

The Politics of Legal Management of Upstream Sector of Oil and Gas in the Production Sharing Contracts by Using Gross Split Systems

Riana Wulandari Ananto¹, Albertus Sentot Sudarwanto², Yudho Taruno Muryanto³

¹Master Program Of Law, Sebelas Maret University Surakarta, Surakarta, Indonesia

^{2,3}Lecturer Master Program of Law Sebelas Maret University, Surakarta, Indonesia

Corresponding Author: Riana Wulandari Ananto

Abstract:- Legal politics in general can be formulated as a series of concepts and principles that form the outline and basis of the plan in the implementation of a job, leadership and ways of acting in the field of law. The legal politics of oil and gas management in Indonesia in its development aims to perfect an existing policy. Oil and gas management contracts in Indonesia have been amended several times, from the changes in the objectives of the parties in this case the government and Contractors oriented to business profits have not been fully realized, seen from each party experiencing losses, For this reason the Government issued a policy to enhance the existing policies by issuing option a new upstream oil and gas business that is a production sharing contract using the gross split system regulated in the Regulation of the Minister of Energy of Mineral Resources Number 8 of 2017. The hope of the goals of the parties that are oriented to business profits in contractual can be realized, especially for the government can achieve the ideals in accordance with mandated by the 1945 Constitution of the Republic of Indonesia. is the size of the return on investment and the profits that will be received by the contractor, very much depends on how efficient the contractor is in running upstream oil and gas operations. The more efficient the contractor, the return on investment and optimal profit will be obtained.

Key words: Legal politics, upstream business activities, production sharing contract, gross split.

I. INTRODUCTION

Oil and gas exploration and exploitation activities are considered as one of the non-renewable strategic natural resources controlled by the state and vital commodities that control the livelihoods of many people and have an important role in the national economy.¹ Being a country with the largest oil reserves in the Southeast Asian region also makes Indonesia a famous oil and gas barn, and becomes an investment destination for the oil and gas sector

in the world.² Therefore, the energy sector, particularly oil and gas, is still a contributor to national income.³

The management of oil and gas industry activities to meet the prosperity and welfare of the people, the implementation is divided into two sectors, namely the upstream and downstream sectors with two different management systems to be able to manage oil and gas optimally. Investment regulation in the mining industry is basically an integration between elements of public law and private law.⁴ At the level of implementation of natural resource management in oil and gas mining for the upstream sector, regarding the operation and distribution of mining revenue between the government and contractors, this is still the main problem, so there is an indication of legal politics of upstream oil and oil and gas management with the strategy for managing oil and gas for the needs of the people in the future. This can be seen in the development of production sharing contracts as oil and gas management contracts in Indonesia that have experienced several generations and each generation has different principles.⁵

Political law is the policy of state administrators about what are the criteria for punishing things. This policy can be related to the formation of law, the application of law, or law enforcement itself.⁶ The political development of the law on oil and gas in Indonesia rests on the development or

²Shofia Shobah, Hanif Nur Widhiyanti, Patricia Audrey, Cost Recovery in the Oil and Gas Cooperation Contract in Indonesia Viewed from International Contract Law. Faculty of Law Brawijaya University, p 1.

³Ali Supriyadi, The Increased Safety of Oil and Gas Business Through the Implementation of the Indonesian National Standard (SNI) and Indonesian National Work Competency Standards (SKKNI), Management Forum, Vol 6, No 4. P 1.

⁴Sang Ayu Putu Rahayu, The Principles of Law in the Cooperation Contract for Upstream Oil and Gas Business Activities, Yuridika: Volume 32 No. 2, May 2017, p 337.

⁵Indah Dwi Qurbani, Politics of Law on Oil and Gas Management in Indonesia, Legal Arena, Vol 6, No 5, August 2012, p 115-116.

⁶ Kartono, The Dynamics of the Law of Judicial Review in Indonesia, Journal of Legal Dynamics, Vol 11, Special Edition February 2011, p 17.

¹Sulistiyono, The Efforts to Reduce Illegal Retailers in the Distribution of Oil Fuel through Sub-Distributors, Management Forums, Vol 6, No 1, p14.

improvement of existing oil and gas legal products (*iusconstitutum*) or constitutional legal products or customary legal products that develop in the community in order to reach the ideals in accordance with mandate of the 1945 Constitution. In this case the word "legal politics" refers to the applicable positive law relating to laws and regulations governing oil and gas in Indonesia as legal products made by state administrators and the direction of legal developments to be built so as to cover *ius constitutum* (current law) and *ius constituendum* (the law aspired in the future).

