

Sovereignty of Oil and Gas Management in Indonesia: An International Law Perspective

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Abstract

The issue of sovereignty of natural resource management is a crucial aspect to be faced by each country such as Indonesia which is known as a country that has a wealth of oil and natural gas. Sovereignty over natural resources including oil and gas management guaranteed as one of the forms of sovereignty possessed by every nation. This is set out in UN General Assembly Resolutions and other international legal instruments. In the principle of international law sovereignty is known there are three aspects of sovereignty that can be divided up: external, internal, and territorial sovereignty. Based on the analysis of these three aspects of sovereignty, Indonesia has not been able to optimally show its existence as a sovereign country and has full control over the management of oil and gas.

Keywords: sovereignty, oil and natural gas, international law.

I. Introduction

The sovereignty issues¹ that include the aspects of natural resource management are crucial aspects that will be faced by each country including Indonesia in an increasingly competitive global context. This is not because natural resources, especially oil and gas owned by Indonesia is very abundant.² The management of oil and gas to date still has a very important role to support the sustainability of Indonesia's development, both as one of the mainstay of foreign exchange earners, and as a supplier of energy needs³ in the country that affect the national economy. On the basis of that influence, Indonesia's oil and gas wealth can be expressed as the most important aspect of Indonesia as a nation and a sovereign nation.

In line with that, George Anderson mentioned that "natural resources are important to the politics and economics of many countries. Of all resources, oil and gas stand apart in terms of their breadth and depth of impact".⁴ The wealth of natural resources is a component of the success of a nation's economic development. It is also in line with that opinion "the real option value in the natural resources sector is of significant economic magnitude".⁵

¹ There are various approaches, various categorizations and variations on the use of meaning and the conception of sovereignty, such as domestic sovereignty, interdependence sovereignty, international law sovereignty and absolute sovereignty of the state. Sovereignty as a concept which refers to the ultimate and supreme authority from the point of view of various elements of sovereignty, such as: rule of law or political sovereignty; internal sovereignty or external sovereignty; a single sovereignty or a shareable sovereignty; and government or people's sovereignty. See: Jens Bartelson, 2006, "The Concept of Sovereignty Revisited", 17 *European Journal of International Law* Vol. 17. No. 2, Oxford: Oxford University Press, p. 463. See also: Sarooshi, 2004, "The Essentially Contested Nature of the Concept of Sovereignty: Implications For The Exercise by International Organizations of Delegated Powers of Government", 25 *Michigan Journal of International Law*, Summer 2004: Symposium: Diversity or Cacophony? New Sources of Norms in International Law. Michigan: University of Michigan, p. 1108.

² Although the abundance of Indonesia's oil and gas wealth is based on the latest data, it has experienced a drastic decline rate. This is due to the ability of petroleum production in Indonesia continues to decline due to the old wells and resource areas located in the frontier area. In addition, changing policies and low world oil prices have lowered exploration and exploitation activities that have resulted in lower oil and gas reserves. See: Ira Fitriana, et. (Editor), 2017, *Indonesia Energy Outlook 2017*, Jakarta: Center for Technology of Energy Resources and Chemical Industry (PTSEIK) & Agency for the Assessment and Application of Technology (BPPT), p. 21.

³ Ira Fitriana, et.al. (Editor), *Ibid.*, p. 10. In 2015, the largest share of energy consumption in Indonesia was in the household sector (35%) followed by transportation sector (31%), industry (29%), commercial (4.0%) and others (2.0%). During the period of 2010-2015, transportation sector experienced the largest growth of 5.2% per year, followed by household sector (3.8%), and commercial sector (2.9%). The growth of industrial sector and other sectors decreased by 4.6% and 10%.

⁴ George Anderson (Ed.), 2012, *Oil and Gas in Federal Systems*, Canada: Oxford University Press, p. 1.

⁵ Adi Libson, 2015, "Is the Deadweight Actually Dead? Real Option Value and Taxation of Oil and Gas", Volume 45 Issue 3

Therefore, the role of the state as the subject of international law in controlling all sectors of natural resource management such as oil and natural gas becomes very important to maintain the existence of a state of its sovereignty to manage its own natural wealth without interference and interference from other parties such as the exploitation of oil and gas multinational corporations to various natural resources under the pretext of international business cooperation that occurred in various parts of the world.

