



Research Article



Executing Upstream Oil and Natural Gas Business Activities: Legal Status and Authority of the Oil and Gas Special Working Unit (SKK)

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Abstract: The Oil and Gas Special Task Force (SKK Oil) is a government agency responsible for controlling and supervising upstream oil and gas businesses. This study aims to examine the legal position of SKK Oil as the executor of national upstream oil and gas business activities and its role in promoting national energy security. The research utilizes an empirical juridical legal research method with qualitative research specifications, providing a focused and in-depth analysis of the subject matter. Secondary data obtained from primary, secondary, and tertiary legal sources are used in this study. The findings reveal that the National Oil and Gas Management Policy has not fully aligned with the goal of achieving national energy security.

Keywords: upstream oil and gas business, oil and natural gas, Oil and Gas Special Working Unit (SKK)



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INTRODUCTION

Natural resources encompass elements that hold value and serve human needs, thus making them crucial components of societal development. Their significance extends to the formation of human civilization, influencing cultural perspectives and approaches toward resource dominance and management. The state's command over natural resources necessitates their administration through a designated state-owned enterprise vested with mining authority, reflecting national sovereignty. The management of these resources by the state aligns with the stipulations outlined in Article 33, Paragraph (2) of the Constitution of the Republic of Indonesia (UUD NKRI 1945). This article emphasizes those branches of production, particularly those pertaining to natural resource management and essential for the livelihoods of many, must be subject to state control and regulation. Additionally, Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia clarifies that the state possesses jurisdiction over land, water, and the natural resources contained within, obligating the state to utilize them in a manner that maximizes the people's prosperity. Consequently, meticulous management of natural resources, particularly in the case of oil and gas, must be carried out in accordance with prevailing laws to ensure the utmost welfare of the populace.¹

Law Number 22 of 2001 concerning Oil and Gas (UU oil and gas) which forms the basis of SKK Oil' authority in managing oil and gas, it is stated that oil and gas is one of

¹ Deendarlianto and others, 'Modelling of Indonesian Road Transport Energy Sector in Order to Fulfill the National Energy and Oil Reduction Targets', *Renewable Energy*, 146 (2020), 504-18
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the natural resources that are easy to obtain but non-renewable which is a national wealth whose existence is controlled by the country. Based on the law, to manage oil and gas natural resources must be capable of realizing the objectives contained in the elucidation of Article 33 of the 1945 Constitution of the Republic of Indonesia. But over time, Law Number 22 of 2001 concerning oil and gas is no longer by the provisions of Article 33 of the 1945 Constitution due to the presence of production branches that can affect demand people's lives are not taken care of by the State Company. Furthermore, there is another reason, in Article 28 paragraph (2) of the Oil and Gas Law which prioritizes mechanisms of business competition and does not guarantee the meaning of the principle of economic democracy which is regulated in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, so that it is declared contradictory with the 1945 Constitution of the Republic of Indonesia by the Constitutional Court.²

Oil and natural gas are non-renewable natural resources or also known as natural resources that have a fixed stock and a type of resource with limited reserves.³ Hence, exploitation of these resources will use up resource reserves. Oil and gas management is implemented by both the government and the private sector without causing a loss of comfort and welfare of society. Upstream oil and gas business activities are carried out by an agency or institution approved by the government.⁴ At first, authorized by the government to carry out upstream oil and gas business activities in Indonesia the Agency Implementer of Upstream Oil and Gas Business Activities (BP Oil), then existence was replaced by the Oil and Gas Special Task Force (SKK Oil). Dissolution BP Oil was motivated by the issuance of the Constitutional Court Decision Number 36/PUU-X/2012 concerning the dissolution of BP Oil to restore the sovereignty of the state in the oil and gas sector, protecting the human rights of the Indonesian people, as well as for realizing the ideals of a rule of law and democracy for the sake of the life of the nation and state dignified.⁵ Another reason is that BP Oil only has the function controlling and supervising oil and gas management and not conducting direct management.⁶

