

# Licensing Mechanism in Oil and Natural Gas Management in Aceh (Sea Territory) Reviewed Based on the Aceh Government Law with Cooperation Law

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## Abstract

*The mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which clearly refers to the sovereignty of the people as a collective owner who has an interest in the fulfillment of a common goal, namely welfare for all Indonesian people. Whereas in the context of regional autonomy, it is closely related to decentralization which mandates that the granting of autonomy must be based on the principles that can be seen in the general explanation of the regional autonomy law, namely RI Law No. 23 of 2014. The role of the Aceh Government in this case is represented by the DPRA in The making of the Oil and Gas Cooperation Contract needs to be studied by knowing with certainty the position of the local government (DPRA) in the ratification of the cooperation contract (KKS), especially if the mining location is in an offshore area. Aceh Province as one of the provinces in Indonesia which is rich in natural wealth, one of them is natural resources oil and gas (MIGAS). Based on the TAP MPR. No. IV/MPR/1999 was reaffirmed in TAP MPR No. IV/MPR/2000 concerning Policy Recommendations in the Implementation of Regional Autonomy and TAP MPR. No. IX/MPR/2001 Regarding Agrarian Reform and Natural Resources Management, the existing legal politics in Indonesia in terms of natural resource management is influenced by harmonization and synchronization between the Special Laws of Aceh so that Law Number 18 of 2001 which was later replaced with Law No. Law No. 11 of 2006.*

## Keywords

oil and gas management  
licensing mechanism;  
authority regulation in oil  
and gas management; aceh  
government law; oil and gas  
law; job creation act



## I. Introduction

The oil and gas mining sector (MIGAS) is placed as minerals (Mining A) which have vital and strategic value. to provide an energy commodity based on fuel oil (BBM), a source of state revenue from exports. Exploration activities are field investigations aimed at gathering information about the presence of oil and gas. Meanwhile, exploitation activities are part of the upstream oil and gas activities aimed at removing crude oil from the reservoir from the earth to the surface. The discovery of an oil and gas mine in Aceh has the potential for exploration and exploitation in the 0-200 mile sea area. This discovery is expected to increase State Revenue as well as to build energy security, especially in the Aceh region.

Oil and gas are strategic and vital national natural resources whose existence covers land areas as well as in water areas or offshore areas. In relation to the oil and gas

discovery area, Hasyim Djalal is of the opinion that the sovereignty that exists in the Indonesian territory is recognized for the entire archipelago which includes one territorial unit over its land, seas, including the seabed, the land below, the air above and the sea and all natural resources contained therein. Related to the management of oil and gas, the existing legal politics in Indonesia in terms of natural resource management, there is a harmonization and synchronization between the Special Laws of Aceh so that Law Number 18 of 2001 is replaced with Law no. 11 of 2006. This is in order to accommodate all the aspirations of the community that are in accordance with an interest in economic development, especially in the Aceh region. In the management of oil and gas, it is inseparable from the intended principle, namely the principle of balance in the regulation of authority in oil and gas management between the Central Government and the Aceh Government.

The regulation of offshore oil and gas mining management can be seen in Article 2 of the Oil and Gas Law, the legal principles are as follows: The principle of the people's economy, the principle of integration, the principle of benefit, the principle of justice, the principle of balance, the principle of equity, the principle of mutual prosperity and the welfare of the people at large, the principle of security and safety, the principle of legal certainty and the principle of environmental insight. Balance is one of the basic principles that must exist in any legislation which in this dissertation analyzes the balance of authority arrangements in the management of offshore oil and gas mining in the era of special autonomy in Aceh. In the provisions of Article 18A of the 1945 Constitution of the Republic of Indonesia, it is the constitutional basis for regional autonomy which is not independence but rather the existence of regional freedom and independence in managing and carrying out some of the affairs under its authority. Derivatives of regulations related to financial management are regulated in Article 288 of Law No. 23 of 2014 which explicitly regulates the Balancing Fund consisting of Revenue Sharing Funds (DBH), General Allocation Funds (DAU), Special Allocation Funds (DAK). The division of authority for the management of oil and gas mining in marine areas in Aceh Province can be seen in the explanation of the table below:

**Table 1.** The division of authority between the Central Government and the Aceh Regional Government in the management of oil and gas mining in the sea area.