To anticipate this, the international legal regime has acknowledged the right of every country and nation in terms of the management of natural resources in the form of sovereignty in full. Mentioned in several international documents in the form of United Nations General Assembly resolution of the permanent mastery of natural resource wealth to be used and exploited freely by the country concerned. One of them is contained in United Nations General Assembly Resolution No. 1803 Year 1962 which affirms that oil and natural gas as fossil energy is none other than the national natural resources of a nation owned on the basis of the permanent sovereignty of its natural resources possessed.¹

As Antony Anghie mentions that: “The formulation of the doctrine of permanent sovereignty over natural resources was one of the principal mechanisms by which the new states hoped to regain control over their own resources and, in this way, promote development”.² The formulation of the doctrine of permanent control over natural resource wealth under international law is essential for every country to gain control over the wealth of their own natural resources. Therefore, the management must be in accordance with the national development interests of the country concerned.

Similarly, in several international human rights instruments in the form of the Universal Declaration of Human Rights and two human rights covenants which affirm the principle of Self-Determination from each country will the management of natural resources independently without any interference from other countries. Antony Anghie stated that:³ “Indeed, the idea of permanent sovereignty over natural resources was closely tied to the concept of self-determination, which in itself suggests the close links between political sovereignty and economic sovereignty”.

On the basis of the foregoing, sovereignty over the management of oil and natural gas in the form of self-sustaining and absolute management is an identity that cannot be separated from the question of sovereignty of a country, moreover the international law regime has acknowledged the full sovereignty of natural resource management owned by each country. Based on these thoughts then the problem to be discussed in this paper is how far the scope of sovereignty of oil and gas management in Indonesia from international law perspective?

II. Research Method

This research is normative legal research,⁴ using a legal and conceptual approach.⁵ The data used are secondary data in the form of primary legal material (international legal instrument), and secondary legal materials (books, journals, research reports, and printed and online media news) through literature study. The collected legal materials are then analysed qualitatively, then presented descriptively in order to answer the problems in this paper.

III. Results and Discussion

The Principle of Sovereignty over Natural Resources under International Law

Oil and natural gas is a type of natural resources with strategic value controlled by the state and is a vital commodity that controls the livelihood of many people and has an important role in the economy of every nation and country. In the perspective of international law, the intense study of natural resources was not originally an object of study to be analysed in the field of international law. It's just because the study of the concept of sovereignty of permanent natural resources that continue to make natural resource law study into one aspect of discussion in international law.

Article 3, Seton Hall Law Review, New Jersey: Seton Hall University School of Law, p. 843.

¹ UN General Assembly Resolution Number 1803 Year 1962 on Permanent Sovereignty Over Natural Resources.

² Antony Anghie, 2007, *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press, p. 211.

³ *Ibid.*, p. 211.

⁴ Soerjono Soekanto and Sri Mamudji, 2011, *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers. p. 14.

⁵ Peter Mahmud Marzuki, 2010, *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. p. 96.

It was explained by Nico Schrijver that:¹ “Permanent sovereignty over natural resources is one of the more controversial new principles of international law that have evolved since world war two. During this period the decolonization process has taken place and newly independent states have sought to develop new principles and rules of international law in order to assert and strengthen their position in international relations and to promote their social and economic development”.

Another view from Ricardo Pereira mentions that:² “The history of international law noted that before 1945, the natural resources is not an object of study that systematically studied in international law, but the development of the concept of sovereignty permanently to the natural resources, and the development of the law of the sea have made the birth of the law of natural resources as a new branch of international law.” Than Ricardo Pereira argue that:³ “After 1945, the future of international law in the field of natural resources further the subject of discussion in various forums and influencing the policy makers and lawmakers, mainly deals with the issue of environmental damage threat caused by the exploration and exploitation of natural resources”.

When discussing the basis of the juridical foundation in the framework of international law in relation to the management of natural resources, especially oil and natural gas, will not be separated from various international legal instruments that govern the principle of state sovereignty over the right to control natural resources. The principle of sovereignty or the right of state control over natural resources (Sovereignty over Natural Resources) is not new and has been fully recognized by international law as can be found in various official documents, including:

1. United Nations General Assembly Resolution 626 (VII) of 21 December 1952 concerning self-determination in the economic field (economic self-determination). In that resolution it is affirmed on the right of every State to exploit and freely exploit its wealth and natural resources, wherever it may be for its progress and economic development.⁴
2. United Nations General Assembly Resolution 1803 (XVII) of 14 December 1962, Resolution 2158 (XXI) of 25 November 1966, and Resolution 3016 (XXVIII) of 18 December 1972. This resolution extends the scope of the principle of permanent sovereignty over natural resources on the seabed and underneath which is still within the national jurisdiction of a country.⁵ Resolution 1803 (XVII) also prioritizes the interests of national development and the welfare of the people of the country concerned and emphasizes that economic agreements including investment are for national development which is independent and based on the recognition of each country over the right to control wealth and natural resources.

