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Legal Reform as Corruption Prevention Efforts in Management of Oil and Gas Upstream Business Field

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Abstract*--*The main problem in this study is that transparency in the oil and gas business is still not implemented. This is because oil and gas regulations still still have the potential for corruption.The purpose of this study is to examine the oil and gas regulations that have the potential for corruption. This study uses the concept approach and the statute approach. Researchers discovered that the upstream oil and gas management rules are not consistent wit h the general principles of good governance The results of the study concluded that the existence of potential regulations on the emergence of corruption include overlapping regulations in the field of licensing, private contractual relations allowing transparency to other parties. The researcher recommends that legal reform efforts are needed through licensing policies as a preventive instrument, the issuance of national energy policies, and effective monitoring of oil and gas exploitation.

Key words*--*Transparency, Oil and Gas Upstream Business Sector, Corruption Prevention

I. INTRODUCTION

Businesses in the oil and gas upstream industry are required to be more transparent in order to avoid bribery as result of the links in the industry that seem unopened. Legal reform efforts to be transparent are carried out through licensing policies as preventive instrument. Some provisions namely Governmental Regulation Number 79 of 2014 and Republic of Indonesia's Presidential Regulation Number 22 of 2017 and related regulations have been improved related to the field of supervision. What is regulated in the 3 (three) forms of the regulation is more related to the supervision of management control which is in the Special Working Unit of Oil and Gas function (SKK Migas), is more related to the administration, does not involve mechanisms and procedures and has not touched many aspects of the contract. Thus, what is stipulated in the oil and gas regulations is incomplete so that in practice it often creates legal loopholes that can cause state losses, either because of collusion or because of the inability of officials in the form of oversight of the control and management of mineral resources (oil and gas).

The root of corruption in Pertamina is wrong management controlled by the military at Pertamina. Lack of accountability within the management of Pertamina been allowed by the government because the government enjoyed also the flow of funds from the corruption of the government enjoyed also the flow of funds from the corruption of it. There were no reports of financial book-keeping there are no reports on business operations so that Pertamina is like a state within a state [1]

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Policy of national energy contained in Governmental Regulation Number 79 of 2014 and Presidential Regulation of Indonesia Number 22 of 2017, rules for supervision of oil and gas exploitation during contract implementation as in Article 24 paragraph (2) letter b of the Ministerial Regulation of Energy and Resources Mineral Number 48 of 2017 concerning operational management control in the form of approval of POD (Plan of Development), WP&B (Work Program and Budget), AFE (Authorization for Expenditure) in which the three forms of management control supervision are in the Special Working Unit of Oil and Gas function. The status of Special Working Unit of Oil and Gas function (SKK Migas) is a work unit specifically under the Ministry of Energy and Mineral Resources, therefore if there is a breach of contract implementation conducted by Special Working Unit of Oil and Gas function, the risk will be borne by the Government of Indonesia [2].

Ministerial Regulation of Energy and Mineral Resources Number 22 of 2008 and Governmental Regulation Number 79 of 2010 concerning Refundable Operating Costs and Treatment of Income Tax in the Oil and Gas Upstream industry as a reflection of evaluation in the preparation of oil and gas cooperation contracts so that the preparation of government contracts always adheres principles of good faith and transparency.

Based on Act Number 22 Year 2001 concerning Oil and Gas, in the oil and gas business there are upstream and downstream businesses. Upstream businesses consist of exploration and exploitation activities. Whereas the downstream business consists of processing, transportation, storage and commercial activities. The upstream business is carried out based on a cooperation contract with the implementing agency, while the downstream business is carried out after obtaining permission from the Ministry of Energy and Mineral Resources [3].

The officials misunderstanding in the oil and gas sector in drafting and managing contracts requires attention because it involves aspects of managing state finances and the public interest is important in contracts made by the government. This is one of the characteristics that distinguish private contracts and government contracts and constitutional mandate as stated in article 23 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Third Amendment) which states: State revenue and expenditure budgets as form of state financial management are stipulated annually by law and implemented openly and responsibly for the greatest prosperity of the people.

