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*Practice Group(s):*

*Oil & Gas*

*Energy, Infrastructure  
and Resources*

## Indonesian State Owned Upstream Oil and Gas Regulator Invalidated by Constitutional Court

*By Nick Watts and Raja Bose*

BPMIGAS (the Indonesian state upstream oil and gas regulator) has effectively been invalidated by the Constitutional Court.

On November 13, 2012, the Constitutional Court annulled certain provisions of Law 22 of 2001 on Oil and Gas ("Oil and Gas Law") that referred to the phrase "Regulator Company" as well as its function in representing the Government of Indonesia ("GOI") in contracts and in managing the industry on the grounds that such provisions were unconstitutional. In a binding decree, the Court declared that articles 1, 4, 41, 44, 45, 48, 59, 61, and 63 of the Oil and Gas Law had violated Article 33 of the Indonesian Constitution.

This decision follows a judicial review action commenced by several organizations and individuals that claimed that the very existence of BPMIGAS violated Article 33 of the Indonesian Constitution which provides that the "land, waters and natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people." It has been reported that in striking down the provisions of the Oil and Gas Law, the Constitutional Court was "liberating" the management of the oil and gas sector which had become highly influenced by foreign parties and therefore contrary to the concept that such resources should be under state control.

The Court has also ruled that:

1. Existing contracts with BPMIGAS, including 302 Production Sharing Contracts, will remain valid until they expire; and
2. The role and function of BPMIGAS will be handled directly by the Ministry of Energy and Mineral Resources ("MEMR").

This development has thus created uncertainty within the GOI and for players in the oil and gas industry (both local and foreign) particularly in respect to new projects and the contracts governing 29 existing oil and gas projects which are up for renewal between 2013 and 2017.

The initial reaction from the Chairman of the now-defunct BPMIGAS, Raden Priyono, was concern that the decision would affect investments in the oil and gas sector and could risk US\$103 million per day in state revenue from oil and gas. He said that many oil and gas projects would also have to be halted following the Court's decision.

The Minister of MEMR has confirmed that the GOI will abide by the Court's ruling but has conceded that the MEMR has not determined its next step.

In view of the current situation, it is hoped that the MEMR will address the uncertainty of the projects over the next few days.

For companies that have existing contracts or future projects with BPMIGAS or have dealings with the Indonesian upstream oil and gas regulator, the developing situation in Indonesia over the next few days and weeks will be critically relevant. If you have any questions or would like more information, please contact us directly.

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