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Estimating The Exploration And Production (E&P) Industry's Rig Contract Business Owner

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Abstract

According to Article 33 of the 1945 Structure, oil and gas have the potential to greatly influence state and revenue generation sources, thereby realizing societal welfare and economic prosperity. For this reason, oil and gas have a crucial and strategic position among natural resources. As a result, a specialized work group for exploration and production (E&P) was established through the enactment of Oil and Gas Law Number 22, 2001. This organization is in charge of supervising all exploration and production-related operations. In accordance with Presidential Regulation No. 12, 2021, Procedural Instruction 007, 2017, exploration and production builders carry out the rig procurement procedure to rig providers builders with their proposal Owner Estimate's worth. There are conflicting interpretations and discrepancies in the Owner Estimate instruction problem for upstream exploration and production (E&P). Concerns pertaining to areas of law positivism that Owner Estimate provides may or may not be secret in the process. It allows for collusion during the purchasing procedure. Normative juridical analysis is used in the research to make Owner Estimates of Value and to cover regulation. Therefore, in order to achieve conformity with the agreement principle and legal certainty, it is required to alter the President's Regulation and the Summary of Procedural Instruction. In order for the specialized work group for exploration and production (E&P), the E&P builders, and the rig providers to execute upstream business flawlessly and optimally to support communal welfare, the regulation's evaluation will support legal clarity, ability, and persuasiveness.

Keywords: Offering Owner Estimate; Oil and Gas Contractor; Rig Provider.

Introduction

In the Indonesian country and state, oil and gas are considered essential resources under governmental control. They are mostly utilized for the people's prosperity. They are resources that can't be replaced, and they have a significant

impact on people's lives and income.¹

In order to ensure people's success and well-being, the administration of the exploration and production (E&P) industry is divided into two divisions. The upstream and downstream divisions have two distinct administration frameworks to ideally oversee oil and gas.² The income generated by the oil and gas sector is essential to the overall country, not just the regions.³ We have to start with a strong foundation in order to manage Indonesia's Oil and Gas Sector: The 1945 Framework.⁴

The 2001 UU Migas (Oil and Gas Law)⁵ determines the fundamentals of gas and oil management. Rules are made more specific when they are needed for operations. Based on an earlier directive from the President, the administration established regulations for how things should be done. A regulation known as Procurement of Goods/Services was implemented in 2021 concerning the acquisition of goods and services. Work Strategy Rules (PTK) 007 for Technical Operations are created by the exploration and production (E&P) trade exercises in Indonesia's specialized work group, SKK Migas.⁶

A support contract with SKK Migas, also known as Oil and Gas temporary worker (KKKS), is used by an Exchange Substance or Enduring Establishment, such as Caltex Pacific Indonesia, Medco Exploration & Production, Pertamina Eksplorasi & Generation, and others, to carry out the investigation and misuse work region. Hundreds of oil and gas working zones are still supervised by SKK Migas in Indonesian space.

Utilizing Generation Sharing Contract (PSC) Fetched Recuperation and PSC Net Part frameworks, KKKS oversees task divisions. While PSC Net Part does not

¹ Ericson Sihotang, *Politik Hukum Pengelolaan Migas, Pasca-Putusan Mahkamah Konstitusi* (P3DI 2014).[37].

² Sang Ayu Putu Rahayu, 'Prinsip Hukum Dalam Kontrak Kerjasama Kegiatan Usaha Hulu Minyak dan Gas Bumi' (2017) 32 *Yuridika*. [337].

³ Indah Dwi Qurbani, 'Prinsip Hukum Perimbangan Dana Bagi Hasil Minyak dan Gas Bumi' (2014) 29 *Yuridika*. [114].

⁴ A Rinto Pudyantoro, *Bisnis Hulu Migas, Mengurai Persoalan and Memahami Masa Depan Bisnis Hulu Migas Indonesia* (Gramedia Pustaka Utama 2019).[42].

