TEST Engineering & Management

May – June 2020
ISSN: 0193-4120 Page No. 23365 - 23376

Contextualization of Interpretation of State Control in Managing Oil and Gas

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Article Info
Volume 83
Page Number: 23365 – 23376
Publication Issue:
May - June 2020

Abstract

Contextualization of the meaning of state control in managing Oil and gas in the Decision of the Constitutional Court is an interesting discourse as a constitutional study of the economy and natural resources. This study focused on two things, first, the interpretation of state control in managing natural resources; then the contextualization of the meaning of state control in managing oil and gas. This study used normative methods with a descriptive analysis approach. The results of the study showed that the interpretation of state control in oil and gas management mandates the state in the form of policy (beleid), administration (bestuursdaad), regulation (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) for the greatest benefit of the people. The contextualization of the meaning of state control in managing oil and gas gives authority to the government through the State-Owned Enterprise and/or Regional-Owned Enterprise not to the implementing body so that the principle of state control is not reduced.

Keywords: *State Control, Interpretation, Contextualization, Constitutional Court, Oil and Gas*

Article History
Article Received*: 11 May 2020*
Revised*: 19 May 2020*
Accepted*: 29 May 2020*
Publication*: 12 June 2020*

A. INTRODUCTION

In the constitutional system, the constitution is constructed as the highest agreement or even a social contract of all people to live in a state or organization in a broader sense. The form of constitution formulation: (i) written documented in a legal document called Constitution, or (ii) written undocumented in a single text but contained in many historical texts, or (iii) not written at all but only obeyed in the practice of state power. In terms of content, the constitution contains fundamental values and norms that are set out in writing and/or are clearly enforced in the practice of state power. If the content of the norm referred to is a legal norm then it is referred to as constitutional law. However, if values

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and norms are ethical norms, they can be called constitutional ethics.[1]

The social ideals of the 1945 Constitution are very clearly reflected in the Preamble of the 1945 Constitution and also in content. In fact, "Social Welfare" becomes the title of Chapter XIV of The 1945 Constitution. After the fourth amendment in 2002, the title of Chapter XIV was changed to "National Economy and Social Welfare". Whereas in the fourth paragraph of the Preamble of the 1945 Constitution, the meanings associated with it are referred to as "Public Welfare" and "Social justice". The four state objectives are formulated in the fourth paragraph of the Preamble of the 1945 Constitution, namely "(1) to protect all the people of Indonesia and all the independence and the land that has been struggled for, (2) to improve public welfare, (3) to educate the life of the people, and (4) to participate towards the establishment of a world order based on freedom, perpetual peace, and social justice ". While "social justice" is the basic formulation of the state or the fifth principle of Pancasila, namely "social justice for all Indonesian people". That public welfare and social justice contain and constitute the main social ideals so that the 1945 Constitution can be called the Social Constitution in the second meaning, namely a socially-oriented constitution. In fact, if it is related to the entire material of Chapter XIV on National Economy and Social Welfare which contains Article 33 and Article 34, so that the 1945 Constitution can also be named as "Economic Constitution" and at the same time "Social Constitution" or Welfare Constitution, and Social Justice Constitution.[2]

Basically, the Preamble of the 1945 Constitution is a formulation of basic norms (postulates) of the existence of the Indonesian state. This has the consequence that the Preamble of the 1945 Constitution is a self-evidence norm, and as a basic norm needs to be derived into a more operational (special) norm.[3] In meaning the formulation of Article 33 of the 1945 Constitution, it has consequences that the relationship between the statement of state objectives (social justice and public welfare) contained in the Preamble of the 1945 Constitution with Article 33 of the 1945 Constitution is a relationship between the objectives (Preamble of the 1945 Constitution) and means or method (Article 33 of the 1945 Constitution). In such a position, Articles 33 and 34 of the 1945 Constitution are the fundamental rules of law of the 1945 Constitution which depend on the Preamble of the 1945 Constitution.[4]

