Reconstruction of Oil and Natural Gas Law for the Welfare of the Indonesian People

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Abstract. Foreign interests now have greater access to Indonesian natural gas and oil management according to Law Number 22 of 2001 regulating Oil and Natural Gas. Article 33 of the 1945 Constitution is violated, turning governmental authority over the branches of creation that influence the existences of countless individuals into an established fiction. It is necessary to reconstruct oil and gas laws that can improve the welfare of all Indonesian people, not just certain people. The research is normative, namely examining the law currently in force, and whether the legal norms are by the 1945 Constitution and Pancasila. A conceptual approach as well as a legislative approach are employed. Also, document and literature studies were used to obtain data. The outcomes show that various arrangements in the ongoing oil and gas regulation, known as Regulation Number 22 of 2001 Overseeing Oil and Flammable gas, are believed to be in struggle with the 1945 Constitution. This is additionally upheld by the choice Number 36/PUU-X/2012 of the Sacred Court, which expresses that a few arrangements of Regulation Number 22 of 2001 overseeing Oil and Gaseous petrol are governed illegal and have no limiting legitimate power. As a result, the oil and gas legislation have to be revised. Modernizing the laws concerning oil and gas is part of reconstruction. The projected oil and gas legislation aims to achieve the welfare of the whole Indonesian community by combining justice, clarity, and pragmatism.

Keywords: law, oil, natural gas, well-being

1 Introduction

Article 33, passages (2) and (3) of the 1945 Constitution underscores that the state is responsible for the areas of creation that are vital to the state and impact a many individuals' lives. Along these lines, the state administers the land, the water, and the regular assets, using them to the best extent possible for the benefit of the people. Given that oil and natural gas are essential commodities that are essential for meeting domestic energy needs, providing industrial raw materials, and earning foreign exchange, they are considered non-renewable strategic natural resources under state control. As such, their management must be carried out as efficiently as possible to maximize their potential for the welfare and prosperity of the populace.[1]

In 2017 Indonesia was the 21st largest oil producer in the world and the second largest in the Asia Pacific region (after China). As for gas, in 2017 Indonesia was the 12th largest natural gas producer in the world and the fourth largest in the Asia Pacific region (after China, Malaysia, and Australia). Meanwhile, based on 2019 EMIS Insights Industry Report data,

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Indonesia was also recorded as the third largest Liquefied Natural Gas (LNG) exporter in the world and the second largest in the Asia Pacific region in 2017 (after Australia). However, on the one hand, Indonesia is a net importer of oil, because domestic production is insufficient to meet domestic needs.

Based on data, Indonesia's crude oil production has a negative trend, in other words, it tends to decline. During the Asian Financial Crisis phase (medio 1997 – 1998) until 2007, Indonesia's crude oil production experienced a period of its sharpest decline. The opposite does not happen if you look at conditions in the world and the G-20 countries, of which Indonesia is one of the members. The OECD generally shows that crude oil production tends to be stable, where the decline phase occurred in the period 2004 - 2011, but the decline was not too significant.[2]

The Oil and Gas Law, officially known as Law Number 22 of 2001, was passed by the government in 2001. But because it is thought to not represent Pancasila, this statute has generated a great deal of debate when it was first introduced. International pressure to reform the energy sector, particularly the oil and gas industry, was one of the reform agendas that emerged during the reform wave and also impacted the political landscape during the creation of Law Number 22 of 2001 concerning Oil and Gas. Energy sector reform includes, among other things, (1) energy price reform and (2) institutional reform of energy management. Energy reform does not only focus on efforts to remove fuel oil (BBM) subsidies but is intended to provide large opportunities for international corporations to enter the oil and gas business in Indonesia.

