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Forestry Borrow to Use Permit in Upstream Oil and Gas Activity: Ecology Governance, Development Administration, and Administration Law Perspective

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Abstract

The “Forestry Borrow to Use (FBU) Permit” is an approval of the Ministry of Forestry to allow non-forestry activity to be conducted in Forestry Area. The Upstream Oil and Gas (OG) activity is commonly conducted in suburban or remote area where is located in such forestry area. In this kind of situation, a permission process must take place. So that there is a hierarchy: The Upstream OG activity Executor shall be in position as the Applicant, while the Ministry of Forestry shall be in the “higher” position as the Approver/Issuer the FBU Permit. This shows that between Governmental Institutions, one’s position is subordinate from another, thus causing a situation in which one institution’s plan can be disapproved by another government institution’s decision. Is this hierarchical structure conforming with the new values of coordination, synchronization and harmonization among government institution as required by Good Governance? This paper will analyze it in the perspective of Ecology Governance, Development Administration, Administrative Law in the Democratic Country.

Keywords: Forestry; Permit; Good Governance; Ecology Governance; Development Administration.

Introduction

The Ground Philosophy of the Forestry Area Management by the State is “Forest is a blessing of God and therefore the people must be grateful of that.” It means that both people and state shall be aware that they cannot create any forest as natural as it is originally created by God. In other words, it is understood that in such situation where forest has degraded for any reason, then it will be impossible to recover or revert it back to the same condition, as natural as it previously existed. There are always forest degradations happening. Moreover, some damages are

unrecoverable. The human actions are the most causes of those degradations and damages of the forest, even more than any cases that is caused by the nature.

The statement of relations among God-Forest-Humankind as above cited is clearly described in the consideration of Forestry Law No. 41/1999. This is something rare in the wordings of such Law. There is only a few of Law that clearly mentioned about God in its consideration. Another law that mentioned God is the Agrarian Law (Law No. 5/1960). Aware of the above reasons, therefore, the State provides a very strong concern to engage the government, private parties, and the society to be seriously committed in saving the forest for the sustainability of human life and other creatures in this earth as provided and ordered by God.

The facts have been proofing that humans in this earth will not exist without any forest. However, the civilization life instead teaches: humans can not only depend their life to the forest to keep them alive. Humans also need other Natural Resources that have been served by God as in this earth to sustain their life as Subramanian defines:¹

“Natural resources refer to the things that exist freely in nature for human use and do not necessarily require the action of mankind for their generation or production. The key aspect of natural resources is that they determine the survival of humans and other life forms on earth. These resources include land, rocks, forests (vegetation), water (ocean, lakes, streams, seas, and rivers), fossil fuel, animals (fish, wild life, and domesticated animals), minerals, sunlight and air”.

The important sentences in Subramanian definition: “*the thing that exists freely for human use*” and “*it determines the survival of humans and other life forms on earth*”. These statements raised a question: “Are the existing policies or governance over the natural resources good enough, so that in one hand humans can survive affirmatively and that natural resource is preserved safely?”.

Helmi wrote: “The function of the Permit is as an instrument to preserve environment against activities of human which is allowed by the permit. It means that such permitted business activity shall be obligated to prevent environment

¹ Subramanian K.R, ‘The Crisis of Consumption of Natural Resources’ (2018) 2 International Journal of Recent Innovations in Academic Research.[10].

pollution or disruption that may be created by the business activity”.²

However, people aware that in order to keep humans to survive and to be civilized, people also need energy, not only environment. The majority of energy demand on earth until now is the Hydro Carbon/Fossil-based energy. Unluckily, this fossil energy sources are commonly located underneath the bed of forest, so that to access the reserve, humans have no choice other than to sacrifice some piece of the forest for drilling works. Indonesia Constitution even provides mandate to the Government to explore, exploit and manage the Hydro Carbon / Fossil-based energy for the most prosperity of the people.

Didik Sasono Setyadi mentioned “The mandate shall be deemed as the obligation of the government before the people, therefore the government shall prepare, form, execute, control, evaluate and reform the “tools and methods” (if necessary) of natural resources management properly”.³ In the execution of the “mandate” the permit to utilize some piece of forest is necessary.

