



Natural Resources Contracts and Implementation of Oil and Gas Permits in Foreign Companies Related to Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution: Literature Review

Ibrahim Arsyad¹, Heliaantoro Heliaantoro²

¹STIH Gunung Jati, Tangerang, Indonesia, ibrahim.arsyad2014@gmail.com

²STIH Gunung Jati, Tangerang, Indonesia, toro1940@gmail.com

Corresponding author: ibrahim.arsyad2014@gmail.com¹

Abstract: The purpose of this article is expected to be a useful reference for policymakers, academics, oil and gas companies, and the general public in understanding and managing Indonesia's natural resources more effectively and responsibly. Structured and normative juridical literature review. Relevant scientific articles are selected, identified, and evaluated during the literature review process. The scope of the study was determined using the PICO (population/problem, intervention, comparison) framework, which was used to establish the study boundaries. A number of relevant scientific articles were selected, identified, and reviewed during the literature review. The PICO framework provides a score to set research boundaries. The legal concept of proper management of oil and gas resources can be realized by making strategic changes through a new paradigm to increase the utilization of domestic oil and gas, increase the role and capacity of SOEs in oil and gas management, change the scheme of domestic market obligations and oil and gas export policies, and adjust the oil and gas fund scheme. analysis of natural resource contracts and the implementation of oil and gas permits in foreign companies, related to the provisions of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution. Observing how these practices can optimize benefits for the national economy while considering social justice and environmental sustainability, in line with the spirit of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution which emphasizes the management of natural resources for the prosperity and welfare of the people.

Keywords: Article 33 Paragraph 2 and 3 of the 1945 Constitution, Natural Resources Contracts, Implementation of Oil and Gas Permits, Foreign Companies

INTRODUCTION

Indonesia as a country rich in natural resources, especially oil and gas (oil and gas), has become an attraction for many foreign companies operating in the energy sector. In the era of globalization and the increasing need for energy, the management of these natural resources

must be regulated in such a way as to provide maximum benefits for the Indonesian people. Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution is the constitutional basis for the management of these natural resources, which states that the branches of production that are important for the state and control the livelihood of the people must be controlled by the state and used as much as possible for the prosperity of the people (Indonesia and Indonesia, 1945).

Currently, the oil and gas sector in Indonesia is at a crossroads between the need to attract foreign investment for efficient exploration and production and the need to ensure that the management of these resources is in line with the national interest (Aisyah, 2023). The Indonesian government has adopted various policies and regulations to regulate oil and gas activities, including licensing and contracts involving foreign companies (Bayunanto, 2014). These contracts are usually in the form of Production Sharing Contracts (PSCs), where foreign companies bear the costs of exploration and production while the production results are divided between the company and (Anjani and Baihaqi, 2018; Ruslijanto, Ikaningtyas and Kurniaty, 2018).

Although the existence of foreign companies in the oil and gas sector can bring in the investment and technology needed for efficient exploitation, there are several important issues that need to be analyzed, especially related to the implementation of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution. This article emphasizes that the branches of production that are important to the state and that control the lives of the people are controlled by the state and that the earth, water, and natural resources contained in it are controlled by the state and used as much as possible for the prosperity of the people (Yayahjuariah, 2007). Some of the main problems that arise include how the implementation of oil and gas contracts with foreign companies affects the country's sovereignty in managing its natural resources, the extent to which the contract guarantees that the economic benefits from the exploitation of natural resources will return to the state and society (Hanan, Swastika and Rohmawati, 2024), differences in interpretation and application of laws related to the implementation of oil and gas contracts and permits often cause legal uncertainty that can hinder the investment and operation of foreign companies (Wardhana, Baharudin and Anggalana, 2023), the effectiveness of the supervision mechanism and compliance with applicable regulations, both by the government and foreign companies (Lorsenius and Aprilyanti, 2022). Oil and gas contracts in Indonesia are usually in the form of Production Sharing Contracts (PSCs). In this contract, foreign companies bear the cost of exploration and production, while the production proceeds are shared between the company and the government (Sundari and Muryanto, 2020). It is designed to ensure that the government gets its fair share of the profits from the exploitation of natural resources. However, the implementation of PSC often encounters obstacles, such as differences in interpretation regarding the distribution of results, as well as transparency and accountability in financial and production reports. There are also concerns about environmental protection and the social impact of oil and gas exploitation activities (Prihanti, Widjanarko and Budiyo, 2022).