Article 33 Paragraph (3) of the 1945 Constitution stipulates that "the land, the waters and natural resources within shall be under the powers of the state and shall be used to the greatest benefit of the people". Article 2 paragraph (2) of Law Number 5 of 1960 on Basic Regulations of Agrarian Principles stipulates that "The rights of controlled by the State intended in clause 1 of this Articles provide authority: (a) to regulate and implement the appropriation, the utilization, the reservation and the cultivation of that earth, water, and water space as mention above, (b) to determine and regulate the legal relations between persons concerning the earth, water, and water space, (c) to determine and regulate the legal relations between persons and legal acts concerning the earth, water and air space.

[1] Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi*, Sinar Grafika, Jakarta, 2014.

[2] Jimly Asshiddiqie, SH., Perkembangan-Perkembangan Baru Tentang Konstitusi Dan Konstitusionalisme Dalam Teori Dan Praktik, Makalah disampaikan dalam Bimtek APHTN di Pusdiklat MK RI Cisarua Bogor 2017, p. 5-6

[3] Hans Kelsen (terjemahan Drs. Somardi), *Teori Hukum Murni Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Empirik-Deskriptif*, (Bandung: Rimdi Press,1995), p.113-114.

[4] Kuntana Magnar, Inna Junaenah, dan Giri Ahmad Taufik, *Tafsir MK Atas Pasal 33 UUD 1945: (Studi Atas Putusan MK Mengenai Judicial Review UU No. 7/2004, UU No. 22/2001, dan UU No. 20/2002***,** Jurnal Konstitusi, Volume 7, Nomor 1, Februari 2010, p. 112

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The existence of the Constitutional Court as one of the actors of judicial power has brought very important changes in the Indonesian constitutional system, especially in the development of legal science in general. After the Constitutional Court was formed based on Article 24 C of the 1945 Constitution and Law Number 24 of 2003 as changed to Law Number 8 of 2011 on the Constitutional Court (Constitutional Court Law), the Constitutional Court has brought new things in the interpretation of the 1945 Constitution.[5]

Desacralization[6] of the 1945 Constitution by the Constitutional Court has both positive and negative impacts on the development of law and state administration in Indonesia. In the Decision of the Constitutional Court on laws related to the field of economics and natural resource management has provided a new meaning in interpreting Article 33 of The 1945 Constitution. A new meaning in the interpretation of the Constitutional Court on natural resource management is found to have a contextual interpretation (Judicial Review of Law on Electricity and Law on Oil and Gas) and there is also an inconsistent interpretation in the state control (Judicial Review of Law on Water Resources).

The Decision of the Constitutional Court should be a benchmark for the development of the interpretation of the 1945 Constitution.[7] This shows how the consistency of the Constitutional Court in applying a legal concept, specifically relating to natural resource management as an interpretation of Article 33 of The 1945 Constitution. The concept that was re-interpreted by the Constitutional Court even found a new meaning that provides clarity as well as an unclear meaning of the norm. Even if there are inconsistencies in the formation of law either horizontally or if there is a conflict with the basic norms, the contextual interpretation of the Constitutional Court is a pragmatic choice.

The state control in every regime that has existed in Indonesia is interpreted differently and even contradictory in spirit and purpose. However, in relation to control of land, water, and natural resources, the Colonial Regime, the Old Order Regime, and the New Order Regime placed the state in almost the same position, namely as the highest authority over land and natural resources.[8]

Based on the above explanation, it is very important to conduct an in-depth study of the meaning of the state control in managing natural resources in the Oil and Gas field that has been interpreted by the Constitutional Court so that there are different interpretations with Law on Electricity and Law on Water Resources whereas the same constitution as an option that needs to be discussed through a deep and critical scientific study.

