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Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty

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| Article | Abstract |
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| <p>Keywords: Benefit Distribution; Old Wells Oil; Public Participation; State Regime.</p> <p>Article History: Received: Mar 23, 2022; Reviewed: Jun 17, 2022; Accepted: Jul 10, 2022; Published: Jul 31, 2022.</p> <p>DOI: 10.28946/slrev.Vol6.Iss2.1745.pp286-303</p> | <p>Indonesia has the potential for oil from old wells of 10,000 barrels per day, but this potential is not optimally regulated. Hence, its management cannot realise social justice. This research aims to provide a prescription for the distribution of benefits and public participation in managing petroleum in old wells because all provisions for old wells do not accommodate the public interest. This research uses normative legal research utilising a statutory, conceptual, and case approach to analyse the regulation policy related to old wells management. Data were collected by investigating primer and seconder legal material. The results show that the distribution of benefits related to profit-sharing for oil management services at old wells did not reflect justice. Thus, it is causing a lot of illegal mining activities. Moreover, public participation in determining policies is still at the pseudo participation (informing level). Therefore the actual participation has not been accommodated in related regulations of old wells management.</p> |
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INTRODUCTION

As a strategic and vital commodity, oil has a high demand for daily needs or industries. In the 1970s, Indonesia was one of the developing countries contributing 95% of oil production globally. However, crude oil production in Indonesia shows a gradual decline in a decade, from 949 thousand barrels per day (BPD) in 2009 to 778 thousand BPD in 2018.¹ Due to Covid-19, production oil in 2020 fell to 706.7 and is only targeted at 705 BPD in 2021.² This matter is also directly proportional to slow reserve discovery and lack of exploration and investment.

¹ Suharyati et al., "Indonesia Energy Outlook 2019" (Jakarta, 2019).

² SKK Migas, "Annual Report 2020 & 2021" (Jakarta, n.d.).

Currently, Indonesia not only fulfils the national demand by importing crude oil from the Middle East region and the large-scale oil industry but also by producing oil from old wells in the non-productive oil field. One thousand four hundred wells are being reactivated from 13,824 old wells.³ In this research, mining old wells are not the same as the enhanced oil recovery (EOR) method that uses high technology and funding. Old wells mining is managed by local communities that do not use sophisticated technology and have low financing. The old wells mining method is as simple as lowering the 'timba' (like a bucket for extracting oil) to a borehole and raising it. Meanwhile, EOR is carried out by injecting CO² and water (including steam or gas) to decrease the viscosity and improve flow levels.⁴ This kind of mining can be seen in several traditional oil mines spread across Indonesia, such as Wonocolo Village, Bojonegoro Regency, Ledok Village, Blora Regency, Bangoan Village, Tulungagung Regency, Pasir Putih Village, Aceh Timur Regency, and Sungai Angit Village, Musi Banyuasin Regency.

Due to the economic nature of petroleum, its management often creates conflicts of interest that are full of elements of control over something profitable. Onshore oil has many legal and social issues and is complicated compared to offshore mining because onshore petroleum management includes economic, environmental, and human factors (communities around the site). The conflict between companies and communities around the mine or fellow communities is related to the absence of government supervision. Mining communities who disagree and reject the profit-sharing system offered by the company insist on mining and refining their own oil, which infringes legal provisions. Social conflicts also occur between mining communities claiming wells that seem to have been grouped. Thus, referring to the natural resource ownership system, Indonesia will be positioning itself as a nation that adheres to state regimes. In the state regimes, natural resource ownership and management are in the hands of the state.⁵

State regimes require that individuals and organisations using natural resources comply with state regulations. It is ruled in Article 33 of the 1945 Constitution of the Republic of Indonesia, which indicates that the state owns the authority to harness natural resources.⁶ The consequence is that the state must use its authority as much as the prosperity of the people. Article 4 paragraphs (1) and (2) of Law No. 22 of 2001 agree that the state controls petroleum natural resources because it is included in the production branch, which is essential for the state and affects the livelihood of many people. The Constitutional Court has reviewed several laws regarding natural resources, including the review of Law No. 22 of 2001 through the Constitutional Court Decision Number 002/PUU-I/2003 and the Constitutional Court Decision Number 36/PUU-X/2012. The Constitutional Court also provides an interpretation of state control over natural resources. Through the Decision of the Constitutional Court Number 001/PUU-I/2003 concerning Electricity.

³ Martha Maulidia et al., "Rethinking Renewable Energy Targets and Electricity Sector Reform in Indonesia: A Private Sector Perspective," *Renewable and Sustainable Energy Reviews* 101, no. February 2018 (2019): 231–47, <https://doi.org/10.1016/j.rser.2018.11.005>.

⁴ Anthony R.H. Goodwin et al., *Conventional Oil and Gas, Future Energy: Improved, Sustainable and Clean Options for Our Planet* (Elsevier Ltd, 2013).

⁵ Peter Bednarik et al., "A Game of Common-Pool Resource Management: Effects of Communication, Risky Environment and Worldviews," *Ecological Economics* 156 (February 2019): 287–92, <https://doi.org/10.1016/J.ECOLECON.2018.10.004>.

⁶ A Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* 12, no. 2 (2016): 401–21, <https://doi.org/DOI:10.31078/jk12210>.

According to the Constitutional Court, state control needs to be interpreted in depth which originates and is derived from the concept of people's sovereignty over all existing natural resources. It includes the notion of public ownership by the people's collectivity of natural resources. The Constitutional Court stated that the meaning of state control over natural resources that control the lives of many people is explained in stages, namely 1) Management (*beheersdaad*), 2) Policy (*beleid*), 3) Management (*bestuursdaad*), 4) Regulation (*regelendaad*), and 5) Supervision (*toezichthoudensdaad*). According to the Constitutional Court, the best management of natural resources is at the state level directly managing it.⁷ Returning to the state's goal of achieving social justice in managing natural resources, Notonagoro stated that achieving shared wealth and happiness is the aim that social justice needs to accomplish.⁸ It is closely linked to the essence of energy, which has high economic value, and not infrequently, the importance of social justice is far from management. It differs from private regimes that aim to benefit a few individuals with a strong influence. Ultimately, the state regime's concept will avoid or minimise conflicts in harnessing petroleum mining.

