UNIVERSITAS INDONESIA

ANALISA PERJANJIAN OPERASI BERSAMA (*JOINT OPERATING AGREEMENT*) DALAM KEGIATAN USAHA HULU MINYAK DAN GAS BUMI
(Studi Kasus Perjanjian Operasi Bersama Antara X dan Y)

SKRIPSI
Diajukan sebagai salah satu syarat untuk memperoleh gelar Sarjana Hukum

RADITYA KOSASIH
050500205Y

FAKULTAS HUKUM
PROGRAM REGULER
KEKHUSUSAN HUBUNGAN TENTANG
SESAMA ANGGOTA MASYARAKAT
DEPOK
JUNI 2009

HALAMAN PERNYATAAN ORISINALITAS

Skripsi ini adalah hasil karya sendiri,
dan semua sumber baik yang dikutip maupun dirujuk
telah saya nyatakan dengan benar

Nama	**: RADITYA KOSASIH**
NPM	**: 050500205Y**
Tanda Tangan	**: .....**
Tanggal	**: 22 Juni 2009**

HALAMAN PENGESAHAN

Skripsi ini diajukan oleh

Nama	: RADITYA KOSASIH
NPM	: 050500205Y
Program Studi	: Hukum (Hubungan Tentang Sesama Anggota Masyarakat)
Judul Skripsi	: ANALISA PERJANJIAN OPERASI BERSAMA (*JOINT OPERATING AGREEMENT*) DALAM KEGIATAN USAHA HULU MINYAK DAN GAS BUMI (Studi Kasus Perjanjian Operasi Bersama Antara X dan Y)

Telah berhasil dipertahankan di hadapan Dewan Penguji dan diterima sebagai bagian persyaratan yang diperlukan untuk memperoleh gelar Sarjana Hukum pada Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Indonesia

DEWAN PENGUJI

Pembimbing : Prof. Dr. Rosa Agustina, S.H., M.H. (.....)

Pembimbing : Suharnoko, S.H., MLI (.....)

Penguji : Surini Ahlan Sjarif, S.H., M.H. (.....)

Penguji : Akhmad Budi Cahyono, S.H., M.H. (.....)

Penguji : Abdul Salam, S.H., M.H. (.....)

Ditetapkan di : .....

Tanggal : .....

UCAPAN TERIMA KASIH

Puji Syukur kepada Tuhan Yang Maha Esa, karena tanpa berkat dan rahmat-Nya, saya tidak akan bisa menyelesaikan Skripsi ini. Penulisan skripsi ini dilakukan dalam rangka memenuhi salah satu syarat untuk mendapatkan gelar Sarjana Hukum pada Fakultas Hukum Universitas Indonesia. Selama 4 tahun saya melakukan studi di Fakultas Hukum Universitas Indonesia, banyak sekali pengalaman menarik yang saya dapatkan. Saya masih ingat bagaimana saya menjalani kelas pertama saya, mengikuti ujian-ujian, berorganisasi, dan akhirnya menyelesaikan penulisan skripsi ini untuk bisa menempatkan gelar SH di belakang nama saya. Semuanya berlalu dengan begitu cepat, sungguh saya merasa sangat beruntung bisa mendapatkan kesempatan menjalankan studi di salah satu Fakultas Hukum terbaik di Indonesia. Semuanya tidak terlepas dari peran-peran para pengajar, teman-teman, dan seluruh civitas akademika FHUI. Oleh karena itu saya ingin mengucapkan terima kasih kepada seluruh pihak-pihak yang mendukung saya selama ini, khususnya dalam penulisan Skripsi ini, yaitu:

1. Papa, Mama, dan Cici, yang selama ini selalu senantiasa mendukung penulis dalam menyelesaikan penulisan skripsi ini. Tidak ada dukungan yang lebih baik daripada dukungan dari keluarga sendiri. Terima kasih atas segala pengertiannya dan kesabarannya dalam menghadapi penulis yang sering menunda-nunda pembuatan skripsi ini. Dan yang paling penting, terima kasih atas dukungannya bagi penulis selama melewati masa studinya di FHUI.
2. Prof. Dr. Rosa Agustina, S.H., M.H., selaku Pembimbing I, atas segala bimbingannya terhadap penulis dalam menyelesaikan penulisan skripsi ini. Walaupun beliau cukup sibuk, tapi masih bersedia meluangkan waktu untuk mendampingi dan memberikan arahan kepada penulis, hingga akhir penulisan skripsi ini.
3. Bapak Suharnoko, S.H., MLI, selaku Pembimbing II, atas saran-saran yang telah diberikan selama ini kepada penulis dalam rangka penyusunan skripsi ini.

4. Hakim dan Rekan *Law Firm*, khususnya Bapak M. Hakim Nasution yang membantu penulis dalam memperoleh data dan memberikan kesempatan kepada penulis untuk mengikuti "*Oil and Gas Course*". Deska Widianto, Master JOA, atas segala kesabarannya menjawab pertanyaan-pertanyaan dan memberikan penjelasan mengenai JOA. Dan tidak lupa untuk Bianca Ayasha, Ibu Kepala Sekolah, terima kasih atas inspirasi yang diberikan kepada penulis untuk menulis skripsi mengenai *oil and gas*.
5. Ibu Retno Muniarti, selaku pembimbing akademik, atas dukungan dan bimbingan terhadap penulis mulai dari awal masuk di FHUI sampai semester akhir.
6. Keluarga Besar ALSA LCUI, khususnya Charlie's Angels (Muthia, Ibom, Yvonne), Ade, Andrea, Tisya, Yuli, Yesi, Shinta, Aruni, BJ, Difa, Warman, Lanang, Inem, Dhanu, Caca, Farah, Haryo, Ibeth Dyna, Yomi Sita, Hanum, Mario, Arum, Ochie, Fanie, Yodhie, Icha, Anggia, Aceng, Ega, Dimas, Riri, dan Bia . Terima kasih banyak atas kerja sama dan dukungannya selama ini. Saya bangga dan merasa terhormat bisa bekerja sama dengan kalian semua. Titip ALSA LCUI, tolong dijaga dengan baik dan ditimgkatkan eksistensinya. ALSA Always Be One!!
7. Teman-teman 2005: Cakra, Ephraim, Meza, Bagus, Wendy, Abay, Niken, Dian, Lufti, Peat, Ridho, Runi, Jilly, Titis, Mamad, Febby, Trez, Adya, Livia, Ala, Ayu, Boti, Kris, Adit, Jutek, Melly, Rani, Melissa, Andrew, Amel, Esther, Deden, Harjo, Gheno, Fajri, Jabal, Kiki, Mario, Dion, Heidy, Gordon, Green, Habibi, Haratua, Ani, Bule, Talita, Simon, Selwas, Tita, Tia, dan semua teman-teman angkatan dua ribu lima yang katanya cuma ada satu.
8. Senior-senior 2003 dan 2004, Vindy (Mentor paling luar biasa, terima kasih atas bimbingannya dan fotokopiannya), Angel, Dewi, Cubi, Patrice, Batar, Icha, Tephy, Andini, Nano, Dius, Botak, Dave, Stephen, Bejo, Mada, Imay, Edith, Fika, Tiwi, Acid, Herla, Ija, Wandha, dan senior-senior lainnya.

9. Teman-teman 2006: Farid, Dita, Dian, Ary, Dhanti, Ega, Azhar, Gulardi, Riki, Lamboy, Nancy, Siksta, Yoshi, dan lainnya yang tidak bisa disebutkan satu per satu.
10. Teman-teman 2007: Sangeh, Sarah, Irina, Afi, Ade, Alex, Agan, Alfa, Cesar, Inda, Heri, Marcia, Nindy, Vya, Puri, Acid, Oji, Rian, Ridha, dan lainnya yang tidak bisa disebutkan satu per satu.
11. Teman-teman 2008: Subuh, Sume, Quina, Sisil, Karin, Fina, Sea, Dilla, Alia, Anya, Reza, dan lainnya yang tidak bisa disebutkan satu per satu.

Skripsi ini memang masih jauh dari sempurna, namun semoga pembuatan skripsi ini membawa manfaat bagi pengembangan ilmu, khususnya ilmu hukum di Indonesia. Terima kasih.

Depok, 19 Juni 2009

Penulis

HALAMAN PERNYATAAN PERSETUJUAN PUBLIKASI TUGAS AKHIR UNTUK KEPENTINGAN AKADEMIS

Sebagai sivitas akademik Universitas Indonesia, saya yang bertanda tangan dibawah ini:

Nama : RADITYA KOSASIH
NPM : 050500205Y
Program Studi : Hukum (Hubungan Tentang Sesama Anggota Masyarakat)
Fakultas : Hukum
Jenis Karya : Skripsi

Demi pengembangan ilmu pengetahuan, menyetujui untuk memberikan kepada Universitas Indonesia **Hak Bebas Royalti Non-eksklusif (*Non-exclusive Royalty-Free Right*)** atas karya ilmiah saya yang berjudul:

"ANALISA PERJANJIAN OPERASI BERSAMA (*JOINT OPERATING AGREEMENT*) DALAM KEGIATAN USAHA HULU MINYAK DAN GAS BUMI (Studi Kasus Perjanjian Operasi Bersama Antara X dan Y)"

Beserta perangkat yang ada (jika diperlukan). Dengan Hak Bebas Royalti Non-eksklusif ini Universitas Indonesia berhak menyimpan, mengalihmedia/formatkan, mengelola dalam bentuk pangkalan data (*database*), merawat, dan memublikasikan tugas akhir saya selama tetap mencantumkan nama saya sebagai penulis/pencipta dan sebagai pemilik Hak Cipta.

Demikian pernyataan ini saya buat dengan sebenarnya.

Dibuat di : Depok
Pada tanggal : 22 Juni 2009

Yang Menyatakan,

(RADITYA KOSASIH)

ABSTRAK

Nama : RADITYA KOSASIH
Program Studi : Hukum (Hubungan Tentang Sesama Anggota Masyarakat)
Judul : ANALISA PERJANJIAN OPERASI BERSAMA (*JOINT OPERATING AGREEMENT*) DALAM KEGIATAN USAHA HULU MINYAK DAN GAS BUMI
(Studi Kasus Perjanjian Operasi Bersama Antara X dan Y)

Skripsi ini membahas mengenai Perjanjian Operasi Bersama (*Joint Operating Agreement*) dalam kegiatan usaha hulu minyak dan gas bumi di Indonesia, dengan studi kasus Perjanjian Operasi Bersama antara X dan Y. Penelitian ini menggunakan metode penelitian Normatif Yuridis dimana data penelitian ini sebagian besar dari studi kepustakaan. Hasil penelitian ini menyatakan bahwa pengaturan hak dan kewajiban dalam Perjanjian Operasi Bersama ini sudah adil bagi para pihak. Namun, pengaturan mengenai pengadaan barang dan jasa dinilai tidak sesuai dengan asas kebebasan berkontrak.

Kata kunci : Perjanjian Operasi Bersama, Hak dan Kewajiban, Kebebasan Berkontrak

ABSTRACT

Name : RADITYA KOSASIH
Study Program : Law (Relationship between Community Member/Private Law)
Title : ANALYSIS ON JOINT OPERATING AGREEMENT IN THE UPSTREAM OIL AND GAS BUSSINES ACTIVITIES (Case Study on Joint Operating Agreement Between X and Y)

This thesis is focusing on Joint Operating Agreement in the upstream oil and gas bussines activities in Indonesia, case study on Joint Operating Agreement between X and Y. This research is normative yuridis research, which some of the data were collected from literature. The result states that the clauses of rights and duties are fair enough for the parties. But, the clauses of procurement of goods and services are inappropriate with the freedom of contract.

Keywords : Joint Operating Agreement, Rights and Duties, Freedom of Contract

DAFTAR ISI

DAFTAR LAMPIRAN

BAB 1

PENDAHULUAN

1.1 Latar Belakang

Indonesia merupakan negara yang kaya akan bahan galian (tambang). Bahan galian itu meliputi emas, perak tembaga, batu bara, minyak, gas bumi, dan lain-lain.[1] Seluruh bahan galian itu termasuk dalam kekayaan alam yang dikuasai oleh Negara.[2] Tujuan penguasaan ini adalah supaya kekayaan nasional ini bisa dimanfaatkan sebesar-besarnya untuk kemakmuran rakyat, sesuai dengan Pasal 33 Undang-Undang Dasar 1945.[3] Oleh karena itu, setiap warga negara, walaupun memiliki hak atas sebidang tanah di permukaan, tidak mempunyai hak untuk menguasai berbagai kekayaan alam yang ada di bawah permukaan tersebut.[4] Bahan-bahan galian tersebut, khususnya minyak dan gas bumi, memiliki peranan yang besar bagi pembangunan nasional karena hasil bahan galian tersebut dapat

---

[1] H. Salim H.S., *Hukum Pertambangan Di Indonesia*, Cet. 4. (Jakarta: Rajawali Pers, 2008), hlm. 1.

[2] Dalam industri minyak dan gas di Indonesia, "penguasaan" oleh negara ini memiliki arti yang berbeda antara Kegiatan Usaha Hulu dengan Hilir. Dalam Kegiatan Usaha Hulu, "penguasaan" oleh negara artinya negara memiliki minyak dan gas tersebut, sehingga negara berhak mendapatkan royalti apabila minyak dan gas tersebut diambil. Namun, dalam Kegiatan Usaha Hilir, "penguasaan" oleh negara artinya negara mengatur minyak dan gas tersebut, karena belum tentu semua minyak dan gas tersebut merupakan hasil produksi dalam negeri. Atas hal ini, negara berhak mendapatkan penghasilan berupa pajak.

[3] Indonesia (A), *Undang-Undang Dasar 1945*, Pasal 33.

[4] H. Salim H.S., *Op. Cit.,* hlm. 284.

memberikan nilai tambah secara nyata kepada pertumbuhan ekonomi nasional yang meningkat dan berkelanjutan. [5]

Minyak dan gas bumi, yang merupakan sumber daya alam strategis tidak terbarukan[6], umumnya ditemukan dan terdapat pada lokasi yang oleh *geologis* disebut sebagai jebakan-jebakan struktural dan *startigrafic* (*structural and stratigraphic traps*). Jebakan-jebakan tersebut merupakan bentukan-bentukan batuan *reservoir* yang mempu mewadahi minyak dan fluida gas terakumulasi. Minyak dan gas bumi bisa ditemukan di lapisan mana saja di bawah permukaan tanah, namun pada umumnya kedua bahan galian ini bisa ditemukan ribuan kaki dibawah permukaan tanah.[7]

Letaknya yang jauh dari permukaan tanah, membuat minyak dan gas bumi tidak bisa ditemukan dengan mudah walaupun teknologi kini sudah berkembang dengan sangat pesat. Data-data yang didapat dari permukaan tanah tidak akan bisa memberikan posisi bahan tambang tersebut secara akurat. Beberapa metode sudah dikembangkan dalam mencari posisi dari minyak dan gas bumi, seperti *core drilling* (pengeboran untuk mengambil batuan contoh), *gravity meters* (pengukuran gravitasi), *seismic survey* (survey seismik), *magnetic survey* (survei magnetik), dan penginderaan jarak jauh dari satelit. Namun, metode-metode ini hanya menghasilkan gambaran mengenai ada atau tidaknya minyak dan gas bumi pada formasi tertentu. Metode ini tidak akan bisa memberikan data yang akurat mengenai jumlah dan karakteristik bahan galian yang ada di bawah permukaan tanah.[8]

---

[5] Indonesia (B), *Undang-Undang Tentang Minyak dan Gas Bumi*, UU No. 22 Tahun 2001, LN. No. 136 Tahun 2001, TLN. No. 4152.

[6] *Ibid.*

[7] Rudi M. Simamora, *Hukum Minyak dan Gas Bumi*. Cet.1.(Jakarta: Djambatan, 2000), hlm. 1.

[8] *Ibid*, hlm. 2.

Undang-Undang No. 22 Tahun 2001 Tentang Minyak dan Gas Bumi (UU Migas) membagi kegiatan usaha Minyak dan Gas Bumi menjadi 2 (dua) bagian, yaitu:[9]

1. Kegiatan Usaha Hulu
2. Kegiatan Usaha Hilir

Kegiatan Usaha Hulu adalah kegiatan usaha yang berintikan dan bertumpu pada kegiatan usaha, yaitu usaha ekplorasi dan ekploitasi. Adapun tujuan dari kegiatan eksplorasi adalah untuk memperoleh informasi mengenai kondisi geologi, menemukan dan memperoleh perkiraan cadangan minyak dan gas bumi dari suatu wilayah kerja tertentu. Sedangkan kegiatan eksploitasi bertujuan untuk menghasilkan minyak dan gas bumi dari wilayah kerja yang ditentukan.[10] Kegiatan Usaha Hulu dilakukan oleh Badan Usaha atau Badan Usaha Tetap dengan Kontrak Kerja Sama dengan BP MIGAS.[11]

Kegiatan Usaha Hilir diatur dalam Pasal 1 angka 10, Pasal 5, Pasal 7, Pasal 23 sampai dengan Pasal 25 UU Migas. Kegiatan di sektor hilir ini mencakup pengolahan, pengangkutan, penyimpanan, dan niaga. Kegiatan tersebut dilakukan oleh Badan Usaha yang telah mendapatkan Izin Usaha dari Pemerintah.[12] Dalam hal-hal yang menyangkut kepentingan daerah, Izin Usaha akan dikeluarkan setelah terlebih dahulu mendapatkan rekomendasi dari Pemerintah Daerah.[13] Pemerintah juga membentuk BPH MIGAS (Badan Pengatur Kegiatan Usaha Hilir Minyak dan Gas) untuk

---

[9] *Undang Undang Tentang Minyak dan Gas Bumi, Op. Cit.*, Pasal 5.

[10] H. Salim H.S., *Op. Cit.*, hlm. 285.

[11] BP MIGAS (Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi) adalah badan yang dibentuk oleh Pemerintah untuk melakukan pengendalian Kegiatan Usaha Hulu Minyak dan Gas Bumi, sesuai dengan Pasal 1 angka 23 UU tentang Minyak dan Gas Bumi. Sejak tahun 2002, melalui Peraturan Pemerintah No. 42 Tahun 2002 tentang Badan Pelaksana Kegiatan Usaha Hulu, peran pemerintah untuk melakukan pengawasan dan pembinaan kegiatan Kontrak Kerjasama atau Kontrak Productions Sharing, dialihkan dari PERTAMINA ke BP MIGAS.

[12] Izin Usaha yang dimaksud adalah izin yang diberikan kepada Badan Usaha oleh Menteri Energi dan Sumber Daya Mineral (Menteri ESDM) di bawah koordinasi dengan Direktorat Jendral Minyak dan Gas (Ditjen Migas), sesuai dengan kewenangan masing-masing, untuk melaksanakan kegiatan di sektor hilir, setelah memenuhi persyaratan yang diperlukan.

[13] *Undang-Undang Tentang Minyak dan Gas Bumi, Op. Cit.*, Penjelasan Pasal 23 ayat (1)

menjalankan fungsi pengaturan dan pengawasan terhadap penyediaan dan pendistribusian Bahan Bakar Minyak dan Gas Bumi serta pengangkutan Gas Bumi melalui pipa pada Kegiatan Usaha Hilir.[14]

Pada prakteknya, terdapat beberapa Kegiatan Usaha Hilir yang juga termasuk dalam Kegiatan Usaha Hulu. Kegiatan tersebut disebut sebagai Kegiatan Lanjutan Usaha Hulu. Adapun yang termasuk dalam Kegiatan Usaha Lanjutan Hulu ini adalah kegiatan pengolahan lapangan, pengangkutan, penyimpanan, dan penjualan hasil produksi sendiri yang dilakukan oleh Badan Usaha, yang tidak ditujukan untuk memperoleh keuntungan maupun laba. Dalam melakukan kegiatan usaha lanjutan, Badan Usaha tersebut tidak perlu memperoleh Izin Usaha, seperti halnya Kegiatan Usaha Hilir.[15]

Kegiatan Usaha Hulu Minyak dan Gas Bumi harus dilakukan seoptimal mungkin, mengingat kedua bahan tambang ini adalah sumber energi yang tak terbarukan.[16] Khusus untuk minyak bumi, beberapa tahun belakangan ini, kegiatan eksplorasi dan tingkat keberhasilannya cenderung menurun dengan semakin matangnya Wilayah Kerja yang sudah berproduksi.[17] Pemerintah bahkan sudah mulai melirik batu bara dan gas bumi sebagai sumber energi andalan baru pengganti minyak bumi, yang produksinya terus menurun.[18] Selain itu, melalui Undang-Undang Nomor 30 Tahun 2007 tentang Energi, Pemerintah berusaha untuk mengajak masyarakat merubah pola pikir dari

---

[14] *Ibid*, Pasal 1 angka 24.

[15] Indonesia (C), *Peraturan Pemerintah Tentang Kegiatan Usaha Hulu Minyak dan Gas Bumi*, PP No. 35 Tahun 2004, LN. No. 123 Tahun 2004, TLN. No. 4435, Pasal 44 - 45.

[16] *Ibid*, Penjelasan Paragraf 3.

[17] Madjedi Hasan, *Pacta Sunt Servanda: Penerapan Asas "janji itu mengikat" dalam Kontrak Bagi Hasil di Bidang Minyak dan Bumi*, Cet. 1., (Jakarta: PT. Fikahati Aneska, 2005), hlm. 78.

[18] Widi Agustian, "*Produksi Minyak Menurun, Batu Bara dan Gas Bumi Jadi Sumber Energi Andalan*", <http://autos.okezone.com/index.php/ReadStory/2008/09/12/19/145292/19/batu-bara-gas-bumi-jadi-sumber-energi-andalan>, 12 September 2008

penggunaan sumber energi yang tidak terbarukan, menjadi sumber energi yang terbarukan.[19]

Kondisi ini menuntut Pemerintah, dalam hal ini diwakili oleh BP MIGAS untuk lebih berhati-hati dalam menjalankan Kegiatan Usaha Hulu Minyak dan Gas Bumi. Salah satunya adalah dengan lebih selektif memilih Kontraktor yang diajak untuk bekerja sama dan menandatangani Kontrak Kerja Sama (*Production Sharing Contract*). Kegiatan Usaha Hulu Minyak dan Gas Bumi dilaksanakan dan dikendalikan melalui Kontrak Kerja Sama ini.[20]

Kontrak Kerja Sama atau *Production Sharing Contract* (PSC) merupakan perjanjian atau kontrak yang dibuat antara badan pelaksana dengan badan usaha atau badan usaha tetap untuk melakukan kegiatan eksplorasi dan ekploitasi di bidang minyak dan gas bumi dengan prinsip bagi hasil.[21] Bentuk kontrak seperti ini sebenarnya sudah dikenal sejak ratusan tahun yang lalu di Indonesia, yaitu dalam bentuk kontrak bagi hasil antara pemilik tanah dengan petani yang mengusahakan tanah tersebut. Dasar hukumnya adalah hukum adat yang sudah berlaku di Indonesia selama ratusan tahun.[22] Konsep kontrak bagi hasil itulah yang diterapkan dalam PSC.

Sejak pertama kali digunakan di Indonesia tahun 1964, syarat dan ketentuan yang terdapat dalam PSC sudah mengalami beberapa kali transformasi hingga PSC generasi kelima yang kini digunakan. Perubahan ini terjadi seiring dengan berkembangnya dunia industri minyak dan gas bumi di Indonesia. PSC generasi I (1964-1977) menyerahkan Manajemen Operasi di tangan Pertamina, menetapkan *cost recovery* maksimum sebesar 40% setiap tahun, dan mewajibkan

---

[19] Sumber energi terbarukan adalah sumber energi yang dihasilkan dari sumber daya energi yang berkelanjutan jika dikelola dengan baik, antara lain panas bumi, angin, bioenergi, sinar matahari, aliran dan terjunan air, serta gerakan dan perbedaan suhu lapisan laut. (Lihat Pasal 1 angka 6 UU No. 30 tahun 2007 tentang Energi)

[20] H. Salim H.S., *Op. Cit*., hlm. 286.

[21] *Ibid*, hlm. 306.

[22] Tengku Nathan Machmud (A), *The Indonesian Production Sharing Contract: An Investor's Perspective*, (Kluwer Law International-The Hague, 2000), hlm. 43.

Kontraktor untuk melaksanakan pembayaran tambahan kepada pemerintah.[23] Pembagian hasil menjadi 65% untuk Pertamina dan 35% untuk Kontraktor. Pada PSC generasi II (1978-1987) pembatasan *cost recovery* sebesar 40% dihapuskan dan Kontraktor membayar pajak 56% langsung kepada Pemerintah. Namun Kontraktor mendapatkan insentif dengan diberikannya harga ekspor penuh minyak mentah untuk memenuhi kebutuhan dalam negeri setelah lima tahun pertama produksi. Pada PSC generasi III (1988-2002), Pemerintah menetapkan peraturan perundang-undangan pajak baru sebesar 48%. Pembagian hasil untuk minyak adalah 65% untuk Pertamina dan 35% untuk Kontraktor; sedangkan pembagian hasil untuk gas bumi adalah 70% untuk Pertamina dan 30% untuk Kontraktor. PSC generasi IV (2002-2008) muncul sebagai akibat dikeluarkannya UU No. 22 Tahun 2001 tentang Minyak dan Gas Bumi, dimana terjadi perubahan yang paling signifikan pada para pihak yang menandatangani PSC, yaitu menjadi badan pelaksana (BP MIGAS) dengan badan usaha dan/atau badan usaha tetap. Pembagian hasil produksinya juga mengalami perubahan, yaitu minyak menjadi 85% untuk BP MIGAS dan 15% untuk badan usaha atau badan usaha tetap; sedangkan gas bumi menjadi 70% untuk BP MIGAS dan 30% untuk badan usaha atau badan usaha tetap.[24] Pada PSC generasi V (2008-sekarang), perubahan terjadi terkait dengan *cost recovery*, yaitu bahwa titik eksplorasi yang ditemukan setelah Rencana Pengembangan (*Plan of Development*) disetujui, tidak dapat dimasukkan ke dalam *cost recovery*. Selain itu, ditambahkan juga klausula mengenai dikeluarkannya suatu Lapangan dalam Wilayah Kerja yang tidak ekonomis.[25]

---

[23] Pada tahun 1973-1974 terjadi lonjakan harga minyak dunia sehingga Pemerintah menetapkan kebijaksanaan bahwa Kontraktor wajib untuk melaksanakan pembayaran tambahan kepada Pemerintah.

[24] H. Salim H.S., *Op. Cit*., hlm. 318-322

[25] Suatu Wilayah Kerja dikatakan tidak ekonomis/komersiil ketika jumlah minyak atau gas bumi yang diperkirakan dapat dihasilkan tidak sepadan dengan biaya yang dikeluarkan untuk melakukan operasi tersebut. Apabila suatu lapangan dalam Wilayah Kerja dikatakan tidak ekonomis, maka dengan klausula dalam PSC generasi V, Lapangan tersebut dapat diminta kembali oleh BP MIGAS dan dikeluarkan dari Wilayah Kerja Kontraktor terkait.

Karakteristik industri usaha hulu migas adalah padat modal, resiko tinggi, dan merupakan penanaman modal jangka panjang.[26] Oleh karena itu, pada umunya pelaksanaan dari operasi perminyakan tidak dijalankan sendiri oleh satu badan usaha atau badan usaha tetap, sebagai Kontraktor tunggal, untuk menanggung seluruh biaya yang akan dikeluarkan dan yang paling penting menanggung semua resiko atas kegagalan yang terjadi. Untuk membagi resiko dan biaya yang besar tersebut, biasanya dibentuk semacam konsorsium untuk memperoleh suatu kontrak kerja sama sektor hulu minyak dan gas bumi. Atau cara lain adalah dengan memperoleh kontrak kerja sama itu terlebih dahulu, baru setelah itu ditawarkan kepada badan usaha atau badan usaha tetap lainnya yang ingin berpartisipasi dalam kontrak tersebut, cara ini disebut dengan *farm-out.*[27]

Kerja sama antara para pihak dalam konsorsium yang dibentuk itu salah satunya dapat diwujudkan melalui suatu Perjanjian Operasi Bersama (*Joint Operating Agreement*). Perjanjian ini dilakukan antara badan usaha atau badan usaha tetap yang memiliki partisipasi dalam operasi tersebut. Peraturan perundangan-undangan mengakomodir untuk dilibatkannya pihak lain dalam operasi perminyakan baik melalui pengalihan, penyerahan, ataupun pemindahtanganan seluruh maupun sebagian hak dan kewajiban kepada pihak lain setelah mendapatkan persetujuan Menteri ESDM, berdasarkan pertimbangan dari BP MIGAS. Namun, perjanjian semacam ini hanya mengatur mengenai hal-hal antara para pihak yang berada dalam konsorsium tersebut. BP Migas tidak ikut campur dalam Perjanjian ini, karena pada dasarnya BP Migas tidak terpengaruh dengan banyaknya pihak yang bergabung dalam konsorsium tersebut. Pemerintah akan melihat bagian dari Kontraktor yang menandatangani PSC sebagai kepentingan yang tidak terbagi-bagi (*undevided interest*).

Oleh karena itu perjanjian ini akan membagi secara jelas hak dan kewajiban dari masing-masing pihak berdasarkan partisipasinya (*participating interest*). Hal penting lainnya yang dimuat dalam *Joint Operating Agreement*

---

[26] Alan F. Panggabean, *Penyelenggaraan Kegiatan Usaha Hulu*, disampaikan pada Training on The Law of Energy and Mineral Resources (TERM), Depok, 20 Maret 2009.

[27] Rudi M. Simamora, *Op. Cit.*, hlm. 112.

(JOA) adalah penunjukan Operator yang akan menjadi pelaksana dan menjalankan segala hal yang dimandatkan oleh JOA terkait dengan operasi di lapangan. Selain itu, JOA juga akan membahas mengenai beberapa hal yang sifatnya teknis, salah satunya adalah terkait dengan prosedur pengadaan barang dan jasa (*procurement of goods and services*). Hal-hal teknis seperti ini juga harus diperhatikan karena tidak boleh bertentangan dengan pengaturan dalam PSC, walaupun pilihan hukum antara JOA dan PSC berbeda.

Berdasarkan latar belakang tersebut, maka penulis tertarik untuk menulis mengenai "Analisa Perjanjian Operasi Bersama (*Joint Operating Agreement*) Dalam Kegiatan Usaha Hulu Minyak dan Gas Bumi"

1.2. Pokok Permasalahan

Berdasarkan latar belakang yang telah diuraikan diatas, maka terdapat beberapa pokok masalah sebagai berikut:

2.1.1. Bagaimanakah pengaturan hak dan kewajiban para pihak dalam Perjanjian Operasi Bersama antara X dengan Y?

2.1.2. Apakah pengaturan mengenai pengadaan barang dan jasa dalam Perjanjian Operasi Bersama antara X dan Y telah sesuai dengan asas kebebasan berkontrak?

1.3. Tujuan Penulisan

Tujuan dari penulisan skripsi ini dapat dibagi menjadi dua, yaitu tujuan umum dan tujuan khusus. Yang menjadi tujuan umum dari penulisan skripsi ini adalah untuk mendapatkan gambaran yang jelas mengenai bentuk perjanjian operasi bersama yang digunakan dalam kegiatan usaha hulu minyak dan gas bumi, Sedangkan tujuan khusus dari penulisan skripsi ini yaitu sebagai berikut:

1. Mengetahui hak dan kewajiban para pihak dalam perjanjian operasi bersama dalam kegiatan usaha hulu minyak dan gas bumi;
2. Mengetahui pengaturan hal-hal teknis dalam Perjanjian Operasi Bersama, khususnya mengenai prosedur pengadaan barang dan jasa;

1.4 Definisi Konsepsional

Kerangka konsepsional adalah suatu definisi yang menggambarkan hubungan antara pengertian-pengertian khusus yang akan diteliti. Definisi konsepsional merupakan istilah-istilah yang terkait dengan pembahasan yang akan dilakukan yaitu istilah-istilah di bidang minyak dan gas bumi.

1.4.1. Minyak Bumi adalah hasil proses alami berupa hidrokarbon yang dalam kondisi tekanan dan temperatur atmosfer berupa fasa cair atau padat, termasuk aspal, lilin mineral atau ozokerit, dan bitumen yang diperoleh dari proses penambangan, tetapi tidak termasuk batubara atau endapan hidrokarbon lain yang berbentuk padat yang diperoleh dari kegiatan yang tidak berkaitan dengan kegiatan usaha Minyak dan Gas Bumi[28];

1.4.2. Kegiatan Usaha Hulu adalah kegiatan usaha yang berintikan atau bertumpu pada kegiatan usaha Eksplorasi dan Eksploitasi;[29]

1.4.3. Eksplorasi adalah kegiatan yang bertujuan memperoleh informasi mengenai kondisi geologi untuk menemukan dan memperoleh perkiraan cadangan Minyak dan Gas Bumi di Wilayah Kerja yang ditentukan;[30]

1.4.4. Eksploitasi adalah rangkaian kegiatan yang bertujuan untuk menghasilkan Minyak dan Gas Bumi dari Wilayah Kerja yang ditentukan, yang terdiri atas pengeboran dan penyelesaian sumur, pembangunan sarana pengangkutan, penyimpanan, dan pengolahan untuk pemisahan dan pemurnian Minyak dan Gas Bumi di lapangan serta kegiatan lain yang mendukungnya;[31]

---

[28] *Undang-Undang Tentang Minyak dan Gas Bumi, Op. Cit*., Pasal 1 angka 1

[29] *Ibid*, Pasal 1 angka 7

[30] *Ibid*, Pasal 1 angka 8

[31] *Ibid*, Pasal 1 angka 9

1.4.5. Wilayah Kerja adalah daerah tertentu di dalam Wilayah Hukum Pertambangan Indonesia untuk pelaksanaan Eksplorasi dan Eksploitasi[32];

1.4.6. Badan Usaha adalah perusahaan berbentuk badan hukum yang menjalankan jenis usaha bersifat tetap, terus-menerus dan didirikan sesuai dengan peraturan perundang-undangan yang berlaku serta bekerja dan berkedudukan dalam wilayah Negara Kesatuan Republik Indonesia[33];

1.4.7. Bentuk Usaha Tetap adalah badan usaha yang didirikan dan berbadan hukum di luar wilayah Negara Kesatuan Republik Indonesia yang melakukan kegiatan di wilayah Negara Kesatuan Republik Indonesia dan wajib mematuhi peraturan perundang-undangan yang berlaku di Republik Indonesia[34];

1.4.8. Kontrak Kerja Sama adalah Kontrak Bagi Hasil atau bentuk kontrak kerja sama lain dalam kegiatan Eksplorasi dan Eksploitasi yang lebih menguntungkan Negara dan hasilnya dipergunakan untuk sebesar-besar kemakmuran rakyat[35];

1.4.9. Operasi Bersama adalah seluruh operasi dan kegiatan yang dilaksanakan oleh Operator terkait dengan Perjanjian Operasi Bersama, yang seluruh biayanya bisa dibebankan pada semua pihak[36];

---

[32] *Ibid*, Pasal 1 angka 16

[33] *Ibid*, Pasal 1 angka 17

[34] *Ibid*, Pasal 1 angka 18

[35] *Ibid*, Pasal 1 angka 19

[36] *Joint Operation Agreement, Article* 1.39

1.5 Metode Penelitian

Metode penelitian yang akan digunakan dalam skripsi ini adalah metode penelitian yuridis normatif yaitu penelitian yang dilakukan dengan cara meneliti bahan pustaka, atau disebut juga penelitian kepustakaan, penelitian ini bertujuan untuk memahami adanya hubungan antara hukum positif serta norma-norma yang berlaku dalam masyarakat.[37] Penelitian ini dilakukan dengan alat pengumpul data berupa studi dokumen yang menghasilkan data sekunder, yaitu data yang mencakup dokumen-dokumen resmi, buku-buku, hasil-hasil penelitian yang berwujud laporan, buku harian dan seterusnya.[38]

Adapun bahan pustaka yang dipergunakan antara lain:

1. Bahan hukum primer, yaitu bahan hukum yang mempunyai kekuatan mengikat yaitu peraturan perundang-undangan.
2. Bahan hukum sekunder yaitu bahan hukum yang berupa buku, jurnal ilmiah, artikel, majalah, surat kabar, penelusuran internet maupun skripsi.
3. Bahan hukum tersier yaitu bahan hukum yang memberikan petunjuk maupun penjelasan terhadap bahan hukum primer dan sekunder.

1.6 Sistematika Penulisan

Penelitian ini akan dilakukan dengan sistematika sebagai berikut:

Bab 1 sebagai bab pendahuluan terdiri dari latar belakang, pokok permasalahan, tujuan penulisan, definisi konsepsional, metode penulisan, dan sistematika penulisan.

Bab 2 Tinjauan Umum Hukum Perjanjian merupakan suatu tinjauan secara teoritis mengenai perjanjian pada umumnya, pengertian dari perjanjian dan perikatan, asas-asas hukum perjanjian, syarat sahnya perjanjian, penafsiran perjanjian, jenis-jenis perikatan, dan hapusnya perikatan.

---

[37]Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat),*Cet.7. (Jakarta: RajaGrafindo Persada, 2003), hlm. 13.

[38] *Ibid*., hlm. 12.

Bab 3 Tinjauan Perjanjian dalam Kegiatan Usaha Hulu Minyak dan Gas Bumi akan membahas mengenai sejarah industri minyak dan gas di Indonesia, jenis-jenis kontrak dalam usaha perminyakan. Khusus mengenai Perjanjian Operasi Bersama akan lebih dispesifikan ke dalam 4 bagian, yaitu mengenai Operator, Komisi Operasi, Pembiayaan, dan Pengadaan Barang dan Jasa.

Bab 4 Analisa Perjanjian Operasi Bersama antara X dengan Y akan membahas mengenai Perjanjian Operasi Bersama antara X dan Y atas suatu Wilayah Kerja tertentu. Pembahasan akan mengkhususkan pada posisi dan kedudukan para pihak, pengaturan mengenai hak dan kewajiban para pihak, pengaturan mengenai metode pengadaan baranf dan jasa dalam Perjanjian Operasi Bersama, pilihan hukum, dan penyelesaian sengketa.

Bab 5 Penutup berisi kesimpulan dan saran dari seluruh penulisan ini.

BAB 2
TINJAUAN UMUM HUKUM PERJANJIAN

2.1. Perjanjian Pada Umumnya

Kegiatan Usaha Hulu Minyak dan Gas Bumi dapat dilaksanakan dengan membuat usaha bersama, dimana bentuk dan persyaratan serta kondisinya bisa sangat beragam.[39] Salah satu cara untuk mewujudkan usaha bersama itu adalah dengan menuangkannya ke dalam bentuk perjanjian. Salah satu bentuk perjanjian yang lazim digunakan adalah Perjanjian Operasi Bersama (*Joint Operating Agreement*). Melalui perjanjian ini, para pihak yang memiliki *participating interest* akan menyepakati pembagian hak dan kewajiban masing-masing, pembagian produksi, penunjukan Operator, dan lain-lain. Perjanjian yang dibuat ini tentunya akan memperhatikan ketentuan-ketentuan yang diatur dalam Buku III KUHPerdata. Maka berdasarkan hal-hal tersebut diatas, kita perlu mengetahui mengenai dasar-dasar hukum perjanjian di Indonesia, mulai dari hukum perdata hingga teori-teori hukum perjanjian.

Pada dasarnya, terdapat beberapa pengertian mengenai hukum perdata menurut para sarjana, yaitu:

1. Prof. R. Subekti, SH

   "Hukum Perdata adalah segala hukum pokok yang mengatur kepentingan-kepentingan pribadi."[40]

---

[39] Madjedi Hasan (B), *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum*, (Jakarta: PT. Fikahati Aneska, 2009), hlm. 56.

[40] Tim Pengajar Pengantar Hukum indonesia, *Materi Ajar Pengantar Hukum Indonesia*, (Depok, FHUI 2007), hlm. 130.

2. Sri Soedewi Msjhoen Sofwan

   "Hukum Perdata adalah hukum yang mengatur kepentingan antara warga negara perseorangan yang satu dengan warga negara perseorangan lainnya."[41]

Dari pengertian-pengertian tersebut, dapat dilihat bahwa hukum perdata mengatur mengenai hubungan antara individu dengan individu lainnya, yang terdapat dalam suatu hubungan hukum. Hubungan hukum tersebut bisa timbul akibat suatu perbuatan hukum yang dilakukan oleh para pihak. Salah satu contoh perbuatan hukum tersebut adalah perjanjian, dimana para pihak berjanji untuk mengikatkan diri satu sama lain.[42] KUHPerdata mengatur mengenai perjanjian dalam Buku III KUHPerdata. Oleh karena itu, untuk selanjutnya penulis akan membahas secara lebih mendalam mengenai hukum perjanjian dalam Buku III KUHPerdata.

2.2 Pengertian Perjanjian dan Perikatan

Pasal 1313 KUHPerdata memberikan pengertian perjanjian sebagai suatu perbuatan dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang atau lebih. Para sarjana hukum berpendapat bahwa definisi ini tidak lengkap, karena yang dirumuskan itu hanya mengenai perjanjian sepihak saja.[43] Padahal perjanjian itu merupakan tindakan hukum dua pihak. Dalam perjanjian

---

[41] *Ibid*, hlm. 130.

[42] J. Satrio, *Hukum Perjanjian (Perjanjian Pada Umumnya)*. Cet. 1. (Bandung: PT. Citra Aditya Bakti, 1992), hlm. 8.

[43] Mariam Darus Badrulzaman et. al., *Kompilasi Hukum Perikatan (Dalam Rangka Menyambut Masa Purna Bakti Usia 70 Tahun)*, Cet. 1. (Bandung: PT. Citra Aditya Bakti, 2001), hlm. 65.

terdapat unsur janji, janji yang diberikan pihak yang satu kepada pihak yang lain.[44]

Ada beberapa pandangan mengenai pengertian dari perjanjian, yaitu:

1. Menurut Prof. R. Subekti, SH

   Perjanjian adalah suatu peristiwa dimana seseorang berjanji kepada orang lain atau dimana kedua orang itu saling berjanji untuk melaksanakan sesuatu hal.[45]

2. Menurut Sri Soedewi Msjhoen Sofwan

   Perjanjian adalah suatu perbuatan hukum dimana seorang atau lebih, mengikatkan dirinya terhadap seorang lain atau lebih.

Sedangkan untuk istilah "perikatan", sebetulnya tidak ada pengaturannya yang jelas di undang-undang. Namun menurut Subekti, perikatan yang dimaksud dalam Buku III KUHPerdata adalah:[46]

> *Suatu hubungan hukum (mengenai kekayaan harta beda) antara dua orang, yang memberi hak pada yang satu untuk menuntut barang sesuatu dari yang lainnya, sedangkan orang yang lainnya ini diwajibkan untuk memenuhi tuntutan tersebut.*

Pasal 1233 KUHPerdata menyatakan bahwa setiap perikatan bisa lahir dari perjanjian maupun undang-undang. Maka dapat disimpulkan bahwa antara perikatan dengan perjanjian adalah dua hal yang berbeda.[47] Perjanjian itu menerbitkan perikatan. Perjanjian adalah sumber perikatan, di sampingnya ada sumber-sumber lain. Suatu perjanjian juga dinamakan persetujuan, karena dua pihak itu setuju untuk melakukan sesuatu. Dapat dikatakan bahwa dua perkataan

---

[44] J. Satrio, *Op. Cit*., hlm. 9.

