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Shifting Law Political of State Power in Oil and Gas Law Based on People Prosperity Principles

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ABSTRACT

Essentially, natural resources that are graved into the deep of earth in Indonesia are a national wealth that belong to Indonesian People, including oil and gas, therefore, state has obligation to rules and manage them for the sake of people prosperity maximally. This notion is ruled within the Constitution UUD 1945, article 33, in particular subarticle 2 and 3. Nonetheless, since the independent of Indonesia there is no legislation regarding oil and gas which has considerably fullfiled the duty of such notion of the contitution of UUD 1945. This regard happened due to law political changed which influenced by political, economical, and global interest against state power in the business of oil and gas that neglect the principles of people prosperity. Nowadays, oil and gas business is ruled by law No. 22/2001 which replaced Law No. 44/Government regulation (lieu law) /1960 regarding oil and gas and law No. 8/1971 regarding oil and gas state company, nevertheless, such changing is deemed more neglect the principles of people prosperity. Due to shifting such law political from Law No. 44/Lieu Law/1960 to Law No.22/2001 has occured many problematic issues, either philosophically, teroritically, sociologically, or legally.Therefore, the problems that will be analized are : why was happened shifting law political of state power in oil and gas law that caused neglecting the principles of people prosperity ? what are the legal implications of such neglecting ? and how is the construction of law political which accomadate the principles of people prosperity ? The research done to answer the problems through normative study, by philosphy approach, conceptual, historical with deductive logical way. Its research also using descriptive and prescriptive method. From the result of reaserch has found, *first*, shifting law political occured due to political, and economical reason that influanced by international interest, *second*, the Philosophy aspect of Law No. 22/2001 has been changed from Law. No. 44/Lieu Law/1960, it is deemed that state power on oil and gas shall be meant as power on economic commodities hence it renders wide open space for private sector to participate and rule in oil and gas business, rather than state, *three*, Law No.22/2001 implements market mechanisme and free competition rules , as consequences this changing has been downgrading state's role in the oil and gas governance system to provide people prosperity. By considering those result of the research, it would be recommended some ideas to recontructing law political in the basis of The Principles of People Prosperity.

Key world : Law political, State Power, The Principles of People Prosperity

INTRODUCTION

Indonesia has been blessed by God upon abundance natural resources, such as mineral resources which are laid on surface, in the deep water, sea, or bellow surface, therefore it becomes attracting for anyone to utilize and monetize it. Since the first time oil faounded in 1894 in Telaga Said, Pangkalan Brandan, North Sumatra, the Dutch Colonial Government was keeping develop the oil industry in the Nusantara area. Further, it invited some foreign investors, such as America to doing business in oil in Indonesia, encompass exploration, exploitation, refinery, transportation and trading. Since that time, the oil industry had been developing and ruled by private company, then The Dutch colonial government deemed to make legislation by the law called Indische Mijn Wet 1899 (IMW 1899). IMW 1899 had liberal character which render conccecion right to company in doing oil and gas business, at the same time to own land including mineral inside the land. It may say, concession right similar with mining authority.

Then oil and gas industry that taking tremendous profit of petro dollar had been ruled by "The Three Big Sisters" namely Stanvac which ruled Central and South Sumatera, Shell ruled North Sumatera and Papua, and Caltex ruled a part of Central Sumatera, meanwhile The Dutch Colonial Governemnet took taxes and royalty based on the 5 A Contract model. Based on lucrative experince, the oil companies vied in exploiting the oil fields and also desperatley found out a new frontiers of oil filed in Nusantara. The exploration and exploitation

activities which exploitatively had been occured until the era of Japanese colonial. At that tiime, it was formed oil legion of people that aimed to take over The oil fields in the Sumatera areas. Since Japanese had been defeated by ally and Indonesia gets independent on 17 August 1945. The Oil Legionaire of North Sumatra rouse to fight against ally who would back to take the oil fields in the Sumatera areas. In 1947, establisehed the first State oil company namey Permiri in Langsa Aceh then it was developing to be three oil companies (Permina, Pertamin and Permigan) throughout the countries[1].

