

Kepastian hukum pengalihan partisipasi interes dan perubahan saham kontraktor kontrak kerja sama pada kegiatan usaha hulu minyak dan gas bumi = Legal certainty in participating interest transfer and change of contractor cooperation contract shares under upstream oil and gas industry

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Abstrak

Pemerintah telah menerbitkan Permen ESDM No. 48 Tahun 2017 Tentang Pengawasan Pengusahaan Pada Kegiatan Usaha di Sektor Energi dan Sumber Daya Mineral, yang mengatur mengenai proses persetujuan pengalihan Partisipasi Interes dan perubahan saham terhadap Kontraktor Kontrak Kerja Sama pengelolaan hulu minyak dan gas bumi di Indonesia, dimana ketentuan peralihan Permen ESDM No. 48 Tahun 2017 menyatakan bahwa permohonan pengalihan Partisipasi Interes / perubahan saham Kontraktor yang telah diajukan sebelum berlakunya Permen ini wajib diproses sesuai dengan ketentuan dalam Permen ini. Hal tersebut menunjukkan bahwa Permen ini selain berlaku untuk permohonan Pengalihan Partisipasi Interes / perubahan saham untuk Kontrak Kerja Sama yang akan disepakati kedepan, juga berlaku untuk permohonan Pengalihan Partisipasi Interes / perubahan saham kebelakang yang Kontrak Kerja Samanya telah disepakati bersama. Oleh karenanya, mengakibatkan pengesampingan Kontrak Kerja Sama sehingga terjadinya ketidakpastian hukum terhadap pelaksanaan Kontrak Kerja Sama yang sudah disepakati sebelum berlakunya Permen ESDM No. 48 Tahun 2017.

.....The government has been issued Regulation of the Ministry of Energy and Mineral Resources Number 48 of 2017 on Business Supervision within the Energy and Mineral Resources Sector, which regulates the approval process on the transfer of Participating Interest and changes to shares towards the Contractor to a Cooperation Contract of the management of upstream oil-and-gas in Indonesia, where in the transitional provisions of Regulation of the Ministry of Energy and Mineral Resources Number 48 of 2017 stated that any application for transfer of Participating Interest or changes in the Contractor's shares which has been submitted prior to the enforcement of this Ministerial Regulation shall be processed in accordance with the provisions under this Ministerial Regulation. This indicates that this Ministerial Regulation is not only applied to the application for transfer of Participating Interest or changes to shares for the Cooperation Contract to be agreed to in the future, but also applies to the application for transfer of Participating Interest or changes to shares which the Cooperation Contract has been mutually agreed upon previously. Therefore, it caused waiver of the Cooperation Contract, so that legal uncertainty arises regarding the implementation of the Cooperation Contract which has been agreed upon prior to the enforcement of the Regulation of the Ministry of Energy and Mineral Resources Number 48 of 2017.