ICOLEG 2021

Proceedings of the 2nd International Conference on Law, Economic, Governance

Semarang, Indonesia
29-30 June 2021

EDITORS

Irma Cahyaningtyas
Aju Putrijanti
Kadek Cahya Susila Wibawa

CCER

EAI
RESEARCH MEETS INNOVATION

Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia

Research Article

Character and Disharmony of Legislation on Oil and Gas Sector in the Perspective of Article 33 of the 1945 Constitution

Suparto Suparto[1,*], Admiral Admiral[1]
1: Universitas Islam Riau
*Contact email: suparto@law.uir.ac.id

Abstract
Oil and natural gas are one of the most strategic non-renewable natural resources in Indonesia. Therefore, its management and utilization must be in accordance with the constitution of the Country, namely the 1945 Constitution. This research objective is concern to the character and disharmony of the legislation itself in the perspective of Article 33 of the 1945 Constitution. Based on the research, obtained the results that the character of legislation in the field of oil and gas management starting from Indische Mijnwet Stb 1899 No. 214 Jo. Stb 1906 No. 434, Law No. 44/PRP/1960, Law No. 8 of 1971 and Law No. 22 of 2001 occurred dynamics ranging from those in accordance with the spirit of Article 33 of the 1945 Constitution to those that are not. The reason was the international pressure and the persistence of global interest in the management of oil and gas in Indonesia. Possible efforts in addressing the problem of disharmony between legislation and non-conformity with the 1945 Constitution are: 1) Amend/revoke certain articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them. 2) Apply for a material test to the Judiciary (judicial review). 3) Apply the principle of laws of legislation.

Keywords characters disharmony regulations oil and gas the 1945 constitution

Published 2021-10-12 Publisher EAI

http://dx.doi.org/10.4108/eai.29-6-2021.2312658

Proceedings of the 2nd

International Conference on Law, Economic, Governance

29-30 June 2021, Semarang, Indonesia

ICOLEG 2021

General Chairs

Irma Cahyaningtyas, Universitas Diponegoro, Indonesia

Technical Programme Chair

Retno Saraswati	(Universitas Diponegoro, Indonesia)
Indarja	(Universitas Diponegoro, Indonesia)
Idil Akbar	(Universitas Padjadjaran, Indonesia)
Suyatno Ladiqi	(Universitas Sultan Zainal Abidin, Malaysia)

Preface

The 2nd International Conference on Law, Economic, Governance (ICOLEG) is an annual event hosted by Faculty of Law, Universitas Diponegoro, Indonesia.

"The Wave of Digitalization on Digital Society: Challenging Ethics and Law in Moral Boundaries" has been chosen at the main theme for the conference, with a focus on the latest research and trends, as well as outlook of the field. Call for paper fields to be included in ICOLEG 2021 are: Law, Economic, Governance, Politics, Development, etc.

The conference invites delegates from across Indonesian and Southeast Asian region and beyond and is usually attended by more than 100 participants from university academics, researchers, practitioners, and professionals across a wide range of industries. We select around 60 papers for proceedings. The conference itself is supported by ***Asosiasi Penyelenggara Program Studi Ilmu Hukum Indonesia*** (APPSIHI) and **Southeast Asia Academic Mobility** (SEAAM).

Dr. Irma Cahyaningtyas.

Conference Organization

Steering Committee

Salawati Mat Basir	(Universiti Kebangsaan Malaysia, Malaysia)
FX Joko Priyono	(Universitas Diponegoro, Indonesia)
Sidharta	(Universitas Bina Nusantara, Indonesia)
Herlambang P. Wiratraman	(Universiti Airlangga, Indonesia)
David Bamford	(Flinders University, Australia)
Joanne van der Leun	(Universiteit Leinden, Netherland)
Benedict Sheehy	(University of Canberra, Australia)

Organizing Committee

General Chair

Irma Cahyaningtyas	(Universitas Diponegoro, Indonesia)

General Co-Chairs

Bambang Dwi	(Universitas Diponegoro, Indonesia)
Marjo	(Universitas Diponegoro, Indonesia)

TPC Chair and Co-Chair

Lapon Tukan Leonard	(Universitas Diponegoro, Indonesia)
Sukinta	(Universitas Diponegoro, Indonesia)

