



Formulation of Oil and Gas Production Sharing Contracts in Foreign Investment in the Upstream Oil and Gas Sector: A Study in the Pase Block, North Aceh

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Abstract: The formulation of oil and gas Production Sharing Contracts (PSCs) in Aceh differs greatly from those in other regions of Indonesia. This process shall adhere to the Government Regulation No. 23 of 2015 on the Joint Management of Oil and Gas Natural Resources in Aceh, as the legal foundation for the Aceh Government's authority in managing these resources. Accordingly, the Aceh Government shall be involved in the drafting, amendment, and termination of the PSCs, which also includes issues related to data management, payment of signature and production bonuses, audits, transfer of participating interests, involvement of Aceh-owned enterprises, and determination of CSR funds. However, there is only one oil and gas PSC in the Pase Block, signed between the Aceh Regional Development Company and Triangle Pase Inc. on May 22, 2015. This study explored the implementation of the PSC in the context of foreign investment in the upstream oil and gas sector in Aceh. Employing a normative juridical method, the study collected data by means of interviews and literature reviews, and analyzed the data based on oil and gas regulatory frameworks. The findings revealed that the implementation of the PSC indicated several contractual obligations that were not fulfilled or were violated by Triangle Pase Inc., causing financial losses to the Aceh Regional Development Company. As a result of these violations, the Aceh Regional Development Company filed a legal claim through the Indonesian National Arbitration Board, whose decision was to reject all of the Company's claims and to require it to pay arbitration costs. Therefore, the Aceh Regional Development Company promptly filed for the annulment of the decision issued by the Indonesian National Arbitration Board.

Keywords: Contract, Production Sharing, Management, Oil, Gas, International Law

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Abstrak: *Perumusan Kontrak Bagi Hasil minyak dan gas bumi di Aceh berbeda dengan daerah lain di Indonesia. Perumusan Kontrak Bagi Hasil harus berpedoman pada Peraturan Pemerintah Nomor 23 Tahun 2015 tentang Pengelolaan Bersama Sumber Daya Alam Minyak dan Gas Bumi di Aceh sebagai dasar hukum bagi Pemerintah Aceh dalam mengelola minyak dan gas bumi. Penyusunan Kontrak Bagi Hasil di Aceh wajib melibatkan Pemerintah Aceh terutama dalam hal melakukan perumusan, perubahan dan pembatalan Kontrak Bagi Hasil. Demikian juga isu terkait pengelolaan data, pembayaran bonus tanda tangan dan bonus produksi, pemeriksaan, pengalihan Participating Interest, pelibatan Badan Usaha Milik Aceh dan penetapan dana CSR. Namun, hanya terdapat satu Kontrak Bagi Hasil Pengelolaan Minyak dan Gas Bumi Blok Pase antara Perusahaan Daerah Pembangunan Aceh dan Triangle Pase Inc, yang ditandatangani pada 22 Mei 2015. Kajian ini difokuskan pada implementasi rumusan kontrak bagi hasil minyak dan gas bumi dalam penanaman modal asing di sektor hulu minyak dan gas bumi di Aceh. Penelitian ini menggunakan metode yuridis normatif. Data diperoleh melalui wawancara dan literatur kepustakaan, kemudian di analisis dengan peraturan perundang undangan tentang pengelolaan minyak dan gas. Hasil penelitian menunjukkan bahwa pelaksanaan Kontrak Bagi Hasil dijumpai sejumlah kewajiban kontraktual yang belum dilaksanakan dan bahkan dilanggar oleh pihak Triangle Pase Inc, sehingga menimbulkan kerugian bagi pihak Perusahaan Daerah Pembangunan Aceh. Dampak dari perubahan ini Perusahaan Daerah Pembangunan Aceh melakukan tuntutan hukum melalui Badan Arbitrase Nasional Indonesia yang putusannya adalah menolak semua gugatan Perusahaan Daerah Pembangunan Aceh dan mewajibkan membayar biaya arbitrase. Oleh karena itu Perusahaan Daerah Pembangunan Aceh segera mengajukan pembatalan terhadap putusan Badan Arbitrase Nasional Indonesia.*
Kata Kunci: *Kontrak, Bagi Hasil, Pengelolaan, Minyak, Gas, Hukum Internasional*

Introduction

An important agreement between the Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) and the Government of the Republic of Indonesia granted authority over the management of oil and gas resources in Aceh, as outlined in the Helsinki Memorandum of Understanding signed on August 15, 2005. The provisions regarding this authority were subsequently regulated in Article 160 of the Law Number 11 of 2006 concerning the Governance of Aceh. To implement the authority referred to in Article 160, the Government issued the Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh.¹

¹Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas

The management of oil and gas in Aceh is overseen by the Aceh Oil and Gas Management Agency (Badan Pengelola Migas Aceh/BPMA), in accordance with the agency's duties as stipulated in Article 13, which states: "The Aceh Oil and Gas Management Agency is tasked with implementing, controlling, and supervising cooperation contracts in upstream oil and gas activities so that the extraction of state-owned oil and gas natural resources located on land and at sea within Aceh's jurisdiction can provide maximum benefits and revenue for the state, for the greatest prosperity of the people."

In addition to these duties, the BPMA is also responsible for conducting negotiations, drafting cooperation agreements, and signing contracts with Production Sharing Contract (PSC) contractors. Therefore, the BPMA functions as the contracting party in PSC arrangements within Aceh's jurisdiction.²

In accordance with its mandated duties and functions, the BPMA is required to be actively involved in the formulation of Oil and Gas PSCs. The involvement of BPMA in every stage of contract formulation is crucial to ensure that the resulting contracts align with Aceh's special authority in oil and gas management as regulated in Government Regulation Number 23 of 2015.³ Further, the BPMA is responsible for overseeing and monitoring the implementation of PSCs to ensure compliance and accountability.

