

PREVENTION OF ILLEGAL FUEL SMUGGLE IN THE BORDER OF EAST NUSA TENGARA AND TIMOR LESTE

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Abstract

Indonesia is one of the countries with abundant natural resources, this can be seen from the abundant human resources that are able to improve the management of existing natural resources. This is also emphasized in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD RI 1945). A different fact is faced by small communities in the border area between Nusa Tenggara Timur Indonesia and Timor Leste. The problem is that the small communities there are not unable to enjoy subsidy relief due to wrong targets but because of smuggling carried out to neighboring countries. In several criminal cases that occurred in the border area between East Nusa Tenggara and Timor Leste, one of them was the Indonesian National Armed Forces (Satgas Pamtas) RI-RDTL East Sector Border Security Task Force, Yonif Raider 408 / Sbh, thwarted the smuggling of thousands of liters of fuel oil. (BBM) in the RI-RDTL border area.

There have been many efforts made by the government to improve the welfare of its citizens by utilizing existing natural resources, especially in the oil and gas sector, one of which is in terms of access to energy consumption through fuel oil (BBM) subsidies which are still being debated. Some are of the view that state assistance must be maintained, but on the other hand, they still think that fuel subsidies are still not on target. A different fact is faced by small communities in the border area between Nusa Tenggara Timur Indonesia and Timor Leste. In addition, at the opening of the International Convention on Indonesian Upstream Oil and Gas 2020, which was organized by SKK Migas, the Government also supported the improvement of the investment climate in Indonesia's upstream oil and natural gas (oil and gas) sector, amid a decline in national oil and gas production and sluggish movement of strategic industries due to the the Covid-19 pandemi.

Keywords: *Police, Illegal, Fuel, Border, Law, Smuggling*

Abstrak

Indonesia merupakan salah satu negara dengan sumber daya alam yang melimpah, hal ini terlihat dari sumber daya manusia yang melimpah yang mampu meningkatkan pengelolaan sumber daya alam yang ada. Hal ini juga ditegaskan dalam Pasal 33 ayat 3 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD RI 1945). Fakta berbeda dihadapi masyarakat kecil di kawasan perbatasan antara Nusa Tenggara Timur Indonesia dan Timor Leste. Persoalannya, masyarakat kecil di sana bukan tidak bisa menikmati keringanan subsidi karena salah sasaran tapi karena penyelundupan yang dilakukan ke negara tetangga. Dalam beberapa kasus pidana yang terjadi di kawasan perbatasan antara Nusa Tenggara Timur dan Timor Leste, salah satunya Satgas Pamtas RI-RDTL Timur, Yonif Raider 408/Sbh, menggagalkan penyelundupan. ribuan liter bahan bakar minyak. (BBM) di daerah perbatasan RI-RDTL.

Banyak upaya yang dilakukan pemerintah untuk meningkatkan kesejahteraan warganya dengan memanfaatkan sumber daya alam yang ada, khususnya di sektor migas, salah satunya dalam hal akses konsumsi energi melalui subsidi Bahan Bakar Minyak (BBM) yang masih diperdebatkan. Ada yang berpandangan bahwa bantuan negara harus tetap dipertahankan, namun di sisi lain masih menganggap subsidi BBM masih belum tepat sasaran. Fakta berbeda dihadapi masyarakat kecil di kawasan perbatasan antara Nusa Tenggara Timur Indonesia dan Timor Leste. Selain itu, pada pembukaan Konvensi Internasional Hulu Migas Indonesia 2020 yang diselenggarakan oleh SKK Migas, Pemerintah juga mendukung perbaikan iklim investasi di sektor hulu minyak dan gas bumi (migas) Indonesia, di tengah Penurunan produksi migas nasional dan lesunya pergerakan industri strategis akibat pandemi Covid-19

Kata Kunci: Ilegal, Bahan Bakar, Perbatasan, Hukum, Penyelundupan

PRELIMINARY

Indonesia is one of the countries with abundant natural resources, this can be seen from the abundant human resources that are able to improve the management of existing natural resources. Ownership and processing of natural resources by a country is one of the sources of foreign exchange or income for the country. One of the sources of natural wealth which is very strategic and has an important role in the national economy, among others, is oil and natural gas which must be used maximally for the prosperity of the Indonesian people. This is also emphasized in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD RI 1945) which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In this case the government is given the authority by the state in the form of mining concessions to carry out oil and gas exploration and exploitation activities.

