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IMPLEMENTATION OF PCS COST RECOVERY VS GROSS SPLIT MODEL IN EARTH OIL AND GAS COOPERATION CONTRACTS IN INDONESIA AFTER GOVERNMENT REGULATION NUMBER 53/2017, IN EFFECT TO STATE REVENUE

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ABSTRACT
At the age of more than 130 years since the findings, oil and gas reserves have tended to decline relatively recently. Every year (2010-2020) there is always a gap between the performance of oil production and oil consumption in Indonesia where oil production cannot cover Indonesia's oil consumption needs, so the rest is forced to import from foreign oil producers. Realization of ready-to-sell (lifting) oil production in the third quarter of 2022 reached 610,100 barrels per day. This achievement is still below the 2022 state budget target of 703,000 barrels per day. The reason for the decline in oil and gas supply is a lack of exploration. The government's decision to change the Production Sharing Contract (PSC) Cost Recovery into PSC Gross Split in the oil and gas cooperation contract scheme is intended to increase the efficiency and effectiveness of production split between the contractor and the government carried out by SKK Migas as stated in the ESDM Minister Regulation No. 8/2017 as amended by Regulation No. 52/2018 and No. 20/2019 concerning PSC Gross Split. After having received a lot of criticism from experts and contractors finally through ESDM Ministerial Regulation No. 12/2020 the Indonesian government changed its policy by imposing forms of cooperation and flexibility in the form of contracts for gross split results or cost recovery. The aim of the research is to evaluate how the implementation of PSC Gross Split is compared with the implementation of PSC Cost Recovery in the oil and gas cooperation contract in Indonesia in effect to State Revenue. The research method used in this research is a descriptive method with the application of comparative analysis. While the research approach used is a qualitative approach. Data collection method uses interview, observation and documentation methods. The author concludes, that the government's policy through ESDM Ministerial Regulation No.12/2020 gives the impression that the government is ambivalent, namely that there is an element of uncertainty in the consistency of government policy in the field of calculating contractor income vs. government revenue which of course this uncertainty will have an impact on tax fairness even an increase in government revenue or revenue can be disrupted due to resistance from other foreign miners who are not given discretionary choices to use the PSC cost recovery method. By considering that the government's decision to use PSC Gross Split is more profitable for the government than PSC Cost Recovery, to reflect the government's commitment to realizing an increasingly condusive and progressive Ease of Doing Business Index in Indonesia in the eyes of investors, rather than the government returning to using the cost recovery model in oil and gas exploration, it would be much better if the government is consistent with implementing the Gross Split model but by providing an extra special incentive as a form of government support in water development considering that projects in deep sea waters carry a very high risk.

Keywords : Implementation, PSC Cost Recovery, Gross Split, Aspect of Taxation

INTRODUCTION

Since the first time Indonesian petroleum was discovered in the 1880s in Langkat, North Sumatra, various industrial phenomena have occurred. Starting from the achievement of lifting performance Had successful in 1977 and 1995 with oil production of around 1.5 million barrels per day (bpd), recently it was noted that the realization of ready-to-sell production (lifting) of crude oil during quarter III-2022 had not met the target, far from achievement of production performance in 1977/1995. At the age of more than 130 years since the findings, oil and gas reserves have tended to decline relatively recently. Realization of ready-to-sell (lifting) oil production in the third quarter of 2022 reached 610,100 barrels per day. This achievement is still below the 2022 state budget target of 703,000 barrels per day. Related to this condition, to boost oil production, the government needs to immediately realize strategic projects in the upstream section to increase production and attract investment as a breakthrough in accelerating the execution of strategic projects, bearing in mind that the performance of oil production is decreasing over time as shown in table 1.1 as below :

Table 1. Description of Oil Production Vs Consumption Performance in Indonesia 2010-2020

Production and Consumption oil in thousands of barrels per day											
Thousand barrels daily	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Production oil	1003	952	917	883	847	838	876	838	808	781	743
Consumption	1443	1579	1663	1657	1642	1552	1508	1610	1649	1626	1449
Ratio Produksi terhadap konsumsi minyak	69,5%	60,3%	55,1%	53,3%	51,6%	54,0%	58,1%	52,0%	49,0%	48,0%	51,3%

Source: bp Statistical Review of World Energy 2021. The data is processed by the author https://www.bp.com/content/dam/bp/businesssites/en/global/corporate/pdfs/energyeconomics/statistical-review/bp-stats-review-2021-full-report.pdf

