

PERMIT SIMPLIFICATION FOR UPSTREAM OIL AND GAS OPERATION IN INDONESIA: THE DEVELOPMENT ADMINISTRATION AND GOOD GOVERNANCE PERSPECTIVES

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ABSTRACT

This article discusses how the permit simplification for upstream oil and gas operation in Indonesia is conducted. In doing so, the authors utilize two perspectives, namely development administration and good governance. This research is inspired by a condition where there are many regulations apply and required to obtain permits for upstream oil and gas operation in Indonesia. The current problem nowadays are related to the type of the permits, the regulations and procedures to follow, as well as permit issuers to deal with are too many submissions. This have caused handicaps for the industry to grow competitively. Meanwhile, Indonesia still has a high dependency on Oil and Gas Industry for State Income reason and Energy Resilience. Even though the reformation has been started since 1998 however the change of old bureaucratic system and mentality of the bureaucrats into the new paradigm of good governance is still very less and tend to be progressing very slowly. Therefore, this qualitative research is interested in viewing the implementation of the ongoing simplification. This research is qualitative in nature and utilizes secondary data related to the permitting system of the upstream oil and gas activities. This research concludes that the current system is not in line with the principles of development administration and good governance. Second, the findings conclude that the simplification is urgently needed for maintaining State Finance, Energy Resilience, and Multiplier Effect to the Economic Growth.

KEYWORDS permit simplification; upstream oil and gas operation; development administration; good governance; administrative law



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How to cite: Setyadi, D. S., Rowa, H. & Utomo, A. B. (2023). Permit Simplification for Upstream Oil and Gas Operation in Indonesia: The Development Administration and Good Governance Perspectives. *Journal Eduvest*. 3 (4): 793-476
E-ISSN: 2775-3727
Published by: <https://greenpublisher.id/>

INTRODUCTION

According to Article 41 of Law No.22/2001 regarding Oil and Gas (OG), any upstream oil and gas activity in Indonesia has to comply with all mechanisms of control and supervision by the authorized Government institutions as stipulated in the Laws and Regulations.

Setyadi noted that this stipulation is at least regulating the production sharing contractor to make “legal engagements” with various administrative officials or institutions whichever by the laws and regulations having obligation and authorities related to any activity of Upstream OG sector (Setyadi, 2017).

Many institutions, laws, and regulations are concerned with such upstream oil and gas operations. For instance, when such upstream OG operation be conducted in land area, it will need several documents such as: (1) Land Use / Master Plan Confirmation (*kesesuaian tata ruang*); (2) Location Determination (*penetapan lokasi*); (3) Environment Permit and Environment Assessment Approval (*izin lingkungan dan amdal / UKL-UPL*); (4) Permit to Use Public Road for Special Purpose (*izin melintas jalan*); (5) Certificate of Design and Installation Approval (*persetujuan layak operasi*); (6) Water Use Permit, either Well Water and/or Surface Water (*izin penggunaan air permukaan dan/atau air bawah tanah*); (7) Crossing Permit whether for River Crossing, Road Crossing, and/or Railways Crossing (*izin melintas sungai, jalan dan atau rel kereta api*) as well as many other permits, depending on the complexity of the OG activities.

In case such OG activity is conducted in Forestry Area, the differencing mechanism applies. Land Acquisition in the Forestry Area is not allowed. In the forestry area, the scheme applied is the Lend / Borrow Use (*Persetujuan Pinjam Pakai Kawasan Hutan*). The other additional basic permits: Environment Approval, Certificate of Design, and Installation.

Offshore, there is the other scheme namely Sea Location Determination (*penetapan lokasi*). As a consequence, other permits related to sea operation shall apply, such as Permit to Use Foreign Vessel (*Izin Penggunaan Kapal Asing*), Dumping Permit (*Izin Pembuangan Limbah*), Special Terminal Harbor (*Izin Pelabuhan / Terminal Khusus*) and others.

In relation with permit or recommendation that is issued by Local Government, Monika Suhayati said “Such a permit issued by the government is intended to create safe and convenience for the public so that any activities are conducted as permitted accordingly. However, on the other side, in many cases such permit has also been utilized to generate Local Government Income, by a reason that income is important to support local autonomy” (Suhayati, 2017).