B. METHOD

This study used normative legal methods by examining library materials or secondary data.[9] This study used the descriptive analysis because the description is the precise measurement and reporting of the characteristics of some populations of phenomena under study.[10] With this specification, the epistemological basis for the interpretation of the state control on Natural Resources in the field of Oil and

[5] Lilis Mulyani, Jurnal Masyarakat dan Budaya, Volume 10 No. 2 Tahun 2008, p 65.
[6] *Ibid*, p 66
[7] *Ibid*

[8] Tody Sasmitha ddk, Pemaknaan Hak Menguasai Negara Oleh Mahkamah Konstitusi (Kajian Terhadap Putusan Mk No. 35/Puu-X/2012; Putusan Mk No. 50/Puux/ 2012; Dan Putusan Mk No. 3/Puu-Viii/2010), Pusat Penelitian dan Pengabdian Masyarakat Sekolah Tinggi Pertanahan Nasional, Cet. Pertama Desember 2014, p. iv
[9] Soerjono Soekanto dan Sri Mamudji, *Metode Penelitian Hukum Normatif*, (Jakarta: Rajagrafindo Persada, 2006), p. 13-14
[10] Earl Babbie, *The Practice of Social Research. Dalam Ida Nurlinda*,Metode Konsolidasi Tanah untuk Pengadaan Tanah yang Partisipatif dan Penataan Ruang yang terpadu.Jurnal Hukum Vol. 18 No. 2 Yogyakarta April 2011, p. 165.

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Gas is described in the decision of the Constitutional Court.

Law as a social principle cannot be separated from the values prevailing in the society. In the context of development, which values of the existing community conditions are to be abandoned and replaced with which values can and should be maintained.[11] This study used secondary data and was supported by primary data. The secondary legal materials related to research material and are explaining primary legal materials, such as literature, research results, seminar results and tertiary legal materials in the form of a legal dictionary to provide clarity on secondary data in the form of primary legal materials and secondary legal materials. Data were analyzed philosophically by using the concept of comparison in finding the meaning of contextualization and inconsistent interpretation of Constitutional Court.

C. DISCUSSION AND ANALYSIS

1. Interpretation of state control in Managing Oil and Gas

Constitutional interpretation becomes one of the tools for constitutional judges to provide justice or decide cases because of its position as the interpreter of the constitution,[12] especially for judicial review of law cases against the 1945 Constitution and disputes of authority between state institutions. With this power, constitutional judges can function properly and optimally, but there is also the potential for arbitration by judges, even though in their position, the judge is in the last position in resolving a legal problem. Moreover, the decision of the judge will bring consequences not only to individuals but also can bring legal consequences in general, especially in the case of judicial review of law because of the general binding force.

The 1945 Constitution can be interpreted variously as stated by Hamid S. Attamimi, which shows weaknesses in the arrangement of languages which contain imperfections of the first and second levels. First-level imperfections include double, vague, and overly broad meanings. Second-level imperfections include inaccuracies in words and expressions for the same thing with different words and expressions, inaccuracies of interest (the same words and expressions are used for different interests), excessive, wordy, chaotic, lack of punctuation for long sentences, and arrangement irregularities.[7] Bagir Manan informed that the interpretation of written law is unavoidable due to various weaknesses of the written law itself such as; a) laws and regulations are inflexible; b) laws and regulations that are never complete to meet all legal events or lawsuits. Satjipto Raharjo explained the interpretation of the law that since the formation of the written legal tradition, interpretation became something important because the text became something that must be read, even it was said that interpretation was the heart of the law.[13]

The philosophical basis and conception of the objectives of Law Number 22 Year 2001 include: 1) oil and natural gas as natural resources contained in the Indonesian mining jurisdiction controlled by the State and held by the Government as the holder of mining authority in accordance with the spirit of Article 33 paragraph (2) of The 1945 Constitution; 2) eliminate monopolistic businesses in both the upstream and downstream sectors; 3) create and

[11] Mochtar Kusuma atmaja, *Konsep-konsep hukum Dalam Pembangunan, (*Bandung: Alumni, 2002), p. 10.

