

Business Management Of Oil and Gas Upstream after the Constitutional Court Decision n0. 36/PUU-x/2012 in Order To Achieve the Prosperity Of the People

¹Hebib Dwinata Dahen, ² Yuslim, ³ Kurnia Warman

¹Magister Of Law Student, ^{2,3}Magister Of Law Lecture,

Andalas University, Padang, Indonesia

Email : ¹hebib.dahen@yahoo.com , ²yuslim_1957@yahoo.com ³kwarman@gmail.com

Abstract: *The Constitutional Court stated that 9 articles were unconstitutional in the Oil and Gas Law. After the Constitutional Court's decision, the government was deemed inconsistent in carrying out the Constitutional Court's decision. The formulation of the problem in this research is 1). How is the management of oil and gas before the Constitutional Court Decision Number 36 / PUU-X / 2012, 2). How is the management of oil and gas upstream businesses after the Constitutional Court Decision Number 36 / PUU-X / 2012 to achieve people's prosperity, 3). What is the perspective of the Constitutional Court Decision Number 36 / PUU-X / 2012 on the management of upstream oil and gas businesses to achieve people's prosperity? The type of research used is normative legal research, The research approach used is an approach to legislation and conceptual approaches. The legal material used is primary legal materials, secondary raw materials, and tertiary legal materials. The technique of collecting the legal material used is study documents. The technique of analysis of legal materials used is qualitative analysis techniques. Based on the results of the study can be concluded that 1) Oil and gas management before the birth of the Constitutional Court Decision is carried out by the oil and gas implementing agency, where the oil and gas implementing agency represents the country in conducting civil relations with business entities or permanent business entities 2). the management of upstream oil and gas business cannot be separated from the concept of the right to control the state, private actions of the government, and the purpose of Article 3 of the Constitution which is to achieve the prosperity of the people. therefore the management of upstream oil and gas business is returned to the government by forming special oil and gas working unit, however, special oil and gas working unit have similarities with oil and gas implementing agency which was declared unconstitutional by the previous Constitutional Court. 3) The perspective of the Constitutional Court ruling Number 36 / PUU-X / 2012 regarding the management of oil and gas oil and gas management institutions do not have significant differences from the previous ones, legal justice, and legal benefits have not yet been achieved.*

Key Words: *Busines Management of Oil And Gas Upstream, Decision of the Constitutional Court Number 36 / PUU-X / 2012, Prosperity of the People.*

1. INTRODUCTION:

Basic provisions for the management of oil and gas in Indonesia are based on Article 33 paragraph (3) of the Constitution of the Republic of Indonesia, which states that: "The earth and water and the natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people.[1] Based on these provisions, all exploitation of oil and gas must aim for the prosperity of the people. One way to achieve the prosperity of the people is by applying the principle of the right to control by the state in the management of oil and gas. The principle of state control over oil and gas management in Indonesia is regulated in several laws and regulations. Based on the series of regulations governing oil and gas management, Constitutional Court Decision Number 36 / PUU-X / 2012 concerning testing of Law Number 22 of 2001 concerning Oil and Gas is the last foundation in the regulation of oil and gas management in Indonesia. The decision of the Constitutional Court Number 36 / PUU-X / 2012 decides that the articles governing the Implementing Body, the phrase "with the Implementing Body", the phrase "through the Implementing Body", the phrase "based on consideration of the Implementing Body and", the phrase "Agency The Implementer and "and all the phrases of the Implementing Agency in the Explanation are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force.[2] With the dissolution of oil and gas implementing agency based on the decision of the Constitutional Court, the Government has returned to take over the control of oil and gas management. In this case, the Government's position to take over the authority and function of oil and gas implementing agency is carried out by the Ministry of Energy and Mineral Resources. The decision of the Constitutional Court was followed up by issuing Presidential Regulation No. 95/2012 concerning the Transfer of the Implementation of Duties and Functions of Upstream Oil and Gas Business Activities in which the contents of this Presidential Regulation are the transfer of carrying out the duties and functions of upstream oil and gas business activities to the Ministry of Energy and Mineral Resources. Presidential Regulation Number 95 the Year 2012 is followed up by the Ministry of Energy and Mineral

Resources by issuing Decree Number 3135K / 08 / MEM / 2012 concerning the Transfer of Duties, Functions, and Organizations in the Implementation of Upstream Oil and Gas Business Activities. In the same year, the Ministry of Energy and Mineral Resources issued Decree Number 3136K / 73 / MEM / 2012. Continued in 2013 the government issued Presidential Regulation No. 9 of 2013 concerning the Management of Upstream Oil and Gas Business Activities.[3]

