

**THE NEW PUBLIC FINANCE IMPLEMENTATION IN THE PRODUCTION  
SHARING CONTRACT SCHEME FOR EXPLORATION AND EXPLOITATION OF  
OIL AND GAS RESOURCE IN INDONESIA**

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**Abstract**

*Indonesia is a country which have oil and gas reserve as one of the country natural resources. Until now, the government management on oil and gas resources remain plays such important role in both strategic aspect as the state income contributor and the energy resilience. The Production Sharing Contract (PSC) Scheme applies in the management system of exploration and exploitation (Upstream) of oil and gas resources that is mandated by the 1945 Constitution that should be managed for the greatest people prosperity. The PSC Scheme is a type of collaboration or partnership agreement between Government Institution (Representative) with Private Parties (National or Multi-National Corporation) to mutually explore and exploit the resources for the purpose of the Government mission (to provide people prosperity) in one hand, and to produce added value for the private corporation on the other hand. PSC Scheme has been enabling both parties joint and share genera and technical management aspect, asset management aspect, as well as financial / fiscal aspect encompass, therefore this scheme should be considered as part of the New Public Finance in implementation;*

**Key Words:** New Public Finance, Production Sharing Contact, Oil and Gas Resource  
Exploration and Exploitation.

**INTRODUCTION**

Oil and Gas Industry (previously oil industry only) in the Dutch Indies' territory had been commercially started in 1885, way before the 1945 Indonesian Declaration of Independence. There were a lot of the biggest oil companies in the world left their footprints in the area

wherever currently being the territory of Republic of Indonesia. Some of them even remain exist in Indonesia until now.

As a comparison, the oil industry history in Indonesia has grown earlier than any of success stories of the Oil and Gas Business in the Middle East Countries. However, the clearest difference between Indonesia and the Middle East Countries in management of their own natural resources is regarding the outcomes: prosperity of the people and the development of the countries.

The Middle East Countries is much more developed so far, after they exploit their oil resources, while in the Dutch Indies – which was under the Dutch Colonial Government – remains poor and underdeveloped. Therefore, only the day after the declaration of independence, the Constitution of the Republic of Indonesia 1945 (1945 Constitution) was established with a very strong message within the “Preamble” and Article 33, that the goal of the newly independent country is to gain people’s prosperity by managing the natural resources accordingly. This constitution was then determined as the highest source of Laws in the structure of laws and regulations in Indonesia, in which provide a very clear statement on the ownership and usage rights over the natural resources shall be mandated by the People to the Government.

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 Government is being mandated to manage and use the natural resources for the prosperity of the people, as a proof of the most crucial function of a state government.

The mandate shall be deemed as the obligation of the government before the people, therefore the government shall prepare, form, execute, control, evaluate and reform the “tools and methods” (if necessary) of natural resources management properly. In fact, the government has a lot of alternatives to choose such scheme whichever in line with the value provided by the Constitution to exercise the mandate. The act of government to choose the best one or the most suitable “tools and methods” is basically an issue of Public Policy/Governance study rather than a Legal study. Therefore, this research will be focusing on analyzing the Production Sharing Contract in perspective of Public Policy/Governance study and approach.

The Indonesian Government has chosen the Production Sharing Contract Scheme with Oil and Gas Private and Public National and or Multi-National Companies. This choice is an interesting issue since the government chose to deliver their Constitutional obligation (to provide the greatest prosperity of the people) throughout such collaboration with Corporation (non-government and private parties) because in the collaboration/partnership, there must be some:

- a. Joint operation management;
- b. Joint financial management before sharing split;
- c. Joint asset management purchase, use / utilization;

d. Risk Sharing;

These all are the characteristics of the New Public Finance Theory. As mentioned in the title, this research will be conducted upon the implementation of New Public Finance Theory into Indonesia Oil and Gas Exploration and Exploitation Public Policy and Management.