⁵ Indonesia Legal Center Publishing, *Peraturan Perundang-Undangan Pertambangan, Minyak Dan Gas Bumi & Mineral Dan Batubara* (Karya Gemilang 2014).[3].

⁶ *ibid.*[43].

use PTK 007, KKKS and the PSC Fetched Recuperation framework use it to secure products and services related to the oil and gas sector.⁷

In order to implement the fundamentals of chain administration supply chain management, PTK 007 Fourth Amendment of 2017 provides the legal framework for fine-tuning coordinates and explicit specialized and regulatory instruction. Additionally, it unifies the perspectives and knowledge of all upstream oil and gas commerce directors in the Republic of Indonesia about the procurement of products and services.⁸ When it comes to their PTK 007 rig, KKKS requires drilling/workover rigs. The Fourth Amendment of 2017 establishes the legal foundation for fine-tuning coordinates and explicit regulatory and specialized instruction, in order to comprehend the principles of supply chain management, as well as matching the perspective and comprehension of all directors of upstream oil and gas commerce inside the Republic of Indonesia with regard to the acquisition of goods/services.

The attitude of exploration and exploitation operations, which entail costly, high-risk, time-sensitive endeavors? Rig contractors, as well as providers of rig products and services, are responsible for developing the Owner Estimate (“Harga Perkiraan Sendiri”/”HPS”) of the procedure for obtaining rig supplies and equipment. Between 2017 PTK-007 Fourth Revision instructions and the inconsistent and multi-interpreted Presidential Regulation No. 12 of 2021, there is an Owner Estimate difficulty. The HPS is the evaluated result of expertly computed cost data for items or services, chosen by the official making the commitment, and used to ascertain the price that the acquisition official or obtainment benefit unit will provide.⁹ During the assessment stage, the issue of how to schedule HPS in Fix benefit contracts for upstream oil and gas operations is critical. The final HPS value, which must be unambiguous, consistent, and free from different interpretations, will decide who wins the rig procurement.

⁷ *ibid.*[132].

⁸ SKK Migas, *Pedoman Tata Kerja, Nomor: Pedoman Tata Kerja-007/SKKMA0000/2017/S0 (Revisi 04)* (SKK Migas 2017).[97].

⁹ Mudjisantosa, *Memahami Spesifikasi HPS dan Kerugian Negara* (Primaprint 2013).[50].

The government must work with SKK Migas to coordinate its handling of the current acquisition situation in the oil and gas industry as part of its responsibilities as a legislator and regulator for the purchase of goods and services. In addition to conflicting and divergent interpretations of the preparation and execution of HPS scores for KKKS and providers of goods and services, PTK 007 and the Presidential Regulation have a number of issues. According to the following guidelines found in Presidential Regulation No. 12 of 2021:¹⁰

- a) The establishment of HPS is not covered by Presidential Regulation No. 12 of 2021;
- b) The HPS Esteem Offer is non-confidential and open;
- c) The negotiation process and HPS planning seem to have constituted a conspiracy.

Consider the following factors when evaluating the 2017 PTK-007 Fourth Revision:¹¹

- a) Depending on the kind, the full HPS/OE value stated in the goods/services procurement document may be open or non-confidential;
- b) The lowest HPS value is currently being progressively discussed for the winner's appraisal;
- c) There appears to have been a conspiracy engaged in the HPS preparation and the negotiation process.

Empirical law-supported qualitative normative law techniques are used in the research process. Normative juridical research is qualitative study and alludes to the legal standards included in presidential decrees, statutes, PTK, and professional judgments.

Supported by an empirical investigation, the research of application (*Ius Operatum*) aims to confidently determine the manner in which the current positive

¹⁰ Peraturan Presiden Republik Indonesia Nomor 12 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 16 Tahun 2021 Tentang Pengadaan Barang/Jasa Pemerintah Dengan Rahmat Tuhan Yang Maha Esa Presiden Republik Indonesia 2021.[15].