In addition to Monika statement Arifuddin mentioned “Provision of Permit, is a starting process of control by law which will be effective only if it will be followed up by such proportional overseeing by the Government as the Law Enforcer to ensure the Permit Holder carry on the activity according to the permit and consistently” (Arifuddin, 2017).

The problem is, all required permits have to be obtained one by one through various Government Ministries/ Institutions. This mechanism has been

significantly prolonging the process of exploration and exploitation of Oil and Gas so far.

Based on identification done by the authors, in such most complicated Upstream OG activity, it may relate to 15 – 16 Ministries and Institutions, including Local Government Institutions as the issuer even more, so that the efforts and time to obtain permits become very hard and very long. Even sometimes they cannot be predicted how long to complete.

In case of only one of those permits has not been obtained yet, then the whole Upstream OG activity cannot be conducted, because it is deemed as in compliance with the regulation.

Muhammad Rezky noticed “the complexity of Government bureaucracy and inefficiency have been becoming the big concern. For instance, the nature of Permit in Indonesia is mostly partial, sequential and un-integrated. Many of permit do not utilize information technology (online) system. Time frame to obtain as well as cost of permit are not defined. The bureaucracy paradigm is not simple (Ardiyan & Firdaus, 2018).

The problems of permit complexity have been discussed in many official meetings within and inter-government institutions. It is also discussed in some international and national forums on the strategy to ease business and enhance investment in Indonesia, in which commonly known that permitting system is the handicap / difficult factor to do business in Indonesia. Therefore, such a change in the existing Permit System is radically needed.

There have been many policies issued by the Government of Indonesia in regards to business permit. There are two recent important policies that have been issued by the President. The first one is the President Regulation No. 91 / 2017 regarding Acceleration of Business Execution, and the second one is the President Regulation No 24/ 2018 regarding Business Permit Service Integrated by Electronic System. However, the issued regulations do not have any significant impact on the simplification and ease of obtaining permits required for the Upstream OG activity.

Paramita Nur Kurniawati has a view “this is important to be done because the acceleration of the development has been being burdened by various ineffective and inefficient regulation, even there many redundant regulations. Regulations reformation processes in Ministries and Institutions will be conducted under monitoring by National Planning Board (Bappenas) and Presidential Staff Office (KSP)” (Kurniati & Roesida, 2018).

However, Mochamad Nurhestitunggal criticize “there are some reformation program progressing and achieving the target, however the change is relatively small and incremental. The implementation of reformation so far has not made any significant change on the dominant model of Old Public Administration” (Nurhestitunggal & Muhlisin, 2020).

In the few years, the oil and gas price are declining significantly. The decline has made it worse to the investment on Upstream OG so that the business is no longer as attractive as before. On the other hand, the natural decline of the existing OG Wells is happening and continuing. Without such extra efforts to speed up Upstream OG activities in finding some new reserve and producing the proven reserve, Indonesia will be very hard to maintain production for the needs of OG

energy supply to the domestic demand, as result, Indonesia has to fill the gap of the demand by importing OG from abroad.

The following diagram is showing the trend of oil production vs consumption in Indonesia. This diagram is showing a clear message that Indonesia has to do something different, instead of something as business as usual.

