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The International Comparative Legal Guide to:

Oil & Gas Regulation 2019

14th Edition

A practical cross-border insight into oil and gas regulation work

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EDITORIAL

Welcome to the fourteenth edition of *The International Comparative Legal Guide to: Oil & Gas Regulation*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of oil and gas regulation.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with an overview of key issues and developments affecting oil and gas regulation.

Country question and answer chapters. These provide a broad overview of common issues in oil and gas regulation in 28 jurisdictions.

All chapters are written by leading energy lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Philip Thomson and Julia Derrick of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Indonesia's proven natural gas reserves were recorded in the *BP Statistical Review of World Energy 2018* ("BP 2018 Report") at 102.9 trillion cubic feet ("Tcf"). Gas production reached 68.0 billion m^3, representing 60% of the total oil and gas production in Indonesia. Of the foregoing production, 21.7 billion m^3 was exported as LNG and 8.0 billion m^3 was exported through pipelines.

According to the *PwC Oil and Gas Guide 2018* ("2018 PwC Guide"), Indonesia has the sixth largest Coal Bed Methane reserves in the world at 453 Tcf. Shale gas reserves are estimated at 574 Tcf.

Indonesia's main areas for gas production are South Sumatra, East Kalimantan, Natuna, Sulawesi, and West Papua.

In 2017, a number of upstream projects have been declared as strategic projects by the Government of Indonesia ("Government") in an effort to increase oil and gas production. These include Tangguh Train-3, the Chevron Indonesia Deepwater Development Project, the Jangkrik Field Development Project, and the development of the Jambaran-Tiung Biru block and Genting's Kasuri block.

According to Petrominer website, the Special Task Force for Upstream Oil and Gas Business Activities ("SKK Migas") has targeted a number of upstream projects to commence production in 2018. These include the Lica production facilities optimisation by PT Medco E&P Indonesia, the Block A Gas Field development by PT Medco E&P Malaka, the SP project by PT PHE ONWJ, the CPS Modification by PetroChina Intl. Jabung Ltd., the Ario Dama-Sriwijaya Phase 2 project by PT Tropik Energi Pandan, the distribution of Temelat Gas to the Kembang Mountain Station by PT Medco E&P Indonesia, and the development of the Subsea Pipeline Gas Lift BW Field Poleng by PT Pertamina EP.

LNG facilities in Indonesia include Bontang (East Kalimantan), Tangguh (West Papua), and Donggi Senoro (Sulawesi). In a 15 year roadmap published by the Directorate General of Oil and Gas ("DGOG") in April 2016, the Government forecast a need for USD 24.8 billion in investment to enhance gas infrastructure.

A national gas transmission and distribution network has been developed by the Ministry of Energy and Mineral Resources ("MEMR"). Gas pipelines and storage facilities may be owned and operated by private companies, subject to the regulations of the MEMR and the Downstream Oil and Gas Regulatory Agency ("BPH Migas").

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

In 2017, natural gas satisfied roughly 18.6% of Indonesia's total energy requirements.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Currently, Indonesia's natural gas requirements are fully met by domestic production, particularly by the allocation of the domestic market obligation ("DMO") from every Production Sharing Contract ("PSC") Contractor. PSC Contractors are required by law and contract to reserve 25% of their oil and gas production for the domestic market. According to the BP 2018 Report, the ratio of Indonesia's natural gas production to consumption in 2017 was 173.5%.

This is expected to change. According to the *BP Statistical Review of World Energy 2016* report, the MEMR projects that Indonesia will start importing natural gas by 2019.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

Nearly half of Indonesia's gas production is exported. According to the BP 2018 Report, LNG exports in 2017 reached 21.7 billion m^3 to eight countries, including the biggest customers, namely Japan, South Korea, and China. During that same period, 8.0 billion m^3 was exported by pipeline to Singapore and Malaysia.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

According to the BP 2018 Report, there were 3.2 billion barrels of proven oil reserves in Indonesia as of the end of 2017, putting Indonesia in the top 20 of the world's oil producers. Oil production reaches 949,000 barrels of oil per day. This marks a 7.6% increase from the production rate in 2016. Until November 2017, Indonesia's oil and gas revenue contributed 4.99% to the State revenue.

The *SKK Migas Annual Report* in 2017 recorded that after terminating 37 PSCs in 2017, at the end of 2017, Indonesia had a total of 255 PSCs, comprising 87 PSCs in the production stage and the remaining 168 in the exploration stage.

Most oil upstream activities are focused in western Indonesia, with the main areas for oil production being Sumatra, the Java Sea, East Kalimantan, and Natuna. The Government has been encouraging exploration activities in eastern parts of Indonesia, where, according to the 2018 PwC Guide, 39 tertiary and pre-tertiary basins show rich promise in hydrocarbons. Major companies are involved in oil exploration and exploitation in Indonesia, including Chevron Pacific Indonesia, Total E&P, ConocoPhillips, and ExxonMobil.