In resolution 1803 Year 1962 on the right to permanent control over natural wealth, it is stated that in every state the right to fully control over its natural wealth and all economic activities. The exploration, development and utilization of such resources together with the foreign capital required for such purposes shall be in accordance with the rules and conditions of the society and the nation concerned in view of the need for authorization, restriction or prohibition on such activities.⁶

Resolution 1803 has then become the legal basis for developing countries to request improvements to the terms and conditions of the concession treaties, whereas some other non-binding resolutions constitute a political basis that can be used to encourage change. The Resolutions recognize the right of the state to nationalize foreign ownership, resulting in increased uncertainty and risk of loss for foreign companies, thus increasing bargaining positions of host countries.⁷

Resolution 2158 (XXI) was the first attempt at connecting the state's control over natural resources in the presence of various demands from developing countries to obtain a larger and more profitable portion of the processing, marketing and distribution of natural resources.

¹ Nico Schrijver, 1997, *Sovereignty Over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press, p. 1.

² Imam Mulyana, 2016, “The Development of International Law in the Field of Renewable Energy”, *Hasanuddin Law Review*, 2 (1): 41.

³ *Ibid.*, p. 41.

⁴ A. Madjedi Hasan, 2009, *Kontrak Minyak dan Gas Bumi Berasas Keadilan dan Kepastian Hukum*, Jakarta: Fikahati Aneskam, p. 35.

⁵ Huala Adolf, 2011, *Aspek-Aspek Negara dalam Hukum Internasional*, Jakarta: PT. Raja Grafindo Persada, p. 53-54.

⁶ UN General Assembly Resolution 1803 (XVII) of December 14, 1962 on Permanent Sovereignty Over Natural Resources.

⁷ A. Madjedi Hasan, *Op.Cit.*, p. 36.

3. United Nations General Assembly Resolution 3201 (S-VI) of May 1, 1974 on the Declaration on the Establishment of a New International Economic Order and Resolution 3281 (XXIX) of December 12, 1974 on the Charter of Economic Rights and Duties of States, which reaffirms the right of control by the state to oversee its natural resources in an effort to promote economic growth. Resolution 3201 affirms that a new international economic order should be based on, among others, the full control of the state and to secure this natural resource each country shall have the right to control and exploit it, which includes also nationalizing or transferring ownership to its own country. In Article 1, Chapter II of Resolution 3281 affirms that every state has sovereignty and inalienable rights (rights which cannot be submitted or transferred without a rightful consent) to choose economic systems as well as political, social and cultural systems based on the will of the people, without outside intervention, coercion or threats in any form. Subsequent to Article 2 Chapter II asserts that every country has the right and freedom to exercise its rights, including owning, using and releasing its resources and economic activities.¹
4. Article 1 International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 1 International Covenant on Civil Political Rights (ICCPR) of December 16, 1966. This international agreement affirms the right of a state to freely exploit its natural wealth. ICESCR and ICCPR which are part of Universal Declaration of Human Rights Year 1948 is an international agreement resulting from the General Assembly of the United Nations and entered into force on January 3, 1976. This Agreement contains an agreement to cooperate in providing economic, social and cultural rights to individuals and/or nations.
5. Declaration on the Human Environment 1972 in Stockholm. In Articles 11 and 12 it is affirmed that the state has the sovereign right to exploit its natural resources in accordance with its own environmental preservation policy. In the utilization of these natural resources, the state is responsible for activities that harm the environment, either in its own territory, or in the territory of other countries (Articles 12 and Article 11). The Stockholm Declaration also affirms the need for good planning and management to save natural resources for the benefit of present and future generations.

Sovereignty of Oil and Gas Management in Indonesia from the International Law Point of View

Sovereignty is a recognized concept and forms the basis of the workings of the international legal system. The fundamental doctrine of sovereignty is that sovereignty is an absolute power over a particular territory. According to Jenik Radon,² the absolute power of the region becomes the basis for the formation of the state so that this understanding is helpful in looking at and evaluating the position of a country in the context of a very dynamic international relationship.

