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NEW OIL AND GAS REGULATIONS IN INDONESIA TO PREVENT CORRUPTION IN UPSTREAM SECTOR

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Abstract

Provisions regarding gross split in the management of upstream oil and gas have been applied to several oil and gas contracts in Indonesia. After being implemented in 2017, as many as 40 work areas have used gross split schemes. Of the contracts agreed upon, Indonesia received additional non-tax state revenues of up to IDR 13.3 trillion so that the gross split scheme is considered more profitable than the cost recovery scheme. The gross split scheme is considered to be a solution to the alleged corruption that occurs in the cost recovery scheme. Although the gross split scheme is considered better, oil and gas industry players ask the government to evaluate this scheme in order to attract more investors. This article describes the gross split scheme relationship will alleged corruption in the previous scheme. This article concludes that good governance and appropriate legal products are needed in the management of oil and gas to prevent corruption.

Keywords -- Gross Split, upstream oil and gas, good governance, corruption

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INTRODUCTION

In its development, there are several patterns of oil and gas management. Johnson, as quoted by Widjajono Partowidagdo (Partowidagdo, 2009), stated that oil and gas management is divided into royalty or tax system (concession) and contract system. This contract system is divided into service contracts and production service contracts. Service contracts are further divided into systems based on flat fees and divisions that refer to profit. Indonesia as a country producing oil and gas, had implemented a concession system during the Dutch colonial period. This system began to change since the issuance of Law Number 44 Prp (substitute regulations) in 1960. The enactment of this law marks the start of the era of production sharing contracts (PSCs) with replacement of production costs or cost recovery.

The era of production sharing contracts (PSCs) has changed several times since it was implemented in 1964. The latest provisions on profit sharing contracts are regulated by Law Number 22 Year 2001 concerning oil and gas. The increase in non-balanced cost reimbursement by increasing production makes the government issue a new policy in January 2018 which is known as the system as gross split contract (Iskana, 2017). This scheme is analogous to working on rice fields with 57 percent oil and gas distribution for the country and 43 percent for contractors, while the distribution for natural gas is 52 percent for the country, 48 percent for contractors (Supriatna, 2017). The gross split scheme is expected to be a solution to minimize the alleged corruption that occurs in the upstream oil and gas sector. Some well-known corruption cases in the upstream oil and gas sector, among others, corruption cases of PT. Chevron on the land bioremediation project at the Riau mining site, the InnoSpec case in the procurement of Tetra Ethyl Lead (TEL), as well as bribery cases involving the Head of SKK Migas Rudi Rubiandini. The last case which was discussed was the case of investment through the Participating Interest (PI) of the Basker Manta Gummy (BMG) Australia Block in 2009. In this case, the former president director of Pertamina, Karen Agustiawan was sentenced to 8 years in prison and a fine of Rp. 1 billion

subsidiary 4 months because it is believed to enrich Australia's Roc Oil Company Limited (ROC) (Hidayat, 2019).

Post applied to a number of oil and gas blocks, this new pattern of profit sharing for oil and gas management still reaps the pros and cons (Indrawan, 2017). Although the polemic still characterizes the implementation of this new system, the government considers that with this scheme change schemes can encourage exploration and exploitation efforts to be faster, effective and efficient (Rahmania, 2017).

This research will answer the question about what are correlation between the gross split schemes and corruption in the upstream oil and gas sector? To answer this question, this article will also explain the development of oil and gas management in Indonesia.

This article in the first section will explain the background of the relationship between corruption and the counter gross split scheme on oil and gas management. Furthermore, in the second part, we will explain the development of oil and gas management patterns in Indonesia. The relationship between corruption and gross split will be explained also. While the third part explains good governance and oil and gas management in Indonesia, which will be ended by conclusions and suggestions.

LITERATURE REVIEW

A. Oil and Gas Management in Indonesia

Since it was discovered the first oil source in Indonesia in 1883 by A.G Zeijlker in Telaga Tiga and Telaga Said near Pangkalan Brandan, North Sumatra (Sasongko, 2014), the management of oil and gas in the country continues to grow. In the era before independence, oil and gas management in Indonesia used a concession system. The implementation of this system is based on the Indische Mijl Wet (IMW) 1899 which is a rule in the mining sector formed by the Dutch colonial government (Institute, Peran Pemerintah, Pertamina dan KKKS, 2015). This regulation is still applied in Indonesia until the birth of two government regulations on October 26, 1960, namely Law Number 37 Prp of 1960 concerning General Mining, and Law

Number 44 Prp of 1960 concerning Oil and Gas Mining (Hasan, 2009). After the enactment of Law No. 44 Prp in 1960, the Indonesian government for the first time signed a production sharing contract with an American private company, the Independent Indonesia American Petroleum Company (IIAPCO)(Institute, Peran Pemerintah, Pertamina dan KKKS, 2015). This contract is a first generation production contract. This contact then continued to change until the birth of Law Number 22 Year 2001 concerning oil and gas which is a form of fourth generation profit-sharing contract.

