

The Oil, Gas and Mining Sectors Governance Through Local *Extractive Industries Transparency Initiative (EITI)*

Adi Kusumaningrum
International Law
Brawijaya University
Malang, Indonesia
adi_ningrum@ub.ac.id

Abstract— The natural wealth of a state beneath the earth's surface, such as mineral, natural gas, coal and petroleum are the main factor of the existence of the term of "Extractive Industry". Considering that natural wealth including extractive industries is one of the main sectors for the economic development, thus, a major step shall be needed in the form of transparency initiatives that encourage the accountability of natural resource management, as applied in several countries in the world, known as *Extractive Industries Transparency Initiative*. Indonesia is such a 'heaven' for most possessors of the Extractive Industries, but on the other hand, it is undeniable that some regions in Indonesia are highly ranked to stand as the poorest regions because of the lack of optimal cooperation between the central government and regional governments in undertaking transparency of state revenues. Therefore, oil, gas and mining transparency teams shall be established in several regions as an effort to optimize regional revenues.

Keywords— *extractive industries, governance, Extractive Industries Transparency Initiative, local content initiatives*

I. INTRODUCTION

Extractive Industries are defined as of activity engaged in exploiting natural resources that drawn out from beneath the earth's surface, such as minerals, coal, petroleum, and natural gas. In 2017, the income resulted from the upstream oil and gas reached 13.1 billion dollar AS which equals to RP 175 trillion. Meanwhile, according to the APBN-P (Revised State Budget) in 2017 the target of national income from the upstream oil and gas industry was targeted to be 12.2 billion dollar AS or equals to Rp163 trillion. The total component of national income from PNB (Non-Tax State Revenue) and gas and oil tax in 2017 was Rp135 trillion, or Rp86 trillion for PNB and Rp49 trillion from gas and oil tax. Therefore, this sector still becomes the main resource of national economic growth. It contributes in gaining national income, support the regional development, enhance investment, provide supplies for domestic industry, and any other gainful reactions such as providing job vacancies. This is such an important role in national development, either in terms of regional income, subsidy, access to electricity, to remote provinces development, and any local community development through CSR-ComDev program.

The implementation and the mechanism of this practice is regulated on Presidential Regulation Number 26 Year 2010 about the Transparency in National and Regional Income from Extractive Industries. This regulation was signed on April 23rd 2010 and it obliges companies dealing with petroleum, minerals, and coal mining to report all the revenue/income gained from these sectors. Likewise the regulation obliges the government, either the national or regional government, to report the income/outcome resulted from petroleum, minerals, and coal mining. In the perspective of International Community, this requirement is known as *Extractive Industries Transparency Initiative (EITI)*, an independent voluntarily standard in order to maintain the transparency in extractive industries and it has been applied in several countries.

The meeting of Coordinating Ministry of Economy mentioned that the participation rate of extractive industries, especially in mineral and coal sector, has not been going optimal. There are only 100-120 companies with the highest royalty are required to file report. While the rest, 10.000 companies that hold Mining Permit (IUP) are not being obliged to report due to the inability of Indonesian EITI to deal with the companies' transparency.

This article is mainly focused on studies about forming local EITI which mostly IUP (mining permit) are issued by the regional government. The establishment of local EITI is meant to enhance the cooperation between the state and extractive industry and to facilitate the regional government to gain more data related to the extractive industries located in their areas to help them organize their regional planning hopefully it will boost the transparency in the management of extractive industries either in regional and national scale. It was made to fulfill the expectation that the establishment of local EITI could bring positive impact on the management in regions which notably to elevate the prosperity and welfare of the community in the area.

II. THE LEGAL FRAMEWORK OF THE MANAGEMENT OF EXTRACTIVE INDUSTRIES IN INDONESIA

The Constitution of the Republic of Indonesia (UUD 1945) Article 33 section (2) and section (3) emphasized that production sectors that are vital to the state and affect the livelihood of a considerable part of the population are controlled by the state. Including earth, water, and the natural

resources within the land are controlled by the government for the sake of nation's prosperity and welfare. Article 33 in UUD 1945 is the main framework of natural resources exploitation in Indonesia. According to "Management Right", the country has full control in managing the natural resources in Indonesia. The authority upon production sectors which are essential to the state is also mentioned in Article 2 Section 2 UUPA (Basic Agrarian Law Act). As one of the vital production sectors in Indonesia oil and gas sector contributes so much to people's lives. Oil and gas are such a strategic and unrenewable commodity that government should take control over it. They hold important role in providing industrial supplies, fulfilling the needs of energy in the country, and one of the most important national income. Therefore, the management should be done as optimal as possible in order to give the utmost benefit for the nation.