[45] Subekti, *Hukum Perjanjian*, Cet. 22. (Jakarta: PT. Intermasa, 2008), hlm. 1.

[46] R. Subekti, *Pokok-Pokok Hukum Perdata*, Cet. 14. (Jakarta: PT. Intermasa, 1992), hlm. 122-123.

[47] J. Satrio, *Op. Cit.*, hlm. 2.

(perjanjian dan persetujuan) itu adalah sama artinya. Istilah kontrak, lebih sempit karena ditujukan kepada perjanjian atau persetujuan yang tertulis.

2.3 Asas-Asas Hukum Perjanjian

Para pihak yang terikat dalam perjanjian, wajib untuk melakukan suatu prestasi, dalam hal ini, debitur, dapat menentukan lebih dahulu, dengan menyesuaikan pada kemampuannya untuk memenuhi prestasi dan untuk menyelaraskan dengan hak dan kewajiban yang ada pada kreditur. Dalam rangka menciptakan keseimbangan dan memelihara hak-hak yang dimiliki oleh para pihak sebelum perjanjian yang dibuat mengikat para pihak, KUHPerdata memberikan beberapa asas umum, yang merupakan pedoman atau patokan, serta menjadi batas atau rambu bagi para pihak dalam membuat perjanjiannya.[48]

Adapun asas-asas umum hukum perjanjian yang terdapat dalam KUHPerdata adalah sebagai berikut:

1. Asas Kebebasan Berkontrak

   Asas kebebasan berkontrak merupakan asas yang sangat penting, baik dalam sistem hukum *common law* maupun *civil law*. Asas ini memberikan keleluasaan kepada setiap subjek hukum bisa membuat perjanjian yang melahirkan hak dan kewajiban apapun sesuai dengan yang kesepakatan. KUHPerdata memang tidak menuangkan asas ini dalam satu pasal tersendiri. Namun kita dapat melihat Pasal 1320 angka 4 KUHPerdata sebagai dasar eksistensi dari asas kebebasan berkontrak, yaitu sebab yang halal.[49] Pasal ini secara tidak langsung mengakui adanya kebebasan berkontrak dan menegaskan bahwa ada batasan-batasan terhadap asas ini, yaitu kebebasan berkontrak bisa

---

[48] Kartini Muljadi dan Gunawan Widjaja, *Perikatan Yang Lahir Dari Perjanjian*, (Jakarta: PT. RajaGrafindo Persada, 2006), hlm. 14.

[49] Gunawan Widjaja, *Memahami Prinsip Keterbukaan (Aanvullend Recht) Dalam Hukum Perdata*, (Jakarta: PT. RajaGrafindo Persada, 2006), hlm. 275.

dijalankan sepanjang prestasi yang wajib dilakukan tersebut bukanlah sesuatu yang terlarang.[50] Pembatasan kebebasan berkontrak ini setidak-tidaknya dipengaruhi oleh dua faktor, yaitu:[51]

a. makin berpengaruhnya ajaran itikad baik dimana itikad baik tidak hanya ada pada saat pelaksanaan kontrak, tetapi juga harus ada pada saat dibuatnya kontrak;
b. makin berkembangnya ajaran penyalahagunaan keadaan.

Kebebasan berkontrak yang berlatar belakang pada faham *individualisme* dalam zaman Yunani dan berkembang pesat dalam zaman *reinaissance* berpandangan bahwa setiap orang bebas untuk memperoleh apa yang dikehendakinya.[52] Selain itu, asas ini tidak bisa dilepaskan dari pengaruh berbagai aliran filsafat politik dan ekonomi liberal yang berkembang pada abad kesembilan belas, salah satunya yaitu aliran *leissez faire*.[53] Aliran yang dipelopori oleh Adam Smith ini menekankan prinsip non-intervensi oleh pemerintah terhadap ekonomi dan bekerjanya pasar.[54] Namun, kini kebebasan berkontrak cenderung

---

[50] Sesuatu yang terlarang adalah segala hal yang dilarang oleh undang-undang, atau berlawanan dengan ketertiban umum atau kesusilaan. Lihat Pasal 1377 KUHPerdata.

[51] Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak*, Cet. 1. (Jakarta: Program Pascasarjana, Fakultas Hukum Universitas Indonesia, 2003), hlm. 2-3.

[52] Madjedi Hasan (2), *Op. Cit*., hlm. 110-111.

[53] Istilah *laissez faire* ini memang dipopulerkan Adam Smith, namun pertama kali dikemukakan oleh Vincent de Gournay. Istilah lengkapnya adalah: "*laissez faire, laissez passer, le monde va alors de lui meme*". Secara harafiah berarti: "Biarkanlah berbuat, biarkanlah berlalu, dunia akan berputar terus". Semboyan ini kemudian dimaknai: "Biarkanlah orang berbuat seperti apa yang mereka sukai tanpa campur tangan pemerintah". Pemerintah hendaknya tidak memperluas campur tangannya dalam perekonomian, kecuali atas hal-hal yang esensial untuk melindungi kehidupan milik untuk mempertahankan kebebasan berkontrak. Lihat Ridwan Khairandy, hlm. 45.

[54] *Ibid*.

berkembang kearah kebebasan tanpa batas (*unrestricted freedom of contract*).[55] Oleh karena itu, pada abad dua puluh ini paradigma kebebasan berkontrak telah banyak bergeser kearah paradigma kepatutan. Dengan demikian, kebebasan masih menjadi asas yang penting dalam hukum kontrak, namun bukan lagi menjadi kebebasan berkontrak yang tanpa batas.

2. Asas Itikad Baik

Pasal 1338 ayat (3) KUHPerdata menyatakan bahwa: "Semua perjanjian harus dilaksanakan dengan itikad baik." Dalam istilah bisnis, itikad baik yang berasal dari '*bona fide*' diartikan sebagai upaya untuk tidak mencari keuntungan yang tidak wajar atau tidak menipu pihak lain, bermaksud jujur untuk memenuhi kewajiban atau mentaati standar yang pantas dalam transaksi yang wajar (*observance of reasonable standards of fair dealing*). Sementara itu dalam istilah hukum, itikad baik adalah suatu istilah abstrak dan komprehensif yang meliputi kepercayaan (*sincere belief*) atau motif tanpa kebencian atau keinginan untuk menipu orang lain.[56]

Sebagai salah satu asas penting dalam hukum perjanjian, doktrin itikad baik ini masih merupakan sesuatu yang kontroversial. Perdebatan utama yang timbul disini adalah terkait dengan definisi itikad baik itu sendiri. Dalam kenyataannya sangat sulit menemukan pengertian yang jelas mengenai itikad baik, bahkan Pasal 1338 ayat (3) KUHPerdata juga tidak merinci lebih lanjut mengenai pengertian dari itikad baik ini. Oleh karena itu, untuk dapat memahami makna itikad baik yang lebih jelas, harus dilihat pada penafsiran itikad baik dalam praktik peradilan. Dengan demikian, perkembangan doktrin itikad baik lebih merupakan hasil kerja pengadilan daripada legislatif yang

---

[55] *Ibid*, hlm. 1.

[56] Madjedi Hasan (2), *Op. Cit*., hlm. 118-119.

berkembang secara kasus demi kasus. Hakim memegang peranan penting dalam menafsirkan atau memperluas ajaran itikad baik ini.[57]

Di Belanda, penafsiran itikad baik dalam kontrak oleh Pengadilan muncul dalam perkara *Hengsten Vereniging v. Onderlinge Paarden en Vee Assurantie (Artist de Laboureur Arrest)*, HR 9 Februari 1923, NJ 1923, 676. Menurut Hoge Raad, itikad baik ini merupakan doktrin yang merujuk kepada kerasionalan dan kepatutan (*redelijkheid en billijkheid*) yang hidup dalam masyarakat. Penafsiran ini erat kaitannya dengan ketentuan Pasal 1375 BW Belanda (lama) yang menyebutkan bahwa perjanjian tidak hanya mengikat untuk hal-hal yang secara tegas dinyatakan di dalamnya, tetapi juga segala sesuatu yang menurut sifat perjanjian, diharuskan oleh kepatutan, kebiasaan, atau undang-undang.[58]

Sedangkan di Indonesia, dalam perkara *Ny. Lie Lian Joun v. Arthur Tutuarima*, No. 91/1970/Perd./P.T.B., Pengadilan Tinggi Bandung, menafsirkan Pasal 1338 ayat (3) KUHPerdata bahwa perjanjian harus dilaksanakan dengan itikad baik artinya perjanjian tersebut harus dilaksanakan sesuai dengan kepatutan dan keadilan. Dengan demikian, pengadilan harus mempertimbangkan apakah dalam persoalan yang dikemukakan kepadanya ada kepatutan dan keadilan atau tidak. Menurut Pengadilan Tinggi Bandung, apabila dalam perjanjian tersebut terdapat kepatutan dan keadilan, hakim dapat merubah isi perjanjian tersebut. Perubahan tersebut adalah merubah isi perjanjian. Perjanjian tidak hanya ditentukan oleh rangkaian kata-kata yang

---

[57] Ridwan Khairandy, *Op. Cit.*., hlm. 6-8.

[58] Rumusan pasal tersebut telah digantikan oleh Pasal 6.248.1 BW Belanda (baru) yang menyebutkan bahwa suatu perjanjian tidak hanya mengikat pada hal-hal diperjanjikan oleh para pihak, tetapi juga terhadap apa yang menurut sifat perjanjian, undang-undang, kebiasaan, atau kerasionalan dan kepatutan. Lihat Ridwan Khairandy, hlm. 9.

disusun para pihak, tetapi juga ditentukan oleh kepatutan dan keadilan.[59]

Dari penafsiran diatas, baik oleh Hoge Raad maupun Pengadilan Tinggi Bandung, dapat kita lihat bahwa itikad baik itu harus mengacu pada kerasionalan dan kepatutan, tetapi rujukan tersebut masih belum bisa memperjelas pengertian dari itikad baik. Pengertian kepatutan sebagai salah satu bentuk keadilan masih sangat abstrak dan sarat dengan perdebatan filosofis. Beberapa teori keadilan yang dikembangkan oleh Plato hingga Hart, mempengaruhi cara pandang Hakim sehingga membentuk cara pandang yang subyektif dan penafsiran yang berbeda-beda diantara para Hakim. Namun sikap pandang yang subyektif ini seharusnya dapat dihindari dengan mengasumsikan bahwa keadilan yang dimaksud adalah keadilan yang hidup dalam masyarakat.[60]

Asas itikad baik sekarang tidak hanya diterapkan dalam pelaksanaan isi perjanjian tersebut, tetapi juga ketika pembuatan perjanjian.[61] Ketika Perjanjian itu dibuat, idealnya adalah para pihak memiliki posisi tawar (*bargaining position*) yang seimbang, tetapi pada kenyataannya para pihak tidak selalu memiliki posisi tawar yang seimbang.[62] Akibatnya pihak yang memiliki posisi lebih kuat cenderung lebih menguasai pihak yang lebih lemah. Sehingga perjanjian yang dibuat juga akan lebih menguntungkan pihak yang kuat.

---

[59] *Ibid*, hlm. 17.

[60] *Ibid*, hlm. 9-10.

[61] *Ibid.*, hlm. 3.

[62] *Ibid*, hlm. 2.

3. Asas Konsensualisme

Dalam Hukum Perjanjian juga berlaku asas konsensualisme. Istilah ini berasal dari bahasa latin *consensus* yang berarti sepakat. Asas konsensualisme bukanlah berarti untuk suatu perjanjian disyaratkan adanya kesepakatan. Ini memang merupakan hal yang sudah sewajarnya terjadi, dimana perjanjian juga dinamakan persetujuan, yang berarti kedua belah pihak sudah setuju atau sepakat mengenai suatu hal tertentu.

Konsensualisme yang dimaksudkan disini adalah perjanjian dan perikatan itu pada dasarnya sudah timbul atau dilahirkan sejak tercapainya kesepakatan antara para pihak. Dengan perkataan lain, perjanjian itu sudah sepakat mengenai hal-hal pokok dan tidaklah diperlukan suatu formalitas.[63]

Adakalanya perundang-undangan menetapkan bahwa suatu perjanjian dikatakan sudah sah apabila dibuat dalam bentuk tertulis atau dengan Akta Notaris.[64] Namun hal tersebut adalah pengecualian. Biasanya perjanjian sudah sah dan mengikat para pihak yang terlibat apabila sudah disepakati pokok-pokok dari perjanjian. Perjanjian jual beli, sewa menyewa, tukar menukar adalah perjanjian yang konsensuil. Apabila seseorang ingin membeli barang, dengan disepakatinya barang yang akan dibeli dan harga yang akan dibayar oleh pembeli, maka perjanjia jual beli itu dianggap sudah lahir dengan segala akibat hukumnya.

---

[63] Subekti (1), *Op. Cit.*, hlm. 15.

[64] Dalam perjanjian penghibahan barang tetap, bentuk perjanjiannya harus dibuat secara tertulis dalam bentuk Akta Notaris dan aslinya disimpan Notaris tersebut (lihat Pasal 1682 KUHPerdata). Perjanjian seperti ini adalah perjanjian yang harus memenuhi formalitas tertentu, sehingga dinamakan sebagai perjanjian formil.

4. Asas *Pacta Sunt Servanda*

Pasal 1338 ayat (1) KUHPerdata menyebutkan bahwa: "Semua Perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya." Pasal ini merupakan konsekuensi logis dari Pasal 1233 KUHPerdata yang menyatakan bahwa setiap perikatan bisa lahir dari undang-undang maupun karena perjanjian. Jadi perjanjian adalah sumber perikatan. Sebagai perikatan yang telah dibuat dengan sengaja, atas kehendak para pihak secara sukarela, maka segala sesuatu yang telah disepakati dan disetujui oleh para pihak harus dilaksanakan sebagaimana yang telah dikehendaki. Dalam hal salah satu pihak dalam perjanjian tidak melaksanakannya, maka pihak lain dalam perjanjian berhak untuk memaksakan pelaksanannya melalui mekanisme dan jalur hukum yang berlaku.

Suatu prestasi untuk melaksanakan suatu kewajiban selalu memiliki dua unsur penting, yaitu:[65]

a. Pertama, berhubungan dengan tanggung jawab hukum atas pelaksanaan prestasi tersebut oleh Debitur (*Schuld*). Dalam hal ini ditentukan siapa debitur yang berkewajiban melaksanakan prestasi, tanpa mempersoalkan apakah pemenuhan kewajiban tersebut dapat dituntut oleh kreditur yang berhak atas pelaksanaan kewajiban tersebut.
b. Kedua, berkaitan dengan pertanggung jawaban pemenuhan kewajiban, tanpa memperhatikan siapa debiturnya (*Haftung*). Dalam konteks Haftung, perjanjian tidak dapat dipaksakan pelaksanaannya oleh kreditor (perikatan alamiah).

5. Asas Personalia

Menurut Pasal 1315 KUHPerdata, pada umumnya tiada seorang pun yang dapat mengikatkan diri atas nama sendiri atau meminta

[65] Kartini Muljadi dan Gunawan Widjaja, *Op. Cit*., hlm. 59-60.

ditetapkannya suatu janji, melainkan untuk dirinya sendiri. Asas ini dinamakan asas kepribadian suatu perjanjian. Mengikatkan diri ditujukan pada memikul kewajiban-kewajiban atau menyanggupi melakukan sesuatu, sedangkan minta ditetapkannya suatu janji, ditujukan pada memperoleh hak-hak atas sesuatu atau dapat menuntut sesuatu. Memang sudah semestinya perikatan yang ditimbulkan dari sebuah perjanjian hanya mengikat para pihak yang mengadakan perjanjian itu dan tidak mengikat pihak-pihak lain yang tidak terlibat dalam perjanjian tersebut. [66]

2.4 Syarat Sah Perjanjian

Suatu kontrak atau perjanjian harus memenuhi syarat sahnya perjanjian, sebagaimana yang ditentukan dalam Pasal 1320 KUHPerdata. Dengan dipenuhinya empat syarat yang disebutkan dalam Pasal tersebut, maka suatu perjanjian menjadi sah dan mengikat secara hukum bagi para pihak yang membuatnya.[67]

Adapun empat syarat sahnya perjanjian yang tercantum dalam Pasal 1320 KUHPerdata adalah sebagai berikut:

1. Sepakat mereka yang mengikatkan dirinya;
2. Kecakapan untuk membuat suatu perikatan;
3. Suatu hal tertentu;
4. Suatu sebab yang halal.

Dalam doktrin ilmu hukum yang berkembang, syarat-syarat tersebut dibagi ke dalam dua kelompok besar, yaitu:

---

[66] *Ibid*, hlm. 29.

[67] Suharnoko, *Hukum Perjanjian : Teori dan Analisa Kasus*, Cet. 3. (Jakarta: Kencana, 2004), hlm. 1.

1. Syarat subyektif

Kedua syarat yang pertama dinamakan syarat subyektif, karena kedua syarat tersebut mengenai subyek perjanjian. Apabila kedua syarat ini tidak dipenuhi, maka perjanjian bisa dibatalkan.

a. Sepakat mereka yang mengikatkan dirinya

Para pihak yang mengadakan perjanjian harus bersepakat dan setuju mengenai mengenai hal-hal pokok yang diadakan dalam perjanjian itu.[68] Pernyataan atas kesepakatan itu bisa dilakukan secara tegas atau secara diam-diam. Dalam kehidupan sehari-hari, seringkali pernyataan ini dilakukan secara diam-diam.[69] Misalnya, bila kita naik taksi yang menggunakan argo, secara diam-diam telah terjadi kesepakatan antara penumpang dan supir taksi tersebut. Kesepakatannya adalah penumpang akan membayarkan sejumlah uang sesuai dengan yang tertera di argo dan supir taksi tersebut akan mengantarkan penumpang tersebut ke tempat yang dituju. Kesepakatan ini bisa saja dianggap tidak ada, apabila dapat dibuktikan bahwa kesepakatan terjadi karena ada kekhilafan (*dwaling*), paksaan (*dwang*), maupun penipuan (*bedrog*).[70]

Kekhilafan bisa membatalkan suatu perjanjian apabila mengenai orang atau barang yang menjadi tujuan dari pihak-pihak yang mengadakan perjanjian. Kekhilafan mengenai orang, misalnya penyelenggara suatu festival musik menandatangani kontrak dengan seorang penyanyi sebagai salah satu pengisi acara dari festival musik yang

---

[68] R. Subekti (1), *Op. Cit*., hlm. 17.

[69] R. Subekti (2), *Op. Cit.*, hlm. 135.

[70] Kartini Muljadi dan Gunawan Widjaja, *Op. Cit*., hlm. 95.

akan diselenggarakan. Namun setelah penandatanganan kontrak tersebut, baru diketahui bahwa itu bukan orang yang dimaksud, hanya saja namanya kebetulan sama. Sedangkan kekhilafan mengenai barang, misalnya seseorang membeli sebuah lukisan karya seorang pelukis ternama, namun ternyata lukisan itu hanya tiruan saja.

Paksaan terjadi, jika seseorang memberikan persetujuannya karena ia takut pada suatu ancaman. Paksaan yang dimaksudkan dalam KUHPerdata tidak hanya berarti tindakan kekerasan saja, tetapi paksaan dalam arti yang lebih luas, yaitu meliputi ancaman terhadap kerugian kepentingan hukum sesorang. Intinya bukan kekerasan itu sendiri, tetapi rasa takut yang ditimbulkan oleh adanya kekerasan tersebut.[71]

Selain kekhilafan dan paksaan, penipuan juga bisa menjadi salah satu alasan untuk membatalkan perjanjian, apabila penipuan tersebut dilakukan oleh salah satu pihak sedemikian rupa sehingga terang dan nyata bahwa pihak yang ditipu itu tidak akan membuat perjanjian tersebut bila mengetahui tipu muslihat ini. Perbedaan yang mencolok dengan kekhilafan adalah dalam penipuan ini dapat ditemukan unsur kesengajaan. Penipuan ini harus dibuktikan dan tidak boleh hanya dipersangkakan saja.

b. Kecakapan Untuk Bertindak

Orang yang membuat perjanjian harus cakap menurut hukum. Sebenarnya, setiap orang yang sudah akilbaliq dan sehat pikirannya adalah cakap menurut. Dalam Pasal 1330

[71] J. Satrio, *Op. Cit.*, hlm. 246.

KUHPerdata, disebutkan bahwa orang-orang yang tidak cakap adalah:[72]

1) Orang-orang yang belum dewasa;
2) Mereka yang ditaruh di bawah pengampuan;
3) Orang perempuan dalam hal-hal yang ditetapkan oleh Undang-Undang, dan semua orang kepada siapa Undang-Undang telah melarang membuat perjanjian-perjanjian tertentu.

Dalam hal ini, Pasal 330 KUHPerdata mengatur yang dimaksud dengan belum dewasa adalah mereka yang belum mencapai usia 21 (dua puluh satu) tahun dan belum kawin. Sedangkan Pasal 47 UU No. 1 Tahun 1974 tentang Perkawinan, mengatur bahwa anak yang belum dewasa adalah yang belum mencapai umur 18 (delapan belas) tahun dan berada di bawah kekuasaan orang tuanya, selama mereka tidak dicabut dari kekuasaannya.[73] Apabila perkawinan dibubarkan sebelum usia dewasa, maka mereka tidak akan kembali lagi ke kedudukan belum dewasa.[74] Sedangkan orang-orang yang dibawah pengampuan adalah setiap orang dewasa yang selalu berada dalam keadaan dungu, sakit otak, gelap mata, dan boros.

KUHPerdata juga memandang bahwa seorang wanita yang telah bersuami tidak cakap untuk melakukan

---

[72] R. Subekti (1), *Op. Cit.*

[73] Wienarsih Imam Subekti dan Sri Soesilowati Mahdi, *Hukum Perorangan dan Kekeluargaan Perdata Barat*, Cet. 1. (Jakarta: Gitama Jaya, 2005), hlm. 11.

[74] Mariam Darus Badrulzaman, *Op. Cit*., hlm. 78.

perjanjian. Namun sejak 1963, melalui Surat Edaran Mahkamah Agung No. 3 Tahun 1963 yang ditujukan kepada Ketua Pengadilan Negeri dan Pengadilan Tinggi di seluruh Indonesia, kedudukan wanita yang telah bersuami diangkat ke derajat yang sama dengan pria, untuk mengadakan perbuatan hukum dan menghadap di depan pengadilan.[75]

2. Syarat Obyektif

Dua syarat lainnya disebut sebagai syarat obyektif, yaitu syarat mengenai perjanjian itu sendiri atau obyek dari perbuatan hukum yang dilakukan itu. Tidak dipenuhinya dua syarat ini bisa mengakibatkan perjanjian tersebut menjadi batal demi hukum.

a. Mengenai suatu hal tertentu

Suatu perjanjian haruslah memiliki obyek (*bepaald onderwerp*) tertentu, sekurang-kurangnya dapat ditentukan jenisnya. Undang-Undang tidak mengaharuskan barang itu sudah ada di tangan si berhutang atau tidak, ketika perjanjian itu dibuat. Namun, para pihak dilarang untuk memperjanjikan untuk menolak warisan yang belum terbuka, memperjanjikan warisan pihak ketiga yang belum terbuka, dan membuat perjanjian tentang warisannya sendiri yang belum terbuka. Jumlah obyek perjanjian itu juga tidak perlu disebutkan, asalkan bisa dihitung dan ditentukan di kemudian hari.

b. Suatu sebab yang halal

"Sebab" yang dimaksudkan dalam hal ini adalah tujuan para pihak dalam membuat perjanjian tersebut. Sebab ini harus dibedakan dari motif atau desakan jiwa yang mendorong seseorang untuk membuat perjanjian.

---

[75] *Ibid*, hlm. 79.

Hukum pada dasarnya tidak menghiraukan apa yang ada dalam gagasan atau pemikiran seseorang, yang diperhatikan adalah tindakan yang nyata dan dilakukan dalam masyarakat.

Adapun suatu sebab yang tidak diperbolehkan adalah yang bertentangan dengan undang-undang, kesusilaan, dan ketertiban umum. Bertentangan dengan undang-undang misalnya misalnya suatu perjanjian dimana salah satu pihak menyanggupi untuk melakukan suatu kejahatan. Bertentangan dengan kesusilaan, dimana satu pihak berjanji untuk meninggalkan agamanya dan memeluk agama lain.

2.5 Penafsiran Perjanjian

Suatu perjanjian yang dibuat oleh para pihak merupakan pernyataan kehendak yang diwujudkan dalam penawaran dan penerimaan. Kalau kehendak yang dinyatakan oleh salah satu pihak dapat diterima dengan jelas oleh pihak lainnya, maka tidak ada masalah mengenai isi perjanjian tersebut. Namun apabila pernyataan kehendak itu tidak jelas dan menimbulkan pemahaman yang berbeda oleh pihak lainnya, maka perlu dicari apa yang sebenarnya menjadi maksud para pihak dalam perjanjian tersebut. Perlu ditegaskan bahwa yang perlu dicari tahu adalah kehendak para pihak, bukan apa yang dikehendaki oleh salah satu pihak saja.[76]

Kitab Undang-Undang Hukum Perdata sendiri pada dasarnya sudah membuat beberapa patokan yang dapat digunakan untuk menafsirkan maksud para pihak dalam sebuah perjanjian, yaitu:

1. Pasal 1342 KUHPerdata : "Jika kata-kata suatu perjanjian jelas, tidaklah diperkenankan untuk menyimpang daripadanya dengan jalan penafsiran."

[76] J. Satrio, *Op. Cit.*, hlm. 413-414.

Maksud dari "kata-kata suatu perjanjian yang jelas" adalah kata-kata yang tidak memberikan banyak peluang untuk penafsiran yang berlainan. Pemahaman pasal ini tentunya juga memperhatikan keadaan dan tempat dimana perjanjian itu ditutup; dan hal itu berarti, orang tidak cukup menafsirkannya secara gramatikal saja.

2. Pasal 1343 KUHPerdata: "Jika kata-kata suatu perjanjian dapat diberikan berbagai macam penafsiran, harus dipilihnya menyelidiki maksud kedua belah pihak yang membuat perjanjian itu, daripada memegang teguh arti kata-kata menurut huruf."

   Pasal ini beranggapan bahwa isi dari perjanjian tersebut memang mungkin saja untuk ditafsirkan berlainan. Oleh karena itu, harus dicari apa yang menjadi maksud sebenarnya dari para pihak, walaupun terkadang maksud tersebut bertentangan dengan arti kata-kata dalam perjanjian itu.

3. Pasal 1344 KUHPerdata: "Jika suatu janji dapat diberikan dua macam pengertian, maka harus dipilihnya pengertian yang sedemikian yang memungkinkan janji itu dilaksanakan, daripada memberikan pengertian yang tidak memungkinkan suatu pelaksanaan"

   Seperti pasal sebelumnya, pasal ini juga memungkinkan adanya lebih dari satu penafsiran. Namun penafsirannya dicari yang paling mungkin untuk dilaksanakan dan tidak harus terikat secara ketat dengan penafsiran secara gramatikal maupun maksud para pihak.

4. Pasal 1345 KUHPerdata: "Jika kata-kata dapat diberikan dua macam pengertian, maka harus dipilih pengertian yang paling selaras dengan sifat perjanjian."

   Setiap jenis perjanjian memang memiliki ciri-ciri yang berbeda. Oleh karena itu, merupakan sesuatu yang logis kalau suatu perjanjian, dengan jenis tertentu, harus ditafsirkan sesuai dengan ciri-ciri perjanjian tersebut.

5. Pasal 1346 KUHPerdata: "Apa yang meragu-ragukan harus ditafsirkan menurut apa yang menjadi kebiasaan dalam negeri atau di tempat, dimana perjanjian telah dibuat."

   Penafsiran suatu perjanjian harus dilakukan dengan kebiasaan setempat. Jadi, ukurannya bukan pandangan dari orang yang menafsirkan, namun pandangan masyarakat tempat perjanjian tersebut dibuat.
6. Pasal 1349 KUPerdata: "Jika ada keragu-raguan, maka suatu perjanjian harus ditafsirkan atas kerugian orang yang telah meminta diperjanjikannya suatu hal, dan untuk keuntungan orang yang telah mengikatkan dirinya untuk itu."

   Dalam kehidupan sehari-hari, memang terkadang agak susah untuk menentukan siapa yang memperjanjikan dan siapa yang mengikatkan diri, karena dalam perjanjian timbal balik, orang saling mengikatkan diri. Di sini tidak dapat dikatakan bahwa dasarnya adalah kehendak para pihak, lebih tepatnya adalah pasal ini didasarkan atas "kepatutan". Jalan pikirannya adalah bahwa biasanya inisiatif untuk menutup perjanjian dan mensyaratkan suatu klausula datang dari pihak kreditur. Jadi kreditur tersebut yang dianggap mengatur perumusan dari perjanjian atau klausula tersebut.[77]

2.6 Jenis-Jenis Perikatan

Dalam Hukum Perdata yang berlaku di Indonesia, dikenal beberapa jenis perikatan. Salah satunya adalah perikatan dimana masing-masing pihak hanya ada satu orang, sedangkan sesuatu yang dapat dituntut hanya berupa satu hal, dan

[77] *Ibid*, hlm. 425.

penuntutan ini dapat dilakukan seketika. Perikatan dalam bentuk yang sederhana ini dinamakan perikatan bersahaja atau perikatan murni.[78]

Selain itu, dikenal juga beberapa bentuk perikatan yang bentuknya lebih rumit bila dibandingkan dengan perikatan sederhana yang telah dijelaskan sebelumnya. Adapun perikatan-perikatan tersebut adalah:

1. Perikatan untuk Memberikan Sesuatu

   Perikatan ini mewajibkan debitor untuk menyerahkan suatu kebendaan. Kebendaan adalah setiap barang dan hak yang dapat menjadi objek Hak Milik, sebagaimana yang tercantum dalam Pasal 499 KUHPerdata.

2. Perikatan untuk Melakukan Sesuatu

   Pengaturan mengenai perikatan ini dapat ditemukan di Pasal 1239-1242 KUHPerdata. Namun, pasal-pasal tersebut lebih banyak mengatur mengenai upaya hukum bilamana debitor melakukan wanprestasi. Perikatan ini biasanya berhubungan dengan kewajiban debitor untuk melaksanakan "pekerjaan" atau "jasa" tertentu untuk kepentingan kreditor. Pekerjaan atau jasa tersebut bisa merupakan sesuatu yang bisa dikerjakan siapa saja atau bisa juga merupakan suatu hal yang hanya dapat dikerjakan oleh pihak tertentu, dalam hal ini debitor. Apabila pekerjaan itu bisa dikerjakan siapa saja, maka dalam hal terjadi wanprestasi, kreditor bisa meminta pihak ketiga untuk melaksanakan perikatan tersebut atas beban debitor. Namun bila pekerjaan itu hanya bisa dikerjakan oleh debitor, maka kreditor bisa menuntut debitor untuk memenuhi perikatan tersebut atau menuntut pembatalan perikatan.

3. Perikatan untuk Tidak Melakukan Sesuatu

   Perikatan ini diatur dalam satu bagian dengan perikatan untuk melakukan sesuatu, yang terdiri dari empat pasal. Tidak ada satu ketentuan pun dalam keempat pasal tersebut yang memberikan

[78] R. Subekti (1), *Op. Cit*., hlm. 4.

pengertian atau definisi dari perikatan untuk tidak melakukan sesuatu. Pasal-pasal tersebut menjelaskan bahwa perikatan ini sifatnya adalah larangan, yang apabila dilanggar akan melahirkan perikatan baru bagi debitor untuk penggantian biaya, kerugian dan bunga, serta menghapuskan segala sesuatu yang dilakukan secara bertentangan dengan perikatan.

4. Perikatan bersyarat

   Perikatan bersyarat ini dibagi menjadi dua jenis, yaitu perikatan dengan syarat batal dan syarat tangguh. Adapun yang dimaksud dengan perikatan dengan syarat batal adalah perikatan yang sudah lahir, namun apabila terjadi suatu peristiwa tertentu (yang disyaratkan) bisa membuat perjanjian tersebut dibatalkan. Sedangkan perikatan dengan syarat tangguh adalah perikatan yang beru lahir apabila terjadi suatu peristiwa tertentu.

5. Perikatan dengan ketetapan waktu

   Perikatan ini menangguhkan pelaksanaan perikatan hingga suatu waktu tertentu atau menentukan waktu lama berlakunya perikatan tersebut. Adapun perbedaannya dengan perikatan dengan syarat tangguh adalah dalam perikatan dengan ketetapan waktu, peristiwa yang menangguhkan pelaksanaannya adalah suatu peristiwa yang pasti akan terjadi di masa yang akan datang.

6. Perikatan alternatif

   Perikatan ini memberikan kebebasan kepada si berutang untuk menyerahkan salah satu dari dua barang yang telah disebutkan dalam perjanjian, tetapi ia tidak boleh memaksa si berpiutang untuk menerima sebagian dari barang yang satu dan sebagian barang lainnya.

7. Perikatan tanggung-menanggung

   Perikatan ini melibatkan para pihak dimana salah satu pihak ada yang terdiri atas beberapa orang. Apabila terdapat beberapa orang debitur, maka setiap debitur bisa dituntut untuk memenuhi seluruh

hutang. Sedangkan dalam hal terdapat beberapa orang kreditur, maka setiap kreditur berhak menuntut pembayaran seluruh hutang.

8. Perikatan yang dapat dibagi dan yang tak dapat dibagi

   Perikatan dapat dibagi maupun yang tidak dapat dibagi adalah sekedar prestasinya yang dibagi menurut imbangan, namun pembagian itu tidak boleh sampai mengurangi hakikat dari prestasi tersebut. Mengenai dapat atau tidak dapat dibaginya prestasi tersebut tergantung oleh sifat barang yang tersangkut di dalamnya, tetapi juga dapat disimpulkan dari maksud perikatan tersebut.

9. Perikatan dengan ancaman hukuman

   Perikatan ini adalah perikatan dimana ditentukan bahwa si berutang, untuk jaminan pelaksanaan perikatannya, diwajibkan melakukan sesuatu apabila perikatannya tidak dipenuhi.

2.7 Hapusnya Perikatan

Ada beberapa cara hapusnya perikatan yang dapat diatur dalam Pasal 1381 KUHPerdata, yaitu:[79]

1. Pembayaran;
2. Penawaran pembayaran tunai diikuti dengan penyimpanan atau penitipan;
3. Pembaharuan utang;
4. Perjumpaan utang atau kompensasi;
5. Percampuran utang;
6. Pembebasan utang;
7. Musnahnya barang yang terutang;
8. Batal/pembatalan;
9. Berlakunya suatu syarat batal dan
10. Lewatnya waktu

[79] *Ibid*, hlm. 64.

BAB 3
TINJAUAN PERJANJIAN DALAM KEGIATAN USAHA HULU MINYAK DAN GAS BUMI

3.1. Sejarah Industri Minyak dan Gas Bumi di Indonesia

Penggunaan minyak dan gas bumi sebagai keperluan sehari-hari sebetulnya sudah dimulai sejak ribuan tahun lalu. Misalnya di daratan Cina, dimana orang menggunakan minyak yang keluar dari permukaan tanah untuk menyalakan obor. Namun, usaha pencarian minyak bumi secara komersial di Indonesia dengan metode pengeboran dilakukan pertama kali oleh seorang pengusaha Belanda yang bernama Jan Reerink pada tahun 1871 di suatu daerah lereng gunung Ceremai, dekat Cibodas, Jawa Barat. Ia melakukan pengeboran di empat lokasi sumur, tetapi tidak satu sumur pun yang memberikan hasil yang layak secara komersial. Pencarian ini kemungkinan besar terpengaruh oleh ditemukannya minyak pertama kali di dunia oleh Kolonel Edwin Drake dengan cara melakukan pengeboran metodelogis di Titusville, Pennsylvania, Amerika Serikat pada tahun 1859.[80]

Selanjutnya pada tahun 1883, Aeilko Jans Zijlker, pimpinan perkebunan tembakau di daerah Langkat, Sumatera Utara, menemukan rembesan minyak berdasarkan informasi dari warga sekitar. Setelah ia melakukan penelitian, akhirnya ia memutuskan untuk melakukan pengeboran pertama di daerah tersebut, yaitu daerah Telaga Tiga. Pengeboran ini tidak membuahkan hasil. Namun tahun 1885, sumur kedua dibor di daerah Telaga Tunggal dan memberikan hasil yang luar biasa. Sumur ini dinamakan Telaga Tunggal No. 1 dan sangat terkenal di dunia karena terus menghasilkan minyak selama 50 tahun walaupun hanya dibor sedalam 121 meter. Selanjutnya, pada tahun 1887 ditemukan juga minyak di

[80] Rudi M. Simamora, *Op. Cit*., hlm. 11.

daerah Kruka, Jawa Timur, dan tahun 1901 ditemukan di Ledok, Cepu, Jawa Tengah.

Penemuan-penemuan tersebut mendorong tumbuhnya perusahaan minyak di Indonesia. Pada 16 Juni 1890, Zijlker mendirikan Koninklijke Nederlandsche Petroleum Company atau lebih dikenal dengan Royal Dutch Petroleum Company. Perusahaan ini memfokuskan diri untuk memproduksi, mengolah, dan memasarkan minyak bumi di Pangkalan Brandan. Perusahaan minyak lainnya adalah Shell Transport and Trading Co., didirikan oleh Marcus Samuel yang menemukan minyak di Kalimantan dan membangun kilang di Balikpapan pada tahun 1894.

Pemerintah Belanda pada tahun 1899, memberlakukan Indische Mijn Wet yang melegalisasi wewenang Pemerintah Hindia Belanda untuk memberikan konsesi pertambangan di wilayah Hindia Belanda menggantikan kewenangan yang sebelumnya dimiliki Sultan dan Raja pada masa itu. Indische Mijn Wet ini adalah awal mula dari sejarah penjajahan dan dominasi asing dalam industri perminyakan di Indonesia.

Pada tahun 1907, Royal Dutch Petroleum Company bergabung dengan Shell Transport and Trading Co. Membentuk The Royal Dutch Shell Group, yang kemudian terkenal dengan nama: "Shell". Untuk memperkuat posisinya, Shell mengakuisisi Dortsche Petroleum Company sehingga memperkuat dominasi Shell dalam industri perminyakan di Indonesia.

Hingga sebelum tahun 1950, sistem konsesi terus berlangsung, dimana industri minyak di Indonesia dikuasai oleh tiga perusahaan besar, yaitu Shell, Caltex (perusahaan hasil joint venture antara California Asiatic Oil Company dengan Texaco Overseas Petroleum Campany), dan Stanvac (perusahaan hasil joint venture antara Standard Oil Company of New Jersey dan Mobil).[81] Sistem konsesi yang diberlakukan ini sangat bebas dan tidak ada campur tangan dari pemerintah sama sekali. Perusahaan-perusahaan yang mendapatkan konsesi itu mempunyai kewenangan untuk mengosongkan lahan yang mereka butuhkan,

[81] Tengku Nathan Machmud (A), *Op. Cit*., hlm. 44-45.

memiliki alas hak yang sah atas segala bangunan yang dibangunnya, hanya membayar pajak dan royalti, serta memiliki hak atas mineral, hak atas pertambangan, dan hak atas ekonomi.[82]

Periode 1950-1960 disebut sebagai "*let alone period*", dimana pemerintah membiarkan konsesi yang dimiliki oleh perusahaan-perusahaan tersebut mencapai masa berakhirnya dan tidak diberi perpanjangan. Konsesi Stanvac akan berakhir pada akhir tahun 1951, sedangkan konsesi Caltex dan Shell akan berakhir pada tahun 1953 dan 1955. Pemerintah juga tidak mengeluarkan konsesi baru bagi daerah-daerah lain. Hal ini terjadi karena setelah Indonesia merdeka dan dikeluarkannya Undang-Undang Dasar 1945, sistem konsesi ini dinilai sudah tidak sejalan lagi dengan semangat kemerdekaan yang dicetuskan. Pemerintah ingin mengakhiri konsesi yang dianggap sebagai bentuk penjajahan oleh pihak asing dalam industri perminyakan. Pasal 33 UUD 1945 menjadi dasar bagi pemerintah untuk mengambil alih konsesi yang selama ini dimiliki oleh perusahaan-perusahaan tersebut.

Tahun 1951, Dewan Perwakilan Rakyat (DPR) untuk pertama kalinya memberikan perhatian yang serius terhadap masalah Minyak dan Gas Bumi. Mr. Mohammad Hasan sebagai Ketua Komisi Perdagangan dan Industri di DPR melakukan beberapa penelitian untuk mempersiapkan rencana undang-undang pertambangan Indonesia yang baru. Selain itu, pemerintah juga mulai membentuk Badan Usaha Milik Negara (BUMN) yang disiapkan untuk masuk ke dalam industri minyak dan gas, yaitu Permina, Pertamin, dan Permigan.

Realisasi dari hal-hal tersebut baru terwujud tahun 1960, dimana lahir UU No. 44 Prp Tahun 1960 yang mengamanatkan bahwa pengusahaan pertambangan minyak dan gas bumi hanya dapat dilaksanakan oleh perusahaan negara. Selain itu, diatur juga bahwa Menteri dapat menunjuk pihak lain sebagai kontraktor bagi perusahaan negara tersebut. Undang-undang ini juga mengakhiri era konsesi yang

---

[82] Tengku Nathan Machmud (B), *The Indonesian Oil And Gas Industry: Highlights Of Past And Present Contractual Terms*, disampaikan dalam "*Oil and Gas Course*" yang diselenggarakan oleh Hakim dan Rekan, 13 Maret 2009.

sebelumnya diberikan pada perusahaan-perusahaan asing. Pemerintah melakukan negosiasi dengan perusahaan-perusahaan tersebut dan hasilnya disepakati dalam "*Tokyo Agreement*" tahun 1963, dimana Caltex menjadi kontraktornya Permina, Stanvac menjadi kontraktornya Pertamin, dan Shell menjadi kontraktornya Permigan. Ketiga perusahaan asing tersebut menandatangani Kontrak Karya, yang menggantikan konsesi. Kontrak Karya ini membuat posisi pemerintah menjadi lebih dominan dibandingkan sebelumnya, dimana pemerintah tidak mendapatkan hak apa-apa. Melalui Kontrak Karya ini, kuasa pertambangan kini dimiliki oleh pemerintah.

Namun, kondisi politik yang memburuk dan berdampak pada iklim investasi yang kurang bersahabat, membuat Shell akhirnya angkat kaki dari Indonesia. Shell menjual semua asetnya kepada Permina, terhitung sejak tanggal 1 Januari 1966. Pemerintah lalu membubarkan Permigan dan menjual asetnya kepada negara. Dengan demikian hanya tinggal 2 perusahaan negara, yaitu Permina dan Pertamin. Akhirnya, kedua perusahaan negara itu juga bergabung pada tahun 1968, menjadi PERTAMINA. Kebijaksanaan ini diambil pemerintah dalam rangka Repelita yang mulai dicanangkan waktu itu. Melihat perkembangan dan kemajuan Pertamina, maka pemerintah mengeluarkan UU No. 8 Tahun 1971 tentang Perusahaan Pertambangan Minyak dan Gas Bumi Negara (PERTAMINA) untuk meningkatkan kemampuan dan hasil usaha selanjutnya.