After the first Production Sharing Contract (PSC) was signed by the government in 1966, the Indonesian government in 1968 issued Government Regulation Number 27 of 1968 concerning the establishment of the State Oil and Gas Mining Company (PN Pertamina). PN Pertamina is a combination of PN Permina and PN Pertamina. Pertamina's authority in oil and gas exploitation activities is regulated in Law Number 8 of 1971 concerning the State Oil and Gas Mining Company. Based on the Act, Pertamina is

granted mining authority whose boundaries and territories and conditions are stipulated by the President. Besides, Pertamina is also permitted to contract with other parties in the form of 'Production Sharing Contracts'.

This condition changed when Law Number 22 Year 2001 was passed. The enactment of this law makes the exclusive rights of oil and gas management and exploitation which initially became Pertamina's authority transferred. This regulation makes Pertamina's position equal to other contractors because the law mandates the establishment of the Executive Agency for Upstream Oil and Gas Activities (BP Migas) After the dissolution of BP Migas by the Constitutional Court (MK), the task was temporarily carried out by SKK Migas. But this institution's function is only temporary, before the establishment of a new replacement institution. Changes to the rules that apply in the management of oil and gas till the establishment of Law Number 22 Year 2001, can be seen through the graph below.

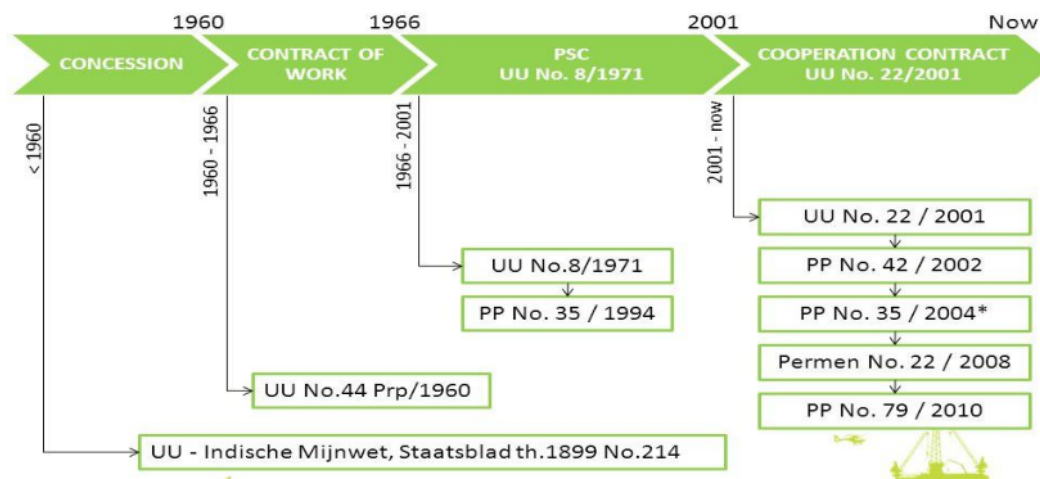


Chart 2.1. Development of oil and gas management rules(Tampubolon, n.d.)

Population growth in Indonesia has an impact on the increasing demand for oil and gas. However the increase in oil and gas needs is not matched by an increase in production. This has

made the government experience a deficit in the oil and gas balance and continues to import.

Table 2.1. Oil and gas trade balance deficit (Primadhyta, 2019)

Year	Oil and gas Export (USD billion)	Oil and gas Import (USD billion)	Surplus/Deficit (USD billion)
2010	28,04	27,41	0,63
2011	41,48	40,7	0,78
2012	36,97	42,57	-5,6
2013	32,63	45,27	-12,6
2014	30,02	43,46	-13,4
2015	18,55	24,61	-6
2016	13,11	18,74	-5,6
2017	15,74	24,31	-8,6
2018	15,66	27,81	-12,15

From the table we know that the number of deficit year by year has increased. The other problem in oil and gas industry especially on upstream part is increased returns to production

costs or cost recovery compared to revenues from the oil and gas sector.