As a type of business that demands high capital and technology with high risk, the oil and gas mining business requires the participation of investors in its business operations. The state, as the authority for oil and gas reserves, generally lacks the capacity in terms of funding and technology to carry out business activities in the oil and gas mining sector. This is because the locations of oil and natural gas reserves are generally under one rule, either on land or at sea, so the cost of the extraction process requires a large amount of funding.¹

In general, the government will cooperate with the private sector with permits granted in the form of mining authorization, mining concession work contracts, and Production Sharing Contracts.² In practice, there are several types and forms of instruments for cooperation in the oil and gas sector. Based on the cooperation contracts between the countries in the world that regulate the granting of concession rights for oil and gas mining between the state and companies or what is also known as a contractor, the forms of oil and gas exploitation agreements can be categorized into five types, including:

- a. Concession;
- b. Production Sharing Contract;
- c. Risk Service Contract; and
- d. Service Contract.

In early 2019, for example, Indonesia is preparing the ratification process for the ASEAN Framework Agreement on Services (AFAS) Package 10. After being signed on 11 November 2018, ASEAN countries including Indonesia will immediately carry out the ratification process for AFAS Package 10. The Ministry of Trade as the working focal point This same statement states that the purpose of ratification of AFAS Package 10 is to provide a legal basis for the Government of Indonesia in carrying out AFAS 10 commitments.

¹ Muhammad Faiz Aziz, *Micro Small (Umk) Through The Draft Law On Job Creation*, 2020.

² HS H. Salim, *Hukum Pertambangan Di Indonesia, Revisi III* (Jakarta: Raja Grafindo Persada, 2007).

Another international agreement, namely the Vienna Convention on the Law of Treaties 1969 (Vienna Convention 1969) regulates the Public International Agreement between countries as the main subject of law international. Prior to the 1969 Vienna Convention, agreements between countries, both bilateral and multilateral, were held solely on the basis of principles such as good faith, *pacta sunt servanda* and the agreement was formed with the consent of the countries therein. In short, before the existence of the Vienna Convention, 1969, the International Agreement between countries was regulated based on international customs based on state practice and decisions of the International Court or International Permanent Court (now no longer exists) as well as the opinions of international legal experts (as a manifestation of opinion jurists).³

There have been many efforts made by the government to improve the welfare of its citizens by utilizing existing natural resources, especially in the oil and gas sector, one of which is in terms of access to energy consumption through fuel oil (BBM) subsidies which are still being debated. Some are of the view that state assistance must be maintained, but on the other hand, they still think that fuel subsidies are still not on target. A different fact is faced by small communities in the border area between Nusa Tenggara Timur Indonesia and Timor Leste. The problem is that the small communities there are not unable to enjoy subsidy relief due to wrong targets but because of smuggling carried out to neighboring countries.

In addition, the Government is also committed to supporting the improvement of the investment climate in Indonesia's upstream oil and gas sector, amidst the decline in national oil and gas production and the sluggish movement of strategic industries due to the impact of the Covid-19 pandemic. The government's commitment in this case is the Coordinating Minister for Maritime Affairs and Investment with the Minister of Energy and Mineral Resources (ESDM) and the Minister of Finance at the opening of the International Convention on Indonesian Upstream Oil and Gas 2020, organized by SKK Migas, on December 2, 2020. In addition It was stated that the Indonesian Government will continue to carry out regulatory reforms to improve the investment climate amid global uncertainty due to the Covid-19 pandemic. Among the efforts made are through the Job Creation Law, the government has simplified and synchronized 8,451 regulations at the national level and 15,955 regulations in the regions that have been burdening the business world, both small, medium and large scale. The government is also modernizing regulations that are no longer in line with global competition.

