ISSN: 0975-833X

Available online at http://www.journalcra.com

International Journal of Current Research
Vol. 11, Issue, 11, pp.8336-8369, November, 2019

DOI: https://doi.org/10.24941/ijcr.32468.11.2019

INTERNATIONAL JOURNAL OF CURRENT RESEARCH

RESEARCH ARTICLE

POLITICAL PROCESS FOR THE PREPARATION OF THE OIL AND GAS LAW IN THE INDONESIAN HOUSE OF REPRESENTATIVES

[1,*]Julizar Idris, [2]Abdul- Hakim, [3]Sarwono and [4]Bambang Santoso Haryono

[1]Student of the Doctoral Program at The Faculty of State Administration of Malang Brawijaya University, Indonesia

[234]Post Graduate Lecturer at the Faculty of State Administration of Malang Brawijaya University

ARTICLE INFO

Article History:
Received 14th August, 2019
Received in revised form
18th September, 2019
Accepted 25th October, 2019
Published online 26th November, 2019

Key Words:
Process, Politics,
Preparation,
Law and Oil and Gas.

ABSTRACT

The purpose of writing this article is to analyze and describe the political process of the preparation of the Oil and Gas Law in the Republic of Indonesia House of Representatives methodology in this study using a qualitative approach research results suggest that the political process in policy formulation occurs from the stages of planning, preparation and discussion and involves many actors from the executive, legislative and judicial, which has an impact on the slowness of the policy formulation process, as a result of different views and different objectives of each actor towards the substance of the policy to be formulated.

Citation: Julizar Idris, Abdul Hakim, Sarwono and Bambang Santoso Haryono. **2019.** "Political process for the preparation of the oil and gas law in the Indonesian house of representatives", *International Journal of Current Research*, 11, (11), 8336-8369.

INTRODUCTION

According to Dunn (2003), policy (policy) is a collection of decisions taken by an actor or political group, in an effort to choose goals and ways to achieve that goal. In principle, the party that makes these policies has the power and authority to implement them. The link between policy and politics is also explicitly seen in Budiardjo opinion, which states that policy is one of the concepts in political science (Budiardjo, 2009: 2), and therefore public policy cannot be separated from the political process that occurs in its formulation and also in its implementation. Policy is a collection of decisions taken by an actor or political group in an effort to choose goals and ways to achieve goals. The relevance of these opinions with this research is related to the political process in the formulation of public policies, especially policies in the energy sector, and more specifically the laws governing oil and gas. At present, the actors involved in the formulation of energy policies are mostly from the Government (executives) and a small percentage of Entrepreneurs. Various groups involved as policy users are often ignored. On the one hand, mass media is only used as a tool to politicize policies.

Corresponding author: **Julizar Idris,**
Student of the Doctoral Program at The Faculty of State Administration of Malang Brawijaya University, Indonesia.

Even sometimes policies that are not final and become state decisions often have been leaked to the public, resulting in a blunder of opinion and various protests that have resulted in a stronger impact and socio-cultural aspects than the substance of the law. This is in line with Mitchel and Gibson (2011), who stated that: "In terms of policy making, first, my fundamental belief is that the policy process is never totally rational, but always informed and shaped by politics". The same thing was stated by Lubis (2007: 5), which explains that policy is a set of decisions taken by political actors in order to choose goals and how to achieve goals. The energy policy adopted by a country or organization cannot be separated from various problems. One example of the fundamental problems of energy policy is proposed by Deutch (2011), which states that there are several factors that play an important role in policy formulation, but are not taken into account and eventually become a problem. These factors are: first, goal (goal), here does not mean that there are no goals to be achieved in the regulations, but rather to the substance of the purpose. The aim of the energy policy that has been made without consider various important aspects, not comprehensive and not comprehensive so that there is no achievement of goals. Second, public opinion and moral attitudes. Public attention to energy issues has been increasing since the 1970s. There are three things related to public opinion and morals, namely: (1) an increase in the community that has attention to the future energy of the country; (2)

energy costs, weather changes and energy security are the main concerns of the community at present; and (3) society is more open to energy conversion measures and new technology. Community attitudes towards energy also differ in one country from another. This difference is due to differences in the adoption of efficient principles or the principle of equality in guiding national emission restrictions. Based on the description, it is clear that the management of natural wealth in the form of oil and gas in the context of Indonesia's energy security creation requires a "better" legislation that adopts the dynamics of change that occur in society and in the business world. According to Nugroho, one important component in a modern state is public policy. Every modern country is ensured to have a constitution, laws and policy decisions as a rule of living together. A country without a component of public policy is a failed state, because shared life is governed by a group of people, who work like tyrants with the aim of satisfying their self and / or group interests (Nugroho, 2014). One of the main pillars in the administration of a country's government is the establishment of good, harmonious and easily applied legislation in society. As a discourse to implement the formation of good laws and regulations, it is necessary to have a regulation that can be used as a guideline and reference for parties related to the establishment of laws and regulations, both at the Central Government level and at the Regional Government level. Regulations that provide guidance on the establishment of laws and regulations have always been awaited and are expected to provide guidance and guidance, so that the process of forming legislation covering the stages of planning, preparation, formulation, discussion, ratification or determination and enactment becomes clearer. As explained earlier, that one of the important policies that demand changes in the substance of the articles is energy policy. This is because, both now and in the future, energy is a very important need for humanity. In the modern economic era, energy is very important to ensure the continuity of industrial, business, household, digital technology, telecommunications, transportation, trade and so on. Therefore, according to Demirbas, access to energy is vital and very important and is a right for everyone to improve the quality of their lives through access to energy. Countries as administrators must guarantee the availability of energy for all citizens (Demirbasa, et al., 2004).

Energy issues are becoming increasingly important and of concern to all parties today, not only in the country and the region, but have become a concern for the whole world. Oil, natural gas, coal, nuclear, and various other energy sources become "scrambles" and must be controlled by ownership from upstream to downstream, so that it often causes conflicts between business people, and between countries. As said by Knittel, that the main problem in the energy sector is mainly related to security of supply or supply energy security, which consists of access to energy (the ability to obtain energy in affordable amounts and prices) and the continuity of supply or maintaining supply from various kinds of disturbances. The huge growth of energy demand, especially in the new industrial countries (China and India), is not balanced by the discovery of new sources that are quite large and with greater production. Not to mention coupled with threats and potential conflicts in some areas, it poses a threat to the security of energy supply from countries that have large energy sources to energy resource importing countries (Knittel, 2012). A country is said to have energy security if the country can maintain the supply of energy supply at the required price at a reasonable limit to support economic growth and society in a sustainable manner. Energy security is very important for both developed and developing countries, especially for energy importing countries. Energy security is not guaranteed if there is a lack of energy supply. This has often happened especially for petroleum, for example: in the first oil crisis due to an embargo by Saudi Arabia, the second oil crisis because of the war between Iran and Iraq, the Gulf crisis because of the Iraq invasion of Kuwait, and followed by the Gulf War, and oil prices continue to soar as a result of the American invasion of Iraq. Disruption of natural disasters (Hurricane Catrina, in the United States, 2005) caused fluctuations in world oil prices due to disruption of a number of oil infrastructure in the Gulf of Mexico (Reddy, 2009). The Indonesian government is well aware of the importance of energy security, both in terms of access to energy, namely the ability to obtain energy in affordable quantities and prices, as well as in the sense of continuity of supply or safeguarding supplies from various kinds of disturbances. This can be seen from the political will of the government and the House of Representatives in 2001 to formulate and enact Law No.22 of 2001 concerning Oil and Gas, as a revision of Law Number 44 Prp. In 1960 concerning Oil and Gas Mining, Law Number 15 of 1962 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 1962 concerning the Obligations of Oil Companies to Meet Domestic Needs, and Law Number 8 of 1971 concerning Oil Mining Companies and State Gas, which is deemed not suitable with the development of oil and gas mining business.

There are three main considerations made by the executive and legislative at the time to formulate and enact Law No.22 of 2001, namely: first, that national development must be directed towards the realization of people's welfare by reforming all aspects of national and state life based on Pancasila and the 1945 Constitution; second, that oil and natural gas are strategic non-renewable natural resources controlled by the state and are vital commodities that control the livelihood of many people and have an important role in the national economy so that their management must be able to maximally provide prosperity and prosperity for the people; and third, that oil and gas business activities have important role in providing real added value to the increasing and sustainable national economic growth. However, very high energy consumption has put Indonesia (PT. Pertamina) which was originally an oil exporting country, turned into an oil importing country, and thus is also mandating Law No.22 of 2001 in the position of "need to be evaluated", to fulfill demands for dynamics of domestic energy needs and reform of companies engaged in the energy sector in order to become more efficient in their management, through an instrument or policy scenario. This is, among other things, pushing for an effort to revise Law No.22 of 2001 concerning Oil and Gas by incorporating a new RRU on Oil and Gas into the national legislation program (Prolegnas). The Act (Law) is a legal product formed by the House of Representatives (DPR) and the President, as well as for certain laws, involving the Regional Representative Council (DPD). Broadly speaking, the process of forming the law is divided into five stages, namely: planning, drafting, discussing, authorizing and enacting. Discussion of the matter of the bill between the DPR and the President (also with the DPD, specifically for certain topics) through two levels of discussion. The first level is talks at commission meetings, joint commission meetings, legislative body meetings, budget body meetings or special committee meetings. The second level is the discussion at the plenary meeting.

Arrangements prior to the decision of the MK 92/2012 only "allow" the DPD to participate in the first level discussion, but after the decision of the Constitutional Court 92/2012, the DPD participated in the second level discussion. But the role of the DPD did not come to the approval of a bill. The joint agreement on a bill remains the authority of the President and DPR. What happened at the discussion stage was "mutual criticism" of a bill. If the bill comes from the President, the DPR and DPD will give their opinions and input. If the bill comes from the House of Representatives, then the President and the DPD will give their opinions and input. If the bill comes from the DPD, then the President and DPR will provide input and opinions. The drafting of the Law in Indonesia since the amendment to the 1945 Constitution which transferred the power of the formation of the Act from the President to the hands of the DPR, adherence to the principles of the formation of legislation is very alarming. An example is disobedience to the principle of conformity between type, hierarchy and content matter.

For several years, there were problems in the form of a law by its forming institutions, namely the DPR and the President, simple problems and should not need to be regulated in the Act, it was still forced into law. Lawmakers to date, no longer hold on to the understanding that to them it is charged in addition to the task of forming laws concerning matters which have been stipulated in the Constitution must be regulated by or based on the Act, it is indeed possible that there are certain things beyond those stipulated in the Constitution it is to be regulated by law. However, matters outside of those stipulated in the Constitution are not permissible and, therefore, should not be added to the arbitrary but must be based on material content of the Law that has been determined in its scope.On the contrary, the current formators of the Law have also interpreted unilaterally to consider that their power is not limited to forming laws.

As a result of this understanding, according to the legislator, all aspects of life can be regulated by law. In this mindset, in addition to matters that must be regulated by the Law contained in the Constitution, other matters may be regulated by the Law if the lawmakers want it, which is whenever they feel it is necessary to regulate it by law. In the process of perfection needs to reform the drafting of laws so that the law in the drafting produces a credible law and truly fulfills the expectations of the people. The national legislative program that is drafted must pay attention to the implementation of the national legislation program the previous year and the completeness of the preparation of the National Legislation Program such as the draft law and academic texts. After the preparation of the National Legislation Program in the joint Legislative Body of the DPD, and the Government represented by the Minister who carries out government affairs in the field of law, in this case the Minister of Law and Human Rights (Menkumham), then the National Legislation Program was brought to the DPR plenary session for approval. Apart from the national legislation program, the Indonesian Parliament and the President can submit the Draft Law with the conception of the draft law which includes the urgency and purpose of the drafting, the objectives to be realized, the main points, the scope and objects to be regulated, the range and direction of the arrangement . All conceptions mentioned above are stated in academic texts. The bill submitted outside the National Legislation Program must first be discussed at the Legislation Body to be agreed upon and then coordinate with the Minister of Law and Human Rights as a representative of the government that carries out government affairs in the legal field for mutual approval. The results of the joint agreement between the Legislative Body and the Minister of Law and Human Rights were reported in the plenary session of the Indonesian House of Representatives to get approval. Some things that can be submitted as a bill outside the National Legislation Program are to ratify international conventions or agreements, to fill legal vacancies due to the decision of the Constitutional Court, to overcome extraordinary circumstances, conflicts or natural disasters and to overcome certain other conditions that ensure national urgency. a draft law. There are major principles in the drafting of this Bill, namely all the material compiled and the Draft Law must be in harmony with Pancasila as the state philosophy and the 1945 Constitution of the Republic of Indonesia. As a basic state and legal philosophy, all draft The laws that are prepared cannot contradict or deviate from both. Pancasia and the 1945 Constitution of the Republic of Indonesia must be a guideline in drafting the regulations below including the Law. The problem that often occurs in the process of drafting the law is the number of laws that are arranged on the basis of political and interests in the DPR, even the loss of articles in certain rules. In the process of drafting in general it has become the rights and authority of the House of Representatives but on the basis of democracy the involvement of the community, NGOs, universities, mass organizations, needs to oversee the process of preparation. In the process of revising Law No.22 of 2001 concerning Oil and Gas (Oil and Gas Law), which is the case in this study, it has been a Prolegnas from 2001 to 2015, but there was a stagnation and the discussion stopped. The occurrence of this process is due to the interests between the Government, businessmen, political elites who are very sharp in the process of formulating and completing the Oil and Gas Law. This is because there are problems with the unfinished political process in the DPR, both in discussions and review plans.

In order to harmonize the development model in the oil and gas sector (oil and gas) in Indonesia it is necessary to look at three main things needed, namely: the development of a new sustainable oil and gas paradigm; technology transfer for development activities and national progress; and the political will of a democratic and transparent Oil and Gas policy. In the context of a broader step forward in the world of oil and gas is to make oil and gas as the main issue (main issue) that is balanced with the issue political, economic, social and legal, thus requiring comprehensive, objective, wise and thoughtful thinking. Because as stated in the previous description, that in order to achieve the goals of the country for the welfare of society, it requires the management of natural resources that are effective and efficient, whose arrangements must go through an inclusive law, covering the interests of all stakeholders fairly. However, what happened in the process of drafting and revising the Oil and Gas Law from 2001 to 2016 has never been resolved because of the many interests in the process. Political will becomes the main key in the process of drafting the Oil and Gas Law. This is the background of the importance of this research conducted, among others, to examine in depth and comprehensively the political process in the discussion of the Oil and Gas Bill. Research Problem Formulation Based on the description of the background, the researcher can damage the problem of this research, as follows: What is the political process for the formulation of the Oil and Gas Law in the Indonesian House of Representatives?

Research Objectives Based on the formulation of the research problem, the purpose of this study was to obtain detailed and comprehensive answers about: the political process of drafting the Oil and Gas Law in the Indonesian House of Representatives;

RESEARCH METHODS

This study uses a qualitative research approach

Research focus: The political process of drafting the Oil and Gas Law in the DPR RI, which includes: planning, drafting and discussing; especially first-level discussions, namely: discussions in Commission Meetings, Joint Commission Meetings, Legislation Board Meetings, Budget Board Meetings or Special Committee Meetings;

Location and Research Site: This research was carried out in the Indonesian House of Representatives, especially to Commission VII, which included a Legislation Body work unit. This work unit was chosen as a place of research because it carries out the function of public policy formulation, which relates to: (1) the political process in the form of collecting data and information in the framework of the preparation of the Oil and Gas Bill; and (2) the first level discussion process, namely: discussions in Commission Meetings, Joint Commission Meetings, Legislation Board Meetings, Budget Board Meetings or Special Committee Meetings. While the research site is the work space of members of Commission VII, the commission meeting room, the Chairperson of the Commission VII, the Legislation Board Leadership room, the Legislation Agency Secretariat room, and the Legislation Board member room.

Data source: The source of the research data comes from the observed events or activities, namely the activities of commission meetings, joint commission meetings, Legislation Body meetings, and special meetings held in the context of the discussion of the Oil and Gas Bill. The key informants of this study were the Head of the Indonesian House of Representatives Commission VII, the Legislative Body Leader, and the Secretary of the Chair of the Commission VII and the Leadership Secretary of the Legislation Body. Other Imfoman were staff from the Ministry of Law and Human Rights Office, members of Commission VII and members of the Legislation Body. The source of the data in the form of documents consists of: the results of the commission meetings and joint commission meetings held in the Secretariat of Commission VII and Legislation Body Secretariat, Legislative Leadership Report, Oil and Gas Bill, and other relevant documents.

Data collection technique: Data collection in this study was carried out through observation or observation, interview and document search (documentation technique).

Validity of Data: Testing the validity of qualitative research method data includes tests: credibility (internal validity), transferability (external validity), dependability (reliability), and confirmability (objectivity). Sugiono (2013)

Data analysis: The data that has been collected is analyzed using Interactive Model data analysis techniques from Miles, namely the interactive Model analysis method in data analysis shown in Figure 1 below.

RESEARCH RESULT

Political Process for the Preparation of the Oil and Gas Law in the Indonesian Parliament. The process of drafting the Law has a policy reference, namely Government Laws and Regulations based on Law Number 10 of 2004 concerning Establishment of Legislation (PPP Law). In addition, the legislative process proposed by the President is also regulated by Presidential Regulation Number 68 of 2005 concerning Procedures for Preparing the Draft Law, Draft Government Regulation in Lieu of Laws, Draft Government Regulations and Draft Presidential Regulations (Perpres No. 68 / 2005). This regulation was established to implement the provisions of Article 18 paragraph (3) and Article 24 of the PPP Law. Basically the process of making the law after the enactment of the PPP Law is divided into several stages, namely planning, preparation, techniques for the preparation, formulation, discussion, ratification, enactment and dissemination (General Provisions number 1 of the PPP Law). This is in accordance with what was said by this research informant, AT, as follows:

In fact the drafting process of the bill or law already has rules. All are regulated in the General Provisions number 1 of the PPP Law, in which the preparation is divided into several stages, namely planning, preparation, techniques for the preparation, formulation, discussion, ratification, promulgation and dissemination ... but also since 2000, the Parliament and the Government have poured indicator of their program in what is called the National Development Program (Law No. 25 of 2000). In the National Development Program (Propenas), there are development indicators in the field of law, one of the indicators is the enactment of around 120 items of legislation. (Interview, 23 April 2017). In general, the process of structuring a law passes through a long process as described above. Since 2000, the House of Representatives and the Government have poured their program indicators in what is called the National Development Program (Law No. 25 of 2000). In the National Development Program (Propenas), there are development indicators in the field of law, one of the indicators is the enactment of around 120 items of legislation. From the points of Propenas, what was called the National Legislation Program (Prolegnas) was prepared, in which there were approximately 200 laws planned to be completed in five years. Then from the National Legislation Program an annual priority was made on the bill to be discussed by the Government and the Parliament, called the Annual Development Plan (Repeta).

The National Legislation Program itself was prepared through coordination between the House of Representatives represented by the Legislative Body and the Government represented by Bappenas. Then the discussion process is the same as the process of discussing the law, only involving all representatives of the Commission in the DPR. The preparation of the Repeta was carried out by the Government (represented by the Minister of Justice and Human Rights) and the Legislation Body after obtaining input from the Faction and the Commission and from the Secretariat General. This research informant, At, stated as follows: "We know what is known as Propenas or the National Legislation Program wherein there are approximately 200 laws planned to be completed in five years. Then from the National Legislation Program an annual priority was made on the bill to be discussed by the Government and the Parliament, called the Annual Development Plan (Repeta).

While the National Legislation Program was prepared through coordination between the House of Representatives represented by the Legislative Body and the Government represented by Bappenas. Then the discussion process is the same as the process of discussing the law, only involving all representatives of the Commission in the DPR. The preparation of the Repeta is carried out by the Government (represented by the Minister of Justice and Human Rights) and the Legislation Body after getting input from the Faction and the Commission and from the Secretariat General". (Interview, April 23, 2017). The results of the interview showed the role of the Commission and the Legislative Body in the process of drafting the bill in the DPR. In connection with the formation of the Commission and the duties of the Commission, this research informant (GIP, from Commission VII) stated as follows:

The composition and membership of the Commission are determined by the DPR in a plenary meeting according to the balance and equal distribution of the number of members of each faction, at the beginning of the period of membership of the DPR and at the beginning of the session year. Every. Members, except MPR and DPR Leaders, must be members of one of the Commissions. The Number of Commissions, the Working Pair of the Commission and the Scope of Duties of the Commission are further regulated by a DPR Decree based on government institutions, both state ministries and non-ministerial institutions, and the secretariat of state institutions, taking into account the effectiveness of the DPR's duties. (Interview, October 2017). Whereas with regard to the Commission's duties, the informant further stated as follows:

The task of the Commission in drafting the law is to prepare, compile, discuss, and refine the Bill which is included in the scope of its duties. (Interview, October, 2017). As for those related to the Legislation Body (Baleg), other informants who are also members of the DPR-RI, SAA, stated as follows: The Legislative Body is formed by the DPR and is a permanent instrument of the DPR. The DPR determines the composition and membership of the Legislative Body at the beginning of the DPR membership period, the beginning of the session year and every session period. The number of members of the Legislation Body is at most 2 (two) times the number of members of the Commission, which reflects the Faction and the Commission. The Head of the Legislation Body is a collective and collegial leadership unit, consisting of one chairman and a maximum of four deputy chairpersons elected from and by members of the Legislation Body in a fixed package based on the faction's proposal in accordance with the principle of consensus. (Interview, October 2017).

