

## **The Essence of the Public Interest Principle in Petroleum Mining According to the Constitution**

I Gede Janitra Rad Winatha<sup>1</sup>

Meliana Putri<sup>2</sup>

### **Abstract**

Indonesia is a country that has abundant natural resources, but Indonesia faces challenges in regulating petroleum mining so that it can always improve people's welfare. Therefore, this research will focus on examining the actual role of the state in implementing the principle of public interest in the field of petroleum mining as mandated by the 1945 Constitution of the Republic of Indonesia. This principle of public interest is intended to ensure that petroleum resources are considered strategic. by the state can be managed for the greatest prosperity of the people so that it is in line with the objectives of the constitution, namely justice, expediency and legal certainty. To achieve this, the state must be able to provide parameters regarding the extent to which the regulation concerns the public interest so that it can be used as a guide in interpreting state control over natural resources and ensuring their utilization for the greatest prosperity of the people. stated in the law. constitution. This principle has actually been tested and enforced through various legal frameworks and Constitutional Court decisions, thereby further emphasizing the role of the state in prioritizing community welfare in petroleum mining activities.

**Keywords: Petroleum, Indonesian Constitution, Public Interest**

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<sup>1</sup> Reasercher, Udayana University, Indonesia, email: [gedejanitra851@gmail.com](mailto:gedejanitra851@gmail.com)

<sup>2</sup> Reasercher, Southwest Petroleum University, China, email: [melianapr01@gmail.com](mailto:melianapr01@gmail.com)

## I. Introduction

Indonesia was blessed by God Almighty as a country that has extraordinary natural wealth, including natural wealth in the form of petroleum. However, in regulatory terms, it turns out that Indonesia is not yet fully able to manage these natural resources, this is shown by the fact that oil consumption in Indonesia is twice its production, this is important to regulate comprehensively in order to improve people's welfare. According to The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Indonesia is a state with legal authority. Accordingly, the government's responsibility under the law to govern the nation is to always give priority to the values found in the legislation, which have three main goals: justice (*gerechtigheit*), usefulness (*zweckmaerten*), and legal certainty (*rechtssicherheit*), as stated by Gustav Radburch. (Santoso, 2021) This justice is meant to ensure that the law can give society a sense of justice, in this case in Indonesia to the fullest extent of its potential; usefulness indicates that the law is not constructed for the benefit of a select few but rather for a value that positively affects the people; and finally, legal certainty is the goal of the law to guarantee that all actions are genuinely in accordance with the fundamental idea of the action and do not give rise to various interpretations that may mislead the people.

Gustav Radburch's definition of the purpose of law in Indonesia is actually included in a fundamental document known as the 1945 Constitution of the Republic of Indonesia. Establishing fundamental standards in a nation serves as a guide for all governmental agencies, the general public, and interested parties. As long as a state jurisdiction acts within the bounds of reasonable legal interests, it can benefit all parties involved and ensure legal clarity, which in turn ensures state conduciveness. The 1945 Constitution of the Republic of Indonesia is the primary law that governs all facets of state life in Indonesia, including the utilization of space within the planet for oil mining. In Indonesia, using space beneath the earth for oil mining is considered the use of strategic natural resources. Because petroleum is a strategic resource, its use is designed to be governed by the government and serves the interests of the greatest number of people. (Ananda Prima Yurista, 2015)

From a legal standpoint, the idea of using subterranean space for petroleum mining can be seen as a way to generate significant income for the state, which can then be used to support economic development and public welfare. A further emphasis on this can be found in Article 33, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the Indonesian economy must be set up as a cooperative enterprise using the kinship concept. This

clause makes it necessary for Indonesian law to exist in society in order to offer an integrated framework for managing the nation's economy. The management of the nation's economy through the use of this space must also consider that the Territory of the Unitary State of the Republic of Indonesia is a gift from God Almighty to the Indonesian people, who must be grateful for it, protect it, and use it sustainably for the greatest good of the people, as required by Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.."

The *a quo* article's clauses demonstrate that Indonesia's founders intended for all uses of space, including the country's natural resources, to be directed for the welfare of its people. This demonstrates that Indonesia is a welfare state, whereby the government is required to advance the general welfare and provide basic needs of the public. (Wibowo, 2018) The welfare state is defined as a state that not only meets the needs of its citizens, but also ensures that the community is able to meet its own needs and eventually grow and progress on its own, thereby contributing to the nation's progress. This is the fundamental tenet of the law, which serves as the basis for regulations pertaining to petroleum mining that prioritize the public interest while also protecting residents' welfare.