Despite Indonesia's implementation of a state regime and control of the harness of oil mining by its regulations, in some cases, conflicts still exist. Old wells management in Indonesia is generally governed by Law Number 22 of 2001 concerning Oil and Natural Gas, nor Government Regulation Number 35 of 2004 concerning Upstream Oil and Natural Gas Business Activities. Meanwhile, the specific regulation is only regulated in lower regulations, namely the Minister of Energy and Mineral Resources Regulation Number 01 of 2008 on Guidelines of Mining Exploitation at Old Wells (MEMR Regulation No. 01 of 2008). The MEMR Regulation No. 01 of 2008 seeks to harmonise the management of old wells to improve production and increase the community's wealth around the mining site. Previously governed by the Ministry of Mining and Energy Decree No. 1285.K130/M.PE/1996 concerning Guidelines for the Production of Petroleum Mining at Old Wells. However, some regions have enacted Regent Regulation, such as Regulation of The Regency of Bojonegoro Number 30 of 2017 concerning Guidelines for Guiding Groups of Miners and Miners on Old Oil Wells in Bojonegoro Regency and Regulation of The Regency of Blora Number 23 of 2015 concerning Provisions for Implementation of Collecting and Supervision of oil Mining Enterprises in Old Wells in Blora Regency. In contrast, others region has no specific regulation to harness oil from old wells.

The old wells oil field in Wonocolo Village, East Java Province (Wonocolo Field) is one of Indonesia's most significant old wells. Wonocolo Field is operated under a cooperation agreement between Pertamina EP Asset IV (Pertamina EP) as a Contractor and Bojonegoro Regional-owned Enterprise (BUMD Bojonegoro) as a permit holder. They were conducted to control mining activities in Wonocolo Field. In this agreement, Pertamina EP gave authority to BUMD Bojonegoro to operate Wonocolo Field, specifically in the exploitation process involving the local community. However, there are numerous problems operating old mining wells in that oil field, including legal, social, and economic concerns. Historically and sociologically, after the Dutch discovered the oil deposits in 1858, the local community controlled oil mining in

⁷ Yustina Hasttrini Nurwanti, Sri Retna Astuti, and Agustinus Darto Harnoko, *Pertambangan Minyak Dan Sosial Ekonomi Masyarakat: Pengelolaan Penambangan Di Wonocolo Tahun 1960-2017* (Yogyakarta: Balai Pelestarian Nilai Budaya (BPNB), 2017).

⁸ Notonagoro, *Pancasila Secara Ilmiah Populer* (Jakarta: Bumi Aksara, 1994).

Wonocolo. It was formally continued under the Chief of Village control. Currently, the cycle of reactivating old wells is now rigidly controlled by the state. Wonocolo Field is also regulated by the Bojonegoro Regency Government-issued Bojonegoro Regent Regulation Number 30 of 2017 on Guidelines for the Guidance of Mining and Mining Groups at Old Oil Well in Bojonegoro Regency (Bojonegoro Regent Regulation No. 30 of 2017). Following Indonesia's oil and gas management legislation, it has created many improvements in managing old wells in Wonocolo. The diverse cultures of indigenous peoples in Indonesia characterise the area where they come from, including culture in land management. It is unavoidable from the political essence of collective land ownership and has historically been closely related to local customs.⁹ Eventually, it causes illegal mining activities as protests from local communities involved in the mining activities but do not get the benefit they should.

Based on the legal point of view, the problems in the management of petroleum in old wells are referred from material aspects of the MEMR Regulation No. 01 of 2008 as a delegated regulation of Law No. 22 of 2001 and Government Regulation No. 35 of 2004. The regulation's content, intended to manage old wells, does not regulate the benefit profit sharing, so it does not reflect social justice.¹⁰ Eventually, the regulation poses vertically and horizontally problems due to conflicts of interest between the state currently embodied by Pertamina and the mining community. To analyse this issue, this research uses the social justice principle theory described in the fifth principle of Pancasila. Social justice theory is stated rigidly in Article 33 of the Indonesian Constitution that by Constitutional Court is characterised that two indicators of social justice, in this case, are whether the management of old wells has been based on the distribution of benefits and community participation.¹¹

RESEARCH METHODS

This research is a type of legal research.¹² This research delivers arguments, theories, or new social justice concepts through public participation as prescriptions for solving existing problems in old wells management. To obtain the expected scientific truth, this research uses a statutory approach by generally reviewing Law No. 22 of 2001 and Government Regulation No. 34 of 2005 and explicitly reviewing MEMR No. 01 of 2008. This study also uses a conceptual approach related to Pancasila-social justice theory. To get the actual and particular case, this research also intends to case approach by studying old wells management in Bojonegoro Regency. Data were collected by investigating primary legal materials and secondary legal materials. This study also asks for clarification from PT Pertamina, BUMD Bojonegoro, and miners to strengthen the analysis of existing legal materials so that the results of this study are more comprehensive.

⁹ Amy Goymour, Stephen Watterson, and Martin Dixon (Eds), "New Perspectives on Land Registration: Contemporary Problems and Solutions," *Journal of Property, Planning and Environmental Law* 11, no. 3 (2019): 171–75.

¹⁰ Samuel J. Spiegel, "Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia," *World Development* 40, no. 1 (2012): 189–205, <https://doi.org/10.1016/j.worlddev.2011.05.015>.

¹¹ Yance Arizona, "Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber Daya Alam Dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 3 (2011): 258–313.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, VI (Jakarta: Prenadamedia Group, 2017).

ANALYSIS AND DISCUSSION

Distribution Benefit in the Illegal Mining: How Much Oil Could Be Harnessed?