As for the duties of the Legislative Body, from tracing data on documents, as well as the results of interviews, can be summarized as follows:

- Drafting a national legislation program that lists the order of the draft laws and their reasons for 5 (five) years and annual priorities in the DPR;
- Coordinate the preparation of a national legislation program that lists the order of the draft laws and their reasons for 5 (five) years and annual priorities between the DPR, the Government and the DPD;
- Harmonizing, rounding, and consolidating the conception of the draft law submitted by members, the Commission, or a combination of the Commission, before the bill is submitted to the leadership of the DPR;
- Giving consideration to the draft law submitted by members, the Commission, or a combination of the Commission outside the priority of the draft law or outside the draft law registered in the national legislation program;
- Conduct discussions, amendments, and / or amendments to the draft law specifically assigned by the Consultative Body;
- Monitoring and reviewing the law
- Compile, evaluate, and improve the DPR regulations;
- Follow developments and evaluate the discussion of the contents of the draft law through coordination with the Commission and / or special committee;
- Socializing Prolegnas; and
- Make a performance report and inventory problems in the legislative field at the end of the DPR membership period to be used by the Legislation Body in the next membership period.
- Furthermore, in drafting the Draft Bill, the DPR-RI Commission, uses several criteria that will be included in the Repeta: (1) ordered directly by law; (2) determined by the MPR Decree; (3) related to the national economy; and (4) related to protection of economic and social life. To respond to the social conditions that occur in the community, there is a tolerance limit of 10-20 percent to discuss the bill beyond those stipulated in the Repeta. Submission of a bill by the DPR or the Government then follows the Repeta.

This political process that occurs because of the many interesting interests in the preparation. For example, the Decision of the Constitutional Court Case Number 002 / PUU-I / 2003 on December 21, 2004, has canceled Article 12 paragraph (3), Article 22 paragraph (1), and Article 28 paragraph (2) and paragraph (3) of Law Law Number 22 Year 2001 concerning Oil and Natural Gas, because it is contrary to Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), so the abrogated articles no longer have binding legal force. Finally, the Constitutional Court also issued a decision on the judicial review of Law Number 2 of 2001 concerning Oil and Gas, namely through Decision No. 36 / PUU-X / 2012. The Constitutional Court, among others, canceled Article 1 number 23, Article 4 paragraph (3), Article 41 paragraph (2), Article 44, Article 45, Article 48 (1), Article 59 letter a, Article 61, Article 63 of the Oil and Gas Law. The Constitutional Court also canceled the phrase "with the Implementing Body in Article 11 paragraph (1), the phrase" through the Executing Agency in Article 20 paragraph (3), the phrase "based on the consideration of the Implementing Agency and" in Article 21 paragraph (1), phrase - Agency Executor and Article 49 of Law Number 22 Year 2001 concerning Oil and Gas. This is in accordance with what was said by SY (the informant is a Commission Member), as follows:

"... the drafting of the Draft Law and the Oil and Gas Law can be said to be a political process because it is very difficult because there are many interesting interests in the preparation. Many times the Oil and Gas Law was revised and entered the courtroom of the Constitutional Court. Many provisions have been canceled and revised by the Constitutional Court.

However, the revision has not finished. In fact, since 2010 the Oil and Gas Law has always been a priority in the national legislation program. I personally admit that the revision process of the Oil and Gas Law is quite tough because of several things that influence the tough discussion of this one bill, including oil and gas as a strategic non-renewable natural resource which is a vital commodity that controls the livelihood of many people. Therefore, according to him, a rule formulation must be sought so that its management can be optimal for the greatest prosperity and prosperity of the people ... on the other hand oil and gas business activities tend to lead to liberalization. As a result, the formulation of the rules on oil and gas has become tangent to many aspects of the economy. Oil and gas management must be able to bring a positive impact on people's welfare, namely that the oil and gas sector is not only a source of state income, but must be able to encourage national economic growth ". (Interview, January 20, 2017).

Procedurally, the establishment of a law (one of which is the Oil and Gas Law) is a stage of activities carried out continuously. This process begins with the formation of an idea or idea about the need for regulationto a problem, which is then followed by the preparation of a draft law either by the House of Representatives, the Regional Representative Council, or by the Government, then the discussion of the draft law in the House of Representatives for mutual consent, followed by ratification, and concluding with nomination. The procedures for preparing draft legislation are based on Presidential Instruction No. 15 of 1970 on the Procedures for Preparing the Draft Law and Government Regulations. While the procedure for preparing the draft law of the House of Representatives Initiative and the discussion of the two plans is governed by the Rules of Procedure of the House of Representatives of the Republic of Indonesia Number 03A / DPR RI / I / 2001-2002. The enactment of Presidential Decree Number 188 of 1998 on the Procedures for Preparing the draft Law stipulated on October 28, 1998, the process of establishing the law is carried out in accordance with the Presidential Decree. However, with the provisions of Article 58 of Law Number 10 Year 2004 on the Establishment of Legislation, since November 1, 2004 everything about the establishment of legislation is bound by the law. Based on the amendments to the 1945 Constitution, a draft law may come from several parties, namely: (a) Government (President), pursuant to Article 5 paragraph (1) of the 1945 Constitution; (b) the House of Representatives, pursuant to Article 20 paragraph (1) of the 1945 Constitution; (c) Members of Parliament, pursuant to Article 21 of the 1945 Constitution; and (d) DPD under Article 22 letter D of the 1945 Constitution.

Furthermore, in general, the process of forming the Law consists of several stages, namely: (a) the process of preparation for the establishment of the law, which is the process of drafting and designing within the Government environment, in the House of Representatives, or in the DPD environment; (b) the process of discussion in the House of Representatives; (c) the verification process by the President; and (d) the Procedure process (by the Minister whose duties and responsibilities in the field of legislation). The process of drafting a law, in which there is a transformation of the vision, mission and value desired by law-makers with the community in a form of law. The lawmakers since the beginning of the design process have been required that the resulting law meet a variety of needs, which include: first, affordable; second, enforceable; third, in accordance with the principles of legal guarantees and equality of regulated target rights; and fourth, able to absorb the aspirations of society. In addition to these difficulties, lawmakers are pursuing the dynamics of community development which is constantly changing in line with the values that are well-regarded by society. Thus, the establishment of a law as part of the process of establishing a wider legal system is not static, but has the dynamics of change. Mechanism of law-making or regulatory creation legislation, one of which was formed through the legal politics required by the rulers of that time. So the mechanism of legal creation in Indonesia today is based on the will and authority of the holder of power. Legal politics can be defined as the will or will of the state to the law. That is, for what the law was created, what the purpose of its creation and where it was going. Various difficulties in the formulation of laws, seem to have long been felt by the Indonesian nation as a developing country. The difficulties in the formation of this law, now more felt by the nation Indonesia, which is facing various social problems fundamentally on multi-dimensional structural and cultural problems. Whereas the establishment of this law now and in the future will continue to increase as a response to the demands of the community along with the increasing complexities and conditions of society.

Along with the dynamics of changes that occur in society, the drafting process of the law requires community participation, which contains two meanings, namely: process and substance. The process is a mechanism in the formation of legislation that must be carried out transparently so that the community can participate in providing inputs in managing a problem. While the substance is the material to be regulated must be aimed at the interests of the wider community so as to produce a law that is democratic and responsive in character and populist. In other words, the establishment of the law is not only determined by the formal legal rules and the political will of the legislators, but also takes into account the interests of the community (participating interest), for the welfare of the community and local government. This is as stipulated in Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities, in Articles 34 and 35. Article 34 states "since the approval of the field development plan which will first be produced from a Working Area, the Contractor is obliged to offer participating interest 10% (ten percent) to Regionally Owned Enterprises".

Article 35 states: (1) A statement of interest and ability to take a participating interest as referred to in Article 34 is submitted by a Regionally Owned Enterprise within a maximum period of 60 (sixty) days from the date of bidding from the contractor; (2) In the event that a Regionally-Owned Enterprise does not provide a capability statement within the period referred to in paragraph (1), the contractor must offer to the National Company; (3) In the event that the National Company does not provide a statement of interest and ability within a maximum period of 60 (sixty) days from the date of bidding from the contractor to the National Company, the offer is declared closed. This participating interest is a right that has limitations, especially with the ability period (60 days) from the Regional Enterprise Regional Enterprise (PD) or Limited Liability Company (PT) to the contractor. Limited Company Shares can be owned by the Regional Government, Regional Companies, private companies and the public but the largest portion of the Limited Liability Company shares is owned by

the Regional Government or Regional Companies. The Contractor can transfer, submit and transfer part or all of his rights and obligations to other parties after obtaining approval from the Minister based on the consideration of the Implementing Agency. If the transfer, delivery and transfer of part or all of the contractor's rights and obligations is carried out to a non-affiliated company or to a company other than a business partner in the same working area, the Minister may ask the contractor to offer the national company first. In line with the existence of Government Regulation Number 35 of 2004 concerning Upstream Oil and Gas Business Activities, the participating interest in the formation of laws cannot be simply ignored by the legislature. Moreover, with the establishment of the Constitutional Court, one of the authorities is to examine the law so that the participating interest will become more meaningful. In the context of the participating interest, the problem is that oil and gas investment in Indonesia is no longer attractive. This matter considering oil production continues to decline, proven reserves have declined to below 4 billion barrels and well conditions are aging, so oil and gas contractors do not want to invest in exploration. Even without exploration, new oil and gas reserves will never be found. Another problem that arises in the future, is whether legal politics in the establishment of the Oil and Gas Law (Oil and Gas Law) that will be applied to local governments can create prosperity for the people in the area, as well as other issues related to the provisions in investment in exploration and exploitation.

This study discusses how the political process of the formation of Law No. 22 of 2001 concerning Oil and Gas. Based on the Constitutional Court's Decision, Law Number 22 Year 2001 concerning Oil and Natural Gas requires a change in particular to the articles that have been annulled, as well as related articles which have implications for the amendment of articles which were canceled. Several provisions of the article which were canceled by the Constitutional Court in Law No. 22 of 2001 concerning Oil and Gas, put the country in a weak position. In the management of oil and gas, the Government is not placed or positioned as a mining authority holder, but the contractor as the holder of the mining authority is given the right to carry out exploration and exploitation by the state. This is contrary to the provisions in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution, that production branches that are important to the state and control the livelihood of many people, are controlled by the state and used as much as possible for the prosperity of the people.

Law Number 22 Year 2001 concerning Oil and Gas further exacerbates Indonesia's mismanagement of Natural Resources (SDA) which makes the oil and gas industry fail to become a buffer for national energy security. The worse the mismanagement of natural resources in oil and gas is marked by the misdirected fiscal regulation, the creation of a complicated new bureaucracy chain, inefficiency of operational costs (cost recovery) and the existence of "mafia games", the decline in nationalism authority in petroleum contracts and policies in the field oil and natural gas without a roadmap. This has caused oil and gas production (lifting) not to increase, especially since 2004. Misdirected fiscal regulation is marked by the abolition of the lex specialis principle in the Production Sharing Contract (PSC) in Law Number 22 Year 2001 concerning Oil and Natural Gas. Indonesia is the only country that collects taxes at the preproduction stage. Through Article 31 of Law Number 22 Year 2001 concerning Oil and Gas, Indonesia applies various taxes and levies in the exploration period, which includes import duties of 15% (fifteen percent) and Value Added Tax 10% (ten percent) of the value capital goods imported from abroad. Law Number 22 Year 2001 concerning Oil and Gas introduces a new institution called the Oil and Gas Implementing Agency. However, its functions and tasks are relatively limited because of the legal status aspect of this institution in the form of a State-Owned Legal Entity (BHMN). As a state-owned legal entity, this institution is not a business entity so it cannot fulfill the eligible conditions to conduct business transactions with other parties especially with the company. As a BHMN, business transactions are carried out with third party intermediaries. BP Migas as a BHMN is the controller of oil and gas operations management but is not a State-Owned Enterprise (BUMN) that is directly involved in production activities.

The strong debate in the revision of the Oil and Gas Law is that cost recovery inefficiencies occur in upstream oil and gas operations because there has never been an audit of the price of fuel oil (BBM) and the cost of oil and gas production, both for oil companies Indonesian national (Pertamina) and foreign corporations such as Exxon Mobile, Chevron, Shell, British Petroleum, and others. Until now what was known was only the comparative price or the difference in price between the domestic fuel price and the world oil price, especially the fuel price prevailing in Singapore. Therefore, the pricing of fuel marketed domestically is largely determined by the price mechanism based on MOPS plus Alpha. Law Number 22 Year 2001 concerning Oil and Natural Gas has also reduced national sovereignty in contracts that tend to place the state and contractor in an equal position. The dogma pacta sunct servanda (sanctity of a contract) is manifested in an international arbitration mechanism to resolve industrial disputes (dispute settlement), as said by informants, the US, as follows:

"... the complex problem in the Oil and Gas Law is that this law is too pro-foreign. Where this is feared it will threaten the sovereignty of the State in managing the existing oil and gas. For example, in the PSC (Production Sharing Contract) standard clause that was valid for 37 years (1964-2001) before the enactment of Law Number 22 Year 2001 concerning Oil and Gas, the Government was protected from the possibility of being dragged into international arbitration and guaranteed that whatever content the contract will not impede the Government's right to assert its national interests ". (Interview, February 25, 2017).

According to other informants, GIP, the difference between the existing law and the draft bill for the amendment to the law is primarily on institutional issues, as in the statement below.

"... especially the institutional problem and affirming that all natural resources reinforce the message of the 1945 Constitution, especially concerning Article 33, I think this is an important substance that will change from the current Act. We see the current law that we are less sovereign, we really have BUMNs, for example Pertamina and PGN which are engaged in this sector but what applies in the law now treats the same as other contractors, both foreign and local, in the shrimp draft In this new law, we position that the state is sovereign, all the natural resources contained in the bowels of the earth are wholly owned by the state, so we position the institution that will be assigned to take care of this completely.

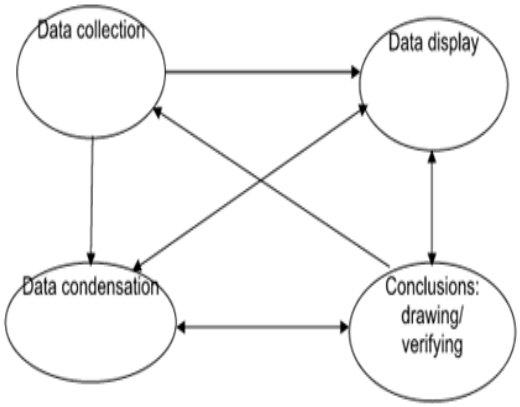
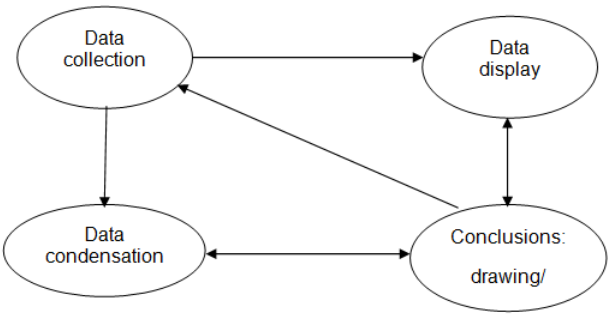


Figure 1. Compnents of Data Analysis: Interactive Model



Source: DPR-RI Secretariat

Figure 2. The Process of Discussing the Oil and Gas Bill

Whereas then in his business he must work together because he is unable to do it alone is another matter, the most important thing is that the lead is institutional that belongs to the state, so that the institution is truly 100% owned by the state, not just privacy, even this institution may not be privatized, it is to guarantee the sovereignty of the State in it. If so far Pertamina or PGN have no different from other contractors, then in the future the Act that we are discussing positions the full control of the state, the power of mining in the country, the power to cultivate this in a state-owned enterprise that is in managing it working together it's a matter of activity. Whereas in his management he cooperates with the matter of activities that are B to B. (Interview, October 2017).

The current Law Number 22 Year 2001 concerning Oil and Gas has created a national energy policy that tends to be sectoral and only oriented to the income aspect, not the national security in the energy sector. The issue of oil and gas and energy seems to be only a matter of the Ministry of Energy and Mineral Resources or the Ministry of Finance. Therefore, Indonesia is experiencing a paradox of plenty, is in the shadow of an energy crisis in the middle of the barn and abundant sources of oil and natural gas energy. In addition, the discourse or idea of establishing a permanent oil and gas fund (petroleum fund) is far from being realized. Though this idea is important as an effort to develop fuel energy produced or derived from plants or plants. Because natural resources of oil and gas are nonrenewable energy sources. The future energy policy should prioritize the development of new energy as a substitute for oil and natural gas energy. The new energy referred to is the development of fuel energy derived from agricultural products, such as plants and plants. To develop this energy, it needs long-term funding support (petroleum funds), in addition to policy support.

Therefore, in the draft law on oil and gas, it is necessary to regulate funds for the development of renewable fuel energy as a substitute for oil and gas reserves. In the 2009-2014 DPR membership period, the Government and Parliament have sought to make political will in the form of the Draft Law on Oil and Gas (Oil and Gas Bill) in accordance with the 2009-2014 National Legislation Program, but cannot yet be passed as a law. In the 2014-2019 membership period the Oil and Gas Draft Bill re-entered the 2014-2019 National Legislation Program and became a priority in 2015 as a proposal from the House of Representatives. Based on various problems that occur related to the management of oil and gas in Indonesia, one way to improve the national oil system is to improve its policy base, namely Law Number 22 Year 2001 concerning Oil and Natural Gas.

Planning: Planning is the process by which the DPR and the Government formulate a plan and a priority scale for the Act that will be made by the DPR in a certain period. This process is accommodated by a program called the National Legislation Program (Prolegnas). In 2000, the National Legislation Program was part of the National Development Program (Propenas) which was outlined in the form of an Act, namely Law No. 20 of 2000. In the PPP Law, planning is also contained in the National Legislation Program, but it has not been regulated further in what form. Whereas the provisions concerning the procedures for the preparation and management of the National Legislation Program are regulated by a Presidential Regulation (Perpres).

Politically the bill or law comes from several sources, namely: (1) the bill from the President; (2) RUU from DPR; and (3) the bill from the DPD.

Bill from the President: Before a bill was proposed by the President there were several steps that had to be passed, which in the PPP Law consisted of the stages of preparation, preparation techniques, and formulation. These three stages can be packaged into a commonly used term, namely design. Provisions governing the stages of drafting the law are further regulated in Presidential Regulation No. 68/2005. Previously, the drafting process for the bill was regulated by Presidential Decree Number 188 of 1998 concerning Procedures for Preparing the Bill. But with the enactment of Perpres No. 68/2005, the Presidential Decree is revoked and declared invalid. The arrangement of the stages or procedures for preparing the Draft Law in this Presidential Regulation consists of (i) the drafting of the Draft Law which includes the drafting of the Draft Law based on the National Legislation Program and drafting of the Bill outside the National Legislation Program, and (ii) submission of the Bill to the Parliament.

Bill from the House of Representatives: Before arriving at the DPR initiative proposal, there were several bodies that usually carried out the process of preparing a bill. As an illustration, the Draft Anti-Corruption Commission Bill was prepared by the PPP Faction, while the Bill on Procedures for Establishing Legislation (TCP3) was prepared by the Assistant Team of the Legislation Body. Besides that there are several other bodies that have functional authority to prepare a bill that will be the proposal of the DPR initiative. The agency is the Center for Data and Information Services (PPPDI) which is tasked with conducting research on the substance of the draft law and the DPR Secretariat's Design Team who put the results of the

research into a draft law. In carrying out the function as a drafting of the bill, both the Legislation Committee and the expert team from the faction have their own mechanisms. Baleg, for example, in addition to conducting research on several draft laws, also collaborates with various universities in several regions in Indonesia. For one bill, Baleg will usually ask three universities to conduct research and socialization on the results of the research. Baleg also received many draft bills from civil society, such as the Bill on Freedom of Obtaining Information from ICEL (Indonesian Center for Environmental Law), the Bill on Citizenship from GANDI (Anti-Discrimination Movement) and the Labor Bill from Kopbumi. For civil society, the entrance to a proposal may be more "neutral" if it is through Baleg rather than through the faction, because it seems not affiliated with any party. Whereas PPPI, which has 43 researchers, has more functions to assist the Baleg and the secretariat in preparing a draft law and in providing views on the bill being discussed. In addition, the PPPDI often also conducts research to help DPR members in carrying out their duties, both for legislative, oversight and budgetary functions.

At the faction level the drafting of a bill began with the mandate of the party conference. Then the faction formed an Expert Team that drafted the bill based on community input through the DPP and party DPD.

Bill from the DPD: As a new legislative body, the DPD is in its time to build a good and effective drafting system and discussion of the bill. At the beginning of this term, the DPD adopted a system that was used by the DPR. To design a bill they submit to individuals or committee who will propose it. It's just that the filter is in, the Plenary Session of the DPD that will ratify whether or not a bill can be submitted to the DPD proposal to the DPR. The proposed Bill may be proposed by the Law Designation Committee (PPU) or the Ad Hoc Committee. While the Proposal for the Formation of the Bill can be submitted by at least ¼ the number of DPD members. The proposal for the establishment of a bill must be completed with background, purpose and main points and list of names, provincial names and proposers' signatures. Both the Proposed Bill and the Proposed Formation of the Bill were submitted to PPU. Furthermore, the PPU leaders will submit the Proposed Bill or Proposed Formation of the Bill to the DPD leaders. At the next DPD plenary session the head of the session must inform the members about the entry of the proposed Bill or the Proposal for the Formation of the Bill, which must then be distributed to all members. The Plenary Session decides whether the Proposed Bill or the Proposed Formation of the Bill is accepted, rejected or accepted with a change. The decision to accept or reject must first give the proposer the opportunity to give an explanation, members are also given the opportunity to give opinions.