### Legal Reference

In regards to the implementation of Article 33 of the 1945 Constitution, Indonesian government have promulgated several laws since the independence, such as:

1. Law No. 44/Prp/1960 on Oil and Gas Mining
2. Law No. 8 / 1971 on State Owned Mining Company on Oil and Gas
3. Law No. 22 / 2001 on Oil and Gas

However, the Law No. 22 / 2001 on Oil and Gas was judicially reviewed twice by the Indonesian Constitutional Court, i.e.:

1. No 02 / PUU – I / 2003 revoking a phrase regarding “the transfer of authority” from the Government to the Partner who operate the Working Area.
2. No. 36 / PUU – X / 2012 revoking all Articles and stipulation regarding BPMIGAS (the Executive Body of Oil and Gas Upstream)

The main reasons of the applicant to file a review to the Constitutional Court in the past were about some Non-Government Organization (the Plaintiff) that were worried about such potential degradation of “state sovereignty level” over the public ownership of goods (natural resources: Oil and Gas in this case) whenever they entered PSC within stipulations of the original articles of Law No. 22/2001. The Plaintiff argued that some stipulations in the Law No. 22 / 2001 were shrinking the sovereignty of the country.

As result in 2003 and 2012 the Constitutional Court Verdicts revoked some major articles as mentioned above. The Constitutional Court said those revoked articles are against the spirit and values of the Constitution, and therefore they were deemed unconstitutional.

Even though the Verdicts urged the Government to immediately change the Governance of Oil and Gas accordingly, yet the Production Sharing Contract Scheme remain to be kept as it is, in order to maintain the industry since it still needs longer support and investment – mainly from abroad players – until Indonesia have the capability to solely handle the industry without support (especially in the financial aspects).

The Production Sharing Contract Scheme was first introduced at the end of 60’s and until the early 70’s, due to the situation where the “Big Oil and Gas Companies” were leaving Indonesia. Those Companies were discomforted by the local political situation at that time in which the

spirit of nationalization and anti-imperialism and capitalism was strongly voiced so that they (as Capitalist) felt threatened.

In response to the situation, some smaller scale of oil and gas companies were gathered by IbnuSutowo, as he later became the most influential person in the history of Indonesian oil and gas industry. He invited the companies to come and invest in Indonesia. Later, they established a group of companies namely IAPCO (Independent Indonesia America Petroleum Company), and since then the Production Sharing Scheme was introduced and rapidly promoted.

Regardless of the laws and governing schemes applied and changed, since the independence day of Indonesia, the government's political obligations to manage the oil and gas resources cannot be denied, all constitutions and their amendments (except during the period of Constitution of United States of Indonesia 1949) required the government to get involved and control the oil and gas resource and management.

How do the government exercise such obligations? Their roles in the past in oil and gas had been represented by Multi State-Owned Companies: "Permina, Pertamina and Permigan" (in the period of Law No. 44/Prp/1960), then it was changed to the Single National State-Owned Oil Company: "Pertamina" (according to Law No. 8 /1971), and after that it was transferred to a Non-Profit Executive Body: BPMIGAS (according to Law No.22/2001), currently and temporarily by Special Task for Executive on Oil and Gas; SKK Migas (in responding the Constitutional Verdict No.36 / PUU – X/2012) while the country is waiting for the New Oil and Gas Law to "appoint such an existing State Owned Enterprise" or "establish a New Special State Own Enterprise" as the Government Representative to manage the oil and gas resources.

There have been three laws issued and two Constitutional Court Verdict made to stipulate government's obligation to manage oil and gas. In each law or verdict always provide expectation that someday the government (or by State-Owned Company) shall self-manage the oil and gas resources independently without any interventions from foreign actors. This, however, raised some questions: when is it going to happen? Why it should be promised? Is it necessary under the concept of the New Public Finance?

The spirit of independence was caused by the "over-sense" of nationalism and sovereignty, however sometimes the people who are strongly voicing that spirit are not fully aware of the global trend of the governance, which is going to be more collaborative or partnership spirits. They do not know that to manage oil and gas industry by partnership scheme with private is not only a matter of sharing profit, but also risk sharing. The government prefers to do it collaboratively because they do not want to suffer any loss/risk.

### **Objective and Methodology**

The method applied in this research is a literature research method, by using secondary data found during the literature research to analyze the Production Sharing Contract Scheme and

Applicable Laws related to them. This method means searching, collecting and qualifying data and information from various “expertise products in written form” regarding facts and their views on the Production Sharing Contract and any information related to the matter. These secondary data are collected from books, articles, journals, statement in medias and other written and published sources.