A regulation governing upstream oil and gas activities is regulated in Law Number 22 of 2001 concerning Oil and Gas promulgated in State Gazette of 2001 Number 136 Additional State Gazette Number 4152 is the fourth phase as well as the last phase to date from development oil and gas law politics in Indonesia. The consideration of the establishment of Law Number 22 Year 2001 was because Law Number 10 Year 2004 concerning Amendment to Law Number 8 of 1971 concerning Pertamina was deemed no longer in line with the development of the oil and gas mining business. The enactment of the Oil and Gas Law greatly influences the implementation of oil and gas contracts. The effect of the Oil and Gas Law on the implementation of oil and gas contracts that can be seen today is regarding the issue of the distribution of production with a production sharing contract with a cost recovery system that is very detrimental to the state. Which can be known from since 2015, with profit sharing contracts that used the first cost recovery system in history, to return the upstream operating costs of oil and gas greater than the revenue from the management of upstream oil and gas parts of the government or in this case represented by SKK Migas. In fact, in 2016 the return on upstream oil and gas operating costs had exceeded Rp. 46.4 trillion, while the revenue from the government's share of upstream oil and gas was only Rp. 39.9 trillion.⁷

For this reason, the Government issued a new option for the upstream sector of oil and gas business system, namely the gross split system. Which then by the Minister of Energy and Mineral Resources (ESDM) on January 13, 2017 stipulates ESDM Ministerial Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts. A profit sharing contract that uses the Gross Split system is a profit-sharing contract in upstream oil and gas business activities based on the principle of gross production without the operating cost recovery mechanism. With this new scheme, the government does not need to think about reimbursing upstream oil and gas operating costs. KKS contractors will cover all costs of upstream oil and gas

operations. Instead, the government only gets the production division.⁸

In order to promote prosperity and build social justice, one of the principles of State management is included in Article 33 of the 1945 Constitution of the Republic of Indonesia that "the earth and water and natural resources contained therein are controlled by the state and used as much as possible for prosperity the people".⁹ Article 33 of the 1945 Constitution of the Republic of Indonesia is a philosophical foundation in the development of the legal politics of oil and gas in Indonesia. The position of the 1945 Constitution of the Republic of Indonesia as a basic law provides a legal consequence that any material under the laws and regulations that are underneath it must not conflict with the material contained in the 1945 Constitution of the Republic of Indonesia. The State of the Republic of Indonesia in 1945, which determines the outline, direction, content and form of law that will be applied in Indonesia. Amendments made in 2001 to Article 33 of the 1945 Constitution of the Republic of Indonesia contain two additional articles and chapter titles, which are stated in CHAPTER XIV of the Body of the 1945 Constitution of the Republic of Indonesia with the chapter heading National Economy and Social Welfare by containing 5 verses. Based on the above description of problems statement background, it is necessary to carry out further and in-depth analysis related to legal politics in the management of upstream oil and gas in the production sharing contract with the gross split system.

II. DISCUSSION

1. *The Definition of Legal Politics*

The term political law, etymologically derived from the Dutch term *Rechtspolitiek*. This term is a form of the word *rechts* and *politiek*. In Indonesian *rechts* means law, and *politiek* means *beleid* or policy. Based on this explanation, legal politics is briefly interpreted as a legal policy. Policy means a series of concepts and principles that form the outline and basis of the plan for implementing a job, leadership, and how to act. The politics of law in general can be formulated as a series of concepts and principles that form the outline and basis of the plan in the implementation of a job, leadership, and ways of acting in the field of law. Political law is the policy of state administrators about what are the criteria for punishing things. This policy may be

⁸BUMI SKK Migas Bulletin, Opens New Hope from the Gross Split scheme, SKK Migas, February 2017, https://skkmigas.go.id/images/upload/file/Bumi_February_2017, p 4.

⁹M. Ilham F Putuhena, Politics of Law for the Management of Upstream Oil and Gas After the Decision of the Constitutional Court (Politics of Upstream Oil law gas management after the Constitutional Court Decision), *Rechts Journal Vinding Media National Law Development*. Vol. 4 No. 2, August 2015. p 238.