If the proposed Draft Bill or Proposal for the Formation of the Draft Law is received with an amendment, the DPD assigns the PPU to discuss and refine the Proposed Bill or Propose the Establishment of the Bill. The proposed Draft Law or proposal for the establishment of a bill that has been approved to become a DPD proposal is then submitted to the leadership of the DPR. The explanation above is in accordance with the explanation of the informant from the DPR Secretariat, HW, who stated as follows:

"... The bill or law politically comes from several sources, namely (1) the bill from the President; (2) RUU from DPR; and (3) the bill from the DPD ... for the bill from the President, the mechanism before a bill is proposed by the President, there are several steps that must be passed, which in the PPP law consists of the preparation, preparation and formulation stages. Whereas for the bill from the House of Representatives the mechanism is that before arriving at the DPR initiative proposal, there are several bodies that usually carry out the process of preparing a bill. Then for the bill from the DPD, it is left to the individual or committee who will propose it. It's just that the filter is in the Plenary Session of the DPD that will ratify whether a bill can or not be submitted to the DPD proposal to the DPR ". (Interview, February 207). In addition, a Draft Law (RUU) can come from three doors, namely the President, the DPR, and the Regional Representative Council (DPD). In proposing a bill, the three institutions must be guided by the National Legislation Program.

Proposal by the President: The bill originating from the President is conveyed to the leadership of the House of Representatives by sending a letter of President prepared by the Minister of State Secretary to the leadership of the House of Representatives accompanied by a statement from the Government regarding the Draft Law. The Presidential Letter contains at least (i) the Minister assigned to represent the President in the deliberation of the Bill in the DPR, (ii) the nature of the resolution of the desired bill and (iii) the way of handling or discussion. Meanwhile, the Government statement accompanying the President's letter was prepared by the initiator which at least contained: (i) the urgency and purpose of the drafting, (ii) the objective to be realized, (iii) the main points, scope or object to be regulated, and (iv) reach and direction of arrangement. These four elements illustrate the overall substance of the bill.

Proposal by the DPD: The DPD has the right to propose a bill relating to regional autonomy, central and regional relations, formation and expansion as well as regional merger, management of natural resources and other economic resources, as well as those relating to financial balance between the center and the regions. To file a The bill, the DPD leaders convey to the chairman of the House of Representatives the Bill along with the academic text, if there is no academic text from the bill concerned, it is enough to convey the information or explanation. In the next plenary meeting after the bill was received by the DPR, the chairman of the meeting told the members about the entry of the bill from the DPD, the bill was then distributed to all members. Furthermore, the House of Representatives will assign Baleg or the Commission to discuss the bill with the DPD. At the latest 15 (fifteen) days after being assigned, the Commission or the appointed Baleg invites the DPD fittings to discuss the bill.

Proposal by the Parliament: Proposals by the DPR can be done through several doors, namely: Legislation Body, Commission, Joint Commission, and seventeen members. The proposed Bill submitted by the Legislative Body, the Commission, Joint Commission or members was submitted to the DPR leaders along with information on proposers or academic texts. In the next plenary meeting, the head of the session will announce to the members about the existence of the draft bill, then the bill will be distributed to all members. The plenary meeting will decide whether the bill can in principle be accepted as a bill from the DPR.

Before the decision is accepted or not, the bill is given the opportunity for the factions to give opinions. The decision of the plenary meeting on a proposed bill could be: agreement without change, agreement with change, and rejection. If the proposed bill is approved with amendments, the House of Representatives will assign the Commission, the Legislation Committee or the Special Committee (Pansus) to perfect the bill. However, if the bill is approved without amendment or the bill has been finalized by the Commission, the Legislation Committee or Special Committee then the bill is submitted to the President and the DPD leaders (in the case of the proposed bill relating to the authority of the DPD). The President must appoint a Minister who will represent him in the discussion, no later than 60 days after receipt of the letter from the DPR. While the DPD must designate the equipment that will represent the discussion process. In the context of the planning of the Oil and Gas Law, based on field findings data it is known that the political process occurs because in the planning process the preparation of the Oil and Gas Law comes from executive initiatives and enters into the National Legislation Program, in which there are many interests in the development and has been repeatedly revised by the Court and The DPR itself, as said by the US, is as follows:

"... actually this Oil and Gas Law does have a very high political element because there are a lot of strong interests from many parties ... as it is known that during the 2009-2014 DPR membership period the Government and Parliament have sought to make political will in the form of the Oil Bill and Natural Gas (Oil and Gas Bill) in accordance with the 2009-2014 National Legislation Program, but cannot be passed as a law. In the 2014-2019 membership period the Oil and Gas Draft Bill re-entered the 2014-2019 National Legislation Program and became a priority in 2015 as a proposal from the House of Representatives. Based on various problems that occur related to the management of oil and gas in Indonesia, then one way to improve the national oil system is to improve the policy base, namely Law No. 22 of 2001 concerning Oil and Natural Gas. (Interview, March 2017).

In subsequent developments, when this bill has become law even though its political nuances are very strong, as stated by AN, as follows:

"... The Ministry of Energy and Mineral Resources (ESDM) has drafted a revision of the Oil and Gas Law No. 22 of 2001 concerning Oil and Gas (Oil and Gas) since last year. However, the revision must be seen in its entirety. And how to understand the existing processes in the oil and gas sector itself ... which must be revised, seeing as a whole is the most important is how we understand the business processes of the oil and gas sector. Because the Oil and Gas Law number 22 is clear. But there is indeed a trade off in relation to the oil and gas processing business. (Interview, August 2017). Based on the results of the Interview above, it can be seen that the Oil and Gas Law which is historically planned and compiled based on executive initiatives and then entered into the National Legislation Program has never actually been achieved, even more often the priority of the discussion is based on the needs of the law which was urgent, especially when it comes to interests political. Therefore the National Legislation Program always fails to meet its target, if it is compared between the planning made in the National Legislation Program and the realization each year. Based on field data it is known that the National Legislation Program is indeed in many cases loaded with polemic oriented because since the beginning of the reformation, especially in the 2000-2004 period (especially after the enactment of Law Number 25 of 2000 concerning Propenas), the target has been set that 120 (one hundred and twenty) the law must be stipulated until 2004, on the basis of consideration, 120 laws stipulated in Propenas will be the basis for all state administrators to further accelerate the Indonesian people out of the multidimensional crisis since 1997. But in reality deviate from the target and priority set by the Propenas Law. This happens due to pressure or pressure from the international community. Therefore, the issue of priority scale in the preparation of legislation is very significant to be regulated in a law, including in the case of this Oil and Gas Law.

In fact the issue of the priority scale of the bill in general and the Oil and Gas Law which was discussed already has an agreement between the Government and the Parliament, namely there are 10 basic considerations:

- is an order from the 1945 Constitution;
- is an order of the MPR-RI Decree;
- related to the implementation of other laws (in this case Propenas and Repeta);
- the bill that is still under discussion in the DPR;
- the bill that has been submitted to the State Secretariat;
- a bill that has received an initiative permit from the President;
- the bill that has entered cross-department / LPND discussions;
- the bill that already has an Academic Text;
- the bill which is a priority program of each agency; and
- a bill that encourages accelerated reform.

The establishment of the Oil and Gas Law which is sourced from the National Legislation Program still cannot answer the priority and measurable needs. This is related to the absence of binding rules, both the Government and the House of Representatives, especially related to the determination of parameters and mechanisms for determining the priority of legislative regulations, the establishment of a mechanism for the drafting of the draft law, the stipulation of obligations to prepare Academic Texts (before the birth of Law Number 10 Year 2004 concerning the Establishment of Legislation), meanwhile the legal basis used in the preparation of the Prolegnas is Presidential Instruction number 15 of 1970 as amended by Presidential Decree number 188 in the DPR Rules of Conduct which facilitates the requirements for proposing a bill, which has at least received the signature of 10 DPR members and submitted to the Consultative Body to later become the DPR initiative. On the other hand, from the side of the Executive Institution, which is based on Presidential Decree No. 188 of 1998, the mechanism that is obliged to be followed by agencies / institutions to obtain practical licenses to submit a bill to the President requires a long time, among others because they have to prepare an Academic Paper, inter-departmental / institutional discussion , discussions with the State Secretariat, and discussions with the DPR. This is why the Oil and Gas Law is very strong in its political nuances. As stated by, US, as follows:

"... there is a priority scale in the National Legislation Program, this makes the Oil and Gas Law very long to be a law and free of polemics ... not to mention that the establishment of

the Oil and Gas Law originating from the National Legislation Program still cannot answer priority and measurable needs. This is related to the absence of binding regulations, both the Government and the House of Representatives, especially related to the determination of parameters and the mechanism for determining the priority of legislative making, the establishment of a mechanism for the drafting of the draft law, and the stipulation of obligations to prepare Academic Texts. (Interview, 23 April 2017). The National Legislation Program was prepared for a period of five years and the drafting function was to determine the priority scale of the formation of legislation and also function to mobilize communication in the planning process for drafting legislation to formulate laws regulated by law. Preparation of priority sequences within the one year period, then becomes part of the legal development plan (REPETA). In the House of Representatives, based on the DPR-RI Rules of Procedure (DPR Standing Orders) it was confirmed that the preparation of the National Legislation Program was the duty of the DPR Legislation Body. Article 41 The DPR Standing Orders stipulate that the task of the legislative body is to plan and compile the program as well as the order of priority for the discussion of the Bill for the term of DPR membership and each budget, with the stages: (a) inventorying input from the Faction, Commission and the community to be determined as a decision of the Legislative Body; (b) the decision of the Baleg is the material for consultation with the Government; and (c) the results of consultations with the Government are reported to the Plenary Meeting to be determined.

The above process is the planning process of the Oil and Gas Law, and becomes an inseparable part of the Law itself, as stated by the US, as follows:

"The planning of the Oil and Gas Law is through a process that is not short, because the procedure in the DPR is also long ... there is a process of inventorying input from the faction, the Commission, and the community to be determined as a decision of the Legislative Body ... then the decision of the Baleg is an ingredient of consultation with the Government ... The government is reported to the Plenary Session to be determined ... this planning process that must be passed and certainly from each of these stages results in a long debate that does not last ... Subsequently paragraph (2) Article 41 of the DPR Standing Orders stipulates that in carrying out these tasks, the Legislation Body can, among other things, coordinate and consult with the Government or other parties which are deemed necessary regarding the scope of its duties ... provide recommendations to the Consultative Body and the Commission relating to the drafting program and priority of the deliberation of the bill

for one period of membership of the House of Representatives in each fiscal year ... giving recommendations to the Consultative Body and / or the Commission that are based on the results of monitoring the Law material ". (Interview, April 2017).

Based on the provisions of the DPR Standing Orders above, it is clearly determined that Baleg has a strategic role in the preparation of the Oil and Gas Bill Bill. In addition to having an important role in the preparation of priority sequences, the Legislation Body also has a role to realize the Oil and Gas Bill into a Law, because Baleg also has the authority to draft and submit a bill and also has the authority to discuss together with the Government if assigned by the DPR through the Consultative Body. Furthermore, one of the new things from Law No. 10 of 2004 is the role of the DPR in the process of preparing the National Legislation Program, a process usually carried out in the executive, this time combined with the legislature and even managed by the legislature. In its journey, it turns out that the National Legislation Program for the Oil and Gas Law as an institution that collects and prepares priorities for the formulation of laws and regulations, has not clearly determined the criteria of priority scale for a bill including the Oil and Gas Law submitted in the planning list. In general, Law No. 25 of 2000 only mentions a list of the proposed bills, both from the DPR (through the Legislation Committee) and from the Government (through the Department / LPND). Because there are no clear provisions regarding the determination of priorities why a bill is proposed, what happens in the field is the occurrence of overtaking from each of the interested parties, both within the DPR and in the Government to submit a bill. This is as disclosed by SY, as follows:

"... the rules in the planning of the Act have actually been set forth in Law Number 25 of 2000 ... the process can be long and tiring, one of them because the Act only mentions a list of the proposed bills, both from the DPR (through the Legislation Body) and from the Government (through the Department / LPND) ... because there are no clear provisions regarding the determination of priorities why a bill is submitted, then what happens is to overtake from each of the interested parties, both within the DPR and in the Government to propose a draft law ... the priority order determined for the 2004 Repeta is the bill mandated by the 1945 Constitution, the bill mandated by the MPR's TAP, and the Bill stipulated by the remaining Propenas ". (Interview, April 2017).

The next planning mechanism is in the submission of the program, where each department as the initiator who submits a proposal or plan believes that the proposal must really have a high level of urgency so it needs to be prioritized to be realized in a short time. For this reason of urgency, often the "owner" of the plan does not hesitate to take every effort to realize the program immediately, without considering that other parties have the same interests. This attitude is often called "sectoral egoism" which is often the "disease" in the legislative process. Each initiator competes to submit their respective legislative plans, with the target of establishing legislation. Because of the large number of legislative plans proposed, the institutions that have the authority to resolve them are very limited its ability then consequently appears then the "bottle-neck" condition which complicates the situation.

The number of legislative plans proposed from year to year is accumulating because they have to queue up to wait for realization. Therefore, the oil and gas law takes a long time to be approved because of this situation, because the "carry over" pattern of legislation from the previous year to the following year is common, given the many backlogs of legislation plans that cannot be handled and resolved. . Then the problem faced is how to make the overall proposed legislative plan be realized in an orderly and orderly manner in accordance with the level of urgency, as expressed by SY, as follows: "The oil and gas law is politically very difficult to discuss because in the DPR itself the number of legislative plans proposed from year to year is accumulating because they have to queue up to wait for realization.

Therefore, the oil and gas law takes a long time to be approved because of the situation, there is a "carry over" legislation plan from the previous year to the following year because of the many backlogs of legislation plans that cannot be handled and resolved. Then the problem is how can the overall proposed legislative plan be realized in an orderly and orderly manner in accordance with the level of urgency ... for that it is necessary to have a mechanism that is able to facilitate the realization of the proposed legislative plans, so that they can actually be realized in accordance with the scale priority". (Interview, April 2017). In general, other influences which are quite important for the National Legislation Board's instruments arise from the effectiveness of regional autonomy. The reduced authority of the Central Government has also led to a reduction in proposed legislative plans submitted by Departments / LPND, because now the legislative plan must be considered more carefully and carefully, not as free as past practices. If previously the regions could only be said to be implementing the central regulations, then the region has the right to question the substance of regulations issued by the center.

Friction between central and regional interests in relation to laws and regulations is unlikely to arise if the central agency is not careful in sorting out the fields of authority. Of course the problem will be very complicated if the friction arises after the formation of a law. Therefore, it would be better if in the drafting process the initiating parties or institutions first seek communication with the regions so that regional aspirations can be accommodated in national regulations. The presence of the DPD made the political system in Indonesia especially in the preparation of the Oil and Gas Law complete. In the Indonesian political system there are two forms of representation. Representation of the people through political parties (political parties) which transformed into DPR or the House of Representatives. However, there is also geopolitical or territorial representation that manifests in the DPD. In this understanding the DPD has a balanced institutional position with the DPR. However, if seen further, with stronger legitimacy due to being directly elected by the people, the 1945 Constitution and the Structure and Status Law provide minimal authority to the DPD. This is as disclosed by SY, as follows:

"... the polemic of planning the Oil and Gas Law to its revision was also caused by the presence of the DPD which made the political system complete. In the system. Indonesian politics there are two forms of representation. Representation of the people through political parties (political parties) which transformed into DPR or the House of Representatives. However, there is also geopolitical or territorial representation that manifests in the DPD. In this understanding the DPD has a balanced institutional position with the DPR. But if we look further, with stronger legitimacy because they are directly elected by the people, the 1945 Constitution and the Structure and Status Law provide minimal authority to the DPD. This makes the planning phase run slowly. (Interview, May 2017).

In terms of function, duty and authority, as revealed in Article 22D of the 1945 Constitution, it appears that the DPD is only "subordinate" to the DPR. There it is stipulated that the DPD "can submit" to the DPR and "discuss" the bill relating to regional autonomy, central and regional relations, formation and expansion and regional merger, management of natural resources and other economic resources, as well as those related to central financial balance and the area. In addition, the DPD is also given a role in the selection of members of the Supreme Audit Agency, its role only gives consideration to the DPR. The lack of functions, duties and authority of the DPD in the relationship between the DPR and DPD, the position of the DPD is very weak, because its function only gives consideration to the DPR. So, still the functions, duties and authority of the DPD are lower than the DPR. The authority of the DPD which is relatively weak when compared to the DPR will create its own difficulties for the DPD to carry out its function in maintaining productive central and regional relations. The weakness of this authority also makes the strength of the legitimacy of DPD members stronger than those of DPR members will not encourage a balance in the Indonesian representative institutions. The functions, duties, and authority of the DPD have a consequence on the relationship between the DPR and DPD which increasingly appear to be increasingly inharmonious. After the DPR was accused of never involving the DPD in the preparation of the National Legislation Program, the appointment of members of the Supreme Audit Agency (BPK), and in the amendment of Law No. 22 of 1999 concerning Regional Government. The DPD again felt dwarfed by its position which was aligned with the Faction, the Commission, and the DPR's fittings in the preparation of the Prolegnas. The feeling of being dwarfed actually arises from the realization that in fact the DPR and DPD are two equal state institutions, even if seen from the election process, the DPD should be given more authority because it was directly elected by the people in their respective regions. However, the fact that the DPD is only given limited authority, this has resulted in reactions like now. The DPD was not involved in the National Legislation Program discussion, according to the Head of the Legislative Assembly of the House of Representatives, for reasons of the DPR's Article 42 Paragraph (1) letter a number 1. decision of the Legislation Body. This is as disclosed by SY, as follows:

"... the slowness of the planning process is due to the DPD's functions, duties, and authority bringing consequences on the relationship between the DPR and DPD which increasingly appear to be less harmonious. After the DPR was accused of never involving the DPD in the preparation of the National Legislation Program, the appointment of members of the Supreme Audit Agency (BPK), and in the amendment of Law No. 22 of 1999 concerning Regional Government. The DPD again felt dwarfed by its position which was aligned with the Faction, the Commission, and the DPR's equipment in the preparation of the Prolegnas ". (Interview, May 12, 2017). Furthermore, the position of the DPD in the field of legislation, as contained in Article 40 of the Susduk Law states that the DPD is a regional representative body that is domiciled as a state institution. This means that the DPR and DPD are state institutions that are equal in position. Both of these institutions can be distinguished from their functions. Article 25 of the Structure and Status Law states that the DPR has legislative, budgetary and supervisory functions. Whereas in Article 41 of the Law on Structure and Structure, the DPD has the functions of: (a) submitting proposals, taking part in discussions and providing considerations relating to certain areas of legislation; (b) supervision of the implementation of certain laws. In connection with this, the research informant, SY, stated as follows: "... however, what needs to be considered in the future is that in order to strengthen the legislative function of control and balance it needs to be designed in the revision of the Structure and Status Law to provide a proportional place to the reality of the existing constitution against the DPD if strengthening through amendments experiences political

failure in the MPR. In its legislative function when there is material that the Oil and Gas Law fails to agree with the President and DPR, then one or both of them can request consideration of the confirmation (statement of confirmation) of the area for the material, so that it can be a strict patron of the regional wishes or the middle way of the legislative process. In fact, the region can request a delay, for the Oil and Gas Law that wants to be approved, because the region will give a reaffirmation, in a certain period the suspension of approval is done while waiting for regional confirmation of the material on the Oil and Gas Law ". (Interview, May 2017).

Based on the explanation above, it can be concluded that the following:

- Politically the planning of the Oil and Gas Law comes from several sources, namely: (1) the Bill from the President; (2) RUU from DPR; and (3) the bill from the DPD;
- The political process occurs because of the planning process for the formulation of the Oil and Gas Law because this Act originates from the executive initiative and enters into the Prolegnas. Whereas in its development there were many interests in the drafting and even when the Oil and Gas Bill was passed into the Oil and Gas Law and implemented even though this Law has been repeatedly revised by the Constitutional Court and Parliament;
- The Oil and Gas Law which is historically planned and compiled based on executive initiatives which later entered the Prolegnas actually never reached, even more often the priority of the discussion was based on the needs of the law which at that time was urgent, especially when it came to political interests. Therefore the National Legislation Program always fails to meet its target, if it is compared between the planning made in the National Legislation Program and the realization each year;
- Priority scale in the National Legislation Program, this makes the Oil and Gas Law very long into law and is free of polemic, not to mention that the establishment of the Oil and Gas Law which is sourced from the National Legislation Program still cannot answer priority and measurable needs;
- Planning the Oil and Gas Law through a process that is not short, because the procedure in the DPR is also long, there is a process of inventorying input from the faction, the Commission, and the community to be determined as a decision of the Legislative Body, then the decision of the Baleg is material for consultation with the Government in consultation with the Government reported to the Plenary Meeting to be determined;
- The slowness of the planning process is due to the DPD's functions, duties, and authority bringing consequences to the relationship between the DPR and DPD which increasingly appear to be less harmonious. After the DPR was accused of never involving the DPD in preparation of the National Legislation Program, appointment of members of the Supreme Audit Agency (BPK), and in amendments to Law No. 22 of 1999 concerning Regional Government.

Preparation: At the faction level the drafting of a bill began with the mandate of the party's mukatamar. Then the faction formed an expert team that drafted the bill based on community input through the DPP and party DPD.

Meanwhile, in the Government's proposed bill, the procedure for formulation is regulated in Presidential Decree 188 of 1998. The process begins with the preparation of academic concepts and texts followed by applications for initiatives carried out by the relevant technical department or non-departmental institutions. After obtaining approval from the President, a draft committee was drafted. There is almost the same model in the formation of this drafting team. The Chairperson is the Minister of the relevant technical department, then the core team consists of Echelon I officials (at the level of Director General), officials from other agencies related to the substance of the Bill, and figures or academics who are considered to have expertise in the field. While the assistance team usually involves many civil society such as NGOs. The design team will then formulate and consult the draft to the public.

