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## Empowering Communities Through Old Oil Wells: Analysing Legal Frameworks and Policy Gaps in Indonesia

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Article	Abstract
<p><b>Keywords:</b></p> <p>Community welfare; Mining operations; Old oil wells.</p> <p><b>Article History</b> Received: Nov 14, 2024; Reviewed: Jan 14, 2025; Accepted: Jan 28, 2025; Published: Jan 31, 2025.</p> <p><b>DOI:</b> 10.28946/slrev.Vol9.Iss1.4261.pp95-113</p>	<p>This article examines the relationship between the operation of old oil wells, as governed by Minister of Energy and Mineral Resources Regulation Number 1 of 2008, and the improvement of community welfare, particularly for communities surrounding mining areas. The regulation aims to empower communities by enabling their participation in oil well operations through Village Unit Cooperatives (KUD) and Regionally Owned Business Entities (BUMD). Employing a socio-legal approach, this study conceptualizes law as a functional social institution and investigates its application in three sub-districts in Musi Banyuasin Regency, South Sumatra Province. The findings reveal that the regulation is ineffective due to its complex permit requirements, which are perceived as a significant obstacle by local communities, thereby impeding its objectives. Moreover, the regulation lacks explicit legal provisions to address community welfare by exploiting old oil wells. To address these shortcomings, the study recommends revising the regulation to simplify licensing procedures and include explicit provisions that promote community welfare. Additionally, it emphasizes the need for policy instruments, such as legal assistance, mentoring, technical and non-technical guidance, and continuous supervision, to support community-led mining activities. These measures are essential to ensure that the operation of old oil wells contributes meaningfully to the welfare of local communities, aligning with the regulation's intended goals.</p>

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## INTRODUCTION

Indonesia is one of the largest petroleum-producing countries and is ranked 25<sup>th</sup> among the oil-rich countries, with reserves of 4.4 billion barrels. Indonesia's oil resources are spread across many regions. From this distribution, there are at least 4 (four) regions that are the largest petroleum producers, namely Riau, which is able to produce 365,827 barrels per day, with crude oil as much as 359,777 barrels and condensate as much as 6,050 barrels, Papua with oil production per day as much as 14,811 barrels with details of 8,243 barrels of oil and condensate of 6,568 barrels, South Sumatra can produce oil 30,718 barrels and condensate 10,339 barrels,

and East Java which can produce 52,290 barrels of crude oil and 326 barrels of condensate or a total of 52,616 barrels per day<sup>1</sup>.

The implementation of petroleum business activities is juridically regulated in Law Number 22 of 2001 concerning Oil and Gas in conjunction with Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation. According to Article 2 in this law, the Oil and Gas management activities are carried out on the principles of people's economy, integration, benefits, justice, balance, equity, common prosperity and welfare of the people, security, safety, and legal certainty as well as environmentally friendly<sup>2</sup>. Meanwhile, according to Article 3 of Law Number 22 of 2001, the objectives of oil and gas management activities include creating jobs, improving the welfare and prosperity of fair and equitable people, and maintaining environmental sustainability. The principles and objectives of the implementation of oil and gas business activities are basically a reflection of the legal politics of the Oil and Gas Law, which is in favour of the interests of the people<sup>3</sup>.

Petroleum mining business activities are one of the sources that contribute a lot to state revenue<sup>4</sup>, and it plays an important rule in efforts to improve community welfare<sup>5</sup>. In petroleum mining activities, several important things must receive attention from the government, one of which is the practice of mining or drilling petroleum in old oil wells carried out by communities living around the mining areas. Usually, this activity is carried out traditionally. An old oil well is a petroleum well drilled before 1970. It was once exploited and located in an uncultivated field in a work area bound by a Cooperation Contract, but the contractor no longer cultivates it. One area that has quite a large number of old oil wells is Musi Banyuasin Regency (MUBA), South Sumatra Province<sup>6</sup>.

Petroleum mining in old oil wells has been regulated in the Minister of Energy and Mineral Resources (ESDM) Regulation Number 1 of 2008 concerning Guidelines for Operating Petroleum Mining in Old Wells, which aims to reactivate old oil wells which still have the potential to produce petroleum and can use to improve community welfare<sup>7</sup>, by providing opportunities for communities, especially communities around the mine, to participate in exploiting these old oil wells. However, the policies in the Minister of Energy and Mineral Resources Regulation Number 1 of 2008 have not been implemented effectively. One

<sup>1</sup> Juni Wulan Ningsih, "Empat Daerah Penghasil Minyak Terbesar Di Indonesia," *Republika*, 2014.

<sup>2</sup> Muhammad Abdi Sabri I Budahu, Marno M Hipan, and Samuelson Sahattua, "Pengaturan Pengelolaan Minyak Dan Gas Bumi Berwawasan Lingkungan," *SUPREMASI: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum Dan Pengajarannya* 18, no. 1 (2023): 047, <https://doi.org/10.26858/supremasi.v18i1.44556>.

<sup>3</sup> Indah Dwi Qurbani, "Politik Hukum Pengelolaan Minyak Dan Gas Bumi Di Indonesia," *Arena Hukum* 5, no. 2 (2012): 115–21, <https://doi.org/10.21776/ub.arenahukum.2012.00502.5>.

<sup>4</sup> Muhammad Ridwan, "Terkerek Harga Minyak, Penerimaan Negara Di Sektor Migas Tembus 189,8 Triliun," 2021.

<sup>5</sup> Roziqin Roziqin, "Pengelolaan Sektor Minyak Bumi Di Indonesia Pasca Reformasi: Analisis Konsep Negara Kesejahteraan," *Jurnal Tata Kelola Dan Akuntabilitas Keuangan Negara*, 2015, 128–40, <https://doi.org/10.28986/jtaken.v1i2.23>.

<sup>6</sup> Yuswalina Yuswalina and Adi Candra, "Pemanfaatan Sumur Minyak Tua Sisa Eksploitasi Peninggalan Belanda Dalam Hubungannya Dengan Perekonomian Masyarakat Di Kabupaten Musi Banyuasin," *Muamalah* 3, no. 1 (2017): 59–72, <https://doi.org/10.19109/muamalah.v3i1.1508>.