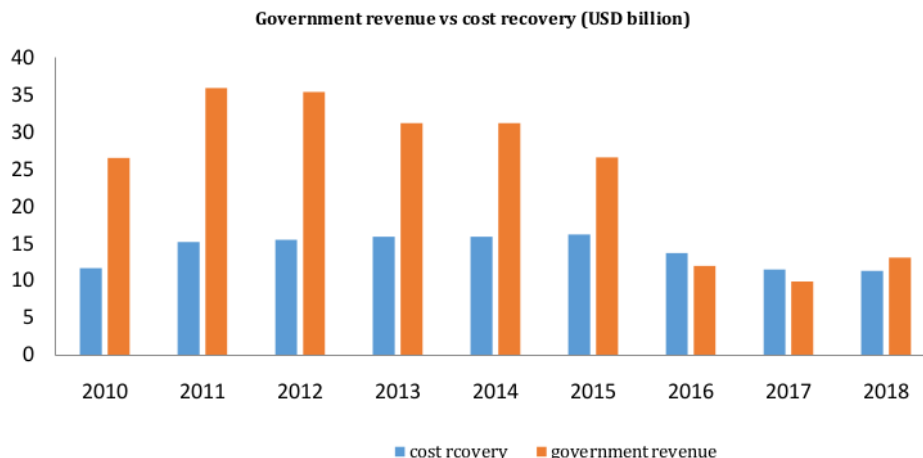


Chart 2.2. Government revenue vs cost recovery (Budiartie, Satrianegara, & Prakoswa, 2018)

The increase of cost recovery made the government issue a new regulation, namely ESDM Regulation No. 8 of 2017 concerning contracts for gross split results. Gross split production sharing contract is a production sharing contract for upstream oil and gas business activities based on the principle of sharing gross production without the cost recovery mechanism.

There are three spirits in the scheme for the gross split profit sharing, namely certainty, simplicity, and efficiency. Certainty or certainty means that the gross split profit sharing scheme is designed to provide certainty for Cooperation Contract Contractors (KKKS) regarding the amount of profit sharing they will receive by calculating themselves. Simplicity is more focused on the fiscal system, because this system makes it easy for contractors not to have to discuss Long with SKK Migas about work plans and budgets. While efficiency is more aimed at the procurement of goods and services that can be done by the contractors.

Contracts for gross split results must at least contain the following requirements: 1) ownership of natural resources remains in the hands of the Government until the point of delivery; 2) control of operations management resides with SKK Migas; and 3) capital and risks are borne entirely by the contractor. In this contract, the Minister of Energy and Mineral Resources has the authority to determine the form and provisions of the principal contract. Some basic provisions that must be included in this contract are, among others: 1) state revenue; 2) working area and return; 3) obligation to spend funds; 4) transfer of ownership of production of oil and gas; 5) period and conditions for contract extension; 6) settlement of disputes; 7) the obligation to supply petroleum and natural gas for domestic needs; 8) expiration of the contract; 9) obligations after mining operations; 10) occupational safety and health; 11) environmental management; 12) transfer of rights and obligations; 13) reporting required; and 14) field development plans.

Three types of gross split that can be applied to the results sharing scheme, namely base split, split and progressive split variables (Ant, wamen-esdm-jelaskan-apa-itu-gross-split, 2016). Base split for petroleum is 57% of the country's share and 43% of the contractor's share, while for natural gas is 52% of the country's share and 48% of the contractor's share. The variable components in question are: 1) the status of the working area; 2)

field location; 3) depth of reservoir; 4) the availability of supporting infrastructure; 5) type of reservoir; 6) carbon dioxide (CO₂) content; 7) hydrogen sulfide (H₂S) content; 8) Specific gravity of petroleum; 9) the level of domestic components during the field development; and 10) production stages. The progressive component consists of: a) the price of petroleum; and b) the cumulative amount of oil and gas production.

The gross split policy, which is expected to alleviate the noise of opinion regarding cost recovery, turns out to create resistance among entrepreneurs (Radjaguguk, 2016). To reduce gross split rejection, ESDM Minister Ignatius Jonan issued Minister of Energy and Mineral Resources Regulation No. 52 of 2017 (DK, 2017) as a revision of ESDM Regulation No. 8 of 2017. There are several important points of this new regulation, namely (NK, 2017): 1) The space for adding contractors' revenue sharing through Ministerial discretion is not restricted as in the previous regulation, the maximum is 5%; 2) percentage increase of several variables for the results of the contractor; 3) profit sharing variables related to oil and gas prices using formulas (Zuhri, 2017). Meanwhile, to overcome the legal problem of oil and gas contract regulation which is only based on Ministerial regulation, the government issues a fiscal policy through Government Regulation (PP) Number 53 of 2017 concerning taxation on upstream oil and gas business activities with production sharing contracts.