Sponsorship and Exhibit Chair

Aju Putrijanti	(Universitas Diponegoro, Indonesia)

Local Chair

R. Benny Riyanto	(Universitas Diponegoro, Indonesia)

Workshops Chair

Kartika Widya Utama	(Universitas Diponegoro, Indonesia)

Publicity & Social Media Chair
Zil Aidi (Universitas Diponegoro, Indonesia)

Publications Chair
Cahyo Seftyono (Universitas Negeri Semarang, Indonesia)

Web Chair
Indah Putri Indriyani (Universitas Diponegoro, Indonesia)

Posters and PhD Track Chair
Lita Tyesta (Universitas Diponegoro, Indonesia)

Panels Chair
Djoni Gunanto (Universitas Diponegoro, Indonesia)

Demos Chair
Miftahul Ulum (Universitas Diponegoro, Indonesia)

Tutorials Chairs
Ustad Mangku Alam (Universitas Negeri Semarang, Indonesia)

Technical Program Committee

Retno Saraswati (Universitas Diponegoro, Indonesia)

Indarja (Universitas Diponegoro, Indonesia)

Idil Akbar (Universitas Padjadjaran, Indonesia)

Suyatno Ladiqi (Universitas Sultan Zainal Abidin, Malaysia)

ICOLEG

Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia

We proudly present the proceedings of 2nd International Conference on Law, Economic and Governance 2021 (ICOLEG 2021). It focuses on how the wave of digitalization influences the ethics and law, especially in Law and Democracy, Law and Indigenous People, Law in Contemporary Issues, Law and Economic…
more »

Editor(s): Irma Cahyaningtyas (Universitas Diponegoro, Indonesia), Aju Putrijanti (Universitas Diponegoro, Indonesia) and Kadek Cahya Susila Wibawa (Universitas Diponegoro, Indonesia)

Publisher EAI ISBN 978-1-63190-317-5 ISSN 2593-7650 Series CCER

Conference dates 29th–30th Jun 2021 Location Semarang, Indonesia

Appeared in EUDL 2021-10-12

Select search terms here…

Ordered by title ▲ or year ▼

Showing 1–10 of 66 results Page size: 10 25 50

1 2 3 4 5 6 7 Next Last

A Comparative Study on the Legal Protection of Indigenous Peoples Rights towards Traditional Knowledge in Brazil and Indonesia
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Billy Panjaitan, Kholis Roisah

Advantages and Disadvantages of Implementing the Electronic Information and Transactions Law on Freedom of Speech
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Hary Isdyanto, Alvi Syahrin, Madisa Ablisar, Mahmud Mulyadi

Compensation for Damaged Land: Comparative Study between Indonesia and Japan
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Embun Sari, Muhammad Yamin, Hasim Purba, Rosnidar Sembiring

Criminal Liability of Investigators on Wrongful Accusations during Investigations
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Dadi Purba, Ediwarman Ediwarman, Madiasa Ablisar

Cybernotary as Support for Cybersecurity and Resilience
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Finna Nazran, Tan Kamello, Hasim Purba, Ok Saidin

Digital Transformation in Bank Perkreditan Rakyat in Encouraging Efficiency and Answering the Challenges of the New Era of Industry 4.0
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Amne Gumilar Carlie Mudia, Angelicha Aminah Zairuni Ussu, Atika Mitzalina

Efforts to Prevent FFB Theft in Plantation SOEs through Optimizing CSR Funds by Involving the Police
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Alimuddin Sinurat, Budiman Ginting, Ediwarman Ediwarman, Mahmud Mulyadi

Improving the Role of Ombudsman as a Monitoring Institution of Public Organization in Indonesia
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Budi Ispriyarso, Siti Malikhatun Badriyah

Legal Analysis of Property Transfer Tax Regulations in Notarial Transaction Agreements Amidst the Digitalization of Society 5.0
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Albert Lodewyk Sentosa Siahaan, Budiman Ginting, Muhammad Yamin, Keizerina Devi

The Importance of Agency Law for Indonesia as a Fundamental for Fair Business Activity
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Budi Santoso