Based on these regulations, a Special Task Force for Upstream Oil and Gas Business Activities was formed, in which the functions and duties of oil and gas implementing agencies are carried out by this institution. The establishment of special oil and gas working unit to replace oil and gas implementing agency is considered to only change the name of oil and gas implementing agency to special oil and gas working unit, by not changing its substance, and there is no meaningful difference between oil and gas implementing agency and special oil and gas working unit. Based on this, it raises questions about the management of upstream oil and gas businesses as intended by the Constitutional Court Decision and how the government's understanding of the implementation of the Constitutional Court's decision. [4] Based on the description above, the authors are interested in knowing the management of upstream oil and gas businesses after the Constitutional Court ruling Number 36 / PUU-X / 2012, whether the management of upstream oil and natural gas businesses after the Constitutional Court ruling has been able to provide maximum prosperity for the people referred to the Decision of the Constitutional Court.

2. LITERATURE REVIEW:

The right to control the state is a formal authority or authority that exists in the state and gives the right to the state to act both actively and passively in the field of state government, in other words, the state's authority is not only related to the authority of government alone but also includes all authority in to carry out their duties. (1) There are important limitations that must be kept in mind by the state in using the state's sovereign rights, namely: (2)

- Restrictions by the 1945 Constitution of the Republic of Indonesia. That matters governed by the state may not result in violations of human rights guaranteed by the 1945 Constitution of the Republic of Indonesia. Ordinary regulations on an interest and cause loss, on the other hand, is one form of the violation. A person who relinquishes his rights must receive legal protection and a fair appreciation for the sacrifice.
- Substantive restrictions in the sense of regulations made by the state must be relevant to the objectives to be achieved, namely for the greatest prosperity of the people. And this authority cannot be delegated to the private sector because it involves public welfare laden with mission services. Delegation to the private sector which is part of the community will cause a conflict of interest, and therefore not possible. [5]

The form of controlling rights by the state stated in the decision of the Constitutional Court consists of the right to make policies (beleid) and management actions (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the maximum prosperity of the people. This state control right is also applied in the management of oil and gas. In the management of oil and gas, there are several important principles in the operation of oil and gas that are regulated in Article 2 of the Law on Oil and Gas, namely the principle of democratic economy, the principle of cohesiveness, the principle of expediency, the principle of justice, the principle of balance, the principle of equity, the principle of equity, the principle of equity. joint prosperity, The principle of welfare of the people, the principle of safety, the principle of legal certainty, the principle of environmental insight.[6] The objectives of oil and gas management are stated in Article 3 of the Oil and Gas Law, while the objectives of oil and gas management are:

- guarantee the effectiveness and implementation of Exploration and Exploitation business activities in an effective, effective, and highly competitive and sustainable manner for strategic and non-renewable state-owned Oil and Gas through open and transparent mechanisms;
- guarantee the effectiveness of the implementation and control of accountable processing, transportation, storage and commercial businesses conducted through a mechanism of fair, healthy and transparent business competition;
- guarantee the efficiency and effectiveness of the availability of Petroleum and Natural Gas, both as energy sources and as raw materials, for domestic needs;
- support and develop national capabilities to be more able to compete at the national, regional, and international levels.
- increase state revenues to make the maximum contribution to the national economy and develop and strengthen Indonesia's industrial and trade position;
- creating jobs, increasing the welfare and prosperity of the people that are fair and equitable, while maintaining environmental sustainability. [7]

3. METHODS:

This research is normative juridical, namely legal research conducted by examining library materials or secondary research sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This research is descriptive, using a statutory approach and conceptual approach. The legal material collection technique used by the writer is a document study or library study. The legal analysis technique that I use is qualitative.[8]

4. DISCUSSION:

The Constitutional Court has abolished the existence of oil and gas implementing agency through the Decision of the Constitutional Court Number 6 / X-PUU / 2012, this is because the duties and authority of oil and gas implementing agency in the management of oil and gas are considered to conflict with Article 33 of the 1945 Constitution of the Republic of Indonesia. After the decision of the Constitutional Court, the government formed the special oil and gas working unit based on Presidential Regulation Number 9 of 2013 concerning the management and implementation of upstream oil and gas business activities, this Perpres explained that oil and gas management body had been replaced by special oil and gas working unit and formed a supervisory commission for control, supervision, and evaluation on the management of upstream oil and gas business activities. The duties and authority of special oil and gas working units are still the same as oil and gas management body which has been abolished by the Constitutional Court. So that the management of the upstream oil and gas business carried out by special oil and gas working unit is considered to be merely a change of name.[9]