Every year (2010-2020) there is always a gap between the performance of oil production and oil consumption in Indonesia where oil production cannot cover Indonesia's oil consumption needs, so the rest is forced to import from foreign oil producers. In 2020 alone, Indonesia is forced to import as much as 48.3% of Indonesia's total oil consumption. The reasons for not achieving the oil lifting target include operational problems, namely: i. In January 2022, for example, actual oil lifting was only 616,000 barrels per day. This achievement was not higher than expected, namely 660,000 barrels per day. The cause was a cable fault in the Banyu Urip Field, Bojonegoro, East Java. ii. After production increased in February 2022 (626,000 barrels per day) and April 2022 (627,000 barrels per day), a landslide occurred which caused the pipeline to be unsafe to operate at Exxon Mobil Cepu Limited (EMCL), Bojonegoro, so production fell again to 606,000 barrels per day. iii. Another operational disruption was a leak in the demolition hose in September

As a result, oil production is only 593,000 barrels per day. Until 2022 Indonesia is still a net oil and gas importer country, for example, Indonesia targets that in 2022 crude oil production will reach 703,000 barrels per day (bpd), while oil demand Indonesia's crude oil reached around 1.4 million bpd. That means to cover the difference in needs, Indonesia still has to import it. The low level of exploration activities is the main cause. To overcome the operational constraints mentioned above, SKK Migas conducted an audit of the maintenance performance of the cooperation contract contractors (KKKS). So far, the audit results show several problems, including i. there is a knowledge gap in equipment operation, ii. there is no prevention of the occurrence of the main failure mode in the maintenance strategy, and iii. no risk

assessment has been carried out. The results of the audit will be material for improving facility maintenance in the future.

The government has adopted several policies whose ultimate goal is to increase the productivity of oil and gas exploration and exploitation. Oil and gas exploration is the search for the location of hydrocarbon reserves such as oil and gas in the bowels of the earth. Furthermore, the location found will be the starting point of the drilling and processing of oil and gas. The Gross Split model, which is currently being planned to become the new PSC, replaces the cost recovery model. Starting from the most basic thing, namely the Production Sharing Contract (PSC), which is the arrangement used in the upstream sector for exploration and development of petroleum resources. Several oil producing countries, especially developing countries have adopted it as a contract for the exploration and development of their oil and gas resources. The Gross Split Model is intended to replace the cost recovery profit-sharing model that has been used by the oil and gas industry in Indonesia since 1965. The Ministry of ESDM officially changed the Production Sharing Contract (PSC) system to Gross Split with the issuance of ESDM Ministerial Regulation No. 8/2017, which became effective in January 2017. The result was based on the records of the ESDM Minister as of June 2019, there were 42 oil and gas blocks that have signed the gross split model. Based on these facts, of course we can hope that this new model can continue to increase the enthusiasm of the investment climate, so that oil and gas production can continue to grow and develop in a sustainable manner.

Regarding cost efficiency, while still using the PSC Model, cost recovery costs were indeed recorded as capable of exceeding government revenues in the 2015-2016 period when world oil prices plummeted. In 2017 when oil prices recovered, government revenues were indeed able to outperform cost recovery costs, but the government could not always depend on fluctuations in global oil prices. Therefore, the gross split model that the government claims is capable of streamlining production costs.

The government expects additional state revenue, both from the sale of oil and gas itself and from income tax and VAT revenue from the sale of oil and gas. With the issuance of regulations No. 8/2017 which was amended by the ESDM Ministerial Regulation No. 52/2017, will oil and gas production increase? This is what the government is betting on because the government's decision to use the Gross Split model is considered more profitable for the government than the Cost Recovery model in the PSC Model (Rulandari et al., 2018). Certainly, it will be part of the government's obligation through SKK Migas to provide the best public service to contractors in the oil and gas industry considering that this contract will last for the next few years because businesses in the oil and gas industry cannot produce immediately, it needs a long process starting from new exploration and exploitation. towards production unless the contractor who has already produced wants to change the contract from the Cost Recovery model to the Gross Split model.

LITERATURE REVIEW

1. Production Sharing Contract (PSC) is a distinct petroleum arrangement that has been adopted by many developing countries in the exploration and production of their petroleum resources as it guarantees the sovereign right of the state over these resources and meets their economic desires by providing capital and technology for their production. In this arrangement, the Government assumes minimal or no risk at all in the production of its petroleum resources (Ogunleye, 2015).
2. Cost Recovery according to Petrowiki[1]: Under a typical production-sharing agreement, the contractor is responsible for the field development and all exploration and development expenses. In return, the contractor recovers costs (investments and operating expenses) out of the gross production stream.

