

## Sharing Revenue of Oil and Gas Industry between Center and Local Government from Legal Perspective

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### Abstract

This research discusses about sharing revenue of oil and gas industry between center and local government from legal perspective. This research is a normative juridical using statute approach and case approach. Data collection conducted by literary study and document study, observation, and interview. Analysis is conducted qualitatively to obtain proper conclusion from the observed problem. This research found that Law. 25/ 1999, and Article 14 paragraph 4 (e) of Law no. 33 2004 which is set the division of state revenues of Oil and Gas can not implemented easily in many local goverment, but also considering local government condition as area which is producing oil and gas and their financial balance with other area.

**Keywords:** oil and gas, sharing revenue, Indonesia, local government

### Introduction

Oil and gas is one of natural resources vital support the national economy. Gas as a branch of production of an important for the country and dominate countless lives state- controlled, according to mandate of the constitution. The purpose mastery by the state is to be able to be used to the maximum prosperity and improve quality of life and life of the people in a sustainable intergenerational (inter- temporal).

For the creation of a unity in empowering the natural resources, it the authority of the country to master natural wealth is a tenure which is the implementation of the provisions of Article 33 paragraph (2) 1 and (3) 2 Constitution of the Indonesia Republic and amendment (1945). Even in Article 33 1945 confirmed that to be achieved in the management and exploitation of oil and gas that is in earth is a maximum of the prosperity, but essentially meant nothing but the welfare for all the Indonesian people. Ideologi3 mastering of natural resources formulated perfect in Article 33 paragraph (2) and paragraph (3) 1945. That norm is being the basis for exploration and exploitation of natural resources in Indonesia. The interpretation is authentic on the provisions of Article 33 paragraph (3) formulated through an explanation of the 1945 that" earth and water and natural resources contained in the earth is the points prosperity of the people. Because of that, it should be controlled by the state and used to the maximum of the people prosperity. On the other hand, the norm is a constitutional basis in the translation in business of the national economy.

As one example, Riau as one of the province in Indonesia can contribute to the center of 59 trillion rupiah of oil and gas. While the budget returned to the Riau only 600 billion Rupiah, or just 1, 01 percent. The amount is certainly has increased in line passing of the concept of regional autonomy. 2 Discrepancy between the area or also be said gap between central and local continue with injustice in the division of natural products. The area that its natural resources rich, particularly rich mine such as petroleum, gas, coal and gold such as Riau, East Kalimantan, Papua and some other areas can not enjoy the results of its natural rich because of regulation or legislation impartially to the area. In fact what is in the area should belong to the area and can be used to the welfare of the people of the area.

Although the spirit of regional autonomy which gave birth Law No. 22 1999 which further amended by Law No. 32 2004 on Regional Government, this Act also supported by making the Law No. 25 1999, amended by Law No. 33 2004 on Fiscal Balance and local, but inequality of the division of natural results for the area has not adequate judging from the results of nature as well as the potential owned by the area concerned. Due to some areas that have a natural products such as mining, the Act has not just what it should be obtained, with the balance of the form of sharing, if seen from the mining products produced by the area, because the DBH between the center and the area of the mining products are very few proportion to the relevant region compared to the received by the government Jakarta. Article 14 c Law. 33 2004 only provide 20 percent of the results of mining common to the producer area, and 80 percent for the central government. In the letter e is set mining petroleum even less the returned to the area concerned, which is only 15,5 percent, while the rest in cash central government.

Not to mention the judging of what has been distributed to each region to be revenue, it will be increasingly clear this Act more profitable for the area located in Java compared to the existing outside Java. Inequality like this will be a lot of a result and can add an inventory problem in the country. The first problem that appears course dissatisfaction some areas which resulted in national disintegration, will then we follow up on ethnic conflict and sentiment against certain ethnic due to feel always benefited by the government. The problem next is the urbanization a high to urban areas in Java island, this happens because the concentration of economic

growth and fishing lenih many people to move in order to get the improvement economic, social, cultural and education. The problems arising from implementation of financial balance pattern between the central and local like this, especially in terms of DBH on the sector revenue in the area is whether the fair division of such as this when viewed from the source revenues generated by each region?. Furthermore it necessary looks for the right formulation to avoid imbalances financial inter- one area with other areas and inequality financial between the central and local?

