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Setting of Earth Oil Management in Old Wells Based on the Principle Social Justice

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Abstract

This study aims to determine and explain the management arrangements for petroleum mining in old wells based on the principle of social justice. This study uses normative research methods with data sources in the form of primary and secondary legal materials. The results of the study show that the management of petroleum mining in old wells does not yet reflect the principle of social justice because the regulations governing mining occur overlapping multiple interpretations, conflictual and disobedient principles, which in turn creates disharmony between one rule and another.

Keywords: Social Justice; Equitable Benefits; Community Participation.

Abstrak

Penelitian ini bertujuan untuk mengetahui dan menjelaskan pengaturan pengelolaan pertambangan minyak bumi pada sumur tua berdasarkan prinsip keadilan sosial. Penelitian ini menggunakan metode penelitian hukum normatif dengan sumber data berupa bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa pengaturan pengelolaan pertambangan minyak bumi pada sumur tua belum mencerminkan prinsip keadilan sosial karena peraturan yang mengatur mengenai pertambangan terjadi tumpang tindih multitafsir, konflikktual dan tidak taat asas yang pada ujungnya menciptakan tidak harmonisnya antara satu peraturan dan peraturan yang lain.

Kata Kunci: Keadilan Sosial; Pemerataan Manfaat; Partisipasi Masyarakat.

Introduction

Petroleum is one of the vital natural resources (SDA) to support human survival. The amount that is fixed and non-renewable gives the consequences for careful planning in the management of petroleum in order to provide maximum benefit. As a commodity that affects the lives of many people, the control of natural resources in the form of oil in Indonesia is in the hands of the state and managed for the prosperity of the people. (Anis Siti Hartati and Marita, 2017).

The management is an attempt to achieve national development goals for the region. This provision for the management of natural resources is found in the language of Article 33 of the Republic of Indonesia Constitution of 1945 (URI NRI 1945). The article's description is philosophy of the Indonesian economy introduced by the Indonesian people's founding fathers. In the case of natural petroleum resources, reference may be made to Article 33(3) of the Republic of Indonesia Constitution of 1945, which states that the land, water and natural resources found therein are regulated by the State and used for the greater benefit of the citizens.

In order to obtain maximum results in management, it is necessary to have laws and regulations specifically governing the management of petroleum which are implemented on the principles of democracy, justice and sustainability. Oil and gas operations are currently regulated in Law Number 22 Year 2001 on Oil and Gas (Oil and Gas Law) which includes upstream and downstream oil and gas operations. The Oil and Gas Law was established so that oil and gas business activities could be nationally and internationally consistent with the development of the oil and gas mining industry. (Anis Siti Hartati and Marita, 2017)

The oil industry is by far the largest and most internationally penetrated industry in the world, among all industries (Para, 2004, p. 1). Indonesia itself has been operating oil mining since the 1800s which involves the international industrial network of the Netherlands (Simamora, 2000, p. 11). Behind the scale of the current oil industry, however, there's also the production of petroleum extraction in old wells that the group typically does. The Ministry of Energy and Mineral Resources Regulation No. 01 of 2008 on Mining Guidelines for Old Wells (ESDM Ministerial Regulation No. 01 of 2008) was promulgated with a view to improving the existing old wells.

Indonesia has 13,824 old wells that have the opportunity, if properly managed, to increase national oil production while increasing the welfare of local communities in producing regions. The output of the old wells from 1,993 wells exceeded 2,143 barrels per day (bpd). Yet now it's undergone a production decline and leaves 1,905,23 bpd of 1,400 wells (Pratama, 2020). While the effects of the production of old wells have a significant contribution to the output of national oil, historically the management of petroleum mines in old wells still often causes legal, social and economic problems within the community.

Historically and sociologically, since Indonesia 's independence, local communities have managed old wells in mutual cooperation to meet the everyday needs. The management of petroleum in old wells is rigidly regulated after the issuance of Regulation No 01/2008 of the ESDM Ministers. The assumption is that in undertaking oil production the mining community is bound to the government, beginning from the

process of re-operating wells to the surrender of all oil production (this process is called the process of leaving).

However, conflicts of interest between the countries currently served by Pertamina and the mining community, as well as fellow people, often trigger issues. This issue is closely related to the history of the discovery of old wells in an area that then gave birth to the practice of slavery (Belvage, 2016, p. 454). Socio-economic inequalities often exist in local communities in oil-producing regions that should have priority in obtaining the benefits of their area's natural resources (Yurista & Wicaksono, 2015, p. 315) Judicially checked, the question of handling old wells has to do with the material aspects of ESDM Ministerial Regulation No. 01 Year 2008. The nature of the legislation designed to control the old wells is not yet detailed, vague, and less stringent.