In the beginning of independence, the ability of State oil companies (SOC) had not yet ready to replaced the foreign/international oil companies (IOC), hence, President Soekarno let IOCs existed and kept working in Indonesia, but some of them had been taken over by state oil company. 5 A contract was persistently prevailing until 1959. In 1959, Soekarno had declared the president decree which returned to UUD 1945, after prevailing Temporary Constitution 1950. By means, the article 33 UUD 1945 should became a philosophy *grondslagh* of economic politic and abolished all kind of imperialism in economic sector. By that time, Soekarno introduced the political platform called *Manipol USDEK* that means the government must be run under UUD 1945, Socialism, Guided Economic, Guided Democracy and Indonesia character[2].

Political regime of Soekarno which anti-foreign had done nationalization in the sector of mining, including oil. Soekarno Government then issued Government Regulation lieu Law Number 37 year 1960 regarding Mining (Law No. 37/lieu law/1960) and Government Regulation lieu Law Number 44 year 1960 regarding Mining (Law No. 44/Lieu Law/1960) regarding Oil and gas instead of IMW 1899. By the spirit of anti-foreign and a strong willing to bring people sovereignty back upon oil and gas resources, all the oil and gas business activities took back from foreign companies and hand over to the state companies based on The Power of Mining. In the Law No. 37/Lieu Law/1960 was regulated about the category of mining sources which typically strategic, vital, and common. Based on The article 4 Law No. 37/Lieu Law/1960 , Oil and gas considered as in strategic and vital category. Strategic means importent for the state with regard defence aspect, national resilliance, and state budget and vital means rule over public rights and interest.

The definition of state power refer to the meaning as direct governance by state through State Oil company (SOC), therefore all the foreign company shall oblige and submissive to the rule and sumbit their concession right to the state oil companies (SOC), on the other hand, state considerably need International Oil Company (IOC) due to lack of capital, technology, and expertist, hence, role of IOC stiil was being involved, it was regulated in the article 6 Law No. 44/Lieu law/1960 based on working contract with SOC's such as Pertamin, Permigan and Permina was exist at that time.

Oil and Gas governance system based on Law No.44/lieu law/1960 implements 2 feeds of functions model that the first feed is policy function which hold by Gevernment cq ministry, and the second feeds are regulation fuction as well as business function hold by SOC. As consequence, state can control strongly all aspects of oil and gas business process. Nevertheless, that system could not run well due to national politic turmoil that effected SOC performance in running business, the output of oil production did not match the target to develop the oil industry and also state income. On the other hand, IOC was reluctant to thrust their business in good performance as well under Law. 44/lieu law/1960, the law discouraged them to move forward, in the same token, their cooperation with SOC had not assumely profit as much their previous profit under IMW 1899.

As a result, the SOC had not yet rendered benefit to the people optimally as stated in the consideration of Law No. 44/lieu law/1944 as bellows :

"whereas oil and gas has function that very important to develop community in just and prosperous, compare to the other mineral"

Soekarno kept endeavoring to rectify the political and economic consdition through various program of guided economic, but the unrest situation was continuing until the tragedy of G-30 S- PKI happened in 1965, and the cause of this occasion had impacted to Soekarno's fell down, he replaced by Soeharto in 1967. In the regime of Soeharto's government, the anti-foreign policy had been changed to be more welcome, Soeharto was aware that the country in emergency situation needed help from investor, especially foreign investor, so that he enacted

[1] Hadi Daryono, dkk, Dari Pangkalan Brandan Migas Indonesia Mendunia, Transformasi ke Non Migas di Pangkalan Brandan Suatu Keniscayaan, Jakarta, Penerbit Perominer, 2013
[2] Revrisond Baswir, Hudyanto, Rinto Andriono, M. Yana Adya dan Denny Purwo Sembodo, Jakarta *Pembangunan TanpaPerasaan,* Pustaka Pelajar-IDEAELSAM,1999

Law No. 1 year 1967 regarding Foreign Investment as the firs law he had. By enacting this law, Indonesia atracted investor to invest in mega projects and industries, including oil and gas.