<sup>7</sup> M.Irhas Effendi, "Optimalisasi Pengusahaan Sumur Minyak Tua Dalam Rangka Peningkatan Produksi Minyak Nasional Dan Kesejahteraan Masyarakat," *Jurnal Mineral Energi Dan Lingkungan* 1, no. 2 (2017): 16–25, <https://doi.org/https://doi.org/10.31315/jmel.v1i2.2040.g1846>.

example has happened in MUBA Regency as a district producer of oil and gas, where most people still rely on their income from the agricultural sector with an average income that is still very low, even based on data from the South Sumatra Central Bureau of Statistics in 2023-2024, MUBA is the third district with the highest number of poor people in South Sumatra, namely 105.38 thousand people<sup>8</sup>, which when compared with other districts that are not oil and gas producers, this figure is categorized as very high<sup>9</sup>. The research is conducted in three subdistricts in the MUBA Regency, namely Babat Toman, Batanghari Leko, and Bayung Lincir. These three sub-districts are where the largest number of old oil wells are distributed compared to other sub-districts in the MUBA Regency.

This article will examine two problems: (1) Are the current legal policies governing the mining operation of old oil wells effective for improving community welfare? Moreover, (2) what the direction of the policy is for regulating the mining operation of old oil wells for the community's welfare in the future? However, before these two issues are discussed, the basic relationship between natural resources and community welfare will also be discussed, which is the state's goal.

## RESEARCH METHODS

This legal research is socio-legal research that conceptualizes law as a real and functional social institution in the system of social life<sup>10</sup>. The study was carried out in this research regarding the operation of regulations related to oil and gas, especially the Regulation of the Minister of Energy and Mineral Resources (ESDM) Number 1 of 2008 concerning Guidelines for Operating Petroleum Mining in Old Oil Wells in the community (Three subdistricts in Musi Banyuasin Regency as Research location), so that conclusions can be obtained Is the regulation in question effective or is it the opposite? Based on the results of this study, an analysis is then carried out regarding what the government should do so that the regulations in question are more effective as a tool to achieve community welfare as one of the state's goals.

## ANALYSIS AND DISCUSSION

### Natural Resources and Community Welfare

Indonesia is a country that is very rich in natural resources spread across various provinces. Natural resources in Indonesia include oil, gold, copper, silver, and coal. These natural resources can improve the welfare of the community if they are managed properly for the benefit of the community because they are providers of food, energy, water, and life support<sup>11</sup>.

<sup>8</sup> Badan Pusat Statistik Provinsi Sumatera Selatan, "Jumlah Penduduk Miskin Maret Menurut Kab/Kota, 2023-2024" (2024), <https://sumsel.bps.go.id/id/statistics-table/2/NjgzlZl=/jumlah-penduduk-miskin-maret-menurut-kab-kota.html>.

<sup>9</sup> Badan Pusat Statistik Provinsi Sumatera Selatan.

<sup>10</sup> Soetandyo Wignjosoebroto, "Penggunaan Metodologi Penelitian Menurut Tradisi Sains Dalam Ilmu Hukum Dan Ilmu Sosial," *Refleksi Hukum*, no. 1 (1995): 8.

<sup>11</sup> Muh. Saad, Ayu Rukayyah Yunus, and Muslihati Muslihati, "Dampak Eksploitasi Sumber Daya Alam Dalam Peningkatan Kesejahteraan Masyarakat Perspektif Ekonomi Islam," *Madinah: Jurnal Studi Islam* 8, No. 1 (2021): 131–146.

Optimal use of natural resources can be an indicator of the success of a region's economic development<sup>12</sup>.

The use of natural resources receives the attention of the world and has long been considered as one of the elements of human rights and economic development of a country<sup>13</sup>, even the United Nations, in the [1803 XVII UN General Assembly Resolution](#), stated that "the right of people and nations to permanent sovereignty over their wealth and natural resources must be exercised in the interest of national development and the welfare of the people of the country concerned"<sup>14</sup>.

Natural resources are often seen as the main asset driving a country's development and wealth creation. As time goes by and with progressive industrialization, the use of natural resources also increases. In some cases, the exploitation level exceeds natural resources' natural regeneration rate. Such overexploitation ultimately threatens the livelihoods and well-being of the people who depend on these resources, and endangers the health of ecosystems. The risk of depletion of natural resources, especially for non-renewable natural resources, shows the need to regulate the use of natural resources to prosper and prospering communities<sup>15</sup>.

The state controls Natural resources in Indonesia, as stated in Article 33, paragraph (3) of the 1945 Constitution: "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people". The purpose of Article 33, paragraph (3) of the 1945 Constitution is to give authority to the state to control natural resources. The meaning of "controlled by the state" must be interpreted to include the meaning of control by the state in a broad sense, which is derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "earth, water and natural resources contained in it", including the meaning of public ownership by the collectivity of the people over the sources of wealth in question. The people collectively were constructed by the 1945 Constitution, giving a mandate to the state to hold<sup>16</sup> policies (*regulations*) and management actions (*bestuursdaad*); arrangement (*regelendaad*); management (*beheersdaad*); and Surveillance Act.

The essence of state control over natural resources is to improve the welfare of the Indonesian people. The 1945 Constitution authorizes the state to control natural resources, yet the implementation of these activities can be handed over to foreign and domestic investors, as stated in Article 10 of Law Number 11 of 1967 concerning the Principal Provisions of Mining, stating that:

<sup>12</sup> Dini Intan Veronica, Muhammad Iqbal Fasa, and Suharto, "Pemanfaatan Sumber Daya Alam Terhadap Pembangunan Berkelanjutan Dalam Persepektif Ekonomi Islam," *Jurnal Dinamika Ekonomi Syariah* 9, No. 2 (2022): 200–210.

<sup>13</sup> Bonaraja Purba et al., *Pengelolaan Sumber Daya Alam Dan Lingkungan: Teori Dan Pemikiran*, Yayasan Kita Menulis, 2023. : 6

<sup>14</sup> International Resource Panel, "Prospek Sumber Daya Global 2019: Sumber Daya Alam Untuk Masa Depan Yang Kita Inginkan," 2019. Diakses tanggal 16 Oktober 2024

<sup>15</sup> Zaman. Nur, *Sumber Daya Dan Kesejahteraan Masyarakat*, 1st ed. (Medan: Yayasan Kita Menulis, 2021). : 16

<sup>16</sup> Yance Arizona, "Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber Daya Alam Dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* Vol. 8, No. 3 (2011): 258–313.

