

Formulating an Oil and Gas Revenue Sharing Fund Based on Rights Based Approach

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Abstract. The backdrop to this research is the existence of dissatisfaction that has become pervasive among many local governments, producers of oil and gas in Indonesia, towards unjust oil and gas Revenue Sharing Fund (DBH) between central and local governments. To that end, the main objective of this research is to formulate a Revenue Sharing Fund of oil and gas production that is just for all parties by using a Rights-Based Approach (RBA). To provide the basis for the formula, the study uses qualitative method and the data collection techniques are in-depth interviews, FGD, and document analysis (desk study). The findings recommend two scenarios. The first scenario posits indigenous communities under two possibilities, i.e. either conferring share ownership in oil and gas business or the right to lease land in areas where oil and gas production occurs. The second scenario is to calculate oil and gas revenue sharing fund on the basis of governmental tier in a just and proportional manner, starting from the provincial, district, sub-district, village, and kampong levels, particularly for native and indigenous communities who are producers and non-producers of oil and gas.

Keywords: fiscal decentralization, rights-based approach, oil and gas revenue sharing fund

Abstrak. Studi ini dilatarbelakangi adanya ketidakpuasan banyak pemerintah daerah di Indonesia yang menjadi penghasil minyak dan gas (migas) terhadap pembagian Dana Bagi Hasil (DBH) migas yang tidak adil antara pusat dan daerah. Berdasarkan hal tersebut, tujuan utama dari kajian ini adalah untuk merumuskan formula DBH Migas yang adil bagi semua pihak dengan menggunakan Pendekatan Berbasis Hak. Untuk merumuskan formula tersebut, penelitian ini menggunakan metode kualitatif dan teknik pengumpulan datanya adalah wawancara mendalam, FGD dan pengumpulan data sekunder. Penelitian ini menghasilkan dua skenario sebagai rekomendasi. Skenario pertama menempatkan penduduk asli atau masyarakat adat di bawah dua kemungkinan yakni ikut menjadi pemilik saham bisnis migas atau hanya menyewakan tanah yang di dalamnya mengandung migas. Skenario kedua adalah menghitung perolehan DBH sesuai level pemerintahan secara proporsional mulai dari tingkat provinsi, kabupaten, distrik, kampung dan masyarakat adat baik yang menjadi penghasil maupun bukan penghasil migas.

Kata kunci: desentralisasi fiskal, dana bagi hasil migas, pendekatan berbasis hak

INTRODUCTION

Relations between central and local governments have been characterized by ebbs and flow since Indonesia proclaimed her Independence in 1945. On several occasions some local governments resorted to stage rebellions and demand secession as a response to treatments the central government imposed to them which they perceived as both unjust and impoverishing for people in the regions. In early days after Indonesia proclaimed her Independence, she had to contend with the first rebellion occurring in East Sumatra and Indonesia Communist Party in Madiun. Subsequently, other rebellions followed in several areas, backed by the support of Dutch government, by and large, clamored for sovereignty. In fact, during the period when Indonesia was under Parliamentary democratic government, rebellions became so frequent that the government had a lot of resources and effort to stifle them. The list included Darul Islam/Indonesia Soldiers of Islam (DI/TII) in West Java under the leadership of Kartosuwiryo; in Eastern Indonesia, Maluku in particular, Soumokil formed Republic Maluku Selatan (RMS); while during mid-1950s, Indonesia had to

contend with the PRRI rebellion which had its epicenter in West Sumatra as well as Permesta rebellion that had its basis in North Sulawesi.

Some of the rebellions were motivated by the disgruntlement over economic structure in Java compared with the condition outside Java as well as the over centralization of authority and power in the central government (Amal, 1992; Pratikno, 2005; Haris, 2005; Anne Both, 2014). In the realm of economy, the central government based in Jakarta in general and Java in particular enjoyed most of the benefits generated by the production of natural resources. The distribution of benefits from government policies became even more lopsided in favor of Java compared with Outer Java areas. Such an outcome was a logical consequence of a government system that was highly centralized in the central government, leaving little authority and power for local governments. Policy on unfair natural resource revenue sharing between the central and the regions is believed to cause the outbreak of some regional rebellions in the early years of Indonesian independence.

Nonetheless, it is worth noting that the rebellions were not confined to the old order era, but on the contrary also characterized early phases of the reform era. This

includes but by no means limited to the Free Aceh Movement (GAM) and Organization for the Liberation of Papua (OPM). The two rebel movements happened to be based in areas at the western most and eastern most parts of Indonesian archipelago, respectively, and were by and largely attributable to unfair share in the control of petroleum oil and natural gas resources as well as other key minerals which are vital sources of revenues in the natural resources sector in Indonesia. The unjust distribution of natural resources was reflected in the formula used in the oil and gas revenue sharing fund (Dana Bagi Hasil Migas) which does not take into consideration let alone appreciate interests of local communities who should be the principal owners of such natural resources.

In light of the history of the relations between the central and local government that is characterized by unfairness in the sharing of natural resources profit, to mitigate the potential for recurrence of episodes in the center-local government relations by designing a formula that is able to ensure appropriate and fair sharing of mineral resources production for local governments is deemed necessary and urgent. The designation of the formula using only an economic approach is not entirely pertinent as such a method does not take into consideration the socio-culture of the local population who bear the brunt of the adverse impact that emanates from mining activities in their area. Formula for revenue-sharing of oil and gas in Aceh and Papua are regulated by Special Autonomy Laws to comply with the 70 percent for the producing region and 30 percent for the center. This composition already reflects fairness for producing region, but unfortunately there is no transparency as to the real numbers of oil and gas production that has been taken from any oil and gas wells and the number of profit obtained. Moreover, these benefits are not flowing to the level of indigenous peoples, the actual original owner of oil and gas. The budget coming from oil and gas Revenue Sharing Funds is usually just stop at the district whose allocations are often not transparent. The community (grassroots) received the negative impact of oil and gas exploitation due to a broken environment. Ultimately it did not receive the benefits of the natural resources that come from the village (CPPS-UGM, 2012). Social and political upheaval of indigenous peoples against oil and gas companies in several regions in Indonesia is the result of this injustice.