Aceh Governance Law No. 11 of 2006	Central Government Authority.	Aceh Regional Government Authority.
	The authority of the Central Government in offshore areas more than 12-200 miles from the Acehese jurisdiction, is exercised by the Government with the participation of the Aceh Government.	The authority of the Aceh Government in the offshore area of 0-12 nautical miles, oil and gas business activities are managed by the Aceh Oil and Gas Management Agency (BPMA) which was formed to manage and jointly control upstream business activities in the oil and gas sector located on land and sea under the authority of Aceh.

Source: The data is processed based on the relevant laws and regulations.

## **II. Research Method**

### **2.1 Types of Research**

The type of research that I use in this dissertation is Legal Research (Legal Research). According to Prof. Peter Mahmud Marzuki in his book on legal research, he stated that legal research is normative juridical research. The normative juridical definition is research conducted by reviewing and analyzing all laws and regulations relating to the authority of the Aceh government in its efforts to jointly manage oil and gas mines in offshore areas and analyze the problems or legal issues mentioned above which are consistent it is in line with the legal rules that are relevant to the issues raised while emphasizing the related legal aspects. It is hoped that from this method a legal prescription will be obtained so that later it will be scientifically justified (with a maximum level of truth accuracy). Normative legal research is used in this dissertation research because it is based on the peculiarities of legal science itself so that the research method is a research method that is inherently normative in nature. The normative legal research method is used to examine the authority, especially in the management of oil and gas mines in offshore areas in the context of special autonomy in Aceh.

### **2.2 Research Approach**

The research approaches in this dissertation research include the Legislative Approach (statute approach), the conceptual approach (conceptual approach) and the historical approach (historical approach). The approach in legislation is to examine all positive legal regulations related to the management of the oil and gas mining business, especially offshore (especially in Aceh Province), especially on the arrangement of authorities in joint management carried out by the Central Government and the Aceh Government.

### **2.3 Types of Legal Materials**

Primary legal materials consist of:

1. 1945 Constitution of the Republic of Indonesia
2. TAP MPR. No. IV/MPR/1999 was reaffirmed in TAP MPR No. IV/MPR/2000 concerning Policy Recommendations in the Implementation of Regional Autonomy
3. TAP MPR No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management
4. TAP MPR No. XVI/MPR/1998 on Economic Politics in the Context of Economic Democracy
5. Law No. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh
6. Law No. 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nangroe Aceh Darussalam
7. Law No. 22 of 2001 concerning Oil and Gas (Oil and Gas Law)
8. Law No. 11 of 2006 concerning the Government of Aceh
9. Law Number 11 of 2020 concerning Job Creation
10. Law of the Republic of Indonesia No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government

Secondary legal materials, which are used in this research, are legal materials that can provide an explanation of primary legal materials, namely in the form of literature or books related to Oil and Gas Mining, oil and gas management, and several other related matters such as papers, journals and so on.

#### **2.4 Legal Material Search Techniques**

The technique of collecting and tracing legal materials is carried out by using literature, literature, document studies, as well as research and journal methods.

#### **2.4 Legal Material Analysis Techniques**

The legal material analysis technique used is grammatical interpretation. Grammatical interpretation is the simplest way of interpretation or explanation to find out the meaning of the provisions of the law by describing them according to language, wording or sound.