- (1) The Minister may appoint another party as a contractor if it is determined to carry out works that have not been or cannot be carried out by the Government Agency or the State Company concerned as the holder of mining power.*
- (2) A government agency or state company must adhere to the guidelines, instructions, and conditions given by the Minister when entering into a work agreement with a contractor as intended in paragraph (1) of this article.*
- (3) The work agreement in paragraph (2) of this article shall come into force after it is ratified by the government after consultation with the House of Representatives in relation to the exploitation of the group as long as it is familiar with the excavated materials specified in Article 13 of this law and/or whose work agreement is in the form of foreign investment".*

There are three things regulated in this article, which include: 1) The Government/Minister may appoint contractors to carry out work related to exploration and exploitation; 2) The agreement is outlined in the form of a work contract; and 3) momentum of the agreement after the government ratified it.

The Indonesian government can invite contractors to cooperate in implementing natural resource mining activities. The factor that causes the government to appoint contractors, especially foreign contractors, to implement activities in the mining sector is that the government or government agencies have been unable to carry out these activities. The activities that are carried out require advanced technology and are costly. To be able to carry out mining activities, the foreign contractor first signs an agreement called a work contract with the Government of Indonesia<sup>17</sup>. Even though it is managed by a contractor, the Natural Resources management model must prioritize justice and ensure the community's welfare. The mining management model that meets the community's sense of justice is conceptualized as a pattern or way of working that is carried out to manage and pursue mining activities in accordance with the wishes and wishes of the community and the government so that they can enjoy the benefits of mining activities around them.

Over time, the provisions regarding mining have also changed. Law Number 11 of 1967, concerning Basic Provisions for Mining, was then replaced with Law Number 4 of 2009, concerning Mineral and Coal Mining, which then underwent changes in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Since 2009, Indonesia has switched from a mining management regime based on Employment Contracts and Coal Mining Concession Work Agreements (*PKP2B*) to a regime based on Mining Business Permits (*IUP*). This change was made to accommodate the mandate in Article 33 paragraph (3) of the 1945 Constitution, namely that the state can control natural resources for the prosperity of the people.

The state's obligation, born from the right to control natural resources, is a mandate given by the people. The state is not the supreme ruler over natural resources. However, as a regulator and supervisor, even in the interpretation of the Constitutional Court through Decision Number

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<sup>17</sup> Achmad Haris Januari, "Sistem Pembangunan Berkelanjutan Terhadap Tata Kelola Pertambangan," *Jurnal Hukum Dan Bisnis (Selisik)* 1, no. 2 (2015): 43–65.

3/PUU-VIII/2010, Decision Number 35/PUU-X/2012, and Decision Number 50/PUU-X/2012, the meaning of the Right to Rule the State (*HMN*) is interpreted not only limited to the regulatory function, but more than that where the state carries out policy functions (*regulations*), management (*beheersdaad*), regulation (*regelendaad*), management (*bestuurdaad*), and supervision (*toezichtoudaad*). Expanding the meaning of the *HMN* concept aims to achieve the phrase for the greatest possible prosperity of the people mandated by the 1945 Constitution.

### Mining Old Oil Wells: A Half-Hearted Policy

Indonesia is ranked 25th as the world's largest oil producer, with a total production of 833,667 barrels per day<sup>18</sup>. However, the amount of Indonesian crude oil production (lifting) always decreases yearly. The reason for the decline in crude oil lifting is that many of the oil wells in Indonesia are relatively old (over 30 years), which has resulted in a decrease in production volume<sup>19</sup>Table 1 shows data from the National Central Bureau of Statistics regarding Indonesian crude oil production.<sup>20</sup>

**Table 1. Indonesian crude oil production from 2012 to 2023**

Year	Crude oil (barrel)	Natural Gas (MMScf)
2012	314,665.90	2,982,753.50
2013	301,191.90	2,969,210.80
2014	287,902.20	2,999,524.40
2015	286,814.20	2,948,365.80
2017	292,373.80	2,781,154.00
2018	281,826.61	2,833,783.51
2019	273,494.80	2,647,985.90
2020	259,246.80	2,442,830.70
2021	240,324.50	2,433,364.00
2022	223,532.50	1,962,929.00
2023*	206,354.40	1,007,923.20

*Source: Central Statistics Agency*

Based on Table 1, there has been a significant decrease in crude oil production in Indonesia. To overcome that problem, the government has made various efforts, including transferring PT's management. Chevron Pacific Indonesia to PT. Pertamina Hulu Rokan. The government also supports oil and gas Cooperation Contract Contractors (KKKS) by facilitating permits and providing support for resolving several crucial issues, including technical, socio-environmental and other issues. The government also provides policy support in the form of taxing unused produced water and exemption from indirect taxes<sup>21</sup>. Apart from these efforts, the government has also formed various other policies aimed at increasing the amount of crude

<sup>18</sup> Annisa Purwatiningsih and Masykur, "Eksplorasi Dan Eksploitasi Pertambangan Minyak Dan Gas Bumi Di Laut Natuna Bagian Utara Laut Yuridiksi Nasional Untuk Meningkatkan Kesejahteraanmasyarakat Di Kepulauan Natuna," *Jurnal Reformasi* 2, no. 2 (2012): 59–67.

<sup>19</sup> Juli Panglima Saragih, "Penurunan Produksi Minyak Mentah, Lonjakan Harga, Dan Impor Minyak Mentah Dan Bbm," *Pusaka Bkd* 16, no. 9 (2024).

<sup>20</sup> Badan Pusat Statistik, "Produksi Minyak Bumi Dan Gas Alam, 1996-2022," 2024.