According to Safri Nugraha: “Permit is a form of “determination” (*beschiking*) made by the government as part of Administrative Law action. It had also been noticed that Permit is a “Handling Tool” of the Government over various activities held by common people”.⁴ Regarding the capacity of the Government level to issue permit for activity in the forest Josep P Montiero.⁵

“If there is any other law regulate some content regarding forest, the Forestry Law shall be prevail (*Lex Specialist*), while the other laws such as Agrarian Law, Environment Law, Local Government Law shall be imposed later as the *Lex Generalist*, therefore the law which provide authority to determine the use of forest for mining activities is the Law No 41/1999 regarding Forestry, instead of the Law No. 32/2004 regarding Local Government”.⁶

² Helmi, ‘Kedudukan Hukum Lingkungan Dalam Sistem Perizinan Di Indonesia’ (2010) 2 Jurnal Ilmu Hukum <<https://jih.ejournal.unri.ac.id/index.php/JIH/article/view/1149>>.

³ Didik Sasono Setyadi, [et., al.] ‘The New Public Finance Implementation in the Production Sharing Contract Scheme for Exploration and Exploitation of Oil and Gas Resources in Indonesia’ (2020) 3 National Journal of Law <<http://journal.unas.ac.id/law/article/view/920>>.[323].

⁴ Safri Nugraha, ‘Landasan Teoritis Dan Yuridis Prosedur Perizinan Lingkungan Di DEPHUB’ (1997) 27 Hukum dan Pembangunan <<http://jhp.ui.ac.id/index.php/home/article/view/525>>.[27].

⁵ Josep P Montiero, ‘Izin Pemanfaatan Kawasan Hutan Negara Untuk Pertambangan Dalam Era Otonomi Daerah’ (2006) 24 Jurnal Hukum Pro Justitia.

⁶ The Law No 32/2004 has been amended by the Law No 23/2014.[393].

According to the Forestry Law No. 41/1999 Article 38:

- (1) The use of forestry area for development purpose other than forestry activities shall only be allowed in the production forestry area and protected forestry area.
- (2) The use of forestry area as mentioned in paragraph (1) shall be done without any change on main functions of the forestry area.
- (3) The use of forestry area for mining purposes shall be made into borrow to use permit by the Minister by considering the dimension of the area and period as well as environment preservation.
- (4) In the protected forest open pit mining is prohibited.
- (5) Provision of the Borrow to Use Permit as mentioned in paragraph (3) whichever it has important impact, very large scope of area, has strategic values, has to be handled by Minister within prior approval of the Parliament.

In this Article 38, Upstream OG activity is not specifically mentioned. In the implementing regulation of this article the Upstream OG activity is categorized as “mining activity” so that in early implementation of this norms, the Upstream OG activity was impacted by the Conservative Foresters who were mostly refusing any aggressive mining in the forest. They were not aware that Upstream OG activity method different to the mining activity. Recently, there have been a mutual understanding between Forester, Petro Miners, and Geologists that they have to work together to manage the natural resources jointly and proportionally.

The phenomenon that will be researched in this paper: “Are the Government Policies on the Forestry and on the Upstream OG are made in sync, so that the Government is always able to manage those two vital resources fairly, effectively, and efficiently for the greatest prosperity of the people?”. This research will use two perspective approaches: “Ecology Governance Approach” and “Development Administrative Approach” by referring to the Administrative Law principle to respond to the research questions.

Based on the scientific approach, the management of forest consists of two types: firstly, management of the forest utilization and secondly, management of the use of forest. Then those two matters are formulated into a policy in the legislative product called as the Forestry Law No. 41/1999. According to the Article 38 of the Law No. 41/1999, the only permission scheme to allow the Upstream OG activity to access the Forest in order to lift the oil and gas reserved is by the Minister of

Forestry Permit (Currently the Minister of Forestry and Environment). This permit is called as the Forestry Usage because the Upstream OG activity only “use” the land in some forestry area without utilizing any product of the forest. The stipulations of Article 38 as described above are implemented by the Government Regulation No. 24/2010 regarding the Use of Forestry Area as amended by Government Regulation No. 105/2015.

