AKIBAT HUKUM PEMUTUSAN KONTRAK KERJASAMA PEMASANGAN FIRE ALARM SYSTEM SECARA SEPIHAK (PADA PERUSAHAAN SECURITY SYSTEM)

TESIS

Diajukan Sebagai Salah Satu Syarat
Guna Memperoleh Gelar Magister Hukum (M.H.)

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

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ABSTRAK

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Judul : Akibat Hukum Pemutusan Kontrak Kerjasama Pemasangan Fire Alarm System Secara Sepihak (Pada Perusahaan Security System)

Tesis ini membahas tentang pemutusan kontrak kerjasama pemasangan fire alarm system yang dilakukan secara sepihak oleh Pemilik Proyek terhadap Kontraktor. Permasalahan dari penelitian ini apakah pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek sudah sesuai dengan prosedur pemutusan yang diatur di dalam kontrak, yang kedua pemutusan kontrak secara sepihak merupakan fakta wanprestasi yang dilakukan oleh Kontraktor sehingga layak dikenakan sanksi pemutusan kontrak.
Penelitian ini adalah penelitian hukum normatif yang menitikberatkan pada penelitian kepustakaan.
Hasil penelitian mendapat kesimpulan bahwa pemutusan kontrak yang dilakukan oleh Pemilik Proyek tidak sesuai dengan prosedur yang terdapat di dalam kontrak dan pemutusan tersebut memang merupakan fakta wanprestasi yang dilakukan oleh kontraktor sehingga memang kontrak tesebut layak untuk diputuskan.

Kata Kunci : Pemutusan Kontrak , Wanprestasi

ABSTRACT

Name : Elly Rahmawaty Anggraini
Study Program : Legal Study
Title : Legal Consequences Disconnection Of Cooperation contract Installation Of Fire Alarm System Unilaterally (At Company Of Security System)

This thesis study the disconnection of cooperation contract installation of fire alarm system which done unilaterally by Owner Of Project of to contractor. Problems from this research whether disconnection of contract unilaterally done by Owner Of Project of have as according to procedure disconnection of which arranged in contract, secondly disconnection of contract unilaterally is default fact done by Contractor so that competent sanctioned disconnection of contract.
This research is research of law normative which at research of bibliography.
Research result get conclusion that disconnection of contract done by Owner Of Project of unmatched to procedure which there are in contract and disconnection of the truly is default fact done by contractor so that truly contracting is competent to be decided.

Keyword : Disconnection Of contract , Default

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BAB I
PENDAHULUAN

1.1 LATAR BELAKANG MASALAH

Didalam kehidupan masyarakat sehari-hari terlihat adanya lalu lintas hubungan antara orang yang satu dengan orang yang lainnya, dimana hubungan tersebut mempunyai kepentingan yang bertimbal balik satu sama lain dan melahirkan hak dan kewajiban antara yang satu dengan yang lainnya. Hubungan tersebut merupakan hubungan hukum, dimana masing-masing individu dilindungi oleh ketentuan hukum atau ketentuan undang-undang.

Pada saat ini di masa era globalisasi, zaman dimana orang semakin tidak tergantung pada jarak, tempat dan juga pada perbedaan waktu. Sejak orang mulai melakukan suatu kegiatan ekonomi dengan melakukan perdagangan atau barter, banyak hal yang telah berkembang dan terjadi transaksi antar manusia atau antar badan hukum, sehingga kegiatan perniagaan berkembang seperti apa yang kita alami sekarang. Warga masyarakat semakin sering terlibat dalam segala bentuk kegiatan perekonomian. Dan oleh sebab itu diperlukan adanya suatu penyusunan kontrak bisnis, yang dapat menyampaikan keinginan atau aspirasi dari para pihak untuk mencapai tujuannya dalam bertransaksi tersebut.

Pihak-pihak yang membuat suatu kontrak bisnis, di dalam kontrak tersebut timbul hubungan hukum yang melahirkan hak dan kewajiban bagi para pihak yang membuat kontrak tersebut, sehingga dapat dikatakan kontrak tersebut menjadi suatu peraturan yang mengikat bagi kedua pihak tersebut. Pernyataan diantara para pihak yang membuat kontrak tersebut, merupakan sumber untuk menetapkan hak dan kewajiban yang bertimbal balik diantara para pihak tersebut. Pernyataan ini akan melahirkan suatu kesepakatan bagi keduanya.

Suatu kontrak pada dasarnya adalah suatu dokumen tertulis yang memuat keinginan-keinginan para pihak untuk mencapai tujuan-tujuan komersialnya, dan bagaimana pihaknya diuntungkan, dilindungi, atau dibatasi tanggung jawabnya dalam mencapai tujuan-tujuan tersebut. Terkadang masih ada pandangan bahwa kontrak atau perjanjian tidak selalu dianggap sebagai dokumen hukum. Dalam

beberapa hal, masih banyak yang beranggapan kontrak atau perjanjian adalah hanya suatu symbol kerjasama. Oleh karena itu walaupun menandatangani kontrak atau perjanjian yang terperinci, banyak yang tidak memperhatikan isinya, sampai suatu permasalahan terjadi.[1]

Kontrak atau perjanjian itu tentunya dibuat bukan hanya sebagai alat pelengkap dari suatu transaksi bisnis akan tetapi sebagai alat pengikat bagi para pihak yang melakukan transaksi bisnis tersebut. Dimana kontrak atau perjanjian tersebut menjadi undang-undang bagi para pihak yang membuatnya, "Semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya".[2] Dengan menekankan pada perkataan semua, maka pasal tersebut seolah-olah berisikan suatu pernyataan kepada masyarakat bahwa kita, diperbolehkan membuat perjanjian yang berupa dan berisi apa saja (atau tentang apa saja) dan perjanjian itu akan mengikat mereka yang membuatnya seperti suatu undang-undang.[3]

Akan tetapi, munculnya banyak kontrak baku (standard contract) juga menyebabkan banyak terjadi pembatasan terhadap asas kebebasan berkontrak, baik kontrak baku yang dibuat oleh pemerintah maupun kontrak baku yang dibuat antara sesama kalangan bisnis[4]. Sehingga terkadang kontrak atau perjanjian tersebut menjadi tidak berimbang dan tidak ada win-win solution bagi para pihak yang terlibat di dalamnya.

Pengertian kontrak bila kita lihat dalam Black Law Dictionary adalah :

" Contract : An agreement between two or more persons which creates an obligation to do or not to do a peculiar thing".[5]

Contract diartikan sebagai suatu perjanjian antara dua orang atau lebih yang menciptakan kewajiban untuk berbuat atau tidak berbuat sesuatu hal yang khusus.

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[1] Prof. Erman Rajagukguk, SH., LLM., Phd, "Hukum Kontrak Internasional Dalam Praktek : Studi Kasus Perusahaan Joint Venture di Indonesia" (Bahan Kuliah Kemahiran Membuat Perjanjian, Universitas Kristen Indonesia, Jakarta 6 Desember 1997)

[2] Pasal 1338 ayat (1) Kitab Undang-undang Hukum Perdata

[3] Prof. Subekti, SH., Hukum Perjanjian, Cetakan VI, PT. Intermasa, Jakarta 1979, hal 13-14

[4] Munir Fuady, Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis), PT. Citra Aditya Bakti, Bandung 2007, hal 51-52

[5] Herry Campell Black, M.A., Black's Law Dictionary, sixth edition. (west group 1998)

Sedangkan pasal 1313 Kitab Undang-Undang Hukum Perdata menyatakan suatu persetujuan adalah perbuatan dimana satu orang atau lebih mengikatkan dirinya terhadap orang lain atau lebih.

Dari pengertian diatas dapat kita simpulkan bahwa kontrak dibuat oleh dua orang atau lebih yang dapat menciptakan suatu kewajiban antara para pihak. Dimana dalam suatu kontrak para pihak harus melaksanakan kewajiban-kewajiban mereka yang timbul dari kontrak tersebut dan juga akan memperoleh hak-hak yang juga timbul dari kontrak tersebut secara timbal balik.

Sebagai contoh kita lihat suatu Kontrak Kerjasama Pemasangan Fire Alarm System. Dimana di dalam kontrak ini dasar dari hubungan hukum para pihak yang terlibat dalam pelaksanaan pekerjaan pemasangan alarm system ini adalah perikatan. Perikatan yang dibuat berdasarkan ketentuan-ketentuan yang ada dalam Buku ke III Kitab Undang-Undang Hukum Perdata. Dalam kontrak kerjasama ini kita melakukan kerjasama pemasangan fire alarm system untuk Mall A yang batas progressnya harus selesai pada bulan September 2006 dan Mall B bulan Januari 2007. Di dalam kurun waktu tersebut kita harus menyelesaikan pemasangan fire alarm system di semua titik yang telah ditentukan di dalam kontrak. Pembayaran yang dilakukan pun tergantung sejauh mana penyelesaian pemasangan tersebut terselesaikan. Apabila pekerjaan pemasangan fire alarm system yang dilakukan melebihi tenggang waktu yang ditentukan, maka resiko pembayaran denda akan keterlambatan pekerjaan akan dikenakan sebesar 1 permil perhari keterlambatan dengan batas maksimum 10% dari nilai kontrak. Bahkan yang lebih buruk lagi terjadinya pemutusan kontrak secara sepihak sebelum kontrak tersebut berakhir.

Tentunya baik Pemilik Proyek maupun Kontraktor tidak mengharapkan menderita kerugian dalam pelaksanaan proyek ini. Dalam Kontrak kerjasama pemasangan fire alarm system ini, klausul pemutusan kontrak diatur apabila terjadi wanprestasi dalam pelaksanaan pekerjaan. Sebelum pemutusan kontrak dilakukan, maka pemilik proyek harus memberikan satu kali peringatan terlebih dahulu, dengan jangka waktu 14 (empat belas) hari. Apabila setelah diberikan satu kali peringatan pihak yang melakukan wanprestasi belum juga memperlihatkan itikad baik untuk memperbaiki kesalahan, maka Pemilik Proyek berhak untuk

melakukan pemutusan kontrak secara sepihak. Hal ini tentunya perlu kita cermati, apakah prosedur pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek telah sesuai dengan prosedur yang terdapat didalam kontrak? Pemutusan kontrak ini dapat terjadi sebagai akibat dari kesalahan yang dilakukan oleh Kontraktor karena tidak terpenuhinya Progress pekerjaan yang disepakati. Atau mungkin kesalahan juga dapat datang dari Pemilik Proyek. Dimana Pemilik Proyek melakukan wanprestasi dengan tidak melakukan pembayaran sesuai kesepakatan yang berlaku. Maka dengan ini, pihak Kontraktor pun dapat melakukan pemutusan kontrak, apabila Pemilik Proyek melakukan kesalahan.

Mengingat permasalahan pemutusan kontrak secara sepihak ini menimbulkan permasalahan yang sangat rumit dan dapat menimbulkan sengketa yang berkepanjangan antara para pihak karena salah satu pihak tentunya tidak akan dapat menerima tindakan yang dilakukan oleh pihak lainnya yang melakukan pemutusan kontrak secara sepihak. Masih terdapat pemikiran yang terjadi di dalam pelaksanaan kontrak itu sendiri, bahwa apabila terjadi pemutusan kontrak secara sepihak, maka pihak yang memutuskan kontrak tersebut tidak perlu lagi memenuhi kewajibannya, hal ini merupakan perbuatan yang sangat merugikan pihak lainnya. Karena seyogyanya walaupun terjadi pemutusan kontrak, tetaplah kewajiban para pihak tersebut harus diselesaikan.

Dari pertanyaan-pertanyaan yang timbul diatas jelas sekali terlihat bahwa masih banyak kontrak yang dibuat tidak berimbang, tidak win-win solution bagi para pihak atau bahkan merugikan salah satu pihak. Untuk itu penulis sangat tertarik untuk membahas pemutusan kontrak yang dilakukan secara sepihak dalam suatu perjanjian kerjasama.

1.2 RUMUSAN MASALAH

Kompleksitas dari suatu kontrak membuat para pihak yang terikat didalamnya haruslah menyadari dan mengerti isi keseluruhan dari kontrak tersebut secara detail. Berdasarkan hal tersebut para pihak haruslah membuat kontrak dengan terperinci, yang memuat hak dan kewajiban secara jelas bagi masing-masing pihak. Namun dalam pelaksanaannya terjadi hal-hal diluar kuasa para pihak, yang mana dapat mempengaruhi pelaksanaan kontrak tersebut serta

diperlukan pula penyelesaian dari permasalahan yang timbul akibat pelaksanaan kontrak tersebut.

Penulis akan menguraikan dalam tesis ini mengenai pemutusan kontrak yang dilakukan secara sepihak. Dan apakah pemutusan kontrak secara sepihak tersebut merupakan fakta dari wanprestasi yang dilakukan oleh salah satu pihak, sehingga kontrak tersebut memang layak untuk diputuskan.

Berdasarkan apa yang diuraikan diatas, maka beberapa pokok permasalahan yang akan di bahas adalah :

1. Apakah prosedur pemutusan kontrak yang dilakukan secara sepihak sesuai dengan prosedur di dalam kontrak ?
2. Apakah pemutusan kontrak secara sepihak yang dilakukan oleh pemilik proyek merupakan suatu fakta dari perbuatan wanprestasi yang dilakukan oleh Kontraktor sehingga kontrak tersebut layak untuk diputuskan?

1.3 TUJUAN DAN KEGUNAAN PENELITIAN

Penelitian ini diharapkan dapat memberikan kegunaan teoritis akademis dan keperluan praktis. Dari sudut teoritis akademis penelitian ini bertujuan untuk :

1. Mengetahui apakah proses pemutusan kontrak secara sepihak yang dilakukan oleh pemilik proyek sesuai dengan prosedur yang diatur dalam kontrak.
2. Apakah pemutusan kontrak secara sepihak merupakan fakta dari perbuatan wanprestasi yang dilakukan oleh kontraktor sehingga kontrak tersebut memang layak untuk diputuskan?

Berdasarkan pada hasil penelitian yang diperoleh tersebut diatas, penelitian ini juga diharapkan dapat :

1. Memberikan gambaran umum mengenai sah nya pemutusan kontrak secara sepihak.
2. Memberikan gambaran yang jelas apakah dasar yang dijadikan alasan untuk melakukan pemutusan kontrak secara sepihak karena kontraktor melakukan wanprestasi dari pelaksanaan kontrak sehingga layak diputuskan.

Sehingga dengan demikian diharapkan dari hasil penelitian ini dapat memberikan kontribusi pengembangan ilmu pengetahuan khususnya dalam bidang hukum kontrak.

Penulis juga berharap melalui tulisan ini dapat berguna sebagai masukan bagi para pihak dalam membuat suatu kontrak kerjasama untuk mengatasi bagaimana penyelesaian permasalahan yang terjadi apabila terjadi pemutusan kontrak secara sepihak.

1.4 RUANG LINGKUP PENELITIAN

Seperti telah dijelaskan dalam rumusan masalah, penelitian ini memfokuskan diri pada permasalahan mengenai kontrak, khususnya mengenai pemutusan kontrak secara sepihak.

Untuk menjawab hal tersebut, maka akan dibahas terlebih dahulu,hal-hal yang berhubungan dengan kontrak secara umum, sah tidaknya pemutusan kontrak secara sepihak apabila salah satu pihak melakukan kelalaian yang telah melampaui batas waktu yang telah ditentukan.

Setelah itu penelitian difokuskan apakah pemutusan kontrak secara sepihak tersebut merupakan wanprestasi sehingga sesuai dengan ketentuan yang terdapat di dalam kontrak, kontrak tersebut dapat diputuskan secara sepihak.
Sehingga dengan terjawabnya hal-hal tersebut diatas kita akan mendapatkan jawaban atas pokok permasalahan apakah pemutusan kontrak secara sepihak dapat dilakukan apabila salah satu pihak melakukan kelalaian yang mana kelalaian tersebut melewai batas waktu yang ditetapkan di dalam kontrak.

1.5 METODE PENELITIAN

Jenis penelitian ini adalah yuridis normatif. Sebagai penelitian normatif, penelitian ini menitik beratkan pada studi kepustakaan yang berdasarkan pada data sekunder yang meliputi :[6]

a. Bahan hukum primer yaitu bahan hukum yang mengikat berupa peraturan perundang-undangan yang berhubungan dengan kontrak (Buku ke III Kitab Undang-Undang Hukum Perdata)

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[6] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Jakarta: PT. Raja Grafindo Persada, 1994, hal. 52.

b. Bahan hukum sekunder yaitu bahan yang memberikan penjelasan tentang bahan hukum primer antara lain berupa tulisan atau pendapat para ahli yang dimuat dalam buku-buku, majalah maupun buletin dan hasil penelitian yang ada hubungannya dengan permasalahan dalam penelitian ini.

c. Bahan hukum tersier berupa referensi lainnya yang berkaitan dengan topik penelitian yang memberikan informasi lebih lanjut mengenai bahan hukum primer dan bahan hukum sekunder seperti ensiklopedi, kamus dan surat kabar.[7]

Dalam mengumpulkan data yang digunakan untuk menyusun penulisan ini, penulis melakukan studi kepustakaan dengan membaca tulisan-tulisan yang ada hubungannya dengan topik yang akan dibahas yang terdapat dalam peraturan perundang-undangan, buku, surat kabar, majalah, makalah hasil seminar, internet, kamus dan ensiklopedia. Data-data yang diperoleh kemudian diolah melalui analisis dan konstruksi data dengan maksud memberikan gambaran yang komprehensif mengenai tema penelitian ini. Analisis yang digunakan dalam penelitian ini adalah secara kualitatif. Hal ini digunakan untuk memperoleh deskripsi mengenai obyek yang diteliti. Sehingga mendapatkan jawaban sesuai dengan pokok permasalahan dalam penelitian ini secara komprehensif holistik dan mendalam.

Walaupun titik berat penelitian ini adalah penelitian kepustakaan yang akan lebih banyak mengkaji data sekunder, namun untuk mendukung kevalidatan data dan kajian data sekunder tersebut penulis juga melakukan penelitian lapangan yang mana data-data yang penulis peroleh akan digunakan untuk mendukung hasil analisa penyelesaian permasalahan dalam penulisan tesis ini.

1.6 KERANGKA TEORI DAN KONSEPSIONAL

Teori adalah serangkaian praposisi atau keterangan yang saling berhubungan dan tersusun dalam sistem deduksi, yang mengemukakan penjelasan atas suatu gejala. Sedikitnya terdapat tiga unsur dalam suatu teori. Pertama, penjelasan tentang hubungan antara berbagai unsur dalam suatu teori. Kedua, teori

[7] Bambang Sunggono, *Metode Penelitian Hukum*, Jakarta : Rajawali Pers 1998, hal. 117.

menganut sistem deduktif, yaitu sesuatu yang bertolak dari suatu yang umum dan abstrak menuju suatu yang khusus dan nyata. Aspek kunci yang ketiga adalah bahwa teori memberikan penjelasan atas gejala yang dikemukakannya. Fungsi teori dalam suatu penelitian adalah untuk memberikan pengarahan kepada penelitian yang akan dilakukan.[8]

Dari keterangan di atas maka penulis akan menggunakan terori hukum untuk membahas masalah mengenai kontrak, khususnya pemutusan kontrak yang dlakukan secara sepihak. Teori hukum ini mengacu kepada buku ke III Kitab Undang-Undang Hukum Perdata. Dimana di dalam suatu kontrak kerjasama pemasangan fire alarm system, jangka waktu pekerjaan dapat mempengaruhi terus atau terputusnya suatu kontrak. Apabila salah satu pihak memutuskan untuk mengakhiri secara sepihak kontrak tersebut apakah perbuatannya tersebut merupakan fakta perbuatan yang dapat dibenarkan karena salah satu pihak wanprestasi.[9]

1.7 SISTEMATIKA LAPORAN PENELITIAN

Penelitian ini disusun dengan sistematika sebagai berikut:

BAB I PENDAHULUAN

Terdiri dari latar belakang masalah, permasalahan, tujuan dan kegunaan penelitian, ruang lingkup penelitian, metode penelitian, kerangka teoritis dan konsepsional, serta sistematika laporan penelitian.

BAB II PENGERTIAN KONTRAK

Dalam bab ini akan dibahas apa pengertian dari perjanjian, asas-asas yang terdapat dalam perjanjian, dan penafsiran kontrak.

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[8] Sutan Remy Sjahdeni, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*, Jakarta Penerbit IBI, 1993. hal. 8

[9] Suharnoko, SH., MLI., Hukum Perjanjian teori dan analisa kasus, Kencana Predana Media Group, Jakarta 2004, hal 119

BAB III WANPRESTASI

Dalam bab ini akan dibahas mengenai apa yang dimaksud dengan pengertian wanprestasi, sanksi dari wanprestasi.

BAB IV HASIL PENELITIAN DAN ANALISA

Dalam bab ini membahas tentang pemutusan kontrak kerjasama pemasangan fire alarm system secara sepihak , kontrak kerjasama pemasangan fire alarm system yang dibatalkan secara sepihak sebagai wanprestasi atau perbuatan melawan hukum.

BAB V PENUTUP

Merupakan bab penutup yang berisi kesimpulan dari hasil penelitian dan rekomendasi saran-saran penulis yang dianggap perlu.

BAB II
SYARAT-SYARAT SAHNYA SUATU KONTRAK

2.1 PENGERTIAN PERJANJIAN

Di dalam kehidupan masyarakat sejak dahulu kita telah mengenal adanya tukar menukar barang dan jasa untuk memenuhi kebutuhan hidup sehari-hari. Dari pelaksanaan tukar menukar barang dan jasa tersebut, maka telah timbul adanya perjanjian, dimana masyarakat tersebut saling mengikatkan diri mereka dan saling memenuhi hak dan kewajiban mereka.

Begitu juga kehidupan masyarakat modern saat ini,membuat suatu perjanjian atau kontrak kerjasama sudah merupakan suatu hal yang biasa , karena dalam kehidupan ini, individu yang satu sangat bergantung kepada individu yang lainnya, saling mengadakan kerjasama, membuat perjanjian, saling mengikatkan diri untuk memenuhi hak dan kewajibannya. Oleh karena itu banyak sekali macam-macam perjanjian seperti halnya yang dikemukakan oleh para sarjana hukum bahwa perjanjian dapat dibuat 1001 macam perjanjian.

Perlu terlebih dahulu dijelaskan apakah pengertian dari perjanjian ini. Menurut Pasal 1313 Kitab Undang-Undang Hukum Perdata Pengertian Perjanjan adalah: "Suatu perbuatan dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang atau lebih".

Dari pengertian ini para sarjana hukum berpendapat bahwa pengertian perjanjian ini kurang lengkap dan bahkan dikatakan terlalu luas sehingga banyak mengandung kelemahan-kelamahan. Pengertian tersebut kurang lengkap karena hanya menyebutkan perjanjian secara sepihak saja, sedangkan perjanjian itu mengikat bagi kedua belah yang saling berjanji,untuk mendapatkan suatu pengikatan perjanjian yang sah dalam hukum.

Tetapi kiranya pengertian perjanjian yang dimaksud dalam pasal 1313 KUH Perdata dimaksudkan perbuatan hukum yang mempunyai akibat hukum terhadap pihak-pihak yang mengadakan perjanjian itu, dan juga kiranya dapat melindungi para pihak pembuat perjanjian tersebut secara benar dan sesuai dengan hukum yang berlaku sehingga para pihak yang terkait merasa aman dan tidak ada yang dirugikan.

Menurut K.R.M.T. Tirtodiningrat, pengertian perjanjian adalah sebagai berikut :

" Perjanjian adalah sebuah perbuatan hukum berdasarkan kata sepakat di antara dua orang atau lebih untuk menimbulkan akibat-akibat hukum yang diperkenankan oleh undang-undang".[10]

Pendapat lain dikemukakan oleh R. Soetojo Prawiro Hamidjojo menyatakan :

"Perjanjian adalah semua persetujuan, yang menimbulkan akibat hukum atau yang mengharapkan suatu akibat hukum, tanpa menghiraukan apakah akibat hukum tersebut merupakan terlaksananya perikatan atau tidak".[11]

Sedangkan R. Wirjono Prodjodikoro mengatakan : *"Perjanjian adalah suatu perhubungan hukum mengenai harta benda kekayaan antara dua pihak, dalam mana satu pihak berjanji atau dianggap berjanji untuk melakukan suatu hal atau untuk tidak melakukan suatu hal, sedangkan pihak lain berhak untuk menuntut pelaksanaan janji itu".*[12]

Pengertian lain dikemukakan oleh Abdul Kadir Muhamad, yang mana memberikan batasan bahwa perjanjian adalah suatu persetujuan dengan mana dua orang atau lebih saling mengikatkan diri untk melaksanakan suatu hal dalam lapangan harta kekayaan.[13]

Lain pula yang dikemukan oleh R. Subekti yang mana beliau memberikan perjanjian sebagai berikut :

"suatu peristiwa dimana seseorang berjanji kepada seorang lain atau dimana dua orang itu saling berjanji untuk melaksanakan sesuatu hal".[14]

Sedangkan menurut teori klasik yang dimaksud dengan perjanjian adalah suatu perbuatan hukum yang bersisi dua yang didasarkan atas kesepakatan untuk menimbulkan akibat hukum. Adapun yang dimaksud dengan satu perbuatan hukum yang bersisi dua adalah satu perbuatan hukum yang mencakup penawaran dari pihak yang satu dan permintaan dari pihak yang lain. Namun pada perkembangan selanjutnya pandangan bahwa perjanjian merupakan satu perbuatan yang bersisi dua dirasakan kurang tepat berdasarkan alasan bahwa dari

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[10] K.R.M.T. Tirtodiningrat. Ikhtisar Hukum Perdata dan Dagang. PT. Pembangunan , Jakarta hal 83.

[11] R. Soetodjo Prawiro Hamidjojo, Hukum Perikatan , PT. Bina Ilmu, Surabaya , hal 85

[12] R. Wirjono Prodjodikoro, Asas – Asas Hukum Perjanjian, Sumur Bandung, Bandung 1981, hal. 11

[13] Abdul Kadir Muhamad, Hukum Perikatan, Alumni, Bandung, 1982, Hal 78

[14] Prof R. Subekti, SH, Aneka Perjanjian, Alumni Bandung 1979, Hal 1

pihak yang satu ada penawaran dan dari pihak yang lain ada penerimaan maka ada dua perbuatan hukum yang masing-masing bersisi satu. Dengan demikian perjanjian bukan merupakan satu perbuatan hukum melainkan merupakan hubungan hukum antara dua orang yang bersepakat untuk menimbulkan akibat hukum.[15]

Dari semua definisi diatas untuk terbentuknya perjajian harus ada kehendak yang mencapai kata sepakat atau consensus diantara pihak-pihak yang memberikan janji, dimana satu pihak menyatakan kata setuju, dilain pihak menyatakan kata setuju untuk melaksanakan perjanjian itu. Tanpa adanya kata sepakat maka tidak mungkin ada perjanjian. Kata sepakat dapat diberikan secara lisan, tertulis, atau bahkan dapat diberikan secara diam-diam atau dapat dengan bahasa isyarat. Dalam perjanjian itu perlu diwujudkan dimana pihak-pihak yang mengadakan perjanjian itu terlebih dahulu saling berjanji terhadap pihak lainnya, sebelumnya didahului dengan pernyataan kehendak antara kedua belah pihak itu, artinya menyangkut pokok perjanjiannya. Disamping itu pula harus dinyatakan adanya suatu perjanjian tertentu, seperti adanya akibat hukum dalam perjanjian misalnya bertujuan untuk mengikat terhadap masing-masing pihak secara bertimbal balik sesuai dengan hukum. Dengan demikian dapat disimpulkan unsur-unsur perjanjian sebagai berikut :

1. Adanya dua pihak atau lebih
2. Adanya kata sepakat diantara para pihak
3. Adanya akibat hukum yang ditimbulkan berupa hak dan kewajiban

Perjanjian yang dibuat oleh dua atau lebih menimbulkan perikatan diantara orang-orang tersebut. Definisi dari perikatan secara spesifik tidak ditemukan di dalam KUH Perdata. Namun dapat didefinisikan bahwa perikatan adalah suatu hubungan hukum antara dua pihak berdasarkan mana pihak yang satu berhak menuntut sesuatu dari pihak yang lain dan pihak yang lain berkewajiban untuk memenuhi kewajiban itu. Pihak yang berhak menuntut sesuatu dinamakan kreditur atau si berpiutang, sedang pihak yang berkewajiban memenuhi tuntutan dinamakan debitur atau si berhutang. Jadi jelas bahwa perjanjian merupakan sumber perikatan. Suatu perjanjian yang diadakan oleh para pihak haruslah memenuhi

[15] Sudikno Mertokusumo, Penemuan Hukum – Sebuah Penghantar Liberty Yogyakarta 2003, Hal 116

syarat-syarat, mengenai syarat sahnya perjanjian dapat kita temukan dalam pasal 1320 KUH Perdata, yang menentukan bahwa, untuk sahnya persetujuan-persetujuan diperlukan empat syarat yaitu :

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

Untuk mengetahui lebih jauh dari keempat persyaratan tersebut, maka akan diuraikan satu persatu seperti dibawah ini :

Sepakat mereka yang mengikatkan dirinya dalam suatu perjanjian. Sehingga apabila telah tercapai adanya kata sepakat mengenai hal-hal pokok dari yang diperjanjikan itu, akan sah tetapi sebaiknya jika terdapat kekhilapan, berarti tidak ada kesepakatan, dengan demikian mengakibatkan batalnya perjanjian yang telah diadakan antara para pihak yang bersangkutan.

Kecakapan untuk membuat suatu perikatan. Dalam hal ini mengandung arti bahwa yang tidak cakap membuat perjanjian akan berakibat batalnya perjanjian, siapa-siapa sajakah yang termasuk katagori orang-orang yang tidak cakap, dalam pasal 1330 KUH Perdata menentukan bahwa :

"Tak cakap untuk membuat persetujuan-persetujuan adalah :

1. Orang-orang yang belum dewasa
2. Mereka yang ditaruh di bawah pengampunan
3. Orang-orang perempuan, dalam hal-hal yang ditentukan oleh undang-undang telah melarangnya membuat persetujuan-persetujuan tertentu

Pasal 1330 ayat (1) KUH Perdata menjelaskan yang tergolong orang-orang yang belum dewasa adalah mereka yang belum mencapai umur 21 tahun dan tidak terlebih dahulu telah kawin. Apabila perkawinan itu dibubarkan sebelum umur mereka genap 21 tahun, maka mereka tidak kembali lagi dalam kedudukan belum dewasa. Sedangkan yang dimaksud dengan mereka yang ditaruh dibawah pengampuan Pasal 433 KUH Perdata menjelaskan setiap orang dewasa yang selalu berada dalam keadaan ini, sakit otak, atau mata gelap, walaupun kadang-kadang ia cakap mempergunakan pikirannya. Disamping itu orang-orang dewasa yang mempunyai sikap pemboros dapat juga di taruh di bawah pengampuan.

Mengenai ketidak cakapan seorang wanita bersuami, dengan adanya Surat Edaran Mahkamah Agung No. 3 tahun 1963, yang ditujukan kepada Ketua Pengadilan Negeri dan Pengadilan Tinggi di seluruh Indonesia, maka status wanita bersuami diangkat dan dipersamakan dengan pria. Sehingga dalam hal seorang wanita bersuami akan melakukan suatu perbuatan hukum dan menghadap ke muka pengadilan, ia tidak perlu lagi minta ijin dan bantuan dari suaminya.

