

## THE GOVERNMENT RESPONSIBILITY FOR OIL AND GAS MANAGEMENT BASED ON CONSTITUTION OF INDONESIA

Ardiansah\*, Eddy Asnawi, Sudi Fahmi

Universitas Lancang Kuning

Jl. Yos Sudarso Km. 8 Rumbai Pekanbaru, Riau, Indonesia, 28266

\*email: [ardiansah@unilak.ac.id](mailto:ardiansah@unilak.ac.id).

Syaimak Ismail

Universiti Teknologi MARA (UiTM)

Jalan Ilmu 1/1, 40450 Shah Alam, Selangor, Malaysia

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**Abstract:** On September 3, 2022, fuel prices were raised by President Joko Widodo, with advocates arguing that the increase is necessary to safeguard the State Revenue and Expenditure Budget. Dissenting groups contended the hike was inappropriate, citing a dissonance between the identified problem and the proposed solution. Therefore, this study aims to analyze the legal aspects, policies and the role of the government in ensuring the welfare of Indonesian citizens through oil and gas management. Using a normative legal study methodology, the study used both statutory and analytical methods. The results showed a discrepancy between the increase in fuel price and the principles outlined in Article 33 and the Preamble of the 1945 Constitution of the Republic of Indonesia. The government, as the representative of the state, holds the authority to manage the mining sector's economy, aiming to maximize prosperity for citizens. Adhering to the ideology of a welfare state, the responsibility to provide basic social needs and foster prosperity is assigned to the government.

**Keywords:** Responsibility, Oil and Gas Management, Indonesian Citizens.

**Abstrak:** Pada tanggal 3 September 2022, harga bahan bakar dinaikkan oleh Presiden Joko Widodo, dan para pendukungnya berpendapat bahwa kenaikan tersebut diperlukan untuk menjaga Anggaran Pendapatan dan Belanja Negara. Kelompok yang berbeda pendapat berpendapat bahwa kenaikan tersebut tidak tepat, dengan alasan adanya disonansi antara masalah yang teridentifikasi dan solusi yang diusulkan. Oleh karena itu, penelitian ini bertujuan untuk menganalisis aspek hukum, kebijakan dan peran pemerintah dalam menjamin kesejahteraan masyarakat Indonesia melalui pengelolaan migas. Dengan menggunakan metodologi kajian hukum normatif, penelitian ini menggunakan metode perundang-undangan dan analitis. Hasil penelitian menunjukkan adanya kesenjangan antara kenaikan harga BBM dengan prinsip yang tertuang dalam Pasal 33 dan Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Pemerintah sebagai wakil negara mempunyai kewenangan mengelola perekonomian sektor pertambangan dengan tujuan untuk sebesar-besarnya kesejahteraan masyarakat. Menganut ideologi negara kesejahteraan, tanggung jawab untuk menyediakan kebutuhan dasar sosial dan menumbuhkan kesejahteraan berada di tangan pemerintah.

**Kata Kunci:** Tanggung Jawab, Pengelolaan Migas, Warga Negara Indonesia

## Introduction

Fuel prices in Indonesia are being raised by the government in response to the turmoil in the global oil market. On Saturday, September 3, 2022, President Joko Widodo announced an increase in the prices of Pertalite, Diesel, and Pertamina fuel oil. The President stresses that sustaining domestic fuel prices through subsidies from the State Budget (APBN) is no longer feasible.<sup>1</sup>

According to the government's perspective, the upsurge in fuel prices is considered unavoidable due to several factors. Specifically, fuel subsidies and compensation lack precision, benefiting many individuals who can afford these resources. The purpose of the price hike is to ease the additional burden of subsidies and compensation, transforming it into direct assistance for underprivileged and vulnerable communities.<sup>2</sup>

Economic Observer Wisnu Wibowo from Airlangga University Surabaya supports the President's decision, perceiving it as a fitting measure to safeguard the State Budget. Adjusting fuel prices is necessary to prevent

the collapse of the fiscal system, presenting it as an alternative to rescue the APBN. Wisnu Wibowo considers this as an opportune moment to enhance the allocation of fuel subsidies.<sup>3</sup>

Executive Director of the Reforminer Institute, Komaidi Notonegoro supports the perception that parties opposing the increase in fuel prices are essentially advocating for the wealthy. This stance stems from the dominance of well-off individuals among users of Pertalite fuel. Statistics show that 70% of subsidized fuel consumers own four-wheeled vehicles, with only 30% using two-wheelers.<sup>4</sup>

Economic Observers at Gadjah Mada University express divergent views. Fahmi Radhi opines that the decision to increase fuel prices represents an incompatibility between the identified problem and the proposed solution. It is argued by this observer that the root problem of fuel dependency will not be addressed, connecting it to treating tinea versicolor when the target is to cure coughs. Fahmi Radhi states that the real problem lies in the inefficient targeting of 70% of fuel

<sup>1</sup> The Jakarta Post, 'Government Hikes Fuel Prices to Rein in Ballooning Subsidies', *The Jakarta Post*, 3 September 2022, <https://www.thejakartapost.com/indonesia/2022/09/03/government-hikes-fuel-prices-to-rein-in-ballooning-subsidies.html>.