By contrast, in other regions that are also a producer of oil and gas e.g. East Kalimantan (Kaltim) and Riau, the formula of Revenue Sharing Funds is more heavy into 70 percent for the center and 30 percent for the regions. For example, the transfer of funds from the natural resources of Kaltim province dries out quickly as Kaltim only earned an average of IDR 7 trillion of the total 100 trillion-120 trillion rupiahs transferred to the center from East Kalimantan (Kurniawati, 2012). This formula is getting lame if traced down; there is hardly some budget of oil and gas Revenue sharing funds flowing to the indigenous peoples and the oil-producing villages. The field implementation fact of this policy is very tragic, for the villages and communities have to bear the burden of natural exploitation, i.e. the negative

impact of damaged environments, while each day they only watch the natural resources from the village exploited, without leaving any benefit for them. Thus we can conclude that the current formula that has been used in distributing natural resources Revenue Sharing Fund in general and petroleum oil and natural gas in particular, does not in any way take into consideration the interests of local and indigenous communities.

Oil and gas is part and parcel of their indigenous communities hence they have an obligation to protect even if it means losing their lives in the process. In fact what is also interesting is that they have gone to the extent of mentioning the percentage of oil and gas production they are supposed to receive, which is 12 percent. To that end, it is very relevant that this research uses a Rights-Based Approach (RBA) in formulating oil and gas Revenue Sharing Fund. This study uses RBA because this model takes into account the existence of the lowest levels of government and indigenous peoples as rights holders who should also benefit from the results of oil and gas mining in the village. Therefore, this paper examines the perception of the community and village government on oil and gas Revenue Sharing Fund formula that is considered fair. Their perception then became the basis for developing a formula proposed in this study. In the meantime, the choosing of oil and gas sector was based on the important consideration that natural resources is one of the vital sectors in Indonesia.

RBA can be understood as norms and entitlements that create constraints and obligations in interactions between people or institutions. The definition of rights refers to human rights i.e. norms that help to protect all people from severe political, legal, social, or other abuses. It is based on the understanding that all people are, by virtue of being human, inherently entitled to minimum standards of freedom and dignity, regardless of nationality, place of residence, gender, origin, color, religion, language, or any other status. In Universal Declaration of Human Rights, everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property (www.ohchr.org).

RBA concept is similar with the relationship between duty bearers and rights holders. In the opinion of Campese et al. (2009) all human beings are rights holders. The individual and groups responsible for upholding and enabling the realization of rights are duty bearers. The State is a primary duty bearer, but other non-state actors also have important responsibilities. Duty bearer's responsibilities are typically categorized as respecting, protecting, and fulfilling rights. Respecting rights means refraining from interfering with people's pursuit or enjoyment of their rights, for example through uncompensated or forced eviction. Protecting rights means ensuring that 'third parties' (including private businesses and NGOs) do not interfere with people's pursuit or enjoyment of their rights. Fulfilling rights mean creating an enabling environment for people to rely on their rights. Rights must be directly provided when people cannot provide them for themselves, such as providing food aid following a severe drought (Campese et al., 2009; Wahyuningsih, et.all., 2014).

RBA possesses a strong correlation to the natural resources management, especially on Oil and Gas. This aspect is a sensitive issue, triggering complaints from local stakeholders including local community as those who suffer most as a result of abandoned ownership due to the management of their own regional natural resources. RBA has a correlation with the natural resources management including the oil and gas Revenue Sharing Fund; RBA helps the right holders to fulfill their basic needs, especially in the fields of economic, education, and health. This would create healthy systems on the natural resources management and oil & gas sharing fund. RBA also helps the government and community to protect the environment, meaning also to fulfill the rights of their future offspring. The right fulfillment can be obtained by recognition on the land and the customary rights. The failure in fulfilling RBA in terms of oil and gas Revenue Sharing Fund will result in conflict increment that threatens the security of the economy of the whole community.

The oil and gas sharing fund is part of fiscal decentralization system. Litvack (1999) explained that one of decentralization type is fiscal decentralization i.e. the authority given to the locals to explore potential income sources, and the right to accept transfer from higher government and to determine routine expenditure, as well as investment. Therefore, public involvement becomes important. Roy Bahl (2008) gives operational definition of fiscal decentralization as the empowerment of people through the empowerment of their local governments. The key term here is 'the local government'. Fiscal decentralization is about central governments' passing budgetary authority to elected sub-national governments in the form of power to make taxing and spending decisions.

For local government possessing natural resources, fiscal decentralization can be a determining factor to get higher incomes, to provide better services to the community. One of the forms of fiscal decentralization is Revenue Sharing Fund sourced from the wealth of natural resources, in particular oil and gas. In order to create local legislation, arranged according to people's needs, the allocation principals of Revenue Sharing Fund for Oil and Gas should be as follows: 1) Fair: producing regions which so far has the least benefit from their own natural resources, should derive a bigger portion in order to achieve a positive correlation of the natural resources existence to the community welfare. The level of revenue distribution starts from the province to the indigenous communities; 2) Proportional: concerns with funds distribution between the producing areas and the non producing areas; 3) Transparent: distribution and allocation process can be assessed by public sectors; 4) Efficient: Revenue Sharing Fund allocation process for producing areas and/or non producing areas can be executed directly based on the program and activity which has been arranged and agreed by the local governments.

These four principals are the forms of the rights-based Revenue Sharing Fund distribution, especially for the producing areas from the levels of province to the indigenous community. A positive impact from

the implementation of the right-based approach is the reduction in indigenous community's distrust against the government. A conflict of interest may occur among governmental level. In the indigenous community whose system is build on the customary law, a natural resource management cannot be separated from their existence. Having their position not incorporated in the system can cause distrust between the government and the indigenous community, which can eventually influence the security of oil and gas exploration in the field. Therefore, efforts to implement a suitable Revenue Sharing Fund should not stop in the district government level. District governments should also ascertain that the Revenue Sharing Fund formula is distributed down to the sub-district level and indigenous community. The right formula paying attention to the accountability principle is expected to reduce the tension either among governmental level or between the government and the indigenous community.

Recognition of local community's right is not only accomplished through the regulation issued by the central government in the form of Revenue Sharing Fund, but can also be a business relationship between the local community and the company. Within this kind of relationship, the community can get direct benefit from the land used by the company for business operation, through either renting method or share ownership. The government plays a role as a facilitator and as the protector on this business relationship.