The oil and gas licensing process in Indonesia involves several stages, ranging from initial surveys, exploration, to production. Each stage requires a different permit and involves various government agencies, such as the Ministry of Energy and Mineral Resources (EMR) and SKK Migas. This process is often complicated and time-consuming, which can be a barrier for foreign companies (Suparman and Aritonang, 2021). Related to Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution, this licensing process must ensure that every stage of oil and gas activities is carried out taking into account the national interest and the welfare of the people. This requires good coordination between government agencies, as well as active participation from the community in the supervision and implementation of oil and gas activities (Redi, 2015). For example, the Mahakam block is one of the important examples in

this analysis, this block was previously managed by foreign companies, Total E&P Indonesia and Inpex Corporation, and in 2018 its management was transferred to PT Pertamina Hulu Mahakam (CAHYANINGSIH and Rahmiaji, 2017). This transition is the government's effort to increase national control over strategic natural resources, in accordance with Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution. However, this transition faces various challenges, including a decrease in production due to management transitions, the need for large investments to maintain production levels, and operational and technical adjustments (NUR RIZKY, 2017). This case shows how complex natural resource management can be, especially when it comes to maintaining a balance between national sovereignty and the need to attract foreign investment.

It is hoped that the aim of this article will be a useful reference for policymakers, academics, oil and gas companies and the general public in understanding and managing Indonesia's natural resources more effectively and responsibly.

METHODS

The research method used in this article is a structured and normative juridical literature review. Relevant scientific articles are selected, identified, and evaluated during the literature review process. The scope of the study was determined using the PICO (population/problem, intervention, comparison) framework, which was used to establish the study boundaries. A number of relevant scientific articles were selected, identified, and reviewed during the literature review. The PICO framework provides a score to set research boundaries. Table 1 illustrates the limitations of the scope of the study based on literature reviews from several existing journals. Table 2 then presents the metrics used from the scientific article and presents the findings in this article.

Table 1. Summary of PICO

Component	Information
Population/problem	Natural Resources Contracts
Intervetion Comparison	n.a
Foreign Companies	This reinforcement comes from the literature that reflects the findings of studies conducted by other researchers

The research process involves formulating research questions, conducting literature searches, selecting studies for data extraction, assessing feasibility criteria, and evaluating quality. This article is focused on the exploration of research questions through literature searches in various international journals. This study emphasizes the importance of Article 33 Paragraphs 2 and 3 of the 1945 Constitution, Natural Resources Contracts, Implementation of Oil and Gas Permits, and Foreign Companies. The search for articles was conducted in July 2024, using the PRISMA (Preferred Reporting Items for Systematic Review and Meta-Analysis) guidelines for the selection of literature sources. The inclusion and exclusion criteria include: 1) inclusion of scientific articles written in Indonesian, and 2) inclusion of literature published as scientific articles in journals, both in English and Indonesian. Research articles that do not meet these criteria are excluded, without restricting the year of publication. The discussion in the research article emphasizes the importance of diversity, equity, and inclusion related to employee performance, presented in a literature review style. Full text is not

available; This article uses scientific terms that are easy to understand. In this search, the criteria are not applied to complete the source selection procedure. Figure 1 illustrates a collection of literature, comparing supporting literature assessments; The process of synthesizing material is carried out. The final step involves assessing the quality of data synthesis, referencing research findings, and data mining. The fabrication matrix table represents the results of data extraction.