<sup>2</sup> antaranews.com, 'Fuel Price Increase Is the Government's Last Option: Jokowi', *Antara News*, 3 September 2022, <https://en.antaranews.com/news/247897/fuel-price-increase-is-the-governments-last-option-jokowi>.

<sup>3</sup> Pikiran Rakyat, 'Rakyat Menjerit Tolak Harga BBM Naik, Pakar Ekonomi: Keputusan Pemerintah

Sudah Tepat - *Www.Pikiran-Rakyat.Com*', *Pikiran Rakyat*, 7 September 2022, <https://www.pikiran-rakyat.com/nasional/pr-015456595/rakyat-menjerit-tolak-harga-bbm-naik-pakar-ekonomi-keputusan-pemerintah-sudah-tepat>.

<sup>4</sup> CNN, 'Pakar: Menolak Harga BBM Naik Sama Saja Membela Orang Mampu', *CNN Indonesia*, 14 September 2022, <https://www.cnnindonesia.com/ekonomi/20220914162237-90-847852/pakar-menolak-harga-bbm-naik-sama-saja-membela-orang-mampu>.

distribution. According to Radhi, the government can make improvements by minimizing subsidies without the necessity of raising fuel prices.<sup>5</sup>

Managing Director of Political Economy and Policy Studies, Anthony Budiawan, supports the perspective that students, labourers, and online transportation workers should reject the fuel price increase. Reinforcing that the surplus APBN should serve as a tool for distributing justice and prosperity, rather than being wielded for political interests. Budiawan advocates for energy subsidies benefiting all citizens in light of soaring fuel prices.<sup>6</sup>

Despite the current debate surrounding the fuel price increase, Chandra Purna Itrawan of the Pelita Umat Legal Aid Institute submitted a material review request to the Supreme Court regarding the Minister of Energy and Mineral Resources Decree Number 218.K/MG.01/MEM.M/2022, dated September 19, 2022. Chandra Purna Itrawan argues that the minister's decision contradicts Article 3 letter f of Law Number 30 of 2007 concerning Energy. Purna further state the rise in fuel price presents a significant challenge, contributing to increased manufacturing costs, transportation expenses, and reduced production volumes, leading to a decline in job opportunities and heightened poverty.

Itrawan states the need for energy management to prioritize fair and equitable welfare for Indonesian citizens.<sup>7</sup>

Several publications have delved into the government's responsibility in oil and gas management, offering diverse perspectives. Zulkarnain argues that the current method, driven by business and foreign investment companies, primarily benefits these entities without contributing to the welfare of the Indonesian citizens.<sup>8</sup>

Anshar, Juajir Sumardi, S. M. Noor, and Irwansyah contend that despite Indonesia's abundant oil and gas wealth, the country struggles to assert itself as a sovereign entity with full control over oil and gas management.<sup>9</sup> Indah Cahyani and Ekawestri Prajwalita Widiati report that while the government has implemented regulations and policies in oil and gas sector, inconsistencies and norms ambiguities led to conflicts of authority among managing institutions.<sup>10</sup>

Ibnu Sina Chandranegara and Zainal Arifin Hoesein criticize Law Number 22 of 2001 as overly liberal, attributing it to stagnation in oil and gas industry and the decline of strategic industries in terms of oil extraction, exploration, exploitation, and production.<sup>11</sup> Support and Admiral state the

<sup>5</sup> BBC News Indonesia, 'Harga BBM subsidi naik, ekonom: "Kebijakan yang salah sasaran dan cari gampang saja"', *BBC News Indonesia*, 5 September 2022, <https://www.bbc.com/indonesia/articles/cmjdd4gjddzo>.

<sup>6</sup> Safari Sidakaton, 'Tolak Kenaikan Harga BBM, Aktivist Senior Dan Para Pakar Dukung Gerakan Mahasiswa - Harian Terbit', *Harian Terbit*, 15 September 2022, <https://www.harianterbit.com/nasional/pr-2744759988/tolak-kenaikan-harga-bbm-aktivis-senior-dan-para-pakar-dukung-gerakan-mahasiswa>.

<sup>7</sup> Andri Saubani, 'Alasan LBH Pelita Umat Gugat Kenaikan Harga BBM: Masyarakat Makin Terpuruk', *Republika Online*, 19 September 2022, <https://republika.co.id/share/riga0i409>.

<sup>8</sup> Zulkarnain, 'State Responsibilities For The Management Of Oil And Gas In The Border Region', *Tanduko Law Review* 5, no. 1 (2020): 116.

<sup>9</sup> Anshar et al., 'Sovereignty of Oil and Gas Management in Indonesia: An International Law Perspective', *Journal of Law, Policy and Globalization* 71 (2018).

<sup>10</sup> Indah Cahyani and Ekawestri Prajwalita Widiati, 'Unravelling Incoherence Norms of Indonesia's Energy Security Regulations', in *Proceedings of the 3rd International Conference on Social Sciences (ICSS)*, vol. 473 (Atlantis Press, 2020), 704, <http://creativecommons.org/licenses/by-nc/4.0/>.