Legal regulations regulating the extraction of petroleum, particularly oil mining in old wells, should have the potential to mitigate existing problems. In fact, the limit can't be said to be controlling petroleum mining in old wells. This can be seen from the exchange of continuous issues that occur. While oil is considered to be a natural resource that can play a major role in the economy of the country, it can promote social justice. Departing from the issues raised, the author wishes to discuss the legal issues relating to the management of petroleum extraction in old wells based on principles of social justice.

Research Methods

The research method used is prescriptive normative legal research. The approach used in this is the Statute Approach and Conceptual Approach (Marzuki, 2017, pp. 41, 59-60, 133, 136). The analysis is based on primary legal material, namely the 1945 Constitution of the Republic of Indonesia, Law Number 22 of 2001 concerning Oil and Gas, and Regulation of the Minister of Energy and Mineral Resources Number 01 of 2018 concerning Guidelines for Mining Exploitation in Old Wells. Secondary legal materials in the form of books, journals and related scientific publications.

Discussion

1. Meaning of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia in the Petroleum Management Regulation

The reform of Article 33 of the Republic of Indonesia 's Constitution of 1945 should not be isolated from the Pancasila 's five precepts, including "Economic Justice for All Indonesians." Notonagoro clarified that social justice is simply a mission / aim to be done in order to bring about collective wealth and happiness of all people (Notonagoro, 1994, p. 16). In the form of Natural Resources, the Republic of Indonesia Constitution of 1945 stipulated this in Article 33 of CHAPTER XIV National Economy and Social Welfare, which must be

understood as a unit to achieve economic justice. Article 33 of the Republic of Indonesia Constitution of 1945 is indeed an economic ideology for Indonesia.

Economic philosophies that are fundamental in populist economies and institutionalized in the constitution will become a platform for Indonesian economic policy (Iskandar, & Zuhdi, 2016, pp. 116, 119). In essence, the theory of common economy or translated as economic democracy gives priority to collective prosperity (totality or mutualism) not to individual prosperity (individualism) (Dian, 2015, p. 88) in order to establish a social justice system. The individualism theory itself is closely related to liberal justice, where the individual has the right to do what he wants without being coerced. John Locke argues that liberality, which is the basic principle of liberalism, is interpreted as the lack of external interference in human practices (Aida, 2005, p. 96).

Social justice is definitely distinct from the sense of justice presented in utilitarian justice by some thinkers including John Stuart Mill, with the doctrine that anything that is real will create great satisfaction or profit (Mill, 1957, p. 9). The concept of utilitarianism was then criticized by the bearers for understanding liberalism's justice, because that overrides the rights of individuals. John Rawls' Justice Liberalism notes that equal freedom is the principal concept, but even freedom is in a set of arrangements (lexical ordering), and that freedom can be restricted only by freedom itself, not by social or economic interests (Lebacqz, 2013, p. 53). Although Etzioni criticizes liberal ideas of communitarianism although ignoring the crucial fact that individuals are "embedded" into society (Etzioni, 2015, p. 1).

John Rawls also claimed that the full function of the state is necessary in realizing a justice. This opinion is a rebuttal to Robert Nozick who recognizes constitutional justice, which allows the State to play a limited role in delivering justice (Lebacqz, 2013, pp. 95-96). Whereas Sen argues that the focus of justice theory as fairness is more on just institutions rather than just communities. Sen emphasizes justice not on the full position of institutions, but on institutions that are equal with a emphasis on mitigating inequality, promoting justice and concentrating on realization since (Sunaryo, 2018, pp. 16, 19-20).

In essence, Article 33(3) of the Republic of Indonesia 's Constitution of 1945 institutionalizes the spirit of creating social justice by becoming the basis for regulating the control and allocation of natural resources, including, but not limited to, the natural resources. The constitutional court interprets regulation of natural resources on many levels. The people are collectively built by the Constitution of 1945 which gives the state a mandate within the framework of state control over an important branch of production and/or which controls the lives of many people so that it is actually carried out for the greatest prosperity of all people, namely policy, management measures and regulation. (Gina Lova Sari, Yulinah Trihadiningrum, Ni'matuzahroh, 2018)

Through its opinion, the Constitutional Court (MK) also sets out four criteria to decide that a provision is intended to ensure the greatest welfare for the people, namely: 1) the use of natural resources for the people; 2) the extent of allocation of the benefits of natural resources for the people; 3) the level of

involvement by the people in deciding the benefits of natural resources; and Yet only the metrics relating to the allocation of benefits and group engagement were followed in this discussion. Since oil has proven advantageous in people's lives. Although respecting customary rights in the management of petroleum, especially in old wells, the state has actually granted so that petroleum mining is still controlled for generations by local communities at present.