In accordance with decree of Constitutional Court (MK) in 2012, article 33 UUD 1945 entrust all the authority to establish policy, management, control, and supervision towards the national resources to the State for the importance of the citizen in general[1]. Article 33 UUD 1945 is the legal framework that ultimately regulates the policy of extractive industries in Indonesia, such as UU 22/2001 about oil and natural gas. Furthermore, there are other regulations concerning about oil and natural gas in Indonesia. For instance, PP (Presidential Regulation) 35/2004 that had been amended by PP 34/2005 about the business activity of upstream oil and gas; Presidential Regulation No. 36 2004 about downstream oil and gas; PP 79/2010 about cost recovery and tax; Presidential Regulation Number 1 2006 about the amount and the use of capital in oil supply and distribution as well as natural gas transportation through pipes; Presidential Regulation number 5 2006 about national energy policy; Presidential Regulation 9/2013 about SKK Migas (Special Work Unit on Upstream oil and Gas Business Activity); and other regulations such as: Presidential Regulation ESDM 35/2008; Presidential Regulation ESDM 8/2005; and Decree of Ministry 31/2013.

UU Migas 22/2001 emphasized the rights of the country in controlling petroleum and natural gas mining in which Government deals with the company's operational as the authority by assigning the duty to the assigned work unit. Article 2 from UU Number 22 2001 about Oil and Natural Gas stated that the establishment of business activity in Oil and Natural Gas sector shall be executed by prioritizing on economic growth, integrative, benefit, fairness, balance, equality, communal welfare and prosperity, safety, legal policy, and environment.

In accordance with Article 4 UU 22/2001, Oil and Natural Gas as the strategic non-renewable natural resources that located in Indonesian Mining Jurisdiction shall be controlled by the State. As mentioned in article 1, the government has the managing rights to be the authority of the mining. The Government then establishes the work unit as mentioned in Article 1 number 23.¹ The responsibility of

¹ UU 22/2011 becomes one of constitutions that regulate oil and gas sector that still being valid in current days. It regulates about the transfer of duty from Pertamina to the State in managing and supervising the operation of oil and gas mining. The duty then overtaken by BP Migas. But in the long term, in 2013 Constitutional Court (MK) annulled articles related to BP Migas in UU 22/2001. Based on the decree, the government transferred the duty of BP Migas onto SKK Migas under the supervision of ESDM Ministry. SKK Migas in an institution established by the government of the Republic of Indonesia based on the Presidential

the regional government, regarding with extractive industries activity, are to process and regulate the mining permit in the extractive areas, cooperate with Director General of Fiscal Balance to negotiate the percentage of allocation on the profit sharing with the Central Government upon the income of extractive industries sector within their region.

III. THE LEGAL FRAMEWORK OF TRANSPARANCY IN EXTRACTIVE INDUSTRY IN EAST JAVA

Extractive Industries Transparency Initiative (EITI) is a global standard that contains of requirements which promote transparency and accountability of the management of natural resources. It obliges the companies of oil and natural gas to openly publish their payment towards the government, and government publish the income acquired from those companies. The goal of EITI is to provide transparency of information for the nation in order to strengthen the system and maintain the trust between the government and related companies. The transparency on the State and Regional's revenue gained from extractive industries is exclusively regulated by President Regulation 26/2010. This policy also defines the meaning of extractive industries, the state and regional income from extractive industries, the establishment of Transparency Team, the management of the structure and responsibility of Transparency Team.

Bojonegoro is one of the regional governments in East Java that regulates the transparency of extractive industry, especially in oil and natural gas. This policy is regulated in Regional Regulation Number 6 2012 about the Transparency in the Management of Income, Environment and Social Responsibility in Oil and Natural Gas business activity. East Java does not particularly regulate the transparency in the management of oil and natural gas, the only Regional Regulation in East Java to look up to is the Regional Regulation of East Java Province Number 4 Year 2011 about the Social Responsibility of Company.

Regional Regulation of East Java Province Number 4 Year 2011 about the Social Responsibility of Company emphasized the attempt to bring prosperity and welfare for the society along with the environmental preservation in the region. Thus, it is necessary to build cooperation between the regional government, business leaders, and society[2]. In this case, the business leaders could have easiness and protection in doing the business and give them the opportunity in contributing towards the socio-economic development and preserve the environment in all aspects.

In running the business, the responsibilities of industry is not only about economy and legal sector. They also must be responsible towards the ethical responsibility. Business ethic is a standard guidance of conduct in business world to differentiate between the good and wrong doings that need to be obeyed by the business world community. The social responsibility towards the society and environment has a wide range of definition. Shortly, it can be defined as the contribution and existence of a certain organization in a social community through activities meant for communal interests, community, and environment. Similar to EITI, the social responsibility of company is also one of the means in implementing the principle of good corporate governance.