This present study critically analyzed the formulation of the PSC for oil and gas management in the Pase Block between the Regionally-Owned Enterprise and Triangle Pase Inc. The study focused on evaluating the extent to which the contract aligned with the Government Regulation No. 23 of 2015 and reflected Aceh's special autonomy status as granted through the Helsinki Memorandum of Understanding (MoU). The ultimate aim of the study is to promote legal certainty in PSC formulation in Aceh in order to support sustainable economic growth in the region.

This study employed a combination of normative juridical and empirical

²Azhari Yahya and Nurdin MH, "Management Authority Of Oil And Gas Resources In Aceh Territory After Signing The Government Regulation Number 23 Year 2015," *Journal on Leadership and Policy* 3, no. Number 2 (2018); Shochrul Rohmatul Ajija, Arivia Fikratuz Zakia, and Rudi Purwono, "The Impact of Opening the Export Promotion Agencies on Indonesia's Non-Oil and Gas Exports," *Heliyon* 7, no. 8 (2021); Nurdin Nurdin and Amira Amira, "Foreign Capital Investment In Upstream Oil And Gas: A Case Study Of Pase Working Area, Aceh Province, Indonesia," *Student Journal of International Law* 1, no. 1 (2021).

³Ronald L. Holzhaecker, Rafael Wittek, and Johan Woltjer, *Decentralization and Governance in Indonesia, Decentralization and Governance in Indonesia*, 2015; Azhari Yahya, "Foreign Direct Investment Inflow into Aceh Province of Indonesia after Peace Agreement," in *Emerald Reach Proceedings Series*, vol. 1, 2018; Hidayah Balqis and Nurdin MH, "Corporate Social Responsibility By Foreign Direct Investment In Block Pase Upstream Oil And Gas Sector, East Aceh Regency, Indonesia," *Student Journal of International Law* 2, no. 1 (2022); Zakia Vonna, Sri Walny Rahayu, and M Nur, "Compatible Concept of Contract Law with Oil and Gas Production Sharing Contract in Indonesia," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 24, no. 9 (2019).

legal research methods. Data were collected by means of interviews and a literature review. Primary data were obtained from interviews with selected respondents, while secondary data, comprising primary legal materials, were gathered through an analysis of national laws and regulations, oil and gas PSC documents, as well as relevant literature and academic journals. All data were subsequently classified according to the specific issues addressed in the study. After the classification process, the data were analyzed using a qualitative approach.

The History of Paise Block Management

Investment in the upstream oil and gas sector is highly capital-intensive and carries significant risks. In light of these, the government encourages the participation of foreign investors through Foreign Direct Investment (FDI) to support the development of this strategic sector.⁴ At present, FDI serves as a key instrument for generating employment opportunities and stimulating economic growth across various sectors, including oil and gas. Justin Kuepper states that *“Foreign Direct Investment, has become the foundation for governments and companies. By acquiring controlling stock in foreign assets, companies can quickly acquire new products and technologies, and sell existing products to new markets. And by encouraging direct foreign investments, governments can create jobs and increase economic growth, especially if an area has vast resources both natural and human. For international investors, foreign investments play a crucial role, using capital to purchase real assets typically gold, land, homes, and so on.”*⁵ In recent years, FDI has become a main source of capital for developing countries, as it provides a significant role in supporting national development efforts.⁶

⁴S. P. G. and John Bouvier, “Bouvier’s Law Dictionary,” *Harvard Law Review* 28, no. 5 (1915); Oxford Paperback Reference, *Oxford Dictionary of Law*, Oxford Paperback Reference, vol. 20, 2003; Mercy T. Magombeyi and Nicholas M. Odhiambo, “Foreign Direct Investment And Poverty Reduction,” *Comparative Economic Research* 20, no. 2 (2017); Luh Putu Yeyen Karista Putri et al., “Comparative Analysis of Indonesia’s Minimum Capital Requirements for Foreign Direct Investment,” *Lex Scientia Law Review* 7, no. 1 (2023).

⁵Justin Kuepper, “Foreign Direct Investment”, <https://www.thebalance.com/what-is-foreign-direct-investment-1979197>. (25/06/2019), accessed on 1 March 2020, at 10.00 AM; Karl P. Sauvant and Michael D. Nolan, “China’s Outward Foreign Direct Investment and International Investment Law,” *Journal of International Economic Law* 18, no. 4 (2015); Anan Chandrawulan, “Liberalisation of Foreign Investment Law in Indonesia,” *International Journal of Private Law* 6, no. 4 (2013).

⁶Rungrat Saeyang and Ayut Nissapa, “Factors Affecting Revealed Symmetric Comparative Advantage of Crude Palm Oil Exports of Indonesia, Malaysia and Thailand,” *Songklanakarin Journal of Science and Technology* 44, no. 1 (2022); Mehdi Nejati and Mojtaba Bahmani, “The Economic Impacts of Foreign Direct Investment in Oil and Gas Sector: A CGE Analysis for Iranian Economy,” *Energy Strategy Reviews* 32 (2020); Nguyen Anh Tu, “Innovation