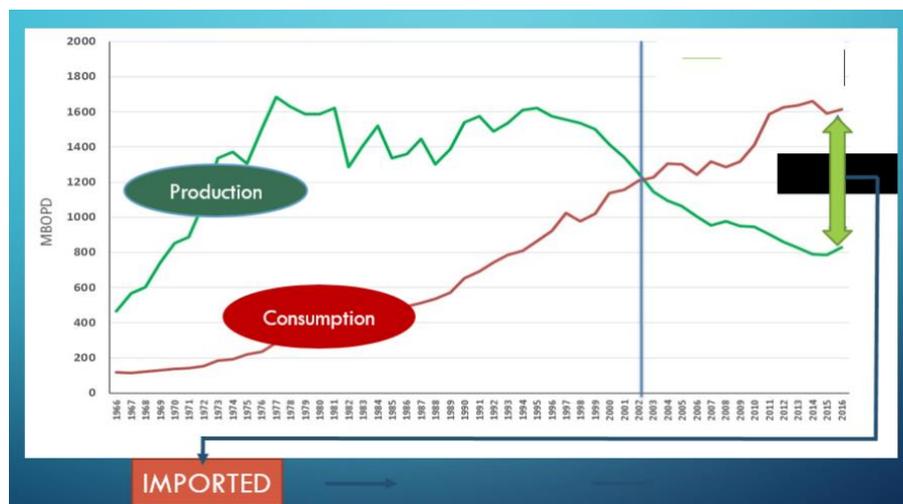


Figure 1. the trend of oil production vs consumption in Indonesia

The matter that may help the country to improve the Upstream OG activity performance is by improving the permitting system so that the Upstream OG activities plan can be executed more rapidly and aggressively. The permit system should be made into some simpler process, purposive, measurable, accountable, effective, and efficient.

The permit simplification is a phenomenon of the Development Administration and Good Governance so that the authors will be focusing on those two approaches. Moreover, this study aims to discuss how the permit simplification for upstream oil and gas operation in Indonesia is conducted.

RESEARCH METHOD

This methodology of this research is classified as qualitative research. According to Bogdan and Bilken, there are several characteristics of a qualitative research as follows. First, it has a natural setting, meaning that a qualitative research study things as the way they are. Second, it is descriptive, in the sense that it gives us a thick narrative about what is actually going on from a phenomenon which we choose as a case. Third, it is concerning more in the process rather than outcomes, which signifies that a qualitative study will look into nuances and dynamics occurring within its process, as opposed to quantitative researches which look at the measurable outcomes. Fourth, it tends to analyze data inductively rather than deductively, meaning that a qualitative research seek to build patterns from seeing the phenomenon rather than starting from a problem-solving theory to prove a hypothesis. Lastly, a qualitative research sees “meaning” as an essential feature,

which means that the researcher also needs to interpret its findings which will later be used to understand the phenomenon being studied (Sugiyono, 2010).

The method applied in this research is a literature research method, by using secondary data found during the research to analyze the Permitting System of the Upstream OG activities. This method means searching, collecting and qualifying data and information from various “expertise products in written form” regarding facts and their views on the permit, development administration and good governance issues related to the matter. These secondary data are collected from books, articles, journals, statements in media, and other written and published sources.

According to Terry Hutchinson in “Researching and Writing in Law” this research might be called as a “Fundamental Research” and as a non-doctrinal methodology (Research designed to secure deeper understanding of law as a social phenomenon (Hutchinson, 2002). Especially as a phenomenon of the Governance Study. However, due to the time limitation, there will be no direct interview with stakeholders is engaged in this research. The literature and secondary data prevail as the main sources of this research.

Existing Condition of the Indonesian Upstream OG Activity

The Upstream OG Activity in Indonesia is classified as a vital and strategic activity. This phrase of “vital and strategic” can be found in the consideration of the Law No. 22 / 2001 regarding Oil and Gas. AS the vital and strategic activity the Upstream OG activity cannot be executed in the absence of the Government intervention.

This principle is coming from the mandatory order by the Indonesia Constitution 1945. Article 33 (3) of the mentioned Constitution provides that:” the earth and water and the natural resources contained within them are to be controlled by the State and used for the greatest possible prosperity of the people”. This article means that the Government is being mandated to manage and use the natural resources for the prosperity of the people, as proof of the most crucial function of a state government.

This mandate shall obligate the government to prepare, form, execute, control, evaluate, and reform the “tools and methods” on how the upstream OG to be managed effectively and efficiently. The characteristic of the Upstream OG activity in Indonesia is very specific as figured out in the following diagram;



Figure 2. Oil price and oil and gas sector contribution to the Indonesian's state income