RESEARCH METHOD

This article is based on the results of a research conducted by the author in the Center for Population and Policy Studies (CPPS) UGM during two periods 2012 and 2013-2014. Both research used qualitative methods that entailed comparison studies between practices in the regions in Indonesia and those in other countries. The study in 2012 compared the oil and gas Revenue Sharing Fund practices in West Papua Province and Nangroe Aceh Darussalam (NAD) Province. Meanwhile, the 2014 study was conducted in Fakfak district since it has been designated as an area for future natural gas exploitation within the framework of LNG expansion project located in West Papua. The primary data for both research were obtained by conducting in-depth interviews and FGD with local leaders and members of the local communities in oil and gas sector (NAD and West Papua), while the secondary data were taken from desk-study on legal documents, i.e. regulations on oil and natural gas Revenue Sharing Fund in Indonesia. To strengthen the analysis, comparison with practices/experiences of oil and gas revenue sharing management in other countries is made. Based on the outcome of the comparison between Aceh, Papua and other selected countries, coupled with results of interviews and FGD with members of the local communities in oil and gas producing areas, the author subsequently formulates the oil and gas Revenue Sharing Fund model appropriate for the producing areas. The study uses RBA, stressing on the importance of taking the

rights of local native and indigenous communities into consideration for revenue sharing. Previous studies tend to use purely economic approach, making the analysis very technocratic. This paper seeks to develop bottom-up approaches to political rights of citizens through RBA, to determine what should be a fair share of the natural resources in the village. The bottom-up approach is coupled with laws regarding Revenue Sharing Funds (top-down) resulting in a more fair and accountable draft of DBH policy.

RESULT AND DISCUSSION

The format used in allocating oil and gas Revenue Sharing Fund at the national level is based on Law No. 33/2004 which stipulates that the remainder of revenue from a deduction of tax and other charges from the revenue obtained from the exploitation and production of oil and gas is shared under the following arrangement/formula: Close to 69.5 percent goes to the central government, and 30.5 percent is allocated to local governments. The 30.5 percent component is subsequently distributed based on the following formula: 6 percent is allocated to the province, 12 percent to the district producing oil and gas, and 12 percent is distributed to other district governments in the province within whose jurisdiction oil and gas production occurs. The remainder that is 0.5 percent is allocated to education and health expenditure.

However, specifically for Aceh and Papua, the formula used in allocating oil and gas Revenue Sharing Fund does not refer to the Law, as the two provinces have a Special Regional Autonomy status (asymmetric decentralization), hence enjoying special arrangement. With regards to Papua, Law No. 21/2001 on special autonomy stipulates that the oil and gas Revenue Sharing Fund is 70 percent and 30 percent for the local government and central government, respectively. Local community leaders in one of the oil and gas producing districts in West Papua said that there was no objection to the format that allocates 30 percent of oil and gas production revenue to the central government. In accordance with article (34), subsection (3), number (7), of the special regional administration, a detailed arrangement is required with respect to the 70 percent of oil and gas Revenue Sharing Fund allocated to the local government, stating that "the detailed allocation of revenues between Papua province and district governments or any other names is stipulated in detail and equitable manner in special regulation which should pay special attention to under developed areas". Nonetheless, by the time this paper was written, deliberations of the special regulation on the oil and gas Revenue Sharing Fund for West Papua were still continuing.

With regards to Aceh, the formula used in allocating oil and gas revenues is based on Special Regional Autonomy Law No.11/2006, specifically article 181, section 3. The law contains provisions that Aceh province receives 55 percent of oil revenues, while the central government gets 45 percent. Meanwhile, with respect to natural gas, Aceh receives 40 percent of

revenues, while 60 percent goes to central government coffers. To that end, the formula allocates a smaller proportion of oil and natural gas revenues to Aceh than what Papua gets. Subsequently, article 182, section 3, stipulates that at least 30 percent of revenues in the oil and gas Revenue Sharing Fund is allocated on education expenditure. Article 182, section 4, explains that at least 70 percent of oil and gas production sharing revenue is allocated on development programs that are jointly agreed upon by the provincial government and district governments. In the shari'a regulation (Qanun) No. 2/2008 on procedures of allocation of additional oil and gas revenues and utilization of special autonomy fund, it is stated that the allocation of 70 percent of the oil and gas production revenue is based on an agreement that is reached between Aceh provincial government and district governments. The detailed account of the utilization of the fund is as follows: First, 25 percent of that allocation goes to district governments that produce oil and gas resources. Secondly, 35 percent is allocated to district/municipal governments that are non-producers of oil and gas in Aceh province (with the detail being that 50 percent is allocated equally and the remaining 50 percent is allocated on the basis of several indicators that include total population, area, gross regional domestic product, human development index, and other relevant indicators). Third, 40 percent is allocated to development programs and activities that are undertaken by Aceh government.

In accordance with the general formula stipulated in Law No. 33/2004, many oil and gas producing local governments in Indonesia consider it unjust. The same applies to the formula that is encapsulated in West Papua gubernatorial regulation and the Law on Special regional autonomy for Aceh, which many perceive as yet to incorporate aspirations of oil and gas producing district governments. Similar disappointment is palpable in many oil and gas producing district governments in Aceh, which consider the provisions embodied in the special regional autonomy have yet to evince tangible outcomes for producers of oil and gas in the province. The dissatisfaction that local government feel about the formula currently used for allocating oil and gas revenues was articulated by a local religious leader residing in the oil and gas producing area in West Papua. According to him, oil and gas producing districts should have control over the way oil and gas is allocated. The structure of bureaucracy at district level falls under the jurisdiction of the province; however, the ups and downs related to oil and gas production occur at the district level. In light of that, oil and gas producing districts must have control over the distribution and allocation of oil and gas revenues. To that end, there is a need for an urgent resolution of the problem if dissatisfaction does not only translate into a vertical conflict among districts at the same level of administration, but also between local governments at different levels. Moreover, the above situation remains unresolved even after the provincial government has been vested with authority and power to regulate the issue. This is by and large due to the failure of the provincial government to take on such responsibility.

Moreover, oil and gas producing district governments face incessant pressure from local indigenous communities who consider the oil and gas exploited land as theirs by ancestry. In fact, as has been elucidated earlier, many rebellions in Indonesia involved grass root communities who felt neglected despite the fact that they are ancestral owners of the land on which economic activities occur. The majority of communities in oil and gas producing areas continue to enjoy a standard of living, far below that enjoyed by other areas in Indonesia. Thus, the low social welfare, which members of communities enjoy in oil and gas producing areas, is very much in contrast to the vast natural resources potential such areas have. This therefore means that the vast natural resource potential does not correlate positively with the level of social welfare of the population that inhabits the oil and gas producing areas. To that end, to avert the danger of falling into the natural resource curse, the need for developing a formula that will ensure a just allocation and management of oil and gas revenues is deemed necessary and urgent. Developing such a formula will dissipate fears and sense of neglect that many communities in oil and gas producing areas feel, thereby reducing the potential for future conflicts. As a comparison, the paper studied the practices used in the determination and management of oil and gas revenues in Bolivia and Ghana.

