MANAGEMENT AUTHORITY OF OIL AND GAS RESOURCES IN ACEH TERRITORY AFTER SIGNING THE GOVERNMENT REGULATION NUMBER 23 YEAR 2015

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ABSTRACT

The oil and gas industry in Indonesia has been started since 1871 by Royal Dutch Shell. Meanwhile, the oil and gas industry in Aceh began in 1971 which was marked by the discovery of the Arun oil and gas fields. At that time, the management of oil and gas is done centrally by not involving the Government of Aceh as a regional producer. This led to armed conflict between the Government of Indonesia and the Free Aceh Movement and prolonged conflict (for 32 years) ended with the approval of the joint oil and gas management pattern found in the territory of Aceh as stipulated in the MoU Helsinki on August 15 2005, Law No. 11 of 2006 concerning the Government of Aceh and Government Regulation No. 23 of 2015 concerning Joint Management of Oil and Gas in Aceh. In order to finalize joint oil and gas management in Aceh, universities, especially the Faculty of Law, need to immediately prepare human resources who are competent in the oil and gas and energy law so that they are skilled at negotiating and drafting a Production Sharing Contracts (PSC) for oil and gas or Kontrak Bagi Hasil (KBH). For this purpose, law faculties need to immediately incorporate oil and gas and energy law courses into their curriculum.

Keywords: Authority, management, oil, gas, Aceh.

INTRODUCTION

THE LEGAL BASIS FOR THE MANAGEMENT OF OIL AND GAS

The 1945 Constitution, Article 33 paragraph (2) and paragraph (3) constitute the legal basis for managing natural oil and gas resources. Article 33 paragraph (2) reads: Production branches that are important to the state and which control the livelihood of many people are controlled by the state. Article 33 paragraph (3) reads: Earth and water and the natural wealth contained in them are controlled by the state and used for the greatest prosperity of the people.
Since oil and gas is one of the most important and strategic natural resources for the country, the control must be carried out by the country and utilized for the greatest prosperity of the people. Oil and natural gas resources that are not wisely managed and utilized will create conflict within the community.

Further provisions regarding oil and gas in Indonesia are regulated in Law No. 2 of 2001 concerning Oil and Natural Gas, Government Regulation Number 35 of 2004 concerning Upstream Oil and Natural Gas, Government Regulation No. 36 of 2004 concerning Downstream Oil and Natural Gas Business Activities. Meanwhile, provisions relating to and / or regarding oil and gas in Aceh are regulated in Law No. 11 of 2006 concerning Government of Aceh and Government Regulation No. 23 of 2015 concerning Joint Management of Oil and Natural Gas Resources in Aceh.

**HISTORY OF OIL AND NATURAL GAS DISCOVERIES IN INDONESIA**

*A Brief History of Oil and Natural Gas Discovery in Indonesia*

Petroleum is oil that originates in the bowels of the earth, in the form of thick, dark brown or flammable greenish liquid formed from organic compounds both plants and animals, especially microorganisms that live on land or oceans since millions of years ago.

Not many people know that Indonesia's oil and gas industrial activity has been in operation for a very long time, beginning with (oil and gas) exploration by Royal Dutch (Shell Group) in 1871. The first commercial oil production in Indonesia were carried out in 1885 in the regions of South Sumatra, Central Java and East Java. Actually, the oil and gas industry in Indonesia is one of the oldest oil and gas industry activities in the world. Ironically, even though the historical record has been so long, but until now there is not much literature about oil and gas in bookstores or libraries.

Aceh’s petroleum history cannot be separated from the discovery of oil in 1883 by Aeiko Jans Zijlker, the leader of tobacco plantations in the Langkat area, North Sumatra. To obtain oil tenure rights, Zijlker requested a Work Area (WA) concession to Sultan Langkat, which was then named Telaga Said.