Based on the above background, the formulation of the problem that needs to be raised is the role of the government and apparatus in tackling the smuggling of illegal fuel in the border area of East Nusa Tenggara and Timor Leste?

RESEARCH METHODS

1. Type of Research

The approach method used in this research is normative juridical, namely a qualitative approach. The research specification used in this research is descriptive analysis, which is to describe and then analyze the existing problems. This study also uses a comparative and systematic interpretation. The analysis is then carried out using the elements of the parties and Governed by International Law in accordance with the understanding of the international agreement and finding legal rules, legal principles, and legal doctrine in order to answer the legal issues at hand.

2. Research Approach

The approach used in this paper is the statute approach, namely by examining the existing legal regulations and also the conceptual approach which refers to the legal principles

³ Hukumonline.com, 'Konvensi Wina 1969 Induk Pengaturan Perjanjian Internasional', *Hukumonline.Com*. 17

contained in views and doctrines and legal theory.

3. Types of Legal Materials

Primary legal materials are authoritative legal materials, meaning they have authority.

The primary legal materials used are:

- a. The 1945 Constitution of the Republic of Indonesia
- b. Civil Code
- c. Law Number 22 Year 2001 concerning Oil and Natural Gas
- d. The Constitutional Court Decision No. 36 / PUU-X / 2012, Presidential Decree Number 95 of 2012, Kepmen ESDM No. 3135 of 2012 and Presidential Decree Number 9 of 2013
- e. 1969 Vienna Convention on International Treaties.

DISCUSSION

1. Legality of Oil and Gas Cooperation Contracts from Legal Aspects in Indonesia

Every area of land, sea and air has different natural resources which causes the need to meet the existing shortcomings in a country with the advantages of other countries, resulting in what is called an "absolute advantage" where a country imports production materials or foodstuffs, which it does not own or cannot produce from other countries⁴. Oil and natural gas (oil and gas) is one of the main commodities that have the largest foreign exchange for the country. Therefore, the government does not want individual ownership of natural resources, such that the management and regulation are carried out by the government.

In Law Number 22 Year 2001 concerning Oil and Gas, which states that playing a role as a regulator of oil and gas business activities is the Oil and Gas Implementing Body (BP Migas). In addition, in the form of a cooperation agreement in the oil and natural gas sector, namely a Production Sharing Contract, which is a cooperation contract in Exploration and Exploitation activities that is more beneficial to the state and the results are used for the maximum welfare of the people. The Oil and Gas Contract System has several characteristics, including:

- a. Ownership of natural resources remains in the hands of the government until the point of delivery;
- b. Operations management control rests with the executing agency;
- c. Capital and risks are entirely borne by the business entity or permanent business entity.⁵

Regarding this, the Government can choose to control the mining material to carry out its own hands through BUMN or cooperate with other parties if it is deemed not sufficient to be implemented by government agencies themselves. If the government cooperates with the private sector, the position of the government is to give permission to the contractor concerned. The permits granted are in the form of mining authorization, mining concession work contracts and Production Sharing Contracts.⁶

The executing agency and function that is formed is to supervise upstream business activities so that the extraction of state-owned oil and gas natural resources can provide

⁴ Melda Kamil Ariadni, *Hukum Internasional Hukum Yang Hidup* (Jakarta: Diadit Meida).

⁵ Affina Niken Al-Islami, 'Legalitas Kontrak Kerjasama Minyak Dan Gas Bumi Pada Organisasi Dan Tata Kerja Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi', *Jurnal Fakultas Hukum Universitas Brawijaya*, 2015.

⁶ H. Salim.

maximum benefits and revenues for the state for the greatest welfare of the people.^{7,8} The object of a cooperation contract is oil and gas business activities, especially upstream business activities which include exploration and exploitation. The oil and gas cooperation contract is a contract that is civil in nature carried out by the government against a permanent business entity. In the opinion of scholars, the more emphasized is the form of the contract signed by both parties.⁹