Bolivia is one of the countries whose national revenue depends heavily on oil and gas production. Government revenues from oil and gas take the form of royalty on oil and gas exploration and direct hydro-carbon tax. Bolivian royalty system sets a proportion of 18 percent and has been in place since 2005. Meanwhile, hydro-carbon tax rate varies from 18% to 32 % of the value of oil and gas extraction which is backed by a political agreement.

In addition, Bolivia obliges the possession of an extraction license for all oil and gas exploration and exploitation companies. Later on 50 percent of the revenue from the tax is used in natural preservation and is allocated to oil and gas producing regions. Subsequently, the remaining 50% is allocated to the Ministry of Environment. Some of the 32% is allocated for expenditure that supports organizational development (Morgandi, 2008).

Bolivia is one of the countries that allocate a very small percentage of oil and gas production for the central government (37%), with the remainder allocated to pension fund development, Universities, and company development. Nonetheless, criticism is leveled against the high direct hydro-carbon tax, the process of determining has more often than not degenerates into political bickering and a source of instability (Morgandi, 2008).

Meanwhile, Mining is Ghana's main source of revenue, contributing 12% to national revenue. In general, revenue from mining activities is drawn from royalty payments that average 3-6% and corporate income tax. Revenue from the two sources is then disbursed to local governments through District Assemblies Common Fund, which according to

prevailing laws is set at least 7.5%. However, 100 percent of the fund coming from tax belongs to the central government, while 80 % of revenues from royalty goes to the central government. Meanwhile, 10 % of the remaining royalty revenue is allocated to mineral development fund and community land owners (Morgandi, 2008).

Based on the above scheme, the inference that can be drawn is that the central government receives the largest portion of oil and gas production. Meanwhile, oil and gas producing areas have to do with very little. Criticism leveled against the scheme relates to the delay that often characterizes the fund transferred to beneficiaries. Besides, another criticism is the slow absorption of the fund transferred to local governments. Consequently, the transfer of fund to local governments is considered inefficient and has been decried for delays that often bedevil program implementation.

In general, a nation often uses certain terminologies in effecting the distribution of revenues to local governments. Oil and gas revenues are categorized into two forms, namely: vertical distribution and horizontal distribution. Vertical distribution refers to revenues from the mining sector from one area or region within the country, the distribution of which is based on the level of government. The level of distribution is in turn categorized into three levels: central, provincial, and district governments. To that end, vertical distribution entails the distribution of vertical revenue for the provincial government and the central government. Besides, in the event that oil and gas revenues are still available, it is allocated to district governments as oil and gas producers. Meanwhile, horizontal distribution is the sharing of oil and gas revenue to three tiers of government that include the central, provincial, and district governments regardless whether or not the beneficiaries are oil and gas producers. To have an in-depth understanding of the various conditions that characterize Revenue Sharing Fund arrangements, the following section gives an elucidation of the mechanisms used in allocating oil and gas revenues.

The mechanism used in allocating oil and gas revenues sharing fund is categorized into three forms. First, allocation of revenue based on whether or not the area is a producer or not (derivation). Secondly, revenue allocation mechanism based on a certain formula underpinned by various variables that serve as factors of consideration for a certain area such as (population, per capita income, or efforts toward promoting improvement in incomes). In other words, revenue allocation mechanism is based on certain requirements or conditions or formula (statutory formula). Lastly, the level of oil and gas revenue generated by oil and gas exploration and production is not set or determined. Nonetheless, the level of revenue distributed through production sharing to provinces and districts is incorporated in the general transfer of revenue to local governments without specifying the percentage that production sharing contributes to the general transfer fund (undifferentiated). The three concepts above (derivation, statutory formula, and

undifferentiated) determine the level of allocation of oil and gas Revenue Sharing Fund that are used in many countries, including Indonesia (Morgandi, 2008).

It is regrettable that Indonesia has yet to take into consideration the rights of local communities in the allocation of oil and gas Revenue Sharing Fund. According to Boesen and Martin (2007) the definition underpinned by the Rights Based Approach (RBA) is a framework that integrates international norms, principles, standards, and goals of a human rights system into development plans and process. The framework is characterized by methods and activities associated with the human rights system and have strong influence on the functioning and organizational development of the system itself. We have the conviction that RBA has the ability to take incorporate poverty as manifestation of injustice, marginalization, discrimination, and exploitation as the principal causes of impoverishment. Based on this approach, poverty ceases to be considered a mistake by an individual which entails resolving the use of a personal approach. In general RBA analysis uses technical analysis of the relationship between rights-holders and duty-bearers. Rights-holders are those who have the rights that must be observed, while duty-bearers are those who have the authority, hence are expected to observe rights of rights-holders. The main dynamic of RBA lies in identifying the fundamental cause of poverty, empowering rights-holders to clamor, and lay claim to observance of their rights as well as strengthen the competence of duty-bearers to conduct their functions in more responsible manner (Boesen and Martin, 2007).

The following section elucidates the use of technical analysis of the relationship between duty-bearers and rights-holders in the context of relations between the central government and local governments in the distribution of oil and gas revenues. The central government is a duty bearer with respect to oil and gas provincial governments, which is why the latter have the right to demand fair treatment from the former. On the contrary, it is the responsibility of the central government to conduct the distribution of oil and gas revenues in a fair, transparent, and accountable manner. The following is the relation between the provincial and district government. Provincial governments are duty-bearers while district governments are rights-holders. What is true with respect to the relations between the central government and provincial governments is also true for the relations between the oil and gas producing provincial and district governments. At the level of district governments, the same pattern of relationship should continue to lower tiers as this level of government is duty-bearer with respect to sub district administrations, which therefore are rights-holders. However, the foregoing is only possible if and only if sub district governments are autonomous, and not merely parts of district governments. In the same vein, the sub district assumes the role of duty-bearers for villages/urban hamlets which are therefore rights-holders. The delineation does not end there, as some areas with strong native communities, oil and gas revenue sharing formula is incomplete if they are excluded.

To that end, the main problem that bedevils the current formula used in distributing oil and gas revenues is the exclusion of local communities as the rightful right holders. This is despite the reality that local communities are in essence the principals who own natural wealth underground. Ancestors of such communities used to traverse day in day out land that is today the center of exploration and exploitation by multinational companies through concessions they obtain from the central government. Members of society consider the funds they receive both in cash and kind as well as development programs as theirs by right. There is a clear link between right and time when disbursement is made. Members of society consider the transfer of money delayed as a debt: "debt" payments of which, members of society have the inalienable right to demand by knocking on the door or dowry that oil and gas company promises to deliver to DAV region.

