

INDONESIAN JOURNAL *of* LAW AND SOCIETY

VOLUME 1 | ISSUE 2 | SEPTEMBER 2020

<https://jurnal.unej.ac.id/index.php/IJLS>



FACULTY OF LAW
UNIVERSITY OF JEMBER, INDONESIA



TABLE OF CONTENTS

ARTICLES

- 101 – 124 Fair Use Doctrine in Photocopying Books for Educational Purposes:
A Study of Copyright Acts in Indonesia and the United States
Nadiya Nurmayana, Mardi Handono, Galuh Puspaningrum
- 125 – 144 Legal Consequences of Refugees' Visa Misuse to Obtain Indonesian
Citizenship
Aninda Novedia Esafrin, Antikowati, Gautama Budi Arundhati
- 145 – 162 Comparing the Contract Between Islamic and Indonesian Laws
Atharyanshah Puneri
- 163 – 180 Child-Friendly Cities and Districts As Human Rights Protection in
Indonesia's Decentralization Context
Fanny Tanuwijaya, Fiska Maulidian Nugroho
- 181 – 198 Reformulating Political Party Court Procedures in Parties' Dispute
Settlement
Happy Agung Saputra, Iwan Rachmad Soetijono, Shofi Munawwir Effendi
- 199 – 218 Compensation Arrangements in Expropriating Goods and Equipment:
An Indonesian Experience
Misbahul Ilham, Bhim Prakoso, Ermanto Fahamsyah

Compensation Arrangements in Expropriating Goods and Equipment: An Indonesian Experience

Misbahul Ilham*

University of Jember, Indonesia

Bhim Prakoso

University of Jember, Indonesia

Ermanto Fahamsyah

University of Jember, Indonesia

ABSTRACT. After the change of oil and gas production sharing contract scheme in 2017, the expropriation of goods and equipment has become the main clause in the Production Sharing Contract (PSC) contract. As a substantial production subsidiary, oil and gas exploitation is controlled by PSC. This paper aimed to examine the PSC contract, Oil and Gas Law, and upstream oil and gas business ordinance to expropriate goods and equipment. The PSC outline contains ownership of natural resources, the working area of oil and gas operations, oil and gas reserves, capital, and sophisticated supporting goods and equipment. However, the problem in the contract dealt with the ownership of goods and equipment purchased by the contractor. The cooperation contract regulated that goods that support oil and gas operations were included in the category of State Property without compensation. The provisions in the contract tended to be detrimental to the contractors who have carried out the exploration stage but did not find oil and gas reserves until the specified time limit. This paper used normative legal research to analyze the regulation of clause the expropriation of goods and equipment and statute approach to explore the clause from various regulations. The result showed the acquisition of ownership of goods and equipment in the PSC, upstream oil and gas business regulation was not regulating the compensation arrangements.

KEYWORDS: Natural Resources Law, Upstream Activities, Compensation Arrangements.

Submitted: 10/09/2020 Reviewed: 12/09/2020 Revised: 15/10/2020 Accepted: 16/10/2020



Copyright © 2020 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions

* Corresponding authors' e-mail: misbahulilham313@gmail.com

I. INTRODUCTION

Natural resource management of oil and gas generates enormous returns from their production, critical to a global resource-led political economy development. For countries with enormous natural resources such as Indonesia, Venezuela, and Saudi Arabia, they experience economic and controlling stagnation or difficulties.¹ Thus, Indonesia's dependence on oil and natural gas is relatively high due to a large amount of natural wealth.² The oil and gas industry has experienced significant volatility in the last five years, both in Indonesia and globally,³ caused by global geopolitical and economic considerations playing a significant role in driving the oil and gas industry. Currently, Indonesian people are also requisite for oil and gas products considered from increased petroleum consumption, domestic energy, and industrial raw materials.⁴ By taking into account the enormous need for oil and gas products, Indonesia sets control of oil and gas by the state. However, the right to control owned by the state must also consider the products that must aim at the community's welfare.

Managing the oil and gas industry is high risk due to the dwindling supply of nature and the high cost of procuring and refining resources. The state in the production of oil and natural gas has the function to regulate and manage natural wealth such as land, water, and other natural resources. The constitutional content in the economic sector must be structured as a joint effort based on the principles.⁵ In addition, the production branches, which are essential and have a bearing on the livelihood of the people, are

¹ Genio Ladyan Finasisca, Tri Hayati, "Domestic Beneficiation Policy In Mining Sector: A Case Study Of Indonesia" (2020) 7:07 J Crit Rev, online: <<http://www.jcreview.com/fulltext/197-1588918536.pdf?1589182258>>.

² Alan Gelb, Benn Eifert & Borje Nils Tallroth, *The Political Economy of Fiscal Policy and Economic Management in Oil-Exporting Countries*, Policy Research Working Papers (The World Bank, 2002).

³ Fourina Permatadewi, "Oil and Gas in Indonesia - Investment and Taxation Guide 2018" at 152.