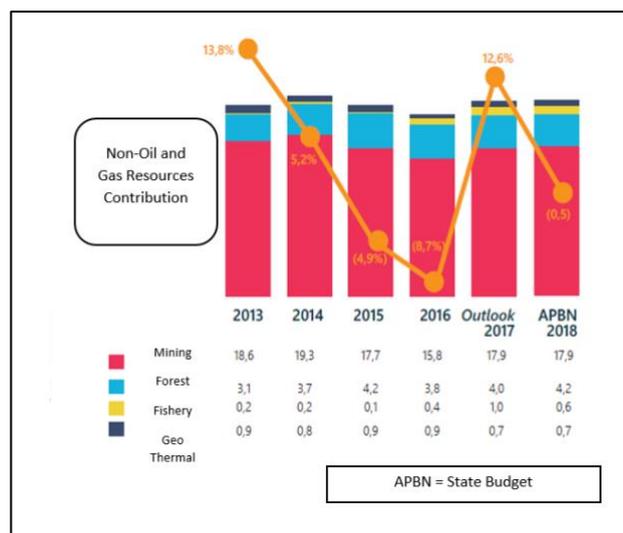


Figure 3. Non-oil and gas sector contribution to Indonesia's state income

Currently, there are three existing conditions regarding the Upstream OG activity in Indonesia. First, Upstream OG activity is expected to provide a significant contribution to State Income. Second, in comparison to the income from other natural resources, Upstream OG activity still contributes more revenue to the state budget. Lastly, the Upstream OG activity is expected to maintain the energy resilience of the country

Regarding energy resilience, Benny Lubiantara said (Lubiantara, 2017):

According to the Energy Assembly in the Publication of Indonesia Energy Outlook 2014, the Indonesia energy mix resilience to fulfill the domestic demand is still highly dependent on Oil and Gas, it is about 66% with the breakdown 48% of Oil and 18% of Gas. The oil has been contributing almost half of the domestic consumption, ironically the domestic production is

continuously and naturally declining because of lack of exploration discovery of new reserve

These facts are proofing that Upstream OG is still vital and strategic for Indonesia in terms of energy supply as well as state income. However, the applicable permitting system is not sufficiently supporting the policy, even in many cases become the handicaps.

Framework of Thinking

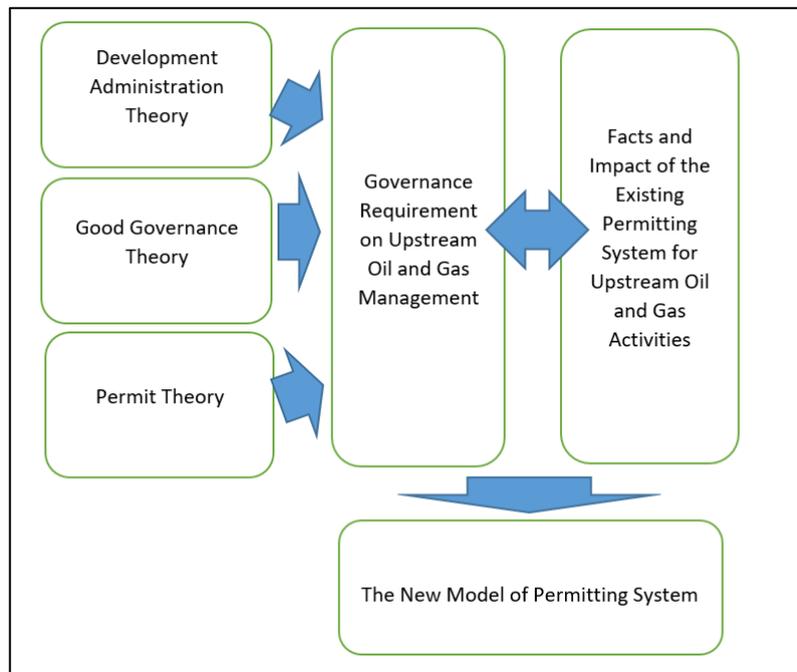


Figure 4. Framework of thinking

RESULT AND DISCUSSION

Analysis

There are “Three Legal Products” which have to be referred to identify the goals and how to achieve them which stipulate the Indonesian Government in executing the mandated obligations by the Constitution. There are:

- 1) Law No 22 / 2001 regarding Oil and Gas Law; This law addressing that Oil and Gas resources and assets are owned by the Government instead of the Partner.
- 2) Constitution Court Verdict No. 02 / PUU – I/2003 regarding the Judicial Review of Law No. 22 / 2001; This Verdict addressing that Government cannot transfer any public authority to the partner.
- 3) Constitution Court Verdict No. 36/ PUU – X/2012 regarding the Judicial Review of the Law No. 22 / 2001; This Verdict addressing the mining right of Oil and Gas Resources is part of sovereignty that can not be transferred to the partner. The Government shall play a strong position to control the partner. The government role will be represented by a State Owned Company.

