

**CONSTITUTIONALITY IN PRODUCTION SHARING CONTRACTS:
LEGAL POLICY ON PETROLEUM AND NATURAL GAS**

Muhammad Luthfan Hadi Darus¹

Citation Guide:

Muhammad Luthfan Hadi Darus,
'CONSTITUTIONALITY
IN PRODUCTION
SHARING CONTRACTS:
Legal Policy on Petroleum
and Natural Gas [2020] 1
(2) Prophetic Law Review
97.

Received:

5 March 2020

Accepted:

13 July 2020

Published:

13 July 2020

DOI:

10.20885/PLR.vol2.iss1.art5

Abstract

This research is focused on constitutionality issue of Law No. 22 Year 2001 on Petroleum and Natural Gas and its relation to Article 33 of the 1945 Constitution and constitutionality of production sharing contract in relation to Article 33 of the 1945 Constitution. This research uses normative juridical method. This research finds: first, the current Law on Petroleum and Natural Gas and its relation to Article 33 of the 1945 Constitution is conceptually still problematic. This is evidenced by the several law articles which had been quashed by the Constitutional Court because they contradict the 1945 Constitution. Second, the petroleum and gas business contracts still contradict the spirit of Article 33 paragraph (3) of the 1945 Constitution, this can be seen by the granting of requests for judicial review of the Law on Petroleum and Gas in the Constitutional Court.

Keywords: *constitution, Production Sharing Contract (PSC), petroleum and natural gas.*

A. Introduction

Petroleum and natural gas mining is divided into two, namely exploration and exploitation.² The exploration and exploitation activities in upstream sector must be based on production sharing contract (PSC).³ Basically, this PSC is a civil contract where the relationship between the state and the mining company or the investor is based on the

¹ Student, Doctoral Program in Law, Faculty of Law, Universitas Islam Indonesia, Cik Di Tiro Street No. 1, Yogyakarta, 55223. E-mail: luthfandarus@gmail.com

²AM Putut Prabantoro, *Migas The Untold Story* (Gramedia 2014), p. 14.

³Compilation of Mining Law (*Kompilasi Hukum Pertambangan*), *Produk Perundangan Terlengkap dan Terbaru* (Pustaka Yustitia 2009) p. 43.

contractual relation to explore and to exploit in the field of petroleum and natural gas mining.⁴ Indonesia is the pioneer of this system.⁵

The implementation of this PSC system to the cooperative contract in reality does not reflect constitutional values. This cooperative contract does not reflect the spirit of Article 33 paragraph (2) and (3) The Constitution of the Republic of Indonesia year 1945 (hereinafter referred to as the 1945 Constitution). Whereas, according to the Article, exploration and exploitation as production branches that are important and affect the lives of many people must be controlled by the state to be used as much as possible for people prosperity. Thus, the constitutional values must underlie or inspire the cooperative contract.

In the past, constitutional values and contract law were considered to have nothing to do with each other. This is because there are very sharp differences between public law and private law. Contract law is considered as a branch of law that is completely separated from the influence of basic rights (constitutional rights) which have no influence on contract law. The function of constitutional values at that time was limited only to protect individuals from excessive use of state power.⁶

Nevertheless, currently constitutional values and contract law have proceeded with each other with very rapid development. The increasing influence of constitutional rights on relation based on private law in the field of contract law, allows to discuss the influence of constitutional values on contract law. This change clearly shows the development of constitutional doctrine and contract law are no longer in isolation from one another.⁷

The first PSC concept that become reference in the world today is widely used by countries with transition-period economic condition. PSC as cooperation between investor

⁴Madjedi Hasan, *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum* (Fikahati Aneska 2009) p. 279.

⁵The PSC which was first introduced in Indonesia is considered as the forerunner of the Modern PSC, as stated by Johnson, D. "How to Evaluate the Fiscal Terms Oil Contract", article on *IPD Working Paper Series, 2006*. The rationale for petroleum and natural gas management in Indonesia has actually been designed with the idea of Production Sharing Contract. The originator of the Production Sharing Contract idea was Bung Karno, who got the idea based on the applicable practice in agriculture management in Java. Most farmers (Marhaen) are not owners of rice fields. Farmers get their income from profit sharing (paron). Management is in the hands of the owners. Widjajono Partowidagdo, 'PSC di Indonesia versus Pengusahaan Migas Dunia *Cost Recovery* versus Peningkatan Produksi Migas di Indonesia' paper presented at Seminar on Indonesian Engineers Association (PII), Jakarta, July 31st, 2008, p. 2.

⁶Olha O. Cherednychenko, *Subordinating Contract law to Fundamental Rights: Towards a Major Breakthrough or towards Walking in Circles. dalam Constitutional Values and European Contract Law* (The Kluwer law International Publisher 2008) p. 36.

⁷Ibid.

and the state currently is actively used in more than 40 (forty) countries,⁸ including Angola, Vietnam, Libya, Egypt, Malaysia, Peru, Syria, Philippine, Papua New Guinea and others.⁹ The PSC is relatively successful in Indonesia with the PSC model development, so that Indonesia has become the international pioneer in the PSC system.¹⁰

Management and utilization of Indonesia's natural resources, including petroleum and natural gas must be carried out based on Article 33 paragraph (3) of the 1945 Constitution which is the main basis for the management and utilization of natural resources for improving people's welfare.¹¹

Article 33 paragraph (3) of the 1945 Constitution is the basis for state tenure right concept. This concept justifies the state in seeking natural resources related to public utility and public services on the basis of philosophical, strategic, political, economic and general welfare considerations.¹²

Many problems of legal and economy as well as contract systems that become political commodities related to petroleum and natural gas management in Indonesia. These problems are both related to legislation which is the implementation of Article 33 paragraph (3) of the 1945 Constitution, as well as the problems of various aspects of upstream petroleum and natural gas activities.¹³

Especially with respect to Law Number 22 Year 2001 on Petroleum and Natural Gas conceptually it is still problematic. This is evidenced by several Articles in the law which are canceled by the Constitutional Court because they contradict the 1945 Constitution, as the Constitutional Court Decision Number 20/PUU-V/2007, Number 36/PUU-X/2012 and Number 65/PUU-X/2012. All requests for judicial review of the law dispute the production sharing contract system contained in Law No. 22 Year 2001 on Petroleum and Natural Gas. Due to the background above, this study is focused on: First, how is the constitutionality of Law Number 22 Year 2001 on Petroleum and Natural Gas and its

⁸Meanwhile Robert Fabrikant, stated that the PSC which was more common in petroleum and natural gas contracts in the 1970s was used by at least 60 percent of oil-producing countries in Robert Fabrikant, 'Production Sharing Contracts in the Indonesian Petroleum Industry' [1975] *Harvard International Law Journal*, Vol. 16.