In article 23 paragraph (1) of the 1945 Constitution of the Republic of Indonesia it appears that the management of state finances, including contracts made by the government, must refer to the principles of transparency and accountability and good faith for the prosperity of the people. Transparency is an important principle in contracts made by the government, its main purpose is to protect state finances and the public interest so that there is no financial loss. Therefore, the consequences of applying the principle of transparency in contracts made by the government need to provide the widest possible access to the public.

Control taken to make oil and gas upstream business activities more transparent is to create certain restrictions by promoting a system that is in accordance with standards, so that procurement can be more fair and guarantee the fairest, most efficient prices so that cost recovery can be controlled. Investigated and offenders once found guilt should be prosecuted and the loots taken back on the value of what has been stolen [4].

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The length of the business chain in the oil and gas upstream industry has become a gap for bribery practices in the industry. In addition, the deviations types that may arise from the length of the link are contractual deviations, collusion, bribery and commission reception, abuse of position. All of the above findings are often found of alleged irregularities in the chain in the oil and gas upstream industry. Many examples support this. The alleged crime of money laundering, inclusion and corruption allegedly committed by Rudi Rubiandini, the former Head of Special Working Unit of Oil and Gas has been tried [5]. In this case, the KPK named Rudi Rubiandini as the state organizer as defendant on the first charge was article 12 letter a of Act Number 31 of 1999 juncto Act Number 20 of 2001 juncto Article 55 Paragraph (1) juncto Article 65 Paragraph (1) of the Criminal Code. The second indictment was article 11 of Act Number 31 of 1999 juncto Act of Number 20 of 2001. The third indictment was article 3 of Act Number 8 of 2010 concerning Prevention of Eradication of Money Laundering Crimes juncto article 55 Paragraph (1) of the Criminal Code. The defendant was charged with or participating in acts that were each seen as an independent act so that it constituted several crimes, received prizes, promises namely prizes in the form of money, SGD.200,000.00 (two hundred thousand Singapore dollars) and USD 900,000 (nine hundred thousand United States dollars) from Widodo Ratanachaiton and PT KOP. Ltd (Simanjuntak Gunawan Sanjaya), and USD 522,500 (five hundred twenty two thousand five hundred United States dollars) from Arta Meris Simbolan as President Director of PT Kaltim Parma Industri (PT KPI) what giving of this money is for the defendant to commit acts related to the implementation of a limited auction of crude oil and condensate for the state in Special Working Unit of Oil and Gas. Bribery was also estimated to reach billions of rupiah.

The business processes in the oil and gas upstream sector are rather long starting from work or WK (working area), then the work of procuring studies, 3D and 2D (2D or 3D seismic surveys), exploration, drilling (drilling), etc., discovering new oil and gas reserves (discovery), until there is agreement and so forth [6] in which each part of the chain is often used in bribery practices that cause state losses.

Oil and gas upstream management requires the principle of transparency, where the regulation and implementation of transparency has been carried out, but what is the goal of transparency has not been achieved. The main elements of transparency are information and interests. The website either owned by the Ministry of Energy and Mineral Resources, or Special Working Unit of Oil and Gas has indeed provided and presented various information about the oil and gas upstream sector, but the main element of the information presented does not have point of contact with the second element of transparency, namely interests. The second element of transparency in the oil and gas industry is the element of interest of the parties involved, namely, the central government, local governments, Cooperation Contract Contractors (K3S), and the community [7].

The principle of transparency is very important principle, both in good governance and in the General Principles of Good Governance, because without these principles it is almost impossible to implement other principles. Scope of transparency principle includes 2 (two) things, namely substance and procedures [8]. This principle can make it easier for the public to access the laws and regulations and its implementation regulations, related to the State's responsibility in regulating the transparency principle of upstream oil and gas management. In addition, this principle is very important to prevent the practice of collusion which is detrimental to the State finances and in certain cases can actually harm the public interest.

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The government is responsible for implementing the principle of transparency in every administration, including the upstream oil and gas administration. The Paradigm Shift from Energy Resources as export commodity to generate foreign exchange becomes that energy is the capital of national development. However, the Energy Resource (SDE) paradigm as export commodity to generate foreign exchange and the energy paradigm is national development capital that is both paradigm of depleting energy without regard to the rights of future generations. Capital is problem in the administration of national energy but on the other hand the government is wasting the budget by separating institutional oversight functions and business functions between Pertamina and Special Working Unit of Oil and Gas as form of inefficiency.