<sup>21</sup> Niken Paramita dan Jefrfey Ivan Vincent Purwanto, "Strategi Pemerintah Mendongkrak Produksi Minyak Bumi Nasional," 2025.

oil production; one of those policies is formatting the. Minister of Energy and Mineral Resources Regulation No. 01 of 2008 concerning Guidelines for Petroleum Mining in Old Wells<sup>22</sup>. This policy was formed because, in several oil-producing areas in Indonesia, many old oil wells have been in production for more than 70 years; some have been in production since the Dutch era. Data in 2010 shows that there are approximately 13,000 old wells left by the Dutch scattered in various regions ranging from Aceh, Riau, South Sumatra, West Java, Central Java, East Java, East Kalimantan, Maluku and Papua. Of the 13,000 old wells, most are still abandoned, and only around 754 wells have been activated<sup>23</sup>.

The aim of establishing Minister of Energy and Mineral Resources Regulation Number 1 of 2008 is basically not only an effort to increase national crude oil production, but more than that, this regulation in principle, aims to improve community welfare through active participation in mining exploitation activities for old oil wells<sup>24</sup>. The aim of improving community welfare can be seen in the preamble section, considering letter A in this regulation, which explicitly states this. Community participation in mining business activities for old oil wells, according to the provisions of Article 2 paragraph (2) of this Ministerial Regulation, can be carried out through the Village Unit Cooperative (KUD) in the event that the contractor no longer operates that old oil well.

The provisions regarding community participation in the mining of old oil wells have basically provided an opportunity for the community, especially communities around the mine, to be able to improve their standard of living to become more prosperous<sup>25</sup>. However, the welfare goals expected with this policy are, in fact, not immediately achievable. Based on the results of interviews with informants at the research location, one of the factors that hinder the implementation of the development of old oil wells by the community is the complexity of the permits that must be obtained and the requirements as stipulated in Article 3 paragraphs (1), (2), (3), and (4) Minister of Energy and Mineral Resources Regulation Number 1 of 2008<sup>26</sup>. The provisions regarding licensing for people who are mostly farmers are difficult for them to fulfil; this is not only due to limited knowledge but also because their mental readiness to deal with formal power is very limited. This was admitted by an informant who admitted that there was nothing wrong with giving up when it came to dealing with the government, "it will definitely be difficult" was the sentence from the informant in response to a question about the licensing provisions.

Another obstacle to community participation in old oil well mining business activities is that there is no KUD as a forum for the community to participate in the old oil well mining business. Still, based on the results of interviews with informants, no KUD can become a legal entity where the community gathers to carry out mining activities in the research location area. In fact, the mandate from the Minister of Energy and Mineral Resources Regulation Number 1

<sup>22</sup> Suprapti 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, <https://doi.org/10.12962/j24433527.v4i2.628>.

<sup>23</sup> Sayoga Heru Prayitno, "Kajian Teknis Re-Opening Sumur Tua Untuk Peningkatan Produksi Minyak Nasional (Menuju 1 Juta BOPD Tahun 2012)," *Jurnal Teknologi Minyak & Gas Bumi* 3 (2010): 3–15.

<sup>24</sup> Effendi, "Optimalisasi Pengusahaan Sumur Minyak Tua Dalam Rangka Peningkatan Produksi Minyak Nasional Dan Kesejahteraan Masyarakat."

<sup>25</sup> Eddy Ibrahim, *Buku Potensi Sumur Tua Regulasi Dan Implikasinya Dari Aspek Lingkungan* (Palembang: UNSRI PRESS, 2022).

<sup>26</sup> Yuswalina and Candra, "Pemanfaatan Sumur Minyak Tua Sisa Eksploitasi Peninggalan Belanda Dalam Hubungannya Dengan Perekonomian Masyarakat Di Kabupaten Musi Banyuasin."

of 2008 requires the existence of KUD as a forum for community participation in the exploitation of old oil wells. KUD is a business unit and an economic unit for rural communities that can be used to carry out various business activities to improve community welfare, including exploiting old oil wells. It is believed that the use of KUD can prevent illegal drilling activities, which are rampant in various oil-producing areas<sup>27</sup>. KUD as a forum for exploiting old oil wells has been widely practised in several areas. Based on data from the official website of the Ministry of Energy and Mineral Resources, in 2013, at least 5 KUDs received approval from the government, in this case, the Minister of ESDM, to exploit old oil wells. The five KUDs in question come from several oil-producing provinces in Indonesia, including East Kalimantan, Sorong Papua, Bojonegoro, East Java, and Langkat, North Sumatera<sup>28</sup>. Specifically for the Bojonegoro area, there are 2 KUDs that have received permission from the government. Meanwhile, no KUD has received the permit as intended for South Sumatra, including MUBA. So far, in the MUBA Regency, mining operations for old oil wells have been carried out by regional-owned enterprises, in this case, PT. Petro Muba, in collaboration with PT. Pertamina EP<sup>29</sup>, and the community who became informants admitted that they did not know how the BUMD business process works.

PT. Petro Muba has involved the community in operating old oil well mining in MUBA Regency. One way is to collaborate with a Village-Owned Enterprise, namely PT. TSE. However, PT. TSE does not directly conduct mining activities but only transports crude oil from Sungai Angit Village, Babat Toman District, to PT. Pertamina. Nevertheless, the collaboration between PT. TSE and PT. Petro Muba has quite promising business value for the community because of the projected daily income from PT. TSE can reach Rp. 110,619,500<sup>30</sup>, a value that is quite high and potentially impacts improving the economy and welfare of society. However, in reality, there are benefits to the existence of PT. TSE is not really felt by the community because, based on information from informants, only a small portion are involved in this transportation activity, and not all of the transportation workers come from the local area. So, the community around the mining area still does not really feel the direct impact on improving their economy and welfare from this activity.

The obstacles felt by the community, especially communities around the mine, are still exacerbated by the lack of attention of the relevant parties to the difficulties faced by these communities. According to informants who were successfully interviewed, the community around the mine has high hopes for the presence of the government and contractors to provide outreach and training related to the licensing process, understanding the standards of mining techniques, as well as understanding how to form KUDs and any other corporate business bodies that can be a forum for the community to participate in the mining business activities of old oil wells.

<sup>27</sup> Rizky Adi Nugraha, Lego Karjoko, and Waluyo Waluyo, "Koperasi Unit Desa Dalam Pencegahan Ilegal Drilling," *Jurnal Discretie* 2, no. 3 (2023): 129, <https://doi.org/10.20961/jd.v2i3.53625>.