#### **Problem Formulation**

First, what form of sharing revenue of oil and gas industry between center and local government? Second, how efforts to achieve the right of legal implementation on sharing revenue of oil and gas industry between center and local government?

#### **Research Objectives**

First, examine and analyze forms of sharing revenue of oil and gas industry between center and local government. Second, proposed the legal concept for sharing revenue of oil and gas industry between center and local government

#### **Methods**

This study used several approaches, ie approaches of law (Statute Approach) is done by reviewing all laws and regulations relevant to the sharing revenue of oil and gas industry between center and local government. The second approach was Case (Case Approach) by way of examination of cases of sharing revenue of oil and gas industry between center and local government. Fundamental studies in this approach are that legal consideration to come to a decision. Techniques of data collection in this study using three main techniques, namely the study of documents, observation, and interviews. The results are analyzed in qualitative research, starting by examining all the data available from various sources, from interviews and observations that have been written in the field notes, personal documents, official documents, images, photographs, and so on, through data analysis procedure that is data reduction, unitization of data, categorization of data, and interpretation of data.

#### **Results and Discussion**

##### ***Form of sharing revenue of oil and gas industry between center and local government***

The birth of financial balance between the central and local government due to dispersal of power vertically in the country, namely the power of the central government is divided to the areas underneath. This dispersal caused the local government/ region should also have funds in the implementation of power or sovereignty itself, it is necessary to set the financial balance between central and local government. Before looking for the definition of financial balance between the central and local, good seen first sense of decentralized system in the unitary state in advance, because the financial balance between the central and local born of this concept.

According to Amrah Muslim, decentralization is the delegation of the authority to the bodies and factions in society in particular area to take care of his own household. (Huda, 2005). According to Jimly Asshiddiqie (2007), in decentralized units local government is seen as a representative of the central government, so therefore, units' regional offices needed as an extension of minister who led government departments.

Fiscal decentralisation is considered to 'escape the traps of inefficient governance, macroeconomic instability, and inadequate economic growth in which they have become mired in recent years' (Seymour *et al*, 2002). Other supporters argues that fiscal decentralisation enables local governments in a better position to understand and provide better public services and goods that merit local needs. In addition, with decentralisation, local government are more closely to its people so they may have greater drive to practice better fiscal responsibilities in terms of general public service (Lin *et al*, 2000). Globally, decentralisation has been seen as a new insight with numerous studies on intergovernmental fiscal. Following its politic era shifts in 1998, Indonesia begins decentralisation era with two important Law of decentralisation, Law 22/1999 and Law 25/1999. Law 22/1999 contains the administration of decentralization arrangement between the central, provincial, municipality/regency, and village government. Meanwhile Law 25/1999 details the fiscal decentralisation between government levels.

Financial relations between central and regional government can be interpreted as a system governing how to a number of funds shared among different levels of the government, as well as how to look for financing sources area to support activities public sector. (Tjandra, 2009). Financial relations between the central and local government is characterized in the presence of the balance funds, ie funds derived from the central government allocated to the local governments to fund local needs in order to the implementation of decentralization, which consists of General Allocation Fund, Special Allocation Fund and Sharing Fund of tax revenue and natural resources. Financial balance between the central and local government is a financing system administration within the framework of the unitary state, which pencakup division of financial between the central and local governments as well as equalization between the area in proportion, democratic, fair and transparent by taking into account the potential, the condition, and local needs, in line with the obligations and the division of the

authority as well as the procedures for the implementation of authority, including management and financial control.

The budget allocation of the center to the area or financial balance between the central and local often referred to also with government transfers. The existence of sharing system or the balance of this, according to Davey, due to the central government( national) to attract direct a potential financial state, keanekaaan source income countries also be the cause of the central government delegate decision- tax conducted by the area. Furthermore, Davey explained, that if the national government should be cleared the largest part of spending public, then the central government must be self- limiting in pemanfaatn results tax, or in this case the entire income countries, in the interest income regional, or convey a lot of acceptance itself to the regional government. Based on this reason it is necessary to be allocated funds for development in the local level, the form of the general allocation, special and with the sharing system. In outline the financial balance between the central and local done with some purpose. (Davey, 1988).