⁹Topan Meiza Romadhon. 'Pengaturan *Production Sharing Contract* dalam Undang-Undang Minyak Dan Gas', [2009] *Jurnal Hukum* Vol. 16 No. 1, p. 89.

¹⁰PWC, *Oil and Gas in Indonesia: Investment and Taxation Guide* (8th Edition, 2017) p. 8.

¹¹Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Year 1945* (Rajawali Press 2009) p. 91-92.

¹²Ridwan Khairandy, Introduction in Junaidi Albab Setiawan, *Migas Untuk Rakyat Catatan Seorang Praktisi*, (Octopus 2015) p. xiv. See also Dodik Setiawan Nur Heriyanto, 'Contracting Out Public Services to NGO Practices in Asian Countries', [2016] *Public Goods and Governance* Vol. 1 Issue 1, p.34

¹³*Ibid.*

relation to Article 33 of the 1945 Constitution? Second, how is the constitutionality of production sharing contract in relation to Article 33 of the Constitution?

B. Problem Formulation

This research is focused on analyzing two problems: first, constitutionality position of law Number 22 Year 2001 on Petroleum and Natural Gas and its relation to Article 33 of the 1945 Constitution. Second, constitutionality of production sharing contract in relation to Article 33 of the Constitution.

C. Methodology

The method used in this study is normative juridical research method that is qualitative. The normative juridical method used in this study is to analyze data that refers to norms contained in the legislation and court ruling.

D. Result and Discussion

1. Implementation of PSC for Petroleum and Natural Gas Mining in Indonesia

Pursuant to Article 1 number 19 of Law Number 22 Year 2001 on Petroleum and Natural Gas (hereinafter referred to as Law on Petroleum and Gas), joint cooperation contract shall be a production sharing contract or other models of joint cooperation contract in exploration and exploitation activities, which is better in favor of the state and whose output is maximally used for improving people's welfare.¹⁴

Article 1 number 19 of Law on Petroleum and Natural Gas does not specifically explain the definition of PSC but focuses on theoretical concept of cooperation in the field of petroleum and natural gas. Cooperation in the field of petroleum and natural gas is divided into two types, namely PSC contract and other contracts.¹⁵

In the 1995 Russia Law on Production Sharing Agreement and the 1997 Petroleum Tax Code, the term used was *Production Sharing Agreement* (PSA), while in Suriname, the term commonly used was *Production Sharing Service Contract* (PSSC). While in Indonesia, the term *Production Sharing* contract is found in Article 12 paragraph (2) Law Number 8 Year 1971 on Pertamina Jo. Law Number 10 Year 1974 on Changes to Law

¹⁴Law No. 22 of 2001 on Petroleum and Natural Gas does not use the term Production Sharing Contract but states the joint cooperation contract in which there is a production sharing contract.

¹⁵Salim HS., *Hukum Pertambangan di Indonesia* (PT. Raja Grafindo Persada 2012) p. 304.

Number 8 Year 1971 Pertamina and in Article 1 number 19 of Law on Petroleum and Natural Gas.¹⁶

The purpose of PSC is in addition to bringing in new investors in oil field, it is also expected to contribute to people's welfare. Every investment effort must be directed towards people's welfare. That is, with the investment invested by investors, it can improve the quality of the Indonesian people.¹⁷ The starting point of social relations in society is an awareness in the context of relationships and the composition of society to be intertwined for the realization of agreements as contained in the contract.¹⁸

The PSC concept articulates that petroleum and natural gas resources are owned and controlled by the host country, while the contractor bears all the risks and costs associated with exploration and production, and if successful, the contractor will be allowed to share in resources based on *cost recovery* and percentage profit oil.¹⁹

Certain requirements in making foreign investment for developing countries are not to inhibit trade activities of foreign investment companies, but rather to ensure a more efficient contribution from foreign capital to economic development, to enhance and maximize employment opportunities, reduce industrial, economic and social losses from certain regions, enhancing contribution of foreign investors in the development of domestic technological capability and to ensure more efficient use of natural resources to expand market, especially export market.²⁰ Under the PSC system, foreign petroleum and natural gas companies obtain rights to certain parts of oil produced as a reciprocal of risks taken and services provided. The state, however, remains the owner of petroleum produced only in accordance with the contractor's right to production portion.²¹

Production sharing contract (PSC) in its development has undergone several changes. PSC can be divided into five generations:

- 1) Generation I production sharing contract (PSC) (1964-1977);
- 2) Generation II production sharing contract (PSC) (1978-1987);

¹⁶*Ibid.*

¹⁷Salim HS dan Budi Sutrisno, *Hukum Investasi di Indonesia* (Rajawali 2008) p. 10.

¹⁸Sakina Shaik Ahmad Yusoff dan Azimon Abdul Aziz, *Mengenal Undang-Undang Kontrak Malaysia* (Laser Press 2006) p. 30.

¹⁹Thomas W. Walde and George K Ndi, 'International Oil and Gas Investment: Moving Eastward?' [1994] *International Energy and Resources Law & Policy Series*; 'The Main Difference Between Product Sharing Contracts and Risk Service Contract Types Lies in the Level of Their Risks and Gains' Research Gate) <<https://www.researchgate.net>>

²⁰Hardeep Puri and Delfino Bondad, 'TRIM's Development and the general Agreement', in UNCTAD, *Uruguay Round: Further Papers on Selected Issues* (United Nations 1990) p. 64

²¹Kirsten Bindemann, *Production-Sharing Agreements: An Economic Analysis* (Oxford Institute for Energy Studies 1999) p. 9.

- 3) Generation III production sharing contract (PSC) (1988-2002);
- 4) Generation IV production sharing contract (PSC) (2002- the issuance of Decision of the Constitutional Court Number 36/PUU-X/2012 dated 13 November 2012);²² and
- 5) Generation V production sharing contract (PSC) (Since the issuance of Decision of the Constitutional Court Number 36/PUU-X/2012 dated 13 November 2012-now).

2. Analysis on the Constitutionality of Law Number 22 of 2001 on Petroleum and Natural Gas

Currently the applicable law is Law Number 22 Year 2001 concerning Petroleum and Natural Gas (Law on Petroleum and Natural Gas). This Law supersedes Law Number 44 Prp of 1960 concerning Petroleum and Natural Gas Mining.

The establishment of law on petroleum and natural gas mining always follows the interests and political objectives of government, such as Law Number 44 Prp of 1960 concerning Petroleum and Natural Gas Mining which was made with the rhythm of Soekarno's revolution. Likewise, Law Number 8 of 1971 concerning State Petroleum and Natural Gas Mining Company (Law on Pertamina) which was born with Soeharto's economic development rhythm and Law Number 22 of 2001 concerning Petroleum and Natural Gas made with the rhythm of reform.