FDI is widely acknowledged by both the general public and the international community for its substantial benefits, particularly in facilitating access to advanced technologies and managerial expertise. In this context, Sudha states that, “*The existence of Foreign Direct Investment in improving technology, managerial skills and abilities is now well accepted by the wider community. Foreign Direct Investment continues to benefit as a form of international economic transaction and as an instrument of international economic integration.*”⁷ For developing nations, FDI is considered an essential tool for accelerating economic development. Developing countries have regarded FDI as one of the most effective means to stimulate economic growth, particularly in light of the common challenge of insufficient national savings to finance domestic investment.⁸ Similarly, the Indonesian government, as a developing nation, requires substantial capital to support its economic development efforts. This aligns with the assertion made by Strat et al. that, “*Indonesia, as a developing country, needs large funds to carry out economic development. Two factors, there are macroeconomic stability and the labor market of an economy have been identified by the literature, as some of the main aspects that are analyzed by investors before deciding for a future host country.*”⁹

The term *Foreign Investment* is the English equivalent of the Indonesian phrase *Penanaman Modal Asing* (PMA). The Law Number 25 of 2007 defines *Foreign Investment* specifically as direct foreign capital invested in accordance with the provisions of the law and intended for the operation of a business within the territory of Indonesia.¹⁰ There are several important aspects of this definition. First, the investment is made directly, which means that the investor is personally and fully responsible for all risks arising from the investment. Second, the phrase “in accordance with the law” indicates that foreign capital invested in Indonesia must be based on the substance, procedures, and requirements set forth in the

and Foreign Direct Investment Attraction in Developing Countries,” *Cogent Economics and Finance* 12, no. 1 (2024).

⁷S. Sudha, “A Study on Economic Development with Driven from Foreign Direct Investment Between 2012 and 2022,” *Quing: International Journal of Commerce and Management* 3, no. 3 (2023); I. Gusti Ngurah Parikesit Widiatedja and I. Nyoman Suyatna, “Job Creation Law and Foreign Direct Investment in Tourism in Indonesia: Is It Better than Before?,” *Udayana Journal of Law and Culture* 6, no. 1 (2022).

⁸Claudia TeziaJanuarita Putri and Regina Niken Wilantari, “Determinan Aliran Foreign Direct Investment Di Indonesia (Pendekatan Model Dunning),” *Media Trend* 11, no. 2 (2016): 141; Gift Andrew Sabola, “The Link between Chinese Belt and Road Initiative and Foreign Direct Investment Inflows in Southern Africa,” *Borsa Istanbul Review* 24, no. 2 (2024); Mi Jeong Shin and Seungbin Park, “Natural Disasters, Foreign Direct Investment, and Women’s Rights in Developing Countries,” *Social Science Research* 117 (2024).

⁹Vasile Alecsandru Strat, Adriana Davidescu(Alexandru), and Andreea Maria Paul(Vass), “FDI and The Unemployment - A Causality Analysis for the Latest EU Members,” *Procedia Economics and Finance* 23 (2015);

¹⁰Article 1 of Law Number 1 of 1967 concerning Foreign Investment

prevailing laws and regulations enacted by the Government of the Republic of Indonesia. Lastly, the phrase “operating a business in Indonesia” implies that a foreign company, or a joint venture between a foreign and an Indonesian company, must carry out its business activities within the territory of Indonesia.¹¹

The concept of *Foreign Investment* is also defined in Law Number 25 of 2007 concerning Investment, which affirms that Foreign Investment refers to investment activities conducted by foreign investors to engage in business within the territory of the Republic of Indonesia, either through the use of wholly foreign capital or in partnership with domestic investors.¹² To add, Sornarajah defines *Foreign Investment*, or Foreign Direct Investment (FDI), as the transfer of tangible or intangible assets from one country to another for the purpose of utilizing those assets to generate wealth in the host country, under the full or partial control of the asset owner.¹³

To overcome funding difficulties in managing the Pase Block, the Aceh Government through the Aceh Regional Development Company entered into a joint management arrangement with Triangle Pase Inc., a foreign oil and gas company based in Australia. In 1982, the Pase Working Area was managed by Mobil Pase Inc., marked by the signing of a Production Sharing Contract on February 12, 1981, between the State Oil and Gas Mining Company and Mobil Pase Inc. for a period of 30 (thirty) years. The contract covered an area of 942 square kilometers located in the districts of East Aceh, North Aceh, and Bireuen.¹⁴ In 2012, the contract period for the Pase Working Area expired and was handed over to the Ministry of Energy and Mineral Resources of the Republic of Indonesia. To avoid a management vacuum and to prevent undesirable incidents such as gas blowouts, on February 10, 2012, the Ministry of Energy and Mineral Resources, through Letter Number 1132/12/MEM.M/2012, assigned temporary management of the area to Triangle Pase Inc.

¹¹Salim HS and Budi Sutrisno, *Hukum Investasi Di Indonesia* (Jakarta: Raja Grafindo Persada, 2007), 148; Januari Nasya Ayu Taduri, “The Legal Certainty and Protection of Foreign Investment Againsts Investment Practices in Indonesia,” *Lex Scientia Law Review* 5, no. 1 (2021); Hikmatul Ula, Kevin Sobel-Read, and Cahyani Aisyiah, “Indonesia at the Intersection of Human Rights and International Investment,” *Asia Pacific Journal on Human Rights and the Law* 23, no. 2 (2022).

¹²Article 1 Point 9 of Law Number 25 of 2007 concerning Foreign Investment

¹³M. Sornarajah, *International Investment Law* (Cambridge: Cambridge University Press, 2004), 204; Herman Soegoto, Surjatno Wiganepdo Soegoto, and Daniel Francois Meyer, “The Role Of Domestic Investment, Foreign Investment, And Micro, Small And Medium-Sized Enterprises For Poverty Reduction In Indonesia,” *Journal of Eastern European and Central Asian Research* 9, no. 5 (2022).

