

Effectiveness of Law of the Republic of Indonesia Number 11 of 2020 on Job Creation towards Oil and Gas Downstream Business Supervision Implementation in Indonesia

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Abstract. Oil and gas are strategic non-renewable natural resources whose management needs to be carried out optimally to be utilized for the welfare of the people. This article analyses about the regulation and implementation of Job Creation Law especially on oil and gas downstream business supervision. The government hands over the implementation of activities in the downstream oil and gas sector to the Oil and Gas Downstream Business Supervision which called as Downstream Oil and Gas Regulatory Body, to supervise the implementation of the supply and distribution of Oil and the transportation of Natural Gas through pipes so that the availability and distribution of Oil can be guaranteed throughout the Republic of Indonesia and increase the utilization of Natural Gas in domestic. The Job Creation Law's birth is expected to support the strengthening of the supervisory function for downstream Oil and Gas business activities. The duties and functions of the Oil and Gas Downstream Business Supervision have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to the duties, functions and organizational structure of downstream oil and gas regulatory agency. Several regulatory changes in the Oil and Gas sector are required to support the duties and functions of downstream oil and gas regulatory agency, which need to be regulated in the Job Creation Law, including several provisions regarding LNG and CNG, Representative Offices, and Public Service Bodies and Dispute Resolution.

Keywords: Downstream, Oil and Gas Business Activities, Job Creation Law, Supervision

1 Introduction

The policy towards the petroleum industry in Indonesia has undergone significant changes. From 1970 to 2001, Pertamina served as regulator and the central business player in the domestic, upstream, and downstream petroleum industry. Since the promulgation of Law No. 8 of 1971 concerning Pertamina, BUMN has acquired monopolistic power in domestic exploration, processing, distribution, and sales activities. Foreign companies involved in the upstream sector have a contract status and must share profits directly with Pertamina. Simultaneously, processing and supplying BBM can only be carried out by these SOEs.

The control of the petroleum industry by Pertamina has caused many issues, including Pertamina's inefficiency in performance, many financial leaks, and monopoly issues. The idea

emerged to form a world-class national oil and gas company that could compete with other state companies [1][2][3]. It then underlies the issuance of Law No. 22 of 2001 concerning Oil and Natural Gas. In principle, this new law seeks to return power to the state, Pertamina has the status of a BUMN and will take action as one of the oil and gas business actors in the upstream and downstream industries. The regulator's role is left to government institutions, while Pertamina only plays one role as a pure operator [4][5][6].

With the enactment of the Oil and Gas Law, the implementation of oil and gas business activities from a philosophical aspect has undergone a very fundamental change. The Government is the policyholder in the oil and gas sector. The government then divides 2 (two) sections of oil and gas business activities which consist of upstream business activities, including exploration and exploitation activities, and (2) downstream business activities, including processing, transportation, storage, and commerce (including natural gas trading through transmission and distribution pipelines). Downstream Business Activities are generally business-related activities, where production costs and losses that may arise cannot be charged (consolidated) on the costs of the Upstream Business Activities. In order for the function of the Government as a regulator, supervisor, and supervisor to run more efficiently, the Upstream Oil and Gas Business Activities Executive Agency (BP Migas) was formed, while in the Downstream Business Activities the Oil and Gas Downstream Business Activities Regulatory Agency (BPH Migas) was formed.

To carry out the mandate of Law No. 22 of 2001, the Government then enacted Gov. Reg. No. 67 of 2002 concerning the Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities for Transportation of Natural Gas by Pipe, which was later amended by Government Regulation No. 49 of 2012. The establishment of BPH MIGAS as The Regulatory Body was then emphasized again by the presence of Presidential Decree No. 86 of 2002 concerning the Establishment of a Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities of Transportation of Natural Gas through Pipes which later underwent a change to Presidential Decree No. 45 of 2012 in order to improve the organization.

Based on Article 8 of Law No. 22 Of 2001, downstream oil and gas regulatory body was born because of the need for a Regulatory Body to regulate, determine and supervise the availability and distribution of Oil Fuel, National Oil Fuel reserves, utilization of Oil Fuel transportation, and storage facilities, Gas transportation rates. Natural through pipelines, Natural Gas Prices for Households and Small Customers, and the operation of Natural Gas Transmission and Distribution.