⁴ Ana Fitriyatus Sa'adah, Akhmad Fauzi & Bambang Juanda, "Peramalan Penyediaan dan Konsumsi Bahan Bakar Minyak Indonesia dengan Model Sistem Dinamik" (2017) 17:2 J Ekon Dan Pembang Indones at 118-137.

⁵ Ibnu Sina Chandranegara, "Desain Konstitusional Hukum Migas untuk Sebesar-Besarnya Kemakmuran Rakyat" (2017) 14:1 Jurnal Konstitusi at 45.

directly controlled by the state on the condition that they are used maximally for the prosperity of the people. Under the current contract, the government appointed the company as a contractor in a licensed area.⁶ In the current condition, Oil and gas investment return sharing scheme in the cooperation contract is divided into two. They are PSC cost recovery (PSC CR) and PSC gross split (PSC GS).⁷ The cost recovery scheme is that the state will reimburse all costs related to oil and gas revenues, then the oil and gas proceeds will be given to the state with a larger portion with a distribution range of 85% for the state and 15% for contractors.⁸ Meanwhile, the gross split scheme states that the contractor bears all costs related to the acquisition of oil and gas, then the contractor will get a more significant share of the revenue from oil and gas, the scheme can be 57% for the state and 43% for the contractor.⁹

Several implementing regulations state that all goods and equipment purchased by contractors in implementing petroleum operations become state property and are managed by the Special Task Force for Upstream Oil and Gas Business Activities.¹⁰ The regulations in question are Government Regulation 35/2004, Government Regulation 27/2017, Government Regulation 53/2017, Minister of Finance Regulation 89/PMK.06/2019, Minister of Finance Regulation 02/PMK.05/2011 and Minister of Energy and Mineral Resources Regulation 8/2017. The government's treatment of goods and equipment that should belong to the contractor and directly

⁶ Dwi Atty Mardiana, Fadhli, Ridha Husla, RS Trijana Kartoatmodjo, "Assessing Indonesia's Upstream Petroleum Fiscal Regimes Choices" (2019) 8:11 Int J Sci Technol Res, at 2449.

⁷ Buletin Skk Migas, "Membuka Harapan Baru dari Skema Gross Split" (2017) 24.

⁸ Hari Sutra Disemadi & Sahuri Lasmadi, "Utilizing Production Sharing Contracts (PSCs) as a Means for the Protection of Indonesia's Natural Resources" (2019) 6:3 Lentera Hukum at 393.

⁹ Hari Sutra Disemadi & Sahuri Lasmadi, "Utilizing Production Sharing Contracts (PSCs) as a Means for the Protection of Indonesia's Natural Resources" (2019) 6:3 Lentera Hukum at 393.

¹⁰ Duwi S Ariyani, "Penataan Barang Milik Negara Beleid Aset Hulu Migas Bikin Rumit Birokrasi", *Koran Bisniscom* (Oktober 2017), online: <<https://koran.bisnis.com/read/20171013/451/698733/penataan-barang-milik-negara-beleid-aset-hulu-migas-bikin-rumit-birokrasi>>.

states that the goods that have been used in oil and gas operations in their working area belong to them.

This research examined the government's arrangement of the expropriation of contractor goods and equipment. The compensation arrangement in oil and gas law must follow Government Regulation 35/2004 on upstream oil and gas business activities and the cooperation contract. The first section of this paper will discuss the legal and regulatory framework of the upstream oil business contracts in Indonesian experience from its beginning until the shift of the current scheme. The second and third discussions will elaborate on the expropriation of ownership of goods and equipment and the compensation after the current alteration scheme.

II. METHODS

This research uses normative legal analysis to examine the legal framework of upstream oil and business activities to explore problems by looking at norms and their application, and a conceptual method to analyze doctrine and legal views as material for solving problems. The legal sources used consist of primary legal materials, secondary legal materials, and non-legal materials.

III. LEGAL AND REGULATORY FRAMEWORK OF THE UPSTREAM OIL BUSINESS CONTRACTS

A. Legal Aspect of Upstream Oil Contracts

Oil and gas business activities are conditional on investment activities with significant capital, thus to facilitate the legal relationship between the owners of capital and the recipients of capital, a contract called a Cooperation Contract is formed.¹¹ Under Article 1:14 of the Oil and Gas Law, the contract is interpreted as a Production Sharing Contract or other cooperation contracts in exploitation and exploration activities that are more profitable for the state. The results are used for people's prosperity. It

¹¹ Sulaiman, "Rekonstruksi Hukum Minyak dan Gas Bumi yang Berkeadilan di Indonesia" (2016) 18:2 Kanun Journal Ilmu Hukum at 221.

indicates other types of contracts other than production sharing contracts whose existence is still recognized. Although Indonesia has made changes two times, the cooperation system changes in the upstream oil and gas business activities. Cooperation Contracts are still expected to be a tool for the government to improve relations with investors in managing the upstream oil and gas business. Another objective is to assure accountable processing, transport, storage, and commercial businesses through fair and transparent business competition. It includes guaranteeing the efficient and effective supply of oil and gas as a source of energy and meeting domestic needs, promoting national capacity, increasing state income, and enhancing public welfare and prosperity equitably while maintaining the conservation of the environment.