In the downstream sector, there are nine oil refineries in the country with a combined installed capacity of 1.1 million barrels per day.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

In 2017, oil satisfied roughly 39.5% of Indonesia's energy requirements.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

According to the BP 2018 Report, Indonesia's oil consumption in 2017 reached 77.3 million tons, 60% of which was met by domestic production.

2.4 To what extent is your jurisdiction's oil production exported?

According to the 2017 SKK Migas Annual Report, Indonesia exported 102.7 million barrels of oil in 2017, with Thailand, Singapore, and Malaysia as the top three countries Indonesia exports oil to, at 17.9, 12.4, and 12.1 million barrels respectively.

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Indonesia's oil and gas sector is governed by Law No. 22 of 2001 regarding Oil and Gas (November 22, 2001) (the "Oil and Gas Law"). The State retains mineral rights throughout Indonesian territory and the Government holds the mining authority.

The oil and gas sector comprises upstream and downstream activities, which are separately regulated and organised. Upstream activities include exploration and exploitation and are regulated under Government Regulation No. 35 of 2004 regarding Upstream Oil and Natural Gas Business Activities, as lastly amended by Government Regulation No. 55 of 2009 ("GR 35"). The upstream sector is managed and supervised by SKK Migas.

Due to the unique territorial composition of the archipelagic state of Indonesia, upstream oil activities may be undertaken in onshore and offshore areas. Work areas for onshore and offshore operations are determined by the MEMR based on consultations with and recommendations from the respective regional governments.

Downstream activities encompass processing, transportation, storage, and trading, and are regulated under Government Regulation No. 36 of 2004 regarding Upstream Oil and Natural Gas Business Activities, as has been amended by Government Regulation No. 30 of 2009 ("GR 36"). Downstream operations fall under the auspices of the MEMR and BPH Migas.

Through Government Regulation No. 79 of 2014, the Government has stipulated national energy policy to be implemented from 2014 to 2050, focusing primarily on energy availability for national needs, prioritisation of energy development, utilisation of national energy resources, and national energy reserves. The target for the availability of primary energy, which includes natural oil and gas, is approximately 400 million tonnes of oil equivalent ("MTOE") in 2025 and approximately 1,000 MTOE in 2050.

The President of Indonesia, Joko Widodo, announced a list of national strategic projects through Presidential Regulation No. 3 of 2016 regarding the Acceleration of the Implementation of National Strategic Projects, as lastly amended by Presidential Regulation No. 56 of 2018, which include several downstream oil and gas projects, namely the development of the Bontang and Tuban refineries, upgrading existing refineries, and the construction of fuel oil and LPG tank storage in the eastern parts of Indonesia. A presidential decree and presidential instruction seek to accelerate these projects and mandate enhanced cooperation among relevant Government institutions for the achievement of these objectives.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Private companies earn the right to explore and exploit oil and gas resources by entering into cooperation contracts, mainly based upon a production sharing scheme, with the Government (through SKK Migas), thus acting as a Contractor to SKK Migas. One entity can hold only one PSC, and a PSC is normally granted for 30 years, typically comprising six plus four years of exploration and 20 years of exploitation. All financial risks of operations under the PSC are borne by the Contractor. If a work area proceeds to the exploitation stage, the Contractor is entitled to cost recovery.

In the traditional production sharing scheme that has been used over the past years in Indonesia, the production output is typically subject to a first tranche petroleum ("FTP") requirement, cost recovery and certain taxes, and the remaining portion is distributed among the Contractor and the Government in the proportions set out in the PSC (the "Cost Recovery PSC"). In early 2017, the Government, through MEMR Regulation No. 8 of 2017 regarding Gross Split PSC, as amended by MEMR Regulation No. 52 of 2017 ("MEMR Reg. 8/2017"), introduced the gross-split production sharing scheme, in which the production output is split at gross (without FTP, cost recovery or tax deductions) in a sharing proportion stipulated at the beginning of a field development and subject to fluctuation depending on certain variables and progressive components (the "Gross Split PSC").

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

In both Cost Recovery PSC and Gross Split PSC contexts, when a commercial discovery is made, the Contractor must prepare a Plan of Development ("POD") for the relevant field. The first POD is approved by the MEMR based on the considerations of SKK Migas and kicks off the exploitation stage. Subsequent PODs are approved by SKK Migas.

Other authorisations differ in each PSC model.

