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Governance and the Role of Legal Aspects in the Fuel Pricing in Indonesia

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ABSTRACT

This research aims to analyze about the governance policy and the role of legal politic aspects in the unification of fuel prices in Indonesia. This study used the mixed method, which is the analysis of data of fuel, and the normative juridical methods, investigating legal principles contained in the rules and legislation in determining the fuel prices. Although the nature of this research is descriptive analytical, the study was intended to provide the accurate data as much as possible about the condition of fuel pricing by describing the facts using available data. The results of the discussion concluded that the legal and politic aspects have noticeable role in the determination of unification of fuel prices and in ensuring fuel availability thorough Indonesia, as well as the supply of fuel to the public in the domestic market. The study results are regarded important to provide another perspective in analyzing the role of legal politic elements in fuel pricing, that not merely focus on economic and quantitative analysis. The results show that the fuel pricing can be used as the basis for bargaining power, and political interests, making it is frequently not easy to unify the price nationally. The study also gives some legal justifications and social foundations of administered price of fuel that can be conducted by developing countries, especially Indonesia, having national oil companies and the state body on oil and gas management.

Keywords: Administered Price, Fuel Supply, Legal Justification, State Role

JEL Classifications: K23, K32, Q48

1. INTRODUCTION

The commitment of President Joko Widodo to realize Nawa Cita which means nine ideal goals is actually a substantial derivation from Soekarno's Trisakti idea, which is sovereign in politics, self-reliant in economy and high personality in culture (Ambariyanto et al., 2017). The essence of Nawacita is to bring back the country among the citizens, state border security following the regional sovereignty and protection of natural resources (Neilson and Wright, 2017). Moreover, Nawacita is to realize economic independence by moving the strategic sectors of the domestic economy. Both of these programs are being tested and become the priority set to be met by the current government. Therefore the country is to be present in the middle of citizens, the protection of natural resources and economic independence. In relation to the context of fuel problems, it has a very important role as the basic needs of society, industrial and transporting sector, and in determining changes in the prices of staples. In order to overcome the fuel problem, President Joko Widodo in a speech of state on 16 August 2017 before the House of

Representatives and the Senate on fuel issues stated that Indonesia has also facing the challenge of getting rid of the middle income trap and the trap of natural resources (Basri and Putra, 2016). After the completion of the oil and gas boom in the 1970s (Karl, 1997; Hill, 1992), furthermore, the President stated that the desire to do equitable distribution is not just a slogan, but must really make it concretely. For instance, in the Provinces in Papua and other east Indonesian provinces and small islands have to buy fuel at very expensive prices (Agustina et al., 2012).

In this connection, the policy of fuel price must be implemented by the government either within the context of the state and in the context of social causes problems in one area will certainly have an impact on other so the government can find out what are the implications and actions taken about the management and control of fuel prices. Then if the government is not able to regulate and control the fuel prices, there will be chaos in the sustainability of economic development in Indonesia. This is due to the fact that fuel is a basic necessity in industries around the world, but fuel is a

non-renewable natural resource. The need for fuel both in industry and transportation is increasing every day because these machines require fuel and can cause the scarcity of fuel, but the increasing need for fuel is not supported by the declining natural resources (Sumaila et al., 2008). The 1945 Constitution of the State of the Republic of Indonesia places the management of natural resources on the provisions of Article 33. Under the provision, Law No. 22 of 2001 on Oil and Natural Gas was established. This Act supersedes Law No. 44 of the Government Regulation of 1960 on Oil and Gas Mining, Law No. 15 of 1962 on Stipulation of Government Regulation in Lieu of Law No. 2 of 1962 concerning Obligation of Oil Companies to Meet Domestic Demand, and Law No. 8 of 1971 concerning Oil and Petroleum Mining Companies which is considered to have no longer appropriate with the development of oil and gas mining business at that time (Agustina et al., 2008).

Based on the description of the background of the above problem, it can be determined some research problems as how the role of legal and politic aspects in determining the fuel prices and the important determinants as well as the legal politic solutions in the effort to unify the price of fuel in Indonesia. Such study is regarded important to provide another perspective in analyzing the role of legal politic elements in fuel pricing, that not merely focus on economic and quantitative analysis (for instance see, Setiyo et al., 2016; Sasana et al., 2017; Mohamed and Bekhet, 2016; Kurniawan, 2017; Chaiwat and Tangvitoontham, 2014; Madaleno et al., 2015; Lenkova, 2017). The authors review about how the role of law in the unification of the price of fuel in Indonesia. The approach taken is to use economic laws, laws relating to various economic activities with macro and micro approaches. The macro conceptual study means the legal study of everything that has to do with macro economic activity, in this section there is state intervention on the activity so as to achieve a healthy and reasonable economic society. Economic activity in its various field activities is regulated by law. Thus, economic law has a broad scope of understanding covering all issues related to the relationship between law and economic activities, especially in the oil and gas sector that have considerable role in improving and maintaining economic growth, and political stability.

This research was done driven by fact that fuel was priced unequally in different parts of Indonesia. Papuan people in the most eastern part of Indonesia have to buy fuel at a very expensive price, sometimes it costs tens of price purchased in Java or Sumatra in western part of the country in western part of the country see Table 1. The current government wish to unify the price of fuel in Indonesia. By one fuel price policy, the government considered necessary to assess more accurately and comprehensively concerned with the issue of fuel price gap in Java and other Indonesian islands, especially with Papua provinces. Regarding the Pertamina's distribution problems, because of Papua island's topography that is mountaneous and has many highlands, according to Presidential Decree No. 191 of 2014 article 1(4), the terminal fuel depot/distributors is fuel storage and distribution are owned or controlled by PT Pertamina (Persero) and/or other business entity that gets the assignment of supply and distribution of specific fuel type (Legal Information Documentation Network, Ministry of Energy and Mineral Resources, 2014). From this Presidential Decree, the government commissioned Pertamina to

distribute fuel at the same price at the handover point or channeling institution. The government would also bear the cost of the fuel which includes the supply, storage, distribution of fuel.