The Optimization of e-Court Integrated System in Providing Access to Justice During the Covid-19 Pandemic
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Aju Putrijanti, Anggita Doramia Lumbanraja, Aditya Yuli Sulistyawan

The Role of Indonesia Virtual Police in Countering Hate Speech on Social Media
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Adya Paramita Prabandari, Irma Cahyaningtyas, Kadek Cahya Susila Wibawa

A Study of Legal Protection of Consumers in e-Commerce Transactions
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Rinitami Njatrijani, Bagus Rahmanda

Assessing Industrial Customer's Willingness to Pay to Support Natural Gas Pricing Policy in Indonesia
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Novi Muharam, Widodo Wahyu Purwanto

Character and Disharmony of Legislation on Oil and Gas Sector in the Perspective of Article 33 of the 1945 Constitution
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Suparto Suparto, Admiral Admiral

Comparison of Legal Systems: Legal Studies on Postponement of Debt Payment Obligations in Indonesia and Reorganization in the United States
Research Article in Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia
Sumamurung P. Simaremare, Bismar Nasution, Sunarmi Sunarmi, Edi Yunara

Character and Disharmony of Legislation on Oil and Gas Sector in the Perspective of Article 33 of the 1945 Constitution

Suparto[1], Admiral[2]
{suparto@law.uir.ac.id[1]}

Universitas Islam Riau, Indonesia[1, 2]

Abstract. Oil and natural gas are one of the most strategic non-renewable natural resources in Indonesia. Therefore, its management and utilization must be in accordance with the constitution of the Country, namely the 1945 Constitution. This research objective is concern to the character and disharmony of the legislation itself in the perspective of Article 33 of the 1945 Constitution. Based on the research, obtained the results that the character of legislation in the field of oil and gas management starting from *Indische Mijnwet* Stb 1899 No. 214 *Jo*. Stb 1906 No. 434, Law No. 44/PRP/1960, Law No. 8 of 1971 and Law No. 22 of 2001 occurred dynamics ranging from those in accordance with the spirit of Article 33 of the 1945 Constitution to those that are not. The reason was the international pressure and the persistence of global interest in the management of oil and gas in Indonesia. Possible efforts in addressing the problem of disharmony between legislation and non-conformity with the 1945 Constitution are: 1) Amend/revoke certain articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them. 2) Apply for a material test to the Judiciary (judicial review). 3) Apply the principle of laws of legislation.

Keywords: Characters, Disharmony, Regulations, Oil and Gas, The 1945 Constitution

1 Introduction

In 1899, the Dutch East Indies Colonial Government issued a statutory regulation in the oil and gas sector known as *Indische Mijnwet* 1899 No. 214 dated 23 May 1899 *Jo*. Stb 1906 No. 434 concerning Mining Concessions. In this legislation, the Dutch East Indies Government discriminates between Dutch Companies and Non-Dutch Companies. After the Independence Revolution on August 17, 1945, *Indische Mijnwet* 1899 remained in force until 1960 although this regulation was very contrary to the spirit and soul contained in Article 33 of the 1945 Constitution. It occurs due to the absence of a law related to oil and gas management in Indonesia and in accordance with the provisions contained in the Transitional Rule I of the 1945 Constitution. The Indonesian government at that time had made various efforts to establish laws and regulations in the Oil and Gas sector which had a nationalist spirit in accordance with the spirit of Article 33 of the 1945 Constitution, one of which was canceling the mining rights granted by the Dutch East Indies Colonial Government to Oil and Gas Companies (Law No. 10 of 1959) and required all oil and gas companies to be incorporated under Indonesian law (Law No. 78 of 1958) [1].

ICOLEG 2021, June 29-30, Semarang, Indonesia

DOI 10.4108/eai.29-6-2021.2312658

On October 26, 1960, the first legislation in Indonesia related to oil and gas, namely The Replacement Government Regulation Law (Perpu) No. 44 of 1960 was officially enacted. This law has officially restored the sovereignty of oil and gas into the hands of Motherland and in its contingency states this Perpu is a mandate from the Presidential Decree dated July 5, 1959, the provisions of Article 33 of the 1945 Constitution and the Political Manifesto of the Republic of Indonesia as affirmed in President Sukarno's Speech in 1960. This legislation explicitly states *Indische Mijnwet* is no longer valid and then changes the Oil and Gas Concession system to a Contract of Work system [2].