B. Concession System For Upstream Oil Contracts

This system has been in effect during the era of the Dutch East Indies government. In this system, mining companies that can manage oil and gas mining are given mining rights and control over land. The contractor has full control over the oil being mined, and the contractor is obliged to pay royalties to the state. Howard R Williams and Charles J Meyer¹² in the *Manual of Oil and Gas Terms* provide an understanding that the concession system is:

"An agreement (usually from host government permitting a foreign petroleum company to prospect for and produce oil in the area subject to the agreement.) The terms ordinarily include a time limitation and provision for royalty to be paid to the government."

The concession referred to above is defined as an agreement between the state that owns or holds the oil and gas mining authority and the investor, whereby the investor will get the right to explore and, if successful, produce and market oil and natural gas without involving the concession-giving country and its management.

¹² Howard R Williams, Patrick H Martin, Charles J Meyers, *Manual of Oil and Gas Terms: Annotated Manual of Legal, Engineering and Tax Words and Phrases*, 17th Edition ed (LexisNexis).

According to A Madjedi Hasan¹³ several provisions in the concession system can be described as the patterns and conditions contained in the concession system, namely: exclusive rights to the concession holder for a certain time (75 years) to carry out exploration and exploitation of petroleum; and the right to sell it including by-products (refined) produced from the concession area. In this concession system, the land given varies but is generally very broad and the rights granted to concessionaires are almost unlimited and full of excessive privileges. The payment for the concession shall only be in the form of royalty payments (based on production volume at a fixed rate). Concession holders are not subject to income tax. Ownership of oil and gas resources based on the concession system is right in rem, which can be used as collateral. Rightsholders will become owners as soon as these resources are produced. The government is not involved in the ownership of the management of operational activities other than receiving royalty payments and other levies.

The relationship between the host country and the company at the start of the concession system allowed the company to impose asymmetrical conditions on the host.¹⁴ With this concession system, the state as the owner of natural resources gives the right to seek, develop, and export to a company (generally a foreign company) freely from a vast area for an extended period in exchange for a certain amount of payment and other benefits. Thus, the government only has the right to receive commercial uses, which initially take the form of royalties and turn into royalties and taxes.

C. Contract of Work for Upstream Oil Contracts

The implementation of the contract of work has been in effect from 1960 to 1963. This system was built for oil and gas mining companies only to be given the power to the government so that the contractor pays a tax of 56%

¹³ A Madjedi Hasan, "Kontrak Pertambangan Minyak dan Gas Bumi, (Training on The Law of Energy and Mineral Resources)" in (Faculty of Law, Universitas Indonesia, 2010) at 20.

¹⁴ *Ibid.*

directly to the government. Besides that, the Generally Accepted Accounting Procedure (GAP) needs to be applied for which the restriction on operating costs (Cost Recovery Calling) is 40% and has been removed. The definitive work contract is outlined in Article 1 of the Decree of the Minister of Mining and Energy 1409.K/201/M.PE/1996 on the procedures for processing applications for the granting of mining rights, principle permits, work contracts, and work agreements for coal mining companies (PKP2B). that is; an agreement between the Indonesian government and a foreign private company or a joint venture between foreign and national for exploitation of natural resources in the form of minerals.¹⁵

The definition above constructs a work contract as an agreement. The subjects in the agreement are the government and foreign companies in a joint venture between foreign and national companies. Ismail Sunny¹⁶ stated that in the implementation of a work contract, it refers to as foreign capital cooperation in the form of a work contract which occurs when a foreign investment forms an Indonesian legal entity and this legal entity enters into cooperation with a legal entity that uses national capital. Meanwhile, Sri Woelan Azizi has a different meaning that the contract of work is in the presence of a collaboration in which a foreign party forms an Indonesian legal entity. This Indonesian legal entity cooperates with an Indonesian legal entity that uses Indonesian capital.¹⁷

Salim defines a work contract as an agreement made between the Indonesian government and foreign contractors solely and/or is a joint venture between a foreign legal entity and a domestic legal entity to carry out exploration and exploitation activities in the field.¹⁸ General mining, according to the time frame agreed by both parties. The work contract

¹⁵ Jennifer McKay & Balbir Bhasin, “*Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform*” (2001) 19:4 J Energy Nat Resour Law at 329–343.

¹⁶ Ratnasari Fajariyah Abidin, “*Aspek Yuridis Renegosiasi Kontrak Karya di Indonesia (Studi Kontrak Karya Antara Pemerintah Republik Indonesia Dengan PT.Freeport Indonesia)*” (2018) 11:01 Al-Risal at 19.

¹⁷ *Ibid.*

¹⁸ Salim HS, *Hukum Pertambangan Mineral dan Batubara* (Jakarta: Sinar Grafika, 2014).

regulates the legal relationship between the parties and governs the object of the work contract. In general, the elements of a work contract are a contractual (agreement made by the parties), legal subject, the existence of objects, general mining, and term in the contract.