In reference with these applicable Law and Regulation, any Upstream Oil and Gas (OG) activity in the forestry area has to be conducted under the permit called as “Forestry Borrow to Use Permit” (FBU Permit). The Guidance of the FBU Permit is determined by Ministry of Forestry and Environment Decree No. P.27/Menlhk/Setjen/Kum.1/7/2018 which requires and obligates the Upstream OG activity to The detail requirement is stipulated in the article 23 of the Minister Decree:

1. Legality of the Business Activity (PSC Contract);
2. Map of Location to be made in certain format of coordinate Datum WGS 84;
3. Governor Recommendation;
4. Integrity Pact Statement (Notary Deed);
5. Technical Advice from *Perhutani**) (for Upstream OG activity in Java);
6. Environmental Permit;
7. Satellite Imagery Map.

This Minister Decree also allows the applicant to use the Online Single Submission (OSS). However, the OSS is only useful for entry system only, the remaining processes must be handled manually. These requirements in this procedure/guidance are actually reflecting how effective and efficient the synchronization of policies in the perspective of Ecology Governance and Development Administration and Administrative Law respectively.

This research is a qualitative research based on literature and secondary data research as well as Observation. Author’s position as the Head of One Door Service Policy and Formalities Division of SKK Migas has opened a door to a wide opportunity in order to observe the implementation of the Guidance of FBU Permit in Upstream OG day to day activities. As commonly described by literatures that in the qualitative research, the most important tool of the research is the researcher himself. Therefore, the author is not only relying on the Literatures and other

secondary data, but also optimizing the research by observing day to day processes of obtaining FBU Permits for Upstream OG activities carried out in the One Door Service Policy and Formalities Division of SKK Migas.

Theories: Forestry Borrow to use Permit

This part of the article will explain the result of the analysis of the conducted research. During the analysis, there are several important theories as mentioned below:

a. Government Principle Tasks as Grand Theory

Muhammad Ryaas Rasyid in his book “Makna Pemerintahan (The Meaning of Governance)”, described that Government has seven principle tasks to be delivered to the society. The seventh principle is:⁷ “Implementing the policy to preserve resources and environment such as water, land and forest. The Government has also the obligation to evolve research and development activities to utilize the natural resources for the purpose to promote the balance of exploitation and preservation”. The first and second principle of Ryaas Rasyid are the same as commonly found in the other definition, which is related to the “security and protection” and “law and order”. The third principle is fairness, the fourth principle is public services provisions, the fifth principle is social welfare and poverty alleviation, and the sixth principle is economic stimulation and creating jobs employment.

Currently in Governance Science the first and second principles are no longer be understood as hierarchical relation between the “government” and the “governed” structure as previously meant by the old concept of Public Administration, but it has been deemed as an “agreement” between the Government and the People (Society and Privates). Muchlis Hamdi describes it as follow:⁸ “Therefore, the social order, that is in other word is familiarly called as the security and peaceful, in no longer be understood as a reflection of enforcement of a power or authority of the government.

⁷ Muhammad Ryaas Rasyid, *Makna Pemerintahan* (Mutiarasumber Widya 2007).[11-12]. “Perhutani” is a State-Owned Company which is assigned by the Government of Indonesia to manage Forest in Java Island.

⁸ Muchlis Hamdi, *Bunga Rampai Pemerintahan* (Yarsif Watampone 2002).[4].

On the side the social order is a picture of agreement on the manifestation of the governance framework”.

Since the 50's, Van Poelje has said:⁹

“Government science has no longer been aimed to the formal content of Constitutional and Administrative Law, but the implementation of these Constitution and Administrative Law, it is no longer about how such certain action is executed but why is that certain action has to be executed, it is no longer about the institutions which are appointed to do the tasks but why in such certain country, in such certain time, it has to choose such certain organization, what are the goods and what the weakness?”.