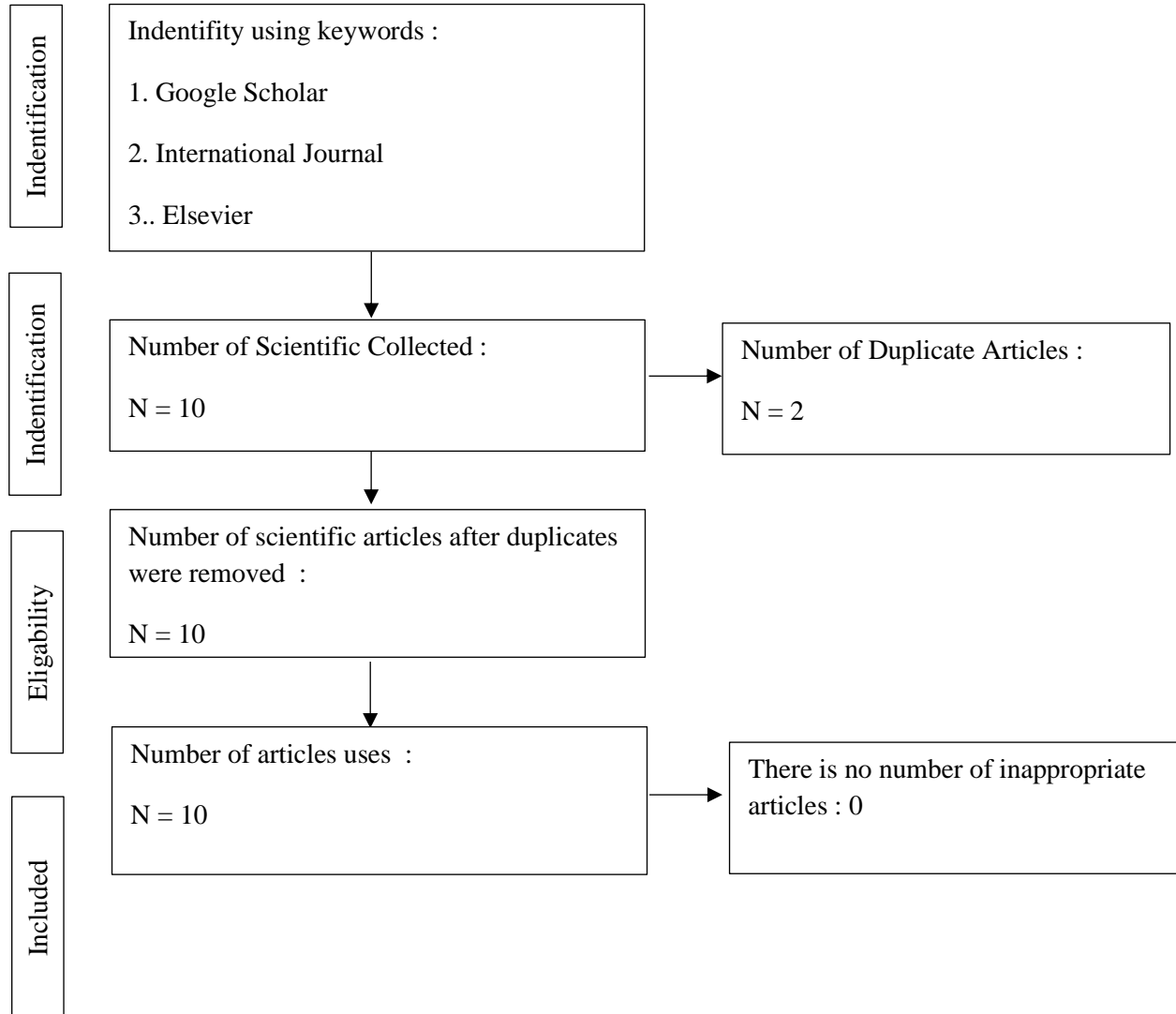


Table 2. Literature Description

Number	Article Name	Authors	Journal	Publisher	Findings
1	Imposition of trade tariffs by the USA on China: implications for the WTO and international trade law	(Nwoke, 2020)	Journal of International Trade Law and Policy, Vol. 19 No. 2, pp. 69-84. https://doi.org/10.1108/JI-TLP-01-2019-0003	Emerald Publishing	The Trump Administration's application of a single tariff, despite violating U.S. domestic legislation and rulings, as well as the country's obligations under the 1994 GATT, signals a clear danger to the survival of the WTO and international trade in generalinternasional secara umum
2	Palm oil, the RED II and WTO law: EU	(Mayr, Hollaus and	Reciel, Volume30, Issue2	Wiley	The seemingly deliberate targeting of palm oil casts doubt on the