¹¹ SKK Migas (n 8).[38].

law will be implemented. The researcher interviewed resource people from SKK Migas, KKKS, and suppliers of merchandise and administrations within the oil and gas environment in order to plan to execute the acquisition of merchandise and administrations for the operational division of penetration-testing oil businesses both locally and internationally, as well as for rigs connected to HPS in oil and gas exercises. These individuals are highly skilled and well-respected in their industry. The notion of legal certainty must be understood by the Indonesian government's Service of Vitality and Mineral Assets, SKK Migas, KKKS, and fix suppliers in order to prepare HPS in fix benefit contracts for upstream oil and gas trade activities.

Several methodologies are used in this law research with the aim of collecting data from a range of sources pertinent to the research subject, including the law certainty principle in the exploration and production (E&P) operations as the foundation for writing HPS in rig service contracts. In legal research, two different approaches are employed. Using this tactic, the writer addresses many aspects of the problem that need to be solved.¹² The two legal study projects using normative research approaches are as follows:¹³

1) Legislative Strategy

To do this, a review of the laws and rules that are pertinent to the current legal circumstances is carried out. Presidential Regulation No. 12, 2021 and Oil and Gas Law No. 2, 2001, which are the regulations that are applicable in the author of PTK007 from SKK Migas, can compare the preparation of HPS and their compatibility. The study's findings support the use of problem-solving techniques.

2) Comparative Strategy

In the context of exploration and production (E&P) activities, this comparative technique is used to compare the specifications for the HPS setup in oil associations and corporations operating outside of Indonesia with the laws or Presidential Regulations or PTK on how to do so.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Edisi revi, Prenada Media Group 2015).[133].

¹³ *ibid.*

The HPS Esteem Offer is not private or secret when it comes to obtaining products or services.

In accordance with Presidential Control No. 12 of 2021, the details of the HPS are secret, but its esteem is public.¹⁴ Fourth Revision of PTK 007 Rules: Depending on the kind of contract, the HPS value is either not confidential or confidential, and the parties participating in the procurement process are expected to keep the information discreet. The Presidential Control No. 12 of 2021 and PTK 007 Fourth Amendment of 2017 are opposed by the policies controlling the purchase of goods and services. High-tech, costly, risky, and time-critical operational drills requiring specialized equipment, supplies, labor, and certification are the hallmarks of upstream oil and gas exercises.

The Oil and Gas Law mandates that upstream oil and gas activities make a stated offer of HPS Value in order to ensure effective and efficient procurement. In accordance with According to Presidential Decree No. 12 of 2021, consumers of products and services must provide members with informative materials when obtaining goods and services, as well as to freely and publicly share HPS Esteem in sensitive documents. Providing tactics and tactful legal advice are really important to comprehending the core authoritative contract elements for government acquisitions.¹⁵

Depending on the type of contract, HPS Regard's offer may be closed or opaque, but KKKS implements the acquisition of products and services in a conflicting manner while educating people about upstream operations for gas and oil. In compliance with KKKS's action plans, the Fourth Alteration of 2017 PTK 007 restrictions are put into effect. Delicate offers are open, which makes it easier for repair suppliers to review fix cost data from the showcase or other sources.

¹⁴ Peraturan Presiden Republik Indonesia Nomor 12 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 16 Tahun 2021 Tentang Pengadaan Barang/Jasa Pemerintah Dengan Rahmat Tuhan Yang Maha Esa Presiden Republik Indonesia.[15].

¹⁵ A. Alanzi, 'Tendering in Assignment of the Administrative Contract: A Comparison of Egyptian Tender Law and Saudi Government Tenders and Procurement Law' (2021) 7 Hasanuddin Law Review.[105-118].

