

Upstream Oil and Gas Management: Legal Policy of Aceh's Special Autonomy Perspective

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Abstract

One form of natural resource in Indonesia is Oil and Natural Gas. The existence of the upstream oil and gas industry has a direct and indirect impact on regional development. Of several oil and gas-producing regions in Indonesia, Aceh is the only region that has special autonomy status. Are there differences in management arrangements and distribution of natural gas revenues from Aceh compared to other regions? How can oil and gas management provide greater benefits to Aceh? This research uses doctrinal or normative legal research, by examining library materials or secondary data. This research also uses primary data in the form of interviews with stakeholders. The result shows that the special autonomy granted to Aceh Province gives the regional government the authority to be involved in oil and gas management through the Aceh Oil and Gas Agency. However, as it turns out into practice, its duties and scope of authority are limited to monitoring implementation, acting as a regulator at the national level; hence, a direct role in the upstream oil and gas business process does not work and does not have a direct impact on increasing local revenue. Therefore, it is crucial to involve the region in direct oil and gas management in Aceh, in part or in whole, by giving the region the right to manage old wells.

Keywords: Oil; Gas; Natural Resource; Special Autonomy, Profit-Sharing Funds.

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1. INTRODUCTION

Natural resource management in Indonesia is considered to be impartial to regional governments and only prioritizes the interests of the central government. State control over natural resources is stated in the 1945 Constitution with the aim of maximizing the welfare and prosperity of the Indonesian people [1]. Many news and studies reveal that natural resource management has not provided adequate results for development and improving community welfare [2]. What often happens is that regions and communities only get residue from management carried out by the central government in the form of ecosystem destruction, horizontal conflicts and spatial planning chaos.

One form of natural resource in Indonesia is Oil and Natural Gas. Oil and gas are the world's main source of energy, reaching 65%, then coal at 23%, and the rest comes from water, geothermal and others. In oil and gas management, much debate is related to the distribution of utilization results. Sharing the proceeds from the use of oil and gas natural resources is a form of fiscal decentralization, which refers to financial and expenditure arrangements between regional governments and the central government [3].

In fact, what the central and regional governments are fighting over is the value of the proceeds from granting concessions as well as the proceeds from taxes and royalties on the use of natural resources. Where the value is relatively much smaller

¹ Sibarani, Sabungan. "Analysis of State Control Over Natural Resources Oil and Gas (According to Law No. 22 of 2001 Concerning Oil and Gas)." *Brawijaya Law Journal* 5, no. 2 (2018): 217-232.

² Anshar, Sumardi, Juajir, Noor, SM, and Irwansyah. "Sovereignty of Oil and Gas Management in Indonesia:

An International Law Perspective." *JL Pol'y & Globalization* 71 (2018): 149.

³ Citra, J. "New Indonesian Government Policy on "Participating Interest" Arrangements in Oil and Gas Management." *Journal of Law and Economics* 1, no. 1 (2020): 13-17.

than the results of natural resource utilization obtained by the party receiving the concession for the natural resource. Therefore, the struggle that occurs is less than reasonable, because the value is much smaller than the results from the use of natural resources [4].

The existence of the upstream oil and gas industry has a direct and indirect impact on regional development. Directly contributing to the region participation rights of 10%, regional taxes and regional levies. The indirect impact comes from companies supporting upstream oil and gas businesses and the disbursement of social responsibility.

Oil and gas-producing regions in Indonesia include Aceh, Riau, West Papua, South Sumatra, East Java, West Java, North Sumatra and East Kalimantan. Of these regions, Aceh is one of the oil and gas producers with special autonomy status [5]. How are the differences in management arrangements and distribution of oil and gas natural resources in Aceh compared to other regions? The research question in this paper is whether the upstream oil and gas management arrangements reflect the legal politics of special autonomy that are fair.

Natural resources have two characteristics, namely renewable resources (renewable natural resources) and natural resources that are non-renewable (non-renewable natural resources). One type of nonrenewable natural resource in the mining sector, namely oil and natural gas. Oil and gas mining operations carry several relatively high risks.

In 2022, Indonesia had seventeen oil and gas-producing provinces. However, the natural resource adagium still applies in eight provinces where the number of poor people is higher than the national average of 9.57%, even though the regional income from oil and gas revenue sharing funds is quite high [6]. In addition, politically, there are a number of local governments that complain about the process of calculating, disbursing and reporting oil and gas revenue sharing funds, which often leads to tensions between the central and regional governments.

2. METHOD

This research uses doctrinal or normative legal research, by examining library materials or secondary data. This research also uses primary data in the form of interviews with stakeholders [7]. Furthermore, the data were analyzed with content analysis to analyze the formulation of the problem and then made a conclusion and suggestion. Those legal material collected are analysed prescriptively.