According to Terry Hutchinson in “Researching and Writing in Law”,<sup>1</sup> this research might be called as a “Fundamental Research” and as a non-doctrinal methodology (Research designed to secure deeper understanding of law as social phenomenon, including research on the historical, philosophical, linguistic, economic, social or political implication of law”). In this matter it tends to focus on Public Policy/Governance Study.

The objective is to search for the interrelation about the “fitness” of the New Public Finance Theory to the Production Sharing Contract Scheme of the Exploration and Exploitation of Oil and Gas Resources in Indonesia. This research is very interesting because the New Public Finance Theory is becoming more popular in New Public Policy study in recent decades, in which it is deemed very important to formulate the law with futuristic foreseen of a wide and long term perspective of the governance in nowadays, rather than just formulating such an old-fashioned law and policy.

### Theory

It is common in the social phenomenon (Fundamental Research) that grand, middle range and applied theories apply in the analysis. The theories used in this research are:

#### 1. Grand Theory: Collaborative Governance Theory

Ansell and Gash define collaborative governance as follows:<sup>2</sup>

*A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets*

#### 2. Middle Range Theory: Public Private Partnership Theory

Koschatzky defines the Public Private Partnership as:<sup>3</sup>

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<sup>1</sup>Hutchinson, Terry, *Researching and Writing in Law*, Lawbook Co, Pymont NSW, 2002, p.10

<sup>2</sup> Ansell, Chris (Eds.) “Collaborative Governance”, *Journal of Public Administration Research and Theory Advance Access published November 13, 2007*

<sup>3</sup>KoschatzkyA “Theoretical view on public-private partnership in research and innovation in Germany” *Arbeitspapiere, Unternehmen und Region, No. R2/ 2017*

*We define a public-private partnership as a public service and/or a private economic activity, which is jointly financed and operated by the public sector and industry on the basis of a contract which regulates financing and operation (Koschatzky 2013: 21-22)*

### 3. Applied Theory: New Public Finance Theory

Talking about the New Public Finance, Inge Kaul and Pedro Conceicao says:<sup>4</sup>

*Thus public finance today is about more than taxing and spending public revenue. It involves channeling resources to public policy goals, with the government using fiscal, regulatory, and monitoring tools to encourage and complement private activities and private spending on these goals. It also involves being open to private sector competition and sharing responsibility and risks with non-state providers in the interest of enhanced efficiency and effectiveness.*

From the definition provided by Inge Kaul and Conceicao as mentioned, there is an enlargement on the scope of the Public Finance, which is not only limited to the matters of State Finance as previously acknowledged in the classical theory of public management.

Supporting Kaul and Conceicao, then Richard M. Bird and Arindam Das-Gupta deliver a similar concept of the new public finance:<sup>5</sup>

*Public finance is not just about money. Its subject matter includes not only all aspects of public sector finances but also the structure of the public sector and fiscal institutions as well as the broad objectives and rationale for government activity. We focus here on how governments raise resources to finance spending, without regard to what spending is financed. Even so, our scope is still substantial, not least because some analysis of the nature and efficiency of public spending is needed for a proper understanding of financing sources.*

Furthermore, Andrew R. Donaldson mentions:<sup>6</sup>

*Public finance, as an analytical discipline and as the practical arena of public policy design and implementation, has undergone two far-reaching reforms over*

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<sup>4</sup> Kaul, Inge (eds.) *The New Public Finance: Responding to Global Challenges*, UNDP, New York, Oxford University, 2006, hlm,5