*A Brief History of Oil and Natural Gas Discovery in the Aceh Region*

Meanwhile, the search for oil and natural gas in the Aceh Region were carried out in 1969. At that time, Mobil Oil (now ExxonMobil) signed a Production Sharing Contracts (PSC) with Pertamina to search for oil sources from the bowels of the earth, both onshore and offshore with a primary focus on North Aceh region.
Since 1971, Mobil Oil has conducted 14 (fourteen) drilling sessions in the vicinity of Arun Village, North Aceh Regency, but has not found oil and gas with satisfactory results because it contains carbon dioxide which was too high so it is difficult to develop. This is as expressed by Gob Graves, Exploration Manager of Mobil Oil, that:

“The beginnings of LNG exploration dated back to October 24, 1971, when Bob Graves, exploration manager for Mobil Oil Indonesia, completed a drill-stem test on a wildcat well in the Arun oil field in North Sumatra. Graves had already drilled 14 holes in the field, an area of rice paddies, fish ponds, and coconut trees, but had found nothing. The 15th drill-stem test, Arun A-1, was successful. Alex Massad, Mobil Oil’s exploration and production chief in New York, proposed further drilling in the area for natural gas, at a cost of 400,000. The directors at Pertamina recognized the potential for profits from Arun-1. The successful drilling of Arun-2 and Arun-3 in early 1972 confirmed the presence of large LNG reserves”

Forty-five years ago, precisely on October 24, 1971, the Mobil Oil Exploration Team (now ExxonMobil) led by Bob Graves found that natural gas reserves reached 17.1 trillion cubic feet in the stomach of Arun (Aron) Village, North Aceh. Arun Village is a village in Syamtalira District (Aron), North Aceh, where the name was later used as the name of the natural gas company operating in the area, namely PT Arun.

After discovering natural gas in the stomach of Arun Village on October 24, 1971, a year later (1972) also found an offshore natural gas source in the North Sumatra Offshore (NSO) field located in the Malacca Strait, at a distance of about 107.6 Km from PT Arun Refinery in Blang Lancang. In addition, onshore (land) gas sources were also found in Pante Bidari Sub-District, East Aceh Regency which were signed by a Production Sharing Contracts between the State Oil and Gas Mining Company and MOBIL PASE INC on 12 February 1981, known as Pase Work Area (WA), then in 2015, the PSC was transferred to Triangle Pase INC which in its business involved a Regional Government Business Entity appointed by the Aceh Government.

Furthermore, in 1998, the NSO "A" project was developed, which included a gas processing unit for offshore facilities. This facility was built to process 450 MMSCFD of natural gas from offshore in addition to the natural gas raw material from the Arun field in North Aceh which was decreasing.

On March 16, 1974, PT Arun was established as an operator company. This company was just launched by President Soeharto on September 19, 1978 after successfully exporting the first condensate to Japan, on October 14, 1977.

Under the contract with the Central Government, ExxonMobil will operate in North Aceh until 2018. However, on October 15, 2015, ExxonMobil transferred the Production Sharing Contracts (PSC) to
Pertamina Hulu Energi (PHE) without obtaining approval from the Aceh Government and this is not in accordance with the provisions of Article 161 of Law Number 11 of 2006 concerning the Government of Aceh which confirms that:

“Cooperation Contract Agreement with other parties that existed at the time this law was promulgated can be extended after obtaining an agreement between the Government and the Aceh Government in accordance with the provisions referred to in Article 160 paragraph (3).

The extraction of oil and natural gas in the bowels of Aceh for 43 years ended on October 15, 2014 with total production as follows: (LNG) 4269 cargo, LPG 14.5 million MT, and (3) Condensate 761 million barrels. The total revenues from the sale referred to above is US $ 300 Billion, equivalent to Rp. 1037 Trillion.

Ironically, the total fantastic sales results as mentioned above have not been able to improve the welfare of the people of North Aceh, which has been dubbed the petro dollar area, in particular and the Acehnese community in general. Based on this fact, a group of Acehnese people (Free Aceh Movement) protested strongly against the Government’s policies that were not in favor of the Acehnese people, namely fighting with arms. One of the triggers of armed conflict in Aceh was due to injustices in the distribution of natural resources of oil and gas (inequitable distribution of wealth). Realizing this mistake, the Government agreed to negotiate with GAM to find the best and dignified solution for both parties, namely to hold Helsinki negotiations by producing a Memorandum of Understanding signed on August 15, 2015 in Helsinki-Finland.