The concept of sovereignty is still a very important theme in terms of discussing international relations among nations and especially for the development of international legal studies.³ In fact, the sovereignty which is the basic principle in international relations has persisted for several centuries and makes the sovereignty interesting to study in terms of its meaning and practice.⁴ The idea of sovereignty in the perspective of international law has undergone various forms of conceptual shift due to several factors. One of them is the trend of globalization development in the form of the interdependence of a country with other countries and intertwining the intensity of cooperation between countries.⁵

¹ Ibid., p. 37.

² Jenik Radon, 2004, "Sovereignty: A Political Emotion, Not A Concept", Volume 40 Issue 195, Stanford Journal of International Law. Commemorative Issue: Balance of Power: Redefining Sovereignty in Contemporary International Law Commemorative Introduction, Summer 2004, Stanford: University of Stanford, p. 195.

³ John H. Jackson, 2006, *Sovereignty, the WTO and Changing Fundamentals of International Law*, Cambridge: Cambridge University Press, p. 57.

⁴ Matthew S. Weinert, 2007, *Democratic Sovereignty: Authority, Legitimacy, and State in a Globalizing Age*, New York: University College London Press, p. 194.

⁵ Magdalena Petronella Ferreira-Snyman, 2009, "The Erosion of State Sovereignty in Public International Law: Towards A World Law?", Doctor Legume in Public International Law in the Faculty of Law at the University of Johannesburg, p. 32.

In accordance with the concept of international law, in general sovereignty has three main aspects namely:¹

- The external aspect of sovereignty; the right of every State to freely determine its relationship with various countries or other groups without restrictions, pressure or supervision from other countries.
- Internal aspects of sovereignty; the exclusive right or authority of a State to determine the form of its institutions, the workings of those institutions and the right to make the legislation it wishes and the measures to comply with it.
- The territorial aspect of sovereignty which means the full and exclusive power possessed by the state over the individuals and objects contained in the territory.

Based on three main aspects of sovereignty in accordance with the concept of international law above, then in discussing the topic of state control over the management of oil and natural gas within the framework of the concept of international law sovereignty can be divided into three parts, namely external sovereignty; internal sovereignty; and territorial sovereignty, as may be described one by one as in the following explanation:

1. External Sovereignty over Oil and Gas Management in Indonesia

The sovereignty of oil and gas management in Indonesia within the framework of external sovereignty can be interpreted as the ultimate power in the form of exclusive rights and authorities of a country in the field of oil and gas management to freely determine its international relations with various other countries/parties without any hindrance/ intervention.

The results of oil and gas management in Indonesia are the most important part of the development process in Indonesia. Oil and gas revenues account for 30% of total government revenues. For this reason, oil and natural gas are said to be strategic industries and play an important role in development. There are various oil and gas management systems that have been applied in Indonesia. This shows the exclusive authority that Indonesia possesses as a sovereign state externally to determine its own international relations with various parties, particularly foreign oil and gas companies as investors and contractors in the national oil and gas industry. Among the oil and gas management systems, are as follows:

- Concession System: the contractor has full power over oil and gas, which is mined and is obliged to pay royalties to the state. This system has not existed since 1961.
- Work Contract System: is a contract in the form of profit sharing where the management is in the contractor and has not existed since 1983.
- Production Sharing Contract System.
- Technical Assistance Contract (the production divided is obtained only from production mining after secondary recovery. Distribution of oil and natural gas from total production).
- Joint Operating Body System. This contract is the same as the profit sharing system but the government participates in capital so the composition becomes 50% : 50%.

However, in the history of oil concessions in Indonesia, there are only three models of cooperation contracts between the government and investors/contractors, namely: concession system, work contract system and profit sharing contract (PSC). The profit-sharing system is the longest oil and gas management system in the oil and gas industry in Indonesia. However, in its implementation, the profit-sharing contract raises a variety of problems, the rise and fall of world oil prices determines the profit sharing. This has not been affected by the cost recovery, fee, and tax policies affecting state revenues with profit-sharing systems that result in state revenues not getting an initial percentage of 85% of profits from oil and gas production.