Downstream oil and gas regulatory agency is currently supervising fuel distribution in 7,251 distribution agencies throughout the Republic of Indonesia, with a total fuel distribution reaching 83.3 million KL/year. In the natural gas sector, downstream oil and gas regulatory agency supervises natural gas transportation and trading through pipelines with a transmission pipe length of 5,192.12 km and a distribution pipe length of 6,133.54 km.

Its implementers must supervise business actors considering many mafia downstream oil and gas activities, including fuel mixing, misuse and diversion of subsidized fuel, modification of fuel tanks, illegal businesses, or fake permits or expired permits [7]. Based on Downstream oil and gas regulatory agency data, throughout 2020, there were 281 cases with 1,341 66 KL of evidence [7]. The issuance of Law No. 11 of 2020 concerning Job Creation can be new hope for the regulation and supervision of oil and gas in Indonesia, so that it is interesting to study further how the provisions for controlling regulations on downstream oil and gas business activities in Indonesia after the enactment of the Job Creation Law and how the effectiveness of the implementation of supervision of the business of supplying and distributing BBM and increasing the utilization of Natural Gas in the country by the Regulatory Body. This paper will

analyze the effectiveness of the implementation of supervision of downstream oil and gas business activities carried out by Downstream oil and gas regulatory body after enacting the Job Creation Law.

2 Research Methods

This article's approach method is juridical empirical, which focuses on the enactment or implementation of normative legal provisions in action at any particular legal event in society with the research specification in the form of descriptive-analytical [8]. This article's type of data uses qualitative data obtained based on primary data sources collected through interviews, namely a conversation, a question and answer session between the researcher and the respondent who sits physically facing each other and is directed to a particular problem [8]. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. This article's data collection method is carried out through field studies conducted by interviewing sources at Downstream oil and gas regulatory body, especially in the Legal and Public Relations section who can provide all information related to the functions and duties of downstream oil and gas regulatory agency in business activities. Furthermore, the data were analyzed using qualitative analysis methods.

3 Results and Discussion

3.1 Effectiveness of Law of the Republic of Indonesia Number 11 of 2020 on Job Creation towards Oil and Gas Downstream Business Supervision Implementation in Indonesia

Law No. 22 of 2001 requires the Regulatory Body to be an independent body. This is then confirmed in the provisions of Article 2 paragraph (2) of Government Regulation No. 67 of 2002, which states that the Regulatory Body established to regulate and supervise the supply and distribution of Oil and Gas Fuel and Transportation of Natural Gas via pipelines in Downstream Business Activities. is a government institution which in carrying out its functions, duties, and authorities is independent. According to Nurtjahjo [9], the objective of establishing this independent state institution was due to two things, namely: Due to increasingly complex state tasks that require sufficient independence for their operations and efforts to empower existing state institutions' tasks by forming new, more specific institutions.

In order to provide an industrial sector engaged in Energy and Mineral Resources, the Job Creation Law amends, changes, or stipulates new regulations previously regulated in Law No. 22 of 2001 concerning Oil and Natural Gas. Amendments to several provisions in the Oil and Gas Law in Article 40 of the Job Creation Law. Broadly speaking, the provisions contained in the Oil and Gas cluster emphasize changes in Oil and Gas licensing, that Oil and Gas activities, both upstream and downstream, are carried out based on Business Licensing from the Central Government, previously Oil and Gas exploitation was carried out based on a contract. Cooperation. If there is one of the requirements stipulated in the Undertaking Licensing and/or it fulfills the requirements, the Central Government may impose administrative sanctions. The consequences of changing a cooperation contract to a simple business license, the status of the

ongoing cooperation contract, whether it must be regulated or remains valid, have not been carefully regulated [10][11][12].

The duties and functions of downstream oil and gas regulatory agency as the Regulatory Body for downstream oil and gas business activities have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to duties, functions and the organizational structure of downstream oil and gas regulatory agency. Government Regulation No. 25 of 2021 concerning the Implementation of the Energy and Mineral Resources Sector as an implementing regulation of the Job Creation Law also has not accommodated oil and gas business activities, including the Regulatory Body in it.