The state is a perfect legal subject, in this case the state makes and implements laws and changes laws. The state also tries persons or legal subjects who violate the law, while business entities are still legal entities with limited capacity. In this case, business entities continue to act more as implementers of laws made by the state which results in imbalance. Apart from that, an unbalanced position can separate the status of the state as a sovereign state (*jury imperii*) and also the state as a subject of civil law (*jury gestiones*). Based on the concept of *jury gestiones*, a country is deemed to have abandoned its immunity (waiver of immunity) or sovereignty in connection with the country's actions in the business sector. This calendar is necessary so that the position of the parties in a contract or commercial transaction can be in a balanced position (the principle of Equality of the Parties).¹⁰

The subjects in an agreement are part of the legal subjects regulated in the Civil Code Articles 1315, 1317, 1318 and 1340 which regulate the subjects in an agreement which must be in the form of legal subjects (persons or legal entities) and do not conflict with Article 1320 of the Civil Code. In recognized legal subjects, there are a number of requirements that must be met by legal entities, namely, among others:

- a. Formed and established legally in accordance with the legal provisions governing the formation or establishment of a legal entity. The requirements for the formation of this legal entity are in accordance with the form or type of legal entity to be established. aims as a regulator in upstream oil and gas activities in Indonesia.
- b. Owning assets separate from the assets of its members.
- c. Rights and legal obligations that are separate from the rights and obligations of its members.

As a follow-up to the Constitutional Court decision Number 36 / PUU-X / 2012 concerning the Testing of the Oil and Gas Law. The follow-up to the Constitutional Court's decision is a Presidential Decree, as explained in Article 10 paragraph (1) of Law Number 12 Year 2011, that the material content that must be regulated in law is further regulation regarding the provisions of the Constitution of the Republic of Indonesia. In 1945, an order regulated in law, the ratification of certain international treaties, a follow-up to the decisions of the Constitutional Court and the fulfillment of legal needs in society.

2. Cooperation Relations Between Countries Based on International Treaties Law

In oil and gas law, the role of government is not a subject of international law, but a subject of civil law, because the relationship between the government and investors is civil in nature. An agreement with the investor party should be treated as a term in English as a government contract, a government contract which is subject to civil law including international civil and not subject to public international law. The state is a public organ that transcends the conception of being a private legal entity, but in reality the state can become a

⁷ *Peraturan Pemerintah Nomor 42 Tahun 2002 Tentang Badan Pelaksana Kegiatan Usaha Huku Minyak Dan Gas Bumi* (Jakarta: Lembaran Negara Republik Indonesia, 2002).

⁸ *Undang Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi* (Jakarta: Lembaran Negara Republik Indonesia, 2001).

⁹ Huala Adolf, *Dasar-Dasar Kontrak Internasional* (Bandung: Refika Aditama, 2008).

¹⁰ Adolf.

party to a dispute.¹¹

Based on the opinion of Sudargo Guatama in relation to cooperation between countries in international treaty law, which cannot be separated from international civil law, are the entire rules and legal decisions that indicate which legal rules apply or whether they are legal relations, if the legal relationship and events Citizens at a certain time show a point of connection with the rules and regulations of law from two or more different countries in different spheres and powers.¹²

In addition to the rules of international civil law in Production Sharing Contracts, it is considered to be a cooperation pattern or business alliance, currently it is considered to be the most capable of describing the national philosophy that places oil and natural gas as a source of natural wealth from Indonesian soil.

Through a Production Sharing Contract, a business cooperation can be held, where control over the results of the business remains with the state represented by an Implementing Body which plays a role in the elements of business planning and control, then in its own implementation it is entirely left to the business partners who have the capital and technology capabilities to carry it out. If we look closely, all the basic elements in a business are fulfilled in full in the contract with a clear division of responsibilities.¹³

With the Production Sharing Contract, this creates legal certainty in dividing the results between local or foreign private parties and the government so that it can be used as a source of foreign exchange. The existence of a Production Sharing Contract has become a debate for several groups regarding the status of the Production Sharing Contract as an ordinary agreement or included in an International Agreement. Considering the importance of the existence of Production Sharing Contracts as an instrument of cooperation between the government and the private sector, especially for foreign private parties, which is then required in Law Number 22 Year 2001 regarding Oil and Gas, that the production sharing contract must be reported. to the House of Representatives (DPR) as government supervisor.