<sup>28</sup> Direktorat Jenderal Minyak dan Gas Bumi Kementerian ESDM Republik Indonesia, "Lima KUD Disetujui Kelola Sumur Tua," 2013.

<sup>29</sup> Adrian Gunawan, Joni Emirzon, and Muhammad Syaifuddin, "Kerjasama Pt Pertamina Ep Dengan Pt Petro Muba Dalam Pengusahaan Sumur Tua Minyak Bumi Di Lapangan Babat Dan Kukui Desa Sungai Angit," *Lex LATA* 2, no. 3 (2022): 735–46, <https://doi.org/10.28946/lexl.v2i3.1016>.

<sup>30</sup> M. Dewa Rizki Antari, Azka Robi, Trimadona, "Analisis Kegiatan Transportasi Crude Oil Hasil Produksi Tambang Rakyat Desa Sungai Angit Oleh Badan Usaha Milik Desa (Bum Desa) Pt Tse Menuju Landing Station Pt X Asset-1 R Field Dari Aspek Keekonomian Dan Kesehatan Dan Keselamatan Kerja," *Jurnal Teknik Patra Akademia* 15, No. 1 (2024): 62–75.

The conditions described above are very common in the mining area. People live side by side with high-value natural resources but do not feel the benefits of these natural resources. In fact, the existence of policies in the form of regulations issued by the government does not help them live more prosperously. Communities around the mine continue to live below the poverty line and do not have access to the natural resources around them.

Based on the analysis above, it is not wrong if the policy on exploiting old oil wells, which is technically regulated in Minister of Energy and Mineral Resources Regulation No. 1 of 2008, is considered a half-hearted policy, especially concerning achieving community welfare. In fact, if it is based on the aim of developing a national legal system, as stated by Bagir Manan, the formation of laws and regulations must be based on several principles and one of the principles is that the regulations that are formed must contain instruments that encourage the progress of social welfare, and aim for justice for all the people of Indonesia<sup>31</sup>.

In other words, the welfare expected in mining policy so far is still supposed (*das sollen*), not yet implemented in actual conditions (*das sein*)<sup>32</sup>, so the welfare discourse that the state is trying to build through various policies in mining regulations, including the Minister of Energy and Mineral Resources Regulation Number 1 of 2008,, has not been fully interpreted in everyday social space.

### **Mining of Old Oil Wells and Their Various Problems (Sociological Study in Three Subdistricts (Babat Toman, Batanghari Leko, Bayung Lincir) Musi Banyuasin District – South Sumatra)**

Musi Banyuasin Regency (MUBA), South Sumatra Province, is a district with a relatively large crude oil potential. Oil mining operations in this area have even started since the Dutch era. However, as time goes by, the oil mining business has begun to decrease, experiencing a reduction (cut off), which in the end has left wells that still have oil reserves but with the amount of production that has been greatly reduced. The remaining oil wells are currently categorized as old oil wells and are spread sporadically in several sub-districts in MUBA Regency<sup>33</sup>. Some of the old Dutch oil wells have been exploited by BUMD, in this case PT. Petro Muba and some others are still managed by contractors, namely the Medco Company and Conoco Philip<sup>34</sup>. Meanwhile, most of the other old wells are still in a neglected condition or are not being worked on either by contractors or by the community<sup>35</sup>.

These abandoned old oil wells cover a fairly large area and attract communities around the mine to exploit these old oil wells. This community operates old oil wells using traditional methods and does not have permits (illegal). Based on data from PT. Petro Muba has at least 12 distribution locations for old oil wells in the MUBA district. Of the 12 locations, 9 of them are managed by the community. Data on the existence of these old wells can be seen in the following table 2.

<sup>31</sup> Irsan Irsan and Meria Utama, "The Political Law on Coal Mining in the Fulfilment of People's Welfare in Indonesia," *Sriwijaya Law Review* 3, no. 1 (2019): 11, <https://doi.org/10.28946/slrev.vol3.iss1.202.pp11-25>.

<sup>32</sup> Bambang Prabowo Soedarso, "Potret Hukum Pertambangan Di Indonesia Dalam Era UU No. 4 Tahun 2009," *Indonesian Journal of International Law* 6, no. 3 (2009), <https://doi.org/10.17304/ijil.vol6.3.209>.

<sup>33</sup> Taufik Arief et al., "Bimbingan Teknis Terhadap Penambang Sumur Minyak Ilegal Di Dusun Keban I Kecamatan Sanga Desa Kabupaten Musi Banyuasin Sumatera Selatan," *Prima Abdika : Jurnal Pengabdian Masyarakat* 3, no. 1 (2023): 65–73, <https://doi.org/10.37478/abdika.v3i1.2582>.

<sup>34</sup> Arief et al.

<sup>35</sup> John Chrysostomus Sado and Renando Adam Ghazali, "Relasi Pemerintah Dengan Kelompok Penambang Minyak Ilegal Di Kabupaten Musi Banyuasin Sumatera Selatan" 4, no. 1 (n.d.).

**Table 2: Old oil wells in Musi Banyuasin Regency**

Subdistrict	The Existence of Old Oil Wells		
	Community-Managed	Not Managed by the Community	Production Per BOPD
Babat Toman	500 wells	-	2,000 BPOD
Sanga Desa	400 wells	-	1,000 BPOD
Wetan Lane	200 wells	-	800 BPOD
Keluang	100 wells	-	500 BPOD
Batanghari Leko	100 wells	-	500 BPOD
Bayung Lincir	100 wells	-	800 BPOD
Sungai Lilin	100 wells	-	400 BPOD
Tungkal Jaya	100 wells	-	800 BPOD
Tripe Supat	-	100 wells	500 BPOD
High Plaque	100 wells	-	500 BPOD
Sungai Keruh	-	100 wells	500 BPOD
Jirak Jaya	-	100 wells	500 BPOD

*Source: Petromuba, BPOD = Barrell Well Per Day*

Most of the old oil wells managed by the community do not have permits; this is because the community considers the licensing procedures to be too complicated, and they tend to be "afraid" of dealing with formal authority, as explained in the previous section. The illegal exploitation of old oil wells by the community certainly leaves various problems, both for the community and the environment<sup>36</sup>. Apart from that, oil mining activities without permits are carried out on old and new oil wells, which are deliberately created by the community. In fact, illegal drilling activities on new oil wells are most widespread in the MUBA Regency area, with the number of illegal wells reaching 10,000 wells<sup>37</sup>.