Selain SEMA No. 3/1963, Pasal 31 ayat (1) dan (2) Undang-Undang No. 1 tahun 1974, juga mengangkat status wanita bersuami, yang menentukan bahwa :

"Hak dan kedudukan isteri adalah seimbang dengan hak dan kedudukan suami dalam kehidupan berumah tangga dan pergaulan hidup bersama dalam masyarakat"

"masing-masing pihak berhak untuk melakukan perbuatan hukum"

Suatu hal tertentu, yang dimaksudkan dalam persyaratan ketiga ini adalah obyek dari pada perjanjian, dimana obyek perjanjian haruslah merupakan barang-barang yang data diperdagangkan atau mempunyai arti ekonomis. Sedangkan barang-barang yang dipergunakan untuk kepentingan umum tidak dapat dijadikan obyek suatu perjanjian. Dan tidak menjadi suatu halangan terhadap pokok perjanjian itu walaupun barangnya sudah ada atau belum, yang penting barangnya dikemudian hari dapat ditentukan, hal ini sesuai dengan Pasal 1333 KUH Perdata dan Pasal 1334 ayat (1) KUH Perdata yang menentukan bahwa:

"suatu persetujuan harus mempunyai pokok suatu barang yang paling sedikit ditentukan jenisnya. Tidaklah menjadi halangan bahwa jumlah barang tidak tentu, asal saja jumlah itu terkemudian hari dapat menjadi pokok suatu perjanjian".

Suatu sebab yang halal, pengertian sebab dalam persyaratan dari perjanjian tersebut ada, disebabkan adanya hubungan hukum kekayaan antara dua orangatau lebih. Karena termasuk pengertian sebab yang tidak halal adalah sebab dikatakan palsu apabila sebab tersebut diadakan oleh pihak untuk menutupi atau menyelubungi sebab yang bertentangan dengan undang-undang, atau bertentangan dengan kesusilaan atau ketertiban umum.

Suatu perjanjian itu dibuat, dalam keadaan bagaimana pun terdapat dua pihak yaitu :

1. Pihak yang satu sebagai kreditur, yaitu pihak yang berhak untuk menuntut supaya perjanjian yang diadakan antara pihak-pihak itu dipenuhi.
2. pihak lainnya yang disebut sebagai debitur atau pihak yang mempunyai kewajiban unuk memenuhi perjanjian yang diadakan antara pihak-pihak itu. Yang keduanya merupakan subyek dari suatu perjanjian itu.

Kalau dilihat dalam Pasal 1234 KUH Perdata dari tujuannya suatu perjanjian itu adalah untuk :

a. Memberikan sesuatu, yang termasuk perjanjian ini adalah memberikan sejumlah uang, memberi benda untuk dipakai atau disewkan, penyerahan hak milik atau sesuatu benda.
b. Berbuat sesuatu, yang termasuk perjanjian ini adalah membangun rumah atau gedung, membangun jembatan, pemasangan instalasi alarm system.
c. Tidak berbuat sesuatu, misalnya seseorang telah mengadakan perjanjian dengan orang lainnya saat menjual pabrik alat pemadam untuk tidak menjalankan usaha itu dalam daerah yang sama.

Sehingga apabila kedua belah pihak pada waktu yang bersamaan berada dalam suatu tempat tertentu, dimana ada kesepakatan mengenai penawaran dan penerimaan dari suatu penawaran tersebut, maka terjadi perjanjian antara kedua belah pihak yang mengadakannya.

Dari uraian itu, bahwa bila tidak memenuhi syarat-syarat pejanjian sesuai Pasal 1320 KUH Perdata mempunyai konsekwensi yang berbeda-beda, sesuai persyaratan-persyaratan mana yang tidak dipenuhinya.

Persyaratan kesatu dan kedua dari Pasal tersebut merupakan persyaratan subyektif, yang menyangkut tentang orang apabila persyaratan subyektif ini tidak dipenuhi dalam suatu perjanjian, maka perjanjian tersebut dapat dibuatkan, dan pembatalannya harus dimintakan kepada Pengadilan Negeri yang berwenang.

Persyaratan ketiga dan keempat merupakan persyaratan obyektif, yang menyangkut tentang obyek dari pada perjanjian apabila persyaratan obyektif ini tidak dipenuhi dalam suatu perjanjian, maka perjanjian tersebut batal demi

hukum, yang berarti untuk batalnya perjanjian tidak perlu lagi dimintakan pembatalan, dengan demikian tanpa adanya permintaan pembatalan, perjanjian telah batal dengan sendirinya.

Semua perjajian yang sah itu akan mengikat kedua belah pihak yang mengadakannya, disamping itu berlakunya perjanjian itu harus ada itikad baik dari masing-masing pihak yang berjanji, sehingga perjanjian antara pihak-pihak itu tidak dapat ditarik kembali, kecuali ats persesuaian kehendak secara bersama bahwa perjanjian itu dibatalkan, ini tercantum dalam Pasal 1338 KUH Perdata.

Dari pengertian Pasal 1338 KUH Perdata diatas, bukannya bebas tanpa batas untuk mengadakan perjanjian itu, tetapi masih dibatasi dengan pembatasan bahwa tidak boleh bertentangan dengan ketertiban umum atau kesusilaan.

Karena perjanjian itu telah mengikat pihak-pihak yang mengadakannya, maka masing-masing pihak itu harus bertanggung jawab terhadap sesuatu yang telah dijanjikan dalam perjanjian yang telah disepakatinya itu, artinya bahwa yang berjanji itu harus memperhatikan dan menjalakan hak dan kewajiban.

2.1.1 ASAS – ASAS POKOK DALAM HUKUM PERJANJIAN

Menurut kamus umum Bahasa Indonesia WJS. Poerwadarminta, pengertian dari asas adalah suatu kebenaran yang menjadi pokok dasar atau tumpuan berpikir[16].

Sudikno Mertokusumo mengatakan asas hukum atau prinsip hukum bukanlah peraturan konkrit, melainkan merupakan pemikiran dasar yang umum sifatnya atau merupakan latar belakang dari peraturan konkrit yang terdapat dalam dan di belakang system hukum yang terjelma dalam peraturan perundang-undangan dan putusan hakim yang merupakan hukum positif dan dapat diketemukan dengan mencari sifat-sifat umum dari peraturan hukum konkrit tersebut[17].

Jadi asas hukum bukanlah kaedah hukum yang konkrit, melainkan merupakan latar belakang peraturan yang konkrit dan bersifat umum atau abstrak. Kalau peraturan hukum yang konkrit itu dapat diterapkan secara langsung pada peristiwanya maka asas hukum dapat diterapkan.

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[16] WJS Porwadarminta, Kamus Bahasa Indonesia, Jakarta, 1992, hal 60

[17] Mertokusumo, op cit hal 34-35

Didalam perjanjian dikenal beberapa asas pokok yang berkaitan dengan lainnya, isi kekuatan mengikat, berlakunya dalam pelaksanaan, yaitu :

1. Asas konsensualisme
2. Asas Kebebasan Berkontrak
3. Asas Pacta Sunt Servanda
4. Asas Kepribadian
5. Asas Itikad Baik

Di bawah ini adalah penjelasan dari kelima asas tersebut.

1. Asas Konsensualisme

Asas Konsensualisme ini berkaitan dengan lahirnya perjanjian. Perkataan Konsensualisme berasal dari bahasa Latin consensus yang berarti sepakat. Dengan adanya kesepakatan berarti bahwa diantara para pihak yang bersangkutan telah tercapai persesuaian kehendak secara timbal balik yang membentuk perjanjian.

Asas konsensualisme tersirat dari kalimat "perjanjian yang dibuat secara sah" dalam pasal 1338 ayat (1) KUH Perdata. Pasal ini berhubungan erat dengan Pasal 1320 ayat (1) KUH Perdata tentang Syarat Sahnya Perjanjian yang Pertama yaitu sepakat mereka yang mengikatkan dirinya.

Suatu perjanjian akan terbentuk atau lahir dengan adanya kata sepakat diantara semua pihak, namun untuk jenis perjanjian tertentu undang-undang menetapkan formalitas tertentu yang harus dipenuhi. Pada perkembangan saat ini ada kecenderungan mewujudkan perjanjian konsensuil dalam bentuk tertulis di bawah tangan atau dengan akta tertentu. Hal ini dimaksudkan untuk memudahkan pembuktian jika dalam pelaksanaan perjanjian timbul permasalahan atau perselisihan diantara para pihak.

2. Asas Kebebasan Berkontrak

Asas kebebasan berkontrak berkaitan dengan isi perjanjian yang mana asas ini terkandung dalam perkataan "semua perjanjian" yang terdapat dalam Pasal 1338 ayat (1) KUH Perdata bahwa semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya.

Berdasarkan asas ini maka dapat disimpulkan bahwa :

a. Setiap orang bebas untuk membuat atau tidak membuat perjanjian

b. Setiap orang bebas membuat perjanjian dengan siapapun
c. Setiap orang bebas untuk menentukan isi dan syarat perjanjian
d. Setiap orang bebas untuk menentukan bentuk perjanjian
e. Setiap orang bebas untuk menentukan pada hukum mana perjanjian itu akan tunduk.

Berdasarkan asas kebebasan bekontrak maka berbagai ketentuan perundang-undangan mengenai perjanjian hanya sebagai hukum pelengkap. Meskipun Pasal 1338 ayat (1) KUH Perdata mengatur kebebasan berkontrak bagi setiap orang namun kebebasan yang dimaksud tidaklah bersifat mutlak. Tetapi ada pembatasan – pembatasannya yaitu tidak boleh melanggar ketentuan perundang-undangan, ketentuan umum dan kesusilaan.

Keberadaan asas kebebasan berkontrak tidak dapat dilepaskan dari pengaruh berbagai aliran filsafat politik dan ekonomi liberal yang berkembang pada abad kesembilan belas. Dalam bidang ekonomi berkembang aliran yang dipelopori oleh Adam Smith yang menerapkan prinsip non intervensi oleh pemerintah terhadap kegiatan ekonomi dan bekerjanya pasar. Filsafat Jeremy Bentham yang menekankan adanya idiologi free choice juga memiliki pengaruh yang besar bagi pertumbuhan Asas Kebebsan Berkontrak tersebut. Baik pemikiran Adam Smith maupun Bentham didasarkan filsafat individualisme. Kedua pemikiran tesebut tidak dapat dilepaskan dari pengaruh filsafat etika Immanuel Kant. Semua filsafat yang menekankan pada aspek kebebasan individu yang dikembangkan para filsuf Barat di atas jika dilacak lebih jauh lagi, berakar kepada filsafat hukum alam (natural Law) yang sangat berkembang pada abad pencerahan[18].

3. Asas Pacta Sunt Servanda

Asas Pacta Sunt Servanda berkaitan dengan kekuatan mengikat dari perjanjian yang mana asas ini terkandung dalam Pasal 1338 ayat (1) KUHPerdata pada kalimat "berlaku sebagai undang-undang bagi mereka yang membuatnya". Asas ini berkaitan dengan akibat dari suatu perjanjian bahwa perjanjian yang dibuat secara sah oleh para pihak mengikat para pembuatnya sebagai undang-

[18] Ridwan Khairandy, Itikad baik dalam Kebesan Berkontrak, Fakultas Hukum Universitas Indonesia, Jakarta 2004, hal 45-46

undang. Para pihak harus tunduk pada perjanjian yang dibuat sebagaimana halnya mereka harus tunduk pada undang-undang yang ditetapkan oleh Negara. Pasal 1338 ayat (1) KUH Perdata ini berhubungan erat dengan Pasal 1338 ayat (2) yang berbunyi sebagai berikut : " Suatu Perjanjian tidak dapat ditarik kembali selain dengan sepakat kedua belah pihak atau karena alasan-alasan yang oleh undang-undang dinyatakan cukup untuk itu", kecuali ada alasan pembenar untuk melakukan hal itu.

4. Asas Kepribadian

Asas kepribadian ini berkaitan dengan pelaksanaan perjanjian yakni menyangkut subjek dalam suatu perjanjian yang mana asas ini terkandung dalam Pasal 1315 KUH Perdata yang menyatakan bahwa "pada umumnya tak seorang dapat mengikatkan diri atas nama diri sendiri atau meminta ditetapkannya satu janji dari pada untuk dirinya sendiri. Asas kepribadian mempunyai hubungan erat dengan Asas Pacta Sunt Servanda karena dalam Asas Pacta Sunt Servanda dinyatakan bahwa perjanjian dibuat para pihak mengikat sebagai undang-undang, sementara Asas Kepribadian menyatakan bahwa perjanjian hanya mengikat para pihak yang membuatnya dan tidak dapat mengikat pihak lain.

Namun Asas Kepribadian memiliki pengecualian yaitu dalam hal perjanjian untuk kepentingan pihak ketiga yang dalam bahasa Belanda disebut derden beding. Pengecualian bagi Asas Kepribadian ini diatur dalam Pasal 1317 KUH Perdata yang berbunyi "Lagi pun diperbolehkan juga untuk meminta ditetapkannya suatu janji guna kepentingan seorang pihak ketiga, apabila suatu penetapan janji, yang dibuat oleh seorang untuk dirinya sendiri, atau suatu pemberian yang dilakukannya kepada orang lain, memuat suatu janji yang seperti itu. Siapa yang telah memperjanjikan sesuatu seperti itu, tidak boleh menariknya kembali, apabila pihak ketiga tersebut telah menyatakan kehendak mempergunakannya". Sebagai contoh derden beding adalah perjanjian penutupan asuransi antara seorang ayah dan perusahaan asuransi untuk asuransi anak. Perjanjian penutupan asuransi memang dibuat oleh sang ayah dengan perusahaan asuransi, namun perjanjian itu juga mengikat sang anak karena perjanjian itu

dibuat untuk kepentingan si anak tersebut meskipun sang anak tidak ikut menandatangani perjanjian.

5. Asas Itikad Baik

Asas Itikad Baik ini berkaitan dengan pelaksanaan perjanjian. Asas ini menghendaki bahwa apa yang sudah disepakati para pihak dalam suatu perjanjian harus dilaksanakan dengan memenuhi tuntutan keadilan dan tidak melanggar kepatutan dengan menjauhkan diri dari perbuatan yang dapat menimbulkan kerugian bagi pihak lain. Asas itikad baik ini terdapat dalam Pasal 1338 ayat (3) KUH Perdata yaitu *"suatu perjanjian harus dilaksanakan dengan itikad baik"*.

Tidak ada penjelasan lebih lanjut apa yang dimaksud dengan itikad baik. Kalaupun ada ketentuan yang mendefinisikan itikad baik tersebut tetapi definisi itupun masih juga menimbulkan kebingungan. Oleh karena itu untuk dapat memahami makna itikad baik yang lebih jelas harus dilihat pada penafsiran itikad baik dalam praktek pengadilan. Dengan demikian perkembangan doktrin itikad baik lebih merupakan hasil kerja pengadilan. Di Belanda, penafsiran itikad baik dalam kontrak oleh pengadilan muncul dalam perkara Hengsten Vereniging melawan Onderlinge Paarden an Vee Assurantie (Artist de Laboereur Arrest), HR February 1923, NJ 1923, 676. Menurut Hoge Raad, itikad baik ini merupakan doktrin yang merujuk kepada kerasionalan dan kepatutan yang hidup dalam masyarakat. Hoge Raad menyatakan bahwa perjanjian harus dilaksanakan menurut kerasionalan dan kepatutan. Hoge Raad dengan tegas menyatakan bahwa memperhatikan itikad baik pada pelaksanaan perjanjian tidak lain adalah menafsirkan perjanjian menurut ukuran kerasionalan dan kepatutan[19].

Dalam konteks putusan pengadilan Indonesia, dalam bagian pertimbangan hukum suatu putusan, seringkali hakim menyatakan bahwa perbuatan atau pelaksanaan kontrak harus dilandasi itikad baik. Dalam perkara Ny. Lie Lian Joun melawan Arthur Tutuarima, No 91/1970/Perd/P.T.B., Pengadilan Tinggi Bandung mencoba menafsirkan itikad baik yang dimaksud Pasal 1338 ayat (3) KUH Perdata. Pengadilan Tinggi Bandung menyatakan perjanjian harus dilaksanakan dengan itikad baik. Melaksanakan perjanjian dengan itikad baik berarti perjanjian

[19] Ridwan Khairandy, Ibid, hal 7-9

harus dilaksanakan sesuai kepatutan dan keadilan. Dengan demikian pengadilan harus mempertimbangkan apakah dalam persoalan yang dikemukakan kepadanya apakah ada kepatutan dan keadilan atau tidak. Menurut Pengadilan Tinggi Bandung, apabila dalam perjanjian itu tidak terdapat kepatutan dan keadilan, hakim dapat merubah perjanjian. Perubahan tersebut adalah merubah isi perjanjian. Perjanjian tidak hanya ditentukan oleh rangkaian kata-kata yang disusun para pihak, tetapi juga ditentukan oleh kepatutan dan keadilan[20] .

Asas itikad baik menjadi salah satu instrument hukum untuk membatasi kebebasan berkontrak dan kekuatan mengikatnya perjanjian. Dalam hukum kontrak, itikad baik memiliki tiga fungsi. Dengan fungsi yang pertama semua kontrak harus ditafsirkan sesuai dengan itikad baik. Fungsi kedua adalah fungsi menambah. Dengan fungsi ini hakim dapat menambah isi perjanjian dan menambah kata-kata peraturan perundang-undangan yang berkaitan dengan perjanjian itu. Fungsi ketiga adalah fungsi membatasi dan meniadakan. Dengan fungsi ini hakim dapat mengesampingkan isi perjanjian atau peraturan perundang-undangan yang berkaitan dengan perjanjian jika terjadi perubahan keadaan. Perubahan keadaan itu sedemikian rupa mengakibatkan pelaksanaan apa yang terdapat dalam suatu perjanjian atau peraturan perundang-undangan menjadi tidak adil lagi[21].

2.1.2 Penafsiran Kontrak

Suatu kontrak idealnya tidak memerlukan penafsiran. Klausula, kalimat maupun kata-kata dalam kontrak seharusnya dengan sendirinya dapat menjelaskan maksud dan ketentuan-ketentuan dalam kontrak. Bentuk kontrak bermacam-macam, ada kontrak yang panjang terinci dan ada kontrak yang singkat dan padat, yang merupakan manifestasi atas kehendak para pihak yang berkontrak. Jika semua yang terkandung dalam kontrak jelas maka penafsiran dalam kontrak tidak diperlukan[22]. Namun dalam praktek hampir tidak ada kontrak yang tidak memerlukan penafsiran apalagi jika sudah timbul sengketa diantara para pihak

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[20] Ibid hal 16-17
[21] Ibid, hal 33
[22] Munir Fuady, Hukum Kontrak-Dari Sudut Pandang Hukum Bisnis, Citra Aditya Bakti, Bandung, 2003, hal 53

berkaitan dengan suatu ketentuan yang terkandung dalam kontrak. Penafsiran diperlukan untuk memberi arti sebenarnya atas klausula, kalimat dan kata-kata yang tertulis di dalam kontrak.

Metode-metode penafsiran kontrak yang dikenal adalah sebagai berikut[23] :

1. Metode Penafsiran Gramatikal atau Obyektif
2. Metode Penafsiran Teologis atau Subyektif
3. Metode Penafsiran Sosiologis
4. Metode Penafsiran Praktis
5. Metode Penafsiran Integral

Berikut ini masing-masing penjelasan dari definisi di atas :

1. Metode Penafsiran Gramatikal atau Obyektif

Kontrak memerlukan bahasa, tidak mungkin kontrak tersusun tanpa menggunakan bahasa. Oleh karena itu bahasa merupakan sarana yang penting bagi penyusunan kontrak. Untuk mengetahui makna yang tertulis dalam suatu kontrak perlu penafsiran menurut bahasa umum sehari-hari. Penafsiran gramatikal atau obyektif menekankan pada apa yang tertulis dalam suatu kontrak daripada melihat kepada maksud dari para pihak, apalagi jika bahasa yang digunakan dalam kontrak sudah cukup jelas. Dengan demikian, penafsiran kontrak secara gramatikal lebih bersifat formal.

2. Metode Penafsiran Teologis atau Subyektif

Menurut metode penafsiran subjektif ini, penafsiran kontrak dilakukan dengan berpegang seoptimal mungkin pada maksud yang sebenarnya dari para pihak, tanpa terlalu berpegang kepada kata-kata yang ada dalam kontrak tersebut. Dengan metode penafsiran ini diselidiki maksud dan tujuan dari para pihak dalam kontrak daripada hanya memuat kepada kata-kata secara gramatikal.

3. Metode Penafsiran Sosiologis

Metode Penafsiran Sosiologis adalah penafsiran kontrak yang lebih menitikberatkan pada kebiasaan-kebiasaan dalam masyarakat dan kondisi serta situasi di sekitar kontrak yang bersangkutan. KUH Perdata juga menganut metode penafsiran sosiologis ini dengan menyatakan bahwa hal-hal yang menurut kebiasaan selamanya diperjanjikan dianggap secara diam-diam dimasukkan

[23] Ibid, hal 56-72

kedalam kontrak. Penafsiran dengan memasukkan kebiasaan digunakan hanya untuk memperjelas maksud dari kontrak, bukan untuk menyimpang dari apa yang tertulis dalam kontrak.

4. Metode Penafsiran Praktis

Metode Penafsiran Praktis adalah penafsiran atas suatu kontrak yang tidak jelas sehingga memiliki lebih dari 1 (satu) pengertian dimana pengertian kontrak yang dipilih adalah menurut pengertian yang dapat dilaksanakan daripada memilih pengertian yang tidak dapat dilaksanakan/dipraktekkan. Hal dapat dimengerti mengingat ketika membuat kontrak tentunya para pihak menghendaki agar kontrak dapat dilaksanakan, sehingga dengan penafsiran praktis akan mendekati kehendak dari para pembuat kontrak.

5. Metode Penafsiran Integral

Yang dimaksud dengan Metode Penafsiran Integral terhadap suatu kontrak adalah suatu metode penafsiran yang menafsirkan klausula dari kontrak sebagai bagian yang integral dari keseluruhan isi kontrak tersebut. Menafsirkan suatu bagian kontrak harus dihubungkan dengan bagian kontrak lainnya. Jadi, suatu kontrak harus dipandang dengan utuh secara keseluruhan, tidak boleh dipilah-pilah untuk diberikan pengertian yang berbeda-beda dari masing-masing bagian tersebut.

Sesuatu Asas Pacta Sunt Servanda yang terkandung dalam Pasal 1338 ayat (1) KUH Perdata yang mengatur bahwa "semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya" maka sudah selayaknya metode-metode penafsiran yang dipakai untuk menafsikan peraturan perundang-undangan dapat dipakai juga untuk menafsirkan perjanjian / kontrak. Metode-metode penafsiran undang-undang yang dikenal antara lain sebagai berikut[24] :

1. Metode Argumentum Per Analogiam (Analogi)
2. Metode Argumentum a Contrario (a con rario)
3. Metode Eksposisi

[24] Sudikno Mertokusumo, Penemuan Hukum-Sebuah Pengantar, Liberty, Yogyakarta, 2003, hal 67-72

Berikut Penjelasan dari masing-masing metode tersebut di atas:

1. **Metode Argumentum Per Analogiam (Analogi)**

Ada kalanya peraturan perundang-undangan terlalu sempit ruang lingkupnya, sehingga untuk dapat menerapkan undang-undang pada peristiwanya hakim akan memperluasnya dengan metode argumentum per analogam atau analogi. Dengan analogi peristiwa yang serupa, sejenis atau mirip dengan yang diatur dalam undang-undang diperlukan sama.

Pada analogi, suatu peraturan khusus dalam undang-undang dijadikan umum yang tidak tertulis dalam undang-undang, kemudian digali asas yang terdapat di dalamnya dan disimpulkan dari ketentuan yang umum itu peristiwa yang khusus. Peraturan umum yang tidak tertulis diatur dalam undang-undang tersebut, tatapi mirip atau serupa dengan peristiwa yang diatur dalam undang-undang. Analogi digunakan apabila menghadapi peristiwa-peristiwa yang analogi atau mirip. Tidak hanya sekedar mirip, juga kepentingan masyarakat hukum menuntut penilaian yang sama.

Oleh hakim penalaran analogi digunakan kalau hakim harus menjatuhkan putusan dalam suatu konflik yang tidak tersedia peraturan-peraturannya. Dalam hal ini hakim bersikap seperti pembentuk undang-undang yang mengetahui adanya kekosongan hukum, akan melengkapinya dengan peraturan-peraturan yang serupa seperti yang dibuatnya untuk peristiwa-peristiwa yang tidak diatur, dengan penerapan peraturan untuk peristiwa-peristiwa yang telah diatur yang sesuai secara analog.

2. **Argumentum a Contrario (a contrario)**

Adanya kalanya suatu peristiwa tidak secara khusus diatur oleh undang-undang, tatapi kebalikan dari peristiwa tersebut diatur oleh undang-undang. Bagaimana cara menentukan hukumnya?. Cara menentukan hukumnya ialah dengan pertimbangan bahwa apabila undang-undang menetapkan hal-hal tertentu untuk peristiwa terentu, maka peraturan itu terbatas pada peristiwa tertentu itu dan untuk peristiwa diluarnya berlaku kebalikannya. Ini merupakan metode a contrario. Ini merupakan cara penafsiran atau penjelasan undang-undang yang didasarkan pada pengertian sebaliknya dari peristiwa konkrit yang dihadapi dengan peristiwa yang diatur dalam undang-undang. Apabila suatu peristiwa tertentu diatur, tetapi

peristiwa lainnya yang mirip tidak diatur, maka yang terkahir ini berlaku hal yang sebaliknya.

3. Metode Eksposisi

Metode eksposisi tidak lain adalah metode konstruksi hukum. Metode eksposisi atau metode konstruksi hukum adalah metode untuk menjelaskan kata-kata atau membentuk pengertian, bukan untuk menjelaskan barang.

Metode eksposisi dibagi dua yaitu metode eksposisi verbal dan metode eksposisi yang tidak verbal. Metode eksposisi verbal dibagi lebih lanjut verbal principal dan verbal melengkapi.

Metode eksposisi verbal principal dibagi menjadi dua yaitu pertama diterapkan pada kata-kata individual, yaitu metode individuasi. Suatu nama dijelaskan dengan individuasi, apabila diberi satu indikasi dengan membedakan nama yang bersangkutan dari nama lain yang mungkin mengacaukan. Pada individuasi sering digunakan tempat atau waktu.

Metode eksposisi verbal yang kedua diterapkan pada kata-kata lain. Termasuk dalam metode ini ialah paraphrase dan definisi.

Suatu kata dijelaskan dengan metode paraphrase kalau digunakan dalam satu kalimat dan kemudian kalimat itu diganti dengan kalimat lain. Sebagai contoh hendak dijelaskan kata "kepentingan" maka dibentuklah kalimat yang mengandung kata "kepentingan" sebagai berikut :
"Orang mempunyai kepentingan dalam perbuatan atau kejadian". Selanjutnya dibentuk kalimat lain yang tidak mengandung kata "kepentingan" yang maknanya sama yaitu "Perbuatan atau kejadian menimbulkan untung rugi". Kemudian kalimat tersebut diganti menjadi kalimat "Orang mempunyai kepentingan dalam suatu perbuatan atau kejadian, kalau perbuatan kejadian itu mengakibatkan untung atau rugi".

Metode definisi merupakan suatu pernyataan tentang arti lambang. Kata merupakan salah satu jenis lambang. Kata yang digunakan untuk memberi definisi disebut definiendum, sedangkan kata-kata yang digunakan untuk memberi definisi disebut definiens. Tujuan dari definisi adalah untuk :

1. Menjelaskan kata ;
2. Mengurangi kekaburan arti kata ;

3. Menghindari kata-kata yang "berwayuh arti" (ambiguitas) ;
4. Menambah kosa kata.

KUH Perdata mengatur masalah penafsiran kontrak ini dalam Pasal 1342 sampai Pasal 1351. Ada 10 (sepuluh) prinsip-prinsip penafsiran kontrak menurut KUH Perdata yaitu sebagai berikut :

1. Jika kata-kata dalam suatu perjanjian jelas, tidak boleh ditafsirkan untuk menyimpang daripadanya. Hal ini diatur dalam Pasal 1342. Prinsip merupakan implementasi metode penafsiran gramatikal atau obyektif.
2. Jika kata-kata dalam suatu perjanjian dapat diberikan berbagai macam penafsiran maka yang dipilih adalah maksud kedua belah pihak, daripada berpegang secara kaku pada bahasa dalam kontrak. Hal ini diatur dalam Pasal 1343. Prinsip ini merupakan implementasi dari metode penafsiran teleologis atau subyektif.
3. Jika kata-kata dalam kontrak dapat diberikan dua macam pengertian maka dipilih pengertian paling memungkinkan untuk dilaksanakannya kontrak tersebut. Hal ini diatur dalam pasal 1344. prinsip ini merupakan implementasi dari metode penafsiran prakmatis.
4. Jika kata-kata dalam perjanjian dapat diberikan dua macam pengertian maka dipilih pengertian yang paling selaras dengan sifat kontrak. Hal ini diatur dalam Pasal 1345. Prinsip ini merupakan implementasi dari metode penafsiran integral.
5. Hal-hal yang meragukan harus ditafsirkan sesuai dengan kebiasaan setempat dimana kontrak dibuat. Hal ini diatur dalam Pasal 1346. Prinsip ini merupakan implementasi dari metode penafsiran sosiologis
6. Hal-hal yang menurut kebiasaan selamanya ada dalam kontrak, harus dianggap ada dalam tiap kontrak meskipun tidak dengan tegas dinyatakan. Hal ini diatur dalam Pasal 1347. Prinsip ini merupakan implementasi dari metode penafsiran sosiologis.

7. Semua klausula dalam suatu kontrak harus ditafsirkan dalam rangka kontrak secara keseluruhan. Hal ini diatur dalam Pasal 1348. prinsip ini merupakan implementasi dari metode integral.
8. Jika ada keragu-raguan akan hal tertentu dalam suatu kontrak maka harus ditafsirkan untuk kerugian pihak yang minta diperjanjikan hal tertentu tersebut dan untuk keuntungan orang yang telah mengikatkan dirinya untuk itu. Hal ini diatur dalam Pasal 1349.
9. Meskipun kata-kata dalam suatu kontrak luas sekali penyusunannya, namun kontrak hanya meliputi hal-hal yang nyata-nyata dimaksudkan oleh para pihak sewaktu menyusun kontrak. Hal ini diatur dalam Pasal 1350. Prinsip ini merupakan implementasi dari metode penafsiran teleologis atau subyektif.
10. Penegasan terhadap sesuatu hal dalam kontrak tidak berpengaruh terhadap hal-hal lainnya yang tidak ikut ditegaskan. Hal ini diatur dalam Pasal 1351.

Menurut KUH Perdata, apabila bahasa kontrak sudah jelas sekali, penafsiran kontrak yang bertentangan dengan bahasa dalam kontrak tidak dapat dibenarkan (sebagaimana yang dimaksud oleh Pasal 1342 KUH Perdata). Akan tetapi, jika bahasa dalam kontrak masih dapat ditafsirkan, maka KUH Perdata lebih menganut metode penafsiran teleologis ketimbang metode penafsiran gramatikal. Hal tersebut dapat terlihat dalam ketentuan-ketentuan sebagai berikut:

1. Pasal 1343 KUH Perdata

   Dalam hal ini ditentukan bahwa penafsiran kontrak dilakukan dengan lebih mempertimbangkan dan menyelidiki maksud dan tujuan dari kedua belah pihak dari hanya melihat kepada kata-kata secara gramatikal.
2. Pasal 1350 KUH Perdata

   Ketetuan dalam pasal ini menyebutkan bahwa jika bahasa dalam suatu kontrak terlalu luas, maka haruslah ditafsirkan semata-mata perti yang dikehendaki oleh para pihak.