The Special Task Force for Upstream Oil and Gas Business Activities (SKK Oil) was formed in 2013 based on Presidential Decree Number 9 of 2013 Minister of Energy and Resources Mineral Resources (ESDM) which subsequently formed the Decree of the Minister of Energy and Mineral Resources No. 9 this year 2013. The purpose of establishing SKK Oil is to carry out the supervisory function and control over the upstream business in the oil and gas sector. SKK Oil is responsible carry out the

² Indah Dwi Qurbani, *Analisis Perubahan Atas Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi*, Jurnal Hukum Lingkungan Vol. 1 Issue 1, Januari 2014, p.135

<https://doi.org/10.38011/jhli.v1i1.172>

³ Amiruddin Idris, *Pengelolaan Sumber Daya Tidak Pulih Berbasis Ekonomi Sumber Daya (Studi Kasus PT. Arum NGL)*, Jurnal Lentera, Vol. 13 No. 4, November 2013, p. 2.

⁴ Lego Karjoko and others, 'Indonesia's Sustainable Development Goals Resolving Waste Problem: Informal to Formal Policy', *International Journal of Sustainable Development and Planning*, 17.2 (2022), 649–58 <https://doi.org/10.18280/ijstdp.170230>

⁵ Abdul Ghofur Ansori dan Sobirin Malian, *Membangun Hukum Indonesia*, dalam Mahfud MD, *Politik Hukum Hak Asasi Manusia Di Indonesia*, (Yogyakarta; Total Media, 2008), p. 259.

⁶ Faisal Kurniawan, *Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak Dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak*, Jurnal Hukum dan Peradilan, Vol. 2 No. 3, November 2013, p.476 <http://dx.doi.org/10.25216/jhp.2.3.2013.471-492>



management of upstream oil and gas business activities based on Cooperation Contracts (KKS). The important role of SKK Oil is to maintain the security of the oil and gas energy supply in the long term.⁷

METHOD

This article employs an empirical juridical research method to investigate the legal position of the Oil and Gas Special Task Force (SKK) as the executing body responsible for upstream oil and gas activities in ensuring national energy security. By utilizing empirical or non-doctrinal methods, the article aims to provide an explanation grounded in real-world observations. Qualitative data collected during the research process will be presented in a comprehensive and detailed manner, offering a focused and in-depth description of the subject matter.

RESULT AND DISCUSSION

Legal Position of the Oil and Gas Special Task Force (SKK) as Executor National Upstream Oil and Gas Business Activities

Legal standing (*lotus standi*) can be interpreted as a situation where a legal subject or legal object is deemed to meet the requirements to apply for the settlement of disputes that occur. Based on Article 3 of the Regulations President Number 95 of 2012 concerning Transfer of Duties and Functions Implementation Upstream Oil and Gas Business Activities mentioned that the entire series the process of managing upstream oil and gas business activities is carried out by BP Oil with The President is the highest authority in managing the oil sector and natural gas. The President gives his authority in the form of a mandate to the Minister of Energy Resources and Minerals (ESDM) which can form Ministerial Decrees to follow up on the mandate from the President in oil and gas management based on Presidential Regulation Number 9 of 2013 concerning the Implementation of Management Upstream Oil and Gas Business Activities. The Minister of Energy and Mineral Resources has the authority free source from free ermesen or authority attached to government as state administration.⁸

The implementation of management of upstream oil and gas business activities carried out by BP Oil transformed, through a Court Decision Constituency Number 36/PUU-X/2012 concerning Dissolution of the Activity Implementing Body Upstream Oil and Gas Business which is replaced by a Work Unit Special (SKK) Oil and Gas to ensure the continuity of Upstream Oil and Gas Business Activities Natural gas. All implementation of upstream oil and gas activities is carried out through the rights and obligations attached to BP Oil either because of law Number 22 of 2001 concerning Oil and Gas, namely BP Oil which contrary to Article 11 Paragraph (1), phrase "through the Executing Agency" in Article 20 Paragraph (3), with the phrase "based on the