This law rearranges a number of issues related to management which were originally very centralized and monopolistic by dividing authority:²³

- First* : separation of petroleum and natural gas upstream and downstream industries;
- Second*: mining authority is again in the hand of government, not Pertamina or business entities.
- Third* : Business entities that wish to invest in the petroleum and natural gas working area must sign a Joint Cooperation Contract with the Implementing Agency; and
- Fourth*: establishment of an Implementing Agency to supervise and control Joint Cooperation Contract in the upstream petroleum and natural gas industry.

Based on discussion process of Petroleum and Natural Gas Bill, one of the oils and gas management targets is improvement and advancement of public lives, which are stakeholders in the economic results of petroleum and natural gas as state assets, as mandated by Article 33 of the 1945 Constitution. So that this law must be able to articulate crystallization of substance values of reform by accommodating public aspirations so as

²²Salim HS, *Hukum Pertambangan di Indonesia, Loc. Cit.*

²³Gde Pradnyana, *Nasionalisme Migas* (Nayottama Press Holdings 2014) p. 13-14.

not to be manipulated by anyone into momentary and partisan interests, let alone that the general public aspirations be led to certain interests both politically and economically.²⁴

The monetary crisis in 1998 was a turning point of national oil governance system. Because Indonesia obtained a loan from the International Monetary Fund, according to Letter of Intent (LoI), Indonesia must amend Law Number 8 Year 1971 with a new law.²⁵ The history of Law No. 22 year 2001 concerning Petroleum and Natural Gas is part of Letter of Intent (LoI) package imposed by IMF and international political economic cartels such as the World Bank, to liberalize and deregulate strategic sectors in Indonesia. Petroleum and natural gas are one of them. As is known, that LoI is a number of provisions that must be carried out by Indonesia, as condition for receiving "aid" in handling monetary crisis. Substantially LoI in the framework of liberalization.²⁶

Law No. 22 of 2001 on Petroleum and Natural Gas is considered extremely liberal, because it carries neoliberal norms stipulated in IMF requirements contained in various LoIs for the Indonesian government at that time. These liberal policies are like divestment, deregulation, competition, equal treatment (between Pertamina as a state-owned enterprise and foreign companies), and price submission to the market mechanism. Some LoI issued by IMF which become strong basis for Law on Petroleum and Natural Gas are as shown in the le below:²⁷

1. LoI September 11th, 1998. Emphasizing government's effort to carry out a number of policies, such as divestment of State-Owned Enterprises.²⁸
2. LoI November 13th, 1998. The government's planned to privatize 150 State-Owned Enterprises (SOEs) over the next decade. This privatization would touch all SOEs starting from telecommunication, electricity, energy, to national airlines. While company efficiency would be increased through a number of strategic plans, such as granting autonomy to the company management, increasing competition, tightening budget, and eliminating access to privileges for bank credit access.²⁹
3. LoI January 20th, 2000. The government planned to make a number of structural changes in the two energy sectors, including the electricity and petroleum and natural gas sectors. In the electricity sector, the government planned to restructure State Electricity Company, establish Electricity Law, establish an independent regulatory body, and establish progressive fare policy according to commercial

²⁴General View of PDI Perjuangan Fraction in Draft Law Discussion on Petroleum and Natural Gas, General Secretariat of the House of Representatives of the Republic of Indonesia (DPR RI), Book I, p. 79.

²⁵Muhammad AS Hikam (ed.), *Menyongsong 2014-2019 Memperkuat Indonesia Dalam Dunia Yang Berubah* (Rumah Buku 2014) p. 271.

²⁶Juli Panglima Saragih, *Sejarah Perminyakan Indonesia* (1st Ed, Aghrindo Abadi 2010) p. 39.

²⁷Syamsul Hadi, et al, *Kudeta Putih: Reformasi dan Pelembagaan Kepentingan Asing dalam Ekonomi Indonesia* (Indonesia Berdikari 2012) p. 98-100.

²⁸*Ibid.*

²⁹The International Monetary Fund, *Indonesia-Supplementary Memorandum of Economic and Financial Policies* (The International Monetary Fund 1998).

level without burdening the poor. These rules were made with the aim of inviting private investment and improving efficiency. For the petroleum and natural gas sector, the government would revise and modernize Energy Law, reform and restructure Pertamina, ensure that fiscal rules regarding exploration and production remain internationally competitive, harmonize price of domestic products with international price, and create a sound policy framework to support the use of economical energy in the country. This Energy Law would provide a legal protection for the establishment of a special body to allocate and supervise exploration contracts, the establishment of an independent body to regulate monopoly elements in downstream businesses, create effective competition in supplying fuel in domestic market, and change Pertamina into a Public Company.³⁰

4. LoI May 1st, 2000. The government was committed to a number of reforms and restructuration's, including reform of the medium-term energy pricing policy. The government also conducted a special audit with the help of a number of SOEs in the framework of this restructuring and privatization program.³¹
5. LoI 31 July 31st, 2000. The government was committed to a number of policies, especially in the energy sector by accelerating privatization by immediately preparing legal instruments for companies engaged in this sector.³²
6. LoI December 13th, 2001. The government was committed to adjusting fuel price at world market price.³³

Changes in the legal basis of governance of primary energy sources in the petroleum and natural gas sector have also changed the overall economic value and process of petroleum and natural gas sector in Indonesia. The LoI above is a concrete fact that the background of Law on Petroleum and Natural Gas is not based on Article 33 of the 1945 Constitution and is not adjusted to the reality of Indonesia.³⁴

Enactment of Law Number 22 year 2001 on Petroleum and Natural Gas is part of Indonesia's commitment to the IMF to obtain a loan package of \$ 43,000,0000,0000.- (forty-three billion US dollars) when the 1997/1998 crisis occurred.³⁵

To ensure Indonesia runs the IMF program primarily to reform the energy sector, reform will be assisted by the United States Agency for International Development (USAID). According to USAID's advice, reform must be carried out through minimizing the government role as a regulator, reducing subsidies, and promoting role involvement of

³⁰ The International Monetary Fund, *Indonesia-Supplementary Memorandum of Economic and Financial Policies* (The International Monetary Fund 2000) p. 100.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ Said Didu, *Peran dan Fungsi Ideal BUMN Dalam Pengelolaan Aset Negara* (1st Ed., Gramedia Pustaka 2010)

³⁵ *Ibid.*

the private sector.³⁶International financial institution plays an important role in "injecting" economic liberalization values in the ongoing legal reform in Indonesia. The aim is to encourage commercialization policy and privatization. Privatization is an action or process to move trade or industry affairs from ownership or control of government to those of private company.³⁷

