
International Agreement or Private Agreement? Uplift Policy in Oil and Gas Taxation in Production Sharing Contracts between Foreign Contractors and the Indonesian Government

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This article examines two questions: (1) whether the Production Sharing Contract in oil and gas sectors between different countries should be considered as an international agreement or a private agreement; and (2) how to formulate uplift in the PSC which contains the value of equity for investors and the State. In the Production Sharing Contract, there is problem of setting the tax on oil and gas sector particularly uplift policy relating to the taxation of income in the state revenue sources. This issue is related to the return of controversy of operational costs recognized by the contractor (cost recovery claim). This tax controversy gave rise to uplift that is only levied on oil and gas State owned Enterprises contracting partners in the scheme of the Joint Operating Body, especially in the old fields with advanced technology (Enhanced Oil Recovery). The controversy is related to the declining production and increased production costs that are recognized by the contractor.

Keywords

Production Sharing Contract, International Agreement, Uplift, Pertamina, Taxes

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I. Introduction

Awareness of paying taxes among the people in Indonesia is still relatively low. Since Indonesia's independence, only 30 percent of taxpayers has paid taxes.¹ Today, 25 million taxpayers were recorded in the Directorate General of Income Tax of the country, although there are approximately 55 million workers and employees with taxable income.² Similarly, only 500,000 corporate and entity taxpayers were recorded, even though the Central Statistics Agency ("CSA") revealed in 2012 that the number of enterprises in Indonesia reached to 12.9 million.³ This discrepancy is due to the consensus among the Indonesians that the payment of taxes did not provide direct benefits to the people, despite of the definition of taxes which states that no direct benefits are necessarily related to the payment of taxes.⁴

Indonesia is a country with significant natural gas reserves and is also a major producer of liquefied natural gas. When Indonesia gained the independence, she had a variety of natural resources, many of which were non-renewable such as petroleum and natural gas (oil) that had been taken by the colonialists.⁵ To explore sufficient natural resources, Indonesia not only needs experts, but also requires sufficient capital investment.⁶ Exploring and exploiting oil and gas require high costs and risks as well as the expertise and advanced technology that must be owned by Indonesia.⁷ In development, revenues from the oil and gas sector in Indonesia has an important role in the state budget revenues. Therefore, this sector needs adequate policy in relation to its management, particularly with regard to state revenue.⁸

With respect to oil and gas management which is done by the foreign contractors, the government earns revenue from the profit shared in the form of non-tax revenue, in addition to the income tax revenue on profit earned by the foreign contractors.⁹ The upstream oil and gas industry is very special in terms of business processes,

¹ Anandita Budi Suryana, *Mengerek Kepatuhan Wajib Pajak (Hoist The Taxpayer Compliance)* 4 (KOMPAS NEWSPAPER, 2012), available at <http://www.scribd.com/doc/197689161/Artikel-Kepatuhan-Wajib-Pajak#scribd> (last visited on Oct. 25, 2015).

² See *Harian Bisnis Indonesia*, Apr. 19, 2012, available at <http://bisniskeuangan.kompas.com/read/2013/02/11/02171978/Sensus.Pajak.Digiatkan.Lagi> (last visited on Oct. 25, 2015).

³ Directorate General of Taxation Team, *National Guidebook Tax Census 11* (2011).

⁴ MARDIASMO, *TAXATION 1* (2011).

⁵ B. SANUSI, *ROLE OF GAS IN INDONESIAN ECONOMY 7* (2002).

⁶ *Id.*

⁷ E. RADJAGUKGUK, *INDONESIAN INVESTMENT LAW 6* (2005).

⁸ A. MADJEDI HASAN, *CONTRACTS OIL AND GAS PRINCIPLED JUSTICE AND LAW ENFORCEMENTS 5* (2009).

⁹ *Id.*