Perkembangan lainnya yang dihasilkan adalah dengan mulai diterapkannya PSC yang dimulai oleh Ibnu Sutowo pada tahun 1966. PSC yang pertama ditandatangani dengan Independent Indonesian American Petroleum Company (IIAPCO). Bentuk kontrak ini menghidupkan kembali iklim investasi minyak dan gas di Indonesia. Kontraktor-kontraktor asing lain juga semakin tertarik, sehingga dalam kurun waktu 1966-1975 sebanyak 59 perusahaan asing beroperasi di Indonesia berdasarkan PSC.[83] Hasil produksi meningkat drastis hingga tiga kali lipat, dari 500 MBOD tahun 1966 menjadi 1,7 MMBOD pada tahun 1976.

---

[83] H. Salim H. S., *Op. Cit*., hlm. 313.

Pertamina mengalami krisis keuangan pada tahun 1975. Ini merupakan dampak dari perekonomian global yang memburuk dan menyebabkan tidak stabilnya ekonomi di Indonesia. Pinjaman-pinjaman jangka panjang sangat sulit untuk didapatkan, padahal Pertamina sedang membutuhkan pinjaman jangka panjang. Pada tahun 1976, Ibnu Sutowo dilepas dari jabatannya sebagai Presiden Direktur Pertamina.[84] Hal ini memberikan pengaruhnya cukup besar terhadap kepemimpinan dalam tubuh Pertamina.

Semakin banyaknya PSC yang ditandatangani membuat Pertamina harus bekerja lebih dalam mengawasi pelaksanaan setiap PSC yang ada. Oleh karena itu, pada akhir 1960an dibentuk sebuah badan khusus bernama Dinas Koordinasi Kontraktor Asing (DKKA), yang pada akhir 1970an berubah nama menjadi Badan Koordinasi Kontraktor Asing, dan akhirnya berubah menjadi Badan Pembinaan Pengusahaan Kontraktor Asing (BPPKA). Badan ini berkoordinasi langsung dengan Presiden Direktur Pertamina untuk mengawasi pelaksanaan dari setiap PSC yang ditandatangani. Selain itu, badan ini juga berusaha mempelajari dan melakukan pengembangan terhadap PSC di saat yang sama.[85]

Pada tahun 2001, dikeluarkan UU No. 22 Tahun 2001 tentang Minyak dan Gas Bumi. Melalui undang-undang ini, Kuasa Pertambangan tidak lagi berada di tangan Pertamina, tetapi berada di pemerintah. Dibentuk suatu lembaga baru, namanya Badan Pelaksana Minyak dan Gas (BP Migas), dimana BP Migas berperan menjadi perwakilan pemerintah dalam menandatangani PSC. Namun ternyata UU 22 Tahun 2001 ini juga dianggap belum bisa menjawab tantangan

---

[84] Penyebab dari pemecatan ini belakangan diketahui bahwa dikarenakan ia menolak permintaan Presiden Soeharto untuk bekerja sama dengan Japan Indonesian Oil Company (JIOC). Ibnu Sutowo merasa seharusnya Pertamina menjalin kerjasama dengan Far East Trading (FEOT), bukannya dengan JIOC. Hal ini yang membuat ia dipecat dengan alasan yang dibuat-buat, yaitu bahwa ia dianggap melakukan kesalahan dalam memilih rekanan bisnis dan telah melakukan korupsi. Hal ini menunjukkan bahwa industri minyak dan gas ini adalah industri yang sangat strategis sehingga tidak jarang dipengaruhi oleh keputusan-keputusan yang sifatnya sangat politis.

[85] Tengku Nathan Mahmud, *Op. Cit.*, hlm. 53-54.

dan keluhan dari para investor terkait dengan industri minyak dan gas di Indonesia.

Kegiatan eksplorasi menurun drastis dibandingkan tahun-tahun sebelumnya. Akibatnya, jumlah minyak yang dihasilkan pun semakin memburuk. Para investor kurang berani dalam melakukan eksplorasi sehingga daerah - daerahnya juga kurang dikembangkan. Angka produksi menurun dari 1,7 MMBOD (1977) menjadi 960 MBOD (2009) dan Indonesia menjadi *net oil importer* pada tahun 2004.

3.2 Jenis-Jenis Kontrak Dalam Industri Perminyakan di Indonesia

Industri perminyakan adalah industri yang tingkat kompleksitasnya tinggi. Oleh karena itu, dalam menjalankan usaha perminyakan, dikenal beberapa macam jenis kontrak yang digunakan sesuai dengan kondisi yang diinginkan, yaitu:

3.2.1 *Production Sharing Contract* (PSC)

3.2.2 *Technical Assistance Contract* (TAC)

3.2.3 *Joint Operating Agreement* (JOA)

3.2.1 *Production Sharing Contract* (PSC)

PSC merupakan model yang dikembangkan dari konsep perjanjian bagi hasil yang dikenal dalam hukum adat Indonesia. Konsep perjanjian bagi hasil yang dikenal dalam hukum adat tersebut telah dikodifikasikan dalam UU No. 2 Tahun 1960 tentang perjanjian bagi hasil, dimana dijelaskan bahwa pengertiannya adalah perjanjian dengan nama apapun juga yang diadakan antara pemilik pada satu pihak dan seseorang atau badan hukum pada lain pihak yang dalam hal ini disebut "penggarap" berdasarkan perjanjian mana diperkenankan oleh pemilik tersebut untuk menyelenggarakan usaha pertanian diatas tanah pemilik, dengan pembagian hasil antara kedua belah pihak. Kontrak inilah yang kemudian dikembangkan menjadi PSC dan digunakan dalam industri minyak dan gas bumi di Indonesia.[86]

PSC adalah sebuah kontrak tertulis antara badan usaha dan/atau badan usaha tetap dengan BP Migas. Substansi yang harus dimuat dalam PSC telah ditentukan dalam Pasal 11 ayat (3) UU No. 22 Tahun 2001 tentang Minyak dan Gas Bumi. Ketentuan-ketentuan pokok yang harus dimuat dalam PSC antara lain:

1. Penerimaan negara;
2. Wilayah kerja dan pengembaliannya;
3. Kewajiban pengeluaran dana;
4. Perpindahan kepemilikan hasil produksi atas minya dan gas bumi;
5. Jangka waktu dan kondisi perpanjangan kontrak;
6. Penyelesaian perselisihan;
7. Kewajiban pemasokan minyak bumi dan/atau gas bumi untuk kebutuhan dalam negeri;
8. Berakhirnya kontrak;
9. Kewajiban pasca operasi pertambangan;
10. Keselamatan dan kesehatan kerja;
11. Pengelolaan lingkungan hidup;
12. Pengalihan dan kewajiban;
13. Pelaporan yang diperlukan;
14. Rencana pengembangan lapangan;
15. Pengutamaan pamanfaatan barang dan jasa dalam negeri;
16. Pengembangan masyarakat sekitarnya dan jaminan hak-hak masyarakat adat;
17. Pengutamaan penggunaan tenaga kerja Indonesia.

Para pihak yang terkait PSC adalah negara, dalam hal ini diwakili oleh badan pelaksana (BP Migas), sedangkan pihak kedua atau kontraktornya adalah badan usaha dan/atau badan usaha tetap. Tugas BP Migas diatur dalam Pasal 44 ayat (3) UU No. 22 Tahun 2001 j.o. Pasal 11 PP No. 42 Tahun 2002. Tugas badan pelaksana, yaitu:

[86] Rudi M. Simamora, *Op. Cit*., hlm. 59.

1. Memberikan pertimbangan kepada menteri atas kebijakannya dalam hal penyiapan dan penawaran wilayah kerja serta PSC;
2. Melaksanakan penandatanganan PSC;
3. Mengkaji dan menyampaikan rencana pengembangan lapangan yang pertama kali akan diproduksikan dalam suatu wilayah kerja kepada menteri untuk mendapatkan persetujuan;
4. Memberikan persetujuan rencana pengembangan lapangan, selain yang tercantum pada angka 3 diatas;
5. Memberikan persetujuan rencana kerja dan anggaran;
6. Melaksanakan pengawasan dan melaporkan kepada menteri mengenai pelaksanaan PSC;
7. Menunjuk penjual minyak dan gas bumi bagian negara yang dapat memberikan keuntungan sebesar-besarnya bagi negara.

Dari tugas-tugas yang telah dijabarkan diatas, tugas yang paling penting adalah penandatanganan PSC, karena penandatangan tersebut akan menimbulkan hak dan kewajiban diantara kedua belah pihak

Hak dan kewajiban badan usaha dan/atau badan usaha tetap yang melaksanakan kegiatan usaha hulu berdasarkan PSC diatur dalam Pasal 31 UU No. 22 Tahun 2001, yaitu:

1. Membayar pajak yang merupakan penerimaan negara; dan
2. Membayar bukan pajak yang merupakan penerimaan negara.

Adapun, penerimaan negara yang berupa pajak, terdiri atas:

1. Pajak-pajak;
2. Bea masuk, dan pungutan lain atas impor dan cukai;
3. Pajak daerah dan distribusi daerah.

Penerimaan negara bukan pajak, terdiri atas:

1. Bagian negara, yaitu bagian produksi yang diserahkan oleh badan usaha atau badan usaha tetap kepada negara sebagai pemilik sumber daya minyak dan gas bumi;

2. Iuran tetap, yaitu iuran yang dibayar oleh badan usaha atau badan usaha tetap kepada negara sebagai pemilik sumber daya minyak dan gas bumi sesuai luas wilayah kerja sebagai imbalan atas kesempatan melakukan kegiatan eksplorasi dan eksploitasi;
3. Iuran eksplorasi dan eksploitasi, yaitu iuran yang dibayarkan oleh badan usaha atau badan usaha tetap kepada negara sebagai kompensasi atas pengambilan kekayaan alam minyak dan gas bumi yang tak terbarukan;
4. Bonus-bonus, yaitu penerimaan dari bonus-bonus penandatanganan. Bonus kompensasi data, bonus produksi, dan bonus-bonus dalam bentuk apapun yang diperoleh badan pelaksana dalam rangka PSC.

Dalam *Article 5.2* PSC yang dibuat antara BP Migas dan Kontraktor telah ditentukan hak dan kewajiban para pihak. Adapun kewajiban kontraktor adalah sebagai berikut:

1. Menyediakan semua biaya yang diperlukan untuk membeli atau menyewa peralatan dan material
2. Menyediakan segala bantuan teknis, termasuk tenaga kerja asing
3. Menyediakan biaya lain untuk pelaksanaan program kerja termasuk pembayaran kepada pihak ketiga (asing) yang memberikan jasa kepada kontraktor
4. Bertanggung jawab atas persiapan dan pelaksanaan program kerja yang akan dilakukan dengan cepat dan menggunakan metode ilmiah
5. Melakukan peninjauan tentang kondisi lingkungan pada awal kegiatan
6. Mengambil tindakan-tindakan pencegahan untuk melindungi sistem ekologi, pelayaran, penangkapan ikan, dan mencegah meluasnya pencemaran laut, sungai-sungai, dan lain-lain sebagai akibat langsung dari pelaksanaan operasi
7. Mengeluarkan semua peralatan yang digunakan dari wilayah kontrak sesuai dengan ketentuan BP Migas dan pemerintah Indonesia. Alat ini baru dikeluarkan setelah masa kontrak berakhir.

8. Melakukan pemulihan semua lokasi pengeboran sesuai dengan peraturan pemerintah, yang bertujuan untuk mencegah resiko terhadap kehidupan manusia dan harta benda atau lingkungan
9. Memasukkan anggaran tahunan biaya operasional, taksiran biaya pemulihan dan pembebasan lokasi untuk setiap sumur eksplorasi dalam program kerja. Semua biaya yang dikeluarkan oleh kontraktor dalam proses pembebasan sumur-sumur tersebut dan pemulihan lokasi pengeboran akan dibayar sebagai biaya operasional
10. Memasukkan rencana konstruksi untuk setiap penemuan secara komersial, program pemulihan dan pembebasan lokasi bersama sesuai dengan prosedur pendanaan setiap program
11. Menyerahkan semua salinan data geologi, geofisika, pengeboran, sumur minyak dan produksi, dan data lainnya kepada pemerintah Indonesia melalui BP Migas. Kontraktor dapat memegang salinan data asli yang harus disetujui oleh pemerintah Indonesia.
12. Menyiapkan dan melaksanakan rencana-rencana dan program-program untuk pelatihan di bidang industri dan pendidikan di Indonesia bagi semua kelompok kerja
13. Menyetujui penjualan dan pengiriman sejumlah minyak kepada pemerintah Indonesia sebanyak 25% dari total bagi hasil yang diterima kontraktor, penjualan ini baru dilakukan setelah produksi secara komersial
14. Menggunakan barang-barang dan jasa yang diproduksi di Indonesia atau yang dibuat oleh orang Indonesia
15. Membayar pajak pendapatan kepada Pemerintah Indonesia, termasuk pajak akhir dari keuntungan yang diterima kontraktor
16. Menaati semua peraturan yang berlaku di Indonesia
17. Tidak dibenarkan untuk mengungkapkan kepada pihak ketiga tentang data geologi, geofisika, petrofisika, teknis, sumur minyak, dan data lainnya tanpa izin tertulis dari pemerintah Indonesia
18. Kontraktor akan memberikan dana minimum sebesar 75.000 US$ sebelum program kerja tahunan dimulai kepada BP migas.

Sedangkan hak dari seorang kontraktor adalah:

1. Menjual, memberikan, atau memindahkan semua atau sebagian hak-hak dan wewenang-wewenangnya menurut kontrak kepada perusahaan cabang dengan syarat harus ada izin tertulis dari BP Migas;
2. Menjual, memberikan, atau memindahkan semua atau sebagian hak-hak dan wewenang-wewenangnya menurut kontrak ini kepada pihak-pihak ketiga selain perusahaan cabang dengan izin tertulis dari BP Migas dan Pemerintah Indonesia;
3. Melakukan pengawasan terhadap semua alat-alat yang disewa;
4. Memasukkan dan mengeluarkan fasilitas-fasilitas dari wilayah kontrak;
5. Menggunakan dan mengakses semua data dan informasi geologi, geofisika, pengeboran, sumur minyak dan produksi pada wilayah kontrak yang dilakukan oleh Pemerintah Indonesia. Semua biaya untuk mendapatkan data dan informasi tersebut akan disediakan oleh kontraktor, dan termasuk biaya operasional;
6. Menjual dan mengekspor minyak mentahnya keluar negeri; dan
7. Menunjuk perwakilannya di Jakarta

Kewajiban BP Migas telah ditentukan dalam *Article 5.3* PSC, yaitu:

1. Bertanggung jawab terhadap Manajemen Operasional;
2. Membantu dan memperlancar pelaksanaan program kerja kontraktor dengan menyediakan fasilitas, pegawai, dan persediaan, tidak terbatas pada penyediaan atau pembuatan visa, izin kerja, transportasi, perlindungan keamanan, dan hiburan yang mungkin diminta oleh kontraktor, dimana biaya untuk menyediakan hal itu akan ditanggung oleh kontraktor sebagai biaya operasional;
3. Membebaskan kontraktor dari pajak-pajak lain, seperti PPN, Pajak Pemindahan, Pajak Ekspor Impor Bahan Baku, dan peralatan yang dibawa ke Indonesia;

4. Tidak diperkenankan untuk menyampaikan kepada pihak ketiga semua data asli dari operasi pengeboran minyak, seperti data geologi, geofisika, petrofisika, teknis, sumur minyak dan data lainnya tanpa izin tertulis dari kontraktor;
5. Menyetujui penggunaan aset oleh pihak ketiga dengan syarat harus ada izin tertulis dari kontraktor.

Hak BP Migas adalah sebagai berikut:

1. Menerima hasil produksi minyak dan gas bumi, sesuai yang telah ditetapkan antara BP Migas dengan Kontraktor; dan
2. Menerima pajak pendapatan dan pajak akhir tahun dari kontraktor.

Hasil produksi yang diterima oleh pemerintah melalui BP Migas sesuai dengan Pasal 16 Peraturan Pemerintah No. 35 Tahun 1994 tentang Syarat-Syarat dan Pedoman Kerjasama Kontrak Bagi Hasil Minyak dan Gas Bumi, ditentukan oleh Menteri Pertambangan dan Energi. Namun pada umumnya, untuk PSC generasi terakhir ini pembagiannya adalah sebagai berikut:

1. Minyak
   85 % : untuk BP Migas
   15 % : utnuk Badan Usaha atau Badan Usaha Tetap
2. Gas
   70 % : untuk BP Migas
   30 % : untuk Badan Usaha atau Badan Usaha Tetap

3.2.2 *Technical Assistant Contract* (TAC)

TAC merupakan salah satu bentuk kontrak (derivatif) turunan dari PSC. Kontrak ini dibuat dengan tujuan untuk merehabilitasi sumur lama atau blok yang sedang mengalami penurunan produksi yang sangat tajam.[87] Biasanya ini digunakan dalam hal negara memiliki cadangan sumur minyak yang telah terbukti

[87] Tengku Nathan Machmud (A), *Op. Cit*., hlm. 73.

dan membutuhkan bantuan manajemen, operasional, pemasaran atau keahlian teknis khusus.

Pada dasarnya, TAC adalah kontrak pemborongan pekerjaan biasa, tidak seperti PSC dimana para pihak sepakat untuk mengusahakan bersama suatu blok dan melakukan pembagian hasil pada akhirnya. Kontraktor yang menandatangani TAC ini tidak akan mendapatkan hak apapun atas blok tersebut, negara tidak pernah menyerahkan blok tersebut.

Prinsip-prinsip dasar TAC adalah sebagai berikut:

1. TAC meliputi kegiatan ekploitasi atau pengembangan saja, tidak seperti PSC yang mencakup eksplorasi dan eksploitasi. Kontraktor tidak diwajibkan untuk melakukan kegiatan eksplorasi berupa survey seismik, pengeboran sumur eksplorasi, dan sebagainya. Akan tetapi, kontraktor diwajibkan untuk melakukan kegiatan-kegiatan yang bisa meningkatkan tingkat produksi minyak atau gas dari sebelunya. Kegiatan ini dinamakan *Enhance Oil Recovery* (EOR).[88]
2. Penggantian biaya operasi sebesar maksimum 65% dari minyak dan gas bumi yang dihasilkan dan tidak digunakan untuk kegiatan produksi.
3. TAC tidak mengenal *First Tranche Petroleum* (FTP) sebagaimana yang dikenal dalam PSC.
4. Masa berlakunya TAC adalah 20 tahun. Hal ini disesuaikan dengan PSC. Dalam PSC, masa berlakunya adalah 30 tahun, artinya 10 tahun pertama digunakan untuk masa eksplorasi dan 20 tahun berikutnya untuk masa pengembangan dan produksi. Oleh karena itu masa berlaku kontraknya hanya 20 tahun. Apabila dalam 2 tahun pertama

---

[88] EOR dalam Standard Technical Assistance Contract PERTAMINA diartikan sebagai "*the recovery of Incremental Oil by appropriate process or method including but not limited to: energy injection into oil bearing formations; usually in the form of liquids, liquid with surfactan, polymers or other chemicals, gas, steam, or heat injected through an input wells. Enhace Oil Recovery includes secondary and tertiary recovery.*" Lihat Rudi M. Simamora, *Op. Cit*., hlm. 102.

belum bisa dipastikan akan ada produksi yang sifatnya komersial, maka kontraktor tersebut dapat meminta perpanjangan waktu untuk satu kali dua tahun berikutnya, dan jika sampai akhir tahun keempat masih tidak ada produksi yang sifatnya komersial, maka TAC akan berakhir dengan sendirinya.

5. Sejalan dengan prinsip-prinsip diatas, maka kontraktor hanya membuat rencana kerja dan anggaran untuk jangka waktu 4 tahun pertama yang dirancang untuk program pengembangan, bukan untuk tahapan eksplorasi seperti yang diatur dalam PSC.
6. Dalam TAC juga tidak diatur mengenai penyisihan atau penyerahan kembali sebagian wilayah kerja (*relinquishment*) karena wilayah kerja yang dikelola oleh kontraktor tersebut tidak pernah diserahkan ke kontraktor. Walaupun kontraktor tetap berkewajiban untuk mengembalikan lapangan tersebut apabila ternyata dalam 4 tahun pertama tidak ada produksi yang mengandung nilai komersial. Hal ini sejalan dengan penjelasan sebelumnya, TAC ini hanya seperti kontrak pemborongan pekerjaan biasa, bukan seperti kontrak bagi hasil.
7. Prinsip kepemilikan peralatan dan aset sama seperti dalam PSC, tetapi kepada kontraktor diberikan hak pengawasan dan aset-aset tersebut dan berkewajiban memeliharanya sepanjang masa berlakunya TAC tersebut.

3.2.3 *Joint Operating Agreement* (JOA)

Industri perminyakan merupakan industri yang padat modal, berteknologi serta beresiko tinggi. Oleh karena itu umumnya pelaksanaan operasi perminyakan tidak dijalankan sendiri oleh satu badan usaha atau badan usaha tetap. Untuk membagi resiko dan biaya tersebut, dibentuk suatu semacam konsorsium untuk memperoleh suatu kontrak pertambangan minyak dan gas bumi. Atau dengan cara lain, yaitu setelah suatu badan usaha atau badan usaha tetap mendapatkan kontrak, lalu kontrak tersebut ditawarkan kepada pihak lain untuk berpartisipasi. Cara yang terakhir disebut dengan *farm-out*.

Untuk mengatur lebih lanjut pelaksanaan suatu operasi bersama, maka para pihak membuat Perjanjian Operasi Bersama (*Joint Operating Agreement-JOA*). JOA ini paling tidak mempunyai dua fungsi utama, yaitu:[89]

1. Menetapkan dasar-dasar alokasi hak dan kewajiban para pihak yang terlibat dalam JOA;
2. Mengatur tata cara pelaksanaan operasi oleh operator yang ditunjuk dengan pengawasan dari komisi operasi (*operating committee*)

Di samping itu, JOA juga akan mengatur tentang prosedur akuntansi, operasi tanpa partisipasi semua pihak, konsekuensi gagal berpartisipasi, rencana kerja dan anggaran, pembagian hasil produksi, tata cara pengambilan keputusan, kerahasiaan data, pengunduran diri, pengalihan *Participating Interest* (PI), pajak, dan hal-hal lain yang dianggap perlu.

JOA yang dibuat oleh para pihak ini tidak perlu dimintakan persetujuan kepada BP Migas, karena pada dasarnya PI itu dianggap sebagai sesuatu yang tidak dapat dibagi-bagi (*undevided interest*). Jadi BP Migas tidak akan melihat berapa bagian PI dari masing-masing pihak yang ada dalam JOA. BP Migas hanya akan melihat siapa yang menjadi Operator dalam operasi ini dan bertanggung jawab langsung kepada BP Migas. BP Migas akan melihat Operator tersebut sebagai pemegang 100% PI. Apabila setelah ditandatangani JOA terdapat perubahan Operator dari apa yang tertera di PSC, maka para pihak wajib memberitahukannya kepada BP Migas.[90] Berikut akan dibahas beberapa aspek penting dalam suatu JOA:

3.2.2.1 Operator

Operator biasanya adalah pihak yang berpartisipasi dalam JOA tersebut dan memiliki PI yang paling besar diantara pihak-pihak lainnya. Pihak dengan PI yang lebih kecil biasanya enggan untuk mengambil peran tersebut.

[89] Rudi M. Simamora, Op. Cit., hlm. 113.

[90] M. Hakim Nasution, *Joint Operating Agreement*, disampaikan dalam "*Oil And Gas Course*" yang diselenggarakan oleh Hakim dan Rekan, 13 April 2009.

Selain itu, pihak lainnya juga ragu akan komitmen pihak yang memiliki PI lebih kecil ini, dikarenakan adanya pandangan bahwa motivasi menjalankan usaha berkaitan langsung dengan pendapatan atau keuntungan yang diterima. Dengan pendapatan lebih kecil dari pihak lain, keseriusan operator menjadi suatu pertimbangan penting.

Dalam mengelola dan menjalankan operasi, operator diwajibkan untuk melakukannya dengan:[91]

> "*a dlligent, safe, efficient and manner in accordance with good and prudent oil field practices and conservation principles generally accepted in international petroleum industry under similar circumstances.*"

Dalam menjalankan fungsi dan wewenangnya biasanya operator hanya akan bertanggung jawab jika kerugian atau kecelakaan yang terjadi sebagai akibat dari kecerobohan besar atau kesalahn yang disengaja oleh operator. Operator juga biasanya tidak bertanggung jawab atas kerugian tidak langsung (*consequential damages*) yang timbul dari pelaksanaan operasi.

Masalah lain yang berkaitan dengan operator adalah pengunduran diri dan penggantian operator. Umumnya dalam JOA diatur bahwa operator dapat mengundurkan diri apabila telah memenuhi persyaratan penyelesaian pekerjaan minimum dan telah mengalihkan PI miliknya kepada pihak lain. Persyaratan ini penting untuk menjaga kelangsungan operasi perminyakan, karena seperti yang kita ketahui operasi perminyakan ini merupakan operasi yang menggunakan modal cukup besar, sehingga apabila terjadi keterlambatan bisa mengakibatkan kerugian yang cukup signifikan. Selain itu ada juga persyaratan yang lebih longgar, yaitu operator tersebut cukup memberika pemberitahuan dari jauh-jauh hari. Ini semua tergantung pengaturan dalm JOA tersebut.

Di samping disebabkan oleh pengunduran diri, penggantian operator dapat terjadi dalam hal operator dianggap sudah tidak mampu lagi untuk

---

[91] Lihat *Article* 4.2.(A) JOA

menjalankan fungsinya baik secara kontraktual atau secara hukum, misalnya operator dinyatakan pailit oleh Pengadilan. Dalam hal penggatian operator karena alasan ketidak mampuan biasanya JOA menentukan syarat-syarat dan alasan-alasan yang eksplisit untuk dapat dilaksanakan.

Setelah disepakati pengunduran diri atau pemberhentian operator, para pihak non-operator akan segera menunjuk gantinya yang diambil dari salah satu pihak yang ada. Umumnya JOA mengatur tentang persyaratan dan prosedur penggantian tersebut yang mencakup antara lain tentang quorum suara dalam pengambilan keputusan untuk maksud tersebut, alokasi PI yang ditinggalkan, dan pengaturan prosedur pangalihan (masa transisi).[92]

3.2.2.2 Komisi Operasi (*Operating Committee*)

Komisi Operasi dibentuk untuk membuat kebijakan-kebijakan dasar tentang pelaksanaan operasi yang harus dijalankan operator dalam kurun waktu tertentu dan mengawasi serta memerintahkan sesuatu sehubungan dengan pelaksanaan operasi bersama dan pelaksanaan tugas operator. Secara umum dapat dikatakan bahwa komisi operasi bertugas untuk menjamin terselenggaranya operasi dengan baik dan lancar untuk pencapaian tujuan operasi bersama seoptimal dan seefisien mungkin.

Semua pihak dalam operasi bersama berhak untuk menempatkan wakilnya di komisi operasi dan masing-masing pihak mempunyai hak suara sesuai dengan PI yang dimilikinya. Penunjukan seorang atau lebih perwakilan tersebut umumnya tidak bersifat permanen tapi dilakukan dengan fleksibel tanpa mengurangi aspek formalitas yang dipersyaratkan. Semua keputusan yang diambil dalam rapat komisi operasi adalah mengikat, sepanjang putusan tersebut telah memenuhi syarat formil maupun materiil yang telah ditentukan dalam JOA, misalnya mengenai persyaratan quorum.[93]

---

[92] Rudi M. Simamora, *Op. Cit*., hlm. 114-117.

[93] *Ibid*, hlm. 117-118.

Biasanya metode pengambilan keputusan dalam JOA dirancang bertingkat, maksudnya adalah untuk hal-hal yang rutin akan diserahkan kepada operator untuk memutuskan secara langsung. Namun untuk hal-hal yang lebih vital dan penting, keputusan akan diambil oleh Komisi Operasi dengan quorum tertentu. Sedangkan untuk hal-hal yang sensitif dan strategis, keputusan adalah suara bulat dari komisi operasi.

Rapat-rapat bagi Komisi Operasi biasanya diselenggarakan dan direncanakan oleh Operator. Selain rapat Komisi Operasi, biasanya dibentuk juga sub-sub komisi seperti sub komisi teknis, sub komisi keuangan, dan sebagainya. Sub-komisi yang dibuat ini disesuaikan dengan kebutuhan dan berhak mengadakan rapat-rapat sendiri untuk mendukung rapat-rapat komisi operasi. Adapun rapat sub komisi ini juga dipersiapkan oleh operator.

Komisi operasi ini dipimpin oleh *Chairman*, biasanya *Chairman* adalah pihak non-operator yang memiliki PI terbesar. Sedangkan operator akan menunjuk sekretaris yang akan mendampingi *Chairman* dalam menjalankan tugas Komisi Operasi.[94]

3.2.2.3 Pembiayaan

Pembiayaan operasi bersama biasanya sejak awal sudah ditanggung bersama oleh para pihak dengan pembebanan sesuai dengan proporsional PI yang dimiliki oleh masing-masing pihak. Untuk itu biasanya para pihak menyerahkan uang muka pembiayaan operasi yang dikelola dalam suatu rekening bersama. Mekanisme penyetoran uang muka tersebut biasanya disebut dengan permohonan tunai (*cash call*).

Jika salah satu pihak adalah Negara, maka biasanya tidak diterapkan *cash call* karena pada dasarnya semua pembiayaan sebuah operasi ditanggung oleh kontraktor terkait. Jadi *cash call* hanya diterapkan di antara mitra yang berstatus kontraktor terhadap Negara.

---

[94] M. Hakim Nasution, *Op. Cit.*

Para pihak tidak boleh melepaskan dirinya dari kewajiban untuk memenuhi *cash call* sesuai dengan batas waktu dan cara yang telah ditentukan dalam prosedur akuntansi dalam JOA. Apabila ada pihak yang berada dalam kondisi tidak mampu memenuhi *cash call* karena suatu alasan yang disebabkan *force majeure*, tetap saja pihak tersebut bisa dianggap wanprestasi (*default*). *Default* yang berkepanjangan dapat menjadi dasar untuk meminta pihak yang tidak dapat memenuhi kewajibannya untuk mengundurkan diri, dengan tanpa bayaran apapun dan ia wajib mengalihkan seluruh PI miliknya kepada pihak lain sehingga jumlah keseluruhan PI menjadi seratus persen.[95]

3.2.2.4 Pengadaan Barang dan Jasa

Pengadaan barang dan jasa dalam industri perminyakan sudah menjadi sesuatu hal yang sangat penting, bukan sekedar masalah teknis biasa. Ada beberapa peraturan yang mengatur mengenai pengadaan barang, yaitu:

1. UU No. 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat,
2. Keppres No. 80 Tahun 2003 tentang Pedoman Pengadaan Barang/Jasa Pemerintah, dan
3. Pedoman Tata Kerja No. 007/PTK/VI/2004 tentang Pengelolaan Rantai Suplai Kontraktor Kontrak Kerja Sama yang dikeluarkan oleh BP Migas.

Umumnya pengadaan barang dan jasa dilakukan melalui suatu mekanisme lelang baik bersifat terbuka atau terbatas, penunjukan atau dengan pembelian langsung, pemilihan langsung atau dengan pengikatan strategis lainnya. Penentuan mekanisme apa yang digunakan dalam proses pengadaan barang dan jasa tergantung bentuk perjanjian pengusahaan pertambangannya dan juga ketentuan perundang-undangan domestik. Di Indonesia, proses pengadaan barang dan jasa untuk sektor hulu industri minyak dan gas

[95] Rudi M. Simamora, *Op. Cit*., hlm. 119.

merujuk pada Pedoman Tata Kerja No. 007/PTK/VI/2004 tentang Pengelolaan Rantai Suplai Kontraktor Kontrak Kerja Sama yang dikeluarkan oleh BP Migas.

Pengadaan barang merupakan salah satu bagian yang tingkat effisiensinya berpengaruh langsung pada tingkat efisiensi operasi secara keseluruhan. Apabila terjadi kecurangan atau kesalahan dalam pengadaan barang dan jasa, maka bisa berakibat fatal terhadap kelangsungan operasi. Selain itu, pengadaan barang dan jasa juga akan mempengaruhi langsung biaya operasi yang akan dikeluarkan, semakin besar biaya operasi yang dikeluarkan mengakibatkan semakin kecilnya pendapatan.

Faktor penting lain yang harus diperhatikan dalam proses pengadaan barang dan jasa adalah mengenai Tingkat Kandungan Dalam Negeri (TKDN). PTK No. 007/PTK/VI/2004 mengatur bahwa kontraktor dalam hal melakukan pengadaan barang dan jasa untuk kebutuhan operasinya harus mengupayakan penggunaan barang dan jasa hasil produksi dalam negeri dan mengutamakan penyedia barang dan jasa nasional. Hal ini biasanya dicantumkan juga secara jelas dan tegas ke dalam dokumen pengadaan barang dan jasa.

BAB 4
TINJAUAN PERJANJIAN OPERASI BERSAMA ANTARA X DAN Y

4.1. Posisi dan Kedudukan Para Pihak

Dalam Perjanjian Operasi Bersama yang akan dibahas oleh Penulis terdapat dua pihak yang terlibat, yaitu:

a. Pihak Pertama yaitu X, perusahaan yang tunduk pada hukum (dirahasiakan) dan berkedudukan di (dirahasiakan).
b. Pihak Kedua yaitu Y, perusahaan yang tunduk pada hukum (dirahasiakan) dan berkedudukan di (diarahasiakan).

Adapun fakta-fakta yang terdapat antara kedua pihak tersebut terkait dengan Perjanjian ini adalah:

a. Y adalah kontraktor dengan 100% (seratus persen) *Participating Interest* (PI) yang menandatangani PSC dengan BP Migas tertanggal 14 Desember 2004 atas suatu Wilayah Kerja tertentu (dirahasiakan) di Indonesia; dan
b. X dan Y telah menandatangani *Farm-out Agreement* tertanggal Januari 2009 yang pada intinya menyepakati pengalihan 90% (sembilan puluh persen) PI dari Y ke X.

Akibat dari pengalihan PI yang dilakukan oleh Y kepada X, maka dengan demikian semenjak berlakunya Perjanjian ini, posisi para pihak adalah sebagai berikut:[96]

a. X memiliki 90% PI
b. Y memiliki 10% PI

Selain itu, para pihak juga menyepakati beberapa hal, salah satunya adalah mengenai penunjukan X sebagai Operator yang akan melaksanakan operasi bersama ini. Penunjukan ini salah satunya didasari atas bagian PI milik X yang

[96] Lihat *Article* 3.2 JOA

lebih besar dari Y, dimana pihak dengan PI lebih besar akan memiliki tanggung jawab yang lebih besar pula. Sehingga diharapkan dapat lebih bertanggung jawab dalam menjalankan tugasnya sebagai Operator.

Dari fakta-fakta diatas, maka Penulis berpendapat bahwa posisi X, yang juga bertindak sebagai Operator, sangat kuat dalam Perjanjian ini. Sedangkan Y sebagai pihak Non-Operator memiliki kedudukan yang cukup lemah, karena jumlah partisipasinya dalam operasi ini juga kecil. Dalam beberapa prosedur pengambilan keputusan, posisi suara para pihak tentunya akan tergantung dari jumlah pasrtisipasi mereka dalam operasi ini. Oleh karena itu, sudah pasti X memiliki pengaruh yang sangat besar dalam pengambilan keputusan yang terkait operasi bersama, bukan karena kedudukannya sebagai Operator, melainkan karena partisipasinya yang sangat besar (90%) dalam operasi bersama ini.

4.2 Pengaturan Mengenai Hak dan Kewajiban Para Pihak

Dalam Perjanjian ini diatur mengenai kewajiban X sebagai Operator sebagai berikut:

a. Terkait dengan tanggung jawabnya sebagai salah satu pihak dalam Perjanjian ini:

   Membayar ke rekening bersama sebagai bentuk partisipasinya dalam operasi bersama sebelum tenggat waktu yang ditentukan, sesuai dengan Prosedur Akuntansi.[97]

b. Terkait dengan pelaksanaan operasi bersama:

   i. Melaksanakan operasi bersama sesuai dengan ketentuan-ketentuan dalam PSC, hukum/peraturan perundang-undangan, Perjanjian ini, dan keputusan Komisi Operasi yang tidak bertentangan dengan Perjanjian ini;[98]

---

[97] Lihat *Article* 3.3.(C) JOA

[98] Lihat *Article* 4.2.(B).(1) JOA

ii. Melaksanakan operasi bersama dengan cara yang hati-hati, aman, dan efisien, sesuai dengan praktek industri minyak dan prinsip konservasi minyak, yang baik dan bijak, yang dijalankan secara umum dalam industri minyak internasional, dalam situasi yang serupa;[99]

iii. Melaksanakan pengurusan pembayaran, keuangan, dan akuntansi keuangan dengan hati-hati, sesuai dengan praktek yang baik dan bijak, yang dijalankan secara umum dalam industri minyak internasional, dalam situasi yang serupa;[100]

iv. Mempersiapkan dan mengatur segala hal terkait dengan kegiatan Komisi Operasi;[101]

v. Mempersiapkan dan menyerahkan Rencana Kerja dan Anggaran, serta Persetujuan Pengeluaran (bila diperlukan), kepada Komisi Operasi;[102]

vi. Mendapatkan ijin dan persetujuan yang dibutuhkan dalam hubungannya dengan pelaksanaan operasi bersama;[103]

vii. Atas pemberitahuan yang wajar, mengijinkan perwakilan para pihak untuk meninjau operasi bersama, memeriksa properti bersama, dan mengaudit keuangan sesuai dengan yang diatur prosesdur akuntansi, yang dilakukan dalam jam kerja dan atas resiko serta biaya dari pihak terkait;[104]

viii. Menyetujui untuk tetap mematuhi ketentuan dalam PSC sesuai dengan praktek industri minyak yang baik dan bijak

---

[99] Lihat *Article* 4.2.(B).(2) JOA

[100] Lihat *Article* 4.2.(B).(3) JOA

[101] Lihat *Article* 4.2.(B).(4) JOA

[102] *Ibid*.

[103] Lihat *Article* 4.2.(B).(5) JOA

[104] Lihat *Article* 4.2.(B).(7) JOA

yang dijalankan secara umum dalam industri minyak internasional, dalam situasi yang serupa.[105]

ix. Membayar dan melakukan segala sesuatu yang dibutuhkan, terkait dengan tanggung jawab dan pengeluaran, yang berhubungan dengan operasi bersama, dan menjaga agar properti bersama terbebas dari segala penjaminan, tuntutan, dan pembebanan diluar operasi bersama;[106]

x. Membayar kepada Pemerintah, segala pembayaran rutin, pajak, royalti, dan pembayaran lain terkait operasi bersama, diluar pajak pendapatan para pihak;[107]

xi. Melaksanakan kewajiban Operator untuk mempersiapkan dan menyediakan laporan, hasil rekam, dan informasi yang mungkin dibutuhkan terkait dengan ketentuan dalam PSC;[108]

xii. Mewakili para pihak dalam setiap kesepakatan dengan Pemerintah terkait dengan PSC atau pelaksanaan operasi bersama;[109]

xiii. Memberitahukan kepada para pihak atas pelaksanaan rapat untuk membahas isu-isu yang spesifik dan signifikan, terkait dengan PSC;[110]

xiv. Dalam keadaan darurat (termasuk kebakaran besar, ledakan, keluarnya gas alam, keluarnya minyak bumi, atau sabotase; kecelakaan yang mengakibatkan korban jiwa, cedera terhadap karyawan atau kontraktor, atau pihak ketiga, atau

---

[105] Lihat *Article* 4.2.(B).(8) JOA

[106] *Ibid*.

[107] Lihat *Article* 4.2.(B).(9) JOA

[108] Lihat *Article* 4.2.(B).(10) JOA

[109] Lihat *Article* 4.2.(B).(11) JOA

[110] *Ibid*.

kerusakan berat terhadap properti; pemberontakan; evakuasi personil operator; atau perubahan level produksi yang mempengaruhi kuota), melakukan segala sesuatu yang sewajarnya untuk melindungi jiwa, kesehatan, lingkungan, dan properti bersama. Selain itu, melaporkan kepada pihak Non-Operator terkait dengan kejadian tersebut, serta langkah-langkah yang dilakukan Operator untuk merespon kejadian tersebut.[111]

xv. Melaksanakan recana kesehatan, keamanan, dan lingkungan, terkait dengan pelaksanaan operasi bersama, yang dirancang sesuai dengan hukum yang mengatur dan ketentuan dalam Perjanjian ini.[112]

c. Terkait dengan Personil Operator:

i. Mengikat atau memiliki karyawan, *secondees*, kontraktor, konsultan, dan agen, yang merupakan kebutuhan yang wajar dalam rangka penyelenggaraan operasi bersama;[113]

ii. Menentukan jumlah karyawan, secondees, kontraktor, konsultan, agen, tata cara pemilihan mereka, jam kerja, dan (kecuali *secondees*) gaji yang dibayarkan kepada mereka;[114]

iii. Meminta pihak non-operator untuk menominasikan personil yang teruji, untuk mengisi posisi tertentu sebagai *secondees*.[115]

d. Terkait dengan informasi yang diberikan oleh Operator:

---

[111] Lihat *Article* 4.2.(B).(13) JOA

[112] Lihat *Article* 4.2.(B).(14) JOA

[113] Lihat *Article* 4.3.(A) JOA

[114] Lihat *Article* 4.3.(B) JOA

[115] Lihat *Article* 4.2.(C).(4) JOA

i. Menyediakan data dan laporan kepada pihak Non-Operator, dalam bentuk tertulis maupun digital, yang mereka buat terkait penyelenggaraan operasi bersama;[116]

ii. Memberikan akses kepada pihak Non-Operator atas data dan laporan terkait dengan penyelenggaraan operasi bersama.[117]

e. Terkait dengan penyelesaian klaim dan tuntutan hukum:

i. Memberitahukan kepada para pihak mengenai tuntutan hukum yang timbul dari atau berhubungan dengan penyelenggaraan operasi bersama;[118]

ii. Mewakili para pihak dalam menjalankan proses penyelesaian perkara;[119]

iii. Mendapatkan persetujuan dari Komisi Operasi apabila tuntutan tersebut bernilai lebih besar dari 250,000 US Dollar.[120]

f. Terkait dengan asuransi:

i. Mendapatkan dan mengurus asuransi atas rekening bersama, dalam tipe dan jumlah yang disyaratkan oleh PSC atau hukum yang berlaku;[121]

ii. Memberitahukan Komisi Operasi, apabila asuransi tersebut tersedia hanya dalam biaya tidak wajar;[122]

g. Terkait dengan *Health, Safety, and Environment* (HSE):

---

[116] Lihat *Article* 4.4.(A) JOA

[117] Lihat *Article* 4.4.(B) JOA

[118] Lihat *Article* 4.5.(A) JOA

[119] *Ibid*.

[120] *Ibid*.