One of the causes of legal problems in the oil and gas upstream sector is due to the neglect of the principle of transparency in the management of upstream oil and gas and the use of civil instruments in the form of private contractual relationships because private contractual relationships do not allow for transparency other than the parties. The legal relationship scheme created in the private contractual concept fosters opportunities for corruption [9].

Use of a preventive approach is needed in eradicating corruption because preventive measures will have reach broader with long-term effects [10] and can prevent the potential loss of the State's finances and the State's economic losses in a greater amount [11].

Transparency principle is very important, considering that article 11 paragraph (3) of Act Number 22 of 2001 concerning Oil and Gas (herein after referred to as Oil and Gas Act) contains at least 17 basic provisions that must be included in the cooperation contract made between the implementing agency and the business entity or permanent establishment. One of the obligations is the development of the surrounding community (mining communities) and the guarantee of the rights of indigenous peoples (letter p).

In many of the survey countries, a longstanding veil of secrecy over extractive industry activities has limited public, as well as legislative, access to information on the oil and mining sectors. Efforts to hide corrupt practices at the highest level of government have been a primary cause [12]. Transparency, accountability and ethical conduct of business in the oil and gas sector should be deepened. The floodgate opened to indigenous companies should be maintained so as to enhance inclusiveness [13].

Some previous studies that have been conducted related to the upstream management of oil and gas have not touched the principle of transparency. Legal principles in the cooperation contract for oil and gas upstream business activities conducted by Sang Ayu Putu Rahayu, which concluded that the focus is more on the auction stage as the pre-contract stage in addition to the legal principles of the agreement [14]. Legal principles of Oil and Gas Revenue Sharing Funds' was the research title by Indah Dwi Qurbani. She highlights more about the legal principles that should be guided by the central government and regional governments, in the sharing of oil and gas [15]. Whereas in this article is emphasing more on studies related to oil and gas regulations that have the potential for corruption and legal reforms in efforts to prevent corruption in the upstream management of the oil and gas business sector.

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II. METHOD

Legal research with the title Legal Reform as Corruption Prevention Efforts in Oil and Gas Upstream Management is an effort to prevent corruption in the oil and gas upstream sector, so as to achieve state income efficiency and realize the greatest prosperity for the people of Indonesia as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia after changes.

From the background description and the formulation of the problem, this legal research method is normative legal research [16] move to the upstream oil and gas business management arrangements in its consistency with the General Principles of Good Governance (AAUPB).

This research was conducted by using conceptual approach, statute approach [17]. Through conceptual approach, an assessment of the nature of transparency will be carried out, and an analysis of the possible applicability of public legal principles, along with derived legal principles such as the principle of good governance in oil and gas upstream management activities.

III. RESULTS AND DISCUSSION

Rules that have potential for corruption in oil and gas upstream business activities

The upstream implementation of oil and gas must reflect AAUPB or the principle of good governance because the control over resource wealth is the authority of the government in its implementation as mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Disregard of the principle of transparency, not only harms ordinary people but the impact of neglecting the principle of transparency is ultimately felt by the oil and gas business actors and the government, can encourage sectoral egos and overlapping licenses, the emergence of a crisis of trust between the local government and the central government, which in turn can lead to decline in NOC and IOC investment requests.

The existence of individual Ministry policies also has the potential to cause corrupt behavior. Implementing Agency of Oil and Gas declared in 2012, oil and gas production of 1 million barrels per day. However, exploration activities experienced problems due to the issuance of regulations from other ministries. The Ministry of Transportation certainly does not have bad intentions when issuing regulations on cabotage principle. The Ministry of Environment should also be suspected of trying to issue regulations that are expected to improve the quality of life together when issuing regulations on air pollution thresholds. Before simplification, there were 37 permits for one wellbore.