With the new Law on Petroleum and Natural Gas enactment, the mining authority must be revoked from Pertamina, taken over by the Government to be handed back to business actors consisting of foreign companies and private companies. Pertamina was changed to Public Company (*PT Persero*) and divided into upstream and downstream business activities which are separate companies.³⁸This Law aims to unbound the upstream and downstream sectors of petroleum and natural gas that were previously integrated. In the upstream sector, foreign parties have controlled petroleum and natural gas business in Indonesia, and control 80% of Indonesia's petroleum and natural gas reserves. In the upstream sector, this law has stripped Pertamina of its authority as the sole holder of the petroleum and natural gas mining authority. Pertamina is made as an "ordinary" player, equated with any petroleum and natural gas contractor in Indonesia. Pertamina must also unbound itself into separate branches of upstream and downstream businesses.³⁹

The liberalization of the petroleum and natural gas sector reduces the state role that is too large in economic activity. In this context, it is very necessary to carry out the debureaucratization of the supervision and deconcentration system in the management of state enterprises.⁴⁰ Along with this liberalization, the number of state-owned enterprises operating in Indonesia has decreased.⁴¹ Therefore, with the liberalization principle through Law on Petroleum and Natural Gas, the objectives as Article 33 of the 1945 Constitution paragraph (2) and (3) are difficult to realize.

This liberalization is in accordance with calculation of economic approach that makes efficiency the main focus in economic activities because of constraints and

³⁶Roziqin, 'Pengelolaan Sektor Minyak Bumi Di Indonesia Pasca Reformasi: Analisis Konsep Negara Kesejahteraan', [2015] *Jurnal Tata Kelola & Akuntabilitas Keuangan Negara*, Vol. 1, No. 2, p. 132.

³⁷Yance Arizona, *Konstitusionalisme Agraria*, (STPN Press Publisher 2014) p. 157.

³⁸Muhammad AS Hikam (ed.), *Menyongsong 2014-2019 ...*, *Loc. Cit.*

³⁹M. Kholid Syeirazi, *Di Bawah Bendera Asing; Liberalisasi Industri Migas di Indonesia* (Pustaka LP3S Indonesia 2009)p. 62.

⁴⁰Yance Arizona, *Konstitusionalisme Agraria. Op. Cit.*, p. iii.

⁴¹Tim Wilson, *Innovating Indonesian Investment Regulation: The Need for Further Reform* (Institute of Public Affairs 2001) p. 7.

allocations in production process. This calculation economic approach is mostly used as the basis and dominant in economics. In this case according to Caporaso and Levine, economy is no longer seen as economics but is seen as "economizing").⁴²

Sri-Edi Swasono stated that efficiency in economy is oriented to maximum gain (in economic enterprises) and maximum satisfaction (in individual economic transaction). That is to say neo-classical economic understanding as a form of economic liberalism / neoliberalism which operates through the free market (*laissez-faire*). The free market opens the way for "market sovereignty" displacing the "people sovereignty", the free market will displace the poor, not displace poverty.⁴³

Because of this narrow nature, calculation economic approach does not take into account political territory in it. This is what underlies that power is not in the government as a state institution but is in the market as a holder of power in economy (market mechanism). The principle of efficiency makes this market reduce government role in controlling market and even the market itself which has control and has invisible power (invisible hand). The invisible power factor is seen as not mere coincidence, but absolute condition benefiting this liberalization holders who generally have high capital and technology.⁴⁴ This has happened in management of petroleum and natural gas resources through Law No. 22 of 2001.

In addition, mandate of the constitution (1945 Constitution) implies that Indonesia's earth wealth is held by the state not by the market, so that liberalization of petroleum and natural gas natural resources is not in accordance with ideals and struggles of the Indonesian nation.

Many legal and economic issues are related to petroleum and natural gas in Indonesia. The issues are both concerning legislation which is the implementation of Article 33 of the 1945 Constitution, as well as various aspects of upstream and downstream petroleum and natural gas activities,⁴⁵ including contract system used in the management of upstream petroleum and natural gas activities.

3. Constitutionality of Law Number 22 of 2001 on Petroleum and Natural Gas in relation to Article 33 of the Indonesian Constitution of 1945

⁴²James ACaporaso dan David P Levine translated by Suraji, *Teori-Teori Ekonomi Politik* (Pustaka Pelajar 2008), p. 40.

⁴³Sri-Edi Swasono, *Tentang Kerakyatan dan Demokrasi Ekonomi*, (Bappenas 2008) p. 24.

⁴⁴James ACaporaso and David P Levine translated by Suraji, *Teori-Teori Ekonomi Politik*, *Op. Cit.*, p. 38.

⁴⁵Ridwan Khairandy in Junaidi Albab Setiawan, *Migas Untuk Rakyat...*, *Op. Cit.*, p. xiv.

Current problems in petroleum and natural gas mining, not only in the upstream activities, but also in the downstream activities of petroleum and natural gas, which in terms of regulation differ from each other.⁴⁶

The complexity of problems in petroleum and natural gas mining activities, requires a management policy that can accommodate various interests in the community, including investors (contractors) interests. However, in management process, the state interests are basis and priority of the petroleum and natural gas sector management policy in the future. This is in accordance with the mandate of Article 33 of the 1945 Constitution.⁴⁷ Pros and cons occur when decision maker to ratify the Petroleum and Natural Gas Bill because it is considered Petroleum and Natural Gas Bill is contrary to the 1945 Constitution, by issuing *Minderheidsnota*, but the leader of plenary meeting still impose agreement on the Bill in a consensus.⁴⁸

Law on Petroleum and Natural Gas has caused legal problems in its implementation. This law has undergone 3 (three) tests in the Constitutional Court. The three decisions of the Constitutional Court (MK) on Law on Petroleum and Natural Gas represent 2 (two) important issues in the 1945 Constitution of the Republic of Indonesia, namely first, regarding petroleum and natural gas management system and second, regarding petroleum and natural gas management agency as an implementation of the concept controlled by the state.⁴⁹

Constitutional Court Decision No. 002/PUU-I/2003 on December 21st, 2004 concerning petroleum and natural gas management system which due to the Constitutional Court is contrary to the 1945 Constitution.⁵⁰ Constitutional Court Decision Number 020/PUU-V/2007 and subsequently Constitutional Court Decision No. 36/PUU-X/2012 relating to institutional management of petroleum and natural gas.⁵¹

Constitutional Court Decision No. 002/PUU-I/2003 has canceled Article 12 paragraph (3), Article 22 paragraph (1), as well as Article 28 paragraph (2) and paragraph

⁴⁶Commission Secretariat VII DPR RI, Academic Text of Petroleum and Natural Gas Mining Bill, p 22.

⁴⁷*Ibid.*

⁴⁸Decision of the Constitutional Court Number 002/PUU-1/2003 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas, p 13.