	sustainable biofuel policy tangled up in green?	Madner, 2021)	Special Issue:The Amazon Rainforest July 2021		justification of the move on environmental grounds
3	Economics of Oil Plants: Demand, Supply, and International Trade	(Mustafa and Iqbal, 2021)	Economics of Oil Plants: Demand, Supply, and International Trade. In: Tombuloglu, H., Unver, T., Tombuloglu, G., Hakeem, K.R. (eds) Oil Crop Genomics. Springer, Cham. https://doi.org/10.1007/978-3-030-70420-9_19	Springer	Global production of oil grains increased by about 15% from 2013 to 2017: the US is the largest producer of oil grains followed by Brazil, Argentina and China; Indonesia and Malaysia are the largest suppliers of palm oil; China, the US, and the European Union are major producers of rapeseed oil, while India and China are the two main producers of cottonseed and peanut oil. Global Demand production of oil grains increased by about 15% from 2013 to 2017: the US is the largest producer of oil grains followed by Brazil, Argentina and China; Indonesia and Malaysia are the largest suppliers of palm oil; China, the US, and the European Union are major producers of rapeseed oil, while India and China are the two main producers of cottonseed and peanut oil. Rising demand is also one of the main factors driving producers to increase their oil grain production. In addition to the surge in oil grain production, the world still faces a significant supply shortage. This requires an economic evaluation of oil crops, especially those that focus on demand, supply, and trade. Therefore, this chapter is a review of recent and past studies to examine the demand, supply, and trade of oil crops The increase is also one of the main factors that encourage producers to increase their oil grain production. In addition to the surge in oil grain production, the world still faces a significant supply shortage. This requires an economic evaluation of oil crops, especially those that focus on demand, supply, and trade. Therefore, this chapter is a review of current and past studies to examine demand, supply, and trade in oil crops
4	Measuring the coordination of renewable energy as a natural	(Liu, Huang and Huang, 2022)	Resources Policy, Volume 78, September 2022, 102915	Elsevier	The dominance of the market by the subject also optimizes its profits. Positive coordination actions through contracts between retailers and producers can improve the quality of renewable energy. Green

	resource contracts based on rights structure and corporate social responsibility from economic recovery				finance and sustainable economic growth are growing in popularity, and contract coordination can result in Pareto improvements for both parties
5	I'll Pay You Later: Relational Contracts in the Oil Industry	(Paltseva, Toews and Troya-Martinez, 2022)	Paltseva, Elena and Toews, Gerhard and Troya-Martinez, Marta, I'll Pay You Later: Relational Contracts in the Oil Industry (March 2022). CEPR Discussion Paper No. DP17121, Available at SSRN: https://ssrn.com/abstract=4069930	SSRN	This new world order makes it politically difficult for developed countries to continue the practice of military intervention to support the enforcement of their oil company contracts. The fading of enforcement (military), along with the absence of local law enforcement, triggered the need to delay such contracts
6	The impact of digital finance on the natural resource market: Evidence from DeFi, oil, and gold	(Cevik <i>et al.</i> , 2022)	Resources Policy Volume 79, December 2022, 103081	Elsevier	The price structure and risk of natural resources such as crude oil and gold are affected by digital financial instruments, especially during times of crisis. In addition, the results of the cross-quantile approach show that the significant cross-correlation between DeFi tokens and the natural resource market during periods of the market is generally negative, so DeFi tokens can provide effective protection for gold and crude oil investors
7	The relationship between green finance, economic factors, geopolitical risk and natural resources commodity prices: Evidence from five most	(Li <i>et al.</i> , 2022)	Resources Policy Volume 78, September 2022, 102733	Elsevier	Green finance and economic factors (economic growth and population growth) have a positive relationship with the price of natural resource commodities. The findings also reveal that geopolitical risks have a negative relationship with the prices of natural resource commodities in selected countries. The study provides guidance for policymakers in making regulations on factors affecting the price of natural resource commodities and provides