State control in oil management is essential to achieving social justice. In the state regimes, the management of old wells in Wonocolo Field, conducted from 1950 until now, put itself. It is demonstrated by the state's involvement as the holder of tenure rights to have detailed rules on how old oil wells can be exploited in Indonesia. Pertamina EP, BUMD Bojonegoro, and the miners in Wonocolo (local communities) have developed a petroleum management system/method in old wells by mixing traditional and modern values and technology. Based on the history of managing old wells after 1950, old wells were "managed" – holder permits by the head of the village, then successively shifted to management by Village Unit Cooperative (known as KUD), the mining association (consist of the local communities), and BUMD.

Conceptually, the regulation of petroleum is based on Article 33 section (3) of the 1945 Constitution of the Republic of Indonesia. However, the management of old wells in Wonocolo is not entirely regulated by the state because, traditionally, there have been practices of regulation over old wells by various local community groups that are out of regulation. Even before the Government Regulation in Lieu of Acts No. 44 in 1960 was enacted, ownership of the old well at Wonocolo was in the hand of the Chief of Village. The Chief of Village has a crucial position in the oil lifting process. The Chief of the village also has the authority to decide which person or community is entitled to "own" the well ("owner of the well"). Wells owners are people who get kinship/personal closeness rights to take oil from old wells and then sell it. At that time, oil from old wells was openly sold to parties who needed them.

When MEMR Regulation No. 01 of 2008 was promulgated, legal issues remained inevitable and considered commonplace in managing old wells in Wonocolo. The miners' ownership rights of the wells are still historically exercised as they have been conducted from generation to generation. Social relations agree that whoever discovers an unmanaged well is the owner and is entitled to gain from it. This situation triggers a shift like a state property that de jure closed the de facto access to open access.¹³ Whereas, based on Article 2 section (2) MEMR Regulation No. 01 of 2008, parties who can cooperate with Pertamina to manage old wells, namely KUD or BUMD. The selection of KUD instead of Village-Owned Enterprises as the party that can manage is because KUD is a stakeholder directly established by a group of individuals (community).¹⁴

Meanwhile, BUMDes (Villages-Owned Enterprised) is formed by the village government, so it is expected to provide more benefits to the community directly than the village government.¹⁵ While granting authority to BUMD is a separate question, why are two institutions with different levels and functions of the regional authority appointed simultaneously as managers of old wells? Because, when talking about social justice, whose indicator is community

¹³ Marwoto, "Analisis Masalah Dan Strategi Pengelolaan Sumur Tua Di Blok Cepu (Studi Kasus Tambang Rakyat Minyak Bumi Di Desa Wonocolo, Kabupaten Bojonegoro)" (Institut Pertanian Bogor, 2012).

¹⁴ D. A. Yurista, A. P., Wicaksono, Ananda Prima Yurista, and Dian Agung Wicaksono, "Politik Hukum Pertambangan Minyak Bumi Pada Sumur Tua Sebagai Strategi Menuju Ketahanan Energi Di Indonesia," *Jurnal Rechts Vinding* 4, no. 2 (2015): 311–25.

¹⁵ Husen Alting, "Legal Analysis of the Empowering Legal Entities of Badan Usaha Milik Desa (BUMDes) After the Enactment of the Job Creation Law," in *Proceedings of the International Joined Conference on Social Science (ICSS 2021), Advances in Social Science, Education and Humanities Research, Vol. 603*, 2021, 532–38.

participation, KUD is more likely to involve the community directly. However, this research will not discuss the reasons for granting this authority because it will be in a different context.

Back to the discussion, BUMD Bojonegoro was appointed by the Bojonegoro Regency Government to manage petroleum in old wells after several previous KUDs no longer operated to cultivate 493 wells in the Wonocolo Field. However, currently, only 222 wells are being reactivated. The oil mining process in old wells only includes the extraction/lifting and transportation processes, which are included in the upstream and midstream industries.¹⁶ The extraction of petroleum mining in wells was carried out only in wells that fulfilled the requirements as follows: (1) that had been drilled before 1970; (2) were developed and located in the area of work of the contractor, and;(3) still has economic value but is no longer cultivated.

Now, where is the point of old wells' mining activity beginning, which becomes unfair? Due to a lack of regulating regulations and a significant demand for petroleum, Indonesia engages in indiscriminate and illicit mining. There is a need for qualitative and quantitative data on the effects of petroleum mining to develop effective strategies for sustainable petroleum extraction. In this discussion, the principle of social justice is closely related to the state's goal to avoid disturbance, maintain order, security, and peace, and maintain needs and interests to achieve justice, meaning that everyone gets what their right to achieve prosperity and happiness is, namely the fulfilment of their needs and interests.¹⁷ Thus, discussing the benefit distribution and public participation as two of the social justice principles indicators of harnessing natural resources. Eventually, the problem that makes social justice not fulfilled begins from three reasons: a) Uncontrolled resources that can be utilised; b) Parties who are not adequately regulated; and c) The absence of the permit holder's supervision.

Formally, mining activities in Wonocolo Field are legal. However, some processes done by unscrupulous miners violate the laws. For example, in the process of old wells exploration MEMR Regulation No. 01 of 2008 limits the depth of the well and which well could be exploited by Miners. However, Miners still re-drill the hole to deeper it, or they drill new holes next to the contractor's legal well as much as possible when the oil runs out from the legal well. Then, it causes illegal mining judgment by communities for all activities in the mining. Examining the illegal mining exploitation process caused by new drilling activities can be referred to in Article 9 of MEMR Regulation No. 01 of 2008. The article states that KUD or BUMD can only exploit allowed wells. The prohibition against drilling new wells because the old wells have been registered, and their coordinates have been recorded. Moreover, the old wells have been decided that old wells are not commercially viable for industrial scale. Drilling new wells are also one of the activities at the Wonocolo mining site causing environmental damage. Therefore, in breach of current laws, all ways of drilling new wells increase the number of drill holes.