Daniel Johnston defines a Production Sharing Contract as "a contractual agreement between a contractor and a host government whereby the contractor bears all exploration cost and development and production cost in return for a stipulated of the production resulting from this effort". This definition contains 3, namely: 1. Agreement between the contractor and the government; 2. The contractor is obliged to provide all exploration, development and production costs; 3. Cost recovery is determined based on the sharing of production and results of operations, so that all costs incurred will be deducted from profits in exploration or exploitation activities.¹⁴

One acknowledgment of the nature of the jury gestiones of a country when conducting a civil contract degrades the sovereignty of the state which is the public representation in the context of controlling natural resources. This degradation occurs because of the deregulation of government regulations to reduce private profits, which is indicated by the existence of a contractual relationship or agreement between the government and parties when there is a transfer of rights to natural resources.

In a corporatocracy, which does not only mean that people in the government are dominated by people with merchant backgrounds with economic motives that are gained from political power, but also read from the concept of legal relations built by the state with

¹¹ *Undang Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal* (Jakarta: Lembaran Negara Republik Indonesia, 2007).

¹² Sudargo Guatama, *Pengantar Hukum Perdata Internasional Indonesia* (Bandung: Bina Cipta, 1985).

¹³ Melli Asriani, 'Implementasi Pajak Melli Asriani, Implementasi Pajak Pertambahan Nilai Ditanggung Pemerintah Atas Impor Barang Untuk Eksplorasi Minyak Dan Gas Bumi' (Universitas Indonesia, 2008).

¹⁴ C Mahulette Michael, 'No Title', *Diponegoro Law Jurnal*, 5.3 (2016).

investors.¹⁵ The concept of state control over natural resources should be seen as part of a system of rights over natural resources. A right which is defined as a political construction, then the right is integrated with all rights holders in a unified system of rights.

International agreements are an instrument for a country to establish cooperative relations between countries. The pattern of relations which then led to the emergence of the 1969 Vienna Convention which regulates International Treaties. In Article 2 number 1 letter a, the 1969 Vienna Convention reads: "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

According to Mochtar Kusumaatmadja, an international treaty is an agreement between nations that aims to create consequences for certain laws. Meanwhile, the implementation of the 1969 Vienna Convention in Law Number 24 of 2000 concerning International Treaties, in Article 1 letter a, defines the meaning of an international agreement as: "Agreement in a certain form and name, which is regulated in international law which is made in writing and creates rights and obligations in the field of public law". Meanwhile, Article 4 Paragraph (1) states that the elements of an International Agreement are:

- a. created by countries, international organizations, and other international law subjects;
- b. regulated by international law (governed by international law);
- c. raises rights and obligations in the field of public law.

According to Damos Dumoli Agusman, what must be fulfilled by an agreement document to be established as an international agreement according to the 1969 Vienna Convention and Law Number 24 of 2000 concerning International Treaties, namely:

- a. The agreement must have an international character (an international agreement) so that it does not cover agreements between states or between regional governments of a national state.
- b. The agreement must be made by a country and / or international organization (by subject of international law), so that it does not include treaties that are international in nature but are made by non-international legal subjects, such as agreements between countries and multinational companies.
- c. The agreement is subject to an international legal regime (governed by international law) which by Law No. 24 of 2000 is called "regulated in international law and creates rights and obligations in the field of public law".¹⁶

Based on the definition of International Treaties, it is found that several analyzes of an International Agreement are found, namely:

- a. The parties who made the agreement;
- b. There is an agreement to comply with the provisions of international law;
- c. The International Agreement must be public, not private.

In addition, in the Indonesian Upstream Oil and Gas International Convention, a Special Task Force for Upstream Oil and Gas Business Activities was established by the Government of the Republic of Indonesia through Presidential Regulation Number 9 of 2013 concerning Management of Upstream Oil and Gas Business Activities (SKK) for Migas, by providing 18 awards to Cooperation Contract Contractors (KKKS) and supporting institutions at the SKK Migas Awards, on April 4, 2020. The awarding ceremony was the first time that SKK Migas has made, in order to boost productivity and performance of the upstream oil and gas industry. Head of SKK Migas Dwi Soetjipto said, the SKK Migas Awards are expected to further motivate Cooperation Contract Contractors (KKKS), and emphasize the role of KKKS in

¹⁵ Yance Arizona, *Konstitusi Dalam Intaian Noeliberalisme: Konstitusionalitas Penguasaan Negara Atas Sumber Daya Alam Dalam Putusan Mahkamah Konstitusi*.

