



The Legal Position of Participating Interest in Oil and Gas Production Sharing Contract as Bankruptcy Estate

Tony Basoeki Soelistyo*, Dyah Permata Budi Asri, Irmanjaya Thaher

Faculty of Law, Universitas Esa Unggul, Jakarta, Indonesia.

: tonysoelistyo@student.esaunggul.ac.id

Corresponding Author*

Abstract

Bankruptcy law in Indonesia subjects all of a debtor's assets to a general enforcement regime for the benefit of creditors. This becomes more complicated when the asset in question is a Participating Interest (PI) in an oil and gas Production Sharing Contract (PSC), which operates under the constitutional framework of State control over natural resources and a strict public licensing regime. This article examines two questions: whether PI in an oil and gas PSC qualifies as part of the bankruptcy estate (*boedel pailit*) under Indonesian bankruptcy law, and how restrictions on PI transfers based on the principle of State control affect estate administration and the satisfaction of creditors' claims. The research employs a normative legal method combining statutory, conceptual, and limited case approaches, drawing on legislation, court decisions, and administrative documentation of PI transfer practice. The analysis finds that PI is an intangible contractual-economic right with measurable financial value that is not expressly excluded by statute, therefore it qualifies as part of the bankruptcy estate, and its transfer remains subject to State approval as *lex specialis* in the oil and gas sector. An examination of two cases and two administrative events shows that how the State exercises its approval power determines whether creditor protection remains within the *rechtsstaat* or drifts toward *machtsstaat*. The absence of explicit approval criteria leaves wide discretion in the State's hands. This directly undermines legal certainty for creditors and exposes a persistent tension between public control and private rights.

Keywords: Bankruptcy Estate; Participating Interest; Production Sharing Contract; State Control; Upstream Oil and Gas.

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INTRODUCTION

Bankruptcy law provides a legal instrument for the collective administration and settlement of a debtor's assets in order to satisfy creditors' rights in an orderly manner.¹ Under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations [*Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, hereinafter *UUKPKPU*], all of the debtor's assets become a general security (*jaminan umum*) subject to general seizure (*sita umum*) by a curator, as a manifestation of the *rechtsstaat* principle in protecting creditors.² However, the concept of the bankruptcy estate (*boedel pailit*) becomes problematic when the object concerned is a Participating Interest (PI) in a Production Sharing Contract (PSC) in the upstream oil and gas sector. PI is an asset that is simultaneously an economic-contractual right of the

¹ Christopher Panal Lumban Gaol and Mancur Sinaga, "Prinsip Hukum Kepailitan Di Indonesia," *Jurnal Hukum Justice* 3, no. 2 (2026): 155-165, <https://doi.org/10.54367>.

² Hikmah Istiqamah, Siti Zainab Yanlua, and Muhammad Akbar Yanlua, "Konsep Negara Hukum Rechtsstaat Dan Rule of Law," *AL-MUQARANA* 3, no. 1 (2024): 9-18, <https://doi.org/10.33477/am.v3i1.7991>.

contractor,³ and an object subject to State control over natural resources under Article 33 of the 1945 Constitution.⁴ This dual character creates tension between private-law settlement of debts and public-law control over oil and gas resources.

Existing studies have addressed related aspects but have not confronted this tension directly. Studies on the Golden Spike Energy (GSE) bankruptcy concluded that the company, in its capacity as the *Kontraktor Kontrak Kerja Sama* (KKKS), was in a "zero-asset" condition merely because it acted as the operator of the PSC on behalf of the State, therefore leaving creditors without recovery.⁵ However, those works did not distinguish between physical assets owned by the State and the PI as an economic-contractual right that may still hold recoverable value. Other studies examined PIs in the context of share acquisitions⁶ or the general authority of curators over bankruptcy estates,⁷ but none has specifically analyzed the qualification of a PI as bankruptcy estate nor how the ministerial approval requirement, based on the principle of State control, affects the curator's authority to realize it for creditors.

This study addresses that gap by examining how the *rechtsstaat* principle and State control over natural resources interact concretely in determining the status and settlement of a PI within the bankruptcy estate. It analyzes two research questions: (1) whether a PI in an oil and gas PSC can be qualified as part of the bankruptcy estate under Indonesian bankruptcy law; and (2) how the restrictions on PI transfer, grounded in the principle of State control, affect the settlement of the bankruptcy estate and the satisfaction of creditors' rights. Drawing on the GSE case [Supreme Court Decision No. 386 K/Pdt.Sus-Pailit/2013 or *Putusan Nomor 386 K/Pdt.Sus-Pailit/2013*, hereinafter MA Decision 386/2013], the Oilex-West Kampar case [High Court Decision No. 680/PDT/2016/PT DKI or *Putusan Pengadilan Tinggi DKI Nomor 680/PDT/2016/PT DKI*, hereinafter PT DKI Decision 680/2016], and the administrative practice of PI transfers in the Bulu and West Madura PSCs, this article offers a novel doctrinal reconstruction of the PI's dual position, i.e. economic-contractual asset versus public-law-controlled resource, and its implications for the boundary between *rechtsstaat* and *machtsstaat*. The significance of this study lies in providing a clearer legal framework for curators, creditors, regulators (ESDM, SKK Migas), and courts confronting future bankruptcies of PSC contractors, an issue that is likely to recur as Indonesia's upstream oil and gas sector matures.