¹⁴Triangle Pase Inc, “Kertas Kerja Disampaikan Dihadapan Pansus Rencana Umum Energi Aceh (RUEA) DPRA” (Kantor Pusat Operasi PHE Kecamatan Tanah Luas Aceh Utara, 2019).

Formulation of the Production Sharing Contract

The Production Sharing Contract (PSC) has its roots in Indonesian customary law, which was later codified into Law Number 2 of 1960 concerning Sharecropping Agreements. Indonesia was the first country to adopt the PSC model, and since 1966, this model has been used worldwide, including in countries such as Angola, Cambodia, China, Egypt, Ethiopia, Gabon, India, Liberia, Libya, Malaysia, Mauritania, Mongolia, Mozambique, Myanmar, Nigeria, Sudan, Syria, Tanzania, Timor-Leste, Trinidad and Tobago, Tunisia, Vietnam, and Yemen.¹⁵ According to Law Number 2 of 1960, a Sharecropping Agreement is any agreement regardless of its title entered into between a landowner on one side and an individual or legal entity on the other side, referred to as the cultivator, whereby the landowner permits the cultivator to carry out agricultural activities on the landowner's land, with the yield to be shared between both parties. This concept later evolved into the PSC model for oil and gas mining operations.¹⁶

The term *Cooperation Contract*, according to the provisions of the Law Number 22 of 2001 concerning Oil and Gas, refers to a PSC or other forms of cooperation contracts in exploitation activities that are more beneficial to the state and whose outcomes are used for the greatest prosperity of the people. The provision in this article does not specifically define the PSC, but rather focuses on the general concept of cooperation in the oil and gas sector. A clearer definition of the PSC can be found in Article 1, Point 1 of the Government Regulation Number 35 of 1994 concerning Upstream Oil and Gas Activities, which outlines the terms and guidelines for cooperation under a PSC. According to this regulation, a PSC is a cooperation agreement between Pertamina and a contractor to conduct oil and gas exploration and exploitation based on the principle of production sharing.¹⁷

Based on the provisions of Article 6 paragraph (1) of the Law Number 22 of 2001, the control over oil and gas mining, particularly upstream business activities, is carried out and regulated through cooperation contracts. According to Article 1 paragraph (19) of the same law, a Cooperation Contract refers to a PSC or other forms of cooperation agreements in exploration and exploitation activities that are more beneficial to the state and whose outcomes are used for the greatest prosperity of the people.

¹⁵Brad Roach and Alistair Dunstan, "The Indonesian PSC: The End of an Era," *Journal of World Energy Law and Business* 11, no. 2 (2018), p. 116–35; Hari Sutra Disemadi and Sahuri Lasmadi, "Utilizing Production Sharing Contracts (PSCs) as a Means for the Protection of Indonesia's Natural Resources," *Lentera Hukum* 6, no. 3 (2019); Muhammad Ariyon et al., "Comparison of Oil and Gas Fiscal Policies in Southeast Asian Countries: Indonesia, Malaysia and Brunei Darussalam," in *BIO Web of Conferences*, vol. 70, 2023.

¹⁶Rudi M. Simamora, *Hukum Minyak Dan Gas Bumi* (Jakarta: Jembatan, 2000), p. 76.

¹⁷Government Regulation Number 34 of 2004 concerning Upstream Oil and Gas Business Activities

Specifically for the Province of Aceh, the regulation of oil and gas PSCs is stipulated in Article 1, Point 27 of the Government Regulation No. 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh. The regulation defines a PSC as a form of cooperation contract in upstream oil and gas activities based on the principle of production sharing.

According to Salim HS, a PSC is an agreement established between an implementing agency and a business entity and/or permanent establishment to conduct exploration and exploitation activities in the oil and gas sector, based on the principle of production sharing.¹⁸ Further, Rudi M. Simamora describes the main characteristics of PSCs as the following:

- a) **Management is in the hands of the state (state-owned enterprise):** The state actively participates in and supervises the operation of oil and gas mining activities, while still granting the contractor the authority to act as the operator and carry out operations under its supervision. The state is directly involved in the operational decision-making process, which is generally carried out through an approval mechanism. The core issue here lies in determining the extent to which state or state-owned enterprise approval is required in the decision-making process.
- b) **Operating Cost Recovery:** The operator is obligated to initially cover the required operating costs, which are later reimbursed from the proceeds of sales or by taking a portion of the produced oil and gas. The amount of cost recovery does not necessarily have to be full (full recovery); it may be partial, depending on the results of the negotiation.
- c) **Production Split:** The production split, after deducting operating costs and other obligations, represents the profit for the contractor and the revenue for the state. The percentage of the production split varies depending on several factors.
- d) **Tax:** Taxes are imposed on the contractor's operations, and the amount is related to the production split between the state and the contractor. The principle is that the greater the state's share, the smaller the income tax imposed on the contractor.
- e) **Asset Ownership Belongs to the State (State-Owned Enterprise):** Generally, all equipment required for operational activities becomes the property of the state-owned enterprise either immediately after purchase or after depreciation. This provision excludes leased equipment, as ownership never transfers to the contractor.¹⁹

¹⁸Salim HS, *Hukum Pertambangan Di Indonesia* (Jakarta: Raja Grafindo Persada, 2004). p. 206.