Three main principles in the preparation of tax regulations in the gross split scheme, namely taxation intended to encourage the oil and gas industry, are expected to provide legal certainty, and this regulation has a simple pattern (rap/co₂, 2017). In this regulation, the government provides seven fiscal incentives for KKKS with the hope that the investment climate in the upstream oil and gas sector will improve.

In January 2017, the Offshore North West Java (ONWJ) working area (WK) was the first WK to use this scheme. The management of ONWJ's WK was handed over to a subsidiary of PT. Pertamina, namely PT Pertamina Hulu Energi ONWJ (PHE ONWJ) with a final split contract between the Government and the Contractor, is 42.5%: 57.5% for oil and 37.5%: 62.5% for gas (Kurniawan, 2017). Not only the ONWJ block, the application of the gross split scheme was also carried out by Andaman I and Andaman II, and in eight blocks that had expired and were not extended (Kumparan T. E., 2018). The eight blocks are: 1) North

Sumatra Offshore (NSO); 2) OganKomeriing; 3) Tuban; 4) East Kalimantan; 5) Attaka; 6) Middle; 7) Sanga-sanga and 8) South East Sumatra (SES). All blocks are given to PT. Pertamina to manage it. Until now, there are still three oil and gas blocks with a split gross scheme that is in the process of being signed. In 2018, the government will auction 26 oil and gas blocks with a scheme that is believed to benefit the government and investors.

After the implementation of the gross split contract scheme in the first semester of 2018, state revenues reached USD 17.3 billion, this figure increased by USD 3.5 billion compared to the same period in 2017 which was USD 13.8 billion (Birdieni, 2018). Meanwhile, at the beginning of 2019, the government through the Ministry of Energy and Mineral Resources announced that the implementation of the gross split scheme had provided contributions of Non-Tax State Revenues (PNBP) of up to Rp. 13.3 trillion from signature bonuses of 40 oil and gas blocks. In addition, the gross split scheme also made the country pocket work commitments or exploration funds of USD 2.1 billion or around 31.5 trillion (sfr/agt, 2019).

B. Gross Split and Corruption

The word corruption comes from Latin, "corruption" which means damaging, making rotten, bribing (Sahetapy, 1979). Subekti in his large Indonesian dictionary compiled explained corruption as a self-enriching crime that directly harms the country's finances and economy (Subekti, 1977). While the Indonesian Encyclopedia describes corruption as a symptom when officials, state agencies abuse their authority with bribery, forgery, and other irregularities (Hartarti, 2006). According to the Indonesia legal perspective, the definition of corruption has clearly been explained in 13 articles in Law No. 31 of 1999 which was amended by Law No. 20 of 2001 concerning Eradication of Corruption Crimes. Based on these articles, corruption is formulated into 30 forms/types of corruption. The articles describe in detail the actions that could be subject to criminal sanctions for corruption. The thirty forms/types of corruption can basically be grouped as follows: 1. state financial losses, 2. bribery, 3. embezzlement in office, 4. extortion, 5. cheating, 6. conflict of interest in procurement, 7. gratuities. Besides other criminal acts relating to corruption which are contained in Law No.31 of 1999 jo. UU no. 20 of 2001. Types of criminal offenses related to corruption are: 1. obstruct the process of examining corruption cases, 2. not giving information or giving incorrect information, 3. banks that do not provide suspect account information, 4. witnesses or experts who did not give statements or give false statements, 5. people who hold office secrets do not provide information or giving false information, 6. witness who discloses the identity of the reporter.

There are several common forms of corruption referring to the understanding of corruption described by Syed Hussein Alatas (Alatas, 1975), namely bribery, extortion and nepotism. In the Criminal Code (KUHP), criminal acts of corruption are grouped into (Danil, 2012): 1) groups of criminal acts of bribery; 2) criminal acts of fraud; 3) greedy criminal acts (*knevalarijor* extortion); 4) criminal groups with contractors, suppliers and partners. Meanwhile, based on the Law on the Eradication of Corruption Acts, it is grouped into (Korupsi, 2006): 1) corruption related to state finance; 2) corruption related to bribery; 3) abuse of office; 4) extortion; 5) corruption related to fraud; 6) corruption related to procurement; 7) corruption related to gratuity.

Provisions regarding the eradication of criminal acts of corruption in the early days of independence are contained in the Central War Rule of the Army Chief of Staff, Regulation Number Prrt/Perpu/C13/1958. Furthermore, this regulation was corrected by Law No. 24 of 1960. During the New Order government, efforts to eradicate corruption were regulated by Law No. 3 of 1971. After the demise of President Soeharto, who

had been in power for 32 years, a request was made for provisions concerning corruption. A number of provisions that are passed are Law No. No. 28 of 1999 concerning the Implementation of Clean and Free Government from corruption, collusion and nepotism (KKN), Law No. 31 of 2000 Jo Law No. 20 of 2001.