Based on observations and interviews with several initial informants conducted in three sub-districts, namely Babat Toman, Bayung Lincir and Batanghari Leko, researchers obtained data that the community had drilled wells and produced crude oil using traditional illegal drilling methods over a period, which is quite long. According to several informants, illegal mining also occurs in other areas in the MUBA area. For the local community, illegal drilling activities are very promising because they can produce crude oil nicknamed "black gold" in various quantities. The crude oil can then be sold directly to illegal refineries at a higher price, around Rp. 6000 per litre. Meanwhile, if it is sold to an official party, one of which is PT Petro Muba as a BUMD, which has obtained a permit, the price obtained is around Rp. 4 300. The difference in price offered by the illegal refinery has further increased the enthusiasm of the community to carry out illegal mining, both in old and new wells.

The income from illegal oil mining activities from old and new wells is very tempting. Based on information from an informant who admitted that he had been involved in illegal mining activities (in the local language called "molot") for more or less 7 years, income from this activity could reach over 50 million or even 100 million per week. According to him, this income would be higher if the well being exploited was 'melting' or producing abundant oil. Another informant who has been involved in illegal drilling activities for approximately 4 years

<sup>36</sup> Rahmat Sugiarto, "Illegal Drilling Menghantui Sungai Lilin Ini Yang Dilakukan Pj Bupati MUBA," 2024.

<sup>37</sup> Glori K. Wadrianto Putra, Aji YK, "Ada 10.000 Sumur Minyak Illegal, Kerusakan Lingkungan Ancam MUBA," *Kompas.Com*, 2024.

also provided the same information; in fact, according to his confession, he once earned an income of almost 3 billion Rupiah in one month because his oil well was always 'meluing'. As admitted by the informant, the amount of income is certainly an attraction for other parties to try their luck by carrying out the same activities.

Illegal mining activities, as stated above, if seen at a glance, will give the impression that they are profitable for the community, especially communities around the mine. However, based on interviews with several informants, it turns out that the capital owners for both old and new wells do not all come from communities around the mine but from several other areas, many even from areas outside MUBA Regency. Very few communities around the mine are capital owners. A lack of capital causes this to open a well, which, if averaged out, could cost 50 to 60 million Rupiah. This amount is not small for the community around the mine, most of whom work as farmers. So, in this illegal drilling activity, the community around the mine only plays the role of labour, both as a collector and as a transporter, with an average monthly income of approximately 3.5 million Rupiah. This contrasts the income of capital owners, who earn hundreds of millions every month. Thus, oil well mining activities, including mining of old oil wells, do not directly contribute to improving the welfare of communities around the mine. On the other hand, this illegal drilling activity also raises other complex problems that negatively affect the community and the environment around the mine.

The problems around the mining area of old oil wells and new wells are relatively the same. One of the issues that has emerged is the issue of worker safety, where almost all illegal drilling activities are carried out traditionally and do not pay attention to worker safety and health standards. Based on observations in the field, the workers at the drilled wells carried out their work activities without adequate safety equipment, and some did not even use safety equipment. According to the recognition of these workers, work accidents often occur at mining sites. One of the most frequent forms of work accidents is workers being exposed to bursts of crude oil, which, according to them, are sometimes unexpected; this is very dangerous for both health and safety. However, this is normal and does not immediately stop this illegal activity. According to the testimony of this worker informant, his income as a worker in an illegal mine is much greater than his income as a rubber farmer in his village.

Ignoring occupational safety and health standards can negatively impact workers, even potentially threatening life safety. One example is a work accident case that occurred in Hamlet II, Tanjung Dalam village, where 4 miners were inhaled by poisonous gas from an oil well site. As a result of this incident, one worker died, and three others fainted and received medical treatment<sup>38</sup>. This condition occurs because when workers carry out their activities, they do not use respiratory or other protective equipment, so the potential for work accidents like this is very likely to occur.

Another problem often encountered in the three sub-districts that are research locations is severe environmental damage. From field observations, illegal oil wells are usually located quite far in the forest or can also be around residents' gardens. Road access to the location is usually very poor. The environmental damage around oil wells is very massive. Many areas with a radius of 3 km from the well point experienced serious damage. The condition of polluted land due to crude oil spills negatively impacts soil fertility, so residents' gardens, which are one of the sources of income for communities around the mine, can no longer be

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<sup>38</sup> Trianda-Polda Sumsel, "Sebabkan Satu Orang Tewas Akibat Keracunan Gas, Pemilik Sumur Minyak Diringkus Tim Gabungan," 2024.

relied on. Data from Walhi South Sumatra even states that potential environmental losses in MUBA Regency could reach 6.7 trillion Rupiah per year, including real losses and environmental restoration costs<sup>39</sup>.

Apart from forest areas, damage occurred in rivers around illegal oil well areas. River pollution due to oil spills is also very worrying. One example is the pollution of the Lubuk Buah River in the Batanghari Leko sub-district due to a crude oil spill.<sup>40</sup> The volume of black crude oil that spills into the river flowed with the river's flow and greatly affected the river's quality.

Another issue that cannot be ruled out is the quality of public health. Based on interviews with several informants, people around the mine often complain of health problems, especially respiratory problems. This is caused by smoke from the oil-burning process carried out during refining by illegal refiners, which is an inseparable part of the illegal drilling activity. The thick smoke from the burning process not only pollutes and damages the air quality around the location but also directly affects the community. As a result, the quality of public health is also disturbed. Informants also added that air pollution due to smoke becomes worse if an oil well explodes, which results in a fire. Several cases of fires due to oil well explosions in several areas in MUBA Regency have added to the list of causes of air pollution in this area, especially in the area around the mine<sup>41</sup>.

The description of the various problems that actually occur in the area around the mine, including around the old oil wells as described, shows a situation that is "all wrong". On the one hand, oil mining business activities, including old oil wells, have the effect of increasing welfare for people who participate in illegal mining activities, but if we look at the various problems resulting from illegal drilling activities, this activity tends to have more negative impacts, both for the community, as well as for the environment around the mine. Moreover, if it is related to the level of community welfare, where people around the mine act more as workers and not as owners so that the value of profits from illegal oil sales do not go into the pockets of the residents but into the pockets of capital owners, most of whom do not come from the area around the mine. In other words, communities around the mine do not directly receive benefits from illegal drilling activities. On the contrary, they experience more negative impacts on safety, health, livelihoods, environmental damage, and even the threat of death due to potential accidents occurring at illegal drilling locations.