[12] Some existing literature does not say the Constitutional Court as the sole interpreter of the constitution because the right to interpret the constitution is not only in the Constitutional Court, other state institutions namely the President as executive power and the Parliament as a legislative body certainly also have the right to interpret the constitution in order to carry out their duties and authority.

[13] Satjipto Raharjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*, Cet. 1, Genta Publishing, Yogyakarta, 2009, p. 116

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guarantee central revenue and regional revenue that is more tangible than the output; 4) develop national oil and gas companies both domestically and abroad and can accommodate future developments in oil and gas business activities; 5) provide clearer provisions on guarantee of continuity of the supply and service of fuel oil (BBM) as well as arrangements relating to the mechanism of fuel subsidies; 6) guarantee the supply of adequate data, professional workforce, improvement of research and development functions and encourage investment through the creation of a conducive investment climate; 7) management of work areas by the Government that will be sought by companies or permanent establishments: 8) guarantee of greater legal certainty (simple, decisive, and consistent arrangements) and eliminate government interference that is too large, so that the business climate is expected to be able more healthy and competitive; 9) Anticipating an increase in criminal acts in oil and gas business activities, both in quantity and quality, through the appointment of Civil Servant Investigators.

Decision of the Constitutional Court Number 002/PUU-I/2003 on 21st December 2004 repeals Article 12 paragraph (3) on the word "authorized", Article 22 paragraph (1) on "at most" and Article 28 paragraph (2) and paragraph (3), "(2) The price of Oil and Gas Fuels is left to the mechanism of fair business competition; (3) The implementation of the price policy as referred to in paragraph (2) does not reduce the social responsibility of the government towards certain groups of people "as judicial review of Law Number 22 of 2001 on Oil and Gas because it contradicts Article 33 paragraph (2) and paragraph (3) of The 1945 Constitution, so that repealed articles no longer have binding legal force. The Constitutional Court also issued a decision on judicial review of Law Number 22 of 2001 on Oil and Gas through Decision Number 36/PUU-X/2012, 13 November 2012. The Constitutional Court repealed Article 1 number 23, Article 4 paragraph (3) , Article 41 paragraph (2), Article 44, Article 45, Article 48 (1), Article 59 letter a, Article 61, Article 63. The Constitutional Court also repealed the phrase "with the Implementing Body" in Article 11 paragraph (1), the phrase "Through the Implementing Body" in Article 20 paragraph (3), the phrase "based on the consideration of the Implementing Agency" and in Article 21 paragraph (1), the phrase "Implementing Agency" and in Article 49 Law Number 22 of 2001 on Oil and Gas.

Some provisions of the article repealed by the Constitutional Court in Law Number 22 of 2001 on Oil and Gas put the state in a weak position. In the management of oil and gas, the Government is not placed or positioned as the holder of mining authority, but rather the contractor as the "holder" of mining authority because it is given the right to explore and exploit by the state. This contradicts Article 33 Paragraph (2) and Paragraph (3) of the 1945 Constitution, that the sectors of production which are important to the state shall be under the powers of the state and shall be used to the greatest benefit of the people.[14]

According to the decision of the Constitutional Court in the interpretation of the state control shows that "controlled by the state" contains a broader meaning than ownership in the conception of civil law. The conception of control by the state is a conception of public law related to the principle of popular sovereignty embraced in The 1945 Constitution, both in politics (political democracy) and economics (economic democracy). In understanding the sovereignty of the people, the people recognized as the source, owner, and at the same time the highest authority in the life of the state, in accordance with the doctrine "of the people, by the people and for the

[14] Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Law Number 22 Tahun 2001 Tentang Minyak Dan Gas Bumi Deputi Bidang Perundang Undangan Sekretariat Jenderal Dewan Perwakilan Rakyat Republik Indonesia 2015

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people". In the meaning of the highest power is also included the meaning of public ownership by the people collectively. State control in the broadest meaning shows that what originates from the conception of the sovereignty of the sources of wealth such as "the land, the waters and natural resources within", including public ownership by the collectivity of the people over the sources of wealth.