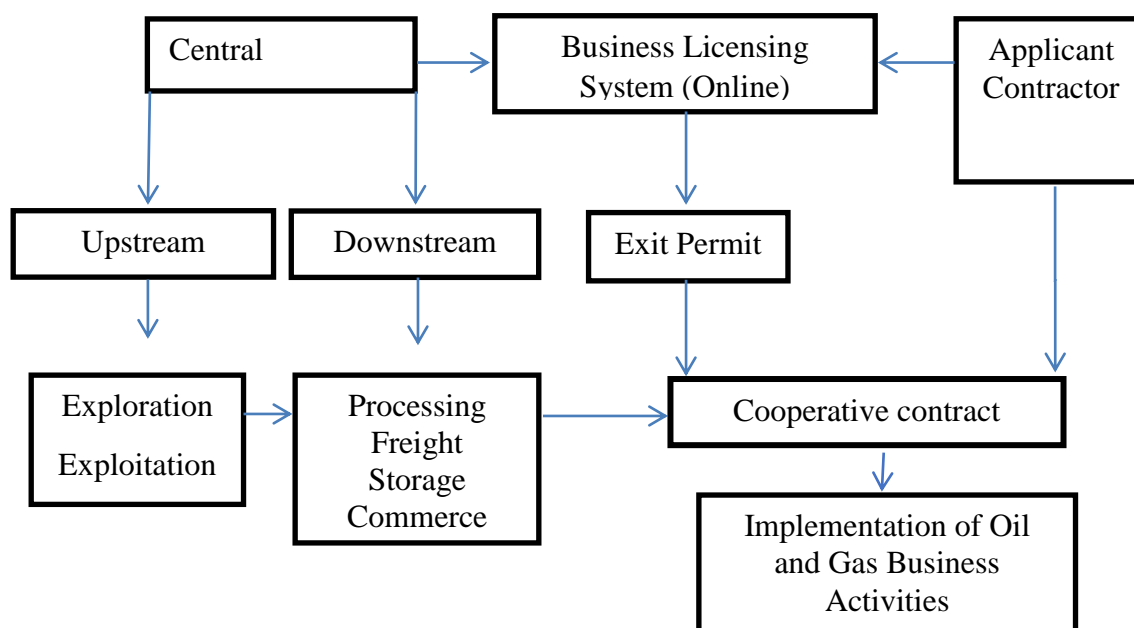
### **III. Result and Discussion**

The regulation of authority in the management of oil and gas mining located in Aceh (especially oil and gas mining located in the sea area) especially from the aspect of the licensing mechanism is reviewed with the substance contained in the Job Creation Act.

In the administration of the state, it cannot be separated from Article 1 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia that the fundamental basis for the implementation of the administration of the Indonesian state must be based on the principles of democracy and the rule of law, so it can be concluded that in Indonesia adheres to the principle of the rule of law democratic one. Democracy itself implies that it is the people who determine the way the people will be governed and it is the people who determine the ways of running the government system. The implementation of the state is then realized in the principle of legality, which means that the power and administration of the state is carried out according to predetermined rules (ratified) both in terms of material law (substantive) and formal law (procedure).

Regarding the problem of oil and gas mining management in Aceh (sea areas), this is related to several regulations that apply in Indonesia. These regulations include the Aceh Government Law, the Oil and Gas Law, and the Job Creation Law. As for the legal basis in this Job Creation Act, among others: MPR Decree Number XVI/MPR/1998 concerning Economic Politics in the Context of Economic Democracy, MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, Article 4 , Article 5 paragraph (1), Article 18, Article 18 A, Article 8 B, Article 20, Article 22 D and Article 33 of the 1945 Constitution of the Republic of Indonesia.

The following is a figure regarding the flow of licensing for oil and gas business activities in the Job Creation Act.



**Figure 1.** Licensing flow for oil and gas business activities in the Job Creation Act.  
 Source: Data based on relevant laws and regulations

Oil and natural gas as strategic non-renewable natural resources contained within the Indonesian mining jurisdiction are national assets controlled by the state. Control by the state is carried out by the Central Government through oil and gas business activities. Oil and gas business activities consist of upstream business activities and downstream business activities. The Business License that has been granted can only be used in accordance with the designation of its business activities. An application for a Business Licensing must be made using an electronic Business Licensing system managed by the Central Government.

Some of the contents of the Omnibus Law, namely the Law on Job Creation, have significantly reduced the autonomy rights granted to the Regional Governments both provinces and districts based on Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia. (NRI 1945 Constitution). Such as cutting some of the authority to process and analyze environmental impacts (AMDAL) with environmental permits (Article 22), then the loss of consultation on the determination of potential areas for oil and gas (MIGAS) in Article 40, the loss of authority to grant approval for special economic zones (Article 50).

The legal basis for the formation of the Law on the Government of Aceh includes: Article 1 paragraph (1), Article 5 paragraph (1) Article 18, Article 18A, Article 18B, and Article 20 of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 1956 concerning the Establishment of the Autonomous Region of Aceh Province. and Amendments to Regulations of the Province of North Sumatra, Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province and the Special Region of Aceh, Law Number 32 of 2004 concerning Regional Government and Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments.