### **Policy Direction of Old Oil Well Mining for Community Welfare**

The mining of old oil wells without permits (illegal drilling) has become a protracted problem in various oil-producing areas, including the Musi Banyuasin Regency. Old oil wells that still have economic value should be utilized by the community, especially communities around the mine, to improve their welfare. In addition, the establishment of Minister of Energy and Mineral Resources Regulation Number 1 of 2008, which explicitly provides the community with the opportunity to participate in old oil well mining business activities, should provide a strong legal umbrella for the community to enjoy the results of natural resources in the form of petroleum in the area where he lives. However, it is very unfortunate that the community,

<sup>39</sup> Admin, "Kerugian Negara Dan Pemulihan Lingkungan Akibat Illegal Drilling Di Kabupaten MUBA," 2024.

<sup>40</sup> Fajri Ramadhoni, "Minyak Illegal Cemari Sungai Lubuk Buah Batanghari MUBA, Polis Dan DLH Telusuri Sumbernya," 2024.

<sup>41</sup> Lamsihar Silitonga, "Sumur Minyak Illegal Meledak Di Muba, Satu Orang Tewas," rri.co.id, 2023.

especially those in the mining area, consider the regulations that have been formed to be burdensome because the procedures that must be fulfilled, especially permits for mining old oil wells, are considered difficult and complicated by the community so that the community still underestimates the policy of reusing old wells<sup>42</sup>.

The formation of Minister of Energy and Mineral Resources Regulation Number 1 of 2008 manifests legal politics in the pro-community mining sector, which has been contained in the Law on Oil and Gas Number 22 of 2001 (Oil and Gas Law). The legal politics of regulating petroleum business through the Oil and Gas Law reflects the Indonesian people's philosophical views regarding using natural resources for the greatest prosperity of the people. As stated in the previous section, this can be seen from the principles of organizing Oil and Gas business activities in the Oil and Gas Law. Apart from that, the aim of organizing oil and natural gas business activities also reflects the legal politics of regulating oil and natural gas business to achieve the greatest prosperity for the people.

The legal political manifestation of mining law in Indonesia which aims to achieve the greatest prosperity for the people, is realized in the provisions of Article 9 paragraph (1) of the Oil and Gas Law in conjunction with the Job Creation Law, which provides opportunities for community participation in upstream and downstream oil and gas activities on an operational scale based on the financial and technical capabilities of each business entity as regulated in Article 5 points 1 and 2 of this law.

Juridically, the regulation through Article 9 paragraph (1) of the Oil and Gas Law has explicitly provided opportunities for the community, namely through small business cooperatives, to actively participate in upstream and downstream oil and gas business activities. However, it is very unfortunate that the provisions of Article 9 paragraph (1) of the Oil and Gas Law only stop at the regulatory stage, without any other more specific and definite regulations regarding how the public can be involved in the Upstream and Downstream Oil and Gas business activities which are currently, in turn, can provide benefits for the greatest prosperity of the people.

The concretization of the implementation of the provisions of Article 9 paragraph (1), which is a legal political embodiment of community participation in petroleum mining operations, has only appeared in Minister of Energy and Mineral Resources Regulation No. 1 of 2008, which provides opportunities for community participation through Regional Owned Enterprises (BUMD), Village Unit Cooperatives (KUD), or small businesses to exploit old oil wells as stated in the previous section. However, as stipulated in Article 9 paragraph (1) of the Oil and Gas Law, regulations regarding community participation in exploiting old oil wells in Minister of Energy and Mineral Resources Regulation No. 1 of 2008 also do not fully regulate how to implement community participation, including regulations that guarantee legal certainty for achieving community welfare goals, especially communities around mining areas, and is also not reflected in Minister of Energy and Mineral Resources Regulation No. 1 of 2008.

Minister of Energy and Mineral Resources Regulation No. 1 of 2008 only regulates the procedures for submitting applications for approval by BUMD or KUD to participate in oil exploitation in old oil wells, along with the requirements in the form of administrative documents and technical documents that must be submitted (Articles 3-5). Apart from that, the

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<sup>42</sup> Ananda Prima Yurista, "Politik Hukum Pertambangan Minyak Bumi Pada Sumur Tua Sebagai Strategi Menuju Ketahanan Energi Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 2 (2015): 311, <https://doi.org/10.33331/rechtsvinding.v4i2.26>.

Minister of Energy and Mineral Resources Regulation No. 1 of 2008 also regulates agreements to produce petroleum (Articles 6, 7 and 8), implementation of producing petroleum (Articles 9 and 10), and compensation for services producing petroleum (Article 11). However, such arrangements still do not provide benchmarks and guarantees of certainty for improving the welfare of the community, especially communities around the mining area, because there is not a single article in the Minister of Energy and Mineral Resources Regulation that can be used as a clear reference basis for efforts to improve the welfare of the community, especially communities around the mining area.

The absence of an article that explicitly states how to improve the community welfare, especially communities around the mine, in relation to petroleum mining in old oil wells, which is concretized in Minister of Energy and Mineral Resources Regulation No. 1 of 2008 ultimately resulted in the existence of legal incompleteness which resulted in the goal of improving the welfare of the community, especially communities around the mining area, not being achieved, and this means that the legal politics of regulating oil and gas mining aims to realize the greatest prosperity of the people, including the communities surrounding the mine who working on old oil wells has not been able to fulfil this goal.

The various issues described above add to the long list of problems related to the mining operation of old oil wells. Mining legal politics, which actually aims to achieve people's welfare, has not been realized because of the various problems above. In addition, problems related to implementing and accepting legal rules in society are still problematic, as explained in the previous section, making achieving welfare goals increasingly difficult. In fact, legal politics is a policy direction regarding what a country wants to achieve and functions as a guide to achieving these goals<sup>43</sup>.