⁷Ministry of Information and Information, 2018, New Era of Management of Upstream Oil and Gas <http://www.depkes.go.id/article/print/18022000001/era-baru-pengelola-migas-indonesia.html>, accessed on August 4, 2018 at 07.00 pm.

related to the formation of law, the application of law, or law enforcement itself.¹⁰

According to Soedarto in the constitution journal by the Son of Astomo, legal politics is the policy of the State through the State agencies that are authorized to set desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired.¹¹ Satjipto Raharjo in the constitution journal by Putera Astomo, defines legal politics as an activity of choosing and the way to be used to achieve a certain social and legal goal in society. According to Satjipto Raharjo, there are some fundamental statements that appear in legal politics studies, namely: (1) what goals can be achieved with the existing legal system. (2) what ways and what, which is best considered to be used to achieve that goal. (3) when is the law necessary to be changed and through the ways in which the change should be carried out (4) can a pattern be formulated that can help us formulate the process of selecting goals and ways to achieve those goals well. by the Son of Astomo, defining legal politics as an activity of choosing and how to be used to achieve a certain social and legal goal in society. According to Satjipto Raharjo, there are some fundamental statements that appear in legal politics studies, namely: (1) what goals are to be achieved with the existing legal system. (2) what ways and what, which is best considered to be used to achieve that goal. (3) when the law needs to be changed and through the ways in which the change should be carried out (4) can a pattern be formulated that can help us formulate the process of selecting goals and ways to achieve these goals properly.¹²

The definition of legal politics according to experts and specialist is basically substantially the same. Political law is a legal policy or official line of law that will be enforced either by making new laws or by replacing old laws, in order to achieve State objectives. Based on the existing understanding, the core of the definition of legal politics is legalpolicy that will or has been implemented nationally by the Indonesian government, which includes first, the development of law that has the essence of making and updating legal materials so that they can be in accordance with their needs. Second, the implementation of existing legal provisions includes the affirmation of the functions of institutions and guidance from law enforcers. From this research, it appears that legal politics includes the process of making and implementing laws that can show the nature and direction of the law to be built and enforced.¹³

2. *Legal Politics of of Upstream Sector of Oil and Gas Management in Production Sharing Contracts with Gross Split*

The political development of the law on oil and gas in Indonesia rests on the development or improvement of the existing oil and gas legal products (*iusconstitutum*) or constitutional law products or customary legal products that develop in the community in order to reach the ideals in accordance with the mandate of the 1945 Constitution. In this case the word "legal politics" refers to the applicable positive law relating to laws and regulations governing oil and gas in Indonesia as legal products made by state administrators and the direction of legal developments to be built so as to cover *ius constitutum* (current law) and *ius constituendum* (the law aspired in the future).

Business activities in the oil and gas sector are based on production sharing contracts. The first concept of production sharing contract or also known as production sharing agreement, which is the reference material in the world at this time, was first used in Bolivia in the early 1950s. Since then, the production sharing agreement has been widely used by countries with economic conditions in the transition period. The production sharing agreement as a form of cooperation between investors and the State in the process of finding minerals in underground layers is now actively used in more than 40 countries, including Angola, Vietnam, Libya, Egypt, Malaysia, Peru, Syria, the Philippines, Papua New Guinea, and others.¹⁴

In further developments, production sharing agreements were used in C.I.S, namely Russia, Azerbaijan and Kazakhstan. In 1995, Russia adopted a federal law on "agreement for profit sharing". Currently, some investors have carried out their activities in Russia under the production sharing agreement, although this regulation has not yet received further approval, because the regulatory process for the regulation is not final. The concept of a production sharing agreement that is followed by many countries in the world today is (1) Production sharing agreement as a special form of agreement relating to the underground layer by using relationships based on the principles of private contracts on the relationship between the State and investors to predict, explore, and refine or extract mineral resources, (2) Production sharing agreement as a contract that is subject to government policy when entrusting investors to educate, inspect and refine mineral resources within the boundaries of the layer area underground that has been determined based on compensation and the time period set by the government for investors, where investors are required to carry out work carried out with financing and risks borne by themselves.¹⁵

¹⁰ Kartono, *Op.Cit.*, p17.

¹¹ Putera Astomo, 2014, The Establishment of Law in the Framework of National Law Renewal in the Age of Democracy, Journal of the Constitution, Vol. 11, No. 3, September, p 586.