The contractor normally receives payments in oil production and is exposed to both technical and market risks. Furthermore, according to (Sunarya & Taufik, 2017), in the cost recovery model, the government participates in bearing the burden of operational costs. Therefore, all assets obtained using cost recovery funds become state assets. The amount of this cost recovery determines the amount of profit shared between the Government and the Oil and Gas Contractor, the higher the cost of production (cost recovery) the lower the profit shared, and conversely the lower the cost of production (cost recovery) the higher the profit shared between the Government and Oil and gas contractor. Profit (equity to be split) = production income (gross production) - production costs (cost recovery).

3. Kasman Arifin ZA and Iqbal Maulana Arifin (2014) in the Management Application Journal (JAM) Vol 12 No 4, 2014 stated that "the upstream oil and gas industry in Indonesia knows the term Cost Recovery which means revenue (received by oil companies) for cover capital expenses and operating costs in a given year plus (remaining) unrecovered costs from the previous year. ….Oil companies receive wages (fees), which include cost recovery and contractor share of profit oil. In some PSCs, capital costs are depreciated and the depreciation amount can be returned or taken from revenue. Revenue after minus recoverable costs is called profit oil which must be shared between the government and the contractor. The company gets paid (fee) as compensation for working on oil and gas, namely from cost recovery and split of oil profits, while the government will receive the remainder called "government take" [2].
4. (Sunarya & Taufik, 2017), citing the definition according to ESDM Ministerial Regulation no. 08/2017 concerning Gross Split Production Sharing Contracts, namely a production sharing contract in upstream oil and gas business activities based on the principle of gross production without a mechanism for refunding operating costs. In the Gross Split model, the country does not participate in the burden of operating costs. Therefore (should) all assets obtained from oil and gas operations belong to the contractor and not the government. development, this profit sharing can be adjusted according to the economic conditions of the project, where the economic conditions are defined by variable components and progressive components.

   However, unique in the Gross Split PSC model, the assets used for Oil and Gas operations are stated as State assets (Articles 21 and 22 of ESDM Minister Regulation 08/2017). The government sets a base split. ESDM Minister Regulation No. 08/2018 stipulates that the base split of oil production sharing contracts is 57% of the government and 43% of the contractor's

Share, the initial share of gas is determined by 52% of the government's share and 48% of the contractor's share. In its information as completely as possible about the existence of oil and gas and other energy somewhere. Exploitation activities are part of upstream oil and gas activities aimed at removing crude oil from the reservoir inside the earth to the surface. The overall exploitation of oil and gas mining includes the main and supporting activities namely drilling supported by offshore platforms, well completion, construction of crude oil transportation facilities produced, storage and processing in the field including natural gas processing (natural gas) which is converted to liquid, known as liquid natural gas (LNG)".

A PSC is a contractual arrangement made between an oil company (contractor), which is one and a state designated enterprise (state party) authorizing the contractor to conduct petroleum exploration and exploitation within a certain area (contract area) in accordance with the rules of the agreement (Taverne, 1996). It is considered as the oldest form of risk contract with a dual character; the first is that it represents the petroleum right since it authorizes the contractor to undertake petroleum exploration and exploitation within the contract area (Taverne, 1996). Secondly, it embodies a contractual form of co-operation between the contractor and the state party (Taverne, 1996). The PSC has been described as a form of taxation designed to satisfy the political objectives for state participation (Daniel, P. 1995). PSC

often contains some terms that offer special advantages to the host country such as production bonuses, scholarships, training, grants to government authorities or educational institutions, domestic market obligations and public participation options (Pongsiri, 2004).

RESEARCH METHOD

This research will focus on Implementation of PCS Gross Split Vs Cost Recovery in Earth Oil and Gas Cooperation Contracts in Indonesia After Government Regulation No. 53/2017 concerning Tax Treatment of Upstream Oil and Gas Business Activities with Gross Split Production Sharing Contracts, by taking into account aspects of taxation in Indonesia in effect to State Revenue. This research is important to be carried out on the grounds that the government's policy through ESDM Ministerial Regulation No.12/2020 as rectification of ESDM Ministerial Regulation No. 08/2017 which has been amended by ESDM Ministerial Regulation No. 52/2017 and No. 20/2019 concerning PSC Gross Split, gives the impression that the government is ambivalent, namely that there is an element of uncertainty in the consistency of government policy in the field of calculating contractor income vs. government revenue which of course this uncertainty will have an impact on tax fairness even an increase in government revenue or revenue can be disrupted due to resistance from other oil mining contractors with the gross split model) whom are not given discretionary choices to use the PSC Cost recovery method. After having received a lot of criticism from experts and contractors, finally through ESDM Ministerial Regulation No. 12/2020, the Indonesian government changed its policy by imposing forms of cooperation and flexibility in the form of contracts for gross split results or cost recovery. So that this might create uncertainty for the KKKS and also harm the State, because since the new regulation was issued until now no major foreign investors (such as Chevron) have been interested in PSC under the Gross Split system to work on oil and gas fields in deep sea waters, which of course has an impact on the decline in state revenues because oil and gas production has fallen, and tax revenues have also been affected accordingly.