[121] Lihat *Article* 4.7.(A) JOA

[122] Lihat *Article* 4.7.(B) JOA

i. Menyelenggarakan dan mengimplementasikan rencana HSE sesuai dengan standar dan prosedur yang diakui dalam industri minyak international, dalam situasi yang serupa;[123]

ii. Merancang dan mengoperasikan properti bersama sesuai dengan rencana HSE;[124]

iii. Menerapkan aturan mengenai HSE yang berlaku di wilayah tersebut, peraturan perundangn-undangan, dan statuta lain yang dibutuhkan dan terkait dengan HSE;[125]

iv. Menyelenggarakan dan mengimplementasikan sebuah program untuk kajian HSE reguler;[126]

h. Terkait dengan Rencana Kerja dan Anggaran:

i. Dalam waktu 60 (enam puluh) hari setelah Perjanjian ini berlaku, Operator harus menyerahkan kepada para pihak Rencana Kerja dan Anggaran yang diajukan menyangkut pelaksanaan operasi bersama untuk tahun tersebut, dan untuk tahun selanjutnya (jika dibutuhkan);[127]

ii. Setiap atau sebelum hari pertama di bulan September pada tahun kalender, Operator harus menyerahkan kepada para pihak Rencana Kerja dan Anggaran yang diajukan menyangkut pelaksanaan operasi bersama untuk tahun selanjutnya;[128]

iii. Jika terdapat penemuan, Operator harus memberikan pemberitahuan kepada para pihak yang berisi laporan detail

---

[123] Lihat *Article* 4.12.(A).(1) JOA

[124] Lihat *Article* 4.12.(A).(2) JOA

[125] Lihat *Article* 4.12.(A).(3) JOA

[126] Lihat *Article* 4.12.(D) JOA

[127] Lihat *Article* 6.1.(A) JOA

[128] Lihat *Article* 6.1.(B) JOA

mengenai penemuan tersebut dan apakah perlu dilakukan penaksiran terhadap penemuan tersebut;[129]

iv. Memberikan laporan kepada para pihak terkait dengan hasil penaksiran dan penilaian dari Operator apakah penemuan tersebut berpotensi untuk mengandung nilai komersial;[130]

v. Jika Komisi Operasi menyatakan bahwa penemuan tersebut mungkin mengandung nilai komersial, maka Operator harus menyerahkan pernyataan kepada pemerintah dan secepatnya menyerahkan kepada para pihak mengenai Rencana Pengembangan atas penemuan tersebut;[131]

vi. Jika Komisi Operasi telah menyatakan bahwa penemuan tersebut adalah penemuan yang mengandung nilai komersial dan telah menyetujui Rencana Pengembangannya, maka Operator harus segera menyampaikan pemberitahuan kepada pemerintah dan mengambil langkah apapunyang dibutuhkan sesuai dengan PSC untuk meminta persetujuan pemerintah atas Rencana Pengembangan tersebut;[132]

vii. Setiap atau sebelum hari pertama di bulan September pada tahun kalender, Operator harus menyerahkan Rencana Kerja dan Anggaran yang diajukan atas area produksi untuk tahun berikutnya;[133]

viii. Memberikan kontrak terkait pengadaan barang dan jasa, sesuai dengan prosedur yang diatur dalam Perjanjian ini;[134]

---

[129] Lihat *Article* 6.1.(C) JOA

[130] Lihat *Article* 6.1.(H) JOA

[131] Lihat *Article* 6.2.(A) JOA

[132] Lihat *Article* 6.2.(B) JOA

[133] Lihat *Article* 6.3 JOA

[134] Lihat *Article* 6.6 JOA

i. Terkait dengan Prosedur Authorization for Expenditure (AFE):
Mengirimkan AFE kepada pihak Non-Operator atas kegiatan yang nilainya:[135]

- Diatas 2.000.000 US Dollars pada Rencana Kerja dan Anggaran untuk eksplorasi dan penaksiran;
- Diatas 5.000.000 US Dollars pada Rencana Kerja dan Anggaran untuk pengembangan;
- Diatas 5.000.000 US Dollars pada Rencana Kerja dan Anggaran untuk produksi.

j. Terkait dengan *Exclusive Operations*:
Membuat pembukuan, laporan keuangan, dan rekening yang terpisah untuk Exclusive Operations, yang juga terikat pada hak untuk melakukan audit dan eksaminasi atas rekening bersama dan laporan terkait, sesuai dengan prosedur akuntansi yang diatur dalam Perjanjian ini;[136]

k. Terkait dengan Pengumuman Publik:
Bertanggung jawab atas persiapan dan pelaksanaan semua pengumuman dan pernyataan kepada publik terkait dengan Perjanjian ini atau pelaksanaan operasi bersama. Sebelum melakukan pengumuman publik, Operator harus meminta persetujuan atas pengumuman tersebut setidak-tidaknya dari 70% (tujuh puluh persen) atau lebih pemegang PI.[137]

Adapun hak-hak dari X sebagai Operator yang diatur dalam perjanjian ini adalah sebagai berikut:

---

[135] Lihat *Article* 6.7.(A) JOA

[136] Lihat *Article* 7.11.(D) JOA

[137] Lihat *Article* 20.3.(A) JOA

a. Operator berhak untuk mempekerjakan kontraktor independen dan agen dalam operasi bersama;[138]
b. Operator berhak untuk menggabungkan dana yang dimilikinya dengan dana dari atau untuk rekening bersama yang terkait dengan operasi bersama ini;[139]
c. Operator berhak untuk meminta biaya kepada pihak yang berpartisipasi dalam Exclusive Operations dan tidak boleh diminta untuk menggunakan dananya sendiri untuk pelaksanaan operasi tersebut;[140]
d. Operator berhak untuk tidak memulai atau melanjutkan Exclusive Operations sampai permohonan dananya kepada para pihak terkait dipenuhi;[141]
e. Operator berhak untuk mendapatkan penggantian biaya (cost recovery) atas biaya yang dikeluarkannya untuk melaksanakan operasi bersama, dalam bentuk hidrokarbon;[142]
f. Operator berhak mendapatkan bagian atas hidrokarbon yang menjadi hak kontraktor, sesuai dengan proporsionalnya.[143]
g. Operator berhak untuk mengambil bagian Y atas hidrokarbon terkait dengan *cost recovery*, karena kewajiban Y untuk membayar biaya operasi ditanggung oleh X.[144]

Adapun yang menjadi kewajiban dari Y selaku pihak Non-Operator yang diatur dalam Perjanjian ini adalah sebagai berikut:

---

[138] Lihat *Article* 4.2.(A) JOA

[139] Lihat *Article* 4.8 JOA

[140] Lihat *Article* 7.11.(D) JOA

[141] *Ibid*.

[142] Lihat *Article* 19.2.(A) JOA

[143] *Ibid*.

[144] Lihat *Article* 19.2.(C) JOA

a. Pihak Non-Operator berkewajiban menunjuk salah satu perwakilan dan alternatifnya untuk menempati posisi di Komisi Operasi;[145]
b. Pihak Non-Operator berkewajiban untuk membayar sebagai bentuk partisipasinya dalam operasi bersama sebelum tenggat waktu yang ditentukan, sesuai dengan Prosedur Akuntansi.[146]

Adapun yang menjadi hak dari Y selaku pihak Non-Operator yang diatur dalam Perjanjian ini adalah sebagai berikut:

a. Pihak Non-Operator berhak untuk menghadiri setiap rapat dengan Pemerintah, namun hanya dalam kapasitas sebagai peninjau;[147]
b. Pihak Non-Operator berhak untuk mengadakan diskusi dengan Pemerintah terkait dengan permasalahan bisnis yang ada hubungannya dengan PSC atau Perjanjian ini;[148]
c. Pihak Non-Operator berhak untuk mengakses data dan laporan yang terkait dengan pelaksanaan operasi bersama dan mengandakannya atas biaya sendiri;[149]

Dari penjabaran hak dan kewajiban para pihak diatas, dapat kita lihat bahwa tanggung jawab X, sebagai Operator, dalam pelaksanaan operasi bersama ini sangat berat. Ada begitu banyak kewajiban yang harus dilakukan oleh X dengan pelaksanaan operasi bersama ini. Dalam pelaksanaan operasi eksplorasi maupun eksploitasi, Operator adalah pihak yang turun tangan secara langsung di lapangan untuk mengatur dan mengelola segala hal, baik teknis maupun non-teknis yang terkait dengan pelaksanaan operasi tersebut.

---

[145] Lihat *Article* 5.1 JOA

[146] Lihat *Article* 3.3.(C) JOA

[147] Lihat *Article* 4.2.(B).(11) JOA

[148] *Ibid*.

[149] Lihat *Article* 4.4.(B) JOA

Tanggung jawab yang besar ini diikuti pula dengan resiko yang besar. X, sebagai pemegang 90%, PI berarti juga akan menanggung sebesar 90% dari seluruh biaya yang dibutuhkan untuk pelaksanaan operasi bersama ini. Biaya yang dikeluarkan oleh X ini tidak akan diganti apabila tidak ada penemuan yang mengandung nilai komersial (*Commercial Discovery*). Pemerintah, melalui BP Migas adalah pihak yang berhak menentukan apakah suatu penemuan itu bisa dikatakan mengadung nilai komersial atau tidak. Pernyataan komersial itu akan diberikan atas suatu penemuan yang diajukan oleh Kontraktor kepada BP Migas, bersama dengan Rencana Pengembangannya. Apabila BP Migas menyatakan bahwa penemuan yang diajukan oleh Kontraktor tersebut mengandung nilai komersialitas, maka biaya yang sebelumnya dikeluarkan untuk melakukan ekplorasi dan biaya yang akan dikeluarkan untuk tahap produksi, akan diganti melalui mekanisme *cost recovery*. Jadi seluruh biaya yang dikeluarkan oleh X, baru akan diganti apabila ditemukan penemuan yang dinilai komersial oleh BP Migas. Apabila setelah melakukan berbagai kegiatan eksplorasi dan tidak ada penemuan yang dinilai komersial, maka seluruh biaya yang dikeluarkan oleh X belum bisa diganti.

Menurut Bapak Tengku Nathan Machmud[150], hingga sekitar tahun 1990, peluang untuk mendapatkan penemuan yang mengandung nilai komersial masih cukup besar, rasionya sekitar 1:5.[151] Namun kini peluangnya sudah lebih sulit, rasionya sudah menjadi 1:15. Oleh karena itu, resiko terbesar yang dihadapi oleh X adalah sulitnya mendapatkan penemuan yang mengandung nilai komersial. Apabila tidak segera menemukan sumur yang mengandung nilai komersial, maka biaya yang dikeluarkan oleh X untuk tahap eksplorasi itu belum bisa diganti.

Selain itu, dalam *farm-out agreement* yang disepakati oleh X dan Y, disebutkan juga bahwa partisipasi Y sebesar 10% akan ditanggung oleh X sampai

---

[150] Disampaikan dalam "*Oil and Gas Course*" yang diselenggarakan oleh Hakim dan Rekan, 13 Maret 2009.

[151] Maksud dari rasio 1:5 ini adalah untuk setiap 5 sumur yang digali pada tahap eksplorasi, biasanya 1 sumur merupakan penemuan yang mengandung nilai komersial.

ada penemuan yang dinilai komersial. Kesepakatan ini juga dipertegas dalam *Article* 7.12.(A).(1) JOA, yang bunyinya adalah sebagai berikut:

> *"Except as otherwise agreed in writing, all operations proposed in such Y Exclusive Operations Area shall be Exclusive Operations and all parties except Y shall be deemed to be Non-Consenting Parties who have relinquished their rights to participate in such operation and have no option to reinstate such rights under Article 7.4.(C). Y may propose such operations notwithstanding that* ***Y's interest is beiong carried by X for operations outside Y Exclusive Operations Area.***"

Ini artinya sama saja dengan X menanggung 100% biaya eksplorasi, padahal partisipasi X hanya sebesar 90%. Setelah ada penemuan yang komersial, baru X mendapatkan *cost recovery* sebesar atas pengeluarannya pada tahap eksplorasi.[152] Hal ini menunjukan besarnya resiko yang dihadapi X sebagai Operator dan pemegang 90% PI.

Pengambilan keputusan atas tindakan-tindakan yang belum diatur dalam Perjanjian ini akan dilakukan oleh Komisi Operasi, yang dalam hal ini terdiri dari perwakilan X dan Y. Dalam setiap pengambilan keputusan, setiap perwakilan dianggap memiliki suara sesuai proporsional kepemilikan PI. Oleh karena itu, suara dari perwakilan X akan dianggap sebesar 90%, sedangkan suara dari perwakilan Y dianggap sebesar 10% saja. Dengan bobot suara yang hanya sebesar 10%, apapun pendapat dari Y tidak akan berpengaruh terhadap keputusan yang diberikan X, karena dalam Perjanjian ini diatur bahwa keputusan yang diambil adalah keputusan yang didukung oleh setidak-tidaknya 70% dari PI. Perjanjian menyebut batas ini sebagai "*Pass Mark*". Apapun pendapat dari Y pada saat pengambilan keputusan, tidak akan bisa memenuhi *Pass Mark* yang ditentukan dalam Perjanjian ini. Namun Penulis berpendapat bahwa hal ini cukup adil mengingat resiko-resiko yang ditanggung oleh X dalam pelaksanaan operasi ini. Resiko yang ditanggung oleh X sangat besar, bahkan bisa dibilang Y sebagai salah satu pihak dalam Perjanjian ini tidak memiliki resiko apapun. Oleh karena

[152] Lihat *Article* 19.2.(C) JOA

itu sudah selayaknya keputusan yang diambil oleh X tidak bisa diganggu gugat oleh Y, walaupun Y adalah salah satu pihak dalam Perjanjian ini.

Dalam pengaturan mengenai hak dan kewajiban para pihak, memang terlihat kewajiban yang dimiliki oleh X sebagai Operator lebih besar. Serta X secara tidak langsung berhak menentukan segala keputusan yang diambil oleh Komisi Operasi, karena hanya X yang mampu melewati *Pass Mark* yang telah ditentukan oleh Perjanjian ini. Namun, penulis berpendapat bahwa hal ini cukup adil mengingat partisipasi X dalam Perjanjian ini jauh lebih besar dibandingkan Y, yaitu 90% berbanding 10%. Bahkan untuk tahap eksplorasi, bisa dibilang partisipasi X adalah 100%, karena X juga menanggung kewajiban Y untuk membayar partisipasinya sebesar 10%. Resiko yang dihadapi oleh X sebagai pemilik 90% PI sangat besar. Sedangkan Y sebagai pemilik 10% PI bisa dibilang tidak memiliki resiko sama sekali, karena kewajibannya sudah ditanggung oleh X. Oleh karena itu, sudah sewajarnya apabila X, yang juga ditunjuk sebagai Operator, memiliki hak dan kewajiban yang lebih besar, termasuk hak untuk menentukan hal-hal yang terkait dengan operasi bersama ini.

Penulis juga berpendapat bahwa tidak ada unsur paksaan dalam pengaturan hak dan kewajiban para pihak dalam pembuatan Perjanjian ini. Para pihak berada dalam posisi yang seimbang, artinya tidak ada pihak yang berada dalam posisi tawar yang lebih kuat, sehingga bisa menekan pihak lainnya. Tidak ada paksaan yang dilakukan dengan kekerasan, maupun dalam bentuk ancaman. Ancaman ini biasanya menimbulkan rasa takut dari salah satu pihak, sehingga pihak itu bersedia mengikuti kemauan dari pihak lainnya yang mengeluarkan ancaman.

Dalam pembuatan Perjanjian ini, X dan Y berada dalam posisi yang sejajar, tidak ada pihak yang lebih dominan sehingga bisa melakukan paksaan atau ancaman terhadap pihak lainnya. Kalaupun ada klausula-klausula yang terlihat menguntungkan salah satu pihak, itu bukan terjadi karena adanya paksaan. Klausula itu timbul sebagai bagian dari negosiasi bisnis antara kedua belah pihak.

Dalam negosiasi, sangat wajar apabila ada pihak yang meminta kompensasi apabila ada haknya yang diambil atau tidak bisa didapatkannya. Misalnya dalam Perjanjian ini, Y diuntungkan karena tidak memiliki resiko

apapun, Y harus membayar partisipasinya apabila sudah pasti ada penemuan yang komersial. Beban Y untuk membayar partisipasinya pada tahap eksplorasi, ditanggung oleh X. Menurut Penulis, hal ini wajar-wajar saja, mengingat Y sebagai pemegang 10% PI, tidak memiliki kekuatan untuk ikut menentukan keputusan yang dibuat oleh Komisi Operasi karena Y tidak akan bisa memenuhi *Pass Mark*. Oleh karena Y tidak bisa mempengaruhi keputusan Komisi Operasi sama sekali, maka wajar saja apabila Y juga tidak ingin dirugikan dengan keputusan-keputusan yang dibuat oleh X.

Jadi, Penulis berpendapat bahwa pada dasarnya pengaturan mengenai hak dan kewajiban antara para pihak, dalam hal ini X dan Y, sudah cukup adil. Masing-masing pihak mendapatkan hak dan kewajibannya sesuai dengan beban dan resiko yang ditanggungnya atas partisipasinya dalam operasi bersama ini. Tidak ada paksaan yang dilakukan oleh salah satu pihak terhadap pihak lainnya.

4.3 Pengaturan Mengenai Metode Pengadaan Barang dan Jasa dalam Perjanjian Operasi Bersama antara X dan Y

Salah satu kewajiban dari X sebagai Operator adalah melakukan proses pengadaan barang yang dibutuhkan untuk pelaksanaan operasi bersama ini. Perjanjian ini mengatur mengenai metode yang harus dilakukan oleh Operator dalam pengadaan barang dan jasa. Pengaturannya sebagai berikut:[153]

[153] Lihat *Article* 6.6 JOA

	Prosedur A	Prosedur B	Prosedur C
Operasi Eksplorasi dan Penaksiran	< US$500,000	Antara US$500,000 sampai US$2,000,000	Lebih besar dari US$2,000,000
Operasi Pengembangan	< US$2,000,000	Antara US$2,000,000 Sampai US$5,000,000	Lebih besar dari US$5,000,000
Operasi Produksi	< US$2,000,000	Antara US$2,000,000 Sampai US$5,000,000	Lebih besar dari US$5,000,000

Prosedur A adalah sebagai berikut:

Operator berhak untuk memberikan kontrak terhadap kontraktor pihak ketiga yang memiliki kualifikasi terbaik, dilihat dari biaya, kualitas, keamanan, dan lingkungan, dan kemampuan untuk melaksanakan kontrak dalam jangka waktu, tanpa harus melalui melaknisme tender dan tanpa harus meminta persetujuan Komisi Operasi.

Prosedur B adalah sebagai berikut:

Operator berhak untuk memberikan kontrak atau serangkaian kontrak (kontraktor yang sama, barang atau jasa yang sama, operasi yang sama) terhadap kontraktor pihak ketiga, dimana pemberian kontrak ini telah melalui suatu proses tender, kecuali telah ada persetujuan khusus dari Komisi Operasi untuk tidak melalui tender.

Prosedur C adalah sebagai berikut:

Operator harus memberikan rekomendasi kepada Komisi Operasi yang mencakup hal-hal dan mengikuti prosedur sebagai berikut:

1. Daftar para calon kontraktor yang diundang oleh Operator untuk mengikuti tender;

2. Daftar kontraktor lain yang juga dipertimbangkan;
3. Jangka waktu pelaksanaan proyek tersebut;
4. Analisa mengenai hasil tender, yang menyatakan rekomendasi kepada Operator mengenai kepada siapa seharusnya kontrak diberikan dan alasannya;
5. Mendapatkan persetujuan Komisi Operasi untuk pemberian kontrak tersebut;
6. Atas permintaan salah satu pihak, dapat memberikan contoh kontrak tersebut.

Dari penjelasan diatas dapat kita simpulkan bahwa prosedur A adalah metode penunjukan langsung. Sedangkan prosedur B dan C adalah metode pelelangan umum.

Pengaturan mengenai penentuan metode pengadaan barang dan jasa yang diatur dalam Perjanjian ini berbeda dengan pengaturan dalam Pedoman Tata Kerja BP Migas No. 007/PTK/VI/2004 tentang Pengelolaan Rantai Suplai Kontraktor Kerja Sama (selanjutnya disebut PTK 007). Dalam PTK 007 ini diatur bahwa metode penunjukan langsung (seperti prosedur A dalam Perjanjian), dapat dilaksanakan apabila nilai pengadaan barang dan jasa tersebut lebih kecil atau sama dengan Rp 50.000.000,- (lima puluh juta rupiah) atau setara dengan US$ 5,000.00 (lima ribu dolar Amerika Serikat). Untuk penunjukan langsung dengan nilai lebih besar dari Rp 50.000.000,- (lima puluh juta rupiah) atau setara dengan US$ 5,000.00 (lima ribu dolar Amerika Serikat) dapat dilakukan untuk:[154]

1. Pekerjaan yang tidak dapat ditunda-tunda lagi sehubungan dengan terjadinya keadaan darurat berdasarkan pernyataan pejabat tertinggi Kontraktor KKS;
2. Pengadaan bahan bakar minyak produksi Pertamina;
3. Pelelangan tang setelah diadakan satu kali pelelangan ulang, masih mengalami kegagalan, karena hanya satu kontraktor

[154] Lihat PTK BP Migas No. 007/PTK/VI/2004 tentang Pengelolaan Rantai Suplai Kontraktor Kerja Sama, Buku Kedua, Bab I, Bagian F, Angka 4, huruf b.

penyedia barang atau jasa yang memasukkan penawaran atau memenuhi syarat;

4. Pemilihan langsung hanya diikuti oleh satu peserta yang memenuhi syarat;
5. Pekerjaan tertentu dengan dilengkapi jastifikasi yang disetujui Pempinan Tertinggi setempat atau oleh Pejabat yang diberi kewenangan.

Jadi dapat kita lihat bahwa pengaturan mengenai pengadaan barang dan jasa di dalam Perjanjian, khususnya terkait syarat dilakukannya penunjukan langsung, berbeda dengan pengaturan dalam PTK 007. Perjanjian mensyaratkan nominal sampai dengan US$ 500,000 sedangkan PTK 007 hanya memperbolehkan penunjukan langsung untuk proyek yang nominalnya tidak lebih dari US$ 5,000.

Apabila kita lihat dari asas kebebasan berkontrak, para pihak dibebaskan untuk membuat sendiri isi perjanjiannya sepanjang itu bukan merupakan sesuatu yang terlarang. Suatu hal bisa dikategorikan sebagai sesuatu yang terlarang apabila melanggar ketertiban umum dan kesusilaan. Selain itu, dalam membuat sebuh perjanjian, para pihak juga dituntut untuk menerapkan asas itikad baik, artinya isi dari perjanjian tersebut tidak boleh melanggar kepatutan dan kerasionalan yang berlaku di masyarakat. Klausula-klausula dalam perjanjian juga harus mempertimbangkan segala sesuatu yang menurut sifat perjanjian, diharuskan oleh kepatutan, kebiasaan, atau undang-undang.

PTK 007 adalah pedoman yang dibuat oleh BP Migas, yang dalam hal ini menjalankan peran sebagai Regulator, terkait dengan tata cara pengadaan barang dan/atau jasa di dalam kegiatan hulu minyak dan gas di Indonesia. Pedoman ini dibuat oleh BP Migas agar terdapat keseragaman mengenai prosedur dan tata cara pengadaan barang dan jasa dalam industri minyak dan gas yang areanya berada dalam wilayah Republik Indonesia. Seperti yang telah dijelaskan pada bab sebelumnya, bahwa pengadaan barang dan jasa ini memegang peranan yang cukup strategis, bukan sekedar masalah teknis saja. Pengadaan barang dan jasa memegang peranan yang penting terkait dengan biaya yang dikeluarkan oleh kontraktor dalam mengadakan sebuah operasi bersama. Oleh karena itu, BP Migas

mengeluarkan pedoman khusus yang membahas mengenai tata cara pengadaan barang dan jasa untuk menjamin terselenggaranya proses pengadaan barang yang adil bagi semua pihak.

PTK 007 ini sendiri hanya berbentuk pedoman tata kerja, bukan undang-undang, peraturan pemerintah, ataupun peraturan perundang-undangan lainnya. Selain itu, di dalamnya juga tidak dimuat sanksi-sanksi yang akan diterapkan apabila ketentuan dalam PTK 007 ini dilanggar. Jadi bila kita lihat sekilas, pedoman tata kerja ini tidak memiliki kekuatan hukum yang cukup mengikat para kontraktor.

Namun, dalam kegiatan minyak dan gas bumi di Indonesia, BP Migas adalah perwakilan pemerintah yang memiliki kewenangan untuk menyetujui *cost recovery* yang diajukan oleh para pihak. *Cost recovery* ini sangat penting bagi para pihak, karena apabila *cost recovery* yang diajukan kontraktor tidak mendapatkan persetujuan dari BP Migas, maka kontraktor tersebut bisa mengalami kerugian yang cukup besar. Salah satu alasan tidak disetujuinya cost recovery adalah apabila terdapat prosedur pengadaan barang dan jasa yang dilakukan tidak sesuai dengan segala ketentuan yang diatur dalam PTK 007. Sanksi inilah yang membuat PTK 007 memiliki kekuatan hukum, dan mau tidak mau, para pihak harus menaati PTK 007 atau mereka tidak akan mendapatkan *cost recovery*.

Oleh karena itu, PTK 007 sebetulnya sudah dianggap sebagai kebiasaan yang berlaku di dalam kegiatan hulu minyak dan gas bumi di Indonesia, untuk masalah pengadaan barang dan jasa. Semua pihak yang ingin melakukan proses pengadaan barang dan jasa, harus merujuk pada PTK 007, selain peraturan perundang-undangan lainnya yang terkait dengan pengadaan barang dan jasa maupun persaingan usaha.

Jadi penulis berpendapat bahwa klausula pengadaan barang dan jasa dalam Perjanjian ini sudah tidak sesuai kebiasaan yang berlaku dalam kegiatan hulu minyak dan gas bumi, khususnya terkait dengan masalah pengadaan barang dan jasa. Persyaratan yang diterapkan untuk penggunaan metode penunjukan langsung, seharusnya tidak boleh sampai nominal US$ 500,000, maksimal US$5,000 sesuai dengan yang diatur dalam PTK 007.

Klausula dalam Perjanjian ini juga bisa menimbulkan ketidakadilan, dimana kontraktor lain dalam melaksanakan pengadaan barang dan jasa, selalu merujuk pada PTK 007. Apabila Perjanjian ini menyepakati klausula yang bertentangan dengan PTK 007, maka ini akan menjadi tidak adil bagi kontraktor kontrak kerja sama lainnya, karena mereka harus mengikuti segala sesuatu yang diatur dalam PTK 007.

X sebagai Operator, juga seharusnya mempunyai itikad baik untuk menjalankan tugasnya sebagai Operator yang bijak (*prudent*). Dalam rangka menjalankan tugasnya tersebut, seharusnya X tidak boleh melakukan segala sesuatu yang melanggar peraturan perundang-undangan, yang bisa mengakibatkan kerugian terhadap pelaksanaan operasi bersama ini. X seharusnya sejak awal sudah menghindari hal-hal yang berpotensi untuk menimbulkan kerugian, seperti penerapan klausula pengadaan barang dan jasa yang berbeda dengan PTK 007. Penerapan klausula ini bisa mengakibatkan cost recovery dari operasi bersama ini tidak disetujui oleh BP Migas. Hal ini akan menyebabkan kerugian besar, baik bagi X maupun Y.

Jadi, Penulis berpendapat bahwa klausula pengadaan barang dan jasa yang diatur dalam Perjanjian ini tidak sesuai dengan kebiasaan yang sudah berlaku di masyarakat, dimana sudah ada pedoman tersendiri yang mengatur mengenai prosedur tata cara pengadaan barang dan jasa, yaitu PTK 007. Selain itu, Operator juga seharusnya beritikad baik untuk melaksanakan tugasnya dengan bijak dan tidak melakukan tindakan-tindakan yang berpotensi merugikan pelaksanaan operasi bersama ini.

4.4 Pilihan Hukum dan Penyelesaian Sengketa

Dalam Perjanjian ini, X dan Y sepakat untuk menggunakan Hukum Inggris sebagai hukum yang mengatur mengenai Perjanjian ini. Para pihak sepakat untuk menggunakan pilihan hukum Inggris karena memang peraturan perundang-undangan di Indonesia dianggap belum memadai terkait dengan hukum minyak dan gas bumi. Pilihan hukum ini tentunya tidak mengesampingkan hukum Indonesia, karena PSC yang menjadi dasar dari JOA ini menggunakan

pilihan hukum Indonesia. Segala sesuatu yang diatur dalam Perjanjian ini, tidak boleh bertentangan dengan ketentuan dalam PSC, karena sebetulnya Perjanjian ini adalah turunan dari PSC. Selain itu, perjanjian ini berisi mengenai pelaksanaan operasi atas suatu blok yang berada di wilayah Republik Indonesia. Oleh karena itu, hukum Inggris dianggap berlaku untuk Perjanjian ini sepanjang tindak bertentangan dengan PSC yang menggunakan hukum Indonesia sebagai pilihan hukumnya.

Terkait dengan penyelesaian sengketa, para pihak sepakat untuk menyelesaikannya melalui Arbitrase, dengan *International Chamber of Commerce* (ICC) sebagai *choice of forum*. Para pihak juga menyepakati Singapura sebagai tempat untuk melangsungkan arbitrase ini. Oleh karena itu, prosedur atau tata cara penyelesaian perkara pun mengikuti prosedur penyelesaian sengketa yang diatur oleh ICC.

Akibat dari dipilihnya ICC sebagai lembaga arbitrase dan Singapura sebagai tempat pelaksanaan arbitrase adalah apabila putusan arbitrase ini ingin dilaksanakan di Indonesia, maka putusan ini akan dianggap sebagai putusan arbitrase internasional. Putusan arbitrase internasional adalah putusan yang dijatuhkan oleh lembaga arbitrase atau arbiter perorangan diluar wilayah hukum Indonesia.[155] Putusan ICC bisa diakui dan dilaksanakan di wilayah hukum Republik Indonesia apabila putusan tersebut tidak bertentangan dengan kepentingan umum dan mendapatkan putusan eksekuatur dari Ketua Pengadilan Negeri Jakarta Pusat.

[155] Indonesia (D), *Undang-Undang Tentang Arbitrase dan Alternatif Penyelesaian Sengketa*, UU No. 30 Tahun 1999, LN No. 138 Tahun 1999, TLN No. 3872, Pasal 1 angka 9.

BAB 5
PENUTUP

5.1. Kesimpulan

Berdasarkan seluruh uraian dan pembahasan yang telah dilakukan dalam bab-bab sebelumnya, maka dapat diambil kesimpulan sebagai berkut:

1. Pengaturan hak dan kewajiban dari para pihak, dalam hal ini X dan Y, dinilai sudah adil bagi para pihak. X sebagai Operator memiliki tanggung jawab yang lebih besar dan berhak mengambil keputusan karena partisipasi X yang cukup besar, yaitu sejumlah 90%. Sedangkan Y yang memiliki partisipasi hanya sebesar 10%, tidak mungkin mempengaruhi keputusan yang dibuat oleh Komisi Operasi karena Perjanjian ini telah menentukan *Pass Mark* sebesar 70%. Dalam pengaturan hak dan kewajiban ini juga tidak ditemukan unsur paksaan, kalaupun ada klausula yang terlihat menguntungkan salah satu pihak, maka ini hanya merupakan hasil dari negosiasi bisnis yang dilakukan oleh kedua pihak.
2. Bahwa pengaturan pengadaan barang dan jasa, khususnya terkait dengan metode yang digunakan, tidak sesuai asas kebebasan berkontrak, karena persyaratan untuk menggunakan metode penunjukan langsung yang diatur dalam Perjanjian ini tidak sesuai dengan persyaratan yang diatur dalam PTK BP Migas No. 007/PTK/VI/2004. Selain itu, pengaturan ini juga tidak sesuai asas itikad baik, dimana seharusnya para pihak tidak membuat klausula yang bertentangan dengan kepatutan, kebiasaan, dan undang-undang. X sebagai Operator harusnya bisa menjalankan tugasnya sebagai Operator yang bijak (*prudent*) dan menghindari hal-hal yang bisa menimbulkan kerugian bagi pelaksanaan operasi bersama.

5.2 Saran

Berdasarkan seluruh teori dan pembahasan serta kesimpulan yang didapatkan, maka Penulis mempunyai beberapa saran yaitu sebagai berikut:

1. Bagi para pihak, seharusnya para pihak tidak membuat isi perjanjian yang bertentangan dengan kebiasaan. Memang kita mengenal asas kebebasan berkontrak, namun asas ini memiliki batasan-batasan. Asas ini tidak bisa diartikan lagi sebagai kebebasan yang seluas-luasnya untuk menentukan isi dari sebuah perjanjian. Khusus untuk perjanjian dalam kegiatan hulu minyak dan gas bumi, para pihak harus memperhatikan batasan-batasan seperti, UU Migas, PP No. 35 Tahun 2004 tentang Kegiatan Hulu Minyak dan Gas Bumi, serta pedoman-pedoman yang dikeluarkan oleh BP Migas.
2. Bagi X sebagai Operator, seharusnya lebih berhati-hati dalam melakukan tugasnya, termasuk menghindari hal-hal yang mungkin bisa menimbulkan kerugian bagi pelaksanaan operasi bersama. Apabila terjadi kerugian, misalnya *cost recovery* tidak disetujui oleh BP Migas, dikarenakan Operator tidak menjalankan tugasnya dengan baik, maka Operator bisa dimintai pertanggung jawabannya atas kerugian tersebut.
3. Bagi BP Migas, sebaiknya pedoman-pedoman yang dikeluarkan oleh BP Migas diberikan juga sanksi di dalamnya. Sehingga pedoman itu memiliki kekuatan hukum yang kuat dan diikuti oleh semua pihak, tidak hanya sekedar menjadi pedoman atau panduan bagi para pihak, dimana para pihak memiliki kebebasan untuk mengikuti pedoman tersebut atau tidak.

DAFTAR PUSTAKA

PERATURAN PERUNDANG-UNDANGAN

Indonesia. *Undang-Undang Dasar 1945*

_____. *Undang-Undang Tentang Arbitrase dan Alternatif Penyelesaian Sengketa*. UU No. 30 Tahun 1999. LN No. 138 Tahun 1999. TLN No. 3872.

_____. *Undang-Undang Tentang Minyak dan Gas Bumi*. UU No. 22 Tahun 2001. LN No. 136 Tahun 2001. TLN No. 4152.

_____. *Peraturan Pemerintah Tentang Kegiatan Usaha Hulu Minyak dan Gas Bumi*. PP No. 35 Tahun 2004. LN No. 123 Tahun 2004. TLN. No. 4435.

BUKU

Badrulzaman, Mariam Darus, Et al. *Kompilasi Hukum Perikatan (Dalam Rangka Menyambut Masa Purna Bakti Usia 70 Tahun)*. Cet. 1. Bandung: PT. Citra Aditya Bakti, 2001.

Hasan, Madjedi. *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum*. Jakarta: PT. Fikahati Aneska, 2009.

_____. *Pacta Sunt Servanda: Penerapan Asas "janji itu mengikat" dalam Kontrak Bagi Hasil di Bidang Minyak dan Bumi*. Cet. 1. Jakarta: PT. Fikahati Aneska, 2005.

Khairandy, Ridwan. *Itikad Baik Dalam Kebebasan Berkontrak* Cet. 1. Jakarta: Program Pascasarjana, Fakultas Hukum Universitas Indonesia, 2003.

Machmud, Tengku Nathan. *The Indonesian Production Sharing Contract: An Investor's Perspective*. Kluwer Law International-The Hague, 2000.

Muljadi, Kartini dan Gunawan Widjaja. *Perikatan Yang Lahir Dari Perjanjian*. Jakarta: PT. RajaGrafindo Persada, 2006.

Salim H.S., H. *Hukum Pertambangan Di Indonesia*. Cet. 4. Jakarta: Rajawali Pers, 2008.

Satrio, J. *Hukum Perjanjian (Perjanjian Pada Umumnya)*. Cet. 1. Bandung: PT. Citra Aditya Bakti, 1992.

Simamora, Rudi M. *Hukum Minyak dan Gas Bumi*. Cet.1. Jakarta: Djambatan, 2000

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Cet.7. Jakarta: RajaGrafindo Persada, 2003

Subekti. *Hukum Perjanjian*, Cet. 22. Jakarta: PT. Intermasa, 2008.

_____. *Pokok-Pokok Hukum Perdata*. Cet. 14. Jakarta: PT. Intermasa, 1992.

Subekti, Wienarsih Imam dan Sri Soesilowati Mahdi. *Hukum Perorangan dan Kekeluargaan Perdata Barat*. Cet. 1. Jakarta: Gitama Jaya, 2005.

Suharnoko. *Hukum Perjanjian : Teori dan Analisa Kasus*. Cet. 3. Jakarta: Kencana, 2004.

Tim Pengajar Pengantar Hukum Indonesia. *Materi Ajar Pengantar Hukum Indonesia*. Depok, FHUI 2007.

Widjaja, Gunawan. *Memahami Prinsip Keterbukaan (Aanvullend Recht) Dalam Hukum Perdata*. Jakarta: PT. RajaGrafindo Persada, 2006.

MAKALAH / PRESENTASI

Machmud, Tengku Nathan. *The Indonesian Oil And Gas Industry: Highlights Of Past And Present Contractual Terms*. disampaikan dalam "*Oil and Gas Course*" yang diselenggarakan oleh Hakim dan Rekan, 13 Maret 2009.

Nasution, M. Hakim. *Joint Operating Agreement*. disampaikan dalam "*Oil And Gas Course*" yang diselenggarakan oleh Hakim dan Rekan, 13 April 2009.

Panggabean, Alan F. *Penyelenggaraan Kegiatan Usaha Hulu*. disampaikan pada Training on The Law of Energy and Mineral Resources (TERM). Depok. 20 Maret 2009.

INTERNET

Agustian, Widi. "*Produksi Minyak Menurun, Batu Bara dan Gas Bumi Jadi Sumber Energi Andalan*". <http://autos.okezone.com/index.php/ReadStory/2008/09/12/19/145292/19/batu-bara-gas-bumi-jadi-sumber-energi-andalan>. 12 September 2008.

OPERATING AGREEMENT COVERING:

TABLE OF CONTENTS

OPERATING AGREEMENT

THIS AGREEMENT is made as of the _____ (the "***Effective Date***") between X and Production Indonesia (_____) Limited , a company existing under the laws of _____ (hereinafter referred to as X, and Y , a company existing under the laws of - (hereinafter referred to as Y). The companies named above, and their respective successors and assignees (if any), may sometimes individually be referred to as "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Y is Contractor with one hundred percent participating interest under that certain --- Production Sharing Contract, dated December 14, 2004 with Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (BPMIGAS) covering certain areas located in -, Indonesia (the "***Contract***"); and

WHEREAS, pursuant to that certain Farmout Agreement between X dated January __, 2009, Y has assigned ninety percent (90%) participating interest to the Contract to X, subject to and in accordance with such Farmout Agreement; and

WHEREAS, the Parties desire to define their respective rights and obligations with respect to their operations under the Contract;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements and obligations set out below and to be performed, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following words and terms shall have the meaning ascribed to them below:

1.1 ***Accounting Procedure*** means the rules, provisions and conditions contained in Exhibit A.

1.2 ***AFE*** means an authorization for expenditure pursuant to Article 6.7.

1.3 ***Affiliate*** means a legal entity which Controls, or which is Controlled by, or which is Controlled by an entity which Controls, a Party.

1.4 ***Agreed Interest Rate*** means interest compounded on a monthly basis, at the rate per annum equal to the one (1) month term, London Interbank Offered Rate (LIBOR rate) for U.S. dollar deposits, as published in London by the Financial Times or if not published, then by The Wall Street Journal, plus seven (7%) percentage points, applicable on the first Business Day prior to the due date of payment and thereafter on the first Business Day of each succeeding calendar month. If the aforesaid rate is contrary to any applicable usury law, the rate of interest to be charged shall be the maximum rate permitted by such applicable law.

1.5 ***Agreement*** means this agreement, together with the Exhibits attached to this

agreement, and any extension, renewal or amendment hereof agreed to in writing by the Parties.

1.5.1 ***Y Exclusive Operations Area s***hall mean that area designated as such within the Contract Area as shown on Exhibit B to this Agreement, within which any oil and gas operations not required to satisfy the Minimum Work Obligations shall be carried out as Exclusive Operations with Y as the sole Consenting Party

1.6 ***Appraisal Well*** means any well (other than an Exploration Well or a Development Well) whose purpose at the time of commencement of drilling such well is to appraise the extent or the volume of Hydrocarbon reserves contained in an existing Discovery.

1.7 ***Business Day*** means a Day on which the banks in Indonesia are customarily open for business.

1.8 ***Calendar Quarter*** means a period of three (3) months commencing with January 1 and ending on the following March 31, a period of three (3) months commencing with April 1 and ending on the following June 30, a period of three (3) months commencing with July 1 and ending on the following September 30, or a period of three (3) months commencing with October 1 and ending on the following December 31, all in accordance with the Gregorian Calendar.

1.9 ***Calendar Year*** means a period of twelve (12) months commencing with January 1 and ending on the following December 31 according to the Gregorian Calendar.

1.10 ***Commercial Discovery*** means any Discovery that is sufficient to entitle the Parties to apply for authorization from the Government to commence exploitation.

1.11 ***Completion*** means an operation intended to complete a well through the Christmas tree as a producer of Hydrocarbons in one or more Zones, including the setting of production casing, perforating, stimulating the well and production Testing conducted in such operation. Completion shall also include any such operation performed on any well which is intended to be used primarily as an injector of water and/or gas. ***"Complete"*** and other derivatives shall be construed accordingly.

1.13 ***Consenting Party*** means a Party who agrees to participate in and pay its share of the cost of an Exclusive Operation.

1.13 ***Consequential Loss*** means any loss, damages, costs, expenses or liabilities caused (directly or indirectly) by any of the following arising out of, relating to, or connected with this Agreement or the operations carried out under this Agreement: (i) reservoir or formation damage; (ii) inability to produce, use or dispose of Hydrocarbons; (iii) loss or deferment of income; (iv) punitive damages; or (v) other indirect damages or losses whether or not similar to the foregoing.

1.14 ***Contract*** means the instrument identified in the recitals to this Agreement and any extension, renewal or amendment thereto.

1.15 ***Contract Area*** means as of the Effective Date the area that is described in Exhibit B. The perimeter or perimeters of the Contract Area shall correspond to that area covered by the Contract, as such area may vary from time to time during the term of validity of

the Contract.

1.16 ***Control*** means the ownership directly or indirectly of fifty (50) percent or more of the voting rights in a partnership or legal entity. ***"Controls"***, ***"Controlled by"*** and other derivatives shall be construed accordingly.

1.17 ***Cost Hydrocarbons*** means that portion of the total production of Hydrocarbons which is allocated to the Parties under the Contract and this Agreement for the recovery of the costs and expenses incurred by the Parties and allowed to be recovered pursuant to the Contract.

1.18 ***Crude Oil*** means all crude oils, condensates, and natural gas liquids at atmospheric pressure recovered upstream of the delivery point (Article 9.3(a)(5)) which are subject to and covered by the Contract.

1.19 ***Day*** means a calendar day unless otherwise specifically provided.

1.20 ***Deepening*** means an operation whereby a well is drilled to an objective Zone below the deepest Zone in which the well was previously drilled, or below the deepest Zone proposed in the associated AFE (if required), whichever is the deeper. ***"Deepen"*** and other derivatives shall be construed accordingly.