D. Cooperative Contract for Upstream Oil Contract

Cooperation contracts that foreign private companies with the government have executed have a broad impact on society.¹⁹ The positive consequences of the cooperation contract are job opportunities and technology transfer. Article 1 of the Oil and Gas Law confirms the definition of a cooperation contract, namely:

"Cooperation Contracts are production sharing contracts or other forms of cooperation contracts in exploration and exploitation activities that are more beneficial to the state and the results are used for the greatest prosperity of the people."

Production Sharing Contracts translate the Cooperation Contracts in the Oil and Gas Law and several other laws and regulations. Permanent establishment. Production Sharing Contracts have been implemented in Indonesia since 1964. Production Sharing Contracts (PSCs) were born at that time to overcome the problems of limited domestic capital, technology, and human resources faced in oil and gas operations.²⁰

IV. THE EXPROPRIATION FOR UPSTREAM OIL AND GAS BUSINESS CONTRACTORS

The regulation of goods and equipment is regulated in Cooperation Contracts and various laws and regulations relating to upstream oil and gas business activities. The business Entity in the Cooperation Contract is referred to as the Cooperation Contract Contractor as one of the parties interested in goods and equipment to support oil and gas exploration and exploitation activities. In its operation, the Cooperation Contract

¹⁹ Law 22/2001 on *Oil and Natural Gas*.

²⁰ Rudi M Simamora, *Hukum Minyak dan Gas Bumi* (Jakarta: Djambaran, 2000) at 271.

Contractor requires supporting goods and equipment in one way, namely buying the supporting goods and equipment. The initial stage in the contract agreement between the state and the Cooperation Contract Contractor has general rights in oil and gas activities. The state has a working area, oil and gas reserves, and ex-terminated BMN. Cooperation Contract Contractors as investors must have financial, human resources (HR), and technology. The number of capital assets (CA), investment assets (IA), limited inventories, seismic material and wells, ground wells, and office equipment at the exploration stage.²¹

Significant additions to CA, IA, and supplies in production facilities and equipment, wells, supply materials, offices, and housing. Until the final stage, namely the termination of the contract by significantly reducing CA, IA, and inventories by returning to the state.²² The clauses in the PSC Contract (Production Sharing Contract) and Article 78 of Government Regulation 35/2004 concerning upstream oil and gas business activities.

"All goods and equipment that are directly used in the upstream oil and gas business activities purchased by the contractor become state property/assets whose development is carried out by the government and managed by the executing agency."

In addition, it is regulated in Article 3 of PMK 89/PMK.06/2019 on the management of state property originating from the implementation of cooperation contracts for upstream oil and gas business activities, which states:

"Goods purchased or obtained through the import process for use or intended for use by contractors in the implementation of upstream oil and gas business activities are state property owned by oil and gas after landing at seaports, airports or other places. The purchased goods have fulfilled the customs obligations of the imported destination under the statutory regulations. There is a difference regarding the goods that will become BMN of imported oil and gas and those that are not imported. This status is deemed essential to ensure that the

²¹ Dr Grace Li, *"The PRC Contract Law and Its Unique Notion of Subrogation"* (2009) 4:1 at 10.

²² *Ibid* at 12.

goods that will become BMN oil and gas originate from abroad or domestically."

In general, goods are part of state assets which are specific units that can be valued, counted, measured, and weighed. Meanwhile, state-owned goods are defined in Article 1:1 of Government Regulation 27/2014 on Management of State/Regional Property. All goods purchased or obtained at the expense of the State Budget or originating from other legitimate acquisitions, excluding money and securities. Thus, the State, Provinces, Regencies/Municipalities as state institutions have property rights and other rights proportionally and under the principles of limitation and conditions stipulated in statutory regulations. Likewise, individual legal subjects and civil legal entities. Public legal entities can sell, rent, utilize and or manage the goods they own.²³

The definition of State Property (abbreviated as SP) is also stated in Article 1:3 of Minister of Finance Regulation No. 171/PMK.05/2007 on Central Government Financial Accounting and Reporting System which outlines:

"BMN is all goods purchased or obtained at the expense of the State Budget or derived from legitimate acquisitions. The classification of goods referred to above is tangible goods that can be assessed, counted, measured, and weighed, excluding money and securities."

Goods and equipment in oil and gas operations are categorized as state-owned goods obtained from other legal acquisitions according to Article 2:2 of the Government Regulation 27/2014 on the Management of State Property. Among others, goods obtained from a gift/donation or the like, goods obtained as an implementation of an agreement/contract, goods received under the provisions of law, or goods received based on a court decision that has acquired permanent legal force. BMN managers who have the authority to regulate and manage SP. It is the Minister of Finance as general treasurer of the state that becomes the manager of state property authorized and responsible for the regulation and implementation of policies relating to BMN management.

²³ McKay & Bhasin, "Mining Law and Policy in Indonesia," *supra* note 15.

