

# Legal Vacuums in the Management of State Assets from Upstream Oil and Gas Cooperation Contracts

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## Abstrak

This research examines legal vacuums in the management of state assets derived from Cooperation Contracts (KKKS) in the upstream oil and gas sector in Indonesia. Despite a legal framework established by Law No. 22 of 2001 and Government Regulation No. 35 of 2004, field practices reveal discrepancies between regulations and implementation, leading to difficulties in the recording and reporting of assets, as well as the determination of depreciation values and operational costs. The impact of this legal vacuum not only affects state revenue and transparency but also has significant social and economic implications. Through case study analysis, this research suggests improvements to existing regulations, capacity building for KKKS, and strengthening oversight mechanisms to optimize the management of state assets in the upstream oil and gas sector.

Keywords: Legal Vacuum, Management of State Assets, Cooperation Contracts (KKKS), Upstream Oil and Gas Sector.

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## INTRODUCTION

The upstream oil and gas sector plays a strategic role in supporting Indonesia's national economy. Oil and gas resources are one of the key commodities that significantly contribute to state revenue. Since the discovery of oil and gas reserves in the early 20th century, the upstream oil and gas sector has become a backbone of national income through various fiscal mechanisms, such as taxes, royalties, and production sharing (Pudyantoro, 2012). The cooperation contracts made between the government and international as well as national oil and gas companies, especially in the form of Production Sharing Contracts (PSC), serve as the main instrument in managing these natural resource wealth. From the perspective of the State Revenue and Expenditure Budget (APBN), the oil and gas sector often provides a significant contribution to state revenue, both through non-tax state revenue (PNBP) and direct tax revenues from oil and gas companies (Hariansah, A., 2016). Revenues from this sector originate from production sharing, income tax, and various fees paid by oil and gas contractors. For instance, during the peak production period of oil and gas in Indonesia, this sector was able to contribute more than 20% of total state revenue. Although the contribution of oil and gas to the State Revenue and Expenditure Budget (APBN) has declined due to falling production and changes in global commodity prices, this sector remains one of the income sources that cannot be overlooked, especially considering the potential reserves that are still not fully explored and exploited.

The state assets derived from cooperation contracts in the upstream oil and gas sector also hold vital strategic value (Tordo, 2011). When oil and gas contractors operate in Indonesia through cooperation contracts, the assets obtained from exploration and production activities, such as infrastructure equipment, oil wells, processing facilities,

and extraction technology, become part of the nation's wealth. This means that every oil and gas production output generated from these oil blocks, whether onshore or offshore, not only provides financial benefits to the companies involved but also directly contributes to the growth of state assets (Lubiantara, 2012). Good management of these assets is essential, as their value and sustainability depend on policies and regulations that ensure security and effective utilization.

In addition to providing direct revenue, the upstream oil and gas sector also has a substantial multiplier effect on the national economy (Agerton, Hartley, Medlock III, & Temzelides, 2017). This industry creates jobs for thousands of local workers, both directly at production sites and indirectly through the supply chain of goods and services related to the oil and gas industry. Moreover, foreign investments flowing in through oil and gas exploration and production projects also play a role in increasing foreign exchange earnings, strengthening the balance of payments, and promoting technology transfer and enhancement of local workforce capabilities. In the long term, the sustainability of the oil and gas sector is a determinant of national energy security and fiscal stability, especially if the management of state assets is conducted transparently and accountably (Parra, 2003).

According to the provisions in Article 6 paragraph 1 of Law Number 22 of 2001 concerning Oil and Gas, it is stated that all operations in the upstream oil and gas sector must be conducted through cooperation contracts between the government and the operating contractors. This cooperation contract, often referred to as a Cooperation Contract (KKKS) or Production Sharing Contract (PSC), serves as the legal foundation for the regulation and implementation of oil and gas exploration and production activities in Indonesia. This mechanism allows the government to control and oversee oil and gas operations conducted by both foreign and domestic contractors in order to maximize profits for the state (Pradnyana, 2014).

One important provision in this cooperation contract is that assets acquired or purchased by the contractor during the execution of the upstream oil and gas work program will automatically become the property of the Government of Indonesia (Hewitt, 2010). This aligns with the provisions outlined in Section X Title of Equipment of the PSC, which states that any equipment purchased by the contractor for the purpose of upstream oil and gas operations becomes the property of the Government of Indonesia (GOI). Specifically, such equipment will officially become state property upon its arrival at Indonesian import ports if the equipment is sourced from abroad. This statement emphasizes that although the contractor is responsible for the purchase and procurement, ownership still resides with the government (Hair, 2010).