For a Cost Recovery PSC, expenditures throughout the PSC term are planned ahead by the Contractor in an annual Work Plan and Budget ("WP&B") to be approved by SKK Migas. A Contractor must also prepare an Authorisation for Expenditure ("AFE") for specific work and can only execute the work upon SKK Migas' approval of the relevant AFE.

For a Gross Split PSC, as there is no cost-recovery mechanism, SKK Migas only approves the annual work plan. The budget is only presented to SKK Migas for its consideration in approving the annual work plan, but is not subject to SKK Migas' approval. SKK Migas has the authority to adjust the production split for each field by considering the progressive components stipulated in MEMR Reg. 8/2017.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

Extracted oil and gas remains owned by the State until it passes the point of export or other delivery point. Thereafter, the Government is entitled to a certain percentage of the production output as apportioned under the PSC, as is the Contractor.

Under the Oil and Gas Law, entities in the form of a State-owned enterprise ("SOE"), regional-owned enterprise ("BUMD"), a cooperative, small business, or private business entity may enter into a PSC with SKK Migas to undertake upstream oil and gas business activities. Pertamina, as an SOE and the State oil company, can hold participating interests ("PI") in numerous PSCs as a Contractor of SKK Migas. There is no maximum limit on the PI that an SOE, BUMD, or Pertamina may hold.

Upon the first POD approval, a Contractor is required to offer 10% PI in its PSC to a BUMD that (i) is a regional entity wholly owned by the regional Government, (ii) is owned at least 99% by the regional government and the remaining by an regional government-affiliated entity, (iii) is established pursuant to a regional government regulation, and (iv) does not conduct any business activity other than management of such offered PI. The BUMD may accept or decline the offer based on its financial capability, and in the latter event the offer must be tendered to an SOE.

In addition, MEMR Regulation No. 23 of 2018 regarding the Management of Oil and Gas Working Areas which Production Sharing Contract Will Expire, as lastly amended by MEMR Regulation No. 28 of 2018 ("MEMR Reg. 23/2018"), stipulates that Pertamina may elect to resume the operations of a work area whose PSC is expiring, irrespective of whether the initial Contractor has applied for an extension. If both Pertamina and the initial Contractor express a willingness to operate a work area, the MEMR has the authority to decide whether the operation will be resumed by Pertamina, the initial Contractor, or jointly between the two.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

Indonesia does not impose royalties on PSCs, but secures the State's minimum income through the FTP mechanism in Cost Recovery PSCs. FTP is the first take of oil or gas immediately after production in a work area in one calendar year that is received by the State prior to cost recovery and profit calculation. FTP therefore secures the State's minimum income. The amount of FTP is determined in the relevant Cost Recovery PSC.

Taxes applicable to PSCs include income tax, VAT, import duties, regional taxes, and other levies. The PSC may stipulate whether the tax laws and regulations applicable at the time of the PSC execution shall apply (stabilised) or whether the PSC shall follow every tax law and regulation issued over time. In addition, Contractors are required to pay non-tax State revenues such as exploration and exploitation fees and bonuses, including signing bonus and production bonus.

The sharing proportion between the Government and the Contractor for a Cost Recovery PSC is typically 85:15 for oil and 70:30 for gas, respectively. For a Gross Split PSC, the initial sharing proportion between the Government and the Contractor is 57:43 for oil and 52:48 for gas, respectively.

3.6 Are there any restrictions on the export of production?

Subject to obtaining requisite export approvals, a Contractor is entitled to export its production entitlement, subject to its DMO by which 25% of the Contractor's entitlement must be allocated for the domestic market.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

The Indonesian Currency Law and Bank Indonesia ("BI") Regulation No. 17/3/PBI/2015 regarding the Mandatory Use of Rupiah restrict most transactions within Indonesian territory from being carried out using foreign currency. Core upstream activities in Indonesia are exempted from this requirement for a certain period of time, such as expenditures in relation to firm commitment, over/under lifting, and domestic oil and gas sales transactions by upstream players, which are exempted for 10 years.

BI also requires all oil and gas export proceeds be deposited in a foreign exchange bank in Indonesia before being remitted overseas. This requirement is contained in BI Regulation No. 16/10/PBI/2014, as amended by BI Regulation No. 17/23/PBI/2015 regarding Receipt of Export Proceeds in Foreign Exchange and Withdrawal of Offshore Loan Foreign Exchange.