Garret Hardin stated that the tragedy of the commons happens in a condition of the use of shared natural resources in which each individual acts for personal gain, thereby reducing the benefits of these resources. The commons tragedy reappears, in reverse, in the pollution issue.

¹⁶ Chaofeng Yin, "International Law Regulation of Offshore Oil and Gas Exploitation," *Environmental Impact Assessment Review* 88 (2021): 106551, <https://doi.org/https://doi.org/10.1016/j.eiar.2021.106551>.

¹⁷ Gatot Dwi Hendro W. and Muh. Risnain, "Refleksi Cita Hukum Pancasila Dalam Pengaturan Pengelolaan Sumberdaya Alam," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2 (2020): 312–25, <https://doi.org/10.29303/ius.v8i2.808>.

Moreover, since it is not a problem to not remove something from the common property, but to bring something into the water such as waste, chemical waste, or radioactive, toxic gases into the air, and irritating.¹⁸ Thus, drilling holes without any scientific and technological calculation to chase oil for personal interests will not increase benefits for people but individual concerns.

In addition, the transportation, refining, and distribution processes are all essential sequential processes in oil management.¹⁹ In this case, miners only have the task of exploiting and collecting them for BUMD. Then BUMD will carry the oil to the Main Gathering Station (MGS) owned by the contractor. In fact, miners transport some oil productions (are helped by the Trader), and it is not to MGS. Some of the oil productions are sold to other parties but the contractor. Oil productions are sold in crude oil or have been refined. Again, the community was carried out by unscrupulous miners' social and legal judgments for exploiting old wells in Wonocolo.²⁰ The transportation (transport the oil to sell it) and refining processes by the miners themselves are activities that are not under the MEMR Regulation No. 01 of 2008. Thus, it is illegal because mining old wells does not comply with the management rights stipulated in the Ministry of Energy and Mineral Resources and what has been agreed between BUMD and Pertamina EP. BUMD's authority to produce petroleum includes only the lifting and transporting process (from the Miners to MGS), which means BUMD's petroleum management in Wonocolo does not involve refining and marketing.

Referring to Article 10 section (1) of MEMR Regulation No. 01 of 2008, it is mentioned that all oil produced from working areas cooperating with KUD or BUMD must be deposited with the contractor. Therefore, oil production from the old well in Wonocolo should be collected to Pertamina EP as a contractor. Although many miners are currently aware of channelling their oil products to Pertamina EP through BUMD, illegal refining and transportation by miners for sale can still be found in Wonocolo. In the meantime, if it is ultimately distributed to the contractor, the payments for KUD/BUMD will be raised, which will then be allocated to the miners and the Revenue Sharing Fund. Revenue Sharing Fund is intended to improve the vertical balance between the central and the regions by paying attention to the potential of producing regions. Concerning the concept of decentralisation, the Revenue Sharing Fund is used to fund regional needs.²¹

Output from the Wonocolo's old wells is currently adequate to produce additional production and old oil nationally. The average production of old wells stands presently at about 1,905.23 BPD from 1,400 active wells in Indonesia. Meanwhile, BUMD Bojonegoro's production oil reached 283.68 BPD. It means the production of oil deposited by KUD/BUMD to Pertamina EP will contribute about 1/7 of the total output of the old national well. Even though not all the oil produced from the old wells managed by BUMD Bojonegoro has been deposited to The Contractor. Even though in the period 2011-2016, the Oil and Gas Natural Resources

¹⁸ Garrett Hardin, "The Tragedy of the Commons," *Science, New Series* 162, no. 3859 (2017): 1243–48.

¹⁹ Spiegel, "Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia."

²⁰ Heni Susiati et al., "Site Suitability-Based Spatial-Weighted Multicriteria Analysis for Nuclear Power Plants in Indonesia," *Heliyon* 8, no. 3 (2022): e09088, <https://doi.org/10.1016/j.heliyon.2022.e09088>.

²¹ Matthew Libassi, "Contested Subterranean Territory: Gold Mining and Competing Claims to Indonesia's Underground," *Political Geography* 98, no. April 2021 (2022): 102675, <https://doi.org/10.1016/j.polgeo.2022.102675>.

Revenue Sharing Fund was in the cluster of 10%-20% and 0%-10% (less to very low) of the percentage of the Fiscal Balance. However, Revenue Sharing Fund allocation still provides benefits to producing regions. The producing region gets a more significant portion, and other regions in the province receive a particular amount of the distribution. Later, Revenue Sharing Fund can be used for the region's benefit, such as education and infrastructure funds, which the wider community to achieve prosperity.²²

Wonocolo Village people generally can provide labour and capital to maintain old wells, but this is achieved in cooperation. However, the state property disposition transition from de jure close access to de facto open-access creates sets of opportunities. It offers an incentive for "weak people" who are disadvantaged by economic circumstances and economically powerful people to take advantage of the old well's oil wealth. This pressure has led to rampant illegal mining activities.²³

Legal Policy of the Unregulated Parties in Old Wells Petroleum Management

The management of natural resources requires legality, no exception to the involved parties in its system. Thus, it could be counted as the actual benefit, and for whom the benefit must be shared. Bojonegoro Regent Regulation No. 30 of 2017 classes parties involved in the mining operation as contractors, BUMD/ KUD, Miners, and Miners Group. In this case, the contractor is Pertamina EP, which has the authority to operate Wonocolo Field. BUMD Bojonegoro is a holder of permits the contractor gives to manage old wells in its Field. Miners are intended for someone (individual) who fulfils the requirements of becoming a miner, while the Miners Group is an association consisting of several miners.

Currently, at least 6 (six) parties are involved in the old well management process at Wonocolo Field, i.e., Pertamina EP, BUMD Bojonegoro, Wells Owner, Worker, Trader, and Investor. Wells Owner, Worker, Trader, and Investor consist of local communities/investors who could be coming from outside the Wonocolo region. They are grouping and being several mine owner groups.