Regulation Number 9 Year 2013 about the Management of Upstream Oil and Gas Business Activity.

IV. BOJONEGORO REGENCY AS THE ROLE MODEL IN EITI ESTABLISHMENT IN REGION

Since the land of Bojonegoro has such abundant amount of gas and natural gas resource, either other regions which have been exploited such as Sukowati Block, Cepu Block, and other old oil wells, the region enacted the Regional Regulation of Bojonegoro Number 6 Year 2012 about the Transparency in the Management of Income, Environment, and Company's Social Responsibility in Oil and Natural Gas business activity. Nevertheless, Bojonegoro stood the fifth rank in the category of poor region in 2008. Surely, this is becoming a challenge for regional government and other regions that experience the same thing. Moreover, the region have lack of preparation in capacity, and have not made clear such short term and long term plans in their development. Meanwhile, the income earned from oil and natural gas industry has always be a short-term, volatile, and non-renewable.

Regional Government needs a certain strategy and attempt in developing the extractive industry [3]. Therefore, it is possible to transform the income earned from oil and gas sector into a sustainable development plan. According to the researcher, one of the strategies is by establishing Regional EITI. This program deals with the transparency of income from shared profit, either the share between contractor and Regional Government (*Participating Interest*), and between the central government and Regional government [4]. In doing so, a valid and transparent calculation mechanism is necessary in order to avoid misperception, miscalculation, trust issues, or even conflict among the stakeholders [5].

Transparency is also needed to access any other kind of information such as environmental issues and CSR. It is important to ensure that the industry run the business in accordance with the standard of health, safety, and environmental/HSE standard. Information regarding environmental effect possibly rise in every step of operational in upstream oil and gas (pre-construction, drilling, production operation, and post-operation) that all of them shall be informed to the society, especially those in the surrounding area. It is important to prevent any incident whatsoever. Besides, industry also ought to communicate the management of emergency situation and disaster impacted by extractive industry activities.

Furthermore, society development program which is conducted through CSR-Comdev (*Corporate Social Responsibility Development*) should be reported transparently in order to maximize the benefit and avoid conflict. Many issues may arise due to this program, such as: development that is not being coordinated well with the government, non-sustainable development, provided exclusively for the elite, or it is suspected to be reported as cost-recovery and being reimbursed by Government. All of this problem can be avoided through transparency.

The Regional Regulation of Bojonegoro Regency Number 6 Year 2012 regulated the requirement for Transparency Team. Article 14 discuss about the establishment of the team in order to supervise the transparency within oil and gas sector. The basis of the team is in the center of Bojonegoro Regency, and the establishment is determined by the Mayor. This team shall be presided by the Regional Secretary and the members are

from the Local Work Unit (SKPD), local business leader, and citizen (non-governmental organization, public figure, labor union). The main duty of transparency team is to collect information/data, verification and analysis, socialize and publish the data related with the management of oil and gas in Bojonegoro Regency [6].

The establishment of Transparency team of oil and gas shall be purposed at providing guidance and supervising the business activity of oil and gas in the area. It is expected to optimize the regional income from this sector. Besides, it is also expected to improve the transparency of income from the sector. The transparency includes: a) income from oil and gas sector; b) income from Participating Interest (PI); c) the counter measuring cost of environmental/social risk; d) Corporate social responsibility; e) community development. Transparency team will compose a blueprint in achieving transparency in this sector. Furthermore, it is necessary to conduct socialization and publication of oil and gas transparency. Along with the development of technology of information and the highly increasing demand of society, the team must serve aspirations of the nation regarding the transparency in oil and gas. In order to stay efficient and effective, the team is made simple in which the Head, Vice-Head, and Secretary also work as the members.

V. CONCLUSION

The extractive industries transparency initiative (EITI) sets a global standard for transparency in the management of oil, gas, and mining revenue. Compliance with the EITI standard is overseen by a coalition of governments, companies, and civil society groups, both at the international level and within each of the countries in which it is being implemented. Local transparency mechanism is expected to be integrated and mutually supportive with a model of transparency in national income. The establishment of local transparency team of oil, gas and mining shall be purposed at providing guidance and supervising the business activity of oil, gas and mining in the area. Incorporating local content into EITI processes could address both varying local contexts and the need to engage different stakeholders in the consultative processes. Bringing all the relevant players together to discuss the goals and challenges of developing local content policies will likely be the necessary first step toward future progress on this issue.

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