1. Local expending is to serve society.
2. Encourage efforts by local governments to run the development programs tailored to the national policy.
3. Stimulate the regional economic growth, both to help growth and to reduce inequality between the regions.
4. Controlling expenditure regional,
5. Established service standards or more development fair.
6. Developing regions capacity of fiscal low, and
7. Help the region in overcoming emergencies.

Transfer funds from the center to the area should pay attention to some important things, so that this policy appropriate and can be beneficial to the central government and especially for the area itself. (Tjandra, 2009). Some of the most important note is acceptance of adequate for the area in order to government function. Furthermore, is the justice in the transfer, which is in accordance with the needs of fiscal area and in my opinion should also in accordance with what generated by the local?

#### ***The conception of Justice for sharing revenue***

Before discuss about sharing revenue in oil and gas, I describe about law of mining (oil and gas). First history from During the Dutch colonial period, which lasted for over 350 years until the declaration of Indonesia's independence on 17th August 1945, the colonial government reserved to itself all mining rights, oil and gas included. This policy was relaxed gradually, so that by the 1850's mining rights could be afforded to private enterprises under an executive order (Kusumaatmadja, 1974). Continue UU 44/60 was enacted on 26 October, 1960 under the title: "Oil and Gas Mining". This law reaffirmed the basic principle of the Indonesian state, as mentioned in Article 33 of UUD 45, that all minerals, including petroleum, belong to the people of Indonesia and shall be controlled by the state and used for the optimum welfare of the people. On 15 September, 1971, Law No. 8 of 1971 ("UU No. 8/71", also often referred to as the "PERTAMINA Law") was enacted, regarding the State Oil and Gas Mining Company (PN. PERTAMINA), serving as the legal basis for the incorporation of the current day ("PERTAMINA"). Here, for the first time the Production Sharing Contract ("PSC") is mentioned in Indonesian legislation. After predictable opposition from both PERTAMINA and the provinces, on 23 November, 2001, the new Oil and Gas Law, Law No. 20 of 2001 ("UU No 20/2001") was finally passed, revoking previous legislation (UU 44/60 and UU 8/71) and transferring total authority over oil and gas activities from PERTAMINA back to the government.

Specialized in this paper I focus more about justice role in financial balance between pemerintah center and the area. Conception of justice is very spacious indeed, not limited and never stopped to debated, since the time of Plato, Aristotle to Rawls justice remains an intellectual discourse among the thinkers, both political thinkers, the law, economic and thinkers in science public administration. The concept of justice I lift because I judge in the financial balance between pemerintah central and regional so far has not fair, impressed discrimination, therefore conception of justice is a surgical the corresponding to parse discrimination, because real opponents of justice is discrimination.

With regard to the conception of justice, historically local government began to the famous in the United Kingdom because the response to urbanization that add an issue in urban, therefore need to be reset procedure territorial to the absence of the buildup of the population in a region only. (Sirajuddin in Padjar, 2010). Setup like this is so that the existence of the spread of economic growth in all regions, in other words spread of economic growth is so that occurs population distribution evenly. The end result in order to be achieved a justice equitable for each region.

This injustice can be seen from at least results must be received by the area as a place where mining products that are, when the area also that will receive any risk for example environmental damage due to mining. The division of such as this will impact on the budgeting in each region and will be an inequality. The area that can maximize the budget taken retribution from other areas, parking and everything income which is this local

tax can be allocate substantial funds in the budget spending, while the areas that have not a maximum tax area will be little budgets.

Whereas the area that have not maximize tax area has a natural resources mining great, as a bit allocation of DBH from the results of its natural then the budgets to be a bit too. These areas such as Jakarta and all areas in Java can maximize tax area and get the DBH a greater than the United Nations because the United Nations only 10% to the center, 90% can be enjoyed by the area. With these circumstances that area can get the allocation of substantial funds from the center.

Meanwhile, for areas in general outside Java PBB is not too great because not been able to the maximum will get the allocation of DBH a smaller than the PBB sector. This condition is still not profitable for areas of the existing outside Java, because the Law. 33 2004 provide small portions for the area. It automatically if accumulated all the areas outside Java will get the sharing revenue of a slightly compared to the area outside Java. The mechanism of the division of this sharing revenue resulting in inequality economic growth between the areas in Java and areas of the existing outside Java, because the area in Java island allocated substantial funds so that it will have source of sufficient funds to spur economic growth, not to mention it is supported with the budget of DAU as well as the DAK more accepted by these areas.