Minister of Trade ("MOT") Regulation No. 94 of 2018 regarding Provisions on the Use of a Letter of Credit for the Export of Certain Goods requires that the export of oil and gas products, including petroleum oil and oil obtained from minerals containing bitumen, crude oil, condensed oil, liquefied natural gas, liquefied propane, liquefied butane, other mixtures of propane and butane used as motor fuel, and others, shall be paid through a Letter of Credit ("L/C") received from a foreign exchange bank in Indonesia or an export financing institution established by the Government. However, the MOT can suspend this requirement for any exporter that is yet unable to implement the obligation to use an L/C as its method of payment. This suspension may be granted for a limited time and is subject to a consideration from the relevant technical ministry, i.e., the MEMR through the DGOG.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

During the first three years of the exploration period (the "Firm Commitment" period), a Contractor is not allowed to (i) transfer the majority of its PI to a non-affiliated party, or (ii) transfer a certain percentage of its PI that would result in the PI transferee holding a higher percentage of PI than any other initial Contractors. Change of operatorship in a PSC during the Firm Commitment is also prohibited. After such period, transfer of PI may be conducted upon the approval of the MEMR based on the consideration of SKK Migas.

A PSC typically provides an approval or notification requirement for the transfer of all or a portion of the Contractor's PI to an affiliate or non-affiliated third party. From 2007 onwards, PSCs have stipulated that transfers of PI to affiliates and changes of control in a party to a PSC require prior written consent of the MEMR (through SKK Migas). Similarly, MEMR Regulation No. 48 of 2017 ("MEMR Reg. 48/2017") stipulates that a transfer of PI in a PSC requires prior approval of the MEMR.

GR 35 also imposes a requirement that if all or a portion of the rights of the Contractor are transferred to a non-affiliate or to another company that is not a partner in the same working area, the MEMR can "request" that the Contractor offer the interest to a national company.

Any transfer of PI must follow the guidelines and procedures stipulated in SKK Migas Working Guidelines ("PTK") No. 057 of 2014 regarding the transfer of PI. The party receiving the transfer is subject to SKK Migas' review and approval since an entity must possess the requisite financial capability and skills to hold PI in a PSC.

Pursuant to MEMR Reg. 48/2017, indirect transfer of PI through the transfer of shares of the Contractor requires MEMR approval with SKK Migas' consideration if the transfer pertains to majority shares, thus resulting in a direct change of control of the Contractor. If the transfer results in an indirect change of control of the Contractor, the transfer needs only to be reported to the MEMR through SKK Migas.

In addition, the direct and indirect transfer of PI as well as change of control is subject to taxes imposed by Government Regulation No. 79 of 2010, as amended by Government Regulation No. 27 of 2017 (as amended, "GR 79/2010"), and Minister of Finance Regulation No. 257/PMK.011/2011.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

A Contractor must provide a performance bond by the time of execution of the PSC, the amount of which depends on the type of the contract area. The performance bond for open areas, a portion of the contract area that is carved out based on PSC and areas for which the PSC has expired, is 10% of the total Firm Commitment value, with a minimum sum of USD 1.5 million. Areas that have never been developed or are being or have been produced are subject to a performance bond in an amount equivalent to 10% of the WP&B for the first two years of the exploration period, with a minimum sum of USD 1 million.

Further, a parental guarantee may be required by SKK Migas for a company intending to acquire PI in a PSC, subject to SKK Migas' assessment of the company's audited financial statements.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

PI cannot be pledged as security. This is primarily because a PI transfer can only be conducted upon approval of the Government, and there is no guarantee that the Government will approve the transfer of PI to the pledgee if execution comes.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

In conducting petroleum activities, PSC Contractors are required to comply with the provisions of occupational health and safety, environmental management, and community development regulations. In the exploration phase, PSC Contractors must complete an environmental monitoring and environmental management ("UKL/UPL") report. During the exploitation of a proposed development, PSC Contractors must further conduct an environmental assessment ("AMDAL"), which is subject to the relevant Government authority's approval. PSC Contractors are also required to make periodic reports to the relevant Government authorities regarding their compliance with the UKL/UPL or AMDAL. In addition, the Environmental Law requires PSC Contractors to obtain an environmental licence from the Minister of Environment and Forestry.

The DGOG is responsible for supervising the implementation of health, safety and environment ("HSE") regulations in the oil and gas sector and imposing sanctions for non-compliance. The DGOG designates Mining Inspection Enforcement teams to examine work safety compliance in oil and gas businesses. If the facilities and techniques satisfy work health and safety standards, the DGOG shall issue certifications for installations and equipment. Non-compliance with applicable HSE rules subjects the company to administrative sanctions up to revocation of the licence.

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

New-generation PSCs stipulate an express obligation to carry out an abandonment and site restoration ("ASR") programme and to provide ASR funds.

The Oil and Gas Law highlights post-operation obligations as a means of ensuring environmental management and protection, and GR 35 obligates Contractors to allocate funds for post-operation activities. MEMR Reg. 23/2018 also stipulates that outstanding post-operation obligations of a PSC nearing expiry are to be carried out by the entity that has been appointed by the MEMR to resume the PSC, which could be PT Pertamina (Persero) and/or another Contractor.