THE LEGAL BASIS FOR THE MANAGEMENT OF OIL AND NATURAL GAS IN ACEH

The granting of the authority to manage oil and natural gas in Aceh is a political compromise between the Free Aceh Movement (GAM) and the Government of the Republic of Indonesia agreed at the negotiations in Helsinki, Finland on Sunday, July 17, 2005 as stated in a Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement and was signed on Monday, August 15, 2005.

The memorandum of understanding referred to above is known as the Helsinki Memorandum of Understanding (MoU). In the perspective of international law, the MoU is a form of international law (Soft Law) and is often regarded as a weak law that must be transformed into national law so that it becomes a hard law that has executing power in Indonesia. For this purpose, the Government of the Republic of Indonesia has issued Law No. 11 of 2006 concerning the Government of Aceh (UUPA)
and Government Regulation No. 23 of 2015 concerning Management of Oil and Natural Gas Resources in Aceh.

Regarding the oil and gas management rights in Aceh, the Helsinki MoU in 1.3.4 confirms that:

>“Aceh is entitled to retain seventy (70) percent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh”.

To carry out the mandate of managing oil and natural gas resources as stipulated in the Helsinki MoU, in 2006, the Government of the Republic of Indonesia issued Law No. 11 of 2006 concerning the Government of Aceh, in which Article 160 confirms that:

(1) The Government and the Government of Aceh jointly manage oil and natural gas resources that are on land and sea in the territory of Aceh;
(2) To carry out the management as referred to in paragraph (1) the Government and the Government of Aceh may appoint, or establish an executive body set together;
(3) Cooperation Contracts with other parties to carry out exploration and exploitation in the context of oil and gas management can be carried out if the entire contents of the cooperation contract agreement have been mutually agreed upon by the Government and the Government of Aceh;
(4) Before holding discussions with the Government regarding the cooperation contract as referred to in paragraph (3), the Government of Aceh must obtain the approval of the DPRA.
(5) Further provisions regarding the matters referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by Government Regulation.

In order to follow up the provisions of Article 160 of Law Number 11 of 2006, the Government has issued Government Regulation No. 23 of 2015 concerning Management of Oil and Natural Gas Resources in Aceh signed on May 5, 2015 and expected a year after the said PP was signed by the Government and Aceh Government must have established the Aceh Oil and Gas Management Body (BPMA).

**THE ESTABLISHMENT OF THE ACEH OIL AND GAS MANAGEMENT BODY (BPMA)**

*The establishment of BPMA*

The Aceh Oil and Gas Management Body was formed with PP No. 23 of 2015, as confirmed in Article 10 paragraph (1): With this government regulation BPMA is formed. Paragraph (2) BPMA as referred to in paragraph (1) has the status of a Government Agency. There is no further explanation about the understanding of the Government Agency and this will have an impact on the status of employees of
BPMA itself whether they are status as Government Servants or as non Government Servants and subsequently will have an impact on the remuneration system that will be provided to them.

The Aceh Oil and Gas Management Body (BPMA) is a Government Agency established to carry out joint management and control of upstream business activities in the Oil and Gas sector which is on land and sea in the Aceh territory (0 to 12 nautical miles) by Sharing Revenues for the Government 30% and the Government of Aceh 70%. Meanwhile, the authority of the natural resources of Oil and Gas in the sea area 12 to 200 miles from the territory of Aceh is carried out by the Government by including the Government of Aceh, with the Sharing Revenues for the Government 70% and the Government of Aceh 30%.

**Duties and Functions of BPMA**

The Aceh Oil and Gas Management Body not only carries out the duties and functions of the SKK Oil and gas, but also simultaneously carries out the duties of the Directorate General of Oil and Gas at the Ministry of Energy and Mineral Resources. Thus, BPMA is not an affiliate or a subsidiary of SKK Oil and gas in Aceh.

The duties and functions of BPMA as stipulated in Article 13 Law No. 23 of 2015:
To implement, control and supervise the Cooperation Contract (KKS) activities so that the extraction of state-owned natural resources of Oil and Gas on land and sea in Aceh’s territory can provide maximum benefits and results for the country for the people’s welfare.