METHODS OF THE RESEARCH

This study employs normative legal research (doctrinal research), which treats law as a system of prescriptive norms and examines it through legal materials rather than empirical

³ Mohammad Choirul Anam, et al., "Perkembangan Konsep Perjanjian Production Sharing Contract Dalam Mekanisme Pengolahan Minyak dan Gas di Indonesia," *Yustisia Merdeka* 10, no. 1 (2024): 41–49.

⁴ Indira Ryandhita dan Akhmad Budi Cahyono, "Analisis Implementasi Hukum Perjanjian dalam Kontrak Bagi Hasil (Production Sharing Contract) Gross Split pada Kegiatan Usaha Hulu Minyak dan Gas Bumi di Indonesia," *Lex Patrimonium* 3, no. 1 (2024): 1–16.

⁵ Lousia Ester Beby S, "Perlindungan Hukum Bagi Kreditor Pada Kasus Kepailitan Perusahaan/KKKS Minyak Dan Gas Bumi Studi Kasus Kepailitan Antara PT. Global Pacific Energi Dengan KKKS PT. Golden Spike Energy Indonesia," *To-Ra* 6, no. 1 (2020): 13–22; Atika Ismail and Susiana Kifli, "Perlindungan Hukum Bagi Kreditor dalam Kepailitan di Sektor Hulu Minyak dan Gas Bumi," *Wajah Hukum* 6, no. 2 (2022): 434–440, <https://doi.org/10.33087/wjh.v6i2.1079>.

⁶ Aqida Sabrina, "Tinjauan Hukum Mengenai Dampak Akuisisi Saham Kontraktor Kontrak Kerja Sama (KKS) Usaha Hulu Minyak Dan Gas Bumi Terhadap Kepemilikan Participating Interest" (Tesis: Universitas Indonesia, 2014).

⁷ Aditya Rizal Ranovianto and Merline Eva Lyanthi, "Tanggung Jawab Perdata Atas Tindakan Lalai Kurator Dalam Kepengurusan Harta Pailit (Boedel Pailit)," *Journal Publicuho* 7, no. 3 (2024): 1054–1064, <https://doi.org/10.35817/publicuho.v7i3.457>; Kartika Sari Yosefin, "Analisis Kewenangan Kurator Dalam Rangka Pemberesan Boedel Pailit Studi Kasus Petroselat Ltd" (Tesis: Universitas Indonesia, 2024).

observation of social behaviour.⁸ Three approaches are combined: the statutory approach (*pendekatan perundang-undangan*), the conceptual approach (*pendekatan konseptual*), and, to certain extent, the case approach (*pendekatan kasus*). The statutory approach is applied to examine the norms of bankruptcy law and upstream oil and gas law; the conceptual approach is used to clarify the concepts of PI, the bankruptcy estate, and State control over natural resources; and the case approach is used to read the factual-juridical issues arising in the GSE case, the Oilex–West Kampar case, and the two administrative events involving PI transfers in the Bulu and West Madura PSCs. Primary legal materials comprise legislation, court decisions, and administrative documentation of PI transfers, including the SKK Migas Administrative Work Guidelines Number PTK-057/SKKMA0000/2018/S0 [Pedoman Tata Kerja Nomor: PTK-057/SKKMA0000/2018/S0 Tentang Administrasi Kontrak Kerja Sama Revisi-01, hereinafter PTK-057]. Secondary legal materials include conceptual literature and prior studies relevant to bankruptcy, PSCs, and State control. All materials are analysed qualitatively and prescriptively to formulate a legal argument on the status of a PI within the bankruptcy estate and the limits on its settlement within the framework of State control.