<sup>11</sup> Ibnu Sina Chandranegara and Zainal Arifin Hoesein, 'Policy Concept and Designs of Oil and Gas Governance in Indonesia's Oil Companies',

necessity for oil and gas management to correlate with the 1945 Constitution. Proposing an amendment or revoking specific articles through authorized institutions, initiating judicial reviews, and applying legal principles of statutory regulations to address inconsistencies.<sup>12</sup>

Nurharsyah Hanafie, Hasnawi Haris, Herman, and Andi Aco Agus state the constitutional importance of the state's right to control natural oil and gas resources for the prosperity and welfare of Indonesian citizens. Asserting that this control significantly contributes to the State Revenue and Expenditure Budget, national development, and the livelihoods of the community.<sup>13</sup> Fatma Ulfatun Najicha states the policy developments in oil and gas management, cautioning against liberalization schemes that could lead to social injustice and impede the achievement of welfare of citizen.<sup>14</sup> Despite various studies, there is a gap in study specifically exploring the government's responsibility in managing oil and gas based on the Indonesian Constitution. It is important to acknowledge that constitution mandates the government to provide basic needs and foster prosperity for Indonesian citizens.

Observing the polemic over the increase in oil and gas prices, the critical questions evolve for further exploration. What are the legal aspects of Indonesian oil and gas regulations? What is the state's policy on oil and gas management? How have oil and gas

management policies evolved during the Old, New, and Reformation Orders? What responsibility should the government bear in managing oil and gas for the welfare of the Indonesian Citizens? Therefore, this study aims to address some of these questions, recognizing the need for in-depth exploration in the areas.

## Method

This study was classified as normative legal study<sup>15</sup> including the adoption of both statutory<sup>16</sup> and analytical methodologies.<sup>17</sup> The study used secondary data, specifically the primary and secondary legal materials. Subsequent to the data collection phase, a qualitative analysis was used to address the identified study questions.

## Result and Discussion

### *Legal Aspects of Indonesian Oil and Gas Regulations*

The evolution of regulations governing Indonesian oil and gas management commenced with the enactment of Law Number 44 Prp of 1960 concerning Oil and Gas Mining.<sup>18</sup> This legislation asserted the important role of petroleum and natural gas in fostering a just and prosperous society, showing their significance compared to other minerals. Recognizing Earth's substantial role in production and its direct and indirect impact on the livelihoods of the majority, the

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*International Journal of Energy Economics and Policy* 9, no. 3 (2019): 21.

<sup>12</sup> Suparto and Admiral, 'Character and Disharmony of Legislation Oil and Gas Sector in Perspective of Article 33 of the 1945 Constitution', in *Proceedings of the 2nd the International Conference on Law, Economics, Governance* (International Conference on Law, Economics, Governance (ICOLEG), EAI, 2021).

<sup>13</sup> Nurharsyah Hanafie et al., 'Juridicity of Oil and Gas Management in Indonesia as State Control Right (HMN)', *Technium Social Sciences Journal* 50 (November 2023): 475.

<sup>14</sup> Fatma Ulfatun Najicha, 'Oil and Natural Gas Management Policy in Realizing Equal Energy in Indonesia', *Journal of Human Rights, Culture and Legal System* 1, no. 2 (30 July 2021).

<sup>15</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2011), 14.

<sup>16</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Grup, 2010), 96.

<sup>17</sup> Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia, 2005), 256.

<sup>18</sup> Najicha, 'Oil and Natural Gas Management Policy in Realizing Equal Energy in Indonesia', 72.

State asserted control over management of natural resources, particularly Oil and Gas.<sup>19</sup>

The state, with responsibility of determining distribution and controlling oil and fuel prices for public affordability, established Pertamina in 1957. The agency underwent several changes, as reflected in the Articles of Association dated 14 December 2015.<sup>20</sup> Following the enactment of Law Number 8 of 1971, Pertamina assumed comprehensive responsibility for managing oil and gas resources, including exploration, exploitation, production, processing, transportation, and sales.<sup>21</sup>

A thorough examination of the content of Law Number 44 Prp of 1960 concerning Oil and Gas Mining and Act Number 8 of 1971 concerning State Oil and Gas Mining Companies shows their constitution mandate, specifically in Article 33 of the 1945 Constitution.<sup>22</sup>

The necessity to revise regulations regarding oil and gas governance stemmed from various factors, including the outdated nature of existing policies that no longer correlate with the evolution of oil and natural gas mining businesses.<sup>23</sup> The antiquated

regulations were incongruent with technological advancements and the escalating national energy needs.<sup>24</sup> Furthermore, these regulations contributed to inefficiencies in Pertamina's performance, financial leaks, and the establishment of oil and gas monopoly, impeding the formation of a world-class national energy company capable of competing globally.<sup>25</sup>

The provisions outlined in Law Number 22 of 2001 addressed regulations pertaining to oil and natural gas mining. This new policy specifically targeted oil and gas mining managed by officially recognized business entities, such as Pertamina.<sup>26</sup> The enactment of Law Number 22 of 2001 led to a reduction of state sovereignty in contracts, placing the nation and contractors on more equal footing.<sup>27</sup>

The authority to carry out energy mining businesses was delegated by the government to the State Oil and Gas Mining Company, abbreviated as Pertamina. Consequently, Pertamina held the exclusive authority to

<sup>19</sup> Sabungan Sibarani, 'Analysis of State Control Over Natural Resources Oil and Gas (According to Law No. 22 of 2001 Concerning Oil and Gas)', *Brawijaya Law Journal* 5, no. 2 (30 October 2018): 221.