1.21 ***Development Plan*** means a plan for the development of Hydrocarbons from an Exploitation Area.

1.22 ***Development Well*** means any well drilled for the production of Hydrocarbons pursuant to a Development Plan.

1.23 ***Discovery*** means the discovery of an accumulation of Hydrocarbons whose existence until that moment was unproven by drilling.

1.24 ***Dispute*** means any dispute, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, relating to, or connected with this Agreement or the operations carried out under this Agreement, including any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement.

1.25 ***Entitlement*** means that quantity of Hydrocarbons (excluding all quantities used or lost in Joint Operations) of which a Party has the right and obligation to take delivery pursuant to the terms of this Agreement and the Contract, as such rights and obligations may be adjusted by the terms of any lifting, balancing and other disposition agreements entered into pursuant to Article 9.

1.26 ***Environmental Loss*** means any loss, damages, costs, expenses or liabilities (other than Consequential Loss) caused by a discharge of Hydrocarbons, pollutants or other contaminants into or onto any medium (such as land, surface water, ground water and/or air) arising out of, relating to, or connected with this Agreement or the operations carried out under this Agreement, including any of the following: (i) injury or damage to, or destruction of, natural resources or real or personal property; (ii) cost of pollution control, cleanup and removal; (iii) cost of restoration of natural resources; and (iv) fines, penalties or other assessments.

1.27 ***Exclusive Operation*** means those operations and activities carried out pursuant to this Agreement, the costs of which are chargeable to the account of less than all the Parties.

1.28 ***Exclusive Well*** means a well drilled pursuant to an Exclusive Operation.

1.29 ***Exploitation Area*** means that part of the Contract Area which is established for development of a Commercial Discovery pursuant to the Contract or, if the Contract does not establish an exploitation area, then that part of the Contract Area which is delineated as the exploitation area in a Development Plan approved as a Joint Operation or as an Exclusive Operation.

1.30 ***Exploitation Period*** means any and all periods of exploitation during which the production and removal of Hydrocarbons is permitted under the Contract.

1.31 ***Exploration Period*** means any and all periods of exploration set out in the Contract.

1.32 ***Exploration Well*** means any well the purpose of which at the time of the commencement of drilling is to explore for an accumulation of Hydrocarbons, which accumulation was at that time unproven by drilling.

1.33 ***G & G Data*** means only geological, geophysical and geochemical data and other similar information that is not obtained through a well bore.

1.34 ***Government*** means the government of Indonesia and any political subdivision, agency or instrumentality thereof.

1.35 ***Indonesian Participant*** means the Local Government Company or Indonesian National Company referred to in Section 16 of the Contract.

1.36 ***Gross Negligence / Willful Misconduct*** means any act or failure to act (whether sole, joint or concurrent) by any person or entity which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

1.37 ***Hydrocarbons*** means all substances which are subject to and covered by the Contract, including Crude Oil and Natural Gas.

1.38 ***Joint Account*** means the accounts maintained by Operator in accordance with the provisions of this Agreement, including the Accounting Procedure.

1.39 ***Joint Operations*** means those operations and activities carried out by Operator pursuant to this Agreement, the costs of which are chargeable to all Parties.

1.40 ***Joint Property*** means, at any point in time, all wells, facilities, equipment, materials, information, funds and property (other than Hydrocarbons) held for use in Joint Operations.

1.41 ***Laws / Regulations*** means those laws, statutes, rules and regulations governing activities under the Contract.

1.42 ***Minimum Work Obligations*** means those work and/or expenditure obligations specified in the Contract that must be performed in order to satisfy the obligations of the Contract.

1.43 ***Natural Gas*** means all gaseous hydrocarbons (including wet gas, dry gas and residue gas) which are subject to and covered by the Contract, but excluding Crude Oil.

1.44 ***Non-Consenting Party*** means each Party who elects not to participate in an Exclusive Operation.

1.45 ***Non-Operator*** means each Party to this Agreement other than Operator.

1.46 ***Operating Committee*** means the committee constituted in accordance with Article 5.

1.47 ***Operator*** means a Party to this Agreement designated as such in accordance with Articles 4 or 7.12(E).

1.48 ***Participating Interest*** means as to any Party, the undivided interest of such Party (expressed as a percentage of the total interests of all Parties) in the rights and obligations derived from the Parties' interest in the Contract and this Agreement.

1.49 ***Plugging Back*** means a single operation whereby a deeper Zone is abandoned in order to attempt a Completion in a shallower Zone. ***"Plug Back"*** and other derivatives shall be construed accordingly.

1.50 ***Profit Hydrocarbons*** means that portion of the total production of Hydrocarbons, in excess of Cost Hydrocarbons, which is allocated to the Parties under the terms of the Contract.

1.51 ***Recompletion*** means an operation whereby a Completion in one Zone is abandoned in order to attempt a Completion in a different Zone within the existing wellbore. ***"Recomplete"*** and other derivatives shall be construed accordingly.

1.52 ***Reworking*** means an operation conducted in the wellbore of a well after it is Completed to secure, restore, or improve production in a Zone which is currently open to production in the wellbore. Such operations include well stimulation operations, but exclude any routine repair or maintenance work, or drilling, Sidetracking, Deepening, Completing, Recompleting, or Plugging Back of a well. ***"Rework"*** and other derivatives shall be construed accordingly.

1.53 ***Security*** means (i) a guarantee or standby letter of credit issued by a bank; (ii) an on-demand bond issued by a surety corporation; (iii) a corporate guarantee; (iv) any financial security required by the Contract or this Agreement; and (v) any financial security agreed from time to time by the Parties; provided, however, that the bank, surety or corporation issuing the guarantee, standby letter of credit, bond or other security (as applicable) has a credit rating indicating it has a sufficient worth to pay its obligations in all reasonably foreseeable circumstances.

1.54 ***Senior Supervisory Personnel*** means, with respect to a Party, any individual who functions as: its senior resident manager who directs all operations and activities of such Party in the country or region in which he is resident, and any manager who directly reports to such senior resident manager in such country or region and is responsible for

exploration, appraisal, development or production operations; and any individual who functions for such Party or one of its Affiliates at a management level equivalent to or superior to the above specified senior resident manager or direct report positions and is responsible for exploration, appraisal, development or production operations, or any officer or director of such Party or one of its Affiliates.

1.55 ***Sidetracking*** means the directional control and intentional deviation of a well so as to change the bottom hole location unless done to straighten the hole or to drill around junk in the hole or to overcome other mechanical difficulties. ***"Sidetrack"*** and other derivatives shall be construed accordingly.

1.56 ***Testing*** means an operation intended to evaluate the capacity of a Zone to produce Hydrocarbons. ***"Test"*** and other derivatives shall be construed accordingly.

1.57 ***Urgent Operational Matters*** has the meaning ascribed to it in Article 5.12(A)(1).

1.58 ***Work Program and Budget*** means a work program for Joint Operations and budget therefore as described and approved in accordance with Article 6.

1.59 ***Zone*** means a stratum of earth containing or thought to contain an accumulation of Hydrocarbons separately producible from any other accumulation of Hydrocarbons.

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1 Effective Date

This Agreement shall have effect from the Effective Date (as defined in the preamble to this Agreement) and shall continue in effect until the following occur in accordance with the terms of this Agreement: the Contract terminates; all materials, equipment and personal property used in connection with Joint Operations or Exclusive Operations have been disposed of or removed; and final settlement (including settlement in relation to any financial audit carried out pursuant to the Accounting Procedure) has been made. Notwithstanding the preceding sentence: (i) Article 10 shall remain in effect until all abandonment obligations under the Contract have been satisfied; and (ii) Article 4.5, Article 8, **Article 14,** Article 15.2, Article 18 and the indemnity obligation under Article 20.1 (A) shall remain in effect until all obligations have been extinguished and all Disputes have been resolved. Termination of this Agreement shall be without prejudice to any rights and obligations arising out of or in connection with this Agreement which have vested, matured or accrued prior to such termination.

2.2 Deemed Approval of Prior Actions

Notwithstanding Article 2.1, and subject to Article 4.6 and Sections 1.6 and 1.8 of the Accounting Procedure, all actions taken by the Operator between the effective date of the Contract and the Effective Date of this Agreement in furtherance of the Joint Operations shall, so far as necessary, be deemed to have been approved by the Operating Committee and bind each of the Non-Operators. No such actions by the Operator shall give rise to any rights for the Non-Operators to object on the grounds that such actions were not authorized hereunder.

ARTICLE 3
SCOPE

3.1 Scope

(A) The purpose of this Agreement is to establish the respective rights and obligations of the Parties with regard to operations under the Contract, including the joint exploration, appraisal, development, production and disposition of Hydrocarbons from the Contract Area.

(B) For greater certainty, the Parties confirm that, except to the extent expressly included in the Contract, the following activities are outside of the scope of this Agreement and are not addressed herein:

(1) construction, operation, ownership, maintenance, repair and removal of facilities downstream from the delivery point (as determined under Article 9) of the Parties' Entitlements;

(2) transportation of the Parties' Entitlements downstream from the delivery point (as determined under Article 9);

(3) marketing and sales of Hydrocarbons, except as expressly provided in Article 8.4 and Article 9;

(4) acquisition of rights to explore for, appraise, develop or produce Hydrocarbons outside of the Contract Area (other than as a consequence of unitization with an adjoining contract area under the terms of the Contract); and

(5) exploration, appraisal, development or production of minerals other than Hydrocarbons, whether inside or outside of the Contract Area.

3.2 Participating Interest

(A) The Participating Interests of the Parties as of the Effective Date are:

X	90%
Y	10%

(B) If a Party transfers all or part of its Participating Interest pursuant to the provisions of this Agreement and the Contract, the Participating Interests of the Parties shall be revised accordingly.

3.3 Ownership, Obligations and Liabilities

(A) Unless otherwise provided in this Agreement, all the rights and interests in and under the Contract, all Joint Property, and any Hydrocarbons produced from the Contract Area shall, subject to the terms of the Contract, be owned by the Parties in accordance with their respective Participating Interests.

(B) Unless otherwise provided in this Agreement, the obligations of the Parties under the Contract and all liabilities and expenses incurred by Operator in connection with Joint Operations shall be charged to the Joint Account and all credits to the Joint Account shall be shared by the Parties, in accordance with their respective Participating Interests.

(C) Each Party shall pay when due, in accordance with the Accounting Procedure, its Participating Interest share of Joint Account expenses, including cash advances and interest, accrued pursuant to this Agreement. A Party's payment of any charge under this Agreement shall be without prejudice to its right to later contest the charge.

3.4 Government Participation

If an Indonesian Participant elects to participate in the rights and obligations of Parties pursuant to Section 16 of the Contract, the Parties shall contribute, in proportion to their respective Participating Interests, to the interest to be acquired by such company.

The Parties shall execute such documents as may be necessary to effect such transfer of interests and the joinder of the Indonesian Participant as a Party to this Agreement. All payments received for the transfer of such interests shall be credited to the Parties in proportion to their Participating Interests.

ARTICLE 4
OPERATOR

4.1 Designation of Operator

X is designated as Operator and agrees to act as such in accordance with this Agreement.

4.2 Rights and Duties of Operator

(A) Subject to the terms and conditions of this Agreement, Operator shall have all of the rights, functions and duties of Operator under the Contract and shall have exclusive charge of and shall conduct all Joint Operations. Operator may employ independent contractors and agents (which independent contractors and agents may include an Affiliate of Operator, a Non-Operator, or an Affiliate of a Non-Operator) in such Joint Operations.

(B) In the conduct of Joint Operations Operator shall:

(1) perform Joint Operations in accordance with the provisions of the Contract, the Laws / Regulations, this Agreement, and the decisions of the Operating Committee not in conflict with this Agreement;

(2) conduct all Joint Operations in a diligent, safe and efficient manner in accordance with such good and prudent petroleum industry practices and petroleum field conservation principles as are generally followed by the international petroleum industry under similar circumstances;

(3) in accordance with the Accounting Procedure, exercise due care with respect to the receipt, payment and accounting of funds in accordance with good and prudent practices as are generally followed by the international petroleum industry under similar circumstances;

(4) subject to Article 4.6 and the Accounting Procedure, neither gain a profit nor suffer a loss as a result of being the Operator in its conduct of Joint Operations, provided that Operator may rely upon Operating Committee approval of specific accounting practices not in conflict with the Accounting Procedure;

(5) perform the duties for the Operating Committee set out in Article 5, and prepare and submit to the Operating Committee proposed Work Programs and Budgets and (if required) AFEs, as provided for in Article 6;

(6) acquire all permits, consents, approvals, and surface or other rights that may be required for or in connection with the conduct of Joint Operations;

(7) upon receipt of reasonable advance notice, permit the representatives of any of the Parties to have at all reasonable times during normal business hours and at their own risk and expense reasonable access to the Joint Operations with the right to observe all Joint Operations and to inspect all Joint Property and to conduct financial audits as provided in the Accounting Procedure;

(8) undertake to maintain the Contract in full force and effect in accordance with such good and prudent petroleum industry practices as are generally followed by the international petroleum industry under similar circumstances. Operator shall timely pay and discharge all liabilities and expenses incurred in connection with Joint Operations and use its reasonable endeavors to keep and maintain the Joint Property free from all liens, charges and encumbrances arising out of Joint Operations;

(9) pay to the Government for the Joint Account, within the periods and in the manner prescribed by the Contract and the Laws / Regulations, all periodic payments, royalties, taxes, fees and other payments pertaining to Joint Operations but excluding any taxes measured by the incomes of the Parties;

(10) carry out the obligations of Operator pursuant to the Contract, including preparing and furnishing such reports, records and information as may be required pursuant to the Contract;

(11) have, in accordance with any decisions of the Operating Committee, the exclusive right and obligation to represent the Parties in all dealings with the Government with respect to matters arising under the Contract and Joint Operations. Operator shall notify the other Parties as soon as practicable of such meetings arranged to address specific and significant issues related to the Contract. Subject to the Contract and any necessary Government approvals, Non-Operators shall have the right to attend any meetings with the Government with respect to such matters, but only in

the capacity of observers; except as directed by the Operating Committee, Non-Operators shall not act as spokesman. Nothing contained in this Agreement shall restrict any Party from holding discussions with the Government with respect to any issue peculiar to its particular business interests arising under the Contract or this Agreement, but in such event such Party shall promptly advise the Parties, if possible, before and in any event promptly after such discussions, provided that such Party shall not be required to divulge to the Parties any matters discussed to the extent the same involve proprietary information or matters not affecting the Parties;

(12) in accordance with Article 9.3 and any decisions of the Operating Committee, assess (to the extent lawful) alternatives for the disposition of Natural Gas from a Discovery;

(13) in case of an emergency (including a significant fire, explosion, Natural Gas release, Crude Oil release, or sabotage; incident or act of God involving loss of life, serious injury to an employee, contractor, or third party, or serious property damage; strikes and riots; or evacuations of Operator personnel, probable in-country, international or major U. S. media coverage; or changes in production level affecting quota): (i) take all necessary and proper measures for the protection of life, health, the environment and property; and (ii) as soon as reasonably practicable, report to Non-Operators the details of such event and any measures Operator has taken or plans to take in response thereto;

(14) establish and implement pursuant to Article 4.12 an HSE plan to govern Joint Operations which is designed to ensure compliance with applicable HSE laws, rules and regulations and this Agreement;

(15) include, to the extent practical, in its contracts with independent contractors and to the extent lawful, provisions which:

(a) establish that such contractors can only enforce their contracts against Operator;

(b) permit Operator, on behalf of itself and Non-Operators, to enforce contractual indemnities against, and recover losses and damages suffered by them (insofar as recovered under their contracts) from, such contractors; and

(c) require such contractors to take insurance required by Article 4.7(H).

4.3 Operator Personnel

(A) Operator shall engage or retain only such employees, Secondees, contractors, consultants and agents as are reasonably necessary to conduct Joint Operations. For the purposes of this Article 4.3, ***"Secondee"*** means an employee of a Non-Operator (or its Affiliate) who is seconded to Operator to provide services under a secondment agreement to be negotiated and entered

into between Operator and such Non-Operator; and ***"Secondment"*** means placement within Operator's organization in accordance with this Article 4.3 of one or more persons who are employed by a Non-Operator or an Affiliate.

(B) Subject to the Contract and this Agreement, Operator shall determine the number of employees, Secondees, contractors, consultants and agents, the selection of such persons, their hours of work, and (except for Secondees) the compensation to be paid to all such persons in connection with Joint Operations.

(C) Secondment may be implemented (i) in situations requiring particular expertise or involving projects of a technical, operational or economically challenging nature; and (ii) in the manner set out in paragraphs (1) to (7) below.

(1) Any Party may propose Secondment for a designated purpose related to Joint Operations. Any proposal for Secondment must include the:

(a) designated purpose and scope of Secondment, including duties, responsibilities, and deliverables;

(b) duration of the Secondment;

(c) number of Secondees and minimum expertise, qualifications and experience required;

(d) work location and position within Operator's organization of each Secondee; and

(e) estimated costs of the Secondment.

(2) In relation to a proposed Secondment meeting the requirements of Article 4.3(C)(1), Operator shall as soon as reasonably practicable approve or reject any Secondment proposed by a Non-Operator, in Operator's sole discretion.

(3) Any proposal for one or more Secondment positions approved by Operator is subject to: (i) the Operating Committee's authorization of an appropriate budget for such Secondment positions; and (ii) Non-Operators continuing to make available to Operator Secondees qualified to fulfill the designated purpose and scope of such Secondment.

(4) As to each Secondment position, Operator shall request Non-Operators to nominate, by a specified date, qualified personnel to be the Secondee for such position. Each Non-Operator has the right (but not the obligation) to nominate for each Secondment position one or more proposed Secondees who such Non-Operator considers reasonably qualified to fulfill the designated purpose and scope of such Secondment.

(5) Following the deadline for submitting nominations, Operator shall consider the expertise and experience of each such nominee in light of the expertise and experience required for the approved and authorized Secondment position, and shall select or reject any nominee in Operator's sole discretion.

(6) Operator shall have the right to terminate the Secondment for cause in accordance with the Secondment agreement provided for under Article 4.3(D).

(7) Although each Secondee shall report to and be directed by Operator, each Secondee shall remain at all times the employee of the Party (or its Affiliate) nominating such Secondee. However, for the duration of the Secondment, the secondee shall be a joint employee of the Operator and the Non-Operator Party (or its Affiliate), subject to the limitations set out in the secondment agreement.

(D) Any Secondment under this Agreement shall be in accordance with a separate secondment agreement to be negotiated and entered into between Operator and the employer of the Secondee, which agreement shall be consistent with this Article 4.3.

(E) All costs related to Secondment and Secondees that are within the Work Program and Budget related to such Secondment position shall be charged to the Joint Account.

(F) If any Secondee acting as the Senior Supervisory Personnel of Operator or its Affiliates engages in Gross Negligence / Willful Misconduct which proximately causes the Parties to incur damage, loss, cost, expense or liability for claims, demands or causes of action referred to in Articles 4.6(A) or 4.6(B), then all such damages, losses, costs, expenses and liabilities shall be allocated to the Non-Operator who nominated such Secondee, in an equivalent manner and to the same extent liability for Gross Negligence / Willful Misconduct is allocated to Operator pursuant to Article 4.6.

4.4 Information Supplied by Operator

(A) Subject to Article 15.3, Operator shall promptly provide Non-Operators with the following data and reports (to the extent to be charged to the Joint Account) in hard copy form and, if available, in digital form as they are currently produced or compiled from Joint Operations:

(1) copies of all logs or surveys;

(2) daily drilling reports;

(3) copies of all Tests and core data and analysis reports;

(4) final well recap report;

(5) copies of plugging reports;

(6) copies of intermediate and final geological and geophysical maps, seismic sections and shot point location maps, interpretations, and reports;

(7) monthly reports on engineering studies and development schedules and

monthly and annual progress reports on development projects, which shall at least depict the status of each such project from inception to date, its cumulative costs to date and the commitments taken;

(8) weekly production summary and engineering activity reports, monthly reports on production with performance data listed by field, wells and Reservoir, annual reservoir studies and reserve estimates;

(9) as requested by a Non-Operator, (i) prior to filing with the Government, copies of all material reports relating to Joint Operations or the Contract Area anticipated to be furnished by Operator to the Government; and (ii) other material studies and reports relating to Joint Operations;

(10) data and reports under agreements provided for in Article 9;

(11) quarterly copies of financial and accounting reports as provided for under this Agreement and in the Accounting Procedure and variances from budget;

(12) monthly and annual key operating performance reports summarizing key performance data, including safety and environmental statistics;

(13) such additional information as a Non-Operator may reasonably request, provided that the requesting Party or Parties pay the costs of preparation of such information and that the preparation of such information will not unduly burden Operator's administrative and technical personnel. Only Non-Operators who pay such costs will receive such additional information;

(14) at non-Operator's request, copies of other Joint Operations reports or data generated by Operator and charged to Joint Account funds (including overhead);

(15) timely reports of events that may have a material effect on quality and quantity of production and ability to lift hydrocarbons, and

(16) other reports as directed by the Operating Committee.

(B) Subject to Article 15, Operator shall give Non-Operators access at all reasonable times during normal business hours to all data and reports (other than data and reports provided to Non-Operators in accordance with Article 4.4(A)) acquired in the conduct of Joint Operations, which a Non-Operator may reasonably request. Any Non-Operator may make copies of such other data at its sole expense.

4.5 Settlement of Claims and Lawsuits

(A) Operator shall promptly notify the Parties of any and all material claims or suits that arise out of or relate in any way to Joint Operations. Operator shall represent the Parties pursuing, defending or opposing the claims or suits. Operator may in its sole discretion compromise or settle any such claim or suit or any related series of claims or suits for an amount not to exceed the equivalent of

$250,000U.S. Dollars exclusive of legal fees. Operator shall obtain the approval and direction of the Operating Committee on amounts in excess of the above-stated amount. Without prejudice to the foregoing, each Non-Operator shall have the right to be represented by its own counsel at its own expense in the settlement, compromise or defense of such claims or suits.

(B) Any Non-Operator shall promptly notify the other Parties of any claim made against such Non-Operator by a third party that arises out of or may affect the Joint Operations, and such Non-Operator shall defend or settle the same in accordance with any directions given by the Operating Committee. Those costs, expenses and damages incurred pursuant to such defense or settlement which are attributable to Joint Operations shall be for the Joint Account.

(C) Notwithstanding Article 4.5(A) and Article 4.5(B), each Party shall have the right to participate in any such suit, prosecution, defense or settlement conducted in accordance with Article 4.5(A) and Article 4.5(B), at its sole cost and expense; provided always that no Party may settle its Participating Interest share of any claim without first satisfying the Operating Committee that it can do so without prejudicing the interests of the Joint Operations.

4.6 Limitation on Liability of Operator

(A) Except as set out in Article 4.6(C), neither Operator nor any other Indemnitee (as defined below) shall bear (except as a Party to the extent of its Participating Interest share) any damage, loss, cost, expense or liability resulting from performing (or failing to perform) the duties and functions of Operator, and the Indemnitees are hereby released from liability to Non-Operators for any and all damages, losses, costs, expenses and liabilities arising out of, incident to or resulting from such performance or failure to perform, even though caused in whole or in part by a pre-existing defect, or the negligence (whether sole, joint or concurrent), gross negligence, willful misconduct, strict liability or other legal fault of Operator (or any such Indemnitee).

(B) Except as set out in Article 4.6(C), the Parties shall (in proportion to their Participating Interests) defend and indemnify Operator and its Affiliates, and their respective directors, officers, and employees (collectively, the ***"Indemnitees"***), from any and all damages, losses, costs, expenses (including reasonable legal costs, expenses and attorneys' fees) and liabilities incident to claims, demands or causes of action brought by or on behalf of any person or entity, which claims, demands or causes of action arise out of, are incident to or result from Joint Operations, even though caused in whole or in part by a pre-existing defect, or the negligence (whether sole, joint or concurrent), gross negligence, willful misconduct, strict liability or other legal fault of Operator (or any such Indemnitee).

(C) Notwithstanding Articles 4.6(A) or 4.6(B), if any Senior Supervisory Personnel of Operator or its Affiliates engage in Gross Negligence / Willful Misconduct which proximately causes the Parties to incur damage, loss, cost, expense or liability for claims, demands or causes of action referred to in Articles 4.6(A) or 4.6(B), then, in addition to its Participating Interest share Operator shall bear all such damages, losses, costs, expenses and liabilities.

Notwithstanding the foregoing, under no circumstances shall Operator (except as a Party to the extent of its Participating Interest) or any other Indemnitee bear any Consequential Loss or Environmental Loss.

(D) Nothing in this Article 4.6 shall be deemed to relieve Operator from its Participating Interest share of any damage, loss, cost, expense or liability arising out of, incident to, or resulting from Joint Operations.

4.7 Insurance Obtained by Operator

(A) Operator shall procure and maintain for the Joint Account all insurance in the types and amounts required by the Contract or the Laws / Regulations.

(B) Operator shall procure and maintain any further insurance, at reasonable rates, as the Operating Committee may from time to time require. In the event that such further insurance is, in Operator's reasonable opinion, unavailable or available only at an unreasonable cost, Operator shall promptly notify the Non-Operators in order to allow the Operating Committee to reconsider such further insurance.

(C) Subject to the Contract and the Law/Regulations, each Party will be provided the opportunity to underwrite any or all of the insurance to be obtained by Operator under Articles 4.7(A) and 4.7(B), through such Party's Affiliate insurance company or, if such direct insurance is not so permitted, through reinsurance policies to such Party's Affiliate insurance company; provided that the security and creditworthiness of such insurance arrangements are satisfactory to Operator, and that such arrangements will not result in any part of the premiums for such insurance not being recoverable under the Contract, or being significantly higher than the market rate.

(D) Subject to the Contract and the Laws / Regulations, any Party may elect not to participate in the insurance to be procured under Articles 4.7(A) and 4.7(B) provided such Party:

(1) gives prompt written notice to that effect to Operator;

(2) does nothing which may interfere with Operator's negotiations for such insurance for the other Parties;

(3) obtains insurance prior to or concurrent with the commencement of relevant operations and maintains such insurance (in respect of which a current certificate of adequate coverage, provided at least once a year, shall be sufficient evidence) or other evidence of financial responsibility which fully covers its Participating Interest share of the risks that would be covered by the insurance to be procured under Article 4.7(A) and/or Article 4.7(B), as applicable, and which the Operating Committee determines to be acceptable. No such determination of acceptability shall in any way absolve a non-participating Party from its obligation to meet each cash call (except, in accordance with Article 4.7(F), as regards the costs of the insurance policy in which such Party has elected not to participate) including any cash call with respect to damages and losses

and/or the costs of remedying the same in accordance with the terms of this Agreement, the Contract and the Laws / Regulations. If such Party obtains other insurance, such insurance shall (a) contain a waiver of subrogation in favor of all the other Parties, the Operator and their insurers but only with respect to their interests under this Agreement; (b) provide that thirty (30) days written notice be given to Operator prior to any material change in, or cancellation of, such insurance policy; (c) be primary to, and receive no contribution from, any other insurance maintained by or on behalf of, or benefiting Operator or the other Parties; and (d) contain adequate territorial extensions and coverage in the location of the Joint Operations; and

(4) is responsible for all deductibles, coinsurance payments, self-insured exposures, uninsured or underinsured exposures relating to its interests under this Agreement.

(E) In the event Operator elects, to the extent permitted by the Contract and Laws / Regulations, to self-insure all or part of the coverage to be procured under Articles 4.7(A) and/or 4.7(B), Operator shall so notify the Operating Committee and provide a qualified self-insurance letter stating what coverages Operator is self-insuring. Any risk to be covered by insurance to be procured in accordance with Articles 4.7(A) and 4.7(B), that is not identified in the self-insurance letter shall be covered by insurance and supported by a current certificate of adequate coverage. If requested by the Operating Committee from time to time, Operator shall provide evidence of financial responsibility, acceptable to the Operating Committee, which fully covers the risks that would be covered by the insurance to be procured under Articles 4.7(A) and 4.7(B).

(F) The cost of insurance in which all the Parties are participating shall be for the Joint Account and the cost of insurance in which less than all the Parties are participating shall be charged to the Parties participating in proportion to their respective Participating Interests. Subject to the preceding sentence, the cost of insurance with respect to an Exclusive Operation shall be charged to the Consenting Parties.

(G) Operator shall, with respect to all insurance obtained under this Article 4.7:

(1) use reasonable endeavors to procure or cause to be procured such insurance prior to or concurrent with, the commencement of relevant operations and maintain or cause to be maintained such insurance during the term of the relevant operations or any longer term required under the Contract or the Laws / Regulations;

(2) promptly inform the participating Parties when such insurance is obtained and supply them upon request with certificates of insurance or upon request copies of the relevant policies when the same are issued;

(3) arrange for the participating Parties, according to their respective Participating Interests, to be named as co-insureds on the relevant policies with waivers of subrogation in favor of all the Parties but only with respect to their interests under this Agreement;

(4) use reasonable endeavors to ensure that each policy shall survive the default or bankruptcy of the insured for claims arising out of an event before such default or bankruptcy and that all rights of the insured shall revert to the Parties not in default or bankruptcy; and

(5) duly file all claims and take all necessary and proper steps to collect any proceeds and credit any proceeds to the participating Parties in proportion to their respective Participating Interests.

(H) Operator shall use its reasonable endeavors to require all contractors performing work with respect to Joint Operations to:

(1) obtain and maintain any and all insurance in the types and amounts required by the Contract, the Laws / Regulations or any decision of the Operating Committee;

(2) name the Parties as additional insureds on the contractor's insurance policies and obtain from their insurers waivers of all rights of recourse against Operator and Non-Operators ; and

(3) at Operator's election provide Operator with certificates reflecting such insurance prior to the commencement of their services.

4.8 Commingling of Funds

Operator may commingle with its own funds the monies which it receives from or for the Joint Account pursuant to this Agreement. Notwithstanding that monies of a Non-Operator have been commingled with Operator's funds, Operator shall account to the Non-Operators for the monies of a Non-Operator advanced or paid to Operator, whether for the conduct of Joint Operations or as proceeds from the sale of Hydrocarbons or Joint Property under this Agreement. Such monies shall be applied only to their intended use and shall in no way be deemed to be funds belonging to Operator.

Notwithstanding the foregoing, the Operating Committee shall have the right to require Operator to segregate from Operator's own funds the monies which Operator receives from or for the Joint Account pursuant to this Agreement. The Party acting as the Operator shall have the right to hold its share of the Joint Account funds outside of such account.

The Operating Committee may decide that monies Operator receives for the Joint Account shall be deposited in an interest-bearing account after the approval of the Development Plan.

Interest earned shall be allocated among the Parties on an equitable basis taking into account the date of the funding by each Party and its share of the Joint Account monies. Operator shall apply such earned interest to the next succeeding cash call or, if directed by the Operating Committee, pay it to the Parties.

4.9 Resignation of Operator

Subject to Article 4.11, Operator may resign as Operator at any time by so notifying the other Parties at least one hundred and twenty (120) Days prior to the effective date of such resignation.

4.10 Removal of Operator

(A) Subject to Article 4.11, and any necessary Government approvals, Operator shall be removed upon receipt of notice from any Non-Operator if:

(1) Operator becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors;

(2) an order is made by a court or an effective resolution is passed for the reorganization under any bankruptcy law, dissolution, liquidation, or winding up of Operator;

(3) a receiver is appointed for a substantial part of Operator's assets; or

(4) Operator dissolves, liquidates, is wound up, or otherwise terminates its existence.

(B) Subject to Article 4.11, and any necessary Government approvals, Operator may be removed by the decision of the Non-Operators if Operator has committed a material breach of this Agreement or the Contract and has either failed to commence to cure that breach within thirty (30) Days of receipt of a notice from Non-Operators detailing the alleged breach or failed to diligently pursue the cure to completion. Any decision of Non-Operators to give notice of breach to Operator or to remove Operator under this Article 4.10(B) shall be made by an affirmative vote of two (2) or more of the total number of Non-Operators holding a combined Participating Interest of at least twenty-five percent (25 %). However, if Operator disputes such alleged commission of or failure to cure a material breach and dispute resolution proceedings are initiated pursuant to Article 18.2 in relation to such breach, then Operator shall remain appointed and no successor Operator may be appointed pending the conclusion or abandonment of such proceedings, subject to the terms of Article 8.3 with respect to Operator's breach of its payment obligations, unless Operator resigns or is subsequently removed on other grounds pursuant to Article 4.9.

(C) If Operator together with any Affiliates of Operator is or becomes the holder of a Participating Interest of less than fifteen percent (15%), then Operator shall be required to promptly notify the other Parties. The Operating Committee shall then vote within thirty (30) Days of such notification on whether or not a successor Operator should be named pursuant to Article 4.11.

(D) If there is a direct or indirect Change in Control of Operator (other than a transfer of Control to an Affiliate of Operator), Operator shall be required to promptly notify the other Parties. The Operating Committee shall vote within thirty (30) Days of such notification on whether or not a successor Operator should be named pursuant to Article 4.11.

4.11 Appointment of Successor

When a change of Operator occurs pursuant to Article 4.9 or Article 4.10:

(A) The Operating Committee shall meet as soon as possible to appoint a successor Operator pursuant to the voting procedure of Article 5.9. No Party may be appointed successor Operator against its will.

(B) If Operator is removed, other than in the case of Article 4.10(C) or Article 4.10(D), neither Operator nor any Affiliate of Operator shall have the right to be considered as a candidate for the successor Operator.

(C) The resigning or removed Operator shall be compensated out of the Joint Account for its reasonable expenses directly related to its resignation or removal, except in the case of Articles 4.10(A) or 4.10(B).

(D) The resigning or removed Operator and the successor Operator shall arrange for the taking of an inventory of all Joint Property and Hydrocarbons, and an audit of the Joint Account books and records of the resigning or removed Operator. Such inventory and audit shall be completed, if possible, no later than the effective date of the change of Operator and shall be subject to the approval of the Operating Committee. The liabilities and expenses of such inventory and audit shall be charged to the Joint Account.

(E) The resignation or removal of Operator and its replacement by the successor Operator shall not become effective prior to receipt of any necessary Government approvals.

(F) Upon the effective date of the resignation or removal, the successor Operator shall succeed to all duties, rights and authority prescribed for Operator. The former Operator shall transfer to the successor Operator custody of all Joint Property, books of account, records and other documents maintained by Operator pertaining to the Contract Area and to Joint Operations. Upon delivery of the above-described property and data, the former Operator shall be released and discharged from all obligations and liabilities as Operator accruing after such date.

4.12 Health, Safety and Environment ("HSE")

(A) With the goal of achieving safe and reliable operations in compliance with applicable HSE laws, rules and regulations (including avoiding significant and unintended impact on the safety or health of people, on property, or on the environment), Operator shall in the conduct of Joint Operations:

(1) establish and implement an HSE plan in a manner consistent with standards and procedures generally followed in the international petroleum industry under similar circumstances;

(2) design and operate Joint Property consistent with the HSE plan; and

(3) conform with locally applicable HSE laws, rules and regulations and other HSE-related statutory requirements that may apply.

(B) The Operating Committee shall from time to time review details of Operator's HSE plan and Operator's implementation thereof.

(C) In the conduct of Joint Operations, Operator shall establish and implement a program for regular HSE assessments. The purpose of such assessments is to periodically review HSE systems and procedures, including actual practice and performance, to verify that the HSE plan is being implemented in accordance with the policies and standards of the HSE plan. Operator shall, at a minimum, conduct such an assessment before entering into significant new Joint Operations and before undertaking any major changes to existing Joint Operations. Upon reasonable notice given to Operator, Non-Operators shall have the right to participate in such HSE assessments.

(D) Operator shall make all reasonable efforts to require its contractors, consultants and agents undertaking activities for the Joint Account to manage HSE risks in a manner consistent with the requirements of this Article 4.12.

(E) Operator shall establish and enforce rules consistent with those generally followed in the international petroleum industry under similar circumstances that, at a minimum, prohibit within the Contract Area and other designated areas in which Operator conducts Joint Operations the following:

(1) Prohibitions

Unless specifically authorized in writing by Operator, Operator's policy and its implementation shall prohibit the following in the Contract Area:

(a) Using, possessing, selling, manufacturing, distributing, concealing, or transporting any of the following items:

i. Any Prohibited Substance;

ii. Contraband, including firearms, ammunition, explosives, and weapons;

iii. Illicit drug equipment or paraphernalia.

(b) Using or possessing prescription drugs or over-the-counter medication that may cause impairment except when all of the following conditions have been met:

i. Prescription drugs have been prescribed by a licensed physician for the person in possession of the drugs.

ii. The prescription was filled by a licensed pharmacist for the person possessing the drugs.

iii. The individual notifies their supervisor that they will be in possession of or using, impairment-causing prescription drugs or over-the-counter medication and appropriate steps are taken to accommodate the possibility of impairment, including but not limited to, removal from work for the period of possible impairment

(c) Being under the Influence of Prohibited Substances while performing any work in the Contract Area.

(d) Switching or adulterating any urine, blood or other sample used for testing.

(2) For purposes of this Article, 4.12 (E), the following terms shall be defined as follows:

(a) Prohibited Substances are: i.) illicit or unprescribed drugs and controlled substances or mood or mind altering substances, ii.) prescribed drugs used in a manner inconsistent with the prescription, and iii.) alcoholic beverages.

(b) Under the Influence shall be understood to mean: i.) the presence of a Prohibited Substance, or metabolites of a Prohibited Substance in body fluids above the cut-off level established by Operator's Policy, or other commonly accepted cut-off level and/or ii.) the presence of a Prohibited Substance that affects an individual in any detectable manner. The symptoms of influence may be, but are not limited to, slurred speech or difficulty in maintaining balance.

ARTICLE 5
OPERATING COMMITTEE

5.1 Establishment of Operating Committee

To provide for the overall supervision and direction of Joint Operations, there is established an Operating Committee composed of representatives of each Party holding a Participating Interest. Each Party shall appoint one (1) representative and one (1) alternate representative to serve on the Operating Committee. Each Party shall as soon as possible after the date of this Agreement give notice in writing to the other Parties of the name and address of its representative and alternate representative to serve on the Operating Committee. Each Party shall have the right to change its representative and alternate at any time by giving notice of such change to the other Parties. Each Party shall bear the cost associated with its participation on the Operating Committee.

5.2 Powers and Duties of Operating Committee

(A) The Operating Committee shall have power and duty to authorize and supervise Joint Operations that are necessary or desirable to fulfill the Contract and properly explore and exploit the Contract Area in accordance with this Agreement and in a manner appropriate in the circumstances.

(B) Without limiting the generality of the foregoing, the powers and duties of the Operating Committee with respect to Joint Operations shall include:

(1) Consideration, revision and approval of all proposed Work Programs and Budgets;

(2) Consideration, revision, and approval where applicable, of Authorizations for Expenditures submitted by the Operator pursuant to Articles 6.7 and 6.8;

(3) Consideration of the recommendations of the subcommittees referred to in Article 5.4;

(4) Decisions on matters relating to relinquishment and abandonment;

(5) Subject to Article 4.5, settlement of claims and lawsuits; and

(6) Approval of the location, objective and depth of wells to be drilled and seismic programs to be performed

5.3 Authority to Vote

The representative of a Party, or in his absence his alternate representative, shall be authorized to represent and bind such Party with respect to any matter which is within the powers of the Operating Committee and is properly brought before the Operating Committee. Each such representative shall have a vote equal to the Participating Interest of the Party such person represents. Each alternate representative shall be entitled to attend all Operating Committee meetings but shall have no vote at such meetings except in the absence of the representative for whom he is the alternate. In addition to the representative and alternate representative, each Party may also bring to any Operating Committee meetings such technical and other advisors as it may deem appropriate.

5.4 Subcommittees

The Operating Committee may establish such subcommittees, including technical subcommittees, as the Operating Committee may deem appropriate. The functions of such subcommittees shall be in an advisory capacity or as otherwise determined unanimously by the Parties. Each Party shall have the right to appoint a representative to each subcommittee. Each Party shall bear its own costs associated with its participation in such subcommittees, unless the Operating Committee determines that such costs will be charged to the Joint Account.

5.5 Notice of Meeting

(A) Except as otherwise provided in Article 6.2(B), Operator may call a meeting of the Operating Committee by giving notice to the Parties at least fifteen (15) Days in advance of such meeting.

(B) Any Non-Operator may request a meeting of the Operating Committee by giving notice to all the other Parties. Upon receiving such request, Operator shall call such meeting for a date not less than fifteen (15) Days nor more than twenty (20) Days after receipt of the request.

(C) The notice periods above may only be waived with the unanimous consent of all the Parties.

5.6 Contents of Meeting Notice

(A) Each notice of a meeting of the Operating Committee as provided by Operator shall contain:

(1) the date, time and location of the meeting;

(2) an agenda of the matters and proposals to be considered and/or voted upon; and

(3) copies of all proposals to be considered at the meeting (including all appropriate supporting information not previously distributed to the Parties).

(B) A Party, by notice to the other Parties given not less than seven (7) Days prior to a meeting, may add additional matters to the agenda for a meeting.

(C) On the request of a Party, and with the unanimous consent of all Parties, the Operating Committee may consider at a meeting a proposal not contained in such meeting agenda.

5.7 Location of Meetings

All meetings of the Operating Committee shall be held in Jakarta, or elsewhere as the Operating Committee may decide.

5.8 Operator's Duties for Meetings

(A) With respect to meetings of the Operating Committee and any subcommittee, Operator's duties shall include:

(1) timely preparation and distribution of the agenda;

(2) organization and conduct of the meeting; and

(3) preparation of a written record or minutes of each meeting.

(B) Operator shall have the right to appoint the chairman of the Operating Committee and all subcommittees.

5.9 Voting Procedure

(A) Except as otherwise expressly provided in this Agreement, all decisions, approvals and other actions of the Operating Committee on all proposals coming before it shall be decided by the affirmative vote of a Party or Parties having at least seventy percent (70%) of the Participating Interests, hereinafter referred to as "Pass Mark".

(B) Notwithstanding the provisions of Article 5.9(A), the vote of two or more Parties holding at least ninety percent (90%) of the Participating Interest, shall be required to approve the following:

	Matter
(1)	Subject to Article 7, Drilling, Deepening, Testing, Sidetracking, Plugging Back, Recompleting or Reworking Exploration Wells beyond the Minimum Work Obligation.
(2)	Subject to Article 7, Development Plans.
(3)	Subject to Article 7, determination that a Discovery is a Commercial Discovery.
(4)	Unitization with an adjoining contract area.
(5)	Establishment of an interest bearing account for Joint Account monies prior to the approval of the first Development Plan by the Government consistent with Article 4.8.
(6)	Modifications in scope of an approved Development Plan which result in a more than 25% increase or decrease in the total cost of the Development Plan.
(7)	Voluntary relinquishment of all or any part of the Contract Area.
(8)	Voluntary termination of the Contract.
(9)	Acquisition and development of Venture Information under terms other than as specified in Article 15.
(10)	Subject to Article 11, Amendments, Renewals and Extensions to the Contract.

5.10 Record of Votes

The chairman of the Operating Committee shall appoint a secretary ("Secretary") who shall make a record of each proposal voted on and the results of such voting at each Operating Committee meeting. Each representative shall sign and be provided a copy of such record at the end of such meeting, and it shall be considered the final record of the decisions of the Operating Committee.