In old wells management, the party that directly interacts with Miner Group is BUMD Bojonegoro. BUMD Bojonegoro's function/role in managing old wells is currently illustrated as a 'marketplace' for miners. BUMD is an entity that has the right to manage old wells so that petroleum mining becomes a legal concession because it is licensed. However, BUMD's function is to manage administration, fee payment, and social and environmental responsibility-related programs. Thus, BUMD does not undertake the method of lifting or transporting. The miners do the lifting process while the Trader does the transportation process. Below are the BUMD Bojonegoro's functions/roles in managing old wells: (1) Mining concession holder from the contractor, (2) Select and propose Miners Groups to the Regent for an appointment, (3) Provide Miners Groups registration identity, (4) Together with the Miners Group to prepare, implement,

²² Riya Dwi Handaka, 'Analisis Peranan Dana Bagi Hasil Minyak Bumi dan Gas Bumi sebagai Pendanaan Desentralisasi', *Jurnal Manajemen Keuangan Publik*, 1.2 (2017), 27–35.

²³ Tuti Hartati Siregar et al., "Spatial Distribution and Seasonal Variation of the Trace Hazardous Element Contamination in Jakarta Bay, Indonesia," *Marine Pollution Bulletin* 110, no. 2 (2016): 634–46, <https://doi.org/10.1016/j.marpolbul.2016.05.008>.

and evaluate the Group Work Plan, (5) To provide guidance, empowerment, and supervision to miners and Miners Group.

However, this implementation is not entirely appropriate, as we know, because of the lack of the function of each party consisting of the Miners Group. The Miners Group mentioned in the Bojonegoro Regent Regulation No. 30 of 2017 coordinates miners registered to KUD or BUMD. Article 5 section (4) Bojonegoro Regent Regulation No. 30 of 2017 stated that miners or Miners Group must comply with the laws, even the policy appointed by BUMD. However, not all miners in Wonocolo have registered their groups to BUMD. Thus, there are 2 (two) types of Miner's Group, namely Mining Groups, which are registered in BUMD and Miners Group, that do not register with BUMD. The unregistered miners are not bound by the management model implemented by BUMD for these miners, including their oil output.

Unregulated parties will eventually become a new problem in managing old wells. They infringe the provision stating that Miners must be registered in a group enacted by the Regent. They must have an identity from BUMD Bojonegoro to carry out the oil, which is stated in Article 2 Bojonegoro Regent Regulation No. 30 of 2017. The results are that the unregistered miners act like there is no need to comply with any rules from BUMD. Ultimately, the unregulated parties also cannot be tracked about what they do. So that is an advantage for them. Profits are taken from illegal practices, such as refining oil and selling oil to parties outside the contractor, crude and traditionally refined oil. Of course, this is more profitable than miners collecting crude oil to BUMD. After that, it is paid within a certain period with an open bank account with the approval of Pertamina EP, which is regulated by Article 4 section (5) Bojonegoro Regent Regulation No. 30 of 2017.²⁴

Economic demands are still used as the reason for justifying illegal mining practices. The inability to deposit petroleum from old wells to Pertamina EP results from socio-economic tensions during using old wells.²⁵ The fees earned from old wells management are sperate into three sections, which are shared internally, i.e., Pertamina EP with BUMD Bojonegoro, BUMD Bojonegoro with the miners. Based on these fees shared between BUMD Bojonegoro and miners, the table 1 shows the price data of crude oil from old wells:²⁶

Table 1: Crude Oil Price

| No. | Institution | Year | Price |
|-----|--|-----------|------------------|
| 1 | KUD Bogosasono | 2006 | Rp354.70/litre |
| 2 | KUD Bogosasono | 2009 | Rp960/litre |
| 3 | the Mining Association (PPST Wonocolo) | 2015-2016 | Rp2,100/liter |
| 4 | BUMD Bojonegoro | 2020 | Rp3645.64/litter |

Source: *Analysed from the primary source*

²⁴ T. T. Werner, Anthony Bebbington, and Gillian Gregory, "Assessing Impacts of Mining: Recent Contributions from GIS and Remote Sensing," *Extractive Industries and Society* 6, no. 3 (2019): 993–1012, <https://doi.org/10.1016/j.exis.2019.06.011>.

²⁵ Laurence L. Delina, "Topographies of Coal Mining Dissent: Power, Politics, and Protests in Southern Philippines," *World Development* 137 (2021): 105194, <https://doi.org/10.1016/j.worlddev.2020.105194>.

²⁶ Suprapti, "Penyelesaian Sengketa Pengelolaan Sumur Tua Secara Tradisional Oleh Masyarakat Di Desa Wonocolo Bojonegoro Ditinjau Dari Aspek Hukum," *Jurnal Sosial Humaniora* 4, no. 2 (2011): 121–34.; Nurwanti, Astuti, and Harnoko, *Pertambangan Minyak Dan Sosial Ekonomi Masyarakat: Pengelolaan Penambangan Di Wonocolo Tahun 1960-2017*.

The remuneration issue is felt never addressed even though it breaches current laws. Miners feel dissatisfied with their payments because the miners find the costs offered unacceptably. Therefore, miners tend to process their crude oil (in Wonocolo known as 'lantung') and then market it to wholesalers or retailers, which continues today because the oil production will become miners' income if the oil is not deposited to the contractor.

Actually, BUMD Bojonegoro's income share is 90% for the Miners and 10% for BUMD Bojonegoro. However, Miners Group must share their income with 70% of the investors and 30% of them. In this case, the profit-sharing percentage is disadvantageous for the miners. Investors invest their money to earn profit sharing, many of whom come from outside East Java Province. Although it was governed in Article 8 of Bojonegoro Regent Regulation No. 30 of 2017, the Work Area (contractor), BUMD, or banks and miners fund the management of old wells.