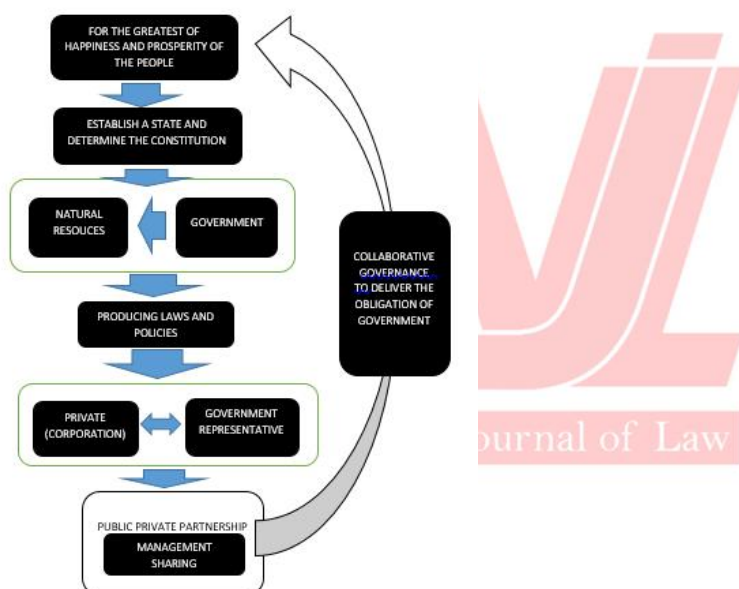
<sup>5</sup> Bird, Richard M (eds.), "Public Finance in Developing Countries". [https://www.researchgate.net/publication/256027677\\_Public\\_Finance\\_in\\_Developing\\_Countries/link/00b7d529f59f303fac000000/download](https://www.researchgate.net/publication/256027677_Public_Finance_in_Developing_Countries/link/00b7d529f59f303fac000000/download)

<sup>6</sup> Donaldson, Andrew R, "Aspect of The New Public Finance", *OECD JOURNAL ON BUDGETING*, Volume 6 – No. 2, 2006

*the past two decades. The first is the exploration of the “policy space” between markets and government action: the evolution of public-private partnerships and the pursuit of public policy purposes through the regulation and mobilization of private sector activity and co-operation with civil society organizations. The second is the growing role of international co-operation in public affairs: action to address global public goods and increasing attention to the dynamics and effectiveness of international collaboration in both policy and public service delivery*

### Frame of Thinking

The Researcher intentionally want to put the theories in sequential as the framework of thinking so that the analysis can be done smoothly.



## Analysis

### A. The Production Sharing Contract

Regarding the origin of Production Sharing Contract, WidjajonoPartowidagdo says<sup>7</sup>

*The basic of thinking on Oil and Gas management in Indonesia by Production Sharing Contract (PSC) had been framed (since long time ago). The originator of the PSC concept was Bung Karno (the 1<sup>st</sup> President of Indonesia) who gets the idea from the traditional cooperation and management practice of agricultural in Java. Most of the Farmers (Marhaen) were not the land owners. The Farmer earntheir income from cooperation scheme (called as “Paron”, with the Land Owners). The role player of the management remains under the Owner.*

*IbnuSutowo in his book “The Role of Oil in the National Resilience (1970)” stated that the things to be shared is the oil (product) instead of the money (cash). Ibnu said “and regarding this oil, it is up to us, whether we would like to bartering, refining, or selling by ourselves. Or we ask our partner to help us to sell it, for us. The main idea is we are really hosting in our home country. This is why the management of production sharing contract must be under the government.*

This model of cooperation (PSC) is the original scheme of cooperation has been living and growing within the socio-culture of Indonesian local wisdom since a long time ago. Nowadays There are many countries around the world adopted this scheme to manage their oil and gas resources<sup>8</sup>

Regarding the reason why PSC scheme strongly exists, M. KholidSyeirazi added a writing that the PSC is a “correction” policy of the previous schemes on the oil and gas resources management in Indonesia. The first scheme namely “Concession Scheme” in the Dutch Colonialism era had failed to promote people prosperity. While its replacement, namely “Contract of Work Scheme” during Sukarno’s presidential tenure (1960 – 1966) resulted no significant improvement on the Government management role as well as outcomes to the people, so that finally those schemes are revoked and changed into “Production Sharing Contract Scheme”.

The PSC scheme was first introduced before the fall of Sukarno’s era, and it was rapidly growing in the earlier years of Soeharto’s era, when the foreign capital law and Pertamina Law were issued (Law No. 1 / 1967 and No. 8 / 9171). Since then, the PSC scheme go on to become the

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<sup>7</sup>Translated by the Researcher from WidjajonoPartowidagdo, *MigasdanEnergi di Indonesia*, Development Studies Foundation, Jakarta, 2009. Widjajono is the former Vice Minister of Energy and Mineral Resources under the Cabinet of President SusiloBambangYudhoyono. He was a Professor of Oil and Gas Department of Institute Technology Bandung (ITB)

<sup>8</sup> Referred to Benny Lubiantara on *EkonomiMigasTinjauanApekKomersialKontrakMigas*, GramediaWidiasarana Indonesia, Jakarta, 2012



sole scheme of how the industry should be run and is still acceptable for the industry. It also continues to be implemented until now with several modifications<sup>9</sup>.