Di samping itu, penafsiran gramatikal, khususnya penafsiran dengan melihat kepada arti kata sebagaimana tertulis dalam kamus tidak selamanya dapat

dipergunakan, karena banyak kelemahannya. Kelemahan-kelemahannya tersebut adalah sebagai berikut :

1. Pengertian dalam kamus hanya menolong penerapan kata ke dalam penggunaannya yang umum saja, tidak terhadap hal-hal yang khusus.
2. Kata-kata yang perlu ditafsirkan mungkin kabur, sehingga pengertian dalam kamus pun kabur.
3. Atau kata-kata tersebut memiliki banyak arti (ambiguity) sehingga dalam kamus juga akan banyak arti, tanpa mengetahui mana yang paling tepat untuk menafsirkan kontrak yang bersangkutan.
4. Sering kali bahasa yang dipergunakan belum jelas jika hanya melihat dalam kamus saja, tatapi mesti dilihat secara kontektual, tersebut dilihat kepada situasi dan kondisi ketika kontrak dibuat.
5. Sering juga para pihak dalam kontrak menggunakan kata tertentu tidak dalam arti yang umum, tetapi dimaksudkan sebagai istilah teknis tertentu yang berbeda dalam pengertiannya yang umum.

Dalam Konvensi PBB Untuk Kontrak Perdagangan Barang Internasional (CISG) juga diatur prinsip-prinsip dalam menafsirkan isi kontrak. Prinsip-prinsip tersebut adalah :

1. Hasil negosiasi yang dibuat sebelum kontrak dibuat merupakan unsur yang menjadi pertimbangan dalam menafsirkan isi kontrak.
2. Praktek-praktek / kebiasaan perniagaan yang dibuat para pihak diantara mereka sendiri merupakan unsur yang menjadi pertimbangan dalam menafsirkan isi kontrak.
3. Kebiasaan setempat tidak bisa dijadikan acuan dalam menafsirkan maksud dari para pihak dalam kontrak. Dalam menafsirkan isi kontrak pertimbangan diberikan kepada karakter internasional dan kebutuhan untuk mempromosikan kesamaan dalam penerapan CISG serta ketaatan akan niat baik / itikad baik.

BAB III
WANPRESTASI

3.1 PENGERTIAN WANPRESTASI

Sebelum menguraikan masalah wanprestasi, terlebih dahulu penulis akan menguraikan pengertian prestasi, karena prestasi berhubungan erat dengan wanprestasi. Prestasi adalah kewajiban yang harus dipenuhi oleh debitur dalam setiap perikatan.[25] Apabila si berhutang (debitur) tidak melakukan apa yang dijanjikan, maka melakukan wanprestasi.[26] debitur dianggap telah lalai atau alpa atau ingkar janji, atau juga melanggar perjanjian bila ia melakukan atau berbuat sesuatu yang tidak boleh dilakukannya.

Abdulkadir Muhammad memberikan pengertian wanprestasi adalah tidak memenuhi kewajiban yang telah ditetapkan dalam perikatan, baik perikatan yang timbul karena perjanjian maupun perikatan karena undang-undang.[27] Jadi jelas apabila ia tidak memenuhi kewajibannya sebagaimana telah ditetapkan dalam persetujuan atau perjanjian yang telah diperjanjikan, karena suatu peristiwa yang dapat dipersalahkan kepadanya, maka dalam hal demikian ini merupakan perbuatan wanprestasi atau ingkar janji.

Selanjutnya macam-macam bentuk wanprestasi itu ada empat yaitu :

1. Dua pihak telah mengadakan perjanjian, salah satu pihak tidak memenuhi prestasi yang dijanjikannya sama sekali seperti dalam perjanjian.
2. Dua pihak telah mengadakan perjanjian, salah satu pihak memenuhi prestasi, tetapi tidak seperti yang telah di perjanjikan.
3. Dua pihak telah mengadakan perjanjikan, tetapi dalam memenuhi prestasinya terlambat tidak seperti yang dijanjikan.
4. Melakukan perbuatan yang bertentangan dengan apa yang dijanjikan.

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[25] Abdulkadir Muhammad, Op-cit, hal 17

[26] Prof. R. Subekti, Hukum Perjanjian, PT. Intermasa, Jakarta 1979, hal 45

[27] Abdulkadir Muhammad, Op-cit, hal 20

Sanksi terhadap pihak yang melakukan wanpretasi, maka undang-undang menentukan bahwa :

1. Ia dapat dituntut untuk membayar ganti kerugian, yang tercantum dalam Pasal 1243 KUH Perdata.
2. Dalam hal wanprestasi itu terjadi dari perjanjian yang timbal balik, seperti jual-beli, maka yang bersalah dapat dituntut pembatalan perjanjian yang dimintakan kepada hakim, hal ini terdapat dalam Pasal 1266 KUH Perdata.[28]

Untuk menentukan adanya suatu wanprestasi, ini tergantung pada perikatannya dengan ketentuan waktu, atau tidak. Apabila perikatannya dengan ketentuan waktu maka wanprestasi akan terjadi bila melampaui waktu yang telah ditentukan waktu, wanprestasinya tidak terjadi demi hukum karena tidak secara pasti waktu tertentu ditetapkan, hal ini disebabkan kerena tidak ada kepastian kapan terjadi wanprestasi. Karena itu perikatan yang tidak melalui ketentuan waktu untuk pemenuhannya prestasi dapat dengan segera diadakan penagihan.

Namun demikian undang-undang memberikan suatu ketentuan upaya hukum dengan pemberian pernyataan lalai.

Dalam hal perikatannya dengan jangka waktu, ketentuannya dapat dilihat dari pasal 1238 KUH Perdata yang berbunyi :

"Si berutang adalah lalai, apabila ia dengan surat perintah atau dengan sebuah akta sejenis itu, telah dinyatakan lalai, atau demi perikatannya sendiri, ialah jika ini menetapkan, bahwa siberutang akan harus dianggap lalai dengan lewatnya waktu yang ditentukan"

Pernyataan lalai ada yang diperlukan dan ada yang tidak diperlukan mengingat adanya bentuk wanprestasi. Maka pernyataan lalainya sebagai berikut :

1. Apabila debitur tidak memenuhi prestasi sama sekali maka pernyataan lalai tidak diperlukan, kredit langsung minta ganti kerugian.
2. Dalam hal debitur terlambat memenuhi prestasi, maka pernyataan lalai diperlukan, karena debitur masih dapat berprestasi.

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[28] Kartono, Persetujuan Jual-Beli menurut kitab Undang-Undang Hukum Perdata,...

3. Kalau debitur keliru dalam memenuhi prestasi, Hoge Raad berpendapat lain apabila kerena kekeliruan debitur kemudian terjadi pemutusan perjanjian positif, pernyataan lalai tidak perlu.[29]

Apabila suatu perjanjian tidak dipenuhi (wanprestasi) maka mempunyai akibat-akibat dengan disertai dasar-dasar hukumnya, Abdulkadir Muhammad mengemukakan sebagi berikut :

1. Debitur diharuskan membayar ganti rugi yang telah diderita oleh kreditur (pasal 1243 KUH Perdata). Ketentuan ini berlaku untuk semua perikatan.
2. Dalam perjanjian timbal balik, wanprestasi dari satu pihak memberikan hak kepada pihak lainnya untuk membatalkannya atau memutuskan perjanjian lewat hakim, (pasal 1266 KUH Perdata).
3. Resiko beralih kepada debitur sejak saat terjadinya wanprestasi (pasal 1237 ayat (2) KUH. Perdata). Ketentuan ini hanya berlaku bagi perikatan untuk memberikan sesuatu.
4. Membayar biaya perkara apabila diperkarakan dimuka hakim (pasal 181 HIR). Debitur yang terbukti melakukan waprestasi tentu didalam perkara. Ketentuan ini berlaku untuk semua perikatan.
5. Memenuhi perjanjian jika masih dapat dilakukan atau pembatalan perjanjian disertai dengan pembayaran ganti kerugian (pasal 1267 KUH. Perdata) ini berlaku untuk semua perikatan.[30]

Wanprestasi atau kelalaian mempunyai akibat-akibat yang begitu penting, maka harus ditetapkan lebih dahulu apakah debitur wanprestasi atau lalai, dan kalau hal tersebut disangkal oleh debitur, harus dibuktikan dihadapan hakim.[31]

Apabila debitur lalai dalam memenuhi prestasinya, maka pelaksanaan tersebut harus ditagih. Debitur tersebut harus diberi peringatan, bahwa kreditur menghendaki pelaksanaan perjanjian. Apabila prestasi tersebut dapat dilakukan saat itu juga, maka dapat dituntut seketika, seperti perjanjian jual-beli. Akan tetapi apabila prestasi tidak dapat dilakukan seketika, maka perlu diberikan waktu yang pantas. Untuk pelaksanaan Kontrak pemasangan fire alarm system, dalam hal

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[29] Abdulkadir Muhammad, Op-cit, hal 16
[30] Abdulkadir Muhammad, Op-cit, hal 24
[31] Pro. R. Subekti, Op-cit hal 45

debitur (Kontraktor) melakukan wanprestasi, maka Kreditur (Pemilik Proyek) dapat memberikan satu kali peringatan dengan tenggang waktu 14 (empat belas) hari. Seperti tercantum di dalam kontrak, dikatakan ada tenggang waktu 14 (empat belas) hari untuk memenuhi prestasi yang tertunda.

Tata cara memperingatkan apabila seorang debitur, agar apabila si debitur tidak memenuhi teguran itu, maka ia dapat dikatakan lalai dapat dilihat pada pasal 1238 KUH Perdata yang berbunyi :

"si berutang adalah lalai, bila ia dengan surat perintah atau dengan sebuah akta sejenis itu, telah dinyatakan lalai, atau demi perikatannya sendiri menetapkan bahwa si berutang akan harus dianggap lalai dengan lewatnya waktu yang ditentukan".

Apakah yang dimaksud dengan surat perintah? Yang dimaksud dengan surat perintah ialah suatu peringatan resmi oleh seorang juru sita pengadilan. Perkataan akta sejenis oleh undang-undang dimaksudkan suatu peringatan tertulis. Saat ini sudah lazim ditafsirkan sebagai suatu peringatan tertulis atau surat teguran yang menyatakan desakan si berpiutang supaya prestasi dilakukan dengan seketika atau dalam waktu yang singkat.

Apabila seorang debitur sudah diperingatkan dengan tegas untuk dimintakan memnuhi prestasinya, seperti tersebut di atas, apabila ia tetap tidak melakukan prestasinya, maka ia dikatakan lalai atau alpa dan dapat dikenakan sanksi-sanksi sebagaimana mestinya.

Menurut Prof. R. Subekti hukuman atau akibat-akibat yang tidak enak bagi debitur yang lalai ada empat macam, yaitu [32] :

1. Membayar kerugian yang diderita oleh kreditur atau dengan singkat dinamakan ganti-rugi;
2. pembatalan perjanjian atau juga dinamakan pemecahan perjanjian;
3. peralihan resiko;
4. membayar biaya perkara, kalau sampai diperkarakan di depan hakim.

Ganti rugi sering diperinci kedalam tiga unsur yaitu : biaya, rugi dan bunga. Yang dimaksud dengan biaya adalah segala pengeluaran atau perongkosan yang nyata-nyata telah dikeluarkan oleh salah satu pihak.

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[32] Ibid

Yang dimaksud dengan istilah rugi adalah kerugian yang berupa kehilangan keuntungan karena kerusakan barang-barang kepunyaan kreditur akibat kelalaian yang dilakukan oleh debitur.

Yang dimaksud dengan bunga ialah kerugian yang berupa kehilangan keuntungan yang sudah diperkirakan atau sudah dihitung oleh kreditur.

Code Civil (dalam bahasa Perancis) memperinci ganti rugi kedalam dua unsur yaitu dommages et interests[33]. Dommages meliputi apa yang kita namakan biaya dan rugi. Sedangkan interests adalah bunga dalam arti kehilangan keuntungan.

Di dalam undang-undang, mengenai penuntutan ganti rugi diatur ketentuan-ketentuan hal-hal mana yang dapat dikategorikan ke dalam ganti rugi tersebut.

Ketentuan-ketentuan ini merupakan pembatasan dari apa yang boleh dituntut dari ganti rugi. Jadi dapat kita lihat, bahwa ganti rugi itu dibatasi, hanya meliputi kerugian yang dapat diduga dan merupakan akibat langsung dari wanprestasi.

Persyaratan dapat diduga dan akibat langsung dari wanprestasi berhubungan erat satu dengan lainnya. Persyaratan dapat diduga, dapat meliputi besarnya kerugian. Sehingga kerugian yang jumlahnya telah melampaui batas-batas yang dapat diduga, tidak boleh ditimpakan kepada debitur untuk membayarnya, kecuali memang debitur telah nyata-nyata melakukan tipu daya untuk mengelabui kreditur seperti yang disebut dalam Pasal 1247 KUH Perdata :

"Si berutang hanya diwajibkan mengganti biaya rugi dan bunga yang nyata telah atau sedianya harus dapat diduga sewaktu perjanjian dilahirkan, kecuali jika hal tidak dipenuhinya perjanjian itu disebabkan karena sesuatu tipu daya yang dilakukan olehnya".

Dan penggantian yang dilakukan oleh debitur haruslah sesuai dengan akibat langsung dari tidak dipenuhinya perjanjian oleh debitur , yang mana hal tersebut harus masih dalam batas-batas yang terletak dalam persyaratan akibat langsung seperti tercantum di dalam Pasal 1248 KUH Perdata :

"Bahwa jika hal tidak dipenuhinya perjanjian itu disebabkan karena tipu daya si berutang, penggantian biaya, rugi dan bunga sekedar mengenai kerugian dan keuntungan yang terhilang baginya, hanyalah terdiri atas apa yang merupakan akibat langsung dari tidak dipenuhinya perjanjian".

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[33] Porf. R. Subekti, Op cit hal 47

Mengenai pembatalan perjanjian atau disebut juga pemecahan perjanjian, sebagai sanksi lain atas kelalaian debitur, mungkin ada pihak yang tidak dapat melihat sisi pembatalannya atau pemecahan tersebut sebagai hukuman. Pembatalan perjanjian, bertujuan membawa para pihak kembali pada keadaan sebelum perjanjian diadakan. Masalah pembatalan perjanjian ini di dalam KUH Perdata diatur dalam pasal 1266.

Mengenai Peralihan resiko sebagai sanksi yang juga dapat diberikan, seandainya debitur lalai disebutkan di dalam Pasal 1237 KUH Perdata ayat (2). Yang dimaksud dengan resiko adalah kewajiban untuk memikul kerugian jika terjadi suatu peristiwa di luar kesalahan salah satu pihak, yang menimpa barang yang menjadi obyek perjanjian.

Sedangkan tentang masalah pembayaran ongkos biaya perkara akibat kelalaian yang dilakukan oleh debitur apabila masalah ini sampai ke pengadilan, terdapat di dalam suatu peraturan Hukum Acara, bahwa pihak yang dikalahkan diwajibkan membayar biaya perkara seperti disebutkan dalam Pasal 181 ayat (1) HIR. Debitur yang lalai , tentu akan kalah di dalam suatu perkara yang dihadapkan ke depan hakim.

Dari uraian yang disebutkan diatas maka dapatlah kita tarik suatu kesimpulan bahwa kreditur yang dirugikan dapat memilih tuntutan-tuntutan sebagai berikut :

1. pemenuhan perjanjian
2. pemenuhan disertai ganti rugi
3. ganti rugi saja
4. pembatalan perjanjian
5. pembatalan disertai ganti rugi

3.1.1 Pembatalan Kontrak Secara Sepihak

Pembatalan kontrak secara sepihak sering terjadi di dalam pelaksanaan suatu kontrak kerjasama, dalam hal ini Kontrak Kerjasama Pemasangan Fire Alarm System. Dalam pembatalan ini ada yang memang berasalan untuk membatalkan perjanjian, ada yang tidak beralasan.

Ada tiga hal yang harus diperhatikan sebagai syarat supaya pembatalan kontrak dapat dilakukan[34]. Ketiga syarat yang dimaksud adalah :

1. Perjanjian bersifat timbal balik
2. Harus ada wanprestasi
3. Harus dengan putusan hakim

Perjanjian timbal balik, dimana para pihak yang harus memenuhi kewajiban yaitu prestasi. Jika salah satu pihak ingkar janji atau wanprestasi mengenai syarat pokoknya dari perjanjian, maka dapat diajukan gugatan permintaan pembatalan perjanjian kepada hakim.seperti kita ketahui bahwa kontrak yang dibuat secara sah, yang telah memenuhi syarat-syarat yang tercantum didalam undang-undang, maka kontrak tersebut berlaku sebagai undang-undang bagi mereka yang membuatnya, seperti tercantum dalam Pasal 1338 KUH Perdata ayat (1), sedangkan ayat (2) berbunyi sebagai berikut :

"Persetujuan-persetujuan itu tidak dapat ditarik kembali selain dengan sepakat kedua belah pihak, atau alasan-alasan yang oleh undang-undang dinyatakan cukup untuk itu".

Dari Pasal 1338 ayat (2) KUH Perdata, jelas disebutkan bahwa suatu perjanjian atau kontrak tidak dapat dibatalkan secara sepihak, karena jika dibatalkan secara sepihak, berarti perjanjian atau kontrak tersebut tidak mengikat para pihak yang membuatnya.

Berarti disini jelas setiap pembatalan terhadap suatu kontrak, haruslah berdasarkan kesepakatan para pihak yang mengikatkan dirinya dalam kontrak tersebut. Apabila pemutusan kontrak dilakukan tanpa kesepakatan dan hanya dilakukan oleh salah satu pihak, maka hal tersebut dapat dikatakan bertentangan dengan pasal 1338 ayat (2) KUH Perdata.

Di dalam suatu kontrak, diatur suatu pasal yang berisi tentang pembatalan kontrak, dimana dalam pasal tersebut disebutkan bahwa kontrak dapat dibatalkan secara sepihak secara otomatis apabila pihak lainnya tidak memenuhi prestasinya, dan sebelum pemutusan kontrak tersebut dilakukan akan diberikan suatu peringatan tertulis kepada pihak yang tidak memenuhi prestasinya untuk segera

[34] Abdulkadir Muhammad, Hukum Perikatan, Bandung, Alumni, 1982, hal 36

memenuhi kewajibannya tersebut lengkap dengan tenggang waktu kapan prestasi tersebut harus dipenuhi.

Akan tetapi tidak jarang terjadi, setelah prestasi dipenuhi, kontrak tersebut tetap saja dibatalkan sepihak dengan alasan prestasi terlambat. Hal ini tentunya sudah dapat terlihat, bahwa antara para pihak yang membuat kontrak tersebut, tidak ditemukan lagi kata sepakat dan para pihak tersebut sudah tidak lagi menghormati kontrak yang dibuat, yang merupakan undang-undang bagi para pihak yang membuatnya.

Untuk mengetahui apakah suatu kontrak yang dibuat secara sah dapat dibatalkan masa kontrak berlaku dan apa konsekuensi dari pembatalan kontrak tersebut, pertama-tama harus dilihat apakah dahulu dalam perjanjian tersebut terdapat klausul yang mengatur tentang kemungkinan terjadinya pembatalan perjanjian beserta penyebab dan konsekuensinya bagi para pihak. Apabila ada maka pembatalan perjanjian tersebut dapat dilakukan karena dapat dikategorikan sebagai sesuatu hal yang tidak bertentangan. Secara umum, pembatalan perjanjian dapat dikelompokkan berdasarkan kriteria berikut ini.

3.1.2 Pembatalan Kontrak yang diatur dalam perjanjian (Terminasi)

Terdapat berbagai kemungkinan pengaturan tentang pembatalan kontrak yang diatur dalam perjanjian, sebagai berikut :

1. Penyebutan alasan pemutusan perjanjian

   Seringkali dalam perjanjian diperinci alasan-alasan sehingga salah satu pihak atau kedua belah pihak dapat memutuskan perjanjian. Maka dalam hal ini tidak semua wanprestasi dapat menyebabkan salah satu pihak memutuskan perjanjiannya , tetapi hanya wanprestasi seperti yang disebutkan dalam perjanjian saja.

2. Perjanjian dapat diputus dengan sepakat kedua belah pihak

   Kadang-kadang disebutkan dalam perjanjian bahwa suatu perjanjian hanya dapat diputuskan jika disetujui oleh kedua belah pihak. Sebenarnya hal ini hanya penegasan saja, karena tanpa penyebutan tentang hal tersebut, demi hukum, perjanjian dapat diterminisasi jika disetujui oleh kedua belah pihak.

3. Pengenyampingan pasal 1266 KUH Perdata

   sangat sering dalam perjanjian disebutkan bahwa jika ingin memutuskan perjanjian, para pihak tidak harus menempuh prosedur pengadilan, tetapi dapat diputuskan langsung oleh para pihak. Dengan ini pasal 1266 BW harus dengan tegas dikesampingkan berlakunya. Sebab, menurut pasal 1266 tersebut, setiap pemutusan perjanjian harus dilakukan lewat pengadilan.

4. Tata cara pemutusan perjanjian

   Disamping penentuan pemutusan perjanjian tidak lewat pengadilan, biasanya ditentukan juga prosedur pemutusan perjanjian oleh para pihak tersebut. Sering ditentukan dalam perjanjian bahwa sebelum diputuskan suatu perjanjian, haruslah terlebih dahulu diperingatkan pihak yang tidak memenuhi prestasinya untuk melaksanakan, kewajibannya. Peringatan ini bisa dilakukan dua atau tiga kali. Bila peringatan tersebut masih tidak diindahkan, maka salah satu pihak dapat langsung memutuskan perjanjian tersebut. Penulisan kewajiban memberi peringatan seperti ini sejalan dengan prinsip yang dianut BW yaitu ingebrekestelling, yakni dengan dikeluarkannya "akta lalai" oleh pihak kreditur (lihat pasal 1238 BW) , dimana somasi (dengan berbagai perkecualian)pada prinsipnya memang diperlukan untuk dapat memutuskan suatu kontrak.

3.1.3 Pembatalan Perjanjian Karena Wanprstasi

Apabila terjadi wanprestasi terhadap suatu perjanjian, kepada pihak lain diberikan berbagai hak sebagai berikut:

1. Exceptio non adimpleti contractus

   Berdasarkan prinsip exceptio non adimpleti contractus ini, maka pihak yang dirugikan akibat adanya suatu wanprestasi dapat menolak prestasinya atau menolak melakukan prestasi selanjutnya manakala pihak lainnya telah melakukan wanprestasi.

2. Penolakan prestasi selanjutnya dari pihak lawan

   apabila pihak lawan telah melakukan wanprestasi, misalnya mulai mengirim barang yang rusak dalam suatu kontrak jual beli, maka pihak

yang dirugikan berhak untuk menolak pelaksanaan prestasi selanjutnya dari pihak lawan tersebut, misaknya menolak menerima barang selanjutnya yang akan dikirim oleh pihak lawan dalam contoh kontrak jual beli tersebut.

3. Menuntut restitusi

   ada kemungkinan sewaktu pihak lawan melakukan wanprestasi, pihak lannya telah selesai atau telah mulai melakukan prestasinya seperti yang diperjanjikannya dalam perjanjian yg bersangkutan. Dalam hal tersebut, maka pihak yang telah melakukan prestasi tersebut berhak untuk menuntut restusi dari pihak lawan, yakni menuntut agar kepadanya diberikan kembali atau dibayar setiap prestasi yang telah dilakukannya.

3.1.4 Pembatasan terhadap pemutusan perjanjian

Seperti telah dijelaskan bahwa jika salah satu pihak telah melakukan wanprestasi maka pihak yang lainnya dalam perjanjian tersebut berhak untuk memutuskan perjanjian yang bersangkutan. Akan tetapi terhadap hak memutuskan perjanjian oleh pihak yang telah dirugikan akibat wanprestasi ini berlaku beberapa restriksi yuridis berupa:

1. Wanprestasi harus serius

   Tidak terhadap semua wanprestasi pihak yang dirugikan dapat memutuskan perjanjian tersebut. Melainkan pihak yang dirugikan harus dapat pula menunjukkan bahwa wanprestasi tersebut merupakan wanprestasi yang serius. Jika hanya terhadap wanprestasi yang tidak serius, yakni jika salah satu pihak tidak melakukan suatu kewajiban kecil, maka pihak yang lainnya tidak berhak untuk memutuskan perjanjian tersebut, walaupun tidak tertutup kemungkinan baginya untuk meminta ganti rugi jika cukup alasan untuk itu.

2. Hak memutuskan perjanjian belum dikesampingkan

   umumnya diterima dalam teori hukum perjanjian bahwa hak untuk melakukan pemutusan perjanjian karena pihak lainnya telah melakukan wanprestasi tidak berlaku lagi manakala pihak yang dirugikan tersebut mengenyampingkan hak untuk memutuskan perjanjian tersebut.

3. Pemutusan perjanjian tidak terlambat dilakukan

   pemutusan perjanjian oleh pihak yang dirugikan karena pihak lainnya telah melakukan wanprestasi haruslah dilakukan dalam waktu yang pantas (reasonable time). Hal ini untuk memberikan kepastian bagi pihak yang telah melakukan wanprestasi untuk meneruskan atau tidak wanprestasi yang belum sempat dilaksanakannya. Apabila selama jangka waktu yang wajar terhadap pemutusan perjanjian tidak digunakan untuk memutuskan perjanjian yang bersangkutan, maka dia telah terlambat memutuskan perjanjian atas dasar bahwa dia telah menerima atau mentoleransi atas tindakan yang mengandung unsur wanprestasi tersebut, sehingga dia tidak dapat lagi memutuskan perjanjian yang bersangkutan.

4. Wanprestasi yang disertai dengan unsur kesalahan

   pada prinsipnya BW tidak mensyaratkan eksistensi unsur "kesalahan" agar suatu perjanjian dapat diputuskan oleh pihak yang dirugikan atau agar dapat dituntutnya suatu pembayaran ganti rugi. Akan tetapi berdasarkan pasal 1266 BW yang melibatkan pengadilan unuk memutuskan perjanjiaan timbal balik, maka penggunaan diskresi pengadilan untuk memutuskan perjanjian tersebut juga antara lain akan menggunakan faktor kesalahan pihak pelaku wanprestasi untuk dapat menentukan apakah perjanjian tersebut dapat diputus atau tidak.

Dengan demikian, menurut system BW Indonesia, maka pada prinsipnya asal ada kewajiban yang tidak dikerjakan, dan kewajiban yang tidak dilaksanakan tersebut cukup material (material breach), maka suatu perjanjian sudah dapat diputuskan dan ganti rugi sudah dapat dimintakan. Asal saja tidak dilaksanakannya kewajiban tersebut bukan karena hal-hal yang bersifat force majeure, yang untuk ini tidak diatur oleh hukum yang mengatur tentang wanprestasi, tetapi sudah merupakan wilayah hukum yang lain, yakni hukum yang mengatur tentang force majeure dan tentang resiko.

3.2 Pembelaan Pihak Yang Dianggap Wanprestasi

Pihak yang dianggap wanprestasi dalam melaksanakan kewajiban kontrak dapat melakukan pembelaan dengan mengajukan beberapa macam alasan untuk

membebaskan diri dari hukuman yang ditimpakan kepadanya. Pembelaan bagi pihak yang dianggap melakukan wanprestasi ada tiga macam yaitu :

2.2 Mengajukan tuntutan adanya keadaan memaksa (overmacht atau force majeure)

2.3 Mengajukan bahwa kreditur sendiri juga telah wanprestasi/lalai (exeptio non adimpleti contractus)

2.4 Mengajukan bahwa kreditur telah melepaskan hanya untuk menuntut ganti rugi (pelepasan hak/rechtsverworking)

Penjelasan masing-masing pembelaan di atas adalah sebagai berikut :

1. Keadaan Memaksa (Overmacht atau force majeure)

Melalui pembelaan ini debitur berusaha menunjukkan bahwa tidak terlaksananya hal yang diperjanjiakan disebabkan oleh hal-hal yang berada diluar kontrol dirinya dan tidak dapat diduga sama sekali, dimana debitur tidak dapat berbuat apa-apa terhadap keadaan yang timbul di luar dugaan dimaksud. Dengan perkataan lain bahwa terjadinya wanprestasi bukan disebabkan karena kelalaian atau kelapaan debitur melainkan karena keadaan yang berada diluar kemampuan dan kendali dirinya.

Mengenai keadaan memaksa diatur dalam Pasal 1244 dan 1245 KUH Perdata dimana kedua pasal ini tercantum dalam bagian yang mengatur tentang ganti rugi. Dari kedua pasal dimaksud didapat rumusan dari keadaan memaksa adalah suatu kejadian yang tidak terduga, tidak disengaja dan tidak dapat dipertanggungjawabkan kepada debitur serta memaksa dalam arti debitur terpaksa tidak dapat menepati janjinya.

2. Exceptio non adimpleti contractus

Melalui pembelaan ini debitur yang dituduh wanprestasi dan dituntut ganti rugi mengajukan argumentasi bahwa kreditur sendiri juga telah wanprestasi atau tidak memenuhi janjinya. Dalam perjanjian timbal balik terdapat suatu asas bahwa kedua pihak harus sama-sama melakukan kewajibannya. Mengenai exeptio non adimpleti contractus sebagai pembelaan bagi debitur yang dituduh lalai, yang jika ternyata benar dapat membebaskan debitur dari pembayaran ganti rugi, sama sekali tidak ada disebutkan di dalam undang – undang. Exceptio non adimpleti contractus lebih merupakan yurisprudensi yang telah diciptakan para hakim.

3. Pelepasan Hak (rechtsverwerking)

Melalui pembelaan ini debitur yang dituduh wanprestasi mengajukan argumentasi bahwa pihak kreditur telah melepaskan haknya untuk menuntut ganti rugi. Sebagai contoh dalam jual beli, meskipun barang diterima oleh pembeli tidak memenuhi kwalitas atau mengandung cacat tersembunyi si pembeli sama sekali tidak menegur penjual atau mengembalikan barang melainkan tetap memakai barang tersebut. Atau pembeli tetap memesan barang seperti itu. Jika ternyata pembeli kemudian menuntut ganti rugi atau pembatalan perjanjian maka penjual dapat menyandarkan diri pada kesimpulan bahwa sebenarnya barang yang telah dijual telah memuaskan pembeli.

BAB IV
HASIL PENENLITIAN DAN ANALISA

4.1 Apakah Proses Pemutusan Kontrak Secara Sepihak Sesuai Dengan Prosedur Pemutusan Kontrak yang Diatur Di Dalam Kontrak

Persyaratan formal untuk terjadinya wanprestasi adalah pernyataan lalai yaitu pemberitahuan dari kreditur kepada debitur mengenai kapan selambat-lambatnya kreditur tersebut meminta pemenuhan prestasi kepada debiturnya. Pernyataan lalai ini diatur dalam Pasal 1238 KUH Perdata dan bentuknya ada tiga yaitu :

1. Surat perintah
2. Akta sejenis, yaitu perbuatan hukum yang sejenis dengan perintah.
3. Dapat disimpulkan dari perikatannya sendiri. Hal ini terjadi jika para pihak dalam perjanjiannya telah menentukan sendiri saat si debitur harus berprestasi, dengan demikian jika setelah jangka waktu untuk berprestasi itu dilewati dan ternyata si debitur tidak melaksanakan kewajibannya, dengan sendirinya ia telah berada dalam keadaan wanprestasi.