Based on this profit-sharing scheme, it can be seen that the community gets less benefit than the Company (Pertamina), BUMD, and investors. This arises because MEMR Regulation No. 01 of 2008 and Bojonegoro Regent Regulation No. 30 of 2017 do not regulate it. Profit-sharing is not even mentioned in the Articles of the regulation and included in the Blora Regent Regulation No. 23 of 2015. Whereas in Musi Banyuasin Regency, the regional regulations governing old wells are still based on the Musi Banyuasin Regency Regional Regulation Number 26 of 2007 concerning the Management of Old Oil Wells in the Musi Banyuasin Regency. The regulation was enacted before the MEMR Regulation No. 01 of 2008. This regulation regulates profit sharing/remuneration between KUD or BUMD and the company specified in the Service Agreement. This indicates that an essential thing is left to the parties, which the weak party, in this case, the community, will lose, so injustice appears. Supposedly in the concept of state control of natural resources, the state needs to be present in a vital context.

Contrary to the facts, parties that do not come from the producing regions invest in more benefits. Article 3 section (1) Bojonegoro Regent Regulation No. 30 of 2017 mentioned that miners are native to the district where there are old wells. Obviously, in the case of the Wonocolo Village, they are citizens in the Kadewan sub-district, Bojonegoro Regency. This article offers local people the benefits of engaging in the actual management of old wells. In particular, it can boost the local community's economy and the area in general. Based on a study carried out by Umar et al., the introduction of the liberalisation of the upstream oil and gas sector in the context of oil mining in Bojonegoro, the role and presence of international oil companies in the local sphere is not matched with the right strategy to reconcile the interests of the globalisation subject (multinational corporations) with their objects (society and state). As a result, a cultural shock arose, collective opposition to companies by protests and environmental concerns.²⁷

Legal Policy Permit Holder's Supervision Related to Illegal Mining

In the case of old mining wells in Wonocolo, the supervisory function, one of the levels of state control over natural resources, is not seriously carried out conscientiously. Structured supervision

²⁷ Ahmad Rizky Mardhatillah Umar, "Ekonomi Politik Perminyakan Indonesia: Analisis Kebijakan Liberalisasi Sektor Hulu Migas Indonesia Pasca-1998," *Jurnal Ilmu Sosial Dan Ilmu Politi* 16, no. 1 (2012): 45–61.

before or after mining activities is carried out according to the supervisory principle. It can relate to the articles in The MEMR Regulation No. 01 of 2008 and the Bojonegoro Regent Regulation No. 30 of 2017, which contain the threat of sanctions for illegal mining practices. Referring to Article 2 section (2) and (3) The MEMR Regulation No. 01 of 2008, only KUD or BUMD can cooperate with companies (that hold regional permits). Therefore, parties other than KUD or BUMD who manage old wells certainly violate the provisions. Management sanctions are given to KUD or BUMD if the results of oil management in the cooperated area are not fully deposited to the company. It is regulated in Article 16 section (1) and (2) of The MEMR Regulation No. 01 of 2008.

Article 10 Bojonegoro Regent's Regulation No. 30 of 2017 explained the prohibition on miners sending or selling old oil production to other than Pertamina/State. Then, Article 12 stipulates administrative sanctions that can be imposed on mine owners who violate existing prohibitions, namely in the form of written warnings and disbandment of the Group of miners to be able to extract oil from old wells. The state, however, does not govern how this can be appropriately implemented. The mining and deposit mechanisms that have been regulated will be useless if there are no regulations regarding proper supervision.²⁸ The author assesses that there has been a 'leakage' in the distribution of petroleum as petroleum is taken from the well and stored in the existing MGS. It is due to the lack of clarity regarding several matters, i.e., 1) Who is obliged to know how much output is provided by one well, and 2) Who is forced to supervise and ensure that all of the petroleum products stored in old wells will be fully paid to Pertamina EP.

BUMD Bojonegoro, which has permission as the old well management, should be obligated to manage its work area. The factual mining process bestowed to the Mining Group and intended to be uncontrolled adds to the supervision burden that the BUMD must bear. Weak supervision by competent institutions makes this problem even more challenging to overcome. Thus, supervision should not only be left to BUMD but also other authorities. In Article 14 MEMR Number 01 of 2008, the institutions that should play a role in this supervision are the Directorate General of MEMR, the Implementing Body, and the Provincial/Regency/City Governments. A supervisory function is a form of state control over its natural resources so that its utilisation can be distributed evenly, not only belonging to particular individuals or groups, and also does not cause environmental damage.²⁹

Concerning the licensing context, Djatmiati clarified that cases of illegal mining still occur and cause environmental losses and harm. It indicates that the character and function of the permissions are being abused. At the same time, licensing is inherent in any aspect of activities in Indonesia. The authority is a tool used as a legal mechanism in Administrative Law to govern the actions of people and society. The character of government-issued permits is a *gelede normstelling*. The Ministry of Energy and Natural Resources Regulation is a legal framework

²⁸ Maribeth Erb, Adonara Elizabeth Mucek, and Kathryn Robinson, "Exploring a Social Geology Approach in Eastern Indonesia: What Are Mining Territories?," *Extractive Industries and Society* 8, no. 1 (2021): 89–103, <https://doi.org/10.1016/j.exis.2020.09.005>.