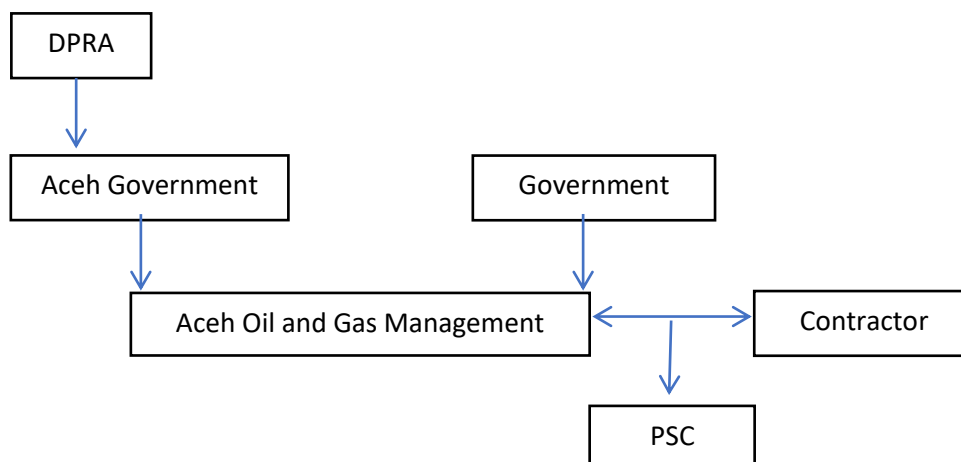
The economy in Aceh is an economy that is organized based on the principle of kinship and the principle of economic democracy with the principles of togetherness, efficiency, justice, sustainability and environmental insight as well as maintaining a balance in the progress of districts/cities in Aceh. In terms of natural resource management, it

includes the mining sector which consists of mineral, coal, geothermal, forestry, fishery mining which is carried out by applying the principles of transparency and sustainable development.

In the management of the above business activities, the Aceh Government can establish Regional Owned Enterprises or may make modal participation in State Owned Enterprises. In terms of the management of natural resources of oil and gas, the Government and the Government of Aceh shall jointly manage the natural resources of oil and gas which are in the territory of Aceh's authority. And to carry out the implementation, management, joint supervision and control of upstream oil and gas business activities located in the land and sea areas within the jurisdiction of Aceh (0-12 millimetres) and the authority for managing oil and natural gas natural resources located in the area 12-200 miles from the territory Aceh's authority to be implemented by the Government by involving the Aceh Government, the Government and the Aceh Government can form an implementing agency that is jointly determined, namely the Aceh Oil and Gas Management Agency (BPMA). BPMA as one of its functions is to sign a PSC with the Contractor so that in the end it can provide maximum benefits and revenues for the state for the greatest prosperity of the people.

Cooperation Contracts with other parties to carry out exploration and exploitation in the context of oil and gas management can be carried out if the entire contents of the PSC agreement have been mutually agreed upon by the Government and the Government of Aceh. However, before discussing with the Government regarding the PSC, in this case the Aceh Government must first obtain the approval of the Aceh People's Advisory Council (DPRA). Further implementation of the management of oil and gas will be further regulated in Government Regulation of the Republic of Indonesia Number 23 of 2015 concerning Joint Management of Oil and Gas Natural Resources in Aceh.