The House of Representatives and the Government do not plotted which bill will be proposed by the Government and which bill will be proposed by the Parliament. It could be that a bill was carried out by various parties, for example a case that had occurred in the political law package. In September 2000, the Government (Ministry of Home Affairs) formed a team to package the political bill. The bill has also been socialized to several regions in Indonesia. Parallel to the process, the DPR in collaboration with RIDEP has also compiled a package of political laws. Ironically when the Government submitted the bill to the House of Representatives on May 29, 2002 with the Presidential Order No. R.06 / PU / V / 2002 (for the Political Party Bill) and No. R.07 / PU / V / 2002 (for the Election Bill) none of the two concepts was proposed. The Ministry of Home Affairs instead proposed a new concept formed by different teams. Politically the bill or law is prepared by: (1) drafting of the bill from the president; (2) Drafting the Bill based on the National Legislation Program; (3) drafting of the bill based on outside the Prolegnas; and (4) Submission of the Bill from the DPD.

Preparation of the Bill from the President (Executive): The drafting of the Bill was carried out by the Minister or the head of the non-departmental Government institution, referred to as the initiator, who proposed the drafting of the bill. The drafting of the bill was carried out by the proponent based on the National Legislation Program. However, in certain circumstances, the initiator can formulate a bill outside the Prolegnas after first submitting an application for an initiative permit to the President. Submission of this application for license permission is accompanied by an explanation of the conception of the regulation of the Act which includes: (i) urgency and purpose of drafting; (ii) goals to be realized; (iii) the subject matter, scope, or object to be regulated; and (iv) the range and direction of the arrangement. Meanwhile, Perpres No. 68/2005 stipulates certain conditions that allow proponents to draft a bill outside the National Legislation Program, namely: (a) stipulating Government Regulations in place of Laws into Laws; (b) ratify international conventions or agreements; (c) carry out the decision of the Constitutional Court; (d) overcome extraordinary circumstances, conditions of conflict or disaster natural; or (e) certain other conditions that ensure national urgency over a bill that can be agreed upon by the DPR Legislation Body and the Minister who has duties and responsibilities in the field of legislation. In the event that the bill that will be drafted is included in the National Legislation Program, the drafting does not require an approval permit from the President.

The initiator in drafting the bill can first prepare an academic paper on the material to be arranged. Preparation of academic texts is carried out by the joint initiator - together with the department whose duties and responsibilities are in the field of legislation. At present the department that has duties and responsibilities in the field of legislation is the Ministry of Law and Human Rights (Menhukham). Furthermore, the implementation of the preparation of academic texts can be submitted to universities or other third parties who have expertise.

Drafting the Bill based on the National Legislation Program
This process begins with the establishment of an inter-departmental committee by the initiator. Membership of this committee consists of elements of departments and non-departmental government agencies related to the substance of the bill. This committee is chaired by a chairman appointed by the initiator. Meanwhile, the secretary of the inter-departmental committee is held by the Head of the Legal Bureau or the head of the work unit that carries out functions in the legislative field at the initiating institution. In each inter-departmental committee representatives from Menhukham were included to harmonize the draft law and legislative drafting techniques. The interdepartmental committee emphasized the discussion on the principle issues regarding the object to be regulated, the range and direction of the arrangement. While the design activities which include the preparation, processing and formulation of the bill are carried out by the law firm or the work unit that carries out functions in the field of legislation at the initiating institution. The design results are then conveyed to the inter-departmental committee to examine their suitability with agreed principles. In the discussion of the bill at the interdepartmental committee level, the initiator can also invite experts from higher education institutions or organizations in the socio-political, professional and other social fields according to the needs of the drafting of the bill.

During the preparation, the head of the inter-departmental committee reports on the development of drafting and / or problems to the initiator to obtain a decision or direction. The head of the inter-departmental committee conveyed the final formulation of the bill to the initiator accompanied by an explanation. Furthermore, in order to improve the initiator, the bill can be disseminated to the public.The initiator submits the Bill to the Minister who has duties and responsibilities in the field of legislation currently carried out by the Minister of Law and Human Rights (Menhukham) and the Minister or the head of relevant institutions to obtain consideration and initial approval. Consideration and initial approval of Menhukham is prioritized on harmonizing conception and legislative design techniques. Consideration and initial approval are given no later than 14 (fourteen) working days after the bill is received.
If the initiator sees any differences in the considerations that have been accepted then the initiator together with Menhukham resolves the difference with the Minister or the head of the relevant institution. If the settlement is unsuccessful, Menhukham reports the matter in writing to the President to obtain a decision. Furthermore, the re-formulation of the bill was carried out by the initiator together with Menhukham. In the event that the Bill does not have any further problems both in terms of substance and in terms of legislative design techniques, the proponent proposes the bill to the President to be submitted to the DPR. However, if the President believes that the bill still contains problems, the President assigns the Minister of Law and Human Rights and the initiator to re-coordinate the revision of the Bill and within 30 (thirty) working days after the assignment is received, the initiator must resubmit the Bill to the President.

Drafting the Bill outside the Prolegnas: Basically the process of drafting the bill outside the National Legislation Program is the same as the drafting of the bill based on the National Legislation Program. It's just that, in drafting a bill outside the National Legislation Program there are preliminary stages that must be carried out before entering the stage of drafting the law as described previously. This initial stage is intended to harmonize, round up and consolidate the draft conception of the bill prepared by the initiator. This process was carried out through a method of consultation between the initiator and Menhukham. Furthermore, for the smooth harmonization, rounding and strengthening of the draft bill, the Minister of Law and Human Rights coordinated the discussion of the conception with the officials authorized to make decisions, legal experts and / or legislators from the initiating institutions and other relevant institutions. This process can also involve universities and / or organizations.

If the coordination is not successful, the Minister of Law and Human Rights and the initiator report to the President accompanied by an explanation of differences of opinion or views that arise. This report to the President is intended to obtain a decision or direction which is at the same time a permit for drafting a bill. However, if the coordination is aimed at harmonizing, rounding and stabilizing the conception of the bill, then the proponent will convey the draft bill to the President for approval. Furthermore, if the President approves the initiator forms an inter-departmental committee. The inter-departmental committee formation and drafting of the Bill was carried out in accordance with the drafting stages of the bill based on the National Legislation Program that had been described previously.

Submission of the Bill to the DPR: The bill that was approved by the President was submitted to the DPR for discussion. This process begins with the submission of the President's letter prepared by the Minister of State Secretary to the leadership of the House of Representatives to submit a bill accompanied by a statement from the Government regarding the draft bill.

The Drafting Phase of the Bill is the preparation stage before a bill is discussed jointly between the Parliament and the Government. This stage consists of: (1) making of the Academic Text, (2) Drafting the Bill; and (3) Harmonization, rounding and consolidation of conception. This is as explained by SY, as follows:

"... the stage after planning in drafting the Draft Law and the Act is the drafting stage, this is a preparation stage before a bill is discussed jointly between the DPR and the Government. This stage consists of: (1) making of the Academic Text, (2) Drafting the Bill; and (3) Harmonization, rounding and strengthening of conception ... this is also a very political stage because of the long stages and involving many parties ". (Interview, May 2017).

Figure Draft Bill Drafting: Academic Paper is the text of the research or legal studies and other research results tehadap a specific problem that can be justified scientifically on regulating the issue in a draft regulation as a solution to the

problems and needs of the community law. In this process a scientific study is made of the policy choices that will be made. This matter is also inseparable from political processes and content because academic texts are made on the basis of standing position from the academic drafters. Therefore, academic texts can be made, compiled and submitted by anyone for a bill or law. This is as expressed by SY, as follows:

"... this stage of academic submission is actually the obligation of the initiator of the bill, but it can also be the right of other parties who are also interested in criticizing the draft law or the resulting law. This makes the preparation stage very political in nature. (Interview, May 20, 2017). Based on academic paper prepared by the Government, considering the importance of the problem of oil and gas to be made law of his is because oil is one of the policy instruments to improve the welfare and prosperity of the people through the management of natural resources of oil and gas is through fiscal policy to increase state revenue from oil and natural gas. The fuel subsidy policy and LPG in the state budget, is one form of fiscal policy to improve the welfare of many people. Until 2014, the fuel and LPG subsidy policy was still in effect, even though it had begun to be reduced. Just as with electricity subsidies for customers with a 450KWh voltage is also still subsidized by the Government through the state budget fiscal policy.

Departing from the idea above, based on the academic paper that the political choice or policy management of oil and gas is closely related to aspects of the state budget, and efforts to improve the welfare and prosperity of the masses, promote oil and gas as sources of energy and raw materials industries, without having stop the entry of foreign investment in the development of the oil and gas mining industry. At present it is difficult for the Government (state) to stop foreign investment in the oil and gas sector without encouraging domestic investment, especially national private investment. But the policy of the oil and gas mining industry remains to be inclusive without sacrificing the welfare and prosperity of the people in its management in the field. This is in line with what was revealed by the US, as follows:

".... political choices or oil and gas management policies are closely related to aspects of the state budget, and efforts to improve the welfare and prosperity of the people, promote oil and gas as an energy source and raw material for the industrial sector, without having to stop the entry of foreign investment in the development of the oil and gas mining industry. At present it is difficult for the Government (state) to stop foreign investment in the oil and gas sector without encouraging domestic investment, especially national private investment. But the policy of the oil and gas mining industry remains to be inclusive without sacrificing the welfare and prosperity of the people in its management in the field. " (Interview, May 2017). The political consideration in this academic paper is that along with the increasingly strategic and important natural resources of oil and gas for the development and prosperity of many people in Indonesia, and the rapid development of industry and economy in various countries, as well as the tendency of "seizing" sources Strategic nature such as oil and gas in several regions of the world, the politics of oil and gas management needs to be directed towards the interests of the country. In addition, the politics of oil and gas management must also be oriented to the welfare and prosperity of many people, one of which is by increasing national energy security.

These political and policy choices must be pursued, because natural resources of oil and gas are depletion and unrenewable resources. Whereas the Government has not been serious in developing alternative energy such as renewable energy (renewable energy) replacing the energy of oil and natural gas sourced from fossils. Future energy policies should prioritize the development of new energy as a substitute for oil and natural gas energy in the framework of national energy security (energy sovereignty and energy independence). The new energy referred to is the development of energy fuels derived from agricultural products, such as plants and other plants. To develop this energy, it needs long-term funding support (petroleum funds), in addition to policy support. Therefore, in the future it is necessary to regulate the policy and certainty of the allocation of funds for the development of renewable fuel energy, as a substitute for depletion oil and natural gas reserves. This is in line with what was revealed by the US, as follows:

"... energy policy in the future should prioritize the development of new energy as a substitute for oil and gas energy in the context of national energy security (energy sovereignty and energy independence). The new energy referred to is the development of energy fuels derived from agricultural products, such as plants and other plants. To develop this energy, it needs long-term funding support (petroleum funds), in addition to policy support. (Interview, May 2017). Tracing from the academic manuscripts made, the legal basis for the management of oil and gas must be in accordance and in sync with the political direction of managing oil and gas as described above. Therefore, the legal framework for oil and gas management must also be based on Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), as well as the strategic interests of the country's fiscal policy. Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that production branches which are important for the State and which control the livelihood of the public are controlled by the State. Furthermore, the Article also confirms that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Based on this, oil and gas as one of the strategic natural resources that is not renewable and is a vital commodity that controls the lives of many people, it must be controlled by the state with management that is carried out optimally in order to obtain maximum benefit for the prosperity and welfare of the people.

As natural wealth that can be used for the greatest prosperity and prosperity of the people, the management of oil and natural gas is subject to a national economic system that is held based on economic democracy with the principles of togetherness, fairness, sustainability, environmental insight, independence and balance progress and national economic unity as explained in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia NRI. Consideration of people's welfare and prosperity as discussed in the Academic Text above makes the drafting of the Oil and Gas Law difficult. Moreover, there are also many competing academic texts which revise academic texts made by the Government. As stated by the Publish What You Pay (PWYP) Coalition, Indonesia is overseeing the Revision of Law No. 22 of 2001 concerning Oil and Gas (Oil and Gas Law) which is in accordance with the constitution and leads to improvements in governance.

A number of issues become the background of the urgency of the need to oversee the revision of the Oil and Gas Law. First, there is a Constitutional Court Decision which mandates the rearrangement of upstream oil and gas business activities by dissolving the Oil and Gas Management Agency (BP Migas) and making the State-Owned Enterprises (BUMN) the spearhead of oil and gas upstream management. Secondly, the current Oil and Gas Law causes Indonesia's natural resource mismanagement as indicated by the absence of a roadmap for oil and gas management and utilization, the presence of oil and gas mafia, and inefficiency in operational costs (cost recovery). Third, national energy policies tend to be sectoral and only oriented to income aspects, not national security in the energy sector. Fourth, this law forgets downstream activities and tends to upstream oil and gas activities. This is as stated by YW, as follows:

"... The PWYP Indonesia Coalition which was initiated by one of its members concerned with the development of environmental law and natural resources, namely the Indonesia Center for Environmental Law encouraged an advocacy movement to oversee the Revision of the Oil and Gas Law as well as drafting a draft draft Oil and Gas Law version of the Civil Society that will be proposed in the process of discussing the Revision of the Oil and Gas Law in the DPR and the Government ... we consider the process of drafting the Oil and Gas Bill has been through a series of in-depth discussions and Interviews with experts, academics, civil society and the Government for approximately 11 (eleven) months included in this Bill, namely Oil and gas management planning, Oil and Gas management institutions, regulatory bodies, BUMN Managers, Domestic Marker Obligations (DMO), Reserve Funds, Cost Recovery, Participating Interests (PIs), Protection of the Impact of Oil and Gas Activities, and Information and Participation System Reform ". (Interview, August 2017). An example of the above case is one of the conditions in which the PWYP Indonesia Coalition together with other elements of civil society are trying to encourage transparency and space for public participation in the discussion of the Revision of the Oil and Gas Law both in the DPR and the Government. In addition, ensuring that the Oil and Gas Law produced must have a vision to encourage improved governance while ensuring the country's sovereignty over energy. Things like this make the political nuance of the Oil and Gas Law compile difficult and long.

As well as what AN also said, as follows:

"... the discussion of the revision of Law Number 22 Year 2001 concerning Oil and Gas is slow. Since entering the National Legislation Program (Prolegnas) for the 2009-2014 period and continued as the 2016 priority Prolegnas agenda, the discussion will not be finished. The absence of a legal umbrella that is the direction for policy making in the oil and gas sector will certainly harm the state, the Government and the community ... this is because the DPR's ability to complete the National Legislation Program is low. Per year, the DPR is only able to complete the discussion of the draft law around 10-15 percent of the target. Not only the Oil and Gas Bill, the discussion lasted very long in the DPR. There are also many other bills that are also important and strategic in experiencing the same fate, being left behind. For example, in the economic field, the discussion of the Draft Law on BUMN, banking, Bank Indonesia, Wage System, Financial System Safety Net, Employment, National Transportation System, Tourism, Deposit Insurance Corporation, etc. has the same fate. Whereas in the non-economic sector, discussions that dragged on included the TNI Bill, Broadcasting, State Secrets, Land Affairs, Political Parties, KPK, Culture, National Security, Indonesian National Police, Human Rights, Marriage, Eradication of Terrorism Crime, and so on ... .. with the unfinished discussion of the Oil and Gas Law, there is no strong legal basis that underlies activities and management in the Oil and Gas sector. At present, oil and gas rules are patchy, more dominated by operational regulations. As a result, the use and management of oil and gas runs without clear direction. (Interview, August 2017).

As explained earlier, the oil and gas management policy has undergone several changes. This of course refers to and bases itself on the prevailing laws and regulations from time to time. At present the laws that apply are Law Number 22 Year 2001 concerning Oil and Gas (Oil and Gas Law). This Oil and Gas Law replaces Law Number 8 of 1971 concerning the State Oil and Gas Mining Company (Law on Pertamina). Based on field data it is known that the thick political polemic of the Oil and Gas Law has caused legal problems in its implementation. This law has been tested three times in the Constitutional Court. The three decisions of the Constitutional Court (MK) on the Oil and Gas Law represent 2 (two) important issues in the 1945 Constitution of the Republic of Indonesia, namely the first concerning the system of oil and gas management and the second is the oil and gas management agency as an implementation from the concept controlled by the state. MK Decision No. 002 / PUU-I / 2003 on December 21, 2004 concerning the management system of oil and gas which according to the Constitutional Court contradicts the 1945 Constitution, and furthermore the Constitutional Court Decision No. 36 / PUU-X / 2012 relating to the management of oil and gas. This is as stated by SY, as follows:

"... the thick political polemic of the Oil and Gas Law has caused legal problems in its implementation. This law has undergone 3 (three) tests in the Constitutional Court. The three decisions of the Constitutional Court (MK) on the Oil and Gas Law represent 2 (two) important issues in the 1945 Constitution of the Republic of Indonesia, namely the first concerning the system for the management or management of oil and gas and the second is regarding the management of oil and gas as an implementation of the concept controlled by the state. MK Decision No. 002 / PUU-I / 2003 on December 21, 2004 concerning the management system of oil and gas which according to the Constitutional Court contradicts the 1945 Constitution, and furthermore the Constitutional Court Decision No. 36 / PUU-X / 2012 relating to the management of oil and gas ". (Interview, July 2017).

From the field data it was found that there were several provisions of the article that were canceled by the Constitutional Court in the Oil and Gas Law which placed the state (Government) in a weak position. Position of the Oil and Gas Management Agency (BP Oil and Gas) as regulated in the Oil and Gas Law puts the Government in this case BP Oil and Gas at a position equivalent to the Oil and Gas Upstream Business Entity. Therefore there is a practice of legal relations between the Government and business actors (Government to Business). This practice is seen by the Constitutional Court to undermine the status of the Government. Current problems in oil and gas mining activities, not only in the upstream oil and gas activities, but also in the downstream activities of oil and

natural gas which in terms of regulation differ from one another. The complexity of the problems in oil and gas mining activities requires a management policy that can accommodate various interests in the community, including the interests of investors (contractors) who have invested their capital in the oil and gas sector. However, in the management process, the interests of the state are the basis and priority of the management policy of the oil and gas sector in the future. This is in accordance with what is mandated in Article 33 of the 1945 Constitution.

During the 2009-2014 DPR membership period, the Government and the Parliament have sought to make political will in the form of the Draft Law on Oil and Gas (RUU on Oil and Gas) in accordance with the 2009-2014 National Legislation Program, but have not yet been legalized. In the 2014-2019 membership period the Draft Law on Oil and natural gas re-entered the 2014-2019 National Legislation Program and became a priority in 2015 as a proposal from the House of Representatives. Based on various problems that occur related to the management of oil and gas in Indonesia, then one way to improve the national oil system is by refining its policy base, namely by making changes and improvements to Law Number 22 of 2001 concerning Oil and Natural Gas.
Based on the explanation and findings above, it can be concluded that the Oil and Gas Law which is prepared by making academic texts is a procedural step that is not easy to pass apart because this is a scientific study or research, also many similar interests to make the Law better in accordance with each perspective -that. Persons outside the DPR and the executive have their own perspectives in viewing the Oil and Gas Law which includes NGOs and the wider community.