²⁹ Fabricio Maia et al., "The Need for Technological Improvements in Indonesia's Artisanal Cassiterite Mining Sector," *Extractive Industries and Society* 6, no. 4 (2019): 1292–1301, <https://doi.org/10.1016/j.exis.2019.07.010>.

governing the legality of the management of old wells. Grants are given to managers to create authority, policy, substance, and law enforcement.³⁰

In addition to Wonocolo Village, environmental damage due to mining carried out without proper/illegal procedures has occurred in several mining sites for old wells. For example, in Ledok Village, Blora Regency, there is environmental damage due to mining due to poor old well oil management,³¹ where it was stated that the permit holder did not carry out routine reporting on ecological management and monitoring to the Blora Regency Environmental Agency and, based on compliance criteria, had a score of 17 in the disobedient category in carrying out environmental management and monitoring as stated in the Environment Management Efforts and Environment Monitoring Efforts Document.³² The negative impact of the management of old wells on the environment also occurred in Pasir Putih Village, East Aceh Regency, where the wells exploded due to illegal mining management, killing the miners.³³ Land fire due to illegal mining also occurred in Sungai Angit Village, Musi Banyuasin Regency.³⁴

Article 3 MEMR Regulation No. 01 of 2008 regulates the management of mining company permits for old wells. In this case, BUMD Bojonegoro applied to the contractor with a copy to Minister c.q. The Director-General and Implementing Agency adds administrative and technical papers and receives a letter of recommendation from the Regency Government of Bojonegoro and approved by the Provincial Government of East Java. The extraction of petroleum in old wells in Wonocolo is a legitimate business operation because BUMD Bojonegoro already has a management permit, which means that it conforms to the MEMR Regulation No. 01 of 2008 and cannot be considered illegal mining.

Public participation Based on Social Justice in Realising Energy Sovereignty

The author believes that illegal mining operation is also part of the Miners Group's resistance to the injustice of policymaking and enforcement in managing old wells. Society will remain marginalised in social, economic, and even legal spheres. Since justice that arises from liberalism says that fair rights and equality are in a sequence of order, that is the core concept. Justice, not economic or social interests, can be restricted only by contribution.³⁵ Etzioni criticises liberal ideals of communitarianism, ignoring the essential fact that individuals are "embedded" in the community.³⁶

Illegal mining in Indonesia is continuously happening, even though it is against regulations. The local population is also carried out in the illegal mining of coal and gold because of their poverty

³⁰ Tatiek Sri Djatmiati, "Perizinan Sebagai Instrumen Yuridis Dalam Pelayanan Publik," *Pidato Pengukuhan Jabatan Guru Besar Dalam Bidang Hukum Administrasi Pada Fakultas Hukum Universitas Airlangga*, 24 November, 2007, 1–34.

³¹ Kukuh Prasetyo Jati, "Thesis: Dampak Penambangan Minyak Tradisional Terhadap Kondisi Sosial Ekonomi Dan Lingkungan Hidup (Studi Kasus Desa Ledok, Kecamatan Sambong, Kabupaten Blora)" (Universitas Sebelas Maret Surakarta, 2016).

³² Wahyu Yuwono, "Strategi Pengelolaan Lingkungan Penambangan Minyak Bumi Pada Sumur Tua Desa Bangowan, Kecamatan Jiken, Kabupaten Blora" (Universitas Diponegoro, 2014).

³³ Badan Penanggulangan Bencana Aceh, "Kebakaran Sumur Minyak Masyarakat Di Aceh Timur," 2018.

³⁴ Monanisa, Mardiana, and Nina Damayati, "Menggali Manfaat Tambang Minyak Tradisional Bagi Masyarakat Desa Sungai Angit," *Jurnal Swarnabhumi* 5, no. 2 (2020): 50–57.

³⁵ Karen Lebacqz, *Six Theories of Justice, Terjemahan: Yudi Santoso* (Bandung: Nusa Media, 2013).

³⁶ Amitai Etzioni, *The Encyclopedia of Political Thought - Communitarianism*, ed. Michael T. Gibbons., 1st ed. (New Jersey: John Wiley & Sons, Ltd, 2015).

trying to benefit them.³⁷ They are also funded by people from outside the area to illegally rent heavy equipment, mining and transportation, and even their illegal production.³⁸ As we know, illegal activities can damage the environment and natural resource management. However, illegal mining activities in managing old wells in Wonocolo are still being carried out openly.

Illegal mining creates enormous state loss for more evenly distributed profits. From a legal point of view, miners' ambiguous status often limits the sense of community participation. The miners' status relates to the historical and sociological aspects of the mining community who feel that the old wells they take advantage of are their 'owned' from generation to generation, which is closely related to the economic aspect as well. Meanwhile, the management of old wells has been legally regulated. The unclear miners' status is also related to some miners who would not register themselves under the BUMD Bojonegoro. Finally, illegal activities arise to take more significant benefits. Furthermore, according to the author, it is caused by financial problems because their sense of ownership and voting rights are not accommodated in a legal relationship between the BUMD and the miners. BUMD has no direct legal links with the miners, so who will be responsible for all types of petroleum management losses in this old well? In managing natural resources, communication between parties is essential so that the parties' roles can run properly. There is no cooperation without communication.³⁹

If it is drawn in a matter of legality/licensing, BUMD has received management permission for old wells. The character of the permit is constitutive, which means that it creates rights and obligations. Consequently, authorisation is a protective method for avoiding conduct that contravenes current laws or norms. In this case, the permit issued gives BUMD's right to ensure that the whole mining method does not deviate from the regulations. One of the most required in sustainable natural resources management is community participation. Public participation is more effective if achieved during the management plan-making process. It minimises shocks to the community that may experience potential property loss.⁴⁰

Arnstein stated that the ideal natural resource management is management that involves local communities. The high level of community participation is at the level of citizen control.⁴¹ Not only in the implementation. However, the extent to which the local community participates in forming regulations regarding managing resources on their lands. In public participation research in Manitoba, Canada, community participation is essential in achieving environmental goals. It is also related to Pieraccini's statement that the conflicting debate on human rights and the environment is related to the role of the process of decision-making in social and environmental

³⁷ Isma Rosyida and Masatoshi Sasaoka, "Local Political Dynamics of Coastal and Marine Resource Governance: A Case Study of Tin-Mining at a Coastal Community in Indonesia," *Environmental Development* 26, no. September 2017 (2018): 12–22, <https://doi.org/10.1016/j.envdev.2018.03.003>.

³⁸ Jennifer McKay and Balbir Bhasin, "Mining Law and Policy in Indonesia: Issues in Current Practice That Need Reform," *Journal of Energy & Natural Resources Law* 19, no. 4 (2001): 329–43.

