

## **The Urgency of Good Faith Principles in Production Sharing Cooperation Contracts with the Gross Split System**

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### **Abstract**

With the existence of a production sharing contract carried out by the Government with contractors, it is possible to realize equitable energy in Indonesia. Gross Split itself will not eliminate State control in controlling oil and gas. The urgency of applying the principle of good faith in production sharing contracts with the gross split system is very important, with the hope of creating justice for business actors, which is a reflection of the principle of good faith in production sharing contracts with the gross split system, which illustrates that the principle of good faith is very important. important in making agreements, and in making contracts or cooperation must be based on the good faith of both parties in achieving common goals. So it is hoped that the application of this principle in production sharing contracts will be able to have a good impact on the development of the investment world in Indonesia which is increasingly advanced, and avoid losses for both parties.

**Keywords:** Gross Split, Good Faith Principle



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### **INTRODUCTION**

Indonesia is rich in natural resources which are very abundant so that mining is one of the industrial businesses that can be relied upon to bring in foreign exchange for Indonesia. Its natural wealth is the abundance of oil and natural gas. Oil and natural gas are vital commodities that control the lives of many people and have an important role in the national economy, so that their management must be able to optimally provide prosperity and welfare for the people.

It is well known that oil and natural gas are non-renewable natural resources. Therefore, the use and management of these natural resources must be carried out carefully and the supervision must be in accordance with the laws regulated in Indonesia. In the regulations stipulated in Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people.

According to Law Number 22 of 2001 concerning Oil and Gas, the Government gives priority to the use of natural gas for domestic needs and is tasked with providing strategic reserves of petroleum to support the supply of domestic fuel oil (Law No 22: 2001). Exploration is an activity carried out in order to obtain information regarding geological conditions in order to obtain detailed information, regarding the location, shape, dimensions, distribution, quality and measurable resources of minerals as well as information regarding the social and environmental environment.

In managing oil and natural gas, the government is given authority by the state to grant mining rights to explore and exploit oil and natural gas. The granting of mining rights can be called upstream oil and gas (Maroli). In its management, it is hoped that upstream oil and gas will provide maximum utilization for the welfare and prosperity of the people. The upstream oil and gas activities are stipulated in Law Number 22 of 2001 concerning Oil and Gas with

implementation based on cooperation contracts or production sharing contracts and other cooperation contracts.

The upstream oil and gas contract must be implemented by the government which is the holder of mining rights by the State with business entities. In making the contract must bring about the public interest. In making the contract, of course, it must contain legal principles that cannot be overlooked, one of which is to contain the principle of good faith. If the implementation of the contract does not apply the principle of good faith, it will result in conflict between the parties in the cooperation contract. In this case where one of the parties is the government itself, which in its power is managed for the sake of fulfilling the lives of many people. In making a business contract, the principle of good faith is important to carry out the contract in good faith so that neither party is harmed. The principle of good faith itself is contained in Article 1338 Paragraph (3) of the Civil Code.

The gross split scheme itself is a scheme in which the calculation of profit sharing for the management of oil and gas working areas between the Government and contractors is calculated in advance. In managing this gross split scheme will not make the state lose control over oil and gas, but with this scheme it will make the income for the state more certain. Thus, the author analyzes the legal issues that will be discussed in this paper, namely regarding the urgency of the principle of good faith in production sharing contracts with a gross split system.

The author has compiled a formulation of the problem that will be discussed in the results and discussion. The formulation of the problem includes: What about the urgency of the principle of good faith towards production sharing contracts with gross split system?

## **RESEARCH METHODS**

This article aims to find out how the urgency of the principle of good faith contained in production sharing contracts with the gross split system in Indonesia can create energy with justice. The type of data used is in the form of secondary data obtained by data collection techniques in the form of literature studies, which are then analyzed by researchers.

## **RESEARCH RESULTS AND DISCUSSION**

Law is inseparable from human life, and every human being has an interest, and that human interest during his life always develops. Humans themselves want that their interests are protected from various things that threaten them. It's the same as making a cooperation contract, where in carrying out business activities thereafter avoiding the dangers that threaten the parties to the agreement.

The definition of law according to the Complete Indonesian Dictionary is regulations that are made and agreed upon both written and unwritten, laws and regulations on the behavior of each particular community. (Kamisa: 1997) In entering into an agreement, you must first understand business law, which is a guide in entering into an agreement or in establishing a business. Business law itself is a legal instrument that regulates a procedure and implementation of an affair in various business activities, whether trading, industrial or activities related to the exchange of goods and services.

Legal definition according to Dr. Urbanization of business law is a set of rules governing the activities and behavior of business people in order to achieve business goals in which there are rules and prohibitions as well as sanctions for those who violate them in order to realize healthy and just business activities. The function of business law itself is as a medium of information that is useful for business people in understanding the rights and obligations guaranteed by law (Urbanization and Gunardi: 2021).

In entering into an agreement or contract, you must first understand how the agreement is valid in the eyes of the law. In Article 1320 of the Civil Code, there is an agreement: that is, where the parties making the contract, then there are those who are competent, that is, they have the legal ability to carry out legal actions, then there is a certain thing, namely the existence of a clear object of the agreement, and a cause. lawful in which the agreement or contract made does not conflict with existing laws and does not violate public order.