Based on the results of the interview, it is known that the Oil and Gas Law made in 2001 has undergone a revision, which has led to the final drafting of the Oil and Gas Law and still leaving a political polemic. Because the history of the birth of this law also left polemic because Law No. 22 of 2001 concerning Oil and Gas was born after Indonesia received the IMF program to prevent the impact of the 1998/1999 economic crisis. The aim is to reform the oil and gas sector. However, this Oil and Gas Law tends to be liberal because it makes petroleum resources turn ownership to foreign and market-oriented. State oil and gas reserves can be certified on behalf of companies that have concessions exploring them. In fact, the certificate can be pledged to obtain drilling capital. Pertamina as a state-owned company is not authorized to record oil and gas reserves as a national asset. The practice of managing oil and gas resources is considered detrimental to the state financially and people's ownership of reduced natural wealth. Pertamina's position as a national oil company (NOC) which was formed based on the Oil and Gas Law Number 8 of 1971 has changed since the enactment of the Oil and Gas Law Number 22/2001. If the previous oil and gas law Pertamina was appointed as an oil and gas regulator and regulator in Indonesia, Pertamina Law No. 22/2001 was only an operator. This is as expressed by SY, as follows:

"... this change is caused by the Oil and Gas Law No. 22/2001 which separates authority in the oil and gas sector by adding arrangements for the downstream oil and gas sector which in the Oil and Gas Law No. 8/1971 has not been regulated. However, in practice Pertamina after Act No. 8/1971 functions more as a regulator than oil and gas operators in Indonesia. Positions that changed from regulator to operator as mandated by this law naturally affected Pertamina's performance ... based on Oil and Gas Law No. 22/2001, in addition to Pertamina which turned into an oil and gas operator, two other institutions were formed which regulated the upstream and downstream activities of the oil and gas sector. . BP Migas (later replaced by SKK Migas) became the Government's representative as the upstream oil and gas regulator. While BPH Migas is the Government's representative as the supervisor of the downstream oil and gas sector ... however, since the enactment of the Oil and Gas Law Number 22/2001, the condition of the oil and gas sector has worsened, even the national energy security is threatened. Petroleum production decreases with the depletion of petroleum reserves. Meanwhile, due to increased oil and gas consumption due to population growth and the use of motorized vehicles, imports of crude oil both crude and fuel oil have increased. This drains the country's foreign exchange and affects the trade balance deficit. State finances were burdened because oil and gas fuel subsidies continued to swell the state budget ... in its development, BP Migas was dissolved by the Constitutional Court in November 2012 and replaced by SKK Migas. Not only that, no less than 22 articles in the Oil and Gas Law No. 22/2001 are declared contrary to the constitution and do not have binding legal force ". (Interview, June 2017). Thus, the revision of the Oil and Gas Law becomes a necessity. The existence of the Constitutional Court Decision Number 36 / PUU-X / 2012 mandates changes in the governance of the national upstream oil and gas industry and leads to state control for the prosperity of the people. This is the basis for the revision of the Oil and Gas Law. This is as expressed by SY, as follows:

"... in the revision of the Oil and Gas Law of the Ministry of Energy and Mineral Resources (ESDM), it was emphasized that they already had a view regarding the discussion of the revision of the Oil and Gas Law which will be discussed together with the DPR ... The ESDM Ministry team independently drafted the oil and gas industry governance plan. At present the new discussion process completes management from the upstream side, while the downstream side is being discussed ... The reason is that currently the discussion of the revision of the Oil and Gas Law is still the domain of the House of Representatives Commission VII ... The government will not propose itself to take the initiative to discuss the revision of the oil and gas law to be accelerated, because discussion in the DPR believed to be accelerated. The government might analyze it too, what kind of idea. But we are still in the corridor of the state administration now the initiative is still from the DPR ". (Interview, June 16, 2017). Based on the Interview, it can be seen that the House Commission VII is currently discussing the revision of the Oil and Gas Law which is targeted to be completed this year. For institutional issues, the factions in the House of Representatives agreed to establish a Special Business Entity (BUK) that would regulate oil and gas governance in the country, including being the parent for various state companies engaged in the Oil and Gas sector.
The Special Task Force for Implementing Upstream Oil and Gas Business Activities (SKK Migas) is proposed to be merged in BUK. Another discourse is PT Pertamina (Persero) which is proposed as the BUK. In Law Number 22 Year 2001 concerning Oil and Gas, BP Migas, which was originally mandated to become a management body, was annulled and dissolved by the Constitutional Court which eventually gave birth to a temporary body, namely SKK Migas. Thus, it can be seen that the current polemic in the formulation of the Oil and

Gas Law is in the urgency of the revision. The revision of the Oil and Gas Law Number 22/2001 is believed by many parties to be able to restore the sovereignty of the state and the people over oil and gas resources. The management of oil and gas resources must be returned to the constitution, namely as natural resources controlled by the state and used for the greatest prosperity of the people in accordance with Article 33 of the 1945 Constitution. The findings above are strengthened by the results of interviews with SY, as follows:

"... there have been many inputs from various circles that have concerns about our current oil and gas conditions. Some of the things that must be prioritized in the discussion of the revision of the Oil and Gas Law include oil and gas reserves and production, energy security oriented to energy independence, transparent governance and accountability so as to eliminate oil and gas mafia practices, and of course legal certainty in the oil and gas sector activities ... . now the ball is in the hands of the DPR. Publicly understandable, the law is a political product so that there are many interesting interests. However, there is no reason to delay the completion of the discussion of the oil and gas bill. This is because there are at least two things that make the oil and gas bill become urgent at this time. (Interview, August 2017).

Based on the field findings it was found that there were several things that led to the rearrangement of the Oil and Gas Law, namely: first, the uncertain situation of the global economy was increasing along with the political dynamics after the election of the new US President. Global conditions will clearly affect the domestic economy. We will still face the potential trade balance deficit and fiscal deficit in which oil and gas has a role in both of these. Secondly, as a political product, the current discussion on the bill in the DPR should be smoother because the composition of the DPR has now been dominated by coalitions that are more supportive of the Government. This is an opportunity on the other side. After seven years have passed, the House of Representatives has targeted that the revision of the Oil and Gas Law will be completed in the first quarter or II 2018. However, there is still a long way to go after the academic text is available until it becomes a new law. Thus the preparation of the Oil and Gas Law based on the data description above has a very strong political challenge because of the attractiveness of strong interests from many parties both from the Government, DPR and the wider community. Included in the preparation of the Oil and Gas Law which is being sought to be revised.

The next stage of the process of drafting the Oil and Gas Law is Harmonization, Rounding, and Consolidation Consolidation, where this stage is a stage to ensure that the draft bill has been in harmony with Pancasila, the 1945 Constitution of the Republic of Indonesia, and other laws and legislative drafting techniques. In addition, the law also resulted in an agreement on the substance regulated in the Act. This is as disclosed by SY, as follows: "... harmonizing the bill is regulated in Article 18 of Law No. 10 of 2004, it was said that harmonization, rounding, and the determination of the conception of the draft law that came from the President, was coordinated by the Minister whose duties and responsibilities were in the field of legislation ". Then it is further regulated in Presidential Regulation Number 61 of 2005 concerning the Preparation and Management of National Legislation Programs and Presidential Regulation Number 68 of 2005 concerning Procedures for preparing the Draft Law, Government Draft Substitution of Laws, Draft Government Regulations and Draft Regulations President". (Interview, June 2017). The results of interviews with SAA, informants from the Legislation Body, also showed that the current political process of the Bill on the Amendment of the Oil and Gas Law had reached the stage of harmonization, as follows:

"Now, we are again harmonizing the Oil and Gas Law, there are indeed a few problems, especially with regard to institutions, the proposal of friends from Commission VII wants institutional ... the oil and gas organizational structure in both upstream and downstream is handled in a particular institution ... there is the formation of a new body ... it's called the Special Business Entity, while it collides with the provisions in the Act on State Owned Enterprises, ... that's the problem now. The special business entity ... BUK, the name, the concept of the Oil and Gas Ruu is later a body that is not a state-owned enterprise but it is given the authority to seek profit, ... the ambiguity is there, so the discussion is a bit stagnant, while if he is a business entity and must seek profits means that he must be bound by the BUMN Law. (Interview, October 2017). According to the informant, SAA, the new institution in question is not like BP-MIGAS that had existed before, because BP-MIGAS is not looking for profit, while this new institution is expected to also seek profit, as in the following interview results:

"... not like BPMIGAS which is not looking for profit, because BPMIGAS used to be a regulator, BUK is now in addition to being a regulator as well as an operator. Now who is assigned? Is Pertamina? Or the establishment of a new Business Entity? So, therefore, we synchronize again to find a way out of how to comply with the BUMN Law. Because in the SOE Law, there are only two business entities, one form of limited liability company, the second and the second is the Public Service Agency, BLU ... Well, this BUK is not known, what kind of agency, in the laws relating to SOEs ... "Well, that's one, the next BUK's Board of Directors membership in the draft will be chosen by the House of Representatives but he will later be responsible directly to the President". (In The explanation of the Oil and Gas Bill (amendment) that entered the harmonization stage was also said by other informants from the Legislation Body, HTD, as follows:

"The government proposal, and yesterday the government would also be asked to be the government's proposal but the results agreed to be submitted to the DPR's proposal and now has entered the harmonization stage. In accordance with the explanation of the Chairman (Chairman of the Legislative Body, Red), there was a big obstacle to harmonization related to the legal status of the Special Business Entity that was different or collided with the BUMN Law, it needed an agreement between the proponents of Commission VII and Commission VI to make the formulation like what was want by the Special Business Entity, and until now it has not been finished so it's stuck on this side only, even though in Baleg itself we have prepared it too, so if the problem is finished then in this Baleg if it is compared it will run faster because Baleg has also digged information with Stakeholders who are related to Oil and Gas and it is the material of the members of the Legislative Assembly to harmonize this draft. But, if the problem of the Special Business Entity with BUMN must be between proposers there is an agreement ". (Interview, October 2017). Thus it is clear that in the harmonization phase the problem is the legal status of the new body proposed in the

Amended Oil and Gas Bill, and until now the formulation of the matter is still ongoing. Harmonization of laws and regulations is a consequence of the existence of a hierarchy of laws and regulations as stipulated in Article 7 of Law No. 10 of 2004. There are 3 (three) reasons for harmonizing the bill as stipulated in the provisions of Article 18 of Law No. 10 of 2004, namely:

- Law as one type of legislation which is a subsystem of the national legal system. Legislation must be interrelated and related and constitute a unified whole with other subsystems;
- The law can be tested (judicial review) both materially and formally by the Constitutional Court (MK) pursuant to Article 24C paragraph (1) of the 1945 Constitution, based on this matter the harmonization of laws and regulations is very important to be carried out as a preventive measure (preventive) to prevent the filing of an application for testing the law against the 1945 Constitution by the Constitutional Court;
- Ensure that the process of establishing legislation is carried out in accordance with the principles for legal certainty.
- Law No. 10 of 2004 is a guideline as a sure, standard and standard method and method that binds all institutions that are authorized to make laws and regulations. Law No. 10 of 2004 was created and enacted to further improve the coordination and smoothness of the process of establishing legislation. Without a definite guideline or method in the formation of laws and regulations, there will be unevenness or differences in forms between one law and another.

Based on the explanation above, it can be concluded several things as follows:

In the process of drafting the bill / law politically it is carried out through the process of: (1) compiling an academic paper; (2) preparation; and (3) harmonization and synchronization; terview, October 2017).

The process is carried out entirely by Bamus. The Bamus also sets its own criteria for determining whether a bill is discussed by the Commission, Joint Commission or Special Committee. Interviews with the US, stated as follows:

"... in general we know that a bill proposed in the discussion can be decided to be approved by amendment or rejected ... if the bill is approved with amendments, the DPR assigns to the Commission, the Legislation Body, or the Special Committee to discuss and refine the bill. After being approved as a proposed bill from the House of Representatives, the DPR Leader conveyed to the President with a request that the President appoint the Minister who would represent the Government in discussing the bill together with the DPR ... well, what if the bill is rejected? In fact, if a bill is rejected by the House of Representatives to be an initiative proposal, there is no regulation whether the bill can be submitted again More about the first and subsequent level discussion mechanisms at the Discussion and Approval Level must go through several stages, as said by the US, as follows:

"... First Level discussions occur in the arena of Commission Meetings, Joint Commissions, Legislation Board Meetings, Budget Committee Meetings or Special Committee Meetings together with the Government ... The Standing Orders do not explain the process and criteria for determining which DPR body or equipment (what is the Commission, joint Commission or the Special Committee) which will discuss a draft law with the Government. The process is carried out entirely by Bamus. The Bamus also set its own criteria for determining whether a bill was discussed by the Commission, the Joint Commission or Special Committee, among others based on considerations if the substance of the law was a combination of various fields in the Commission and a Special Committee or Joint Commission was formed. Whereas if it only covers one area, the Commission will discuss it ... also if the schedule of a Commission is too dense, a Special Committee will be formed, but if there are too many Special Committee and people are discharged in the Special Committee then discussed in the Commission ". (Interview, June 2017).

From the explanation of the interview above, it can be seen that the discussion mechanism of the Oil and Gas Law examined in this study is in accordance with the mechanism, but only the first level discussion is found, in accordance with the results of the Interview data with SY, as follows:

"... the discussion of the Oil and Gas Law takes place at the first level of discussion, namely: discussions in the Commission Meetings, Joint Commission Meetings, Legislation Board Meetings, Budget Board Meetings or Special Committee Meetings ... this happened because the decision to ratify the bill to become an Oil and Gas Law could have been produced in the decision making at the Plenary Meeting. In meetings, commissions, leaders of the Legislation Body, leaders of the Budget Committee, or leaders of the Special Committee ". (Interview, May 2017).

Bamus set the criteria for determining whether a bill was discussed by the Commission, the Joint Commission or Special Committee, among others based on the following considerations:

- Substance of the law. If the substance of the law is a combination of various fields in the Commission, a Special Committee or joint Commission is formed. Whereas if it only covers one area, the Commission will discuss it; and
- Workload of each Commission. If the schedule of a Commission is too dense then a special committee is formed, but if too many special committees and people are discharged in the special committee, the Committee will discuss it.

In the draft discussion, the Commission was assisted by the Commission Secretary to record, record and document the trial or data, other and manage correspondence documentation (including community aspirations) relating to the Commission. Requests to hold hearings with the Commission are submitted to the secretary of the Commission, which passes on to the Commission's leadership meeting to schedule a meeting. The Commission Secretary should manage and submit all documentation to the Documentation Division of the DPR General Secretariat which holds all institutional documents. But unfortunately often the document does not reach the

Documentation Field.during the trial ... ". (Interview, June 2017). Furthermore, based on the results of the interview with SY, it was known that the first level discussion process consisted of three activities, namely:

- A general view of each faction against a bill originating from the government, or the government's response to a bill from the DPR. The Standing Orders do not require the submission of written documents in writing before the meeting agenda, but usually the documents are distributed at the meeting;
- The Government's response to the general view of the faction or answer to the leadership of the Commission, the head of the Legislation Body, the head of the Budget Committee, or the head of the Special Committee for the Government's response. The Standing Orders do not require the submission of written documents before the meeting agenda as above. Usually the document is also shared during meetings; and
- Joint discussion and approval of the bill by the Parliament and the Government in a working meeting based on the Problem Inventory List (DIM).

Following the results of the interview with SY, are presented below:

"... it is important for us to know that there are three activities that exist in this process, namely: a general view of each faction against a bill that comes from the Government, or the Government's response to a bill coming from the DPR. The Standing Orders do not require the submission of landscape documents in writing before the meeting agenda, but usually the documents are distributed at the meeting ... the Government's answer to the general view of the Faction or the response of the head of the Commission, the head of the Legislation Body, the head of the Budget Committee, or the head of the Special Committee for the Government's response . The Standing Orders do not require the submission of written documents before the meeting agenda as above. Usually the document is also distributed at the time of the meeting ... joint discussion and approval of the bill by the DPR and the Government in a working meeting based on the Problem Inventory List (DIM) ". (Interview, May 2017).

Second-degree talks are decision making in the Plenary Meeting. In Commission Meetings, the Chair of the Legislative Body, the Chair of the Budget Committee, or the Chair of the Special Committee report the results of the first level talks; normally this report is written in writing and read out in a meeting. If deemed necessary (and usually done), each faction through its members can accompany the record of the attitude of the faction. It is not clear whether each member (not his Fraction) can record their attitudes, but there is still an opportunity to submit individual records containing important notes, objections and differences of opinion commonly referred to as mijnderheadsnota. Finally, the Government can deliver a speech The DPR's approval is stated in the DPR's decree and delivered by the DPR Leader to the President to be passed into law with a copy to the relevant Minister. Based on the data that has been presented, it can be described the core findings of the first focus of this study, as follows:

The stage / process of drafting the Oil and Gas Law starts from planning, preparation and discussion;

Politically the planning of the Oil and Gas Law comes from several sources, namely (1) the Bill from the President; (2) RUU from DPR; and (3) the bill from the DPD. The political process occurs because of the planning process for the formulation of the Oil and Gas Law because this Act comes from executive initiatives and enters into the National Legislation Program. Whereas in its development there were many interests in the drafting and even when the Oil and Gas Bill was passed into the Oil and Gas Law and implemented even though this Law repeatedly the revision by the Constitutional Court and Parliament itself. The Oil and Gas Law, which has historically been planned and compiled based on executive initiatives which later entered the Prolegnas, was never actually achieved, even more often the priority of the discussion was based on the needs of the law which at that time was urgent, especially when it came to political interests. Therefore the National Legislation Program always fails to meet its target, if it is compared between the planning made in the National Legislation Program and the realization each year. Priority scale in the National Legislation Program, this has made the Oil and Gas Law very long into law and is free from polemics, not to mention that the establishment of the Oil and Gas Law which is sourced from the National Legislation Program still cannot answer priority and measurable needs. The planning of the Oil and Gas Law is through a process that is not short, because the procedure in the DPR is also long, there is a process of inventorying input from the Faction, the Commission, and the community to be determined as a decision of the Legislative Body and then the decision of the Legislative Assembly is material consultation with the Government as a result of consultation with the Government reported to the Plenary Meeting to set. The slowness of the planning process is due to the DPD's functions, duties, and authority which have a consequence on the relationship between the DPR and DPD which increasingly appear to be less harmonious. After the DPR was accused of never involving the DPD in the preparation of the National Legislation Program, the appointment of members of the Supreme Audit Agency (BPK), and in the amendment of Law No. 22 of 1999 concerning Regional Government;

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In the process of drafting the bill / law politically it is carried out through the process of (1) academic texts; (2) preparation; and (3) harmonization and synchronization. The Oil and Gas Law which is prepared by making academic texts is a procedural step that is not easy to pass other than because it is a scientific / research study, also there are many similar interests to make the Law made better according to their respective perspectives. Parties outside the DPR and the executive have their respective perspectives in viewing the Oil and Gas Law which includes NGOs and the wider community. Based on the field findings, it was found that there were several things that led to the rearrangement of the Oil and Gas Law, which was first, the increasingly uncertain global economic situation. Global conditions will clearly affect the domestic economy. Secondly, as a political product, the current discussion on the bill in the DPR should be smoother because the composition of the DPR has now been dominated by coalitions that are more supportive of the Government. The drafting of the Oil and Gas Law based on the description of the data presented above does have a very strong political challenge because it attracts strong interests from many parties, both from the Government, DPR and the wider community. Included in the preparation of the Oil and Gas Law which is being sought to be revised.

DISCUSSION

Political Process for the Preparation of the Oil and Gas Law in the Indonesian Parliament Oil and gas are one of the non-renewable strategic (non-renewable) natural resources that are controlled by the state and are vital commodities that control the livelihood of many people and have an important role in the national economy so that their management must be able to maximally provide prosperity and people's welfare . Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution stipulate that production branches that are important to the state and which control the livelihood of the public are controlled by the state. Likewise, the earth, water and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity and welfare of the people. At the implementation level, the management of oil and gas resources is directed only to investment and exports, so there is an indication of the legal politics of oil and gas sale, with no strategy to reserve oil and gas resources for the needs of the people in the future (Mining Advocacy Network Magazine, 2005: 43). This can be seen in the development of production sharing contracts as oil and gas management contracts in Indonesia that have undergone several generations and each generation has a different principle. Production sharing contract system which consists of various principles is very exploitative. Oil and gas management only emphasizes the element of dredging without the protection of the rights of local communities and the mitigation of their impacts. Other evidence is based on research data obtained by the Mining Advocacy Network (Jatam) that in 1998 President Suharto's government had spent 75% of Indonesia's oil reserves (Mine Advocacy Network Magazine, 2005: 25). The enactment of Law Number 22 Year 2001 concerning Oil and Gas also does not change the oil and gas management system. The contract system used by Law No. 22 of 2001 with Law Number 8 of 1971 concerning Pertamina is the same, namely the production sharing contract system as stated in Article 1 number 19 of Law Number 22 of 2001 concerning Oil and Natural Gas with the name of the system for sharing. The change of some state administrators who become state authorities does not at all reflect the cessation of oil and gas liberalization. At present oil and gas exploitation is increasingly uncontrolled, rules issued for investment gain only. Indonesia as a colony of energy resources and consumption markets is inevitably shifted to globalism and imperialism. Energy is one of the biggest contributors to the State Budget (APBN), especially oil and natural gas under the control of globalization. With the project of market opening, privatization and energy consumer intervention, in this context the state mega project is no longer on the politics of development law as it was during the reign of President Suharto, but in the economic occupation of natural resources, vital economic assets and control of local markets by foreign companies.

This is where the importance of the discussion on the legal politics of oil and gas management is due to the impact on Indonesia's readiness to face the free market of oil and gas management, especially in terms of its legal rules. In the midst of the chaotic infrastructure and oil and gas business conditions, it is very unlikely that Indonesia can compete competitively in the free market. Included in this is by regulating normatively through the Oil and Gas Law (Oil and Gas) regarding its management. Thus it cannot be denied that the Oil and Gas Law then has an important role in regulating all aspects of oil and gas management without exception, from upstream to downstream as well as vice versa. There are several aspects that must be immediately resolved in the Oil and Gas Law, among others, the position of the state in the use of natural resources must be strong. According to him, Article 33 of the 1945 Constitution must be a basic principle of oil and gas management and exploitation. In other words, ownership rights on oil and gas exist in the country and the country itself must obtain benefits. State profits should not be obtained from factors that harm investors. On the other hand, it also emphasizes the importance of rules that ensure there is no profit for foreign parties in the management of oil and gas. It's just that, hoping that the revision of the Oil and Gas Law can clarify the rules that support investment. Because the exploitation in the oil and gas sector is not the same and congruent with other companies in the field of natural resources, such as minerals or coal. Moreover, when compared to business in the property or toll road sector. Oil and gas management must be based on a comprehensive understanding of this type of business. For example oil is found in reservoir rock layers. To ascertain whether there is oil or not under the bowels of the earth, a set of activities is needed, from geological surveys to exploration and exploitation. Furthermore, changes to the Oil and Gas Law must aim to

increase production. In addition, he hopes that the new regulation in the oil and gas sector can attract investors to invest in Indonesia. Not the other way around, makes investors afraid. The provisions contained in the revision of the Oil and Gas Law should be related to forestry, the environment, shipping, taxation, central and regional financial balance, and investment. It is not a longer and complicated process of cooperation contract because the DPR must be consulted first. Thus, the drafting of the Oil and Gas Law is very laden with political content and interests that greatly affect the achievement of oil and gas management that is welfare of the community. An interesting discussion carried out at the stage / process of drafting the Oil and Gas Law starts from planning, formulation and discussion.