³⁹ Bednarik et al., "A Game of Common-Pool Resource Management: Effects of Communication, Risky Environment and Worldviews."

⁴⁰ Austin Dziwornu Ablo, "Carceral Labour: Offshore Work Relations, Conflicts and Local Participation in Ghana's Oil and Gas Industry," *Political Geography* 93 (March 2022): 102556, <https://doi.org/10.1016/J.POLGEO.2021.102556>.

⁴¹ Sherry Arnstein, "A Ladder of Citizen Participation," *Journal of the American Institute of Planners* 35, no. 4 (1969): 216–24.

justice.⁴² Meanwhile, oil management in Bojonegoro Regency is still in the in-forming stage, where the community is only given information but is not actively involved or considered for its inclusion in policy making. This is detrimental to the community, which also has the right to manage old wells.

Therefore, although BUMD, as the permit holder, states that the distribution of mining products is 90% for miners and 10% for BUMD, in reality, this does not answer and guarantee the distribution of benefits to the surrounding community at large. This is because the absence of the community in formulating regulations and policies increases the chance that the policy will not match what the community really needs in an implementation manner. This is what ultimately leads to much illegal mining. In order to cover the mining results, they should get more properly.

A crucial factor for improving environmental consciousness is the engagement of various stakeholders in decision-making. Ideally, management should be organised adequately in the old wells through KUD or BUMD. The old well management arrangements that have been regulated in the MEMR Regulation No. 01 of 2008 and the Bojonegoro Regent Regulation No. 30 of 2017 should be equally distributed benefits to the community, especially those in producing areas. But this has not been achieved. The author argues that illegal mining can be interpreted as a response from the Wonocolo miners that the management model arrangement in the extraction of petroleum mining in old wells did not fulfil the miners' welfare.

All regulations do not capture the mining community's historical, sociological, and economic issues before the enactment of MEMER Regulation No. 01 of 2008 and the other highest related umbrella law. In the end, the distribution of the results of the management of petroleum which is regulated without the involvement of the community creates a rejection in the form of selling and refining oil independently, which of course, the results will not be shared with Pertamina/the State. It is a massive loss for the state. The Ministry of Energy and Mineral Resources (ESDM) has at least recorded that there are approximately 4,500 illegal wells in Indonesia with an estimated oil yield of 2,500 - 10,000 BPD.⁴³ We can remember that long-term sustainability requires rules that are appropriate to the characteristics of the resource system and its users. Large-scale government systems can facilitate such arrangements but can also undermine them.⁴⁴

Basically, public policy must encourage sustainable development. Therefore, it must harmonise the protection and improvement of the environment with economic development and social progress.⁴⁵ The unregulated public participation is a problem for the government, which happened to recognise the old well mining community as a community entity in Wonocolo

⁴² Margherita Pieraccini, "Towards Just Resilience: Representing and Including New Constituencies in Adaptive Governance and Law," *Journal of Environmental Law* 31, no. 2 (2019): 213, <https://doi.org/https://doi.org/10.1093/jel/eqz002>.

⁴³ Kementerian Energi dan Sumber Daya Mineral, "Siaran Pers No. 472.Pers/04/SJI/2021, Tanggal: 22 Desember 2021 Tangani Sumur Minyak Ilegal, Pemerintah Seimbangkan Penegakan Hukum Dan Pemberdayaan Penambang" (2021).

⁴⁴ R.C. Bastakoti and G. Shivakoti, "Governing the Commons Through Understanding of Institutional Diversity: An Agenda for Application of Ostrom's Framework in Managing Natural Resources in Asia," in *Redefining Diversity and Dynamics of Natural Resources Management in Asia*, 1st ed. (Elsevier Ltd., 2017), 41–52, <https://doi.org/http://dx.doi.org/10.1016/B978-0-12-805454-3.00003-7>.

⁴⁵ Miriam R. Aczel, Karen E. Makuch, and Manel Chibane, "How Much Is Enough? Approaches to Public Participation in Shale Gas Regulation across England, France, and Algeria," *The Extractive Industries and Society* 5, no. 4 (November 2018): 427–40, <https://doi.org/10.1016/J.EXIS.2018.10.003>.

Village. Socio-economic disparities occur in local communities in oil-producing areas that should prioritise receiving the benefits of natural resources in their regions. Even though the promulgation of legal products related to the exploitation of petroleum in old wells is to provide benefits to enhance the wealth of miners, for this reason, revising old wells mining regulations taking into account community participation and distribution of benefits can provide an impetus for policymakers to adopt prosperous policies because most of the natural resource management is directed towards people's welfare so the social justice can be realised.

CONCLUSION

Based on the review of the MEMR Regulation No. 01 of 2008, Bojonegoro Regent Regulation No. 30 of 2017, and some local regulations mentioned before, this research concluded that the old wells oil management in Wonocolo Field does not represent the principles of social justice due to the low public participation (informing level) in legal drafting processes. As a result of this lack of participation, vital matters such as the regulation of profit sharing/remuneration between KUD or BUMD and the Company are not regulated in terms of laws and regulations related to the management of old wells in Indonesia. Therefore, injustice in the distribution of the results of the control of old wells tends to be won by other than the community; this shows that there is no even distribution of benefits. Historical, sociological, and economic reasons encourage mining communities to commit illegal activities by selling and refining crude oil for personal gain. The regulations have not reflected the principles of social justice; those regulations cause the illegal mining activities done by unscrupulous miners. It causes the absence of a fair distribution of benefits and community participation. It has resulted in losses to the management of old wells and environmental damage. Hence, the state's goal of providing citizens with the maximum profit from natural resource management to achieve social justice has not yet been realised. In the end, to realise energy sovereignty in the old well management policy related to profit sharing-benefit distribution, the community concerned must be involved. This is because the production of old wells can contribute to national oil production. For achieving energy sovereignty.

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