On December 15, 1971, the second legislation was enacted in the oil and gas sector, namely Law No. 8 of 1971 on the establishment of Pertamina (State Oil and Gas Mining Company). This Law, once again refers to the spirit and soul of the provisions of Article 33; the Constitution of 1945. In this law, Pertamina as the full representation of the state acts as a mining power. In this case Pertamina functions as a regulator and operator of oil and gas management in Indonesia [3].

In 1997-1998, there was a Monetary Crisis in Indonesia and then the Government asked the International Monetary Fund (IMF) for assistance, the institution then intervened politically through changes in several regulations to become more liberal, one of which was the Manpower Law (Law No.13 of 2003) and the Oil and Gas Law (Law No. 22 of 2001). In Law No. 22 of 2001, there has been disharmony with the previous Law and also not in accordance with the spirit and soul of Article 33 in the Constitution of 1945 concerning the full control of the state over all Natural Resources in Indonesia [4]. Based on the description, in this article will be discussed about the character of the legislation in the field of oil and gas management according to Article 33 of the 1945 Constitution and efforts that can be made to harmonize the legislation.

2 Discussion

2.1 Character and Disharmony of Legislation in the Sector of Oil and Gas

Disharmony (incompatibility) of legislation occurs due to sectoral selfishness of ministries/institutions in the process of planning and forming laws or the existence of certain socio-political interests, for example are: The amendments of the Manpower Law as well as the Oil and Gas Act due to the insistence of IMF institutions in the past. Previously, L.M. Gandhi had identified the factors that cause the onset of disharmony in legal practice in Indonesia, namely: The difference between various statutes or statutory regulations. In addition, the increasing number of rules makes it difficult to know or to hit all of them. Thus, the provision which states that everyone is considered to be aware of all applicable laws is undoubtedly ineffective [5].

Table 1. Benchmarking Assessment of the Legislation Orientation

Orientation	Exploitation or Conservation
Alignments	Pro-people or Pro-capital
Management and its implementation	Centralistic/decentralist, attitudes towards legal pluralism. implementation: sectoral, coordination, production orientation
Protection of Human Rights	Gender, recognition of Indigenous People, the settlement of disputes

Regulations of Good governance	Participation, transparency and accountability
People's relationship with natural resources	Rights or licenses
State relations with natural resources	The right to control the state, the right of the nation

Source: Susetio [6].

Disharmony of legislation has a huge impact on the survival of the state, because it can lead to the occurrence of several things as follows:

a. There are different interpretations in its implementation.
b. The occurrence of legal uncertainty.
c. Implementation of ineffective and inefficient laws and regulations.
d. The occurrence of legal dysfunction [4].

As previously stated, that in the history of Indonesia, there are three national laws and regulations in the field of oil and gas:

a. Perpu No. 44/PRP/1960 on Oil and Gas Mining.
b. Law No. 8/1971 on the Establishment of Pertamina.
c. Law No. 22 of 2001 on Oil and Gas.

Although both are products of national legislation, there are differences in terms of the politics of law in their formation and the purpose for which the law is formed. Perpu No. 44/PRP/1960 is the mandate of the provisions of Article 33 of the 1945 Constitution which take over all oil and gas sovereignty in Indonesia completely from the hands of foreign oil and gas companies [7]. Foreign Oil and Gas Company that used to be concession holder based on *Indische Mijnwet* changed its status to Oil and Gas Contractor. It is stated in the explanation of the Law where it is stated that by referring to Article 33 paragraph (3) of the 1945 Constitution, the Indonesian people gives power to the State of the Republic of Indonesia to regulate, maintain and use the national wealth as well as possible in order to achieve a fair and prosperous Indonesian society. It is also stated that the authority of the state to control includes control and exploitation of oil and gas extracted materials. The business is further carried out by the State Company (PN) in this case is the State Oil Mining Company of Indonesia (PN. Pertamin) as the Mining Power that binds the agreement with oil and gas company (Oil and Gas Contractor). As one example is the Agreement/Contract of Oil and Gas (*Contract of Work*) signed by PN. Pertamin with PT. Caltex Pacific Indonesia on September 25, 1963. In the terms of the agreement, it is stated unequivocally that:

a. All Oil and Gas resources contained in the territory of Indonesia are national assets under the control of the state.
b. All of these Oil and Gas resources are important branches of life for the lives of many people and only controlled by the State and run by state companies [8].