The data analysis method used in this research is a descriptive analysis method by comparative research. While the research approach used is a qualitative approach where the data obtained are in the form of in-depth interviews, observations, literature and documentation studies. According to (Cresswell, 2014) "an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with word, reporting detailed views of information and conducted in a natural setting." Qualitative approach applies the naturalistic paradigm, where the research is carried out in natural settings. In this qualitative research method, the research method is used to examine the condition of natural objects, where the key instrument is a key, data analysis is inductive, and the results of qualitative research emphasize the meaning of the researcher rather than generalization. The research dimension is case study, in the sense of conducting a study of a social reality. In this study, researchers applied a case study that was examined from various aspects as well as a strategy to obtain the relevant data. Data collection techniques use In depth, opened ended interviews, by conducting in-depth interviews with informants (Executive oil and gas companies, Oil and Gas Observers, Tax Observers from Pricewaterhouse Coopers, and Oil and Gas Companies Association). And to strengthen the results of the analysis and discussion the author also uses literature studies in the form of statistics on oil and gas statistics, scientific publications in journals, papers and articles.

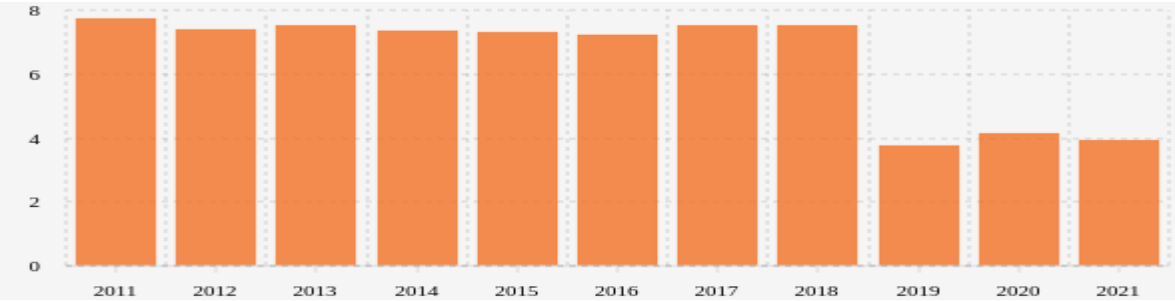
RESULTS AND DISCUSSION

ESDM Minister Arifin Tasrif said that Indonesia's oil reserves are available for 9.5 years and gas reserves for 19.9 years. The oil and gas reserves are based on reserve data for 2020 and it is assumed that no new oil and gas reserves have been discovered ³, meanwhile the Deputy Minister of Energy and Mineral

Resources stated that oil and gas development in the deep sea requires collaboration between the government and contractors to achieve on-stream (upstream) targets. Government support for deep water development is formulated in policies to provide incentives for deep sea projects.[4]

Table 2- Indonesian Oil Reserves (2011-2021)

Billion Barrel



https://databoks.katadata.co.id/tags/cadangan-minyak

With these dwindling oil reserves, the implementation of the energy transition to renewable energy in Indonesia needs to be accelerated or it is necessary to find new sources of oil wells in deep sea waters in several places that contain large oil and gas sources. However, Article 33 paragraph (3) of the 1945 Constitution which states "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people" is used as a constitutional philosophical basis in the utilization of natural wealth in Indonesia's diverse land. kinds, such as coal, petroleum, gheothermal, etc. All of this natural wealth belongs to the state and is used for the prosperity of the people without being allowed to be privately owned. However, investors can still invest in the oil and gas sector on the condition that the cooperation contract made must partner with the government qq PT. Pertamina. In order to create a just energy in Indonesia, the government applies the gross split model to replace the Cost Recovery model, for the calculation of profit sharing contracts for the management of Oil and Gas (Oil and Gas) working areas in Indonesia. The gross split model is a model in which the calculation of profit sharing for the management of oil and gas working areas between the government and oil and gas contractors is calculated in advance. The gross split model is seen as more profitable because it no longer uses the First Tranche Petroleum (FTP) mechanism.