A. Rinto Pudyantoro explains the reason why PSC Contract scheme strongly exists until now and in the future. He mentions that the principle of the production contract among others:<sup>10</sup>

- a. The Right to the Oil and Gas Resources Ownership remains belong to the Government (no transfer of ownership to private partners)
- b. The Government shall bear no risk in the event of failures to recover oil and gas reserve
- c. The Government shall face no financial issue to fund the exploration and exploitation activities.

Those principles can guarantee both constitutional requirements and pragmatic business requirements to exist together at the same time. The PSC Scheme could respond any requirements by the constitution about the right to mineral resources ownership properly, that it is not transferred to private parties, and it remains in the hands of the government. The PSC Scheme also could respond to the financial aspect of the oil and gas business needs as well as it is able to avoid any risks exposure to the government.

Mochamad Kasmali in “The Energy Market Review”, mentions that currently to enter into oil and gas business Indonesia, a business entity must:<sup>11</sup>

- a. Succeed in a tender process held by DGOG for an oil and gas block; and
- b. Enter into a PSC with SKK Migas.

The PSC is valid for 30 years and can be extended once for up to 20 years. While according to the Law No. 22 / 2001 Article 11 and Government Regulation No. 35 / 2004 Article 26, the PSC Contract shall at least contain the following principles:

- a. State Income
- b. Working Area and Relinquishment
- c. Financial Obligation
- d. Ownership Transfer of Oil and Gas Production
- e. Term and Condition of Contract Extension
- f. Obligation to Supply Oil and Gas for Domestic Needs
- g. Post Operation Obligation
- h. Health, Safety and Environment
- i. Transfer of Right and Obligation

<sup>9</sup>Translated and Summarized by Researcher from M. Kholid Syeirazi, *Tata Kelola Migas Merah Putih*, LP3ES, Jakarta, 2017, p. 118 – 266

<sup>10</sup>Translated by Researcher from A Rinto Pudyantoro, *A to Z Bisnis Hulu Migas*, p.153

<sup>11</sup>Mochamad Kasmali in David L Schwartz, *The Energy Regulation and Market Review*, Sixth Edition, The Law Reviews, United Kingdom, London, 2017, p.180 (DGOG = Directorate General Oil and Gas of Ministry of Energy and Mineral Resources)

- j. Mandatory Reporting
- k. Plan of Development
- l. Local Goods and Services Utilization Priority
- m. Surrounding Community Development and Conservation of Indigenous People / Tribes Right
- n. Local Human Resources Use Affirmation

Most of the above principles are regarding and related to the Government common obligations to the people and the state which have to be solely performed by the government, especially when the government is conducting oil and gas business without any private partners. The PSC Scheme has been enabling or helping the government to transfer or at least share the obligation to the partner, e.g. the obligation to allocate financial requirements for the oil and gas investment and operation.

#### B. Plan of Development

There is the most important milestone in the Oil and Gas PSC Scheme that has to be obtained after the exploration discovers such proven oil and gas reserve, namely the Plan of Development (POD). This POD is a kind of “policy” made by the government to whether or not develop an oil and gas field in certain working area, in order to exercise the obligation stipulated in the constitution. The mechanism of POD approval in general is stipulated in the Article 21 Law No. 22/2001, whereas for the First POD has to be approved by the Minister of Energy and Mineral Resources on behalf of the government. In this case the Minister is acting on behalf of the Government who hold a mandate from the people.

The First POD as well as the following PODs are containing the plan and forecast calculation of government income /take. The government take is the “total portion of government income that includes royalties, income tax, other taxes, and profit sharing”.<sup>12</sup> Other than the issue of income / financial aspects, the POD is also concerning on the public issues such as regional development (income and masterplan), technical compliance, environmental aspects and sustainability as stipulated in Article 21 of the Law No. 22/2001 and it’s Official Explanation Document).