In general, management of natural resources for petroleum is provided for in Article 4(1) and (2) of the Oil and Gas Act. There are 3 regimes, namely private property regimes, state property regimes, and common property regimes, judging from the theory of natural resource tenure regimens. In this case, Article 4(1) and (2) of the Oil and Gas Law classifies itself as a State control system or State Property Regimes. Where the State is in the hands of ownership and power. Individuals and organizations using natural resources have an duty to comply with state laws, and the State has the right to make its rules. (Gina Lova Sari, Yulinah Trihadiningrum, Ni'matuzahroh). This is different from private regimes, because the concentration of private ownership is in the hands of many groups of people who have control, who do things primarily for their own gain (Qomarudin Helmy and Edwan Kardena, 2015).

Article 4, paragraphs (1) and (2) of the Oil and Gas Law accept that the state controls petroleum natural resources because they are important branches of production for the country and affect the lives of many people. This is intended that the petroleum management outcomes will have equal benefits for the local community and the state's participation in the management process. However, Article 9 of the Oil and Gas Law has been submitted to the Constitutional Court for judicial review, since it is considered to provide equal opportunities for upstream business activities to BUMN, BUMD, Cooperatives / SMEs and private business entities. So that direct management of petroleum distorts the control of the state. Amartya Sen in Choice, Welfare, and Measurement argues that achieving group welfare will not be effective in achieving an objective that is too centric in the interests of individuals or themselves (Qomarudin Helmy and Edwan Kardena, 2015).

Instead, the Constitutional Court (MK) interprets the meaning of state control over natural resources that govern other people's lives is clarified in stages. The five roles / authority of the state in the sense of state control, if not viewed as a single unit of operation, must be understood in stages based on their efficacy in order to achieve the goal for the greater prosperity of the people. According to the Constitutional Court, however, the method of state control over oil and gas by direct management of natural resources remains the most effective form of control for achieving greater profits (Humaidi, 2015, pp. 293-294).

It aims to ensure people's stability and to eradicate before post-independence the exploitation of natural resources by foreign companies including oil companies. (Zon & Zuhdi, 2016, p. 116). So long as the nation has the capital, technology, and management skills to control natural resources, the state must choose to directly manage its natural resources. Direct

administration of the state by state organs, which in this case is through a state-owned enterprise, should ensure that all the outcomes and benefits obtained go to state benefits that ultimately bring greater benefits to the people. Conversely, if the state surrenders natural resource control to be handled outside the state by private companies or other legal entities, the benefits to the state will be split so that the benefits to the citizens will also be that.

Essentially the exploitation of natural resources in the form of petroleum is achieved for the people 's greatest prosperity. Where the state is specifically to get bigger income as a boss. Furthermore, community participation in petroleum management needs to be considered so that people can participate in this petroleum management activity. According to Arnstein group engagement is focused on community control to decide an end product. Arnstein defined it in stages with the form of the participation ladder differentiated on the basis of the corresponding degree of the power of the people to decide the strategy and/or programme. There are 3 main levels with 8 sub-levels, and the highest level is the Degree of Citizen Power-Citizen Control, which is the level at which people take part from beginning to end in regulating public policy (Qomarudin Helmy and Edwan Kardena, 2015).

Mitchell said that local empowerment is one (one) of 3 (three) important factors of sustainable development. This means that a conversion step needs to be taken to realize sustainable growth, from centralized management of experts, practitioners, government and private sector to a mix of the four with local society. One concern should be the level of community involvement in natural resource management. Since it is also found that the distribution of power and wealth within society lies precisely at the center of the challenges of social growth. For this reason, involvement of the local community must be included in decision-making (Mitchell, Setiawan, & Rahmi, 2016, p. 253; 255).

Therefore, community participation is not limited exclusively to the awareness of the social and environmental duty (TJSL) provided by the company to the community at the place where a company carries out its operations, and to the community in a specific sense, such as the area around a factory or the wider community. ,, 2000, page 292). TJSL is an instrument of Article 33 of the Republic of Indonesia's NRI Constitution of 1945, which seeks to help achieve the widest possible distribution of benefits to the society. The regulation is relevant because it is anticipated that the legal subject which runs the TJSL would be a government arm to realize that aim. According to Karjoko Lego, et al. TJSL software has a problem with regard to CSR principle. The Oil and Gas Act does not even control how much funding and TJSL system forms should be allocated to the group (Karjoko, Santosa, & Handayani, 2019, pp. 306, 318 & 320).