¹⁹Zainuddin, "Environmental Law Enforcement in Illegal Mining Cases in Indonesia," *International Journal of Criminal Justice Sciences* 18, no. 2 (2023); Irsan Irsan and Meria Utama, "The Political Law on Coal Mining in the Fulfilment of People's Welfare in Indonesia," *Sriwijaya*

There are three fundamental principles contained in a PSC, as regulated in Article 6 paragraph (2) of the Law Number 22 of 2001, as follows:

- 1) Ownership of natural resources remains with the government until the point of delivery;
- 2) Operational management control is held by the implementing agency;
- 3) All capital and risks are borne entirely by the Business Entity or Permanent Establishment.

Mochtar Kusumaatmadja made a comparison between the model of the Work Contract (*Kontrak Karya*) and the PSC as regulated in Article 6 paragraph (2) of the Law Number 22 of 2001, as the following:

- 1) Under the Production Sharing Contract the government, through Pertamina, retains the management of the operations and control over the resources; under the Work Contract, management of the operations and control over the resources are in the hands of the contractor, with the government (i.e., the Department of Mines) only supervising.
- 2) Under the Production Sharing Contract, the Work Program and Budget are annually submitted for approval by Pertamina, and Pertamina may propose revisions; most work contracts concerning minerals do not contain such provisions. Where such provisions do exist, their function is not to give the government management rights, as it is in the Production Sharing Contract, but merely to indicate whether the contractor adhering the mining laws, regulations, and guidelines of the department.
- 3) Responsibility for taxes and other government levies under the Production Sharing Contract is Pertamina's, since the Pertamina is the holder of the authority to mine; under the work contract, however, it is the contractor who must pay land rent royalties, taxes, and other levies.
- 4) The Production Sharing Contract explicitly states that "title of the (contractor's share of) crude oil passes at the point of export"; no such provision exists in the work contracts, in which title to oil presumably passes at the wellhead.²⁰

In general, there are two models of Oil and Gas PSCs in Indonesia. The first is the Cost Recovery PSC model, as regulated in Government Regulation Number 79 of 2010 concerning Recoverable Operating Costs and the Application of Income Tax in the Upstream Oil and Gas Sector, as amended by Government

Law Review, 2019; Bambang Heri Supriyanto, "Legal Protection Of The National Oil And Gas Energy By Law Number 22 Of 2001," *International Journal of Social Science* 3, no. 4 (2023).

²⁰Mochtar Kusumaatmadja, *Right Over Natural Resources The Indonesian Experience* (Bandung: Alumni Publisher, 2002), p. 12; Nicholas Lingard et al., "Cost Recovery in Production Sharing Contracts: A Comparative Review of Southeast Asian Jurisdictions," *Journal of World Energy Law and Business* 13, no. 5–6 (2020).

Regulation Number 27 of 2017. The second is the Gross Split PSC model (PSC GS), as regulated in Minister of Energy and Mineral Resources Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts, which was most recently amended by Ministerial Regulation Number 20 of 2019.

Understanding the distinction between the PSC Cost Recovery model and the PSC Gross Split model is essential, as each represents a different approach to managing upstream oil and gas operations. The main differences between the two models are outlined in the following table:

Table I: Differences Between Cost Recovery and Gross Split Production Sharing Contracts

Aspect	Cost Recovery	Gross Split
Legal Basis	Government Regulation No. 79 of 2010 jo. Government Regulation No. 27 of 2017	Minister of Energy and Mineral Resources Regulation No. 8 of 2017 jo. No. 52 of 2017 jo. No. 20 of 2019
Definition	Operating costs can be reimbursed by the State	Operating costs are not reimbursed by the State
Production Split	Oil: 85% (State): 15% (Contractor) Gas: 70% (State): 30% (Contractor)	Oil: 57% (State): 43% (Contractor) Gas: 52% (State): 48% (Contractor)
State Control	Dominant, as all core and supporting activities must receive prior approval	Limited only to core activities, and cost policies are determined by the contractor (PSC holder)

The Government of Indonesia currently implements the Gross Split PSC model, and the Government of Aceh is likewise encouraged to adopt this scheme. This policy direction has prompted ongoing discussions between the Government of the Republic of Indonesia, particularly the Ministry of Energy and Mineral Resources, and the Government of Aceh. Both the Cost Recovery and Gross Split PSC models possess distinct advantages and limitations, which continue to be the subject of analysis and debate in determining the most suitable framework for oil and gas resource management in the region. In this regard, Mallinda Eka Yuniza notes that, *“On one hand, it is a necessity because the deterioration of state revenue is worrying. On the other hand, it is a premature move because concrete regulations do not follow this shift, and it discourages contractors.”*²¹ From the

²¹Mallinda Eka Yuniza, Aicha Grade Rebecca, and Rahmah Candrika Ramadhaniati, “A Necessity or a Premature Move? The Shift of Indonesian Production Sharing Contract in the Oil and Gas Industry,” *International Journal of Energy Economics and Policy* 10, no. 4 (2020), p. 251–57; Ibrahim Salahudin Mohamed et al., “A New Progressive And Efficient Production

perspective of the Aceh Government, however, the PSC with a Cost Recovery scheme is considered more advantageous and transparent, as all operational costs are borne by the contractor. Moreover, this model aligns with the mandate outlined in the Government Regulation No. 23 of 2015.

In light of the above discussions, this study aimed to examine the formulation of a PSC for oil and gas working areas in Aceh in a manner that aligns with the region's special autonomy status, with a particular focus on its implementation in the Pase Working Area. Prior to the commencement of joint management of the Pase Block, it is essential for the relevant parties to first establish the terms of a PSC. In this context, the Aceh Oil and Gas Management Agency (BPMA) acts as one of the principal stakeholders involved in the formulation of the contract.²² As previously noted, one of the key functions of the BPMA is to facilitate negotiations and draft cooperation agreements in the oil and gas sector, particularly those conducted between the Central Government and the Government of Aceh.