All the above products should be interpreted systematically. Those products are jointly providing very clear messages that they have a very strong position in the management of Upstream OG. The Government shall not transfer any (public) authority to the private partner of the Production Sharing Contract (PSC) on Upstream OG activity. The partner shall only be in position as the “Contractor” of such a production sharing scheme. The Partner shall only focus on Finance, Technical and Operation Management issues and provisions, instead of the whole Upstream OG activity management nor any public obligations.

The matter is currently (in fact) the Upstream OG Contractors are obligated to obtain permits required for Upstream OG activities. Even the worse thing: the required permits are too many (too many types of permits, too many regulations to follow, to many institutions to deal with). The following is the example of the government institutions that deal with permits (these only an example, this is not all included). This table will only mention about 10 permits. Actually, one Upstream OG activity requires much more than ten types of permits.

Table 1. Government Institutions that deal with permits

No	Institution	Type of Permit	Legal Reference
1	Ministry of Forestry and Environment	Permits Related to Environment	Environment Law and the Implementing Regulations
2	Ministry of Forestry and Environment	Permits Related to Forestry Area Use	Forestry Law, Conservation of Ecosystem Law and the Implementing Regulations
3	Ministry of Sea and Fishery	Sea Location Determination	Sea Laws and the Implementing Regulations
4	Ministry of Agrarian and Master Plan (National Land Board)	Recommendation on the conformation on the Master Plan	Master Plan Law and Implementing Regulation
5	Ministry of Transportation	Permits Related to the Use of Foreign Vessel.	Marine and Shipping Law and Implementing Regulation
6	Ministry of Transportation	Special Harbor Permit (if any)	Marine Transportation Laws and Regulations
7	Ministry of Transportation	Special Airport Permit (if any)	Air Transportation Laws Regulations
8	Ministry of Finance	Master List / Importing Permits	Custom Law and Regulations
9	Ministry of Manpower	Permit for Expatriate Planning and Placement	Manpower Laws and Regulations
10	Ministry of Public Work	Permit for River Water Use	Water Resources Laws and Regulations

Each of the ten permits above has to obtained separately in series instead of parallel. There are hierarchical procedures for obtaining permits. There is a lack of involvement of the society to control the disciplinary of the bureaucrat in performing public services so that the permitting system and services are beyond any control of the civil society and privates.

The following description is to explain how inefficient and ineffective process of the permit: to entry into permit process, the Permit Applicant (SKK Migas and or the Partner) shall prepare and submit the “same administrative requirement” to all Permit Issuers: Copy of PSC Contract, Tax Registration Number, the Identity of Company (Partner), the Authorized Person Appointment as such subject to the verification by the Permit Issuers / Institutions. This administrative requirement is basically to check the “Legality Status of the Partner / Contractor”. The question will be “what for?” and “why?”. But the issuers will be simply answering “it is stipulated in the regulation”.

This requirement is showing that the Government is inconsistent with their owned principle underlined by those “three legal products” as mentioned above. This administrative requirement demonstrates that the government is not confident about their management over the Upstream OG activity which is factually and legally under the control of the Government through Government Executive Task Force for Upstream Oil and Gas Activity (SKK Migas) as the representative of the Government. If so, why then the various institutions are individually asking and reviewing the administrative requirement? hasn't it been done by the SKK Migas (as representative of the government) which has sovereign right over the Upstream OG activity?

The other basic question raised when the Upstream OG activity is being conducted: why should the approved activity by the government (by concession i.e. Production Sharing Contract) have to deal again with so many government institutions and officials? why don't the government just organize their concerns through only one or two institutions? So that it becomes much more focused and efficient.

Actually, in the modern era, the various concerns across the multi ministry functions can be made into such a checklist of compliance then it is delegated to the leading sector of supervision of the Upstream OG activity (it may be Ministry of Energy and Mineral Resource or SKK Migas). So that any activity of Upstream OG shall trough one door service only. This will be focusing on the improvement of communication across multifunction. Back to the definition said by Edward Weidner as mentioned above (Anggara & Sumantri, 2016):

For the administration of the development, the administrative machinery itself must be improved and developed to enable a well-coordinated and multi-functional approach towards solving the national problem on the development

As well Gisselquist cited the OECD definition on the Good Governance (Gisselquist, 2012):

'the use of political authority and exercise of control in society to the management of its resources for social and economic development,' which 'encompasses the role of public authorities in establishing the environment in which economic operators function and in determining the distribution of benefits as well as the nature of the relationship between the ruler and the ruled' (OECD 1995)

Further, understanding the data as shown by the Ministry of Finance as well as Benny Lubiantara's statement as previously mentioned above, there is no more

reason to excuse or delay that Indonesia must change/simplify the permitting system for Upstream OG activity.