Dalam Pasal 61.1 point (b) Kontrak Kerjasama Pemasangan Fire System yang menjadi obyek penelitian ini diatur bahwa sebelum melakukan pemutusan perjanjian secara sepihak, Pemilik Proyek terlebih dahulu akan memberikan peringatan tertulis kepada Kontraktor dimana pemutusan kontrak secara sepihak dapat dilakukan apabila dalam waktu 14 (empat belas) hari kalender setelah menerima surat peringatan dari Pemilik Proyek ternyata Kontraktor tetap tidak memperbaiki kesalahan atau tidak melaksanakan kewajiban sesuai dengan ketentuan kontrak. Keharusan adanya peringatan tertulis dari Pemilik Proyek kepada Kontraktor yang tertulis dalam Kontrak Pemasangan Fire Alarm System merupakan Implementasi dari Pasal 1238 KUH Perdata mensyaratkan adanya pernyataan lalai yaitu pemberitahuan dari kreditur (Pemilik Proyek) kepada debitur (Kontraktor) mengenai kapan selambat-selambatnya kreditur tersebut meminta pemenuhan prestasi kepada debiturnya.

Pasal 61.1 poin (b) Kontrak Kerjasama Pemasangan Fire Alarm System yang mengatur bahwa Pemilik Proyek Berhak Secara Sepihak memutuskan kontrak dengan pemberitahuan tertulis 14 (empat belas) hari kalender sebelum pemutusan kontrak berlaku efektif dalam hal Kontraktor melakukan wanprestasi. Dengan kata lain pemutusan kontrak oleh Pemilik Proyek baru berlaku efektif 14 (empat belas) hari kalender sejak surat pemutusan kontrak (pemberitahuan tertulis) dikeluarkan. Dengan demikian Pasal 61.1 poin (b) mengandung 3 (tiga) ketentuan pokok berkaitan dengan prosedur pemutusan kontrak secara sepihak oleh Pemilik Proyek yaitu :

1. Bahwa Pemilik Proyek terlebih dahulu memberikan peringatan tertulis kepada Kontraktor sebelum melaksanakan pemutusan kontrak secara sepihak.
2. Bahwa pemutusan kontrak secara sepihak dapat dilakukan setelah 14 (empat belas) hari kalender setelah menerima surat peringatan Kontraktor tetap tidak memperbaiki kinerja atu tidak melaksanakan kewajiban sesuai dengan ketentuan kontrak.
3. Bahwa Pemilik Proyek berhak secara sepihak memutuskan kontrak dengan pemberitahuan 14 (empat belas) hari kalender sebelum pemutusan kontrak berlaku efektif dalam hal Kontraktor melakukan wanprestasi.

Ketiga ketentuan pokok ini bersifat komulatif dalam arti ketiga ketentuan pokok ini harus dipenuhi oleh Pemilik Proyek agar pemutusan kontrak yang diatur dalam kontrak yang dilakukan secara sepihak sesuai dengan prosedur pemutusan kontrak yang diatur dalam kontrak. Jika ada salah satu dari ketiga ketentuan – ketentuan pokok di atas yang tidak dipenuhi oleh pemilik Proyek maka pemutusan kontrak dapat dikategorikan tidak sesuai dengan prosedur yang diatas dalam kontrak. Untuk itu dilakukan penelitian satu persatu terhadap pelaksanaan ketiga ketentuan-ketentuan pokok menyangkut prosedur pemutusan kontrak secara sepihak tersebut di atas.

1. Pelaksanaan ketentuan bahwa Pemilik Proyek terlebih dahulu harus memberikan 1 (satu) kali peringatan tertulis kepada Kontraktor sebelum melaksanakan pemutusan kontrak secara sepihak.

Pada tanggal 1 Mei 2007 Pemilik Proyek mengirim Surat Pemutusan Kontrak kepada Kontraktor yang menyatakan bahwa kemajuan pekerjaan yang dilakukan oleh Kontraktor belum menunjukkan tanda-tanda selesainya pekerjaan seperti yang telah dijanjikan oleh pihak Kontraktor, dimana hal ini dapat berdampak kepada penyelesaian proyek secara keseluruhan dan dapat mengakibatkan efek kerugian yang cukup besar bagi Pemilik Proyek. Dalam Surat Pemutusan Kontrak Tersebut dikatakan bahwa antara Pemilik Proyek dan Kontraktor telah berkali-kali mengadakan pembicaraan melalui pertemuan-pertemuan untuk membahas keterlambatan pekerjaan dari Pihak Kontraktor, akan tetapi sampai dengan diberikannya Surat pemutusan Kontrak ini oleh Pemilik Proyek, Kontraktor belum menyelesaikan prestasinya kepada Pemilik Proyek. Sehingga berdasarkan hal-hal tersebut maka Pemilik Proyek memutuskan untuk melakukan Pemutusan Kontrak terhadap Kontraktor secara sepihak. Sesuai dengan Pasal 61.1 point (b) dikatakan bahwa dengan tanpa alasan Pemilik Proyek dapat memutuskan kontrak apabila Kontraktor gagal memenuhi progress pekerjaannya.

Pemutusan Kontrak yang dilakukan oleh Pemilik Proyek terhadap Kontraktor sudah sesuai dengan ketentuan kontrak, apabila Kontraktor gagal memenuhi progress pekerjaannya maka Pemilik Proyek dapat melakukan pemutusan kontrak secara sepihak. Akan tetapi Pemilik Proyek tidak menjalankan ketentuan bahwa sebelum melakukan pemutusan kontrak, Pemilik Proyek harus memberikan tenggang waktu selama 14 (empat belas) hari kepada Kontraktor sebelum pemutusan kontrak ditetapkan. Pemilik Proyek mengirimkan surat kepada Kontraktor tanpa mencantumkan tenggang waktu 14 (empat belas) hari untuk memberikan kesempatan kepada Kontraktor untuk memenuhi prestasinya. Hal ini lah yang dianggap menyalahi kententuan kontrak. Karena Pemilik Proyek tidak memberikan Satu kali peringatan kepada Kontraktor, tetapi langsung mengeluarkan surat pemutusan kontrak yang berlaku pada saat itu juga. Dimana pada saat surat pemutusan kontrak tersebut dikeluarkan oleh Pemilik Proyek yaitu pada tanggal 1 Mei 2007, dan diterima oleh Kontraktor, Kontraktor tidak diperkenankan lagi memasuki Proyek dan melakukan pekerjaan apapun juga.

Keterlambatan Pekerjaan yang dilakukan oleh Kontraktor, yang mana seharusnya pekerjaan tersebut selesai pada bulan Januari 2007, akan tetapi mundur sampai dengan dikeluarkannya surat pemutusan kontrak oleh Pemilik Proyek pada bulan Mei 2007. Dimana pada saat itu progress pekerjaan yang dilakukan oleh Kontraktor baru mencapai 72%, dan keterlambatan progress pekerjaan sudah lewat 3 (tiga) bulan dari jadwal yang ditentukan di dalam kontrak kerjasama pemasangan fire alarm tersebut. Melihat keterlambatan ini, baik dari pihak Pemilik Proyek ataupun dari pihak Kontraktor, sama-sama tidak menghormati Kontrak yang mereka buat sendiri. Seperti yang dikatakan dalam Pasal 1338 ayat (1) KUH Perdata, bahwa Perjanjian adalah undang-undang bagi mereka yang membuatnya. Bahwa pengertian dari kalimat tersebut diatas adalah bahwa kontrak kerjasama pemasangan fire alarm system yang dibuat bersama-sama antara Pemilik Proyek dan Kontraktor adalah sah dan mengikat bagi kedua pihak, yang mana haruslah dipatuhi dan dilaksanakan oleh mereka yang membuatnya. Namun baik Pemilik Proyek maupun Kontraktor sepertinya sama-sama tidak menjalankan kontrak tersebut dengan sebaik-baiknya. Dimana Pemilik Proyek, pada saat Kontraktor sudah melakukan wanprestasi, tidak ada surat peringatan yang diberikan oleh Pemilik Proyek dimana hal tersebut tercantum di dalam kontrak tersebut. Kalau Pemilik proyek menganggap dengan pertemuan-pertemuan yang dilakukan antara Pemilik Proyek dan Kontraktor untuk membahas keterlambatan tersebut sudah dianggap sebagai suatu peringatan yang diberikan dari pihak Pemilik Proyek kepada pihak Kontraktor, tentulah hal tersebut tidak dapat dibenarkan, karena tidak sesuai dengan prosedur yang tercantum di dalam kontrak. Sehingga hal tersebut, tidak membuat Kontraktor segara memperbaiki kinerja kerjanya untuk menyelesaikan progress kerja yang tertinggal, melainkan menambah lama waktu kerja hingga surat pemutusan kontrak dikeluarkan oleh Pemilik Proyek. Kalau dilihat dari asas yang terdapat di dalam kontrak , maka apa yang diuraikan di atas tidak sesuai dengan asas Pacta sunt Servanda yang terkandung di dalam kontrak, dimana dikatakan bahwa Asas ini berkaitan dengan akibat dari suatu perjanjian bahwa perjanjian yang dibuat secara sah oleh para pihak mengikat para pembuatnya sebagai undang-undang. Para pihak harus tunduk pada perjanjian yang dibuat sebagaimana halnya mereka

harus tunduk pada undang-undang yang ditetapkan oleh Negara. Dalam hal ini baik Pemilik Proyek ataupun Kontraktor sudah tidak mematuhi kontrak yang mereka buat, baik pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek ataupun wanprestasi yang dilakukan oleh Kontraktor, sehingga memang apabila dilihat dari permasalahan yang ada, Kontrak kerjasama ini memang layak untuk diputusakan, karena sudah tidak ada kesepakatan dari para pihak untuk melaksanakan kontrak tersebut dengan itikad yang baik.

Dilihat dari asas lain yang terdapat di dalam kontrak , yaitu asas itikad baik dalam berkontrak, maka jelas sekali terlihat bahwa baik Pemilik Proyek maupun Kontraktor tidak memiliki itikad baik di dalam melaksanakan kontrak kerjasama pemasangan fire alarm system ini. Karena masing-masing pihak tidak menjalankan kontrak sesuai dengan kepatutan dan keadilan. Perbuatan Kontraktor yang gagal dalam memenuhi prestasinya dalam pelaksanaan progress pekerjaan yang dilakukan telah menimbulkan kerugian bagi pihak Pemilik Poyek. Sedangkan dari pihak Pemilik Proyek, dalam melakukan pemutusan kontrak secara sepihak, tidak dilakukan sesuai ketentuan yang ada di dalam kontrak.

Dari uraian diatas jelas sekali dapat kita lihat, bahwa pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek tidak sesuai dengan ketentuan yang tercantum di dalam kontrak. Dimana seharusnya sebelum melakukan pemutusan kontrak, Pemilik Proyek pertama-tama haruslah memberikan satu kali peringatan selama 14 (empat belas) hari, sebelum kontrak tersebut dinyatakan berlaku. Seharusnya pemilik Proyek melakukan hal ini dari awal Kontraktor melakukan keterlambatan pekerjaannya. Bukan dengan pertemuan-pertemuan untuk membahas keterlambatan saja yang dilakukan oleh Pemilik Proyek, akan tetapi sesuai dengan prosedur di dalam kontrak, seharusnya pertemua-pertemuan tersebut ditindak lanjuti dengan memberikan surat teguran kepada kontraktor untuk segera memperbaiki kinerja kerjanya agar progress pekerjaan dapat terpenuhi dalam tenggang waktu 14 (empat belas) hari. Apabila dalam kurun waktu tersebut Kontraktor tidak juga memenuhi prestasinya maka, dengan demikian Pemilik Proyek berhak untuk memutuskan kontrak secara sepihak.

Pemilik Proyek dapat dikatakan masih menunjukkan itikad baiknya kepada Kontraktor dengan hanya memberikan peringatan lisan untuk segera

menyelesaikan progress pekerjaan dan memperbaiki kinerjanya. Akan tetapi hal tersebut tidak tercantum di dalam kontrak, sehingga hal tersebut tidak dibenarkan karena tidak terdapat di dalam ketentuan kontrak yang mengikat Pemilik Proyek dan Kontraktor tersebut.

4.2 Pemutusan Kontrak Secara Sepihak Yang Dilakukan oleh Pemilik Proyek adalah Merupakan Fakta Wanprestasi Yang Dilakukan Oleh Kontraktor Sehingga Layak Kontrak Tersebut Diputuskan?

Wanprestasi merupakan suatu perbuatan yang bertentangan dengan kepatutan yang berlaku di dalam kehidupan masyarakat
Unsur-unsur dari wanprestasi dalam Pasal 1243 KUH Perdata adalah tidak dipenuhinya suatu perikatan yang telah disepakati oleh para pihak yang mengadakan kesepakatan tersebut.

Wanprestasi adalah perbuatan tidak memenuhi atau menjalankan apa yang telah disepakati atau diperjanjikan oleh para pihak, jadi penekanannya wanprestasi, terhadap unsur-unsur ingkar janji atau tidak dipenuhinya janji. Apabila perjanjian yang disepakati oleh para pihak, tidak ditepati oleh salah satu pihaknya, akan tetapi sepanjang ada usaha untuk memenuhi prestasi tersebut dan di dalam kesepakatan yang dibuat oleh para pihak klausul pengampunan dicantumkan juga, maka perjanjian tersebut tidak dapat diputuskan sepihak begitu saja, apalagi perjanjian tersebut masih berlangsung dalam jangka waktu yang cukup lama. Seperti perjanjian sewa menyewa. Seringkali kita temukan di dalam perjanjian sewa menyewa salah satu pihak terlambat memenuhi prestasinya seperti membayar uang sewa, membayar biaya yang timbul akibat sewa menyewa tersebut, namun ada usaha dari pihak yang terlambat memenuhi prestasi tersebut untuk segera memenuhi prestasi, tentunya perjanjian itu masih dapat berlangsung, sehingga dalam hal ini apabila dilakukan pemutusan perjanjian secara sepihak, maka pemutusan perjanjian secara sepihak merupakan suatu wanprestasi. Akan tetapi, dalam kontrak kerjasama pemasangan fire alarm system ini, Pemilik Proyek tidak dapat dikatakan melakukan wanprestasi dengan melakukan pemutusan kontrak secara sepihak. Hal ini disebabkan karena Kontraktor telah

gagal memenuhi prestasi yang disepakatinya dengan Pemilik Proyek. Dimana di dalam kontrak kerjasama tersebut disebutkan bahwa pekerjaan yang dilakukan oleh kontraktor harus diselesaikan pada bulan Januari 2007, namun pada kenyataannya sampai dengan surat pemutusan kontrak kerjasama dikeluarkan oleh Pemilik Proyek pada tanggal 1 Mei 2007, pekerjaan tersebut tetap belum diselesaikan oleh Kontraktor. Berarti Kontraktor telah lalai memenuhi prestasinya. Dan kelalaian tersebut telah berlangsung selama 90 (sembilan puluh) hari kalender , dan selama itu pula tidak terlihat adanya usaha dari kontraktor untuk segera memenuhi prestasinya, meskipun Pemilik Proyek telah memperingati kontraktor walaupun hal tersebut dilakukan dengan cara lisan melalui penyampaian di dalam pertemuan-pertemuan yang diadakan antara Pemilik Proyek dengan Kontraktor. Maka berdasarkan kesalahan yang dilakukan oleh Kontraktor dan disebutkan di dalam kontrak, maka Pemilik Proyek dapat melakukan pemutusan kontrak kerjasama pemasangan fire alarm system secara sepihak. Maka pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek terhadap Kontrak merupakan suatu Fakta wanprestasi yang dilakukan oleh Kontraktor terhadap progress kerja yang gagal dipenuhi sesuai dengan kesepakatan di dalam kontrak kerjasama pemasangan fire alarm system tersebut. Pembatalan atau pemutusan kontrak yang dilakukan oleh Pemilik Proyek merupakan salah satu sanksi yang dapat dilakukan sebagai akibat hukum apabila para pihak yang mengikatkan dirinya di dalam suatu perjanjian tidak memenuhi prestasinya. Akan tetapi, meskipun kontrak kerjasama ini layak diputuskan akibat fakta wanprestasi yang dilakukan oleh Kontraktor dalam pelaksanaan pemenuhan prestasinya, namun di dalam Kontrak kerjasama ini tidak mencantumkan klausul bahwa para pihak mengenyampingkan ketentuan dari Pasal 1266 KUH Perdata, dimana pasal tersebut mengatakan bahwa setiap pembatalan perjanjian harus dimintakan kepada hakim. Akan tetapi melihat kesalahan yang dilakukan oleh Kontraktor, dimana Pemilik Proyek telah berusaha untuk memberikan toleransi dalam pemenuhan progress yang dilakukan oleh Kontraktor, akan tetapi sampai batas waktu yang ditentukan tidak juga terpenuhi, maka menurut penulis sudah cukup terpenuhinya syarat dapat dibatalkannya suatu perjanjian secara sepihak oleh Pemilik Proyek seperti tercantum di dalam klausul kontrak perjanjian

2. Pembatalan perjanjian
3. Paralihan resiko
4. Membayar biaya perkara , apabila masalah ini dibawa ke muka hakim.

Disini para pihak memilih untuk menyelesaikan permasalahan ini dengan cara melakukan pembatalan perjanjian dengan tetap membayarkan kewajiban-kewajiban yang harus tetap dibayarkan walaupun kontrak telah diputuskan. Para pihak sepakat untuk menyelesaikan permasalahan ini tanpa harus membawa permasalahan ini ke muka pengadilan atau kehadapan hakim. Karena walaupun Kontraktor tidak menghendaki pemutusan kontrak yang dilakukan secara sepihak oleh Pemilik Proyek, akan tetapi Kontraktor menyadari bahwa hal tersebut terjadi karena kesalahannya yang tidak memenuhi progress pekerjaan yang telah disepakati dalam kontrak. Oleh karena itu akhirnya Kontraktor menerima pemutusan kontrak yang dilakukan secara sepihak oleh Pemilik Proyek. Sehingga dengan demikian pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek terhadap Kontraktor dapat diterima oleh pihak Kontraktor dan menyadari kesalahan yang dibuatnya. Dalam hal pemutusan kontrak secara sepihak ini, Pemilik Proyek juga membayarkan apa yang menjadi hak daripada Kontraktor yang masih terhutang, sehingga pada akhirnya dispute yang pada awalnya timbul, dapat diselesaikan dengan baik tanpa harus sampai ke pengadilan.

gagal memenuhi prestasi yang disepakatinya dengan Pemilik Proyek. Dimana di dalam kontrak kerjasama tersebut disebutkan bahwa pekerjaan yang dilakukan oleh kontraktor harus diselesaikan pada bulan Januari 2007, namun pada kenyataannya sampai dengan surat pemutusan kontrak kerjasama dikeluarkan oleh Pemilik Proyek pada tanggal 1 Mei 2007, pekerjaan tersebut tetap belum diselesaikan oleh Kontraktor. Berarti Kontraktor telah lalai memenuhi prestasinya. Dan kelalaian tersebut telah berlangsung selama 90 (sembilan puluh) hari kalender , dan selama itu pula tidak terlihat adanya usaha dari kontraktor untuk segera memenuhi prestasinya, meskipun Pemilik Proyek telah memperingati kontraktor walaupun hal tersebut dilakukan dengan cara lisan melalui penyampaian di dalam pertemuan-pertemuan yang diadakan antara Pemilik Proyek dengan Kontraktor. Maka berdasarkan kesalahan yang dilakukan oleh Kontraktor dan disebutkan di dalam kontrak, maka Pemilik Proyek dapat melakukan pemutusan kontrak kerjasama pemasangan fire alarm system secara sepihak. Maka pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek terhadap Kontrak merupakan suatu Fakta wanprestasi yang dilakukan oleh Kontraktor terhadap progress kerja yang gagal dipenuhi sesuai dengan kesepakatan di dalam kontrak kerjasama pemasangan fire alarm system tersebut. Pembatalan atau pemutusan kontrak yang dilakukan oleh Pemilik Proyek merupakan salah satu sanksi yang dapat dilakukan sebagai akibat hukum apabila para pihak yang mengikatkan dirinya di dalam suatu perjanjian tidak memenuhi prestasinya. Akan tetapi, meskipun kontrak kerjasama ini layak diputuskan akibat fakta wanprestasi yang dilakukan oleh Kontraktor dalam pelaksanaan pemenuhan prestasinya, namun di dalam Kontrak kerjasama ini tidak mencantumkan klausul bahwa para pihak mengenyampingkan ketentuan dari Pasal 1266 KUH Perdata, dimana pasal tersebut mengatakan bahwa setiap pembatalan perjanjian harus dimintakan kepada hakim. Akan tetapi melihat kesalahan yang dilakukan oleh Kontraktor, dimana Pemilik Proyek telah berusaha untuk memberikan toleransi dalam pemenuhan progress yang dilakukan oleh Kontraktor, akan tetapi sampai batas waktu yang ditentukan tidak juga terpenuhi, maka menurut penulis sudah cukup terpenuhinya syarat dapat dibatalkannya suatu perjanjian secara sepihak oleh Pemilik Proyek seperti tercantum di dalam klausul kontrak perjanjian

kerjasama pemasangan fire alarm system ini. Selain itu Pemilik Proyek juga sudah berusaha untuk membuktikan bahwa memang Kontraktor telah melakukan wanprestasi, dengan memberikan peringatan secara lisan melalui pertemuan-pertemuan yang dilakukan untuk segera memenuhi progress pekerjaannya, akan tetapi peringatan lisan tersebut tidak dihiraukan oleh Kontraktor. Hal ini semakin mempertegas bahwa sudah cukup alasan bagi Pemilik Proyek untuk memutuskan kontrak kerjasama tersebut. Berdasarkan fakta wanprestasi yang telah dilakukan oleh Kontraktor maka sudah cukup bukti untuk Pemilik Proyek melakukan Pembatalan perjanjian secara sepihak terhadap kontrak kerjasama pemasangan fire alarm system tersebut. Dan dengan memberikan peringatan walaupun secara lisan telah dapat dibuktikan pula bahwa Kontraktor tidak juga berusaha untuk memenuhi prestasinya. Sedangkan peringatan lisan melalui pertemuan - pertemuan yang dilakukan oleh keduanya tidak hanya sekali dilakukan. Maka dengan demikian , menurut penulis sudah cukup suatu fakta wanprestasi dikemukakan untuk melakukan pemutusan kontrak secara sepihak walaupun pemutusan kontrak tersebut tidak dimintakan dihadapan hakim.

Apabila dilihat pembelaan yang dapat dilakukan oleh pihak yang melakukan wanprestasi, Kontraktor juga tidak dapat membuktikan bahwa kelalaian yang dilakukannya dalam memenuhi prestasi bukan karena disebabkan oleh force majeure, ataupun Pemilik Proyek juga lalai melakukan prestasi terhadap Kontraktor. Keterlambatan yang dilakukan oleh Kontraktor murni dikarenakan kesalahannya sendiri bukan dikarenakan adanya keadaan memaksa (overmacht/force majeure) sehingga sudah barang tentu kelalaian Kontraktor dalam memenuhi prestasinya tidak dapat dilakukan pembelaan dengan menggunakan alasan keadaan memaksa ini sebagai suatu alasan.

Pemilik Proyek di dalam memenuhi kewajibannya yaitu membayarkan apa yang menjadi hak dari Kontraktor tidak pernah lalai. Setiap progress penagihan yang dilakukan oleh Kontraktor dibayarkan oleh Pemilik Proyek. Maka hal ini pun juga tidak dapat dijadikan alasan untuk melakukan pembelaan terhadap wanprestasi yang dilakukan oleh Kontraktor.

Disini juga Kontraktor tidak dapat membuktikan bahwa Pemilik Proyek telah melepaskan haknya untuk menuntut ganti rugi karena wanprestasi yang dilakukan

oleh Kontraktor. Malah sebaliknya , Pemilik Proyek menuntut agar kontrak kerjasama ini dibatalkan. Sehingga Kontraktor disini tidak dapat melakukan pembelaan apapun terhadap wanprestasi yang memang nyata-nyata dilakukan olehnya.

Dari bukt-bukti ini jelas sudah bahwa memang wanprestasi yang dilakukan oleh Kontraktor sudah merupakan suatu fakta yang jelas dan sudah cukup dibuktikan untuk melakukan pemutusan kontrak kerjasama secara sepihak.

4.3 Penyelesaian Permasalahan Pemutusan Kontrak Kerjasama Pemasangan Fire Alarm System Secara Sepihak

Pemutusan kontrak yang dilakukan oleh Pemilik Proyek terhadap Kontraktor secara sepihak dikarenakan adanya wanprestasi yang dilakukan oleh kontraktor. Pemilik Proyek , walaupun tidak tertulis akan tetapi melalui pertemuan-pertemuan yang dilakukan oleh para pihak, sudah berusaha memperingatkan kepada Kontraktor untuk menyelesaikan progress pekerjaannya. Akan tetapi sampai pihak Pemilik Proyek mengeluarkan surat Pemutusan Kontrak pada tanggal 1 Mei 2007, Kontraktor belum juga menyelesaikan pekerjaannya. Pada saat Kontraktor menerima surat pemutusan kontrak tersebut, Kontraktor berusaha untuk meminta waktu kepada Pemilik Proyek untuk menyelesaikan pekerjaannya, asalkan kontrak tidak diputuskan. Akan tetapi Pemilik Proyek sudah tidak ingin memberikan kesempatan lagi kepada Pihak Kontraktor. Dari sini kita melihat adanya suatu dispute dari pemutusan kontrak yang dilakukan secara sepihak oleh Pemilik Proyek terhadap Kontraktor. Dimana pihak Kontraktor tidak mau menerima pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek, padahal jelas hal tersebut dilakukan karena kesalahan yang dibuat oleh pihak Kontraktor. Para pihak disini mengambil jalan tengah untuk mengadakan pertemuan untuk membicarakan penyelesaian kewajiban dan perhitungan biaya-biaya yang harus dibayarkan. Seperti kita ketahui akibat hukum atau sanksi dari kelalaian pemenuhan suatu prestasai atau dengan kata lain sanksi yang timbul dari akibat wanprestasi terhadap suatu perjanjian yang telah disepakati adalah :

1. Membayar kerugian yang diderita oleh kreditur atau disebut ganti rugi

2. Pembatalan perjanjian
3. Paralihan resiko
4. Membayar biaya perkara , apabila masalah ini dibawa ke muka hakim.

Disini para pihak memilih untuk menyelesaikan permasalahan ini dengan cara melakukan pembatalan perjanjian dengan tetap membayarkan kewajiban-kewajiban yang harus tetap dibayarkan walaupun kontrak telah diputuskan. Para pihak sepakat untuk menyelesaikan permasalahan ini tanpa harus membawa permasalahan ini ke muka pengadilan atau kehadapan hakim. Karena walaupun Kontraktor tidak menghendaki pemutusan kontrak yang dilakukan secara sepihak oleh Pemilik Proyek, akan tetapi Kontraktor menyadari bahwa hal tersebut terjadi karena kesalahannya yang tidak memenuhi progress pekerjaan yang telah disepakati dalam kontrak. Oleh karena itu akhirnya Kontraktor menerima pemutusan kontrak yang dilakukan secara sepihak oleh Pemilik Proyek. Sehingga dengan demikian pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek terhadap Kontraktor dapat diterima oleh pihak Kontraktor dan menyadari kesalahan yang dibuatnya. Dalam hal pemutusan kontrak secara sepihak ini, Pemilik Proyek juga membayarkan apa yang menjadi hak daripada Kontraktor yang masih terhutang, sehingga pada akhirnya dispute yang pada awalnya timbul, dapat diselesaikan dengan baik tanpa harus sampai ke pengadilan.

BAB V
KESIMPULAN DAN SARAN

5.1 Kesimpulan

Berdasarkan hasil analisa yang dilakukan sebagaimana diuraikan dalam Bab IV ternyata diperoleh hasil bahwa :

Pemilik Proyek tidak memenuhi ketentuan Pasal 61.1 poin (b) yang mengatur bahwa Pemilik Proyek berhak secara sepihak memutuskan Kontrak dengan pemberitahuan tertulis 14 (empat belas) hari kalender sebelum pemutusan kontrak berlaku efektif dalam hal Kontraktor melakukan wanprestasi. Dengan demikian dapat disimpulkan bahwa proses pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek tidak sesuai dengan prosedur pemutusan kontrak yang diatur dalam kontrak. Meskipun pemutusan kontrak yang dilakukan oleh Pemilik Proyek adalah hal yang tidak dipersalahkan karena hal tersebut diatur dalam kontrak, hanya prosedur tidak dilakukan dengan tepat.

Bahwa pemutusan kontrak secara sepihak oleh Pemilik Proyek merupakan fakta wanprestasi yang dilakukan oleh Kontraktor terhadap Kontrak Kerjasama yang dibuat.. Akan tetapi di dalam kontrak kerjasama pemasangan fire alarm system ini, perbuatan pemutusan kontrak secara sepihak yang dilakukan oleh Pemilik Proyek terhadap Kontraktor, bukanlah wanprestasi terhadap pihak lainnya, karena pemutusan tersebut terdapat di dalam kontrak kerjasama pemasangan fire alarm system tersebut, dan hal tersebut dilakukan karena memang ada prestasi yang tidak dipenuhi oleh pihak Kontraktor, dan tidak ada usaha pemenuhan prestasi tersebut, sehingga memang layak kontrak tersebut diputuskan oleh Pemilik Proyek.

5.2 Saran - Saran

Dalam pelaksanaan Kontrak Pemasangan Fire Alarm System, sebelum melakukan pemutusan kontrak secara sepihak Pemilik Proyek harus mengkaji secara mendalam dokumen kontrak untuk memastikan apakah ada klausul kontrak yang memungkinkan Pemilik Proyek memutuskan kontrak secara sepihak

sehubungan dengan fakta yang terjadi dalam pelaksanaaan pekerjaan yang akan dijadikan acuan oleh Pemilik Proyek untuk memutuskan kontrak secara sepihak.

Sebelum melakukan pemutusan kontrak secara sepihak Pemilik Proyek harus mendalami prosedur/mekanisme pemutusan kontrak yang diatur dalam kontrak untuk menghindari adanya kesalahan prosedur yang tidak perlu.

Dalam Pasal 1338 KUH Perdata ayat (3) KUH Perdata tercantum keharusan untuk melaksanakan kontrak dengan itikad baik. Namun sepertinya di dalam Kontrak Pemasangan Fire Alarm System ini ketentuan itikad baik dalam pelaksanaan kontrak ini tidak dilaksanakan oleh Para Pihak. Sebaiknya para pihak memasukkan klausul itikad baik dalam kontrak sehingga menjadi prestasi yang harus dilaksanakan dan dipenuhi, yang diharapkan akan membuat para pihak melaksanakan kontrak ini dengan sungguh-sungguh sesuai dengan prinsip kelayakan, kepatutan, keadilan dan kejujuran.

Untuk menjamin adanya kepastian bagi para pihak dalam pelaksanaan Kontrak Pelaksanaan Pemasangan Fire Alarm System, sebaiknya batasan mengenai batas waktu pemenuhan prestasi setelah Kontraktor gagal memenuhinya dicantumkan di dalam kontrak. Hal ini penting ungtuk menghindari adanya potensi sengketa/dispute yang timbul dalam pemutusan kontrak.

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DAFTAR LAMPIRAN

GRAND INDONESIA

Our Ref. : 385/GI-HO/IBU/VII-06 16 July 2006

PT. INDOLOK BAKTI UTAMA
Jl. Salemba Raya No. 32
Jakarta 10430

Attn: Mr. Hindra C. Kurniawan

Dear Sir,

Grand Indonesia Project
FIRE ALARM SYSTEM – Mall A & Mall B
Letter Of Intent

In reference with your quotation ref. 386 rev2/IBU/TM-EM/P-6/VI/06 dated 28 June 2006 and subsequent discussions thereafter including your final revised prices dated 12 July 2006 for design, engineering, manufacturing, supply, delivery, fabrication, installation, completion, operation, maintenance during maintenance period and guarantee of the referenced works (the "Works") for our Grand Indonesia Project, we are pleased to issue this Letter Of Intent to your company at US$ 419,326 excluding VAT, but including all other taxes and duties, all subject to further agreement of the remaining terms and conditions and construction schedule of the Works.