Therefore, the government principle tasks are no longer the matter of how the Government is using or utilizing their authorities towards the people, but it is the matter of how the Government is conducting/performing their commitment to the people in the democratic circumstance as nowadays.

b. Ecology Governance Theory

Sadu Wasistiono promotes a study regarding Ecology Governance. It is an eclectic science of Governance in where such phenomenon of governance is approached by ecology. It is described as a life cycle of creature as an analogy that *“the creatures interact, take and give, for the purpose of to struggle their own existence. In this case there is homeostatic mechanism”*¹⁰ As mentioned in the introduction that both Fossil Energy and Forest are important for the sustainable life of humans, therefore the “The Forester” and the “the Petro Miner” have to talk and interact respectfully. The keywords of this theory are: “take and give interaction”, “struggling for each existence” and “homeostatic mechanism”.

c. Development Administration Theory

Das, S.L, in her book *“Bureaucracy and Development Administration”* wrote: *“Support for reforms in the public sector has been premised on their capacity to enhance the efficiency and the democracy of public administration”*.¹¹ This statement

⁹ Van Poelje, *Pengantar Umum Ilmu Pemerintahan* (Terjemahan: B. Mang Reng Say ed, 1953).[19].

¹⁰ Sadu Wasistiono, *Pengantar Ekologi Pemerintahan* (IPDN Press 2013).(homeostatic is actions to maintain equilibrium/balance).

¹¹ S.L Das, *Bureaucracy and Development Administration* (Swastik Publication 2010).[107].

is underlining the words of “*efficiency*” and “*democracy*” that become more and more important in the bureaucracy rather than merely focusing on the “*authority*” and “*procedure*” as conventionally understood and implemented by the bureaucrats.

Consistent with above theory, Denhart & Denhart have promoted the “*Seven Principles*” of the New Public Service:¹²

1. Serve citizens, not customers;
2. Seek the public interest;
3. Value citizenship and public service above entrepreneurship;
4. Think strategically, act democratically;
5. Recognize that accountability isn’t cheap;
6. Serve, rather than steer;
7. Value people, not just productivity.

As mentioned above, the fourth governance principle says that they must “think strategically and act democratically”. This will be the criteria whether the FBU Permit procedure and guidance are reflecting the expectations of the New Public Services. The keywords of this theory are: “enhancing efficiency” and “conducting a democratic public policy”

d. Administrative Law Theory on the Administrative Determination/Decision Principles

According to Administrative Law Theory applies in Indonesia, a Permit (in this regard is FBU Permit) is such a form of “*Ketetapan Tata Usaha Negara*” (Administrative Determination). Ridwan noted that:¹³

“The Administrative Determination was firstly promoted by a Germany Scholar, Otto Meyer with a terminology called as: “*verwaltungsakt*”. This terminology was promoted to Dutch and called “*beschikking*” by van Vollenhoven and C.W. van der Pot, in which by other Scholars: AM. Donner, H.D. van der Wijk/Willemkonijnenbelt and others are deemed as “*de vader van het modern beschikkingsbegrip*”.

WF Prins, Philipis M. Hadjon and SF. Marbun preferred to call it as “*Keputusan*” (Decision). Regardless which one is the preferred translation, but the element of the “*beschikking*” are:

¹² Sadu Wasistiono (n 11).

¹³ Ridwan HR, *Hukum Administrasi Negara* (PT RajaGrafindo Persada 2006).[144].

1. One Sided/Self Intention (not including two or more parties in an agreement);
2. Issued by an Administrative (Government) Institution;
3. Based on Authority Provided by Public Law;
4. For Specific Purpose and Occasion (Concrete and Final);
5. Providing a Legal Status/Capacity in Administrative Law.