RESULTS AND DISCUSSION

A. The Legal Position of PI within the Framework of the Bankrupt Debtor's Assets

The first research question asks whether PI in an oil and gas PSC qualifies as part of the bankruptcy estate under Indonesian bankruptcy law. The analysis in this section applies the Theory of Legal Certainty as developed by Gustav Radbruch (1878–1949) in his philosophical construction of the idea of law (*Idee des Rechts*). Radbruch held that good law must always realise three fundamental and interrelated values: justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*).⁹ Justice is the normative and constitutive foundation. The moral standard that determines whether a rule qualifies as law at all. Utility requires that law produce genuine social benefit. Legal certainty stabilises both by ensuring that norms are formulated clearly, in written form, with consistent and predictable application, thus all parties have a reliable normative basis for their conduct. Radbruch also insisted that legal certainty has a moral limit, in which where positive law openly and intolerably conflicts with justice, it loses its claim to obedience. This is known as Radbruch's Formula.

In the context of this study, all three values are at stake. Justice demands that the contractual-economic rights of the debtor and creditors not be ignored, utility requires that the real economic value of PI not be left unrealized (if any) whilst legal certainty demands that the status of PI not be left suspended without a clear normative basis. Since the first research question focuses on the normative status of PI as part of the bankruptcy estate, consequently the legal certainty is the primary analytical lens, while justice and utility function as the ethical background informing interpretation.

In PSC practice, PI is reflecting the allocation of a contractor's interest in an upstream oil and gas project. Where a PSC is performed by a single contractor, that contractor internally

⁸ Ika Atikah, *Metode Penelitian Hukum*, (Serang: Haura Utama, 2022); Bintang Adi Putra, et al., "Metodologi Penelitian Hukum Normatif Dalam Perspektif Konsep Dan Teknik Analisis Dalam Kajian Yuridis," *Jurnal Kajian Ilmiah Multidisipliner* 10, no. 4 (2026): 97–112.

⁹ Robert Alexy, "Gustav Radbruch's Concept of Law," in *Law's Ideal Dimension* (Oxford: Oxford University Press, 2021), p. 107–118, <https://doi.org/10.1093/oso/9780198796831.003.0008>.

holds the entirety (100%) of the PI on the contractor's side. Where a PSC is performed by multiple parties under a cooperative arrangement, commonly known as a Joint Operating Agreement (JOA), the PI is divided according to each participant's percentage share, which determines the proportion of rights, obligations, costs, risks, and economic benefits accruing to each party. However only one company/contractor acts as the operator of the relevant PSC, as governed by Article 6 of Government Regulation Number 35 of 2004 [*Peraturan Pemerintah Nomor 35 Tahun 2004 tentang Kegiatan Usaha Hulu Minyak Dan Gas Bumi*, hereinafter PP 35/2004]. PI thus determines the contractor's economic position relative to the flow of oil and gas production benefits. Hasiholan, Murwadi, and Sukarsa (2023) confirm that PI distribution determines the rights and obligations of contractors and enables multiple entities to share risks and benefits in upstream oil and gas activities, affirming PI's character as a valuable contractual-economic right.¹⁰ Ownership of oil and gas reserves, however, remains entirely with the State under Law Number 22 of 2001 concerning Oil and Gas [*Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi*, hereinafter UU Migas] and its implementing regulations.

Under civil law, the concept of *zaak* (object of property) is not confined to tangible goods. Article 499 of the Civil Code [Kitab Undang-Undang Hukum Perdata, hereinafter KUHPerdata] defines property broadly to include both goods and rights that may become the object of ownership. Article 503 KUHPerdata further distinguishes between tangible objects (*benda bertubuh*) and intangible objects (*benda tidak bertubuh*). The debtor's assets need not always take the form of physical objects. Intangible rights that carry economic value and may become the object of a legal relationship fall within the scope of assets that a natural or legal person may hold.

Based on the systematic construction of property law under the KUHPerdata, PI does not qualify as immovable property – Articles 506 through 508 KUHPerdata limit that category to land, buildings, and rights directly attached thereto. PI in an oil and gas PSC is more accurately understood as an intangible contractual-economic right with the character of a *persoonlijk recht* (personal right) arising from the PSC and JOA, binding the parties within their contractual relationship. Because of this character, PI cannot be directly executed like a security interest; it can only be realised through transfer or further arrangement in accordance with mechanisms agreed by the parties and subject to State approval under the oil and gas legal regime.

Article 1131 KUHPerdata affirms that all of a debtor's assets serve as security for all of the debtor's civil obligations – the normative basis of the *paritas creditorum* principle in Indonesian civil law.¹¹ Article 21 UUKPKPU operationalises this in the bankruptcy context, affirming that the bankruptcy estate encompasses all of the debtor's assets at the time of the bankruptcy declaration as well as everything subsequently acquired.¹² This formulation is broad and does not confine the bankruptcy estate to physical objects; intangible rights with economic value accordingly fall within its scope.