As you are aware that time for completion of the Works is of utmost importance and essence, we hereby issue this Letter Of Intent and advise that you liaise with our Project Manager, Mr. Charles Kunarta at the Site for immediate site kick-off meeting; and thereto immediately start with all necessary preparation and mobilization works. This Letter Of Intent shall form part of the Contract.

Please also liaise with our QS department (Mr. Donny Krisantus) to finalize the terms and conditions and other details to complete the Contract Agreement, and thereafter submit the bank guarantees for advance payment bond and performance bond as per the formats provided in the Tender Documents as soon as possible, and we will process the advance payment and letter of credit in due course.

We trust you can appreciate that such expediency is absolutely crucial for early commencement pursuant to the schedule and program of the Works; and we look forward to your acknowledgement and compliance.

Yours faithfully,
PT. GRAND INDONESIA

Frans H Lazaro
Managing Director

CC : CA / CK / SS / AS / DK

PT GRAND INDONESIA

CONTRACT DOCUMENT

Contract No. 056/GI/IBU/VII-06

GRAND INDONESIA PROJECT
FIRE ALARM SYSTEM – Mall A & Mall B

FORM OF AGREEMENT
FORM OF WARRANTY
LETTER OF INTENT
CONSTRUCTION SCHEDULE
BILL OF QUANTITIES
CONDITIONS OF CONTRACT
SPECIFICATIONS
DRAWINGS
CONTRACTOR'S SUBMISSIONS

PT GRAND INDONESIA

FORM OF AGREEMENT

GRAND INDONESIA PROJECT

FIRE ALARM SYSTEM - Mall A & Mall B

FORM OF AGREEMENT

THIS AGREEMENT made on this 25th day of July, 2006 between:

(a) PT GRAND INDONESIA, a company existing and organized under the Laws of the Republic of Indonesia having its principal office at Jalan M H Thamrin No.1, Jakarta 10310, Indonesia (hereinafter called the "EMPLOYER") of the one part, and

(b) PT INDOLOK BAKTI UTAMA, a company existing and organized under the Laws of the Republic of Indonesia having its principal office at Jalan Salemba Raya No. 32, Jakarta 10430, Indonesia (hereinafter called the "CONTRACTOR" which expression shall where the context so admits includes his legal personal representatives and permitted assigns) of the other part.

WHEREAS the EMPLOYER is desirous that certain WORKS shall be executed, viz. GRAND INDONESIA PROJECT: FIRE ALARM SYSTEM – Mall A & Mall B (hereinafter called the "WORKS") and has issued a Letter Of Intent referenced 385/GI-HO/IBU/VII-06 dated 18 July 2006 (hereinafter called the " LETTER OF INTENT ") and which has been agreed and accepted by the CONTRACTOR for the Design, Engineering, Supply, Fabrication, Installation, Completion, Maintenance during the Maintenance Period and Guarantee of such WORKS.

NOW THIS AGREEMENT WITNESSETH as follows:

Article 1: Definition and Interpretation

In this AGREEMENT, words and expressions shall have the same meanings as are respectively assigned to them in the CONDITIONS OF CONTRACT.

Article 2: Contract Documents

The following documents as enclosed in the CONTRACT shall be deemed to form and be read and construed as the CONTRACT, viz.:

(a) this FORM OF AGREEMENT and its annexures;
(b) FORM OF WARRANTY;
(c) LETTER OF INTENT referenced 385/GI-HO/IBU/VII-06 dated 18 July 2006;
(d) Construction Schedule;
(e) BILL OF QUANTITIES;
(f) CONDITIONS OF CONTRACT (and supplementary conditions of contract, if any), the APPENDIX and all annexures appended thereto;
(g) SPECIFICATIONS and Technical Details;
(h) DRAWINGS;
(i) CONTRACTOR'S Submissions.

And any other documents, amendments, revisions and the like either provided by the CONTRACT to be part thereof or mutually agreed between the EMPLOYER and the CONTRACTOR as to be forming part of the CONTRACT.

Article 3: Type of Contract

This is a fixed lump sum CONTRACT and for the entire duration of the CONTRACT, the CONTRACT SUM as provided in article 7 of this AGREEMENT (and all rates and prices therein) is and shall remain fixed and firm, inclusive of all ancillary and other works and expenditures, which are either necessary to carry out and bring to completion the WORKS or which may become necessary to overcome difficulties before completion. Save as otherwise expressly provided in the CONTRACT, there shall be no change in the amount payable by the EMPLOYER to the CONTRACTOR.

Article 4: The Works under this Contract

The CONTRACT comprises the due care and diligent any necessary permit, supply, fabrication, installation, completion, maintenance during the maintenance period and guarantee of the WORKS viz. GRAND INDONESIA PROJECT: FIRE ALARM SYSTEM – Mall A & Mall B; the provision of all labor, MATERIALS, CONSTRUCTION PLANT, TEMPORARY WORKS; and the provisions of everything whether of a temporary or permanent nature and which shall be the best of their respective kinds, required in and for such design, engineering, supply, fabrication, installation, completion, maintenance during the maintenance period and guarantee so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT, all to the satisfaction of the ENGINEER.

Article 5: Engineer

The ENGINEER under the CONTRACT, save unless otherwise replaced by the EMPLOYER and notified in writing to the CONTRACTOR shall be as follows and who shall be acting through for and on its behalf by Mr. Suradji H Darmadji:

PT Cipta Karya Bumi Indah
Gedung WTC Mangga Dua, Jl. Mangga Dua Raya,
Kelurahan Ancol, Jakarta Utara

Provided always that the ENGINEER in exercising his duties pursuant to Clauses 5, 40, 44, 51, 52, 53, 56, 58, 61, 63, and 65 of the CONDITIONS OF CONTRACT, shall seek and acknowledge receipt of the EMPLOYER'S approval and written consent prior to exercising his power under the CONTRACT.

Article 6: Date of Commencement and Completion

The CONTRACTOR shall commence the WORKS immediately and shall proceed thereto with due care and diligence on the date of the LETTER OF INTENT. The WORKS shall be entirely completed at SITE by not later than 30 October 2006 (Site A) and 30 January 2007 (Site B) (hereinafter called the "DATE FOR COMPLETION").

However, notwithstanding the DATE FOR COMPLETION, the ENGINEER reserves all rights to require for earlier phased completion of any parts of the WORKS and the taking over thereto for EMPLOYER'S other contractors to proceed with their works. In this respect also, the CONTRACTOR shall note and be deemed to have accepted that there would be other

contractors at site carrying out their respective works at the same time as the CONTRACTOR is carrying out the WORKS.

The CONTRACTOR shall also be deemed to have agreed and accepted that time for completion is of the essence of the CONTRACT. Therefore, provided always and notwithstanding the aforesaid DATE FOR COMPLETION, in the event during the progress of the WORKS, the ENGINEER shall note that the WORKS are progressing in a manner such that the WORKS can achieve DATE FOR COMPLETION earlier than and in advance of the DATE FOR COMPLETION provided herein, the ENGINEER can in a fair and reasonable manner determine and fix DATE FOR COMPLETION earlier than the DATE FOR COMPLETION as provided herein and inform the same to the CONTRACTOR in writing, and the CONTRACTOR shall comply and achieve completion by such said revised as if they had been the original DATES FOR COMPLETION as initially provided in the CONTRACT. For the avoidance of doubt, there shall be no claims for any acceleration and the like from the CONTRACTOR and all provisions on liquidated damages under the CONTRACT shall apply mutatis mutandis on the revised DATE FOR COMPLETION.

Article 7: Contract Sum

The CONTRACT SUM payable by the EMPLOYER to the CONTRACTOR subject to the CONTRACT shall be United State Dollars Four Hundred Nineteen Thousand Three Hundred and Twenty Six Only (US$ 419,326); excluding PPn but including PPh and all other taxes and duties; and including overheads and profits, etc. The breakdown of the total CONTRACT SUM shall be as indicated in the BILL OF QUANTITIES.

Article 8: Rates and prices to be all inclusive

All rates and prices in the CONTRACT shall remain fixed, firm throughout the CONTRACT and shall be inclusive of all ancillary and other works, materials and expenditure whether separately mentioned or described or not.

Article 9: Progress Payments

Payment under the CONTRACT shall be made as follows. Payment under the CONTRACT shall be made in United State Dollars (US$) only and shall be effected within four (4) weeks of the ENGINEER'S certification. All payments under the CONTRACT shall be subject to PPh:

(a) an advance payment of 20% of the Contract Sum upon the CONTRACTOR'S submission of Advance Payment Bond (Surety Bond from Reputable Insurance Company allowed) of the same amount in the format as shown in Annexures appended to the CONDITIONS OF CONTRACT; and the Performance Bond of 10% of the Contract Sum in the format as shown in Annexures appended to the CONDITIONS OF CONTRACT.

(b) Up to 50% of the Contract Sum shall be paid to the Contractor progressively based on the monthly progress of the material delivered to the SITE as inspected and certified by Grand Indonesia's Engineer.

(c) 25% of the Contract Sum (or partial contract sum) shall be paid to the Contractor after Testing & Commissioning completion for each Mall A & Mall B.

(d) 5% of the Contract Sum shall be withheld by the EMPLOYER as retention money until the completion of the Maintenance Period as stated in the Clause 58 of Conditions Of Contract.

Article 10: Final Payment

The Final Payment, constituting the entire unpaid balance of payment due to the CONTRACTOR under the CONTRACT, shall be made by the EMPLOYER to the CONTRACTOR, three hundred and sixty five (365) days after the ENGINEER'S issuance of the Final Account Certificate pursuant to Clause 58 of the CONDITIONS OF CONTRACT, provided a recommendation for the Final Payment would have been issued by the ENGINEER subject to all financial and maintenance matters being agreed upon and the CONTRACTOR submitting to the EMPLOYER written waiver of all liens, demands, claims and the like to the approval of the ENGINEER.

Article 11: Liquidated Damages for Delay

If the CONTRACTOR shall fail to complete the WORKS in accordance with the DATE FOR COMPLETION as set out in the CONTRACT or within any earlier dates for phased completion in case of any sub-phasing of the WORKS; or within any extensions of time for completion as may be thereto approved by the ENGINEER under the CONTRACT, the CONTRACTOR shall pay liquidated damages to the EMPLOYER at a rate of 0.1% of the CONTRACT SUM for every day delay in achieving the completion of the WORKS.

The maximum amount of liquidated damages under the CONTRACT shall be 10% of the CONTRACT SUM.

Article 12: Bonus for Early Completion

There shall be no bonus for early completion payable to the CONTRACTOR.

Article 13: Compliance with Laws Regulations

Notwithstanding any instructions or other directions given by or on behalf of the EMPLOYER and/or the ENGINEER, the WORKS and its preparation and execution shall comply at all times with the laws, regulations and codes of the Republic of Indonesia applicable to the WORKS or parts thereof.

Article 14: Performance Bond

The CONTRACTOR shall submit to the EMPLOYER, a PERFORMANCE BOND in the acceptable form of a guarantee as annexed in the CONDITIONS OF CONTRACT, drawn through a Bank acceptable to the EMPLOYER for an amount of 10% of the Contract Sum as security for due performance by the CONTRACTOR of each and every liability and obligation owing by the CONTRACTOR to the EMPLOYER, whether of a contractual or tortious nature or otherwise. Failure to provide the PERFORMANCE BOND as required may render the CONTRACT null and void whether the AGREEMENT is signed or not but which shall be without prejudice to all rights of the EMPLOYER to recover all losses and damages arising

thereto. All costs and expenses for the PERFORMANCE BOND including but may not be limited to costs of opening the Bond, necessary extensions thereafter, etc. shall be to the account of the CONTRACTOR.

Article 15: Opportunities for Other Contractors

The CONTRACTOR acknowledges and accepts that the EMPLOYER shall have the power at any time to engage EMPLOYER'S OTHER CONTRACTORS, EMPLOYER'S OWN FORCES, artisans, tradesmen or other contractors and/or permit the engagement of the same by occupiers and/or tenants of the facilities of the PROJECT in the event of completion of any section, phase, or sub-phase of the WORKS pursuant to Clause 48 of the CONDITIONS OF CONTRACT, to execute works (whether or not in connection with the WORKS) simultaneously, contemporaneously, sequentially or otherwise with the execution of the WORKS. The CONTRACTOR shall not delay nor obstruct nor interfere with them in their carrying out of their works but shall permit the SITE to be so used, provide all reasonable facilities for such purposes and shall liaise, work, coordinate, supervise and all of the like with them to ensure the smooth construction and completion of the PROJECT to the ENGINEER'S satisfaction. The CONTRACTOR shall make no claim against the EMPLOYER for extra payment or loss or damage in respect of the presence on SITE of or delay or interference caused by or any act, omission or default on the part of any such persons on SITE. The CONTRACTOR shall make good any damage or loss caused to the WORKS.

Article 16: Warranty

The CONTRACTOR shall be deemed an expert in the WORKS; and shall thereto be responsible for amongst others, the engineering of the WORKS; and which shall be, notwithstanding the EMPLOYER'S specifications, drawings, details, etc, without prejudice to the CONTRACTOR'S engineering responsibilities.

The CONTRACTOR shall warrant that he shall exercise all proper skill and care in the engineering, carrying out and completion of the WORKS as an entire Fire Alarm System and which shall be fit and suitable for the purposes intended and expected. The WORKS shall for a period of at least one (1) year after certified completion of the WORKS or for any durations in accordance with Indonesian statutory requirements, whichever is longer (collectively called the "Warranty Period"); be structurally stable and strong, free from defects, and/or deterioration in the WORKS.

In the event, the WORKS shall fail to meet the warranted requirements as stated herein during the Warranty Period, then the CONTRACTOR shall be liable for the costs of replacement WORKS and/or other rectification as shall be reasonably required by the ENGINEER. For the avoidance of doubt, the CONTRACTOR shall not be considered in default for defects due solely to fair wear and tear which are not attributable in any manner to the CONTRACTOR'S default; and in which event if the EMPLOYER requires replacement, the CONTRACTOR shall supply and deliver the required WORKS based on the CONTRACT RATES or based on mutually agreed rates established based on fair market prices.

Article 17: Effective Date of Contract

Notwithstanding any obligations and liabilities of the CONTRACTOR which could have come into effect earlier, the EMPLOYER and the CONTRACTOR shall be deemed to have entered into a valid and binding contract on the date first mentioned hereinafter and which shall be

called the "Effective Date".

In consideration of the payments to be made by the EMPLOYER to the CONTRACTOR as hereinafter mentioned, the CONTRACTOR hereby covenants with the EMPLOYER to supply, fabricate, install, complete, maintain during the maintenance period and guarantee the WORKS in conformity in all respects with the provisions of the CONTRACT.

The EMPLOYER hereby covenants to pay the CONTRACTOR in consideration of the supply, fabrication, installation, completion, maintenance during the maintenance period and guarantee of the WORKS the amount prescribed by the CONTRACT.

IN WITNESS whereof the parties hereto have caused their duly authorized representatives to execute this AGREEMENT and hereunto set their respective hands the day and year first above written.

For and on behalf of
CONTRACTOR:
PT Indolok Bakti Utama

Hindra C. Kurniawan
President Director

For and on behalf of
EMPLOYER:
PT Grand Indonesia

Frans H Lazaro
Managing Director

PT GRAND INDONESIA

FORM OF WARRANTY

GRAND INDONESIA PROJECT

FIRE ALARM SYSTEM – Mall A & Mall B

FORM OF WARRANTY

TO: PT GRAND INDONESIA
Jalan M H Thamrin No. 1,
Jakarta 10310, Indonesia.

Re: GRAND INDONESIA PROJECT
FIRE ALARM SYSTEM – Mall A & Mall B

Gentlemen,

In respect of the construction of the Grand Indonesia Project (the "Project") at Jalan M H Thamrin No.1, Jakarta 10310, and the undertaking of the design, engineering, supply, fabrication, installation, completion, maintenance during the maintenance period and guarantee for the Fire Alarm System – Mall A & Mall B (the "Works") for the abovementioned Project;

We, PT. Indolok Bakti Utama, in consideration of you, PT Grand Indonesia (the "Employer") awarding us the contract (the "Contract") for the Works for the abovementioned Project irrevocably warrant herein this warranty (the "Warranty") as follows:

1. We have exercised and will continue to exercise all proper skill, diligence and care in Design, Engineering, Supply, Fabrication, Installation, Completion, Maintenance during the Maintenance Period and Guarantee of the said Works, and the selection of materials and goods thereof so far as the Works have been or will be supplied / installed by us or such materials or goods have been or will be selected or approved by us.

2. We will in addition to Clause 1 hereof comply with and satisfy any performance specifications and requirements included in or referred to in the Contract as part of the description of the Works to the approval of the Engineer and under the general directions of the Engineer or his representative, but such approval given by you, your agents, advisers or servants shall not relieve us from any of our responsibilities for the adequacy, safety and suitability of our construction, completion, maintenance and guarantee within the context and intent of the Contract.

3. The Works performed hereunder shall conform to all the requirements of the Contract, be and continue thereafter to be suitable for the services and purposes intended for Fire

Alarm System and shall be free from construction and material defects, inherent, latent and/or otherwise; for a period of at least one (1) year after certified completion of the Works or for any durations in accordance with Indonesian statutory requirements, whichever is longer (collectively called the "Warranty Period").

4. Should any of our Works fail or fail to meet any of our undertakings herein this Warranty, we shall within the time as shall be specified by the Engineer thereto, rectify and/or replace the defective portion of the work(s), at our own expense, to the satisfaction of the Employer and the Engineer. This will not absolve us from being subject to actual damages suffered by the Employer or liquidated damages indicated in the Contract.

Without prejudice to the aforesaid, if we shall fail to rectify and/or replace the defective portion of the work(s) as instructed by the Engineer, we agree that the Employer shall be entitled to employ any third party to carry out and complete the same and in consequence thereto recover all costs, losses and expenses from us. Such rectification and/or replacement works by the Employer's third party necessitated due to our default shall not invalidate the Warranty and the Warranty herein shall continue to bind us unaffected as if the rectification and/or replacement works had been carried out and completed by us.

5. We also undertake that in the event of any damage and/or defects to the Works not due in its entirety to our default, we shall within the time as shall be specified by the Engineer thereto, rectify and/or replace the defective portion of the work(s), to the satisfaction of the Employer and the Engineer. Such works shall be measured and valued based on equivalent rates in the Contract or pro-rated thereto. In the absence of any relevant Contract rates as shall be determined by the Engineer, such works shall be measured and valued based on prevailing fair market rates as mutually agreed between ourselves and the Employer.

6. Nothing in our Contract is intended to exclude or limit our liability for breach of our warranties as set out herein this Warranty.

7. We agree that the Employer may assign the benefits of this Warranty to any third party(ies) as the Employer shall deem necessary and if required by the Employer, we shall enter into and execute separate agreements to effect any such assignment.

8. For the avoidance of doubt, all our duties, obligations, responsibilities and liabilities towards the Employer herein this Form Of Warranty, shall survive, continue unaffected and not be prejudiced in any manner by any completion, cessation and/or termination of the Contract.

Save unless otherwise provided, all terms used herein this Warranty shall have the same meaning as defined in the Contract.

Dated this 25th day of July 2006

Signature : _____

Name : Hindra C. Kurniawan

in the capacity of _____ duly authorized to sign contracts for and on behalf of PT. Indolok Bakti Utama.

IN THE PRESENCE OF:

Witness :

Address :

Occupation :

APPENDIX
TO
CONDITIONS OF CONTRACT

DESCRIPTION	CLAUSE	DETAILS
Amount of Advance Payment	58.2	20% of the Contract Sum
Amount of Performance Bond	10	10% of the Contract Sum
Phased Completion	43.2	Mall A - 30 October 2006 Mall B – 30 January 2007
Date(s) for Completion	43.1	30 January 2007
Amount of Liquidated Damages	47.1	0.1% of the Contract Sum per day of delay in achieving the DATE FOR COMPLETION. The maximum amount of liquidated damages for delay under the CONTRACT shall be 10% of the Contract Sum
Period of Maintenance	49	12 months from the Certificate of Practical Completion
Percentage of Retention Monies	58.1	5% of Contract Sum
Limit of Retention Monies	58.1	5% of Contract Sum
Time within which payment to be made after certificate	58.1	4 weeks
Currency	58.3	United State Dollars Only
Minimum amount certifiable for Materials On Site	58.7	US$ 5,000

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CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

1.1 Definition

In the CONTRACT (as hereinafter defined) the following words and expressions shall have the meaning hereby assigned to them, except where the context otherwise requires:

(a) "APPENDIX" means the appendix to these CONDITIONS OF CONTRACT.

(b) "APPROVED" or "APPROVAL" saved unless otherwise provided in the CONTRACT, means approved or approval in writing by the ENGINEER but which shall not relieve the CONTRACTOR of his duties, obligations, responsibilities and liabilities under the CONTRACT.

(c) "BILL OF QUANTITIES" means all bills of quantities referred to in the CONTRACT wherein the works described therein are not subject to measurement or recalculation, should the actual quantities of the WORKS differ from the same as indicated in the bills of quantities, except in regard to variations ordered by the ENGINEER under the CONTRACT. Pursuant to the aforesaid, it is the CONTRACTOR'S responsibility to verify the items, quantities, rates and prices, and no claim for extra costs shall be entertained due to error(s), increase of the quantities, and/or items omitted in the measurement or mis-description of the WORKS.

(d) "CONDITIONS OF CONTRACT" means the conditions of contract contained in the CONTRACT and the supplementary conditions of contract (if any).

(e) "CONSULTANT(S)" means the person or persons, firm(s) or company(ies) employed by the EMPLOYER for the architectural and/or engineering design of the PROJECT.

(f) "CONTRACT" means the documents identified as the Contract Documents in the FORM OF AGREEMENT and all documents together shall be deemed to form the CONTRACT.

(g) "CONTRACT SUM" means the fixed lump sum named in the EMPLOYER'S LETTER OF INTENT to the CONTRACTOR and/or in the FORM OF AGREEMENT, subject to such additions thereto or deductions therefrom as may be made under the provisions of the CONTRACT hereinafter contained.

(h) "CONTRACTOR" means the person or persons, firm or company identified and named in the FORM OF AGREEMENT, whose tender has been accepted by the EMPLOYER and includes the CONTRACTOR'S personal representative(s), successors and assignees as approved by the EMPLOYER.

(i) "CONTRACTOR'S FACTORY" means the CONTRACTOR'S land and other places where the WORKS are to be fabricated and/or manufactured by the CONTRACTOR.

(j) "CONSTRUCTION PLANT" means all appliances, plant and equipment or other things required for the design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS but does not include materials or goods or other things intended to form or be forming part of the

PERMANENT WORKS.

(k) "DATE(S) FOR COMPLETION" means the date or dates for the completion of the WORKS set out in the LETTER OF INTENT and/or FORM OF AGREEMENT and which are calculated based on provisions in the APPENDIX, or the date or dates on which such extension or extensions of time (if any) as the CONTRACTOR may be allowed under the CONTRACT, shall expire. The latest "DATE FOR COMPLETION" shall also be deemed to be the latest date of the CONTRACT PERIOD.

(l) "DAY" means a calendar day.

(m) "DRAWING(S)" means all drawings referred to in the CONTRACT and all and any modifications thereof or additions thereto as may from time to time be furnished and/or APPROVED by the ENGINEER.

(n) "EMPLOYER" is the party named **PT GRAND INDONESIA** having its Principal Office of Business at Jalan M H Thamrin No. 1, Jakarta 10310, Indonesia, represented by Mr. Frans H Lazaro. Where in the CONTRACT any reference is made to the term "Owner", such term shall mean and be deemed a reference made to "EMPLOYER" save unless the context shall otherwise require.

(o) "EMPLOYER'S MATERIAL(S)" means all materials, machineries, plants, equipments, apparatus, goods and all other things supplied by the EMPLOYER and which shall be intended to form or be forming part of the PERMANENT WORKS by the CONTRACTOR.

(p) "EMPLOYER'S OTHER CONTRACTOR(S)" means the person(s), firm(s) or company(ies) other than the CONTRACTOR who may be employed by the EMPLOYER under separate contract(s) and be present on the SITE or otherwise, to carry out works or to supply goods and materials or otherwise pursuant to the PROJECT, simultaneously, contemporaneously, sequentially or otherwise with the WORKS undertaken by the CONTRACTOR and with whom the CONTRACTOR shall pursuant to the CONTRACT be required to liaise, work, coordinate, cooperate and all of the like.

(q) "EMPLOYER'S OWN FORCE(S)" means the person(s), firm(s) or company(ies) of the EMPLOYER who will at the discretion of the EMPLOYER be present on the SITE or otherwise, to carry out works or to supply goods and materials or otherwise pursuant to the PROJECT, simultaneously, contemporaneously, sequentially or otherwise with the WORKS undertaken by the CONTRACTOR and with whom the CONTRACTOR shall pursuant to the CONTRACT be required to liaise, work, coordinate, cooperate and all of the like.

(r) "ENGINEER" means **PT CIPTA KARYA BUMI INDAH** or other engineer appointed from time to time by the EMPLOYER and notified in writing to the CONTRACTOR to act as ENGINEER for the purposes of the CONTRACT in place of the ENGINEER so designated.

(s) "ENGINEER'S REPRESENTATIVE" means the person or persons as may be appointed from time to time by the ENGINEER or the EMPLOYER to act as ENGINEER'S REPRESENTATIVE for the purposes of the CONTRACT and whose

authority is defined in Sub-Clause 2.2.

(t) "FORM OF AGREEMENT" means the form of agreement entered into and executed by the EMPLOYER and the CONTRACTOR for the CONTRACT, as referred to in Sub-Clause 9.1.

(u) "INSPECTOR" means the ENGINEER'S authorized representatives assigned to make detailed inspections of the performance of the CONTRACT by the CONTRACTOR.

(v) "INSTRUCTION" means a written order or an informal written / verbal order subsequently confirmed formally in writing, issued by the ENGINEER to the CONTRACTOR requesting work to be performed in accordance with the CONTRACT including all variations or changes that do not involve any adjustment in the basis of payment. Directives will include order to start, stop and resume work and orders to perform work under any contingent item in the CONTRACT.

(w) "LETTER OF INTENT" means the EMPLOYER'S letter of intent to the CONTRACTOR whereby the CONTRACTOR shall upon receipt of the same, be immediately bound by the terms and conditions of the CONTRACT.

(x) "MATERIALS" means all materials, machineries, plants, equipments, apparatus, goods and all other things supplied by the CONTRACTOR and which are intended to form or be forming part of the PERMANENT WORKS.

(y) "NOTICE TO PROCEED" means written notice from the EMPLOYER or the ENGINEER to the CONTRACTOR to proceed with the WORKS, including, where applicable the DATE(S) FOR COMPLETION, the date of commencement of the CONTRACT, prior to which no WORKS or any part thereof under the CONTRACT shall be permitted nor will such be recognized or honored under the CONTRACT. The NOTICE TO PROCEED may at the discretion of the EMPLOYER or the ENGINEER be incorporated in the LETTER OF INTENT.

(z) "PERFORMANCE BOND" means the on-demand banker's security furnished by the CONTRACTOR'S surety in order to guarantee the CONTRACTOR'S performance of duties, obligations and responsibilities in accordance with the CONTRACT.

(aa) "PERMANENT WORKS" means all permanent works to be executed and maintained and guaranteed in accordance with the CONTRACT including all variations.

(ab) "PROJECT" means the project identified and named in the FORM OF AGREEMENT and where the WORKS herein this CONTRACT are intended to be part thereof.

(ac) "SCOPE OF WORKS" means all the WORKS to be undertaken by the CONTRACTOR under the CONTRACT and which shall be inclusive of all ancillary and other works whether shown, described or mentioned or not in the SPECIFICATIONS, DRAWINGS, BILL OF QUANTITIES or anywhere in the CONTRACT, which are either necessary to carry out and bring to completion the WORKS or which may become necessary to overcome difficulties to achieve completion of the WORKS or which may be deemed necessary pursuant to good engineering or construction practice as shall be

determined by the ENGINEER.

(ad) "SITE" means the land and other places where the WORKS are to be executed or carried out and any other land(s) and place(s) provided by the EMPLOYER for the purposes of the CONTRACT.

(ae) "SPECIFICATION(S)" means all specifications referred to in the CONTRACT and all and any modifications thereof or additions thereto as may from time to time be furnished and/or APPROVED by the ENGINEER.

(af) "TEMPORARY WORK(S)" means all temporary works of every kind required for the design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS.

(ag) "WORKS" means all works to be performed / provided by the CONTRACTOR under the CONTRACT and shall include both the PERMANENT WORKS and TEMPORARY WORKS as hereinafter defined by the CONTRACT.

1.2 Singular and Plural

Words indicating the singular also include the plural and vice versa where the context requires. Any words capitalized shall have the meanings assigned under Sub-Clause 1.1 and which shall also have similar meanings to the same words but not capitalized if the context so reasonably requires.

1.3 Headings or Notes

The headings and marginal notes in these CONDITIONS OF CONTRACT shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the CONTRACT.

1.4 Cost

The word "cost" shall not include overhead costs and profits whether on or off the SITE.

1.5 Reference to Clause(s) and Sub-Clause(s)

Save unless otherwise provided:

(a) any reference made in these CONDITIONS OF CONTRACT as to any Clause(s) shall mean and be deemed to be a reference made to the respective Clause(s) and all the respective relevant Sub-Clause(s) thereunder in these CONDITIONS OF CONTRACT; and

(b) any reference made in these CONDITIONS OF CONTRACT as to any Sub-Clause(s) shall mean and be deemed to be a reference made to the specific respective Sub-Clause(s) in these CONDITIONS OF CONTRACT.

ENGINEER AND ENGINEER'S REPRESENTATIVE

2.1 Engineer's Power and Duties

The ENGINEER'S powers and duties are limited to administration only in implementation of his responsibilities under the CONTRACT. Save unless otherwise provided in the CONTRACT, the ENGINEER shall have no authority to relieve the CONTRACTOR of any of his duties, obligations, responsibilities and liabilities under the CONTRACT.

In addition to the powers which are expressly assigned to the ENGINEER in this CONTRACT, the ENGINEER shall also have all the powers assigned to the ENGINEER'S REPRESENTATIVE in the CONTRACT.

Without prejudice to any of the powers and authorities of the ENGINEER vested herein the CONTRACT, the ENGINEER may also from time to time in writing delegate to the ENGINEER'S REPRESENTATIVE any of the duties, powers and authorities vested in the ENGINEER and the ENGINEER may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the EMPLOYER and the CONTRACTOR. Any written instruction or approval given by the ENGINEER'S REPRESENTATIVE to the CONTRACTOR within the terms of such delegation, but not otherwise, shall have the same effect as though it had been given by the ENGINEER. Provided always that:

(a) any failure of the ENGINEER'S REPRESENTATIVE to approve or disapprove any work or materials or otherwise under the CONTRACT shall not prejudice the power of the ENGINEER thereafter to disapprove such work or materials or otherwise and to order the pulling down, removal, replacement or breaking up thereof;

(b) if the CONTRACTOR shall with valid reasons, become dissatisfied by reason of any decision of the ENGINEER'S REPRESENTATIVE he shall be entitled to refer the matter to the ENGINEER, who shall thereupon confirm, reverse or vary such decision.