Another example of rule that has the potential for corruption is the overlapping of rules under the law. Overlap between the Investment Coordinating Board and the Ministry of Energy and Mineral Resources in Ministerial Regulation of Energy and Mineral Resources Number 23 of 2015 concerning Delegation of Authority to Grant Licensing in Oil and Gas in the Context of Implementing One Stop Integrated Services to the Head of the Investment Coordinating Board. In essence, a number of licenses were delegated to the Head of the Investment Coordinating Board. The authority to grant permits according to the Minister of Energy and Mineral Resources remains with the Ministry of Energy and Mineral Resources so that the authority can be withdrawn at any time. The Head of the Investment Coordinating Board must provide a copy to the Ministry of Energy and Mineral Resources for each license issued and report on the implementation of the licensing delegation every 3

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months, whereas previously only business licenses were delegated, with Ministerial Regulation of Energy and Mineral Resources Number 5 of 2010 concerning Delegation of Authority to Grant Business Licenses in Energy and Mineral Resources in the Context of Implementing One Stop Services.

Some cases of exploration activities still have to fulfill a number of provisions and require licensing that refers to the provisions issued by several ministries. Not infrequently, many oil and gas exploration activities have retreated because they are located in protected forest areas, so they have to go through a lending and use mechanism that requires almost 2 (two) years to complete.

Ministerial Regulation of Energy and Mineral Resources Number 35 of 2008 concerning WK Offer states in Article 1 paragraph (1) that "work area" is a specific area within the Indonesian mining jurisdiction for exploration and exploitation. The intended open area is the Indonesian mining jurisdiction which has not been designated as working area. Available work areas are work areas that have been offered at work area auction or a direct offer of work areas, but the winner cannot be determined. From the construction of normalization, the definition reflects that the principle of transparency has not yet become the breath of oil and gas upstream management.

The discrepancy of the Ministerial Regulation of Energy and Mineral Resources Number 5 of 2010 can be seen in the first, the choice of delegation of authority with the title of delegation has legal consequences for legal liability, but still has the obligation to report to the Ministry of Energy and Mineral Resources, issuing licenses on behalf of the Ministry of Energy and Mineral Resources. Second, the substitution rights required by the Ministry of Energy and Mineral Resources, third, delegation with the model of handover of authority should have financial consequences, whether the level of ministry has the authority to make a delegation, this is a separate question that is still very difficult to digest, whether there is an authority a ministry regulates other ministries [18].

The confusion about the content of the Ministerial Regulation occurs in Ministerial Regulation Energy and Mineral Resources Number 42 of 2017 and Ministerial Regulation of Energy and Mineral Resources Number 48 of 20017. Ministerial Regulation of Energy and Mineral Resources Number 42 of 2017 concerning Business Supervision in Business Activities in the Energy and Mineral Resources Sector was set on July 14, 2017. Ministerial Regulation of Energy and Mineral Resources Number 48 of 20017 concerning Supervision of Exploitation in the Energy and Mineral Resources Sector on August 3, 2017.

Implementing Agency of Oil and Gas (BP oil and gas) was formed based on Governmental Regulation Number 42 of 2002 concerning the Implementing Agency for oil and gas upstream business activities, as mandated in Article 44 of the Oil and Gas Law. The function of Implementing Agency of Oil and Gas is to supervise upstream business activities so that the extraction of state oil and gas resources can provide maximum benefits to the country for the prosperity of the people. The Oil and Gas Law positions BP oil and gas as the supervisory body for the implementation of oil and gas revenue sharing contracts or upstream Oil and Gas PSC, but of the 7 Implementing Agency of Oil and Gas tasks only 5 (five) tasks reflect the activities within the scope of the implementation of the cooperation contract, the rest in the pre-contract and post-contract phases. In the case of oversight of the implementation of oil and gas upstream business activities, there are still unclear regulatory materials which make it difficult for users to use them as references and guidelines.

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Application of the principle of transparency as a legal framework to prevent corruption

The principle of transparency is very important principle both in good governance and in the General Principles of Good Governance, because without these principles it is almost impossible to implement other principles. The government is responsible for implementing the principle of transparency in every government administration, including the oil and gas upstream business activities. The government has tried to implement the principle of transparency, among others, by establishing KEN and RUEN in Governmental Regulation. Number 79 of 2014 concerning National Energy Policy and Presidential Regulation Number 22 of 2017 concerning the National Energy General Plan. In addition, the Government has also published legislative products and established the principle of transparency as a guideline in the implementation of national energy and oil and gas upstream management.