This provision reflects the government's strategy to maintain full control over the assets used in the oil and gas industry. Through this regulation, the Government of Indonesia ensures that essential assets utilized in exploration and production activities, such as drilling equipment, oil and gas processing facilities, and other supporting infrastructure, do not become the property of the contractor once the work is completed but remain state-owned. This also applies to equipment used during the duration of the contract, ensuring that when the contract ends or is not extended, all utilized equipment remains under government ownership (Salim, 2006).

This approach has several strategic advantages for Indonesia. First, assets that have been purchased by the contractor can still be utilized for long-term operations by the government or other operators without the need for costly repurchases that would strain the national budget. Second, control over these assets ensures that the state

retains bargaining power in determining policies or operations involving third parties in the oil and gas sector. This is especially important in the management of large oil and gas blocks that require investment in advanced technology and equipment. However, on the other hand, this provision also places a significant responsibility on the government to ensure that these assets are managed properly. The government, through relevant institutions such as SKK Migas, must oversee and maintain the equipment that becomes its property after being imported or operated. Without proper management, these assets could become a burden due to the need for maintenance or replacement of spare parts, which could potentially strain the national budget if not accounted for properly (Siahaan, 2020).

In addition to being regulated in the Production Sharing Contract (PSC), provisions regarding the status of goods and equipment used in upstream oil and gas activities are also outlined in Government Regulation (PP) No. 35 of 2004 concerning Upstream Oil and Gas Business Activities. Article 78 of this regulation states that all goods and equipment purchased by contractors for upstream oil and gas activities, which are directly used in operations, will become state property. This ownership includes equipment such as drilling machines, processing facilities, and other supporting infrastructure. The government, through implementing agencies such as SKK Migas, is responsible for the development and management of these assets. Thus, the state secures ownership of essential assets in the oil and gas industry, even though the initial purchase is made by the contractor.

The management of state assets in the upstream oil and gas sector has undergone significant development with the issuance of Government Regulation No. 6 of 2006, which is a follow-up to the mandate of Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury. This regulation creates a new era in state asset management, where management is expected to be more orderly, accountable, and transparent. The purpose of this regulation is to strengthen the governance of state assets not only in the oil and gas sector but across all sectors of government. With more professional and modern implementation, it is hoped that management of state assets can gain public trust and support the realization of good governance.

In the context of upstream oil and gas activities, Contractors of the Cooperation Contract (KKKS), as the implementers of the cooperation contract, play an important role in managing and recording the assets they use during operations. One important aspect of this asset management is the bookkeeping and recording of depreciation costs for the goods and equipment utilized in operations. These depreciation costs become part of the operational cost calculations that are reimbursed to the contractor through a Cost Recovery mechanism. This mechanism allows contractors to recover operational costs from the government after equipment or assets used in oil and gas production have depreciated in value. The regulations concerning the reimbursement of operational costs are outlined in Government Regulation No. 79 of 2010, which addresses Recoverable Operating Costs and Income Tax Treatment in Upstream Oil and Gas Activities, particularly in Articles 7, 11, and 12.

However, in practice, there are often gaps between the existing regulations and the implementation on the ground, particularly in terms of the accounting for state-owned goods originating from KKKS. This issue arises because asset recording and bookkeeping are often not performed accurately, leading to ambiguities in determining depreciation values and the actual amount of state assets. This can result in inaccuracies in calculating the costs that can be reimbursed to the contractor through the Cost

Recovery mechanism, which could ultimately harm the state. This gap highlights the need for improvements in governance and oversight of state assets generated from upstream oil and gas activities. The government must continue to strengthen the recording and reporting systems used by KKKS to ensure compliance with the standards set forth in legislation. With more transparent and accountable asset management, the process of reimbursing operational costs through Cost Recovery will be more efficient and ensure that the state derives optimal benefits from cooperation contracts in the oil and gas sector. Furthermore, good governance will help prevent potential abuse of state assets or fiscal losses caused by weak oversight of state-owned goods used in upstream oil and gas activities.