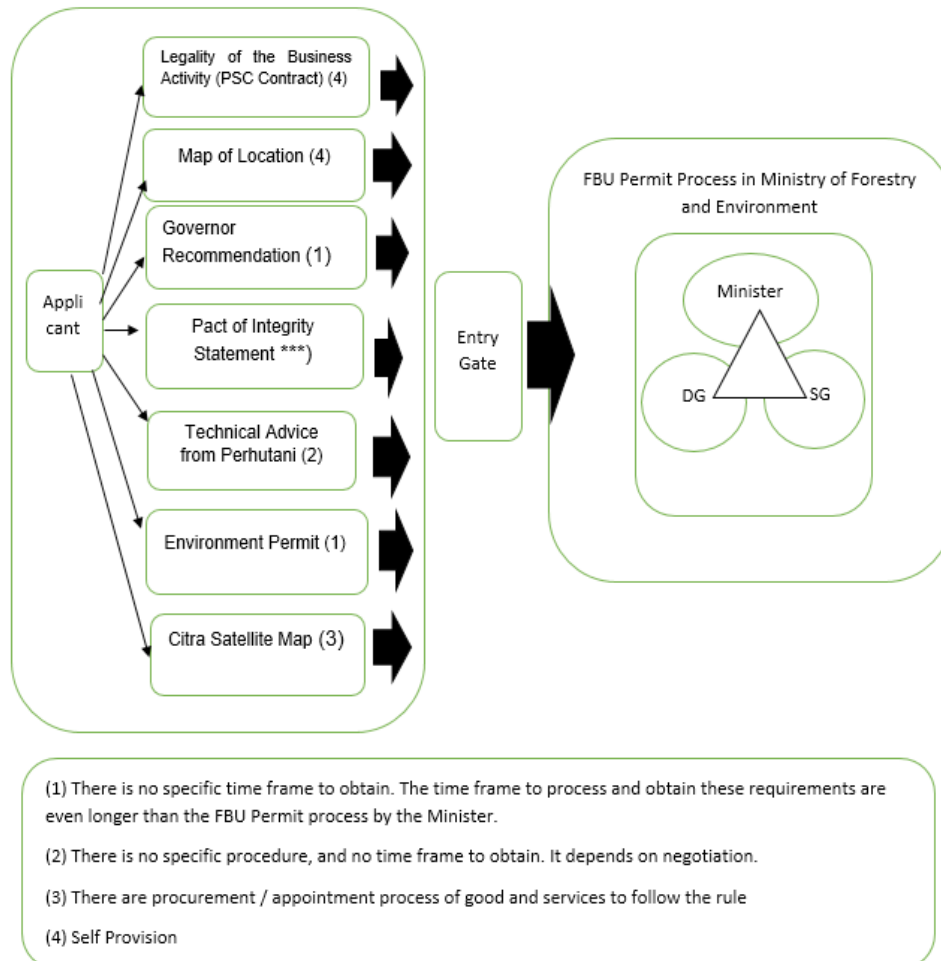
Therefore, the same as other Permit, the FBU Permit is understood as one of this “*beschikking*” according to the Administrative Law Theory.

Characteristics and Process of Forestry Borrow to Use Permit

Prior to the analysis, it is necessary to show the characteristics of Forestry Management and Upstream Oil and Gas Management

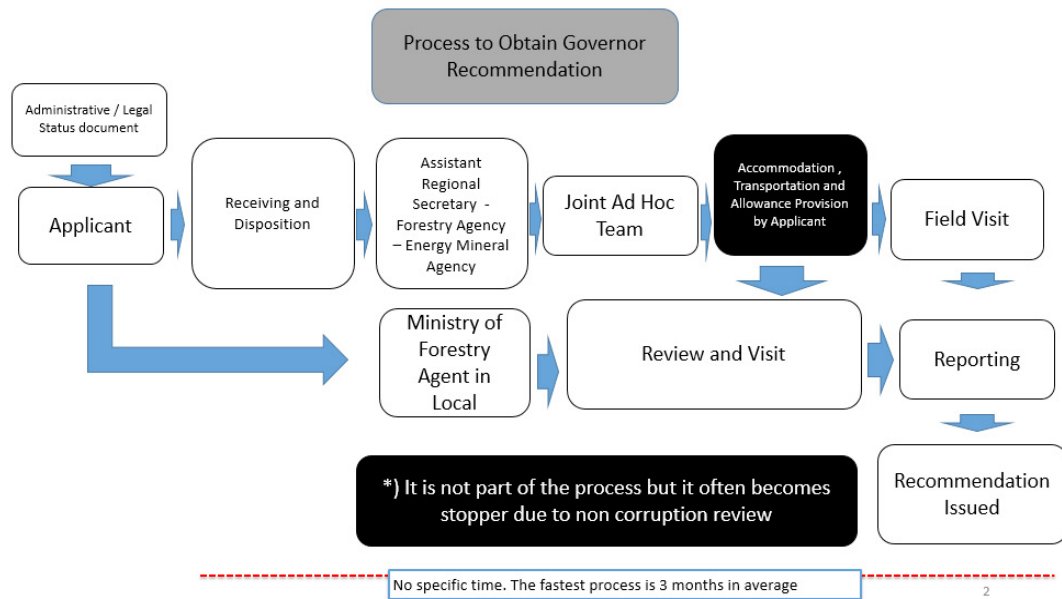
No	Remarks	Forestry	Upstream OG
1	Law	No. 4/1999 No. 5/1990	No. 22/2001
2	Benefit for the Country	1. Environment Conservation/ Non-Commercial Forest and Protected Forest 2. Commercial Activity Forestry Product Industry	1. Energy Source 2. State Income
3	Institution	Ministry of Forestry and Environment	1. Ministry of Energy and Mineral Resources (Regulator) 2. SKK Migas (Executor)
4	Management Scheme	1. Forestry Utilization Permit for Forestry Product and Industry (e.g. Logging Industry, Pulp Industry) 2. Forestry Borrow Use Permit for (FBU Permit) for activity in the forestry area for non-forestry industry (e.g. mining, oil and gas)	Production Sharing Contract between SKK Migas and the Contractors
5	Asset and Activity Ownership	1. Government Own Asset for Non-Commercial Activities 2. Privates Own Asset for Commercial Activities	Government Own Asset and Activity
6	Government Take	1. Royalty (from Forestry Product Industry Activities) 2. Non-Tax Revenue (from Non-Forestry Product Industry)	Direct Production Sharing from Oil and Gas Lifting