Based on the description of the background of the above problem, it can be determined some research problems as how the role of legal and politic aspects in determining the fuel prices and the important determinants as well as the legal justifications in the effort to unify the price of fuel in Indonesia.

2. METHODOLOGY

This type of research is literature research. Data used are secondary data including primary legal materials, secondary law and tertiary legal materials, i.e., materials that provide information on primary and secondary legal materials systematically to explain the relationship between the facts with the legislation in force. The research methodology used is the normative juridical normative law reviewing the law conceptualized as the norm or rules that apply in society, and become a reference behavior of social phenomenon related to the legal aspects (Soerjono, 1986). By using descriptive analytical, the research is intended to give the data as accurately as possible about the state of the object being studied by describing the facts by using qualitative data on the role of legal politic aspects in uniting fuel prices in Indonesia.

3. THE PROBLEMS OF STATE OIL COMPANY IN FULFILLING NATIONAL DEMAND

Economic liberalization in Indonesia should not be fully controlled by the market because the liberal economic system, also called the system of free market economy or *laissez faire* economic system. The family economic system adopted in Indonesia want the government to be given an important role in economic activity in the comprehensive public interest. Thus there is a discrepancy between the stem of the liberal economy and the familial economic stem. The kinship economic system is a way to organize and organize all economic activities in society whether committed by government or private based on certain principles in order to achieve prosperity or prosperity. Indonesia's current economic system is a system of economic democracy that is a national economic system which is a manifestation of the philosophy of Pancasila and the 1945 Constitution based on the family and mutual cooperation of, by and for the people under the leadership and supervision of the government (Liddle, 1982). This economic system has the ideological basis of Pancasila as well as the constitutional basis of the 1945 Constitution (McCawley, 1982; Prawiranegara, 1984). Economic system based on Pancasila is characterized by some matters. First, the wheels of the economy are driven by economic, moral and social stimuli. Second, there is a strong will of all members of society to realize the socio-economic equality. Third, the priority of economic policy is the development of a strong and resilient national economy, which means that nationalism always animates every economic policy. Fourth, cooperative is a pillar of the national economy (Ropke, 1990). Fifth, there is a clear and firm balance between centralism and the decentralization of economic policy to ensure economic justice and social justice while

maintaining economic efficiency and growth (see also for some specific cases, for instance, Ardiansyah et al., 2015).

The legal development in Indonesia tends not to be directly proportional to development in the economic field. As a result of, the economic development achieved by Indonesia did not get a strong legal foundation. Particularly during the New Order period (1966-1998), the development of the law was often diverged in order to pursue rapid economic growth, resulting in various economic imbalances such as welfare gaps in society, collusion between employers and officials, high cost economy, and widespread corruption (for instance, see Smith et al., 2003; Mietzner, 2007; Robertson-Snape, 1999). Economic development must be done through a strong legal foundation because the law is an institution that ultimately determines how the welfare of the people can be enjoyed equally, how social justice can be realized in the life of society, and how the advancement of science and technology can bring progress to the masses. The 1945 constitution itself stipulates that business sectors related to the interests of the wider community should be fully utilized for the welfare of the people. The people should be enjoying the natural wealth that Indonesia has with the best of it.

Thus considering the importance of the role of fuel in community life and various problems that continue to emerge empirically as legal issues, establishment of prices and ensure supply, availability and continuity of supply of fuel to the public in the domestic market, there are needs to examine the role of law and regulation in determining the equitable fuel pricing to resolute various fuel problems. According to the data of Indonesian fuel consumption per day is assumed 1.5 million barrels (Directorate General of Oil and Gas, Ministry of Energy and Mineral Resources, 2015). Therefore the government must function as a buffer, and is advised immediately build a buffer stock of fuel, and then, fuel can function as a buffer reserves serving as stability guards when supplies are disrupted like the global security turmoil, leading to economic disruptions (Wicaksono, 2015). To improve national energy security, the government will build reserves Indonesia does not have a buffer stock yet. So far there is only operational reserves of PT. Pertamina as much as 22 days for fuel and 12 days for LPG. Moreover, the government asked Pertamina and other business entities to have a 30-day operating reserve (Agustinus, 2016). Almost all fuel storage tanks belong to the Contractor Contract (PSC), Chevron and Conoco Philips. The development of oil storage buffer reached 30 days with an investment of about US \$ 17.25 billion is required in anticipation of emergency conditions. To build a 30 day buffer reserve, the oil and petroleum business entities are tasked with securing national oil and fuel reserves, building their processing, transport and storage infrastructure, and aggregating national fuel prices ((Directorate General of Oil and Gas, Ministry of Energy and Mineral Resources, 2015). The government appointed Pertamina as the national fuel and fuel support business (Ayuningtyas and Hartat, 2015).

4. LAW ON OIL AND GAS AND NEW MANAGEMENT OF STATE OIL COMPANY

Oil along with natural gas is an important sector of a country, related to the need for energy and economic progress of the

nation (Omer, 2008; Dincer, 2000; Karl, 2007). Constitutionally, article 33 of the 1945 constitution, states that the branch of vital production that controls the livelihood of the people is controlled by the state and is used as much as possible for the welfare of the people (Butt and Lindsey, 2008). Law No. 22 of 2001 on Oil and Natural Gas which changes to Law No. 8 of 1971 on the State Oil and Gas Mining Company (Fabrikant, 1975), has brought about positive and negative significant change implications. The amendment is due to the fact that the old law is considered to be no longer in accordance with the technological developments. Moreover, the law of supply and demand for energy is increasingly dynamic resulting in the National Oil and Gas Mining Company (Pertamina) being not able to fulfil the national needs.