Through Trilogy of Development namely : economic stability, economic growth, and economic distribution, Soharto's politic emphizised national stability within all sectors, as consequence it evoked law political of Soeharto's regime (called new order regime) were otoriterian, centralistic, and monoplistic, including in oil and gas scetor. By 1971, Soeharto issued Law No. 8 year 1971 regarding State Oil and Gas Company (SOC) which was famous as Law of Pertamina. Pertamina was the only SOC to doing oil and gas business in Indonesia after mergering Permina, Pertamion and Permigas in 1968. Based on Soeharto's policy , The Law No. 44/lieu law/1960 was still prevailing , even more the law No. 8/1971 streghtened the position of SOC[1]. Based on The Law No. 8/1971, Pertamina had undertaken monopoly rule to do the entire oil adn gas business process from exploration to trading activities, upstream until downstream process throughout the country. In that time, it had introduced a new model of countract called Production Sharing Contract which had been introduced by the chairman of Pertamina, Ibnu Sutowo who were from Army corps.[2]. The Soeharto's era was presumely as the era of Army regime that hold power in may State owned Companies, the implication of this configuration of politice made national stability more firmed in one side, on the other side, it caused Colusion, Coruption and Nepotism was aroused anywhere and effected to the economic condition, including in the Pertamina circumstances. This situastion made Pertamina just like state in the state that had powerfull authority to spread and expand in other business despite oil and gas, such as : hotel, property, land, airline, chemical, and many other. This unfocus buisness evoked ineficient cost, in turn, it caused state budget disadvantage.

In 1998, Soeharto step down, Indonesia entered a new era of reformation that started by economic cricis chronically, the state was almost colaps by stacking state debt hugely. This cricis occured due to global monetray cricis that spread out around the region, hence many countries undermined multi-dementional cricis. By that time, role of international financial agencies, such as International Monetray Fund (IMF) and World bank were appeared and dominant to save the economic cricis, including in Indonesia. Before steping down, Soeharto urged monetary rescue to save the situation that effected varios problems in social adn politic. Based on The Washington Conccensus, Indonesian government sign the Letter of Intent to reform some strategic sector, including energy to be more open, transparant and deregulated.

Within couples time later, bill of oil and gas had been submited to the House during President Habibie, the one who succeded Soeharto, but the house refused that bill, and continued in the Abdurahman Wahid Government after habibie and still the house was keepng rejected the bill, and finaly, when Megawati succeded Gus Dur, the bill had been passed by the House and signed by Megawati to be enacted as The Law No. 22/2001. Despite, in the consideration of the law states that the Article 33 UUD NRI as the phillosophy baseground but there is a different implementation in the substance of state power compare to the Law No.44/lieu law/1960, it seems there is a differnet way to interprate due to law political sight[3].

Based on provision of The Law No. 22/2001, state function that undertaken by Pertamina which are an operator as well as a supervisor of contract before, had been changed to be a merely operator. Meanwhile, supervision function had been handed over to the State Legal Body, called BP Migas, which also act to be a party in the business contract with operator (SOC and IOC).

On the other side, the essence of oil and gas which ruled in The Law No. 44/lieu Law/1960 before as the instrument of people prosperous, had been shifted to be an economic commodity that very important to economic development and vital for the economic growth. The conceptional fundament as like explained above will bring implication to the whole system of oil and gas governance that more oriented to the market mechanisme and free market model.

By such shifting law political it then caused many problems , either in philosophy level due to a different meaning essentially of state power that reducing the state's power in oil and gas governance, then also theoritacally had neglected just theory cause any law political which tends to pro-investor rather than pro poor, beside that, the substance of norm in The Law No. 22/2001 is contrary with Justice Theory from John Rawls, such as article 2 Law No.22/2001 that states :

[1] Richard Robinson, Soeharto & Bangkitanya Kapitalisme Indonesia, Depok, Komunitas Bambu, 2012. Hlm 104
[2] Richard Robinson, Soeharto & Bangkitanya Kapitalisme Indonesia, Depok, Komunitas Bambu, 2012. Hlm 104
[3] Metta Dharmasaputra, Wajah Baru Industri Migas , Jakrata, Katta Data, 2013

" undertaking of oil and gas business that is ruled in this Law on the basis of people economy...."

Meanwhile , in the article 3 letter a that states :
"...through open and transparant mechanism" also letter b : "..through business competition that fair, just and transparant"

It does not make sense if such rules apply for small business and cooperative to compate with giant international oil companies (IOC) in head to head position within same arena, IOC has massive capital, high technology and many expertist against small business companies or cooperative that have no sufficient sources to do intencive capital business like oil and gas. The Law No.22/2001 does not protect small business and cooperative as subjects in this law. Moreover, the law let them compete freely by business competation mechanism without previlage for SOC/Pertamina.