Many works of literature found that bureaucracy always is challenged in any intention of stakeholders to change the governance system. The bureaucracy always takes the position in the most conventional attitude. *“Its work is regarded as carrying out the laws, policies, and instructions handed down by the elected officials or issued by the regime as a whole”* in other words they mostly reluctant to create any breakthrough and or any out of the box thinking (Du Gay, 2005). Therefore, changing the permitting system means also changing the culture of bureaucracy. It shall be addressed in the bureaucracy reformation policy. Since so far the key messages of the Development Administration and Good Governance: “self- machinery” and “economic operator function” (promoted by Weidner and Gisselquist) still looked absurd in the eyes of bureaucrats.

The following diagram is showing how the current permitting requirement and complexity for such Upstream OG is identified. It is started from what is the plan of activity, then to be identified “where” will be the location and “how” will be the methods of execution and finally entering into the “jungle of permits”.

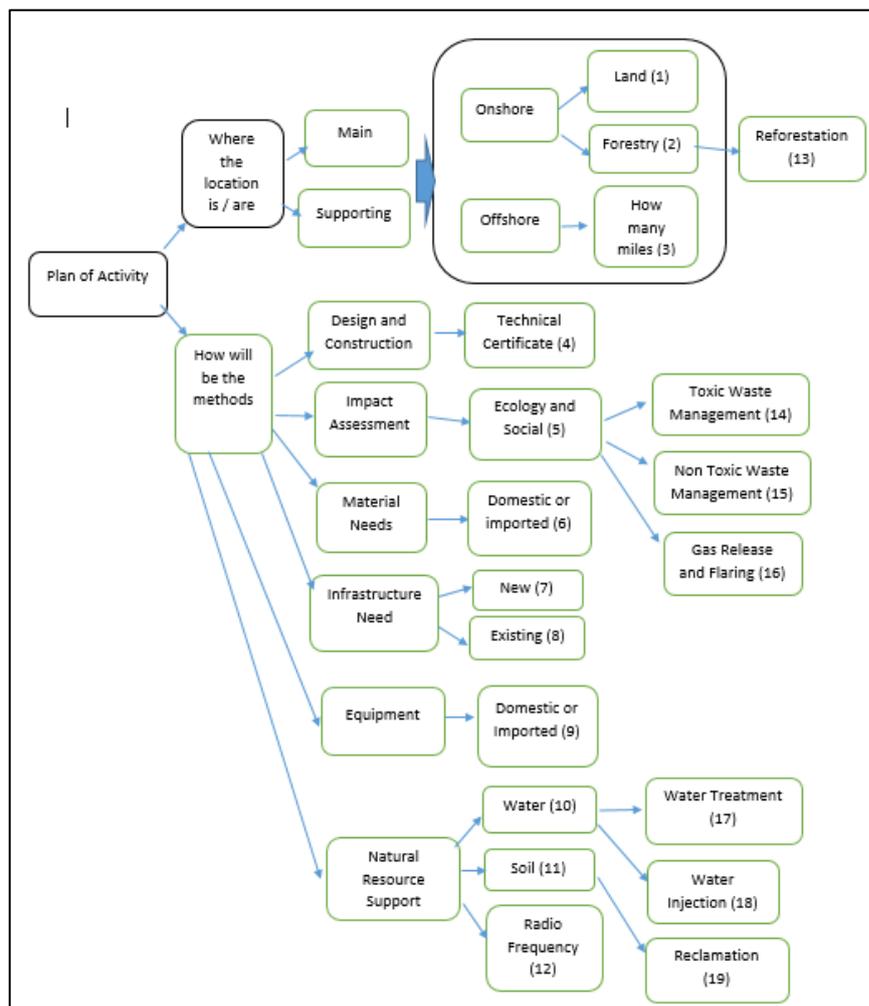


Figure 5. The complexities of the existing permit system

The following table is explaining the above diagram by identifying the Permit Issuers / Government Institutions to deal with to obtain a permit.