As a special crime, corruption in Indonesia has become entrenched so that it occurs in all sectors including upstream oil and gas. Amien Sunaryadi, head of SKK Migas for the 2014-2018 period, stated that the upstream oil and gas sector is prone to bribery practices as happened to the Head of SKK Migas before he, Rudi Rubiandini, was caught in bribery cases of crude oil and condensate tenders from PT. Kaltim Parna Industri (Amelia, ceritakepala-skkmigas-soal-rawannya-praktik-suap-di-sektor-hulu, 2018). During his tenure as Head of the SKK Migas, Amien claimed to have acted on PT Huabei Petroleum Services, one of the vendors who did not want to be audited (Amelia, manajemen-anti-suap-diterapkan-investasi-hulu-migas-lebih-menarik, 2018).

In 2019, the upstream oil and gas sector was in the spotlight after former Pertamina CEO, Karen Agustawan, was sentenced to 8 years in prison and a fine of Rp. 1 billion subsidiary 5 months imprisonment. Karen was considered guilty of corruption, abuse of office, when investing in the Basker Manta Gumny (BMG) block owned by ROC Oil Limited Australia (Laureno, 2019). Karen was charged with neglecting the investment procedures that apply at PT Pertamina and other investment provisions or guidelines so that the state will lose up to Rp. 568 billion (Gabrilin, 2019).

The upstream oil and gas sector is indeed full of risks in accordance with the characteristics of the oil and gas business which requires a large cost because it utilizes expensive advanced technology, with high risk. This is what made the former secretary of the BUMN Ministry, Said Didu, state that carefulness is needed to be able to differentiate every policy in the upstream oil and gas sector as pure business or "conspiracy" (Kumparan R. , 2018). The convicted oil and gas corruption case, Rudi Rubiandini said that the upstream oil and gas industry is a 'dark' industry because not many people understand this business and no one can supervise all actions in each process (Rubiandini, 2019). The practice of bribery that occurs in the upstream oil and gas sector makes business in this sector expensive due to money sharing, and this pattern does not only occur in Indonesia. This practice of bribery has become the finding of the KPK so that the biggest corruption practices so far have occurred in the oil and gas sector. The risk of corruption in this sector is not only because of bribery in licensing but also tax leaks (Egi/Bil, 2014). Some said that corruption in the oil and gas sector was related to the "oil and gas mafia" (Alexandro, 2017).

Corruption in the upstream oil and gas sector is not only bribery and tax evasion, but also in the implementation of corruption occurs in cost recovery or the return of production costs. The Expert Staff of the Minister of Energy and Mineral Resources who is now the Inspector General of the Ministry of Energy and Mineral Resources, Akhmad Syahroza stated that most oil and gas companies in Indonesia only need work portfolios, so they do not produce oil but target cost recovery, this is a burden on state finance due to high cost recovery costs (Syakhroza, 2018). This statement is in accordance with the results of the Audit of Financial Examination Agency (BPK) which stated that in the 2009-2012 period there were 28 findings of alleged irregularities in the management of oil and gas which could potentially harm the country up to Rp. 207,112,380,000 or USD 137,143,740. Allegedly the biggest deviation occurs in Cost recovery due to the many bubbles and mark ups (CR15, 2013). Based on data from Indonesia Corruption Watch (ICW), state losses in the period 2000-2009 due to indications of oil deviation at BP Migas reached Rp. 194 trillion. This high rate of loss is due to the lack of

transparency in oil and gas exploration and exploitation activities. Ironically, ICW added, the gratification model in the oil and gas management agency had been massive and the 'game' could have happened systemically (Panggabean, 2013).

In order to answer various problems regarding cost recovery, mainly due to the increasing cost of replacement which is not comparable with oil production, the government issued Government Regulation (PP) No. 79 of 2010 concerning Cost Recovery in the Upstream Oil and Gas Business Field. The provisions issued on December 20, 2010 are expected to increase the stretch of investment in upstream oil and gas and minimize problems with cost recovery.