⁴⁹Commission Secretariat VII DPR RI, Academic Text of Petroleum and Natural Gas Mining Bill, p. 10-11.

⁵⁰Decision of the Constitutional Court Number 002/PUU-1/2003 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas.

⁵¹Decision of the Constitutional Court Number 036/PUU-XI/2012 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas.

(3) of Law on Petroleum and Natural Gas, because they contradict Article 33 paragraph (2) and paragraph (3) the 1945 Constitution of RI, so that the abrogated Articles no longer have binding legal force.⁵²

Furthermore, based on the Constitutional Court Decision No. 36/PUU-X/2012 has canceled Article 1 number 23, Article 4 paragraph (3), Article 11 paragraph (1), Article 41 paragraph (2), Article 44, Article 45, Article 48 paragraph (1), Article 59 letter a, Article 61, and Article 63.⁵³

Politically the Law Number 22 Year 2001 concerning Petroleum and Natural Gas is not abrogated by the Constitutional Court even though it is contrary to the 1945 Constitution. This is considered "reasonable" because at the time of Law on Petroleum and Natural Gas in the Constitutional Court's testing process, the government was signing billions of rupiah in contract with foreign investor.⁵⁴

Law No. 22 of 2001 on Petroleum and Natural Gas conceptually and substantially contained in the Articles of Law Petroleum and Natural Gas contradicts Article 33 of the 1945 Constitution, so that many Articles of Law Petroleum and Natural Gas were quashed by the Constitutional Court. However, to examine Law Number 22 Year 2001, the author will use the Decision Number 3/PUU-VIII 2010 to assess whether "people's welfare" principle has been reflected in Law Number 22 Year 2001.

According to the Constitutional Court, there are four measures to determine whether a provision in a law is in accordance with the purpose of state control as referred to in Article 33 paragraph (3) of the 1945 Constitution:⁵⁵

- 1) Benefit of natural resources for the people;
- 2) Benefit distribution level of natural resources for the people;
- 3) People's participation level in determining benefit of natural resources;
- 4) Respect for people's rights for generations in utilizing natural resources.

It can be analyzed that Law Number 22 Year 1960 concerning Petroleum and Natural Gas does not fulfill the requirements as a law that reflects, guarantees and is able to realize the principle of people's welfare. Based on the size of Article 33 paragraph (3) of the 1945 Constitution, according to the Court, the state control over the earth and water and natural resources contained therein means that the state has authority and freedom to

⁵²Commission Secretariat VII DPR RI, Academic Text of Petroleum and Natural Gas Mining Bill, p. 11.

⁵³Junaidi Albab Setiawan, *Migas Untuk Rakyat ...*, *Loc. Cit.*

⁵⁴Syamsul Hadi, et al., *Kudeta Putih: Reformasi dan Pelembagaan...*, *Op. Cit.*, p. 103.

⁵⁵Yance Arizona, *Konstitusionalisme Agraria. Op. Cit.*, p. 347.

regulate, make policies, manage and supervise the use of the earth and water and natural resources contained therein with a constitutional measure that is "for improving people's welfare". Based on the provision of Article 33 paragraph (3) of the 1945 Constitution, the state freedom to regulate and make policies on the earth and water and natural resources contained therein is limited by "for improving people's welfare".

4. Constitutionality of PSC in Relation to Article 33 of the Indonesian Constitution of 1945

Basically the "paron" system is taken from cooperation pattern between two farmers in working on one land. One person as the land owner, one person as the cultivator. The yield of rice is divided into two: each gets half portion (paron). "Paron" comes from Javanese language which means half or commonly known and is also called half. This "paron" system is the forerunner to production sharing contract of petroleum and natural gas in Indonesia.

Although the petroleum and natural gas production sharing contract were introduced by Ibnu Sutowo, the originator of Production Sharing Contracts idea was Bung Karno, who got the idea based on applicable practice in agricultural management in Java. Most farmers (Marhaen) are not owners of rice fields. The farmers get their income from profit sharing (paron). Management is in the hands of the owners.⁵⁶

Meanwhile, the sharing system of petroleum and natural gas according to Ibnu Sutowo, the shared is oil (the result) not the money. Ibnu Sutowo stated about the oil: "*It is up to us, whether we want to trade, want to refine by ourselves or want to sell it ourselves. Or we ask the partner to sell it, for us*". The point is that Indonesia must be the host at home.⁵⁷ Furthermore, this profit-sharing system was received by the government and the petroleum and natural gas production sharing contract was first applied in 1966. This contract is listed as the first PSC contract in the history of the world petroleum and natural gas industry.⁵⁸

⁵⁶Widjajono Partowidagdo, *Pengantar Produksi Investasi dan Kemampuan Nasional Hukum Migas*, (CIDES 2008) p. 1.

⁵⁷Ibnu Sutowo, *Peranan Minyak dalam Ketahanan ...*, *Op. Cit.*, p. 4

⁵⁸Bachrawi Sanusi, *Potensi Ekonomi Migas Indonesia* (Rineka Cipta 2004), p. 24.

There are at least three things that need to be observed in the PSC in the upstream petroleum and natural gas industry if it is linked to the country's sovereignty over petroleum and natural gas:⁵⁹

First, all PSC contracts are 30 years in duration and can be extended to 20 years. Many things can happen in the future that are not anticipated when the contract is made, as future conditions are accordance with justice feeling at this time. Therefore, changes to the contract are not needed except with both parties agreement.⁶⁰ This can be seen from the Production Sharing Contract between PN. Oil Mining and Refining Associates (Canada) Ltd in Article II stating: *Term, the term hereof shall be 30 (thirty) years as from the effective date.*⁶¹

Too long contract period could be detrimental to national interests, if in the course of the contract there are policies that will affect the conditions of the contract. The contract made can defeat government authority as mandated in the 1945 Constitution, foreign interest shifts national interest, only because government business leaves public interest. Likewise, the dispute resolution model internationalized through international arbitration has become a threat to Indonesian sovereignty.

Madjedi Hasan stated that when the contract was made at this time, it could be that the situation at the time made investors believe there was legal certainty. But justice will change, today is considered fair, one day may be no longer fair. So, negotiations are needed for that. Because the PSC is vulnerable to change. Madjedi Hasan proposed that in the production sharing contract there shall be a stabilization clause. So, thing is opened, if there is a change, both parties negotiate and find a solution.⁶²

The relationship between the Indonesian government and investors or contractors according to the Law on Petroleum and Natural Gas with the pattern "B to G" causes the government to align with contractors. So, the government cannot execute policies or regulations on the management of petroleum and natural gas assets if the contractor does not agree. If the pattern is "B to B" and the government is above the contract, it can guarantee state sovereignty. The government can execute statutory regulations for the

⁵⁹Agus Salim, 'Pengusahaan Migas di Indonesia dalam Perspektif Kedaulatan Negara atas Sumber Daya Alam (SDA)' [2012] *Jurnal Energi*, 8th Ed., p. 26.