This increases the accuracy and success rate of HPS Esteem planning and reduces the possibility of machinations. Rig procurement providers are crucial for acting as a standard for the success of contract implementation since they are able to compute HPS Value from the beginning with accuracy and competence. As a result, rig suppliers can evaluate their ability to complete the tender without worrying about indications of collusion. The following variables offer non-confidential HPS Esteem within the legal constraint of purchasing goods or services:

- a) Adhere to the standards for integration, equity, adjustment, value, and legal certainty listed in Oil and Gas Law No. 22 of 2001, Article 2.
- b) Adhere to the provisions of Oil and Gas Law No. 22 of 2001, specifically Article 3, which states that the trade of oil and gas shall be conducted and overseen in an efficient, prosperous, fiercely competitive, and workable manner using an open and uncomplicated instrument.
- c) Comply with Law No. 5 of 1999's item 22, which prohibits bid conspiracies, by pointing out that closed or opaque bids may lead to unfair economic competition.
- d) Verify that the delicate isn't unfair and compares to the idea of acceptable trade competition, in which every supplier of products or services with an equal level of expertise are allowed to participate.

Under the main principles of the Government Acquisition Understanding (GPA), global purchasing products and services is executed in a transparent and uncomplicated manner. In order to promote fair business competition, this agreement mandates that its members form transparency in acquisition forms. It is expected that the obtaining substance will provide data in an open manner for the duration of the acquisition handle.¹⁶

Law No. 5 of 1999, Article 22 Considering the provisions of the Oil and Gas Law, the Refusal of Scheme in Tenders demonstrates that tenders that are closed, opaque, and biased in character may result in unfair financial competition. The World Bank, the World Exchange Organization, the United Nations Commission on International Trade Law, SKK Migas, KKKS, and suppliers of goods and services, as well as other countries that follow the GPA's best practices are all taken into account. The author argues that the following regulations, like PTK 007 ("lex predominant

¹⁶ Y Soga Simamora, *Hukum Kontrak, Prinsip-Prinsip Hukum Kontrak Pengadaan Barang Dan Jasa Pemerintah Di Indonesia* (LaksBang PRESSindo 2017).[86].

derogat legi second rate” rule), must be followed when purchasing goods and services that the HPS Esteem Offering method does not consider to be confidential.

The author believes that PTK 007, the Fourth Amendment of 2017, ought to be revised in order to include the taking after law certainty criteria:

- a) Following the law and the chain of command in administration. In order for Indonesia to become a legal state, national law must be developed in an organized, cost-effective, and coordinated manner within the national law framework.¹⁷
- b) The prerequisites are followed in order for the law to operate; in particular, controls are made transparently to set up a fair law introduction for the community’s welfare, adhering to the Pacta Sunt Servanda (law certainty) rule and the law certainty hypothesis of Gustav and Kelsen.
- c) An open and non-confidential offer from HPS Esteem would keep any conspiracy theory between the committee tasked with obtaining goods and services and the supplier away from one another. KKKS and Fix Suppliers carry out the 1999’s Law No. 5 arrangements against monopolistic actions as well as out-of-line commercial competition.
- d) Verify the sufficiency and efficacy of the acquisition handle for goods and services; According to the Oil and Gas Law, businesses involved in the oil and gas industry are required to use a reasonable and open strategy to guarantee the sustainability of the procurement of products and services for both suppliers and clients (KKKS).

In order to support HPS Regard with an open and transparent component for various sorts of contracts, the PTK 007 Fourth Amendment of 2017 has been revised. This includes changes to the strategy within the goods/services acquisition record (fragile) and the opening of the offer cover for the upstream HPS Regard offer for oil and gas projects. As a result, KKKS and Settle providers now have access to a more capable, efficient, and compliant acquirement plan for goods and services. In this context, a conspiracy is an arrangement between two or more individuals to engage in illegal activity together. According to Law No. 5 of 1999’s Item 22, a conspiracy in a tender happens when two or more parties collaborate to affect the tender’s outcome by picking specific participants.¹⁸

¹⁷ Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan* (Sinar Grafika 2018).[89].

¹⁸ Benny Pasaribu, *The Business Competition Supervisory Commission Regulation No.2 Tahun 2010 on Guidelines for Article 22 of Law No. 5 of 1999 on the Prohibition of Conspiracy in Tenders* (Chief of KPPU 2010).[7].