Although provisions regarding cost recovery have been implemented, replacement costs remain high and even exceed the amount of oil and gas production. Allegations of corruption still occur in the upstream oil and gas sector, urging the government to make a number of changes. Jusuf Kalla said, improvements to the system on oil and gas management were more needed than changing institutions and transferring authority (Ant, *jk-yang-perlu-diubah-sistem-skk-migas-bukan-namanya*, 2013). Archandra Tahar proposed three steps so that the state budget for cost recovery is more efficient, namely the use of appropriate technology, simplifying licensing, and contract strategies for the planning, procurement, and construction of projects (Amelia, *tiga-langkah-archandra-tekan-cost-recovery*, 2016). In June 2017, President Joko Widodo signed Government Regulation No. 27 of 2017 concerning Amendments to Government Regulation Number 79 of 2010 concerning Reimbursable Operating costs and income tax treatment in the Upstream Oil and Gas sector. In this provision, the Minister can determine the amount of dynamic profit sharing (Sliding Scale Split) on the cooperation contract (Putra, 2017).

Before the provisions regarding changes in cost recovery rules were issued, the government through the Ministry of Energy and Mineral Resources introduced a new contract pattern, namely the gross PSC split. The scheme regulated by Permen ESDM No. 8 of 2017 is effective starting January 16, 2017. The Gross Split scheme is claimed to be able to reduce the budgetary burden on state revenues and expenditures as well as operating costs no longer charged to the state but to oil and gas contractors. This pattern cuts licensing which has been complicated so far. This regulation is amended by Permen ESDM No. 52 of 2017. Meanwhile, to overcome investor anxieties regarding tax regulations, Government Regulation Number 53 of 2017. Issued a gross split scheme forcing contractors to save money because the amount of profit desired depends on their own calculations.

After being implemented in 2017, the gross split scheme has been used in 40 work areas, with details of 14 auction blocks, 21 termination blocks and 5 amendment blocks. The gross split scheme also contributes non-tax state revenues (PNBP) to Rp. 13.3 trillion and donating exploration funds of Rp. 31.5 trillion.

DISCUSSION AND CONCLUSION

A. Good Governance and Oil and Gas Management in Indonesia

The government has tried to minimize the potential for corruption by implementing a gross split profit sharing scheme because so far cost recovery has become a part that is suspected to be prone to corruption. Corruption in cost recovery is not only due to cost mark-up, but also discussion of returns that occur between the contractor and SKK Migas. Even though cost recovery has been deleted in the gross split profit sharing scheme, opportunities are still possible when discussing contracts such as those that ensnared Rudi Rubiandini. Moreover, in the gross split profit sharing scheme, there is a large authority held by the minister of energy and mineral resources to provide incentives through ministerial discretion. This condition

can lead to bribery gaps to the minister or director general who oversees the oil and gas sector. Therefore, Rudi said that the gross split profit sharing scheme only transferred corruption from SKK Migas to the ministry of energy and mineral resources (Rubiandini R., 2019). Jusuf Kalla had explained that what is needed by the upstream oil and gas industry is the improvement of the management system. The system in question is inseparable from the application of good governance, so that it becomes an integrated part of the government as a state organizer with other stakeholders. The term governance by The United Development Program (UNDP) is translated as follows (Sedarmayanti, 2017):

"Governance is the exercise of economic, political, and administrative authority to manage a country's affairs at all levels and means by which states promote social cohesion, integration, and ensure the well being of their population.... it is complex mechanism, process, relationship and institutions through which citizens and groups articulate their interest, exercise their rights and obligations and mediate their differences".

While the World Bank quoted Prof. Shikha Vyas-Doorgapersad and Prof. Dr. Coskun Can Aktan (Prof. Shikha Vyas-Doorgapersad, 2007), defining Good Governance is *"the manner in which power is exercised in the management of a country's economic and social resources for development"*.

The International Monetary Fund (IMF) explains the agenda of *good governance* are *transparency, accountability, efficiency, fairness, participation and ownership* (Woods, Vol.28, No.5). While *The Commission of The European Communities* stated the existence of five principles in *good governance* are *openness, participation, accountability, effectiveness and coherence* (Communities, 2001). If combined, according to the characteristics of *Good Governance* made by UNDP as quoted by Joko Widodo, namely (Widodo, 2001): 1) *Participation*; 2) *Rule of Law*; 3) *Transparency*; 4) *Responsiveness*; 5) *Consensus Orientation*; 6) *Equity*; 7) *Effectiveness and Efficiency*; 8) *Accountability*; 9) *Strategic Vision*.

The nine characteristics of *Good Governance* when applied to oil and gas management can produce a new system that is more profitable for the state and the private sector as Contractors of Cooperation Contracts (KKKS). So far, **transparency** in the use of production costs has become a major problem including lifting data. Of course, if this element is applied then the problems that arise in oil and gas management can be minimized. In addition, with the principle of **equity**, there will be guarantees for anyone to be able to invest in Indonesia so that there will be an increase in oil and gas lifting, including all KKKS having the same opportunity to get incentives from Ministerial discretion in accordance with cultivated field conditions.