Within the *rechtsstaat* framework, PI which is an intangible contractual-economic right with determinable economic value and not explicitly excluded by statute, must be

¹⁰ Andreas Hasiholan, et al., "Environmental Responsibilities of Local Governments as PI Holders in Upstream Oil and Gas Operations," *IOP Conference Series: Earth and Environmental Science* 1270, no. 1 (2023): 1–9, <https://doi.org/10.1088/1755-1315/1270/1/012006>.

¹¹ Agus Wibowo, *Hukum Kepailitan*, (Semarang: Yayasan Prima Agus Teknik, 2025).

¹² Hendri Jayadi, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, (Publika Global Media, 2021).

recognised as part of the bankruptcy estate. This ensures that PI's treatment in bankruptcy proceedings is clear and consistent, and prevents its economic value from being written off without legal basis.

The economic character of PI is also confirmed by jurisprudence. PT DKI Decision 680/2016 in the Oilex–West Kampar case defined PI as the percentage interest of each party in the rights and obligations arising from the PSC and JOA, and confirmed that any transfer of PI is conditional on State approval. These facts show that PI can become the object of economic dispute and negotiation, while its transfer and exercise cannot be separated from the approval of the oil and gas authority.

The answer to the first research question is therefore that PI qualifies as part of the bankruptcy estate under Indonesian bankruptcy law, as an intangible contractual-economic right held by the bankrupt debtor. As a right arising from the PSC and JOA, PI is governed by the principle of *pacta sunt servanda*. The debtor's bankruptcy does not automatically extinguish the rights and obligations arising from the cooperation contract. It transfers their administration to the curator within the bankruptcy estate framework. The transfer and settlement of PI, however, cannot be separated from the State's oil and gas control regime, the implications of which are examined in the second research question.

B. Restrictions on PI Transfer and the Limits of the Curator's Authority

The second research question concerns the effect of restrictions on PI transfer – arising from the principle of State control – on the settlement of the bankruptcy estate and the fulfilment of creditors' rights. Having established that PI qualifies as a contractual-economic right capable of holding value within the bankruptcy estate, the next question is whether the curator may directly sell or transfer PI to satisfy creditors.

This section applies the Theory of State Control, which is conceptually rooted in the classical doctrine of State sovereignty. Thinkers such as Jean Bodin (1530–1596) and Georg Jellinek (1851–1911) placed the State as the supreme authority over its territory and the resources within it. The State is not merely as a civil law owner, but as a holder of public authority acting on behalf of the people.¹³ In modern literature, the distinction between *imperium* as the State's public authority and *dominium* as private ownership, introduced by Montesquieu (1689–1755)¹⁴, is used to explain that when the State 'controls' natural resources, what is primarily meant is the *imperium* dimension.¹⁵

In the Indonesian legal framework, the Theory of State Control is operationalised through Article 33 of the 1945 Constitution, which places branches of production vital to the State – including land, water, and natural resources – under State control for the greatest prosperity of the people. Constitutional Court Decision Number 002/PUU-I/2003 [*Putusan Mahkamah Konstitusi Perkara Nomor 002/PUU-I/2003*, hereinafter MK Decision 002/2003] affirms that State control over natural resources does not merely signify civil law ownership, but encompasses the public authority to regulate, administer, manage, and supervise a sector that is strategic to the public interest.¹⁶ The obligation to obtain Ministerial approval

¹³ David Doresta Wijaya and Nurul Mubin, "Teori Kedaulatan Negara," *WISSEN: Jurnal Ilmu Sosial dan Humaniora* 2, no. 4 (2024): 114–121, <https://doi.org/10.62383/wissen.v2i4.332>.

¹⁴ Cut Asmaul Husna TR, "Pengakuan Hak Konstitusional Pengelolaan Sumber Daya Industri Ekstraktif dalam Mewujudkan Kesejahteraan Rakyat," *Jurnal Konstitusi* 11, no. 1 (2014): 43–63.

¹⁵ Julius Sembiring, "Hak Menguasai Negara Atas Sumber Daya Agraria," *Bhumi* 2, no. 2 (2016): 119–132.

¹⁶ Brigita Purnawati Manohara and Hikmahanto Juwana, *Pengelolaan Hulu Migas di Sejumlah Negara Penghasil Migas*, (Jakarta: PT RajaGrafindo Persada, 2022).

for PI transfers is a direct expression of this imperium dimension, i.e. the authority to determine who may carry out upstream oil and gas business activities, without transferring private ownership of oil and gas reserves to any party.¹⁷

Article 33 of PP 35/2004 stipulates that a contractor may only transfer its rights and obligations upon obtaining Ministerial approval based on SKK Migas's recommendation. Regulation of the Minister of Energy and Mineral Resources Number 48 of 2017 [*Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 48 Tahun 2017 tentang Pengawasan Pengusahaan Di Sektor Energi Dan Sumber Daya Mineral*, hereinafter PerMen ESDM 48/2017] reaffirms that PI transfers may only be effected after Ministerial approval. These rules make clear that PI transfers are not left entirely to the parties but the State retains a say.