5.11 Minutes

The Secretary shall provide each Party with a copy of the minutes of the Operating Committee meeting within fifteen (15) Business Days after the end of the meeting. Each Party shall have fifteen (15) Days after receipt of such minutes to give notice to the Secretary of its objections to the minutes. A failure to give notice specifying objection to such minutes within said fifteen (15) Day period shall be deemed to be approval of such minutes. In any event, the votes recorded under Article 5.10 shall take precedence over the minutes described above.

5.12 Voting by Notice

(A) In lieu of a meeting, any Party may submit any proposal to the Operating Committee for a vote by notice. The proposing Party or Parties shall notify Operator who shall give each Party's representative notice describing the proposal so submitted and whether Operator considers such operational matter to require urgent determination. Operator shall include with such notice adequate documentation in connection with such proposal to enable the Parties to make a decision. Each Party shall communicate its vote by notice to Operator and the other Parties within one of the following appropriate time periods after receipt of Operator's notice:

(1) Forty-eight (48) hours in the case of operations which involve the use of a drilling rig that is standing by in the Contract Area and for other matters which are of an urgent nature, the time period provided in this Article may be reduced by the Operator to the extent duly justified by the circumstances evidenced by it to the other Parties (such operations and matters being referred to as "***Urgent Operational Matters***"); and

(2) Fifteen (15) Days in the case of all other proposals, except as provided in Article 6.2(B).

(B) Except in the case of Article 5.12(A)(1), any Party may, by notice delivered to all Parties within five (5) Days of receipt of Operator's notice, request that the proposal be decided at a meeting rather than by notice. In such an event, that proposal shall be decided at a meeting duly called for that purpose.

(C) Except as provided in Article 10, any Party failing to communicate its vote in a timely manner shall be deemed to have voted against such proposal.

(D) If a meeting is not requested, then at the expiration of the appropriate time period, Operator shall give each Party a confirmation notice stating the tabulation and results of the vote.

5.13 Effect of Vote

All decisions taken by the Operating Committee pursuant to this Article 5 shall be conclusive and binding on all the Parties, except in the following cases.

(A) If pursuant to this Article 5, a Joint Operation has been properly proposed to the Operating Committee and the Operating Committee has not approved such proposal or not considered such proposal in a timely manner, then any Party shall have the right for the appropriate period specified below to propose, in accordance with Article 7, an Exclusive Operation involving operations essentially the same as those proposed for such Joint Operation.

(1) For proposals related to Urgent Operational Matters, such right shall be exercisable for twenty-four (24) hours after the time specified in Article 5.12(A)(1) has expired or after receipt of Operator's notice given to the Parties pursuant to Article 5.13(C), as applicable.

(2) For proposals to develop a Discovery, such right shall be exercisable for thirty (30) Days after the date the Operating Committee was required to consider such proposal pursuant to Article 5.6 or Article 5.12.

(3) For all other proposals, such right shall be exercisable for thirty (30) Days after the date the Operating Committee was required to consider such proposal pursuant to Article 5.6 or Article 5.12.

(B) If the Consenting Parties to an Exclusive Operation under Article 5.13(A) concur, then the Operating Committee may, at any time, pursuant to this Article 5, reconsider and approve, decide or take action on any proposal that the Operating Committee declined to approve earlier, or modify or revoke an earlier approval, decision or action.

(C) Once a Joint Operation for the drilling, Deepening, Testing, Sidetracking, Plugging Back, Completing, Recompleting, Reworking, or plugging of a well has been approved and commenced, such operation shall not be discontinued without the consent of the Operating Committee; provided, however, that such operation may be discontinued if:

(1) an impenetrable substance or other condition in the hole is encountered which in the reasonable judgment of Operator causes the continuation of such operation to be impractical; or

(2) other circumstances occur which in the reasonable judgment of Operator cause the continuation of such operation to be unwarranted and the Operating Committee, within the period required under Article 5.12(A)(1) after receipt of Operator's notice, approves discontinuing such operation.

On the occurrence of either of the above, Operator shall promptly notify the Parties that such operation is being discontinued pursuant to the foregoing, and any Party shall have the right to propose in accordance with Article 7 an Exclusive Operation to continue such operation.

5.14 Unitization Principles

(A) If the Parties agree pursuant to Article 5.9 to pursue unitization with an adjoining area, the Parties shall in good faith negotiate and conclude the terms of a unitization agreement with the holders of the adjoining area.

(B) Such unitization agreement shall include the following principles so far as practicable:

(1) The equity determination/redetermination process shall provide for use of all relevant technical data and production experience;

(2) The equity determination/redetermination process shall include an initial equity determination and at least one redetermination;

(3) With the unanimous agreement of the unit participants, it shall be permissible not to pursue a scheduled redetermination; and

(4) Equity parameters shall be developed on a fair and equitable basis, consistent with sound engineering, technical, and economic principles, to allow each unit participant to achieve its fair and equitable share of unit Hydrocarbon reserves.

ARTICLE 6
WORK PROGRAMS AND BUDGETS

6.1 Exploration and Appraisal

(A) Within sixty (60) Days after the Effective Date, Operator shall deliver to the Parties a proposed Work Program and Budget detailing the Joint Operations to be performed for the remainder of the current Calendar Year and, if appropriate, for the following Calendar Year. Within thirty (30) Days of such delivery, the Operating Committee shall meet to consider and to endeavor to agree on a Work Program and Budget.

(B) On or before the first Day of September of each Calendar Year, Operator shall deliver to the Parties a proposed Work Program and Budget detailing the Joint Operations to be performed for the following Calendar Year. Within thirty (30) Days of such delivery, the Operating Committee shall meet to consider and to endeavor to agree on a Work Program and Budget.

(C) If a Discovery is made, Operator shall deliver any notice of Discovery required under the Contract and shall as soon as possible submit to the Parties a report containing available details concerning the Discovery and Operator's recommendation as to whether the Discovery merits appraisal and identifies any applicable Contract appraisal obligations. If the Operating Committee determines that the Discovery merits appraisal, Operator within thirty (30) Days shall deliver to the Parties a proposed Work Program and Budget for the appraisal of the Discovery. Within thirty (30) Days of such delivery, or earlier if necessary to meet any applicable deadline under the Contract, the Operating Committee shall meet to consider, modify and then either approve or reject the appraisal plan and Work Program and Budget. If the appraisal plan and Work Program and Budget is approved by the Operating Committee, Operator shall take such steps as may be required under the Contract to secure approval of the appraisal plan and Work Program and Budget by the Government. In the event the Government requires changes in the appraisal plan and Work Program and Budget, the matter shall be resubmitted to the Operating Committee for further consideration.

(D) The Work Program and Budget agreed pursuant to this Article shall include at least that part of the Minimum Work Obligations required to be carried out during the Calendar Year in question under the terms of the Contract. If within the time periods prescribed in this Article 6.1 the Operating Committee is unable to agree on such a Work Program and Budget, then the proposal capable of satisfying the Minimum Work Obligations for the Calendar Year in question that receives the largest Participating Interest vote (even if less than the applicable percentage under Article 5.9) shall be deemed adopted as part of the annual Work Program and Budget. If competing proposals receive equal votes, then Operator shall

choose between those competing proposals. Any portion of a Work Program and Budget adopted pursuant to this Article 6.1(D) instead of Article 5.9 shall contain only such operations for the Joint Account as are necessary to maintain the Contract in full force and effect, including such operations as are necessary to fulfill the Minimum Work Obligations required for the given Calendar Year.

(E) Any approved Work Program and Budget may be revised by the Operating Committee from time to time. To the extent such revisions are approved by the Operating Committee, the Work Program and Budget shall be amended accordingly. Operator shall prepare and submit a corresponding work program and budget amendment to the Government if required by the Contract.

(F) Subject to Article 6.8, approval of any such Work Program and Budget which includes:

(1) an Exploration Well, whether by drilling, Deepening or Sidetracking, shall include approval for only expenditures necessary for the drilling, Deepening, Sidetracking, and Abandonment of such Exploration Well, as applicable. When an Exploration Well has reached its authorized depth, all logs, cores and other approved Tests have been conducted and the results furnished to the Parties, Operator shall submit to the Parties in accordance with Article 5.12(A)(1) an election to participate in an attempt to Complete such Exploration Well. Operator shall include in such submission Operator's recommendation on such Completion attempt and an AFE for such Completion costs.

(2) an Appraisal Well, whether by drilling, Deepening or Sidetracking, shall include approval for all expenditures necessary for drilling, Deepening or Sidetracking, as applicable, and Testing and Completing such Appraisal Well.

(G) Any Party desiring to propose a Completion attempt, or an alternative Completion attempt, must do so within the time period provided in Article 5.12(A)(1) by notifying all other Parties. Any such proposal shall include an AFE for such Completion costs.

(H) Following any Joint Operation appraisal of a Discovery under 6.1(C), Operator shall, as soon as practicable, submit to the Parties a report containing the results of that appraisal and the Operator's assessment as to whether the Discovery is potentially commercial. The Operator shall provide the Non-Operators with a period of not less than sixty (60) Days to review that assessment. Thereafter, the Operating Committee may determine, on the basis of the Operator's assessment, that the Discovery may be commercial. Alternately, the Operating Committee may direct the Operator or one of the non-Operators, if such non-Operator so agrees, to conduct a development feasibility study to assess the commerciality of the Discovery. If so instructed by the Operating Committee, the Operator, or the non-Operator, shall, as soon as practicable, prepare and deliver a feasibility study to the Operating Committee. At such time as the Operating Committee determines that a Discovery may be commercial, it shall direct the Operator to prepare a draft Development Plan under Article 6.2(A) and a draft of the applications required by the Contract.

6.2 Development

(A) If the Operating Committee determines that a Discovery may be a Commercial Discovery, Operator shall, if required to do so under the Contract, deliver a Declaration of Commercial Discovery to the Government, and, as soon as reasonably practicable, but within any time limit which may be required under the Contract, deliver to the Parties a Development Plan together with the first annual Work Program and Budget (or a multi-year Work Program and Budget pursuant to Article 6.5) and provisional Work Programs and Budgets for the remainder of the development of the Discovery, which shall contain, *inter alia*:

(1) details of the proposed work to be undertaken, personnel required and expenditures to be incurred, including the timing of same, on a Calendar Year basis; and

(2) an estimated date for the commencement of production, and production forecasts on a calendar year basis through Abandonment; and

(3) a delineation of the proposed Exploitation Area; and

(4) potential safety and environmental risks to be managed; and

(5) a project execution strategy; and

(6) an initial abandonment plan; and

(7) any other information requested by the Operating Committee.

(B) No sooner than sixty (60) Days after receipt of the Development Plan but prior to any applicable deadline under the Contract, the Operating Committee shall meet to consider, modify and then either approve or reject the Development Plan and the first annual Work Program and Budget for the development of a Discovery, as submitted by Operator. If the Operating Committee determines that the Discovery is a Commercial Discovery and approves the corresponding Development Plan, Operator shall, as soon as possible, deliver any notice of Commercial Discovery required and not previously submitted under the Contract and take such other steps as may be required under the Contract to secure approval of the Development Plan by the Government. In the event the Government requires changes in the Development Plan, the matter shall be resubmitted to the Operating Committee for further consideration.

(C) If the Development Plan is approved, such work shall be incorporated into and form part of annual Work Programs and Budgets, and Operator shall, on or before the first Day of September of each Calendar Year submit a Work Program and Budget for the Exploitation Area, for the following Calendar Year. Subject to Article 6.5, within thirty (30) Days after such submittal, the Operating Committee shall endeavor to agree to such Work Program and Budget, including any necessary or appropriate revisions to the Work Program and Budget for the approved Development Plan.

6.3 Production

On or before the first Day of September of each Calendar Year, Operator shall deliver to the Parties a proposed production Work Program and Budget detailing the Joint Operations to be performed in the Exploitation Area and the projected production schedule for the following Calendar Year. Within thirty (30) Days of such delivery, the Operating Committee shall agree upon a production Work Program and Budget, failing which the provisions of Article 6.1(D) shall be applied *mutatis mutandis*.

6.4 Itemization of Expenditures

(A) During the preparation of the proposed Work Programs and Budgets and Development Plans contemplated in this Article 6, Operator shall consult with the Operating Committee or the appropriate subcommittees regarding the contents of such Work Programs and Budgets and Development Plans.

(B) Each Work Program and Budget and Development Plan submitted by Operator shall contain an itemized estimate of the costs of Joint Operations and all other expenditures to be made for the Joint Account during the Calendar Year in question and shall, *inter alia*:

(1) identify each work category in sufficient detail to afford the ready identification of the nature, scope and duration of the activity in question;

(2) include such reasonable information regarding Operator's allocation procedures and estimated manpower costs as the Operating Committee may determine;

(3) comply with the requirements of the Contract;

(4) during an Exploration Period, provide a forecast of annual expenditures and activities through the end of that Exploration Period.

(C) The Work Program and Budget shall designate the portion or portions of the Contract Area in which Joint Operations itemized in such Work Program and Budget are to be conducted and shall specify the kind and extent of such operations in such detail as the Operating Committee may deem suitable.

6.5 Multi-Year Work Program and Budget

Any work that cannot be efficiently completed within a single Calendar Year may be proposed in a multi-year Work Program and Budget. Upon approval by the Operating Committee, such multi-year Work Program and Budget shall, subject only to revisions approved by the Operating Committee thereafter: (i) remain in effect as between the Parties (and the associated cost estimate shall be a binding pro-rata obligation of each Party) through the completion of the work; and (ii) be reflected in each annual Work Program and Budget. If the Contract requires that Work Programs and Budgets be submitted to the Government for approval, such multi-year Work Program and Budget shall be submitted to the Government either in a single request for a multi-year approval or as part of the annual approval process, according to the terms of the Contract.

6.6 Contract Awards

Subject to the Contract, Operator shall award each contract for Joint Operations on the following basis (the amounts stated are in U.S. dollars, inclusive of taxes):

	Procedure A	Procedure B	Procedure C
Exploration and Appraisal Operations	0 to $500,000	>$500,00 to $2,000,000	>$2,000,000
Development Operations	0 to $2,000,000	>$2,000,000 to $5,000,000	>$5,000,000
Production Operations	0 to $2,000,000	>$2,000,000 to $5,000,000	>$5,000,000

Procedure A

(A) Operator shall have the authority to award the contract to the best qualified third party contractor as determined by cost, quality, safety and environmental performance and ability to perform the contract within the required timeframe without the obligation to tender and without informing or seeking the approval of the Operating Committee. Contract awards in excess of the amounts set out under Procedure A above shall be competitively bid, unless the Operating Committee otherwise agrees. Upon the request of a Party, the Operator shall provide such Party a copy of the executed contract.

Procedure B

(B) Subject to Article 6.6(A), the Operator shall have the authority to award the contract, or a series of related contracts (same contractor, same service or equipment, same operation), to a third party contractor for aggregate amounts of less than or equal to that set out above under Procedure B. Contract awards under this Procedure B shall be competitively bid, unless the Operating Committee otherwise agrees. Contract awards in excess of the amounts set out above in Procedure B shall be subject to Operating Committee approval, unless otherwise agreed. Upon the request of a Party, the Operator shall provide such Party a copy of the executed Contract.

Procedure C

(C) The Operator shall provide the Operating Committee an award recommendation that contains the following, and follows the procedures set out below:

(1) a list of the entities whom Operator invited to tender for the said contract;

(2) a list of other contractors/suppliers considered;

(3) the scope and timing of the work to be executed;

(4) a competitive bid analysis, stating Operator's recommendation as to the entity to whom the contract should be awarded, and the reasons therefore;

(5) obtain the approval of the Operating Committee of the recommended award; and

(6) upon the request of a Party, provide such Party with a copy of the final version of the contract.

(D) Notwithstanding anything to the contrary contained herein, Operator shall have the authority to award any contract for an amount less than or equal to five hundred thousand U.S. Dollars (U.S. $500,000) to an Affiliate of the Operator. For contract awards to Affiliates in excess of that amount, Operating Committee approval shall be required unless the work to be performed is separately identified in the supporting documentation to an approved Work Program and Budget and is specifically identified in such documentation as work to be performed by an Affiliate of the Operator.

(E) Notwithstanding anything to the contrary contained herein, Operator shall be required to obtain the prior approval of the Operating Committee before awarding contracts for services related to the Joint Operations to a Non-Operator or an Affiliate of a Non-Operator.

6.7 Authorization for Expenditure ("AFE") Procedure

(A) Prior to incurring any commitment or expenditure for the Joint Account, which is estimated to be:

(1) in excess of $2,000,000 U.S. dollars in an exploration or appraisal Work Program and Budget;

(2) in excess of $5,000,000 U.S. dollars in a development Work Program and Budget; and

(3) in excess of $5,000,000 U.S. dollars in a production Work Program and Budget,

Operator shall send to each Non-Operator an AFE as described in Articles 6.7(B) and (C). Notwithstanding the above, Operator shall not be obliged to furnish an AFE to the Parties with respect to any Minimum Work Obligations, workover of wells and general and administrative costs that are listed as separate line items in an approved Work Program and Budget.

(B) Notwithstanding any other provision of this Agreement, all AFEs shall be for informational purposes only. Approval of an operation in the current Work Program and Budget shall authorize Operator to conduct the operation (subject to Article 6.8) without further authorization from the Operating Committee.

(C) Each AFE furnished by Operator shall:

(1) identify the operation by specific reference to the applicable line items in the Work Program and Budget;

(2) describe the work in detail;

(3) contain Operator's best estimate of the total funds required to carry out such work;

(4) outline the proposed work schedule;

(5) provide a timetable of expenditures, if known; and

(6) be accompanied by such other supporting information as is necessary for an informed review.

6.8 Overexpenditures of Work Programs and Budgets

(A) For expenditures on any line item of an approved Work Program and Budget, Operator shall be entitled to incur without further approval of the Operating Committee an overexpenditure for such line item up to ten percent (10%) of the authorized amount for such line item, provided that the cumulative total of all overexpenditures for a Calendar Year shall not exceed five percent (5%) of the total annual Work Program and Budget in question.

(B) At such time Operator reasonably anticipates the limits of Article 6.8(A) will be exceeded, Operator shall furnish to the Operating Committee a reasonably detailed estimate for the Operating Committee's approval. The Work Program and Budget shall be revised accordingly and the overexpenditures permitted in Article 6.8(A) shall be based on the revised Work Program and Budget. Operator shall promptly give notice of the amounts of overexpenditures when actually incurred

(C) The Operator may during any Calendar Year make expenditures or incur liabilities on behalf of the Joint Operations for non-budgeted items which in the aggregate do not exceed the lesser of the equivalent of five hundred thousand United States Dollars (U.S. $500,000) or five (5%) percent of the approved Work Programs and Budgets, provided that such items have not been rejected by the Operating Committee and are reasonably consistent with the scope of approved Work Programs and Budgets. The Operator shall, as soon as practicable, report such expenditures to the Parties. Once such expenditures have been approved by the Operating Committee the approved Work Program & Budgets shall be deemed revised to reflect the new aggregate amount approved and the Operator's authority to make expenditures under this Article 6.8(C) shall be restored.

(D) The restrictions contained in this Article 6 shall be without prejudice to Operator's rights to make immediate expenditures, incur liabilities and/or take such actions as it deems necessary for the protection of life, safety, health, environment and property in case of emergency, without Operating Committee approval. In the event of such an emergency, as set out in Articles 4.2(B)(13) and 5.12(A)(1), the Operator shall promptly report the particulars thereof to the Parties, together with the future action it intends to take and its estimate of the cost of any commitment incurred or to be incurred. The Operator shall submit any necessary budget revision to the Operating Committee for approval and incorporation into the relevant Work Program and Budget as soon as practicable.

ARTICLE 7
OPERATIONS BY LESS THAN ALL PARTIES

7.1 Limitation on Applicability

(A) No operations may be conducted in furtherance of the Contract except as Joint Operations under Article 5 or as Exclusive Operations under this Article 7. No Exclusive Operation shall be conducted (other than the tie-in of Exclusive Operation facilities with existing production facilities pursuant to Article 7.10) which conflicts with a previously approved Joint Operation or with a previously approved Exclusive Operation. Neither a Defaulting Party nor a Party whose interest is being carried by the other Parties may propose, conduct or participate in Exclusive Operations under this Article 7.

(B) Operations which are required to fulfill the Minimum Work Obligations must be proposed and conducted as Joint Operations under Article 5, and may not be proposed or conducted as Exclusive Operations under this Article 7.

Except for Exclusive Operations relating to Deepening, Testing, Completing, Sidetracking, Plugging Back, Recompletions or Reworking of a well originally drilled to fulfill the Minimum Work Obligations, the Declaration of a Commercial Discovery or the Development of, and production from a Discovery, no Exclusive Operations may be proposed or conducted until the Minimum Work Obligations are fulfilled.

(C) No Party may propose or conduct an Exclusive Operation under this Article 7 unless and until such Party has properly exercised its right to propose an Exclusive Operation pursuant to Article 5.13, or is entitled to conduct an Exclusive Operation pursuant to Article 7.11, or Article 10.

(D) The following operations may be proposed and conducted as Exclusive Operations, subject to the terms of this Article 7:

(1) drilling and/or Testing of Exploration Wells and Appraisal Wells;

(2) Completion of Exploration Wells and Appraisal Wells not then Completed as productive of Hydrocarbons;

(3) Deepening, Sidetracking, Plugging Back, Reworking, and/or Recompletion of Exploration Wells and Appraisal Wells;

(4) development of and production from a Commercial Discovery;

(5) declaration of a Commercial Discovery;

(6) any operations specifically authorized to be undertaken as an Exclusive Operation under Article 10.

No other type of operation may be proposed or conducted as an Exclusive Operation.

(E) Subject to Article 10, Exclusive Operations may not be carried out within an Exploitation Area. Additionally, Exclusive Operations related to a Discovery may not be carried out during the period of time that a feasibility study is being conducted with respect to such Discovery pursuant to Operating Committee direction under Article 6.1(H).

7.2 Procedure to Propose Exclusive Operations

(A) Subject to Article 7.1, if any Party proposes to conduct an Exclusive Operation, such Party shall give notice of the proposed operation to all Parties other than Non-Consenting Parties who have relinquished their rights to participate in such operation pursuant to Article 7.4(B) or Article 7.4(F) or Article 7.12 and have no option to reinstate such rights under Article 7.4(C). Such notice shall specify that such operation is proposed as an Exclusive Operation and include the work to be performed, the location, the objectives, and estimated cost of such operation and any other information required by the Operating Committee to approve such Operations.

(B) Any Party entitled to receive such notice shall have the right to participate in the proposed operation.

(1) For proposals to Deepen, Test, Complete, Sidetrack, Plug Back, Recomplete or Rework, Exploration Wells or Appraisal Wells related to Urgent Operational Matters, any such Party wishing to exercise such right must so notify the proposing Party and Operator within twenty-four (24) hours after receipt of the notice proposing the Exclusive Operation.

(2) For proposals to declare, develop or produce from a Discovery, any Party wishing to exercise such right must so notify Operator and the Party proposing to develop within sixty (60) Days after receipt of the notice proposing the Exclusive Operation.

(3) For all other proposals, any such Party wishing to exercise such right must so notify the proposing Party and Operator within thirty (30) Days after receipt of the notice proposing the Exclusive Operation.

(C) Failure of a Party to whom a proposal notice is delivered to properly reply within the period specified above shall constitute an election by that Party not to participate in the proposed operation.

(D) If all Parties properly exercise their rights to participate, then the proposed operation shall be conducted as a Joint Operation. Operator shall commence such Joint Operation as promptly as practicable and conduct it with due diligence.

(E) If less than all Parties entitled to receive such proposal notice properly exercise their rights to participate, and so long as the combined participating interests of those Parties electing to participate in the proposed Exclusive Operation equals or exceeds ten (10) percent of the total Participating Interest, except that the combined Participating Interests for Exclusive Operations proposed under 7.2(B)(2) for a Declaration of Commercial Discovery, must equal or exceed the Pass Mark Vote set out in 5.9(A), then:.

(1) As soon as possible (a) after the expiration of the applicable notice period set out in Article 7.2(B), or (b) receipt of notices from all Parties entitled to exercise rights under Article 7.2(B), whichever occurs first, Operator shall notify all Parties of the names of the Consenting Parties.

(2) Concurrently, Operator shall request the Consenting Parties to specify the Participating Interest each Consenting Party is willing to bear in the Exclusive Operation.

(3) Within twenty-four (24) hours after receipt of such notice, each Consenting Party shall respond to Operator stating that it is willing to bear a Participating Interest in such Exclusive Operation equal to:

(a) only its Participating Interest as stated in Article 3.2(A);

(b) a fraction, the numerator of which is such Consenting Party's Participating Interest as stated in Article 3.2(A) and the denominator of which is the aggregate of the Participating Interests of the Consenting Parties as stated in Article 3.2(A); or

(c) the Participating Interest as contemplated by Article 7.2(E)(3)(b) plus all or any part of the difference between one hundred percent (100%) and the total of the Participating Interests subscribed by the other Consenting Parties. Any portion of such difference claimed by more than one Party shall be distributed to each claimant on a pro-rata basis.

(4) Any Consenting Party failing to advise Operator within the response period set out above shall be deemed to have elected to bear the Participating Interest set out in Article 7.2(E)(3)(b) as to the Exclusive Operation.

(5) If, within the response period set out above, the Consenting Parties subscribe less than one hundred percent (100%) of the Participating Interest in the Exclusive Operation, the Party proposing such Exclusive Operation shall be deemed to have withdrawn its proposal for the Exclusive Operation, unless within twenty-four (24) hours of the expiry of the response period set out in Article 7.2(E)(3), the proposing Party notifies the other Consenting Parties that the proposing Party shall bear the unsubscribed Participating Interest.

(6) If one hundred percent (100%) subscription to the proposed Exclusive Operation is obtained, Operator shall promptly notify the Consenting Parties of their Participating Interests in the Exclusive Operation.

(7) As soon as any Exclusive Operation is fully subscribed pursuant to Article 7.2(E)(6), Operator, subject to Article 7.1(E), shall commence such Exclusive Operation as promptly as practicable and conduct it with due diligence in accordance with this Agreement.

(8) If such Exclusive Operation has not been commenced within ninety (90) Days (excluding any extension specifically agreed by all Parties or allowed by the force majeure provisions of Article 16) after the date of the notice given by Operator under Article 7.2(E)(6), the right to conduct such Exclusive Operation shall terminate. If any Party still desires to conduct such Exclusive Operation, notice proposing such operation must be resubmitted to the Parties in accordance with Article 5, as if no proposal to conduct an Exclusive Operation had been previously made.

7.3 Responsibility for Exclusive Operations

(A) The Consenting Parties shall bear, in accordance with the Participating Interests agreed under Article 7.2(E), the entire cost and liability of conducting the Exclusive Operation and shall indemnify the Non-Consenting Parties from any and all costs and liabilities arising from or incurred incident to such Exclusive Operation (including Consequential Loss and Environmental Loss) and shall keep the Contract Area free and clear of all liens and encumbrances of every kind created by or arising from such Exclusive Operation.

(B) Notwithstanding Article 7.3(A), and subject to Article 10.1(E)(2), each Party shall continue to bear its Participating Interest share of the cost and liability incident to the operations in which it participated, including plugging and abandoning and restoring the surface location, but only to the extent those costs were not increased by the Exclusive Operation.

7.4 Consequences of Exclusive Operations

(A) With regard to any Exclusive Operation, for so long as a Non-Consenting Party has the option under Article 7.4(C) to reinstate the rights it relinquished under Article 7.4(B), such Non-Consenting Party shall be entitled to have access concurrently with the Consenting Parties to all data and other information relating to such Exclusive Operation provided, however, that such non-Consenting Party shall have no right to copy, sell or use such data and information for any purpose other than making a decision regarding such Parties participation in such Exclusive Operation.

(B) Subject to Articles 7.4(C), 7.6(E) and 7.8, each Non-Consenting Party shall be deemed to have relinquished to the Consenting Parties, and the Consenting Parties shall be deemed to own, in proportion to their respective Participating Interests in any Exclusive Operation:

(1) all of each such Non-Consenting Party's right to participate in further operations in the well or Deepened or Sidetracked portion of a well in which the Exclusive Operation was conducted and on any Discovery made or appraised in the course of such Exclusive Operation; and

(2) all of each such Non-Consenting Party's right pursuant to the Contract to take and dispose of Hydrocarbons produced and saved:

(a) from the well or Deepened or Sidetracked portion of a well in which such Exclusive Operation was conducted; and

(b) from any wells drilled to appraise or develop a Discovery made or appraised in the course of such Exclusive Operation.

(C) A Non-Consenting Party shall have only the following options to reinstate the rights it relinquished pursuant to Article 7.4(B):

(1) If the Consenting Parties decide to appraise a Discovery made in the course of an Exclusive Operation, the Consenting Parties shall submit to each Non-Consenting Party the approved appraisal Work Program and Budget. For thirty (30) Days (or forty-eight (48) hours for Urgent Operational Matters) from receipt of such appraisal Work Program and Budget, each Non-Consenting Party shall have the option to reinstate the rights it relinquished pursuant to Article 7.4(B) and to participate in such appraisal . The Non-Consenting Party may exercise such option by notifying Operator within the period specified above that such Non-Consenting Party agrees to bear its Participating Interest share of the expense and liability of such appraisal Work Program and Budget, and to pay such amounts as set out in Articles 7.5(A) and 7.5(B).

(2) If the Consenting Parties decide to develop a Discovery made or appraised in the course of an Exclusive Operation, the Consenting Parties shall submit to the Non-Consenting Parties an approved Work Program and Budget and Development Plan substantially in the form intended to be submitted to the Government under the Contract. For sixty (60) Days from receipt of such Work Program and Budget and Development Plan, or such lesser period of time prescribed by the Contract, each Non-Consenting Party shall have the option to reinstate the rights it relinquished pursuant to Article 7.4(B) and to participate in such Development Plan. The Non-Consenting Party may exercise such option by notifying Operator within the period specified above that such Non-Consenting Party agrees to bear its Participating Interest share of the liability and expense of such Development Plan and such future operating and producing costs, and to pay the amounts as set out in Articles 7.5(A) and 7.5(B).

(3) If the Consenting Parties decide to Deepen, Test, Complete, Sidetrack, Plug Back, Recomplete, or Rework an Exclusive Well and such further operation was not included in the original proposal for such Exclusive Well, the Consenting Parties shall submit to the Non-Consenting Parties the approved Work Program and Budget for such further operation. For thirty (30) Days (or forty-eight (48) hours for Urgent Operational Matters) from receipt of such Work Program and Budget, each Non-Consenting Party shall have the option to reinstate the rights it relinquished pursuant to Article 7.4(B) and to participate in such operation. The Non-Consenting Party may exercise such option by notifying Operator within the period specified above that such Non-Consenting Party agrees to bear its Participating Interest share of the liability and expense of such further operation, and to pay the amounts as set out in Articles 7.5(A) and 7.5(B).

A Non-Consenting Party shall not be entitled to reinstate its rights in any other type of operation.

(D) If a Non-Consenting Party does not properly and in a timely manner exercise its option under Article 7.4(C), including paying all amounts due in accordance with Articles 7.5(A) and 7.5(B), such Non-Consenting Party shall have forfeited the options as set out in Article 7.4(C) and the right to participate in the proposed program, unless such program, plan or operation is materially modified or expanded prior to being commenced (in which case a new notice and option shall be given to such Non-Consenting Party under Article 7.4(C)).

(E) A Non-Consenting Party exercising its option under Article 7.4(C) shall notify the other Parties that it agrees to bear its share of the liability and expense of such further operation and to reimburse the amounts set out in Articles 7.5(A) and 7.5(B) that such Non-Consenting Party had not previously paid. Such Non-Consenting Party shall in no way be deemed to be entitled to any amounts paid pursuant to Articles 7.5(A) and 7.5(B) incident to such Exclusive Operations. The Participating Interest of such Non-Consenting Party in such Exclusive Operation shall be its Participating Interest set out in Article 3.2(A). The Consenting Parties shall contribute to the Participating Interest of the Non-Consenting Party in proportion to the excess Participating Interest that each received under Article 7.2(E). If all Parties participate in the proposed operation, then such operation shall be conducted as a Joint Operation pursuant to Article 5.

(F) If after the expiry of the period in which a Non-Consenting Party may exercise its option to participate in a Development Plan the Consenting Parties desire to proceed, Operator shall give notice to the Government under the appropriate provision of the Contract requesting a meeting to advise the Government that the Consenting Parties consider the Discovery to be a Commercial Discovery. Following such meeting such Operator for such development shall apply for an Exploitation Area (if applicable in the Contract). Unless the Development Plan is materially modified or expanded prior to the commencement of operations under such plan (in which case a new notice and option shall be given to the Non-Consenting Parties under Article 7.4(C)), each Non-Consenting Party to such Development Plan shall:

(1) if the Contract so allows, elect not to apply for an Exploitation Area covering such development and forfeit all interest in such Exploitation Area, or

(2) if the Contract does not so allow, be deemed to have:

(a) elected not to apply for an Exploitation Area covering such development;

(b) forfeited all economic interest in such Exploitation Area; and

(c) assumed a fiduciary duty to exercise its legal interest in such Exploitation Area for the benefit of the Consenting Parties.

In either case such Non-Consenting Party shall be deemed to have withdrawn from this Agreement to the extent it relates to such Exploitation Area, even if the Development Plan is modified or expanded subsequent to the commencement of operations under such Development Plan and shall be further deemed to have forfeited any right to participate in the construction and ownership of facilities outside such Exploitation Area designed solely for the use of such Exploitation Area.

7.5 Premium to Participate in Exclusive Operations

(A) Each such Non-Consenting Party shall immediately upon the exercise of its option under Article 7.4(C), begin to bear one hundred percent (100%) of the cash calls made on each Consenting Party in respect of both Joint Operations and Exclusive Operations until such Non-Consenting Party has reimbursed the original Consenting Parties (in proportion to their respective Participating Interest in the Exclusive Operations in which such Non-Consenting Party is reinstating its rights) an amount equal to such Non-Consenting Party's Participating Interest share of all liabilities and expenses including overhead that were incurred in every Exclusive Operation relating to the Discovery (or Exclusive Well, as the case may be) in which the Non-Consenting Party desires to reinstate the rights it relinquished pursuant to Article 7.4(B) and that were not previously paid by such Non-Consenting Party.

(B) In addition to the payment required under Article 7.5(A), immediately following the exercise of its option under Article 7.4(C) each such Non-Consenting Party shall be liable to reimburse the Consenting Parties who took the risk of such Exclusive Operations (in proportion to their respective Participating Interests in the Exclusive Operations) an amount equal to the total of:

(1) One Thousand percent (1000%) of such Non-Consenting Party's Participating Interest share of all liabilities and expenses (including overhead) that were incurred in any Exclusive Operation relating to the drilling, Deepening, Testing, Completing, Sidetracking, Plugging Back, Recompleting and Reworking of the Exploration Well which made the Discovery in which the Non-Consenting Party desires to reinstate the rights it relinquished pursuant to Article 7.4(B), and that were not previously paid by such Non-Consenting Party; plus

(2) Six Hundred percent (600%) of the Non-Consenting Party's Participating Interest share of all liabilities and expenses (including overhead) that were incurred in any Exclusive Operation relating to the drilling, Deepening, Testing, Completing, Sidetracking, Plugging Back, Recompleting and Reworking of the Appraisal Well(s) which delineated the Discovery in which the Non-Consenting Party desires to reinstate the rights it relinquished pursuant to Article 7.4(B), and that were not previously paid by such Non-Consenting Party.

(3) Two Hundred percent (200%) of the Non-Consenting Party's Exclusive Operations Participating Interest share of all liabilities and expenses, including overhead, that were incurred in all Exclusive Operations relating to the Declaration of Commercial Discovery up to the expiry of the period set out in Article 7.4(C), in which a Non-Consenting Party may exercise its option to participate in a Development Plan for the Discovery for which the Non-Consenting Party desires to reinstate its rights, including all liabilities and expenses incurred after submission of said Declaration related to the associated Development Plan.

(C) Each such Non-Consenting Party who is liable for the amounts set out in Article 7.5(B) shall bear one hundred percent (100%) of the cash calls made on each

Consenting Party in respect of both Joint Operations and Exclusive Operations until each Non-Consenting Party has reimbursed the full amount due from it under Article 7.5(B). Unless otherwise agreed, any balance remaining unreimbursed at the end of, or upon a Party's withdrawal from, the subject Exploration Period will be reimbursed by cash payment in the currency designated by the Consenting Parties who took the risk of such Exclusive Operations. The due date for any such payment shall be fifteen (15) Days after notice from Operator of the balance remaining unreimbursed. Unpaid amounts shall accrue interest at the Agreed Interest Rate from the due date until timely paid in full. With respect to Parties who are participants in an on-going Exploitation Period, any balance remaining unreimbursed after twenty-four (24) months from the date of the notice under Article 7.4(C) shall be settled through allocation from the Non-Consenting Parties to the Consenting Parties of an additional share of Profit Hydrocarbons, such allocation timed to enable the reimbursement to be completed in not more than thirty (30) months from the date of the notice under Article 7.4(C).

(D) The Non-Consenting Party exercising its option under Article 7.4(C) shall, in accordance with Article 19, be entitled to all Cost Hydrocarbons derived from reimbursements made under Article 7.5(A). Such Non-Consenting Party shall not be entitled to Cost Hydrocarbons associated with payments made under Article 7.5(B), unless the Contract or any Laws / Regulations require otherwise. Each Consenting Party shall have the right to refuse to accept all or any portion of its share of amounts paid under Articles 7.5(A) and 7.5(B). In such case the refused amount shall be distributed to each non-refusing Consenting Party on a pro-rata basis.

7.6 Order of Preference of Operations

(A) Except as otherwise specifically provided in this Agreement, if any Party desires to propose the conduct of an operation that will conflict with an existing proposal for an Exclusive Operation, such Party shall have the right exercisable for five (5) Days (or twenty-four (24) hours for Urgent Operational Matters) from receipt of the proposal for the Exclusive Operation, to deliver such Party's alternative proposal to all Parties entitled to participate in the proposed operation. Such alternative proposal shall contain the information required under Article 7.2(A).

(B) Each Party receiving such proposals shall elect by delivery of notice to Operator and to the proposing Parties within the appropriate response period set out in Article 7.2(B) to participate in one of the competing proposals. Any Party not notifying Operator and the proposing Parties within the response period shall be deemed to have voted against the proposals.

(C) The proposal receiving the largest aggregate Participating Interest vote shall have priority over all other competing proposals. In the case of a tie vote, Operator shall choose among the proposals receiving the largest aggregate Participating Interest vote. Operator shall deliver notice of such result to all Parties entitled to participate in the operation within five (5) Days (or twenty-four (24) hours for Urgent Operational Matters).

(D) Each Party shall then have two (2) Days (or twenty-four (24) hours for Urgent Operational Matters) from receipt of such notice to elect by delivery of notice to Operator and the proposing Parties whether such Party will participate in such Exclusive Operation, or will relinquish its interest pursuant to Article 7.4(B). Failure by a Party to deliver such notice within such period shall be deemed an election not to participate in the prevailing proposal.

(E) Notwithstanding the provisions of Article 7.4(B), if a well drilled as an Exclusive Operation fails to reach the deepest objective Zone described in the notice proposing such well, Operator shall give notice of such failure to each Non-Consenting Party who submitted or voted for an alternative proposal under this Article 7.6 to drill such well to a shallower Zone than the deepest objective Zone proposed in the notice under which such well was drilled. Each such Non-Consenting Party shall have the option exercisable for forty-eight (48) hours from receipt of such notice to participate for its Participating Interest share in the initial proposed Completion of such well for which it previously voted. Each such Non-Consenting Party may exercise such option by notifying Operator that it wishes to participate in such Completion and by paying its Participating Interest share of the cost of drilling such well to its deepest depth drilled in the Zone in which it is Completed. All liabilities and expenses for drilling and Testing the Exclusive Well below that depth shall be for the sole account of the Consenting Parties. If any such Non-Consenting Party does not properly elect to participate in the first Completion proposed for such well, the relinquishment provisions of Article 7.4(B) shall continue to apply to such Non-Consenting Party's interest.

7.7 Stand-By Costs

(A) When an operation has been performed, all tests have been conducted and the results of such tests furnished to the Parties, stand by costs incurred pending response to any Party's notice proposing an Exclusive Operation for Deepening, Testing, Sidetracking, Completing, Plugging Back, Recompleting, Reworking or other further operation in such well (including the period required under Article 7.6 to resolve competing proposals) shall be charged and borne by the Party or Parties proposing the Exclusive Operation. Stand by costs incurred subsequent to all Parties responding, or expiration of the response time permitted, whichever first occurs, shall be charged to and borne by the Parties proposing the Exclusive Operation in proportion to their Participating Interests, regardless of whether such Exclusive Operation is actually conducted.

(B) If a further operation related to Urgent Operational Matters is proposed while the drilling rig to be utilized is on location, any Party may request and receive up to five (5) additional Days after expiration of the applicable response period specified in Article 7.2(B)(1) within which to respond by notifying Operator that such Party agrees to bear all stand by costs and other costs incurred during such extended response period. Operator may require such Party to pay the estimated stand by costs in advance as a condition to extending the response period. If more than one Party requests such additional time to respond to the notice, stand by costs shall be allocated between such Parties on a Day-to-Day basis in proportion to their Participating Interests.

7.8 Special Considerations Regarding Deepening and Sidetracking

(A) An Exclusive Well shall not be Deepened or Sidetracked without first affording the Non-Consenting Parties in accordance with this Article 7.8 the opportunity to participate in such operation.

(B) In the event any Consenting Party desires to Deepen or Sidetrack an Exclusive Well, such Party shall initiate the procedure contemplated by Article 7.2. If a Deepening or Sidetracking operation is approved pursuant to such provisions, and if any Non-Consenting Party to the Exclusive Well elects to participate in such Deepening or Sidetracking operation, such Non-Consenting Party shall not owe amounts pursuant to Article 7.5(B), and such Non-Consenting Party's payment pursuant to Article 7.5(A) shall be such Non-Consenting Party's Participating Interest share of the liabilities and expenses incurred in connection with drilling the Exclusive Well from the surface to the depth previously drilled which such Non-Consenting Party would have paid had such Non-Consenting Party agreed to participate in such Exclusive Well; provided, however, all liabilities and expenses for Testing and Completing or attempting Completion of the well incurred by Consenting Parties prior to the commencement of actual operations to Deepen or Sidetrack beyond the depth previously drilled shall be for the sole account of the Consenting Parties.

7.9 Use of Property

(A) The Parties participating in any Deepening, Testing, Completing, Sidetracking, Plugging Back, Recompleting or Reworking of any well drilled under this Agreement shall be permitted to use (free of cost) all casing, tubing and other equipment in the well that is not needed for operations by the owners of the wellbore, but the ownership of all such equipment shall remain unchanged. On abandonment of a well in which operations with differing participation have been conducted, the Parties abandoning the well shall account for all equipment in the well to the Parties owning such equipment by tendering to them their respective Participating Interest shares of the value of such equipment less the cost of salvage.

(B) Spare capacity in equipment that is constructed pursuant to this Agreement and that is not otherwise reasonably anticipated for use in Joint Operations (including platforms, treatment facilities, gas processing plants and pipelines) shall be available for use by any Party for Hydrocarbon production from the Contract Area subject to separate agreement of the Parties and provided safety and Joint Operations are not impaired. A reasonable throughput or use tariff based on normal commercial terms shall be charged to and paid by the Consenting Parties for use of any Joint Property.