The **responsiveness** character guarantees maximum service from the government in this case the Ministry of Energy and Mineral Resources, SKK Migas and the regional government so that the licensing process becomes easier so that the investment climate gets better. The application of the **effectiveness and efficiency** principle can help optimize the sources available in the country so that the target of the Component Level Within the National Level (TKDN) required in the Gross Split scheme is fulfilled. The existence of **strategic vision** can certainly produce a blue print of oil and gas management that is in accordance with the constitution, namely the maximum utilization for the people's welfare. Whereas **accountability** fulfillment makes all stakeholders, namely the government, the private sector and the community more prudent in utilizing oil and gas, especially the Minister of Energy and Mineral Resources who has full authority in giving discretion in relation to incentives based on employment conditions for KKKS.

B. Conclusion

As a high risk business, high technology and high cost, the oil and gas industry still leaves a dark record of corruption in this sector. Not only bribery, misappropriation for personal gain and mark up costs found in upstream oil and gas. The government and some experts argue that cost recovery is a major problem in the upstream oil and gas sector so that the new contract pattern is applied in this industry. The gross split PSC system without cost recovery is claimed to be the best pattern in oil and gas revenue sharing schemes. However, of course the gap of corruption can still occur given the large authority of the Minister of Energy and Mineral Resources who has discretion in providing incentives for KKKS. This condition encourages the need for good governance in this sector, so that corruption can be minimized given that not many people understand about the upstream oil and gas industry.

In addition to good governance, consistent regulations are needed in this sector because the oil and gas business is a long-term business, so stability is needed so that investment continues to grow. Strengthening the Minister's regulation as the basis for gross split profit sharing contracts needs to be done immediately if the government is serious in developing the upstream oil and gas business.