The implication is that the change in Pertamina's status, which was once the sole ruler of oil and gas (State-Owned Enterprise) managers into a company, which, by definition, Law No. 19 of 2003 on State-Owned Enterprises, is a state-owned enterprise a limited liability company which capital is divided into shares wholly or at least 51% of whose shares are owned by the Republic of Indonesia which main purpose is to pursue profits. So the Pertamina is no longer regulate the management, distribution, purification, exploitation and so forth regarding national oil management. Pertamina becomes one of the parties or companies that will seek energy management. Pertamina, which no longer monopolizes oil and gas management, is replaced by Oil and Gas Executing Agency (BP Migas), a business activity based on exploration and exploitation activities ie for the upstream sector, and the Oil and Gas Regulatory Agency (BPH Migas) for the downstream sector. BP and BPH oil and gas in accordance with the Law 22/2001, Article 4 paragraph 3 is formed by the government and also directly accountable to the government.

However, Law of Oil and Gas, in addition to providing a solution, also raises its own problems. The positive side is that, since 2001, in terms of service, production, and products, Pertamina has been much better than before. It can be seen with the improvement in oil station service owned or operated by Pertamina. This is the impact of an open competition that encourages each entrepreneur to improve the quality and service. The other positive side is that consumers are increasingly free to determine the fuel or gas they want to use. Depending on the needs and consequences of oil and gas management is not fully controlled by the government. Hence, the government must keep monitoring and controlling the upstream and downstream business activities. Guidance and supervision by BP and BPH Migas must be run in accordance with their respective responsibilities (Agustina et al., 2008). Nonetheless, on 13 November 2012, the constitutional court ruled a chapter governing the duties and functions of the Oil and Gas Executing Agency (BP Migas) regulated in Law Number 22 of 2001 regarding Oil and Natural Gas is contradictory to the 1945 constitution and has no binding law (Constitutional Court of the Republic of Indonesia, 2012). Responding to this decision, the government then decided to issue Presidential Regulation No. 95/2012 to establish Temporary Work Unit for Upstream Oil and Gas Business Activities (SK Migas). This body then becomes Special Unit for Upstream Oil and Gas Business Activities (SKK Migas) through Presidential Regulation No. 9/2013 (<http://www.mahkamahkonstitusi.go.id>),

2012). SKK Migas is in charge of managing upstream oil and gas business activities under the cooperation contract. Different from the BPH Migas which was established with the duty and function to make control arrangements on the provision and distribution of fuel and natural gas, as well as the transportation of natural gas through pipeline at downstream business activities, and responsible to the President, the establishment of SKK Migas institution is intended to take the natural resources of oil and gas owned by the state to be able to provide maximum benefits and state revenue for the greatest prosperity of the people (<http://skkmigas.go.id>, 2017).

In line with the dynamics of the world oil and gas industry, the government issued the Oil and Natural Gas Law No. 22 of 2001. As a consequence of the application of the Act, Pertamina has shifted its form into PT. Pertamina (Persero) and acts only as an operator that establishes cooperation contracts with the government represented by SKK Migas. The law also requires Pertamina to establish subsidiaries to manage the exploration, exploitation and production of oil and gas as the consequences of separation of upstream and downstream businesses (<http://www.pertamina.com>, 2017). Pertamina's upstream business sector implemented in several regions in Indonesia and abroad covers activities in the fields of exploration, production, and transmission of oil and gas. To support the exploration and production activities, Pertamina also pursue the business of technology and drilling services, as well as other activities consisting of geothermal energy development and Coal Bed Methane (CBM). In the exploitation of oil and gas both at home and abroad, Pertamina can operate either independently or through some patterns of cooperation with partners, namely joint operation, Joint Operation Body (JOB), Technical Assistance Contract (TAC), Indonesia Participating/Pertamina Participating Interest (IP/ PPI), and Joint Operations Agency (BOB) (<http://www.pertamina.com>, 2017). Meanwhile, Pertamina's downstream sector includes crude oil processing, marketing and trading of oil, gas and petrochemical products, and related shipping business for the distribution of company's products. Processing activities conducted in some Refinery Units (RU), such as RU II in Dumai, Riau Province, RU III in Plaju, South Sumatera, RU IV in Cilacap, Central Java, RU V in Balikpapan, East Kalimantan, RU VI in Balongan, West Java, and RU VII in Sorong, West Papua. Furthermore, Pertamina also operates Arun LNG Unit in Aceh Province and Bontang Refinery Unit in East Kalimantan. The products produced include fuel such as premium, kerosene, diesel oil, and non-fuel products such as lubricants, asphalt, Liquefied Petroleum Gas (LPG), musicool, and Liquefied Natural Gas (LNG) Paraxylene, Propylene, Polyam, Pure Terephthalic Acid (PTA) and other products (<http://www.pertamina.com>, 2017).