Legal reform efforts in corruption prevention in oil and gas upstream business activities have been carried out through the publication of legislative products in the field of oil and gas upstream industry, namely by pouring KEN and RUEN in Governmental Regulation Number 79 of 2014 concerning National Energy Policy and Presidential Regulation of the Republic of Indonesia Number 22 of 2017 Concerning the National Energy General Plan. Meanwhile, in Nigeria, efforts to prevent corruption in the upstream oil and gas sector go through combined efforts of legal framework through the corrupt- free agencies like the EFCC and ICPC, and the administrative framework of the Freedom of information Bill for the press to report cases of corruption undistrisbuted [19].

A simple parameter to test the fulfillment of information is to ask questions whether the information has been presented, whether the information presented answers the interests of the parties involved such as the central government, regional governments, Cooperation Contract Contractors (K3S), and the community, each with that information each party involved know what their rights and obligations [20].

Legal reform efforts are also carried out in the field of licensing which are regulators or controlling norms so that the community in carrying out an activity in accordance with applicable legal provisions, so that the permit is a preventive instrument, whose main purpose is to prevent deviant behavior from the public in order to fulfill the legal provisions applies. Licensing simplification policy in oil and gas upstream activities has been carried out, namely in January 2018, from 90 regulations, 96 licenses, in February 2018 to 11 regulations, and 45 licenses, in March 2018, 45 licenses, simplified again to 4 regulations and 22 licensing. Simplification of licensing is reflection of transparency between government agencies and other government agencies, both vertically between the central government, state ministries and regional governments, or horizontally among ministry, service agencies, or regional government institutions.

Ministerial Regulation of Energy and Mineral Resources Number 5 of 2010 and ministerial regulation of Energy and Mineral Resources Number 23 of 2015 describe the gradation of the transparency process between government agencies on the process of licensing efficiency that transparency between agencies still needs to be organized and guarded. Licensing is expected to be effective and efficient, but apparently everything needs a process so that the integration of licensing still takes time to arrive at the point of zero from the sectorial ego nuance. It is expected that the integration of permits to the level of the integrated permit is not a mandatory permit that is wrapped in the title delegation permit [21].

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Licensing does not have the sole purpose of obtaining income for the state or region through the withdrawal of sum of money for issuance of permits. Withdrawal of money for the granting of licenses should prove relationship to improving the quality of professional services with certain conditions, qualifying as direct contribution to the purpose on which the permit is based and does not conflict with detourement de pouvoir, in the public interest of such collection is necessary for granting permits, and as a realization of legal protection the determination of financial provisions is used for compensation [22].

The use of private agreements in the upstream oil and gas implementation does not allow the principle of transparency. Before the transfer of ownership between state control over private ownership should use a public agreement framework in order to prevent corruption in oil and gas upstream business activities [23].

In order to prevent the emergence of corruption in oil and gas upstream industry, there are supervision provisions by the ministry of energy and mineral resources as stipulated in Ministerial Regulation of Energy and Mineral Resources Number 42 of 2017 concerning Business Supervision in Business Activities in the Energy and Mineral Resources Sector. Supervision during the period of the oil and gas contract in terms of share ownership and changes in the management structure of the directors and commissioners of K3S. The approval of the ministry of energy and mineral resources for changes to the formation of share ownership must also be continued by requesting approval from BKPM and or the ministry of law and human rights in accordance with the prevailing laws and regulations. Changes in management of directors and / or commissioners must also be approved by the ministry of energy and mineral resources based on Special Working Unit of Oil and Gas considerations. Ministerial Regulation of Energy and Mineral Resources Number 42 of 2017 was then replaced by Ministerial Regulation Energy and Mineral Resources Number 48 of 20017 concerning Business Supervision in the Energy and Mineral Resources Sector.

Substitution of the oil and gas law from Act Number 8 of 1971 was replaced by Act Number 22 of 2001 still leaving "homework" that needed to be completed in order to improve. After the decision of the Constitutional Court Number 002 / PUU-I / 2003 decided to revoke the legal force of article 12 paragraph (3) insofar as the word "given authority" and article 22 as long as the word "most", then the Constitutional Court in the Decision of the Constitutional Court 36 / PUU-X / 2012 in the case of a judicial review of the suitability of Act Number 22 of 2001 to the 1945 Constitution of the Republic of Indonesia, canceling the function and existence of implementing agency of oil and gas by calling it in one of the decisions ruling that the functions and duties of implementing agency of oil and gas are carried out by the government, c.q. relevant ministries, until the enactment of a new act that regulates this and states that all articles in the Act of Oil and Gas no longer have the legal force to apply.