In Indonesia the pattern shows that TJSL / CSR conducted in Indonesia is only for formal legality to be fulfilled. (Wartini & Sefriani, 2015, p. 287). Article 40(1) of the Oil and Gas Law effectively governs the life of TJSL such that each corporation is obliged to engage with the results of the management they receive in the growth of the environment and the society. Nevertheless, the authors feel that reasonable limits need to be set for the community

development undertaken, particularly in the development of the community. It means the group is not just a passive entity that merely receives 'assistance' as a form of TJSL from the company's system. TJSL should be built in such a way that it can truly realize a fair distribution of benefits and community participation, because TJSL actually has the ultimate goal of achieving sustainable development in the community and environment. (Shinta Hadiyantina, Nandaru Ramadhan, 2018)

2. The Principle of Social Justice in the Regulation of the Minister of Energy and Mineral Resources Number 01 of 2008

There are 2 (two) measures used as a guide for the ESDM Ministerial Regulation Number 01 Year 2008 to assess the achievement of the objective of State control in the field of petroleum natural resources for the greater welfare of the citizens as a form of economic justice that ultimately manifests social justice, namely: 1) Equality / Distribution of benefits and 2) Community participatio The definition of economic justice (economic justice) held by Louis Kelso and Mortimer Adler also notes the same thing that the concept of economic justice has three interdependent basic concepts, namely: 1) participation, 2) distribution, and 3) harmony. All three interrelate to sustain an economic justice building (Shinta Hadiyantina, Nandaru Ramadhan, 2018).

Old well management can be said to 'scavenge' the vestiges of petroleum from drill holes that existed in a work area since before 1970. The Contractors no longer considered the wells to be economical to work on. The operation of the oil mines in these old wells is primarily aimed at being operated by the group historically. However, it still has to follow the policy of natural resource management which is specifically regulated in Regulation 01/2008 of the Ministry of Energy and Mineral Resources. Starting with an overview of the fair allocation of profits in the management of these old wells, it goes first to Article 2(2) and (3) of the ESDM Ministerial Regulation No. 01 Year 2008.

Article 2(2) states that the KUD or BUMD is the group that peng is capable of conducting business and generating petroleum in old wells. For this situation, the word 'may' indicates something unabsolute about who is entitled to handle the old well. Because if the old well remains economically and technologically viable, then the contractor is the one who is obliged to operate on it before the KUD or BUMD, as specified in Article 2(1) of the Energy and Mineral Resources Regulation 01/2008. That is, after the Contractor does not use the management right the KUD or BUMD the become the manager.

This is similar to the old Rokan Block economic wells, which were tested by Chevron Pacific Indonesia and continued by PT Pertamina as the manager of this termination block (Ministry of Energy and Mineral Resources, Managing the Rokan Block: Pertamina Must Immediately Implement the EOR, 2020). Depending on the injected material and field conditions, the use of this form of technology can also increase production efficiency up to 73 per cent (Mischenko, 2001, p. 3).

Pay attention to the word 'or' in Article 2 paragraph (3) used to identify parties who can control old wells if the Contractor does not try it, namely KUD 'or' BUMD. In this case, the word 'or' lends meaning to an option. That means choosing whether the KUD or BUMD will manage the region. There has so far been no source that can provide an estimation of which party should / should be given priority to be able to handle the old well. On average, the studies presented relate only to the illegal mining practices carried out by miners. But if grammatically interpreted, the KUD and BUMD are business entities equally entitled to manage petroleum in old wells.

Meanwhile, if you look at the intent of producing old wells that aim to improve community welfare, especially in the vicinity of the mining site, this exploitation may be more beneficial if controlled by the KUD. Since KUD has community leaders in the villages around the site to be more in accordance with the essence of the economic democracy concept, namely the presence of community involvement in development activities (Harvelian, 2016, p. 547). Economic democracy is described as popular sovereignty, where management is carried out by the community and the community as required by Article 33(4) of the Republic of Indonesia 's Constitution of 1945 (Arizona, 2011, p. 300).

Cooperatives are generally a form of business entity that is expected to be able to deliver equitable development and strengthen the national economy. Even cooperatives are called the "national economy pillars" because cooperatives are called to reduce economic inequality (Haryanti, 2016 , p. 2). Meanwhile, BUMD is a regionally owned business entity that can be in the form of regional public corporations and regional firms. Typically, however, ownership of BUMD shares which have licenses to operate old wells is BUMDs in the form of a regional company. Where the BUMD is not all of the region's shares, but only 51% at least.

However, the real source of BUMD capital will come from broad capital sources. Another case involving the KUD which has restricted access to capital so it still needs government support (Firdausy (ed), 2018, pp. 145-146). In addition, management rights were also given to BUMDs in the oil-producing regions in the form of a 10 per cent Participating Interest (Setyadi, 2017, p. 73). Where BUMD benefits from the management as much as the PI from engaging in becoming a manager with good resources and technology in the large-scale petroleum industry.