Table 2. Permit issuers and their remarks in order to gain a permit

No	Institution	Remarks
(1)	a. Province Government b. Local Government	To obtain Master Plan Confirmation a Location Determination for Land Acquisition. Note: The Execution of Land Acquisition Process will be different process after this requirement obtained
(2)	a. Ministry Forestry and Environment b. Province Government	Governor Recommendation shall be obtained first before Forestry Lend Use Permit is applied. Environment Permit shall also be required before obtaining Forestry Lend Use Permit
(3)	a. Ministry of Sea and Fishery	To obtain Sea Location Determination from the Ministry of Sea and Fishery
(4)	a. Ministry of Energy and Mineral Resource	To obtain Approval on Technical Compliance
(5)	a. Ministry of Forestry and b. Province Government	To obtain Environment Permit. It is depending on the scale and how significant is the impact assessment. The more impact has to be concerned by the higher level of government structure level to approve/decide.
(6)	a. Ministry of Finance (Directorate General of Custom) b. Ministry of Energy and Mineral Resources (Directorate General Oil and Gas / DGOG)	To obtain a Master List of Imported Goods from the Ministry of Finance. Previously to obtain Recommendation from DGOG
(7)	a. Ministry of Transportation	To obtain Permit for New Infrastructure Construction and Operation for the New Transportation Infrastructure
(8)	a. Ministry of Transportation	To obtain Permit of Operation on the Existing Infrastructure
(9)	a. Ministry of Transportation	To obtain Permit of Using Foreign Vessel
(10)	a. Ministry of Public Work b. Ministry of Forestry and Environment c. Local Government	To obtain Permit of Utilizing River Water To obtain Permit of Using Sea Water To obtain Permit of Utilizing Well Water
(11)	a. Local Government	To get support/acknowledgement to conduct cut and filling works during the impact assessment discussion before the issuance of Environment Permit (as mentioned in No.5)
(12)	a. Ministry of Communication and Information	To obtain Radio Frequency Use

No	Institution	Remarks
(13)	a. Ministry of Forestry and Environment	To obtain Determination of Location for Reforestation
(14)	a. Ministry of Forestry and Environment b. Local Government	To obtain a Permit for Toxic Waste Management. Depending on the level
(15)	a. Ministry of Forestry and Environment b. Provincial or Local Government	To obtain a Permit for Waste Management. Depending on the level
(16)	a. Ministry of Energy and Mineral Resources	To obtain Approval for Flaring Gas
(17)	a. Ministry of Forestry and Environment b. Provincial or Local Government	To obtain a Permit for Water Treatment. It is depending on the leveling
(18)	a. Ministry of Forestry and Environment	To obtain Water Injection Permit
(19)	a. Ministry of Forestry and Environment b. Provincial or Local Government	To obtain Reclamation Procedure Approval

Note: Most of the Processes are not using the Online Single Submission

The above table is not a complete list of permits, there are still some permits required for the specific purpose of e.g. Explosive for Seismic, Electricity Power and Installation for Internal Use, etc.

If the government consistent with the Development Administration, Good Governance, and Good Permit Governance therefore, the permits can be clustered into two categories. The first one being “Cluster by the Permit Issuer” and the second one is “Cluster by the Permit Substance”.

Table 3. Clustering based on the permit issuer

Permit Issuer	Coding Number of Permit
Ministry of Forestry and Environment	(2), (5), (10), (13), (14), (15), (17), (18), (19)
Ministry of Energy and Mineral Resources	(4), (16)
Ministry of Transportation	(7), (8), (9)
Ministry of Sea and Fishery	(3)
Ministry of Public Work	(10)
Ministry of Finance	(6)
Provincial and Local Government	(1), (2), (10), (11)

Table 4. Clustering based on the permit substance

Substance	Coding Number of Permit
Location and Master Plan	1, 2, 3
Environment	5, 14, 15, 16, 17, 18, 19
Infrastructure	7, 8
Material and Equipment	4, 6, 9
Natural Resources Use	10, 12, 14, 15, 17, 19

From the first table, the author have clustered the coding number of permit based upon the issuer. The result shows that instead of 19 processes, they can be simplified into 7. The same goes with the second table, from which we can see how the permit codes have been clustered based upon their substances. Instead of 19 processes, this new approach can simplify them into 5 processes only.