The 1945 constitution, article 33, section (3) states that "Land, water and all natural wealth contained therein is under the control of the state and must be used to as much as possible enhance people's welfare". The interpretation of 'under the control of the state' should neither be seen as inputting the monopoly of the government nor non-inclusion of members of society as ultimate principal owners. In other words, the article should be interpreted as evincing full responsibility of the state to fulfill its obligations in as fair a manner as possible to members of society who are the principal owners of land that is used for oil and gas operations while at the same time, taking into considerations rights of communities and people in areas that are not directly impacted by such operations. Such distributive fairness should be proportion in the way sharing is made for communities that are directly impacted by oil and gas operations and those that are not.

Unfortunately, Indonesia does not yet consider indigenous communities such as communal landowners as right-holders. According to Morgandi (2008) a number of countries that are producers of oil and gas include indigenous communities in the calculation of oil and gas production sharing arrangement. In addition to Bolivia (land for indigenous people and campesinos communities out of treasury share of revenues), and Ghana (stools-customary land titles holders), other countries are Brazil (landowners-royalty rate of value), and PNG (private and communal landowners).

Considering developments in local political dynamics today, Indonesia should include grass roots rights-holders both institutions and indigenous communities in the determination of oil and gas production sharing formula. In fact, the special regional autonomy laws No.21/2001 and Law No.11/2006 for Papua and Aceh respectively in part constitute an adoption of RBA theory; for example, special regional autonomy for Papua stipulates that "efforts to devolve wide ranging authority to the local government and local people to manage and regulate their own affairs, in the conduct of government functions, and regulate the use of natural resources there lie under their jurisdiction, as well as authority to empower social, economic, and cultural potential, and conferring sufficient

role upon Papua indigenous people". The regulation of the above issue is evident in the explanation text to the Law No.21/2001 on special autonomy. Thus, special autonomy status reiterates recognition of the rights of local communities over their existence as an ethnic minority and as such deserving special treatment. To that end, the conclusion can be drawn that special regional autonomy law mandates the application of RBA principles in fiscal decentralization in general and management of oil and gas Revenue Sharing Fund in particular.

According to the World Bank (1997), the potential benefit likely to arise from devolution of the conduct of fiscal administration to lower tier polities is the increase in efficiency in the implementation of public service delivery as well as the reducing information and transaction costs associated with the provision of public goods and services. Moreover, decentralization of fiscal authority to local governments fosters easier public participation in the development process. In other words, fiscal decentralization has positive correlation with RBA principles which in essence stress the importance of public participation in determining issues affecting their lives. The principle emphasizes the notion that participation is a public right for rights-holders, mandated by duty bearers to observe the process of managing the authority related to oil and gas Revenue Sharing Fund at the government level. Besides, based on the principle of subsidiarity of public finance, the performance of public sector can be enhanced by including local aspects such as local culture, environment, natural resource endowment, and social and economic institutions. The principle is truly relevant to RBA principle that considers social and economic diversity of the local people and is attendant to various interests and needs. To that end, duty bearers should appreciate local diversity and potential in accordance with the international recognized human rights. The expectation is that by including local elements and characteristics, the management of oil and gas Revenue Sharing Fund will reflect government's pertinent response to the needs and problems of indigenous people.

To achieve the desired goals, the process of allocating oil and gas Revenue Sharing Fund should be based on appropriate and right principles. To make such regulations binding, such principles should be incorporated in a local government regulation, which both rights holders and duty bearers should formulate. As an example, the Aceh Qanun No. 2/2008 on the procedures of allocating additional funds for oil and gas revenues and use of special regional authority does not include principles that underpin the allocation, use, and accountability of oil and gas revenue fund. To a large extent, the Qanun regulates issues that are centralistic at the provincial government level. This is understandable given the fact that all issues concerning the administration of activities and functions financed by funds deriving from oil and gas Revenue Sharing Fund fall under the purview of the provincial government. Meanwhile, district governments serve as locus rather than focus of the decision making process in the interest of the population under their

jurisdiction. Doubtless, such regulation will make the realization of regional autonomy far removed from the interests and aspirations of indigenous people.

Some principles, which must be observed in allocating oil and gas revenues, thereby averting the problem of domination by the government (duty-bearers), are as follows: First is fairness, meaning that oil and gas producing regions who to this day have never been shared oil and gas revenues should receive a larger share, having positive correlation with the welfare of indigenous people. The concept of producing regions, which is in congruence with the concept of fiscal decentralization, is tiered relations. Besides the province, other administrative tiers below it include district, sub districts, village governments located in oil and gas producing region. There is a need to emphasize the fact that in accordance with RBA principle, the concept of oil and gas producing region, should include indigenous communities who have ancestral ownership over the land within the institutional structure of land ownership. Thus, by taking into consideration the institutional structure of land ownership, the management of oil and gas Revenue Sharing Fund will foster fairness for indigenous communities. Based on outcomes of several FGD with local traditional leaders and members of indigenous communities, it is only by the involvement of indigenous communities living in areas of exploration and exploitation centers will the distribution process of oil and gas Revenue Sharing Fund achieve fairness. Some opinion of local leaders and members of society who inhabit one of the oil and gas producing districts concerning what constitutes fair percentage in the sharing of oil and gas revenues are depicted in Table 1.

Secondly is proportional. Based on this principle, Indonesia as an independent nation adheres to, espouses, and is committed to promoting the notion of a unitary state of the republic of Indonesia. Based on this concept, other oil and gas non-producing regions have the right to have a fair share in mineral production revenue generated by exploration and exploitation activities undertaken in producing areas within a proportional distribution framework. To that end, any measure put in place to distribute revenues from oil and gas must be based on a proportional framework. Apparently, members of indigenous communities acknowledge the concept of proportionality with respect to the distribution of oil and gas Revenue Sharing Fund in West Papua province. Based on results of interviews conducted with members of the indigenous communities there is a need to distribute oil and gas revenue not only to other Papuans but also in-migrants and other Indonesians.