⁶⁰*Ibid.*

⁶¹ *Production Sharing Contract Between PN. Pertambangan Minyak and Refining Associates (Canada) Ltd* signed on October 20th, 1966, p. 3, compare also Draft of PSC model contract: Production Sharing Contract General Terms. *Op. Cit.*, p. 9.

⁶² Madjedi Hasan, 'Kontrak Migas Perlu Memuat Stabilization Clause' (Hukum Online 2009) <www.hukumonline.com.>

nation and state benefit without the contractor's approval, so that the state sovereignty is not reduced.

Production sharing contracts are imbued with the spirit of liberalism as in the Law on Petroleum and Natural Gas of 2001, so that the contract clauses are made in such a way as to benefit investors. When compared with the Petroleum and Natural Gas Work Contract made in 1963, it can be seen that the petroleum and natural gas work contract has more national interests than the investor's interests.

Business interests regulated based on the work agreement are limited to Article 15 concerning Defense. Contractors will accept government actions that are necessary for the state defense and will avoid acts as desired by the government for the sake of defense interests, without prejudice to the contractor's rights to ask for compensation under the law.⁶³

By using the contract law theory approach, Article 15 of the Contract of Work has *stabilization clause* and also contains the principle of *Boiling Sic Stantibus*. It is seen that the contract must adjust to social developments that occur in this case the defense interest.

With the stabilization clause and also contains the principle of boiling Sic Stantibus, all possible disputes are anticipated. That is, if there is a situation that is not fixed, if the situation changes, the negotiating door will be opened. This in Indonesian civil law still does not exist, and only recognizes *force majeure*, in some places it is called *hardship*. This concept has not been accommodated in civil law. For example, the Karaha Bodas case, was forced to enter a *force majeure* clause that only applies to one party, even though it was unfair.⁶⁴

Second, the absence of the principle of unifying state sovereignty can be seen in a contract clause governing the Domestic Market Obligation (DMO). If the contractor does not carry out its obligations under the DMO, the government cannot enforce the contractor, except to sue it to an international arbitration forum agreed upon in the contract.⁶⁵

Domestic Market Obligations are regulated in government regulation No. 35 of 2004, Chapter V Article 46, namely contractors are responsible for fulfilling petroleum needs for domestic purposes, where the contractor's obligation is at most 25% of its share

⁶³ Work Agreement between PN. Pertamina Minyak Indonesia and California Asiatic Oil Company and Texaco Overseas Petroleum Company dated September 25th, 1963, p. 39.

⁶⁴ Madjedi Hasan, *Kontrak Migas Perlu Memuat ...*, *Loc. Cit.*

⁶⁵ Yance Arizona, *Konstitusi Dalam Intaian Neoliberalisme: ...*, *Loc. Cit.*

after 5 years of production. The fixed amount of the percentage of DMO is determined by the Minister. By setting aside a portion of the contractor's share, the contractor also gets rewards from the government. This DMO system is included in the PSC cooperation contract based on the provisions of Law No. 22 of 2001 on Petroleum and Natural Gas.

Third, petroleum and natural gas contracts equate the government position with the contractual contractor. Civil relations between the Government and Investors shifts public affairs into business space and is oriented to economic benefits. In certain cases, such a government can be categorized as corporatocracy. Corporatocracy is not only meant that people in government are dominated by people with a merchant background with economic motives achieved from political power, but also read from the concept of legal relations built with investors.⁶⁶

The character of corporatocracy for example appears in the case of the Cepu Block. Initially the Government stated that it would not intervene and surrender the agreement to Pertamina with Exxon Mobil with a "B to B" approach (business to business). But in practice, the use of the Cepu Block cannot be separated from the intervention of two Presidents, namely President Susilo Bambang Yudhoyono and President Bush based on business affairs: Business to Business, not purely Government to Government anymore. The implementation of legal relationship for the use of the Cepu Block by Exxon Mobil is carried out with an MoU and Cooperation Contract by the Government through the Petroleum and Natural Gas Implementing Agency (BP Migas) which are equal in position.⁶⁷

Daily reality shows that the government in addition to carrying out activities in the field of public law, is also often involved in the civil law field association. The government often appears with two heads, as representatives of positions (*ambt*) who are subject to public law and as representatives of legal entities (*rechtspersoon*) who are subject to private law.⁶⁸ Thus the government in carrying out its duties in several ways can also use private law.⁶⁹ The fact that there is a legal relationship, one of which is the state,

⁶⁶*Ibid*, p. 16

⁶⁷*Ibid*.

⁶⁸Ridwan HR, *Hukum Administrasi Negara* (Rajawali Press 2010) p. 72.

⁶⁹S.F. Marbun and Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara* (Liberty 2009) p.

does not have to exclude the state from the private law field.⁷⁰ In this case the position of the state is the same as the position of ordinary legal subjects.

The state involvement as a party to the production sharing contract carried out by the government in this case is represented by BP Migas as the implementing agency to sign production sharing contract,⁷¹ the contracts include the PSC between BP Migas and Lasmo Indonesia Limited and Unocal Muara Bakau, Ltd. dated 30 December 2002 with the Muara Bakau contract area, PSC between BP Migas and Sevana Ltd. dated October 14, 2003 with the Bulu contract area, PSC between BP Migas and Santos (NTH Bali I) Pty. Ltd. dated October 14, 2003 with the North Bali I contract area, PSC between BP MIGAS and Knoc Nemone Ltd. and Petrovietnam Investment & Development Company and SK Corporation dated October 14, 2003 with the North East Madura I contract area.⁷²

According to Kurtubi, the petroleum and natural gas contract on Law on Petroleum and Natural Gas No. 22 of 2001 adopted a business to government (B to G) relationship pattern with investors or oil companies. This provision is stipulated in Article 1 number 23 concerning the definition of BP Migas which is established to control upstream business activities. Article 4 paragraph (3) concerning the Government as the holder of the mining authority then establishes BP Migas. Article 11 paragraph (1) concerning upstream business activities carried out by investors based on a contract with BP Migas. Article 44 paragraph (3) letter b assigns BP Migas to carry out the signing of the contract with the investor or oil company. The provisions in the Law on Petroleum and Natural Gas mentioned above determine that the signing of a cooperation contract with a contractor or oil company is the government represented by BP Migas, because the government is contracting the state sovereignty is lost because the government's position becomes equal to the contractor. The government is part of the contracting parties. The government downgrades itself to be equal to an oil company or investor.⁷³

Based on the Constitutional Court Decision Number 036/PUU-XI/2012 has stated the position of BP Migas as the holder of the mining authority from the government unconstitutional or contrary to the constitution. Considering the conception of BP Migas according to the a quo law, associated with the management of petroleum and natural gas

⁷⁰Hans Kelsen, *Teori Umum tentang Hukum dan Negara (Diterjemahkan oleh Raisul Muttaqien dari buku General Theory of Law and State, 1971)* (Nusa Media 2013) p. 289.