Furthermore this shifting of law political had also aroused legal problems such as: conflict of norms and also vogue norm. In fact, Constotutional Court of Republic of Indonesia (CCRI) had decided that some articles in The Law No. 22/2001 contradict with the Article 33 UUD NRI 1945. It is clearly that The Law. 22/2001 has flawless norm based on constitution, more over, the pivotal article regarding state power which stipulated in the article 33 UUD NRI 1945 which says "ruled by the state" is interpreted within different way compare to the Law. No. 44/lieu law/1960 which give power to SOC to doing oil and gas business.

Those condition affected to the social problems too, such as disparity between the have and the have not due to oil pricing and sometimes there are conflicts in the mining areas between the company and community.

Based on the background explained above, here the dissertation would focus on shifting of law political of state authorization within law of oil and gas on the basis The Law No. 22/2001 regarding oil and gas that has changed the basic of philosophy, conceptual baseground of state authorization that effect to the state position, functions, authority. Therefore the problems which would be examined are :

1. Why did happen shifting law political of state authorization in law of oil and gas hence neglect the principles of People prosperity

2. What is the implication of such shifting law political ?

3. How is the construction of law political of state authorization that accomodate the principles of people prosperity ?

METHODOLOGY

1) Kind of research

According to Soerjono dan Sri Mamudji that legal research related with the legal norm or "normwissenschaft" , such as discoursing problems that regard with formulating legal norm. Norms of abrtract law and also concrate norm[1].

In the legal science which has norm as its object, hence this reseach will be done to prove some matters, namely : a) is the form of norm which poured into positive law in legal practice has been suitable or reflect the legal principles which would be creating justice ? b) if any legal provision that is not a reflection of the law principles, is it a think from concretization of legal philosophy ? c) is it any a new law principles as a reflection of existing legal values ? d) is the ideas regarding legal regulation of any certain deed is based on law principles, law theory, or legal philosophy ?[2]

[1] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif, suatu Tinjauan singkat, jakarta RajaGrafindo Persada, cet ke-15. 2013
[2] Johni Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif, Malang, Bayumedia, 2006

The research entitle Shifting Law political State Power in the law of oil and gas on the basis of People Properity, as a normative legal research. The objective of this research focus on positive legal norm and its doctrines (*normwissenschaft*) to enhance normative legal norm system, as well as its aplication for constitutional law and legal proffession in society.

2) legal sources

Legal sources in this research consist of three kind of sources, namely : first, primary legal sources are legal norms which located in various laws, start from UUD 1945, General Assembly decision , statutory, Government regulation, President regulation,and Minsitery Regulation, second, legal sources are explenations about primary legal resources, namely : scientific books, journal, research reports, proceeding, national simposium and so on that its discourse related directly or indirectly with substance of research, third, tertier legal sources are materials that give direction and explanation of primary and secondary legal sources, such as dictionary of terminology from I.P.M. Ranuhandoko, Main Dictionary of Indonesia Language, Black's law Dictionary, and other tersier legal sources.

3) Presentation Technic and Legal resources analysis

In analysing material collected, the writer will catagorize sistematicaly, then it will be analyzed by techical abstracting provided laws in order to be able to find out the principles that contained within every provided laws regarding the model of state power in oil and gas sector, and in this case will be also supported by supporting documentation such as paper note of session of bill of Law No. 22/2001 as well as oil and gas production sharing contract examples.

Interpreting that will be used in scrutinizing the meaning of "state power for peole proseperity maximally" based on gramatical interpretation, systematical, teleological, and orginal intent.

Meanwhile, approaching will be used in this research are Philosophical approach, tatutory approach, conceptual approach, historical approach and comparative approach. Analysing process in this research will be done in the way as bellows :

Collected legal materials either primary, secondary, or tertiery will be filed sistematicaly to be analyzed normatively based on the framework of theory which would be used, are : souvereignity theory, Law political theory, Welfare state Theory, authority Theory, Justice and utiletarian theory and theory of making laws based on the relevancy of each problems by using deductive logic thinking way.

The result will be presented descriptively based on problems respectively, and it also proposes problems solving recomendation suit for the third problem namely law political construction that accomodate the principles of people prosperity prescriptively.