Institutional issues that are regulated in the Act of Oil and Gas, make the power of government actually be divided and become ineffective, not infrequently there is also overlapping of authority among these institutions. Some of the institutions in the Act of Oil and Gas are the Ministry of Energy and Mineral Resources (ESDM), Implementing Agency of Oil and Gas, Downstream Regulatory Agency and Pertamina.[24].

Since the ruling of the Constitutional Court Number 36 / PUU-X / 2012 which has established the unconstitutionality of implementing agency of oil and gas and emphasized new management of oil and gas in Indonesia, until now there has been no new act governing oil and gas management patterns [25].

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Responding to the Decision of the Constitutional Court 36 / PUU-X / 2012 in accordance with the ruling, the Implementing Agency of Oil and Gas function and task should be carried out by the government, c.q. the ministry in this case should be the Ministry of Energy and Mineral Resources. The Government carries out the order of the Constitutional Court by issuing Presidential Regulation Number 95 of 2012 concerning the Transfer of the Implementation of Duties and Functions of oil and gas upstream business activities (State Gazette of the Republic of Indonesia Number 226 of 2012). The Presidential Regulation ordered things in accordance with what was ordered by the Constitutional Court Decree, namely to delegate the duties and functions of Implementing Agency of Oil and Gas to the Ministry of Energy and Mineral Resources.

Decision of the Constitutional Court 36 / PUU-X / 2012 which states that Implementing Agency of Oil and Gas is unconstitutional responded by the Government by issuing two Presidential Regulation, first, Presidential Regulation Number 95 of 2012 concerning the Transfer of the Implementation of Duties and Functions of oil and gas upstream business activities which the Minister of Energy and Mineral Resources issued Decree Number 3135 K / 08 / MEM / 2012 concerning the Transfer of Duties, Functions and Organizations in the Implementation of Upstream Oil and Gas Business Activities and Decree Number 3136 K / 73 / MEM / 2012 [26], and secondly, Presidential Regulation Number 9 of 2013 concerning the Implementation of Management of oil and gas upstream business activities. Presidential Regulation Number 95 of 2012 ordered that the tasks and functions of Implementing Agency of Oil and Gas be transferred to the Ministry of Energy and Mineral Resources, while Presidential Regulation Number 9 of 2013 stipulates that the functions and tasks of Implementing Agency of Oil and Gas are transferred to special work units which are then called Special Working Unit of Oil and Gas. Following up on the Presidential Regulation, Special Working Unit of Oil and Gas was formed by Ministerial Regulation of Energy and Mineral Resources Number 9 of 2013 concerning the Organization and Work Procedures of the Special Work Unit for oil and gas upstream business activities. Special Working Unit of Oil and Gas has the exact same duties and functions as Implementing Agency of Oil and Gas, with two organizational changes in the management of Special Working Unit of Oil and Gas by Ministerial Regulation of Energy and Mineral Resources Number 17 of 2017 and Ministerial Regulation Energy and Mineral Resources Number 53 of 2017.

Special Working Unit of Oil and Gas has the responsibility of oil and gas supervision and management based on President Regulation Number 95 of 2012 and Presiden Regulation Number 9 of 2013, therefore Special Working Unit of Oil and Gas has the authority to sign the contract with oil and gas contractors [27].

Supervision of oil and gas exploitation during contract implementation is confirmed in article 24 paragraph (2) letter b, namely in the form of operational management control in the form of approval of POD (Plan of Development), WP&B (Work Program and Budget), AFE (Authorization for Expenditure). The three forms of management control oversight are in the Special Working Unit of Oil and Gas function. The principle of EITI (independent audit and disclosure of company payments and government receipts) should be applied as part of openness management as applied in several countries [28].