Meanwhile, BPMA in carrying out the tasks referred to in Article 13 plays a role in:

a. Carrying out negotiations and making Cooperation Agreements (PSCs) in the field of Oil and Gas conducted by the Government and the Government of Aceh;
b. Establishing cooperation contracts;
c. Reviewing the first field development plan to be produced in a Working Area;
d. Delivering the results of the study of the first field development plan to be produced in a Working Area that has been approved by the Governor to the Minister;
e. Providing approval for the next field development plan;
f. Providing approval for work plans and budgets of Business Entities / Permanent Establishments;
g. Monitoring and reporting the implementation of Cooperation Contracts to the Minister and Governor; and
h. Providing recommendations to sellers of Petroleum and / or Natural Gas from joint management, which has been approved by the Governor to the Minister, which can provide the greatest benefits for the country.

ORGANIZATIONAL STRUCTURE AND LATEST STATUS OF BPMA

Juridically, the organizational structure of the Aceh Oil and Gas Management Body (BPMA) is regulated in Article 20, namely:

1. Head of BPMA;
2. Supervisory Commission;
3. The executive committee consisting of a maximum of 5 work units and each work unit oversees a maximum of 3 (three) sub-units of work.

The effective work movement of the BPMA organization is largely determined by the structure that will be formed. The formation of the structure became a serious concern of stakeholders, namely the Government of Aceh and its formation should not deviate from the provisions of Law No. 23 of 2015. In other words, the intended structure must be in accordance with the authority, functions and duties of the BPMA set out in SR No. 23 of 2015.

In preparing the organizational structure, the agreed term changes from work units and sub-units become deputies and divisions consisting of:

**Internal Management Deputy:**

1) Division of Internal and General Financial;
2) Division of Human Resources;
3) Division of Legal, Program and Reporting.

**Planning Management Deputy:**

1) Division of Exploration and Exploitation;
2) Division of Evaluation and Field Development;
3) Division of POD, Program, and Budget Control;

**Operation Management Deputy:**

1) Division of Production;
2) Division of Facility Maintenance and Project Control;
3) Division of Operating Support, K4L, Survey and Drilling;

Financial and Commercial Deputy:
1) Division of Accounting and Taxation;
2) Division of Financial Control of Operations and Income;
3) Division of Oil Commercialization, Concentrate and Natural Gas.

Business Support Management Deputy:
1) Division of Asset Management and Supply Chain;
2) Division of Formalities and External Relations;
3) Division of Information System Management and Information Technology.

Each deputy and division must have a job description or job analysis that is adequate and based on SR No. 23 of 2015.

POTENTIAL PROBLEMS IN THE IMPLEMENTATION OF BPMA

When analyzed in depth, the substance of Government Regulation No. 23 of 2015, a number of problems will arise in the implementation of BPMA. These problems can occur because of the articles in which the substance raises multiple interpretations. In addition, another problem that will be faced is the lack of professional legal experts in the oil and gas sector, especially in terms of negotiating with Cooperation Contract Contractors (K3S) and the preparation of Oil and gas Production Sharing Contracts (PSCs) with various multinational companies or Multi National Cooperation (MNC) that have been very experienced.

The articles that give rise to multiple interpretations in Government Regulation No. 23 of 2015 are as follows:

1. Article 3: Authority Management of oil and natural gas resources in the sea area 12 s. 200 miles from Aceh’s territory, carried out by the Government, including the Government of Aceh.
2. Article 4 to Article 6: The Minister carries out general survey activities (Article 4). To carry out the survey referred to in Article 4, the Minister formed a team commissioned by the Government and the Government of Aceh. Who is meant by the Government of Aceh?
3. Article 9: Management and utilization of data obtained from general surveys, exploration and exploitation as referred to in Article 7 shall be carried out by the Government and the Government of Aceh in accordance with the provisions of legislation in the field of Oil and Gas;
4. Article 10 paragraph (2): BPMA has the status of a Government Agency. Establishment of the Aceh Oil and Gas Management Body;

5. Article 13: BPMA plays a role in implementing, controlling and supervising the Cooperation Contract activities so that the extraction of country-owned natural resources of Oil and Gas on land and sea in the territory of Aceh can provide maximum benefits and revenues for the country for the people’s welfare;

6. Article 14 ruf a: BPMA has the role to carry out negotiations and make Cooperation Agreements (PSC) in the field of Oil and Gas conducted by the Government and the Government of Aceh;

7. Article 20 Paragraph (2) The Supervisory Commission consists of:
   a. The Government;
   b. The Government of Aceh; and
   c. People who have knowledge in the field of oil and gas.