The people collectively constructed by The 1945 Constitution give mandates to the state in the form of policy (beleid) and administrative acts (bestuursdaad), to regulate (regelendaad), to manage (beheersdaad), and to supervise (toezichthoudensdaad) for the greatest benefit of the people. The administrative function (bestuursdaad) by the state is carried out by the government with its authority to issue and repeal permits (vergunning), licenses (licenties), and concessions. The regulation function (regelendaad) by the state is carried out through legislative authority by the House of Representatives of the Republic of Indonesia and regulated by the Government (executive). The management function (beheersdaad) is carried out through a share-holding mechanism and/or through direct involvement in the management of State-Owned Enterprise or State-Owned Legal Entitiy as an institutional instrument through which the state c.q. the government utilizes its control over the resources of wealth to be used for the greatest benefit of the people. Likewise, the supervisory function by the state (toezichthoudensdaad) is carried out by the state c.q. the government in the context of supervising and controlling so that the implementation of control by the state over important sectors of production and/or controlling the livelihoods of the people referred to is truly carried out to the greatest benefit of the people.

In its development, the Interpretation of the Constitutional Court emphasized that the most important element of state control is "to the greatest benefit of the people" with four benchmarks, namely: (i) the use of natural resources for the people, (ii) the level of equity of natural resource benefits for the people, (iii) the level of participation of the people in determining the benefits of natural resources, and (iv) respect for the rights of the people for generations in utilizing natural resources.[15] Furthermore, the Constitutional Court also provides an interpretation, to achieve the goal of state control, namely "to the greatest benefit of the people", the form of state control is ranked based on the ability of the state, namely; the first rank, the state directly manages natural resources; the second rank, the state makes policies and arrangements; and third place; the state carries out regulation and supervision.[16] As long as the state can control the important natural resources and products, the state must carry out first-rank control. Furthermore, if it is not able to, the state must carry out second-rank control, and so on, third-rank control as the weakest.

Oil and Gas mining activities are divided into 2 (two) namely exploration and exploitation activities.[17] Exploration and exploitation activities in the upstream sector must be based on production sharing contracts (PSC).[18] Basically, the PSC is a civil contract that determines the relationship between the state and the mining company based on the contractual relationship relating to exploration and exploitation of Oil and Gas.[19] Indonesia is a pioneer in this system,[20] now the

[15] Decision of the Constitutional Court Number 3/PUU-VIII/2010, Judicial Review of Law Number 27 of 2007 on Management of Coastal Areas and Small Islands.

[16] Decision of the Constitutional Court Number 36/PUU-X/2012, 13th November 2012, Judicial Review of Law Number 22 of 2001 on Oil and Gas.

[17] AM Putut Prabantoro, 2014. *Migas The Untold Story*. Jakarta: Gramedia, p 14 bandingkan juga Junaidi Albab Setiawan, 2015. *Migas Untuk Rakyat Catatan Seorang Praktisi.* Yogyakarta: Octopus, p 61.

[18] Kompilasi Hukum Pertambangan, 2009. *Produk Perundangan Terlengkap dan Terbaru.* Yogyakarta: Pustaka Yustitia, p 43.

[19] Madjedi Hasan, 2009. *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum.* Jakarta: Fikahati Aneska, p 279.

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system is followed by more than 40 (fourty) countries.[21]

Then the Government further regulates mining activities by issuing Government Regulation Number 35 of 2004 on Upstream Oil and Gas Business Activities and Government Regulation Number 36 of 2004 on Downstream Oil and Gas Business Activities as the implementation of Law on Oil and Gas.