¹⁶ Damos Dumoli Agusman, *Treaties Under Indonesia Law: A Comparative Study* (Bandung: PT. Remaja Rosdakarya, 2014).

achieving the target of 1 million BOPD and 12 BSCFD of gas by 2030.¹⁷

The government is committed to supporting the improvement of the investment climate in Indonesia's upstream oil and gas (oil and gas) sector, amidst the decline in national oil and gas production and the sluggish movement of this strategic industry due to the Covid-19 pandemic. The government's commitment was conveyed by the Coordinating Minister for Maritime Affairs and Investment, the Minister of Energy and Mineral Resources (ESDM) and the Minister of Finance at the opening of the 2020 International Convention on Indonesian Upstream Oil and Gas, which was hosted by SKK MIGAS virtually on 2 December 2020.

Government of Indonesia continue to carry out regulatory reforms to improve the investment climate amid global uncertainty due to the Covid-19 pandemic. Among the efforts made are through the Job Creation Law, the government has simplified and synchronized 8,451 regulations at the national level and 15,955 regional regulations that have been burdening the business world, both small, medium and large scale. The government is also modernizing regulations that are no longer in line with global competition.

Through the Job Creation Law, the government strives for the simplification and efficiency of the bureaucracy to support all industries in Indonesia. Through this regulation, the government will lower income tax from 25% to 22% or 20% in the next two years. The minister added that the government also provides exemption from VAT and import duties as well as various other facilities for special economic zones by using various fiscal instruments to support the entire business cycle of the upstream oil and gas industry, from exploration to production. The Minister of Energy and Mineral Resources also said that the upstream oil and gas industry in the future will continue to play a strategic role, although the percentage of oil and gas energy mix is estimated to decrease, but in nominal terms it will increase.

The head of SKK Migas in the upstream oil and gas industry has launched a common vision to achieve the target of achieving the production of 1 million barrels of oil per day and 12 billion standard cubic feet of gas per day by 2030. This total amounts to 3.2 million barrels of oil equivalent per day. If this target is achieved, the upstream oil and gas sector will achieve the highest oil and gas production in Indonesia's history. In achieving this vision, a change in mindset and willingness is required by making "NOT Business As Usual" efforts. SKK Migas has also formulated a Strategic Plan for Indonesian Oil and Gas 4.0 (Renstra IOG 4.0) in order to achieve the 2030 target. The 2020 International Convention on Indonesian Upstream Oil and Gas is intended to discuss the needs of all stakeholders in order to support the achievement of the IOG 4.0 Strategic Plan that is being followed. from convention participants which reached more than 12,000 people from 57 countries.¹⁸

3. Oil Fuel Smuggling in the Border Area of East Nusa Tenggara and Timor Leste

The state's noble intention to assist its citizens in accessing energy consumption through fuel oil (BBM) subsidies is still a matter of debate. Some are of the view that state aid must be maintained and others think that the fuel subsidy is no longer on target. A different fact is faced by small communities in the border area between Indonesia and Timor Leste. The problem is, the small communities there are not unable to enjoy subsidy relief because of wrong targets but because of smuggling carried out to neighboring countries.

In several criminal cases that occurred in the border area between East Nusa Tenggara and Timor Leste, one of them was the Indonesian National Armed Forces (Satgas Pamantas) RI-RDTL East Sector Border Security Task Force, Yonif Raider 408 / Sbh, thwarted the smuggling of thousands of liters of fuel oil. (BBM) in the RI-RDTL border area. By Major Inf. Joni Eko Prasetyo has secured the fuel obtained in three different places, namely 1,445 liters

¹⁷ Inibalikpapan.com, 'Konvensi Internasional Hulu Migas Indonesia SKK Migas Kasih 18 Penghargaan Industri Hulu Migas', *Inibalikpapan.Com*.