Then in 1971, law No. 8 of 1971 on the Establishment of State Oil and Gas Mining Company was issued. The soul in this Law is still aligned and harmony with the soul of Article 33 of the Constitution of 1945 and Perpu No. 44/PRP/1960. In Law No. 8 of 1971, the concept of oil and gas agreement regime was established "Production Sharing Contract/PSC" (Production Sharing Contract of Oil and Gas). This legislation is also in line with the spirit of Law No. 5 of 1960 on Agrarian Principles [9] and Perpu No. 44/PRP/1960 [10], because all assets (Equipment, Facilities and land areas acquired by Foreign Contractors prior to Perpu No. 44/PRP/1960 and Law No. 8 of 1971 automatically become state-owned (State-Owned Goods) and managed by Pertamina. The authority over the management of oil and gas operations and the domination of foreign contractors is also reduced from before because all control of oil and

gas management is in the hands of Pertamina. These laws and regulations were still in effect until 2001 [11].

In 1997-1998, there was an economic catastrophe in the form of a monetary crisis, at which time the Government asked for assistance from the IMF. In return for this assistance, the IMF has intervened politically on changes to laws and regulations in Indonesia, one of which is the Law No. 22/2001 on Natural Oil and Gas, that is Law No. 22 of 2001 [12]. Unlike the previous Oil and Gas Law, the Law No. 22 of 2001 is more liberal. In this legislation there is a separation of upstream with downstream oil and gas. The full authority and sovereignty of national oil and gas began to diminish with the establishment of a Regulatory Body (Downstream Oil and Gas Regulatory Agency/BPH Migas) and the Oil and Gas Implementing Agency (Upstream Oil and Gas Business Activities/BPH Migas). The authority owned by the Agency is very different from the authority given to Pertamina in the past, the authority owned by the Oil and Gas Implementing Agency is only partial. Therefore, some oil and gas activists conduct *Judicial Review* to the Constitutional Court related to the Oil and Gas Implementing Agency. On November 13, 2012, the Constitutional Court issued a ruling No. 36/PUU-X/2012 on The Testing of Law No. 22 of 2001 which states that it removes the Oil and Gas Implementing Agency because it is contrary to the Constitution of 1945 and has no binding legal force [13]. The Oil and Gas Implementing Agency as a representation of the State has degraded the meaning of the right to control of the State. The initial concept of the Oil and Gas Implementing Agency was to separate the regulatory bodies from the entities conducting business, the two functions were previously carried out by Pertamina based on Law No. 8 of 1971. The existence of oil and gas implementing agency for the government is intended so that the Government is not directly faced with oil and gas business actors.

The construction of this relationship is not in accordance with the provisions of Article 33 of the 1945 Constitution which specifies that the state has the right to control the branches of production that are important to the state and that control the lives of the people and the earth, water, and natural wealth contained therein, and used for the greater prosperity of the people. The right to control the country gave birth to the authority of the state as a mandate of the Constitution to make policies (*beleid*), management (*bestuursdaad*), arrangements (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for the purpose of the greater prosperity of the people. The authority of the state is constitutional if used for the greater prosperity of the people [14].

Based on the Constitution, the form of state control is classified into several levels as follows:

a. The first and foremost level lies with the state by directly managing oil and gas.
b. The second level is the state making policies and managing state control.
c. The third level is the state carrying out the function of regulation and supervision [15].