ESDM Ministerial Regulation No. 08/2017 concerning Gross Split Production Sharing Contracts has undergone three amendments as below:

1. The first change is through ESDM Ministerial Regulation No. 52/2017 in which changes to the terms of the gross split profit sharing contract are made, namely the parameters and split corrections of 10 variable components and 3 progressive components. In addition, additional profit sharing for the commercialization of the field depends on the economics of the field.
2. The second change is through ESDM Ministerial Regulation No. 20/2019 where improvements to the TKDN variable component and progressive components regarding cumulative production are made. Several large oil and gas contractors, such as Chevron and Shell, apparently felt that the first and second changes were not sufficient to handle oil and gas projects in deep sea waters on the grounds that the risks to be borne for new fields were greater than for existing fields. Looking at the development of oil and gas investment which is getting worse with the departure of Chevron from the Indonesia Deepwater Development (IDD) project and Shell from the Shell project. Chevron asked that it continue to use a cost recovery production sharing contract instead of a gross split for the extension of the IDD Phase I contract for the Ganal and Rapak Blocks, especially in the Gendola-Gehem IDD Phase II development. However, at that time, the Ministry of Energy and Mineral Resources still asked Chevron to use Gross Split, as a result the compromise was deadlocked until finally Chevron in July intended to leave the jumbo gas project in the deep sea.[5]

3. The third change, through ESDM Ministerial Regulation No.12/2020, the Indonesian government changed its policy by imposing forms of cooperation and flexibility in the form of gross split profit sharing contracts or cost recovery [6] .

Even though the Gross Split Production Sharing Contract has undergone three changes, however, the process of change cannot instantly result in a significant increase in lifting or oil and gas production. The decline in oil and gas production in the last decade was caused by natural.

Processes such as the amount and time needed to work on new fields and develop existing Working Areas (WK) to boost lifting or ready-to-sell production of oil and natural gas (oil and gas). Meanwhile, even though the second amendment to the Gross Split Production Sharing Contract has been made, oil and gas contractors for deep sea waters are still reluctant to work on their fields because the level of risk is very high and the exploration costs are expensive.The background to the decision to choose between using the Cost Recovery or Gross Split method is illustrated by the difference between PSC Cost Recovery and Gross Split Oil and Gas. The Gross Split Production Sharing Contract scheme calculates revenue sharing based on oil and gas gross production results. The following figure 1 (in Indonesia) below shows the difference between PSC and Oil and Gas Gross Split:

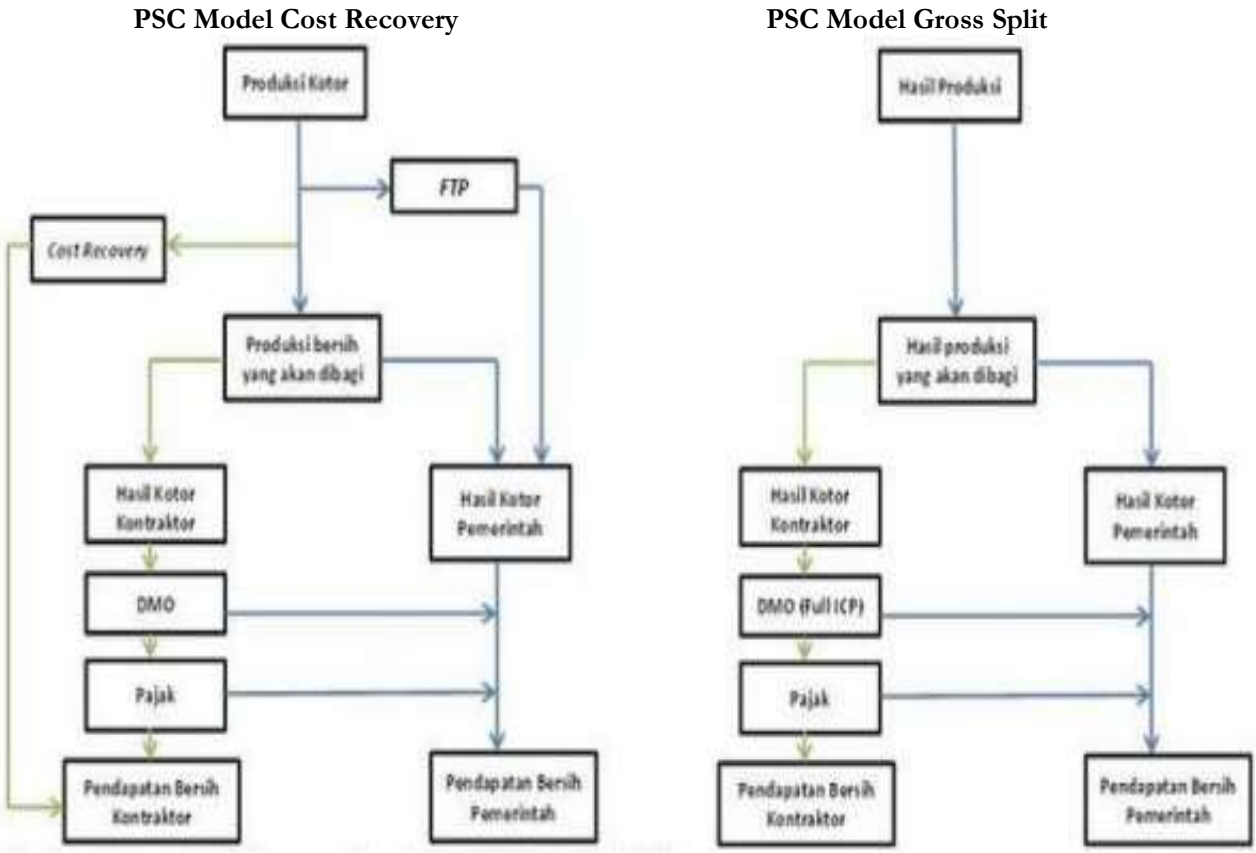


Figure 1 The Differenve Between PSC and Gross Split Migas
Source : Ministry of Energy and Mineral Resources 2017

Bearing in mind the input and evaluation from various parties and contractors, finally the government was urged to revise the gross split scheme. By the beginning of September 2017, ESDM Ministerial Regulation No. 52/2017 was issued by the government containing the revision of the Gross Split Profit Sharing scheme. The base split has been set out with details to be implemented for petroleum 57% for the state and 43% for the contractor, for gas 52% for the state and 48% for the contractor. While the split variables include the status of the working area, the location of the field, the depth of the reservoir, the availability of infrastructure and CO2 content.

The calculation of governments and contractors take based on the different PSC scheme and data as shown below:

Table 3. Comparation of The Split of One Barrel Oil in Standard PSC

Cumulative Gross Revenue		
Contractor Share	46,65	**Government Share**
2.69	FTP 20%	
	37.32	
23.00	**Cost Recovery**	
	14,32	Profit Oil
4.13	Profit Oil Split 29,71	10.19
7.21	DMO 25%	7.21
1.80	DMO Fee	-1,80
1.23	Effective Tax 40%	-1.23
25.65	Division of Gross revenue	21.00
2.63	Division of Cash Flow	21.00
11.19	**Take**	**88.81**
63.93	**Lifting Entitlement**	**36.07**

Source: Ariel Bergmann and Mohamad Jeffry Giranza (2017)

Table 4. Comparation of The Split of One Barrel Oil in Gross Split PSC

Cumulative Gross Revenue		
Contractor Share	46,65	**Government Share**
25.19	Profit Oil Split 54/46	21.46
	25.19	
20.00	Deductions	
	5.19	Taxable Income
-2.08	Effective Tax 40%	2.08
0.00	Other Tax	0.00
25.19	Division of Gross revenue	23.54
3.11	Division of Cash Flow	23.54
11.69	**Take**	**88.31**
54.00	**Lifting Entitlement**	**46.00**

Source: (Bergmann & Giranza, 2017) from the report reference "Wood Mackenzie Indonesia's Gross Split PSC: Improved efficiency at risk of lower investment?

In the PSC system that applies cost recovery, the term First Tranch Petroleum (FTP) is known, namely the first withdrawal once the oil and gas have been successfully produced. This is a guarantee of revenue for the state and the contractors before refunding cost recovery. In the next process, the remainder is distributed to the state and the contractors according to their respective portions, for example an oil production sharing agreement of 15% for the contractors and 85% for the state. Calculation of the Domestic Market Obligation (DMO), namely the contractor's obligation to supply domestic demand for oil and gas in a certain amount is carried out prior to the imposition of tax on the contractor's part.