In 2018, the MEMR issued Regulation No. 15 of 2018 regarding Post-Operation Upstream Oil and Gas Business Activities ("MEMR Reg 15/2018"). This Regulation requires PSC Contractors to conduct post-operation activity by using post-operation activity funds. A post-operation activity plan is required to be prepared and submitted to SKK Migas through the submission of a WP&B (if the PSC is in the exploration stage) or as part of the field development plan (if the PSC is in the exploitation stage). Prior to implementing post-operation activities, PSC Contractors are also required to obtain an approval of the post-operation activity plan from the DGOG. PSCs that do not contain provisions regarding post-operation obligations are subject to MEMR Reg. 15/2018. The procedures to reserve and deposit ASR funds are also set forth in SKK Migas PTK No. 040 of 2018.

More specific decommissioning obligations are contained in various regulations, such as MEMR Regulation No. 02P/1992, which requires land reclamation, and Government Regulation No. 17 of 1974 regarding Supervision of Implementation of Offshore Oil and Gas Exploration, which requires dismantlement of facilities that are no longer used. A PTK in 2015 on Work Completion Approval also lists well-plugging as one of the items constituting completion of drilling work.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/ requirements of the legislation?

Gas storage is generally regulated under GR 36 as a downstream activity. Gas storage activities may be conducted upon obtaining an oil and gas storage licence from the Capital Investment Coordinating Board ("BKPM") c.q. DGOG, except if the gas storage activities are ancillary to the entity's main processing, transportation, or trading activities. A company engaging in gas storage business is obligated to offer facility sharing to a third party by considering the technical and economic aspects. Facility sharing is specifically regulated under BPH Migas Regulation No. 6 of 2005.

3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?

The general provisions on the exploration and production of unconventional oil and gas resources are subject to the Oil and Gas Law and its implementing regulations. There are two specific regulations on unconventional oil and gas resources. The first Regulation, MEMR Regulation No. 5 of 2012 regarding Procedures on the Stipulation and Offering of Unconventional Oil and Gas Working Area, sets forth provisions on the offering of the unconventional working area through direct offering or regular tender.

The second Regulation, MEMR Regulation No. 38 of 2015 regarding the Acceleration of the Unconventional Oil and Gas Business, sets forth provisions that enable an acceleration of unconventional oil and gas sales for PSC Contractors. This Regulation allows the PSC Contractors to sell unconventional oil and gas produced before obtaining the first POD, provided that the sales obtain approval from the MEMR by taking into account the consideration from SKK Migas.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Cross-border sales of natural gas can only be conducted if (i) the domestic need for natural gas has been fulfilled, (ii) there is insufficient domestic infrastructure, or (iii) domestic purchasing power is insufficient to satisfy the relevant gas field's economics. Pursuant to MEMR Regulation No. 6 of 2016 regarding Provisions and Procedures for Stipulating the Allocation and Utilization as well as Pricing of Natural Gas ("MEMR Reg. 6/2016"), the allocation of natural gas production is prioritised (i) for the Government's programme to provide natural gas for transportation, households, and small-scale customers, (ii) to increase national oil and gas production, (iii) for the fertiliser industry, (iv) for industries that use natural gas as a raw material, (v) for the provision of power, and (vi) for industries that use natural gas as fuel. Cross-border deliveries of natural gas are subject to import or export approvals from the MOT, which takes into account the import or export recommendation from the DGOG. The DGOG considers domestic supply and demand in issuing such recommendation. In regard to imports in general, an additional licence is required in the form of a Business Registration Number ("NIB"), in accordance with Government Regulation No. 24 of 2018 regarding Electronic Integrated Business Licensing Services ("GR 24"). The NIB acts as an import licence issued by the Online Single Submission system implemented under the auspices of the Coordinating Ministry of Economic Affairs ("CMEA"). Although the import of natural gas is not specifically subject to a NIB pursuant to GR 24, in practice entities importing natural gas are required to obtain a NIB.

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

Cross-border sales of oil are subject to fulfilment of the DMO (for upstream players). With regard to crude oil, the MEMR recently issued Regulation No. 42 of 2018 regarding the Priority to Use Crude Oil for Meeting Domestic Needs ("MEMR Reg. 42/2018"). This Regulation requires Pertamina and/or holders of the crude oil processing licence to prioritise the utilisation of crude oil from domestic PSC Contractors before considering importation and provides a requirement for a prioritisation for PSC Contractors' crude oil portion to be sold domestically. No later than three months before commencing the export recommendation period for the entire Contractor's portion of volume of crude oil, PSC Contractors or their affiliates are required to offer their portion to Pertamina and/or holders of the crude oil processing licence through a negotiation process using a business-to-business scheme. From the negotiation process, Pertamina may directly appoint a PSC Contractor for the purchase of the crude oil, which may be made in the form of a long-term contract with a period of 12 months. However, it is not yet clear regarding the implementation of this new Regulation.