2. Internal Sovereignty over Oil and Gas Management in Indonesia

The sovereignty of oil and gas management in Indonesia within the framework of internal sovereignty can be interpreted as the ultimate power in the form of exclusive rights and authority of a country in the field of oil and gas management to determine the shape, mode of work of its state institutions, the right to make regulations without any intervention, gain compliance and have the sole authority to decide upon issues arising

¹ Anshar, 2017, "Kedaulatan Atas Sumberdaya Alam Sebagai Wujud Paradigma Postmodern Prinsip Self-Determination", in Proceedings Call Paper National Symposium of International Law Teaching Association (APHI) in Bukittinggi on September 7-8, 2017, *Hukum Internasional dalam Geopolitik Dunia Kontemporer: Perspektif dan Pengalaman Indonesia*, Padang: Faculty of Law, University of Andalas, p. 279. See also Magdalena Petronella Ferreira-Snyman, *Op.Cit.*, p. 35.

within his jurisdiction. In the discussion of the context of the internal sovereignty of oil and gas management in Indonesia, it can be started from the constitutional arrangements set forth in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which affirms that: "The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". On the basis of the mandate of the constitution, there are two main elements in the management of the earth, water, and natural resources (including oil and natural gas) in Indonesia, which is the "state-controlled" and "the greatest prosperity of the people". These two elements become the essence of any management of natural wealth is no exception oil and gas owned by Indonesia.

Furthermore, in the history of oil and gas regulation in Indonesia there are some regulations that have been and still apply. Divided into several phases of government regime i.e.:

- The Dutch colonial regime: *Indische Mijnwet* 1899;
- Regime of the Old Orde government: Law of the Republic of Indonesia Number 44 Year 1960 on Oil and Gas Mining;
- The New Orde government regime: Law of the Republic of Indonesia Number 8 Year 1971 concerning State Oil and Gas Mining Company (Pertamina); and
- The regime of Reform Era: Law of the Republic of Indonesia Number 22 Year 2001 on Oil and Natural Gas.

With the ever and enacted regulation on oil and gas management in Indonesia, indicates that Indonesia is a country capable of realizing the form of internal sovereignty in the case of state control over oil and natural gas wealth in the form of exclusive authority to make regulations, which in the regulation is regulated in detail the form and manner of any state designated agency in the field of oil and gas management. However, in some analytical studies in other studies proves that the enactment of the law still cannot be separated from the influence of other parties who have a large interest in the wealth of oil and natural gas owned by Indonesia. Particularly in the critical analysis of the enforcement of Law No. 22 of 2001, it has received some highlights such as the nature of this law that supports the liberal economy of the international oil and gas industry to limit the role of national companies (Pertamina) to engage in dominant in terms of oil and gas management. For that it can be said that the control of the state in terms of oil and gas management in this aspect of internal sovereignty has not been fully optimized because there is still a form of intervention from outsiders in terms of dictating the form of regulations in the field of oil and gas management.

3. Territorial Sovereignty over the Management of Oil and Gas in Indonesia

The sovereignty of oil and gas management in Indonesia within the framework of territorial sovereignty may be understood as the full power possessed by a country in the exercise of exclusive jurisdiction in its territory in the field of oil and gas management so that the state is authorized to enforce its own national law. With the consequences of all parties (including non-state actors in charge of petroleum and natural gas management) who inhabit the country shall be subservient and in principle *qui in territorio meo est, etiam meus subditus est* (if a person is in a certain territory, he or she shall be subject to the laws of that territory).

The issue of progress and independence of the nation on the natural wealth it has is closely related to the political and economic history of each country, especially in this case concerning the history of colonialism that tendency to exploit the natural wealth in the colonies. However, when decolonization occurs and countries experience independence, the asymmetrical relationship between the newly independent countries and the developed countries does not just change. Developed countries with the advancement of international business systems conducted by multinational corporations are effectively able to continue the patterns of exploitation of various natural resources including oil and natural gas in various parts of the world effectively.

Indonesia as a country that has a long history as a former colonized nation did not escape the clutch of non-state actors in the form of multinational companies with the concept of liberalism economy in exploring and exploiting the wealth of oil and natural gas in abundance in Indonesia. This is an important note because Indonesia is reputedly awarded an abundance of oil and gas wealth still encounters various obstacles in terms of realizing the sovereignty of oil and gas management. Facts in the field found many cases of fuel (BBM) shortages that increasingly catapulted commodity prices. Foreign investment in the oil and gas sector is also present in Indonesia, is often considered to suck oil and gas results abroad. The fuel price hike in 2013 resulted in inflation rising by 6-7%. This condition has implications on the rise in prices of other goods that weaken the purchasing power and living standards of the community. The problem further extends the measurement series of national natural resource management issues.