The diagram is showing how the process to obtain FBU Permit according to the Guidance provided by the Minister of Forestry and Environment Regulation No. P.27/Menlhk/Setjen/Kum.1/7/2018.



This diagram shows the requirements that shall be completed by the Applicant in order to obtain the Minister's Approval. These requirements show the Applicant and the Object of Borrow to Use Permit are maintained as the Private Party and its business activity, rather than a Government Institution and a Government's business activity. In their applications, the Applicant has to complete each requirement without any help from government institutions. This, however, should have been led by the Ministry of Environment and Forestry as the coordinator, to gather other government's institution to provide necessary recommendations and advices. There are some processes inside

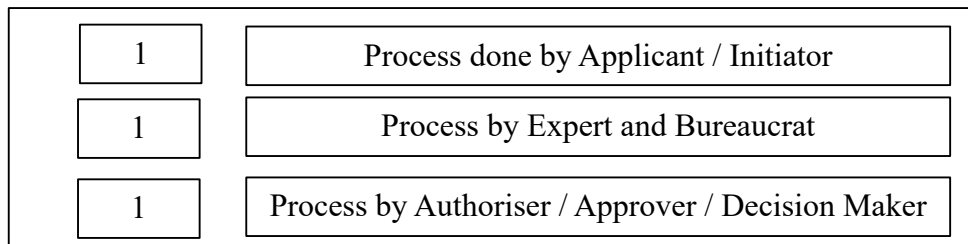
this process before entering into the Ministry Process. Particularly in the fulfilling requirement as (1) marking above (i.e. Process to obtain Governor Recommendation and Environment Permit). The process of obtaining Governor Recommendation is:



Obtaining the Environment Permit even more complicated and very long process to obtain. Below in the list of activities to obtain the Environment Permit.

No.	Activity	Remarks
1.	Preparation	1
2.	Announcement and Public Consultation	1
3.	Preparation of the Term of Reference (TOR)	1
4.	Submission of the TOR for evaluation	1
5.	Evaluation by Commision Secretariat	2
6.	Evaluation by Technical Team	2
7.	Approval of TOR	2
8.	Preparation of Environment Impact Assessment and Management	1
9.	Application for Environment Permit	1

10.	Evaluation on Environment Impact Assessment and Management by the Commission	↓ 2
11.	Evaluation Commission Secretariat	↓ 2
12.	Evaluation by Technical Team	↓ 2
13.	Plenary Evaluation and Recommendation	↓ 2
14.	Approval on Environment Conformation	↓ 3
15.	Issuance of the Environment Permit	↓ 3



Normally all of the processes are completed within 6 months

The above description gives some clarity that obtaining FBU Permit is not as short and simple as usually mentioned by the Ministry of Forestry and Environment because the processes to fulfill the requirement is very complicated and the timeframe is not easily predicted. In case of any processes to be done in sequence, to enable Upstream OG Activity in Forestry Area normally takes about a year earlier in preparation before the activity takes place.