<sup>20</sup> Try Widiyono, 'Challenge of the Director of Pertamina in the Implementation of Corporate's Independence Principles and the Legal Doctrine Fiduciary Duty' (2018 International Conference on Energy and Mining Law (ICEML 2018), Atlantis Press, 2018), 338.

<sup>21</sup> Kasman Arifin and Dina Hidayat, 'Cost Recovery Analysis In Production Sharing Contract In Upstream Oil And Gas Industry (Study On Gas Upstream Industries Indonesia)', *Dinasti International Journal of Economics, Finance & Accounting* 1, no. 6 (3 February 2021): 1026.

<sup>22</sup> Sibarani, 'Analysis of State Control Over Natural Resources Oil and Gas (According to Law No. 22 of 2001 Concerning Oil and Gas)', 232.

<sup>23</sup> Julizar Idris, Abdul Hakim, and Bambang Santoso Haryono, 'Political Policy on Oil and Gas Law in the

Indonesian House of Representatives', *International Journal of Innovation* 11, no. 5 (2020): 681.

<sup>24</sup> B. F. Sihombing and Edy Lisdiyono, 'Governance and the Role of Legal Aspects in the Fuel Pricing in Indonesia', *International Journal of Energy Economics and Policy* 8, no. 3 (8 May 2018): 170.

<sup>25</sup> M. Ilham F. Putuhena, 'Putuhena, Politik Hukum Pengelolaan Hulu Migas Pasca Putusan Mahkamah Konstitusi', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 2 (31 August 2015): 246.

<sup>26</sup> R. Rahaditya and Agoes Dariyo, 'The Application of Law Number 22 of 2001 Concerning Oil and Natural Gas Against People's Oil Mining in the Village of Wonocolo, Kecamatan Kedewan, Bojonegoro, East Java' (International Conference on Economics, Business, Social, and Humanities (ICEBSH 2021), Atlantis Press, 2021), 1.

<sup>27</sup> Idris, Hakim, and Haryono, 'Political Policy on Oil and Gas Law in the Indonesian House of Representatives', 681.

undertake oil and gas mining activities,<sup>28</sup> granting the company extensive powers as outlined in this regulation.<sup>29</sup>

Upon critical examination, the practical implementation of Law Number 22 of 2001 was intricately connected to the Letter of Intent package from the International Monetary Fund (IMF) and the World Bank, which aimed to liberalize and deregulate various strategic sectors.<sup>30</sup> The existence of this law automatically diminished the role of Pertamina, a state-owned company and the sole authority for oil and gas mining in Indonesia.<sup>31</sup>

The implementation of Law Number 22 of 2001 garnered considerable attention. Given the law's inclination towards liberal economic constraints on the international oil and gas industry, Pertamina assumed a dominant role in the energy sector management. However, in terms of domestic sovereignty, management was not optimal due to external interventions dictating regulations in this sector.<sup>32</sup>

The enactment of Law Number 22 of 2001 regarding Oil and Gas also brought about changes in the liberalization of the energy business, which proved detrimental to Indonesia and beneficial to capitalists. This law faced multiple challenges, undergoing scrutiny before constitution Court, with

certain clauses being cancelled several times.<sup>33</sup>

Throughout the history of the founding of the Indonesian State, four laws regulated oil and gas governance, namely the Indische Mijwet of 1899 during the Dutch colonial period, Law Number 44 of 1960 during the Old Order government, Act Number 8 of 1971 effective in the New Order regime, and Law Number 22 of 2001 during the Reform Order era.<sup>34</sup>

### *Indonesian State Oil and Gas Management Policy*

Indonesia was an archipelagic country endowed with rich natural resources including substantial reserves of oil and gas, minerals, agricultural products, and plantations, attracting the interest of foreign investors to invest in the nation.<sup>35</sup> The country possessed both biological and non-living natural resources, meeting the diverse needs of its citizens.<sup>36</sup>

Oil and gas held strategic important as energy sources for global economies. Currently, Indonesia's energy supply has been predominantly fueled by petroleum. In 2005, oil accounted for about 50% of the country's total national energy needs, equivalent to approximately 764 million barrels, and an additional 20% were fulfilled

<sup>28</sup> M. Kholid Syeirazi, *Di Bawah Bendera Asing: Liberalisasi Industri Migas Di Indonesia* (Jakarta: LP3ES, 2009), 93.