The direction of the old oil well mining business policy, which is concretized in the Minister of Energy and Mineral Resources Regulation Number 1 of 2008, aims to improve the community's welfare. However, in order for its implementation to be effective, various efforts need to be made to improve the regulation so that it can effectively achieve the goal of increasing social welfare. Several strategies that can be implemented are as follows in determining the direction of mining exploitation policies for old oil wells in the future, as follows:

1. Completing the gaps in norms related to the technical aspects of achieving community welfare is one of the objectives of this regulation so that these norms can be used as a reference basis for implementing the provisions of this regulation. The basis of reference in question is, for example, related to the distribution of profits from mining activities of old oil wells by BUMD or KUD, which must be handed over to the community around the mine as a guarantee that the community will gain economic benefits from these mining activities. Minister of Energy and Mineral Resources Regulation No. 1 of 2008 contains the phrase, "Contractors are obliged to provide service fees to KUD or BUMD for all petroleum production from the results of producing petroleum" (article 11 paragraph (1)). However, in this regulation, there is no mention of the obligation of KUD or BUMD to provide a share of profits from

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<sup>43</sup> Uyan Wiryadi and Edy Dwi Martono, "Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Nasional," *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 6, no. 1 (2024): 1–10, <https://doi.org/10.37893/krisnalaw.v6i1.790>.

petroleum production to the community. Therefore, the norms governing this matter must be clarified

2. Including the simplification of licensing processes and procedures, especially for KUD as a forum for community participation in mining old oil wells. The provisions of Article 3 paragraphs (1), (2), (3), and (4) of the Minister of Energy and Mineral Resources Regulation Number 1 of 2008 relating to licensing procedures are considered burdensome by the public, therefore simplifying the licensing process needs to be considered. This is necessary to reduce the prevalence of illegal drilling in areas where there are old wells.
3. The authority to regulate old oil wells should be returned to the regions through the Regency government so that licensing procedures can be simpler, considering that although old oil wells are still producing, most of them have been abandoned by contractors considering the production costs and unequal results, in other words, for These oil well contractors no longer provide benefits. In contrast, old oil wells can be an alternative to improve the community's welfare. Apart from that, the Regional Government is considering a better understanding of the real condition in the region in accordance with the principle of regional autonomy.
4. Review possible changes to the design of old oil wells still in the contractor's mining area. Considering that old wells are no longer used by contractors, it would be better if they were returned to the state. The state could appoint regions to regulate the management and exploitation of these old oil wells so that it can be easier to coordinate with the community through KUD in an effort to attract community participation in the development of old oil wells.
5. Establish a policy instrument that provides assistance, guidance, and supervision on an ongoing basis, both technical and non-technical, so that mining activities carried out by the community can majorly contribute to improving community welfare as intended by regulation. Apart from that, it is also necessary for the government to provide training and guidance to the community in collaboration with contractors related to mining efforts that meet both production standards and occupational health and safety standards. This is based on a large amount of neglect of health and safety by miners, which can have fatal consequences for the community's safety.
6. Provide the training and guidance for the formation of KUDs and other forms of business entities that can become an official forum for community participation in the exploitation of old oil well mining. This is because the number of KUDs that have official permits to carry out mining operations for old oil wells in Indonesia is still very limited.

## CONCLUSION

The establishment of the Minister of Energy and Mineral Resources Regulation Number 1 of 2008 concerning Guidelines for the Business of Petroleum Mining in Old Wells is one of the efforts made by the government to reactivate old oil wells spread across several oil producing regions in Indonesia in order to overcome the decline in national crude oil production which has happened from year to year. However, the more fundamental aim of forming this Ministerial Regulation is to improve welfare by providing opportunities for the community through Village Unit Cooperatives (KUD) to participate in oil mining business activities in old wells. The formation of Minister of Energy and Mineral Resources Regulation Number 1 of 2008 is a form of legal, political addition in the pro-community mining sector, which has been included in the Law on Oil and Gas Number 22 of 2001 (Oil and Gas Law). The legal politics of regulating petroleum business through the Oil and Gas Law reflects the Indonesian people's philosophical views regarding the use of natural resources for the greatest prosperity of the people. However, the welfare goals expected with this policy cannot be achieved immediately. Based on the results of research in 3 sub-districts in MUBA Regency, some factors cause the ineffectiveness of this regulation. These factors are (1) the complexity of the permits that must be obtained and are requirements as stipulated in Article 3 paragraphs (1), (2), (3), and (4) of the Minister of Energy and Mineral Resources Regulation Number 1 of 2008, (2) KUD as The platform for the community to participate in the mining operation of old oil wells is not yet available, (3) the lack of attention of the parties involved in this right, the government and contractors to the difficulties faced by the community, especially related to permits and techniques for the exploitation of petroleum mining that meet standard. Based on these three factors, the goal of community welfare as what should be (*das sollen*) of this regulation, in reality (*das sein*) has not been achieved or has not been effective.

In the context of mining legal politics in Indonesia, although the existence of Minister of Energy and Mineral Resources Regulation Number 1 of 2008 has led to efforts to improve community welfare, its formulation still has incomplete norms. Opportunities for community participation in exploiting old oil well mining through KUD are not accompanied by complete arrangements regarding how to implement community participation, including arrangements that guarantee legal certainty for achieving community welfare goals, especially for communities around the mine. Based on this, the researcher recommends several strategies so that the policy direction for regulating the mining of old oil wells is more targeted and effective in improving community welfare. Those strategy are; (1) Completing the gaps of norms related to the technical attainment of community welfare, (2) Simplifying licensing processes and procedures, especially for KUD as a forum for community participation in the mining of old oil wells, (3) The authority to regulate old oil wells should be returned to the regions through Regency Government, so that the licensing procedures can be simpler, on the other hand the Regional Government is considered to understand better the real conditions in the region as in accordance with the principle of regional autonomy, (4) Reviewing the possibility of changing the design of old oil wells which are still in the mining contractor's area, (5) Forming the policy instruments which include providing legalistic licensing assistance, guidance and supervision on an ongoing basis both technical and non-technical as well as providing training and guidance to the community by the government in collaboration with contractors related to mining businesses that meet standards, and (6 ) Providing training and guidance for the

formation of KUDs and other forms of business entities that will become an official forum for community participation in the exploitation of old oil well mining.

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