THE OUTPUT AND DISCOURSE

I) Cause occurance of shifting law political on State Power from The Law No.44/Lieu law/1960 to The Law No. 22/2001

The State function presence to guarante natural resource utilization in order to render benefit maximally for the peole and fair live quality of sociaty, either current generation or next generation. This notion has been stipulated within Article 33 subarticle (3) through the meaning "ruled by the state and utilized for The people prosperity maximally". Such philosophy baseground has been used as basic norm of a statute, in particular related to the natural rsources governance, including oil and gas. Phrase of State Power in the article 33 subarticle (3) delegate state power in the meaning of regulating, governing, managing, supervising and making policy in term of providing prosperity to the people, hence essentially is how to make legal policy which can prosper the people in just. Despite both The Law No. 44/lieu law and The Law No. 22/2001 has used Article 33 subarticle (2) and (3) as the basic philosophy of them, but they have a different logic base of interpretation philosopically.

In the Law No. 44/lieu law/1960, oil and gas became prosperity's instrument that must be ruled by the state in the meaning of direct governance by SOC, meanwhile in the Law No. 22/2001 the meaning of state power just merely done in the form of supervising by legal entity owned by the state (state agency) which does not act directly to doing business, it happened due to law political of law maker at the time of creating law.

In this context, law political is a policy of state apparatus which is basicly in deciding objectives, form and substance of law that will be created and the matters are about of the criteria or guidance to be positivized of norm (ius constituendum) to be positive norm (ius constitutum). Based on the background paper of the discussion of the bill of oil and gas law had been occured the paradigm's shifting of law political from The Law No. 44/lieu law/1960 to The Law No.22/2001 fundamentally.

The substance of The Law No.22/2001 pressumely prevail the doctrine of neoliberalism that later had been reviewed by The Constitutional Court of The Republic of Indonnesia (CCRI) by the petitioner which pressumed that some articles in The Law No.22/2001 contradicts to the article 33 UUD NRI 1945. And, according to the CCRI's decision number 002/PUU I/2003, article number 12 subarticle (3) The Law No. 22/2001 that states : "Ministery decides Business entity or permanent form business entity which give an authority to do business in the activities of exploration and exploitation in working area", CCRI considered that contradict to UUD 1945 by the legal consideration as bellows :

"..wheras pressuposed provision does not suit for the article 4 subarticle (2) The Law No. 22/2001 that stipulates powering by state is undertaken by government as bearer power mining, legally, the authority of state power only exist in the hand of government, and can not be delegated to Business entity or permanent form buisness entity as stated in the article 1 number 5 The Law *a quo.* Meanwhile, Business entity and permanent form business entity just merely carry out the activities based on oil and gas contract with limited economic right., namely sharing upon a part of benefit of oil and gas production as stated in article 6 subarticle (2). According to administrative law, the definition of delegeation of authority is hand over of power from power giver, namely : state, hence by stating phrase of "..delegated authority to business entity and permanent form business entity" , as consequence state power upon oil and gas would be lost. Therefore, Phrase of " delegate authority" does not in line with The article 33 subarticle (3) UUD NRI 1945, where upstream working area sector encompass earth, water, and natural wealth inside its surface, that one of them are oil and gas that is state right to rule upon them through the funtions of regulating, governing, managing, and supervisioning. Therefor, the phrase of "delegeted authority" in the article 12 subarticle (3) is contradict to UUD 1945"

Meanwhile about Article 28 subarticle (2) The Law No. 22/2001 which prevail oil and gas Price based on mechanism of competition fair and adequate pressumed contradict to UUD 1945 by the legal consideration :

" Court has opinion that government intervention in the policy of pricing decision shall be a prominant authority to production branch which important and/or rule upon common people interest rights. Government may consider many things in deciding policy of the price, including offered price by market mechanism. Article 28 subarticle (2) and (3) The Law No. 22/2001 prefer to market mechanism and then government involving just for certain group of people, hence it does not guarante the meaning of economic democracy as ruled in the article 33 subarticle (4), in order to prevent excercising of *homo humini lupus* (the stronger will defeat the weaker). According to the Court, it supposed that Oil and Gas pricing are decided by government by deliberating interest of certain sociaty group and in the same time considering fair and just competition mechanism. As a result, Article 28 subarticle (2) and (3) must be declared contradict to UUD 1945"

Based on both the decision of CCRI above, strongly assumed that The Law No.22/2001 shifted philosophy baseground of oil and gas governance system that the previous notion (The Law No.44/lieu law/1960) rendered state role to carry out oil adn gas business through the policy which oriented to the public service obligation shifted to market mechanisme that reduce state role to involve directly in managing and doing oil and gas business by the reason of inefficency. Government only becomes a supervisor through Legal Body called BP Migas (Executive body of oil and gas). Although BP migas does not involve in doing oil and gas business directly but it becomes a party in the contract represent the government to sign the contract with business entity or permanent form business entity, hence, it is quite often asked by public about its position legaly related state obligation and responsibilty in busines contract.