<sup>29</sup> Rudi M. Simamora, *Hukum Minyak Dan Gas Bumi* (Jakarta: Jambatan, 2000), 93.

<sup>30</sup> Juli Panglima Saragih, *Sejarah Perminyakan Di Indonesia* (Jakarta: Aghrindo Abadi, 2010), 31.

<sup>31</sup> Syeirazi, *Di Bawah Bendera Asing: Liberalisasi Industri Migas Di Indonesia*, 62.

<sup>32</sup> Anshar et al., 'Sovereignty of Oil and Gas Management in Indonesia: An International Law Perspective', 154.

<sup>33</sup> Mochamad Adib Zain, 'Politics of Law on the State Control of Oil and Gas in Indonesia: Gas Liberalization and the Hesitancy of Constitutional

Court', *Journal of Indonesian Legal Studies* 1, no. 1 (2016).

<sup>34</sup> Anshar et al., 'Sovereignty of Oil and Gas Management in Indonesia: An International Law Perspective', 154.

<sup>35</sup> Siti Aisyah and Trias Dewi Renggani, 'Determinants Of Indonesia Non-Oil And Gas Exports To Non-Traditional Market', *International Journal of Economics, Business and Accounting Research (IJEBAAR)* 5, no. 3 (30 September 2021): 1136.

<sup>36</sup> Edy Lisdiyono, 'Excess of Natural Resources Exploitation on Health and Environment by Foreign Investors' (International Conference On Law, Economics, and Health (ICLEH 2022), Atlantis Press, 2023), 712-13.



by gas.<sup>37</sup> However, oil and gas markets have historically experienced periods of price volatility.<sup>38</sup> Recognizing their role in economic and sustainable development, the potential of oil and gas remains important for the growth of Indonesia.<sup>39</sup>

Despite the abundance of natural resources, management of Indonesia's resources struggled to bring about prosperity for the nation. This assessment was attributed to fundamental changes in national oil business activities, specifically the implementation of Law Number 22 of 2001. This regulation stipulated that all national oil activities were to be exclusively carried out by the state, with Pertamina serving as the sole implementer. The centralization of authority, including policy, supervision, and all business aspects, was consolidated under Pertamina's control.<sup>40</sup>

The alterations in oil and gas governance contained in Law Number 22 of 2001 mirrored the dynamic shifts in the global and national energy industry. This legislative change resulted in Pertamina's transformation from a State-Owned Enterprise to an independent entity.<sup>41</sup>

Oil and gas regulations embedded in Law Number 22 of 2001 diminished the significance of permits. Beyond that, the broad liberalization of the energy businesses proved detrimental to Indonesia, while

conversely benefiting capitalists. This law underwent multiple reviews by constitution Court, with various clauses being annulled.<sup>42</sup>

The presence of a liberalization agenda was substantiated by constitution Court based on Law Decision Number 22 of 2001. Therefore, the formulation of oil and gas policies should be guided by the 1945 Constitution. These laws should diligently heed every decision of constitution Court to prevent future cancellations. The formation of regulations should not solely revolve around the government control, more importantly, it should aim to provide adequate welfare for the Indonesian citizens.<sup>43</sup>

The replacement of several state administrators holding authority did not signal an end to the liberalization of oil and natural gas. Presently, energy exploitation is increasingly challenging to manage, with regulations seemingly crafted primarily for investment profits. Indonesia's status as a repository for energy resources and a consumption market has inevitably shifted towards the latest globalism and imperialism.<sup>44</sup>

### Oil and Gas Management Policy During the Old, New Order, and Reformation

Indonesia underwent significant changes in its oil and gas management policies from the Old Era to the Reformation Order. During the

<sup>37</sup> Syamsul Ma'arif, 'Kebijakan Perminyakan Nasional: Dari Kendali Negara Menuju Kapitalisme Pasar', *Sawala: Jurnal Administrasi Negara* 3, no. 1 (12 January 2014): 46-55.

<sup>38</sup> Walid Mensi et al., 'Spillovers between Natural Gas, Gasoline, Oil, and Stock Markets: Evidence from MENA Countries', *Resources Policy* 71 (1 June 2021): 1.

<sup>39</sup> Asian Development Bank, *Indonesia Energy Sector Assessment, Strategy, and Road Map - Update* (Asian Development Bank, 2020), 2.

<sup>40</sup> Mas Subagyo Eko Prasetyo, 'Penerapan Yuridis Undang-Undang Migas Dalam Kaitan Kegiatan Usaha Kecil Migas', *JURNAL DIMENSI* 2, no. 2 (2013): 1.

<sup>41</sup> Dion Yoske Prahara and Prasetyo Budi Saksono, 'Reorganization of Supply Chain Management Function in PERTAMINA EP Based on Newly Developed PERTAMINA EP Business Process', *Indonesian Journal of Business Administration* 1, no. 8 (2012): 585.

<sup>42</sup> Zain, 'Politics of Law on the State Control of Oil and Gas in Indonesia: Gas Liberalization and the Hesitancy of Constitutional Court', 71.

<sup>43</sup> *Ibid.*, 84.