One of the international pressure efforts through the Memorandum of Economic and Finance Policies (IMF letter of Intent) dated January 20, 2000, was regarding the monopoly of the oil and gas industry which at that time was accused of being the cause of inefficiency and corruption which at that time was rampant. Therefore, one of the driving factors for the formation of Law No. 22 of 2001 pertaining to Gas and Oil was to accommodate foreign pressure and even foreign interests, leading to the establishment of a monopoly in the management of oil and gas through State-Possessed Endeavors (Pertamina), which at the hour of the execution of Regulation Number 8 of 1971 concerning Pertamina turned into a portrayal of the state organization in the administration of oil and gas, moved to the idea of corporate oligopoly because of the development of Regulation Number 22 of 2001 concerning Oil and Petroleum gas. Regulation Number 22 of 2001 concerning Oil and Flammable gas is remembered to have been framed through a conventional technique since global interests pervade each political choice made. Nonetheless, this strategy might be defective if the objective of laying out Regulation Number 22 of 2001 is to disregard Article 33 of the 1945 Constitution, making state command over creation branches that influence the existences of many individuals a sacred deception.

Law Number 22 of 2001 addressing Oil and Natural Gas also has a number of issues, having been legally defective from the start. Law Number 22 of 2001 covering Oil and Gas is unconstitutional and harmful to the nation for the following four primary reasons, in general:

1. Has eliminated state sovereignty over oil and gas resources in the bowels of the Indonesian earth.
2. Has harmed the country financially.
3. Breaking up the company structure and the integrated national oil industry into upstream business activities and downstream business activities or unbundling.
4. Making the cost recovery management system submitted by BP Migas detrimental to the state.

As the outline above clarifies, the interests of the Indonesian public are not suitably addressed by Regulation Number 22 of 2001 concerning Oil and Gaseous petrol. Here, for instance, Regulation Number 22 of 2001 isn't supportive individuals, which should be visible from a few arrangements contained in its articles.

In connection with the above, it is necessary to reconstruct oil and gas laws that can improve the welfare of all Indonesian people, not just some people. It is to the goals of a modern state, namely prosperity for all its citizens.

The goal of the proposed law, known as the Ius Constituendum, is to create a fair legislation pertaining to natural gas and oil that would enhance the well-being of society as a whole. All as expressed in the Preface of the 1945 Constitution, the objective of the state is "to shape an Indonesian State Government that safeguards the whole Indonesian country and Indonesia's blood and to advance general government assistance." This demonstrates that the state's essential need is the prosperity of its residents".

2 Problem Formulation

1. The difficulty of this research may be stated as follows in light of the background information previously provided.
2. How will the welfare of the Indonesian people be affected by the reformation of the oil and gas law?

3 Results and Discussion

As recently referenced in the prelude, Regulation Number 22 of 2001 directing Oil and Petroleum gas has various issues, including being lawfully deficient all along. The issue is that various articles are believed to be in conflict with the 1945 Constitution's Article 33, passages (2) and (3).

It should be mentioned that the Cooperation Contract (KKS) method has been employed in oil and gas management ever since Regulation Number 22 of 2001 concerning Oil and Flammable gas was passed. Since the Public authority cq assumed control over the Mining Authority, an open framework has been carried out. The Clergyman of Energy and Mineral Assets is the foundation for completing public oil and gas the board, as expressed in Article 6 of the Oil and Gas Regulation (1). As expressed in Article 1 number 19, Upstream Business Exercises are brought out and overseen through Participation Agreements. " Article 1 Number 19 of the Law characterizes "Participation Agreements" as "creation sharing agreements or different types of collaboration contracts in investigation and double-dealing exercises which are more beneficial for the State and the outcomes are utilized for the best success of individuals".

There is legal ambiguity around the interpretation of these other contracts due to the term "or other forms of cooperation contracts" in Article 1 point 19 of the Oil and Gas Law. The 1945 Constitution's Article 28D, paragraph (1), is in conflict with this. The cooperation contract will include provisions that, as required by Article 33 paragraphs (2) and (3) of the 1945 Constitution, do not represent the greatest prosperity of the people because of this phrase's several interpretations. In addition, the phrase "or controlled through a Cooperation Contract" indicates the use of a contract system that has multiple interpretations in controlling

national oil and gas management. In such a situation, the general principles of contract law that apply in contract law will be attached, namely the principle of balance and the principle of proportionality to the state.