Therefore, in fulfilling its role as the drafter of the PSC, the BPMA must carefully consider the core substance and essential provisions that must be incorporated into the contract. At a minimum, these provisions should include the following:

- a) state revenue;
- b) working area and its relinquishment;
- c) obligation to incur expenses;
- d) transfer of ownership of oil and gas production;
- e) contract duration and conditions for extension;
- f) dispute resolution;
- g) obligation to supply oil and/or gas for domestic needs;
- h) contract termination;
- i) post-exploration and exploitation obligations;
- j) occupational health and safety;
- k) environmental management;
- l) transfer of rights and obligations;
- m) required reporting;
- n) field development plan;
- o) prioritization of the use of domestic goods and services;
- p) community development; and

Sharing Contract For Upstream Oil And Gas Industry,” *Geoenergy Science and Engineering* 235 (2024); Dody Susanto and Asep Handaya Saputra, “Comparative Analysis Of Indonesian Crude Oil Price (ICP) To Gross Product Worth - A Case Study Of The Oil And Gas Industry,” in *AIP Conference Proceedings*, vol. 2720, 2023.

²²Article 14 of Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh

q) prioritization of the use of Indonesian labor.²³

In addition to the above-mentioned substance, the formulation of the PSC for oil and gas in Aceh must also take into account Aceh's special autonomy status in several aspects as outlined in the table below:

Table II: Special Provisions for Aceh in the Formulation of the Production Sharing Contract

Amendment/Cancellation of Contract	The entire content of the contract must be jointly agreed upon by the Central Government and the Aceh Government, in accordance with Article 160 paragraph (3) of Law Number 11 of 2006. The contract must stipulate the authority of the Governor to approve amendments and cancellations of the contract.
Discovery of Oil and Gas Reservoirs	When unitization is required, the Governor has the authority to provide recommendations to the Minister of Energy and Mineral Resources (ESDM) regarding the approval of unitization and the appointment of the operator to manage it.
Oil and Gas Data Management	Original data copies must be approved by the Central Government and based on agreements with the Aceh Government. In accordance with Articles 7, 8, and 9 of Government Regulation Number 23 of 2015, the Aceh Government may store, manage, and utilize copies of data related to exploration and exploitation activities. This is also supported by Aceh Qanun Number 5 of 2018 on Investment.
Payment of Signature and Production Bonuses	The percentage division of funds received by the Central Government and the Aceh Government is in accordance with Articles 70 and 71 of Government Regulation Number 23 of 2015.
Utilization of Goods, Services, and Employment	The development of State-Owned Enterprises is carried out by the Aceh Oil and Gas Management Agency (BPMA) as a Control Unit, and the use of local labor must be in accordance with competency standards.
Audit (Inspection)	Reports submitted by the Cooperation Contract Contractors (KKKS) must also be notified to the

²³Article 43 Paragraph (2) of Government Regulation Number 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh

	Aceh Government, in accordance with Article 17 of Government Regulation Number 23 of 2015.
Transfer of Participating Interest (PI)	In accordance with Article 51 of Government Regulation Number 23 of 2015, the contractor is required to offer at least 10% of the Participating Interest to Aceh's Regional-Owned Enterprises (BUMA).

Source: Government Regulation No. 23 of 2015

Based on the Government Regulation Number 23 of 2015, oil and gas management in Aceh must involve Regional-Owned Enterprises (BUMD) in Aceh. Accordingly, the existence of the Aceh Development Regional Company, now known as PT PEMA, as an Aceh Regional-Owned Enterprise is a mandate of Government Regulation Number 23 of 2015, specifically applicable to oil and gas working areas in Aceh.

To establish this cooperation, both Triangle Pase Inc., the Aceh Development Regional Company (PDPA), and the Aceh Oil and Gas Team formulated a PSC for the Pase Working Area. The formulation of the PSC for the Pase Block took a relatively long time and involved intensive negotiations. However, the parties ultimately succeeded in reaching an agreement on several critical matters, such as the share distribution between the Aceh Development Regional Company and Triangle Pase Inc., operational funding, labor, allocation of community development or corporate social responsibility (CSR) funds, the establishment of a subsidiary as the Operating Company, representation of the Aceh Government in the subsidiary managing the Pase Working Area, revenue generation for the Aceh Government through oil and gas production in the Pase Working Area, dispute resolution, and other matters constituting the substance of the Production Sharing Contract.

Implementation of the Production Sharing Contract

There are several contractual obligations that were agreed upon in the PSC, but not fully implemented. Among the unfulfilled obligations of Triangle Pase Inc. are the following:

1. Failure to Implement Corporate Social Responsibility (CSR)

The allocation of funds for community development around the Pase Working Area project, also known as Corporate Social Responsibility (CSR) funds, is a mandatory legal obligation for the company. CSR was one of the critical aspects during the formulation and negotiation of the PSC, and it was even a key condition set by the East Aceh District House of Representatives in order to accept Triangle Energy Global as the operator of the Pase Block.