Thirdly is transparent. Based on this principle, the process of distribution and allocation of oil and gas Revenue Sharing Fund should be open or transparent, hence disseminated to the public. This means that the formula used in the distribution of oil and gas Revenue Sharing Fund must be transparent and sourced from the capacity, volume of oil and gas extracted (lifting),

Table 1. Opinions of respondents in an oil and gas producing district in West Papua concerning the distribution of oil and gas Revenue Sharing Fund to various beneficiaries in the province

No.	Category of respondents	Opinion
1	Traditional/ customary leader	Out of 70 percent allocated to the province, 20 percent should be allocated to the province, and 50 percent disbursed to district governments. Subsequently, 30 percent of the 50 percent should go to district governments and 20 percent allocated to non-oil and gas producing district governments
2	Religious leaders	Out of 70 percent of oil and gas Revenue Sharing Fund received by the province, 20 percent should be allocated to the province and 50 percent to district governments. Alternatively, 30 percent should be allocated to the province, and 40 percent to oil and gas producing districts. Religious leaders contend that of the 70 percent of the oil and gas Revenue Sharing Fund disbursed to the province, 40 percent should be allocated to oil and gas producing district governments, and 5 percent should go to indigenous leaders. The remainder 25 percent should be allocated to the province.
3	Local People	Indigenous communities demand a share between 5 percent and 12 percent

Source: Report on Oil and Gas Revenue Sharing Fund in West Papua, CPPS-UGM, 2012

and price of oil and gas in the international market. These factors have for long been shrouded in secrecy in the oil and gas industry in Indonesia, ranging from uncertainty about the actual capacity Indonesia has today, how long will it last in future before it is exhausted, to the volume of lifting that goes to oil and gas companies, as well as the real prices of oil and gas on the international market. As a result of the cloak of uncertainty that continues to surround the above issues, many areas rarely know how much oil and gas Revenue Sharing Fund they are supposed to receive, by virtue of their rights, as opposed to what they actually get, based on central government decisions. Not few local governments continue to face high uncertainty in determining the oil and gas Revenue Sharing Fund they receive which in turn has adverse effect on their annual budgeting plans. Meanwhile, with regards to the public perception about the existence of oil and gas Revenue Sharing Fund, many expressed ignorance, doubt, as well as inability to differentiate the fund from the compensation fund regulated in the LNG environmental impact assessment way back in 2002. To many, oil and gas Revenue Sharing Fund remains an issue, a promise, and a plan, which has never been bore fruition. In other words the absence of knowledge among members of the public about oil and gas Revenue Sharing Fund attests to the secrecy with which the fund continues to be determined and administered.

Fourthly is accountable. Based on the prevailing regulatory framework, an accountability for the use to which oil and gas Revenue Sharing Fund is put, must be made. Besides, accountability can also be gauged from the capacity of oil and gas Revenue Sharing Fund to contribute to overcoming problems as well as meet the needs of local governments and their citizenry. Competence and integrity of duty bearers and responsiveness of rights holders is an absolute requirement for achieving that. Professional management of oil and gas Revenue Sharing Fund, right from the level of province to indigenous communities, is an absolute necessity if inefficiency in management and moral hazard so far plaguing the fund can be avoided.

Fifth, is participative. Funding for development programs and activities deriving from oil and gas Revenue Sharing Fund must be in accordance with the needs of society. In other words, the key word is the democratization of oil and gas Revenue Sharing Fund management. The state must avail rights holders the opportunity to participate directly in the management of oil and gas Revenue Sharing Fund by providing them ample room for forums in which they are involved to play a role in oil and gas Revenue Sharing Fund management. To that end, the existence of an oil and gas Revenue Sharing Fund agreed jointly by both rights holders and duty bearers is long overdue. The absence of an oil and gas Revenue Sharing Fund system that is clear, well streamlined, acceptable to the public if not resolved has the potential to ferment conflicts over claims that may degenerate into abuse of power and authority.

Sixth is efficient and effective. Despite the fact that the process of oil and gas Revenue Sharing Fund distribution is a protracted one that consumes a lot of energy and time, it does not mean that it should abnegate from efficiency. The only way to achieve that is through the allocation of oil and gas Revenue Sharing Fund to oil and gas producing and non-producing local governments directly based on programs and activities encapsulated in plans that are products of consensus between local governments and the general public. Besides, the main goal of managing oil and gas Revenue Sharing Fund is to maximize social welfare as enjoined in 1945 Indonesian constitution (article 33, section 3). To that end, whatever model is adopted in managing oil and gas Revenue Sharing Fund must be tailored toward achieving this overarching goal.

An observation of various viewpoints encapsulated in the Law on the financial balancing between the central and local governments, special regional autonomy, concept of fiscal decentralization underpinned by RBA, are imperative in the formulation of an oil and gas Revenue Sharing Fund formula especially those applied to the district level and lower tiers of government. This model does not distinguish between oil and gas because both are natural resources, the

distribution of revenue from production operations that must take into consideration local governments and indigenous communities. The main problem lies in abnegation and not taking into consideration local governments and communities even though the land on which oil and gas operations occur belong to them. In light of that, the model recommends two scenarios which if implemented can help to resolve the problem.

The first scenario is putting indigenous communities into the position of active players in oil and gas industry. The concept of "active player" here refers to the recognition of the existence of indigenous communities as holding rights and having the capacity to participate in oil and gas business. Recognition of the existence of the communities as rights holders in oil and gas business is in line with principles of legality as oil and gas operations are located in customary lands that have for centuries been sources of livelihood for such communities. To that end, once the government recognizes active participation in oil and gas business, there will no longer be a need for the government as duty bearers to distribute oil and gas revenues to them simply because with respect to oil and gas business their rights will have been met. Henceforth, their share in oil and gas revenues will depend on market mechanisms.

Based on the scenario of recognition of customary/traditional communities as active players in oil and gas industry, two models are proposed. First model is indigenous communities becoming shareholders in oil and gas business. This model positions indigenous communities as subjects (rights-holders) in the business because they have right of ownership over the land used by the oil and gas industry to run its operations. The value of shares that is eventually given to indigenous communities very much depends on capital market developments. To manage the shares, indigenous communities can form a customary institution or a company managed by capable and competent individuals drawn from local community. The state as duty-bearers has the obligation to facilitate the process by providing supervision to the institution or company. The use to which revenues that are generated by the company will be put liable to discussion with all members of society within the framework of enhancing social welfare of all elements of society. Second models, Indigenous community lease the land to oil and gas industry. This model has some similarity with the first model, but with a difference. The difference lies in the fact that indigenous communities do not become shareholders in the oil and gas industry, but serve as rights holders leasing their land to the industry. The model has been adopted in many other countries such as PNG and Brazil. The amount of revenue indigenous communities generate by leasing their land depends on prevailing market prices of land in the area where oil and gas operations are located. Meanwhile, the revenues generated from leasing the land to oil and gas industry is by and large tailored to enhance collective welfare of all members of society. The role of the government as duty-bearers in this exercise is to facilitate and supervise the use of revenue.