<sup>44</sup> Indah Dwi Qurbani, 'Politik Hukum Pengelolaan Minyak Dan Gas Bumi Di Indonesia', *Arena Hukum* 5, no. 2 (2012): 116.

Old Order era, the government implemented a profit-sharing system, allocating 60% of production incomes to the nation and 40% to foreign contractors. In 1962, Indonesia actively joined the Organization of Petroleum Exporting Countries (OPEC),<sup>45</sup> leveraging its substantial natural resources.<sup>46</sup> However, the New Order era prioritized exports over domestic needs, diverging from the Old Era policy that mandated oil companies to meet domestic demands. Consequently, domestic oil and gas prices often experienced increases, falling short of expectations for achieving prosperity and welfare for Indonesian citizens.<sup>47</sup>

In the New Order era, Indonesia evolved as the world's largest oil producer and exporter, ranking among the top 11 energy producers globally. However, this massive oil production led to a significant decline in oil reserves.<sup>48</sup> President Suharto further controlled oil and gas management by orchestrating the formation of a national company, Pertamina, through the merger of Pertamina and Pĕrtamin in 1971.<sup>49</sup> This move placed Pertamina under Soeharto's control, enabling the state to monopolize oil production and negotiation capabilities with foreign or domestic parties.<sup>50</sup>

In the early 2000s, Indonesia transitioned from a major oil-exporting country to a net importer, leading to increased pressure on the arrangement. Pertamina's contribution as a State-Owned Enterprise to the nation's revenue gradually diminished.<sup>51</sup>

During the Reform Order era, Presidents Abdurrahman Wahid and Megawati Soekarnoputri faced the challenge of revising oil and gas regulations. President Susilo Bambang Yudhoyono pursued national economic recovery using oil and gas commodity prices. President Joko Widodo later issued a National Energy Policy, extending the regulation set by President Susilo Bambang Yudhoyono from 2025 to 2050.<sup>52</sup>

### *The Government Responsibility in Managing Oil and Gas for the Prosperity of the Indonesian Citizen*

In principle, the advancement of general welfare was both constitution mandate and a great objective at the founding of the Indonesian state. However, this noble objective had not been optimally realized, as evident in the unequal distribution of social welfare among many citizens. Serious steps and a high level of commitment were considered necessary by the Government to implement the mandate of constitution.<sup>53</sup>

<sup>45</sup> Ma'arif, 'Kebijakan Perminyakan Nasional: Dari Kendali Negara Menuju Kapitalisme Pasar'.

<sup>46</sup> Muhammad Badaruddin, 'Indonesia Rejoining OPEC: Dynamics of the Oil Importer and Exporter Countries', *Journal of ASEAN Studies* 3, no. 2 (2015): 116.

<sup>47</sup> Dyah Silvana Amalia, 'Tanggung Jawab Negara Dalam Pengelolaan Minyak Dan Gas Bumi', *Jurnal Ilmiah Fenomena* 12, no. 1 (2014): Dyah Silvana Amalia, 'Tanggung Jawab Negara Dalam Pengelolaan Minyak Dan Gas Bumi', *Jurnal Ilmiah Fenomena* 12, no. 1 (2014): 1140-41.

<sup>48</sup> Nani Rosita, 'Analysis of Work Performance and Export Competitiveness in Province of Indonesia', *SRIWIJAYA INTERNATIONAL JOURNAL OF DYNAMIC ECONOMICS AND BUSINESS* 1, no. 3 (9 December 2017): 279.

<sup>49</sup> M. C. (Merle Calvin) Ricklefs, *A History of Modern Indonesia since c.1200* (Calif: Stanford University Press, 2008), 300-334.

<sup>50</sup> Theodore Friend, *Indonesian Destinies* (Harvard University Press, 2009), 167.

<sup>51</sup> Muhammad Ichsan, Matthew Lockwood, and Maghfira Ramadhani, 'National Oil Companies and Fossil Fuel Subsidy Regimes in Transition: The Case of Indonesia', *The Extractive Industries and Society* 11 (1 September 2022): 8.

<sup>52</sup> Roziqin, 'Post-Reform Oil Sector Management In Indonesia: Analysis Of Public Welfare Concept', *Jurnal Tata Kelola Dan Akuntabilitas Keuangan Negara* 1, no. 2 (1 December 2015): 132.

<sup>53</sup> Farida Umami, Ahkam Nashrullah Maududi, and Aminah Rizqi Mahmudah, 'A Discourse of General Principles of Good Governance in Public Services in



The Government was entrusted with the function of realizing general welfare, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. The Government strived to afford respect, protection, and fulfilment of the rights to the basic needs of its citizens. Therefore, adhering to a welfare state method that prioritized empowerment and social protection was essential.<sup>54</sup>

Indonesia as a country adhering to the ideology of the welfare state, was obligated to contribute to creating prosperity for its citizens. This conception allowed the state to be engaged in various aspects of the individual's lives and daily needs to achieve prosperity. In practical terms, the state bore responsibility for providing basic services and needs for its citizens to a certain level.<sup>55</sup>