¹² *Ibid.*,

¹³ Irfan Nur Rachman, 2016, The Political Law of Natural Resource Management According to Article 33 of the 1945 Constitution, Journal of the Constitution, Vol. 13, No. March 1st, p 196.

¹⁴ Meiza Topan Romadhon, 2009, The Regulation of Production Sharing Contract in Oil and Gas Law, Law Journal, No. 1, Vol. January 16, p 89.

¹⁵ *Ibid.*, p 90.

The Government's great desire to nationalize oil and gas changes at that time. Until then, in 1964 the government introduced the concept of profit sharing in oil and gas cooperation contracts for contractors who intend to exploit and explore oil and gas in Indonesia. The aim is for Indonesia to quickly learn so that it can independently become a producer while managing natural resources in its own homeland. Birth of Law Number 8 of 1971 concerning the Oil and Gas Mining Company (PERTAMINA). The concept of profit sharing Experiencing various kinds of developments and changes, the production sharing agreement or also called the Production Sharing Contract, then the issuance of Law Number 22 Year 2001 concerning Oil and Gas which revoked the enactment of the two previous laws. Law Number 22 Year 2001 the contract for managing oil and gas is referred to as a cooperation contract. This cooperation contract can be interpreted in the form of a production sharing contract.

According to Taverne in a journal by Taiwo Adebola Ogunleye, it was stated that: "A PSC is a contractual arrangement made between an oil company (contractor), which in most cases is a foreign enterprise and a state party) authorizes the contractor to conduct petroleum exploration and exploitation within a certain area (contract area) in accordance with the rules of the agreement."¹⁶Zuhairah Ariff Abd Ghadas stated that:¹⁷ "A PSC is based on contractual principles for the relationship between the parties (HS & IOC) with regards to exploration and production. The rights and obligations of the parties are determined under the contract itself, so that the relationship would legally be equal and any sort of breach raises the issue of contractual and legal liability."

Production sharing contracts have experienced four generations, the core of which is the production sharing contract of the Government's crude oil production sharing system with mining companies (contractors). First generation profit sharing contracts (1964 to 1977). In this generation, the substance of the production sharing contract is the same as that stated by Ibnu Sutowo. However, due to a significant increase in world oil prices in 1973 or 1974, the government established a policy since 1974 the contractor was obliged to carry out additional payments to the government. Production sharing contracts have experienced four generations, the core of which is the Government's crude oil production sharing system with mining companies (contractors). First generation profit sharing contracts (1964 to 1977). In this generation the substance of the production sharing contract is the same as that stated by Ibnu Sutowo. But due to an increase in world oil prices which was quite significant in 1973 or 1974, so the

government established a policy since 1974 the contractor was obliged to carry out additional payments to the government.¹⁸

Contracts for the second generation results (1978 to 1987). Changes in production sharing contracts in this generation are caused more by foreign influences. In this case, the United States Government issued the IRS Ruling, which among other things stipulates that the depositing of Production sharing the contract of Net Operating Income is considered as royalty payments to the government. Because Pertamina and contractor tax payments are paid by Pertamina, it is recommended that contractors pay taxes directly to the government. Thus, the contractor pays a 56% tax directly to the government. In addition, Generally Accepted Accounting Procedure (GAP) must be implemented, including limiting the return of operating costs (cost recovery ceiling) to 40% per annum.¹⁹

Third generation profit sharing contracts (1988 to 2002). In this generation, changes were more due to the government setting new tax legislation in 1984, but this tax regulation could only be implemented in 1988.²⁰ Then the issuance of Law Number 22 Year 2001 concerning Oil and Gas which revoked the enactment of the two previous laws. Law Number 22 Year 2001 the contract for managing oil and gas is referred to as a cooperation contract. This cooperation contract can be interpreted in the form of a production sharing contract. Then the issuance of Law Number 22 Year 2001 concerning Oil and Gas which revoked the enactment of the two previous laws. Law Number 22 Year 2001 the contract for managing oil and gas is referred to as a cooperation contract. This cooperation contract can be interpreted in the form of a production sharing contract.²¹