The FTP received by the contractor is an object of income tax. Income tax on FTP received by the contractor is deferred until the time of calculation. The basis for the imposition of income tax on FTP received by the contractor at the time of calculation is the calculated FTP obtained from the accumulation of FTP received by the Contractor up to the current month minus: i. FTP accumulation is calculated beforehand ii. The remaining operating costs that have not been returned up to the current month. In the gross split system, there is a basic split, i.e. 43% for the contractors and 57% for the state. In Gross Split there is no more cost recovery, FTP and DMO. As for gas, 52% for the state and 48% for the contractors. The basic split is then adjusted according to several variables, such as field status, location, reservoir depth and type, CO2 and H2S content, domestic content level (TKDN), and production stages. So, the contractor's net revenue will still be reduced by its operational costs. Reimbursement of costs is taken from the contractor's own part, no longer being reimbursed first and then the rest is divided.

In relation to TKDN, the realization of TKDN upstream oil and gas reached 63.02% with a total procurement value of US$3.128 million, consisting of a service procurement value of US$2271 million and procurement of goods reaching US$857 million. The increase in TKDN realization is very important because the estimated domestic cost or expenditure contribution for each 1% increase in TKDN percentage is US$45.20 million. "Each 1% increase in TKDN is worth US$45.20 million. This is a large number and therefore it is hoped that the percentage will continue to increase," 7

Through the gross split model, the state will receive oil and gas revenue sharing and taxes from exploration and exploitation activities so that state revenue becomes more certain. The increase in mining investment activity cannot be separated from the change in the gross split profit sharing fiscal system implemented by the Government to replace the previous fiscal regime, namely cost recovery. With the gross split model, operating costs are fully the responsibility of the contractor. Unlike production sharing contracts with the cost recovery model, where operating costs (costs) are ultimately borne by the government. Therefore, contractors will be encouraged to be more efficient because operating costs are the contractor's responsibility. The more efficient the contractor, the better the profit. Then, since 2015 cost recovery has been greater than state oil and gas revenues while in the gross split state oil and gas revenues are more certain. Lastly, cost recovery approval is complicated and lengthy, while in gross split, the bureaucracy is guaranteed to be more efficient and simple.

The gross split calculation will be different for each work area (WK). The exact calculation is in the base split percentage. For the oil base split, 57% belongs to the state and 43% belongs to the KKKS. Meanwhile for natural gas, the state's share is 52% and PSC Contractors' share is 48%. In addition to the base split percentage, it is possible for both the state and the contractor to get a larger share by adding the calculation of 10 variable components (CA status, WK location-onshore, offshore, or remote areas, reservoir depth, supporting infrastructure, level of carbon dioxide content, level of sulfur content, gravity specification, local component, and production phase) and two other progressive components (oil-gas price and cumulative production). This makes the gross split model attractive for investors to manage oil and gas CAs, including unconventional work areas that have bigger challenges. Determination of additional splits for KKKS by looking at several split and progressive split variables. For example, KKKS will get an additional split if the CA has a high degree of difficulty. PSC Contractors will also receive an additional split if the percentage of use of local components is greater. (Source: bulletin-skk-migas-(bumi)-edition-juni-2019.pdf p. 8/9)

Latest Developments Concerning Gross Split Production Sharing Contracts After ESDM Ministerial Eegulation No. 08/2017

Japan Petroleum Exploration Senior Manager, Koichi Nakagami explained, the exploration process in Indonesia is still not optimal. This is because work in the oil and gas exploration sector has a fairly high occupational risk. …. this exploration work has a small chance of success, Koichi said, when an exploration worker proposes several drilling locations, the probability that these locations actually store oil and gas is only 30 percent. [8]

It is certain that the implementation of PSC using the Cost Recovery method with ESDM Ministerial Regulation No.12/2020 will have an unfavorable effect on state revenues, both in terms of oil and gas production sharing revenue (PSC) and tax revenues:

a. From the oil and gas production sharing revenue (PSC) side, the profit split is carried out after deducting the First Tranch Petroleum (FTP) and the recoverable cost of the contractor concerned, compared to the gross split production sharing contract which does not take into account the FTP and the recoverable cost. The application of the PSC Model Cost recovery is detrimental to the government's view of the previous experience and regulation that the receipt of the contractor

(Contractor take) is larger than the government revenue (Government take). In this case, the government's bargaining position appears to be weak because in case of a delay (should this actually happen) the two large foreign oil and gas contractors such as Chevron and Shell in exploring new oil and gas fields in the waters in this case will have a negative impact on the adequacy of production or supply oil and gas for domestic and export needs, while Indonesia itself does not have the capital and equipment as well as skilled workers to take over oil and gas exploration and exploitation independently for projects in deep sea waters. Meanwhile, the contractors/investors need an investment incentive so that they are motivated to get involved in projects to open offshore oil and gas fields in deep sea waters which are very high risk.