The table is the Check List to verify the conformation between FBU Permit Process and The Theories (Administrative Law, Ecology and Development Administration) to analyze whether or not the FBU Permit system conform with the new evolvement of Good and Smart Governance in the Government Science.

No	Administrative Law Characteristics	Ecology Governance Variable	Development Administration Variable
1.	FBU Permit for Upstream OG is one side decision to response an application	It is basically a take and give interaction between applicant and issuer	Knowing the process to obtain, it can be acknowledged that the process is not efficient and not democratically sound

2. FBU Permit is issued by an Administrative Government Institution	The homeostatic mechanism is there but it is not clear yet	There are pre-requisition and recommendation from other administrative institutions. This has to be simplified to be a “one door / gate service”. Any recommendation has to be requested by the Permit Issuer to the other Government Institutions through internal “G to G” institution communication rather than to be conducted by the applicant.
3. FBU Permit is based on Authority provided by Public Law	There is no significant interaction between Forestry Regulator and Upstream OG Regulator to produce joint Guidance on Upstream OG activity in the Forestry Area	The Upstream OG activity is still being treated as a Non-Governmental activity. This causes inefficiency in the coordination and or mutual collaboration between Government institutions
4. FBU Permit is issued for a Specific Purpose	The Purpose of Upstream OG activity in the Forest is clear (to explore and exploit). It has been defined and explained in the Environmental Permit. The interaction and homeostatic process between two interests (forest interest and OG interest) should be jointly discussed and solved in the Environmental Permit processed in which is also under the control of the Ministry of Forestry and Environment. Therefore, there is no reason to make FBU Permit separated from the Environment Permit	As mentioned in the analysis of Ecology Governance Variable. The purpose of the FBU Permit for Upstream OG can be contained in the Environmental Permit. The integration process of FBU Permit in the Environmental Permit process can make it more democratic and more efficient
5. FBU Permit is providing Legality Status of Non-Forestry Activity in the Forestry Area	The Upstream OG activity is an activity done by the Government under Production-Sharing Contract (PSC) in Collaboration with the Contractors. Any activity of the Government shall be deemed legal. Any specific requirement to conduct the activity	As mentioned in the Ecology Variable Analysis, if the Government is implementing other procedure to control and supervise Upstream OG activity in Forestry Area other than the Permit instru-

in Forestry area can be implemented accordingly by control and supervision mechanism. It is not necessarily through Permit, because Permit is (according to Government Administration Law 30/2014) unfit for inter-Governmental institution relations

The above table is showing that FBU Permit for Upstream OG Activity is an old-fashioned procedure. It is not conforming with the Governance Science, in particular: The Ecology Governance, The Development Administration and even the Administrative Law. The unconformity is caused by the very long process of granting the permit and a lot of uncertainty whether the requested permit will be granted or declined, and also less focus on the good governance principles. This is a phenomenon of bureaucracy reformation and subject of the Government (currently Governance) Science study.

Critiques on Forestry Borrow Permit: Ecology Governance, Development Administration, and Administration Law in a Democratic State Perspective

In the history, Mc Iver had mentioned that the Government Science is mainly:¹⁴

“there is an important body of systematic knowledge about the conditions under which different types of government emerge, about the characteristics of the different types, about the relations of the government to the governed in different historical situations, about the modes in which government carry out on their functions according to their kind and so forth. This body of knowledge may properly be named a science”.

Furthermore, in the “Max Weber An Intellectual Portrait”, Max Weber stated that: “when the rule of law prevails, a bureaucratic organization is governed by the following principles: (1) Official business is conducted on continuous basis (2) it is conducted in accordance with stipulated rule in administrative agency”.¹⁵ This statement is explaining why the current FBU Permit procedure is very complicated, because it is still being organized by the old system of bureaucracy as introduced

¹⁴ Muhadam Labolo (ed), *Dialektika Ilmu Pemerintahan* (Ghalia Indonesia 2015).[7-8,82].