5. THE CRITICAL ROLE OF STATE IN OIL AND GAS MANAGEMENT

Some theories such as those proposed by Friedmann (1968), Geelhoed (1994) and Zijlstra (2006) have discussed the role of the state authorized by law to encourage the dynamics of economic development activity (Kapteyn, 2008). Suhardi (2002), Haarmann (2017) states that there are three typologies or categories of the

role of State on behalf of the law. First, state acts as regulator (sturende) and a jury (referee) using the instrument of general law administration and special individual administration. Second, state acts as the presterende (provider) of the various needs of the citizens which according to Zijlstra and Schlössels, (2016) Haan et al. (2010) may be an act included in typology of granting social benefits and other actions that lead to sociale rechtsstaat (social constitutional state). According to Geelhoed, this function as de presterende included in the category of the implementation of the state. In this case the Friedmann also mentioned that the function of provider is a manifestation and duties of the State in social systems of welfare state as happens in most Western countries through various regulations mentioned in group social security act, health insurance act and others (Jones, 1958; Esping-Andersen, 1989). Third, the state roles as interpreneur. This is done by the State to establish business entities belonging to the state (SOEs) which besides carrying out the function as an agent of development, it should also be able to try to finance the schemes themselves (not included in the government budget) and benefits (Ilmar, 2009).

Therefore, the existence of the law directly in the economy which is reflected by the role of state, or factual can be seen in the role of law, or more specifically in administrative law. Administrative law is very influential in the economic life because it is part of the legislation that applies directly touch economic activities in a country (Suhardi, 2002). Later, government involvement should be measurable meaning that the government take into account the extent of government intervention in the economic field with three roles as a regulator, the provider; and as an entrepreneur. While the most important function of law is to provide certainty about the actions of the relations in the conduct of economic relations. The main task of the government is running a law. And the main function of the law is social progress and better standards of life (Sukardi, 2016).

According to Patrick R. P. Heller and Marcel (2012) about the governance of oil and gas, countries with national oil companies (NOCs) have tended to assign administrative responsibilities to three basic models. First, separation-of-powers models (also referred to as the Nordic welfare model (Kvist, 2012), in which an independent technocratic agency has regulatory powers. Second, ministry-dominated models, in which the petroleum ministry or an equivalent executive body is charged with regulation and oversight (Yuniza et al., 2016). Third, NOC-dominated models, in which the national oil company has de jure or de facto responsibility for day-to-day regulation, sometimes including the power to award exploration/production licenses (de Graaff, 2012; Heller and Marcel, 2012). Accordingly, it can be understood that the issue of governance of oil and gas practiced in various countries at this time generally is comprised of three models of governance of the oil and gas countries with National Oil Companies (NOCs) tendency to assign administrative responsibility. The practice of governance of oil and gas conducted in various countries such as oil and gas sector has a strategic role in national development, both as a source of energy, fuel and state revenues from exports.

Based on empirical previous studies on fuel prices Indonesia is more expensive than the United States and Malaysia. According to

Pertamina, the cause why in those countries fuel prices are cheaper is because of the national stock of fuel handed by government see Table 2 and Table 3. Meanwhile, in Indonesia, the stocks are still covered by the channeling of Pertamina (Sari, 2015). Later in the period 2015-2019, the management and utilization of oil and gas faces several constraints. On the supply side, there is a decrease in the number of reserve provision, the investment climate, land use overlap to build tanks storage. On the consumption side, there are some challenges that oil and gas prices are likely to be high, limited infrastructure, low efficiency of use of fuel and gas, and environmental regulatory (Ministry of Energy and Mineral Resources of the Republic of Indonesia, 2015). Furthermore, the condition is worsened in relation to the issue of energy security of Indonesia. Indonesia's energy security are particularly vulnerable as a backup fuel that little, only about 18-22 days. In fact, Singapore has a backup up to 90 days of fuel reserves, China is also stockpiling fuel reserves to 90 days, and the United States even had a spare for 260 days (Agustinus, 2016).

Therefore it is the time for the Indonesian government study with Malaysia and the United States in terms of management and utilization of oil and gas. For example, the United States is doing the Strategic Petroleum Reserve (SPR), an emergency supply of crude oil. The federal supply oil stored were great along the coastlines of the Gulf of Mexico. The decision to withdraw crude oil from the SPR was made by the President under the authority of Act Policy and Energy Conservation (Energy Policy and Conservation Act - EPCA). In case of an energy emergency, SPR oil would be distributed through a competitive sales. SPR formidable size with storage capacity of 713.5 million barrels design has become a significant barrier to the cutoff of oil imports and the main tool of foreign policy. SPR has been used in the US only three times, most recently in June 2011 when the President directed the sale of 30 million barrels of crude oil to offset supply disruptions caused by the Middle East unrest. Moreover, the United States acts in coordination with its partners in the International Energy Agency that issued around the 60 million barrels of oil (Office of Fossil Energy, 2017).

Then, with a priority program of Strategic Petroleum Reserve, the main purpose of fossil energy office is to maintain the readiness of oil supplies for emergency purposes in the direction of the President. From the of 1993-2000, the Department of Energy the top priority is to ensure the readiness of reserves that continued until at least 2025 to perform major life extension program. This includes replacing or repairing the pump, piping and other major components at the site Gulf Coast SPR. This program was completed in March 2000 on schedule and below original cost estimates. On November 13, 2001, President George W. Bush ordered the SPR filled about 700 million barrels to continue using the program in the form of royalties made between the Department of Energy and the Department of the Interior (<https://energy.gov>).

6. FACTORS CAUSING UNEQUAL FUEL PRICE IN INDONESIA

Some issues have been considered as noticeable factors that cause the unequal price of fuel in Indonesia and the solutions in terms of

inserting the role of state/government in the field of trade system of fuel.