Downstream oil and gas regulatory body understands that the supervisory body is more appropriate in nature as a referee and not a regulatory body which is a technical regulator because the technical policy regulator is the authority of the Directorate General of Oil and Gas, which speaks entirely from upstream and downstream to standards of fuel quality specifications, *etc.* Meanwhile, downstream oil and gas regulatory agency has a smaller portion than that, but many business activities must be supervised. downstream oil and gas regulatory agency must supervise approximately seven thousand channeling agencies, starting from Pertamina's distributors (SPBU, SPBB, SPBN, *etc.*). In carrying out its duties and functions as a Regulatory Body, it is noted that downstream oil and gas regulatory agency has issued approximately ninety regulations, of which 90% are related to the tariff for transporting natural gas through pipelines and household gas prices for small customers, which are more directed at distribution and commercial problems.

3.2 The Effectiveness of the Implementation of Business Supervision for the Supply and Distribution of BBM and the Improvement of Domestic Gas Utilization by the Regulatory Body

The Job Creation Law for Oil and Gas clusters has not fully accommodated the Oil and Gas Downstream Regulatory Agency's authority to carry out its duties and functions in the field of supervision of downstream oil and gas business activities. There are eight Law No. 22 of 2001 amended through the Job Creation Law, including article 1, article 4, article 5, article 23, article 25, article 52, article 53, and article 55. Besides, Law the Job Creation Law added article 23A, which was inserted between article 23 and article 24. Some of the changes made were the central government's definition, the regulation of Oil and Gas business activities, and the procedures for imposing sanctions for violations in the implementation of Oil and Gas business activities.

Following the mandate of Law No. 22 of 2001 concerning Oil and Natural Gas, the explanation of Article 47 paragraph (3) states that downstream oil and gas regulatory body is an independent body, so if it is independent, then the budget portion is not incorporated in the Ministry. Besides, so far, downstream oil and gas regulatory body personnel are filled mainly by civil servants within the Ministry of Energy and Mineral Resources. Basically, everyone's constitutional right to hold a public office. However, this provision does not mean that the restrictions imposed are prohibited if it is in the interests of capability, integrity, and professionalism. Independent institutions, in particular, have strategic main duties and functions with great independence. If it is not filled with integrity and independent actors, it will have a negative impact on institutional independence so that its goals will be challenging to achieve.

With Indonesia's vast territory, the centralized supervision of downstream oil and gas regulatory agency significantly hampers downstream oil and gas regulatory body is performance. The existence of representative institutions in the regions to respond to public

complaints can help downstream oil and gas regulatory agency carry out its duties and functions optimally. Currently, downstream oil and gas regulatory body has to supervise quite many business activities, namely approximately seven thousand oil and gas supply agencies, starting from Pertamina's distributors (SPBU, SPBB, SPBN, and others). It is pretty tricky to oversee such a large number with BPH Migas, which currently does not have representative offices in the regions, so downstream oil and gas regulatory body is slow to respond to public reports.

There should be a special directorate in charge of supervision and law enforcement's facilitation regarding an organization. Like the Forestry Law case, law enforcement can be done by the Forest Police, while in the Oil and Gas Law, enforcement cannot be done alone. As currently, many illegal fuel retailers do not have road permits. According to the dimension of legal sociology, this is not a mere legal issue but also a social problem carried out by people who do not have a job. If an approach is carried out with ordinary law enforcement, it will inevitably become chaotic, so it must use a regional-appropriate social approach. So, this becomes a necessity if there is no special supervision unit; thus, the supervision will not undergo development.

To support downstream oil and gas regulatory agency independence requires several regulatory changes in the Oil and Gas sector related to the implementation of its duties and functions that need to be regulated in the Job Creation Law and all implementing regulations for this Law. Among them what is needed by downstream oil and gas regulatory body are several provisions regarding aspects of personnel, funding, and equipment that have been listed in Law No. 22 of 2001 but still require improvement, including:

Law No. 22 of 2001	Law No. 11 of 2020	Issue
The task area of downstream oil and gas regulatory body is stated in detail in Article 46 paragraph (3) letter a-f	Need to insert two new letters, namely letters g and h which mention the exploitation of LNG and CNG as well as other concessions determined by the Minister.	The task area of downstream oil and gas regulatory body is wider in scope than what is stated in Article 46 paragraph (3)
BPH Migas supervises the implementation of the supply and distribution of BBM and Natural Gas as stated in Article 46	A new article need to insert, namely Article 46A which regulates the establishment of the Supervisory Commission and Representative Offices in the regions	The supervisory function is not optimal because of the vast territory of the Republic of Indonesia and the number of business entities that is increasing day by day
Downstream oil and gas regulatory body is independent agency as stated which explain in the Article 47 paragraph (3)	A new article need to insert, namely Article 46B which regulates the pattern of financial management of the Public Service Agency	The finance department is still part of the Ministry of Energy and Mineral Resources
The disputes between business entities for Downstream Oil and Gas Business Activities are resolved by the Police Agency	A new article need to insert, namely Article 47A which regulates the procedure for resolving disputes by downstream oil and gas regulatory agency	Supervision and law enforcement are not progressing well