⁷ Wayan G. Santika and others, 'An Assessment of Energy Policy Impacts on Achieving Sustainable Development Goal 7 in Indonesia', *Energy for Sustainable Development*, 59 (2020), 33–48 <https://doi.org/10.1016/j.esd.2020.08.011> ; Abdul Kadir Jaelani, Resti Dian Luthviati, and Muhammad Jihadul Hayat, 'Permits for the Transfer of Agricultural Land Functions to Non-Agriculture in the Land Purchasing and Sale Process', in *International Conference on Environmental and Energy Policy (ICEEP 2021)* (Atlantis Press, 2021), pp. 216–19 <https://doi.org/10.2991/assehr.k.211014.046>

⁸ Muhammad Ichsan, Matthew Lockwood, and Maghfira Ramadhani, 'National Oil Companies and Fossil Fuel Subsidy Regimes in Transition: The Case of Indonesia', *Extractive Industries and Society*, 2022 <https://doi.org/10.1016/j.exis.2022.101104>



considerations of the Implementing Agency and" in Article 21 Paragraph (1), with the phrase "Implementing Agency" in Article 49 of the Law Oil and gas is against the 1945 Constitution and has no legal force tie. The Constitutional Court also stated Article 1 point 23, Article 4 Paragraph (3), Article 41 Paragraph (2), Article 44, Article 45, Article 48 Paragraph (1), Article 59 letter a, Article 61, and Article 63 of the Oil and Gas Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no force legally binding.⁹

Based on Presidential Regulation Number 26 of 2008 concerning the Formation National Energy Council and Procedures for Screening Candidates for Members of the Energy Council Nationally, governance of national energy security is carried out by the Energy Council National (DEN). Authority is given to the recipient, and the authority to manage national energy security must be based on principles of national resilience, as follows:

1. Implementing Institutional Reforms in the Oil and Gas Sector
 - a. Regulate roles and responsibilities between related ministries, BUMN, Private, and other government agencies;
 - b. Carry out the mandate of the 2012 constitutional court decision and build a synergistic structure for the future;
 - c. Clarity of participating rights of State Owned Oil Companies.
2. Strengthening Public Accountability and Entity-wide Performance Incentives. Through governance mechanisms, including:¹⁰
 - a. Establish an advisory board within the governance system:
 - 1) Prepare work reports for BUMN and other regulatory agencies;
 - 2) Consists of representatives of stakeholders who are
 - 3) Principles conduct based on Pancasila values, the 1945 Constitution, and Archipelagic Outlook, which consists of 7 (seven) ministers who directly responsible for the provision, transportation, distribution, and utilization of energy as well as 8 (eight) members of elements of stakeholders.¹¹
 - b. Ensure appointed board members must have:
 - 1) Technical capability and experience;
 - 2) Independence in order to make good technical decisions.
 - c. All institutions responsible for the oil and gas governance system should carry out periodic independent audits and publish them to legislatures and society.
 - d. The institutions mentioned above must comply the same or higher public reporting standards than the company private. The reporting obligations include:
 - 1) Revenue streams that are under the control of the institutions;

⁹ Indra Chandra Setiawan, Indarto, and Deendarlianto, 'Quantitative Analysis of Automobile Sector in Indonesian Automotive Roadmap for Achieving National Oil and CO2 Emission Reduction Targets by 2030', *Energy Policy*, 150 (2021) <https://doi.org/10.1016/j.enpol.2021.112135>

¹⁰ Departemen Politik & Pemerintahan Fisipol UGM, *Citizen Engagement and Natural Resource Governance Education (CitRes-Edu)*, <https://dpp.fisipol.ugm.ac.id/en/academic-cooperation/citizen-engagement-and-natural-resource-governance-education-citres-edu-2/> Accessed 06 Oktober 2022.