When in carrying out an agreement or contract agreement, the contract that has been made by the parties is a law that has created rights and obligations that must be obeyed and implemented, in accordance with Article 1338 (paragraph 1) of the Civil Code: " All an agreement made legally applies as a law for those who make it." Entering into an agreement that has been signed by the parties is a law for the party making the agreement. However, if the agreement is not based on good faith, the implementation of the cooperation contract that has been agreed will result in a dispute. And make the parties who have agreed to experience interference in the implementation of the agreement. Therefore, good faith is a basic thing that should exist in every agreement made in order to create harmony between the parties.

The principle of good faith originates from the civil law contract law system, in Indonesia itself the principle of good faith has been contained in statutory regulations contained in book III of the Civil Law Code, and came into effect on April 30, 1847 (Harahap: 1986). According to Subekti, good faith is the most important cornerstone in contract law. If in carrying out his rights and obligations in good faith he must heed the norms of decency and justice by distancing himself from actions that might cause harm to other parties (Subekti: 2001). The function of good faith itself works if both parties feel the person concerned, also by the party who feels someone's good faith act towards him. However, in its implementation it must obtain approval, in the agreement it must always imply the good faith of the parties. The principle of good faith is the principle that the parties must carry out the substance of the contract, based on the trust and good will of the parties.

While the Gross Split itself is a scheme in which the calculation of profit sharing from the management of oil and gas working areas between the Government and Oil and Gas Contractors is calculated in advance. With a production sharing contract with a gross split system, the state hopes to realize equitable energy in Indonesia, and the state will receive an appropriate profit sharing between oil and gas and taxes from exploration and exploitation activities so that state revenue becomes more certain. Calculation of the gross split scheme, the calculation will be different in each work area. A definite calculation in entering into a production sharing contract is to apply a Base Split percentage, for an oil base split, 57% is set to become the State's share, and 43% becomes the Contractor's share. As for natural gas, namely 52% for the state, and 48% for contractors.

The advantages of carrying out production sharing contracts with a gross split system are that contractors will naturally make savings, state oil and gas revenues are more certain, the bureaucracy will be more efficient and simpler, because there is no cost recovery approval process by the Government. Even though it seems that the contractors are greatly benefited, it does not mean that the state has lost control because the determination of work areas is in the hands of the state, the determination of production capacity and lifting, as well as the commercial aspects of oil and gas are determined by the state, the sharing of profits is the responsibility of the state, state revenues become more certain, and production is divided at the point give up.

In supporting the government in implementing a new scheme for profit sharing, the Ministry of Energy and Mineral Resources issued Ministerial Regulation Number 08 of 2017 concerning Gross Split production sharing contracts. The regulation contains the basis for the

formation and main provisions for entering into a production sharing contract agreement where the conditions are as follows: Ownership of natural resources remains in the hands of the government until the point of delivery; All capital and risks are borne by the contractor; and Operations management control rests with SKK Migas.

SKK Migas will always supervise the submission of the Plan of Development, increase in oil and gas lifting, oil and gas work safety, including the level of domestic content and supervision of manpower and assets. Good faith itself is an important thing in Production Sharing Contracts with a gross split system because the cooperation contract that is made is a contract that has a long contract period, also contracts that concern the livelihoods of the people in it. The government, represented by SKK Migas, has the authority to carry out and enter into a cooperation agreement in terms of oil and gas exploration and exploitation. Therefore, the implementation of DLSM is not haphazard, if it is carelessly managed and monitored it will result in a very fatal impact, namely the occurrence of oil and gas shortages prematurely.

So it is very important to apply the principle of good faith in upstream oil and gas production sharing cooperation contracts, namely being able to see the benefits and characteristics of the contract. And if the contract does not contain the principle of good faith in making it, both in its implementation and until the end of the contract it will cause significant losses to state revenues. In addition, if the process of implementing the agreement does not apply the principle of good faith, the agreement will be difficult to implement in good and balanced conditions, so that the agreement will not be mutually beneficial because there are parties who are harmed (Samuel M.P hutabarat, 2010: 44).

The production-sharing contract is a government contract, and the government itself is a party to the contract. The production sharing contract itself has a long term, namely: 30 years, and in practice it can be extended under the provisions of Law Number 22 of 2001 concerning Oil and Gas. The application of the principle of good faith in production sharing contracts is because the interests brought into this contract are public interests and not personal interests. And it is a matter that concerns the well-being of many people.

## **CONCLUSION**

The principle of good faith is very important in production sharing contracts, namely to create justice for the parties making an agreement. According to John Boatright and Manuel Velasques, it is fair in the distribution of rights and obligations according to the proper proportions for the parties, so that the parties get what they have agreed on and carry out balanced obligations so as to create harmony in carrying out the activities of the agreement. The production sharing contract is a government contract, and the government itself is the party that carries out the agreement, the term of the production sharing contract with the gross split system itself has a term of 30 years since the production sharing contract was made or agreed upon by both parties. And with the existence of a long-term production sharing contract, the principle of good faith must be used so as not to cause harm to either party.

Suggestion: In the absence of a principle of good faith in making a contract, it will cause a split in the future for the parties, and can make the parties feel that their rights and obligations have been violated, which disrupts the process of implementing the agreement. This is what makes people - people who do not put the principles of good faith in their agreements to be messed up in the end. Therefore, we all have the duty to apply the principle of good faith in every agreement that will be made in order to create fair harmony and convenience for all parties. Realizing that the writer is far from perfect, in the future the writer will be more focused and detailed in explaining the article above, with more sources and of course it can be accounted for.

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