In bankruptcy, these rules carry real weight. The curator may identify PI as part of the debtor's assets and assess its economic value. However, the curator cannot treat PI as an asset freely transferable to any party without regard to oil and gas authority approval and the terms of the PSC.¹⁸ The limitation on the curator's authority to transfer PI is grounded in the principle of *lex specialis derogat legi generali*: UU Migas and PP 35/2004, as *lex specialis* in the oil and gas sector, specifically regulate the conditions for transferring a contractor's rights and obligations, thereby limiting the curator's general authority under UUKPKPU as *lex generalis*. A similar logic shares by the property assets bound by a sale and purchase binding agreement.¹⁹

The bankruptcy estate defines the scope of the debtor's assets, while oil and gas law determines the conditions and limits governing PI transfers. PerMen ESDM 48/2017 and PTK-057/2018 set out the application procedure and documentary requirements for PI transfers but do not explicitly establish substantive criteria for approval. PTK-057/2018 specifically requires a KKKS to submit a formal application to the Head of SKK Migas, attach required documents in hard and soft copy, satisfy the documentary checklist, and respond to requests for clarification from SKK Migas before the application is forwarded to the Minister. PTK-057/2018 also reaffirms the restriction on transferring a majority PI to a non-affiliated party within the first three years of the exploration period, as required by Article 33 of PP 35/2004. Despite this procedural clarity, PTK-057/2018 does not formulate explicit substantive criteria for approving or refusing PI transfer applications. The substantive standard therefore continues to depend on the administrative discretion of the oil and gas authority.

On paper the restriction is clear; in practice, everything depends on how the State actually exercises its discretion. Recent scholarship shows a growing trend: officials enjoy wider discretionary space while formal legality checks weaken, nudging administrative decisions from rule of law toward rule by discretion.²⁰ In such conditions, the line between the *rechtsstaat* character of the approval mechanism and a shift toward *machtsstaat* becomes arguably thin. The answer to the second research question is therefore that restrictions on

¹⁷ Faizal Kurniawan, "Bentuk Perlindungan Hukum Terhadap Kekayaan Minyak Dan Gas Bumi Sebagai Aset Negara Melalui Instrumen Kontrak," *Jurnal Hukum dan Peradilan* 2, no. 3 (2013): 471–492.

¹⁸ Luqman Guntur Ridhwani and Muhamad Jodi Setianto, "Kewenangan Kurator dalam Pengurusan dan Pembersihan Harta Pailit dalam Perspektif Hukum Bisnis," *Federalisme: Jurnal Kajian Hukum dan Ilmu Komunikasi* 3, no. 1 (2026): 70–82, <https://doi.org/10.62383/federalisme.v3i1.1534>.

¹⁹ Liwarry Sagala et al., "Perbuatan Hukum Kurator Dalam Melakukan Penjualan Tanah Dan Rumah Atas Dasar PPJB Dan Menjadi Objek Pailit (Studi Putusan Mahkamah Agung No 436/Pdt.Sus-Pailit/2019)," *Journal of Law & Policy Review* 1, no. 2 (2023): 136–145, <https://doi.org/10.34007/jlpr.v1i2.322>.

²⁰ Sandra Leoni Prakasa Yakub et al., "Rekonfigurasi Batas Diskresi Pejabat Administrasi Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *SOSIAL: Jurnal Ilmiah Pendidikan IPS* 4, no. 1 (2026): 136–154, <https://doi.org/10.62383/sosial.v4i1.1570>.

PI transfer based on the principle of State control affect the settlement of the bankruptcy estate not by nullifying PI's economic value, but by constraining the mechanisms through which that value may be realised. PI may be inventoried and valued as part of the debtor's assets; however, its transfer or use to satisfy creditors' rights must comply with the approvals and restrictions established by oil and gas law.

C. Practical Illustrations: PI, the Bankruptcy Estate, and State Control in Four Events

The four illustrations below are read through a combination of the Theory of Legal Certainty and the Theory of State Control in order to assess, on one hand, whether PI receives definite treatment as part of the debtor's assets, and on the other, whether the State's exercise of its PI transfer approval authority remains within the *rechtsstaat* or shifts toward a *machtsstaat* character.