INSTRUCTIONS given by the ENGINEER shall be in writing, provided that if for any reason the ENGINEER considers it necessary to give any such INSTRUCTIONS orally, the CONTRACTOR shall comply with such INSTRUCTION. Confirmation in writing of such oral INSTRUCTION given by the ENGINEER, whether before or after the carrying out of the INSTRUCTION, shall be deemed to be an INSTRUCTION within the meaning herein. Provided further that if the CONTRACTOR, within no later than seven (7) days, confirms in writing to the ENGINEER any oral INSTRUCTION of the ENGINEER and such confirmation is not contradicted in writing within fourteen (14) days by the ENGINEER, it shall be deemed to be an INSTRUCTION of the ENGINEER.

2.2 Engineer's Representative

The ENGINEER'S REPRESENTATIVE shall be responsible to the ENGINEER and his duties are to watch and supervise the WORKS and to test and examine any materials to be used or workmanship employed in connection with the WORKS.

The ENGINEER'S REPRESENTATIVE shall have no authority to relieve the

CONTRACTOR of any of his duties, obligations, responsibilities or liabilities under the CONTRACT nor, except as expressly provided hereunder or elsewhere in the CONTRACT, to order any work involving delay or any extra payment by the EMPLOYER, nor to make any variation of or in the WORKS.

2.3 Engineer's Requirement of Employer's Approval

In exercising his duties pursuant to Clauses 5, 40, 44, 51, 52, 53, 56, 58, 61, 63 and 65 hereof, the ENGINEER shall seek and acknowledge receipt of the EMPLOYER'S approval and written consent prior to exercising his power under this CONTRACT.

ASSIGNMENT AND SUB-LETTING

3.1 Assignment

Save unless only with the prior written consent of the EMPLOYER, the CONTRACTOR shall not:

(a) assign the CONTRACT in whole or in part thereof, or any benefit or interest therein or thereunder, other than by a charge in favor of the CONTRACTOR'S bankers of any monies due or to become due under this CONTRACT;

(b) make arrangements for the vicarious performance of any of his duties or functions under the CONTRACT by any other person, nor shall any receiver or liquidator of the CONTRACTOR be entitled to carry out such duties or functions.

However without prejudice to the aforesaid, the CONTRACTOR shall acknowledge and accept that the EMPLOYER shall be entitled, at any time, to assign this CONTRACT in whole or in part thereof, or any benefit or interest therein or thereunder to any other company and/or financial institution.

4.1 Sub-letting

The CONTRACTOR shall not sub-let the whole and any part of the WORKS except where otherwise provided by the CONTRACT. The CONTRACTOR shall not sub-let any part of the WORKS without the prior written consent of the ENGINEER, which shall not be unreasonably withheld, and such consent, if given, shall not relieve the CONTRACTOR from any duty, obligation, responsibility or liability under the CONTRACT and the CONTRACTOR shall be responsible for the acts, defaults and negligence of any sub-contractors, his agents, servants or workmen as fully as if they were the acts, defaults or negligence of the CONTRACTOR, his agents, servants or workmen.

CONTRACT DOCUMENTS

5.1 Language and Law

(a) Language

The English Language and metric system of weights and measures shall be used in all correspondence and matters relating to the CONTRACT. The CONTRACTOR'S representative(s) shall be able to speak and write in the English Language proficiently and fluently so as to be able to make themselves understood clearly by the EMPLOYER, ENGINEER and the ENGINEER'S REPRESENTATIVE, and in return be able to understand them clearly.

(b) Law

The CONTRACT shall be deemed to have been made in and shall be construed according to the Laws of Republic of Indonesia. This condition applies to any Local or Foreign Contractor who participates in whatever manner in this CONTRACT and consents to be issued in any court or tribunal of competent jurisdiction within the Republic of Indonesia on any question or matter arising from the documents, award and implementation of the CONTRACT. For this purpose any Office, Agents or Representative(s) of the said Foreign Contractor present in the territory of the Republic of Indonesia is authorized to receive process summons on behalf of the Foreign Contractor where notwithstanding any restriction or limitation imposed by the said Foreign Contractor upon its Officers, Agents or Representative(s).

For the avoidance of doubt, in the event any of the provisions of the CONTRACT shall be held to be illegal, unenforceable, invalid or the like, such illegality, unenforceability, invalidity and the like shall not affect nor prejudice the CONTRACT as a whole but the same to the extent that it shall be so illegal, unenforceable, invalid or the like, shall be independently severed or severable from the CONTRACT and the other remaining provisions thereto or of the CONTRACT shall continue unaffected and without any prejudice therefor.

5.2 Type and Extent of Contract

The CONTRACT comprises the due care and diligent design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS: the provision of all labor, MATERIALS, CONSTRUCTION PLANT, TEMPORARY WORKS; the provision of everything necessary for the due care and diligent use of and incorporation of the EMPLOYER'S MATERIALS into the WORKS; the coordination, cooperating and liaison with the EMPLOYER'S OTHER CONTRACTORS and the EMPLOYER'S OWN FORCES, and the provisions of everything whether of a temporary or permanent nature and which shall be the best of their respective kinds, required in and for such design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT, all to the satisfaction of the ENGINEER.

The CONTRACT is a fixed lump sum contract and for the duration of the CONTRACT and the CONTRACT PERIOD, the CONTRACT SUM (and all rates and prices therein) is and shall remain fixed and firm, and inclusive of all ancillary and other works and expenditures, whether separately or specifically mentioned or described in the

CONTRACT or not, which are either necessary to carry out and bring to completion the WORKS or which may become necessary to overcome difficulties before completion. Save as otherwise expressly provided in the CONTRACT, there shall be no change in the amount payable by the EMPLOYER to the CONTRACTOR.

5.3 Documents mutually explanatory

Save unless otherwise expressly provided, the provisions of the CONDITIONS OF CONTRACT shall prevail over those of any other documents forming part of the CONTRACT. Subject to the foregoing, all documents of the CONTRACT shall be read and construed as a whole and no other special priority except that accorded by laws governing this CONTRACT as provided in Clause 5.1, shall apply.

5.4 Ambiguities or Discrepancies

Subject always to Clause 5.3, in case of ambiguities or discrepancies or inconsistencies or reasonably apparent errors or any of the like between the several documents forming the CONTRACT or in any drawings, schedules or other design or constructional data issued by the ENGINEER as to the precise extent or nature of the works to be carried out by the CONTRACTOR or otherwise, the CONTRACTOR shall give urgent notice in writing of the same with all necessary supporting details not later than three (3) days upon the CONTRACTOR'S discovery of any discrepancies. Provided always that such notification by the CONTRACTOR and the ENGINEER'S satisfaction that the CONTRACTOR has used all reasonable endeavors to mitigate any effects in consequence, shall be a condition precedent to any of the CONTRACTOR'S rights which may arise by reason of this Sub-Clause 5.4.

The ENGINEER shall propose to the EMPLOYER and the CONTRACTOR appropriate INSTRUCTIONS in writing in regard thereto. The EMPLOYER and the CONTRACTOR shall thereupon, within one (1) week of receipt thereof from the ENGINEER, inform the ENGINEER in writing of any non-acceptance, or disagreement with the proposed INSTRUCTION failing which the INSTRUCTION shall be deemed mutually agreed by the EMPLOYER and the CONTRACTOR and the ENGINEER shall so instruct the CONTRACTOR.

6.1 Custody of Drawings

The DRAWINGS prepared by the CONSULTANTS for the WORKS shall remain in the sole custody of the ENGINEER, but two (2) copies thereof shall be furnished to the CONTRACTOR free of charge. The CONTRACTOR shall provide and make at his own expense any further copies required by him. At the completion of the CONTRACT (or earlier in the event of any termination of the CONTRACT), the CONTRACTOR shall return to the ENGINEER all DRAWINGS provided under the CONTRACT.

6.2 One Copy of Drawings to be kept on Site

One (1) copy of the DRAWINGS, furnished to the CONTRACTOR as aforesaid, shall be kept by the CONTRACTOR on SITE and the same shall at all reasonable times be available for inspection and use by the ENGINEER and by any other person(s) authorized by the ENGINEER in writing.

6.3 Disruption of Progress

The CONTRACTOR shall without prejudice to his duties, obligations, responsibilities and liabilities under the CONTRACT, give adequate written notice to the ENGINEER whenever planning or progress of the WORKS is likely to be delayed or disrupted or affected. In the event delay or disruptions to the WORKS may be due to insufficient drawings or delay in the issuance of instructions or approval the CONTRACTOR shall immediately serve written notice to the ENGINEER seeking any further drawing or order, including a direction, instruction or approval.

The written notice shall include details of the drawings or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late. The ENGINEER on receipt of the written notice shall issue any further drawings, or order including a direction, instruction or approval within a reasonable time. Provided always that notwithstanding whatsoever reasons or causes which give rise to delays or disruptions to the progress of the WORKS, the CONTRACTOR will not be entitled and shall be deemed to have waived all rights as to any costs, compensations or remunerations thereof.

6.4 Delays (Drawings)

If, by reason of any failure or inability of the ENGINEER to issue within a time reasonable in all the circumstances any drawing or order including a direction, instruction or approval requested by the CONTRACTOR in accordance with Sub-Clause 6.3, the CONTRACTOR suffers delay then provided always that notification by the CONTRACTOR has been served in accordance with Sub-Clause 6.3 and the ENGINEER is satisfied that the CONTRACTOR has used all reasonable endeavors to mitigate any effects in consequence, the ENGINEER shall take such delay into account in determining any extension of time to which the CONTRACTOR is entitled under Clause 44 hereof.

6.5 Drawings, Reports, Documents submitted by the Contractor

The CONTRACTOR shall himself prepare and submit for the approval of the ENGINEER, all drawings, investigation reports and all other documents for the use of the WORKS in accordance with the requirement of the CONTRACTS.

7.1 Further Drawings and Instructions

The ENGINEER shall have the power and authority to supply to the CONTRACTOR from time to time, during the progress of the WORKS, such further drawings, specifications and instructions as shall be necessary prepared by the CONSULTANTS or otherwise, for the purpose of the proper and adequate design, construction, completion, maintenance and guarantee of the WORKS. The CONTRACTOR shall carry out and be bound by the same.

7.2 Permanent Works designed by Contractor

The CONTRACTOR shall submit the following to the ENGINEER for APPROVAL, any part(s) of the PERMANENT WORKS designed by the CONTRACTOR under the CONTRACT:

(a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the ENGINEER as to the suitability and adequacy of the CONTRACTOR'S design;

(b) all drawings, specifications, calculations and other information related to the erection of the WORKS to be carried out at the discretion of the EMPLOYER by the EMPLOYER'S OWN FORCES and/or EMPLOYER'S OTHER CONTRACTORS, as shall be necessary to satisfy the ENGINEER:

(i) as to the suitability and adequacy of the CONTRACTOR'S design for purposes of handling, erection, installation and the like as part of the PROJECT; and

(ii) as to the proper integration, interphasing, coordination and the like as part of the PROJECT.

(c) operation and maintenance manuals together with drawings of the PERMANENT WORKS as completed, in sufficient detail to enable the EMPLOYER to operate, maintain, repair, rectify, dismantle, reassemble and adjust the PERMANENT WORKS incorporating that design. Save unless otherwise decided by the ENGINEER at his discretion, the WORKS shall not be considered to be completed for the purposes of taking over in accordance with Clause 48 hereof until such operation and maintenance manuals, together with as-built drawings on completion, have been submitted to and APPROVED by the ENGINEER; and

(d) any other drawings, specifications, calculations, information and the like as may be reasonably required by the ENGINEER.

Without prejudice to the CONTRACTOR'S duties, obligations, responsibilities and liabilities insofar as the same relates directly or indirectly to the design by the CONTRACTOR, the design and patent rights and all copyright thereto shall become the property of the EMPLOYER upon APPROVAL by the ENGINEER.

7.3 Responsibility unaffected by Approval

APPROVAL by the ENGINEER required under the CONTRACT, shall not relieve the CONTRACTOR of any of his duties, obligations, responsibilities and liabilities under the CONTRACT.

7.4 Maintenance of Secrecy

The CONTRACTOR shall treat the CONTRACT and everything contained therein as private and confidential and shall not use the same for any purpose other than for the WORKS. In particular, the CONTRACTOR shall at no time without the prior written consent of the EMPLOYER, disclose or publish any information, drawings or photographs concerning the WORKS or allow the same to come to the knowledge and/or in the possession of any third party.

GENERAL OBLIGATIONS

8.1 Contractor's General Responsibilities

The CONTRACTOR shall, subject to the provisions of the CONTRACT and with due care and diligence carry out the design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS and provide all labor, including the supervision thereof, MATERIALS, CONSTRUCTION PLANT, TEMPORARY WORKS and all other things, whether of a temporary or permanent nature, and which shall be the best of their respective kinds required in and for the WORKS, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the CONTRACT, all to the satisfaction of the EMPLOYER and the ENGINEER. The CONTRACTOR'S obligations as aforesaid shall extend to the use of and the incorporation of EMPLOYER'S MATERIALS into the WORKS, if applicable.

8.2 Site Operations and Methods of Construction

The CONTRACTOR shall, take full responsibility for the adequacy, stability and safety of all operations at SITE and/or CONTRACTOR'S FACTORY and methods of construction for the WORKS.

9.1 Form of Agreement

The CONTRACTOR shall when called upon so to do enter into and execute a FORM OF AGREEMENT to be prepared and completed by the ENGINEER, in the form annexed in the Tender Documents with such modifications as may be necessary as decided by the ENGINEER.

10.1 Performance Bond

Prior to the formalization of the CONTRACT but in any case not later than fourteen (14) days of the date of the LETTER OF INTENT, the CONTRACTOR shall submit to the EMPLOYER, a PERFORMANCE BOND in the acceptable form of a guarantee as annexed herein these CONDITIONS OF CONTRACT, drawn through a Bank acceptable to the EMPLOYER for an amount of ten percent (10%) of the CONTRACT SUM as security for due performance by the CONTRACTOR of each and every duty, obligation, responsibility and liability owing by the CONTRACTOR to the EMPLOYER, whether of a contractual or tortious nature or otherwise.

10.2 Forfeiture of Performance Bond

In the event the CONTRACTOR fails to execute the CONTRACT or to complete the WORKS to the satisfaction of the EMPLOYER and the ENGINEER for whatever reason then the PERFORMANCE BOND will be forfeited and become the property of the EMPLOYER who may either by itself or appoint and pay others to undertake or finish the WORKS or to be otherwise dealt with by the EMPLOYER. The forfeiting of the PERFORMANCE BOND shall not prejudice the EMPLOYER'S other rights and claims under the CONTRACT and/or the laws governing the CONTRACT.

10.3 Validity / Release of Performance Bond

The PERFORMANCE BOND shall be valid until the expiry of fourteen (14) days after the issuance of the Certificate of Practical Completion or the issuance of the last Certificate of Practical Completion in the event where more than one (1) Certificate of Practical Completion are to be issued, all pursuant to Clause 48. Subject to the deduction of any proper claims by the EMPLOYER, the PERFORMANCE BOND or recoverable balance thereof shall be returned to the CONTRACTOR upon satisfactory performance of the whole of the WORKS.

10.4 Cost of Performance Bond

The cost of the PERFORMANCE BOND shall be at the expense of the CONTRACTOR. The CONTRACTOR shall submit the PERFORMANCE BOND to the EMPLOYER as one of the conditions precedent to claiming any payment under the CONTRACT.

11.1 Inspection of Site and Other Factors affecting Tender

The EMPLOYER shall have only made available to the CONTRACTOR before the submission by the CONTRACTOR of his tender, such data on hydrological and subsurface conditions as shall have been obtained by or on behalf of the EMPLOYER from investigations undertaken relevant to the WORKS. The EMPLOYER is not responsible for the accuracy and/or completeness of the information. Such information is only given as a guide to the CONTRACTOR, and the CONTRACTOR shall be responsible for his own interpretation thereof.

The CONTRACTOR shall also be deemed to have inspected and examined the SITE and its surroundings and information available in connection therewith, and to have satisfied himself, before submitting his tender and entering into contract with the EMPLOYER, as to :

(a) the form and nature thereof, including the sub-surface conditions;

(b) the hydrological and climatic conditions;

(c) the extent and nature of everything necessary for the completion of the WORKS thereon the SITE (or for the delivery and unloading thereto the SITE in the event WORKS are carried out at the CONTRACTOR'S FACTORY) and the remedying of any defects therein.

(d) the means of access to the SITE and the accommodation he may require and. in general, shall be deemed to have obtained all necessary information, as to risks, contingencies and all other circumstances which may influence or affect his tender; and

(e) the CONTRACTOR shall be deemed to have based his tender on the data made available by the EMPLOYER and on his own inspection and examination, all as aforementioned.

and, in general, shall be deemed to have obtained all necessary information, as to risks, contingencies and all other circumstances which may influence or affect his tender.

The CONTRACTOR shall also be deemed to have satisfied himself as regards existing roads, rivers, railways, or other means of communication with and access to the SITE, the contours thereof, the risk of injury or damage to property adjacent to the SITE or to the occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, the conditions under which the WORKS will have to be carried out, the supply of and the conditions affecting labor, the facilities for obtaining any things whether or not for incorporation and generally to have obtained his own information on all matters affecting the execution of the WORKS and the prices tendered therefore.

No claim by the CONTRACTOR for additional payment will be allowed on the ground of any misunderstanding or misinterpretation in respect of such matter nor shall the CONTRACTOR be released from any risks or obligations imposed on or undertaken by him under the CONTRACT on any such ground or on ground that he did not or could not foresee any matter which might affect or have affected the execution of the WORKS.

12.1 Sufficiency of Tender

The CONTRACTOR shall be deemed to have satisfied himself before tendering and entering into contract with the EMPLOYER, as to the correctness and sufficiency of his tender for the WORKS, the CONTRACT SUM and of the rates and prices stated in the priced BILL OF QUANTITIES and the Schedule of Rates and Prices, if any, which rates and prices shall, except in so far as it is otherwise provided in the CONTRACT, cover all his obligations under the CONTRACT and all matters and things necessary for the due care and diligent design, engineering, fabrication, supply, storage, delivery, testing, maintenance and guarantee of the WORKS and the remedying of any defects therein including but not limited to all duties, obligations, responsibilities and liabilities of the CONTRACTOR related and as regards to other contractors on SITE (including but may not be limited to EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES) and the use of EMPLOYER'S CONSTRUCTION PLANT and EMPLOYER'S MATERIALS.

13.1 Works to be to the Satisfaction of Employer and Engineer

The CONTRACTOR shall carry out the design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS and remedy any defects therein in strict accordance with the CONTRACT and to the satisfaction of the EMPLOYER and the ENGINEER, and shall comply with and adhere strictly to the ENGINEER'S instructions and directions on any matter whether mentioned in the CONTRACT or not, touching or concerning the WORKS. The CONTRACTOR shall take instructions and directions only from the ENGINEER or, subject to the limitations referred to in Clause 2 hereof, from the ENGINEER'S REPRESENTATIVE.

Without prejudice to any provisions in the CONTRACT, if within seven (7) days upon issuance of a written notice from the ENGINEER or, subject to the limitations referred to in Clause 2 hereof, from the ENGINEER'S REPRESENTATIVE requiring the CONTRACTOR to comply with instructions and directions and the CONTRACTOR fails to do so, the EMPLOYER may by itself or employ other contractors at the EMPLOYER'S discretion, to do so under the supervision of the ENGINEER and may proceed to deduct all costs, expenses and damages of doing so from the CONTRACTOR

from monies due or to be due to the CONTRACTOR under the CONTRACT or recoverable as a debt due from the CONTRACTOR to the EMPLOYER, all at the discretion of the EMPLOYER.

14.1 Program to be Submitted

The CONTRACTOR shall submit to the ENGINEER within 2 (two) weeks from date of LETTER OF INTENT, a program for the WORKS in a form acceptable to the ENGINEER. The CONTRACTOR shall also submit to the ENGINEER the detailed weekly program showing day-to-day operations and planned manpower loadings for major activities.

The CONTRACTOR shall whenever required by the ENGINEER or the ENGINEER'S REPRESENTATIVE also provide in writing for his information a general description of the arrangements and methods which the CONTRACTOR proposes to adopt for the design and engineering (if any), supply, install, test, commission, maintain and guarantee of the WORKS.

All program and methods of construction, etc shall be subject to the approval of the ENGINEER but whose approval shall not prejudice the CONTRACTOR'S duties, obligations, responsibilities and liabilities under the CONTRACT. There shall be no claims for any extension of time for completion nor for any increased costs and expenses occasioned by any changes required to the program and/or method of construction as may be required by the ENGINEER.

14.2 Program to be Furnished

If at any time it should appear to the ENGINEER that the actual progress of the WORKS does not conform to the approved program referred to in Sub-Clause 14.1, the CONTRACTOR shall produce, at the request of the ENGINEER, a revised program showing the modifications to the approved program necessary to ensure completion of the WORKS within the DATE(S) FOR COMPLETION.

14.3 Contractor not relieved of Duties or Responsibilities

The submission to and approval by the ENGINEER of such program or the submitting of such particulars shall not relieve the CONTRACTOR of any of his duties, obligations, responsibilities or liabilities under the CONTRACT.

15.1 Contractor's Superintendence

The CONTRACTOR shall provide all necessary superintendence during the construction of the WORKS and as long thereafter as the ENGINEER may consider necessary for the proper fulfilling of the CONTRACTOR'S duties, obligations, responsibilities and liabilities under the CONTRACT.

The CONTRACTOR, or a competent and authorized agent or representative approved of in writing by the ENGINEER, which approval may at any time be withdrawn, is to be constantly on the WORKS and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the ENGINEER, the CONTRACTOR shall,

as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving written notice of such withdrawal, remove the agent from the WORKS and shall not thereafter employ him again on the WORKS in any capacity and shall replace him by another agent approved by the ENGINEER.

Such authorized agent or representative shall receive, on behalf of the CONTRACTOR directions and instructions from the ENGINEER or, subject to the limitations of Clause 2, from the ENGINEER'S REPRESENTATIVE.

16.1 Contractor's Employees

The CONTRACTOR shall provide and employ on the SITE and/or the CONTRACTOR'S FACTORY in connection with the execution of the WORKS and the remedying of any defects therein during the maintenance and/or guarantee of the WORKS:

(a) only such technical assistants as are skilled and experienced in their respective trades and such sub-agents, foremen and leading hands as are competent to give proper supervision to the WORKS, and

(b) such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely fulfilling of the CONTRACTOR'S obligations under the CONTRACT.

All CONTRACTOR'S employees approved by the EMPLOYER / ENGINEER shall not be removed from the CONTRACT except only with the written approval of the EMPLOYER / ENGINEER; otherwise the ENGINEER may proceed to reduce the amount of preliminaries included in the CONTRACT SUM.

16.2 Engineer at Liberty to Object

The ENGINEER shall be at liberty to object to and require the CONTRACTOR to remove forthwith from the WORKS any person employed by the CONTRACTOR who, in the opinion of the ENGINEER, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on SITE and/or on CONTRACTOR'S FACTORY is otherwise considered by the ENGINEER to be undesirable, and such person shall not be again employed upon the WORKS without the written permission of the ENGINEER. Any person so removed from the WORKS shall be replaced as soon as possible by a competent substitute approved by the ENGINEER.

17.1 Setting-out

The CONTRACTOR shall be responsible for,

(a) the true and proper setting-out of the WORKS in relation to original points, lines and levels of reference given by the ENGINEER in writing;

(b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the WORKS; and

(c) the provision of all necessary instruments, appliances and labor in connection

therewith.

If, at any time during the progress of the WORKS, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the WORKS, the CONTRACTOR, on being required so to do by the ENGINEER, shall, at his own cost, rectify such error to the satisfaction of the ENGINEER, unless such error is based on incorrect data supplied in writing by the ENGINEER and provided always that the ENGINEER is satisfied that the CONTRACTOR has mitigated any effects thereto, in which case the expense of rectifying the same shall be borne by the EMPLOYER.

The checking of any setting-out or of any line or level by the ENGINEER shall not in any way relieve the CONTRACTOR of his responsibility for the correctness thereof and the CONTRACTOR shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the WORKS.

18.1 Boreholes and Exploratory Excavation

Not Applicable.

19.1 Safety, Security and Protection of the Environment

The CONTRACTOR shall, throughout the design and engineering (if any), supply, installation, testing, commissioning, maintenance and guarantee of the WORKS in the event the same shall be executed on SITE, and the remedying of any defects therein:

(a) have full regard for the safety of all entitled to be upon the SITE and keep the SITE and the WORKS in an orderly state appropriate to the avoidance of danger to such persons; and

(b) provide and maintain at his own cost lights, guards, fencing, warning signs and watching, when and where necessary or required by the ENGINEER or by any duly constituted authority, for the protection of the WORKS or for the safety and convenience of the public or others; and

(c) take all reasonable steps to protect the environment on and off the SITE and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other cause arising as a consequence of the CONTRACTOR'S methods of operation.

Provided always that the principles herein this Sub-Clause 19.1 shall continue to apply where applicable in the event of WORKS carried out at the CONTRACTOR'S FACTORY.

19.2 Contractor's Responsibilities on Safety, Security and Protection of the Environment with Other Contractors

For the avoidance of doubt and without prejudice to any provision in the CONTRACT, the CONTRACTOR shall to the extent the WORKS or any part thereof shall be performed on SITE, acknowledge and accept that the EMPLOYER has engaged and/or will engage EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN

FORCES who will be in the occupation of the SITE at the same time as the CONTRACTOR is carrying out his CONTRACT and in this respect, the CONTRACTOR shall be required to liaise, work, coordinate, cooperate, supervise and all of the like with the same to ensure the compliance of Sub-Clause 19.1. In the event the provisions therein Sub-Clause 19.1 are not complied with, the ENGINEER'S decision as to the CONTRACTOR'S proportional or entire responsibility and/or accountability and/or liability as regards to such said non-compliance shall be final, binding on and conclusive against the CONTRACTOR and the CONTRACTOR shall not be entitled to make any claim against the EMPLOYER in consequence thereto.

For the avoidance of doubt, the principles herein this Sub-Clause 19.2 shall apply and continue to bind the CONTRACTOR notwithstanding that the WORKS are carried out at the CONTRACTOR'S FACTORY.

20.1 Care of Works

From the commencement of the WORKS until the date stated in the Certificate of Practical Completion for the whole of the WORKS pursuant to Sub-Clause 48.1 hereof, the CONTRACTOR shall take full responsibility for the care of the WORKS thereof.

Without prejudice to the aforesaid, if the ENGINEER shall issue a Certificate(s) of Practical Completion in respect of any part of the PERMANENT WORKS, the care thereof any part of the PERMANENT WORKS shall pass onto the EMPLOYER from the date(s) stated in the Certificate(s) of Practical Completion provided always that the CONTRACTOR shall take full responsibility for the care of any outstanding works and the WORKS or part thereof affected thereon or related thereto, which the CONTRACTOR has undertaken to finish during the Period of Maintenance until such outstanding works are finished.

20.2 Responsibility to Rectify Loss or Damage

In case any damage, loss or injury shall happen to the WORKS, or to any part thereof, from any cause whatsoever, save and except the excepted risks as defined in Sub-Clause 20.4, while the CONTRACTOR shall be responsible for the care thereof the CONTRACTOR shall, at his own cost, repair and make good the same, so that at completion the PERMANENT WORKS shall be in good order and condition and in conformity in every respect with the requirements of the CONTRACT and the ENGINEER'S instruction.

20.3 Loss or Damage due to Employer's Risks

In the event of any such damage, loss or injury happening from any of the excepted risks as described in Sub-Clause 20.4, the CONTRACTOR shall, if and to the extent required by the ENGINEER, repair and make good the same so that at completion the PERMANENT WORKS shall be in good order and condition and in conformity in every respect with the requirements of the CONTRACT and the ENGINEER'S instruction. The cost for the aforesaid works shall be to the account of the EMPLOYER provided always that it shall be condition precedent thereto that the ENGINEER shall be satisfied that the CONTRACTOR has carried out everything reasonably necessary to mitigate any effects thereto and written notice by the CONTRACTOR has been given to the ENGINEER not

later than seven (7) days from the occurrence of the said excepted risks and the works arising thereto are not due nor attributed or attributable to the CONTRACTOR'S default in any manner nor arise during any period where the CONTRACTOR is in default.

The CONTRACTOR shall also be liable for any damage, loss or injury to the WORKS occasioned by him in the course of any operations carried out by him for the purpose of completing any outstanding work or complying with his obligations under Clause 49 and Clause 50.

20.4 Excepted Risks

The "excepted risks" are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, or disorder, or ionizing radiations or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel.

21.1 Insurance of Works and Employer's Construction Plant

Without limiting the duties, obligations, responsibilities and liabilities of the CONTRACTOR under Sub-Clause 20.1 nor limiting any discretion of the CONTRACTOR to take up at his own costs and expenses to cover any difference in conditions and risks which the CONTRACTOR shall decide as necessary to cover the CONTRACTOR'S liabilities under the CONTRACT, the EMPLOYER shall only insofar as the WORKS shall be carried out on SITE, insure for the benefit of and in the joint names of the EMPLOYER, the CONTRACTOR, EMPLOYER'S OTHER CONTRACTORS, EMPLOYER'S OWN FORCES and any party(ies) which the EMPLOYER shall decide to be so insured, and all of their respective sub-contractors, against loss or damage and in such manner that the EMPLOYER, the CONTRACTOR and all the parties aforementioned and their sub-contractors are covered for the period stipulated in Sub-Clause 20.1 and are covered also during the Period of Maintenance for loss or damage arising from a cause, occurring prior to the commencement of the Period of Maintenance loss or damage occasioned by the aforesaid parties.

(a) The WORKS for the time being executed to the CONTRACT SUM or any estimation thereof as shall be decided by the ENGINEER, or such additional sums as may be selected by the EMPLOYER, together with the MATERIALS and EMPLOYER'S MATERIALS for incorporation in the WORKS at their replacement value.

21.2 Third Party Insurance

Without limiting the CONTRACTOR'S duties, obligations, responsibilities and liabilities under Sub-Clause 22.1 nor limiting any discretion of the CONTRACTOR to take up at his own costs and expenses to cover any difference in conditions and risks which the CONTRACTOR shall decide as necessary to cover the CONTRACTOR'S liabilities under the CONTRACT, the EMPLOYER shall only insofar as the WORKS shall be carried out on SITE, effect and maintain for the benefit of and in the joint names of the EMPLOYER, the CONTRACTOR, EMPLOYER'S OTHER CONTRACTORS, EMPLOYER'S OWN FORCES and any party(ies) which the EMPLOYER shall decide to be so insured, and their respective sub-contractors, Third Party Insurance (not including Third Party Motor Insurance) covering the legal liability of the parties for accidental

injury to persons or accidental loss of or damage to property arising out of the execution of the WORKS. The insurance shall remain in force during the CONTRACT including the Period of Maintenance and will be for an indemnity of not less than any one occurrence (or series of occurrences arising out of one source or original cause).

21.3 Choice of Terms and Insurers

The insurance referred to in Sub-Clause 21.1 and Sub-Clause 21.2 shall be effected with an insurer on terms and conditions at the EMPLOYER'S discretion. The EMPLOYER shall, upon the CONTRACTOR'S request, provide the CONTRACTOR with a copy of such terms and conditions. The CONTRACTOR shall with all due care and diligence conform to the conditions of the insurances and all requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear at the CONTRACTOR'S own costs and expenses the consequences, of any failure so to do. The CONTRACTOR shall bear the costs and expenses of all excesses applying under the said policies (insofar as they directly concern risks for which the CONTRACTOR is responsible under the CONTRACT). The CONTRACTOR shall give immediate written notice to the EMPLOYER (or an appointed party) in the event of any loss, damage or liability likely to form the subject of a claim under the EMPLOYER'S insurances.