The legal position in regulating the ownership of goods and equipment for upstream oil and gas business activities is used as the basis for determining the position where a legal subject or legal object is placed. It has the function and purpose of carrying out an activity allowed and not allowed in the cooperation contract. Special Work Unit For Upstream Oil and Gas Business Activities (SKK Migas) is authorized by the state as a substitute for the Implementing Body.²⁴ The executing agency is an agency established to exercise control in the upstream oil and gas business activities. As the holder of the power, the state delegates based on Article 4 of the Oil and Gas Law, which regulates that the government with mining rights forms an executing agency.²⁵ The authority of the executing agency in this activity is to supervise the upstream oil and gas business activities in and throughout the areas described and described in the contract. The cooperation contract contractor in the said contract must have the financial capacity, technical skills, and expertise needed to carry out petroleum business under the clauses in the cooperation contract.²⁶

Control over oil and gas refers to the constitutional basis which delegates the authority to control (in the sense of exploiting and managing) important production branches (oil and gas) and controlling the livelihood needs of many people to the state and can be delegated to business entities in the form of permanent businesses. The state's position as the holder of power rights is due to the sovereignty of its natural resources. Its control must be a priority to be of great value to the people's livelihoods.²⁷ Oil and gas is a significant production, meaning that the oil and gas content in the land is very close to the products that people need from oil and gas production. As an essential and strategic production branch, the oil and gas sector has a different meaning from other countries, namely Malaysia.

²⁴ Affina Niken Al-Islami, "*Legalitas Kontrak Kerjasama Minyak Dan Gas Bumi Pada Organisasi dan Tata Kerja Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi*", p 21.

²⁵ M Ilham F Putuhena, "*Politik Hukum Pengelolaan Hulu Migas Pasca Putusan Mahkamah Konstitusi*" (2015) 4:2 at 17.

²⁶ Brigita P Manohara, Ahmad Redi, "*New Oil And Gas Regulations In Indonesia To Prevent Corruption In Upstream Sector*" (2020) 7:08 J Critical Review at 759.

²⁷ Putuhena, *supra* note 25.

Malaysia in the Petroleum Act ²⁸ defines that ownership of oil and gas as an essential branch is not allowed to be transferred or controlled by the private sector.

Act 144 Petroleum Development Act 1974. The entire ownership in, and the exclusive rights, powers, liberties, and privileges of exploring, exploiting, winning, and obtaining petroleum whether onshore or offshore of Malaysia shall be vested in a Corporation to be incorporated under the Companies Act 1965 or under the law relating to the incorporation of companies.

Malaysian Law 144/1954 on Oil and Petroleum Development that all ownership in terms of exclusive rights, powers, freedoms, and privileges to explore, exploit, win and obtain petroleum either on land or off the coast of Malaysia will be given to A corporation to be incorporated under the Companies Act 1965 or under the laws relating to the incorporation of companies. The entire ownership of the exploration and exploitation of oil and gas in Malaysia, both on land and at sea, is transferred to a national corporation established under the Companies Act. Meanwhile, in Indonesia, the interpretation is different, when the Constitutional Court hearing on 29 April 2010 ²⁹ stated that "what is important for the state is not only that it has a strategic role, but also controls the lives of many people and this management can be managed by the private sector." The state is given the task and authority to make policies (*beleid*), management (*bestuutsdaad*), regulation (*regelended*), management (*beheersdaad*), and supervision (*toezichthoudendsdaad*) over control of a production branch (oil and gas).³⁰ Indonesia strictly regulates the state's position over control of oil and gas as an essential and strategic production branch controlled by the state. It has meaning in its practice, whether the state regulating oil and gas

²⁸ *Petroleum Development Act*, 144 1974.

²⁹ Putuhena, *supra* note 25.

³⁰ Lalang Tri Utomo, Achmad Busro, Ery Agus Priyono, "Aspek Hukum Penerapan Asas Kekuatan Mengikat Dalam Kontrak Bagi Hasil Minyak Dan Gas Bumi di Indonesia" 5:4 Dipenogoro Law J at 3.

management plays a role in public law subjects (*jury imperii*) or civil law subjects (*jury gestiones*).³¹

The parties' position becomes unbalanced with the state's position as the perfect subject. The state can change laws and prosecute legal subjects who break the law as an ideal legal subject. The concept of *jury gestiones* defines that the state as a subject of civil law is considered to have abandoned immunity to its sovereignty in connection with its actions in business activities.³² The substance of the contract is inappropriate because it contradicts the concept of ownership which is intended for the most significant benefit of the people.³³ Based on the explanation above, the state's legal position in this Cooperation Contract becomes the legal relationship between the first party as a sovereign state and the second party as a Cooperation Contract Contractor. Such profits must aim at the maximum possible welfare of the community.