When deciding whether government laws are constitutional, especially those pertaining to petroleum mining, one of the main guiding principles is the public interest. For this reason, it is critical that we comprehend the criteria by which the word "public interest" in the context of the constitution in order to evaluate the constitutionality of using subterranean space for the purpose of petroleum mining. In order to ensure that government legal actions employing Indonesia's territorial area are constitutional and consistently serve the public interest for the prosperity of the populace, it is imperative that this be given careful consideration. The constitutionality of the use of underground space for petroleum mining has also been tested several times at the Constitutional Court, one of the decisions that is very influential in petroleum mining activities is Constitutional Court Decision No. 36/PUU-X/2012, in addition, there are also other tests conducted on Law Number 22 of 2001 concerning Oil and Gas (State Gazette of the Republic Indonesia 2001 Number 136, Additional State Gazette of the Republic Indonesia Number 4152) that all actions in petroleum mining are truly aimed at the public interest for the welfare of the people. Thus, the title of this article, "The Essence of the Public Interest Principle in Petroleum Mining According to the Constitution," refers to an examination

of how the community, legislators, and government can develop stronger relationships through a deeper understanding of what it means to be in the public interest when it comes to the use of earthly space for petroleum mining. This will enable the principle of *Checks and Balances* to be put into practice, ensuring that the use of underground space for petroleum mining is always in the public interest for the welfare of the people as required by the constitution.

## **II. Research Problems and Research Methods**

This paper will examine two problems: first, what are the criteria for valuing the public interest in the use of Earth's space for petroleum mining; and second, are the regulations governing petroleum mining compliant with the Republic of Indonesia's 1945 Constitution? In order to understand the boundaries of public interest in the use of space within the earth and the constitutional value of petroleum mining, a normative legal research method that focuses on literature study is used to analyze this problem. This method looks at different legal principles, legal systematics, legal comparisons, and other pertinent theories.

This research uses primary legal materials sourced from applicable laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law Number 22 of 2001 concerning Oil and Gas (State Gazette of the Republic Indonesia 2001 Number 136, Additional State Gazette of the Republic Indonesia Number 4152), Law Number 2 of 2012 concerning Land Acquisition for Public Use (State Gazette of Republic Indonesia 2012 Number 22, Additional State Gazette of the Republic Indonesia Number 5280), both of which have been amended by Law Number 6 of 2023 concerning Determination of Government Regulations in Lieu of Laws -Law Number 2 of 2022 concerning Job Creation becomes Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Additional State Gazette of the Republic of Indonesia Number 6856), and other statutory regulations and relevant court decisions. In addition, secondary legal materials are used which come from legal journals, studies and books which discuss theories related to the state, constitution, spatial planning law, welfare state and laws relating to petroleum mining.

## **III. Analysis and discussion**

### **Parameters for the Meaning of Public Interest According to Indonesian Law**

A legal concept known as the "public interest" serves as the foundation for state administrative law and constitutional law research. The idea of utilitarianism, developed by John Stuart Mill and first proposed by Jeremy Bentham, essentially emphasizes that justice is

society's ultimate goal, which is to maximize happiness for the largest number of individuals (*the greatest happiness of the greatest number*). This is the foundation upon which thinking about the public interest is based. (Limbong, 2012) The idea of justice eventually highlights the necessity of the state's presence in order to consider the interests of the greatest number of people. The state must therefore be viewed as a whole and comprehensive entity in this situation, even when the general meaning in the context of the state can be construed as comprehensive or does not particularly relate to anything in particular. Jan Gijssel and J.J.H. Bruggink define "public interest" as an imprecise term that defies precise definition or explanation (*vage begrip*). Consequently, there isn't a definition in statutory laws that may give a precise or in-depth explanation of the characteristics of these interests. However, Pound's perspective holds that the public interest attempts to protect societal interests and encompasses the interests of the state as a legal body. As for the public interest, John Salindeho emphasized that it takes into account a variety of social, political, psychological, and national security aspects based on the principles of national development and archipelagic insight. It also involves the interests of the nation and state as well as the common interests of the people. (Limbong, 2012)

According to Michael G. Kitay quoted by Oloan Sitorus, the doctrine of public interests in various countries is divided into two ways.