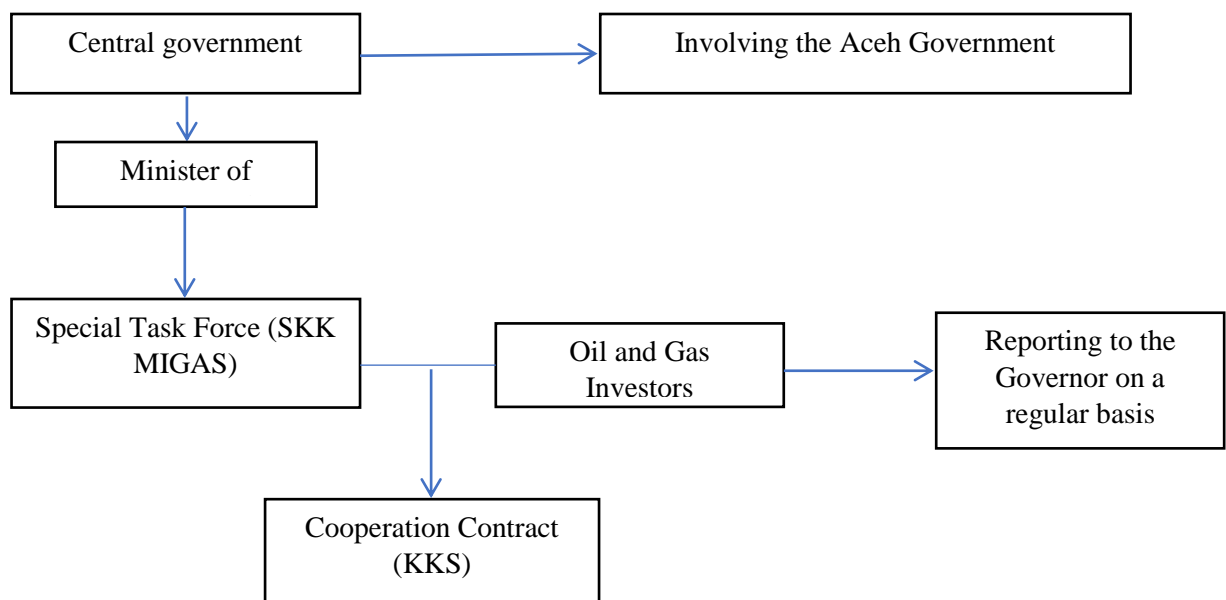
The mechanism for managing oil and gas in Aceh according to Law Number 11 of 2006 concerning the Government of Aceh and Government Regulation of the Republic of Indonesia Number 23 of 2015 concerning Joint Management of Oil and Gas Natural Resources in Aceh, will be clarified in the figure below.



**Figure 2.** Oil and Gas Management Mechanisms (Together between the Aceh Government and the Government (in the 0-12 mill sea area)

Source: The data is processed based on the relevant laws and regulations

In Article 44 of Government Regulation of the Republic of Indonesia Number 23 of 2015 concerning Joint Management of Oil and Gas Natural Resources in Aceh, the regulation states that in carrying out the signing of the Cooperation Contract as referred to in Article 14 (b), BPMA has the task of acting as contracting party with the Contractor. The signing of the Cooperation Contract with the Contractor can be carried out after an agreement has been reached by the Governor and has obtained the approval of the Minister on behalf of the Government. If this is examined based on the substance contained in the Job Creation Law, then the mechanism for making PSCs involving BPMA is clearly eliminated due to the licensing pattern if it is carried out directly (online) with the Central Government. And after the permit is issued, it can immediately carry out oil and gas mining business activities. This is of course contrary to the decentralization principle enshrined in the Law on Governing Aceh which relates to the management of oil and gas resources located in the sea area 12-200 miles from the territory of Aceh's authority, which in its implementation should be carried out by the Government with the participation of the Aceh Government.



**Figure 3.** Oil and Gas Management Mechanisms (Involving the Government of Aceh (in the 12-200 mile sea area))

*Source: The data is processed based on the relevant laws and regulations*

Related to the chart above, there is something interesting to discuss, namely the position of SKK MIGAS which functions as a substitute for BP MIGAS, especially in terms of signing the KKS MIGAS, which is the basis for its validity after being ratified by PP No. 9 of 2013 concerning the Organization and Work Procedures of the Special Task Force for the Implementation of Upstream Business Activities. Oil and Gas basically did not have the legal capacity to carry out all the contracts that had been formed during the time the contracts were in force at that time were still the task of BP MIGAS at that time and were also not authorized to sign new contracts. This is because the position of SKK MIGAS is not a legal subject. In addition, if the emphasis is on aspects of the duties and functions and authorities of SKK MIGAS which are based on their validity only at the level of a Presidential Regulation and a Ministerial Regulation, then this is clearly contrary to the mandate of the 1945 Constitution of the Republic of Indonesia which mandates that for matters relating to the management of natural resources that affect the needs of the people. the lives of many people, it should be regulated in regulations at the level of the law. SKK

MIGAS does not fulfill (exceed capacity) to carry out the constitutional mandate. Therefore, the legality status of all PSCs signed by SKK MIGAS basically becomes null and void. In addition, SKK MIGAS when viewed from an institutional aspect, SKK MIGAS is only a special work unit that is responsible to the President.

The licensing mechanism in the management of oil and gas above, when compared with the oil and gas management mechanism in the job creation law, can be broadly concluded that the content of the job creation law again strengthens the pattern that leads to the implementation of the centralization of power which is also found in the law. Invite Local Government. This pattern is formed by the issuance of laws that have regulations such as the withdrawal of government affairs from regional government affairs and instruments for approval or re-evaluation of central government affairs.