⁷¹Junaidi Albab Setiawan, *Migas Untuk Rakyat...*, *Op. Cit.*, p. 231.

⁷²Decision of the Constitutional Court Number 020/PUU-V/2007, p. 11.

⁷³Decision of the Constitutional Court Number 036/PUU-XI/2012, p. 33.

resources, BP Migas is a special government organ, in the form of a State-Owned Legal Entity (hereinafter referred to as SOLE/BHMN) having a strategic position to act on behalf of the Government to perform state control over petroleum and natural gas particularly upstream activities (exploration and exploitation), namely the control and supervision functions starting from planning, signing contracts with business entities, developing work areas, approval of work plans and budgets of business entities, monitoring the implementation of work contracts and appointing petroleum and natural gas sellers of state parts to the agency another law.

The Constitutional Court is of the opinion that because BP Migas only functions to control and supervise the management of petroleum and natural gas resources, the state in this case the government cannot directly manage petroleum and natural gas resources in upstream activities. Parties who can directly manage petroleum and natural gas resources according to Law on Petroleum and Natural Gas are only Business Entities (i.e. State-Owned Enterprises (BUMN), Regionally Owned Enterprises (BUMD), Cooperatives and private business entities) and Permanent Establishments. So, based on this, the Constitutional Court dissolved the position of BP Migas.

To fill the legal vacuum due to the absence of BP Migas, the Constitutional Court confirmed the state organs that will carry out the functions and duties of BP Migas until the formation of new rules. According to the Court the constitution, the functions and duties must be carried out by the government as the holder of the mining authority in this case the Ministry which has the authority and responsibility in the petroleum and natural gas sector. All rights and authorities of BP Migas in the PSC after this decision, are carried out by the Government or State-Owned Enterprises established by the Government.

Conception of the position of the parties in the production sharing contract as Law No. 22 of 2001 on Petroleum and Natural Gas which embraces the B to G pattern is different from the petroleum and natural gas work contract based on Law No. 40 Prp of 1960 which follows the B to B pattern as seen from Law Number 13 In 1963⁷⁴ it approved the agreement of the work of PN Pertamina with the Pan American Oil Company; and

⁷⁴Law No. 13 of 1963 on Stipulation of Government Regulation in Lieu of Law Number 4 of 1962 on Ratification of the "Work Agreements" between State Company (PN) Pertamina and Pan American Indonesian Oil Company for themselves and on behalf of Pan American International Oil Corporation (Statute Book of 1962 No. 24) into law valid from November 28th, 1963 or take effect on the day of promulgation and has a receding power until June 18th, 1962.

Law Number 14 Year 1963⁷⁵ ratifying the work agreements between PN Pertamina and PT Caltex and Calasitic / Topco, PN Pertamina with Stanvac, and PT Stanvac and PN Permigan with PT Shell.

E. Conclusion

The current Law on Petroleum and Natural Gas is conceptually still problematic. This is evidenced by the several law articles which had been quashed by the Constitutional Court because they contradict the 1945 Constitution. The spirit of economic neoliberalism contained in Law No. 22 of 2001 on Petroleum and Natural Gas is not in line with the spirit and soul of the Indonesian nation as contained in Article 33 of the 1945 Constitution as described above because Article 33 of the 1945 Constitution contains very essential meanings which are reflected in the existence of economic democracy. The meaning of economic democracy has relevance to the meaning of democracy in Indonesia. Democracy in this case is social democracy, based on collectivity (*kolektiviteit*), not liberal democracy based on individualism (not Western democracy). Common economic endeavor must be given a form of joint ownership, joint ownership and shared responsibility. From here, the basic principle of collectivity of Triple Co can be put forward, namely Co-ownership (participating in owning shares), Co-determination (participating in the fund determining business policy) and Co-responsibility (taking responsibility in saving the common endeavor).

The petroleum and natural gas contract regime that came into effect from the Dutch East Indies colonial era through the Indische Mijnwet (Staatblad 1899-214) with a concession system that was valid until 1959, was later replaced by Law Number 44 of 1960 concerning Petroleum and Natural Gas Mining that uses the Petroleum and Natural Gas contract work system and lastly amended by Law No. 22 of 2001 concerning Petroleum and Natural Gas Mining using the PSC system in the petroleum and natural gas business, in principle it does not refer to contract constitutionality due to the many political influences, the authorities' interests and the influence of government ideology in power in its era according to the political dynamics following the national petroleum and natural gas industry policy that always changes according to the ideology affecting the Indonesian petroleum and natural gas industry management. Although the petroleum and

⁷⁵Law Number 14 Year 1963 on Ratification of the work agreements between PN Pertamina and PT Caltex Indonesia and California Asiatic Oil Company (Calasiatic)/Texaco Overseas Petroleum Company (Topco); P.N. Permina and P.T. Stanvac Indonesia; P.N. Permigan and P.T. Shell Indonesia.

natural gas management contract system in Indonesia has changed according to the business development of the petroleum and natural gas industry, but in substance as contained in Law on Petroleum and Natural Gas and the petroleum and natural gas business contract is still against the spirit of Article 33 paragraph (3) of the 1945 Constitution, this can be seen with the granting of petition for testing of Law on Petroleum and Natural Gas in the Constitutional Court. Thus, to realize Article 33 paragraph (3) in the management and business of domestic petroleum and natural gas industry, Law on Petroleum and Natural Gas and petroleum and natural gas contracts are required to be in line with the spirit of constitutionality.

Therefore, this research suggests, *First*, in the upcoming Law on Petroleum and Natural Gas, regulators must adjust the material content of Law on Petroleum and Natural Gas to be in accordance with the constitution spirit, especially Article 33 of the 1945 Constitution.

Second, natural resources contracts, especially petroleum and natural gas, must refer to the constitution, with the consequence that if the contracts contradict the constitution, then the contract can be legally canceled by the judiciary.

References

Indonesian court decisions

Decision of the Constitutional Court Number 002/PUU-1/2003 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas.

Decision of the Constitutional Court Number 020/PUU-V/2007 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas.

Decision of the Constitutional Court Number 036/PUU-XI/2012 on Case of Application for Testing Law Number 22 of 2001 on Petroleum and Natural Gas.

Books

Ahmad, Yusoff Sakina Shaik dan Azimon Abdul Aziz, *Mengenal Undang-Undang Kontrak Malaysia* (Laser Press 2006).