b. From the tax revenue perspective, if there is no modification or adjustment to the profit split ratio calculation component using the PSC Model Cost recovery application, then the application of the PSC Model Cost recovery is detrimental to the government because government revenue as a whole is smaller than the receipt of the contractor benefit. There must be in-depth consideration and negotiation so that there is a win win solution in the development of deep sea offshore oil and gas projects to create a sustainability project in order to support the government's extensification program to increase oil and gas reserves as well as procurement of oil and gas exploitation and lifting for domestic needs and oil and gas export revenues. Therefore, the Indonesian government needs to take strategic steps to target the two interests above, namely between the interests of achieving the increasing oil and gas lifting target to meet domestic needs and oil and gas exports with the interest of increasing government revenue or revenue to improve the water budget function.

The government policy through ESDM Ministerial Regulation No.12/2020 gives the impression that the government is ambivalent, namely that there is an element of uncertainty in the consistency of government policies in the field of calculating contractor revenue vs government revenue, on the one hand recognizing the use of the gross profit split model in dividing oil and gas itself. Certainly this can affect the maintenance of the Ease of Doing Business Index in Indonesia which must show progressive achievements.

However, the principle of legal certainty is very important to avoid the occurrence of disputes in perceptions between state apparatus and miners/taxpayers in the application of profit sharing calculations from the two models above which you wish to choose which will ultimately affect differences in tax treatment. According to Adam Smith, certainty is more important than justice. So a system that has been designed according to the principle of justice, without certainty can be unfair or not always fair. Mansury (1996:5-6) argues, that certainty should guarantee the achievement of justice in tax collection, namely certainty regarding tax subjects, tax objects, tax rates and tax procedures, must guarantee the justice to be achieved through certain tax treatments.

CONCLUSION

1. With the implementation of the Gross Split scheme in oil and gas exploration, economics mathematical calculations on paper show the PSC Cost recovery model provides smaller state revenue to the government (*Government take*) than the receipt of the contractor (*Contractor take*). With using the Gross Split model, state control is not lost due to distribution of profit sharing is determined by the state, and also determination of the working area, production capacity, and the oil and gas commercial aspects remain determined by the country. State revenue definitely becomes more certain and production is divided at the delivery point.

2. From the side of the practical aspects of the approval process and business decision making, just need the minimum involvement of government agencies in implementing upstream oil and gas activities plus investment certainty even though oil prices rise or fall by using a profit sharing contract scheme with the Gross Split scheme. If the oil price is less attractive, the contractor can get an additional split up to a maximum of 7.5%. With the example of the current oil price of around US $ 50 per barrel, then with a profit sharing contract scheme with the gross split model, the contractor will get an additional 5% split. With a high Domestic Content (TKDN), an additional split will be given to the Gross Split scheme. Additional split is 2% if the TKDN reaches 30% to less than 50%. In the mean time If a TKDN of 50% to less than 70% will get an additional split of 3%. While if the contractor manages to reach TKDN by 70% or above, it will be able to add an additional split of 4%. This will be a trigger for contractors to use domestic products by aiming for the benefits of an additional split.
3. It is obviously clear that changes in government policy toward the PSC Cost recovery model in oil and gas exploration will be detrimental to the government. Turning back to the PSC the cost recovery model is not a good choice because investors might not like regulatory instability. The government's decision to use the Gross Split model is considered more profitable for the government than the Cost Recovery model in the PSC scheme, due to the fact that the Gross Split scheme could reduce the burden on the state budget (APBN) because operating costs are no longer charged to the state, but to contractors.
4. Bearing in mind that it took a long time since the discovery of oil and gas reserves for commercialization (first production) that might reach 15 years which resulted in a decline in oil and gas production (Rulandari, 2017), therefore, in the oil and gas cooperation contract in Indonesia with the application of the gross split scheme, it is recommended that the government provide incentives to oil and gas business entities (BU) to accelerate the development (Plan of Development) of oil and gas fields in order to realize the oil production target of 1 million barrels per day (BOPD) in 2030. [9]
5. To reflect the government's commitment to realizing an increasingly condusive and progressive Ease of Doing Business Index in Indonesia in the eyes of investors, rather than the government returning to using the cost recovery model in oil and gas exploration, it would be much better if the government is consistent with implementing the Gross Split model but by providing an extra special incentive as a form of government support in water development considering that projects in deep sea waters carry a very high risk.

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