¹⁸ Skkmigas.go.id, '2020 International Convention on Indonesia Upstream Oil And Gas; Pemerintah Dukung Perbaikan Iklim Investasi Industri Hulu Migas?', *Skkmigas.Go.Id*, 2020.

of fuel with details of 1,410 liters of kerosene and 35 liters of diesel on July 23, 2019. Initially, the post members received information about the existence of community members who were going to carry out illegal smuggling activities. BBM to Timor Leste, through the roads of mice and beaches on the border, so that members move quickly to thwart the smuggling of BBM. This smuggling attempt is of course due to the closeness and trust of the community to the Task Force to jointly prevent various detrimental actions in the community.¹⁹

There is another case that occurred in the community in an effort to prevent smuggling carried out by members of the TNI and Polri which succeeded in thwarting the smuggling of BBM to Timor Leste hidden in the bush. A number of personnel from the RI-RDTL Border Security Task Force Yonarmed 3/105 Tarik thwarted the smuggling of 75 liters of fuel oil (BBM) to Timor Leste. The fuel, in the form of gasoline, diesel and kerosene, is stored in two jerry cans measuring 25 liters and five jerry cans measuring five liters. The arrest took place on September 27, 2020 led by Lt. Col. Arm Laode Irwan Halim, the smuggling was thwarted thanks to the synergy of the TNI and Polri at the border. The smuggling was allegedly carried out because of the high price of fuel in Timor Leste. So, these elements want to benefit from taking advantage of a number of points on the border.

Separately, the Napan Bawah Post Commander Lettu Arm Angga Arisandhy Syam also explained that the BBM was found during a joint patrol with two members of the Brimob Napan Bawah Post from the Police Task Force. When carrying out a joint patrol with colleagues from Brimob in the rat roads that smugglers of goods often pass to Timor Leste, it was discovered that 75 liters of fuel seemed to be hidden intentionally to be ready to be sold illegally.

CLOSSING

1. Conclusion

In oil and gas law, the role of government is not a subject of international law, but a subject of civil law, because the relationship between the government and investors is civil in nature. The agreement with the investor party must be treated as a term in English government contract, a government contract that is subject to civil law including international civil and not subject to public international law. International treaties are an instrument for a country to establish cooperative relations between countries which then led to the emergence of the 1969 Vienna Convention.

There have been many efforts made by the government to improve the welfare of its citizens by utilizing existing natural resources, especially in the oil and gas sector, one of which is access to energy consumption through fuel oil (BBM) subsidies, which is still a debate. Some are of the view that state aid must be maintained, but on the other hand, they still think that fuel subsidies are still not on target. A different fact is faced by small communities in the border area between Nusa Tenggara Timur Indonesia and Timor Leste.

The problem is that the small communities there are not unable to enjoy subsidy relief due to wrong targets but because of smuggling carried out to neighboring countries. In addition, at the opening of the International Convention on Indonesian Upstream Oil and Gas 2020, which was organized by SKK Migas, the Government also supported the improvement of the investment climate in Indonesia's upstream oil and natural gas (oil and gas) sector, amid a decline in national oil and gas production and sluggish movement of strategic industries due to the consequences of the Covid-19 pandemic.

2. Suggestions

It is necessary to establish a legal entity or state-owned business entity or a special supervisory board to carry out oil and gas management so that it remains in accordance with the vision and

¹⁹ kupang.kompas.com, 'TNI-Polri Gagalkan Penyelundupan BBM Di Perbatasan Indonesia-Timor Leste', *Kupang.Kompas.Com*, 2020.

mission since the birth of the Republic of Indonesia which aims to defend the interests of the people by not degrading state sovereignty in front of outside investors as regulated in Article 33 paragraph (3) UUD 1945. As well as differences in views regarding the understanding of international agreements with international contracts, it is necessary to formulate special legal regulations as references in making state cooperation agreements with foreign parties, especially in the oil and natural gas sector, especially for areas bordering with other countries.

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