Law Number 22 of 2001 on Oil and Gas worsens the situation because of the mismanagement of the Natural Resources (SDA) of Indonesia which makes the oil and gas industry fail to be a buffer of national energy security. The worse mismanagement of oil and gas is characterized by the existence of misdirected fiscal regulations, new complicated bureaucratic chains, inefficient operational costs (cost recovery) and the existence of the mafia, decrease of nationalism in oil contracts and the existence of policies in the oil and gas sector that are do not have a roadmap. This causes the production (lifting) of oil and gas does not increase, especially since 2004.[22]

Misdirected fiscal regulations are marked by the repeal of the lex specialis principle in the Production Sharing Contract/PSC in Law Number 22 of 2001 on Oil and Gas. Indonesia is the only state that collects taxes at the pre-production stage. According to Article 31 of Law Number 22 of 2001 on Oil and Gas, Indonesia applies various kinds of taxes and levies in the exploration period, which includes an import duty of 15% (fifteen percent) and Value Added Tax of 10% (ten percent) of the value of capital goods imported from abroad.[23]

Law Number 22 of 2001 on Oil and Gas introduces a new institution called the Oil and Gas Agency. However, its functions and duties are relatively limited because of the legal status aspect of this institution in the form of State-Owned Legal Entity (BHMN). As a State-Owned Legal Entity, this institution is not a business entity so it cannot meet the requirements (eligible) to conduct business transactions with other parties especially with the company. As a State-Owned Legal Entity, business transactions are conducted with third-party intermediaries. BP Migas as a State-Owned Legal Entity is the controller of the management of oil and gas operations but is not a State-Owned Enterprises (BUMN) which directly involved in production activities.[24] Then in Decision of the Constitutional Court No.36/PUU.X/2012, 13 November 2012, the Court decided the dismission of BP Migas.

Law Number 22 of 2001 on Oil and Gas reduced national sovereignty in contracts that tend to place the state and the contractor in an equal position. Pacta sunct servanda dogma (the sanctity of a contract) is manifested in an international arbitration mechanism to resolve industrial disputes (dispute settlement). In the PSC (Production Sharing Contract) standard clause which is valid for 37 years (1964-2001) prior to the existence of Law Number 22 of 2001 on Oil and Gas, the Government is protected from the possibility of being dragged into international arbitration and is guaranteed that whatever the contents of the contract will not impede the right government to assert national interests. In the old PSC there was always a

[20]The PSC was first introduced in Indonesia as a forerunner to the Modern PSC, as stated by Johnson, D. 2006. How to Evaluate the Fiscal Terms Oil Contract. IPD Working Paper Series. The rationale for oil and gas management in Indonesia has actually been designed with the idea of Production Sharing Contracts. The originator of the idea of the Production Sharing Contract was Bung Karno, who got the idea based on current practices in agricultural management in Java. Most farmers (Marhaen) were not owners of rice fields. Farmers got their income from profit sharing (paron). Management is in the hands of the owner. Widjajono Partowidagdo, 2001. *PSC di Indonesia versus Pengusahaan Migas Dunia* Cost Recovery *versus Peningkatan Produksi Migas di Indonesia.* Makalah pada Seminar Persatuan Insinyur Indonesia (PII), tanggal 31 Juli 2008 di Jakarta, p 2.

[21]*Ibid.*

[22] *Ibid*

[23] *Ibid*

[24] *Ibid*

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clause: ―The laws of the Republic of Indonesia shall apply to this Contract ―No term or provisions of this Contract, including the agreement of the Parties to submit to arbitration hereunder, shall prevent or limit the Government of the Republic of Indonesia from exercising its inalienable rights. This clause was repealed in Production Sharing Cooperation.[25]