V. THE COMPENSATION ARRANGEMENTS OF UPSTREAM OIL AND GAS BUSINESS CONTRACTORS

The disadvantages can be defined as a real loss that occurs because of default.³⁴ The amount of the loss is determined by comparing the state of assets after default with the situation if there was no default. M. Yahya Harahap also interpreted more or less the same, namely compensation is defined as the real loss or "*fletelijke nadeel*" caused by the act of default.³⁵ Abdulkadir Muhammad emphasized that Articles 1243 to 1248 of the

³¹ Huala Adolf, *Dasar Dasar Hukum Kontrak Internasional* (Bandung: Refika Aditama, 2008) at 5.

³² Sang Ayu Putu Rahayu, "*Prinsip Hukum Dalam Kontrak Kerjasama Kegiatan Usaha Hulu Minyak Dan Gas Bumi*" (2017) 32:2 *Yuridika* at 333.

³³ Maulana Arba' Satryadin, Ery Agus Priyono & Budi Gutami, "*Penerapan Asas Proporsionalitas Dalam Production Sharing Contract Pada Kegiatan Usaha Pertambangan Hulu Minyak Dan Gas Bumi*" (2016) 5 at 18.

³⁴ R Setiawan, *Pokok Pokok Hukum Perikatan* (Bandung: BinaCipta, 1977) at 17.

³⁵ M Yahya Harahap, *Segi Segi Hukum Perjanjian* (Bandung: Alumni, 1982) at 66.

Civil Code constitute a legal against debtors from arbitrary actions by the creditor due to default.³⁶

Nieuwenhuis broadly puts forward the term loss regarding the decrease in the assets of one party, which is caused by an act that violates the norm by the other party. Nieuwenhuis added that care must be taken to not cause harm as a difference between the situation before and after default or illegal acts.³⁷ It is also essential to pay attention to the elements of compensation as stated in Article 1246 of the Civil Code:

"Costs, losses, and interest that the debtor may be sued for compensation generally consist of the losses he has suffered and the gains that he should enjoy, without prejudice to the exceptions and changes that will be mentioned below."

According to Abdul Kadir Muhammad, the following elements of compensation can be drawn by the cost, losses due to damage, and expected interest or profit.³⁸ Satrio considers more specifically that the elements of compensation are a substitute for the performance obligation of the engagement, part of the primary engagement obligations, such as improper performance.³⁹ The compensation for losses suffered by creditors due to overdue performance is demanded to compensate for the principal performance obligations of the engagement and compensation for the delay.

Regulations related to goods and equipment are not only regulated in the oil and gas cooperation contract, but several regulations also stipulate the same thing. Provisions regarding goods are regulated from Articles 78 to 81 Chapter IX Utilization of Domestic Goods, Services, Technology and Engineering and Design Capabilities in Government Regulation 35/2004 on Upstream Oil and Gas Business Activities.

³⁶ Abdul Kadir Muhammad, *Hukum Perikatan* (Bandung: Citra Aditya Bakti, 1990) at 41.

³⁷ JH Nieuwenhuis, *Pokok Pokok Hukum Perikatan* (Airlangga University Press, 1985) at 54.

³⁸ Abdul Kadir Muhammad, *supra* note 21 at 76.

³⁹ J Satrio, *Hukum Perikatan (Perikatan Pada Umumnya)* (Bandung: Alumni).

Managing goods and equipment includes physical and administrative activities ranging from storage, maintenance, release and delivery, recording, and reporting to meet needs and ensure the smooth operation of petroleum in the working area.⁴⁰

Contractors using a PSC GS scheme must maintain and maintain documents related to the acquisition, maintenance, replacement, modification, and ownership of these goods and equipment according to the provisions that are still in effect while they are still in the upstream oil and gas business activities.⁴¹ The objective of asset management in the form of goods and equipment from upstream oil and gas business activities is effective, efficient, and transparent based on the principles of accountability under the provisions and laws in force to provide maximum benefits to the state while still prioritizing the prosperity and welfare of the people.⁴² The form of management of goods and equipment originating from the assets of a cooperation contract contractor, namely through the existence of a special arrangement from the Minister of Finance Regulation 135/PMK.06/2009 on Management of State Property Derived from Cooperation Contract Contractors.

The general principle in the above regulation regulates that State Property (BMN) is state assets that will later be used and acquired or purchased by the Cooperation Contract Contractor to implement the contract between the Republic of Indonesia and the Cooperation Contract Contractor.⁴³ Goods and equipment categorized as Asset Contractors in a cooperation contract are regulated in Article 2(1) and (2) of Ministry of Finance Regulation 135/PMK.06/2009, which governs the position of goods and determination of their status.

⁴⁰ Skk Migas, "In 2013, role of Badan Pelaksana, including signing of cooperation contract, is transferred to Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (SKK Migas)" at 58.

⁴¹ Amir Hosein Mabadi, *Legal Strategies In Upstream Oil And Gas Contracts to Attract Foreign Investment: Iran's Case* Shahid Beheshti University of Tehran Faculty of Law.

⁴² Faizal Kurniawan, "Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak Dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak" (2013) *Jurnal Prespektif* 2, p 12.

⁴³ *Simon Butt and Fritz Edward Siregar, "State Control Over Natural Resources in Indonesia: Implications of the Oil and Natural Gas Law Case of 2012"* (2013) 31:2 *J ENERGY Nat Resour IAW* at 119.