The abundant oil and natural gas becomes one of Indonesia's resources. In 2010, Indonesia's proven oil reserves amounted to 4.23 MSTB (million stock tank barrels). While Indonesia's proven gas reserves are 108 TSCF (trillion standard cubic feet).¹ When observed in the global scope, Indonesia's petroleum reserves can contribute about 0.4 percent of the world's total petroleum reserves. Meanwhile, Indonesia's natural gas reserves account for about 1.6 percent of the world's natural gas reserves.² Therefore, not surprisingly since the 1970s, oil and gas became Indonesia's most important export commodity. Even before 2006, Indonesia had become the largest LNG (Liquefied Natural Gas) exporter in the world for nearly three decades.³

Another source of the Upstream Oil and Gas Business Unit (SKK Oil and Gas) said that in early 2015 the national oil reserve currently stood at 3.7 billion barrels of some 27 billion barrels of proven oil reserves (proven reserve) since it had already been produced about 22.9 billion barrels. It is estimated that the reserves will last about 10 years longer. However, Indonesia still has 43.7 billion barrels of oil reserves, but this requires exploration and technology funding is very high.⁴ While Indonesia's natural gas reserves at the beginning of 2015 amounted to 151.33 TSCF or an increase of 1.36 percent when compared to natural gas reserves in 2014 amounted to 149.3 TSCF.⁵

Indonesia as a country that has the largest oil and gas reserves, especially in the Southeast Asian region to make this country the attraction of world capital owners. Even before Indonesia was formed as a sovereign country, this country has become the focus of foreign investors to play a role in the mining sector including oil and gas mining.⁶ This condition made the Dutch government in the colonial period to issue *Indische Mijnwet* 1899 a kind of laws regulating mining. This policy grants mining permits through a concession system valid for up to seventy-five years to private companies. Since then multinational companies began to play an active role and participate in exploring and exploiting the Indonesian mining sector and mark the entry of this country in the world oil and gas trade network.

The existence of foreign oil and gas companies in Indonesia, which has been present more than a century ago, makes the hegemony or dominance of foreign oil and gas companies so strong. About 85.4 percent of the 137-national oil and gas mining working areas are owned by foreign companies. National companies control only about 14.6 percent of the work area and eight percent of them are controlled by Pertamina.⁷ This makes the presence of foreign oil and gas companies in Indonesia very significant. In the oil field, one of the foreign oil and gas companies that Chevron even produces 51 percent of the total oil production in Indonesia. As for natural gas, one of the foreign oil and gas companies Total E&P produces 34 percent of Indonesia's total natural gas production.⁸

¹ BP Minyak dan gas bumi, (2011), "Laporan Tahunan BP Minyak dan gas bumi 2010", p. 16. Accessed on January 28, 2012 at http://www.bpminyakdangasbumi.go.id/wp-content/uploads/2011/10/LaporanTahunanBPMINYAK_DAN_GAS BUMI2010.pdf

² Reserves can be classified into proven reserves and potential reserves. Proven reserves are oil or natural gas reserves that have been proven with high degree of certainty through reliable quantitative log analysis, as well as through research and testing of the coating content and hydrocarbon content of reservoirs already produced at commercial production levels. While the potential reserves are oil or natural gas reserves based on geological and engineering data whose numbers are still to be proven by drilling and further testing. Data obtained from Beyond Petroleum, 2012, "BP Statistical Review World Energy 2011". Accessed on September 2, 2014 at http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2011/STAGING/local_assets/pdf/statistical_review_of_world_energy_full_report_2011.pdf

³ Hanan Nugroho, 2011, *A Mosaic Of Indonesian Energy Policy*, Bogor: Press, p.14.

⁴ Lihat: www.kompas.com, "Cadangan Minyak Indonesia Tinggal 3,7 Miliar Barrel", September 7, 2015, Accessed on August 7, 2016 at <http://bisniskeuangan.kompas.com/read/2015/09/07/073500026/Cadangan.Minyak.Indonesia.Tinggal.3.7.Miliar.Barrel>

⁵ See www.kompas.com, "Cadangan Gas Bumi Indonesia 2015 Meningkat", November 16, 2015, Accessed on August 7, 2016 at <http://www.minyak.dan.gas.bumi.esdm.go.id/post/read/cadangan-gas-bumi-indonesia-2015-meningkat>

⁶ M. Kholid Syeirazi, 2009, *Di Bawah Bendera Asing, Liberalisasi Industri Minyak dan gas bumi di Indonesia*, Jakarta: Pustaka LP3ES Indonesia, p. 51.