Upon the occurrence of any loss or damage to the WORKS or unfixed MATERIALS and/or EMPLOYER'S MATERIALS prior to completion from any cause whatsoever, the CONTRACTOR shall subject to Clause 20 and upon the ENGINEER'S instruction, proceed immediately to restore, replace or repair the same free-of-charge to the EMPLOYER, save only that any monies, if and when received, from the insurance pursuant to this Clause shall be paid in the first place to the EMPLOYER and then released to the CONTRACTOR progressively by installments on the interim certificates of the ENGINEER issued pursuant to Clause 58 in proportion to the extent of the works of restoration, replacement or repair but having regard also to any likely shortfall or deficit in insurance monies so paid and to the CONTRACTOR'S obligation as to insurance excesses under Sub-Clause 21.3 which shall be to the CONTRACTOR'S own account pursuant thereto.

21.4 Sub-Contractors

The CONTRACTOR shall insert appropriate conditions in his sub-contracts reflecting the provisions of Clause 21.

22.1 Damage to Persons and Property

The CONTRACTOR shall, except if and so far as the CONTRACT provides otherwise, indemnify the EMPLOYER against all losses and claims in respect of injury or damage to any person or material or physical damage to any property whatsoever which may arise directly or indirectly out of or in consequence of the construction, completion, maintenance and guarantee of the WORKS and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

For the avoidance of doubt and without limiting or prejudicing the generality of this Sub-Clause 22.1, the aforesaid indemnities given by the CONTRACTOR shall not be

defeated or reduced by reason of any negligence or omission of the EMPLOYER or ENGINEER or ENGINEER'S REPRESENTATIVE or any of their respective servants or agents in failing to supervise or control amongst others, the CONTRACTOR'S site operations or methods of working or TEMPORARY WORKS, or to the use of CONSTRUCTION PLANT, or to detect or prevent or remedy defective works, or to ensure proper performance of any other duties, obligations and responsibilities of the CONTRACTOR.

22.2 Indemnity by Employer

The EMPLOYER shall indemnify the CONTRACTOR against all claims, proceedings, damages, costs, charges and expenses in respect of the following matters:

(a) The right of the EMPLOYER to permit the WORKS or any part thereof to be carried out on SITE; and

(c) Injury or damage to persons or property resulting from any act or neglect of the EMPLOYER, his agents, servants or other contractors, not being employed directly or indirectly by the CONTRACTOR, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the CONTRACTOR, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the EMPLOYER, his servants or agents or other contractors for the injury or damage.

23.1 Insurances for Works carried out at Contractor's Factory and Contractor's Motor Third Party Insurances

(a) For WORKS being fabricated and manufactured at the CONTRACTOR'S FACTORY, the CONTRACTOR shall, without limiting his duties, obligations, responsibilities and liabilities under the CONTRACT effect and maintain for the benefit of and in the joint names of the EMPLOYER and the CONTRACTOR and their respective sub-contractors:

(i) the WORKS upto the CONTRACT SUM;

(ii) Third Party Insurance (not including Third Party Motor Insurance) covering the legal liability of the parties for accidental injury to persons or accidental loss of or damage to property arising out of the execution of the WORKS; and

(iii) transit insurances including but not limited to marine cargo insurances and the like, for the delivery of the WORKS to SITE to cover the value of WORKS for each transit and/or delivery to SITE.

The aforesaid insurances by the CONTRACTOR shall remain in force during the CONTRACT including the Period of Maintenance.

Without prejudice to this Sub-Clause 23.1 (a), the CONTRACTOR'S obligation to insure under Sub-Clause 23.1 (a) may at the discretion of the ENGINEER, be considered as satisfied if the CONTRACTOR shall have already effected such insurances for the CONTRACTOR'S FACTORY and for all delivery of materials and goods therefrom,

based on terms and conditions approved by the ENGINEER but the CONTRACTOR shall require such sub-contractor(s) to produce, when required, all such policies and receipts for payment of the current polices.

(b) The CONTRACTOR shall effect and maintain policies of Motor Insurance in respect of all mechanically propelled vehicles used by him and his sub-contractors on public highways or SITE access roads or in any circumstances such as to be eligible for compulsory Motor Insurance with Third Party limits of:

(i) Personal injury (including passenger liability) unlimited

(ii) Property damage - any one accident

23.2 Authorized Insurers / Joint Insured

The insurance referred to in Sub-Clause 23.1 shall be effected with an insurer and on terms all to be approved by the EMPLOYER whose approval shall not relieve the CONTRACTOR of any of his duties, obligations, responsibilities and liabilities under the CONTRACT, and be maintained in full force and effect at all material times. Such insurance shall be in the joint names of the CONTRACTOR and the EMPLOYER, and shall inter-alia include all waivers of subrogation against the EMPLOYER, ENGINEER, ENGINEER'S REPRESENTATIVE and all their respective agents, servants and the like.

The CONTRACTOR shall, whenever required, produce to the ENGINEER, or the EMPLOYER, the policy or policies of insurance and the receipts for current payment of premiums.

23.3 Sub-Contractors Insurances

In respect of the use by sub-contractor(s) of the CONTRACTOR of mechanically propelled vehicles, the CONTRACTOR'S obligation to insure under Sub-Clause 23.1 (b) and Sub-Clause 23.2 shall be satisfied if the said sub-contractor(s) himself shall have effected such insurances but the CONTRACTOR shall require such sub-contractor(s) to produce, when required, all such policies and receipts for payment of the current polices.

24.1 Accident or Injury to Workmen

The EMPLOYER shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the CONTRACTOR or any sub-contractor(s), save and except an accident or injury directly resulting from any act or default of the EMPLOYER, his agent, or servants. The CONTRACTOR shall indemnify and keep indemnified the EMPLOYER against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

24.2 Insurance against Accident or Injury to Workmen

The CONTRACTOR shall insure against such liability with an insurer and on terms all to be approved by the EMPLOYER, which approval shall not be unreasonably withheld and

shall not relieve the CONTRACTOR of any of his duties, obligations, responsibilities and liabilities under the CONTRACT. The aforesaid insurance shall continue during the whole of the time that any persons are employed by the CONTRACTOR on the WORKS and shall, when required, produce to the ENGINEER such policy of insurance and the receipt for payment of the current premium. Provided always that in respect of any persons employed by any sub-contractor(s) of the CONTRACTOR, the CONTRACTOR'S obligation to insure as aforesaid under this Sub-Clause 24.2 shall be satisfied if such said sub-contractor(s) shall have insured against the liability in respect of such persons in such manner that the EMPLOYER is indemnified under the policy, but the CONTRACTOR shall require such sub-contractor(s) to produce to the ENGINEER, when required, such policy of insurance and the receipt for the payment of the current premium.

25.1 Remedy of Contractor's Failure to Insure

If the CONTRACTOR shall fail to effect and keep in force the insurances referred to in Clause 23 and Clause 24, or any other insurances which he may be required to effect under the terms of the CONTRACT, then and in any such case the EMPLOYER may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the EMPLOYER as aforesaid from any monies due or which may become due to the CONTRACTOR, or recover the same as a debt due from the CONTRACTOR, all at the discretion of the EMPLOYER.

25.2 Notice of Accidents

The CONTRACTOR shall on an urgent basis and in any case not later than three (3) days from the occurrence of any accident or event which may reasonably be expected to give rise to a claim under the insurances pursuant to Clause 21, Clause 23 and Clause 24 give notice thereof in writing to the EMPLOYER, and shall also give all notices as may be required under laws, bye-laws, regulation and the like.

In the event of any workmen or other person employed on the WORKS or in conjunction with the CONTRACT, whether in the employ of the CONTRACTOR or his sub-contractors suffering any personal injury and whether there be a claim for compensation or not, notice shall be given by the CONTRACTOR pursuant to Sub-Clause 34.12.

25.3 Damage to Property

In the case of injury or damage caused to property belonging to the EMPLOYER (including but may not be limited to EMPLOYER'S CONSTRUCTION PLANT and/or EMPLOYER'S MATERIALS) or EMPLOYER'S OTHER CONTRACTORS or EMPLOYER'S OWN FORCES or any other party(ies) as the ENGINEER may from time to time reasonably determine from any cause whatsoever arising directly or indirectly out of or in relation to or in connection with the carrying out of the WORKS by the CONTRACTOR as may be reasonably determined by the ENGINEER, the cost and expense of making good such injury or damage shall be recoverable by the EMPLOYER from the CONTRACTOR by deduction from monies due or becoming due to the CONTRACTOR or as a debt due by the CONTRACTOR to the EMPLOYER, at the

discretion of the EMPLOYER notwithstanding that the EMPLOYER may or may not be liable at law to the owners of the injury or damage. Provided always that:

(a) upon such payment or deduction being made, the EMPLOYER shall where the property does not belong to the EMPLOYER, pay over the amount to the owners of the property which has suffered damage or injury and where reasonably possible, furnish to or procure for the CONTRACTOR such discharge or release as the CONTRACTOR may reasonably require;

(b) if the amount that the CONTRACTOR is liable to pay has not been ascertained at the time any monies payable to the CONTRACTOR are due for release, then the EMPLOYER may withhold a sum sufficient in the reasonable opinion of the ENGINEER to cover such liability. As soon as the amount payable by the CONTRACTOR has been ascertained and deducted from the sum retained, the balance if any shall be released to the CONTRACTOR; and

(c) nothing herein this Sub-Clause 25.3 shall affect in any manner any other remedy at law that the owners of the property which has suffered damage or injury may have against the CONTRACTOR.

For the avoidance of doubt, the provisions herein this Sub-Clause 25.3 shall apply mutatis mutandis in the event of injury or damage caused to property belonging to the CONTRACTOR by EMPLOYER'S OTHER CONTRACTORS or EMPLOYER'S OWN FORCES and the ENGINEER'S decision thereto arising shall be final, binding on and conclusive against the CONTRACTOR.

26.1 Giving of Notice and Payment of Fees

The CONTRACTOR shall give all notices and pay all fees required to be given or paid to any National or State Statute, Ordinance, or other Law, or any regulation, or Bye-Laws of any local or other duly constituted authority in relation to the WORKS and by the rules and regulations of all public bodies but excluding building permits.

26.2 Compliances with Statutes, Regulations

The CONTRACTOR shall ascertain and conform in all respects with the provisions of any such Statute, Ordinance or Law as aforesaid and the regulations or Bye-Laws of any local or other duly constituted authority which may be applicable to the WORKS and with such rules and regulations of public bodies and companies as aforesaid and shall keep the EMPLOYER indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or law, regulation or Bye-Laws.

27.1 Fossils, Artifacts

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the SITE shall, as between the EMPLOYER and the CONTRACTOR, be deemed to be the absolute property of the EMPLOYER. The CONTRACTOR shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the ENGINEER

of such discovery and carry out the ENGINEER'S instructions for dealing with the same.

28.1 Patent Rights and Royalties

The CONTRACTOR shall save harmless and indemnify the EMPLOYER from and against all claims and proceedings for or on account of infringement of any patent rights, design trade-mark or name or other protected rights in respect of the design by the CONTRACTOR, CONSTRUCTION PLANT, TEMPORARY WORKS, or MATERIALS used for or in connection with the WORKS or any of them and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Save except for the EMPLOYER'S MATERIALS, the CONTRACTOR shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other MATERIALS required for the WORKS.

29.1 Interference with Traffic and Adjoining Properties

All operations necessary for the design, engineering, fabrication, supply, storage, delivery, testing, maintenance and guarantee of the WORKS including but not limited to any remedying of defects therein shall, so far as compliances with the requirements of the CONTRACTS permits, be carried on so as not to interfere unnecessarily or improperly with:

(a) the convenience of the public including but not limited to occupiers and/or tenants of the facilities of the PROJECT in the event of completion of any section, phase, or sub-phase of the WORKS pursuant to Clause 48; and

(b) the access to, use and occupation of public or private roads and footpaths to. or of properties whether in the possession of the EMPLOYER or of any other person.

The CONTRACTOR shall save harmless and indemnify the EMPLOYER in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the CONTRACTOR is directly or indirectly or otherwise responsible therefor.

The CONTRACTOR shall be responsible for the settlement of any complaints, disputes and claims caused by the WORKS from persons living nearby to the SITE.

30.1 Extraordinary Traffic

The CONTRACTOR shall use every reasonable means to prevent any of the roads, highways or bridges communicating with or on the routes to the SITE from being damaged or injured by any traffic of the CONTRACTOR or any of his sub-contractor(s) and, in particular, shall select routes, choose and use such vehicles as appropriate so that any such extraordinary traffic as will inevitably arise from the moving of MATERIALS, CONSTRUCTION PLANT or TEMPORARY WORKS from and to the SITE shall be limited, as far as reasonably possible, and so that no damage or injury may be occasioned to such roads, highways and/or bridges. The CONTRACTOR shall be responsible and bear the cost of repair and/or making good of such roads, highways and/or bridges to the

satisfaction of the relevant Authority(ies) having the control and maintenance of such roads, highways and/or bridges or if the Authority(ies) shall prefer to make good the same themselves then the CONTRACTOR shall be responsible for all costs and expenses imposed thereto. The CONTRACTOR shall save harmless and indemnify the EMPLOYER from and against all demands, proceedings, damages, costs, charges and expenses whatsoever arising in consequence thereto.

31.1 Opportunities for Other Contractors

The EMPLOYER shall have the power at any time to engage EMPLOYER'S OTHER CONTRACTORS, EMPLOYER'S OWN FORCES, artisans, tradesmen or other contractors and/or permit the engagement of the same by occupiers and/or tenants of the facilities of the PROJECT in the event of completion of any section, phase, or sub-phase of the WORKS pursuant to Clause 48, to execute works (whether or not in connection with the WORKS) simultaneously, contemporaneously, sequentially or otherwise with the execution of the WORKS. The CONTRACTOR shall not delay nor obstruct nor interfere with them in their carrying out of their works but shall permit the SITE to be so used, provide all reasonable facilities for such purposes and shall liaise, work, coordinate, supervise and all of the like with them to ensure the smooth construction and completion of the PROJECT to the ENGINEER'S satisfaction. The CONTRACTOR shall make no claim against the EMPLOYER for extra payment or loss or damage in respect of the presence on SITE of or delay or interference caused by or any act, omission or default on the part of any such persons on SITE. The CONTRACTOR shall make good any damage or loss caused to the WORKS and which shall be subject to the principles provided in Sub-Clause 25.3.

For the avoidance of doubt and without prejudice to any provision in the CONTRACT:

(a) the principles herein shall apply and continue to bind the CONTRACTOR notwithstanding that the WORKS are carried out at the CONTRACTOR'S FACTORY: and

(b) the ENGINEER and/or the EMPLOYER and/or any person(s), firms and the like authorized by the ENGINEER and/or the EMPLOYER, shall have all rights of entry into the SITE and/or the CONTRACTOR'S FACTORY to carry out any of their duties and obligations pursuant to the CONTRACT and the CONTRACTOR shall be deemed to have granted all rights of entry thereto.

32.1 Contractor to Keep Site Clear

During the progress of the WORKS, the CONTRACTOR shall keep the SITE clean and reasonably free from all unnecessary obstruction and shall store or dispose of any CONSTRUCTION PLANT and surplus MATERIALS and clear away and remove from the SITE any wreckage, rubbish or TEMPORARY WORKS no longer required.

33.1 Clearance of Site on Completion

On the completion of the WORKS the CONTRACTOR shall clear away and remove from the SITE all CONSTRUCTION PLANT, surplus MATERIALS (and EMPLOYER'S MATERIALS when so instructed by the ENGINEER), rubbish and

TEMPORARY WORKS of every kind, and leave the whole of the SITE and WORKS (or any portions of the SITE and WORKS thereof as may be instructed by the ENGINEER) clean and in a workmanlike condition to the satisfaction of the ENGINEER.

LABOR

34.1 Engagement of Labor

The CONTRACTOR shall make his own arrangements for the engagement of all labor, local or otherwise, and, save insofar as the CONTRACT otherwise provides, for the transport, housing, feeding and payments thereof.

34.2 Supply of Water

The CONTRACTOR shall provide on the SITE, to the satisfaction of the ENGINEER, an adequate supply of potable and other water for the use of the WORKS, the CONTRACTOR'S staff and labor.

34.3 Alcoholic Beverages or Drugs

The CONTRACTOR shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

34.4 Arms and Ammunition

The CONTRACTOR shall not give, barter or otherwise dispose of to any person, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

34.5 Festival and Religious Customs

The CONTRACTOR shall in all dealings with labor in his employment have due regards to all recognized festivals, days of rest and religious or other customs of the Republic of Indonesia.

34.6 Epidemics

In the event of any outbreak of illness of an epidemic nature, the CONTRACTOR shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

34.7 Disorderly Conduct

The CONTRACTOR shall at all times take all reasonable precautions to prevent any unlawful, riots or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighborhood of the

WORKS against the same.

34.8 Observance by Sub-Contractors

The CONTRACTOR shall be responsible for observance by his sub-contractors of the foregoing provisions.

34.9 Other Conditions affecting Labor and Usage

Imported labor shall comply with the necessary permits and certificates in accordance with Republic of Indonesia Labor, Health and Transmigration Legislation. All engagement of labor shall be in compliance with the most recent and updated labor regulations in Indonesia as may be issued from time to time by the Department of Manpower or other authorities concerned.

34.10 First Aid

The CONTRACTOR shall in the carrying out of the WORKS, be equipped with the necessary medical aid to provide first aid to treat small cuts, bruises, etc. The CONTRACTOR shall also be responsible for the provision of facilities to enable the delivery to and the treatment of at a convenient hospital or clinic of medical cases where warranted.

34.11 Sanitation

The CONTRACTOR shall provide sufficient proper and maintained sanitary equipment, such as urinal, closets, etc. to the satisfaction of the ENGINEER.

34.12 Contractor to Give Notice of Injury

In the event of any workmen or other person employed on the WORKS or in conjunction with the CONTRACT, whether in the employ of the CONTRACTOR or his sub-contractors shall suffer any personal injury and whether there be a claim for compensation or not, the CONTRACTOR shall without delay on an immediate basis, give notice in writing of such personal injury to the ENGINEER. The ENGINEER shall determine whether notice of injury should be served upon the Insurer. Should the EMPLOYER agree to the submission of such claim it shall be submitted by the CONTRACTOR in a detailed written form as required by the EMPLOYER.

35.1 Returns of Labor

The CONTRACTOR shall, if required by the ENGINEER, deliver to the ENGINEER a return in detail, in such form and at such intervals as the ENGINEER may prescribe, showing the supervisory staff and the numbers of the several classes of labor from time to time employed by the CONTRACTOR on the SITE and/or the CONTRACTOR'S FACTORY and such information in respect of CONSTRUCTION PLANT and MATERIALS as the ENGINEER may require.

MATERIALS AND WORKMANSHIP

36.1 Quality of Materials and Workmanship and Test

All MATERIALS and workmanship shall be of the best of their respective kinds and standards described in the CONTRACT and in accordance with the ENGINEER'S instructions, and shall be subjected from time to time to such tests as the ENGINEER may direct at the place of manufacture or fabrication, or on the SITE and/or on the CONTRACTOR'S FACTORY or at such other place or places as may be specified in the CONTRACT, or at all or any of such places.

Without prejudice to the generality of the foregoing:

(a) where and to the extent that APPROVAL of the quality and standards of MATERIALS is a matter for the opinion of the ENGINEER such quality and standards shall be to the satisfaction of the ENGINEER; and

(b) where and to the extent that no standards of workmanship are described in the CONTRACT, workmanship shall be of the highest standards consistent with and appropriate to the prestige of the PROJECT provided that where and to the extent that APPROVAL of workmanship is a matter for the opinion of the ENGINEER such workmanship shall be to the satisfaction of the ENGINEER.

The CONTRACTOR shall bear all costs and expenses in the provision of such assistance, instruments, machines, labor and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any of the MATERIALS used and shall supply samples of MATERIALS before incorporation in the WORKS, for testing as may be selected and required by the ENGINEER.

36.2 Cost of Samples

All samples shall be supplied by the CONTRACTOR at his own costs and expenses if the supply thereof is clearly intended by or provided for in the CONTRACT, except in respect of EMPLOYER'S MATERIALS.

36.3 Cost of Tests

The costs and expenses of making any test shall be borne by the CONTRACTOR and such costs and expenses shall be deemed to have been included in the CONTRACT SUM if such test is clearly intended by or provided for in the CONTRACT unless otherwise specified and/or particularized in the CONTRACT in sufficient detail to enable the CONTRACTOR to price or allow for the same in his tender.

Where the test indicates that the finished or partially finished WORKS are unsatisfactory or is inappropriate for the purposes for which it was intended to fulfill, then all such finished or partially finished WORKS as the case may be, shall be removed and made good to the satisfaction of the ENGINEER at the CONTRACTOR'S own costs and expenses.

36.4 Cost of Tests Not Provided for

If any test is ordered by the ENGINEER which is either not so intended by or provided for under the CONTRACT or not so particularized, then the cost of such test shall be borne by the CONTRACTOR, if the test shows the workmanship or MATERIALS not to be in accordance with the provisions of the CONTRACT or to the satisfaction of the ENGINEER. The CONTRACTOR shall be responsible for making good the defect and all subsequent testing.

37.1 Inspection of Operations

The ENGINEER, and any person authorized by him, shall at all reasonable times have access to the SITE and/or the CONTRACTOR'S FACTORY and to all workshops and places where MATERIALS are being manufactured, fabricated, stored, prepared or obtained for the WORKS and the CONTRACTOR shall at his own costs and expenses, afford every facility for and every assistance in obtaining the right to such access.

37.2 Inspection and Testing

The ENGINEER shall be entitled, during manufacture, fabrication, storage or preparation to inspect and test the MATERIALS to be supplied under the CONTRACT. If MATERIALS are being manufactured, fabricated, stored or prepared in workshops or places other than those of the CONTRACTOR, the CONTRACTOR shall obtain at his own costs and expenses, permission for the ENGINEER to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the CONTRACTOR from any obligation under the CONTRACT.

37.3 Dates for Inspection and Testing

The CONTRACTOR shall agree with the ENGINEER on the time and place for the inspection or testing of any materials as provided in the CONTRACT. The ENGINEER shall give the CONTRACTOR not less than twenty-four (24) hours notice of his intention to carry out the inspection or to attend the tests.

If the ENGINEER, or his duly authorized representative, does not attend on the date agreed, the CONTRACTOR may, unless otherwise instructed by the ENGINEER, proceed with the tests, which shall be deemed to have been made in the presence of the ENGINEER. The CONTRACTOR shall forthwith forward to the ENGINEER duly certified copies of the test readings. If the ENGINEER has not attended the tests, he shall accept the said readings as accurate save unless such tests had been carried out notwithstanding the ENGINEER's instructions otherwise and/or the ENGINEER shall have valid reasons to question the accuracy of the test readings.

37.4 Rejection

If, at the time and place agreed in accordance with Sub-Clause 37.3, the MATERIALS are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause 37, the ENGINEER determines that the MATERIALS are defective or otherwise not in accordance with the CONTRACT, the ENGINEER may reject the MATERIALS and shall notify the CONTRACTOR thereof immediately. The notice shall

state the ENGINEER'S objections with reasons. The CONTRACTOR shall then promptly make good the defect or ensure that rejected MATERIALS comply with the CONTRACT. If the ENGINEER so requests, the tests of rejected MATERIALS shall be made or repeated under the same terms and conditions.

All costs, expenses and damages incurred by the EMPLOYER by the repetition of the tests shall, after due consultation with the EMPLOYER and the CONTRACTOR, be determined by the ENGINEER and shall be recoverable from the CONTRACTOR by the EMPLOYER, and at the discretion of the EMPLOYER may be deducted from any monies due or to become due to the CONTRACTOR or as a debt due from the CONTRACTOR to the EMPLOYER, and the ENGINEER shall notify the CONTRACTOR accordingly, with a copy to the EMPLOYER.

37.5 Independent Inspection

The ENGINEER may delegate inspection and testing of MATERIALS to an independent inspector. Any such delegation shall be considered as an assistant of the ENGINEER.

38.1 Examination of Works before Casting

No part of the WORKS shall be cast or put out of view without the approval of the ENGINEER and the CONTRACTOR shall afford full opportunity for the ENGINEER to examine and measure any such part of the WORKS which is about to be cast or put out of view. The CONTRACTOR shall give notice to the ENGINEER whenever any such part of the WORKS is or are ready or about to be ready for examination and the ENGINEER shall, without unreasonable delay, unless he considers it unnecessary and advises the CONTRACTOR accordingly, attend for the purpose of examining and measuring such part of the WORKS.

38.2 Uncovering and Making Openings

The CONTRACTOR shall uncover any part or parts of the WORKS or make openings in or through the same as the ENGINEER may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the ENGINEER. If any such part or parts have been cast or put out of view after compliance with the requirement of Sub-Clause 38.1 and are found to be executed in accordance with the CONTRACT, the costs of uncovering, making openings in or through, reinstating and making good the same shall save unless the ENGINEER shall have valid reasons for instructing thereto, be borne by the EMPLOYER but in any other case all costs and expenses shall be borne by the CONTRACTOR.

39.1 Removal of Improper Work and Materials

The ENGINEER shall, during the progress of the WORKS, have power to order in writing from time to time:

(a) the removal from the SITE and/or from the CONTRACTOR'S FACTORY, within such time or times as may be specified in the order, of any MATERIALS which, in the opinion of the ENGINEER, are not in accordance with the CONTRACT;

(b) the substitution of proper and suitable MATERIALS; and,

(c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of MATERIALS or workmanship is not, in the opinion of the ENGINEER, in accordance with the CONTRACT.

39.2 Default of Contractor in Compliance

In case of default on the part of the CONTRACTOR in carrying out such order of the ENGINEER under Sub-Clause 39.1, the EMPLOYER shall be entitled to employ and pay other persons to carry out the same and all costs, expenses and damages consequent thereon or incidental thereto shall be recoverable from the CONTRACTOR by the EMPLOYER as a debt due from the CONTRACTOR to the EMPLOYER, or may be deducted by the EMPLOYER from any monies due or which may become due to the CONTRACTOR all at the discretion of the EMPLOYER.

39.3 In Lieu of Correction of Improper Works and Materials

In lieu of correcting work not done or ordered to be done in accordance with Sub-Clause 39.1, the ENGINEER may but shall not be bound to allow such work to remain, and in such case make such allowance for the difference in value, together with such allowance for loss and damage suffered by the EMPLOYER as the ENGINEER may reasonably determine. In making such allowance, the ENGINEER may be guided, but shall not be bound, by the provisions of Clause 52. Provided that nothing in Clause 39 and nothing done or permitted under its provisions shall relieve the CONTRACTOR from his duties, obligations, responsibilities and liabilities to execute the WORKS in all respects in accordance with the provisions of the CONTRACT or from the CONTRACTOR'S duties, obligations, responsibilities and liabilities to make good all defects.

SUSPENSION

40.1 Suspension of Works

The CONTRACTOR shall, on the written order of the ENGINEER, suspend the progress of the WORKS or any part thereof for such time or times and in such manner as the ENGINEER may consider necessary and shall, during such suspension, properly protect and secure the WORKS and the EMPLOYER'S MATERIALS, so far as is necessary in the opinion of the ENGINEER. The extra cost incurred by the CONTRACTOR in giving effect to the ENGINEER'S instructions under this Clause 40 shall be borne and paid by the EMPLOYER unless such suspension is :

(a) otherwise provided for in the CONTRACT; or

(b) necessary by reason of some default or breach of the CONTRACT by the CONTRACTOR and/or his sub-contractors or agents and/or any other party(ies) for whom the CONTRACTOR is responsible; or

(c) necessary by reason of climatic conditions on the SITE and/or other reasons beyond the reasonable control of the EMPLOYER; or

(d) necessary for the proper execution of the WORKS or for the safety of the WORKS or any part thereof insofar as such necessity does not arise from any act or default by the ENGINEER or the EMPLOYER or from any of the excepted risks defined in Sub-Clause 20.4 hereof.

Provided that as conditions precedent to any claims hereunder, the CONTRACTOR shall not be entitled to raise any claim unless the CONTRACTOR shall:

(a) give written notice of his intention to claim within fourteen (14) days of the date of the ENGINEER'S written order;

(b) give full particulars of his claim in writing to the ENGINEER within fourteen (14) days of cessation of suspension of work; and

(c) prove to the reasonable satisfaction of the ENGINEER that the CONTRACTOR has used every endeavor to mitigate all consequences thereto.

The ENGINEER shall subject always to the EMPLOYER'S approval and the CONTRACTOR'S compliance with the aforesaid conditions precedent, settle and determine the CONTRACTOR'S claim as shall, in the opinion of the ENGINEER, be fair and reasonable.

40.2 Suspension lasting more than 120 days

If the progress of the WORKS or any part thereof is suspended on the written order of the ENGINEER and if permission to resume work is not given by the ENGINEER within a period of one hundred and twenty (120) days from the date of suspension then, unless such suspension is due to reasons under Sub-Clause 40.1, the CONTRACTOR may serve a written notice to the ENGINEER requiring permission within twenty-eight (28) days from the receipt thereof, to proceed with the WORKS, or that part thereof in regard to which progress is suspended and, if such permission is not granted within the said time, the CONTRACTOR by further written notice so served may, but is not bound to, elect or treat the suspension, where it affects part only of the WORKS, as an omission of such part under Clause 51, or, where it affects the whole of the WORKS, as an abandonment of the CONTRACT by the EMPLOYER. In the event of such deemed abandonment by the EMPLOYER, the CONTRACTOR shall be entitled to be paid in accordance with the provisions of the CONTRACT for the works satisfactorily carried out by the CONTRACTOR to the satisfaction of the ENGINEER.

COMMENCEMENT TIME AND DELAY

41.1 Commencement of Works

The CONTRACTOR shall commence the WORKS on the date or dates specified in the LETTER OF INTENT for such commencement (which date or dates when so specified therein shall be deemed to be NOTICE TO PROCEED) and if there is no such date or

dates, then on receipt by the CONTRACTOR of a separate NOTICE TO PROCEED to that effect from the ENGINEER and the CONTRACTOR shall proceed with the same with due expedition and without delay in accordance with the CONTRACT and in accordance with any programme of work provided by the CONTRACTOR pursuant to Clause 14.

42.1 Possession of Site and Access thereto

Save insofar as the CONTRACT may prescribe:

α the extent of portions of the SITE of which the CONTRACTOR is to be given possession from time to time; and

α the order in which such portions shall be made available to the CONTRACTOR

and subject to any requirement in the CONTRACT as to the order in which the WORKS shall be executed and subject also to the provisions of Sub-Clause 31.1, the EMPLOYER will give to the CONTRACTOR possession of:

α so much of the SITE; and

α such access as, in accordance with the CONTRACT, is to be provided by the EMPLOYER

as may be required to enable the CONTRACTOR to commence and proceed with the execution of the WORKS at SITE when the CONTRACTOR becomes evidently ready to carry out the same at SITE, in accordance with the programme referred to in Clause 14, if any, and otherwise in accordance with such reasonable proposals as the CONTRACTOR shall, by notice to the ENGINEER with a copy to the EMPLOYER, make. The EMPLOYER will, from time to time as the WORKS proceed, give to the CONTRACTOR possession of such further portions of the SITE as may be required to enable the CONTRACTOR to proceed with the execution of the WORKS with due expedition and without delay in accordance with such programme or proposals, as the case may be.