- First, by using general guidelines where the public interest is not explicitly stated in the regulations, but is determined casuistically by the court.
- Second, through list provisions where activities that are in the public interest are clearly defined in a list.

The wide range of opinions regarding what constitutes the public interest demonstrates how ambiguous and contentious the term is in many contexts. Nevertheless, the government has made an effort to offer a comprehension that serves as a point of reference when elucidating the definition of the public interest. The two methods put out by Michael G. Kitay are employed in Indonesia to define the public interest in positive law.

The definition of public interest, specifically with regard to the use of Indonesian territory, can be found in Law (UU) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 number 104, Supplement to State Gazette Number 2043) (hereinafter referred to as UUPA), which implicitly regulates the public interest. This definition is found in Article 18, which states that "*Land*

*rights can be revoked, for the public interest, including the interests of the nation and state as well as the common interests of the people, by granting appropriate compensation and in the manner directed by law".* The provisions in this UUPA are often used in regulating land rights, as well as a basis for thinking in determining what the true essence of public interest is in terms of land use for petroleum mining activities.

The regulation of the essence of public interest in terms of land acquisition for the public interest related to petroleum mining can also be found in Law Number 2 of 2012 concerning Land Acquisition for Public Interest (State Sheet of 2012 Number 22, Supplement to State Sheet Number 5280) (hereinafter referred to as the Land Acquisition Law for Public Interest) as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (State Sheet of the Republic of Indonesia of 2023 Number 41, Supplement to State Sheet of the Republic of Indonesia Number 6856) (hereinafter referred to as the Job Creation Law). Article 10 of the Law on Land Acquisition for the Public Interest states that the meaning of land utilization for the public interest is for gas, oil, and geothermal infrastructure which is carried out by paying attention to and being guided by the Regional Spatial Plan, National or Regional Development Plan, Strategic Plan, and Work Plan of each Agency that requires land.

In the process of acquiring land for public purposes, there are several legal principles that must be taken into account, according to Boedi Harsono:

- a. Land control and usage must be predicated on legally enforceable rights, according to the principle of legal certainty. Good faith landowners are granted legal protection through either requesting government help or filing a civil lawsuit in a general court..
- b. Principles All rights to land are derived from the rights of the nation, with common interests taking precedence in cases of conflict of interest.
- c. The principle of agreement emphasizes the importance of agreement between related parties, without any coercion.
- d. The principle of mutual respect for the rights they bear is applied in the land acquisition process.
- e. The principles of expediency and justice require the provision of reasonable compensation to affected land owners.

- f. People who hand over land for public purposes have the right to protection from the authorities. (Rudiana, Amiludin, & Ahmad, 2022)

These principles, which include humanity, justice, benefit, certainty, openness, agreement, participation, prosperity, sustainability, and harmony, are specifically outlined in the Law on Land Acquisition for Public Interest.

### **Constitutionality of Petroleum Mining Regulations in Indonesia**

The 1945 Constitution of the Republic of Indonesia is a staatsfundamental norm that is also a legal ideal (*recht idea*) because it contains the main ideas. This is in line with the Principle of Legal Preference, which is composed of the Principle of *lex superior derogat legi inferiori* and emphasizes that the origin of a rule is a rule that has a higher hierarchical position. The Pancasila-based laws of Indonesia have to be consulted before creating new legislation. (Farida Indrati, 2020). The Republic of Indonesia's 1945 Constitution, which is based on Pancasila philosophy, must therefore be cited in order to ensure the validity of all laws that are in effect in Indonesia. The constitution will always provide the best guarantees for the people, including guarantees that the public interest for the welfare of the people is also contained in the constitution. With this in mind, the idea regarding the use of space within the earth for the purposes of petroleum mining must be regulated in such a way in written law considering that Indonesia is a rule of law country and must be of public interest for the welfare of the people in accordance with the mandate of the constitution, especially Article 33 paragraphs (2) and (3) of 1945 Constitution of the Republic of Indonesia.