3. LEGAL POLICY OF OIL AND GAS MANAGEMENT: ACEH'S SPECIAL AUTONOMY PERSPECTIVE

Historically, Indonesia, as a country rich in natural resources, has experienced changes in the strategies for managing extractive resources during different periods of government. Normatively, according to the Law on Oil and Gas, the government has the authority to hold mining rights. This means that the government is given authority by the state to carry out exploration and exploitation activities [8].

Exploration is an activity aimed at obtaining information regarding geological conditions to discover and obtain estimates of Oil and Gas reserves in the specified Working Area. Exploitation is a series of activities aimed at producing Oil and Natural Gas from a specified Working Area, which consists of drilling and completing wells, building transportation, storage and processing facilities for separating and refining Oil and Natural Gas in the field as well as other activities that support it.

The government then formed a regulatory body to carry out regulation and supervision, and an implementing agency to control upstream business activities. In the oil and gas business, activities are divided into upstream business activities in the form of exploration and exploitation and downstream business activities consisting of processing, transportation, storage and trading. These business activities can be carried out by state-owned enterprises; regional-owned enterprises; cooperative; small business; and private business entities. Meanwhile, foreign business entities or so-called permanent business entities can only carry out upstream activities.

⁴ Purwanto, Widodo Wahyu, Yuswan Muharam, Yoga Wienda Pratama, Djoni Hartono, Harimanto Soedirman, and Rezki Anindhito. "Status and outlook of natural gas industry development in Indonesia." *Journal of Natural Gas Science and Engineering* 29 (2016): 55-65.

⁵ Zulkarnaen, Iskandar, Jumadil Saputra, Fauzi Abdurrahman, and Ella Suzanna. "A Study of Economic and Ecological Strategies for Sustainable Development in Aceh, Indonesia." *International Journal of Engineering & Technology* 7, no. 4.34 (2018): 431-436.

⁶ Vonna, Zakia, Sri Walny Rahayu, and M. Nur. "Compatible Concept of Contract Law with Oil and Gas

Production Sharing Contract in Indonesia." *IOSR Journal of Humanities and Social Science* 24, no. 9 (2019): 10-21.

⁷ Irwansyah. *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, (Yogyakarta: Mirra Buana Media, 2020), p. 41.

⁸ Yi, J. X., Kai Wang, Yun Peng, Y. W. Chang, and K. Tang. "New orientation of oil and gas contracts and fiscal terms in Indonesia." *International Journal of Trade, Economics and Finance* 10, no. 3 (2019): 62-66.

As a region that has special autonomy, Aceh has differences in terms of natural resource management. In Law No. 11 of 2006 concerning the Government of Aceh, it is stated that the Central Government and the Government of Aceh jointly manage the natural resources of oil and gas, which are located on land and sea in the Aceh jurisdiction by forming a jointly

appointed implementing agency. Following up on this, the Governor of Aceh issued Decree No. 542/323/2013, as the legal basis for the birth of the Aceh Oil and Gas Management Agency. Government agency formed to carry out joint management and control of upstream business activities in the Oil and Gas sector located on land and sea in the Aceh jurisdiction (0 to 12 miles sea).

Table 1: Comparison of actual production and production targets

	2021	WP&B 2022	WP&B (%)
Barrel Oil Per Day (BOPD)	1908	2050	108
Million Standard Cubic Feet per Day (Gas)	92,02	96,44	105
Barrels of oil equivalent per day (BOEPD)	18340	19271	106

Source: Secondary data, 2024 (processed)

The role of regional government is degraded if you look at the role given by the previous law. Previously, regions that had marine areas were given the authority to manage resources in marine areas. Meanwhile, in the latest law, government affairs in the field of energy and mineral resources related to the management of oil and natural gas fall under the authority of the central government [9]. This is slightly different from Hadi and Michael's [10] writing which states that the authority to manage oil and gas has never been decentralized.

Of the several contractors who have cooperation contracts in Aceh, the role of the local Government is minimal, except for Aceh Oil and Gas Agency involvement in contract negotiations with contractors. Participating interest in Aceh still needs to be completed. Where the offer has been given to the North Aceh Provincial Government and Regional Government through PT Pase Energy as BUMD. But the process still needs to be finished. The only regional Government recorded as having received dividends from PI in oil and gas management is West Java Province through PT. ONWJ West Java Upstream Oil and Gas, whose bidding process started in 2017. This means that after the Minister of Energy and Mineral Resources Regulation was issued, it became the first Regional Government to receive a 10% PI. The following is data on oil and gas production in Aceh:

Four Exploration Working Areas and two exploration Working Areas are in the Aceh jurisdiction.