The concept of a welfare state required active government engagement and intervention through regulations to achieve diverse objectives, particularly in the mining sector, directly impacting the livelihoods of numerous individuals. This role was underscored in Article 33 of the 1945 Constitution paragraph (3), stating that "Earth, water and natural resources contained therein are controlled by the state for the greatest prosperity of citizens".<sup>56</sup>

Although Article 33 of the 1945 Constitution mandated management and

exploitation of mining goods in the earth's depths to maximize wealth, the aim was none other than achieving prosperity for all Indonesian citizens. To achieve this objective, the first priority was given to social justice, including the proportional distribution of income and the fulfilment of social and environmental responsibility. All of these actions were expected to be conducted transparently based on the laws and regulations governing mining.<sup>57</sup>

Article 33, paragraph (3) of the 1945 Constitution granted control rights to the state, represented by the government, to manage and operate the mining sector economy. State control rights were actualized through management and supervision policies, specifically regarding mining goods. The State's control rights over mining goods were intended to be oriented towards the welfare of all citizens.<sup>58</sup>

The social state provided national protection for society, specifically vulnerable groups, such as the poor, disabled, and unused. This concept of welfare represented a revision of a passive state. The country was required to expand its responsibility to address the socio-economic problems faced by the society, leading to the legalization of interventionist states in the 20th century. The state needed to intervene in various social and economic problems to ensure the creation of shared prosperity in society.<sup>59</sup>

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Indonesia', *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (31 January 2022): 26–32.

<sup>54</sup> Mario Pezzini, *Social Protection System Review of Indonesia*, OECD Development Pathways (Paris: OECD, 2019), 18–22.

<sup>55</sup> Wawan Mas'udi and Hasrul Hanif, 'Welfare Politics in Contemporary Indonesia: Examining Welfare Vision of Law 11/2009', *PCD Journal* 3, no. 1–2 (7 June 2017): 113–14.

<sup>56</sup> Hamdan Azhar Siregar, Mr Untoro, and Teuku Saiful Bahri, 'Utilization of Natural Resources in the Mining Sector Related to the State Welfare' (2018 International Conference on Energy and Mining Law (ICEML 2018), Atlantis Press, 2018), 102.

<sup>57</sup> Suparto, 'Interpreting The State's Right to Control In the Provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia', *UIR Law Review* 4, no. 2 (25 October 2020): 1–3.

<sup>58</sup> Muhammad Adib Zain, Ananda Prima Yurista, and Mailinda Eka Yuniza, 'Konsistensi Pengaturan Jaminan Sosial Terhadap Konsep Negara Kesejahteraan Indonesia', *Jurnal Penelitian Hukum Gadjah Mada* 1, no. 2 (2014): 64.

<sup>59</sup> John Tweedy and Alan Hunt, 'The Future of the Welfare State and Social Rights: Reflections on Habermas', *Journal of Law and Society* 21, no. 3 (1994): 289–93.

The concept of welfare state played a important role in protecting and enhancing the well-being of its citizens, based on the principles of equal opportunities, equitable wealth distribution, and responsibility to individuals facing challenges in achieving a good life.<sup>60</sup> As outlined by Esping Anderson, the welfare state was not defined by a standard method but was more accurately identified by policy attributes, consisting of social services and transfers provided by the government including educational services, income transfers, and initiatives aimed at poverty reduction.<sup>61</sup>

In the concept of a welfare state, the government was obligated to expand its responsibility to address the social problems faced by society.<sup>62</sup> The essence of a social state dictated that the government should provide welfare to its citizens by offering services, facilities and infrastructure for the public.<sup>63</sup>

The analysis of petroleum sector policies needed to be approached with the concept of a welfare state, considering its important for the country and its profound impact on the lives of many citizens. Consequently, the State was expected to assume an active role in the petroleum sector, striving to establish a democratic state life that would eventually

lead to the prosperity of citizens.<sup>64</sup> The social state idealized the nature of nation interventionism in the dynamics of society's economy, solely for the benefit of societal welfare.<sup>65</sup>

The implementation of a welfare society in Indonesia was considered a necessity, given the presence of Article 33 of the 1945 Constitution. Any deviations from these principles were essentially violations of the 1945 Constitution, the highest law to be adhered to by all parties.<sup>66</sup>

Roles related to the economic and social welfare sectors were expected to be taken over by the government. This model integrated the extensive state role in social welfare efforts with segmented security accompanied by family networks.<sup>67</sup>

The government's genuine responsibility in securing the well-being of its citizens extends beyond being accountable to voters, it also carries an obligation to God.<sup>68</sup> Therefore, the Government was mandated to fulfil its role as outlined in the Constitution of Indonesia, with a special focus on realizing community welfare, as it represents a form of social justice.<sup>69</sup>

From another perspective, the government's responsibility for oil and gas

<sup>60</sup> Asa Briggs, 'The Welfare State in Historical Perspective', *European Journal of Sociology* 2, no. 2 (1961): 223-57.

<sup>61</sup> Gosta Esping-Andersen, 'The Three Political Economies of the Welfare State', *International Journal of Sociology* 20, no. 3 (1990): 92-122.