The second scenario entails the formulation of a Revenue Sharing Fund that is fair from perspective of the government to indigenous communities. If the government fails to implement the first scenario, the onus of the government is to formulate a fair, just, and proportional formula for distributing oil and gas Revenue Sharing Fund that takes into consideration indigenous communities. In accordance with the special autonomy for West Papua, local government receives a share of 70% while the central government gets 30%. The choice of 30:70 percent sharing ratio in this model is based on the fact that the above ratio has been adopted and applied in the legal framework and has been acceptable and considered equitable by most elements of society. Subsequently, there is need to develop a formula for sharing the 70 % of oil and gas revenue disbursed to lower tiers of government, including indigenous communities. The pattern reflects the relationship between rights holders and duty bearers. In other words, the pattern follows RBA principle that emphasizes the need for the smallest community which in principle is the ultimate owners of oil and gas wealth to be included in any formula that distributes oil and gas Revenue Sharing Fund in area where they are located. The formula proposed is elicited as follows: 1) Out of the 70% of oil and gas revenue that is allocated to local government, 10 % should be kept in a reserve fund that takes the form of an endowment fund. The fund should be allocated to human resources development programs and activities, and health as well as education. The management of the fund should be entrusted with the province and must comply with and adhere to transparency and accountability principles. That leaves a difference of 90% (100%-10%) from 70 percent of the revenue disbursed to the local government; 2) Subsequently, the remaining 90% should be distributed in accordance with government hierarchy, and the distribution made to oil and gas producers at every level. To simplify the hierarchy, the administrative structure is divided into district governments, which includes district government, village administration, and indigenous communities. In accordance with Law No. 33/2004, the pattern used is 6:12:12 or 20:40:40. Based on the pattern, then a) the province receives 20% with the condition that the provincial government must put priority expenditure on education, health, and inter-regional infrastructure; b) District governments located in oil and gas producing provinces receive 40%. The district governments, in turn, are supposed to disburse oil and gas Revenue Sharing Fund to administrative levels below them with indigenous communities receiving oil and gas revenues based on a 20:40:40 pattern. To that end, out of 40% that district governments receive, district governments get 20%, village that are producers of oil and gas get 40% and villages that are not producers of oil and gas receive 40%. Subsequently, oil and gas producing villages in the district governments, use the same pattern to distribute oil and gas Revenue Sharing Fund they receive to oil and gas producing and non-producing indigenous communities. Thus, out of 40 % of oil and gas revenue that oil and gas producing and

non-producing villages receive, villages get 20%, while oil and gas producing indigenous communities receive 40%, while non-producing indigenous communities also get 40%. What is slightly difference is the formula used to distribute oil and gas Revenue Sharing Fund to oil and gas non-producing villages located in oil and gas producing district governments. The formula proposed is 50:50. This implies that out of 40% of oil and gas revenues the oil and gas non-producing villages receive, 50% is allocated to villages and 50% goes to indigenous communities; c) oil and gas non-producing district governments located in oil and gas producing provinces receive 40%. The pattern of 20:40:40 is used to allocate oil and gas revenue to villages and indigenous communities. To that end, out of 40% of revenue that the oil and gas non-producing district governments receive, 20% is disbursed to district governments, 40% goes to villages, and 40% to indigenous communities. Second Scenario above is depicted in Figure 1.

The distribution pattern based on the two scenarios is extremely different from the pattern applied in Aceh and those based on West Papua gubernatorial regulation No. 542/11/V/2001. In accordance with Aceh special regional autonomy, 60% of oil and gas Revenue Sharing Fund is allocated to the central government and 40% goes to local governments. Local government here refers absolutely to the provincial

autonomy vested with the obligation to disburse oil and gas Revenue Sharing Fund it receives to local governments that lie under its jurisdiction. Out of 40% of oil and gas Revenue Sharing Fund allocated to local governments, 30% is specifically allocated to expenditure on education and 70 % for local development (the province receives 40%, oil and gas producing districts get 25%, and non-producing districts receive 35%). The pattern arrangement, used in Aceh does not have an endowment fund.

Another difference between the oil and gas distribution pattern used in Aceh and that adopted in West Papua (see Table 2), lies in the fact that in accordance with West Papua gubernatorial regulation, 45% of petroleum and 60% of natural gas is allocated to the central government. Subsequently, 55 % of oil and gas Revenue Sharing Fund allocated to the local government is distributed based on the following pattern: 16.50% goes to the province, 19.25% is allocated to oil and gas producing districts, while 19.25% is allocated to activities engendering equity purposes. Meanwhile, natural gas revenue allocated to the local government 40% is redistributed in the pattern that allocates 12% to provincial governments, 14% to natural gas producing districts, and 14% to equity purposes. This Revenue Sharing Fund pattern does not have an endowment fund, as well.