¹¹ Dewan Energi Nasional Sekretariat Jenderal, *Tentang Dewan Energi Nasional*, <https://den.go.id/index.php/statispage/index/6-tentang-den.html> diakses pada tanggal 06 Oktober 2022



- 2) Fiscal relations with treasurers and other public bodies;
 - 3) Expenditure and income;
 - 4) Backup and production data;
 - 5) Sales of oil under the responsibility of these institutions;
 - 6) Expenditures by companies for activities under the scope of the institution governance (infrastructure, electricity supply, debt repayment, social services)
- e. The rules are binding to anticipate conflicts of interest between public officials.

National Oil and Gas Governance Policy to Encourage National Energy Security

The political development of oil and natural gas law in Indonesia has entering the fourth or final phase through Law Number 22 of 2001 concerning Oil and Natural Gas which was promulgated in the State Gazette of the year 2001 Number 136 Supplement to the State Gazette Number 4152.¹² The existence of Law Number 22 of 2001 which was expected to provide a new legal basis for steps to renew and realign the oil and gas business to replace Law Number 8 of 1971 concerning Pertamina, turned out to be laden with a hidden agenda.¹³ Management of oil and natural gas according to the concept of the right to control the state based on a constitutional foundation state, namely Article 33 of the 1945 Constitution of the Republic of Indonesia, in which the function of the state is to regulate, manage and overseeing its relationship with the relationship of the state to the economy.¹⁴

The national oil and gas management policy is made by the President under authority or legitimacy as a leader with supreme authority in control of oil and natural gas in Indonesia. According to State Administrative Law, a policy is defined as a principle or method selected to direct sourced decision-making on the law or regulations above it relating to the Government. According to Tjakrawerdaja, based on Article 33 of the 1945 Constitution, management of oil and natural gas must contain 7 (seven) constitutional characteristics, as follows:¹⁵

1. The economy aims to achieve common prosperity for all people, which is explicitly stated in the Elucidation of Article 33 of the 1945 Constitution of the Republic of Indonesia;
2. People's participation in ownership, production processes and enjoying the results following the provisions of Article 33 Paragraph (1) and Paragraph (\$) of the 1945 Constitution of the Republic of Indonesia;
3. By the principles of Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, namely efficiency justice, the economy needs to be implemented using a fair market mechanism based on fair

¹² Indah Dwi, *Politik Hukum Pengelolaan Minyak dan Gas Bumi Di Indonesia*, Jurnal Arena Hukum, Volume 6, Nomor 2, Agustus 2012, p. 117 <https://doi.org/10.21776/ub.arenahukum.2012.00502.5>

¹³ *Ibid*, p. 118 <https://doi.org/10.21776/ub.arenahukum.2012.00502.5>

¹⁴ Haula Rosdiana, Inayati, and Machfud Sidik, 'Indonesia Property Tax Policy on Oil and Gas Upstream Business Activities to Promote National Energy Security: Quo Vadis', *Procedia Environmental Sciences*, 28 (2015), 341–51 <https://doi.org/10.1016/j.proenv.2015.07.043>

¹⁵ Subiakto Tjakrawerdaja, *Menunggu UU Induk Mengenai Perekonomian Nasional*, Reform Review (Jurnal untuk Kajian dan Pemetaan Krisis), Volume II Nomor 1 April-Juni 2008, p. 40.



- competition and the role and authority of the state to intervene if one day it happens market failures;
4. The role of the state must be guaranteed as mandated by Article 33 Paragraph (1) and Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, especially in terms of deep national economic planning formation and enforcement of the implementation of the Act, and in terms of carrying out community service and empowerment programs, liberation taxes, subsidies, and so on;
 5. BUMN is one of the pillars of economic activity that dominates branches of production that are crucial and affect the lives of many people as stated in Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia;
 6. Cooperatives are the pillars of the people's economy which are embodied in the spirit of togetherness with BUMN and the private sector, as well as a business entity people's economy;
 7. The national economy is the embodiment of partnership between cooperatives, BUMN, and private.

