

Analisis Yuridis Posisi Negara (Pemerintah) Dalam Kontrak Production Sharing Migas Menurut KUHPER Dan Undang-Undang Migas No. 22 Tahun 2001 Juncto Pasal 33 ayat (3) UUD 1945 = Analysis Juridical The Position of The State (Government) In Production Sharing Contract According to The Civil Code and The Law No. 22/2001 Concerning Natural Oil and Gas In Conjunction Article 33 (3) The 1945 Constitution

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Abstrak

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Undang-Undang Migas Tahun 2001 menjelaskan Negara (Pemerintah) turut terlibat dalam penyelenggaraan kegiatan usaha hulu migas. Negara diberikan kewenangan mengusahakan hulu migas dalam bentuk Kontrak Production Sharing (KPS) yang didukung filosofis amanat Pasal 33 ayat (3) UUD 1945. Metode penelitian ini adalah penelitian hukum normatif. Hasil penelitian menunjukkan posisi Negara (Pemerintah) dalam KPS menurut analisis KUHPER adalah seimbang. Negara (Pemerintah) menurut KUHPER diakui sebagai subjek hukum perdata yang dapat turut serta dalam hubungan privat. Adanya keseimbangan posisi berkontrak antara Negara (Pemerintah) dengan kontraktor menurut analisis KUHPER karena KPS tidak bisa terlepas dari syarat subjektif sahnya perjanjian menurut Pasal 1320 KUHPER. Walaupun konsep KPS dikembangkan dari perjanjian bagi hasil menurut hukum adat secara nasional untuk kegiatan usaha hulu migas dari hukum perjanjian dengan pemikiran asas kebebasan berkontrak Pasal 1338 ayat (1) KUHPER tetapi ketika Negara (Pemerintah) hendak ikut terlibat menjadi pengusaha dalam usaha hulu migas maka asas kebebasan berkontrak tidak sepenuhnya diberlakukan bagi Negara (Pemerintah) karena prosedur dan pembuatan KPS tidak bisa lepas dari aspek kepentingan publik. Sedangkan jika melihat posisi Negara (Pemerintah) dalam KPS menurut Undang-Undang Migas No. 22 Tahun 2001 adalah tidak seimbang karena KPS bersifat khusus yang persyaratan formalitasnya tidak bisa lepas dari amanat Pasal 33 ayat (3) UUD 1945 dan karena objek yang diperjanjikan adalah bagi hasil produksi migas. Pembuatan KPS didahulukan pengaturannya secara khusus karena melekatnya tanggungjawab Negara (Pemerintah) terhadap perusahaan aset publik. Negara (Pemerintah) juga memiliki kapasitas untuk menandatangani KPS karena Negara (Pemerintah) merupakan subjek hukum yang dapat mengembang hak dan kewajiban sama seperti halnya manusia. Negara (Pemerintah) dapat menutup KPS dimana syarat unsur kapasitasnya diukur dari kewenangannya yang melekat pada pengurus yang mewakili badan hukum tersebut. Kepentingan tindakan privat Negara (Pemerintah) diwakili oleh alat-alat atau organ pengurusnya yang mempunyai kewenangan sebagaimana diatur dalam peraturan perundang-undangan. Apabila pengurus yang mewakili kepentingan Negara itu mempunyai kewenangan untuk menandatangani KPS maka Negara mempunyai kapasitas untuk membuat dan menandatangani kontrak.

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ABSTRACT

The Law No. 22/2001 Concerning Natural Oil And Gas defines the State (Government) involved in the operation of oil and gas upstream activities. The State has the authority to exploit the oil and gas in the form

of Production Sharing Contract (PSC) which is based by the philosophical mandate of Article 33 (3) The 1945 Constitution. The research method of this study is using a normative legal research. The results of this study indicates that the position of the State (Government) in the PSC by analysing according to the Civil Code has an equal standing. The State (Government) according to the Civil Code is approved by the law as a legal entity and could be bound in a legal relationship. Indicating there is an equal standing between the State (Government) and the contractor in the contract according to Civil Code is wherefore the PSC obliged to fulfill the subjective requirements for the validity of contract under Article 1320 Civil Code. Although the PSC concept was evolved from the sharing agreement under customary law nationally for the upstream oil and gas activities pursuant to the contract law by the principle of freedom of contract Article 1338 (1) Civil Code however when the State (Government) would perform its role as entrepreneur in the upstream oil and gas activities, the principle of the freedom of contract is not fully applicable to the State (Government) since the PSC has also within the aspects of public interest. Whereas the position of the State (Government) in PSC according to the Law No. 22/2001 has not an equal standing since of the special nature of PSC requirements prohibited to contravene the mandate of Article 33 (3) The 1945 Constitution. The PSC's substance is specifically regulated by reason of the State (Government) bear of the responsibility over natural resources. The State (Government) has the capacity to sign the PSC by reason of the State (Government) is also a legal subject has the same rights and obligations as well as natural person. The State (Government) could close the PSC where the State's legal capacity is measured from the public official authorization in representing the State's private acts wherein stipulated accordance to the legislations. When the public official has the authority to represent the State's private act therefore the State holds the legal capacity to enter and bound in a contract.

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