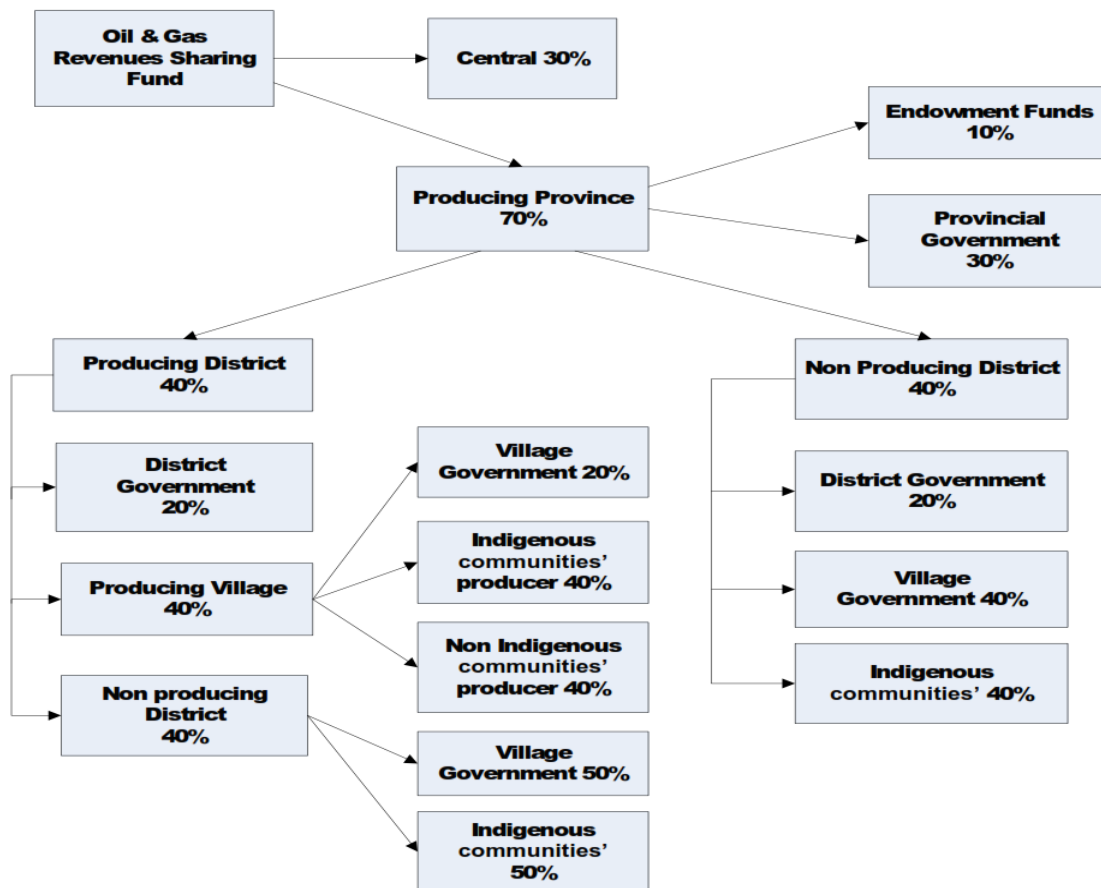


Figure 1. Oil and Gas Revenue Sharing Fund Scenario
 Source: primary data, CPPS-UGM, 2012

Table 2. Differences in the oil and gas Revenue Sharing Fund formula between models and alternatives

Aceh	West Papua Gubernatorial regulation	Alternative Models
60 percent is allocated to the central government	45 percent of petroleum oil and 60 percent of natural gas is allocated to the central government	30 percent is allocated to the central government
40 percent is allocated to the local government. The portion allocated to the local government is subsequently redistributed using the following arrangement: 1) 30 percent is allocated to education (Law No.11 / 2006 and Qanun No.2/ 2008) 2) 70 percent is allocated to development programs a) 25 percent for producers b) 35 percent for non-producers: 50 percent is distributed equally and 50 percent is distributed in accordance with selected indicators c) 40 percent is allocated to the province	In West Papua gubernatorial regulation No.542/11/V/2011, the allocation of natural gas and petroleum is done separately: a) Petroleum: 55 percent 1. Province receives 16.50 percent 2. Producers get 19.25 percent: • 30 percent is distributed to producers • 70 percent is distributed in accordance with certain weights (area is given weight of 20 percent; population is given weight of 15 percent; IKK 20 percent; indigenous people is accorded weight of 45 percent) 3. Equity purposes allocated 19.25 percent b) Natural Gas : 40 percent 1. Province gets 12 percent 2. Producers receive 14 percent: • 70 percent is distributed equally • 30 percent is distributed based on area weight (area is given weight of 20 percent; community is given weight of 15 percent; IKK 20 percent; indigenous people is accorded weight of 45 percent) 3. Equity purposes are allocated 14 percent Note: This arrangement does not have an endowment fund	70 percent is located to local government a) 10 percent goes to the endowment fund b) The remaining 90 percent is distributed based on the formula 6:12:12 = 20:40:40 • Province is allocated 20 percent • Districts that are producers receive: 40 percent, which is redistributed to the district itself (20%), producing villages (40%), non-producing villages 40%. At the producing village level, 20% is allocated to the village itself, 40% goes to indigenous communities and 40% is allocated to non-producing villages. With respect to non-producing villages, 50% is allocated to village administrations, and 50% goes to indigenous communities. • As regards to non-producing districts: they receive 40 percent, which is redistributed in such a way that 20% is allocated to the district, 40% is disbursed to villages, and 40% goes to indigenous communities Note: Takes into consideration the endowment fund which is specifically tailored toward human resource development (education and health) of the local communities

Source: Research Report on Community Economic Development in Fakfak district, West Papua. Collaboration of CPPS GMU and Fakfak district government, 2014 and Report on Oil and Gas Revenue Sharing Fund in West Papua province, CPPS GMU, 2012.

CONCLUSION

One of the root causes of uncertainty that more often than not plagues oil and gas producing regions and communities is the failure of existing formula used in distributing oil and gas Revenue Sharing Fund to take into account fairness for producing areas and communities. To that end, there is need to redress this problem. This paper urges the need to adopt rights based approach in the decentralization of public finance management, especially in the formulation of fiscal balancing between local governments and the central government. This approach is proposed within the framework of fostering integration of norms, principles, standards, systems, and goals derived from an internationally recognized human rights system into development planning and process.

The RBA analysis conducted uses technical analysis of the relationship between rights-holders

and duty-bearers. Rights-holders are holders of rights, while duty-bearers are parties vested with authority and power, whose use is supposed to take into consideration the rights of rights-holders. In RBA parlance, the root cause of the problem in the distribution of oil and gas Revenue Sharing Fund lies in the exclusion of or noninvolvement of indigenous communities, despite the fact that they are the ultimate rights holders of the land used for oil and gas operations. They are in other words, the principal of all natural wealth underground those lands.

By the same token, based on the relationship between rights-holders and duty-bearers, two proposals are made, one that involves turning indigenous communities shareholders into permanently active participants in oil and gas business. This scenario offers two possibilities for indigenous communities. One envisages indigenous communities either as shareholders in oil and gas business or engages in leasing the land used to support

oil and gas operations. The value of shares as well as the value of the lease indigenous communities get largely depends on market forces. If the first scenario is adopted, the government as duty-bearers is no longer required to bear the responsibility of allocating oil and gas Revenue Sharing Fund to indigenous communities directly. Meanwhile, the second scenario envisages the calculation of oil and gas Revenue Sharing Fund based on tiers of government that are both producers and non-producers of oil and gas right from the province, district, to indigenous communities. The pattern of distributing oil and gas Revenue Sharing Fund should be based on the formula that is already accepted as legally binding, in accordance with Law No. No.33/2004, which is 6:12:12 or in other words composition of 20:40:40.

The formula is a moderate offer which the government can take into consideration as a fair and proportional oil and gas Revenue Sharing Fund. Nonetheless, there is need to note that in final analysis, calculation of the formula composition is more often than not influenced by transactional considerations, not amenable to interventions grounded in rationality approaches. Should there be an issue at the front and center in designing a fair and proportional oil and gas Revenue Sharing Fund formula, the importance of including and involving indigenous communities in the process must be taken into consideration and recognized as they are the principal owners of natural resources.

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