From Table 4, there are some factors causing the unequal price in Indonesia among them are inconsistency of law enforcement regarding oil and gas pricing. There is a tendency of state/government in implementing the equal fuel price. Hence, the Ministry of Energy and Mineral Resources of the Republic of Indonesia, has a considerable role, acting as a regulator (sturende) and a referee using an instrument of administrative law to authorize by law to drive the dynamics of economic development and ensure the availability of oil and gas to meet various needs of the people of Indonesia to fuel, within the context of the constitution, Article 33 constitution 1945, and law regarding Oil and Gas. Moreover, the state can act as the presterende (provider) of the various needs of its citizens, including oil and gas. Another obstacle of involving administred price of fuel, is in connection with supply provision such as decreasing reserves, attractiveness and investment climate, and imposition of tax on fuel, low efficiency of use of fuel oil and gas, regulation demand the environment and clean emissions.

Furthermore, Indonesia is considered to have weak energy security with regard to the availability of oil reserves, supply and fuel distribution. Indonesia energy resiliences are particularly vulnerable, because Indonesia has not had a sufficient buffer stock. So far there is only the operational reserve.

Consistent with the efforts of applying the law in the governance of oil and gas, Indonesia should have and implement programs of Energy Security Program (ESP). There are some additional efforts to implement and promote alternative energy sources to reduce dependence on oil imports, to promote energy policies that encourage diversification, both types of energy and sources of supply, and facilitate energy markets function better and more integrated and has a program of the national stock of fuel, have fuel storage tanks through the Strategic Petroleum Reserve (SPR) to 90 days stock.

Based on the description in the above table it is clear that the solutions the role of state/government is very strategic to regulate the balance and control of fuel prices through price pooling, the price set by the government (administred price) in the market as well as demand and supply. This is connected with government intervention that the purpose of protecting the interests of the Indonesian people both as consumers and producers from being harmed. Later, forms of government intervention in the pricing mechanism of fuel, demand, and supply in the market, among others, can be implemented through some of governance policy. First, adjustments in the tariff adjustment or pooling price of fuel which will have implications for strategic goods such as telephone, electricity, drinking water and others. Second, establishment of fuel export and import policies. Third, subsidies (government aid) to the producers. Fourth, implementation of market operations to supply and continuity of supply as well as the unification of the fuel price (administred price). Such efforts are directed to revitalizing the national economy through policy formulated by the government in order to make Indonesia capable of competing with countries other.

Table 1: Comparison between the fuel price in some parts of Indonesia

No	Area	Status	Region	Fuel Price per litre*			
				Pertalite**	Pertamax**	Pertamax Turbo**	Pertamina Dex**
1	Aceh	Province	Sumatera Island (WI)***	7100 (0.5325)	8200 (0.615)	8700 (0.6525)	9200 (0.69)
2	North Sumatera	Province	Sumatera Island (WI)	7100 (0.5325)	8000 (0.6)	8700 (0.6525)	8700 (0.6525)
3	South Sumatera	Province	Sumatera Island (WI)	7300 (0.5475)	8200 (0.615)	8700 (0.6525)	8800 (0.66)
4	Jakarta	Capital City and Province	Java Island (WI)	7,100 (0.5325)	8,450 (0.63375)	8450 (0.63375)	8,400 (0.63)
5	Yogyakarta	Province	Java Island (WI)	7100 (0.5325)	7650 (0.57375)	8550 (0.64125)	8500 (0.6375)
6	East Java	Province	Java Island (WI)	7100 (0.5325)	7650 (0.57375)	8550 (0.64125)	8500 (0.6375)
7	East Kalimantan	Province	Borneo Island (CI)	7300 (0.5475)	8000 (0.615)	-	9700 (0.7275)
8	Bali	Province	Lesser Sunda Islands (CI)	7100 (0.5325)	7650 (0.57375)	8550 (0.64125)	8600 (0.645)
9	South Sulawesi	Province	Celebes Island (EI)	7500 (0.5625)	8600 (0.645)	9900 (0.7425)	10,350 (0.77625)
10	Maluku	Province	Maluku Archipelago (EI)	-	9650 (0.72375)	-	18,000 (1.35)
11	Papua	Province	Papua Island (EI)	7300 (0.5475)	10,450 (0.78375)	15,700 (1.1775)	15,800 (1.18500)
	Puncak Jaya****	District	Papua Province (EI)	50,000-100,000 (3.75-7.5)			
	Memberamo Raya	District	Papua Province (EI)	35,000-50,000 (2.625-3.75)			
	Intan Jaya	District	Papua Province (EI)	50,000-60,000 (3.75-4.5)			
	Yalimo	District	Papua Province (EI)	25,000-30,000 (1.875-2.25)			

*In IDR, while in parentheses is the price equivalent in USD. **Pertalite is a variant Pertamina product of vehicle fuel sold in Indonesia with a RON value of 90; Pertamax is a variant vehicle fuel with a RON value of 92; Pertamax Turbo has a RON value of 98; Pertamina Dex is a variant of modern diesel fuel engine that meets and achieves the EURO 2 emission gas emission standard 2, has a high performance number with cetane number 53. ***WI: The regions located in West Indonesia; CI: Located in Central Indonesia; EI: Located in east Indonesia. ****Actual price of fuel based on some reports. Source: various sources processed for this research

Table 2: Fuel reserves in some countries (in days)

No.	Country	Fuel reserves (in days)
1	Indonesia	18-22
2	Singapore	90
3	China	90
4	The United States	260

Source: <https://finance.detik.com>

7. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis that has been described previously, it can be concluded that the state/government can establish regulations relating to oil and gas governance that should be able to function as predictability law, the law that capable of providing a guarantee and legal certainty for predicting what activities are done for economic development and growth projections, especially relating the relationship between oil reserve, supply and distribution and the economic growth, and people needs. In this context,