Indonesian Petroleum Association (IPA), on June 16, 2011, submitted material test to the Supreme Court, against the President of Indonesia with case register No. 30 P / HUM / 2011. The material test of the Natural Sciences starts from the audit findings of the Financial and Development Supervisory Agency (BPKP) based on the 2002-2005 audit period. Findings of BPKP's become the background for the issuance of Ministerial

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Regulation of Energy and Mineral Resources Number 22 of 2008 concerning Types of Costs for oil and gas upstream business activities which cannot be returned to the Cooperation Contract Contractor, 17 items that cannot be returned to K3S. As a follow-up to the Ministerial Regulation of Energy and Mineral Resources Number 22 of 2008, it was issued Governmental Regulation Number 79 of 2009 concerning Reimbursable Operation Costs and the Treatment of Income Taxes in the Oil and Gas Upstream Business Sector. Governmental Regulation Number 79 of 2010, in addition to strengthening what is regulated in the Energy and Mineral Resources Ministerial Regulation, also adds other points as additional types of operating costs that cannot be refunded in cost recovery. Cost recovery is one of the factors affecting oil and gas revenues, that is lifting, the price of Indonesian Crude Price (ICP), and the exchange rate of the rupiah against the US dollar [29].

In essence, the broad outline of the IPA argument is that Governmental Regulation Number 79 of 2010 is enforced retroactively by requiring existing PSCs to adjust the Governmental Regulation, thus contradicting Oil and Gas Law, Tax Law, Civil Code, and violating the principle of non retroactive and legal certainty. IPA also states that Governmental Regulation Number 79 of 2010 is invalid and violates the law due to unilateral changes to the existing PSCs, whose validity is guaranteed under the Act.

Judicial review of the Supreme Court considers what is regulated in Governmental Regulation Number 79 of 2010 are things that have not been regulated or are not sufficiently regulated in the PSC. Govermental Regulation Number 79 of 2010 in article 38 (a) stated the PSC has been signed before enacting the Governmental Regulation is declared to remain in effect until the date of the contract termination. The Supreme Court also stated that Governmental Regulation Number 79 of 2010 does not contradict the higher regulation, namely Act Number 7 of 1983 concerning Income Tax as amended lastly with Act Number 36 of 2008, based on the Supreme Court's consideration, yudicial review submitted by The IPA against Governmental Regulation Number 79 of 2010 was rejected.

Substance of the operating costs that are not returned in Ministerial Regulation Number 22 of 2008 and Governmental Regulation of Energy and Mineral Resources Number 79 of 2010 concerning Refundable Operating Costs and Income Tax Treatment in the Upstream Oil and Gas Business Field, should be a reflection of evaluation in the preparation of oil and gas cooperation contracts, so that the preparation of government contracts always adhere to the principles of good faith and transparency.

The problem faced by the upstream oil and gas sector is that there are undue costs incurred the cost recovery. Contractor obligations to the government for overlifting in 2013 that have not been paid off and the condensate sale has not been paid by the buyer. In early 2017, the Government announced a new profit sharing system, the gross split production sharing contract as problem solution. This revenue sharing system was issued by the Ministerial Regulation of Energy and Mineral Resources Number 8 of 2017 concerning Gross Split Revenue Sharing System. This system eliminates cost recovery from the agreement and all operating costs will be borne by the contractor himself [30].

Case Number 85 IPID.SUS / TPK / 2013 IPN.JKT.PST alleged crimes of money laundering, inclusion and corruption allegedly committed by Rudi Rubiandini, former head of Special Working Unit of Oil and Gas. KPK accused that Rudi asking Deviardi as Special Working Unit of Oil and Gas deputy head to meet a number of people including Johanes Widjanarko, Gerhard Marten, Widodo Ratanachaiton who among them then gave some money.

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Vonnis of judge in accordance with the indictment that the defendant together with Derviardi had received, placed, transferred, transferred, spent, paid, granted, entrusted, brought abroad, changed the form, exchanged with currency or securities or other acts of assets. According to the judge's conviction, the aforementioned series of legal facts had fulfilled the elements in the first indictment as stated in article 2 paragraph (1) of Act Number 8 of 2010 concerning Money Laundering Crime namely regarding the proceeds of criminal acts or assets obtained from criminal acts of corruption. The second indictment, together with Deviardi, fulfilled the inclusion of article 55 Paragraph (1) of the Criminal Code regarding inclusion. The third indictment according to the belief of the judge together with Deviardi has received an amount of money so that it meets the elements of Article 65 paragraph (1) of the Criminal Code.