The GSE case is significant because it reveals the practical difficulties that arise when a bankruptcy is declared against an upstream oil and gas contractor. In MA Decision 386/2013, the payment source in dispute related to oil revenues from the Raja/Pendopo PSC. The decision also contains an account of claims connected to PI and the position of PT Pertamina Hulu Energi Raja Tempirai as a 50% PI partner in the Joint Operating Body (JOB) Pertamina-GSE. These facts demonstrate that upstream oil and gas activities can generate economic interests relevant to creditors, even though their legal structure differs from that of ordinary commercial assets.

Beby S. (2020) stated that a contractor acts solely as an operator in the search for and discovery of oil and gas resources, while those resources remain under State control.²¹ The same study noted that in its bankruptcy proceedings, GSE was found to possess no assets subject to execution, such that the curator was unable to form a bankruptcy estate. A similar position appears in Ismail & Kifli (2022), which reconstructed GSE as a KKKS holding no executable assets by virtue of its role as a mere operator.²² However, by failing to draw a clear distinction between oil and gas resources as objects of State control and PI as an independent contractual-economic right, the conclusions of these prior studies are an inadequate final answer to the question of PI's status in the bankruptcy estate.

The Oilex–West Kampar case offers a more direct illustration of PI as an economically valuable interest subject to transfer restrictions. PT DKI Decision 680/2016 records that PT Sumatera Persada Energi (SPE) and BPMIGAS (SKK Migas predecessor) executed a PSC for the West Kampar Block, and that an agreement for the transfer of PI to Oilex was made conditional on BPMIGAS approval. The initial transfer of 45% PI from SPE to Oilex obtained the approval of BPMIGAS and the Minister of Energy and Mineral Resources, showing how State control is operationalised through the PI transfer approval mechanism. In the second farmout agreement, however, an additional transfer of 15% PI was agreed upon, again subject to BPMIGAS approval – approval that was never granted before the contractual deadline elapsed.²³ Oilex subsequently terminated the agreement and sought recovery of the PI purchase funds.

The problem in the Oilex–West Kampar case was not an explicit refusal, but the absence of any decision. The PI transfer application was left suspended – neither approved nor

²¹ Beby S, "Perlindungan Hukum Bagi Kreditor," 15.

²² Ismail dan Kifli, "Perlindungan Hukum Bagi Kreditor," 436.

²³ Keyfacts Energy, "Oilex Provides Update on West Kampar Operations In The West Kampar PSC, Indonesia," Keyfacts Energy, 2020, <https://keyfactsenergy.com/news/8672/view/>; Putusan Pengadilan Tinggi Nomor 680/PDT/2016/PT DKI (30 Januari 2017).

refused – until the contractual deadline passed. This is exactly where *machtsstaat* tendencies surface. The State's silence can factually extinguish the realisation of the contractor's economic rights without producing a reviewable and accountable decision. If this were to happen to a bankrupt contractor, the curator and creditors would have no way of knowing whether PI can be settled at all.

The Bulu PSC event in 2023 presents an instance of explicit State refusal. The Ministry of Energy and Mineral Resources [*Kementerian Energi dan Sumber Daya Mineral Republik Indonesia*, hereinafter Kementerian ESDM], through the Directorate General of Oil and Gas [*Direktorat Jenderal Minyak dan Gas Bumi*, hereinafter Ditjen Migas], declared its disapproval of the proposed transfer of 42.5% PI in the Bulu PSC from Mitsui E&P Australia Pty Ltd to Criterium Energy Ltd.²⁴ The refusal was based on the ground that the transfer was effected without first submitting an application for government approval as required by oil and gas law. From a *rechtsstaat* perspective, a refusal accompanied by explicit procedural and substantive grounds is closer in character to the rule-of-law ideal than an ungrounded one. When reasons are stated, the parties know why the PI transfer was refused and what would need to change for it to be permitted. This matters especially in bankruptcy: the curator and creditors can at least ascertain where they stand, rather than being left with no decision at all.

Available documented sources indicate that in practice, government approval for PI transfers is generally granted far more often than refused, provided procedural and substantive requirements are met. Public documentation from Ditjen Migas records a large number of approved interest transfers during 2008–2011 across various PSCs, including ONWJ, Poleng, Blora, Jabung, Sebuksu, Natuna Sea A, South Natuna Sea Block B, Block A Aceh, Mahakam, Muriah, Corridor, Masela, Siak, Kampar, Sengkang, Kangean, Gebang, and Natuna Sea Block A and Tuna. Refusals such as in the Bulu PSC and suspended applications such as in the West Kampar PSC are exceptional cases, far outnumbered by approvals in ordinary business circumstances. In the bankruptcy context, this general pattern cannot be applied automatically. Nonetheless, it provides useful background for assessing how the State exercises its approval authority when the objective shifts from ordinary commercial transfer to the realisation of a PI's economic value within bankruptcy estate settlement. The difficulties in the GSE dispute and the West Kampar case, where the operator was declared bankrupt, illustrate precisely why that distinction matters.