Fourth generation profit sharing contracts (2002 to 2016). In this fourth generation, the percentage of profit sharing is as follows: Petroleum, 85% for the government (Implementing Agency) and 15% for business entities and/or permanent business entities. Then, for natural gas: 70% for the government (Implementing Agency) and 30% for business entities and/or permanent business entities.²² The revenue sharing system between the government and the contractor occurs after previously reduced by Cost recovery. Cost recovery is the return of oil and gas exploration and exploitation costs from the government to contractors. The cost recovery is paid in the form of oil and gas production, which is assessed by the Weighted Average Price (WAP), which is a balanced average price calculated based on the value of lifting for one year divided by the number of lifting

¹⁶ Taiwo Adebola Ogunleye. 2015. A Legal Analysis of Production Contract Arrangements in the Nigerian Petroleum Industry. Journal of Energy Technologies and Policy. Vol.5 No.8 . p 1.

¹⁷Zuhairah Ariff Abd Ghadas, 2014, Types And Features Of International Petroleum Contract, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 4, Issue 3 (June) ISSN 2289-1560, p 39.

¹⁸ Meiza Topan Romadhon, *Op.Cit.*, p 92.

¹⁹ *Ibid.*,

²⁰ *Ibid.*, p 92-93.

²¹ *Ibid.*,

²² Salim HS, 2012. Indonesian Mining Law. Jakarta: Raja Grafindo Persada. p 323

units during the same period.²³ During the exploration process on wells or areas that are considered still productive, investors can implement improved oil recovery, namely efforts to increase oil and gas production, these efforts will always be accompanied by cost recovery because it is included in the production costs.²⁴

The cost recovery system is considered very burdensome to public money through the State Budget (APBN). Since 2015, for the first time with a production sharing contract that used the first cost recovery system in history, to recover the upstream operating costs of oil and gas is greater than the revenue from the management of government upstream oil and gas or in this case controlled by SKK Migas. In fact, in 2016 the return on upstream oil and gas operating costs had exceeded Rp. 46.4 trillion while the revenue from the management of the government's upstream oil and gas portion was only Rp. 39.9 trillion.²⁵ Therefore, the government issued a new gross split upstream oil and gas scheme option, with the issuance of ESDM Minister Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts. So that the government issued a new gross split upstream oil and gas business scheme option, with the issuance of ESDM Ministerial Regulation Number 8 Year 2017 regarding Gross split Production Sharing Contracts.

Gross split system, production risk is borne entirely by the contractor so that the government does not need to bother and does not need to pay cost recovery. The choice was deemed by the government to be much reduced, efficient and reduced the complexity of audits, bureaucracy and lobbies. The profit sharing contract that uses the gross split system is 57% for the country and 43% for the oil contractor, while the share for natural gas is 52% for the country, 48% for contractors. Additional split determination to the Contractor by looking at several split and progressive split variables. For example, the Contractor will get an additional split if the working area has a large degree of difficulty. The contractor will also get additional splits if the percentage of local component usage is greater. As for the 10 split variables, namely, working area status (WK), WK location (onshore, offshore, or remote area), reservoir depth, supporting infrastructure, levels of CO₂ (carbon dioxide) content, H₂S content level (sulfur), specifications gravity, local component, and production phase. Whereas progressive split components are oil prices and cumulative production.²⁶

In making legislation, legal politics is important. For two things: First, as a reason why it is necessary to establish a statutory regulation. Second, to determine what is to be translated into legal sentences and formulate the article. These two things are important because the existence of laws and formulation of articles is a link between legal politics determined by the implementation of legal politics in the implementation phase of legislation. Given that there must be consistency and correlation between what is defined as legal politics and what is intended to be achieved as a goal.²⁷

Law Number 22 Year 2001 concerning Oil and Gas promulgated in the State Gazette of 2001 Number 136 Additional State Gazette Number 4152 is the fourth phase as well as the last phase to date from the political development of oil and gas law in Indonesia. The consideration of the establishment of Law Number 22 Year 2001 was because Law Number 8 of 1971 concerning Pertamina was deemed no longer in line with the development of the oil and gas mining business. Law No. 22 of 2001 also changed Pertamina's role from policy makers, regulators and business actors or players to become players only. In the chart below, the paradigm in Law Number 22 of 2001 concerning Oil and Gas is shown. This is also indicated by forming the Upstream Oil and Gas Activities Executing Agency, hereinafter referred to as BP Migas as regulated in Government Regulation Number 42 of 2002. The Downstream Oil and Gas Oil and Gas Regulatory Agency was also formed based on PP No. 67 of 2002. Completing the formation of the two new bodies Pertamina, based on Government Regulation Number 31 of 2003, has also changed its status to become a Company (Persero) or become a player. Regarding the main regulatory activities in the oil and gas sector, it has also been regulated in Government Regulation Number 35 of 2004 concerning Upstream Activities