Legal vacuums occur when there are certain aspects or issues that are not clearly regulated by the applicable laws and regulations. In the context of managing state assets from upstream oil and gas cooperation contracts, this legal vacuum can encompass several issues, such as a lack of specific regulations regarding the management, recording, and reporting of assets purchased by contractors but owned by the state. For example, although regulations such as Law No. 22 of 2001 concerning Oil and Natural Gas and Government Regulation No. 35 of 2004 state that assets purchased by contractors become state property, detailed implementation regarding supervision mechanisms, accountability, and governance of these assets is often unclear or inconsistent on the ground. This vacuum can create legal uncertainties for the parties involved, both the government and the contractors. Additionally, this legal vacuum also relates to the governance of Cost Recovery. Existing regulations, such as PP No. 79 of 2010, regulate the operational costs that can be reimbursed to contractors, including asset depreciation. However, the absence of detailed guidelines regarding the processes of bookkeeping, auditing, and maintenance of state-owned assets can lead to potential misunderstandings or even abuses in the recording and management of these assets. This vacuum can result in suboptimal asset management, ultimately harming the state both financially and in terms of sovereignty over its natural resources.

## **RESEARCH METHOD**

The research methodology used in this study is the normative legal method, which focuses on examining the written legal norms that are applicable and relevant to the issues being studied. In this research, the normative legal method is employed to analyze the laws and regulations governing the management of state assets from upstream oil and gas cooperation contracts, including Law No. 22 of 2001 concerning Oil and Natural Gas, Government Regulation No. 35 of 2004, and other regulations related to asset management in the upstream oil and gas sector. This approach aims to evaluate the alignment between existing regulations and field practices, as well as to identify any legal vacuums or inconsistencies that require adjustments or legal updates. Thus, this research not only analyzes the law in textual form but also seeks to connect the application of the law with operational realities.

Within the framework of this normative legal method, a statute approach and an analytical approach are utilized. The statute approach involves examining various regulations and legal provisions related to the management of state assets, particularly those concerning the mechanisms of oil and gas cooperation contracts and the management of state-owned goods. This approach aims to gain a comprehensive understanding of the applicable legal provisions and how those regulations are implemented in real-world contexts. Meanwhile, the analytical approach is used to

analyze existing legal concepts, including the concepts of state wealth, asset management, and the responsibilities of the state in cooperation contracts. Through this approach, the research will assess the extent to which existing regulations can address the challenges faced in the management of state assets and provide recommendations for improvements or updates to the regulations if necessary.

## **RESULTS AND DISCUSSION**

### **The Alignment Between Law No. 22 of 2001 on Oil and Natural Gas and Government Regulation No. 35 of 2004 with the Practice of Managing State Assets Arising from Upstream Oil and Gas Cooperation Contracts in Indonesia**

According to Government Regulation No. 6 of 2006 on the Management of State-owned Goods (BMN) as well as various regulations from the Ministry of Finance that regulate the management of BMN originating from Cooperation Contract Contractors (KKKS), there are detailed procedures for the management of BMN in the upstream oil and gas sector. Minister of Finance Regulation No. 135/MK.6/2009, amended by Minister of Finance Regulation No. 165/MK.6/2010, along with Minister of Finance Regulations No. 245/PMK.05/2012 and No. 248/PMK.05/2012, clearly establish guidelines for accounting and reporting of BMN from KKKS. All these regulations aim to ensure that every state asset originating from KKKS activities can be managed properly and in accordance with good governance principles, accountability, and transparency.

In practice, KKKS is responsible for recording, storing, and reporting on the BMN under their control to the relevant authorities, including SKK Migas. As an entity that conducts oil and gas exploration and exploitation activities in Indonesia, KKKS is obligated to regularly report the status of BMN. SKK Migas, as the contract management agency, plays a key role in supervising and controlling BMN originating from KKKS. Besides overseeing asset usage, SKK Migas is also responsible for conveying consolidated reports on these assets to the Ministry of Energy and Mineral Resources (KESDM). SKK Migas envisions itself as a proactive and trustworthy partner in maximizing the benefits of the upstream oil and gas industry for the nation and all stakeholders.

PPBMN (Center for Management of State-Owned Goods) under the Ministry of Energy and Mineral Resources is tasked with managing the BMN within the Ministry of ESDM, including those originating from KKKS. PPBMN's tasks include technical policy preparation, monitoring, evaluation, and reporting regarding the management of BMN. Additionally, DJKN (Directorate General of State Assets) as part of the Ministry of Finance also plays an important role in managing state assets, including BMN originating from the oil and gas sector. DJKN, through the Directorate of State Receivables and Other State-Owned Assets, prepares policies and standardizations, supervises, and evaluates the management of state assets.

In the practical management of State-Owned Goods (BMN) originating from Cooperation Contract Contractors (KKKS), KKKS is obliged to compile asset reports for the BMN under its authority. These reports must be submitted regularly to SKK Migas through digital systems such as SINAS SKK Migas and SINTA. This reporting is regulated by the SKK Migas Governance Guidelines (PTK) No. 007 Book Three of 2009, which mandates KKKS to report asset data to the authorities at a specified frequency. Additionally, KKKS must be aware of the asset values recorded in the Central Government Financial Report (LKPP). However, in reality, many KKKS do not consistently fulfill this reporting obligation, especially regarding timely submissions and report accuracy.