The West Madura case reveals a different dimension of the State's approval authority: using it as an active instrument to shape PI composition. The PSC, previously held by Pertamina, Kodeco Energy, and CNOOC, was approaching its expiry date. As the extension was being negotiated, the government, through ESDM and BPMIGAS, stepped in to determine the PI composition and operator arrangement for the contract extension, resulting in the designation of PT Pertamina (Persero) as the majority PI holder and operator.²⁵ Unlike the Bulu PSC, which highlighted the refusal function, the West Madura event highlights the constitutive function: the State did not merely approve or reject a private application, but actively determined the configuration of the parties' economic

²⁴ Godang, "Tegas Banget! Ditjen Migas Larang Pengalihan PI Sembarangan; Pengalihan PI WK Bulu Tidak Disetujui," Ruang Energi, 2023, <https://www.ruangenergi.com/tegas-banget-ditjen-migas-larang-pengalihan-pi-sembarangan-pengalihan-pi-wk-bulu-tidak-disetujui/>; Verda Nano Setiawan, "Jreng! ESDM Tolak Masuk Perusahaan Kanada di Blok Migas Ini," CNBC Indonesia, 2023, <https://www.cnbcindonesia.com/news/20230324185152-4-424376/jreng-esdm-tolak-masuk-perusahaan-kanada-di-blok-migas-ini>.

²⁵ Ditjen Migas, "Keputusan Blok West Madura Tunggu Hasil Evaluasi BPMIGAS," Ditjen Migas ESDM, 2011, <https://migas.esdm.go.id/post/Keputusan-Blok-West-Madura-Tunggu-Hasil-Evaluasi-BPMIGAS>.

rights to maintain operational continuity and protect the national interest. Where such authority is exercised without transparent and accountable criteria, it opens space for a *machtsstaat* character. Where exercised on the basis of clear and proportionate criteria, it remains within the *rechtsstaat* framework.

Taken together, these four illustrations map the range of positions the State may adopt in exercising its PI transfer approval authority. The GSE case illustrates the problem of upstream oil and gas contractor bankruptcy and the tendency to treat the contractor as a mere operator with no assets. The Oilex–West Kampar case shows PI functioning as a percentage interest in rights and obligations arising from the PSC and JOA, subject to State approval, with the risk of legal uncertainty when approval is left permanently suspended. The Bulu PSC illustrates explicit refusal grounded in reviewable normative reasons. The West Madura PSC illustrates the use of State approval as an active instrument to shape PI composition. Read together, State approval over PI transfers may occupy any point along the spectrum between *rechtsstaat* and *machtsstaat*: it bears a *rechtsstaat* character when it is exercised on a clear legal foundation with reviewable grounds and proportionate application, but carries the potential to shift toward a *machtsstaat* character when exercised through prolonged silence, ungrounded refusal, or the shaping of PI composition based on broad and opaque discretion.

D. Implications for the Fulfilment of Creditors' Rights

Sections B and C above have established that PI forms part of the bankruptcy estate and that its transfer is subject to restrictions arising from State control. The four practical events, namely GSE, Oilex–West Kampar, Bulu PSC, and West Madura PSC, have illustrated how those restrictions operate in practice. What remains to be examined is what all of this means for the fulfilment of creditors' rights.

Where PI is qualified as part of the bankruptcy estate, the curator has grounds to identify, value, and work to optimise PI as a potential source for satisfying creditors' claims. This expands the asset base legally available for debt repayment and corrects the tendency to disregard the debtor's intangible rights entirely and treat the contractor as if it were in a 'zero asset' condition, as evident in cases like GSE.

Prior literature on bankruptcy in the upstream oil and gas sector has largely treated the KKKS as a mere operator with no realisable assets available to creditors. This study argues otherwise. Recognising a PI as part of the bankruptcy estate is important to prevent its economic value from being disregarded entirely. A distinction must therefore be drawn between physical operational assets and the oil and gas resources themselves – neither of which can form part of the bankruptcy estate – and the contractor's contractual-economic rights, which may still carry realisable value for creditors.

On the other hand, the realisation of PI's value for creditors cannot proceed freely as with ordinary commercial asset sales. The curator depends on an administrative process run by SKK Migas and ESDM, a process that is procedurally detailed but lacks explicit substantive criteria for approval. This dependency on conditions outside the parties' control is not unique to oil and gas. In Indonesian corporate law, an analogous logic applies to share transfers: the Supreme Court has affirmed that even a formally valid General Meeting of Shareholders resolution loses legal legitimacy if the substantive requirement of capital

payment is not met.²⁶ In the PSC bankruptcy context, State approval for PI transfer is not merely a procedural formality, instead it is a constitutive substantive requirement that determines whether PI's economic value can in fact be realised to satisfy creditors' rights.