5. ANALYSIS:

5.1. Earth Oil And Gas Management Before The Constitution Court Decree Number 36 / Puu-x / 2012

Management of oil and gas before Decision of the Constitutional Court Number 36 / PUU-X / 2012 is carried out based on Law Number 22 the Year 2001 Concerning Oil and Gas. In the Oil and Gas Law, oil and gas management consists of upstream oil and gas business activities and downstream oil and gas business activities, upstream business activities consisting of exploration activities and exploitation activities. In oil and gas management, the first stage is the upstream business activity and if the upstream business has been carried out it will be continued with the downstream business activity. Based on the oil and gas management stage, the author will first explain the first stage, namely upstream business activities.[10] Upstream Business Activities are business activities that are core or relying on Exploration and Exploitation of business activities. Exploration is an activity that aims to obtain information about the geological conditions to find and obtain estimates of oil and gas reserves in a specified work area. Exploitation is a series of activities aimed at producing Oil and Gas from the determined Work Area, which consists of drilling and finishing wells, construction of transportation, storage, and processing facilities for the separation and purification of Oil and Gas in the field and other activities that support them. [11] Exploration and exploitation activities previously explained are classified as upstream oil and gas business activities, as it is known that oil and gas business activities consist of upstream business activities and downstream business activities if the upstream business activities have been carried out then continued at the downstream business activity stage. In this discussion, the author will explain the upstream business activities first and then the writer will explain the downstream business activities. Upstream business activities can be carried out by State-Owned Enterprises, Regional-Owned Enterprises, Small Business Cooperatives, and Private Business Entities. Upstream business activities are carried out and controlled through cooperation contracts (PSCs). Cooperation contracts are production sharing contracts or other forms of cooperation contracts in exploration and exploitation activities that benefit the country and the results are used to the greatest extent possible for the prosperity of the people as referred to in article 1 paragraph 19 of Law Number 22 the Year 2001 Concerning Oil and natural gas In carrying out Cooperation Contracts, the Government is represented by the Implementing Body. The Implementing Agency referred to here is the Executive Agency for Upstream Oil and Gas Business Activities (oil and gas management body), a State-Owned Legal Entity established under the Oil and Gas Law and Government Regulation Number 42 of 2002 concerning the Implementing Agency for Business Activities Upstream Oil and Gas.[12]

Following the mandate of the law, the main function of the Implementing Agency for Upstream Oil and Gas Business Activities (oil and gas management body) is to supervise and control upstream oil and gas business activities following the Cooperation Contract (KKS), so that the extraction of oil and natural gas natural resources provide maximum benefits and acceptance for the State and as much as possible for the prosperity of the Indonesian people. (4) As for carrying out their duties, oil and gas management body have the authority:

- Fostering cooperation to realize integration and synchronization of KKKS operational activities,
- Formulating policies on KKKS budgets and work programs,
- Oversee the main operational activities of KKKS contractors,
- Fostering all KKKS assets that belong to the state,
- Coordinating with related parties and / or agencies.

After the upstream business activities have been completed, it will be continued at the next stage, namely downstream business activities. Downstream business activities are business activities that are core or based on business activities: Processing, Transportation, Storage, Commerce.[13]

5.2. Management Of Earth Oil And Gas Business Post-Constitutional Court Decree Number 36 / Puu-x / 2012 In Order To Reach The Prosperity Of People In 2012:

In 2012, the Constitutional Court issued Decision of the Constitutional Court Number 36 / PUU-X / 2012 concerning testing of Law Number 22 the Year 2001 concerning Oil and Gas. Through this ruling, the Constitutional Court stated that 9 Articles contradict the constitution. The core of the decision of the Constitutional Court is to state the articles governing the Implementing Body and the phrase "Implementing Agency" is declared contrary to the constitution and does not have binding legal force. The decision of the Constitutional Court immediately disbanded the Implementing Body. In the Constitutional Court Decision Number 002 / PUU-I / 2003, the author concluded that there are two points of the meaning of state control. First, according to the Constitutional Court, the control of this country has a broader and higher understanding of the meaning of ownership in civil law. This state's control comes from the sovereignty of the people, where each people will give their sovereignty to the state so that state sovereignty is born. With the sovereignty of the state, the state has the right to natural resources in Indonesia, the right in question is the right to control, this right to control is different from the right to civil rights. The state's tenure rights are also included in the cumulative right of public ownership by the people because this state's tenure rights are born from people's sovereignty.[14] Second, the state's right to control oil and gas consists of policy, regulation, management, and supervision. These four state rights must be exercised in their entirety and together, they cannot be exercised one by one. In the decision of the Constitutional Court above it is explained that the functions of policy, regulation, and supervision are carried out directly by the government. But for the management function, the government does not carry out direct management. the government only has limited authority to own shares or the state is directly involved in the management of state-owned enterprises and state-owned legal entity. Through its shares and being a part of the management of state-owned enterprises and state-owned legal entity, the state makes use of oil and gas to the maximum extent possible for the people.