REFERENCES

- Partowidagdo, W. (2009). *Migas dan Energi di Indonesia Permasalahan dan Analisis Kebijakan*. Bandung: Development Studies Foundation.
- Iskana, F. R. (2017, January 19). *Rezim.cost.recovery.berakhir.selamat.datang.skema.gross.split*. Retrieved from <http://ekonomi.kompas.com>
- Supriatna, I. (2017, January 20). *BEgini.memahami.gross.split.pengganti.cost.recovery.migas*. Retrieved from <http://ekonomi.kompas.com>
- Hidayat, F. (2019, June 10). *hakim.putuskan.karena.gustiawan.tak.bayar.uang.pengganti.rp.284.m*. Retrieved from <http://news.detik.com>
- Indrawan, R. (2017, March 27). *skema-gross-split-membawa-untung-buntung*. Retrieved from <http://www.dunia-energi.com/analysis>
- Rahmania, A. (2017, May 1). *manakah-yang-lebih-baik-gross-split-atau-cost-recovery*. Retrieved from <https://kumparan.com/alliya-rahmania>
- Sasongko, A. (2014, May 22). *empat-daerah-penghasil-minyak-terbesar-di-indonesia*. Retrieved from <https://www.republika.co.id/berita>
- Institute, T. R. (2015). *Peran Pemerintah, Pertamina dan KKKS*. Jakarta: REforMiner Institute.
- Hasan, M. (2009). *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum*. Jakarta: Fikahati Aneska.
- Institute, T. R. (2015). *Peran Pemerintah, PErtimana dan KKKS*. Jakarta: REforMiner Institute.
- Ant. (2016, December 20). *wamen-esdm-jelaskan-apa-itu-gross-split*. Retrieved from <https://wartaekonomi.co.id>
- Radjaguguk, R. (2016, December 14). *kadin-skema-gross-split-enggak-jelas*. Retrieved from <http://ekonomi.inilah.com>
- DK. (2017, September 5). *direktorat-jendral-minyak-dan-gas-bumi/menteri-esdm-tetapkan-permen-nomor-52-tahun-2017-tentang-revisi-kontra-gross-split*. Retrieved from <https://www.esdm.go.id>
- NK. (2017, September 9). *revisi-gross-split-berlaku-untuk-kontrak-baru*. Retrieved from <http://migas.esdm.go.id>
- Zuhri, S. (2017). *Gross Split*. Jakarta: BIsnis Indonesia, Kolom Spektrum.
- rap/co2. (2017, November 23). *rpp-pajak-gross-split-sudah-di-meja-presiden*. Retrieved from <http://id.beritasatu.com>
- Kurniawan, A. (2017, January 20). *skema-gross-split-pertama-kali-digunakan-onwj*. Retrieved from <https://ekbis.sindonews.com>
- Kumparan, T. E. (2018, April 18). *11-blok-migas-terapkan-skema-gross-split-9-sudah-berproduksi*. Retrieved from <https://kumparan.com/@kumparanbisnis>
- Birdieni, B. (2018, Agustus 31). *penerimaan-migas-semester-I-2018-Naik*. Retrieved from <https://www.gatra.com>
- sfr/agt (2019, February 19). *skema-gross-split-blok-migas-sumbang-penerimaan-negara-rt 13-t*. Retrieved from <https://www.cnnindonesia.com/ekonomi>
- Sahetapy, J. (1979). *Kapita Selekta Kriminologi*. Bandung: Alumni.
- Subekti. (1977). *Kamus Hukum*. Jakarta: Pradnya Paramita.
- Hartati, E. (2006). *Tindak Pidana Korupsi, cetakan kedua*. Jakarta: Sinar Grafika.
- International, T. (2019, July 4). Retrieved from <http://transparency.de/mission/html>
- Alatas, S. H. (1975). *Sosiologi Korupsi*. Jakarta: LP3ES.
- Danil, E. (2012). *Korupsi, Konsep, Tindak Pidana dan Pemberantasannya*. Jakarta: PT. Raja Grafindo.
- Korupsi, K. P. (2006). *Memahami untuk Membasmi*. Jakarta: Komisi Pemberantasan Korupsi.
- Amelia, A. R. (2018, March 27). *cerita-kepala-skk-migas-soal-rawannya-praktik-suap-di-sektor-hulu*. Retrieved from <https://katadata.co.id>
- Amelia, A. R. (2018, March 27). *manajemen-anti-suap-diterapkan-investasi-hulu-migas-lebih-menarik*. Retrieved from <https://katadata.co.id>
- LAureno, S. F. (2019, June 10). *blok-migas-yang-jebloskan-karena-agustiawan-ke-penjara-8-tahun*. Retrieved from <https://finance.detik.com>
- Gabrilin, A. (2019, May 29). *karen-agustiawan-baru-pertama-kali-bisnis-hulu-migas-dianggap-pidana-korupsi*. Retrieved from <https://nasional.kompas.com>
- Kumparan, R. (2018, April 17). *kasus-karen-agustiawan-murni-risiko-bisni-migas-atau-kongkalikong*. Retrieved from <https://kumparan.com/@kumparanbisnis>
- Rubiandini, P. R. (2019, January 19). *pengelolaan sektor hulu migas*. (b. manohara, Interviewer)
- Egi/Bil. (2014, April 7). *korupsi-terbesar-di-sektor-migas*. Retrieved from <https://nasional.kompas.com>
- Alexandro, N. N. (2017, November 15). *korupsi-di-dunia-migas*. Retrieved from <http://patra.itb.ac.id>
- Syakhroza, P. A. (2018, September 14). *pengelolaan sektor hulu migas di Indonesia*. (b. manohara, Interviewer)
- CR15. (2013, September 27). *meramu-formula-tepat-pengelola-huku-migas*. Retrieved from <https://www.hukumonline.com>
- Panggabean, E. (2013, November 24). *icw-pusaran-korupsi-skk-migas-bersifat-sistemik*. Retrieved from <https://www.liputan6.com/news>
- Ant. (2013, August 16). *jk-yang-perlu-diubah-sistem-skk-migas-bukan-namanya*. Retrieved from <https://www.beritasatu.com>
- Amelia, A. R. (2016, November 10). *tiga-langkah-archandra-tekan-cost-recovery*. Retrieved from <https://katadata.co.id>
- Putra, I. R. (2017, July 4). *presiden-jokowi-keluarkan-aturan-baru-soal-cost-recovery-ini-isinya*. Retrieved from <https://www.merdeka.com>
- Sedarmayanti. (2017). *Good Governance (Kepemerintahan yang Baik)*. Bandung: CV Mandar Maju.
- Prof. Shikha Vyas-Doorgapersad, P. D. (2007). *Progression From Ideal State To Good Governance: An Introductory Overview*. International Journal of Business and Management Studies, 31.
- Woods, N. (Vol.28, No.5). *The Challenge of Good Governance for The IMF and The World Bank Themselves*. World Development, 824.

45. Communities, C. o. (2001). European Governance - A White Paper. Brussels: Commission of The European Communities.
46. Widodo, J. (2001). Good Governance : Telaah dari Dimensi Akuntabilitas, Kontrol Birokrasi pada Era Desentralisasi dan Otonomi Daerah. Surabaya: Insan Cendekia.
47. Pratiwi, P. S. (2017, January 23). meliht-jejsk-korupsi-bensin-bertimbal-hingga-trent-700. Retrieved from <https://www.cnnindonesia.com>

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