Implementation of the National Oil and Gas Management Policy by SKK Oil has been going well because the institution encourages the contractor to carry out exploitation and exploration activities.¹⁶ Various policies have been issued and stipulated by the government in the national energy sector, including Law Number 30 of 2007 concerning Energy, Government Regulation Number 79 of 2014 concerning National Energy Policy (KEN), Presidential Regulation Number 22 of 2017 regarding the National Energy General Plan (RUEN), and policies issued by the Provincial Government through the Regional Regulation on the Regional Energy General Plan (RUED). There are several obstacles to SKK Oil in implementing governance for national energy security with juridical and non-juridical, technical, law, and finance. SKK Oil's obstacles in the legal dimension, namely:

1. Overlapping regulations and legal and licensing uncertainties especially in the energy sector, especially oil and gas;
2. The authority of the Central Government and Regional Governments is not clear in energy management, which results in frequent delays in implementing energy policies, especially in the oil and gas sector;
3. The sector is not in favor of domestic products.

Meanwhile, SKK Oil' obstacles are in the non-juridical dimension, namely:¹⁷

1. The source of state revenue is still dependent on the results of energy resources;
2. The high level of dependence on fuel oil, especially in the transportation sector;
3. The need for large investments in the energy sector;
4. Weak mastery of technology and supporting industries.

¹⁶ Hanbali, Wawancara, Staff Divisi Hukum di SKK Oil Jakarta, (Semarang: 1 Desember 2021).

¹⁷ Tumiran, *Paradigma Baru Kebijakan Energi Nasional Menuju Ketahanan dan Kemandirian Energi*, Direktorat Jenderal Ketenagalistrikan 21 Maret 2014

https://gatrik.esdm.go.id/assets/uploads/download_index/files/d0059-paparan-den-bapak-tumiran.pdf diakses pada tanggal 06 Oktober 2022.



The obstacle from a technical point of view is that contractors located in remote locations will be constrained by difficult access roads that require additional funds many. From a legal perspective, SKK Oil is only temporary and does not yet exist replacement based on the applicable laws and regulations. Furthermore, from an economic perspective, SKK Oil has difficulty finding investors with large funds to carry out upstream oil and gas business activities which play an important role in the amount of investment realization in Indonesia.¹⁸

CONCLUSION

The legal status of the Oil and Gas Special Task Force (SKK Oil) is established through a series of legal instruments, including relevant laws, government regulations, and presidential regulations. These regulations grant SKK Oil the authority to manage upstream oil and gas business activities in order to ensure national energy security. The constitutional basis for national oil and gas management is provided in Article 3 of the 1945 Constitution of the Republic of Indonesia, emphasizing the significance of national energy security. This constitutional provision forms the basis for the implementation of oil and natural gas management, affirming the state's right to control and regulate these resources. The legal framework is further supported by specific laws and regulations such as the Energy Law of 2007, National Energy Policy, and the National Energy General Plan, as well as regional policies outlined in the Regional Energy General Plan.

Nevertheless, the implementation of governance for national energy security faces juridical challenges. One obstacle is the temporary status of SKK Oil, without clear substitute laws and regulations to address overlapping issues. For instance, the Constitutional Court's decision on the Dissolution of the Executing Agency for Upstream Oil and Gas Business Activities was replaced by SKK Oil, but the full execution of this decision has not been achieved. Furthermore, contractors operating in remote areas may encounter difficulties in accessing their sites, leading to additional financial and logistical burdens.

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Tumiran, *Paradigma Baru Kebijakan Energi Nasional Menuju Ketahanan dan Kemandirian Energi*, Direktorat Jenderal Ketenagalistrikan 21 Maret 2014 https://gatrik.esdm.go.id/assets/uploads/download_index/files/d0059-paparan-den-bapak-tumiran.pdf diakses pada tanggal 06 Oktober 2022.

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