The implementation of Law Number 26 of 2007 concerning Spatial Planning (State Gazette of 2007 Number 68, Supplement to State Gazette Number 4725), also known as the Spatial Planning Law, was necessary to fulfill this constitutional mandate. The Job Creation Law amended the Spatial Planning Law in several articles, stating that the state is responsible for carrying out spatial planning, with the central and regional governments exercising their authority in accordance with Article 7 paragraph (2) while still respecting each person's rights in accordance with statutory regulations. The state's responsibilities for coordinating spatial planning are twofold: (a) policymaking, or setting the direction of the state; (b) task executing, namely carrying out tasks according to the direction set by the state. Spatial planning activities consist of 3 (three) interrelated activities, namely: spatial planning, utilization space, and control of space utilization. As for the use of space within the earth for petroleum mining, it is specifically regulated in Law Number 22 of 2001 concerning Oil and Natural Gas (State

Gazette of 2001, Number 136, Supplement to State Gazette Number 4152) (hereinafter referred to as the Oil and Gas Law) as amended by the Job Creation Law. In the provisions of Article 2 of the Oil and Gas Law, it is emphasized that business activities related to oil and natural gas must be based on economic principles that prioritize the people, integration, mutual benefits, justice, balance, equitable distribution, joint economic sustainability, and the welfare of many people, while pay attention to aspects of security, safety, legal certainty and environmental preservation. This actually relates to the idea behind Article 33, which is explained on pages 494–495 of Book VII on Finance, National Economy, and National Welfare. Professor Soepomo is credited with starting the idea of kinship, which is the basis for Article 33's reasoning. The idea behind Article 33 is to promote social and general welfare. In light of this, it is imperative that the Oil and Gas Law's provisions reflect this concept. This way of thinking is standard practice, as stated in Article 33, paragraph (3), which declares that all natural resources in Indonesia are under state control for the maximum benefit of the people. In this case, state ownership must not be interpreted as private ownership, in the case of petroleum mining, it must always emphasize the principle of public interest for the welfare of the people, which is truly inspired by the principle of mutual cooperation. The Constitutional Court in the Constitutional Court Decision Number 001-021-022/PUU-I/2003 concerning the Electricity Law provides an illustration of control by the state, namely that society collectively gives a mandate to the state to implement policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for the purpose of maximizing the prosperity of the people, one of which is the state's assertion of public ownership of natural resource production branches and its orientation is public service, not just economic commodities. The Constitutional Court also defined "dominance by the state" as defined in Article 33 of the 1945 Constitution of the Republic of Indonesia, holding that control by the state as defined in that article has the same meaning. This interpretation was made in Decision Number 002/PUU-I/2003, dated 21<sup>st</sup> December of 2004, concerning the review of the Oil and Gas Law. more expansive and superior than the idea of private property ownership. The Republic of Indonesia's 1945 Constitution upholds the concept of popular sovereignty, which links the idea of state authority to both political (political democracy) and economic (economic democracy) spheres. According to this interpretation of popular sovereignty, which is based on the tenet "of the people, by the people, and for the people," the people are seen as the source, the owner, and the primary figurehead of authority in state affairs.

This notion also pertains to the constitutionality of petroleum mining, which was tested



in the Constitutional Court and resulted in Decision Number 36/PUU-X/2012 concerning Review of the Oil and Gas Law, which related to BP Migas performing management-related control and supervision functions rather than management itself. This is regarded as being against the Republic of Indonesia 1945 Constitution. Thus, to guarantee the constitutionality of petroleum mining, it is necessary to emphasize in its regulation that the state must be truly present, not only as a supervisor but must actually carry out direct management. However, in the event that it becomes necessary, the state may actually create a BUMN as a business entity that has priority (*voorrecht*) over other business entities when it comes to petroleum management. This means that in the event that a business entity-to-business entity relationship is required for management purposes, that relationship will exist between the two business entities. Thus, from a constitutional perspective, the fundamentals of petroleum mining in Indonesia will always refer to the Republic of Indonesia's 1945 Constitution, particularly Article 33, which essentially highlights the state's role as the bearer of the people's mandate with the welfare of the people as its primary goal.

#### **IV. Conclusion**

Being a nation governed by laws, Indonesia requires that all laws pertaining to petroleum mining be founded on the public interest principle, in accordance with the Republic of Indonesia's 1945 Constitution. In Indonesia, the public interest principle serves as a guarantee that the state acts as a public institution rather than a private one, emphasizing the pursuit of justice as the primary objective that leads to prosperity for the populace. Consequently, in order to ensure the implementation of the public interest principle, it is actually sufficient to modify all state actions to conform to the constitution of the 1945 Constitution of the Republic of Indonesia. Thus, when discussing the validity of petroleum mining, one must always consult the Republic of Indonesia's 1945 Constitution, particularly Article 33's provisions that the state exist for the benefit of its citizens.

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