Concerning the civil rights of this country, if it is related to state administrative law, it is known that the state is a legal subject, as a dragger van de Rechten en lichen or supporter of rights and obligations. (4) Although state administrative law states that the government can take action civil law, but specifically in the management of oil and gas this civil action is carried out with a Cooperation Contract (KKS), different from other natural resource management. The state's position as a shareholder and part of state-owned enterprises and state-owned legal entity management has resulted in the state becoming one of the parties in the contract so that the country is bound by the Cooperation Contract (KKS) and this will become an obstacle for the state to issue regulations that contradict the contents of the contract. Besides, due to the state being one of the parties to the contract, the country's position is aligned with the parties to the contract. Based on this the Constitutional Court returned the management of oil and gas to the government. Furthermore, the Constitutional Court ruled that the government could form new institutions to manage oil and gas or hand over the management of Oil and Gas to state-owned enterprises. [15] Nevertheless, if it is related to the aim of Article 33 of the 1945 Constitution of the Republic of Indonesia, namely achieving maximum prosperity for the people. The constitution requires state control that brings maximum benefits to the people, which should prioritize state control in the first rank, namely managing oil and gas natural resources that bring greater benefits to the people. direct management by the state or by business entities owned by the state is what is intended by Article 33 of the 1945 Constitution. With direct management, it is ensured that all the results and benefits that are obtained will go to state benefits that will indirectly bring greater benefits to the people. The direct management referred to here, both in the form of direct management by the state (state organ) through a State-Owned Enterprise. These policies, management, regulation, management, and supervision activities are carried out by the state directly, the aim of which is to get a large profit from oil and gas management. So that the realization of welfare and social justice is expected to cause a feeling of peace in the inner citizens. With the maintenance of that peaceful feeling, the order will have strong roots. (5) Based on that, the Constitutional Court believes that the state is given civil rights insofar as this aims to maintain the right of state control and to prosper the people. However, in implementing this civil rights the state must not be represented (such as oil and gas implementing agency which represents the state).[16] One of the government's actions after the ruling of the Constitutional Court Number 36 / PUU-X / 2012 is to form a special oil and gas working unit. The functions of special oil and gas working unit are as follows: (6)

- Consider the Minister of Energy and Mineral Resources for his policy in the preparation and offering of work areas and cooperation contracts;
- Carry out the signing of the cooperation contract;
- Review and submit field development plans that will first be produced in a work area to the Minister of Energy and Mineral Resources for approval;

- Approve the development plan other than as referred to in the previous point;
- Approve the work plan and budget;

The current existence of special oil and gas working unit which was formed to fill the legal vacuum over the dissolution of oil and gas implementing agency does not appear to have changed the structure of the national oil and gas governance as mandated by the decision of the constitutional court hearing on the testing of the Oil and Gas Law. [17] The function owned by special oil and gas working unit which is the same as the function of oil and gas implementing agency certainly shows that the treatment of national oil and gas governance will be maintained. While this function has received a recommendation not to be used anymore. It can be seen that from the regulations that have been issued there is no difference between oil and gas implementing agency and special oil and gas working unit, the name of the institution is different, but the tasks, functions, funding organizations, assets, and personnel are still the same. This means that the government has not been serious in improving oil and gas governance. The cooperation contract which is also carried out by a special oil and gas working unit by continuing to be a representation of the government as a contracting party with a business entity or permanent establishment is the construction of a cooperative relationship that is opposed by the court. Such cooperation would be deemed to degrade the country's sovereignty over natural resources and be in conflict with the principle of state control referred to in the constitution. This shows that it appears that mistakes in the oil and gas regulation implemented by oil and gas implementing agencies were repeated by special oil and gas working units. Thus special oil and gas working unit is a failure again in the management of oil and gas. [18] The difference lies only in the concept of the Supervisory Commission in the special oil and gas working unit which is less influential on the reform of national oil and gas governance. Before the decision of the Constitutional Court, the supervision was carried out by oil and gas implementing agency, but after the decision of the Constitutional Court, the supervision was carried out by the Supervisory Commission, where the Supervisory Commission would assess the performance of special oil and gas working unit. The Supervisory Commission consists of the Minister of Energy and Mineral Resources, Deputy Minister of Energy and Mineral Resources, Deputy Minister of Finance and Head of the Investment Coordinating Board. The second difference is the use of special words to show special oil and gas working unit is directly responsible institutionally to the president and coordinates with the Ministry of Energy and Mineral Resources. [19]