Tenders that appear to either encourage or dissuade unreasonable corporate competition are:¹⁹

- a) Trade performers who are interested and meet the requirements refrain from participating in tenders that are closed, unclear, or not widely publicized.
- b) Due to their selective nature, tenders cannot be followed by all commercial actors of equal skill.
- c) Tenders that exclude participation from other business actors and impose technical limitations or brand standards that favor specific business actors.
- d) The following are indications of a scam when the self-estimated cost or the auction's base cost was determined, among other things:
 - 1) More than two self-estimated costs, the base cost of a single product, or a benefit being promoted for delicate or sell-off should be easily accessible.
 - 2) Base prices or self-estimated prices may only be used by certain business actors.
 - 3) Self-estimated costs, also known as display costs, are determined by speculative and absurd thinking.

The following are the impacts of a plot to purchase rig items and services in the context of upstream oil and gas activities:

- a) Customers who purchase goods or services will have their HPS value increased.
- b) Goods and service providers convey "destitute quality" from the fix, resulting in poor fix execution and a high rate of work accidents.
- c) Does not provide goods/services suppliers with strong performance and HES reputation with foreseeable consequences.
- d) Achieving a high HPS ranking in order to provide affordable recovery for the Indonesian people.

Trick could be considered an unfair commercial competition, and can be handled by the Business Competition Supervisory Commission (KPPU), which is the appropriate body. KPPU is a special kind of organization because it serves two purposes: first, it brings order to commercial rivalry; second, it helps create and maintain an atmosphere that encourages such competition.²⁰

Following the amendment of PTK 007 4th Modification 2017 and Presidential Direction No. 12 of 2021 regarding HPS Esteem offer, which contains a lower and upper constraint, HPS Esteem can now be used to buy goods and services for upstream drills for gas and oil. This implies that product and service security is

¹⁹ *ibid.*[9].

²⁰ Mudjisantosa, *Catatan Aspek Hukum Pengadaan dan Kerugian Negara* (Primaprint 2014).[18].

quick, simple, compliant with the law, and leaves little possibility of conspiracy. In accordance with the principles of contract opportunity, consent, Pacta Sunt Servanda, and great confidence, SKK Migas is free to amend PTK 007, including establishing a lower and upper bound on the HPS esteem for each operational range of KKKS. SKK Migas will benefit from this legal certainty.²¹ Changes to the law are made in response to various national and international developments in order to create autonomous, dependable, simple, competitive, productive, environmentally sustainable oil and gas trading operations, as well as to boost the country's potential and components.²²

In regard to KKKS and vendors of products and services, this is consistent with Gustav, the legal expert's²³ claim that the three basic principles of justice, expediency, and certainty should be upheld by every law. Legal certainty, in Kelsen's opinion,²⁴ is the most important part of the legal system. The society cannot likewise benefit from legal certainty unless the law is assured to apply.

Conclusion

The HPS Value offer is non-confidential in Presidential Regulation No. 12 of 2021 and, depending on the kind of contract, is either open or closed. PTK 007 4th Amendment of 2017 with regard to direction and usage with regard to the arrangement of HPS Values, according to the most recent revisions to Presidential Direction No. 12 of 2021 and PTK 007 4th Modification of 2017. In light of the aforementioned conclusions, the following recommendations can be made: When determining the HPS Value, it is preferable to utilize a reference source law that is accessible (non-confidential) for all types.

²¹ Mathijs H. Ten Wolde, 'Balancing Consumer Rights and Business Interests in Online Cross-Border Consumer Contracts' (2022) 1 Journal of Central Banking Law and Institutions.[1].

²² Fatma Ulfatun Najicha, 'Oil And Natural Gas Management Policy In Realizing Equal Energy In Indonesia' (2021) 1 Journal of Human Rights, Culture and Legal System.[2807-2812].

²³ Adji Samekto, *Pergeseran Pemikiran Hukum Dari Yunani Menuju Postmodernisme* (KonPress 2015).[77].

²⁴ Muhammad Syukri Albani Nasution, *Hukum Dalam Pendekatan Filsafat* (Prenada Media Grup 2016).[125].

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