As discussed in question 4.1 above, cross-border deliveries of oil are subject to import or export approvals from the MOT, which takes into account the import or export recommendation from the DGOG. The DGOG considers domestic supply and demand conditions in issuing such recommendation. Specifically in regard to import of oil, there is an additional licence in the form of a NIB issued by the OSS administered by CMEA.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Gas transportation by pipeline is regulated under GR 36 and MEMR Regulation No. 19 of 2009 regarding Natural Gas Business through Pipelines, and is controlled by BPH Migas. It can only be carried out by a business entity established in Indonesia that has obtained a transportation licence from the BKPM c.q. DGOG, unless such transportation is conducted by a PSC Contractor as a continuation of its upstream activities.

The MEMR, as mandated by the Oil and Gas Law, has established a transportation master plan. This master plan is relied upon by BPH Migas to, *inter alia*, determine transmission routes and distribution networks, tender Special Rights, and determine tariffs in accordance with techno-economic principles.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

In addition to a gas transportation licence from the BKPM c.q. DGOG, a business entity must also obtain Special Rights from the MEMR to transport gas by pipeline within the stipulated transmission and distribution routes by way of tender. An environmental licence must also be obtained by preparing the relevant environmental document, which can be an AMDAL or a UKL/UPL, depending on the length and pressure of the pipelines.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Generally speaking, land rights will be obtained by negotiating with owners and occupiers, in accordance with prevailing laws. To the extent these facilities are used for upstream activities within the framework of a cooperation contract, the Contractor will have to comply with the Oil and Gas Law, GR 35 and the relevant implementing regulations to be issued thereunder. Contractors are responsible for the payment of these rights. Land that is purchased for a facility will become the property of the State, while land that is leased for a facility will be leased in the name of the Contractor.

Title to land purchased for facilities used for downstream activities outside of a cooperation contract may be held in the name of the business entity engaging in the transportation or storage activity.

Projects that serve the public interest may enjoy more Government involvement in the land procurement process, as stipulated in Presidential Regulation No. 71/2012, as has been amended several times, lastly by Presidential Regulation No. 148/2015. The President has also issued a regulation and an instruction to enhance cooperation among governmental entities in smoothing the preparation and operation of nationally strategic projects.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Access to oil and natural gas transportation pipelines and associated infrastructure is organised by BPH Migas by relying on the transportation master plan stipulated by the MEMR.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

The MEMR periodically stipulates a transportation master plan for natural gas that is relied upon by BPH Migas in controlling and supervising the implementation of gas transportation activities by business entities, including determining the joint use of transportation and storage facilities as well as associated infrastructure.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

A pipeline or storage facility operator cannot be required to expand its facilities to accommodate new customers. Facility sharing is obligated by GR 36 only to the extent the relevant facility has sufficient capacity so that the facility sharing will not impair the operations of the facility owner. Facility sharing is also subject to economic considerations, such as the facility owner's investment return rate. BPH Migas is the authority that oversees and regulates facility sharing.

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

In general, and subject to BPH Migas' authority to set tariffs for the transportation of natural gas through pipelines, parties may agree on the terms of the agreement for the transportation and storage of natural gas. A "contractual regime" is in its early stages of evolution.

BPH Migas has the authority to determine and supervise the tariffs for natural gas transportation through pipelines that will be charged by the operator of the pipeline to the users. The relevant operator must submit the proposed tariff to BPH Migas. BPH Migas will then verify and evaluate the proposed tariff. BPH Migas will discuss with the related pipeline operator and the users before determining the tariff.

For the transportation of natural gas, the applicable regulation provides that the agreement between a gas pipeline operator and user must be set forth in a gas transportation agreement. The regulation also requires the operator of the gas pipeline to prepare an access arrangement outlining the terms and conditions for the joint use of the pipelines owned by the operator. This, as well as the tariff, must be approved by BPH Migas. The access arrangement will include management guidelines and technical and legal rules. The gas transportation agreement must be in accordance with the access arrangement.

Crude oil transportation is not subject to the Government's approval, whereas fuel oil is relatively more heavily regulated in terms of distribution, pricing and availability.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Please refer to question 6.1 above.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Please refer to question 6.2 above.

7.3 How is access to the natural gas distribution network organised?

Please refer to question 6.4 above.