In this case, Article 2(3) certainly gives KUD and BUMD equal opportunities to compete in order to become parties which will manage the old wells. Referring to the data from the SKK Migas in 2013, there are 22 KUD units which will and will have operated old wells. In North Sumatra, South Sumatra, Central Java, East Java and Papua (SKK Migas, 2020), the KUD is distributed. Five of them had received permits, namely KUD Mitra Sawit, Sangatta; KUD Serba Usaha Indigenous Mandiri Mineral and Fuel, Sorong; KUD Sumber Food and KUD KUD Usaha Jaya Bersama, Bojonegoro; and KUD Langkat Oil Resources, Langkat (Ministry of Energy and Mineral Resources, Five KUD Approved to Manage Old Well-January 3, 2013, 2020). KUD Wargo Tani Makmur

was made a national pilot project in the management of old oil wells by the Directorate General of Oil and Gas also in 2009 (Hardiwinoto, 2010, p. 435).

But some KUDs have lately been replaced by the management rights of the BUMD. KUD and BUMD 's role as the manager of the old wells that alternated in the end left 9 KUD and BUMD behind. However, to manage the old wells only 3 KUDs still survive, 7 others are managed by regional owned companies. Where KUD had managed only 55 wells out of a total of 1440 active old wells. On the basis of data from the Ministry of Energy and Mineral Resources, KUD and BUMD are as follows (Ministry of Energy and Mineral Resources, Old Oil Wells Management Improves Local Economy (18 May 2020), 2020):

- a. BUMD PT Perto Muba, controlling 565 old wells with a output of 574.34 bpd in the Babat and Kukui fields;
- b. KUD Wargo Tani Makmur, manages 13 wells in Tambi and Nanas Field;
- c. Perusda Purwa Aksara, operates 27 wells in the Gabus Field;
- d. KUD Superior, operates 18 wells in Cipluk Field;
- e. PT Blora Patra Energi, manages 23 wells in Petak Field;
- f. PT Bojonegoro Bangun Sarana operates 493 wells with a output of 283.68 bpd in the Wonocolo, Dandangilo, and Ngrayong fields;
- g. PT Blora Patra Energi, manages 267 wells with a production of 180.91 bpd in the Ledok and Semanggi fields;
- h. KUD Wargo Tani Makmur operates 24 wells with a output of 11.77 bpd in Banyubang Field;
- i. Perusda Aneka Tambang operates 10 wells in the Gegunung Basin, with a 4.10 bpd capacity.

While it is important to give local communities a great opportunity to really be able to engage directly in the management of petroleum, one of them is to empower the KUD. While the nature of public involvement found in the Ministry of Energy and Mineral Resources Regulation No. 01 of 2008 's considerations genuinely represents economic fairness in order to achieve social fairness. Because, in reality, the regional government through BUMD already has PI rights of 10 percent in a work area, which is also a form of participation that can provide benefits , particularly for the region, for improving the economy.

The absence of the KUD's involvement in maintaining these old wells is also inseparable from the lack of clarification about ESDM Ministerial Regulation No. 01 of 2008 in bringing the conventional miners' legal status into effect. Since energy and mineral resources minister only listed two parties, namely KUD and BUMD. But KUD and BUMD in action aren't true bosses. Throughout the 'lifting' method, miners throughout groups generate petroleum, which is to elevate oil from the wells into reservoirs. However, no one describes the role of these miners, for example workers, in the management of old wells. In this way the essence of the mining community's ability to participate is that. Participation in particular is more than simply making production, but also the nature of its power in deciding the old policy of well management.

Oil processing undertaken by KUD or BUMD in old wells is essentially a legitimate operation as it has valid permits. This is laid down in Article 3(1) and (2) of Regulation No 01/2008 of the Ministry for Energy and Mineral Resources. Article 3 provides for the types of management functions relating to the issuance of permits. KUD or BUMD finding the old well first send an application to the contractor whose work area has an old well with a copy to the Energy and Mineral Resources Minister. This copy is relevant because the Minister of Energy and Mineral Resources must grant the concession later on.

However, in this case the Regional Government (Pemda) still has strong authority since KUD or BUMD must first receive a recommendation from the Regency / City Government before it can send an application to the Minister of Energy and Mineral Resources. There is an implementation of the control of oil and gas, and there is an application of the Central Government's attribute authority to the regional government (Setyadi, 2017, p. 47). When the legality of the old well management is obtained, then the KUD or BUMD shall enter into a Petroleum Production Agreement as referred to in paragraph 2 of Article 2. The contract would then become the legal basis for the KUD or BUMD civilly handling petroleum. The rights and obligations of the parties in this contract are regulated. One important point which is controlled is which KUD or BUMD will produce old wells. This is mentioned in the year 2008 of Article 9 ESDM Minister Regulation No. 01.

Article 9 Regulation 01/2008 of the Minister for Energy and Mineral Resources states in this case that only old wells which have been built in the Agreement can be handled. This agreement includes elements relating to the number and location of old wells to be later worked on. This means that this Article forbids the drilling of new wells, because it is likely that the wells have not been registered at the well points coordinates, thereby increasing the number of wells previously accepted. So the authors argue that there are two reasons: firstly, to avoid harm to the environment, and secondly, the legitimacy of the well and the oil it contains.