However, Law No. 22 of 2001 constructs the Oil and Gas Implementing Agency as a government organ only performs the function of controlling and supervising oil and gas management while oil and gas management directly in the upstream sector is carried out by state-owned enterprises and non-state-owned/private enterprises based on the principle of fair, efficient, and transparent business competition. The government then issued Presidential Regulation No. 95 of 2012 concerning the Transfer and Implementation of Duties and Functions of Upstream Oil and Gas Business Activities, to prevent the vacuum of the rules and provide regulation of upstream oil and gas business after the Oil and Gas Implementing Agency is dissolved by the Constitutional Court and returns all functions of the Oil and Gas Implementing Agency to the Ministry of Mineral Resources Energy (ESDM) [16]. The authority is currently carried out by the Special Task Force for Upstream Oil and Gas Business Activities/SKK Migas

[17]. Apart from the upstream sector above, before the enactment of Law No. 22 of 2001, for the distribution of subsidized fuel/PSO (*Public Service Obligation*) in the downstream sector carried out by Pertamina, but after Law No. 2 of 2001 there were very crucial changes, one of which was the appointment of several private companies (PT. Petronas Niaga Indonesia, PT. Surya Parna Niaga and PT. AKR Korporindo) together with PT. Pertamina (Persero) to distribute subsidized fuel/PSO by BPH Migas in 2011. This is also added to the opening of distribution channels and sales of Non-PSO BBM in Indonesia to private parties. For information, besides Pertamina, there are currently several private companies that have business activities at Public Fuel Filling Stations (SPBU) in Indonesia, including Total, Shell, AKR, the Implementing Agency and so on.

The foregoing proves that since the enactment of Law No. 22 of 2001, oil and gas policies in Indonesia in the downstream oil and gas sector have also become more liberal because they gradually include the role of the private sector in fuel distribution activities for both subsidized and non-subsidized fuel [18].

Table 2. Comparison of Legislation in the Oil and Gas (Migas) Sector

Comparison	***Indische Mijnwet***	**UU No. 44/PRP/1960**	**UU No. 8 of 1971**	**UU No. 22 of 2001**
Period	1899 to 1950	1960 to 1971	1971 to 2001	2001- Nowadays
Content	Regulations related to Mining	Regulations related to Oil and Gas Mining	Establishment of Pertamina	Regulations related to Oil and Gas
Regime of Oil and Gas	Concession	Consists of 2 (two) periods: a. Contract of Work (1963 to 1983) b. Production Sharing Contract (1983 to 2001)	Production Sharing Contract with Cost Recovery Scheme (refers to the Law No. 44/PRP/1960	Production Sharing Contract with Schematic: a. Cost Recovery b. Gross Split
The parties	a. Country: Concessionaire b. Oil and Gas Companies: Concession Holders	Consists of 2 (two) periods: 1. Contract of Work Period: a. Country b. State Company/PN PERTAMIN: Mining Authority c. Oil and Gas Companies: Oil and Gas Contractors 2. Period of PSC: a. Country b. PERTAMINA as Mining Authority c. Oil and Gas Contractors	a. Country b. PERTAMINA as Mining Authority c. Oil and Gas Contractors	a. Country b. Oil and Gas Implementing Agency is then continued by SKK Migas c. Oil and Gas Contractors
Subject of Oil and Gas Legal Entities	Divided into two: a. Dutch Oil and Gas Company	Must be incorporated in Indonesia	Must be incorporated in Indonesia	Must be incorporated in Indonesia

	b. Non-Dutch Oil and Gas Company (a/l, STANVAC, BP)			
Operations Management of Oil and Gas	Management of business and ownership of the production of excavated materials/minerals are entirely in the hands of Mining Concession holders	Management of petroleum operations is in the hands of Oil and Gas Contractors	The management of oil and gas business is in the hands of the Mining Power (PERTAMINA) as a representation of the state.	Management of oil and gas business is in the hands of regulators (Oil and Gas Implementing Agency) and is implemented partially only performs the function of control and supervision over oil and gas management while oil and gas management directly in the upstream sector is carried out by state-owned enterprises and non-state-owned enterprises
Status of Oil and Gas Assets (Goods, Equipment, Facilities and Land Areas)	All Assets (Goods, Equipment, Facilities and Land) owned by Oil and Gas Contractors	a. During the period of the Contract: All Assets (Goods, Equipment and Facilities) owned by oil and gas contractors. For land objects to belong to the state b. PSC (Production Sharing Contract): All assets become State assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme	PSC (Production Sharing Contract): All assets become state assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme	PSC (Production Sharing Contract): All assets become state assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme
Profit Sharing	The state only receives mining fees of 0.25 guilders per hectare every year as well as a royalty of 46% of gross proceeds (Article 35-IM 1989)	Consists of two periods: a. In the Period of Contract: Distribution of oil and gas sales results b. In the PSC Period: Profit is taken from the remaining production with a distribution of 85% for the country and 15% for Oil and Gas Contractors	Profits taken from Remaining production with a distribution of 85% for the country and 15% for oil and gas contractors	Profit taken from the remaining production with a distribution of 85% for the country and 15% for oil and gas contractors

Source: Susetio [6].