Balance is a principle intended to harmonize legal institutions and the basic principles of contract law known in civil law which are based on the thoughts and background of individualism on one side and the way of thinking of the Indonesian people on the other side.[2] The principle of proportionality in an agreement is defined as the principle underlying the exchange of rights and obligations of the parties by their proportions or parts.[3]

This situation is very degrading to the dignity of the state, because in cooperation contracts in the Oil and Gas Law, BP Migas, on behalf of the state, contracts with a corporation or private corporation, so that if a dispute occurs, the contract generally always appoints international arbitration to examine and adjudicate the dispute. So, the legal consequences, if the country loses, means the defeat of all the Indonesian people, that is the essence of degrading the dignity of the country.

According to Article 33, paragraphs (2) and (3), the term "controlled by the state" must be understood to refer to both the public responsibility for appropriate wellsprings of abundance by the Indonesian nation all in all and control by the state in the wide sense that stems from the idea of Indonesian sway over the wellsprings of riches, which are "earth, water, and normal abundance contained in that." The 1945 Constitution lays out the aggregate individuals by requiring the state to complete strategies (beleid), the board activities (bestuurdaad), guidelines (regelendaad), the executives (beheersdaad), and management (toezichthoudensdaad) to work on the success of individuals.

Currently, the management of oil and natural gas based on Law Number 22 of 2001 concerning Oil and Natural Gas does not fulfill the elements referred to above, which are one unit, so the right to fulfill the living needs of the Indonesian people is hampered because the contract system does not fulfill the elements.

Then, the meaning of Mining Approval became hazy on the grounds that the Oil and Gas Regulation's requests in Article 4 section (3) — which express, "The public authority as the holder of Mining Approval shapes a Carrying out Organization as planned in Article 1 number 23" — were the reason for the production of the Oil and Gas Executing Organization (BP Migas). This is on the grounds that BP Migas is entrusted with addressing the state in agreements and managing the creation and stores of oil and gas, as expressed in Article 44 of the Oil and Gas Regulation.

The system established by Articles 4(3) and 44 of the Oil and Gas Law creates the impression that BP Oil and Gas is the same as the state, which is different from the meaning of management as intended by Articles 33(2) and (3) of the 1945 Constitution. This lessens the meaning of the state in the phrase "controlled by the state" found in those paragraphs. Apart from that, BP Migas is not an operator (business entity) but is only a State-Owned Legal Entity (BHMN). so that his position cannot be directly involved in oil and gas exploration and production activities. BP Migas does not have wells, refineries, tankers, transport trucks, and gas stations, and cannot sell the state's share of oil, so it cannot guarantee the security of domestic fuel/gas fuel supplies. This proves that the presence of BP Migas has compromised Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution and made the meaning of "controlled by the state" which has been interpreted and decided by the Court unclear due to the failure to fulfill the elements of state control, namely the functions of regulating, administering, manage and supervise overall.

Based on this oil and gas law, the mining authority was revoked from Pertamina and transferred to BP Migas. It means that Pertamina's dual role as a regulator and operator is

stripped away. Law Number 22 of 2001 concerning Oil and Gas also separates the function of policy maker (regulator) and business function (business actor). The regulatory function is handled by BP Migas in the upstream sector and BPH Migas in the downstream sector. Upstream includes exploration and production, while downstream includes refining, transportation, storage, distribution, and commerce.[4] Apart from that, this law also changes transaction actors from previously using the "B to B" or Business to Business (Pertamina and Contractors) pattern as fellow business actors to the "G to B" or Government to Business (BP Migas and Contractors) pattern.[4] As an embodiment of liberalization according to M. Kholid Syeirazi, Law Number 22 of 2001 concerning Oil and Gas will open the door as wide as possible for private parties, including foreigners, to enter deeper into the national oil and gas industry.[5]

All as per the fourth section of the Preface to the 1945 Constitution, which expresses that the objective is "to shape an Indonesian State Government which to safeguard the whole Indonesian country and Indonesia's blood and to promote general welfare," the state's obligations regarding oil and gas management are released, allowing private and foreign companies to take part in the sector. This implies that the purpose of oil and gas is not limited to promoting human welfare."