Table 3: Total proved reserves in Some Asia Pacific Countries

No	Country	Thousand million barrels	Share of total (compared to the world)	R/P ratio
1	Australia	4.0	0.2%	28.3
2	Brunei	1.1	0.1%	23.8
3	China	18.5	1.1%	11.7
4	India	5.7	0.3%	18.0
5	Indonesia	3.6	0.2%	12.0
6	Malaysia	3.6	0.2%	14.2
7	Thailand	0.4	†	2.3
8	Vietnam	4.4	0.3%	33.3

Source: BP Statistical Review of World Energy, 2016

state/government in implementing the governance of oil and gas can apply the Ministry Dominance Model of National Oil Companies (NOC) that were tested successfully been practiced in various developed countries such as the United States, Malaysia, Singapore, and China. By this model, the Ministry of Energy

Table 4: Factors causing unequal fuel price in Indonesia and the solution in legal context

No.	Factors causing unequal fuel price in Indonesia	Solution
1	Inconsistencies in the application of law - there is a tendency of inconsistency by the state/government in implementing oil and gas governance which has been practiced in various developed countries with the Ministry Domination Model, National Oil Companies (NOCs) where the Ministry of Energy and Mineral Resources has the authority and responsibility of de jure and de facto for regulation and supervision, and the power to grant exploration/production permits as well as the concept of state control rights as set forth in Article 33 of the 1945 constitution	<p>1. The role of the State that is authorized by law to encourage the dynamics of economic development activities, acting as a regulator (sturende) and jury (referee) by using general and special individual administrative law instruments. The State acts as the presterende (provider) of the various needs of its citizens in the form of providing social benefits and other actions that lead to social constitutional state (sociale rechtstaat) and has a function as de presterende (the provider) which is included in the category of state administration</p> <p>2. The function of this provider is the embodiment and main task of the State in the social welfare system as occurs in various countries through various regulations mentioned in the social security act group, health insurance act and others; (c). The role of the State as an interpreneur or entrepreneur. This is done by the State by establishing state-owned enterprises (BUMN) which in addition to carrying out functions as agent of development must also be able to try to finance its business independently (not included in the government budget) and provide benefits to the people of Indonesia as stated in The 1945 Constitution of the State of the Republic of Indonesia places the management of Natural Resources on the provisions of Article 33 that the welfare state concept is requiring the government to intervene in economic life for the welfare of all the people</p> <p>3. The government intervention in economic life restricts the principle of freedom of contract and strives in a liberal economic system (classical economic system).</p> <p>4. The government should enact legislation related to oil and gas based law and governance policy being able to make predictability law, that is the law that can provide assurance and legal certainty in predicting what activities that are carried out for the projected economic development</p>
2	Decreasing reserve amount, attractiveness and investment climate and taxation Obstacles of involving the administred price of fuel are also related to supply provision such as decreasing reserve amount, attractiveness and investment climate, overlapping of land use with other activities and imposition of tax on Fuel. There are some taxes imposed on Fuel such as Value Added Tax (VAT) and Motor Vehicle Fuel Tax. On the side, the consumption is faced with high oil and gas prices, limited infrastructure, low efficiency of fuel and gas use, environmental regulation demands for cleaner emissions, and so on.	<p>1. The Government should have and implement a consistent energy security program in Indonesia, the Energy Security Program (ESP). Therefore, the State acts as a regulator (sturende) and jury (referee) by using general administrative law instruments and special individual in conducting fuel's inventory price (administred price)</p> <p>2. Energy Security Program (ESP) the ability to respond collectively in cases of serious oil supply disruption with short-term emergency response measures, the ability of the energy system to react immediately to a sudden change in the supply-demand balance. Long term aspect of energy security, availability of uninterrupted energy sources at affordable prices. Then long-term energy security focuses on matters relating to timely investments to supply energy according to economic development and sustainable environmental needs, and also includes the Agency's goal of establishing alternative energy sources to reduce oil import dependence, promote energy policy which encourages diversification, both types of energy and supply sources, and facilitates better functioning and more integrated energy markets</p>

(contd)

Table 4: (Continued)

No.	Factors causing unequal fuel price in Indonesia	Solution
3	<p>Weak Energy Resilience</p> <p>This is related to Availability of Reserves, Supply and distribution of fuel as one element of energy security. Indonesia's energy security is very vulnerable because of its low fuel reserves, because Indonesia does not have a buffer stock yet. So far there is only operational reserves of PT. Pertamina as much as 22 days for fuel and 12 days for LPG. It is even more ironic that some of the fuel storage tanks are not owned by the government and they belong to the Contractor of Cooperation Contract, Chevron and Conoco Philips</p>	<p>1. The government should have a national fuel stock program, own its own fuel storage tanks through the Strategic Petroleum Reserve Program (SPR) and strategic petroleum research national stock up to 90 days of government stock</p> <p>2. Any costs incurred by the system shall be borne by state/government because the Government acts as the presterende (provider) of fuel. The function of this provider is the embodiment and the main task of the State in social welfare state system as happened in various countries through various rules mentioned in social security act group, health insurance act and others</p>

and Mineral Resources has very important function on behalf of the State to authorize by law to drive the dynamics of economic development activities according to the context of Article 33 of 1945 constitution that vital production branches that dominate the life of the people controlled by the state and used for the greatest prosperity of the people. This model also has justification by which that state can act as a regulator and a jury by using the instruments of administration law and act as the provider of the various needs of Indonesian on fossil fuels.