	natural resources holding countries				assistance for future researchers examining these areas
8	A review on prospective risks and mitigation for oil and gas projects: implication for Indian CGD companies	(Rawat, Gupta and Rao, 2023)	International Journal of Energy Sector Management , Vol. 17 No. 1, pp. 41-62. https://doi.org/10.1108/IJESM-01-2021-0016	Emerald Publishing	The ten main risks that often affect oil and gas projects are project costs, improper project management, changes in economic parameters, currency exchange rates, government regulations and laws, contractor and subcontractor problems, shortage of skilled labor, delays in approval, health and safety issues, and forced circumstances. These risks are primarily responsible for rising costs and project delays
9	Comparative Analysis of Oil and Gas Legal Frameworks in Bangladesh and Nigeria: A Pathway towards Achieving Sustainable Energy through Policy	(Dhali, Hassan and Subramania m, 2023)	Sustainability 2023, 15(21), 15228; https://doi.org/10.3390/su152115228	MDPI	Bangladesh and Nigeria have taken commendable steps towards SDG 7, the current pace and scope are still insufficient to achieve holistic energy sustainability. Therefore, it becomes critical for their regulatory landscape to evolve, integrating policy reforms that are in line with the SDGs
10	HUKUM PENGELOLAAN SUMBER DAYA MINYAK DAN GAS BUMI MENURUT PASAL 33 UNDANG-UNDANG DASAR TAHUN 1945	(Elvis, Suparman and Idris, 2023)	IBLAM LAW REVIEW, 3(3), 14–29. https://doi.org/10.52249/ibr.v3i3.134	IBLAM Law Review	The legal concept of proper management of oil and gas resources can be realized by making strategic changes through a new paradigm to increase the utilization of domestic oil and gas, increasing the role and capacity of SOEs in oil and gas management, changing the scheme domestic market obligations, oil and gas export policies, and changing the oil and gas fund scheme

RESULT AND DISCUSSION

The results of the literature and the findings above are the basis of this scientific article, so these results have been described and will be given a perspective by the researcher in an overall manner in the discussion. There is one thing from the results that will be described here from the results of our research (Elvis, Suparman and Idris, 2023) stating that the legal concept of proper oil and gas resource management can be realized by making strategic changes through a new paradigm to increase the use of domestic oil and gas, increasing the role and capacity of SOEs in oil and gas management, changing the domestic market obligation scheme, oil and gas export policy, and changing the oil and gas fund scheme. As well as the results of research from (Rawat, Gupta and Rao, 2023) stated Ten main risks that often affect oil and gas projects, namely project costs, improper project management, changes in economic parameters, currency exchange rates, government regulations and laws, contractor and subcontractor problems,

shortage of skilled labor, delays in approval, health and safety issues, and forced circumstances. These risks are primarily responsible for rising costs and project delays.

Pasal 33 Ayat 2 dan 3 UUD 1945

Article 33 of the 1945 Constitution regulates the national economy and social welfare. Paragraphs 2 and 3 of this article provide specific guidance on the management of natural resources and branches of production that are important to the state (Indonesia and Indonesia, 1945). Article 33 Paragraph 2, The branches of production that are important to the state and which control the lives of the people are controlled by the state, Article 33 Paragraph 3, 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. Article 33 Paragraph 2, this Paragraph emphasizes that branches of production that have strategic interests for the state and control the lives of the people must be under the control of the state. This means that sectors such as energy, transportation, communication, and infrastructure that are vital to people's lives should not be completely handed over to the private or foreign, but must be managed by the state to ensure justice and welfare for all people.