The state, as the highest organization of the Indonesian nation, must realize its aim, which is founded on the five state principles (Pancasila). The foundation for legal politics in a society that is socially just is the fifth principle, "Social Justice for All Indonesian People," which states that those who are powerful should not arbitrarily mistreat the socially and economically downtrodden.[6]

The goals of the state are the guidelines for how the state is structured and how the lives of its people are regulated. The state's goals become a guiding compass for the country's government and also a barometer to measure the extent to which the government has succeeded in carrying out its work.[7] In general, the ultimate goal of every country is to create happiness for its people (bonum public, common good, commonwealth)[8] in the form of prosperity. According to Aristotle, the state is a unity whose goal is to achieve happiness. Even John Stuart and Jeremy Bentham emphasized that the goal of the state is to achieve the greatest happiness for the greatest number.[9] Likewise, according to Thomas Aquinas, the goal of the state is to provide and organize human happiness.[10]

It turns out that the inquiries of the Indonesian people are not addressed by the Oil and Gas Law. In contrast, the state ought to be in charge of the natural resources that support the livelihoods of a large number of people, many of whom are likewise unfulfilled. Law Number 44 of 1960 about Oil and Gas Mining and Law Number 8 of 1971 concerning Pertamina have been superseded by the Oil and Gas Law, which usurps the oil and gas sovereignty as controlled in Government Regulation.

A legal survey of Regulation Number 22 of 2001, which managed Oil and Petroleum gas, was submitted to the Protected Court in 2012. Lastly, in Choice No. 36/PUU-X/2012, the Established Court, expressed:

1) Article 1 number 23, Article 4 paragraph (3), Article 41 paragraph (2), Article 44, Article 45, Article 48 paragraph (1), Article 59 letter a, Article 61, and Article 63 of Law Number 22 2001 concerning Oil and Gas is contrary to the 1945 Constitution.
2) Article 1 number 23, Article 4 paragraph (3), Article 41 paragraph (2), Article 44, Article 45, Article 48 paragraph (1), Article 59 letter a, Article 61, and Article 63 of Law Number 22 The 2001 Regulation on Oil and Gas does not have binding legal force.

Based on the discussion above, it is important to reconstruct oil and gas law by revising or updating Law Number 22 of 2001 on Natural Gas and Oil. In addition to changing, expanding, improving, reviewing, and replacing the terms of relevant laws and regulations in a legal system, legal reform also aims to actualize via changes, additions, replacements, or deletions of provisions, legal norms in laws and regulations an invitation that applies to a legal system so that oil and gas laws in the future will be better, fairer, more useful, and provide legal certainty for the welfare of all Indonesian people.

4 Conclusion

One energy source that has long been anticipated to provide wealth to all Indonesians is oil and gas; yet, in actuality, it has been overshadowed by the implementation of Law Number 22 of 2001 Concerning Natural Gas and Oil. This law has a lot of problems, not the least of which is that several of its provisions are perceived to be in conflict with the 1945 Constitution, especially Article 33. Moreover, as expressed in the Prelude to the 1945 Constitution's fourth passage, this regulation misses the mark regarding the targets the state.

In order to ensure that the application of oil and gas law in the future reflects justice, certainty, and usefulness of law that is solely aimed at realizing the welfare of all Indonesian people and not to advance the interests of certain or foreign groups, this calls for legislative reconstruction in the form of amending the oil and gas legislation to better align with the principles found in the Pancasila and the 1945 Constitution.

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