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<sup>12</sup>Benny Lubiantara, Op.Cit. p, 24(Translated by Researcher)

The following is the Table of Content to be submitted by the Oil and Gas Company to lodge a proposal to develop oil and gas field after discover such proven reserved as follows:<sup>13</sup>

| BAB | JUDUL  |
|-----|--|
| 1   | <i>Executive Summary</i>   |
| 2   | <i>Geological Findings and Reviews</i>   |
| 3   | <i>Reservoir Descriptions</i>  |
| 4   | <i>Reserve &amp; Production Forecast</i>   |
| 5   | <i>Drilling &amp; Completion</i>   |
| 6   | <i>Production Facilities</i>   |
| 7   | <i>Field Development Scenario</i>  |
| 8   | <i>Health Safety and Environment (HSE) &amp; Corporate Social Responsibility (CSR)</i>   |
| 9   | <i>Abandonment &amp; Site Restoration Plan</i>   |
| 10  | <i>Project Schedule &amp; Organization</i>   |
| 11  | <i>Local Content</i>   |
| 12  | <i>Economics &amp; Commercial</i>  |
| 13  | <i>Conclusion</i>  |
| 14  | <i>Attachments yang mencakup technical supporting data, risalah rapat, cost estimation, spreadsheet economic, dan dokumen komersial.</i> |

### C. Theoretical Analysis

The following table is the theory variables to measure whether Production Sharing Contract Scheme is in accordanceto the Collaborative Theory, Public Private Partnership Theory, as well as New Public Finance:

| # | Theory   | Variable  | PSC Scheme                         | Co nfo rmi ty |
|---|--|---|------------------------------------|---------------|
| 1 | Collaborative Governance Theory<br>(Chris Ansell and | A governing arrangement where one or more public agencies | In the Plan and Development (POD), | Yes           |

<sup>13</sup>Taken from *SKK Migas Guidance Revision 02 No: PTK- 037/SKKMA0000/2018/SO* (Bab = Chapter; Judul = Remarks; Yang mencakup = Shall encompass; RisalahRapat = Minute of Meeting; Dan DokumenKomersial = and Commercial Document)

|   |  |   |   |     |
|---|--|---|---|-----|
|   | <p>Allison Gash, “Collaborative Governance”, <i>Journal of Public Administration Research and Theory Advance Access published November 13, 2007</i>)</p>   | <p>directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets</p>   | <p>the government jointly develop a “policy” / “consensus” of Oil and Gas Field development that contains a lot of Government interests and obligations to the people’s prosperity by managing government’s (public) assets / resources</p> |     |
| 2 | <p>Theory Public-Private Partnership</p> <p>Koschatzky, Knut</p> <p>Working Paper: A Theoretical view on public-private partnership in research and innovation in Germany</p> <p>Arbeitspapiere, Unternehmen und Region, No.R2/ 2017</p> | <p>a public-private partnership as a public service and/or a private economic activity, which is jointly financed and operated by the public sector and industry on the basis of a contract which regulates financing and operation</p>   | <p>In the PSC Scheme, any government-owned projects/activities/properties are financed by private parties</p>   | Yes |
| 3 | <p>Theory New Public Finance</p> <p>(IngeKaul, Pedro Conceicao, New Public Finance, United Nation Development Program, New York, Oxford University Press, 2006, p, 6</p>   | <p>About more than taxing and spending public revenue. It involves channeling resources to public policy goals, with the government using fiscal, regulatory, and monitoring tools to encourage and complement private activities and private spending on these goals. It also involves being open to private sector competition and sharing responsibility and risks with non-state providers in the interest of enhanced efficiency and</p> | <p>Oil and Gas industry is one of the most important sources of government income. This projected income is depending on the commitment of the partners to invest / finance the project and operation</p>                                   | Yes |

|  |                |  |  |
|--|----------------|--|--|
|  | effectiveness. |  |  |
|--|----------------|--|--|

The table shown that PSC Scheme is fully conforming with the Collaborative Governance Theory, the Public Private Partnership Theory, as well as the New Public Finance Theory.

### CONCLUSION

1. The PSC Scheme is an old scheme applies in the policy of the government to manage oil and gas resources. The scheme is originally developed from such traditional collaboration with the people in the agricultural sector. Currently it is adopted by many countries world widely;
2. The PSC Scheme conforms with the New / Modern Governance Theories (Collaborative Governance, Public Private Partnership, New Public Finance);
3. The PSC Scheme has been a common and acceptable policy to the world business practices, therefore it is very potential to be developed and implemented in other Governance Management, particularly in the management of Natural Resources, which could be a subject for further researches;

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