Planning: Planning Establishment of Legislation in Indonesia
Based on Law No. 12 of 2011, in Chapter IV concerning the Planning of Legislation is stated in Article 16 that "Planning for the drafting of the Law is carried out in the National Legislation Program (Prolegnas)." The essence of this Prolegnas is a priority scale for the formation of the Law program in order to realize the national legal system (see Article 17 of Law No. 12 of 2011). Whereas in Article 1 number 8 of the DPR Decree No. 1 of 2009 concerning the Rules of Procedure of the DPR, the National Legislation Program was defined as a planning instrument for the formation of the Law program which was prepared in a planned, integrated and systematic manner. In the aforementioned Rules of Procedure, the National Legislation Program is divided based on periodization, namely long term (20 years), medium term (5 years) and short (1 year). The preparation and determination of this long-term Prolegnas is carried out in accordance with the laws and regulations. The preparation and determination of the medium-term National Legislation Program is carried out at the beginning of the term of membership of the House of Representatives as the executor of the long-term National Legislation Program which can be evaluated at the end of each year together with the preparation and determination of annual priority Prolegnas (Article 106 of the House of Representatives Regulation No. 1 of 2009). The National Legislation Program contains a law formation program with the subject matter to be regulated as well as its relationship with other laws and regulations. The subject matter includes (i) the background and purpose of the preparation, (ii) the target to be realized, (iii) the main points of thought, scope, or object to be regulated; and the range and direction of regulation (Article 4 of the Republic of Indonesia Presidential Regulation No. 61 of 2005).

Referring to Article 18 of Law No. 12 of 2011, drafting a list of bills based on:

- Order of the 1945 Constitution;
- Decree of the People's Consultative Assembly;
- Other law orders;
- National development planning system;
- National long-term development plan;
- Medium-term development plan;
- Government work plan and DPR strategic plan; and
- Aspirations and legal needs of the community.

In the previous chapter it has been stated that the planning of the Oil and Gas Law is politically derived from several sources, namely (1) the Bill from the President; (2) RUU from DPR; and (3) the bill from the DPD. Based on the findings presented in the previous chapter, the political process occurred because of the planning process for the formulation of the Oil and Gas Law because this Act originated from the executive initiative and entered into the Prolegnas. Whereas in its development there were many interests in the drafting and even when the Oil and Gas Bill had been ratified into the Oil and Gas Law and implemented even though this Law had been repeatedly revised by the Constitutional Court and Parliament itself. This happens because the control of natural resources (Property Right) is considered as the authority of the government but its implementation is used for the interests of a handful of people. This is what makes the Oil and Gas Law proposed by the executive to be regulated in the Oil and Gas Law. The right to control natural resources by natural resource economists is recognized as the right of bundle, because actually in one word mastery contains four meanings (Pudyantoro, 2012: 107). This mastery is arranged in stages ranging from the lowest level to the highest, as follows:

- Use Right (the right to use): the right or control to use natural resources. The right to use means limited to the right to use the land in accordance with the allotted agreement;
- Right Management (right to manage): the higher the degree of just having the right to use is the right to manage. Not just get it use, the power holder also has the right to manage. The management in question is the right to organize and the right to decide on this right will be realized for what activities. For example, rights to land, then not only use land but have the right to decide what land is used for what;
- Transfer right: higher than just managing, the rights that are owned can be transferred. The transfer of such rights can be carried out for part or all of the rights depending on the agreement with the right-holders;
- Ownership: the highest right to control natural resources is the right to own. If the natural resources are owned, then the owner can use, manage and also certainly transfer the rights. So it is clear that natural resource control has several meanings. Therefore, when discussing, or discussing the understanding of the control of oil and gas natural resources, all parties must have an understanding and agreement on the definition of the name used.

Rahyani (2014: 62-63) states that the Oil and Gas Law must be drafted because the state's control over oil and gas must be legalized in the relevant law, namely the Oil and Gas Law, which in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution states that: (2) Production branches that are important for the state and which control the livelihood of the public shall be controlled by the state; (3) Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Oil and gas is a production branch that is important for the state and controls the livelihood of many people, and is a natural wealth contained in the earth and water of Indonesia that must be controlled by the state and used for the greatest prosperity of the people as intended in Article 33 paragraph (2) and paragraph (3) 1945 Constitution.
The Constitutional Court has given meaning regarding state control in Article 33 of the 1945 Constitution8, namely that the control by the state in Article 33 of the 1945 Constitution has a higher or broader understanding than ownership in the

conception of civil law. The conception of control by the state is a conception of public law relating to the principle of popular sovereignty adopted in the 1945 Constitution, both in the political (political democracy) and economic (economic democracy) fields. In the understanding of people's sovereignty, it is the people who are recognized as the source, owner, and at the same time the highest authority in the life of the state, in accordance with the doctrine: from the people, by the people, and for the people. In the sense that the highest power is also included in the understanding of public ownership by the people collectively. Whereas the earth and water and natural wealth contained in the jurisdiction of the state are essentially public property of all the people collectively which is mandated to the state to control it to be used for the greatest mutual prosperity. Therefore, Article 33 paragraph (3) determines that "the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Based on Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution, the definition of being controlled by the state must be interpreted to encompass the meaning of state control in the broadest sense derived from and derived from the concept of the sovereignty of the Indonesian people over the resources of the earth, water and natural wealth contained in it also includes the definition of public ownership by the collectivity of the people on the sources of wealth referred to. The people collectively constructed by the 1945 Constitution give a mandate to the state to carry out policies (beleid) and management actions (bestuurdaad), regulations (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the purpose of the greatest prosperity of the people (Constitutional Court Decision Number 36 / PUU-X / 2012, dated November 13, 2012, p. 98). Other findings, as revealed in the previous chapter, are that the Oil and Gas Law, which is historically planned and compiled based on executive initiatives which later entered the Prolegnas, was never actually achieved, even more often the priority of the discussion was based on the needs of the law which was urgent, especially when it came to interests. political. Therefore, the National Legislation Program always fails to meet its target, if it is compared between the plans made in the National Legislation Program and realization each year.

Of the five phrase concepts controlled by the state as developed in the Constitutional Court's ruling, namely the policy, management, regulation, management, and supervision, only the regulatory concept explicitly mentions the involvement of people's representative institutions such as the DPR. This could be simply because the DPR is only seen as a mere legislation institution, even though beside it is also attached to budget institutions and supervision institutions. The current constitutional conception of the state is controlled as interpreted by the Constitutional Court in its decision, there are two concepts. The phrase is controlled by the state which does not necessarily become an autonomous authority of the government or at least constitutionally justified. The two conceptions are: first, the management function is carried out through the mechanism of share ownership and / or through direct involvement in the management of state-owned enterprises or state-owned legal entities as institutional instruments through which the state government must carry out institutional relations with the people's representative institutions both DPR, DPD , and / or provincial / district / city DPRD in utilizing their control over the sources of wealth to be used to the greatest prosperity of the people. The second concept is that the state supervision function is carried out by the state c. Q. the government in order to supervise and control so that the exercise of control by the state over important production branches and / or which control the livelihood of the intended people is really carried out for the greatest prosperity of the people (Erman Radjagukguk, Results of Public Hearings Bill on Oil and Gas Bumi, Tuesday 2 November 2017). The next finding is that the priority scale in the National Legislation Program, which makes the Oil and Gas Law very long into law and free of polemics, not to mention that the establishment of the Oil and Gas Law which is sourced from the National Legislation Program still cannot answer priority and measurable needs. This happens because the government as the holder of the mining authority has an interest in carrying out the mandate of the Article 33 of the 1945 Constitution. The good management of oil and gas natural resources will provide two benefits, namely, first to increase state revenues and second, to have a multiplier effect on the economy.

Upstream oil and gas business can be carried out by the Government by fulfilling the following requirements: (a) the control of oil and gas natural resources remains in the government; (b) the government does not bear the risk of not finding oil and gas reserves; and (c) the government does not face financial difficulties, funds are always available at any time and in unlimited amounts because oil operations face many uncertainties. (Pudyantoro, 2012: 14). Production sharing contracts are translations of the terms Production Sharing Contract (PSC). This term is found in Article 12 paragraph (2) of Law No.8 of 1971 concerning Pertamina in conjunction with Law No. 10 of 1974 concerning Amendment to Law Number 8 of 1971 concerning Pertamina. Pertamina itself is the holder of mining rights over all mining legal areas in Indonesia, as long as regarding oil and gas mining. In its implementation, Pertamina is lacking in capital and technology, it is possible to cooperate with other parties in the exploration and exploitation of oil and gas mining in the form of production sharing contracts. The definition of a production sharing contract based on Article 1 number 1 PP No. 35 of 1994 concerning the Terms of Guidelines for the Cooperation of Oil and Gas Production Sharing Contracts, is a collaboration between Pertamina and the Contractor to carry out exploration and exploitation of oil and gas based on the principle of production sharing (Article 1 number 1 Government Regulation No. 35 of 1994 concerning Terms of Guidelines for Cooperation in Oil and Gas Production Sharing Contracts.

While Article 1 point 19 of the Oil and Gas Law, a cooperation contract is a production sharing contract or other form of cooperation contract in exploration and exploitation activities that are more beneficial to the country and the results are used for the greatest prosperity of the people (Article 1 number 19 Law No. 22 Year 2001 about Oil and Gas. This material is the starting point for reference to the revision of the Oil and Gas Law. Because one of the important parts of oil and gas business activities is the establishment of models and work contracts for oil and gas business. This is because the oil and gas industry is capital intensive and high risk. Production sharing contracts are a form of cooperation with foreign parties in the oil and gas sector that must describe the principles of oil and gas exploitation in accordance with the alignment of the constitution and legislation. Sumantoro defines the production

sharing contract as a collaboration with a profit sharing system between a state company and a foreign company that is contracted. If the contract runs out, the machines will be carried by foreign parties will remain in Indonesia. Collaboration in this form is a foreign credit whose payment is made in a way that results from the production produced by the company (Inosentius, 2014: 34). In simple terms it can be said that the principle of profit sharing is the principles governing the distribution of results obtained from oil and gas exploitation and exploration activities between implementing agencies and permanent business entities. The distribution of these results is then negotiated between the two parties and set out in the PSC. With regard to the activities of the upstream oil and gas sector, in Article 1 number 7, the definition of upstream business activities is defined as a business activity that is based on or based on exploration and exploitation business activities. Exploration is an activity that aims to obtain information about geological conditions to find and obtain estimates of oil and gas reserves in the specified working area (Article 1 point 8 of Law Number 22 Year 2001 concerning Oil and Natural Gas). While exploitation is a series of activities that aim to produce oil and gas from the specified work area, which consists of well drilling and completion, construction of means of transportation, storage and processing for the separation and refining of oil and gas in the field and other activities that support it (Article 1 number 9 of Law Number 22 Year 2001 concerning Oil and Gas).

Upstream oil and gas activities (exploration and exploitation) are investment activities with a long-term dimension (10 to 30 years), containing financial, technical, operational risks, demanding professionalism and reliable human resources, and large capital. Oil and gas investor partners are across state jurisdictions. The upstream industry will naturally filter out business people who can do it. For this reason, it is absolutely necessary for the presence of the State through its policies to regulate so that there is a balance between commercial objectives, sustainable provision of reserves substitute, macro contribution to the national economy, and strengthening national capacity to participate (Purba, 2013). There are four factors that make the upstream oil and gas industry different from other industries, including: first, the length of time between the time of expenditure and revenue; second, decisions made based on high risk and uncertainty and involving sophisticated technology; third, this sector requires a relatively large investment in capital costs; and fourth, behind all these risks, the oil and gas industry also promises huge profits. High risk, the use of advanced technology, and trained human resources as well as the amount of capital needed, make the country, especially developing countries, feel the need to invite foreign investors to carry out exploration and exploitation activities (Lubiantara, 2002: 5). Oil and gas are public goods which in Indonesia belong to the category of public property resources (common property resources). To work it out, a business entity needs to get concession rights from the government. The business entity must first register with the institution that is authorized for it (Directorate General of Oil and Gas), then take part in an auction to get the contract area of work rights. Business entities / contractors are required to pay to get the forms and information available.
Then, the contractor submits a proposal about the activities to be carried out in the area and how much capital will be invested. The contractor is also asked to estimate the production, income and profits to be obtained, and then present the proposal to the relevant institution. The auction winner is determined based on the proposal submitted, the amount of investment to be invested, and the company's bona fide (regarding the good name and experience in the related field). If you succeed in winning the auction, the contractor must pay a signature bonus to get the right to explore and produce oil and gas in his working area (Partowidagdo, 2009: 12). As for those related to the downstream oil and gas sector activities, it is a continuation of oil and gas processing activities. Crude oil that has been processed at an oil refinery is then traded or distributed in the market to be ready for use or consumption. Based on Law Number 22 Year 2001, the downstream activities of oil and gas consist of processing, transporting, storing and trading (trading) business activities. All of these downstream business activities are based on a business permit system (licensing system). In Law Number 22 Year 2001 above, there are several oil and gas downstream business licenses, namely: (a) processing business licenses; (b) permit for transportation business; (c) permit for the storage business; and (d) commercial business licenses (trade) consisting of: general business licenses (wholesale); and limited commercial business licenses (retail trading).

In terms of licensing in the downstream oil and gas sector, the Ministry of Energy and Mineral Resources has issued business licenses for 189 (one hundred and eighty nine) business entities in the activities of oil and gas downstream businesses since 2008. Of that number 101 (one hundred and one) business entities obtain permanent business licenses and 88 (eighty eight) other business entities obtain temporary licenses. Business licenses provided include business activities for processing, transporting, storing, and trading. Of the 101 (one hundred and one) permanent business licenses issued by the Ministry of Energy and Mineral Resources in 2008 each was given to 6 (six) business entities in processing business activities. This consists of 1 (one) oil and gas processing permit, 1 (one) petroleum processing permit, 1 (one) processing permit, and 3 (three) natural gas processing permits. Meanwhile, as many as 46 (forty six) permits were still granted to the transportation business. Of that amount is divided into 41 (forty one) licenses to transport BBM, 3 (three) licenses to transport LPG, 1 (one) CNG transportation, and 1 (one) permit to transport natural gas through pipelines. In short, it can be said that the upstream oil and gas activities adhere to the contract system and the downstream oil and gas activities adhere to the licensing system. The contract system contains the principle that both parties have the same rights and obligations, whereas in the licensing system, the granting of licenses has full power and can revoke permits if they do not carry out the conditions issued by the licensor namely the Government.

The length of the discussion in the revision of the Oil and Gas Law is partly due to the search for patterns that are beneficial for the country, in terms of contractual production agreements with foreign investors. A country's oil and gas industry is different from one another in terms of how the roles and responsibilities of three functions are regulated, namely: policies, regulations and commercial (business) functions. Some countries explicitly separate these functions, such as: Norway and Brazil. In Norway the policy function is handled by the Ministry of Oil and Energy, the regulatory function under the Petroleum Directorate and the commercial functions carried out by the national oil company (NOC) together with the IOC. Likewise in Brazil, the three functions are explicitly separated.

In some countries, there is no explicit separation of the three functions, but one of the other functions, such as in Saudi Arabia and Malaysia, the NOCs (Saudi Aramco and Petronas) play a very dominant role, so besides acting as a commercial function, the NOC also plays regulatory function. In contrast, in Venezuela, the Petroleum Ministry plays a more dominant role. Prior to the Chavez era, the NOC in Venezuela (PDVSA) belonged to the dominant NOC category. When Chavez became President in 1998, the role of the NOC was too strong and involved in politics against the rise of Chavez. Since 1999, PDVSA's domination began to be reduced, the regulatory function was then returned to the Petroleum Ministry. While in Iran the dominance between the NOC (National Iranian Oil Company / NIOC) and the Ministry is relatively balanced. In developing countries the commercial role is generally carried out by the NOC, both alone and together with the IOC. While in OECD countries, among others: USA, UK, Australia and Canada, countries do not go directly into the oil and gas business through the NOC (there are no NOCs in these countries), so that pure commercial functions are carried out by private parties.

In Bolivia, through the new oil and gas law (hydrocarbon law, 2005), stipulates that royalties increase to 18% and direct tax on hydrocarbons (DTH) by 32%, thus bringing the total to 50% of total production. Especially for large fields, plus government participation of 32%, bringing the total to 82%. Comparing with PSC conditions in Indonesia where the revenue sharing is 85%: 15% (oil) and 70%: 30% (gas), certainly not directly to apple to apple because 85% and 70% of the Indonesian government's share are net profits. When calculated from gross income, of course the presentation is not that big, still far below Bolivia which is 82%. This division of the Bolivian model is indeed extremely high for the country, but it is still implemented because it has already known exactly the cost structure so that it only costs money for production and does not need to invest capital. Suppose the production cost is 10% of gross income, the company still earns a profit of 8% of gross income. This 82% model in Bolivia applies to large fields that are in production, thus there is no risk of exploration. If this concept is offered for new blocks that have never been explored, of course there are no interested investors. risky exploration activities, if later found commercial reserves while access to gross income is limited to a maximum of 18%. Investors will certainly think again, when their investment costs will return.

While the Indonesian PSC model with a share of 85%: 15% (oil) and 70%: 30% (gas) is for full cycle activities, from exploration to production. Compared to other countries, profit sharing including taxes has been very good. Actually what happened in Bolivia and some other Latin American countries is inseparable from the existence of an unfair contract made in the past. In Brazil, related to the arrangement of cooperation with investors in the framework of exploration and exploitation activities, through the oil and gas law of 1997, only called the concession system. The law does not mention the possibility of using other systems other than concessions. Therefore, the PSC system has never been there, so the authorities in Brazil have begun to examine the contract systems used by other countries which raised debate about two options, namely to keep using the concession system with modifications or move to the PSC system. The debate raises the pros and cons of academics, who still want the concession system to have the argument that this system has been successful for decades, if the government feels the need to get a larger portion, it can be done by doing a little modification without having to move to the PSC system. While supporters of the PSC system assume that the concession system is only suitable for work areas that have a large geological risk, while the sub-salt basin, because of the many findings, the risk is relatively smaller. In addition, although the two systems can provide the same share of revenue for the government, the distribution arrangements will be easier with the PSC framework, because there is an element of profit sharing (profit oil share). In July 2009, the authorities announced that the government would move to the PSC system by forming a new national company specifically formed for the development of the subsalt basin. Not explained the reason for the establishment of this new national company, but this is expected due to Petrobras's status. Although known as a national company, Petrobras is not 100% state-owned. The government portion is only 48%, the rest is owned by foreign investors and national private.

The establishment of a new 100% state-owned company is intended to maximize the total government share of upstream activities in the subsalt basin. It is clear that what happened in Brazil, contrary to the situation in Indonesia. First, oil and gas exploration activities in Brazil were a great success, but the opposite situation happened in the country. Secondly, Brazil considers the PSC, while in Indonesia the government is busy looking for systems other than PSC because of cost recovery. Brazil's steps so far have been right, because the first stage for them is how to invite investors for oil and gas exploration with attractive terms and conditions. In contrast, Indonesia is too busy looking for contracts that benefit the country, while at the same time exploration performance is less encouraging. Meanwhile, in Norway only recognize the concession system, from the beginning to obtain the government's portion of the oil and gas industry. Norway only relies on their taxation system which is administratively sophisticated, so that the use of the PSC is considered unnecessary. although using concessions and parts of the government is only obtained from taxes, the total share of government revenues is large. Income tax is 28%, plus other taxes, namely special petroleum tax of 50% of net profit, thus a 78% marginal tax rate. At the international level, this portion of government revenue is high, especially compared to oil and gas blocks or fields in other countries that use a concession system.

For investors, even though the share of government revenue is quite high, the Norwegian concession system is considered attractive because the element of government revenue is obtained from taxes, unlike royalties imposed on gross income. Taxes are imposed on net income, a system like this is known as back-end loaded, which tends to be preferred by investors. The simplicity of the fiscal framework for the oil and gas industry in Norway can run well, not apart from the reality that the state governance system is already advanced. Three factors that also support are old traditions there, such as openness, integrity and transparency. Comparison of revenue sharing models in several countries has been outlined in an academic text that serves as a reference for the revision of the Oil and Gas Law. Thus the planning of the Oil and Gas Law is based on the academic text of the law on oil and natural gas, where this academic text is the theoretical framework used is a rationale for producing a product law on oil and gas as a political product. The theoretical framework or rationale for drafting a law on oil and gas is needed as a guidance, so that what is explained in the theoretical framework is in accordance

with what will be regulated in the content of a law. That the planning of drafting the Oil and Gas Law is a legal political area because this is a rule of law produced from or by a political process. The rule of law that was born or made from a political process is the law. A law can be referred to as legal politics, because it is produced in a political process between the legislative body and the executive. A law is also a political decision that can force all levels of society, including political institutions (legislative bodies, executive bodies and judicative institutions) to comply with the rule of law in the law. There are three framework models to explain legal and political interpaly (relations). First, the determinant law of politics in the sense of political activities is regulated by and must be subject to the rule of law. Second, determinant politics of law. This means that because the law is the result or crystallization of political will that interacts and competes with each other. Third, politics and law as a social subsystem are in a position where the degree of determination is balanced with each other. Although the law is a product of political decisions, but once the law exists, all political activities must be subject to the rule of law. Indonesian legal politics tend to be under pressure to develop freedom and liberalization in two important aspects, namely politics and economics. Indonesia's post-reform legal politics accommodates the aspirations of a constitutional government that places people and human rights into the ideals of national law, while accommodating the demands of free market liberalism and open markets on a world scale. The flow came through efforts to overhaul Article 33 of the 1945 Constitution which had become a national economic ideology for forty years.