Referring to Article 10(1) of the ESDM Ministerial Regulation No. 01 Year 2008, this Article provides for the obligation on the part of KUD or BUMD which manages old wells to send their entire output to the contractor. All types of sale, use or use of oil from other than to and by the Contractor from old wells are illegal. The violations tend to occur in many studies on oil management at old wells in Bojonegoro and Musi Banyuasin. (Read: Thesis Marwoto (2012): Thesis — Review of Problems and Methods for the Management of Old Wells in the Cepu Block (Case Study of Petroleum Mining in Wonocolo Village, Bojonegoro Regency); Buku Nurwanti et al: Oil Mining and Community Economic: Mining Management in Wonocolo 1960-2017); Journal Yuswalina & Candra, Adi (2017): Use of Old Oil Well Residual Extraction from Duo Colo 1960-2017).

Current studies indicate that this law can hardly be said to have been adequately applied because it has a detrimental impact (Pratama, 2020). Of this reason, the authors conclude that Article 10 is ideal of ensuring that the state's

oil output can be fairly distributed. Additionally, the oil requirements deposited to the Contractor by KUD / BUMD are also determined. This is provided for in Article 10(2) of ESDM Regulation No 01/2008, so that the oil deposited to the Contractor for further processing is oil with quality requirements. Sadly, however, it is not governed in relation to the fate of the oils that were submitted to the Contractor but do not meet quality requirements. Then it is a question whether the Contractor is then free of any potential transport, storage, refining or even disposal of oils which do not meet such quality requirements.

This Ministerial Regulation also controls the sanctions put on KUD or BUMD if they do not send their entire production to the Contractor in order to ensure that oil production from old wells is handled fairly for the greater welfare of the nation. This is provided for in Article 16(1) of Regulation No 01/2008 on the Minister of Energy and Mineral Resources. Article 16 paragraph (1) provides for strict penalties which the KUD or BUMD may receive if they do not actually send their results to the Contractor. The penalty is in the form of the cancellation of the contract between the Contractor and the KUD or BUMD for the oil production. It applies to the state's oversight role on natural resource management by the KUD or BUMD.

Nevertheless, the fact of illegal mining is still a hot topic for legal analysis of old well mining in managing old wells starting from drilling new points and selling oil privately by miners. Owing to economic demands, efforts to set aside oil production for sale and self-management for the group are still under way. We argue, on average, that the service fees provided for in Article 11(1) are too low and do not cover production costs and are therefore considered unreasonable by the miners. For this reason, more stringent frameworks are required to ensure illegal mining is no longer possible, according to the author. Given that not all areas have local laws regulating controlling oil mining in old wells.

In fact, observing the different problems that occur in the management of old wells occur from the uncertain and strict management of petroleum within the old well itself. Allowances issued for the maintenance of old wells would not only be an orderly method of administration, but also as an annulment of the illicit mining activities of individual miners. The authorisation given is the government's means of monitoring and overseeing all business activities undertaken by both the society, legal entities (companies) and government business (Prabowo, Isharyanto, & Handayani, 2019, pp. 58-59).

Conclusion

This study concludes that it would definitely be difficult to handle old well management which does not represent the values of social justice to achieve economic justice which is required to realize social justice itself. Of this reason, the way forward in the management of old wells should be explicitly and firmly controlled in order to accommodate community involvement, either at the level of citizen control or in realistic involvement in the mining of the oil. As it is a significant cause of the emergence of illicit mining activities, which in effect

means the benefits of old well management, in producing regions in particular, and the broader community in general, cannot be spread equally to the population.