Various KKKS report data at different times, resulting in gaps in the asset reporting that should be recorded in the LKPP.

This gap is reinforced by findings from the Financial Supervisory Agency (BPK), which revealed that the integrity of BMN reports from KKKS is inadequate. BPK identified weaknesses in the Internal Control System (SPI) related to the management of BMN from KKKS in the LKPP from 2007 to 2013. In 2007, BPK could not ascertain the fairness of the balance of other assets managed by BPMIGAS due to issues of asset presentation completeness. Findings in subsequent years continued to indicate that the government had not established clear policies for managing and accounting for state assets derived from KKKS. For instance, unused KKKS assets that had been transferred to the government were poorly recorded, and inventory and asset evaluation processes were deemed insufficient. These findings indicate serious weaknesses in control, management, and reporting of BMN from KKKS, resulting in uncertainty regarding the reported asset values in the LKPP.

BPK's findings on the central government financial reports prompted a swift response from the government to improve the BMN management system derived from KKKS. The government began conducting Asset Inventory and Valuation (IP), as well as issuing several technical regulations to address these findings. One regulation issued was the Minister of Finance Regulation No. 135/PMK.06/2009 on the Management of BMN Derived from KKKS in 2009, along with accounting regulations under PMK No. 02/PMK.05/2011 in 2011. These regulations are intended to provide clearer guidance on the asset management of BMN from KKKS and enhance the integrity of government financial reporting. However, gaps in the implementation of these regulations remain problematic, particularly in terms of consistent reporting by KKKS and the validity of the data consolidated by SKK Migas and related agencies.

In Indonesia's upstream oil and gas sector, the misalignment between regulations and asset management practices in the field is a fundamental issue. Law No. 22 of 2001 on Oil and Gas and Government Regulation No. 35 of 2004 provide a clear legal framework regarding the management of state assets derived from Cooperation Contract Contractors (KKKS). However, in implementation, many contractors face challenges in recording and reporting assets. These difficulties often arise from a lack of understanding of the governing provisions, as well as differing perspectives between regulators and field practitioners. In many cases, reports prepared by KKKS do not fully comply with the standards established by the law and government regulations, leading to inaccuracies and inconsistencies in asset management.

One significant issue is the inaccuracies in determining asset depreciation values. Under applicable provisions, asset depreciation must be calculated according to established accounting standards. Yet, in the field, many contractors use inconsistent or incorrect methods, resulting in questionable depreciation values. Additionally, within the Cost Recovery mechanism, there are clear provisions regarding the operational costs that can be claimed. However, field practices show that some contractors frequently include costs that are inappropriate or not eligible for claims, which leads to confusion and potential disputes between contractors and the government. This not only risks reducing state income but also creates uncertainties for industry players.

Such misalignment has widespread repercussions for the management of state assets. Long-term inaccuracies in reporting and asset assessment can diminish public trust in government management of natural resource wealth. Furthermore, this can thwart government efforts to enhance transparency and accountability in the

management of BMN in the upstream oil and gas sector. To address these issues, a collaborative effort between the government and KKKS is essential to develop a better management system, including preparing clearer guidelines, training for field staff, and more stringent oversight of asset management practices.

### **Legal Vacuums in the Management of State Assets from Upstream Oil and Gas Cooperation Contracts**

Law No. 22 of 2001 serves as a fundamental legal foundation in the management of oil and gas resources in Indonesia. This law stipulates that all oil and gas resources are owned by the state, meaning that their management and utilization must be carried out for the welfare of the people. In this context, the law regulates various aspects, from exploration activities to exploitation, as well as the sale and use of oil and gas products. However, despite clear provisions, there are legal vacuums in operational details and implementation in the field, which often lead to differing interpretations among industry participants. Supplementing Law No. 22 of 2001, Government Regulation No. 35 of 2004 provides further details on upstream oil and gas business activities. This regulation emphasizes the importance of the cooperation contract (KKS) as the primary instrument for conducting oil and gas activities. Nonetheless, the absence of specific guidelines on managing assets generated from these activities often leads to confusion among contractors, resulting in inconsistent practices in the field compared to legal provisions. This regulation also fails to provide a sufficient framework to respond to rapidly changing situations in the oil and gas sector, thus leaving legal gaps that could be exploited for non-compliance.