The task above should have consequences if, in its implementation, there are several goods and equipment under its supervision that are not managed optimally. This decision should also refer to the need and the correct calculation of the goods and equipment utilized or transferred to another party. In particular, the position of goods and equipment regulated in this ministerial regulation confirms the ownership of goods purchased by the Cooperation Contract Contractor.⁴⁴ Property rights and its limitation are regulated in Article 570 of the Civil Code.⁴⁵

Article 570 of the Civil Code outlines that property rights are the right to fully enjoy an object and control that object freely, as long as not used contrary to laws or general regulations held by the power having the authority to do so.⁴⁶ It does not cause interference with the rights of others. All of this without prejudice to the possibility of revocation of rights for the public interest by payment of appropriate compensation. The definition supports a norm outlined in Article 7 of Law 25/ 2007 on investment.

Control over goods and equipment, which are the assets of the Cooperation Contract Contractor, must be followed by a clause with compensation or compensation. It is different from the production sharing cooperation contract clause, which states the rules for transferring ownership without also regulating compensation or compensation for the transfer.⁴⁷

The contract regulates the rights to equipment as executor of the use of goods and services in the Oil and Gas Law In particular, in the matter of taking over ownership of goods and equipment in this cooperation contract. It should regulate for appropriate compensation due to legal actions committed by the state against the contractor's goods and equipment. The basis used is that the acquisition of ownership is included

⁴⁴ Satryadin, Priyono & Gutami, *supra* note at 31.

⁴⁵ Muhammad Syahrir, “*Studi Komparatif Antara Sistem Kontrak Bagi Hasil Minyak Dan Gas Bumi Di Indonesia Dengan Sistem Konses*” (2011) at 170.

⁴⁶ *Ibid.*

⁴⁷ Andrey Hernandoko & Mochammad Najib Imanullah, “*Implikasi Berubahnya Kontrak Bagi Hasil (Product Sharing Contract) Ke Kontrak Bagi Hasil Gross Split Terhadap Investasi Minyak Dan Gas Bumi Di Indonesia*” (2018) at 28.

in the revocation of rights (*onteigening*),⁴⁸ which requires that apart from the revocation of the right based on statutory regulations and public interest, it also states the fundamental requirements regarding appropriate compensation due to the legal consequences of the acquisition. Not only revocation of rights, legal actions committed by the state on contractor goods and equipment are also not based on the provisions in Article 7(1) of the Investment Law, which if the government takes over ownership rights. It must also be accompanied by compensation under market prices. Investor interest in seeking profit in the upstream oil industry must be considered.

VI. CONCLUSION

The provisions for compensation for the expropriation of ownership of goods and equipment of a cooperation contract must be under the market price as the state's responsibility respectively contractor asset's. Law 22/2001 on Oil and Gas, Government Regulation 35/2004 on upstream oil and gas business activities and cooperation contracts do not regulate compensation clearly for the expropriation of ownership of goods and equipment purchased by the contractor in the agreement. The provisions for compensation are stipulated in the provisions for taking ownership of goods and equipment of investors in Article 7 of Law 25/2007 on investment which requires the state in this case as the parties to provide compensation to the contractor if the acquisition of ownership of goods and equipment is still desired.

REFERENCES

Abidin, Ratnasari Fajariyah. "*Aspek Yuridis Renegosiasi Kontrak Karya Di Indonesia (Studi Kontrak Karya Antara Pemerintah Republik Indonesia Dengan Pt.Freeport Indonesia)*" (2018) 11:01 Al-Risalah.

⁴⁸ Rahayu, *supra* note 32.

- Al-Islami, Affina Niken. “*Legalitas Kontrak Kerjasama Minyak Dan Gas Bumi Pada Organisasi Dan Tata Kerja Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi*” 21.
- Brigita P Manohara, Ahmad Redi. “*New Oil And Gas Regulations in Indonesia to Prevent Corruption in Upstream Sector*” (2020) 7:08 J Critical Review.
- Chandranegara, Ibnu Sina. “*Desain Konstitusional Hukum Migas Untuk Sebesar-Besarnya Kemakmuran Rakyat*” (2017) 14:1 J Konstitusi
- Disemadi, Hari Sutra & Sahuri Lasmadi. “*Utilizing Production Sharing Contracts (PSCs) As A Means For The Protection Of Indonesia’s Natural Resources*” (2019) 6:3 Lentera Hukum.
- Duwi S Ariyani. “*Penataan Barang Milik Negara Beleid Aset Hulu Migas Bikin Rumit Birokrasi*”, *Koran Bisniscom* (Oktober 2017), Online: <<https://Koran.Bisnis.Com/Read/20171013/451/698733/Penataan-Barang-Milik-Negara-Beleid-Aset-Hulu-Migas-Bikin-Rumit-Birokrasi>>.
- Dwi Atty Mardiana, Fadhlia, Ridha Husla, Rs Trijana Kartoatmodjo. “*Assessing Indonesia’s Upstream Petroleum Fiscal Regimes Choices*” (2019) 8:11 Int J Sci Technol Res 2449.
- Gelb, Alan, Benn Eifert & Borje Nils Tallroth. *The Political Economy Of Fiscal Policy And Economic Management In Oil-Exporting Countries*, Policy Research Working Papers (The World Bank, 2002).
- Genio Ladyan Finasisca, Tri Hayati. “*Domestic Beneficiation Policy In Mining Sector : A Case Study Of Indonesia*” (2020) 7:07 J Crit Rev.
- Hasan, A Madjedi. “Kontrak Pertambangan Minyak dan Gas Bumi, (Training on the Law of Energy and Mineral Resources)” In (Faculty of Law, Universitas Indonesia, 2010).
- Hernandoko, Andrey & Mochammad Najib Imanullah. “*Implikasi Berubahnya Kontrak Bagi Hasil (Product Sharing Contract) Ke Kontrak Bagi Hasil Gross Split Terhadap Investasi Minyak Dan Gas Bumi Di Indonesia*” (2018).