The direction and pattern of decentralization that can be analyzed in the job creation law clearly violates the decentralization principle that has been legalized and guaranteed by the constitution. Which in the sense of decentralization itself is the delegation of authority/or power from the Central Government to the Regional Government to regulate and manage their own household affairs and with assistance tasks so that they are known as autonomous regions. It is through this instrument of decentralization that checks and balances and democracy that provides opportunities for the people to participate in state governance can be realized. Mutatis mutandis the agreed values contained in checks and balances are automatically eroded.

In the management of energy and mineral resources in the law, especially in Article 38 that with the reason to provide convenience, especially for the community, especially business actors in obtaining business permits from sectors related to energy and mineral resources, this law amends, abolishes , or set some new settings set in:

**Table 2.** Some of the regulations that have undergone changes are listed in the table below.

No.	Laws and Regulations that have changed.
1.	Law Number 22 of 2001 concerning Oil and Natural Gas (State Gazette of the Republic of Indonesia of 2001 Number 136, Supplement to the State Gazette of the Republic of Indonesia Number 4151),
2.	Law Number 21 of 2014 concerning Geothermal (State Gazette of the Republic of Indonesia of 2014 Number 217, Supplement to the State Gazette of the Republic of Indonesia Number 5585),
3.	Law Number 30 of 2009 concerning Electricity (State Gazette of the Republic of Indonesia of 2009 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 5052),
4.	Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2009 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 4959) as amended by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525).

*Source: Data based on relevant laws and regulations.*

It is clear that the Ciptaker Law denies the spirit of regional autonomy as mandated in the constitution with the centrality of authority in the Central Government and Regional Governments as implementers. This Law also changes the understanding of concurrent government affairs (a business that is shared between the Central Government and Regional

Governments) as regulated in Law Number 23 of 2014 concerning Regional Governments. Regions (Perda) must be adapted to this law.

This gives rise to various forms of eviction of rights and coercion on society in general. This form of centralization of power as stated in the MPR Decree (TAP MPR) No. X of 1998, that this hinders the creation of justice and equitable distribution of development results and the implementation of broad, real and responsible regional autonomy. The main problem that occurred later was that the national regulation that covered licensing in the regions that were out of sync with inter-institutions made the solution to centralize authority at the central government offered by the Ciptaker law potentially more complicated, especially because this Law had to be spelled out in many regulations. Government (PP) as the implementing rules.

A democratic state structure basically requires a separation of powers so that power is not concentrated in the central government alone, while the central government itself also requires a division of power that is divided between the center and the regions. The principles of democracy and decentralization in government are clearly contrary to the principle of centralization which wants to collect everything at the center of government. Through decentralized instruments, checks and balances can be realized. However, with the issuance of the Omnibus Law on Job Creation, which has a recentralization approach which *mutatis mutandis*, the values that exist in the purpose of checks and balances are also eroded.

#### **IV. Conclusion**

The ratification of the Oil and Gas PSC by the Government, which can be done online by eliminating all procedures that have been made and ratified in the Oil and Gas Law and in the Aceh Government Law (related to oil and gas mining), is basically aimed at obtaining legality and legitimacy for a state action. which initially had to be carried out through certain legal procedures. The main goal of government is to produce good laws and policies, which reflect the interests of the people. In a larger, multi-purpose society, good laws and policies are outcomes that at least consider the interests of those founded on principles accepted by all. In a democratic political process, participation is the main means of achieving the goals of the government. Therefore, it must be understood by the legislators that the importance of procedures and mechanisms to avoid abuse of power, in other words, a good substance is determined by a good procedure or mechanism.

The Job Creation Act in principle violates the main principles of state administration in the 1945 Constitution of the Republic of Indonesia, which at the same time violates the ethics and morals of the constitution. In the online oil and gas management licensing mechanism that can be carried out directly between investors and the Government, the conclusion is that the Government has never publicly conveyed it to the public. The public can only access it after the PSC has been designed by the Government and submitted to the DPR. In fact, it is clearly mandated that PSCs that are ratified as a political process must meet the elements of openness, dissemination and there is an element of participation. PSCs that are made and ratified by the state will definitely involve the affected parties in decision making.

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