Practically, the government should have a national program of fuel stock, has more storage tanks of fuel through Strategic Petroleum Reserve (SPR) to ensure that fuel stock will reach at least 90 days. In this such state function as provider, it is a manifestation and duties of the state in the system of social welfare state as happens in many countries through various regulations mentioned in the group social security act, health insurance act and others.

REFERENCES

- Agustina, C.D., Ahmad, E., Nugroho, D., Siagian, H. (2012), Political Economy of Natural Resource Revenue Sharing in Indonesia. Asia Research Centre Working Paper No. 55.
- Agustina, C.D.R., del Granado, F.J.A., Bulman, T., Fengler, W., Ikhsan, M. (2008), Black Hole or Black Gold? The Impact of Oil and Gas Prices on Indonesia's Public Finances. Policy Research Working Paper No. 4718.
- Agustinus, M. (2016), Tangki Milik Chevron Cs akan Dipinjam untuk Simpan Cadangan BBM. Available from: <https://www.finance.detik.com/energi/3182875/tangki-milik-chevron-cs-akan-dipinjam-untuk-simpan-cadangan-bbm>.
- Ambariyanto, A., Utama, Y.J., Darsono, D., Setyiono, B., Zainuri, M., Noor, R. (2017), Supporting Indonesian government maritime policy, through diponegoro university main scientific interest. *Advanced Science Letters*, 23(10), 10061-10063.
- Ardiansyah, F., Marthen, A.A., Amalia, N. (2015), Forest and Land-use Governance in a Decentralized Indonesia: A Legal and Policy Review. Vol. 132. Bogor, Indonesia: CIFOR.
- Available from: <http://www.pertamina.com/>.
- Available from: <http://www.skkmigas.go.id/tentang-kami/profil>.
- Ayuningtyas, R., Hartat, E.R. (2015), Kegiatan Usaha Hulu-Hilir Harus Izin Pemerintah. Available from: <http://www.id.beritasatu.com/bumnews/kegiatan-usaha-hulu-hilir-harus-izin-pemerintah/112837>.
- Basri, F., Putra, G.A. (2016), Escaping the Middle Income Trap in Indonesia: An Analysis of Risks, Remedies and National Characteristics. Jakarta: Friedrich-Ebert-Stiftung Indonesia Office. Available from: <http://www.library.fes.de/pdf-files/bueros/indonesien/12509.pdf>.
- BP. (2016), BP Statistical Review of World Energy. Available from: <https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf>.
- Butt, S., Lindsey, T. (2008), Economic reform when the constitution matters: Indonesia's constitutional court and article 33. *Bulletin of Indonesian Economic Studies*, 44(2), 239-262.
- Chaiwat, P., Tangvitoontham, N. (2014), Petroleum's price transmission and imported demand for crude oil in Thailand. *International Journal of Energy Economics and Policy*, 4(3), 476-483.
- Constitutional Court of the Republic of Indonesia. (2012), Inilah Amar Putusan MK Terkait BPMIGAS Bertentangan dengan UUD 1945. Available from: <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=7765#.WmReBJgWM9>.
- de Graaff, N. (2012), The rise of non-western national oil companies: Transformation of the neoliberal global energy order?. In: *Neoliberalism in Crisis*. London: Palgrave Macmillan. p161-178.
- Dincer, I. (2000), Renewable energy and sustainable development: A crucial review. *Renewable and Sustainable Energy Reviews*, 4(2), 157-175.
- Directorate General of Oil and Gas, Ministry of Energy & Mineral Resources. (2015), Pemerintah Bangun Cadangan Penyangga BBM. Available from: <http://www.migas.esdm.go.id/post/read/pemerintah-bangun-cadangan-penyangga-bbm>. [Last retrieved on 2017 Aug 18].
- Esping-Andersen, G. (1989), The three political economies of the welfare state. *Canadian Review of Sociology*, 26(1), 10-36.
- Fabrikant, R. (1975), Pertamina: A legal and financial analysis of a national oil company in a developing country. *Tex Int L J*, 10, 495.
- Friedman, M. (1968), The role of monetary policy. *The American Economic Review*, 58(1), 1-17.
- Geelhoed, L.A. (1994), Deregulating, Herregulating en Zelfregulating. Den Haag: Ministerie van Economische Zaken.
- Haan, P.D., Drupsteen, T.G., Fernhout, R., Schlössels, R.J.N., Zijlstra, S.E. (2010), *Bestuursrecht in de sociale rechtsstaat*. Deventer: Kluwer.
- Haarmann, A. (2017), *The Evolution and Everyday Practice of Collective Patient Involvement in Europe: An Examination of Policy Processes, Motivations, and Implementations in Four Countries*. Netherlands: Springer.
- Heller, P.R., Marcel, V. (2012), *Institutional Design in Low-capacity Oil Hotspots*. New York: Revenue Watch Institute.
- Hill, H. (1992), Regional development in a boom and bust petroleum economy: Indonesia since 1970. *Economic Development and Cultural Change*, 40(2), 351-379.
- Ilmar, A. (2009), *Konstruksi Teori dan Metode Kajian Ilmu Hukum*. Makassar: Hasanuddin University Press.
- Jones, H.W. (1958), *The rule of law and the welfare state*. Columbia Law