⁷ *Ibid.*, p. 108. Five foreign contractors are categorized as super majors (ExxonMobil, Chevron, Shell, Total and BP) controlled oil and gas reserves of 70 percent oil and 80 percent gas, respectively, with volume and production capacity of 68 percent oil and 82 percent gas. While the company is categorized majors (Conoco, Repsol, Unocal, Santa Fe, Gulf, Premier Oil, Lasmco, Inpex, Japex, etc.) control of oil and gas reserves of 18 percent each oil and 15 percent gas with volume and production capacity of 28 percent oil and 15 percent gas. Independent companies-controlled oil and gas reserves of 12 percent oil and 5 percent gas by volume and production capacity of 4 percent oil and 3 percent gas.

⁸ Pricewaterhouse Cooper, (2012), *Oil & Gas in Indonesia: Investment and Taxation Guide May 2012*. p. 22.

Another source mentioned that foreign oil and gas companies operating in Indonesia control 76 percent of the work area or upstream oil and gas and the remaining 24 percent then controlled by national companies. This shows that this percentage value is still smaller when compared to Malaysia with 30 percent and China with 85 percent who controlled the working area of oil and natural gas by their own national companies.¹

The experience of Indonesia as mentioned above cannot be separated from the history and influence of international oil and gas companies that dominate the management of oil and gas world. Mentioned Leslie E. Grayson that:² “In 1970, about 70 per cent of the world’s oil trade was handled by the oil multinationals-Exxon, Royal Dutch/Shell, Mobil, Texaco, Standard of California, Gulf, and British Petroleum. A decade later, the multinational’s share has declined to about 50 per cent. Some of the trade no longer handled by the MNCs has moved to the ‘spot’ market in which both the multinational and national oil companies participate”.

In line with the above, Daniel E. Vielleville and Baiju Simal Vasani expressed the opinion that:³ “Many governments granted generous concessions in the early years to multinational oil corporations in which title to the oil in place was conveyed to the companies, the concession covered large areas, the terms of the concessions were very long (e.g., 60 years or more) and the royalties payable to the government were low”.

The mining sector, especially oil and gas, is different from other industrial sectors. This is because in this sector requires capital and a very large risk, a long exploration process, high technology which is certainly accompanied by painstaking human resources in the field. This also makes the oil and gas companies in the country not many who dare to take steps to move forward and compete in the oil and gas industry. In contrast to foreign oil and gas companies that have had considerable experience and capital. Even these multinational companies claim to be able to help raise national income by increasing production output along with improving the quality of human resources in the form of education to the Indonesian workforce to have the same competence and level of expertise possessed by foreign workers engaged in the oil and gas industry.

In contrast to the claims of oil and gas companies, in fact the oil and gas industry technology is not transferred properly to Indonesia which causes the management of oil and natural gas is still controlled by foreign oil and gas companies.⁴ This makes the production of oil and natural gas in the country is not well controlled. Evidenced by the outflow of Indonesia as a member of the Petroleum Exporting Countries (OPEC) in 2005 (even in 2015 Indonesia re-joined as member of OPEC). Mentioned that:⁵ “Indonesia has been an active player in the international oil and gas industry for more than 120 years and was once significant international oil-exporting country and a member of the Organisation of the Petroleum Exporting Countries (OPEC). Today, Indonesia continues to be a leading exporter of pipeline and liquefied natural gas but has experienced a fairly consistent decline in oil production since 1998, leading to the country becoming a net oil importer by 2004”.

Indonesia, formerly known as an oil and gas exporting country, must accept fact to become an oil and gas importer country. This is because Indonesia has a demand for oil of 1,3 million barrels per day while the country's national production is only capable of reaching 910.000 barrels per day. Therefore, to cover domestic supply shortages, Indonesia must import oil from other countries.⁶

Accessed on September 3, 2014 at http://www.pwc.com/id/en/publications/assets/oil-and-gas-guide_2012.pdf

¹ See www.tempo.co, “Aturan Pengelolaan Wilayah Kerja Minyak dan gas bumi Rugikan Pertamina”, May 27, 2015, Accessed on August 7, 2016 at <https://m.tempo.co/read/news/2015/05/27/090669970/aturan-pengelolaan-wilayah-kerja-minyak-dan-gas-bumi-rugikan-pertamina>

² Leslie E. Grayson, 1981, *National Oil Companies*, Norwich: John Wiley and Sons, p. 1.

³ Daniel E. Vielleville & Baiju Simal Vasani, 2008, “Sovereignty Over Natural Resources Versus Rights Under Investment Contracts: Which One Prevails?”, Volume 5, Issue 2, April 2008, *Transnational Dispute Management Journal*, p. 1.