In addition to the law and government regulations, there are various other regulations governing asset management, such as Minister of Finance regulations and related regulations on the management of state-owned goods. Although there exists a comprehensive legal framework, implementation in the field faces hurdles due to ambiguities in existing provisions and inadequate coordination among relevant government agencies. This underscores the need for a review of existing regulations to ensure that all parties involved clearly understand and can apply these provisions effectively.

The asset management practices of KKKS in the upstream oil and gas sector frequently reveal discrepancies between policy and real circumstances in the field. Although KKKS are required to maintain accurate records and reports, many encounter significant challenges in managing and documenting these assets. This can include difficulties in gathering necessary data and challenges in ensuring that asset records comply with applicable laws. In practice, KKKS often experience issues regarding data accuracy, both in measuring asset values and in timely reporting. Some contractors neglect established reporting standards, either out of a lack of understanding or due to pressures to present favorable reports. This misunderstanding leads to errors in asset depreciation and operational cost recognition, potentially affecting claims under the Cost Recovery mechanism. This indicates a strong need for enhanced training and resources to assist KKKS in fulfilling their reporting obligations.

A notable gap exists between legal provisions and actual practices in the upstream oil and gas sector. While the law establishes clear procedures for asset management, on the ground, practices are often influenced by external factors such as pressures to generate short-term profits and insufficient government oversight. This creates a situation where legal provisions are not effectively applied, leading to violations

and non-compliance that harm state interests. Legal vacuums in the upstream oil and gas sector result in significant consequences for asset management and reporting. Regulatory uncertainties often lead to confusion among KKKS regarding their obligations, which can result in inaccurate or incomplete reporting. This can lead to financial losses for the state, as assets that should have been properly managed are not accurately recorded, resulting in potential lost revenue.

Legal vacuums also affect state income. When KKKS cannot accurately report assets, this can influence figures used for tax calculations and other contributions to the state. Moreover, a lack of transparency in asset management can erode public trust in the government and the involved institutions, which in turn may impact investments in the oil and gas sector. The legal vacuums in the upstream oil and gas sector have broader social and economic implications. Inefficient asset management can affect the distribution of benefits from natural resources to society. Communities that should benefit from natural wealth often find themselves adversely affected when assets are poorly managed, leading to potential dissatisfaction and social instability.

A concrete example of such legal vacuums is evident in several cases where KKKS financial reports are unverifiable, such as poorly recorded asset reports. Findings by the Financial Supervisory Agency (BPK) indicate that the balance of assets managed by KKKS cannot be confidently stated in the central government financial reports. This indicates a gap between what should be reported and what is actually occurring on the ground. From these cases, it is crucial to identify lessons that can be applied to improve asset management. One solution is to strengthen regulations and update existing accounting systems. The government needs to establish clearer guidelines on asset management and reporting and intensify oversight and accountability in this sector.

To address these legal vacuums, the government must conduct a comprehensive evaluation of existing regulations and implement necessary revisions to ensure that all parties clearly understand their obligations. This includes simplifying reporting and asset recording procedures to make them more comprehensible for KKKS. It is important for KKKS to receive adequate training regarding applicable accounting and reporting standards. By enhancing the capacity and knowledge of the workforce in the field, it is hoped that asset management can be conducted more efficiently and in accordance with the existing provisions. Tighter oversight and clearer accountability must also be enforced. This could be achieved through the establishment of independent oversight teams tasked with conducting routine audits of asset management reports by KKKS. Thus, it is expected that the management practices of state assets from cooperation contracts in the upstream oil and gas sector can become more transparent and accountable, yielding greater benefits for the state and society.

## **CONCLUSION**

The conclusions drawn from the analysis of state asset management in the upstream oil and gas sector indicate significant gaps between legal provisions and practices on the ground. Although regulations such as Law No. 22 of 2001 and PP No. 35 of 2004 provide a clear legal framework, their implementation is often hindered by legal vacuums and a lack of specific operational guidelines. Cooperation Contract Contractors (KKKS) frequently encounter difficulties in asset recording and reporting, resulting in inaccuracies in financial reports and non-compliance with regulations. This gap not only impacts state finances but also influences transparency and accountability in managing oil and gas resources.

To tackle these issues, comprehensive reforms of existing regulations are essential, along with capacity building and training for KKKS. Additionally, strengthening oversight mechanisms and accountability is crucial to ensure that state asset management is conducted efficiently and according to applicable laws. With these measures, it is hoped that the upstream oil and gas sector can be managed better, providing maximum benefits for the state and society, and fostering sustainable economic growth.

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