¹⁵ Reinhard Bendix, *Max Webber an Intellectual Portrait* (University of California Press 1977).[424].

by Weber after the second world war. It is more focused on the compliance with the regulation but less attention to the effectiveness and efficiency as required in the concept of Good Governance and New Public Services. Kenneth J. Meier and Laurence J. O'Toole Jr. in their book "Bureaucracy in a Democratic State", said that "Bureaucracies are hierarchical institutions that can provide the capacity and expertise to accomplish complex social tasks, but are frequently characterized as undemocratic and even threatening to democracy".¹⁶

Learning from other country, Ebenstein had made a comparison on the behavior of French bureaucracy and the American as follows:¹⁷ "The French administrative structure developed from the royal household, but was adapted to the purposes of the modern nation-state with the overthrow of the monarchical system. The civil service was already powerful and relatively professional; only its master had changed". (While in US) Far from being a social, economic, or political elite, the American bureaucracy reflects the American public. Its personnel are recruited nationwide and from all classes of the population.

As result the behavior of French bureaucracy is easier to be changed into a new model of bureaucracy, while the US bureaucracy is more complicated, so that Osborne and Gaebler had introduced a theory of Entrepreneurship Bureaucracy/ Reinventing Government. T.M. Vinod Kumar in the E-Governance for Smart Cities mentioned that:¹⁸

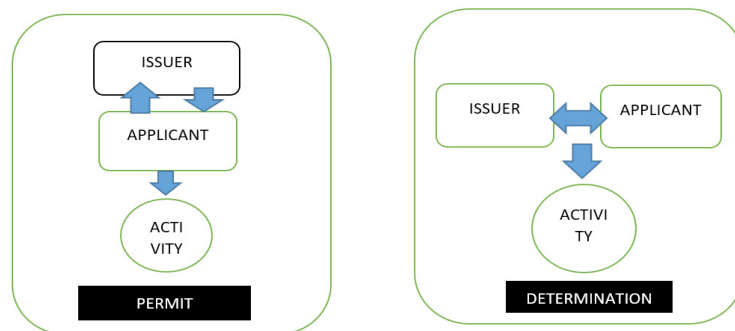
"The Concept of governance has a duality built into that even when it moved from autocracy to oligarchy and then to democracy. In the scheme of this duality, there is one or a group of people who are given legal powers to govern called competent authority and there are another large group who are recipient of governance. "in a democracy for example, the elected politicians and appointed bureaucrats and electorate which need not necessarily 100% population. This duality gets gradually dissolved to a non-duality in an evolving and progressive democracy".

¹⁶ Kenneth J Meier (ed), *Bureaucracy in Democratic State* (The John Hopkins University Press 2006).[1].

¹⁷ William Ebenstein (ed), *American Democracy in World Perspective* (2rd edn, Harper & Row Publishers 1970).

¹⁸ T.M. Vinod Kumar, *E-Governance for Smart Cities* (Springer 2015).[5].

He addressed that in the democratic and smart cities has a strict distinction between the competent authority and the recipient of the governance is no longer relevant. Therefore, the Permit Scheme applies as FBU Permit should be evaluated accordingly. The diagram below is showing the difference between “Permit” (*Izin*) and “Determination” (*Penetapan*). The “Permit” is hierarchical structure of administration, but the “Determination” (*Penetapan*) is equal structure of administration. The “Determination” is closer to the context of democratic governance than the “Permit” scheme.



The “Determination” (*Penetapan*) is more logical than “Permit” (*Izin*), because the Upstream OG Activity is a kind of Government activity so that it is not proper to conduct “G” to “G” relation (between Forestry Ministry and Energy and Mineral Resources or SKK Migas) in a hierarchical structure “upper level” (issuer) and “lower level” (applicant) but it shall be treated equally.

Conclusion

The FBU Permit scheme for Upstream OG Activity is an improper administrative mechanism in accordance with the Ecology Governance, Development Administration and Administrative Law perspective. The scheme creates inefficiency and complicated hierarchical structure amongst the Government institutions. The FBU Permit for Upstream OG Activity shall be replaced by the “Determination” (*Penetapan*) scheme so there will be no hierarchical relation between the applicant and the approver/issuer but equal coordination amongst authorized Government institutions in conducting public obligation/mandate of the constitution through the most effective and efficient management and methods

for the greatest prosperity of the people. By the “Determination” scheme, the Government Institutions shall be more focused on the “Substance” (impact of activities to the forest and how to mitigate) rather than wasting time and resources to focus on administrative stuffs.

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