Based on the decision of the Constitutional Court (MK) No. 36/ PUU.X/ 2012 on November 13, 2012, in which the contents of the decision of the Constitutional Court (MK) No 36/ PUU.X/ 2012 stated that the Constitutional Court granted the petition which contained the petition to question the existence of BP Migas because it was considered not to benefit the state or the people of Indonesia, and also more profitable foreign contractors. And the Court affirmed the existence of BP Migas in contravention of the 1945 Constitution of the Republic of Indonesia. After the verdict the government finally dissolved BP Migas and subsequently oil and gas functions and regulations were submitted to the Ministry of Energy and Mineral Resources, after which the government formed SKK Migas to replace BP Migas. with the issuance of Presidential Regulation No. 95 of 2012 concerning the Transfer of the Duties and Functions of BP Migas to the SKK Migas which is

²³ Abdul Nasir, 2014, History of Indonesia's Oil and Gas Fiscal System, Jakarta: Grasindo, p78.

²⁴Widjajono Partowidagdo, 2009, Oil and Gas and Energy in Indonesia: Issues and Policy Analysis, Bandung: Bandung Development Studies Foundation, p193.

²⁵Ministry of Information and Information, 2018, New Era of Management of Upstream Oil and Gas <http://www.depkes.go.id/article/print/18022000001/era-baru-pengelola-migas-indonesia.html>, accessed on August 4, 2018 At 07.00 pm.

²⁶Ibid.,

²⁷ Indah Dwi Qurbani, *Op.Cit.*, p 11.

responsible to the Minister of Energy and Mineral Resources.²⁸

Related to the legal basis regarding gross split systems can be viewed from formal and material reviews, the concept of production sharing contracts that use gross split systems as stipulated in ESDM Menetri Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts and their changes has fulfilled the elements stipulated in the 2001 Law on Oil and Gas. The formal thing in question has been fulfilled is the profit sharing contract that uses the gross split system included in the definition of the cooperation contract as stipulated in Article 1 number 19 of the 2001 Law on Oil and Gas, the y cooperation contract is the production sharing contract or work contract form each other in exploration and exploitation activities that are more beneficial to the state and the results are needed for the greatest prosperity of the people.

The material things (substantive) that have been fulfilled are the profit sharing contracts that use the gross split system that have fulfilled the substantive requirements stipulated in Article 6 of the 2001 Law on Oil and Gas, namely the main terms of the cooperation contract: "Ownership of natural resources remains in the hands of the government until there is a point of surrender. (1) operational management control is in the implementing agency. (2) capital and risk are borne entirely by the Permanent Business Entity ". Then to affirm that the profit sharing contract using the gross split system is in the cluster of cooperation contracts in the form of profit sharing contracts in the Draft Amendment to PP No. 35 of 2004 has entered the provisions concerning the basic provisions as follows: (1) state revenue, work area and return, (2) obligation to spend funds, (3) transfer of ownership of production of oil and natural gas at the time of contract extension etc.

Article 33 of the 1945 Constitution of the Republic of Indonesia is a philosophical foundation in the development of the legal politics of oil and gas in Indonesia. The position of the 1945 Constitution of the Republic of Indonesia as a basic law provides a legal consequence that any legislation under it must not conflict with the material contained in the 1945 Constitution of the Republic of Indonesia. Republic of Indonesia Constitution Indonesia 1945 which determines the outline, direction, content and form of law that will be applied in Indonesia. Amendments made in 2001 to Article 33 of the 1945 Constitution contain two additional articles and chapter titles, which are located in CHAPTER XIV of the Body of the 1945 Constitution with the chapter heading National Economy and Social Welfare by containing 5 verses. According to Kwik Kian Gie the amendments made to Article 33 of the 1945 Constitution are

related to liberalization in the natural resource management sector. People who desperately need to be forced to pay a high price, there is no longer a state obligation in this case the government to establish mutual cooperation through tax instruments. This happened because of a change in legal orientation, which developed was a perfect market mechanism, liberalization, privatization and globalization. However, slowly this will marginalize the elaboration of the ideas of nationalism and patriotism.²⁹

