

Implementasi buku III KUH perdata tentang perikatan dalam kontrak bagi hasil (production sharing contract) minyak dan gas bumi di Indonesia = The implementation of the 3rd book of Indonesian Civil code about commitment in production sharing contract oil and natural gas in Indonesia

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Abstrak

Kegiatan usaha minyak dan gas bumi mempunyai peranan penting dalam perekonomian Indonesia dan pengusahaannya harus berdasarkan pada Pasal 33 ayat (2) dan (3) Undang-Undang Dasar 1945. Usaha migas di Indonesia dilakukan melalui kerja sama antara pemerintah dan kontraktor dengan bentuk Kontrak Bagi Hasil. Namun, kebijakan migas dirasa belum optimal dalam menjamin kepentingan para pihak yang terlibat di dalam kontrak. Penelitian ini bertujuan untuk menjelaskan ketentuan-ketentuan yang terdapat di dalam Kontrak Bagi Hasil dilihat dari aturan-aturan umum buku III KUH Perdata. Penelitian ini merupakan penelitian dengan pendekatan kualitatif.

Hasil penelitian menunjukkan bahwa besarnya pembagian hasil antara pemerintah dan kontraktor didasarkan pada asas kebebasan berkontrak namun, dengan tetap memperhatikan ketentuan yang terdapat di dalam Undang-Undang Migas. Selain itu, pelaksanaan cost recovery di Indonesia dalam Kontrak Bagi Hasil belum sepenuhnya menampung asas keadilan bagi para pihak yang berkontrak dikarenakan tidak terdapatnya batasan atas pengembalian biaya produksi yang dapat dibebankan kepada pemerintah.

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Business activities of oil and natural gas has an important role in the economy of Indonesia and its execution be based on Article 33 paragraph (2) and (3) of the Constitution of 1945. Oil and gas business in Indonesia is carried out through cooperation between government and contractors with the form of a Production Sharing Contract. However, oil and gas policy deemed not optimal in ensuring the interests of the parties involved in the contract. This research aims to explain the provisions contained in the Production Sharing Contract visits from the general rules of The 3rd Book of Indonesian civil code. The research is held with qualitative approach.

The results showed that the amount of sharing between the government and the contractor is based on the principle of freedom of contract but, by taking into account the provisions contained in the Oil and Gas Law, besides that the implementation of cost recovery in Indonesia in the Production Sharing Contract is not fully accommodate the principle of fairness to the parties that contract because there is no restriction on the return of the production costs can be charged to the government.