(C) Payment for the use of equipment under Article 7.9(B) shall not result in an acquisition of any additional interest in the equipment or platform by the paying Parties. However, such payments shall be included in the costs which the paying Parties are entitled to recoup under Article 7.5. No Party shall be required to provide spare capacity in equipment to another Party or third party for use outside the Contract Area if such use would jeopardize the tax status of the Joint Operation or otherwise increase the tax burden of any Party.

7.10 Lost Production During Tie-In of Exclusive Operation Facilities

If production operations are already on-going under this Agreement, an Exclusive Operation shall not lessen the production from the then existing wells nor lessen capacity of then existing wells and related facilities to handle Hydrocarbon production except for the period of time necessary to tie-in facilities that are part of the Exclusive Operation. If, during the tie-in of Exclusive Operation facilities with the existing production facilities of another operation, the production of Hydrocarbons from such other pre-existing operations is temporarily lessened as a result, then the Consenting Parties shall compensate the parties to such existing operation for such loss of production in the following manner. Operator shall determine the amount by which each Day's production during the tie-in of Exclusive Operation facilities falls below the previous month's average daily production from the existing production facilities of such operation. The so-determined amount of lost production shall be recovered by all Parties who experienced such loss in proportion to their respective Participating Interest. Upon completion of the tie-in, such lost production shall be recovered in full by Operator deducting up to one hundred percent (100%) of the production from the Exclusive Operation, prior to the Consenting Parties being entitled to receive any such production.

7.11 Conduct of Exclusive Operations

(A) Each Exclusive Operation shall be carried out by the Consenting Parties acting as the Operating Committee, subject to the provisions of this Agreement applied *mutatis mutandis* to such Exclusive Operation and subject to the terms and conditions of the Contract. Such Exclusive Operation's Operating Committee shall review Exclusive Operations proposed pursuant to this Article 7 with the Operating Committee for the Joint Operations to ensure consistency with the current Joint Operation's Work Program and Budget.

(B) The computation of costs and expenses incurred in Exclusive Operations, including the costs and expenses of Operator for conducting such operations, shall be made in accordance with the principles set out in the Accounting Procedure.

(C) Operator shall maintain separate books, financial records and accounts for Exclusive Operations which shall be subject to the same rights of audit and examination as the Joint Account and related records, all as provided in the Accounting Procedure. Said rights of audit and examination shall extend to each of the Consenting Parties and each of the Non-Consenting Parties so long as the latter are, or may be, entitled to elect to participate in such Exclusive Operations.

(D) Operator, if it is conducting an Exclusive Operation for the Consenting Parties, regardless of whether it is participating in that Exclusive Operation, shall be entitled to request cash advances and shall not be required to use its own funds to pay any cost and expense (except for its own obligation to fund its Participating Interest Share in the Exclusive Operation) and shall not be obliged to commence or continue Exclusive Operations until cash advances requested have been made, and the Accounting Procedure shall apply to Operator in respect of any Exclusive Operations conducted by it.

(E) If Operator is a Non-Consenting Party to an Exclusive Operation to develop a Discovery, then Operator may resign, but in any event shall resign on the unanimous request of the Consenting Parties, as Operator for the Exploitation Area for such Discovery, and the Consenting Parties shall select a Consenting Party to serve as Operator for such Exclusive Operation only.

Any such resignation of Operator and appointment of a Consenting Party to serve as Operator for such Exclusive Operation shall be subject to the Parties having first obtained any necessary Government approvals.

7.12 ***Y Exclusive Operations Area***

(A) Notwithstanding anything to the contrary in this Article 7, and with respect to proposed operations within the Y Exclusive Operations Area, only:

(1) Except as otherwise agreed in writing, all operations proposed in such Y Exclusive Operations Area shall be Exclusive Operations and all Parties except Y shall be deemed to be Non-Consenting Parties who have relinquished their rights to participate in such operation and have no option to reinstate such rights under Article 7.4 (C). Y may propose such operations notwithstanding that Y's interest is being carried by X for operations outside the Y Exclusive Operations Area.

(2) In any event, notice of any such operation shall be provided to Operator.

(3) Y shall be deemed to be the sole Consenting Party.

ARTICLE 8
DEFAULT

8.1 Default and Notice

(A) Any Party that fails to:

(1) pay when due its share of Joint Account expenses (including cash advances and interest); or

(2) obtain and maintain any Security required of such Party, including ***Adequate Security***, as defined in Article 10.3 of this Agreement, under the Contract or this Agreement;

shall be in default under this Agreement (a ***"Defaulting Party"***). Operator, or any non-defaulting Party in case Operator is the Defaulting Party, shall promptly give notice of such default (the ***"Default Notice"***) to the Defaulting Party and each of the non-defaulting Parties.

(B) For the purposes of this Article 8, ***"Default Period"*** means the period beginning five (5) Business Days from the date that the Default Notice is issued in accordance with this Article 8.1 and ending when all the Defaulting Party's defaults pursuant to this Article 8.1 have been remedied in full.

8.2 Operating Committee Meetings and Data

(A) Notwithstanding any other provision of this Agreement, the Defaulting Party shall have no right, during the Default Period, to:

(1) call or attend Operating Committee or subcommittee meetings;

(2) vote on any matter coming before the Operating Committee or any subcommittee;

(3) access any data or information relating to any operations under this Agreement;

(4) consent to or reject data trades between the Parties and third parties, nor access any data received in such data trades;

(5) Transfer (as defined in Article 12.1) all or part of its Participating Interest, except to non-defaulting Parties in accordance with this Article 8;

(6) consent to or reject any Transfer (as defined in Article 12.1) or otherwise exercise any other rights in respect of Transfers under this Article 8 or under Article 12;

(7) receive its Entitlement in accordance with Article 8.4;

(8) withdraw from this Agreement under Article 13; or

(9) take assignment of any portion of another Party's Participating Interest in the event such other Party is either in default or withdrawing from this Agreement and the Contract.

(B) Notwithstanding any other provisions in this Agreement, during the Default Period:

(1) unless agreed otherwise by the non-defaulting Parties, the voting interest of each non-defaulting Party shall be equal to the ratio such non-defaulting Party's Participating Interest bears to the total Participating Interests of the non-defaulting Parties;

(2) any matters requiring a unanimous vote or approval of the Parties shall not require the vote or approval of the Defaulting Party;

(3) the Defaulting Party shall be deemed to have elected not to participate in any operations that are voted upon during the Default Period, to the extent such an election would be permitted by Article 5.13 and Article 7; and

(4) the Defaulting Party shall be deemed to have approved, and shall join with the non-defaulting Parties in taking, any other actions voted on during the Default Period.

8.3 Allocation of Defaulted Accounts

(A) The Party providing the Default Notice pursuant to Article 8.1 shall include in the Default Notice to each non-defaulting Party a statement of: (i) the approximate sum of money that the non-defaulting Party shall pay as its portion of the Amount in Default; and (ii) if the Defaulting Party has failed to obtain or maintain any Security required of such Party in order to maintain the Contract in full force and effect, the type and amount of the Security the non-defaulting Parties shall post or the funds they shall pay in order to allow Operator, or (if Operator is in default) the notifying Party, to post and maintain such Security. Unless otherwise agreed, the obligations for which the Defaulting Party is in default shall be satisfied by the non-defaulting Parties in proportion to the ratio that each non-defaulting Party's Participating Interest bears to the Participating Interests of all non-defaulting Parties. For the purposes of this Article 8:

"Amount in Default" means the Defaulting Party's share of Joint Account expenses which the Defaulting Party has failed to pay when due pursuant to the terms of this Agreement (but excluding any interest owed on such amount); and

"Total Amount in Default" means the following amounts: (i) the Amount in Default; (ii) third-party costs of obtaining and maintaining any Security incurred by the non-defaulting Parties or the funds paid by such Parties in order to allow Operator to obtain or maintain Security, in accordance with Article 8.3(A)(ii); plus (iii) any interest at the Agreed Interest Rate accrued on the amount under (i) from the date this amount is due by the Defaulting Party until paid in full by the Defaulting Party and on the amount under (ii) from the date this amount is incurred by the non-defaulting Parties until paid in full by the Defaulting Party.

(B) If the Defaulting Party remedies its default in full before the Default Period commences, the notifying Party shall promptly notify each non-defaulting Party by facsimile or telephone and by email, and the non-defaulting Parties shall be relieved of their obligations under Article 8.3(A). Otherwise, each non-defaulting Party shall satisfy its obligations under Article 8.3(A)(i) before the Default Period commences and its obligations under Article 8.3(A)(ii) within ten (10) Days following the Default Notice. If any non-defaulting Party fails to timely satisfy such obligations, such Party shall thereupon be a Defaulting Party subject to the provisions of this Article 8. The non-defaulting Parties shall be entitled to receive their respective shares of the Total Amount in Default payable by such Defaulting Party pursuant to this Article 8.

(C) If Operator is a Defaulting Party, then all payments otherwise payable to Operator for Joint Account costs pursuant to this Agreement shall be made to the notifying Party instead until the default is cured or a successor Operator appointed. The notifying Party shall maintain such funds in a segregated account separate from its own funds and shall apply such funds to third party claims due and payable from the Joint Account of which it has notice, to the extent Operator would be authorized to make such payments under the terms of this Agreement. The notifying Party shall be entitled to bill or cash call the other Parties in accordance with the Accounting Procedure for proper third party charges that become due and payable during such period to the extent sufficient funds are not available. When Operator has cured its default or a successor

Operator is appointed, the notifying Party shall turn over all remaining funds in the account to Operator and shall provide Operator and the other Parties with a detailed accounting of the funds received and expended during this period. The notifying Party shall not be liable for damages, losses, costs, expenses or liabilities arising as a result of its actions under this Article 8.3(C), except to the extent Operator would be liable under Article 4.6.

(D) If the Operator is a Defaulting Party, a meeting of the Operating Committee shall be convened as soon as practicable after Operator's default has continued for eight (8) Days from the date of the Default Notice for the purpose of considering whether to remove Operator. At such meeting, Operator and Affiliates of Operator shall not be entitled to vote. Any decision to remove the Operator under this Article 8.3(A) shall be made by an affirmative vote of two (2) or more of the total number of Parties entitled to vote and holding a combined Participating Interest of at least twenty-five percent (25%).

8.4 Remedies

(A) During the Default Period, the Defaulting Party shall not have a right to its Entitlement, which shall vest in and be the property of the non-defaulting Parties. Operator (or the notifying Party if Operator is a Defaulting Party) shall be authorized to sell such Entitlement in an arm's-length sale on terms that are commercially reasonable under the circumstances and, after deducting all costs, charges and expenses incurred in connection with such sale, pay the net proceeds to the non-defaulting Parties in proportion to the amounts they are owed by the Defaulting Party as a part of the Total Amount in Default (in payment of first the interest and then the principal) and apply such net proceeds toward the establishment of the Reserve Fund (as defined in Article 8.4(C)), if applicable, until all such Total Amount in Default is recovered and such Reserve Fund is established. Any surplus remaining shall be paid to the Defaulting Party, and any deficiency shall remain a debt due from the Defaulting Party to the non-defaulting Parties. When making sales under this Article 8.4(A), the non-defaulting Parties shall have no obligation to share any existing market or obtain a price equal to the price at which their own production is sold.

(B) If Operator disposes of any Joint Property or if any other credit or adjustment is made to the Joint Account during the Default Period, Operator (or the notifying Party if Operator is a Defaulting Party) shall be entitled to apply the Defaulting Party's Participating Interest share of the proceeds of such disposal, credit or adjustment against the Total Amount in Default (against first the interest and then the principal) and toward the establishment of the Reserve Fund (as defined in Article 8.4(C)), if applicable. Any surplus remaining shall be paid to the Defaulting Party, and any deficiency shall remain a debt due from the Defaulting Party to the non-defaulting Parties.

(C) The non-defaulting Parties shall be entitled to apply the net proceeds received under Articles 8.4(A) and 8.4(B) toward the creation of a reserve fund (the ***"Reserve Fund"***) in an amount equal to the Defaulting Party's Participating Interest share of: (i) the estimated cost to abandon any wells and other property in which the Defaulting Party participated; (ii) the estimated cost of severance benefits for local employees upon cessation of operations; and (iii) any other

identifiable costs that the non-defaulting Parties anticipate will be incurred in connection with the cessation of operations. Upon the conclusion of the Default Period, all amounts held in the Reserve Fund shall be returned to the Party previously in Default.

(D) (1) If a Defaulting Party fails to fully remedy all its defaults by the sixtieth (60^{th}) Day following the date of the Default Notice, then, without prejudice to any other rights available to each non-defaulting Party to recover its portion of the Total Amount in Default, each non-defaulting Party shall have the option, exercisable at anytime thereafter during the Default Period, to require that the Defaulting Party completely withdraw from this Agreement and the Contract. Such option shall be exercised by notice to the Defaulting Party and each non-defaulting Party. If such option is exercised, the Defaulting Party shall be deemed to have transferred, pursuant to Article 13.6, effective on the date of the non-defaulting Party's or Parties' notice, its Participating Interest to the non-defaulting Parties. Notwithstanding the terms of Article 13, in the absence of an agreement among the non-defaulting Parties to the contrary, any transfer to the non-defaulting Parties following a withdrawal pursuant to this Article 8.4(D)(1) shall be in proportion to the Participating Interests of the non-defaulting Parties.

(2) A Defaulting Party may remedy its default by paying to the Operator the total amount then due under this Article 8 at any time prior to the exercise by a non-defaulting party of the option specified in Article 8.4(D)(1) and upon receipt of such payment the Operator shall remit to each non-defaulting Party its proportionate share of such amount.

(3) Notwithstanding anything to the contrary contained in this Article 8, a Party which is held in default under this Agreement (and subsequently cures such default) shall be subject to the provisions of this Article 8.4 for a period of two (2) years following the last Day of the Default Period associated with such initial occurrence of default. If such Party fails to remedy a subsequent default by the thirtieth (30^{th}) Day following the date of the Default Notice associated with such subsequent occasion of default (a "***Repeat Defaulting Party***"), then, without prejudice to any other rights available to each non-defaulting Party to recover its portion of the Total Amount in Default, each non-defaulting Party shall have the option, exercisable at any time thereafter until the Repeat Defaulting Party has completely cured its defaults, to require that the Repeat Defaulting Party completely withdraw from this Agreement and the Contract. Such option shall be exercised by notice to the Repeat Defaulting Party and each non-defaulting Party. If such option is exercised, the Repeat Defaulting Party shall be deemed to have transferred, pursuant to Article 13.6, effective on the date of the non-defaulting Party's or Parties' notice, its Participating Interest to the non-defaulting Parties. Notwithstanding the terms of Article 13, in the absence of an agreement among the non-defaulting Parties to the contrary, any transfer to the non-defaulting Parties following a withdrawal pursuant to this Article 8.4(D)(2) shall be in proportion to the Participating Interests of the non-defaulting Parties.

(E) For purposes of this Article 8.4, the Defaulting Party shall, without delay following any request from the non-defaulting Parties, do any act required to be done by the Laws / Regulations and any other applicable laws in order to render the transfer of its Participating Interest legally valid, including obtaining all governmental consents and approvals, and shall execute any document and take such other actions as may be necessary in order to effect a prompt and valid transfer. The Defaulting Party shall be obligated to promptly remove any liens and encumbrances which may exist on its assigned Participating Interests. In the event all Government approvals are not timely obtained, the Defaulting Party shall hold the assigned Participating Interest in trust for the non-defaulting Parties who are entitled to receive it. Each Party constitutes and appoints each other Party its true and lawful attorney to execute such instruments and make such filings and applications as may be necessary to make such transfer legally effective and to obtain any necessary consents of the Government. Actions under this power of attorney may be taken by any Party individually without the joinder of the others. This power of attorney is irrevocable for the term of this Agreement and is coupled with an interest. If requested, each Party shall execute a form prescribed by the Operating Committee setting forth this power of attorney in more detail.

(F) The non-defaulting Parties shall be entitled to recover from the Defaulting Party all reasonable attorneys' fees and all other reasonable costs sustained in the collection of amounts owing by the Defaulting Party.

(G) The rights and remedies granted to the non-defaulting Parties in this Article 8 shall be cumulative, not exclusive, and shall be in addition to any other rights and remedies that may be available to the non-defaulting Parties, whether at law, in equity or otherwise. Each right and remedy available to the non-defaulting Parties may be exercised from time to time and so often and in such order as may be considered expedient by the non-defaulting Parties in their sole discretion.

8.5 Survival

The obligations of the Defaulting Party and the rights of the non-defaulting Parties shall survive the surrender of the Contract, abandonment of Joint Operations and termination of this Agreement.

8.6 No Right of Set Off

Each Party acknowledges and accepts that a fundamental principle of this Agreement is that each Party pays its Participating Interest share of all amounts due under this Agreement as and when required. Accordingly, any Party which becomes a Defaulting Party undertakes that, in respect of either any exercise by the non-defaulting Parties of any rights under or the application of any of the provisions of this Article 8, such Party hereby waives any right to raise by way of set off or invoke as a defense, whether in law or equity, any failure by any other Party to pay amounts due and owing under this Agreement or any alleged claim that such Party may have against Operator or any Non-Operator, whether such claim arises under this Agreement or otherwise. Each Party further agrees that the nature and the amount of the remedies granted to the non-defaulting Parties hereunder are reasonable and appropriate in the circumstances.

ARTICLE 9
DISPOSITION OF PRODUCTION

9.1 Right and Obligation to Take in Kind

Except as otherwise provided in this Article 9 or in Article 8, each Party shall have the right and obligation to own, take in kind and separately dispose of its Entitlement.

9.2 Disposition of Crude Oil

If Crude Oil is to be produced from an Exploitation Area, the Parties shall in good faith, and not less than three (3) months prior to the anticipated first delivery of Crude Oil, as promptly notified by Operator, negotiate and conclude the terms of a lifting agreement to cover the offtake of Crude Oil produced under the Contract. The Government Oil & Gas Company may, if necessary and practicable, also be party to the lifting agreement; if the Government Oil & Gas Company is party to the lifting agreement, then the Parties shall endeavor to obtain its agreement to the principles set forth in this Article 9.2. The lifting agreement shall, to the extent consistent with the Development Plan and subject to the terms of the Contract, make provision for:

(A) the delivery point at which custody and risk of loss of each Party's Entitlement of Crude Oil shall pass to such Party;

(B) Operator's (or the designated responsible entity's) regular periodic advice to the Parties of estimates of total available production for succeeding periods, quantities of each type and/or grade of Crude Oil and each Party's Entitlement for as far ahead as is necessary for Operator (or the designated responsible entity) and the Parties to plan lifting arrangements. Such advice shall also cover, for each type and/or grade of Crude Oil, the total available production and deliveries for the preceding period, and overlifts and underlifts;

(C) nomination by the Parties to Operator (or the designated responsible entity) of acceptance of their shares of total available production for the succeeding period. Such nominations shall in any one period be for each Party's entire Entitlement of available production during that period, subject to operational tolerances and agreed minimum or maximum economic cargo sizes or as the Parties may otherwise agree;

(D) timely mitigation of the effects of overlifts and underlifts;

(E) if offshore loading or a shore terminal for vessel loading is involved, provisions regarding acceptability of tankers, demurrage and (if applicable) availability of berths;

(F) timely preparation of a lifting schedule by the Operator (or designated responsible entity), which lifting schedule shall minimize the possibility of any reduction or shut-in of production; accommodate, to the extent possible, the nominations and scheduling requests of the Parties; provide for the lifting of a standard cargo unless a nominated different sized cargo does not adversely affect production or other lifters and shall not be less than the minimum cargo nor more than the maximum cargo; and, in the event of insufficient production to supply all cargo nominations, give priority to the lifter with the largest lifting entitlement;

(G) each Party shall have both the right and obligation to lift in accordance with the final lifting schedule. The final lifting schedule shall not be revised except in the event of Force Majeure, a material change in production, a material change in the Terminal operating conditions, or a material deviation in a Party's lifting from the final lifting schedule; and

(H) steps to be taken in the event a Party becomes a defaulting lifter, even in the event of Force Majeure, because it fails to nominate, fails to tender a notice of readiness or fails to lift its share of Crude Oil in accordance with the provisions of the lifting agreement. If no other lifter elects to lift the defaulting lifter's cargo, then the Operator (or designated responsible entity) shall have the authority to take all actions which are reasonably necessary to avoid shutdown or reduction of production, including the right to sell an Entitlement which a Party fails to nominate for acceptance pursuant to Article 9.2(c) above or of which a Party fails to take delivery, in accordance with applicable agreed procedures, provided that such failure either constitutes a breach of Operator's or such Party's obligations under the terms of the Contract, or is likely to result in the curtailment or shut-in of production. Such sales shall be made only to the limited extent necessary to avoid disruption in Joint Operations. Operator shall give all Parties as much notice as is practicable of such situation and that a right of sale option has arisen. Any sale shall be of the unnominated or undelivered Entitlement (as the case may be) and for reasonable periods of time (in no event to exceed twelve (12) months). Payment terms for production sold under this option shall be established in the lifting agreement.

(I) As an alternative to provisions (b), (c), (d) and (f) above, where it is anticipated that the rate of Crude Oil production will be high relative to the available storage, the lifting schedule will be based upon a standard cargo size with liftings in vessel presentation ranges assigned by the Operator (or designated responsible entity) to the Party with the highest entitlement on the first day of each vessel presentation range.

If a lifting agreement has not been entered into by the date of first delivery of Crude Oil, the Parties shall nonetheless be obligated to take and separately dispose of such Crude Oil as provided in Article 9.1 and in addition shall be bound by the principles set forth in this Article 9.2 until a lifting agreement is executed by the Parties.

9.3 Disposition of Natural Gas

(A) Natural Gas to be produced from an Exploitation Area shall be taken and disposed of in accordance with the rules and procedures set forth in this Article 9.3. The Parties recognize that, in the event of individual disposition of Natural Gas, imbalances may arise with the result being that a Party will temporarily have disposed of more than its Participating Interest share of production of Natural Gas. Accordingly, if Natural Gas is to be produced from an Exploitation Area, the Parties shall, in good faith and no later than the date on which the Development Plan for Natural Gas production is approved by the Operating Committee, negotiate and conclude the terms of a balancing agreement to cover the disposition of Natural Gas produced under the Contract, regardless of whether all of the Parties have entered into a sales arrangement or sales contract for their respective Entitlement of Natural Gas. The Natural Gas balancing agreement shall, subject to the terms of the Contract, make provision for:

(1) the right of a Party to take less than its Participating Interest share of Natural Gas production but not less than required for minimum operational limits; provided that lifting Entitlements be adjusted for a later period or periods such that the undertaking Party may reasonably expect to take alter delivery of make up Natural Gas while not causing material and adverse impact to any Party not undertaking its Participating Interest share; further provided that no Party has the rights to Natural Gas to which another Party is entitled but chooses not to take; and further provided the Parties agree a method to settle any remaining imbalances prior to abandonment in-kind and to account for such payments for income tax purposes at that time;

(2) balancing of overproduction and underproduction on a gross calorific value basis, determined by comparison of the Natural Gas taken by a Party with that Party's Participating Interest share of production for the period of time;

(3) Natural Gas taken by a Party being regarded as Natural Gas taken and owned exclusively for its own account with title thereto being in such Party, regardless of whether such Natural Gas is (i) attributable to such Party's Participating Interest share of production; (ii) taken as overproduction; or (iii) taken as make-up for past underproduction;

(4) unless otherwise agreed, no agency relationship or other relationship of trust and confidence being created between the Parties in regard to disposition of Natural Gas;

(5) unless otherwise agreed, the delivery point (at which title and risk of loss of Entitlements of Natural Gas shall pass to the Party taking delivery of such Natural Gas) being the point where fiscal calculations are made consistent with the Contract;

(6) each Party's provision to Operator of such information respecting such Party's arrangements for the disposition of its Entitlement of Natural Gas production as Operator may reasonably require in order to conduct Joint Operations in accordance with Article 4.2;

(7) each Party's regular periodic nominations to Operator of the amount of such Party's Entitlement of total available Natural Gas production which it wishes to accept during a defined future period, along with Operator's regular periodic advice to the Parties of estimates of total Natural Gas production (as reasonably in advance as practicable in order to assist the Parties to plan Natural Gas disposition arrangements); provided, however, that the Parties recognize that Operator's estimates may vary from the actual Natural Gas volumes produced;

(8) the allocation of Cost Hydrocarbons and Profit Hydrocarbons in relation to such individual Natural Gas disposition; and

(9) Entitlement to and availability of liquid Hydrocarbons separated or extracted from Natural Gas will be consistent with a Party's actual Natural Gas takes at the delivery point as provided in Article 9.3(A)(5).

If such balancing agreement has not been entered into by the date of first delivery of Natural Gas, the Parties shall nonetheless be bound by the principles set forth in this Article 9.3(A) until a Natural Gas balancing agreement has been entered into between the Parties in accordance with this Agreement.

(B) Unless prohibited by the Laws / Regulations, the Parties may, by unanimous execution of a multiparty Natural Gas disposition agreement, agree to dispose of Natural Gas produced under the Contract on a multiparty basis to a common purchaser or purchasers. The multiparty Natural Gas disposition agreement shall, subject to the Contract, make provision for:

(1) the terms of sale or disposition of Natural Gas on a multiparty basis;

(2) the Parties' rights and obligations with respect to the disposition of Natural Gas on a multiparty basis, including the extent to which Operator is designated as the Parties' authorized representative for the purpose of conducting marketing studies, designing and constructing necessary facilities, investigating financing opportunities, and negotiating sales agreements;

(3) the managerial structure for making decisions governing the multiparty disposal venture;

(4) the scope and duration of the multiparty disposal venture;

(5) the extent, if any, to which the costs of the multiparty disposal venture are chargeable to the Joint Account;

(6) the obligation of the Parties to participate in all Natural Gas infrastructure necessary for such multiparty Natural Gas disposal, and the multiparty disposition venture governing only such Natural Gas infrastructure as is necessary to deliver Natural Gas to the point where fiscal calculations are made for the purposes of the Contract;

(7) the extent to which a Party shall have, or shall be permitted to hold itself out as having, the authority to create any obligation on behalf of the multiparty disposal venture;

(8) confirmation that the relationship among the Parties shall be contractual only and shall not be construed as creating a partnership or other recognized association;

(9) confirmation that formation of the multiparty disposal venture shall not create any rights in any persons not a party thereto; and

(10) the allocation of Cost Hydrocarbons and Profit Hydrocarbons in relation to the multiparty Natural Gas disposal.

9.4 Principles of Natural Gas Agreement(s) with the Government

(A) The Government may, if necessary and practicable, also be party to the balancing agreement under Article 9.3(A) and/or the multiparty disposition venture under Article 9.3(B). If the Government Oil & Gas Company is party to the balancing agreement, then the Parties shall endeavor to obtain its agreement to the principles set forth in Article 9.3(A). Furthermore, if the Government Oil & Gas Company is party to the multiparty disposition venture, then the Parties shall endeavor to obtain its agreement to the principles set forth in Article 9.3(B).

(B) In addition, the Parties shall endeavor to include in the Contract, and in any other agreement with the Government in relation to the disposition of Natural Gas, the following principles:

(1) assured access to a fair share of the available Natural Gas market, including suitable assurances for Government controlled sales;

(2) the right to market Natural Gas, including purchase of the Government's share, to the highest value outlets (domestic or export) and the right to export the Parties' Entitlements of Natural Gas;

(3) a minimum contractual term which provides a reasonable period to develop a Natural Gas market and enables Natural Gas reserves to be produced for their full economic life; and

(4) assured access to infrastructure for the purposes of processing and/or transporting Natural Gas at a competitive tariff.

ARTICLE 10
ABANDONMENT

10.1 Abandonment of Wells Drilled as Joint Operations

(A) A decision to plug and abandon any well which has been drilled as a Joint Operation shall require the approval of the Operating Committee.

(B) Should any Party fail to reply within the period prescribed in Article 5.12(A)(1) or Article 5.12(A)(2), whichever is applicable, after delivery of notice of Operator's proposal to plug and abandon such well, such Party shall be deemed to have consented to the proposed abandonment.

(C) If the Operating Committee approves a decision to plug and abandon an Exploration Well or Appraisal Well, subject to the Laws / Regulations, any Party voting against such decision may propose (within the time periods allowed by Article 5.13(A)) to conduct an alternate Exclusive Operation in the wellbore; provided that the proposed operation may not be in the same zone from which production was previously obtained nor be in a zone which is produced by any other Joint Operation wells. If no Exclusive Operation is timely proposed, or if an Exclusive Operation is timely proposed but is not commenced within the applicable time periods under Article 7.2, such well shall be plugged and abandoned.

(D) Any well plugged and abandoned under this Agreement shall be plugged and abandoned in accordance with the Laws / Regulations and at the cost, risk and expense of the Parties who participated in the cost of drilling such well.

(E) Notwithstanding anything to the contrary in this Article 10.1:

(1) If the Operating Committee approves a decision to plug and abandon a well from which Hydrocarbons have been produced and sold, subject to the Laws / Regulations, any Party voting against the decision may propose (within five (5) Days after the time specified in Article 5.6, Article 5.12(A)(1) or Article 5.12(A)(2), whichever is applicable, has expired) to take over the entire well as an Exclusive Operation. Any Party originally participating in the well shall be entitled to participate in the operation of the well as an Exclusive Operation by response notice within ten (10) Days after receipt of the notice proposing the Exclusive Operation. In such event, the Consenting Parties shall be entitled to conduct an Exclusive Operation in the well; provided that the proposed operation may not be in the same Zone from which production was previously obtained nor be in a Zone which is produced by any other Joint Operation wells.

(2) Each Non-Consenting Party shall be deemed to have relinquished to the Consenting Parties in proportion to their Participating Interests all of its interest in the wellbore of a produced well and related equipment in accordance with Article 7.4(B). The Consenting Parties shall thereafter bear all cost and liability of plugging and abandoning such well in accordance with the Laws / Regulations, to the extent the Parties are or become obligated to contribute to such costs and liabilities, and shall indemnify the Non-Consenting Parties against all such costs and liabilities.

(3) Consenting Parties conducting Exclusive Operations in a well under this Article 10.1(E) shall tender to each of the Non-Consenting Parties such Non-Consenting Parties Interest share of the value of the well's salvable material and equipment, less the Participating Interest shares of the estimated costs of salvaging as of the date the Consenting Parties assumed responsibility for the well.

(4) Subject to Article 7.11(D), Operator shall continue to operate a produced well for the account of the Consenting Parties at the rates and charges contemplated by this Agreement, plus any additional cost and charges which may arise as the result of the separate allocation of interest in such well.

10.2 Abandonment of Exclusive Operations

This Article 10 shall apply *mutatis mutandis* to the abandonment of an Exclusive Well or any well in which an Exclusive Operation has been conducted (in which event all Parties having the right to conduct further operations in such well shall be notified and have the opportunity to conduct Exclusive Operations in the well in accordance with the provisions of this Article 10).

10.3 Abandonment Security

If under the Contract or the Laws / Regulations, the Parties are or become obliged to pay or contribute to the cost of ceasing operations, then during preparation of a Development Plan, the Parties shall negotiate a security agreement, which shall be completed and executed by all Parties participating in such Development Plan prior to application for an Exploitation Area. The security agreement shall incorporate the following principles:

(A) Adequate Security shall be provided by each such Party for each Calendar Year commencing with the Calendar Year in which the Discounted Net Value is less than one hundred fifty percent (150 %) of the Discounted Net Cost;

(B) the amount of Adequate Security required to be provided by each such Party in any Calendar Year (including any security previously provided which will still be current throughout such Calendar Year) shall be equal to the amount by which one hundred fifty percent (150 %) of the Discounted Net Cost exceeds the Discounted Net Value.

(C) The Adequate Security document or any cash used as Adequate Security shall be deposited with a financial institution chosen by the Operating Committee that meets Acceptable Financial Standards and any cash deposited shall be invested as directed by the Operating Committee. For the purposes of determining the amount of a Party's abandonment liability paid as cash, the amount of such abandonment shall be assumed to earn interest at the ninety (90) day term, London Interbank Offered Rate (LIBOR rate) for United States dollar deposits, as published in London by the Financial Times or if not so published, then by the Wall Street Journal, from the date of provision.

(D) The security agreement shall take into consideration the extent to which security or abandonment fund is required by applicable law or regulation and the amount, rate and timing of any such security or abandonment fund shall be taken into consideration in the security agreement, such that there is no duplication of security. No Party shall be obligated to fund more than its Participating Interest share of one hundred percent (100%) of the costs of abandonment.

"Adequate Security" means either (i) irrevocable standby letters of credit or commercial bank guarantees obtained by a Party from financial institutions meeting Acceptable Financial Standards and having a net worth of at least five (5) times the secured amount (ii) irrevocable corporate or government guarantees from entities meeting Acceptable Financial Standards and having a net worth of at least five (5) times the secured amount; (iii) irrevocable guarantees from a wholly-owned subsidiary of an entity meeting Acceptable Financial Standards provided that such subsidiary has a net worth of at least five (5) times the amount being secured and is an Affiliate of the Party; (iv) cash contributed to a secure fund administered by the Operating Committee, and

"Acceptable Financial Standards" means having a sound financial reputation and a history of providing quality service and meeting the minimum financial criterion of a long-term debt rating of at least "AA" by Standard & Poor's or at least "Aa2" by Moody's Investors Service.

"Discounted Net Cost" means that portion of each Party's anticipated before tax cost of ceasing operations in accordance with the Laws / Regulations which remains after deduction of salvage value. Such portion should be calculated at the anticipated time of ceasing operations and discounted at the Discount Rate to December 31 of the Calendar Year in question.

"Discounted Net Value" means the value of each Party's estimated Entitlement which remains after payment of estimated liabilities and expenses required to win, save and transport such production to the delivery point and after deduction of estimated applicable taxes, royalties, imposts and levies on such production. Such Entitlement shall be calculated using estimated market prices and including taxes on income, discounted at the Discount Rate to December 31 of the Calendar Year in question. No account shall be taken of tax allowances expected to be available in respect of the costs of ceasing operations.

"Discount Rate" means the rate per annum equal to the one (1) month term, London Interbank Offered Rate (LIBOR rate) for U.S. dollar deposits applicable to the date falling thirty (30) Business Days prior to the start of a Calendar Year as published in London by the Financial Times or if not published then by The Wall Street Journal.

ARTICLE 11
SURRENDER, EXTENSIONS AND RENEWALS

11.1 Surrender

(A) If the Contract requires the Parties to surrender any portion of the Contract Area, Operator shall advise the Operating Committee of such requirement at least one hundred and twenty (120) Days in advance of the earlier of the date for filing irrevocable notice of such surrender or the date of such surrender. Prior to the end of such period, the Operating Committee shall determine pursuant to Article 5 the size and shape of the surrendered area, consistent with the requirements of the Contract. If a sufficient vote of the Operating Committee cannot be attained, then the proposal supported by a simple majority of the Participating Interests shall be adopted. If no proposal attains the support of a simple majority of the Participating Interests, then the proposal receiving the largest aggregate Participating Interest vote shall be adopted. In the event of a tie, Operator shall choose among the proposals receiving the largest aggregate Participating Interest vote. The Parties shall execute any and all documents and take such other actions as may be necessary to effect the surrender. Each Party renounces all claims and causes of action against Operator and any other Parties on account of any area surrendered in accordance with the foregoing but against its recommendation if Hydrocarbons are subsequently discovered under the surrendered area.

(B) A surrender of all or any part of the Contract Area which is not required by the Contract shall require the unanimous consent of the Parties.

11.2 Extension of the Term

(A) A proposal by any Party to enter into or extend the term of any Exploration or Exploitation Period or any phase of the Contract, or a proposal to extend the term of the Contract, shall be brought before the Operating Committee pursuant to Article 5.

(B) If the Operating Committee does not approve a proposal under 11.2(A), then any Party shall have the right to enter into or extend the term of any Exploration or Exploitation Period or any phase of the Contract or to extend the term of the Contract, regardless of the level of support in the Operating Committee. Such Party shall give the other Parties not less than thirty (30) Days prior notice of its intention to do so. If any Party takes such action, any Party not wishing to extend shall have a right to withdraw, subject to the requirements of Article 13, provided that such Party delivers notice of its withdrawal to all Parties within the above mentioned thirty (30) Days period.

ARTICLE 12
TRANSFER OF INTEREST OR RIGHTS AND CHANGES IN CONTROL

12.1 Obligations

(A) Subject to the requirements of the Contract,

(i) any Transfer (except Transfers pursuant to Article 7, Article 8 or Article 13) shall be effective only if it satisfies the terms and conditions of Article 12.2; and

(ii) a Party subject to a Change in Control must satisfy the terms and conditions of Article 12.3.

Should a Transfer subject to this Article or a Change in Control occur without satisfaction (in all material respects) by the transferor or the Party subject to the Change in Control, as applicable, of the requirements hereof, then each other Party shall be entitled to enforce specific performance of the terms of this Article, in addition to any other remedies (including damages) to which it may be entitled. Each Party agrees that monetary damages alone would not be an adequate remedy for the breach of any Party's obligations under this Article.

(B) For purposes of this Agreement:

"Cash Transfer" means any Transfer where the sole consideration (other than the assumption of obligations relating to the transferred Participating Interest) takes the form of cash, cash equivalents, promissory notes or retained interests (such as production payments) in the Participating Interest being transferred; and

"Cash Value" means the portion of the total monetary value (expressed in U.S. dollars) of the consideration being offered by the proposed transferee (including any cash, other assets, and tax savings to the transferor from a non-cash deal) that reasonably should be allocated to the Participating Interest subject to the proposed Transfer or Change in Control.

"Change in Control" means any direct or indirect change in Control of a Party (whether through merger, sale of shares or other equity interests, or otherwise) through a single transaction or series of related transactions, from one or more transferors to one or more transferees, in which the market value of the Party's Participating Interest represents more than thirty percent (30%) of the aggregate market value of the assets of such Party and its Affiliates that are subject to the Change in Control. For the purposes of this definition, market value shall be determined based upon the amount in cash a willing buyer would pay a willing seller in an arm's length transaction.

"Encumbrance" means a mortgage, lien, pledge, charge or other encumbrance. **"Encumber"** and other derivatives shall be construed accordingly.

"Transfer" means any sale, assignment, Encumbrance or other disposition by a Party of any rights or obligations derived from the Contract or this Agreement (including its Participating Interest), other than its Entitlement and its rights to any credits, refunds or payments under this Agreement, and excluding any direct or indirect change in Control of a Party.

12.2. Transfer

(A) Except in the case of a Party transferring all of its Participating Interest, no Transfer shall be made, other than a mandatory transfer to a local government company or Indonesian National Participant pursuant to Section 16 of the Contract, by any Party which results in the transferor or the transferee holding a Participating Interest of less than ten percent (10%) or any interest other than a Participating Interest in the Contract and this Agreement.

(B) Subject to the terms of Articles 4.9 and 4.10, the Party serving as Operator shall remain Operator following Transfer of a portion of its Participating Interest. In the event of a Transfer of all of its Participating Interest, except to an Affiliate, the Party serving as Operator shall be deemed to have resigned as Operator, effective on the date the Transfer becomes effective under this Article 12, in which event a successor Operator shall be appointed in accordance with Article 4.11. If Operator transfers all of its Participating Interest to an Affiliate, that Affiliate shall automatically become the successor Operator, provided that the transferring Operator shall remain liable for its Affiliate's performance of its obligations.

(C) Both the transferee, and, notwithstanding the Transfer, the transferring Party, shall be liable to the other Parties for the transferring Party's Participating Interest share of any obligations (financial or otherwise) which have vested, matured or accrued under the provisions of the Contract or this Agreement prior to such Transfer. Such obligations, shall include any proposed expenditure approved by the Operating Committee prior to the transferring Party notifying the other Parties of its proposed Transfer and shall also include costs of plugging and abandoning wells or portions of wells and decommissioning facilities in which the transferring Party participated (or with respect to which it was required to bear a share of the costs pursuant to this sentence) to the extent such costs are payable by the Parties under the Contract.

(D) A transferee shall have no rights in the Contract or this Agreement (except any notice and cure rights or similar rights that may be provided to a Lien Holder (as defined in Article 12.2(E)) by separate instrument signed by all Parties) unless and until:

(1) it expressly undertakes in an instrument reasonably satisfactory to the other Parties to perform the obligations of the transferor under the Contract and this Agreement in respect of the Participating Interest being transferred and obtains any necessary Government approval for the Transfer and furnishes any guarantees required by the Government or the Contract on or before the applicable deadlines; and

(2) except in the case of a Transfer to an Affiliate, each Party has consented in writing to such Transfer, which consent shall be denied only if the transferee fails to establish to the reasonable satisfaction of each Party its financial capability to perform its payment obligations under the Contract and this Agreement and its technical capability to contribute to the planning and conduct of Joint Operations. No consent shall be required under this Article 12.2(D)(2) for a Transfer to an Affiliate if the transferring Party agrees in writing to remain liable for its Affiliate's performance of its obligations.

(E) Nothing contained in this Article 12 shall prevent a Party from Encumbering all or any undivided share of its Participating Interest to a third party (a "***Lien Holder***") for the purpose of security relating to finance, provided that:

(1) such Party shall remain liable for all obligations relating to such interest;

(2) the Encumbrance shall be subject to any necessary approval of the Government and be expressly subordinated to the rights of the other Parties under this Agreement;

(3) such Party shall ensure that any Encumbrance shall be expressed to be without prejudice to the provisions of this Agreement; and

(4) the Lien Holder shall first enter into and deliver a subordination agreement in favor of the other Parties.

(F) Any Transfer of all or a portion of a Party's Participating Interest, other than a Transfer to an Affiliate or the granting of an Encumbrance as provided in Article 12.2(E), shall be subject to the following procedure.

(1) Once the final terms and conditions of a Transfer have been fully negotiated, the transferor shall disclose all such final terms and conditions as are relevant to the acquisition of the Participating Interest (and, if applicable, the determination of the Cash Value of the Participating Interest) in a notice to the other Parties, which notice shall be accompanied by a copy of all instruments or relevant portions of instruments establishing such terms and conditions. Each other Party shall have the right to acquire the Participating Interest subject to the proposed Transfer from the transferor on the terms and conditions

described in Article 12.2(F)(3) if, within thirty (30) Days of the transferor's notice, such Party delivers to all other Parties a counter-notification that it accepts such terms and conditions without reservations or conditions (subject to Articles 12.2(F)(3) and 12.2(F)(4), where applicable). If no Party delivers such counter-notification, the Transfer to the proposed transferee may be made, subject to the other provisions of this Article 12, under terms and conditions no more favorable to the transferee than those set forth in the notice to the Parties, provided that the Transfer shall be concluded within one hundred eighty (180) Days from the date of the notice plus such additional period as may be required to secure governmental approvals. No Party shall have a right under this Article 12.2(F) to acquire any asset other than a Participating Interest, nor may any Party be required to acquire any asset other than a Participating Interest, regardless of whether other properties are included in the Transfer.

(2) If more than one Party counter-notifies that it intends to acquire the Participating Interest subject to the proposed Transfer, then each such Party shall acquire a proportion of the Participating Interest to be transferred equal to the ratio of its own Participating Interest to the total Participating Interests of all the counter-notifying Parties, unless the counter-notifying Parties otherwise agree.

