

SKEMA *NAIL DOWN* PADA KONTRAK KERJASAMA KEGIATAN USAHA HULU MIGAS DI INDONESIA DALAM PERSPEKTIF HUKUM PAJAK

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INTISARI

Penelitian hukum ini bertujuan untuk mengetahui bagaimana skema *nail down* pada kontrak kerjasama migas ditinjau dalam perspektif hukum pajak dan bagaimana implikasi dari penerapan skema *nail down* pada kontrak kerjasama migas. Penelitian ini didasari bahwa terdapat pengecualian ketentuan perpajakan baru yang berada pada domain hukum publik, diatur melalui kontrak kerjasama yang berada pada domain hukum privat/perdata.

Metode penelitian yang digunakan pada penelitian ini adalah menggunakan metode yuridis normatif. Penelitian ini dilakukan dengan pendekatan perundang-undangan dan konseptual, serta dianalisis secara kualitatif melalui kajian terhadap peraturan perundang-undangan perpajakan, peraturan perundang-undangan kegiatan hulu migas, hasil wawancara, doktrin, dan putusan pengadilan yang relevan.

Berdasarkan hasil penelitian dan pembahasan dalam penulisan hukum ini diperoleh kesimpulan yaitu dengan diatur dan diakuinya skema *nail down* pada kontrak kerjasama migas melalui peraturan perundang-undangan, maka skema *nail down* selaras dengan ketentuan dan prinsip bahwa peraturan mengenai pajak harus diatur melalui undang-undang. Skema *nail down* juga selaras dengan asas kepastian hukum, terutama asas kepastian dalam hukum pajak (*tax certainty*). Meskipun dalam pelaksanaannya tetap ada beberapa permasalahan, terutama terkait sengketa tarif pajak bunga, dividen, dan royalti (PBDR). Kemudian penerapan skema *nail down* berimplikasi pada kewajiban para pihak untuk melaksanakan ketentuan skema *nail down*.

Kata Kunci: Kontrak Kerjasama Migas, *Production sharing contract*, Skema *Nail down*, Pajak Kegiatan Hulu Migas.

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TAX LAW PERSPECTIVE ON THE *NAIL DOWN* SCHEME IN UPSTREAM OIL AND GAS COOPERATION CONTRACTS IN INDONESIA

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ABSTRACT

This legal research aims to examine how the nail down scheme in oil and gas cooperation contracts is viewed from a tax law perspective, as well as to analyze the implications arising from the implementation of the nail down scheme in such contracts. This study is based on the fact that exceptions to new tax provisions, which fall within the domain of public law, are regulated through cooperation contracts that belong to the domain of private/civil law.

The research method employed is a normative juridical approach. This study utilizes statutory and conceptual approaches, and the analysis is conducted qualitatively by reviewing tax legislation, upstream oil and gas regulations, interview, doctrines, and relevant court decisions.

Based on the findings and discussion of this legal research, it can be concluded that the regulation and recognition of the nail down scheme in oil and gas cooperation contracts through legislation renders the nail down scheme consistent with the provision and principle that tax regulations must be established by law. The nail down scheme also aligns with the principle of legal certainty, particularly the principle of certainty in tax law (tax certainty). Nevertheless, its implementation still presents several issues, especially concerning disputes over the tax rates of branch profit tax (BPT). Furthermore, the implementation of the nail down scheme entails an obligation for the parties to comply with its provisions.

Keyword: *Oil and Gas Cooperation Contract, Production Sharing Contract, Nail down Scheme, Upstream Oil and Gas Taxation.*

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