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

No. This requirement only applies to gas transportation and processing activities.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Under Government Regulation No. 1/2006, the monthly fees charged for accessing the gas distribution network are 3% or 2% of the transmission tariff per 1,000 standard cubic feet for up to 100 billion standard cubic feet or above 100 billion standard cubic feet, respectively.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Direct acquisitions of an interest in a gas utility or the transfer of assets forming part of the distribution network will require revocation of the existing Special Right and issuance of a new Special Right to the acquirer. Indirect acquisitions or transfers of assets (by way of share transfers) may be subject to foreign share ownership restrictions regulated under the Negative Investment List (see question 12.1 below).

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Natural gas trading is governed under GR 36. It must be conducted by a business entity established in Indonesia by obtaining a trading business licence from the BKPM c.q. DGOG. The trading business licence is further categorised into wholesale trading and limited trading, depending on the scale of business and ownership of facilities. Natural gas trading may also be carried out by PSC Contractors directly based on its contractual right under the PSC. Such activity does not require a trading business licence.

Natural gas trading must adhere to the provisions of priority businesses as well as the price stipulation under MEMR Reg. 06/2016.

8.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

This will depend on how BPH Migas regulates distribution and trading activities and whether the Government will issue multiple trading and distribution licences for a given area. Bundling of several products is possible since one entity may hold both a distribution and a trading licence.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

LNG facilities may be operated by upstream players as an ancillary activity to their main activities under the PSC, or by a downstream business entity that engages in processing or trading activities.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

Prior POD approval from the MEMR is required for the operation of LNG facilities at the upstream level. At the downstream level, the construction and operation of LNG facilities must obtain a processing or wholesale trading licence from the MEMR. In both sectors, it may be necessary to obtain other relevant licences from central and regional governments, such as licences related to HSE and land.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Gas pricing is stipulated by considering the economics of fields, domestic and international gas prices, and added value from the domestic utilisation of natural gas. The stipulation of gas prices for domestic needs must also consider the purchasing power of domestic consumers as well as support for the Government's programme to provide natural gas for transportation, households and small-scale customers.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

Please refer to question 6.6 above.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

Downstream oil activities are regulated in GR 36. It encompasses oil processing, storage, transportation and trading, each of which requires a specific licence from the MEMR. A downstream company is allowed to carry out an ancillary downstream activity as a supporting activity to its main business without obtaining a separate business licence, provided that the other downstream activity is not used to generate profit, in which case the company must obtain a separate licence.

Only business entities established in Indonesia are eligible to obtain downstream business licences, subject to the applicable foreign shareholding restriction stipulated in the Negative Investment List.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Depending on the oil commodities being traded, oil trading activities fall under the auspices of the MEMR or BPH Migas. In addition to the downstream licence from the BKPM c.q. DGOG, trading of oil fuel can only be conducted after registering the specific type of oil fuel with BPH Migas and obtaining a NIB from BPH Migas. Oil trading is classified into wholesale trading and limited trading, depending on the scale of business and ownership of facilities.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

While BPH Migas can impose penalties on business entities engaged in the natural gas sector, the Commission for the Supervision of Business Competition ("KPPU") is responsible for implementing Indonesia's Anti-Monopoly Law. The KPPU may issue decisions that certain agreements, conduct or positions in the relevant market (including the natural gas market) are anti-competitive and therefore in violation of Law No. 5 of 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition (the "Anti-Monopoly Law").

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The provisions and criteria on anti-competition are regulated under the Anti-Monopoly Law.

The prohibitions can be categorised as follows: prohibited agreements; prohibited conduct; and abuse of a dominant position in a given market sector.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The KPPU is not necessarily authorised to preclude anti-competitive practices. However, should the KPPU deem certain agreements, conduct or positions in the relevant market (including the oil and gas market) in violation of the Anti-Monopoly Law, it may lawfully issue decisions and sanctions. The KPPU also has the authority to provide advice, on request, regarding a planned merger, consolidation, or acquisition of companies. This advice does not constitute the KPPU's approval or rejection of the planned restructuring scheme and does not preclude the KPPU from performing an assessment of the merger, consolidation, or acquisition after the same is effectuated.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The MEMR has the authority to approve a transfer of shares of a Contractor that will result in a direct change of control of the Contractor, although the MEMR's consideration in granting its approval is not focused on competition issues. The MEMR's approval or rejection of the transfer of shares shall be issued within 28 working days as of SKK Migas' receipt of the correct and complete application. However, in practice, the approval process can take seven to nine months.