(3) In the event of a Cash Transfer that does not involve other properties as part of a wider transaction, each other Party shall have a right to acquire the Participating Interest subject to the proposed Transfer on the same final terms and conditions as were negotiated with the proposed transferee. In the event of a Transfer that is not a Cash Transfer or involves other properties included in a wider transaction (package deal), the transferor shall include in its notification to the other Parties a statement of the Cash Value of the Participating Interest subject to the proposed Transfer, and each other Party shall have a right to acquire such Participating Interest on the same final terms and conditions as were negotiated with the proposed transferee except that it shall pay the Cash Value in immediately available funds at the closing of the Transfer in lieu of the consideration payable in the third party offer, and the terms and conditions of the applicable instruments shall be modified as necessary to reflect the acquisition of a Participating Interest for cash. In the case of a package sale, no Party may acquire the Participating Interest subject to the proposed package sale unless and until the completion of the wider transaction (as modified by the exclusion of properties subject to preemptive rights or excluded for other reasons) with the package sale transferee. If for any reason the package sale terminates without completion, the other Parties' rights to acquire the Participating Interest subject to the proposed package sale shall also terminate.

(4) For purposes of Article 12.2(F)(3), the Cash Value proposed by the transferor in its notice shall be conclusively deemed correct unless any Party (each a ***"Disagreeing Party"***) gives notice to the transferor with a copy to the other Parties within ten (10) Days of receipt of the transferor's notice stating that it does not agree with the transferor's statement of the

Cash Value, stating the Cash Value it believes is correct, and providing any supporting information that it believes is helpful. In such event, the transferor and the Disagreeing Parties shall have fifteen (15) Days in which to attempt to negotiate an agreement on the applicable Cash Value. If no agreement has been reached by the end of such fifteen (15) Day period, either the transferor or any Disagreeing Party shall be entitled to refer the matter to an independent expert as provided in Article 18.3 for determination of the Cash Value.

(5) If the determination of the Cash Value is referred to an independent expert and the value submitted by the transferor is no more than five percent (5%) above the Cash Value determined by the independent expert, the transferor's value shall be used for the Cash Value and the Disagreeing Parties shall pay all costs of the expert. If the value submitted by the transferor is more than five percent (5%) above the Cash Value determined by the independent expert, the independent expert's value shall be used for the Cash Value and the transferor shall pay all costs of the expert. Subject to the independent expert's value being final and binding in accordance with Article 18.3, the Cash Value determined by the procedure shall be final and binding on all Parties.

(6) Once the Cash Value is determined under Article 12.2(F)(5), Operator shall provide notice of such Cash Value to all Parties and, subject to Article 12.2(F)(3), the transferor shall be obligated to sell and the Parties which provided notice of their intention to purchase the transferor's Participating Interest pursuant to Article 12.2(F)(1) shall be obligated to buy the Participating Interest at said value.

(7) If any transfer of Participating Interest is required pursuant to Section 16 of the Contract each Party shall transfer its respective Participating Interest share of such required transfer.

12.3 Change in Control

(A) A Party subject to a Change in Control shall obtain any necessary Government approval with respect to the Change in Control and furnish any replacement Security required by the Government or the Contract on or before the applicable deadlines.

(B) A Party subject to a Change in Control shall provide evidence reasonably satisfactory to the other Parties that following the Change in Control such Party shall continue to have the financial capability to satisfy its payment obligations under the Contract and this Agreement. Should the Party that is subject to the Change in Control fail to provide such evidence, any other Party, by notice to such Party, may require such Party to provide Security satisfactory to the other Parties with respect to its Participating Interest share of any obligations or liabilities which the Parties may reasonably be expected to incur under the Contract and this Agreement during the then-current Exploration or Exploitation Period or phase of the Contract.

(C) Any Change in Control of a Party, other than one which results in ongoing Control by an Affiliate, shall be subject to the following procedure. For purposes of this Article 12.3, the term **"*acquired Party*"** shall refer to the Party that is subject to a Change in Control and the term **"*acquiror*"** shall refer to the Party or third party proposing to acquire Control in a Change in Control.

(1) Once the final terms and conditions of a Change in Control have been fully negotiated, the acquired Party shall disclose all such final terms and conditions as are relevant to the acquisition of such Party's Participating Interest and the determination of the Cash Value of that Participating Interest in a notice to the other Parties, which notice shall be accompanied by a copy of all instruments or relevant portions of instruments establishing such terms and conditions. Each other Party shall have the right to acquire the acquired Party's Participating Interest on the terms and conditions described in Article 12.3(C)(3) if, within thirty (30) Days of the acquired Party's notice, such Party delivers to all other Parties a counter-notification that it accepts such terms and conditions without reservations or conditions (subject to Articles 12.3(C)(3) and 12.3(C)(4), where applicable). If no Party delivers such counter-notification, the Change in Control may proceed without further notice, subject to the other provisions of this Article 12, under terms and conditions no more favorable to the acquiror than those set forth in the notice to the Parties, provided that the Change in Control shall be concluded within one hundred eighty (180) Days from the date of the notice plus such additional period as may be required to secure governmental approvals. No Party shall have a right under this Article 12.3(C) to acquire any asset other than a Participating Interest, nor may any Party be required to acquire any asset other than a Participating Interest, regardless of whether other properties are subject to the Change in Control.

(2) If more than one Party counter-notifies that it intends to acquire the Participating Interest subject to the proposed Change in Control, then each such Party shall acquire a proportion of that Participating Interest equal to the ratio of its own Participating Interest to the total Participating Interests of all the counter-notifying Parties, unless the counter-notifying Parties otherwise agree.

(3) The acquired Party shall include in its notification to the other Parties a statement of the Cash Value of the Participating Interest subject to the proposed Change in Control, and each other Party shall have a right to acquire such Participating Interest for the Cash Value, on the final terms and conditions negotiated with the proposed acquiror that are relevant to the acquisition of a Participating Interest for cash. No Party may acquire the acquired Party's Participating Interest pursuant to this Article 12.3(C) unless and until completion of the Change in Control. If for any reason the Change in Control agreement terminates without completion, the other Parties' rights to acquire the Participating Interest subject to the proposed Change in Control shall also terminate.

(4) For purposes of Article 12.3(C)(3), the Cash Value proposed by the acquired Party in its notice shall be conclusively deemed correct unless any Party (each a **"*Disagreeing Party*"**) gives notice to the acquired Party with a copy to the other Parties within ten (10) Days of receipt of the acquired Party's notice stating that it does not agree with the acquired Party's statement of the Cash Value, stating the Cash Value it believes is correct, and providing any supporting information that it believes is helpful. In such event, the acquired Party and the Disagreeing Parties shall have fifteen (15) Days in which to attempt to negotiate an agreement on the applicable Cash Value. If no agreement has been reached by the end of such fifteen (15) Day period, either the acquired Party or any Disagreeing Party shall be entitled to refer the matter to an independent expert as provided in Article 18.3 for determination of the Cash Value.

(5) If the determination of Cash Value is referred to an independent expert, and the value submitted by the acquired Party is no more than five percent (5%) above the Cash Value determined by the independent expert, the acquired Party's value shall be used for the Cash Value and the Disagreeing Parties shall pay all costs of the expert. If the value submitted by the acquired Party is more than five percent (5%) above the Cash Value determined by the independent expert, the independent expert's value shall be used for the Cash Value and the acquired Party shall pay all costs of the expert. Subject to the independent expert's value being final and binding in accordance with Article 18.3, the Cash Value determined by the procedure shall be final and binding on all Parties.

(6) Once the Cash Value is determined under Article 12.3(C)(4), Operator shall provide notice of such Cash Value to all Parties and, subject to Article 12.3(C)(3), the acquired Party shall be obligated to sell and the Parties which provided notice of their intention to purchase the acquired Party's Participating Interest pursuant to Article 12.3(C)(1) shall be obligated to buy the Participating Interest at said value.

ARTICLE 13
WITHDRAWAL FROM AGREEMENT

13.1 Right of Withdrawal

(A) Subject to the provisions of this Article 13 and the Contract, any Party not in default may at its option withdraw from this Agreement and the Contract by giving notice to all other Parties stating its decision to withdraw. Such notice shall be unconditional and irrevocable when given, except as may be provided in Article 13.7.

(B) The effective date of withdrawal for a withdrawing Party shall be the end of the second calendar month following the calendar month in which the notice of withdrawal is given, provided that if all Parties elect to withdraw, the effective date of withdrawal for each Party shall be the date determined by Article 13.9.

13.2 Partial or Complete Withdrawal

(A) Within thirty (30) Days of receipt of each withdrawing Party's notification, each of the other Parties may also give notice that it desires to withdraw from this Agreement and the Contract. Should all Parties give notice of withdrawal, the Parties shall proceed to abandon the Contract Area and terminate the Contract and this Agreement. If less than all of the Parties give such notice of withdrawal, then the withdrawing Parties shall take all steps to withdraw from the Contract and this Agreement on the earliest possible date and execute and deliver all necessary instruments and documents to assign their Participating Interest to the Parties which are not withdrawing, without any compensation whatsoever, in accordance with the provisions of Article 13.6.

(B) Any Party withdrawing under Article 11.2 or under this Article 13 shall at its option, and subject to the Contract, (1) withdraw from the entirety of the Contract Area, or (2) withdraw only from all exploration activities under the Contract, but not from any Exploitation Area, Commercial Discovery, or Discovery (whether appraised or not) made prior to such withdrawal. Such withdrawing Party shall retain its rights in Joint Property, but only insofar as they relate to any such Exploitation Area, Commercial Discovery or Discovery, and shall abandon all other rights in Joint Property.

13.3 Rights of a Withdrawing Party

A withdrawing Party shall have the right to receive its Entitlement produced through the effective date of its withdrawal. The withdrawing Party shall be entitled to receive all information to which such Party is otherwise entitled under this Agreement until the effective date of its withdrawal. After giving its notification of withdrawal, a Party shall not be entitled to vote on any matters coming before the Operating Committee, other than matters for which such Party has financial responsibility.

13.4 Obligations and Liabilities of a Withdrawing Party

(A) A withdrawing Party shall, following its notification of withdrawal, remain liable only for its share of the following:

(1) costs of Joint Operations, and Exclusive Operations in which it has agreed to participate, that were approved by the Operating Committee or Consenting Parties as part of a Work Program and Budget (including a multi-year Work Program and Budget under Article 6.5) or AFE prior to such Party's notification of withdrawal, regardless of when they are incurred;

(2) any Minimum Work Obligations for the current period or phase of the Contract, and for any subsequent period or phase which has been approved pursuant to Article 11.2 and with respect to which such Party has failed to timely withdraw under Article 13.4(B);

(3) expenditures described in Articles 4.2(B)(13) and 13.5 related to an emergency occurring prior to the effective date of a Party's withdrawal, regardless of when such expenditures are incurred;

(4) all other obligations and liabilities of the Parties or Consenting Parties, as applicable, with respect to acts or omissions under this Agreement prior to the effective date of such Party's withdrawal for which such Party would have been liable, had it not withdrawn from this Agreement; and

(5) in the case of a partially withdrawing Party, any costs and liabilities with respect to Exploitation Areas, Commercial Discoveries and Discoveries from which it has not withdrawn.

The obligations and liabilities for which a withdrawing Party remains liable shall specifically include its share of any costs of plugging and abandoning wells or portions of wells in which it participated (or was required to bear a share of the costs pursuant to Article 13.4(A)(1)) to the extent such costs of plugging and abandoning are payable by the Parties under the Contract. Any mortgages, liens, pledges, charges or other encumbrances which were placed on the withdrawing Party's Participating Interest prior to such Party's withdrawal shall be fully satisfied or released, at the withdrawing Party's expense, prior to its withdrawal. A Party's withdrawal shall not relieve it from liability to the non-withdrawing Parties with respect to any obligations or liabilities attributable to the withdrawing Party under this Article 13 merely because they are not identified or identifiable at the time of withdrawal.

(B) Notwithstanding the foregoing, a Party shall not be liable for any operations or expenditures it voted against (other than operations and expenditures described in Article 13.4(A)(2) or Article 13.4(A)(3)) if it sends notification of its withdrawal within five (5) Days (or within twenty-four (24) hours for Urgent Operational Matters) of the Operating Committee vote approving such operation or expenditure. Likewise, a Party voting against voluntarily entering into or extending of an Exploration Period or Exploitation Period or any phase of the Contract or voluntarily extending the Contract shall not be liable for the Minimum Work Obligations associated therewith provided that it sends notification of its withdrawal within thirty (30) Days of such vote pursuant to Article 11.2.

13.5 Emergency

If a well goes out of control or a fire, blow out, sabotage or other emergency occurs prior to the effective date of a Party's withdrawal, the withdrawing Party shall remain liable for its Participating Interest share of the costs of such emergency, regardless of when they are incurred.

13.6 Assignment

(A) A withdrawing Party shall assign its Participating Interest free of cost to each of the non-withdrawing Parties in the proportion which each of their Participating Interests (prior to the withdrawal) bears to the total Participating Interests of all the non-withdrawing Parties (prior to the withdrawal), unless the non-withdrawing Parties agree otherwise. The expenses associated with the withdrawal and assignments shall be borne by the withdrawing Party.

(B) A non-withdrawing Party shall have the right to refuse to accept its share of an assignment under Article 13.4(A) above, provided however that if any part of a

withdrawing Party's Participating Interest remains unclaimed after sixty (60) Days from the date of the first Notice of withdrawal, the Operator shall so Notify the non-withdrawing Parties. The Parties shall thereafter be deemed to have decided to withdraw from the subject Area unless at least one Party agrees within ten (10) Days from receipt of such Notice to accept the unclaimed Participating Interest.

13.7 Approvals

A withdrawing Party shall promptly join in such actions as may be necessary or desirable to obtain any Government approvals required in connection with the withdrawal and assignments. The non-withdrawing Parties shall use reasonable endeavors to assist the withdrawing Party in obtaining such approvals. Any penalties or expenses incurred by the Parties in connection with such withdrawal shall be borne by the withdrawing Party. If the Government does not approve a Party's withdrawal and assignment to the other Parties, then the withdrawing Party shall at its option either (1) retract its notice of withdrawal by notice to the other Parties and remain a Party as if such notice of withdrawal had never been sent, or (2) hold its Participating Interest in trust for the sole and exclusive benefit of the non-withdrawing Parties with the right to be reimbursed by the non-withdrawing Parties for any subsequent costs and liabilities incurred by it for which it would not have been liable, had it successfully withdrawn.

13.8 Security

(A) A Party withdrawing from this Agreement and the Contract pursuant to this Article 13 shall provide Security satisfactory to the other Parties to satisfy any obligations or liabilities for which the withdrawing Party remains liable in accordance with Article 13.4, but which become due after its withdrawal, including Security to cover the costs of an abandonment, if applicable.

(B) Failure to provide such payment or security shall constitute default under this Agreement.

13.9 Withdrawal or Abandonment by All Parties

In the event all Parties decide to withdraw, the Parties agree that they shall be bound by the terms and conditions of this Agreement for so long as may be necessary to wind up the affairs of the Parties with the Government, to satisfy any requirements of the Laws / Regulations and to facilitate the sale, disposition or abandonment of property or interests held by the Joint Account, all in accordance with Article 2.

ARTICLE 14
RELATIONSHIP OF PARTIES AND TAX

14.1 Relationship of Parties

The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not joint or collective. It is not the intention of the Parties to create, nor shall this Agreement be deemed or construed to create, a mining or other partnership, joint venture or association or (except as explicitly provided in this Agreement) a trust. This Agreement shall not be deemed or construed to authorize any Party to act as an agent,

servant or employee for any other Party for any purpose whatsoever except as explicitly set forth in this Agreement. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries except as expressly provided in this Agreement.

14.2 Tax

Each Party shall be responsible for reporting and discharging its own tax measured by the profit or income of the Party and the satisfaction of such Party's share of all contract obligations under the Contract and under this Agreement. Each Party shall protect, defend and indemnify each other Party from any and all loss, cost or liability arising from the indemnifying Party's failure to report and discharge such taxes or satisfy such obligations. The Parties intend that all income and all tax benefits (including deductions, depreciation, credits and capitalization) with respect to the expenditures made by the Parties hereunder will be allocated by the Government tax authorities to the Parties based on the share of each tax item actually received or borne by each Party. If such allocation is not accomplished due to the application of the Laws / Regulations or other Government action, the Parties shall attempt to adopt mutually agreeable arrangements that will allow the Parties to achieve the financial results intended. Operator shall provide each Party, in a timely manner and at such Party's sole expense, with such information with respect to Joint Operations as such Party may reasonably request for preparation of its tax returns or responding to any audit or other tax proceeding.

14.3 United States Tax Election

(A) If, for United States federal income tax purposes, this Agreement and the operations under this Agreement are regarded as a partnership and if the Parties have not agreed to form a tax partnership, the Parties elect to be excluded from the application of all of the provisions of Subchapter "K", Chapter 1, Subtitle "A" of the United States Internal Revenue Code of 1986, as amended (the **"Code"**), to the extent permitted and authorized by Section 761(a) of the Code and the regulations promulgated under the Code. Operator, if it is a U.S. Party, is authorized and directed to execute and file for each U.S. Party such evidence of this election as may be required by the Internal Revenue Service, including all of the returns, statements, and data required by United States Treasury Regulations Sections 1.761-2 and 1.6031(a)-1(b)(5) and shall provide a copy thereof to each U.S. Party. However, if Operator is not a U.S. Party, the Party who holds the greatest Participating Interest among the U.S. Parties shall fulfill the obligations of Operator under this Article 14.3. Should there be any requirement that any Party give further evidence of this election, each Party shall execute such documents and furnish such other evidence as may be required by the Internal Revenue Service or as may be necessary to evidence this election.

(B) No Party shall give any notice or take any other action inconsistent with the foregoing election. If any income tax laws of any state or other political subdivision of the United States or any future income tax laws of the United States or any such political subdivision contain provisions similar to those in Subchapter "K", Chapter 1, Subtitle "A" of the Code, under which an election similar to that provided by Section 761(a) of the Code is permitted, the Parties shall make such election as may be permitted or required by such laws. In making the foregoing election or elections, each Party states that the income derived by it from operations under this Agreement can be adequately determined without the computation of partnership taxable income.

(C) No activity shall be conducted under this Agreement that would cause any Party to be deemed to be engaged in a trade or business outside of the country of Joint Operations, or the Party's country(ies) of residence, under applicable income tax laws and regulations.

(D) No Party shall be required to do any act or execute any instrument which might subject it to taxation outside of the country of Joint Operations, or the Party's country(ies) of residence .

(E) For the purposes of this Article 14.3, ***"U.S. Party"*** shall mean any Party that is subject to the income tax law of the United States in respect with operations under this Agreement. ***"Non-U.S. Party"*** shall mean any Party that is not subject to such income tax law.

ARTICLE 15
VENTURE INFORMATION - CONFIDENTIALITY - INTELLECTUAL PROPERTY

15.1 Venture Information

(A) Except as otherwise provided in this Article 15 or in Articles 4.4 and 8.4(A), each Party will be entitled to receive all Venture Information related to operations in which such party is a participant. ***"Venture Information"*** means any information and results developed or acquired as a result of Joint Operations and shall be Joint Property, unless provided otherwise in accordance with this Agreement and the Contract. Each Party shall have the right to use all Venture Information it receives without accounting to any other Party, subject to any applicable patents and any limitations set forth in this Agreement and the Contract. For purposes of this Article 15, such right to use shall include, the rights to copy, and prepare derivative works of documents, and to disclose, license, distribute, and sell data.

(B) Each Party may, subject to any applicable restrictions and limitations set forth in the Contract, extend the right to use Venture Information to each of its Affiliates which are obligated to terms not less restrictive that this Article 15.

Except as otherwise provided in the Contract, each Party may extend the right to use Venture Information to members of joint ventures or production sharing arrangements in which such Party or its Affiliates have an ownership or equity interest, or a contractual right to produce or operate hydrocarbon interests, provided that each such member agrees in writing to keep the Venture Information in confidence at least to the same extent as required in Article 15.2 and to use the Venture Information only for the benefit of that joint venture or production sharing arrangement.

(C) The acquisition or development of Venture Information under terms other than as specified in this Article 15 shall require the approval of the Operating Committee. The request for approval submitted by a Party shall be accompanied by a description of, and summary of the use and disclosure restrictions which would be applicable to, the Venture Information, and any such Party will be obligated to use all reasonable efforts to arrange for rights to use which are not less restrictive than specified in this Article 15.

(D) All Venture Information received by a Party under this Agreement is received on an “as is” basis without warranties, express or implied, of any kind. Any use of such Venture Information by a Party shall be at such Party’s sole risk.

15.2 Confidentiality

(A) Subject to the provisions of the Contract and this Article 15, the Parties agree that all information in relation with Joint Operations or Exclusive Operations shall be considered confidential and shall be kept confidential and not be disclosed during the term of the Contract and for a period of five (5) years thereafter to any person or entity not a Party to this Agreement, except:

(1) to an Affiliate pursuant to Article 15.1(B);

(2) to a governmental agency or other entity when required by the Contract;

(3) to the extent such information is required to be furnished in compliance with the applicable law or regulations, or pursuant to any legal proceedings or because of any order of any court binding upon a Party;

(4) to prospective or actual attorneys engaged by any Party where disclosure of such information is essential to such attorney’s work for such Party;

(5) to prospective or actual contractors and consultants engaged by any Party where disclosure of such information is essential to such contractor’s or consultant’s work for such Party;

(6) to a bona fide prospective transferee of a Party’s Participating Interest to the extent appropriate in order to allow the assessment of such Participating Interest (including an entity with whom a Party and/or its Affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares);

(7) to a bank or other financial institution to the extent appropriate to a Party arranging for funding;

(8) to the extent such information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party, or its Affiliates; provided that if any Party desires to disclose information in an annual or periodic report to its or its Affiliates' shareholders and to the public and such disclosure is not required pursuant to any rules or requirements of any government or stock exchange, then such Party shall comply with Article 20.3;

(9) to its respective employees for the purposes of Joint Operations or Exclusive Operations as the case may be, subject to each Party taking customary precautions to ensure such information is kept confidential; and

(10) any information which, through no fault of a Party, becomes a part of the public domain.

(B) Disclosure as pursuant to Articles 15.2(A)(5), (6), and (7) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the recipient party to keep the information strictly confidential for at least as long as the period set out in Article 15.2(A) and to use the information for the sole purpose described in Articles 15.2(A)(5), (6), and (7), whichever is applicable, with respect to the disclosing Party.

15.3 Intellectual Property

(A) Subject to Articles 15.3(C) and 15.5, and unless provided otherwise in the Contract, all intellectual property rights arising from Venture Information shall be Joint Property. Each Party and its Affiliates have the right to use all such intellectual property rights in their own operations (including joint operations or a production sharing arrangement in which the Party or its Affiliates has an ownership or equity interest or a contractual right to produce or operate hydrocarbon interests,) without the approval of any other Party. Decisions regarding obtaining, maintaining and licensing such intellectual property rights shall be made by the Operating Committee, and the costs thereof shall be for the Joint Account. Upon unanimous consent of the Operating Committee, the ownership of intellectual property rights in the Venture Information may be assigned to the Operator or to a Party, provided each Party and its Affiliates shall have a perpetual, royalty-free irrevocable, license for their own operations, including joint venture operations or a production sharing arrangement in which a Party or its Affiliates have an ownership or equity interest, or a contractual right to produce or operate hydrocarbon interests.

(B) Nothing in this Agreement shall be deemed to require a Party to (i) divulge proprietary technology to any of the other Parties; or (ii) grant a license or other rights under any patents or other intellectual property rights owned or controlled by such Party or its Affiliates to any of the other Parties.

(C) If a Party or an Affiliate of a Party has proprietary technology applicable to activities carried out under this Agreement which the Party or its Affiliate desires to make available on terms and conditions other than as specified in Article 15.3(A), the Party or Affiliate may, with the prior approval of the Operating Committee, make the proprietary technology available on terms to be agreed. If the proprietary technology is so made available, then any inventions, discoveries, or improvements which arise from the application of such proprietary technology and which result from Joint Account expenditures shall belong to such Party or Affiliate. In such case, each other Party shall have a perpetual, royalty-free, irrevocable license to practice such inventions, discoveries, or improvements, but only in connection with the Joint Operations.

(D) Subject to Article 4.6(B), all costs and expenses of defending, settling or otherwise handling any claim which is based on the actual or alleged infringement of any intellectual property right shall be for the account of the operation from which the claim arose, whether Joint Operations or Exclusive Operations.

15.4 Continuing Obligations

Any Party ceasing to own a Participating Interest during the term of this Agreement shall nonetheless remain bound by the obligations of confidentiality in Article 15.2, and any disputes in relation thereto shall be resolved in accordance with Article 18.2.

15.5 Trades

Operator may, with approval of the Operating Committee, make well trades and data trades for the benefit of the Parties, with any data so obtained to be furnished to all Parties who participated in the cost of the data that was traded. Operator shall cause any third party to such trade to enter into an undertaking to keep the traded data confidential.

ARTICLE 16
FORCE MAJEURE

16.1 Obligations

If as a result of Force Majeure any Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation to pay any amounts due or to furnish Security, then the obligations of the Party giving such notice, so far as and to the extent that the obligations are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused and for such reasonable period thereafter as may be necessary for the Party to put itself in the same position that it occupied prior to the Force Majeure, but for no longer period. The Party claiming Force Majeure shall notify the other Parties of the Force Majeure within a reasonable time after the occurrence of the facts relied on and shall keep all Parties informed of all significant developments. Such notice shall give reasonably full particulars of the Force Majeure and also estimate the period of time which the Party will probably require to remedy the Force Majeure. The affected Party shall use all reasonable diligence to remove or overcome the Force Majeure situation as quickly as possible in an economic manner but shall not be obligated to settle any labor dispute except on terms acceptable to it, and all such disputes shall be handled within the sole discretion of the affected Party.

16.2 Definition of Force Majeure

For the purposes of this Agreement, ***"Force Majeure"*** shall have the same meaning as is set out in the Contract.

ARTICLE 17
NOTICES

Except as otherwise specifically provided, all notices authorized or required between the Parties by any of the provisions of this Agreement shall be in writing (in English) and delivered in person or by courier service or by any electronic means of transmitting written communications which provides written confirmation of complete transmission, and addressed to such Parties. Oral communication does not constitute notice for purposes of this Agreement, and e-mail addresses

and telephone numbers for the Parties are listed below as a matter of convenience only. A notice given under any provision of this Agreement shall be deemed delivered only when received by the Party to whom such notice is directed, and the time for such Party to deliver any notice in response to such originating notice shall run from the date the originating notice is received. ***"Received"*** for purposes of this Article 17 shall mean actual delivery of the notice to the address of the Party specified hereunder or to be thereafter notified in accordance with this Article 17. Each Party shall have the right to change its address at any time and/or designate that copies of all such notices be directed to another person at another address, by giving written notice thereof to all other Parties, any such change shall become effective ten (10) Days after such notice is received by the last of the Parties so notified.

PARTY	: _____	**PARTY**	: _____
Name	: _____	Name	: _____
Address	: _____	Address	: _____
	_____		_____
	_____		_____
Attention	: _____	Attention	: _____
Telephone	: _____	Telephone	: _____
Fax	: _____	Fax	: _____
Email	: _____	Email	: _____
Name	: _____	Name	: _____
Address	: _____	Address	: _____
	_____		_____
	_____		_____
Attention	: _____	Attention	: _____
Telephone	: _____	Telephone	: _____
Fax	: _____	Fax	: _____
Email	: _____	Email	: _____

ARTICLE 18
APPLICABLE LAW - DISPUTE RESOLUTION – WAIVER OF SOVEREIGN IMMUNITY

18.1 Applicable Law

The substantive laws of England, exclusive of any conflicts of laws principles that could require the application of any other law, shall govern this Agreement for all purposes, including the resolution of all Disputes between or among Parties.

18.2 Dispute Resolution

(A) Arbitration. Any Dispute shall be exclusively and definitively resolved through final and binding arbitration, it being the intention of the Parties that this is a broad form arbitration agreement designed to encompass all possible disputes.

(1) Rules. The arbitration shall be conducted in accordance with the following arbitration rules (as then in effect) (the ***"Rules"***):

Rules of Arbitration of the International Chamber of Commerce (ICC).

(2) Number of Arbitrators. The arbitration shall be conducted by three arbitrators, unless all parties to the Dispute agree to a sole arbitrator within thirty (30) Days after the filing of the arbitration. For greater certainty, for purposes of this Article 18.2(D), the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the Dispute.

(3) Method of Appointment of the Arbitrators. If the arbitration is to be conducted by a sole arbitrator, then the arbitrator will be jointly selected by the parties to the Dispute. If the parties to the Dispute fail to agree on the arbitrator within thirty (30) Days after the filing of the arbitration, then ICC shall appoint the arbitrator.

If the arbitration is to be conducted by three arbitrators and there are only two parties to the Dispute, then each party to the Dispute shall appoint one arbitrator within thirty (30) Days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) Days after the latter of the two arbitrators has been appointed by the parties to the Dispute. If a party to the Dispute fails to appoint its party-appointed arbitrator or if the two party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then the ICC shall appoint the remainder of the three arbitrators not yet appointed.

If the arbitration is to be conducted by three arbitrators and there are more than two parties to the Dispute, then within thirty (30) Days of the filing of the arbitration, all claimants shall jointly appoint one arbitrator and all respondents shall jointly appoint one arbitrator, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) Days after the latter of the two arbitrators has been appointed by the parties to the Dispute. If either all claimants or all respondents fail to make a joint appointment of an arbitrator or if the party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then ICC shall appoint all three arbitrators.

(4) Place of Arbitration. Unless otherwise agreed by all parties to the Dispute, the place of arbitration shall be Singapore.

(5) Language. The arbitration proceedings shall be conducted in the English language and the arbitrator(s) shall be fluent in the English language.

(6) Entry of Judgment. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.

(7) Notice. All notices required for any arbitration proceeding shall be deemed properly given if sent in accordance with Article 17.

(8) Qualifications and Conduct of the Arbitrators. All arbitrators shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any *ex parte* communications with any of the parties to the Dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator, where applicable.

(9) Interim Measures. Any party to the Dispute may apply to a court for interim measures (i) prior to the constitution of the arbitral tribunal (and thereafter as necessary to enforce the arbitral tribunal's rulings); or (ii) in the absence of the jurisdiction of the arbitral tribunal to rule on interim measures in a given jurisdiction. The Parties agree that seeking and obtaining such interim measures shall not waive the right to arbitration. The arbitrators (or in an emergency the presiding arbitrator acting alone in the event one or more of the other arbitrators is unable to be involved in a timely fashion) may grant interim measures including injunctions, attachments and conservation orders in appropriate circumstances, which measures may be immediately enforced by court order. Hearings on requests for interim measures may be held in person, by telephone, by video conference or by other means that permit the parties to the Dispute to present evidence and arguments.

(10) Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the parties to the Dispute. The costs of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal.

(11) Interest. The award shall include interest, as determined by the arbitral award, from the date of any default or other breach of this Agreement until the arbitral award is paid in full. Interest shall be awarded at the Agreed Interest Rate.

(12) Currency of Award. The arbitral award shall be made and payable in United States dollars, free of any tax or other deduction.

(13) Exemplary Damages. The Parties waive their rights to claim or recover, and the arbitral tribunal shall not award, any punitive, consequential, multiple, or other exemplary damages (whether statutory or common law) except to the extent such damages have been awarded to a third party and are subject to allocation between or among the parties to the Dispute, and as specified in Article 7.3.

(14) Waiver of Challenge to Decision or Award. To the extent permitted by law, any right to appeal or challenge any arbitral decision or award, or to

oppose enforcement of any such decision or award before a court or any governmental authority, is hereby waived by the Parties except with respect to the limited grounds for modification or non-enforcement provided by any applicable arbitration statute or treaty.

(B) Confidentiality. All negotiations, mediation, arbitration, and expert determinations relating to a Dispute (including a settlement resulting from negotiation or mediation, an arbitral award, documents exchanged or produced during a mediation or arbitration proceeding, and memorials, briefs or other documents prepared for the arbitration) are confidential and may not be disclosed by the Parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (in accordance with Article 15.2) to the extent necessary to enforce this Article 18 or any arbitration award, to enforce other rights of a Party, or as required by law; provided, however, that breach of this confidentiality provision shall not void any settlement, expert determination or arbitral award.

18.3 Expert Determination

For any decision referred to an expert under Articles 12.2 or 12.3, the Parties hereby agree that such decision shall be conducted expeditiously by an expert selected unanimously by the parties to the Dispute. The expert is not an arbitrator of the Dispute and shall not be deemed to be acting in an arbitral capacity. The Party desiring an expert determination shall give the other parties to the Dispute written notice of the request for such determination. If the parties to the Dispute are unable to agree upon an expert within ten (10) Days after receipt of the notice of request for an expert determination, then, upon the request of any of the parties to the Dispute, the International Centre for Expertise of the International Chamber of Commerce (ICC) shall appoint such expert and shall administer such expert determination through the ICC's Rules for Expertise. The expert, once appointed, shall have no *ex parte* communications with any of the parties to the Dispute concerning the expert determination or the underlying Dispute. All Parties agree to cooperate fully in the expeditious conduct of such expert determination and to provide the expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner. Before issuing his final decision, the expert shall issue a draft report and allow the parties to the Dispute to comment on it. The expert shall endeavor to resolve the Dispute within thirty (30) Days (but no later than sixty (60) Days) after his appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute. The expert's decision shall be final and binding on the parties to the Dispute unless challenged in an arbitration pursuant to Article 18.2(D) within sixty (60) Days of the date the expert's final decision is received by the parties to the Dispute and until replaced by such subsequent arbitral award. In such arbitration (i) the expert determination on the specific matter under Articles 12.2 or 12.3 shall be entitled to a rebuttable presumption of correctness; and (ii) the expert shall not (without the written consent of the parties to the Dispute) be appointed to act as an arbitrator or as adviser to the parties to the Dispute.

18.4 Waiver of Sovereign Immunity

Any Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by the laws of any applicable jurisdiction. This waiver includes immunity from (i) any expert

determination, mediation, or arbitration proceeding commenced pursuant to this Agreement; (ii) any judicial, administrative or other proceedings to aid the expert determination, mediation, or arbitration commenced pursuant to this Agreement; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from an expert determination, mediation, arbitration or any judicial or administrative proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations hereunder are of a commercial and not a governmental nature.

ARTICLE 19
ALLOCATION OF COST & PROFIT HYDROCARBONS

19.1 Allocation of Total Production

(A) The total quantity of Hydrocarbons produced and measured at the delivery point (as determined in accordance with Article 9) from each Exploitation Area and to which the Parties are collectively entitled under the Contract shall be composed of Investment Credit Hydrocarbons, Cost Hydrocarbons and Profit Hydrocarbons in accordance with the provisions of the Contract.

(B) Operator shall develop and the Operating Committee shall approve procedures for allocating such Investment Credit Hydrocarbons, Cost Hydrocarbons and Profit Hydrocarbons during each Calendar Quarter among the individual Exploitation Areas based upon the following principles.

(1) Investment Credit Hydrocarbons, Cost Hydrocarbons and Profit Hydrocarbons shall first be allocated to Exploitation Areas based on the principle that an earlier established operation shall not be enhanced or impaired in any way through the subsequent establishment of any Exploitation Area, whether the subsequently established Exploitation Areas are Exclusive Operations or Joint Operations.

(2) All allocations made pursuant to this Article 19 shall incorporate adjustments to reflect differences in value if different qualities of Hydrocarbons are produced.

19.2 Allocation of Hydrocarbons to Parties

(A) Investment Credit Hydrocarbons, Cost Hydrocarbons and Profit Hydrocarbons allocated to Exploitation Areas pursuant to Article 19.1 shall be allocated to the Parties in proportion to their Participating Interests in each such Exploitation Area.

(B) Notwithstanding anything to the contrary contained in this Article 19, and to the extent allowed under the Contract, Cost Hydrocarbons which are not specifically attributable to an Exploitation Area, if any, shall be allocated to the Parties in proportion to their respective participation in the operations which underlie any such Cost Hydrocarbons, provided, however, that the rights of a Party to Cost Hydrocarbons or Profit Hydrocarbons from an Exploitation Area to which it is a participant shall not be impaired by the rights of any other Party to recover Cost Hydrocarbons which are not specifically attributable to such Exploitation Area.

(C) From the commencement of production, X shall be allocated and entitled to take and receive the portion of Cost Hydrocarbons that would otherwise be allocated to Y ("Y Cost Hydrocarbons"), until X has received a quantity of such Y Cost Hydrocarbons equal in value to the costs incurred by X on behalf of Y under the Contract.

(D) To the extent the Parties, or Operator on behalf of the Parties, receive reimbursement or refund of taxes, levies or other charges from the Government in the form of additional Hydrocarbons, such Hydrocarbons shall be allocated to the Parties in proportion to their Participating Interests.

19.3 Use of Estimates

Initial distribution of Hydrocarbons pursuant to this Article 19 shall be based upon estimates furnished by Operator pursuant to Article 9, with adjustments for actual figures to be made in kind within forty-five (45) Days after the end of the Calendar Quarter and at any later date when adjustments must be made with the Government under the Contract.

19.4 Principles

If no allocation procedure is approved by the Operating Committee in accordance with Article 19.1, the Parties shall nonetheless be bound by the principles set forth in this Article 19 with regard to the allocation of Cost Hydrocarbons and Profit Hydrocarbons.

ARTICLE 20
GENERAL PROVISIONS

20.1 Conduct of the Parties

(A) Each Party warrants that it and its Affiliates have not made, offered, or authorized and will not make, offer, or authorize with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (*i.e.*, any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organization) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (i) the applicable laws of Indonesia (ii) the laws of the country of incorporation of such Party or such Party's ultimate parent company and of the principal place of business of such ultimate parent company; or (iii) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries. Each Party shall defend, indemnify and hold the other Parties harmless from and against any and all claims, damages, losses, penalties, costs and expenses arising from or related to, any breach by such first Party of such warranty. Such indemnity obligation shall survive termination or expiration of this Agreement. Each Party shall in good time (i) respond in reasonable detail to any notice from any other Party reasonably connected with

the above-stated warranty; and (ii) furnish applicable documentary support for such response upon request from such other Party.

(B) Each Party agrees to (i) maintain adequate internal controls; (ii) properly record and report all transactions; and (iii) comply with the laws applicable to it. Each Party must rely on the other Parties' system of internal controls, and on the adequacy of full disclosure of the facts, and of financial and other data regarding the Joint Operations undertaken under this Agreement. No Party is in any way authorized to take any action on behalf of another Party that would result in an inadequate or inaccurate recording and reporting of assets, liabilities or any other transaction, or which would put such Party in violation of its obligations under the laws applicable to the operations under this Agreement.

(C) Notwithstanding anything in this Agreement to the contrary, no provision shall be interpreted or applied so as to require any Party to do, or refrain from doing, anything which would constitute a violation of, or result in a loss of economic benefit under, any law or regulation applicable to such Party.

20.2 Conflicts of Interest

(A) Operator undertakes that it shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Parties in dealing with suppliers, customers and all other organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement.

(B) The provisions of the preceding paragraph shall not apply to: (1) Operator's performance which is in accordance with the local preference laws or policies of the Government; or (2) Operator's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with the terms of this Agreement.

(C) Unless otherwise agreed, the Parties and their Affiliates are free to engage or invest (directly or indirectly) in an unlimited number of activities or businesses, any one or more of which may be related to or in competition with the business activities contemplated under this Agreement, without having or incurring any obligation to offer any interest in such business activities to any Party.

(D) A Non-Operator acting pursuant to this Agreement shall comply with the provisions of this Article as if it were the Operator.

(E) If any information comes to the attention of any Party which indicates any departure from conduct consistent with the standards set forth in this Article, such Party shall immediately notify the other Parties.

20.3 Public Announcements

(A) Operator shall be responsible for the preparation and release of all public announcements and statements regarding this Agreement or the Joint Operations; provided that no public announcement or statement shall be issued or made unless, prior to its release, all the Parties have been furnished with a

copy of such statement or announcement and the approval of one or more Parties including Operator holding participating interests of seventy percent (70%) or more has been obtained. Any such Notice shall be provided a minimum of seven (7) Days prior to its release. Where a public announcement or statement becomes necessary or desirable because of danger to or loss of life, damage to property or pollution as a result of activities arising under this Agreement, Operator is authorized to issue and make such announcement or statement without prior approval of the Parties, but shall promptly furnish all the Parties with a copy of such announcement or statement.

(B) If a Party wishes to issue or make any public announcement or statement regarding this Agreement or the Joint Operations, it shall not do so unless, prior to the release of the public announcement or statement, such Party furnishes all the Parties with a copy of such announcement or statement, and obtains the approval of one or more Parties including Operator holding participating interests of seventy percent (70%) or more; and provided that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement or statement if it is necessary to do so in order to comply with the applicable laws, rules or regulations of any government, legal proceedings or stock exchange having jurisdiction over such Party or its Affiliates as set forth in Article 15.2.

20.4 Successors and Assigns

Subject to the limitations on Transfer contained in Article 12, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

20.5 Waiver

No waiver by any Party of any one or more defaults by another Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults by the same Party, whether of a like or of a different character. Except as expressly provided in this Agreement no Party shall be deemed to have waived, released or modified any of its rights under this Agreement unless such Party has expressly stated, in writing, that it does waive, release or modify such right.

20.6 No Third Party Beneficiaries

Except as provided under Article 4.6 (B), the interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract.

20.7 Joint Preparation

Each provision of this Agreement shall be construed as though all Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

20.8 Severance of Invalid Provisions

If and for so long as any provision of this Agreement shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only so far as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the balance of this Agreement.

20.9 Modifications

Except as is provided in Articles 11.2(B) and 20.8, there shall be no modification of this Agreement or the Contract except by written consent of all Parties.

20.10 Interpretation

(A) Headings. The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular Article.

(B) Singular and Plural. Reference to the singular includes a reference to the plural and vice versa.

(C) Gender. Reference to any gender includes a reference to all other genders.

(D) Article. Unless otherwise provided, reference to any Article or an Exhibit means an Article or Exhibit of this Agreement.

(E) Include. "***Include***" and "***including***" shall mean include or including without limiting the generality of the description preceding such term and are used in an illustrative sense and not a limiting sense.

20.11 Counterpart Execution

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes; provided that no Party shall be bound to this Agreement unless and until all Parties have executed a counterpart. For purposes of assembling all counterparts into one document, Operator is authorized to detach the signature page from one or more counterparts and, after signature thereof by the respective Party, attach each signed signature page to a counterpart.

20.12 Entirety

With respect to the subject matter contained herein, this Agreement (i) is the entire agreement of the Parties; and (ii) supersedes all prior understandings and negotiations of the Parties.

IN WITNESS of their agreement each Party has caused its duly authorized representative to sign this instrument on the date indicated below such representative's signature.

_____	_____
(Company Name)	(Company Name)
By : _____	By : _____
_____	_____
(Print or type name)	(Print or type name)
Title : _____	Title : _____
Date : _____	Date : _____
_____	_____
(Company Name)	(Company Name)
By : _____	By : _____
_____	_____
(Print or type name)	(Print or type name)
Title : _____	Title : _____
Date : _____	Date : _____