2.2 Efforts to Overcome Disharmony of Laws and Regulations in the Oil and Gas Sector

According to AA Oka Mahendra, stated that in the event of disharmony in laws and regulations, there are three ways to overcome these problems, namely the following:

a. Amend/revoke certain articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them.
b. Apply for a material test to the judiciary as follows: 1) For the testing of the law against the Constitution to the Constitutional Court. 2) For the testing of legislation under the law against the law to the Supreme Court.
c. Apply the principle of law/legal doctrine of legislation, namely: 1) *Lex Superior Derogat Legi Inferiori* (Higher legislation overrides the lower legislation). 2) *Lex Specialis Derogat Legi Generalis* (Legislation that specifically overrides the general legislation). 3) *Lex Posterior Derogat Legi Priori* (The new legislation overrides the old legislation) [19].

In addition to the above steps, prevention of disharmony legislation among others can be done through harmonization of the draft legislation. The drafting of a harmonized bill can be carried out at the stage of drafting a national legislation program within the government or in the House of Representatives [17]. Harmonization is carried out by the Minister of Law and Human Rights with other Ministers or leaders of non-ministerial government institutions drafting plans for the establishment of draft laws and leaders of other relevant government agencies as well as with the Legislature of the House of Representatives [15].

Until today, Indonesia has no plans to amend the Law No. 22 of 2001. Indeed, in the last two years a draft of the Oil and Gas Law has been circulating, but it has never been realized. In fact, on June 12, 2020, The President Joko Widodo's government has issued a privatization policy of PT. Pertamina (Persero) in the form of separation of Holding and Sub Holding which is increasingly out of the spirit of Article 33 of the 1945 Constitution. According to the authors, a systemic step is needed to harmonize national law which is based on the paradigm of Pancasila and the 1945 Constitution which creates a system with two fundamental principles, the principle of democracy and the principle of a rule of law which is idealized to create a national legal system with three components, namely legal substance, legal structure with its institutions and legal culture.

3 Conclusion

The character of legislation in the sector of oil and gas management in the perspective of Article 33 of the 1945 Constitution starting from *Indische Mijnwet* Stb 1899 No. 214 Jo. Stb 1906 No. 434 on Mining Concessions, Law No. 44/PRP/1960 on Oil and Gas Mining, Law No. 8 of 1971 on the Establishment of Pertamina and Law No. 22 of 2001 on Oil and Gas dynamics ranging from those in accordance with the soul of Article 33 of the 1945 Constitution to those that do not. The discrepancy is one of the causes of international pressure and there is still a global interest in natural resources management of oil and gas in Indonesia. One example is the failure to realize the new draft oil and gas law by the House of Representatives and the Government. In the Draft Oil and Gas Law, all oil and gas management, both upstream and downstream is integrated into a Special State-Owned Enterprise, this agency is directly responsible to the President. Possible efforts in addressing the problem of disharmony between legislation and non-conformity with the 1945 Constitution are: 1.) Amend/revoke certain

articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them. 2.) Apply for a material test to the Judiciary (judicial review). 3.) Apply the principle of laws of legislation.

3.1 Suggestion

To harmonize laws and regulations in the sector of oil and gas management and to be in line with the spirit of Article 33 of the 1945 Constitution, it can be done by including it in the Omnibus Law. Omnibus law is a method in a legal drafting which is more progressive and effective to harmonize so many laws and regulation in the sector of oil and gas management to be in line with the spirit of constitution.

References

[1] I. D. Qurbani, "Politik Hukum Pengelolaan Minyak dan Gas Bumi di Indonesia," *Arena Huk.*, vol. 5, no. 2, pp. 115–121, 2012.

[2] F. Kurniawan, "Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak," *Perspektif*, vol. 18, no. 2, pp. 74–85, 2013.