References

- Anis Siti Hartati and Marita, "The Performance of Miners in Old Oil Wells in Coal Potential Area (Study: Traditional Oil Miners in Wonocolo, Bojonegoro, Indonesia)", *International Journal of Social Science and Humanity*, Vol. 7, No. 12, December 2017.
- Gina Lova Sari, Yulinah Trihadiningrum, Ni'matuzahroh, "Petroleum Hydrocarbon Pollution in Soil and Surface Water by Public Oil Fields in Wonocolo Sub-district, Indonesia", *Journal of Ecological Engineering*, Volume 19, Issue 2, March 2018.
- Qomarudin Helmy and Edwan Kardena, "Petroleum Oil and Gas Industry Waste Treatment; Common Practice in Indonesia", *J Pet Environ Biotechnol*, Volume 6, Number 2 (2015)
- Shinta Hadiyantina, Nandaru Ramadhan, "The Emergency of Authority on the Supervision of Old Wells Mining Policy in Indonesia", *Advances in Economics, Business and Management Research, Proceedings of the 2018 International Conference on Energy and Mining Law*.
- Eni Muryani, "Sinergisitas Penegakan Hukum Pada Kasus Pertambangan Emas Tanpa Izin di Kabupaten Banyumas, Jawa Tengah", *Jurnal Bestuur*, Volume 7, No. 2 (2019).
- Belvage, R. H. (2016). Strategi Penambang Minyak Tradisional diTengah Meluasnya Kontrol Negara dalam Konteks Pengelolaan Sumber Daya Alam di Indonesia. *Jurnal Masyarakat & Budaya*, Volume 18 No. 3, 453-466.
- Bertens, K. (2000). *Pengantar Etika Bisnis*. Yogyakarta: Kanisius.
- Bromley, D. W., & Cerenea, M. M. (1989). *The Management of Common Property Natural Resources*. Washington D.C.: The World Bank.
- Dian, W. (2015). Keadilan Sosial Dalam Perlindungan Kepentingan Nasional pada Penanaman Modal Asing di Bidang Sumber Daya Alam. *Yuridika: Volume 30 No 1, Januari*, 84-107.
- Dwi Edi Wibowo, "Ewuh Pakewuh Cultural Reconstruction to Equal Consumer Protection", *Jurnal Bestuur*, Volume 8, No. 1 (2020).
- Najella Zubaidi, Regy Gusti Pratama, Sholahuddin Al-Fatih, "Legal Perspective on Effectiveness of Pre-Work Cards for Indonesian People", *Jurnal Bestuur*, Volume 8, No. 1 (2020).
- Etzioni, A. (2015). *The Encyclopedia of Political Thought - Communitarianism*. New Jersey: John Wiley & Sons, Ltd.
- Firdausy (ed), C. M. (2018). *Koperasi dalam Sistem Perekonomian Indonesia*. Jakarta: Yayasan Pustaka Obor Indonesia.
- Hardiwinoto. (2010). Analisis Deskriptif Kondisi Ekonomi Penambangan Minyak Tanah Mentah (Crude Oil) Tradisional di Kecamatan Sambong dan Kecamatan Jepon, Kabupaten Blora. *Prosiding Seminar Nasional UNIMUS 2010* (pp. 425-437). Semarang: Universitas Muhammadiyah Semarang.
- Harvelian, A. (2016). Mahkamah Konstitusi dan Penguatan Konstitusi Ekonomi Indonesia. *Jurnal Konstitusi*, Volume 13, Nomor 3, September , 530-551.
- Haryanti, D. M. (2016). Koperasi dan Pemerataan Pembangunan. *Research & Policy Insight FEB UI*, No. 3, 1-4.
- Abdul Kadir Jaelani, "Politik Hukum Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012 Tentang Pembubaran BP MIGAS: Upaya Mengembalikan Kedaulatan Negara Menuju Perlindungan HAM", *Jurnal Panggung Hukum*, Volume 1, Nomor 1 Tahun 2015.
- Humaidi, M. W. (2015). *Resistensi Demokrasi Ekonomi (Studi Tentang Dinamika Demokrasi Ekonomi dalam UUD 1945 dan Putusan Mahkamah Konstitusi)*. Yogyakarta: Tesis: Fakultas Hukum Universitas Islam Indonesia.
- Karjoko, L., Santosa, J., & Handayani, I. R. (2019). Disfungsi Peraturan Perundang-Undangan Tanggung Jawab Sosial dan Lingkungan di Indonesia. *Jurnal Hukum IUS QUIA IUSTUM* Vol. 26, No. 2, Mei, 305 - 325.