<sup>62</sup> David Garland, 'The Welfare State: A Fundamental Dimension of Modern Government', *European Journal of Sociology* 55, no. 3 (2014): 327-32.

<sup>63</sup> Alexander Petring and et.al, 'Welfare State and Social Democracy', *Friedrich Ebert Stiftung*, 2012, 10-12.

<sup>64</sup> Tim Jackson, 'Governance for Prosperity', *Revue de philosophie économique* 11, no. 1 (2010): 26-28.

<sup>65</sup> Xavier Mendoza and Alfred Vernis, 'The Changing Role of Governments and the Emergence of the Relational State', *Corporate Governance: The International Journal of Business in Society* 8, no. 4 (2008): 389-96.

<sup>66</sup> RJ Agung Kusuma Arcaropeboka and Januri, 'Implementation of Welfare State Ideology in the 1945 Constitution Toward the Right to Land for All Citizens' (International Conference on Law Reform (INCLAR 2019), Atlantis Press, 2020), 126-27.

<sup>67</sup> Julian L. Garritzmann, Erik Neimanns, and Marius R. Busemeyer, 'Public Opinion Towards Welfare State Reform: The Role of Political Trust and Government Satisfaction', *European Journal of Political Research* 62, no. 1 (2023): 201-3.

<sup>68</sup> Iswandi U and Indang Dewata, *Pengelolaan Sumber Daya Alam* (Yogyakarta: Deepublish, 2020), 119.

<sup>69</sup> Pipi Susanti and Rafiqqa Sari, 'Government Responsibility for The Fulfillment Basic Rights of Unprosperous People In Education Sector', *Substantive Justice International Journal of Law* 4, no. 1 (2021): 48-49.

management found validation in Islamic literature. According to Islamic principles, oil and gas were considered natural resources falling under public ownership. Access to ownership was open to the public, but regulations were to be governed by the state in a trustworthy and professional manner. Furthermore, this wealth was recognized as a source of income, allowing the State to manage and allocate it for the public interest fairly, with oversight from citizens.<sup>70</sup>

In Islamic law, oil and gas ownership was classified as public ownership, following the guidance of Rasulullah The Prophet, who stated that "The Muslims were united in three things, namely field, water, and fire" (HR. Abu Dawud and Ibnu Majah). In the above context, "fire" refers to energy sources such as electricity, oil, gas, coal, nuclear, and more. Public possession denoted all wealth predetermined by Allah to be the property of Muslims, constituting joint ownership where individuals could benefit but were prohibited from personal occupancy.<sup>71</sup>

Examining the use of natural resources and management of oil and gas from an Islamic perspective showed the government's responsibility in overseeing these resources. The presence of oil and gas natural resources aimed to actualize prosperity and welfare of citizens.

The policy of government on increasing fuel prices needed correlation with Article 33 of the 1945 Constitution of the Republic of Indonesia and the concept of a welfare state. The potential impact of fuel price hikes on the economy necessitated comprehensive consideration. The announcement of an increase in fuel prices was perceived not as

good news but as a burdensome development in their lives.

The pursuit of a just and prosperous society, as a national ideal, demanded continuous efforts. Maintaining a focus on state administration to achieve a just and prosperous society required awareness from all elements of the nation. Therefore, it was essential to recognize that various capitalistic-liberalistic and socialistic-communistic ideas and concepts primarily aimed at material benefits were incongruent with the objectives of the Indonesian state and constitution.<sup>72</sup>

## Conclusion

In conclusion, this study showed that the increase in fuel prices was inconsistent with Article 33 and the Preamble of the 1945 Constitution of the Republic of Indonesia. The government's decision to raise fuel prices required critical scrutiny, guided by Article 33 of the 1945 Constitution and its Preamble. Article 33 paragraph (3), granted the state, represented by the government, the authority to control the economy in the mining sector. The state's role included policy formulation, regulation, supervision, and the pursuit of the greatest welfare for the Indonesian citizens in managing mineral resources. Given the commitment of the country to the concept of a welfare state, the government was expected to optimally contribute to fostering prosperity for its citizens.

The government should further assume responsibility for providing essential services and meeting the basic needs of the Indonesian citizens. Every effort was necessary to ensure that state administrators remained

<sup>70</sup> Sebastian Herman, 'The Privatization of State-Owned Enterprises in Islamic Perspective: Case of Indonesia', *Global Journal of Management and Business Research* 19, no. B6 (15 May 2019): 19-32.

<sup>71</sup> Lilik Rahmawati, 'Pengelolaan Sumber Daya Migas Perspektif Islam', *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 17, no. 1 (2014): 122.

<sup>72</sup> Cut Asmaul Husna Tr, 'Pengakuan Hak Konstitusional Pengelolaan Sumber Daya Industri Ekstraktif Dalam Mewujudkan Kesejahteraan Rakyat', *Jurnal Konstitusi* 11, no. 1 (2014): 61.

trustworthy and accountable, fostering the establishment of a just and prosperous society. This called for awareness and commitment from all elements of the nation to realize prosperity for the entire population of Indonesia.

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