Arizona, Yance, *Konstitusionalisme Agraria* (STPN Press 2014).

Asshiddiqie Jimly, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Year 1945* (Rajawali Press 2009).

- Bindemann, Kirsten, *Production-Sharing Agreements: An Economic Analysis* (Institute for Energy Studies 1999).
- Caporaso, James A. and David PLevine, (translated by Suraji), *Teori-Teori Ekonomi Politik* (Pustaka Pelajar 2008).
- Compilation of Mining Law, *Produk Perundangan Terlengkap dan Terbaru* (Pustaka Yustitia 2009).
- Didu, Said, *Peran dan Fungsi Ideal BUMN Dalam Pengelolaan Aset Negara* (1st ed., Gramedia Pustaka Publisher 2010).
- Hadi, Syamsul, et al., *Kudeta Putih: Reformasi dan Pelembagaan Kepentingan Asing dalam Ekonomi Indonesia* (Indonesia Berdikari 2012).
- Hasan, Madjedi, *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum* (Fikahati Aneska 2009).
- Hikam, Muhammad AS (ed.), *Menyongsong 2014-2019 Memperkuat Indonesia Dalam Dunia Yang Berubah* (Rumah Buku 2014).
- HR, Ridwan, *Hukum Administrasi Negara* (Rajawali Press 2010).
- HS, Salim and Budi Sutrisno, *Hukum Investasi di Indonesia* (Rajawali 2008).
- HS, Salim B, *Hukum Pertambangan di Indonesia* (PT. Raja Grafindo Persada 2012).
- Kelsen, Hans, *Teori Umum tentang Hukum dan Negara* (translated by Raisul Muttaqien in *General Theory of Law and State*, 1971) (Nusa Media 2013).
- Marbun, S.F. and Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, (Liberty 2009).
- Cherednychenko, Olha O., ‘Subordinating Contract law to Fundamental Rights: Towards a Major Breakthrough or towards Walking in Circles’, in Alphen aan den Rijn, *Constitutional Values and European Contract Law* (Kluwer Law Internasional 2008).
- Panglima, Saragih Juli, *Sejarah Perminyakan di Indonesia* (1st Ed., Aghrindo Abadi 2010).
- Partowidagdo, Widjajono B, *Pengantar Produksi Investasi dan Kemampuan Nasional Hukum Migas* (CIDES 2008).
- Pradnyana, Gde, *Nasionalisme Migas* (Nayottama Press Holdings 2014).
- Puri, Hardeep and Delfino Bondad, “TRIM’s Development and the general Agreement”, in UNCTAD, *Uruguay Round: Further Papers on Selected Issues* (United Nations 1990).

Putut Prabantoro AM., *Migas The Untold Story* (Gramedia 2014).

PWC, *Oil and Gas in Indonesia: Investment and Taxation Guide* (8th Ed., 2017).

Sanusi, Bachrawi, *Potensi Ekonomi Migas Indonesia* (Rineka Cipta 2004).

Swasono, Sri-Edi, *Tentang Kerakyatan dan Demokrasi Ekonomi* (National Development Planning Agency 2008).

Syeirazi, M. Kholid, *Di Bawah Bendera Asing; Liberalisasi Industri Migas di Indonesia* (LP3S Indonesia 2009).

Wilson, Tim, *Innovating Indonesian Investment Regulation: The Need for Further Reform* (Institute of Public Affairs 2001).

Winarno, Yudho, et al., *Privatisasi Ketenagalistrikan, Minyak dan Gas Bumi: Dalam Perspektif Peraturan Perundang-undangan, Kebijakan Politik Pemerintah dan Penerapannya di Indonesia* (Pusat Penelitian dan Pengkajian Sekretariat Jenderal 2005).

Journal articles

Fabrikant, Robert, 'Production Sharing Contracts in the Indonesian Petroleum Industry' [1975] *Harvard International Law Journal*, Vol. 16.

Heriyanto, D.S.N., 'Contracting Out Public Services to NGO Practices in Asian Countries', [2016] *Public Goods and Governance* Vol. 1 Issue 1.

Johnson, D., 'How to Evaluate the Fiscal Terms Oil Contract' [2006] *IPD Working Paper Series*.

Romadhon, Topan Meiza, 'Pengaturan Production Sharing Contract dalam Undang-Undang Minyak Dan Gas' [2009] *Jurnal Hukum* Vol 16. No. 1.

Roziqin, 'Pengelolaan Sektor Minyak Bumi Di Indonesia Pasca Reformasi: Analisis Konsep Negara Kesejahteraan' [2015] *Jurnal Tata Kelola & Akuntabilitas Keuangan Negara* Vol. 1 No. 2.

Salim, Agus, 'Pengusahaan Migas di Indonesia dalam Perspektif Kedaulatan Negara atas Sumber Daya Alam (SDA)' [2012] *Jurnal Energi* 8th Ed.

Walde, Thomas W and George K Ndi, 'International Oil and Gas Investment: Moving Eastward?' [1994] *International Energy and Resources Law & Policy Series*.

Papers and Reports

Arizona, Yance B, 'Konstitusi Dalam Intaian Neoliberalisme: Konstitusionalitas Penguasaan Negara Atas Sumberdaya Alam Dalam Putusan Mahkamah Konstitusi' paper presented at Conference on *Warisan Otoritarianisme: Demokrasi Indonesia di Bawah Tirani Modal*. Panel of *Tirani Modal dan Ketatanegaraan*, Tuesday,

Agustus 5th, 2008 at Faculty of Social Science and Political Science University of Indonesia.

Commission Secretariat VII DPR RI, Academic Text of Petroleum and Natural Gas Mining Bill.

General View of PDI Perjuangan faction in Draft Law Discussion on Petroleum and Natural Gas, General Secretariat of the House of Representatives of the Republic of Indonesia (DPR RI), Book I.

Partowidagdo, Widjajono, 'PSC di Indonesia versus Pengusahaan Migas Dunia *Cost Recovery* versus Peningkatan Produksi Migas di Indonesia' paper presented at Seminar on Indonesian Engineers Association (PII), Jakarta, 31 July 2008.

The International Monetary Fund, "*Indonesia-Supplementary Memorandum of Economic and Financial Policies*", The International Monetary Fund, Washington D.C., September 11th, 1998., November 13th, 1998, January 20th, 2000, May 1st, 2000, July 31st, 2000 and December 13th, 2001.

Website

Hasan, Madjedi, 'Kontrak Migas Perlu Memuat Stabilization Clause' (Hukum Online 2009) <www.hukumonline.com.>

Other

Work Agreements between PN. Pertambangan Minyak Indonesia and California Asiatic Oil Company and Texaco Overseas Petroleum Company dated September 25th, 1963.