5.3. Perspective Of The Decision Of The Constitutional Court Number 36 / Puu-x / 2012 On The Management Of Oil And Gas Upstream Business In Order To Achieve The Prosperity Of The People:

Perspectives of the Constitutional Court ruling Number 36 / PUU-X / 2012 regarding the management of oil and natural gas as follows:

- Institutional Aspect, this Constitutional Court's decision has eliminated the existence of oil and gas implementing agency and the formation of a new institution namely special oil and gas working unit and is equipped with a supervisory commission. The change of oil and gas implementing agency to special oil and gas working unit is considered as a mere change in the name of the institution, while the duties, functions, and authorities remain the same, namely establishing a cooperation contract.
- The aspect of justice, oil, and gas management are considered not able to achieve legal justice for the people because in the formation of face-to-face state contracts are still represented by special oil and gas working units so that they are still equalized between the state and the parties in the contract.
- Utilization Aspect, oil and gas management is considered not able to provide maximum benefit for the people because the cooperation contract has implications for the depletion of the national oil and gas supply, even though oil and gas exploitation is carried out until it consumes the oil and gas supply, but poverty is still not resolved and people's prosperity has not been achieved. [20]

6. CONCLUSION:

- Based on the results of research and discussion by the author, the conclusions can be drawn as follows:
- Management of oil and gas before the birth of the Constitutional Court Decision Number 36 / PUU-X / 2012 is held by the government as the holder of mining authority. The government's action is to form an oil and gas implementing agency as a party representing the country in the management of the oil and gas business.
- Management of oil and gas upstream businesses after the Constitutional Court Decision Number 36 / PUU-X / 2012, namely by removing the phrase "implementing agency" in the Oil and Gas Law, the existence of oil and gas implementing agency is also abolished. oil and gas implementing agency were abolished because its status as a civil legal entity representing the state was considered to degrade the country's sovereignty and contradict the state's right to control in Article 33 of the constitution. Therefore, the Constitutional Court decided that management should be returned to the government and decided that the government should form a new

institution that would manage the oil and gas sector or hand over oil and gas management to state-owned enterprises. In 2013 the Government corrected special oil and gas working units to replace oil and gas implementing agencies, the management of upstream businesses that were previously implemented by oil and gas implementing agency and then implemented by special oil and gas working units. Previously, the Constitutional Court had decided that in the management of state oil and gas the country should not be represented and the state should not be bound by cooperation contracts (KKS). important production and control of the livelihoods of many people, the financial benefits of the country are few so that the reduction in state income will be used for the welfare of the people. therefore the government formed a new institution namely a special oil and gas working unit which functions the same as oil and gas implementing agency, but special oil and gas working unit is not a civil legal entity but a special work unit. Supervision of special oil and gas working unit is carried out directly by the Minister of Energy and Mineral Resources, Deputy Minister of Energy and Mineral Resources, Deputy Minister of Finance and Head of the Investment Coordinating Board. Unlike before, the supervision was carried out by the oil and gas implementing agency as well.

- The perspective of the Constitutional Court's decision No. 36 / PUU-X / 2012 for the management of oil and gas, that is, oil and gas management institutions do not have significant differences from the previous ones, legal justice, and legal benefits cannot yet be achieved.

7. SUGGESTION:

- Management of oil and gas must provide great prosperity for the people as mandated by the constitution.
- For the revision of the Oil and Gas Law to stipulate the oil and gas organizers without having to degrade the country's sovereignty, contrary to the constitution but be able to provide maximum prosperity and prosperity for the people.
- Oil and gas civil relations can be submitted to SOEs with full control over natural gas and oil resources remain in the country as referred to by the Constitutional Court Decree Number 36 / PUU-X / 2012.

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