Regarding the public and private aspects of the state control, Achmad Sodiki explained his view that in terms of the state control as a Private Right, the state cannot directly engage in dealing with third parties or private companies. For this reason, State-Owned Enterprises (BUMN) is appointed to work with the private sector. State-Owned Enterprises are chosen to deal with the private sector so that the position of the state is not in an equal position with private corporations. However, the state must have a higher position than its cooperation partners, so that the correction and regulation functions of the state can be carried out properly[26]

2. Contextualization of The Meaning of State control in Managing Oil and Gas

The discourse on the control of natural resources and the scope of control become a fundamental issue when discussing the regulation of natural resources in the Indonesian constitution. There are various models of natural resource ownership that are adopted in state regulations, namely the regime of ownership of natural resources as communal or collective ownership by ruling out individual ownership, ownership or control by the state, ownership regimes that use a combination of the three regimes mentioned earlier.[27]

According to the Constitutional Court, the authority of state rights in Article 33 of the 1945 Constitution in the judicial review of Law Number 20 of 2002 on Article 33 of the 1945 Constitution has a broader meaning than ownership in the conception of civil law. The conception of state control is a conception of public law related to public sovereignty. Therefore the meaning of state control does not mean that the state has land, water, and natural resources, but in the sense that the state formulates policy (regulation), regulates (regelendaad), administers (bestuurdaad), manages (beheersdaad), and supervises (toezichthoudendaad).[28] The word "under the powers of the state" must be broadly interpreted as the authority of state rights which originates from the conception of the sovereignty of the sources of wealth such as "the land, the waters and natural resources within", including public ownership by the collectivity of the people over the sources of wealth.[29] The people collectively constructed by The 1945 Constitution give mandates to the state in the form of policy (beleid) and administrative acts (bestuursdaad), to regulate (regelendaad), to manage (beheersdaad), and to supervise (toezichthoudensdaad) for the greatest benefit of the people.

Decision of the Constitutional Court Number 001, 021, 022 / PUU-I / 2003 dated 15th December 2004 also affirms that if the meaning of "under the powers of the state" is only interpreted as ownership in the sense of civil (private) by the state, then not enough to achieve "the greatest benefit of the people". State control in the broadest meaning shows that what originates from the conception of the sovereignty of the sources of wealth such as "the land, the waters and natural resources within", including public ownership

[25] *Ibid*, p 2-3
[26] Achmad Sodikin, dalam Workshop Hasil Penelitian Sistematis STPN, on 27th November 2014 in Sekolah Tinggi Pertanahan Nasional, Yogyakarta.
[27] Hamdan Zoelva, *Pengelolaan Sumber daya Alam dalam Prespektif UUD 1945 dalam Liber Amicorum 70 Tahun Prof. Dr. Achmad Sodikin, SH*, (Universitas Brawijaya Press (UB Press), Cetakan pertama, 2014), p 9-10.
[28] Pertimbangan Putusan Perkara Nomor 001-021-022/PUU-I/2003 pada tanggal 21 Desember 2004 tentang Pengujian UU Ketenagalistrikan, alinea ke-1 p 334.
[29] Tody Sasmitha dkk, *Loc. Cit*, p. 67

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by the collectivity of the people over the sources of wealth.[30]

The meaning of "under the powers of the state" as stated in Article 33 paragraph (2) of the 1945 Constitution has normative force as follows:[31] (1) the constitution gives the state authority to control the sectors of production which are important for the state and affect the life of the people; (2) the authority is addressed to those who will and have sought the production of which are important for the state and affect the life of the people. In sectors of production that do not yet exist or will only be sought which are important for the state and affect the life of the people, the state has priority rights, namely the state striving for itself and controlling the production sector and at the same time prohibiting individuals or the private sector from working in that sector of the production.