Article 33 Paragraph 3, this Paragraph states that natural resources in Indonesia, such as land, water, and other natural resources, must be controlled by the state. This control by the state means that the state has the right to regulate, manage, and utilize these natural resources for the welfare of all Indonesian people. This management must be carried out with the principles of sustainability and justice, so that the benefits can be felt by current and future generations (Putra and Lestarini, 2020). Article 33 Paragraphs 2 and 3 of the 1945 Constitution emphasizes the importance of state control over natural resources and vital production branches to ensure that the benefits can be felt by all Indonesian people. This control is expected to be carried out in a fair, transparent, and sustainable way, in accordance with the mandate of the constitution.

Natural Resources Contracts

A Natural Resources Contract is a legal agreement that regulates the exploration, exploitation, management, and distribution of natural resources such as oil, gas, minerals, water, and others between the government (as the holder of the right to manage natural resources) and other parties, usually private or foreign companies. This contract specifies the rights and obligations of each party, including revenue sharing, costs, environmental responsibilities, and other relevant aspects. In the management of natural resources, there are several types of contracts that are commonly used to ensure efficient, sustainable, and beneficial exploitation for the state and society. First, Production Sharing Contracts (PSCs), which are common in the oil and gas sector. In PSC, private or foreign companies bear all exploration and production costs. After production begins, the results are shared between the government and the company according to the agreed provisions (Setlight, 2015).

Next is the Contract of Work (KK) which is used in the mineral mining sector. This contract gives the company the right to explore and exploit mineral resources within a certain period of time, with the obligation to pay royalties and taxes to the government. A Joint Venture Agreement (JVA) is a cooperation agreement between the government and a private or foreign company to explore and exploit natural resources together. In a JVA, both parties share the investment, risk, and profit according to the agreed proportions. Finally, a Service Contract is a contract in which a private or foreign company is paid to provide a specific service, such as drilling or managing operations. In this contract, the company does not have the right to the exploited resources, but only receives payment for the services rendered (Shobah *et al.*, 2015).

Each type of contract has different mechanisms and objectives, but all aim to optimize the management of natural resources for the welfare of the people and national development.

Implementation of Oil and Gas Permits

The implementation of an Oil and Gas Permit refers to the administrative and operational processes that must be passed by the company to obtain an official permit from the government to carry out oil and gas exploration and exploitation activities. This permit covers various stages ranging from exploration, development, to oil and gas production. This process is regulated by applicable laws and regulations and involves various government agencies to ensure that oil and gas activities are carried out in accordance with legal provisions, technical standards, and sustainable environmental and social principles (Pradana, Budiarta and Arthanaya, 2021). Another definition states that the implementation of oil and gas permits refers to the administrative and operational processes that must be passed by companies to obtain official permits from the government to carry out oil and gas exploration and exploitation activities. This permit covers various stages ranging from exploration, development, to oil and gas production. This process is regulated by applicable laws and regulations and involves various government agencies to ensure that oil and gas activities are carried out in accordance with legal provisions, technical standards, and sustainable environmental and social principles (Number, 35AD).

The implementation of oil and gas permits involves various important aspects that must be met by companies to obtain and maintain operational permits. This process not only ensures that oil and gas exploration and production activities are carried out in accordance with regulations and technical standards, but also that environmental impacts are minimized and financial obligations are met transparently. Through strict supervision and compliance with regulations, the implementation of oil and gas permits can provide maximum benefits for the state and society (Wola, 2019). The results of the study stated that Oil and Gas stated that anyone who abuses the transportation and/or trade of government-subsidized fuel oil can be subject to imprisonment of up to 6 (six) years and a maximum fine of Rp 60,000,000,000.00 (sixty billion rupiah). Based on this background, the following problems can be formulated: How to enforce criminal law against perpetrators of oil and gas trading without a transportation and distribution permit according to Law Number 22 of 2001 concerning Oil and Gas (Study of Decision No. 71/Pid.Sus/2018/PN.Ptk) (Panggabean, 2019).