- Review, 58(2), 143-156.
- Kapteyn, P.J.G., editor. (2008), *The Law of the European Union and the European Communities: With Reference to Changes to be Made by the Lisbon Treaty*. Frederick, MD: Kluwer Law International.
- Karl, T.L. (1997), *The Paradox of Plenty: Oil Booms and Petro-states*. Vol. 26. Berkeley: University of California Press.
- Karl, T.L. (2007), Oil-led development: Social, political, and economic consequences. *Encyclopedia of Energy*, 4, 661-672.
- Kurniawan, R. (2017), The effect of environmental performance on environmental disclosures of manufacturing, mining and plantation companies listed Indonesia stock exchange. *Arthatama: Journal of Business Management and Accounting*, 1(1), 6-13.
- Kvist, J., editor. (2012), *Changing Social Equality: The Nordic Welfare Model in the 21st Century*. Bristol: Policy Press.
- Legal Information Documentation Network, Ministry of Energy and Mineral Resources. (2014), *Peraturan Presiden Republik Indonesia Nomor 191 Tahun 2014 Tentang Penyediaan, Pendistribusian Dan Harga Jual Eceran Bahan Bakar Minyak*. Available from: <http://www.jdih.esdm.go.id/peraturan/Perpres%20Nomor%20191%20Tahun%202014.pdf>.
- Lenkova, O.V. (2017), Improvement of the methodology for the justification of retail prices for oil products. *International Journal of Energy Economics and Policy*, 7(2), 367-373.
- Liddle, R.W. (1982), The politics of ekonomi pancasila: Some reflections on a recent debate. *Bulletin of Indonesian Economic Studies*, 18(1), 96-101.
- Madaleno, M., Moutinho, V., Mota, J. (2015), Time relationships among electricity and fossil fuel prices: Industry and households in Europe. *International Journal of Energy Economics and Policy*, 5(2), 525-533.
- McCawley, P. (1982), The economics of ekonomi pancasila. *Bulletin of Indonesian Economic Studies*, 18(1), 102-109.
- Mietzner, M. (2007), Party financing in post-soeharto Indonesia: Between state subsidies and political corruption. *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 29(2), 238-263.
- Ministry of Energy and Mineral Resources of the Republic of Indonesia. (2015), *Rencana Strategis 2015-2019 Kementerian Energi dan Sumber Daya Mineral Direktorat Jenderal Minyak dan Gas Bumi*. Available from: <http://www.migas.esdm.go.id/public/images/uploads/posts/renstra-migas-2015-2019.pdf>.
- Mohamed, N.Y.B., Bekhet, H.A. (2016), Impacts of energy subsidy reforms on the industrial energy structures in the Malaysian economy: A computable general equilibrium approach. *International Journal of Energy Economics and Policy*, 6(1), 88-97.
- Neilson, J., Wright, J. (2017), The state and food security discourses of Indonesia: Feeding the bangsa. *Geographical Research*, 55(2), 131-143.
- Office of Fossil Energy. (2017), *Strategic Petroleum Reserve*. Available from: <https://www.energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve>.
- Omer, A.M. (2008), Energy, environment and sustainable development. *Renewable and Sustainable Energy Reviews*, 12(9), 2265-2300.
- Prawiranegara, S. (1984), Pancasila as the sole foundation. *Indonesia*, 38, 74-83.
- Robertson-Snape, F. (1999), Corruption, collusion and nepotism in Indonesia. *Third World Quarterly*, 20(3), 589-602.
- Ropke, J. (1990), Cooperatives in the Pancasila Economy. *Prisma*, 78, 67-82.
- Sari, N.I. (2015), *Ini Penyebab Harga BBM Indonesia Lebih Mahal Dibanding Malaysia*. Available from: <https://www.merdeka.com/uang/ini-penyebab-harga-bbm-indonesia-lebih-mahal-dibanding-malaysia.html>.
- Sasana, H., Setiawan, A.H., Ariyanti, F., Ghozali, I. (2017), The effect of energy subsidy on the environmental quality in Indonesia. *International Journal of Energy Economics and Policy*, 7(5), 245-249.
- Setiyo, M., Soeparman, S., Hamidi, N., Wahyudi, S. (2016), Techno-economic analysis of liquid petroleum gas fueled vehicles as public transportation in Indonesia. *International Journal of Energy Economics and Policy*, 6(3), 495-500.
- Smith, J., Obidzinski, K., Subarudi, S., Suramenggala, I. (2003), Illegal logging, collusive corruption and fragmented governments in Kalimantan, Indonesia. *International Forestry Review*, 5(3), 293-302.
- Soerjono, S. (1986), *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia.
- Suhardi, G. (2002), *Peranan Hukum Dalam Pembangunan Ekonomi*. Yogyakarta: Universitas Atma Jaya.
- Sukardi, S. (2016). Peran penegakan hukum dalam pembangunan ekonomi. *Jurnal Hukum dan Pembangunan*, 46(4), 434-453.
- Sumaila, U.R., Teh, L., Watson, R., Tyedmers, P., Pauly, D. (2008), Fuel price increase, subsidies, overcapacity, and resource sustainability. *ICES Journal of Marine Science*, 65(6), 832-840.
- Wicaksono, P.E. (2015), *Pemerintah Diimbau Bangun Cadangan Penyangga BBM*. Available from: <http://www.bisnis.liputan6.com/read/2374839/pemerintah-diimbau-bangun-cadangan-penyangga-bbm>.
- Yuniza, M.E., Widyaparaga, A., Wicaksono, R., Krisnadevi, P.S. (2016), Natural gas aggregation and the opportunity for synchronization under Indonesian law. *The Journal of World Energy Law and Business*, 9(5), 388-409.
- Zijlstra, S.E. (2006), *Oude Meesters: P. de Haan, Th. G. Drupsteen en R. Fernhout, Bestuursrecht in de sociale rechtsstaat*. Available from: <http://www.hdl.handle.net/1871/47812>.
- Zijlstra, S.E., Schlössels, R.J.N. (2016), *Bestuursrecht in de Sociale Rechtsstaat, Deel I: Onderwijseditie*. Deventer: Kluwer.