The Recommendation Letter of the East Aceh District House of Representatives Number 365/005/2013 emphasizes that the House has no objection to the Governor of Aceh appointing Triangle Pase Global as the partner

of the Aceh Regional Development Company in managing the Pase Working Area, on the condition that Triangle Pase Global fulfills the following additional requirements:

- a) Corporate Social Responsibility (CSR) funds amounting to 2% during Triangle Pase Inc.'s operations since 2009 must be paid in accordance with the results of an independent audit;
- b) If the audit finds that Triangle Pase Inc. still owes CSR funds, the company must settle the obligation as soon as possible;
- c) Future CSR management shall be carried out by a Tripartite CSR Forum consisting of company representatives, local government (executive and legislative), and community members;
- d) CSR funds already paid shall still be recognized, provided they were disbursed in accordance with applicable laws and regulations;
- e) Triangle Pase Inc. is obligated to hire local workers from East Aceh and the Province of Aceh.²⁴

The substance of the Recommendation Letter from the East Aceh District House of Representatives was accommodated in the Production Sharing Contract. However, since the signing of the Production Sharing Contract, Triangle Pase Inc. has not yet fulfilled its CSR obligations as stated in the recommendation from the East Aceh District House of Representatives.

The distribution of CSR funds, as stipulated in the PSC and the Recommendation Letter, has not been implemented. However, in 2017, Triangle Pase Inc. conducted some activities such as repairing the road from Blang Seunong Village to Pantee Labu Village and providing aid to flood victims in Pante Bidari Subdistrict.²⁵

After the signing of the PSC, Triangle Pase Inc. has not shown serious attention to the implementation of CSR, including fulfilling the recommendations from the East Aceh District House of Representatives and constructing the road from Sungai Peulalu to Lhok Nibong as mandated in Article 9 (9.9) of the Joint Venture Agreement, which states that within six (6) months after the signing of the PSC, Triangle Energy Global shall construct a road from Lhok Nibong to Sungai Peulalu at the expense of Triangle Energy Global, and the cost shall not be considered as cost recoverable. Still, to date, this obligation has not been realized.

2. Failure to Establish a Subsidiary Company

In order to study, explore, develop, manage, and operate the Pase Working Area, Triangle Pase Inc. and the Aceh Regional Development Company agreed to form a Joint Venture Company called Aceh Pase Global Energy as the

²⁴The Recommendation Letter of the East Aceh District House of Representatives Number 365/005/2013, dated March 19, 2013

²⁵Badan Pengelola Migas Aceh, "Profil Triangle Pase Inc", BPMA, <<https://bpma.go.id/profil-tpi>>, retrieved on 1/3/2019].

operating company to perform various oil and gas operational activities in the Pase Block. The establishment of a subsidiary is regulated under the Law Number 40 of 2007 on Limited Liability Companies. This Law stipulates that a subsidiary shall be established through its own notarial deed, separate from that of the parent company. However, the parent company is required to participate in the ownership of shares in the subsidiary, thereby having control authority over the said subsidiary.²⁶ In addition, the subsidiary shall be registered, as mandated in the Regulation of the Minister of Trade Number 08/M-DAG/PER/2/2017, which amended the Regulation Number 37/M-DAG/PER/9/2007 on Company Registration Implementation. Company registration shall be carried out by the owner, management, person in charge, or a legal representative of the company at the Company Registration Office in the district/municipality where the company is domiciled.²⁷

An interview with Hasballah revealed that Aceh Pase Global Energy, which has been referred to as a subsidiary, in fact does not yet possess legal status under Indonesian law. This is due to its lack of registration and the absence of a notarial deed, as required by the Law No. 40 of 2007 concerning Limited Liability Companies and Ministry of Trade Regulation No. 08 of 2017.²⁸ Aceh Pase Global Energy was only registered in Singapore on August 1, 2013, and as proof of registration, the company was issued a certificate by the Accounting and Corporate Regulatory Authority (ACRA). This ACRA certificate was then submitted to Aceh Regional Development Company as evidence that Aceh Pase Global Energy had been officially registered in Singapore. Yet, the registration of Aceh Pase Global Energy in Singapore has no legal effect unless the company is registered with the Ministry of Law and Human Rights of the Republic of Indonesia. Therefore, the current status of Aceh Pase Global Energy does not yet qualify it as a legitimate subsidiary company authorized to operate within the Pase Working Area.²⁹

3. Limited Recruitment of Local Workers

Labor-related matters have been regulated in the PSC, which includes a provision that the contractor agrees to employ qualified Indonesian workers. Furthermore, once commercial production begins, the contractor is obliged to educate and train these Indonesian workers as employees and staff, including in

²⁶Interview with Nurdhani, a Notary in Banda Aceh, on February 21, 2019

²⁷Interview with Tarmizi Basyaroen, Operation Manager of Triangle Pase Inc., in North Aceh, on February 23, 2019; Interview with Ismail Saleh, Pase Field Coordinator, in North Aceh, on February 23, 2019

²⁸Interview with Hasballah, Director of Oil and Gas and Mining at the Aceh Regional Development Company, on February 25, 2019; Interview with Mawardi Nur, President Director of PT Pembangunan Aceh, in Banda Aceh, on February 22, 2020

²⁹Interview with Zaini Zubir, Member of the Board of Commissioners of PT Pembangunan Aceh, in Banda Aceh, on February 22, 2020; Interview with Faisal Ilyas, Director of Business Development at PT Pembangunan Aceh, in Banda Aceh, on February 22, 2020

administrative and executive management positions. In addition, the recruitment of local workers is also emphasized in the recommendation letter from the East Aceh District House of Representatives No. 365/005/2013 dated March 19, 2013, which outlines additional conditions to be fulfilled by Triangle Pase Inc., stating that Triangle Pase Inc. is obligated to hire local workers from East Aceh and the Aceh Province.

However, the recruitment and placement of workers have not been in accordance with the provisions set forth in the PSC for the Pase Working Area and the Recommendation Letter from the East Aceh District House of Representatives No. 365/005/2013. This can be seen in the table of Employees and Their Positions at Triangle Pase Inc. below.³⁰

Table III: Employees and Their Positions at Triangle Pase Inc.