⁴ Moreover, in Indonesia, the practice of natural resource management conducted by multinational companies began to get the spotlight seriously. This is because multinational companies operating in Indonesia are considered to have enjoyed unequal profits when compared to the amount of royalties granted to the Government of Indonesia. In addition, the nature of the state's control over natural resources in Indonesia for the greatest prosperity of the people is one of the things that underlies the national movement in repositioning Indonesia's position in various foreign investment contracts in Indonesia. This explanation is quoted from Juajir Sumardi, 2012, *Hukum Perusahaan Transnasional dan Franchise*, Makassar: Arus Timur, p. 9.

⁵ See Marc Hammerson (Consulting Editor), 2013, *Oil and Gas Decommissioning: Law, Policy and Comparative Practice*, London: Globe Bussines Publishing Ltd, p. 285.

⁶ In the midst of an increasing demand for oil, oil exports from foreign oil and gas production continue to take place annually and in 2010 Indonesia's oil exports amounted to 1121 million barrels. (Data from the Ministry of Energy and Mineral Resources of the Republic of Indonesia, 2011, “Statistik Minyak Bumi”, p. 8. Accessed on

Crude oil prices that have experienced a very drastic increase in 2003 ago a serious warning to countries that are planning their energy security program, including Indonesia. Expectations for the presence of foreign oil and gas companies in order to assist the management of oil and natural gas in Indonesia are not going well. The presence of foreign oil and gas companies in developing countries as Indonesia tends to reveal an imbalance of bargaining power in bringing together all interests. This includes the national interest in the availability of oil and natural gas for the needs of all people.

The history of the petroleum industry in Indonesia notes that the dependence on technology and capital on foreign parties is so dominant. The tendency implies that almost all state policies in the oil and gas management sector ranging from upstream to downstream are co-opted by foreign parties. The decline in oil prices felt by the people of Indonesia is also the influence of the international oil market mechanism. This condition can occur as a direct result of high levels of unbalanced public consumption with the level of production and exploitation of crude oil in Indonesia that requires technology and large capital that can only be met through capital investment from international oil and gas companies.

For oil and gas producing countries such as Indonesia, sovereignty of oil and gas management is the key for a country to achieve its goal of prospering its people and building a more advanced economic civilization. The presence of foreign oil and gas companies that are very dominant certainly very influential in the presence of complete sovereignty in terms of management of oil and natural gas in the country. It identifies the threat and sovereignty crisis in the form of foreign party intervention on oil and gas management. It also makes it seem as if the state has no power in terms of 'determining its own destiny' (right of self-determination) in terms of management of oil and natural gas in the country devoted to the greatest prosperity of the people who in principle in accordance with the foundation of the constitution and is also supported by the basic principles or rules based on international law.

IV. Conclusion

The sovereignty of oil and gas management is part of the form of control of natural resources owned by a country. In international law arrangements, there is known permanent sovereignty over natural resources, every country including Indonesia has three aspects of sovereignty that include: external sovereignty; internal sovereignty; and territorial sovereignty. External sovereignty in the field of oil and gas management means that the state can freely determine its international relations with various countries/other parties without any hindrance/intervention. While the internal sovereignty is interpreted that the state has the right to determine the form, the manner of work of its state institutions, the right to make regulations without any intervention, to obtain compliance and have its own authority to decide the problems arising within its jurisdiction.

Territorial sovereignty is defined as the state's control over oil and natural gas as a form of full authority owned by a state in the exercise of exclusive jurisdiction in its territory in the field of oil and gas management, so that the state is authorized to enforce its own national law. Of the three aspects of sovereignty of oil and gas management, Indonesia as an oil and gas producing country has not been able to optimally run the role of the state to fully control the form of domestic oil and gas production and still rely heavily on capital strength and technology of foreign oil and gas companies as investors/contractors, which affects the minimum national income of the oil and gas industry in Indonesia.

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September 6, 2014 at http://prokum.esdm.go.id/Publikasi/Statistik/Statistikpersen20Minyak_persen20Bumi.pdf). This is in contrast to the fact that access to electricity and fuel in Indonesia is low in Asia. The percentage of households with electricity is only about 60 to 70 percent. Meanwhile, rural areas in Indonesia that have electricity only about 85 percent. This means that there are 10,000 villages in Indonesia that are still in the dark and waiting for the entry of electricity. Rotation blackouts are still felt by the entire people of Indonesia.

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