- Kementerian ESDM. (2020, Mei 26). *Kelola Blok Rokan: Pertamina Harus Langsung Laksanakan EOR*. Diakses di Kementerian Energi dan Sumber Daya Mineral RI: <https://www.esdm.go.id/id/berita-unit/direktorat-jenderal-minyak-dan-gas-bumi/kelola-blok-rokan-pertamina-harus-langsung-laksanakan-eor>.
- Nurfaika Ishak, Rahmad Ramadhan Hasibuan, Tri Suhendra Arbani, "Bureaucratic and Political Collaboration Towards a Good Governance System", *Jurnal Bestuur*, Volume 8, No. 1 (2020).
- Martin Roestamy, "Model Land Supply for Land Bank to House Application", *Jurnal Bestuur*, Volume 8, No. 1 (2020).
- Kementerian ESDM. (2020, Mei 25). *Lima KUD Disetujui Kelola Sumur Tua - 3 Januari 2013*. Diakses di Kementerian Energi dan Sumber Daya Mineral Republik Indonesia: <https://www.esdm.go.id/id/media-center/arsip-berita/lima-kud-disetujui-kelola-sumur-tua>.
- Kementerian ESDM. (2020, Mei 26). *Pengelolaan Sumur Minyak Tua Tingkatkan Perekonomian Masyarakat (18 Mei 2020)*. Diakses di Kementerian Energi dan Sumber Daya Mineral RI: <https://migas.esdm.go.id/post/read/pengelolaan-sumur-minyak-tua-tingkatkan-perekonomian-masyarakat>.
- Kurland, N. G., Brohwan, D. K., & Greaney, M. D. (2004). *Capital Homesteading for every Citizen (A Just free Market Solution for Saving Social Security)*. Washington D.C.: Economic Justice Media.
- Lebacqz, K. (2013). *Six Theories of Justice, Terjemahan: Yudi Santoso*. Bandung: Nusa Media.
- Zaidah Nur Rosidah, "Coherence of the Rules of Sharia Against Pancasila", *Jurnal Bestuur*, Volume 8, No. 1 (2020).
- Abdul Kadir Jaelani, "Implementasi Daluarsa Gugatan Dalam Putusan Peradilan Tata Usaha Negara di Indonesia", *Pena Justisia: Media Komunikasi dan Kajian Hukum*, Volume 18, Nomor 2 Tahun 2019.
- Abdul Kadir Jaelani, Alexander A Kurniawan, Lusia Indrastuti "Pelaksanaan Standarisasi Pemberian Paten Dalam Invensi Bidang Obat-Obatan Di Indonesia", *Legality: Jurnal Ilmiah Hukum*, Volume 27, Nomor 2 Tahun 2019
- Marzuki, P. M. (2017). *Penelitian Hukum*. Jakarta: Prenada Media Group.
- Mitchell, B., Setiawan, B., & Rahmi, D. (2016). *Pengelolaan Sumberdaya dan Lingkungan*. Yogyakarta: Gadjah Mada University Press.
- Prabowo, A., Isharyanto, & Handayani, I. R. (2019). Partisipasi Masyarakat sebagai Perwujudan Pemerintahan Berwawasan Pancasila dalam Mekanisme Perizinan Lingkungan. *Prosiding Seminar Nasional Hukum Transendental 2019 Program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta* (pp. 57-72). Surakarta: Publikasi Ilmiah Universitas Muhammadiyah Surakarta
- Pratama, D. (2020, Februari 25). *Penataan Sumur Tua untuk Tambah Produksi Migas dan Kesejahteraan Rakyat*. Diakses di SKK MIGAS: https://www.skkmigas.go.id/berita/penataan-sumur-tua-untuk-tambah-produksi-migas-dan-kesejahteraan-rakyat?_cf_chl_jschl_tk__=3b2253456b53aa81f68af26eod37d037a9828c9f-1583221102-0-ARf4lNQ7yFOsrYlBhTKCalTrlKEHJyZ39tcd_u7W5XhxM19l30KRWM-QdGFvFHCgzo_OdHRSzGO.
- Sefriani, & Wartini, S. (2015). Corporate Social Responsibility dan Tanggung Jawab Negara Terhadap Hak Ekonomi, Sosial, dan Budaya di Indonesia. *Yustisia. Vol. 4 No. 2 Mei - Agustus*, 269-291.
- Setyadi, D. S. (2017). *Aspek Hukum Administrasi Kegiatan Usaha Hulu Minyak dan Gas Bumi*. Surabaya: Sahabat Mandiri.
- SKK Migas. (2020, Mei 25). *SKK Migas Pamalu Tingkatkan Pengelolaan Sumur Tua - 10 November 2013*. Diakses di Satuan Kerja Khusus Pelaksana Kegiatan: https://www.skkmigas.go.id/berita/skk_migas_pamalu_tingkatkan_pengelolaan_sumur_tua.
- Sunaryo. (2018). Amartya Sen tentang Teori Keadilan John Rawls: Kritik Pendekatan Komparatif atas Pendekatan Institusionalisme. *Respons Vol. 23 No. 01*, 11-38.

- Yurista, A. P., & Wicaksono, D. A. (2015). Politik Hukum Pertambangan Minyak Bumi pada Sumur Tua sebagai Strategi Menuju Ketahanan Energi di Indonesia. *Jurnal Rechts Vinding*, Vol. 4, No. 2, Agustus, 311-325.
- Zon, F., Iskandar, M., & Zuhdi, S. (2016). Tinjauan Sejarah Hukum Pasal 33 UUD 1945 sebagai Ideologi Ekonomi . *Jurnal Negara Hukum*, Vol. 7, No. 1, Juni , 111-125.
- Abdul Kadir Jaelani, "Politik Hukum Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012 Tentang Pembubaran BP MIGAS: Upaya Mengembalikan Kedaulatan Negara Menuju Perlindungan HAM", *Jurnal Panggung Hukum*, Volume 1, Nomor 1 Tahun 2015.