Prior consultation with the KPPU can only be conducted for mergers, consolidations, and acquisitions. Upon the KPPU's assessment of the relevant documents, the KPPU shall issue its advice, guidance or written opinion regarding the proposed restructuring to the concerned business actors within 90 days of the submission of the required documents.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

The New Negative Investment List, issued in Presidential Regulation No. 44 of 2016 regarding List of Business Fields that Are Closed and Business Fields that Are Open with Requirements in the Field of Capital Investment, stipulates the foreign shareholding limitations for various business fields. Among others, onshore drilling is closed to foreign investment, while offshore drilling is restricted to a maximum of 75% foreign shareholding.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

As a matter of international law, international treaties and other multinational agreements are binding upon the State upon ratification. Ratification of such international instruments is normally done by way of a presidential regulation, which will be further implemented by a ministerial regulation. All regulations and decrees issued afterward must not deviate from the provisions of the international treaty or the national regulation enacted in light thereof. Therefore, once an international treaty is binding upon the Government, regulatory policy or activity shall develop in accordance with the international treaty. Among others, Indonesia is a party to the United Nations Convention on the Law of the Sea ("UNCLOS"), the 1987 Montreal Protocol, and the International Convention on Civil Liability for Oil Pollution Damage and the protocols and amendments thereof.

Additionally, tax treaties and bilateral investment treaties may be relevant, although the Government recently announced that Indonesia will be withdrawing from all bilateral investment treaties to which it is a party.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

In the upstream sector, the dispute resolution mechanism is stipulated in the PSC. Pursuant to SKK Migas PTK 007, as has been amended several times, disputes in relation to service providers to upstream businesses as well as the procurement thereof may be resolved in court or through arbitration held in Indonesia in accordance with the provisions of the contract. In the event of a dispute between a Special Rights holder in relation to the implementation of gas transportation by pipeline, BPH Migas has the authority to intervene. If such intervention does not yield a settlement between the disputing parties, the dispute may be referred to a district court.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Yes, Indonesia is a signatory to and has ratified both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Indonesia does not recognise foreign court decisions, but international arbitration awards can be enforced in Indonesia through the mechanism provided in Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution. In general, Indonesia has bound itself to enforce foreign arbitral awards if (i) the award is rendered by a tribunal in a country bound by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards or a bilateral treaty with Indonesia, (ii) the dispute is commercial in nature, as that term is understood under Indonesian law, and (iii) the award does not contravene Indonesian law or notions of public order or policy.

Enforcement of international arbitral awards in Indonesia against Government authorities or State organs appears to be difficult. A precedent for this is *Karaha Bodas v. Pertamina*, where an Indonesian court annulled an arbitral award in favour of Karaha Bodas.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

Not to our knowledge.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

A draft of a new oil and gas law, which is widely expected to reform the oil and gas regulatory framework, is being prepared by the House of Representatives. Expected changes include the establishment of oil and gas managing agencies in the form of SOEs to replace SKK Migas, increased privileges for Pertamina in acquiring work areas, the contracts or licensing mechanisms in the upstream sector, the prescribed maximum period for exploration activities, and an obligation to dedicate production to the domestic market through a Safeguarding Business Entity established by the law itself.

In February 2018, the MEMR issued four regulations which revoke 32 regulations in the energy and mineral resources sector, in order to improve investment and economic growth by simplifying the regulatory regime. The 32 regulations included 11 regulations in the oil and gas sector, and three regulations related to SKK Migas.

Also in February 2018, the MEMR issued MEMR Reg 15/2018, which stipulates the provisions related to PSC Contractors' obligation to conduct post-operation activities using post-operation activity funds (see question 3.12 above).

In April 2018, the MEMR issued MEMR Reg. 23/2018, which revokes MEMR Regulation No. 15 of 2015. As briefly discussed in question 3.4 above, this Regulation provides four possible actions for working areas with expiring PSCs, namely: (i) PSC extension by the PSC Contractor; (ii) takeover of the PSC by Pertamina; (iii) joint management between the PSC Contractor and Pertamina; or (iv) tender of the working area. To date, there have been three expiring PSCs that have been granted to Pertamina, namely the Mahakam, Rokan, and East Kalimantan blocks.

The MEMR also issued MEMR Regulation No. 24 of 2018 and MEMR Regulation No. 46 of 2018, which amend MEMR Regulation No. 26 of 2017 regarding the Mechanism for the Recovery of Investment Costs in Upstream Oil and Gas Activities. These recent regulations add several new provisions on the recovery of investment cost, including (i) the time period for SKK Migas to verify the investment cost recovery, and (ii) the time period and late payment penalty related to the settlement of investment cost recovery if an expiring PSC is not renewed and is transferred to a new PSC Contractor.

Another key Regulation issued by the MEMR in 2018 is MEMR Reg. 42/2018, which requires the holders of crude oil processing licences to prioritise the utilisation of crude oil from domestic PSC Contractors before considering importation (see question 5.1 above).

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Syahdan is a member of the Indonesian Advocates Association.

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