The total Definitive Commitment and Definitive Work Commitment to the 6 WKS is US\$150,380,000, of which 19 activities have been realized.

Based on Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, profit-sharing funds are based on a percentage of certain revenues in the APBN and specific performance, which are distributed to producing regions with the aim of reducing fiscal inequality between the Government and Regions, as well as to Other non-producing regions to overcome negative externalities and/or increase equality within one region.

The research findings show how regional income is obtained from oil and gas management in the region [11]. The numbers need to be more significant to accept responsibility for environmental maintenance from gas production that they do not work on [12]. TKD is the primary source of regional income, amounting to more than 60%, regional dependence on the Center is excellent. For Aceh, the number is around 64.24%.

One of the basic principles in natural resource management is that because natural resources are limited, the Government, when using them for one particular thing, will prevent their use for other things, resulting in opportunity costs [13]. Opportunity cost is the emergence of costs/risks because humans sacrifice one thing to get another. The choice of several alternatives will result in a trade-off between the benefits and costs of each alternative for different groups of people (winner

⁹ Sunley, Emil M., Thomas Baunsgaard, and Dominique Simard. "Revenue from the oil and gas sector: Issues and country experience." *Fiscal policy formulation and implementation in oil-producing countries* (2003): 153-183.

¹⁰ Rizaldi, Sony, Slamet Suhartono, Syofyan Hadi, and Tomy Michael. "State Relationship with Private Legal Entities on Oil and Natural Gas Management in Indonesia." *Journal of International Trade, Logistics and Law* 9, no. 1 (2023): 10-14.

¹¹ Sunarjanto, Djoko, and Dwi Kusumantoro. "Optimasi Mewujudkan Ketahanan Energi Nasional: Penanganan

Lingkungan dan Migas Non Konvensional." *Lembaran publikasi minyak dan gas bumi* 49, no. 3 (2015): 243-253.

¹² Hadna, Agus Heruanto. "Formulating an Oil and Gas Revenue Sharing Fund Based on Rights Based Approach." *Bisnis & Birokrasi: Jurnal Ilmu Administrasi dan Organisasi* 23, no. 1 (2017): 2.

¹³ Baik, Ridwan Nyak. "Natural resources investment of oil and gas and regional development impact on community empowerment." *The Indonesian Journal of Geography* 47, no. 1 (2015): 60.

and loser groups). In oil and gas management, the Government accumulates all its authority at the Center and only leaves environmental maintenance to the regions. This approach is contrary to the principles and politics of autonomy built based on the constitution, which places autonomy as a political choice for regional Government.

To balance efforts to protect the environment with managing natural resources and the economy, it is necessary to develop a basic framework for decision-making based on three dimensions: efficiency, sustainability, and justice. Efficiency measures the flow of benefits and costs from policy alternatives. Sustainability measures the impact of policy alternatives on natural capital stocks. Justice measures the distributional aspects of the implementation of policy alternatives.

Therefore, the sharing of profits from using natural gas is fairer if the competition is not only from the proceeds from granting concession permits, taxes and levies but also from the overall results. Most of the benefits so far have been enjoyed by the private sector as concession holders and operators of natural resource exploitation. There is a need for different formulas to share the results of utilising different types of natural resources with different impacts. For types of natural resources that are important and strategic for national development and affect the livelihoods of many people, it is natural that the share of the central government is greater than that of regional governments. However, for types of natural resources that are not important for the state and do not affect the livelihoods of many people, the regional government should receive a more significant portion of the profit sharing from using natural resources.

The involvement of BUMD through PI has become the first step in the transfer of knowledge and involvement of the Regional Government in managing more considerable oil and gas natural resources [14]. Therefore, the 10% PI offer by the contractor must be welcomed by immediately forming and appointing a BUMD that is professional and has integrity. Note that providing more significant opportunities for BUMDs to conduct upstream oil and gas business will significantly impact the region, both directly and indirectly. Hence, BUMD has done this in other areas. It's just a matter of how the Aceh government can copy and paste it and adapt it to the community's needs.

4. CONCLUSION

The special autonomy granted to Aceh Province gives the regional government the authority to be involved in oil and gas management through the Aceh

Oil and Gas Agency. However, as it turns out into practice, its duties and scope of authority are limited to monitoring implementation, acting as a regulator at the national level; hence, a direct role in the upstream oil and gas business process does not work and does not have a direct impact on increasing local revenue. Therefore, it is crucial to involve the region in direct oil and gas management in Aceh, in part or in whole, by giving the region the right to manage old wells.

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¹⁴Widyanti, Rizkyani, Putrisunan Haryanto, Siti Asyiah, and Andang Bachtiar. "PI 10% Share Distribution Methods of Oil & Gas Block for Province and Regency

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