Rudi Rubiandini provided defense including that the person concerned did not have the authority and power related to the auction carried out by the Special Working Unit of Oil and Gas auction committee, that he did not know anything about what was done between Deviardi as Special Working Unit of Oil and Gas deputy head in terms of his meeting with a number of people, Johanes Widjanarko, Gerhard Marten, Widodo Ratanachaiton, about the receipt or deposit of money from them also never ordered Deviardi to accept money from them. Rudi admitted that he had refused the gift of money and returned the entire envelope in the amount of SGD 600,000 (six hundred thousand Singapore dollars) and did not know where the money had been refused. An examination in a criminal case is to look for material truths that will be seen in the correlation between the indictment and the evidence presented that is not proven so it should be suspected there is something else that has been overlooked to be revealed. In administrative law, it is distinguished between personal and official responsibilities, meaning that an official cannot be convicted if he commits an act based on the authority stipulated in the law. The scope of the legality of authority includes authority, procedures and substance, as long as what an official does is still within the scope of the legality of his authority then an official should not be prosecuted in the realm of personal responsibility.

A new state administration official can be convicted for making mistake that is his personal responsibility, that is, overstepping the authority, mixing authority or arbitrary, as regulated in article 17 of Act Number 30 of 2014 concerning Government Administration. Investigation in a criminal case is looking for material truth that will be seen in the correlation between the indictment and the evidence presented, if the coherence is not reached then it is reasonably suspected that something else has been missed to be revealed.

There are other constitutional court decisions related to the oil and gas upstream sector including the Case Decision Number 002 / PUU / -I / 2003 and Case Decision Number 36 / PUU-X / 2012. Decision on Case Number 002 / PUU / -I / 2003 through an application letter dated January 14, 2003 submitting application for yudicial review of the Act. Formally yudicial review is yudicial review of the validity and formally of statutory, meanwhile, materially yudicial review is yudicial review of the material or the contents of laws and regulations whether materially in line with or contradicting the higher level legislation in this case is the 1945 Constitution of the Republic of Indonesia. Yudicial review of Act Number 22 of 2001 concerning Oil and Gas related to the process of forming the Act, although there are minderheidsnota (walk out) in the plenary meeting according to minutes of treaty pages 70-74, but at the end of the plenary meeting (treatise on page 158) when all factions have submitted their final opinion, the chair of the meeting (AM Fatwa) asked whether the proposed bill could

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be approved to be ratified as a law or not, the minutes noted that all members of the People's Representative Assembly agreed without any objections or disagreements.

According to the judge's judgment, it is common in democracy that total of 12 members expressed objections or minderheids in the plenary session as form of democratic practice. In addition to minderheidsnota, a person or number of people or factions in decision making can declare approval, rejection or disagreement, or abstain from part or all of the matter for which a meeting approval is requested to be taken in its decision. Minderheidsnota is not rejection or disagreement in full, but allows the taking to take note of the existence of minderheidsnota so that minderheidsnota is valued as an attitude and practice in decision-making does not have the nature of inhibiting or canceling an agreement so that the judge's judgment states that there is no reason to state the discussion of the Bill on Oil and Gas contrary to or deviate from formal procedures.

IV. CONCLUSION

The principle of transparency occupies the position of the gateway for other legal principles, and in the administration of government, the principle of transparency must be the main concern. The principle of transparency is interpreted as a principle that binds state officials to open themselves to the rights of the people to obtain true, honest, and non-discriminatory information by taking into account the protection of personal, group and state secrets.

Investors who are active in the upstream oil and gas business undertaking export and exploitation activities will count on the risks that will be experienced by oil and gas companies in general. These risks include limited risk of oil and gas resources, limited contract periods, political risks and regulatory risks. For this reason, information disclosure and simplification of licensing regulations are important factors for the upstream oil and gas industry. The principle of transparency must become a principle in the regulation of the upstream oil and gas industry, including through efforts to change regulations and legal reforms in the upstream oil and gas industry licensing sector, which will hopefully be able to prevent corruption in the upstream management of the oil and gas business sector so that ultimately the State losses can be avoided.

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