No	Name	Position		
A. Operation				
1	Tarmizi Basyaroen	Sr. Operation Manager		
2	Agus Setiyawan	Sr. Operation Manager	Jakarta	
	Production Field Coordinator			
3	Nurnuh Abd. Majid	Pase Field Coordinator		
4	Ismail Saleh	Pase Field Coordinator		
	Production Operators			
5	Muhibbudin	Prod. Operator		
6	Zulkhairil Hasni	Prod. Operator		
B. Maintenance Support				
9	Iskandar Usman	Senior Mechanic Tech.		
10	Ali Basyah	Mechanic Tech.		
11	Muchsinnuddin	Instrument Tech.		
12	Iqbal Fahlevi	Instrument Tech.		
13	Umar Nurdin	Electrician Tech.		
14	Muhammad Zakir	Electrician Tech.		
15	Zaiyadi Rasyid	Electrician Tech.		
16	Ismahadi Ibrahim	IT Technician.		
C. Production Helpers				
17	Ashadi	Operator Helper		
18	Kaman Lingga	Operator Helper		
19	Muhammad Multazam	Operator Helper		
20	Ismail Jafar	Operator Helper		
D. Health, Safety and Environmental Support				

³⁰Inc, "Kertas Kerja Disampaikan Dihadapan Pansus Rencana Umum Energi Aceh (RUEA) DPRA."

21	Irwanda Jalil	Hse Manager		
22	Muslim	Field Hse Manager		
23	Sofyan Abd. Rahman	Field Hse Manager		
E. Security				
24	Zainal Abidin	Security Leader	Jakarta	Aceh
25	Marzuki Syah	Security Leader		
F. Community and Government Relation				
26	Razali Jafar	PR Manager		
27	Jailani Ali	Reps. Office Manager		
G. Civil/ Construction Manager				
28	Iljas Suwardi	Civil & Construction Manager	Jakarta	
29	M. Irfan	Civil & Construction Manager	Jakarta	
30	Fery Sukmawan	Construction Supv	Jakarta	
31	Ahkhmad Rahadian	Civil Engineer	Jakarta	
32	Hilmi	Civil Quality Control	Jakarta	
H. Project Manager & Asset/ Logistic Support				
33	Iskandar Rifal	Project Manager	Jakarta	
34	Suprastiyo	Asst. Manager	Jakarta	
I. Facilities Engineer				
35	Iqbal Alaydrus	Facilities Engineer	Jakarta	Aceh

Source: Triangle Pase Inc.

Triangle Pase Inc. had recently announced job openings for a number of positions, such as Operations Manager, Security Leader, Civil/Construction Manager, Project Manager, Asset Manager, Logistics Support, and Facilities Engineer. These announcements, however, were not published in *Harian Serambi Indonesia* or any other widely circulated newspapers in Aceh. As such, the local workforce was largely unaware of the recruitment process, resulting in these employment opportunities being filled by candidates from Jakarta rather than from the local community.

According to the data presented in Table III, out of ten newly hired employees, only two are originally from Aceh, despite currently residing in Jakarta. This situation sparked criticism from both internal staff at Triangle Pase Inc. and members of the local community, ultimately drawing the attention of the BPMA.³¹ Triangle Pase Inc. should not have recruited workers from outside Aceh so long as qualified workers in Aceh were available to perform the jobs offered.

³¹Interview with R.A. from Triangle Pase Inc, on January 29, 2019

This action clearly contradicts the agreements stated in the PSC for the Pase Working Area and the Recommendation Letter from the East Aceh District House of Representatives Number 365/005/2013 dated March 19, 2013.

The Aceh Regional Development Company then filed a lawsuit with the Indonesian National Board of Arbitration (BANI),³² citing substantial losses incurred as a result of Triangle Pase Inc.'s failure to meet its contractual obligations. The company alleged that Triangle Pase Inc. had neglected to distribute CSR funds, failed to construct the agreed-upon access road, and did not give priority to the recruitment of local labor. The Indonesian National Board of Arbitration, however, in its decision dated July 24, 2020, rejected all submitted claims and imposed arbitration costs of IDR 490,303,550 on the Aceh Regional Development Company.

The ruling in favor of Triangle Pase Inc. has effectively excluded the Aceh Regional Development Company from its role as a partner in managing the Pase Block. This outcome has also delayed the realization of the Aceh Government's to participate in the management of oil and gas resources, as mandated by the Law No. 11 of 2006 on Aceh Governance and the Government Regulation No. 23 of 2015.

Conclusion

The formulation of the oil and gas Production Sharing Contract (PSC) refers to the Government Regulation No. 23 of 2015 concerning the Joint Management of Oil and Gas Natural Resources in Aceh, which recognizes and adopts the region's special autonomy status. The management of the Pase Block marked the first PSC formulated in accordance with this special status. Yet, in practice, not all contractual obligations have been fulfilled by the Central Government. Such incomplete implementation undermines the spirit of Aceh's special autonomy, particularly concerning the authority delegated to the Aceh Regional Development Company to manage oil and gas resources in the Pase Block, North Aceh. The Central Government's failure to fulfill its contractual obligations, as stipulated in oil and gas regulations, has then become the basis for the Aceh Regional Development Company to file a lawsuit with the Indonesian National Board of Arbitration (BANI). Nevertheless, the ruling issued by BANI did not grant the claims and instead ordered the Aceh Regional Development Company to bear the arbitration costs. In response, the Aceh Regional Development Company promptly filed an objection and submitted a request for the annulment of BANI's decision.

³²Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

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