As a practical illustration: if a company holding PI in a PSC and acting as operator is declared bankrupt, the curator cannot immediately sell or transfer that PI. The curator must first identify PI as part of the bankruptcy estate, assess its economic value, and then coordinate with the debtor's management and the oil and gas authority to submit a PI transfer application in accordance with PerMen ESDM 48/2017 and PTK-057/2018 and eventually awaiting Ministerial approval based on SKK Migas's evaluation. In these conditions, the curator's obligation to optimise the bankruptcy estate through PI comes up directly against the State's approval authority, which is beyond the curator's control. Transparency, reviewable grounds, and timely exercise of the approval authority are therefore decisive factors in determining whether the contractor's economic rights and creditors' rights in bankruptcy can be realised within the *rechtsstaat* framework, or risk being reduced by a *machtsstaat* character.

Where a PSC is held by more than one company (a consortium), the curator must also account for the JOA, including any right of first refusal (ROFR) held by the other PSC participants over the bankrupt debtor's PI. The settlement of PI therefore depends not only on State approval, but also on the contractual response of the PSC participants, who may choose to exercise or waive their ROFR.

CONCLUSION

Under the *rechtsstaat* framework, and on the basis of the Theory of Legal Certainty together with a systematic reading of Articles 499, 503, and 1131 of the KUHPerdata and Article 21 of the UUKPKPU, PI in an upstream oil and gas PSC qualifies as part of the bankruptcy estate. PI is not a property right over land or oil and gas reserves held under State control. It is an intangible contractual-economic right held by the debtor with measurable financial value. It is distinct from the oil and gas resources and reserves that remain under State control. Placing PI within the bankruptcy estate framework reflects the *rechtsstaat* principle and corrects the misconception that tends to ignore the debtor's intangible rights. If the law were to leave PI's status suspended without clarity, or to nullify its economic value in favour of absolute State interest, bankruptcy law would risk shifting toward a *machtsstaat* character, where creditors' and debtors' private rights are set aside without a fair normative basis. State control restrictions on PI transfer do not extinguish this qualification. They constrain the mechanism of realisation, not the qualification itself. Even at the level of technical regulations (PerMen ESDM 48/2017 and PTK-057/2018) the law sets out the procedure and documentary requirements for PI transfers in reasonable detail, but does not yet establish explicit substantive approval standards. This leaves the discretionary space wide and directly impacts legal certainty for creditors. Within the *rechtsstaat* framework, the requirement of Ministerial approval for PI transfers is legitimate. It rests on a clear legal basis, serves a public objective, and is applied proportionately to maintain continuity in the strategic oil and gas sector. However, since substantive criteria is not yet explicitly formulated in legislation, the exercise of approval authority continues to rest on

²⁶ Fransiska Imelda et al., "Kepastian Hukum Akta Otentik Peralihan Saham Perseroan Terbatas," *Almufi Jurnal Sosial dan Humaniora (ASH)* 2, no. 3 (2025): 458–459.

State discretion. In the bankruptcy context, this places the curator in a difficult position: obliged to optimise the bankruptcy estate through PI, yet ultimately dependent on State approval that is beyond the curator's control and is not always predictable. This is where the line between *rechtsstaat* and *machtsstaat* becomes thin. So long as discretion is exercised on a clear legal basis, with reviewable grounds and proportionate application, the contractor's economic rights and creditors' rights in bankruptcy can still be realised in a measured way. When discretion takes the form of prolonged silence, ungrounded refusal, or the shaping of PI composition based on opaque criteria, those rights risk being reduced without accountability. Based on these conclusions, it is necessary to affirm at the legislative level that PI in an upstream oil and gas PSC is a contractual-economic right that can form part of the bankruptcy estate insofar as it is held by the debtor. This normative affirmation is important so that commercial courts and curators do not hesitate to recognise PI as a financially valuable asset in bankruptcy settlement, and to prevent a recurrence of practices that disregard the debtor's and creditors' intangible rights in similar disputes. At the institutional level, it is also necessary to strengthen the coordination mechanism between the curator, the commercial court, and the oil and gas authority in every PI transfer process that arises in the bankruptcy context. Structured coordination, with clearer and explicit substantive approval standards, will help maintain the balance between creditors' interests in obtaining repayment and the State's interest in ensuring the continued management of the strategic oil and gas resources.

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