It can be seen before the Law. 25/ 1999, State non- tax revenues (PNPB) dariminyak the earth and natural gas is not dibagihasikan. But since the enactment of Law on revenue sharing Oil and Gas it is becoming source of classical political debate between local governments and Center in Indonesia. Dissatisfaction area with the division of Oil and Gas can be felt in the separatist movement today. Article 14 paragraph 4 (e) of Law no. 33 2004 set the division of state revenues of Oil and Gas. Central Government received 84 5% of the acceptance of Petroleum and local government 15, 5%, each maaing 3% for the province concerned, 6% for producing districts and 6% for other districts in the province concerned. From the reception Natural Gas Central Government to obtain 69, 5% parts and Local Government 30, 5% respectively, 6% for the province concerned, 12 for producing districts and 12% for other districts in Province concerned.

In addition to the portion of perceived not fair enough, other issues is the scale production costs is also not transparent good of PPP to the Government, as well as from the government to the area. The area also do not have human resources were able to supervise and calculate the production costs oil and gas company that is in the region. The impact of a sense of injustice with interferes with the process of exploitation of oil and gas companies. This occurs because the area is difficult to demand increase in the portion for the results to the central government, because it was then the area" interfere with" companies in its territory.

Regarding the help center to the area can use two methods transfer, namely with categorical grants and block grants. (Cipto, 2007). Categorical grants is a financial assistance from the center to the area to fund development project particular, eg the highway, which the construction of the government help half or several percent of the total value of the project, the rest charged to the area. While the block grants is the allocation given center to the area and the area given flexibility to use these funds. The allocation of funds daeri center to this area can not evenly, based on the needs and the ability area. For the area that has been prosperous, should not be relieved given help and maybe even be held its support to cover the lack of funds in other areas.

Given the fact is not a sources of acceptance of a suitable for shared-revenue, the oil and gas can be considered not be revised. The reason why do not suitable for sharing are:

1. Not distributed evenly;
2. Acceptance very volatile, and
3. Is not a revenue sources long- term buoyant, due to the nature non- renewable of this SDA.

This proposal definitely not a proposal of the popular for the area and we can be sure will not be accepted. As compensation of the elimination of sharing of SDA this, it can be replaced by the possibility of sharing resources made in the existing in the area. The resources made in this are more renewable, and can encourage the area to continue to develop it. In addition conceptually the actual area can be focused revenue sources other entitled to the area such as: some kind of taxes and retribution the existing relation to the oil; royalty associated with oil and gas (SDA other) that can be dibagihasikan or even left to the area; such as for the result of excise duty, and piggy- backed of income tax loss.

In the end, with such a system then will definitely there will be the area are a little and there is a lot of income, for the area which is still lack of the central government provide assistance to the area in accordance with the needs using the most of funds for the results allocated to the center. With so no area that feel discriminated against because it is allocated funds based on income from natural resources that is in the region, to the area which SDA is a little can be balanced with the help of the center.

## Conclusion

The idea of regional autonomy which is now developing and we are runs the course not a new thing. The fact inequality central areas, or also inequality between the area, even tend to blackmail against the wealth of the area is a trigger of old thinking that has emerged since the republic stand. In its development Indonesia prefer a

decentralized system as the relationship patterns central and local governments, and regulated also rules weeks to financial balance between the center and the area.

Financial balance between the central and local government during this is still regarded as extortion center of the area, where the area which is rich natural resources can not enjoy the most of natural products that is in the region. This fact need to be changed, in order to the integrity of the Indonesian state is maintained and the creation of a social justice for all the Indonesia people (area), not of justice concentrated on the ruling elite course, justice welfare of some classes of course, or welfare of the pseudo only be a lip service elites in order to regional people remain loyal to the Homeland when policy for public welfare in the area just a utopia and promise of quasi- alone.

Efforts to justice for all the Indonesian from legal perspective is not just implemented Law. 25/ 1999, and Article 14 paragraph 4 (e) of Law no. 33 2004 which is set the division of state revenues of Oil and Gas, but also considering local government condition as area which is produse oil and gas and their financial balance with other area.

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