On the other side, business activities carried out by SOC and IOC, they are all in the same arena to compate each other without previlage rights and discreminate treatment. There is no more protection for SOC and the competition run by the principles of free fight competition (*laisez faire* principle).

Judicial review of The Law No. 22/2001 didi not stop to the case number 002/PUU I/2003 it was still continued to the next decision on the case number 036/PUU X/2012 that give a shocking effect for the existance of BP migas. Based on the decision of CCRI upon the case number 036/PUU X/2012 had annulled all the articeles related the existence of BP migas, and as a result BP Migas had been dismissed by the president decision number 95 year 2013 and Ministery decision number 3135/08/MEM/2012 that replaced BP migas to be Tasking Unit of Oil and Gas Activities under Energy and Mineral Resources Ministery.

CCRI annuled BP Migas by the legal consideration as bellows :

" Du to the existence of BP Migas is quite potentially to occur inefficinecy and assume in its practice has open an oportunity to misrepresenting authority and corrupting power hence according to the court the existence of BP Migas is inconstitutional

By the fact of above explaination, basicly The Law No. 22/2001 has been improper to be prevailed due to it has yet lost their essential substance in oil and gas governance system, therefore it shall be replaced by a new law in order avoid negative impact to the worst condition of oil and gas problems.

2) Legal implication shifting Law political state power in oil adn gas law from The Law No.44/lieu law/1960 to The law No.22/2001

Basicaly the legal implications of such shifting law political on state power upon oil and gas law are conflicting norm and vague norm that impact to the oil and gas good corporate govenance system. It started by the philosophy of oil and gas in the consideration of law that become a baseground of substance in articles inside.

In fact, the article 12 subarticle (3), Article 28 subarticle (2) which had been annulled by CCRI represent market mechanism that contradict to UUD 1945, meanwhile all the articles related BP Migas such as article 1 number 23, article 4 subarticle (3), article 41 subarticle (2), article 44, article 45, article 48 subarticle (1), article 59 letter a, article 61, and article 63 The Law No 22/ 2001 contradict to UUD 1945.

Wierdly, the law no. 22/2001 is still prevailing and exist up till now, as consequense, its legal implication after CCRI decision had influenced the substance of ruling on sveral aspects, as bellows :

a. The model of oil adn gas governance which consist of policy function that creating legal policy, making regulation and supervisioning, as well as business had been changed to be separated funtions in The Law No.22/2001. Mainly, it effects to the position of SOC that before used to be a major player in oil and gas business but now just only a common player just like the others namely IOC. In the previous position SOC represented state to control oil and gas governance system, and IOC just merely as subcontractor of SOC. But, in the Law No. 22/2001 , the IOC has stronger position face on SOC due to same treatment and even they have advantages due to have bigger capital, more sophiticated in technology and also more expertist. Therefore, they play bigger role in oil and business activities. By the shifting rule of law, the activities in upstream level of oil and gas business carried out by oil and gas buisness contract between BP Migas and Contractor (SOC and IOC), hence it evokes quasi business contract due to the status of BP migas as not a business entity. It impacts to the decision to sell or decide business target because BP Migas has no working capital to do business , hence it has no right to sell directly or excecute business judgement rule in practice only in the planning (*plan of development*).

b. The legal implication has changed the business process of oil and gas, before it used to be run in vertical integreted business process , then it has been changed to be unbundling business process. It is called, upstream business activities and downstream business activities. As consequence, the state power upon buisness process has been devided into 2 model, first, in upstream buisness it will be undertaken based on contract by BP Migas, and in the downstream business will be run based on business consent and supervised by Government Body (BP Hilir). All the state functions just only as supervisor through government otonomous body (BP Migas and BPH Migas), meanwhile Pertamina as SOC is doing business as usual in the same position with IOC without previlage right. By such model of business process, it effect to the bureucratic problems and cost problems within each level of process. So that why the CCRI said that the model is potentially inefficient.