3.2.1 Regarding LNG and CNG

Law No. 22 of 2001 mentions the types of business activities whose supervision is within the task area of the Regulatory Body as contained in Article 46 paragraph (3). In fact, the supervision carried out by the Regulatory Body is broader than what has been stated in Article 46 paragraph (3), including the Regulatory Body also supervises LNG and CNG. Regarding these provisions, 2 (two) new letters should be inserted, namely letter g and letter h, which state that the Regulatory Body shall regulate and determine the concessions of LNG and CNG and other exploitation stipulated by the Minister.

3.2.2 Regarding Representative Offices and Public Service Bodies

The Regulatory Body is a government agency that is independent in carrying out its functions, duties, and authorities. In the context of controlling and evaluating the regulation and supervision of the supply and distribution of Oil and Gas Fuel as well as the transportation of Natural Gas in downstream business activities by the Regulatory Body, it is necessary to establish a Supervisory Commission consisting of the Minister of Energy and Mineral Resources as chairman and members of the Minister of Finance, Minister of Home Affairs, Minister of Law and Human Rights, Chief of the Indonesian National Police. The Regulatory Body also requires representative offices in the regions so that the supervisory function can run optimally. Representative offices in the regions need to be established considering the vast territory of the Unitary State of the Republic of Indonesia, and the number of business entities that are monitored which is believed to continue to increase in the future, while the Regional Autonomy Law has mandated that Government affairs in the field of Energy and Mineral Resources related to the management of Oil and Gas is the authority of the Central Government. On the funding side, the Regulatory Body can apply the financial management pattern of the Public Service Agency. Determination of the Regulatory Body's cost budget must obtain approval from the House of Representatives, in which the budget is used to finance operational, administrative, asset procurement, and other supporting activities. This provision can be inserted between Article 46 and Article 47 of Law No. 22 of 2001.

3.2.3 Regarding Dispute Resolution

In the event of a dispute between business entities conducting Downstream Oil and Gas activities, the settlement is prioritized by deliberation to reach a consensus. If deliberation to reach a consensus is not reached, the Regulatory Body takes over the dispute's settlement, whose decision is binding and must be obeyed by the parties. This provision can be inserted between Article 47 and Article 48 of Law No. 22 of 2001.

As for downstream oil and gas regulatory body, it is still conventional in carrying out its supervisory function, so it requires changes to be based on Information Technology, for example, recommendations for purchasing certain types of fuel by using applications. Currently, verification by downstream oil and gas regulatory body is still done manually through Pertamina parties.

The regulatory substance created should be able to become a new solution in order to avoid conflicts that have occurred so far [13][14]. By making changes to regulations in the sector of Oil and Gas utilization, it is hoped that it can support the implementation of monitoring of downstream oil and gas business activities by the Oil and Gas Downstream Regulatory Body and can increase the utilization and distribution and distribution of Oil and Gas through domestic

pipelines. This needs to be done considering that Indonesia is an archipelago that requires the distribution and distribution of Oil and Gas evenly throughout the Indonesian archipelago.

4 Conclusion

Based on the results and discussion that has been carried out, it can be concluded that the provisions contained in the Oil and Gas cluster in the Job Creation Law emphasize changes in Oil and Gas licensing, which were previously carried out based on a cooperation contract, currently changing based on Business Licensing of Central government. The duties and functions of the Downstream Oil and Gas Regulatory Body have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to the duties, functions and organizational structure of Downstream Oil and Gas Regulatory Body. Several regulatory changes in the Oil and Gas sector are required to support the optimization of the duties and functions of BPH Migas, which need to be regulated in the Job Creation Law, including several provisions regarding LNG and CNG, Representative Offices and Public Service Bodies and Dispute Resolution.

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