The nature of conformity with the objectives of exploitation and the use of natural resources is absolute and cannot be changed. However, this does not mean that it is the purpose of the law. The purpose of the law is, among other things, the existence of legal certainty towards the absolute and irreversible nature. In this sense the suitability of the law (rehtmatigheid) is placed on the exploitation and use of natural resources for the greatest prosperity of the people. The prosperity of the people is the ideal of the welfare state that must be realized by the state and the Indonesian government.³⁰

The hope with the new upstream oil and gas option scheme is the gross split system, which is regulated in ESDM Ministerial Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts. The goals of the parties that are oriented towards business profits will be realized. Especially for the government can achieve the ideals in accordance with the mandated State Constitution of the Republic of Indonesia in 1945, as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia by stating that "Earth and water and natural resources contained in it is controlled by the state and used as much as possible for the prosperity of the people ". For this reason, the Constitutional Court in Decision Number 3 / PUU-VIII / 2010, dated June 16, 2011, considers that, "... with the clauses" used for the greatest prosperity of the people "then that is the maximum measure of people's prosperity. in determining the management, arrangement or management of the earth, water and natural resources contained in it ... "³¹

State ownership rights or state rights are concepts that are based on state control organizations that have the authority to regulate, manage and supervise the management or control of minerals in this case the management of oil and gas, and contain the obligation to use them as much as possible.³² Not all can be done by the state regarding oil and gas business. Mastery in the scope of exploitation can be

²⁹ Kwik Kian Gie, *Economic Liberalization Strategy, Reform Review (Journal for Crisis Mapping and Study)*, Volume II Number 1 April-June 2008, p 38.

³⁰ Ronald Z. Titahelu, 1993, *The Determination of the Principles of General Law in the Use of Land for the Biggest People's Prosperity*, Dissertation of the Post-Graduate Program at Airlangga University, unpublished, p 14.

³¹ M. Ilham F Putuhena, *Op.Cit.*, p 238.

³² Abror Saleng, 2004, *Legal Mining*, Jakarta: Sinar Grafika, p 24.

²⁸ Dewi Tuti Muryati, Bambang Sadano, dan Doddy Kridasaksana, *Production Sharing Contract in Relation to Oil and Gas Mining Investment*, Research Report, Diponegoro University Alumni Foundation, University of Semarang Faculty of Law, p 3

delegated to state-owned, private or individual legal entities in the Indonesian mining jurisdiction. The state remains sovereign over mining materials.³³ For the management of oil and gas industry activities in order to fulfill the prosperity and welfare of the people, one of them is the upstream sector. To manage the activities of the oil and gas industry in order to fulfill the prosperity and welfare of the people, one of them is the upstream sector.³⁴

III. CONCLUSION

Article 33 of the 1945 Constitution of the Republic of Indonesia as a constitutional foundation in the management of oil and gas becomes legal material based on the concept of state control. The state functions as a regulator, administrator and supervisor as well as its relationship with the country's relations with the economy. The existence of an oil law system in the world that has been formed since before Indonesia's independence gave a particularistic nuance to legal reasoning in Indonesia. Periodization of the political development of oil and natural law in profit sharing contracts using gross split systems, has emphasized a different approach. The influence of legal positivism has been very strongly embedded in the Indonesian legal system, among others, marked by the desire to unify and codify the law (eenheidsbeginsel). The law is only interpreted as a positive norm in the system of legislation, this is represented in the articles contained in the legislation governing the management of oil and gas is based on the Production Sharing Contract that is regulated in the Regulation of the Minister of Energy of Mineral Resources Number 8 of 2017. The debate on the philosophical basis of the formation of legislation in oil and gas management stems from what ideology the state uses in managing the economy. The ideology used is the main foundation for managing oil and gas to achieve people's welfare.

REFERENCES

Books:

- [1]. Nasir, Abdul, 2014, *The History of Indonesia's Oil and Gas Fiscal System*, Jakarta: Grasindo.
- [2]. Salim HS, 2012, *Indonesian Mining Law*, Jakarta: Raja Grafindo Persada.
- [3]. Saleng, Abror, 2004, *Legal Mining*, Jakarta: Sinar Grafika.
- [4]. Sutedi, Adrian, 2011, *Legal Mining*, Jakarta: Sinar Grafika.
- [5]. Widjajono Partowidagdo, 2009, *Oil and Gas and Energy in Indonesia: Issues and Policy Analysis*, Bandung: Bandung Development Studies Foundation.