This Clustering approach is intended to ease the government conducting simplification. Then the choice will be on the government hand to “machinery-itself” to be a well-coordinated and multi-functional approach towards solving the national problem.

By this clustering, the simplification will reduce the type of permits, erase duplication on the administrative requirement, avoid regulation and policy overlapped, minimize the institutions to deal. As a result, the Government may provide more attention and focus on the strategic issues rather than wasting resources to do some overlaps and similar works that are done by many institutions, individually and separately.

The simplification of permit is a form of transformation from a conventional bureaucracy to the new management of bureaucracy which is more concerned with the outcomes rather than the process. This transformation is an important part of development administration as S.L Das mentioned (Kapur & Khosla, 2019):

The relationship between bureaucratic performance and economic growth and development outcomes has been a subject of interest to the international development community as well as scholars for quite some time. Some forty years ago, it is centered on the role of development administration, an approach to public administration that was meant to differ from a more conventional bureaucratic approach.

The simplification of permits by clustering approach is also an important form of Good Governance as described by S.L Das (Kapur & Khosla, 2019):

Governance as an alternative approach to the public sector, and more specifically public administration, represent and attempt to involve the society more in governing and to reduce the hierarchical elements of the system. The basic diagnosis of the ills of government is that hierarchy has led to wasting the talents of people inside government and alienated the public

Without simplification of permits the government suffering themselves, suffering society as well as the private so that they cannot jointly develop the national economic growth effectively and efficiently by optimizing state income, energy resilience, and enhancing multiplier effects of Upstream OG activities to the socio-economic life of the people.

The simplification of course will require a change in the communication method of the government from a hierarchical model of communication to be

diagonal (cross-communication) because the simplification will be involving various functions and stakeholders within the government organization. The principle of this diagonal communication is:” Respect, Empathy, Audible, Clarity, Humble” which is relevant to be applied (Priansa, 2018).

The simplification shall be driven by the “Good Governance”, and supported by “Ethics, Academic Reasons as well as Legal Aspect / Regulation” thoroughly as figured out by the following diagram.

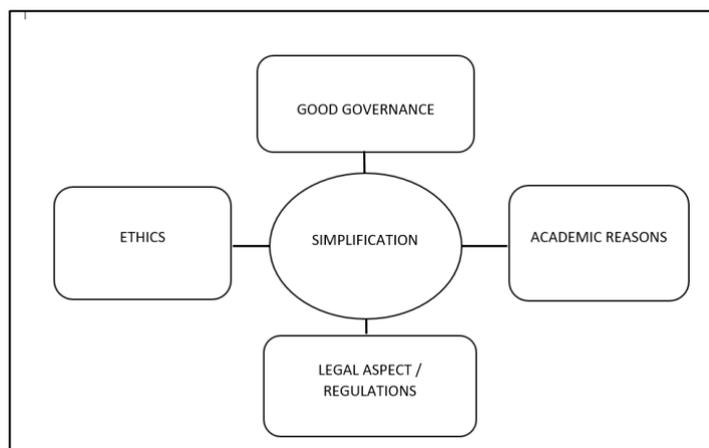


Figure 6. Simplification diagram based upon the other four supporting values

Ethics will be very important in the simplification process because this will remind the government to consider the urgent questions: “is the change good or not?”, rather than only asking ‘is the change logic or not?’ and ‘is the change comply or not?’. To measure the “good” is by the measurement of the “most benefit” for the people as mandated by Article 33 of Constitution 1947.

Good Governance and Ethics shall play more role in public policy formulation and implementation as the ultimate goals of the government-supported by Academic Reasons. Governance is no longer similar to merely implementing regulations as had been happening in the traditional and conventional Government.

CONCLUSION

Based upon the aforementioned discussion, we can come to several points of conclusion. First, it has been apparent that the current Permitting System for Upstream OG Activity is not suitable for the Development Administration and Good Governance in the Democratic Country.

Second, our findings observes that the simplification for Upstream OG Activity is urgently needed for maintaining State Finance, Energy Resilience, and Multiplier Effect to the Economic Growth.

Last but not least, the simplification will end the wasting resources of the government and society's potentials. The simplification will help the government to be more focused on the strategic and substantive works (outcomes-oriented), rather than administration and bureaucratic procedures.

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