d. The next legal implication causes any vague norm of "people aconomy meaning" . In the law no.22/2001, first, regarding the principle and objectives of law that stipulates in the article 2, as states "Undertaking of

oil and gas business that is ruled in this law based on the principle of people economy....", but in the other side , based on the article 12 subarticle (3), ministery delegate the excersing oil and gas business to the Business entity and Permanent form Business entity which are big company. Therefore, there is no clear meaning what the people economy means ? According to revrisond Baswir, the people economy doctrine is laid on the philosophy that economy is a tool to prosper people by empowering and protecting their right. Therefore, it is just like empty concept on paper to states people economy but there is no protection for the people economy in competing in oil and gas.

3. Contruction law political state power in the future that accomodate the principles of people prosperity

Law political that defineted as basic policy of state apparatus in legal field for the next, present, and the pass that derived from presenting values of sociaty to reach the state idea, it needs to be reconstructed in order to be in line with the principles of people proseperity that contained within Pancasila, Preambule of UUD 1945, and Article 33 UUD NRI as moral postulat.

On the other side, It needed progresive interpretation based on teleology approach that can construct new parameters of prosperity derived from oil and gas industry's output. Nonet and Selznic with their theory of responsive and participative shall be applied for invite people participating, this notion requires to invite people involving in oil and gas industry based on their capability. On the basis of Article 33 subarticle (1), essentially the economy activities is not only responible for government to develop and empower but also all parties to involved in it, the meaning of "effort together" and also "familyness principle" refer to participating philosophy which involves anyone, all for one, one for all. By such opinion, it supposed that people, cooperative, either SOC or IOC cooperation shall support each other not only in business process but also support in using oil and gas wisely (*demand side*).

There are two sides must be deemed deliberatly in a new paradigm of oil and gas governance system, namely : supply side (production and business process) and demand side (utilizing and using product). For the first, it refers to how to doing business in oil and gas which accomodate the principle of people prosperity ? first, it consist of oil and gas governance system that become more participative to invite people in controling the environmental aspect, such as deforestation, environment destruction, and so on in oil and gas activities, second, empowering small and middle business cooperation , as well as cooperative to involve in supporting industry of oil and gas, such as : procurement, transportation, gas station, and so on, third, involving community to develop ex-mining field to be developed becomes non oil and gas business area productively, such as : farming, fish breeding, resort, and so on.

All such polcy above needed to be put into the parameter of people policy which can be guidance and rule of the game based on moral postulat from UUD 1945 and Pancasila. Therefore, the oil and gas governance can be implemented by the principles of people prosperity on the basis of togetherness, environmant friendly, fair efficiency, sustainable, otonom, as well as keeping balace between developing and unity of nation. The entire notion can be describe as programs, as follows :

1. Optimalizing state and local government revenue
2. Availability of refined oil and gas safely for distribution
3. Building energy security by good governance of oil and gas management system
4. Building infrustructure of oil and gas refinery in domestic area
5. Encourage and develop diversification of oil and gas from conventional to non conventional sources as alternative energy such as CBM, Shale gas, Bio fuel, etc

6. Motivate Local Government Owned Coperation to involve and participate in oil and gas business, especially in supporting business

7. Establishing education and health infructructure around mining area to support activities.

8. Pushing SOC/IOC program to empower sociaty by Corporate Social Responsibility program, in particular to develop their environment

RECOMMENDATION

1. Immediatly replacing The Law No. 22/2001 that has been improper to be used consider that some of the articles had been annulled by CCRI, that means this law is flawless and inconstitutional.

2. Changing the Law No. 22/2001 shall be able to bring people souverignity back into the governance of oil and gas based on model of seperated functions that each function can be control by state effectively.

3. Based on the parameters of people prosperity described above, it hopefuly can empower prosperity fairly between infrustructure development nationally and prosperity in local, especialy in remote area of oil and gas fields. This policy must be supported by central governemnet by giving more otonomous authority to local government to issue local laws in order to regulate utilizing oil and gas benefit for local people from profit sharing fund which today regulated based on The Law No. 33/2004 regarding Balancing finance between Central and Local

4. Performing mitigation program of environment in ex oil and gas mining area to be develop as productive economy area greenly and friendly environment