Compilation: In the previous chapter it was explained that in the process of drafting the bill / law politically it was carried out through the process of (1) academic texts; (2) preparation; and (3) harmonization and synchronization. The Oil and Gas Law which was prepared by making academic texts is a procedural step that is not easy to pass apart because because this is a scientific / research study, there are also many similar interests to make the Law made better according to each perspective. Parties outside the DPR and the executive have their respective perspectives in viewing the Oil and Gas Law which includes NGOs and the wider community. The preparation of this Oil and Gas Law is systemically related to its position as part of the National Legislation Program, where the aim is to organize a comprehensive and integrated national legal system by acknowledging and respecting religious and customary law and renewing the legislation of colonial inheritance and discriminatory national law, including injustice gender and incompatibility with the demands for reform through legislation programs. Before the Law No. 25/2004, the National Legislation Program was put as part of public policy planning for the government, with GBHN (which was mandated by the MPR to the President) as a basis. This means that the National Legislation Program is considered as a government work area, when the 1945 Constitution was not amended. When the legislative pattern changed in the first amendment in 1999, the habit of planning legislation in the National Legislation Program was considered good to continue. Continuing good habits becomes problematic when the essence of the habit is not considered. In the logic of development planning contained in the initial ideas of the National Legislation Program, there must still be a development program that is the basis. In fact, after the 1945 Constitution amendment, the GBHN no longer exists. So what should be the basis of the development program is the vision and mission of the elected President. With that context, Law No. 25 of 2004 concerning the National Development Planning System. In Law No. 25 of 2004, regulated the existence of the Medium Term Development Plan (RPJM) as a planning document for a period of five years and contained in the form of a Presidential Regulation. Furthermore, the making of the National Legislation Program is made to be more open, but not as a public debate in the context of public policy formulation, which usually takes a long time and is carried out in a participatory manner, as was done in the establishment of the National Legislation Program in previous years, as a collection of lists from the government, DPD, commissions in the DPR, and interest groups (non-governmental organizations, study institutions, etc.). As a result what happens is simply gathering a list of titles without an explanation of public issues that want to be formulated into a policy plan and without consideration of the level of urgency, macro implementation plan, and policy evaluation plan.

The National Legislation Program and in particular the Oil and Gas Law must correlate with overall development planning. In the sense that the making of the National Legislation Program must be constructed as a debate on the formulation of public policies in a participatory and open manner. Legislation must be seen as something that is not rigid. It is a dynamic and sociological and political policy process. Legislation is a legal instrument, but the law is made for a changing society. In this context, law makers must also begin to look at monitoring and evaluation in the eyes of the eyes. Before the amendment to the 1945 Constitution, the authority of the executive body in the national legislation process played a strategic role, and the role of the DPR RI as a legislative body was more passive, namely to wait for the submission of a bill and give its approval. to be passed into law. After the amendment to the 1945 Constitution in accordance with the provisions of Article 20 paragraph (3), the DPR has the power to form the Law even though the government can still submit a bill as an initiative proposal (Article 5). As explained earlier, that the National Legislation Program was carried out by the DPR and the Government in a planned, integrated and systematic manner, the implementation of which was coordinated by the DPR. The preparation of the National Legislation Program in the DPR was coordinated by the Legislation Body. The Government is coordinated by the Minister whose duties and responsibilities are in the field of legislation. Especially for the National Legislation Program prepared by the Government in this case the implementation can be carried out by the Institution of National Law Development Agency, because this institution has long existed as a national legal development institution. The performance of the National Legislation Program carried out by the BPHN should be under the direct supervision of the President which can be coordinated through the relevant ministers. This is necessary, because this program is a national program involving various agencies, government institutions and legislators. The preparation of the National Legislation Program must be organized by an institution as a material for consideration to be followed up as consideration for action. accompanied by adequate authority, legitimacy, facilities and infrastructure to coordinate (both between government institutions and the DPR Legislation Body), as well as synchronizing a National Planning and Planning program that is planned, integrated and systematic in order to support the realization of a national legal system that serves national interests. In addition, ethical and moral issues in the formation of laws in Indonesia must also be considered since the

preparation stage of the National Legislation Program until the stage of implementing legislation and its enactment in the midst of society. Ethical and moral crises that occur in both stages that are very important and critical and very strategic in the development of this nation and state, determine the shape and form and the character of the legislation produced and the conditions of the people and nation that will be created by the law. Ethics and moral formation of national law in a democratic system of government is certainly fundamentally different from an authoritarian system of government. In a democratic government system ethics and morals can be measured from three things: human rights; justice; and community accessibility into the Prolegnas (Suseno, 2000: 45-46). These three ethical and moral benchmarks for the formation of national law are determinants of how far national legislative politics have implicitly considered ethical and moral law development. In terms of human rights, ethics and morals that should be built and maintained are ethics and morality that are in line with the foundation of political life aspired in the opening of the 1945 Constitution and specifically must refer to the sound of the Second Amendment to the 1945 Constitution Chapter XA concerning Human Rights intact.

In terms of justice, the ethics and morality of the formation of national law should give proportionally to everyone what is their right in accordance with their obligations in participating in carrying out and maintaining the administration of the state. Whereas in terms of community accessibility into the National Legislation Program, especially the Oil and Gas Law, community empowerment is needed regarding rights and obligations in accordance with the applicable laws and the understanding that community empowerment must be accompanied by an increase in legal culture, including community legal awareness. On the other hand, the accessibility of the community must also be supported by an awareness of increasing understanding of the bureaucracy about its role as a role model who can provide examples and a good role model in complying with all applicable laws and regulations (Atamasasmita, 2003). In the context of the three benchmarks of ethical and moral problems Establishment of national law, the effectiveness of the application of the Indonesian people's view of life including the philosophy, viisi and mission of the life of the nation and state is a measure of the success of national legislative politics. In this regard, normative quantitative and qualitative measures are not benchmarks that must only be considered in assessing the effectiveness of the DPR and the Government's completion of the bill each year, but also need to consider aspects of community culture and political culture, especially since the reform era. Because the legislative process with legislative products is not a sterile process of political interests because it is a political process. Even the implementation of the legislation, known as "law enforcement" or "law enforcement", is also not always sterile from the influence of legal politics, namely the material / legal substance or legislation. Because as generally understood, legal development is basically the construction of a legal system. In this system framework, there are four legal elements or sub-systems that are interrelated with each other, namely: (1) material or legal substance; (2) legal facilities or institutions; (3) legal apparatus; and (4) culture or community legal awareness. Legal development programs need to be a top priority because the changes to the 1945 Constitution of the Republic of Indonesia have broad and fundamental implications in the constitutional system that needs to be followed by changes in the legal field. In addition, the rapid flow of globalization supported by the development of information technology has changed the pattern of relations between the state and citizens with their governments. These changes also demand the arrangement of the legal system and the underlying legal framework. Within this framework, the National Legislation Program is needed to organize a comprehensive and integrated national legal system which must always be based on the ideals of the proclamation and constitutional basis which states that the state of Indonesia is a legal state (rechtstaats) as stated in Article 1 paragraph (3) of the Law The State of the Republic of Indonesia in 1945. Based on the field findings it was found that there were several things that led to the rearrangement of the Oil and Gas Law, namely first, the increasing uncertainty in the global economy. Global conditions will clearly affect the domestic economy. Second, as a political product, the discussion of the bill in the DPR at this time should be smoother because the composition of the DPR has now been dominated by coalitions that support the government more.

However, if the swift flow of proposals or plans to form legislation (legislative plans) submitted is not accompanied by an effective mechanism that is able to guarantee order, then what is happening is not an improvement in legal conditions, it actually worsens the legal conditions. In order to roll out these legislative reforms in the future, the DPR needs to make a big design of the direction of national legislation that is imbued with the spirit of the Amendment to the 1945 Constitution. legislation. This is of course also evidenced by the high willingness of the DPR to open the widest access to the public to provide input. Law Number 10 of 2004 concerning Establishment of Legislation, Chapter I of General Provisions, Article 1 paragraph 9 states that the National Legislation Program is an instrument for planning the establishment of a Law which is planned, integrated and systematic. Article 2 also states that Pancasila is the source of all sources state law, therefore every material content of legislation must not conflict with the values contained in Pancasila. The formulation of the Oil and Gas Law based on the description of the data presented above does have a very strong political challenge because it attracts strong interests from many parties, both from the government, DPR and the wider community, including in the preparation of the Oil and Gas Law that is being sought for revision.

DISCUSSION

The discussion of the Oil and Gas Law in practice, as well as the findings presented in the previous chapter, is very strong in its legal politics. According to Wahjono (2007: 45-46) legal politics is a basic policy that determines the direction, form and content of the law that will be formed. That legal politics is the policy of state administrators about what is used as a criterion to punish something which includes the formation of law, the application of law, and law enforcement. Based on this formulation, it can be said that the legal politics of oil and gas management in Indonesia is participating in providing input for the efforts to establish oil and gas legal products needed at the national and regional levels in the future or aspired (ius constituendum) based on the dynamics of the aspirations of the people with sovereignty. The development of the legal politics of oil and gas in Indonesia is based on the development or improvement of existing oil and gas legal products (ius constitutum) or constitutional law products or customary law products that develop in the community in

order to achieve the ideals with the mandate of the 1945 Constitution. In this case the word "legal politics" refers to the positive law that applies in relation to the laws and regulations governing oil and gas in Indonesia as legal products made by state administrators and the direction of legal development to be built so includes ius constitutum (current law) and ius constituendum (law that is aspired in the future). In the making of legislation, legal politics is important in relation to two things: first, as a reason why the establishment of a law is needed. Second, to determine what is to be translated into legal sentences and to formulate articles. These two things are important because the existence of legislation and formulation of articles is a link between legal politics established by the implementation of the legal politics in the implementation of laws and regulations. Considering that there must be consistency and correlation between what is defined as legal politics and what you want to achieve as a goal.

The phase of discussion of the material of the Oil and Gas Law is carried out between the DPR and the President (also with the DPD) through two levels of discussion. Level 1, is a discussion at a commission meeting, joint commission meeting, legislative body meeting, budget body meeting or special committee meeting. Level 2, is the discussion at the plenary meeting. The discussion of the Oil and Gas Law takes place at the first level of discussion, namely: discussions in the Commission Meetings, Joint Commission Meetings, Legislation Board Meetings, Budget Agency Meetings or Special Committee Meetings occur because the decision to ratify the Bill into Oil and Gas Law has been generated in decision making in the Plenary Session. This concerns the legal aspects of the regulation of oil and gas covering the area of study (domain) of state institutions making legal politics, the location of legal politic(internal and external) that affect the political development of the law of oil and gas, the level of application in the form of the implementation of legal products which are the political consequences of an idealized legal and legal politics.

The legal aspect of the regulation of oil and gas also uses the process of extracting the values and aspirations that develop in the community by state officials who are authorized to formulate legal politics. There are factors that influence and determine a legal politics, both those that have been, are, and will be determined. This can be used to assess the implementation of legal politics, so as to produce legal politics of oil and gas that is in accordance with the needs and welfare of the people, because if the law is built on a foundation that is not in accordance with the structure of values that develop in society there will be community resistance against the law, because good law is the one that meets the requirements of flosofs, historical and juridical. The description above is in accordance with the theory of public policy formulation, which states that the policy formulation process must incorporate opinions that develop in the political community into the agenda setting policy. The setting agenda is all issues that are generally perceived by the political community as a public problem and the problems involved in the official power of the existing government authority, while the institutional agenda is a series of issues that are explicitly raised to be actively and seriously considered by decision makers who authorized. The success of the issue of public issues in the setting agenda must go through many tests, including winning competing interest, political crisis, shifting issues and priorities that exist in policy makers. Meanwhile, the value of the actor's trust, the ideology adopted, critical life experiences and the influence of the mass media also greatly influence the actors' understanding of the issues scheduled. After the agenda setting, the next stage is problem definition. At this stage the issue issues that have been scheduled are discussed again to determine the next action, and the selection of these actions needs to be done carefully because it will affect the future. Careful action choices include the forecasting needs and the defining target groups and areas (Palumbo in Parsons, 1997). Forecasting needs involve scrutiny of the costs predicted to overcome these problems. Whereas the determination of target groups involves observing the determination of the target group and where the target group is located.

Law Number 22 Year 2001 concerning Oil and Natural Gas promulgated in the State Gazette of 2001 Number 136 Supplement to the State Gazette Number 4152 is the fourth phase as well as the last phase to date of the legal development of the oil and gas law in Indonesia. The consideration of the establishment of Law Number 22 Year 2001 is because Law Number 8 of 1971 concerning Pertamina is deemed no longer suitable with the development of natural gas and natural gas.

Based on the consideration of considering in Law Number 22 Year 2001, national development must be directed to the realization of people's welfare by reforming in all fields of national and state life based on Pancasila and the 1945 Constitution, so as a non-renewable strategic natural resource, regulatory changes to oil and gas mining expected to create oil and gas business activities that are independent, reliable, transparent, competitive, efficient, insightful in environmental preservation, and encourage the development of national potential and role and provide a legal basis for the steps of renewal and arrangement of the operation of oil and gas exploitation .s, factors

Law Number 22 Year 2001 also changes the role of Pertamina from policy makers, regulators and business actors or players to become players only. In the chart below, the paradigm is shown in Law Number 22 Year 2001. It is also shown by forming BP. Oil and Gas based on Government Regulation (PP) Number 42 of 2002. BPH. Oil and gas is also formed based on Government Regulation No. 67 of 2002. Completing the formation of the two new bodies, Pertamina, based on Government Regulation No. 31 of 2003, has also been changed to a Company status (Persero) or just a player. Regarding the main regulatory activities in the oil and gas sector, it has also been regulated in Government Regulation No. 35 of 2004 concerning Upstream Activities and Government Regulation No. 36 of 2004 concerning Downstream Activities. Law No. 22 of 2001 which is expected to provide a new legal basis for steps for renewal and realignment of oil and gas business by replacing the previous law, which is Law No. 8 of 1971 concerning Pertamina, turns out to be full of hidden agendas. Various provisions regarding the authority and obligations of various parties involved in the management of the oil and gas sector are formulated in articles that are very elastic, or submitted to the government through further regulation. This highly elastic Government Regulation will increase uncertainty in the management of the oil sector. and natural gas and will open up opportunities for discretionary and ad-hoc government policies. Based on this, the birth of a law, especially the Oil and Gas Law, if investigated from the manufacturing process, will show how persistent the struggle carried out by several groups so that their interests are guaranteed by the law. Usually groups that are strong in their position in society,

many determine the formation of a law. (Kusnardi, et al., 1988: 33-34). The law is seen as a product or output of the political process or the result of consideration and formulation of public policy (product of political decision making; formulation of public policy), in addition to the law as a product of political considerations, legal policy is defined as a policy or basis for determine the law that should apply in the country. In democratic countries, input that is taken into consideration for the determination of the law, comes from the aspirations of the community or the people, covering the various interests of their lives. This is consistent with the findings of this first focus, namely that the political process in the preparation of the Oil and Gas Law can be seen from the stage / process of drafting the Oil and Gas Law starting from planning, drafting and discussing. Politically the planning of the Oil and Gas Law comes from several sources, namely (1) the Bill from the President; (2) RUU from DPR; and (3) the bill from the DPD. The political process occurs because in the planning process of drafting the Oil and Gas Law because this comes from the executive initiative and enters into the National Legislation Program. Whereas in its development there were many interests in the drafting and even when the Oil and Gas Bill had been ratified into the Oil and Gas Law and implemented even though this Law had been repeatedly revised by the Constitutional Court and Parliament itself. The Oil and Gas Law, which has historically been planned and compiled based on executive initiatives which later entered the Prolegnas, actually never reached, even more often the priority of the discussion was based on the needs of the law which at that time was urgent, especially when it came to political interests. Therefore the National Legislation Program always fails to meet its targets, when compared between the plans made in the National Legislation Program and the realization of each year. Priority scale in the National Legislation Program, this is what made the Oil and Gas Oil and gas which is sourced from the National Legislation Program still cannot answer priority and measurable needs.

The planning of the Oil and Gas Law is not a short process, because the procedure in the DPR is also long, there is a process of inventorying input from factions, commissions, and communities to be determined as a decision of the Legislative Body and then the decision of the Legislative Assembly is material consultation with the government as a result of consultations with the government reported to the Plenary Meeting to set. The slowness of the planning process is due to the DPD's functions, duties and authority which have a consequence on the relationship between the DPR and DPD which are increasingly unharmonious. After the DPR was accused of never involving the DPD in the preparation of the National Legislation Program, the appointment of members of the Supreme Audit Agency (BPK), and in the amendment of Law No. 22 of 1999 concerning Regional Government. Based on this, Law Number 22 of 2001 is considered not sufficient enough as a legal instrument that can protect the rights of the people as a whole as mandated in Article 33 of the 1945 Constitution. The perspective of control and exploitation of energy ownership, especially oil and gas, becomes increasingly blurred, Article 33 of the 1945 Constitution has given the state ownership restrictions on natural resources for the welfare of the people. However, some laws and regulations under it do different things. What is contained in these rules actually intends to encourage Indonesia in free trade or liberalization of oil and gas. This can also be evidenced by the application of a judicial review request to the Constitutional Court up to two times against Law Number 22 Year 2001 with decisions in 2003 and 2007. The politics of Oil and Gas Law is related to Article 33 of the 1945 Constitution Article 33 of the 1945 Constitution is the basis of flosofs in the development of the legal politics of oil and gas in Indonesia. The position of the 1945 Constitution as the basic law gives legal consequence that every material of the legislation under it must not conflict with the material contained in the 1945 Constitution. The 1945 Constitution which specifies the outline, direction, content and form of law that will be applied in Indonesia. The amendments made in 2001 to Article 33 of the 1945 Constitution contain two additional articles and chapter titles, which are located in CHAPTER XIV of the 1945 Constitution with the title of the chapter on the National Economy and Social Welfare by containing 5 verses. According to Kwik Kian Gie (2008: 38) the amendments made to Article 33 of the 1945 Constitution are related to liberalization in the natural resource management sector. People who are in dire need of having to pay high prices, there is no more state obligation in this case the government to hold mutual cooperation through tax instruments. This happened because of changes in legal orientation where the ones developing were the mechanism of perfect markets, liberalization, privatization and globalization. However, this will slowly marginalize the elaboration of the ideas of nationalism and patriotism. Prosperity and prosperity aspired to be further away from expectations, liberalization and market mechanisms have been imposed so far and violate Article 33 of the 1945 Constitution. For example, the decision of the Constitutional Court stating that Article 28 paragraph (2) of Law Number 22 Year 2001 contradicts the 1945 Constitution , the government ignored the decision by continuing to increase the price of fuel according to Article 28 paragraph (2) of Law Number 22 Year 2001. The price of BBM was submitted to the market mechanism, the article which was canceled by the Constitutional Court (Kwik Kian Gie, 2008: 39) Law very long into law and free of polemic, not to mention that the establishment of the Law

The government has acted arbitrarily by using existing powers to violate the provisions of the 1945 Constitution, the law is forced to submit to political power and the interests of the government. A letter issued by the Constitutional Court to remind the Government that a cancellation of Article 28 paragraph (2) of Law Number 22 Year 2001 was deemed contradictory to Article 33 of the 1945 Constitution based on the decision of the Constitutional Court Number 002 / PUU-I / 2003 which was not heeded by the Government by continuing to increase fuel prices. So that there is harassment against the decision of the Constitutional Court as an institution that has the authority to examine the Law against the Basic Law based on Article 24 C paragraph (1) of the 1945 Constitution. According to Tjakrawerdaja (2008: 40) Management of oil and natural gas based on Article 33 of the 1945 Constitution must contain seven constitutional characteristics, namely: First, the economy aims to achieve mutual prosperity of all people, this is explicitly explained in the explanation of Article 33 of the 1945 Constitution. Second, people's participation in ownership, production processes and enjoying the results. This is in accordance with the formulation contained in Article 33 paragraph (1) and paragraph (4) of the 1945 Constitution. Third, in accordance with the principles of Article 33 paragraph (4) of the 1945 Constitution namely fair efficiency, the economy needs to be carried out using fair market mechanisms based on in fair competition and the role and authority of the state to intervene in the event of a market

failure. Fourth, the role of the State must be guaranteed, as mandated by Article 33 paragraph (1) and paragraph (3) of the 1945 Constitution, especially in terms of national economic planning, in forming and enforcing the implementation of the Law, and in terms of implementing community service and empowerment programs, tax exemptions , subsidies and others. Fifth, SOEs as one of the pillars of the economic activities control important production branches that control the livelihood of many people. This is clearly stated in Article 33 paragraph (2) of the 1945 Constitution. Sixth, cooperatives as soko guru of the people's economy must be realized in the spirit of togetherness with SOEs and the private sector, as well as the people's economic business entity. Seventh, the national economy must be a manifestation of equal partnerships between cooperatives, state-owned enterprises and the private sector. This principle is contained in Article 33 paragraph (1) of the 1945 Constitution. It is these constitutional characteristics that should be translated into the entire set of laws and regulations for the management of oil and gas (Tjakrawerdaja, 2008: 41). The greatest prosperity of the people is the goal of any national natural resource management and use. This goal is seen as an interest that cannot be ignored, because in addition to being a constitutional mandate, every citizen is coveted and becomes the responsibility of the state as a consequence of the right to control the state itself. Therefore, every exploitation and use of natural resources is adjusted to the goal (doelmatig). The nature of conformity with the objectives of the exploitation and use of natural resources is absolute and irreversible. However, this does not mean that it is the goal of law (Titahelu, 1993: 14).