[3] Pemerintah Republik Indonesia, *Undang-Undang No. 8 Tahun 1971 tentang Perusahaan Pertambangan Minyak dan Gas Bumi Negara*. 1971.

[4] T. H. Simatupang, "Disharmoni Peraturan Perundang-Undangan Di Bidang Pengawasan Perwalian di Indonesia (Lintas Sejarah Dari Hukum Kolonial Ke Hukum Nasional)," *J. Penelit. Huk. JURE*, vol. 20, no. 2, pp. 221–232, 2020.

[5] A. F. Sidharta, *Hukum dan Logika*. Bandung: Alumni, 2016.

[6] W. Susetio, "Disharmoni peraturan perundang-undangan di bidang agraria," *Lex Jurnalica*, vol. 10, no. 3, p. 18020, 2013.

[7] S. Sulaiman, "Rekonstruksi Hukum Minyak dan Gas Bumi yang Berkeadilan di Indonesia," *Kanun J. Ilmu Huk.*, vol. 18, no. 2, pp. 219–233, 2016.

[8] G. P. Wicaksono, "Kelembagaan Pengelola Minyak Dan Gas Bumi Pasca Putusan Mahkamah Konstitusi (Studi Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012)," *Yuridika*, vol. 30, no. 1, pp. 108–136, 2015.

[9] Pemerintah Republik Indonesia, *Undang-Undang Pokok Agraria No. 5 Tahun 1960*. 1960.

[10] Pemerintah Republik Indonesia, *Peraturan Pemerintah Pengganti Undang-Undang (Perpu) No. 44 Tahun 1960 tentang Pertambangan Minyak Dan Gas Bumi*. 1960.

[11] M. I. F. Putuhena, "Politik Hukum Pengelolaan Hulu Migas Pasca Putusan Mahkamah Konstitusi," *J. Rechts Vinding Media Pembin. Huk. Nas.*, vol. 4, no. 2, pp. 237–253, 2015.

[12] H. S. Asnawi, "Penafsiran Mahkamah Konstitusi terhadap Undang-Undang Migas," *J. Yudisial*, vol. 9, no. 3, pp. 259–279, 2016.

[13] Mahkamah Konstitusi Republik Indonesia, *Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012 Terhadap Peninjauan Kembali Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi*. 2012.

[14] I. S. Chandranegara, "Desain konstitusional hukum migas untuk sebesar-besarnya kemakmuran rakyat," *J. Konstitusi*, vol. 14, no. 1, pp. 45–80, 2017.

[15] K. G. Slamet, "Harmonisasi Hukum dalam Perspektif Perundang-Undangan," *J. Huk. Ius Quia Iustum*, vol. 11, no. 27, pp. 82–96, 2004.

[16] Pemerintah Republik Indonesia, *PERPRES No. 95 Tahun 2012 tentang Pengalihan Pelaksanaan Tugas dan Fungsi Kegiatan Usaha Hulu Minyak dan Gas Bumi*. 2012.

[17] A. R. M. Umar, "Ekonomi Politik Perminyakan Indonesia: Analisis Kebijakan Liberalisasi Sektor Hulu Migas Indonesia pasca-1998," *J. Ilmu Sos. dan Ilmu Polit.*, vol. 16, no. 1, pp. 45–61, 2012.

[18] Pemerintah Republik Indonesia, *Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi*. 2001.

[19] A. A. O. Mahendra, "Harmonisasi peraturan perundang-undangan," *Jakarta. Huk. Tata Negara*

dan Peratur. *Perundang-undangan*, vol. 29, 2010.

CERTIFICATE OF PARTICIPATION

This Certificate Goes To

Suparto

as **PRESENTER** in 5th International Conference on Islamic Law in Indonesia

"The Role of Islamic Laws and Islamic Institution in Dealing with Global Disaster "

on November 17th-18th 2020.

HERU SUSETYO, S.H., LL.M, M.Si, Ph.D
Ketua Lembaga Kajian Islam dan Hukum Islam
Fakultas Hukum Universitas Indonesia

Dr. Edmon Makarim, S.Kom., S.H., LL.M.
Dekan Fakultas Hukum Univeristas Indoensia

Dr. Wirdyaningsih, S.H,M.H
Ketua Asosiasi Dosen Hukum Islam Indonesia