Based on Decision No. 274/PID. SUS/2018/PN.Psp, the punishment of perpetrators of the crime of transporting oil and gas without a permit is carried out by referring to the provisions violated in Law Number 22 of 2001 concerning Oil and Gas. Based on his mistake, the perpetrator was sentenced to six months in prison for having fulfilled all the elements of the article charged. The Judge of the Padangsidempuan District Court who examined and tried the defendant concluded that all elements of the article charged by the Public Prosecutor had been fulfilled (Simanungkalit, 2019). Commercial business activities in the oil and gas sector have an important contribution to the national economy, so their management and implementation must maximize prosperity and welfare for the people. One example is the sale of retail gasoline with the Pom Mini label in Pacitan Regency. To carry out this commercial business activity, it is necessary to have a Commercial Business License regulated in Article 23 Paragraph (2) Letter d of Law Number 22 of 2001 concerning Oil and Gas (Kurniawati, 2019).

Foreign Companies

A Foreign Company is a business entity that is established and operates under the laws of a foreign country but conducts business activities in another country. From a legal point of view, a foreign company refers to a company that is not established under the domestic law of a country, but based on the laws of another country, but conducts business activities or investments in that domestic country. Foreign companies can operate in other countries through

various means, such as establishing branches, representatives, subsidiaries, or through cooperation with local companies. Regulations regarding the operations of foreign companies are usually regulated in foreign investment laws or regulations in the country concerned (Indonesia, 2016; Finance, 2016).

Another definition states that a foreign company is a business entity that is established abroad but carries out economic activities within the country. This can include various forms such as subsidiaries, branches, or representative offices. Foreign companies operate under the laws of their home country, but must also comply with the rules and regulations of the country in which they operate.

Foreign companies typically enter the domestic market to take advantage of economic opportunities, access new markets, or optimize production costs. They can be engaged in various sectors such as manufacturing, services, technology, and natural resources (Number, 40AD; Carr and Stone, 2017).

The regulations governing foreign companies vary by country, but they typically include aspects such as business establishment, licensing, local legal compliance, financial obligations, and social responsibility. A good understanding of this legal framework is essential for foreign companies to succeed in their operations abroad. Previous studies have shown indirect endowment from oil resources – also affecting intermediate countries. As for oil-importing countries, we found that countries that rely heavily on oil as a major source of energy are highly exposed to geopolitical turmoil and the risk of importing political instability along with oil (Cappelli, Carnazza and Vellucci, 2023). (1) The difference in the intensity of import competition is larger, concentrated between Asian and European countries; (2) The most competitive markets in crude oil imports are Russia and Saudi Arabia, and China's dependence on Saudi Arabia is higher compared to the US; (3) Crude oil trade relations are generally divided into four categories, namely import dependence, importer-oriented, close cooperation, and loose trade relations; (4) China has gained increased competitive pressure from Germany and the Netherlands in Russia in recent years, but decreased in Angola and Saudi Arabia (Hao, 2023).

Discussion

The legal concept of proper management of oil and gas resources can be realized by making strategic changes through a new paradigm to increase the utilization of domestic oil and gas, increase the role and capacity of SOEs in oil and gas management, change the scheme of domestic market obligations and oil and gas export policies, and adjust the oil and gas fund scheme. analysis of natural resource contracts and the implementation of oil and gas permits in foreign companies, related to the provisions of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution. Observing how these practices can optimize benefits for the national economy while considering social justice and environmental sustainability, in line with the spirit of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution which emphasizes the management of natural resources for the prosperity and welfare of the people.

CONCLUSION

The legal concept of proper management of oil and gas resources can be realized by making strategic changes through a new paradigm to increase the utilization of domestic oil and gas, increase the role and capacity of SOEs in oil and gas management, change the scheme of domestic market obligations and oil and gas export policies, and adjust the oil and gas fund scheme. analysis of natural resource contracts and the implementation of oil and gas permits in foreign companies, related to the provisions of Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution. Observing how these practices can optimize benefits for the national economy while considering social justice and environmental sustainability, in line with the

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