MODEL OF OIL AND GAS MANAGEMENT, CHALLENGES AND SOLUTIONS

One of the most important parts in managing oil and gas in Aceh is determining the contract model or management agreement. Basically, there are three types of contracts in the oil and gas sector, namely:

First, the concession system aims to respond to the private sector who wants to be involved in the mining industry. Second, the contract of work was valid from 1960 to 1963. In this system, oil and gas companies are only given mining rights. The contractor runs operations management with a profit sharing system. Third, the Production Sharing Contracts (PSC) system that was introduced for the first time by Ibn Soetowo in 1960 which has now been copied by more than 40 countries in the world. With principles: Management control is held by state companies. The contract is based on the division of production, where the contractor bears the risk of pre-production and if oil and gas is found then the contractor will be made a cost recovery which is limited to a maximum of 40% per year from the oil produced.

In general, oil and gas management in Aceh follows the oil and gas management model in Indonesia, namely by implementing a system known as Production Sharing Contracts (PSC). This system is very vulnerable to data manipulation and cost inflation. To overcome this, it needs to be monitored through Cost Recovery agreements, Authorization for Expenditure (AFE) and Plan of Development / POD. However, this cannot guarantee that manipulative actions will be avoided. Therefore, the Government of Aceh modified PSC with the joint management, which place a number of Acehnese oil and gas professionals into the management of a company that would jointly manage oil and gas in Aceh.

With the establishment of BPMA, the upstream oil and gas activities in the Aceh region will be supervised by the agency, including the signing of the Production Sharing Contracts. Therefore, the readiness of professional lawyers is needed to negotiate and prepare oil and gas Production Sharing
Contracts (PSC). However, until now, both the Government of Aceh and the Faculty of Law, Unsyiah have yet to take concrete anticipatory steps to produce Graduates of Laws who understand Oil and Gas and Energy Laws so as to be able to compete with oil and gas law firms from various national oil companies. For that purpose, the Faculty of Law needs to immediately endorse the Legal and Oil Law and Energy courses into their curriculum.

CONCLUSION

1. The results of the long struggle of the Acehnese in the field of Oil and Gas management have been given by the Government through Law No. 11 of 2006 concerning the Government of Aceh and Government Regulation No. 23 of 2015 concerning Joint Management of Oil and Natural Gas Resources in Aceh;

2. In accordance with the principles of Lex Specialis Derogat Lex Generalis, sectoral legislation in the field of oil and gas such as Law No. 22 of 2001 concerning Oil and Gas and SR No. 35 of 2004 concerning Upstream Oil and Natural Gas Business Activities can be excluded by Law No. 11 of 2006 and SR No. 23 of 2015;

3. Oil and gas management in Aceh is a new field. Therefore, it is necessary to immediately prepare adequate human resources, especially in the field of legal preparation of Production Sharing Contracts.

RECOMMENDATIONS

1. Serious supervision and monitoring of the establishment of the Aceh Oil and Gas Management Body (BPMA) is needed from various elements of society, especially the campus community, to ensure the authority of the Aceh Government in the Oil and Gas sector in accordance with Law Number 11 of 2006 concerning Government of Aceh and Government Regulation No. 23 of 2015 concerning Joint Management of Oil and Natural Gas in the Aceh Region;

2. If BPMA's duties, functions and authority are found to be incompatible with the spirit of the Helsinki MoU in the future, Law No. 11 of 2006 and SR No. 23 of 2015, it is necessary to immediately take legal steps such as filing a lawsuit to the Court.

3. The Faculty of Law needs to immediately introduce oil and gas and energy law courses so that it can produce skilled professional graduates to negotiate and prepare Oil and Gas Production Sharing Contracts (PSC).
REFERENCES

Books


Working papers:


Statutory regulations

Law No. 22 of 2001 concerning Oil and gas.


Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities.

Government Regulation No. 23 of 2015 concerning Joint Management of Natural Oil and Gas Resources in Aceh.