvement. Although this approach can increase efficiency and certainty for oil and gas companies, BPMA may face challenges in safeguarding local interests and ensuring optimal benefits for the Aceh region Based on Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh, it is expressly stated that the profit-sharing contract used is cost recovery. In Article 77 paragraph (1) d, it explains the policy in the implementation of cooperation contracts, there is a refund of operating costs (Cost recovery) in terms of the form of cooperation contracts, profit-sharing contracts. The Aceh Oil and Gas Management Agency (BPMA) exercises the authority of oil and gas managers in Aceh to have the authority of autonomy, especially as best as possible so that the utilization of oil and gas natural resources in Aceh can provide the greatest benefits for the region and the people of Aceh. In planning. The BPMA profit-sharing contract also affects the next policy, to the government, it is hoped that the form of the Gross Split Contract that is currently implemented will be reviewed so that it does not conflict with the purpose of oil and gas management.

### **Reference**

1. Rudi Rubiandini RS. Gets to Know the Oil and Gas Industry and Profit Sharing Funds. ITB Press: Bandung, 2021.
2. 1945 Constitution Article 33 Paragraph (3) concerning Explanation of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Gas.
3. Article 160 of the Aceh Government Law (UUPA).
4. Article 1, Number 22 of Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh.

5. Ministry of Energy and Mineral Resources, Minister of Energy and Mineral Resources Number 12 of 2020: Affirmation of the Implementation of the Form of Oil and Gas Cooperation Contracts, accessed from [https://migas.esdm.go.id/post/read/permen-esdm-nomor-12-tahun-2020-penegasan-Enforcement-formof-contract-cooperation-oil and gas cooperation 2024](https://migas.esdm.go.id/post/read/permen-esdm-nomor-12-tahun-2020-penegasan-Enforcement-formof-contract-cooperation-oil-and-gas-cooperation-2024).
6. <https://www.bpma.go.id/tugas-dan-fungsi> accessed June 27, 2024.
7. Juniarso Ridwan and Achmad Sodik Sudrajat, State Administrative Law and Public Service Policy, Nuansa Cendekia, Bandung, 2019.
8. Article 1 number 7 of the Regulation of the Minister of Energy and Mineral Resources No. 8 of 2017.
9. H January S Silaban. "A Study of Business Law on the Actualization of the Use of the Gross Split System in the Production SharingContract Scheme in Indonesia." Thesis in Law, Gadjah Mada University, Yogyakarta in 2018.