The purpose of the law is, among others, the existence of legal certainty regarding the absolute and irreversible nature. In this sense the legal suitability (rehtmatigheid) is placed on the exploitation and use of natural resources for the greatest prosperity of the people. The prosperity of the people is the goal of a welfare state that must be realized by the Indonesian state and government. (Titahelu, 1993: 14). The right to control by the state over the earth, water and natural resources contained therein is essentially a protection and guarantee for the realization of the greatest prosperity of the people. But if the right to control by the state shifts from beheersdaad to being eigensdaad, there is no guarantee that the right of control by the state to use its natural resource object is used for the greatest prosperity of the people. Thus Article 33 of the 1945 Constitution as a constitutional basis in the management of oil and gas becomes legal material based on the concept of the right to control the state. The state functions as a regulator, the management and supervisor also relate to the state's relation to the economy. The existence of the legal system of oil and gas which was formed before before Indonesia became independent, gave a particularistic feel to legal reasoning in Indonesia. Periodization of the political and legal development of oil and gas in Indonesia, has emphasized a different approach. The influence of legal positivism has been very strongly embedded in the Indonesian legal system, among others, marked by the desire to implement law and codification (eenheidsbeginsel). In fact, even after Indonesia's independence, the legal positivism reasoning model is still strongly adopted, one of which is the release of the goal of justice in law. The law is only interpreted as a positive norm in the legislative system, this is represented in the articles contained in the legislation governing the management of oil and gas.

The debate on the basis of the formation of legislation in the management of oil and gas is based on what ideology the state uses in managing the economy. The ideology used is the main foundation for oil and gas management to achieve people's welfare. In conclusion, the state needs to interfere in economic activities. In general, it can be said that the process of drafting the Oil and Gas Law is very tough because it is part of the politics of drafting public policy. Syeirazi (2009: 16), states that there are three theories that can explain how a public policy is produced. First, political coalition theory and economic interests. According to this theory, political-economic policies are formed because of the pressures of economic groups that have political power to influence the birth of a public policy. This means that an economic-political policy is born because of political pressure from economic forces that have an interest in legalizing and overshadowing the business interests of these economic groups. Based on this theory, it can be said that public policy products are not always able to accommodate all the public interests of the wider community, because of the existence of stronger and dominant forces or economic groups that legally defend group interests rather than the public interest. This phenomenon is a common thing especially in transitional societies. Second, the relative autonomy theory of the country. According to this theory, the birth of a policy product is a reflection of the interests of the state as an actor in the public arena that has its own characteristics and choices. The birth of a policy is the result of the state's efforts to achieve its stated goals. The state in this perspective is not just an arena where socio-economic forces compete with each other, but (countries) are also actors who have their own autonomy and logic.

Third, rational choice theory. This theory is based on the basic assumption that every society consists of individuals who act to achieve and maximize the interests of synonym (utility maximizer). According to rational choice theory, public policy is the result of political interaction between rational actors who work to maximize profits or personal interests. Thus, politics is the stage where all parties compete with each other to extract various sources. The strength of this theory lies in its explanation that a non-institutional state is filled by bureaucrats, politicians and technocrats who are free from motives and personal interests. And because of that, state policies will never harm society (Syeirazi, 2000: 22). Regarding the issue of laws on oil and gas, rational choice theory has several advantages. First, rational choice theory guides us to be able to reveal further the motives and interests, including personal interests between actors involved in the preparation of public policy. Second, rational choice theory can uncover government mistakes, because the government consists of actors who are not free from motives and personal interests, even though they are then wrapped in populistic jargon (Syeirazi, 2000: 23). Furthermore, even this relates to the slow discussion of the Oil and Gas Law, closely related to the study of the principles / principles related to the preparation of norms. Legal principles are basic rules and legal principles that are abstract and generally background to concrete rules and law enforcement. The principle of law is not a concrete law, but is a basic mind that is general and abstract, or is the background to concrete regulations contained within and behind every legal system that is incarnated in the legislation and the judge's decision which is a positive law and can be found by looking for general traits in the concrete rules. Based on Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation, certain laws and

regulations can contain other principles in accordance with the relevant laws and regulations. Other content materials are prepared based on the following principles:

- Principle of integration. This arrangement in the Draft Law on Oil and Gas is prepared based on the integration of various interests that are cross-sectoral, cross-regional and cross-stakeholder.
- The principle of harmony, harmony and balance. Arrangement of the order and all matters relating to oil and gas management activities from the upstream to the downstream sectors must pay attention to harmony, environmental harmony and balance.
- Sustainability principle. This means that oil and gas are carried out by ensuring the sustainability and continuity of the carrying capacity and carrying capacity of the environment by taking into account the interests of future generations.
- The principle of legal certainty and justice. The regulation in the Draft Law on Oil and Gas is prepared based on the provisions of the legislation by considering the sense of justice of the community and protecting the rights and obligations of all parties fairly with the guarantee of legal certainty.

The National Legislation Program was prepared for a period of five years and the drafting function was to determine the priority scale of the formation of legislation and also function to mobilize communication in the drafting process of legislative drafting. The activity has been carried out by the National Law Development Agency of the Ministry of Law and Human Rights in the past 20 years. The activity was carried out in one package with the preparation of the Academic Text which had been carried out by the National Law Development Agency. BPHN as a representative of the Government, also invited the House of Representatives to sit together to determine the prolegnas operationally. The National Legislation Program prepared by the House of Representatives and the government is a priority determination program in the framework of establishing a legal forum for concept maturation, equality of perce Preparation of priority sequences within the one year period, then becomes part of the legal development plan (REPETA). In the House of Representatives, based on the DPR-RI's mandate (DPR Standing Orders) it was confirmed that the preparation of the National Legislation Program was the task of the DPR Legislation Body. Article 41 The DPR Standing Orders stipulate that the task of the legislative body is to plan and compile the program as well as the order of priority for the discussion of the Bill for the period of DPR membership and each budget, with the stages:

- inventory of input from factions, commissions and communities to be determined as a decision of the Legislative Assembly;
- the decision of the Baleg is material for consultation with the government;
- the results of consultations with the government are reported to the Plenary Meeting to be determined.

Subsequently paragraph (2) Article 41 of the DPR Standing Orders stipulates that in carrying out these tasks, the Legislation Committee can, among others:

- hold coordination and consultation with the government or other parties which are deemed necessary regarding the scope of their duties;
- provide recommendations to the Consultative Body and related commissions regarding the preparation of the program and the priority of the deliberation of the Bill for one period of DPR membership in each fiscal year;
- provide recommendations to the Consultative Body and / or commissions that are related based on the results of monitoring the material of the Law.

Based on the provisions of the DPR Standing Orders above, it is clear that Baleg has a strategic role in the preparation of the National Legislation Program. In addition to having an important role in the preparation of priority sequences, Baleg also has a role to realize the list of bills into law, because Baleg also has the authority to draft and submit bills and also has the authority to discuss together with the government if assigned by the DPR through the Consultative Body. Furthermore, one of the new things from Law No. 10 of 2004 is the role of the DPR in the process of preparing the National Legislation Program, a process usually carried out in the executive, this time combined with the legislature and even managed by the legislature. In its journey, it turns out that the National Legislation Program as an institution that collects and prepares priorities for the formulation of laws and regulations, has not clearly determined the criteria of priority scale for a bill submitted in the planning list. In general, Law No. 25 of 2000 only mentions a list of the proposed bills, both from the DPR (through the Legislative Assembly) and from the government (through the Department / LPND). Because there are no clear provisions regarding the determination of priorities why a bill is proposed, what happens in the field is the occurrence of overtaking from each of the interested parties, both within the DPR and in the government to submit a bill. There was an agreement that the order of priority determined for the 2004 Repeta was a bill mandated by the 1945 Constitution, a bill mandated by the MPR TAP, and a bill stipulated by the remaining Propenas.

Furthermore, for the submission of each department's program, there needs to be a clear mechanism. This can happen because it is almost certain that the parties proposing the proposal or plan will argue that the proposal really has a high level of urgency so it needs to be prioritized to be realized in a short time. For this reason of urgency, often the "owner" of the plan does not hesitate to take every effort to realize the program immediately, without considering that other parties have the same interests. Attitudes are often called "sectoral selfishness"ption and exchange of information about policies in the preparation of laws and regulations. this is what often becomes a "disease" in the legislative process in our country. Each initiator competes to submit their respective legislative plans, with the target of establishing legislation. Because of the large number of legislative plans proposed, while the institutions that have the authority to solve them are very limited in their capabilities, as a result there arises then a "bottle-neck" condition that further complicates the situation.
The number of legislative plans proposed from year to year is accumulating because they have to queue up to wait for realization. Because of this situation, the pattern of "carry over" the year legislation plan from the previous to the following year is common, given the many backlogs of legislative plans that cannot be handled and resolved. Then the problem faced is, how can the overall proposed legislative plan

be realized in an orderly and orderly manner in accordance with the level of urgency. Therefore, a mechanism is needed to facilitate the realization of the proposed legislative plans, so that they can actually be realized accordingly with priority scale. Since the inception of the Prolegnas instrument, it can be said that this instrument is only related to legislative plans or proposals for the formation of laws and regulations (both laws and government regulations) submitted by the government (executive) through Non-Government Departments and Institutions -department (LPND). This is in accordance with the Indonesian state administration at that time, where the power to form legislation in accordance with the provisions of Article 5 paragraph (1) and Article 20 of the 1945 Constitution is very "executive heavy", so that during that period more than ninety percent of the regulations legislation is formed on the initiative of the executive. Significant changes occurred from the period of 1999 following the amendment to the 1945 Constitution, specifically to the provisions of Article 5 paragraph (1) and Article 20. The new paradigm in the formulation of laws and regulations brings the strengthening of the functions of the legislature (House of Representatives) in the legislative -invitation. This change in paradigm influences the role of the National Legislation Program. If at the previous time the National Legislation Program was the only mechanism, after the amendment to the 1945 Constitution, the National Legislation Program was one of the mechanisms of the legislative program because there was also a mechanism for legislation programs managed by the House Legislation Body. There are even legislative programs managed by the community (professional organizations and non-governmental organizations).

Other influences that are important enough for the National Legislation Instrument are from the effectiveness of regional autonomy. The reduced authority of the Central Government has also led to a reduction in proposed legislative plans submitted by Departments / LPND, because now the legislative plan must be considered more carefully and carefully, not as free as past practices. If previously the regions could only be said to be implementing the central regulations, then the region has the right to question the substance of regulations issued by the center. Friction between central and regional interests in relation to laws and regulations is unlikely to arise if the central agency is not careful in sorting out areas of authority. Of course the problem will be very complicated if the friction arises after the formation of a law. Therefore, it would be better if in the drafting process the initiating parties or institutions first seek communication with the regions so that regional aspirations can be accommodated in national regulations. DPD presence makes the political system in Indonesia is complete. In the Indonesian political system there are two forms of representation. Representation of the people through political parties (political parties) which transformed into DPR and Regional Representatives Council. However, there is also geopolitical or territorial representation that manifests in the DPD. In this understanding the DPD has a balanced institutional position with the DPR. But if we look further, with stronger legitimacy because they are directly elected by the people, the 1945 Constitution and the Structure and Status Law provide minimal authority to the DPD. In terms of function, duty and authority, as revealed in Article 22D of the 1945 Constitution, it appears that the DPD is only "subordinate" to the DPR. There it is stipulated that the DPD "can submit" to the DPR and "discuss" the bill relating to regional autonomy, central and regional relations, formation and expansion and regional merger, management of natural resources and other economic resources, as well as those related to central financial balance and the area. In addition, the DPD is also given a role in the selection of members of the Supreme Audit Agency, its role only gives consideration to the DPR. The lack of functions, duties and authority of the DPD, was stated by former Chairman of the Constitutional Court Jimly Asshiddiqie, that in the relationship between the DPR and DPD, the position of the DPD was very weak, because its function only gave consideration to the DPR. So, in short, still the functions, duties and authority of the DPD are lower than the DPR. The authority of the DPD which is quite weak when compared to the DPR will create its own difficulties for the DPD to carry out its functions in maintaining productive relations between the center and the regions. The weakness of this authority will also make the strength of the legitimacy of the DPD members stronger than those of DPR members will not encourage a balance in Indonesia's representative institutions. The small number of functions, duties, and authorities of the DPD has a consequence on the relationship between the DPR and DPD which are increasingly unharmonious. After the DPR was accused of never involving the DPD in the preparation of the National Legislation Program, the appointment of members of the Supreme Audit Agency (BPK), and in the amendment of Law No. 22 of 1999 concerning Regional Government. The DPD again felt dwarfed by its position which was aligned with the parliamentary faction, commission and equipment in the preparation of the Prolegnas. The feeling of being dwarfed actually arises from the realization that in fact the DPR and DPD are two equal state institutions, even if seen from the election process, the DPD should be given more authority because it was directly elected by the people in their respective regions. However, the fact that the DPD is only given limited authority, this has resulted in reactions like this at present. The DPD was not involved in the National Legislation Program discussion, according to the Chairman of the House of Representatives of the DPR, for reasons of the DPR's Article 42 paragraph (1) letter a number 1 The DPR Standing Orders stated that "the task of the Legislative Body is to inventory input from members of the Commission, DPD, and the community to be determined as decision of the Legislation Body.

Furthermore, the position of the DPD in the field of legislation, as contained in Article 40 of the Susduk Law states that the DPD is a regional representative body that is domiciled as a state institution. This means that the DPR and DPD are state institutions that are equal in position. Both of these institutions can be distinguished from their functions. Article 25 of the Structure and Status Law states that the DPR has legislative, budgetary and supervisory functions. Whereas in Article 41 of the Law on Structure and Structure. The DPD has the function of (a) submission of proposals, participating in discussions and providing considerations relating to certain areas of legislation; (b) supervision of the implementation of certain laws. However, what needs to be considered in the future is that in order to strengthen the legislative function of mutual control and balance it needs to be designed in the revision of the Structure and Status Law a place proportional to the reality of the existing constitution against the DPD if strengthening through the Amendment experiences political failure in the MPR. In its legislative function when there is material the bill fails to be agreed with the President and DPR, then one or both of them can request consideration of the confirmation (statement of confirmation) of the region on the material, so

that it can become a strict patron of the regional wishes or the middle way of the legislative process. In fact, the region can request a delay, for the bill that wants to be approved, because the region will give a reaffirmation attitude, within a certain period of time the suspension of the agreement will be carried out while waiting for the regional confirmation of the bill's material. In Indonesia, oil and gas energy is still the mainstay of the Indonesian economy both as a foreign exchange producer and a supplier of domestic energy needs, so that oil and gas management for state revenue and community welfare are the main things and form the basis for the formulation of oil and gas management policies. The policy of oil and gas management must also be able to encourage the progress and development of the oil and gas industry and other industries.
Because Indonesia still has oil and gas potential that is relatively large. Oil and gas management policies must also be able to encourage increased investment and oil and gas production every year. Existing regulations tend to be one of the obstacles because the regulation of the oil and gas industry is not comprehensive, tends to be very general, and has not provided clear legal certainty, giving rise to different and wrong interpretations. It should and it is time for the government to provide legal clarity and certainty in every formulation of policies / regulations in the industrial sector, including the oil and gas industry, both upstream oil and gas and oil and gas downstream industries.

The results of a survey from Global Petroleum 2010, Fraser Institute Canada stated that the Climate of Oil and Gas Investment in Indonesia is one of the worst in the world, worse than PNG, Thailand, Vietnam, Cambodia, Philippines, Brunei, Malaysia, China, India, Pakistan, Argentina, Brazil, and so on. This happened one of them because the existing Oil and Gas Law is not attractive to investors (Global Petroleum Survey, 2011). Another problem related to oil and gas is the existence of cost recovery inefficiencies that occur because so far there has never been an audit of the price of fuel oil (BBM) and basic costs of crude oil production, both against the Indonesian national oil company (Pertamina) and foreign corporations such as Exxon Mobile, Chevron , Shell, British Petroleum, and others. Until now what was known was only the domestic fuel price comparison with world oil prices, especially Singapore. In addition, the closure in the determination and breakdown of cost recovery so far has been suggested to provide opportunities for collusion and corruption practices as confirmed in the BPK audit findings in 2013 in which cost recovery costs were found to be in the amount of USD 221.5 million or Rp. 2.25 trillion in the period 2010-2012.44 Implementation of transparency is the key to increasing accountability in calculating cost recovery paid to the KKS contractor. A number of regions such as Aceh and Palembang, which have abundant energy resources, need more attention in oil and gas management for these areas, while Cilacap is the largest area for the storage, petroleum processing and fuel oil distribution sectors. Local Governments and other elements must strive to increase energy production and raw materials to produce final energy, therefore investment by the government and business actors is needed to develop energy resources both upstream and downstream (Thertina, 2015). Based on various problems that occur in these areas related to oil and gas management in Indonesia, it is necessary to take steps to improve the national oil system by overhauling its policy base, namely Law Number 22 Year 2001 concerning Oil and Natural Gas.

Oil and Gas Management: The government must emphasize the role of all parties in the oil and gas governance system such as regulatory functions (monitoring and supervision), as well as the role of state-owned companies, or bodies appointed for regulation (managing exploration, production, relations with contractors, tax collection, law enforcement and implementation contract). The Government's firmness must be stated in the form of: 1) regulation (licensing, contract signing, law enforcement, and contract implementation); 2) legislation and regulations must explicitly define and explain the scope and limits of authority of each agency, both government and state oil companies; 3) The role of institutions that supervise standards of costs incurred by clear private contractors and transparency of oil and gas lifting (petroleum sales and distribution of allotments) due to potential state losses, where claims of excessive contractor fees, contractor sales are too large.

Role of Local Government and Regionally Owned Enterprises (BUMD): The role of local governments in the oil and gas sector still refers to 10 (ten) regional authorities based on the Minister of Energy and Mineral Resources Decree number 1454.K / 30 / MEM / 2000. This role is very limited so that many things cannot be handled and carried out by the Regional Government. There are many cases of illegal mining, illegal drilling and illegal taping that cannot be handled optimally, given the absence of rules governing the authority between agencies. The limitation of the role of the Regional Government in the Oil and Gas sector was lost with the enactment of Law Number 23 of 2014 concerning Regional Government. In Article 14 paragraph (3) of the Regional Government Law, it is stated that the Government Affairs in the field of energy and mineral resources as referred to in paragraph (1) relating to the management of oil and natural gas are the authority of the Central Government. In addition to the importance of regulating the role of the Regional Government, another thing that needs to be regulated is the supply of working areas to be able to revive BUMDs and increase the Original Regional Revenues where there is a need to prioritize the offering of working areas that are not extended to BUMN or BUMD.

Profit Sharing Funds: In practice, the implementation of the policy of sharing the revenue sharing of the oil and gas sector between the central and regional governments is carried out based on Law No.33 of 2004 concerning the central and regional financial balances and PP No.55 of 2015. Especially for 2015, the basis for the distribution of revenue-sharing funds is set forth in Perpres Number 162 of 2014 which was amended by Presidential Regulation No.36 of 2015. The distribution mechanism of daitur with PMK, for 2015 is regulated by PMK Number 241 of 2014. With the following portion of the share of 100% Oil Production is divided 85% for the Government and 15% for Contractors. Of the 85% of the Government's share divided by 85% for the Central Government and 15% for the Regional Government. Out of 15% the share of the local government is divided into 3% for the provincial government and 12% for the regency / city government, which divides 6% for producing regencies / cities and 6% for other districts in the province divided equally. As for the results of natural gas production, from 100% of Production Results divided by 70% for the Government and 30% for Contractors. Of the 70% of the Government's share divided by 70% for the Central Government and 30% for the Regional Government. Out of 30% the share of the local

government is divided into 6% for the provincial government and 24% for the regency / municipal government, the distribution of which is 12% for producing regencies / cities and 12% for other districts in the province is divided equally.
The concept of revenue sharing in the upstream oil and gas sector raises the desire for oil and gas processing areas to get the same treatment as oil and gas producing regions. Oil and gas producing regions get a greater percentage of distribution. The consideration of oil and gas processing areas must get a presentation of oil and gas revenue sharing greater than non-oil and gas processing areas because the impact of oil and gas processing processes, especially negative impacts such as fires on refinery tanks and environmental pollution will be felt greater than non-oil and gas processing areas. The consequence is that the percentage of oil and gas revenue sharing funds for the oil and gas processing area is greater, which is also given greater responsibility to the oil and gas processing area compared to non-processing regions. This is because the oil and gas processing area has oil refineries which are national vital objects so that they need more supervision that must be carried out by the oil and gas processing area government. Based on the description above, the following propositions can be formulated:

Minor Proposition (1): The political process in policy formulation occurs since the stages of planning, drafting, and discussing and involves many actors from the executive, legislative and judiciary, which has an impact on the slowness of the policy formulation process, as a result of different views and different objectives of each actor against the substance of the policy to be formulated.

Conclusions and Recommendation

Conclusion

Based on the results of the analysis and discussion, some conclusions can be drawn as follows:

The political process of drafting the Oil and Gas Law takes place in stages: planning, drafting and discussing. Politically the planning of the Oil and Gas Law comes from several sources, namely (1) the Bill from the President; (2) RUU from DPR; and (3) the bill from the DPD. The political process in the planning process, drafting and discussing the Oil and Gas Law occurs because this Act originates from the executive initiative and enters into the National Legislation Program, which in its development many interests are included in the drafting process. The Oil and Gas Law, which has historically been planned and compiled based on executive initiatives which later entered the Prolegnas, has not been resolved until now, because the priority of the discussion is based on the needs of the law which at that time is urgent, especially if it concerns certain political interests. Therefore the National Legislation Program always fails to meet its targets, when compared between the plans made in the National Legislation Program and the realization of each year. A long political process in the process of formulating public policy in the DPR, starting from the process of inventorying input from factions, commissions, and communities to be determined as a decision of the Legislative Body, then the decision of the Legislation Body is a material consultation with the Government, then the results of consultations with the Government are reported to the Plenary Meeting to set.

Suggestion

Based on the identification of several inhibiting factors, the following suggestions can be submitted:

to improve the legislative performance of council members in the process of drafting public policy, an information system is needed which regulates the scheduling of meetings in the DPR, so that there is no overlap of schedules, as a result of multiple positions;

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