Meaning of sectors of production which are important for the state and affect the life of the people, namely: (i) sectors of production which are important for the state and affect the life of the people, (ii) sectors of production which are important for the state but do not affect the life of the people, or (iii) sectors of production which are not important for the state but affect the life of the people. All three must be controlled by the state and used for the greatest benefit of the people. [32]

The administrative function by the state is carried out by the government with its authority to issue and repeal permits, licenses, and concessions. The regulation function by the state is carried out through legislative authority by the House of Representatives of the Republic of Indonesia and regulated by the government (executive). The management function is carried out through a share-holding mechanism and/or through direct involvement in the management of State-Owned Enterprise/Regional-Owned Enterprise or State-Owned Legal Entity/Regional-Owned Legal Entity as an institutional instrument through which the state c.q. the government utilizes its control over the resources of wealth to be used for the greatest benefit of the people. Likewise, the supervisory function by the state) is carried out by the state c.q. the government in the context of supervising and controlling so that the implementation of control by the state over the land, the waters and natural resources within to the greatest benefit of the people.[33]

According to Kurtubi, the Decision of the Constitutional Court on the judicial review of the Law on Oil and Gas on the revised article sentences caused uncertainty. This Law on Oil and Gas needs to be repealed as a whole like Law on Electricity. This is related to the clause in The 1945 Constitution that controls the natural resources is the State. The state granted the authority for mining to the government, in this case, the Ministry of Energy, which was previously given to Pertamina. By the government, the authority to conduct exploration and exploitation is none other than the mining authority (Article 1 (5) of Law on Oil and Gas). Based on Article 12 of Law on Oil and Gas, the Minister hands over the authority to carry out exploitation and exploration to investors, Business Entities and Permanent Business Entities. This shows that the Minister handed over mining authorization to investors. This is precisely what contradicts Article 33 of the 1945 Constitution. The Constitutional Court repealed the word "authority". According to Kurtubi, all articles of the Law on Oil and Gas should be repealed, because the repeal of the word "authority" is the same as the repeal of the "Spirit" of this Law. In other words, although was repealed is one word in one article, but this Decision

[30] *Ibid*, p. 69

[31] Decision Number 001-021-022/PUU-I/2003 21st December 2004 on Judicial Review of Law on Electricity Paragraph 2, p 329.

[32] *Ibid*

[33] *Ibid*

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of the Constitutional Court has made paralysis of the Law on Oil and Gas.[34]

So based on the various explanations above, the meaning of state control in the Decision of the Constitutional Court on judicial review of Law on Oil and Gas has been interpreted contextually as the meaning of state control in judicial review of Law on Electricity even though the principle of state control must be the philosophical foundation in assessing the constitutionality of the law on national natural resources so that when Law on Electricity was declared contrary to Article 33 of the 1945 Constitution as a whole it will be the same as the judicial review of Law on Oil and Gas that was contrary to Article 33 of The 1945 Constitution.

D. Closing

The Decision of the Constitutional Court which interpreted Law on Oil and Gas provided an interpretation of state control in managing Oil and Gas which is different from the interpretation of Law on Electricity despite using the same article namely Article 33 of The 1945 Constitution even though Electricity and Oil and Gas affect the life of the people and have the same goal of achieving the greatest benefit of the people.

The Constitutional Court provided a different interpretation of state control in the management of Electricity, Oil and Gas, and Water Resources even though the judicial review of the three laws uses Article 33 of The 1945 Constitution. The state control interpretation in the Decision of the Constitutional Court on the judicial review of the Law on Oil and Gas towards the 1945 Constitution, was contextualized and inconsistent because there were different interpretations of the same thing, namely natural resources that affect the life of the people and have a purpose to achieve the greatest benefit of the people.

The Constitutional Court must consistently use the concept of law in providing an interpretation of state control over the management of all-natural resources such as Law on Electricity, Law on Oil and Gas, and Law on Water Resources to realize the prosperity of the people. Contextualization and inconsistency of the Constitutional Court in interpreting Law on Oil and Gas so that it differed from Law on Electricity and Law on Water Resources even though using the same article namely Article 33 of The 1945 Constitution in providing interpretation so that it is possible to reinterpret in oil and gas management in the future.

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