Journals:

- [6]. Astomo, Putera, 2014, *The Establishment of Law in the Framework of National Law Renewal in the Age of Democracy*, *Journal of the Constitution*, Vol. 11, No. 3, September.

³³Adrian Sutedi, 2011, *Legal Mining*, Jakarta: Sinar Grafika, p 24.

³⁴Sang Ayu Putu Rahayu, *The Principles of Law in the Cooperation Contract for Upstream Oil and Gas Business Activities*, *Yuridika: Volume 32 No. 2, May 2017*, p 337.

- [7]. Dewi Tuti Muryati, Bambang Sadano, dan Doddy Kridasaksana, *Production Sharing Contract in Relation to Oil and Gas Mining Investment*, Research Report, Diponegoro University Alumni Foundation, University of Semarang Faculty of Law.
- [8]. Ghadas, Zuhairah Ariff Abd, 2014, *Types And Features Of International Petroleum Contract*, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 4, Issue 3 (June) ISSN 2289-1560, p 39.
- [9]. Gie, Kwik Kian, 2008, *Economic Liberalization Strategy*, Reform Review, *Journal for Crisis Studies and Mapping*, Volume II Number 1 April-June, p 38.
- [10]. Kartono, *Dynamics of Legal Judicial Review in Indonesia*, *Journal of Legal Dynamics*, Vol 11, Special Edition February 2011, p 17.
- [11]. Ogunleye, Taiwo Adebola, 2015, *A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry*. *Journal of Energy Technologies and Policy*, Vol.5 No.8 . p. 1
- [12]. Putuhena, M. Ilham F, 2015, *Politics of Law for the Management of Upstream Oil and Gas After the Decision of the Constitutional Court (Politics of your Upstream Oil law gas management after the Constitutional Court Decision)*, *Rechts Journal Vinding Media National Law Development*, Vol. 4 No. 2, August. p 238.
- [13]. Rachman, Irfan Nur, 2016, *The Political Law of Natural Resource Management According to Article 33 of the 1945 Constitution*, *Journal of the Constitution*, Vol., Vol. 13, No. 1, March. p 196.
- [14]. Romadhon, Meiza Topan, 2009, *The Regulation of Production Sharing Contract in Oil and Gas Law*, *Law Journal*, No. 1, Vol. January 16, p 89.
- [15]. Ronald Z. Titahelu, 1993, *The Determination of the Principles of General Law in the Use of Land for the Most People's Prosperity*, Dissertation of the Post-Graduate Program at Airlangga University, Unpublished.
- [16]. Qurbani, Indah Dwi, *The Politics of Law on Oil and Gas Management in Indonesia*, *Legal Arena*, Vo 6, No 5, August 2012, p 115-116.
- [17]. Rahayu, Sang Ayu Putu, *The Principles of Law in the Cooperation Contract for Upstream Oil and Gas Business Activities*, *Yuridika: Volume 32 No. 2, May 2017*, p 337.
- [18]. Supriyadi, Ali, *The Increased Safety of Oil and Gas Business Through the Implementation of the Indonesian National Standard (SNI) and Indonesian National Work Competency Standards (SKKNI)*, *Management Forum*, Vol 6, No 4, p 1.
- [19]. Sulistyono, *The Efforts to Reduce Illegal Retailers in the Distribution of Oil Fuel through Sub-Distributors*, *Management Forums*, Vol 6, No 1, p 14.
- [20]. Shobah, Shofia, Hanif Nur Widhiyanti, Patricia Audrey, *Cost Recovery in the Oil and Gas Cooperation Contract in Indonesia Viewed from International Contract Law*, Faculty of Law Brawijaya University, p 1.

Decision:

- [21]. *The Decision of the Constitutional Court (MK) No 36 / PUU.X / 2012 November 13, 2012.*

Internet:

- [22]. BUMI SKK Migas Bulletin, *Opens New Hope from the Gross Split scheme*, https://skkmigas.go.id/images/upload/file/Bumi_Februari_20177
- [23]. Ministry of Information and Information, 2018, *New Era of Management of Upstream Oil and Gas* <http://www.depkes.go.id/article/print/18022000001/era-baru-pengelola-migas-indonesia.html>.