- Howard R Williams, Patrick H Martin, Charles J Meyers. *Manual of Oil and Gas Terms: Annotated Manual of Legal, Engineering and Tax Words and Phrases*, 17 Th Edition Ed (LexisNexis).
- Huala Adolf. *Dasar Dasar Hukum Kontrak Internasional* (Bandung: Refika Aditama, 2008).
- J Satrio, *Hukum Perikatan (Perikatan Pada Umumnya)* (Bandung: Alumni, 1999).
- JH Nieuwenhuis. *Pokok Pokok Hukum Perikatan* (Surabaya: Airlangga University Press, 1985).
- Kurniawan, Faizal. “*Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak Dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak*” (2013).
- Lalang Tri Utomo, Achmad Busro, Ery Agus Priyono. “*Aspek Hukum Penerapan Asas Kekuatan Mengikat Dalam Kontrak Bagi Hasil Minyak Dan Gas Bumi Di Indonesia*” (2016) 5:4 Dipenogoro Law Journal.
- Li, Dr Grace. “*The Prc Contract Law And Its Unique Notion Of Subrogation*” (2009) 4:1 J Int Commer Law Technol 10.
- Lubintara, Benny. “*Ekonomi Migas-Tinjauan Aspek Komersial Kontrak Migas*” In (Jakarta: Pt. Gramedia Widhasarana Indonesia, 2012).
- M Yahya Harahap. *Segi Segi Hukum Perjanjian* (Alumni, 1982).
- Mabadi, Amir Hosein. *Legal Strategies in Upstream Oil And Gas Contracts to Attract Foreign Investment: Iran’s Case* Shahid Beheshti University of Tehran Faculty of Law, 2008).
- Mckay, Jennifer & Balbir Bhasin. “*Mining Law And Policy In Indonesia: Issues In Current Practice That Need Reform*” (2001) 19:4 J Energy Nat Resour Law.
- Muhammad, Abdul Kadir. *Hukum Perikatan* (Bandung: Alumni, 1990).
- Naazneen Barma, *Rents to Riches? The Political Economy of Natural Resource-Led Development* (Washington, D.C: World Bank, 2012).

- Migas, Buletin Skk. “*Membuka Harapan Baru Dari Skema Gross Split*” (2017).
- Putuhena, M Ilham F. “*Politik Hukum Pengelolaan Hulu Migas Pasca Putusan Mahkamah Konstitusi*” (2015).
- Rahayu, Sang Ayu Putu. “*Prinsip Hukum Dalam Kontrak Kerjasama Kegiatan Usaha Hulu Minyak Dan Gas Bumi*” (2017) 32:2 Yuridika.
- R Setiawan. *Pokok Pokok Hukum Perikatan* (Bandung: Binacipta, 1977).
- Rudi M Simamora. *Hukum Minyak Dan Gas Bumi* (Jakarta: Djambaran, 2000).
- Salim HS. *Hukum Pertambangan Mineral Dan Batubara* (Jakarta: Sinar Grafika, 2014).
- Satryadin, Maulana Arba’, Ery Agus Priyono & Budi Gutami. “*Penerapan Asas Proporsionalitas Dalam Production Sharing Contract Pada Kegiatan Usaha Pertambangan Hulu Minyak Dan Gas Bumi*” (2016).
- Simon Butt And Fritz Edward Siregar. “*State Control Over Natural Resources In Indonesia: Implications Of The Oil And Natural Gas Law Case Of 2012*” (2013) 31:2 J Energy Natural Resource Law.
- Sulaiman. “*Rekonstruksi Hukum Minyak Dan Gas Bumi Yang Berkeadilan Di Indonesia*” (2016) 18:2 Kanun Jurnal Ilmu Hukum.
- Syahrir, Muhammad. “*Studi Komparatif Antara Sistem Kontrak Bagi Hasil Minyak Dan Gas Bumi Di Indonesia Dengan Sistem Konsesi*” (2011).