Provided always that:

(a) the possession of SITE shall not be exclusive to the CONTRACTOR but shall be subject also to the possession of the same by EMPLOYER'S OTHER CONTRACTORS, EMPLOYER'S OWN FORCES and the like provided under the CONTRACT to carry out works pursuant to the PROJECT; and

(b) when the CONTRACTOR is afforded the SITE or portions thereof pursuant to the CONTRACT, no other works and/or services shall be carried out by the CONTRACTOR apart from the WORKS under the CONTRACT.

42.2 Failure to Give Possession

The CONTRACTOR shall give notice in writing to the ENGINEER of any intention to claim within seven (7) days of any failure on the part of the EMPLOYER to give

possession in accordance with the terms of Sub-Clause 42.1, and the giving of such notice in writing shall be a condition precedent to the CONTRACTOR'S right to bring any claim for any extension of time to which the CONTRACTOR is entitled under Clause 44. The CONTRACTOR shall give full particulars of his claim for extension of time in writing to the ENGINEER within seven (7) days of the actual possession of SITE provided by the EMPLOYER, and the giving of such notice in writing shall be a further condition precedent to the CONTRACTOR'S right to bring any claim for extension of time due to failure to afford SITE possession. Provided always that the aforesaid conditions precedent are absolutely complied with by the CONTRACTOR and the ENGINEER is satisfied that the CONTRACTOR has used every endeavor to mitigate any effects thereto, the ENGINEER shall, after due consultation with the EMPLOYER and the CONTRACTOR, determine any extension of time to which the CONTRACTOR is entitled under Clause 44 hereof and shall notify the CONTRACTOR accordingly, with a copy to the EMPLOYER.

Save unless as provided herein Sub-Clause 42.2, all provisions for extension of time under Clause 44 shall apply for any failure to give possession of SITE under Sub-Clause 42.2.

42.3 Wayleaves and Facilities

The CONTRACTOR shall bear all costs, expenses and charges for special or temporary wayleaves required by him in connection with access to the SITE and/or the CONTRACTOR'S FACTORY. The CONTRACTOR shall also provide at his own costs and expenses any additional accommodation outside the SITE and/or the CONTRACTOR'S FACTORY required by the CONTRACTOR for the purposes of the WORKS.

43.1 Time for Completion

Subject to Sub-Clause 43.2 and Clause 51, the WORKS shall be completed by the DATE(S) OF COMPLETION.

43.2 Phased Completion

In additional to any sectional or phased completion required in the APPENDIX, completion of the WORKS may be arranged into separate phases or sub-phases as the ENGINEER may at his discretion consider desirable or necessary during the progress of WORKS. The apportionment of the CONTRACT SUM for each phase or sub-phase of the WORKS shall be fairly determined by the ENGINEER and the rate of liquidated damages shall be either based on the original rate of liquidated damages at the time of the LETTER OF INTENT but to be applied on the apportioned CONTRACT SUM of the said phase or sub-phase of the WORKS or any other rate of liquidated damages as may be fairly decided by the ENGINEER at this discretion provided always that the maximum amount of liquidated damages shall remain unchanged. The CONTRACTOR shall not be entitled to make any claims for additional payment arising from such arrangements into phases or sub-phases whether by way of variation, acceleration or dislocation or delay or loss and expense or damages, and any cost or expense arising from such arrangements is deemed to have been included by the CONTRACTOR in his rates and prices in the BILLS OF QUANTITIES.

44.1 Extension of Time for Completion

The DATE(S) OF COMPLETION may as provided in and subject to the requirements of Sub-Clause 44.2 be extended and re-calculated by the ENGINEER and who shall notify the EMPLOYER and the CONTRACTOR accordingly, by such periods of time and until such further date(s) as may reasonably reflect any delay in completion which, notwithstanding due diligence and the taking of all reasonable steps by the CONTRACTOR to avoid or reduce or mitigate the same, has been caused by the following, provided and to the extent that the same is not due to any act, negligence, default, omission or breach of contract by the CONTRACTOR or anyone under his responsibility including but not limited to any of his subcontractor(s) direct or indirect whether in failing to take reasonable steps to protect the WORKS or otherwise:

(a) the amount of extra or additional work; or

(b) any cause of delay referred to in these CONDITIONS OF CONTRACT; or

(c) exceptionally adverse climatic conditions which shall mean weather conditions occurring in excess of the average number of wet days that occurred during the corresponding dates of the last five years as recorded by the Meteorological Authority and the search fee for the aforesaid records shall be borne by the CONTRACTOR; or

(d) any specific delay, impediment or prevention by the EMPLOYER not provided for under the CONTRACT.

44.2 Contractor to Provide Notification and Detailed Particulars

It shall be a condition precedent to an extension of time by the ENGINEER under any provision of the CONTRACT including Clause 44 that the CONTRACTOR shall save unless otherwise provided in the CONTRACT, within twenty-eight (28) days of the event or order or instruction relied upon notify the ENGINEER in writing of any event or order or instruction which the CONTRACTOR considers entitles the CONTRACTOR to an extension of time together with all full and detailed particulars of the same.

44.3 Notice of Time Extension

If in the opinion of the ENGINEER completion of the WORKS or any section, phase or sub-phase thereof was delayed by any of the causes specified in Sub-Clause 44.1, and provided that the CONTRACTOR has duly complied with the requirements of Sub-Clause 44.2, then the ENGINEER shall at the completion of the WORKS or within a reasonable time thereafter or at such earlier time as the ENGINEER may at his discretion deem necessary or appropriate, grant an extension of time for the completion of the WORKS or any section, phase or sub-phase thereof and notify the EMPLOYER and the CONTRACTOR accordingly. Provided always that in the evaluation of any extension of time, the ENGINEER shall consider any savings or reduction in time for completion of the WORKS or any section, phase or sub-phase thereof by reason of any instruction requiring the omission of any WORKS and the like pursuant to Clause 51 and/or any other reason as the ENGINEER shall decide as fair and reasonable.

44.4 No Claims for Loss and Expense

Save unless otherwise provided in the CONTRACT, the CONTRACTOR shall not be entitled to and is deemed to have waived any claim for loss, expense, costs or damages caused by or arising from the causes referred to in Sub-Clause 44.1, and shall also not be entitled to and is deemed to have waived any claim for loss, expense, costs or damages caused by or arising from any extension of time properly granted under Clause 44.

44.5 Failure of Delay in Extending

Any failure or delay in extending the DATE(S) OF COMPLETION shall not entitle the CONTRACTOR to any claim either by way of damages or by way of acceleration or dislocation costs or for any other reasons.

44.6 Delay during Period of Delay

For the avoidance of doubt, where the CONTRACTOR has failed to complete the WORKS or any section, phase or sub-phase thereof by the DATE(S) OF COMPLETION and the CONTRACTOR continues to carry out the WORKS during the overrun period, any delay during the overrun period arising from a cause for which the ENGINEER or the ENGINEER'S REPRESENTATIVE or the EMPLOYER is responsible, shall not invalidate the EMPLOYER'S right to liquidated damages and provided that the CONTRACTOR has duly complied with the requirements of Sub-Clause 44.2, such delay shall be taken into account by the ENGINEER in certifying a reasonable extension of time for completion of the WORKS or any section, phase or sub-phase thereof.

45.1 Working Hours

Subject to any provision to the contrary contained in the CONTRACT, none of the PERMANENT WORKS shall, save as hereinafter provided, be carried on during the night or on Sundays, or locally recognized equivalent without the permission in writing of the ENGINEER, except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the WORKS, in which case the CONTRACTOR shall immediately advise the ENGINEER.

Provided always that the provisions of this Clause 45.1 shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.

46.1 Rate of Progress

If for any reason, the rate of progress of the whole or any parts of the WORKS at any time, in the opinion of the ENGINEER, is too slow to ensure completion by the prescribed time or extended time for completion, the ENGINEER may so notify the CONTRACTOR in writing and instruct the CONTRACTOR to take such steps as are necessary and the CONTRACTOR shall comply with said instructions to expedite progress so as to complete the WORKS or any section, phase or sub-phase thereof by the prescribed time or extended time. The CONTRACTOR shall inform the ENGINEER of such proposed steps and revise the programme referred to in Clause 14. If, as a result of any notice given by the ENGINEER under this Sub-Clause 46.1, the CONTRACTOR shall seek the ENGINEER'S permission to do any work at night or on Sundays, or locally recognized

days of rest, or their locally recognized equivalent and subject to the compliance with any laws, bye-laws and the like, such permission shall not be unreasonably withheld.

Notwithstanding the provisions of this Sub-Clause 46.1 and subject to the compliance with any laws, bye-laws and the like, the ENGINEER shall be empowered to instruct the CONTRACTOR in writing to carry out the WORKS or any part thereof at any time that the ENGINEER considers necessary owing to the default, negligence, omission or slow progress of the CONTRACTOR.

Provided always that if any steps, taken by the CONTRACTOR in meeting his obligations under this Sub-Clause 46.1, involve the EMPLOYER in any additional costs and expenses, such costs and expenses shall, after due consultation with the EMPLOYER and the CONTRACTOR, be determined by the ENGINEER and shall be recoverable from the CONTRACTOR by the EMPLOYER, and may be deducted by the EMPLOYER from any monies due or becoming due to the CONTRACTOR or as a debt due by the CONTRACTOR to the EMPLOYER at the discretion of the EMPLOYER, and the ENGINEER shall notify the CONTRACTOR accordingly, with copy to the EMPLOYER. The CONTRACTOR shall not be entitled to any additional payment for complying with any instruction give in accordance with this Sub-Clause 46.1.

47.1 Liquidated Damages for Delay

If the CONTRACTOR shall fail to achieve completion of the WORKS or any section, phase or sub-phase thereof by the DATE(S) OF COMPLETION, then the CONTRACTOR shall pay liquidated damages to the EMPLOYER calculated at the rate as set out in the APPENDIX or otherwise computed based on one tenth percent (0.1%) of the CONTRACT SUM of the respective WORKS or any section, phase or sub-phase per day for each day of delay which the respective WORKS or any section, phase or sub-phase thereof shall so remain incomplete until the date of certified completion of the WORKS or any section, phase or sub-phase thereof in accordance with Clause 48.

The maximum amount of the total liquidated damages under the CONTRACT shall be based on the rate as set out in the APPENDIX or otherwise computed based on ten percent (10%) of the CONTRACT SUM for the whole WORKS.

The EMPLOYER may at its discretion, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies due or becoming due to the CONTRACTOR or recover as a debt due by the CONTRACTOR. The payment or deduction of such liquidated damages shall not relieve the CONTRACTOR from his duties and responsibilities to complete the WORKS or any section, phase or sub-phase thereof, or from any other of his obligations and liabilities under the CONTRACT. Without prejudice to this Sub-Clause 47.1, in the event this Clause 47.1 becomes inoperable for any reason, then the EMPLOYER shall be at liberty and be entitled to recover all damages for breach of contract which arise from the CONTRACTOR'S failure to complete the WORKS or any section, phase or sub-phase thereof or to carry out the same with due expedition and without delay.

47.2 Reduction of Liquidated Damages

If, before the time for completion of the whole of the WORKS or any section, phase or

sub-phase thereof, a Certificate of Practical Completion pursuant to Clause 48 has been issued for any part of the WORKS or any part of any section, phase or sub-phase thereof, the liquidated damages for delay in completion of the remainder of the WORKS or remainder of any section, phase or sub-phase thereof, shall, for any period of delay after the date stated in such Certificate of Practical Completion issued pursuant to Clause 48, and in the absence of alternative provisions in the CONTRACT, be adjusted in the proportion which the value of the part so certified to be practically completed bears to the value of the whole of the WORKS or of the whole of any section, phase or sub-phase thereof, as applicable. The provisions of this Sub-Clause 47.2 shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

47.3 Bonus for Early Completion

No bonus for early completion shall be made to the CONTRACTOR.

PRACTICAL COMPLETION

48.1 Certification of Practical Completion of Works

When the whole of the WORKS have been substantially completed, have satisfactorily passed any final test that may be prescribed by the CONTRACT and have been delivered to the SITE and/or any other destinations as instructed by the ENGINEER, the CONTRACTOR may give a notice to that effect to the ENGINEER with a copy to the EMPLOYER, accompanied by an undertaking to finish with due expedition and without delay any outstanding work during the Period of Maintenance. Such notice and undertaking shall be in writing and shall be deemed to be a request by the CONTRACTOR for the ENGINEER to issue a Certificate of Practical Completion in respect of the WORKS.

The ENGINEER may, within twenty-one (21) days of the date of delivery of the CONTRACTOR'S notice, either:

(a) issue to the CONTRACTOR, with a copy to the EMPLOYER, a Certificate of Practical Completion, stating the date(s) on which, in his opinion, the WORKS were substantially completed in accordance with the CONTRACT; or

(b) give instructions in writing to the CONTRACTOR specifying all the work which, in the ENGINEER'S opinion, requires to be done by the CONTRACTOR before the issue of such Certificate. The ENGINEER shall also notify the CONTRACTOR of any defects in the WORKS affecting substantial completion that may appear after such instructions and before completion of the WORKS specified therein. The ENGINEER may then issue such Certificate of Practical Completion within twenty-eight (28) days of completion, to the satisfaction of the ENGINEER, of the works so specified and making good any defects so notified.

48.2 Certification of Practical Completion by Stages

Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the CONTRACTOR may request and the ENGINEER may issue a Certificate of Practical

Completion in respect of:

(a) any section, phase or sub-phase thereof the WORKS in respect of which a separate time for completion is provided in the CONTRACT and/or the same thereof in respect of which a separate time for completion is provided pursuant to Sub-Clause 43.2, subject to the same having been completed to the satisfaction of the ENGINEER and handed over to the EMPLOYER; or

(b) any substantial part of the WORKS or any section, phase or sub-phase thereof which has been both completed to the satisfaction of the ENGINEER and, otherwise than as provided for in the CONTRACT, occupied or used by the EMPLOYER; or

(c) any part of the WORKS or any section, phase or sub-phase thereof which the EMPLOYER has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the CONTRACT or has not been agreed by the CONTRACTOR as a temporary measure).

48.3 Substantial Completion of Parts

If any part of the WORKS or part of any section, phase or sub-phase thereof shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the CONTRACT, the ENGINEER may issue a Certificate of Practical Completion in respect of that part of the WORKS or that part of any section, phase or sub-phase thereof before completion of the whole of the WORKS or the whole of any section, phase or sub-phase thereof and, upon the issue of such Certificate, the CONTRACTOR shall be deemed to have undertaken to complete with due expedition and without delay any outstanding work in that part of the WORKS or that part of any section, phase or sub-phase thereof during the Period of Maintenance.

48.4 Surfaces requiring Reinstatement

Provided always that a Certificate of Practical Completion given in respect of any section, phase or sub-phase thereof the WORKS before completion of the whole of the WORKS shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Certificate shall expressly state so.

48.5 Provisional Certificate of Practical Completion

If the ENGINEER is of the opinion that the WORKS or any section, phase or sub-phase thereof is substantially completed, but not fully ready for handing over to the EMPLOYER, he may at his discretion issue a Provisional Certificate of Practical Completion for the same pending the issuance of the Certificate of Practical Completion at a later date. A Provisional Certificate of Practical Completion shall release the CONTRACTOR from liability for liquidated damages for and only for the respective WORKS or any section, phase or sub-phase thereof where the Provisional Certificate of Practical Completion was issued but shall not affect any of the CONTRACTOR'S other duties, obligations, responsibilities and liabilities under the CONTRACT, and pending issuance of the Certificate of Practical Completion, the CONTRACTOR shall continue to protect such WORKS or any section, phase or sub-phase thereof and maintain any bonds, indemnities and insurances taken up by the CONTRACTOR under the CONTRACT.

The Period of Maintenance shall not commence until the date(s) shown in the Certificate of Practical Completion.

MAINTENANCE AND DEFECTS

49.1 Definition of Period of Maintenance

In these CONDITIONS OF CONTRACT the expression "Period of Maintenance" shall mean the period of maintenance named in the APPENDIX, calculated from:

(a) the date of Practical Completion of the WORKS, certified by the ENGINEER in accordance with Clause 48 hereof, or

(b) in the event of more than one certificate having been issued by the ENGINEER under Clause 48 hereof, the respective dates so certified

and in relation to the Period of Maintenance the expression "WORKS" shall be construed accordingly.

49.2 Execution of Work of Repair

To the intent that the WORKS shall, at or as soon as practicable after the expiration of the Period of Maintenance, be delivered to the EMPLOYER in the condition required by the CONTRACT and shall be as good order and condition (fair wear and tear excepted) as they were at the commencement of the Period of Maintenance, to the satisfaction of the ENGINEER, the CONTRACTOR shall:

(a) complete the work, if any, outstanding on the date stated in the Certificate of Practical Completion under Clause 48 hereof as soon as practicable after such date; and

(b) execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the CONTRACTOR in writing by the ENGINEER during the Period of Maintenance, or within fourteen (14) days after its expiration, as a result of an inspection made by or on behalf of the ENGINEER prior to its expiration.

49.3 Period of Maintenance for Work of Repair

Provided always that all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults carried out by the CONTRACTOR under the CONTRACT shall be further subject to another Period of Maintenance subsequent to their completion and such obligations of the CONTRACTOR shall be without prejudice to the duties, obligations, responsibilities and liabilities of the CONTRACTOR notwithstanding the issuance of Maintenance Certificate under the CONTRACT.

49.4 Cost of Remedying Defects

All works referred to in Sub-Clause 49.2 (b) shall be executed by the CONTRACTOR at

his own cost if the necessity thereof is, in the opinion of the ENGINEER, due to:

(a) the use of materials or workmanship not in accordance with the CONTRACT; or

(b) any fault in such design of the WORKS; or

(c) the neglect or failure on the part of the CONTRACTOR to comply with any duties, obligations, responsibilities expressed or implied, on the CONTRACTOR'S part under the CONTRACT.

If, in the opinion of the ENGINEER, such necessity is due to any other cause not directly or indirectly due to the CONTRACTOR'S default, he shall determine an addition to the CONTRACT SUM in accordance with Clause 52 hereof and shall notify the CONTRACTOR accordingly, with a copy to the EMPLOYER.

49.5 Remedy on Contractor's Failure to Carry out Work Required

If the CONTRACTOR shall fail to do any such work as aforesaid required by the ENGINEER, the EMPLOYER shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the ENGINEER, the CONTRACTOR was liable to do at the CONTRACTOR'S own costs and expenses under the CONTRACT, then all costs, losses and expenses consequent thereon or incidental thereto shall be recoverable from the CONTRACTOR as a debt due to the EMPLOYER, or deducted by the EMPLOYER from any monies due or which may become due to the CONTRACTOR, all at the discretion of the EMPLOYER

50.1 Contractor to Search

The CONTRACTOR shall, if required by the ENGINEER in writing, search under the directions of the ENGINEER for the cause of any defect, imperfection or fault appearing during the progress of the WORKS or in the Period of Maintenance. Unless such defect, imperfection or fault shall be one for which the CONTRACTOR is liable under the CONTRACT, the cost of the work carried out by the CONTRACTOR in searching as aforesaid shall be borne by the EMPLOYER. If such defect, imperfection or fault shall be one for which the CONTRACTOR is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the CONTRACTOR and he shall in such case repair, rectify and make good such defect, imperfection or fault at the CONTRACTOR'S own costs and expenses in accordance with the provisions of Clause 49 hereof.

The ENGINEER may at his discretion and after giving reasonable notice in writing to the CONTRACTOR allow the EMPLOYER by his own workmen or by other contractors to carry out the search as aforesaid and if such work (including any repairs, rectification and making good of work) is work which the CONTRACTOR would have been required to carry out at the CONTRACTOR'S own costs and expenses, the EMPLOYER shall be entitled to recover from the CONTRACTOR the costs and expenses incurred in connection therewith. The CONTRACTOR shall not have any claims against the EMPLOYER for extra payment or loss or damage (including loss of profit) in respect of work undertaken by other contractors under this Sub-Clause 50.1 or the presence on SITE of or delay or interference caused by or an act, omission or default on the part of any such

other contractors. The CONTRACTOR shall make good any damage or loss caused to the WORKS by any such other contractor and the CONTRACTOR'S responsibilities under Clause 20 and Clause 22 shall not be affected by any act, omission or default of any such contractor.

50.2 In Lieu of Rectification

In lieu of correcting work not done or ordered to be done in accordance with Clause 49, the ENGINEER may but shall not be bound to allow such work to remain, and in such case make such allowance for the difference in value, together with such allowance for loss and damage suffered by the EMPLOYER as the ENGINEER may reasonably determine. In making such allowance, the ENGINEER may be guided, but shall not be bound, by the provisions of Clause 52. Provided that nothing in this Sub-Clause 50.2 and nothing done or permitted under its provisions shall relieve the CONTRACTOR from his duties, obligations, responsibilities and liabilities to execute the WORKS in all respects in accordance with the provisions of the CONTRACT or from the CONTRACTOR'S duties, obligations, responsibilities and liabilities to make good all defects.

ALTERATIONS, ADDITIONS AND OMISSIONS

51.1 Variations

The ENGINEER shall make any variation of the form, quality or quantity of the WORKS or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be desirable, he shall, subject to the prior approval by the EMPLOYER, have the power to order the CONTRACTOR to do and the CONTRACTOR shall do any of the following:

(a) increase or decrease the quantity of any work and/or MATERIALS included in the CONTRACT;

(b) omit or reduce any such work and/or MATERIALS;

(c) change the character or quality or kind of any such work and/or MATERIALS;

(d) execute additional work and/or MATERIALS of any kind necessary for the completion of the WORKS;

(e) change the levels, lines, position and dimensions of any part of the WORKS: and

(f) any other changes in the original contract intention as deduced from the CONTRACT as a whole describing or defining the WORKS as shall be deemed necessary by the ENGINEER.

Provided always that:

(i) no such variation shall in any way vitiate or invalidate the CONTRACT, but the value, if any, of all such variations, shall be taken into account in ascertaining the amount to be added or omitted from the CONTRACT SUM. Notwithstanding the aforesaid and for the

avoidance of doubt, the ENGINEER will not value for additional payment any work necessary for completion of the CONTRACT, if such work is expressly included in or reasonably inferable from the CONTRACT and/or are works which are either necessary to complete the WORKS or which become necessary to overcome difficulties before completion. Further and for the avoidance of doubt, ENGINEER'S required changes to any specified sequence or timing of construction of any part of the WORKS and/or the supply of any MATERIALS so long as they are necessary for the proper progress of the Project as a whole as determined by the ENGINEER, shall also not be considered as variation for any additional payment to the CONTRACTOR; and

(ii) in the event of omission of WORKS, the ENGINEER shall be entitled to consider any savings or reduction in time for completion of the WORKS or any section, phase or sub-phase thereof and make the necessary adjustments in the DATE(S) FOR COMPLETION as the ENGINEER shall decide as fair and reasonable and shall thereon notify the EMPLOYER and the CONTRACTOR. Further and for the avoidance of doubt, there shall be no claims by the CONTRACTOR for any loss of profit and the like on any omitted part of the WORKS by reason of any acceleration, dislocation or otherwise of the CONTRACT.

51.2 Orders for Variations to be in Writing

No such variations shall be made by the CONTRACTOR without an order in writing of the ENGINEER. Provided that if for any reason the ENGINEER shall consider it desirable to give any such order verbally, the CONTRACTOR shall comply with such order and any confirmation in writing of such verbal order given by the ENGINEER, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause 51. Provided further that if the CONTRACTOR shall within seven (7) days confirm in writing to the ENGINEER and such confirmation shall not be contradicted in writing within fourteen (14) days by the ENGINEER, it shall be deemed to be an order in writing by the ENGINEER.

52.1 Valuation of Variations

All variations referred to in Clause 51 shall be valued at the rates and prices set-out in the CONTRACT or at analogous or pro-rated rates thereto if in the opinion of the ENGINEER, the same shall be applicable.

If the CONTRACT does not contain rates or prices applicable to the variations nor could any rates thereto be used as analogous or pro-rated rates in the opinion of the ENGINEER, then the following method(s) shall be used to value the variations:

(a) Daywork rates as set out in the CONTRACT; or

(b) Rates or prices to be agreed upon between the ENGINEER and the CONTRACTOR. Provided always that agreement shall not be with-held in the event such rates or prices reflect fair market rates or prices. In the event of disagreement, the ENGINEER shall fix such rates or prices as shall, in his opinion, be reasonable and proper and his decision shall be final, binding on and conclusive against the CONTRACTOR.

Until such time as the rates or prices are agreed or fixed, the ENGINEER shall determine

provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 58 hereof.

52.2 Power of Engineer to Fix Rates

Provided that if the nature or amount of any variations relative to the nature or amount of the whole of the WORKS or any section, phase or sub-phase thereof shall be such that, in the opinion of the ENGINEER, the rate or price contained in the CONTRACT for any item of the works is, by reason of such variations, rendered inappropriate or inapplicable, then a suitable rate or price shall be agreed upon between the ENGINEER and the CONTRACTOR.

In the event of disagreement the ENGINEER shall, with the EMPLOYER'S approval, fix such other rates or prices as shall, in his opinion, be reasonable and proper having regard to the circumstances. Until such time as the rates or prices are agreed or fixed, the ENGINEER shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 58.

Provided always that it shall be a condition precedent and that no claims for additional payment under the variations instructed to be done by the ENGINEER pursuant to Clause 51 shall be considered unless written notice shall have been given by the CONTRACTOR to the ENGINEER of his intention to claim extra payment either within fourteen (14) days of the date of the ENGINEER'S instruction for variation or before the CONTRACTOR'S commencement of the variation whichever is earlier.

52.3 Daywork

The ENGINEER may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a daywork basis. The CONTRACTOR shall comply with such instruction and shall then be paid for such work under the conditions set out in the Daywork Schedule included in the CONTRACT and at the rates and prices affixed thereto.

The CONTRACTOR shall furnish to the ENGINEER such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the ENGINEER quotations for the same for his approval.

In respect of such of the works executed on a daywork basis, the CONTRACTOR shall, during the continuance of such work, deliver each day to the ENGINEER an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and CONSTRUCTION PLANT used thereon or therefor other than CONSTRUCTION PLANT which is included in the percentage addition in accordance with such Daywork Schedule. One copy of each list and statement will, if correct, and when agreed, be signed by the ENGINEER and returned to the CONTRACTOR.

At the end of each month the CONTRACTOR shall deliver to the ENGINEER a priced statement of the labor, materials and CONSTRUCTION PLANT (except as aforesaid) used. The CONTRACTOR's compliance with such continuing obligations shall be condition precedent to the CONTRACTOR's claim hereinunder and who shall not be

entitled to any payment unless such lists and statements have been fully and punctually rendered.

52.4 Variation Works by Other Coniractors

The EMPLOYER may engage other contractors including but may not be limited to EMPLOYER'S OTHER CONTRACTORS and/or EMPLOYER'S OWN FORCES to carry out work to be incorporated in the WORKS in any of the following cases:

(a) if in the opinion of the ENGINEER, the CONTRACTOR is unable to provide the necessary expertise to carry out such work;

(b) if such work involve work, materials or goods and/or the use of specialized plant and equipment that can be undertaken or supplied only by specialist contractors; or

(c) is such work involves the use of materials or goods not described in the CONTRACT.

The CONTRACTOR shall not have any claims against the EMPLOYER for extra payment or loss, expenses, costs or damages (including loss of profit) in respect of work undertaken by the said other contractors herein Sub-Clause 52.4 or the presence on SITE of or delay or interference caused by or an act, omission or default on the part of the said other contractors. The CONTRACTOR'S duties, obligations, responsibilities and liabilities under the CONTRACT shall not be prejudiced nor affected by any act, omission or default of such contractors.

52.5 Measurement Meeting

The CONTRACTOR shall from time to time when required, on reasonable notice by the ENGINEER, attend at the WORKS to take jointly with the ENGINEER or the ENGINEER'S REPRESENTATIVE any measurements of the work executed that may be necessary for the valuation of variations ordered pursuant to Clause 51. Any such measurements when ascertained and any differences arising thereon shall be recorded in the manner required by the ENGINEER. The CONTRACTOR shall at his own costs and expenses provide assistance with every appliance necessary for measuring the work. If the CONTRACTOR fails to attend when so required, the ENGINEER shall have power to proceed himself to take such measurements and such quantities measured shall be deemed final, binding on and conclusive against the CONTRACTOR.

The CONTRACTOR shall provide to the ENGINEER all documents and information necessary for the calculation of the measurements

PROCEDURE FOR CLAIMS

53.1 Procedure for Claims

The CONTRACTOR shall submit to the ENGINEER at monthly interval an account giving particulars, as full and detailed as possible, of all claims for any additional payment to which the CONTRACTOR may consider himself entitled and of all extra or additional work ordered by the ENGINEER which the CONTRACTOR has executed during the

preceding month.

No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars.

Provided always that the ENGINEER shall with the approval of the EMPLOYER, be entitled to authorize payment to be made for any such work or expense, notwithstanding the CONTRACTOR'S failure to comply with this condition, if the CONTRACTOR has, at the earliest practicable opportunity, notified the ENGINEER in writing that the CONTRACTOR intends to make a claim for such work.

Notification of a claim without submission of full particulars such as detailed breakdown and back-up data will not be accepted unless the ENGINEER feels that there are exceptional circumstances which prevent submission of full details. In his letter acknowledging receipt of an incomplete claim, the ENGINEER will specify the latest date by which full details must be submitted. If the CONTRACTOR fails to submit full details before the date specified by the ENGINEER, it will be considered as an admission by the CONTRACTOR that he is no longer proceeding with the claim and such admission shall be final, binding on and conclusive against the CONTRACTOR.

CONSTRUCTION PLANT, TEMPORARY WORKS AND MATERIALS

54.1 Construction Plant, Exclusive Use for the Works

All CONSTRUCTION PLANT, TEMPORARY WORKS and any other MATERIALS provided by the CONTRACTOR shall, when brought on to the SITE or used for the WORKS carried out in the CONTRACTOR'S FACTORY, be deemed as between the EMPLOYER and the CONTRACTOR, to be the property of the EMPLOYER to be used by the CONTRACTOR exclusively for the execution of the WORKS subject to the CONTRACT, and the CONTRACTOR shall not remove the same or any part thereof from the SITE without the written consent of the ENGINEER, except for the purpose of moving it from one part of the SITE to another.

54.2 Contractor's Insurance of Construction Plant

The CONTRACTOR shall procure at his own expense an insurance policy to cover for all the CONSTRUCTION PLANT, and such policy shall be for the whole CONTRACT PERIOD.

The insurance referred to herein Sub-Clause 54.2 shall be effected with an insurer and on terms all to be approved by the EMPLOYER whose approval shall not relieve the CONTRACTOR of any of his duties, obligations, responsibilities and liabilities under the CONTRACT, and be maintained in full force and effect at all material times. Such insurance shall be in the joint names of the CONTRACTOR and the EMPLOYER, and shall inter-alia include all waivers of subrogation against the EMPLOYER, ENGINEER, ENGINEER'S REPRESENTATIVE and all their respective agents, servants and the like.

The CONTRACTOR shall, whenever required, produce to the ENGINEER, or the EMPLOYER, the policy or policies of insurance and the receipts for current payment of

premiums. If the CONTRACTOR shall fail to effect and keep in force the insurance as aforesaid, then and in any such case the EMPLOYER may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the EMPLOYER as aforesaid from any monies due or which may become due to the CONTRACTOR, or recover the same as a debt due from the CONTRACTOR.

54.3 Removal of Construction Plant

Upon completion of the WORKS, the CONTRACTOR shall with the written consent of the ENGINEER, remove from the SITE all the CONSTRUCTION PLANT, TEMPORARY WORKS and the said MATERIALS remaining thereon and any unused MATERIALS provided by the CONTRACTOR, and the property of the same shall then be deemed re-vested in the CONTRACTOR.

54.4 Employer Not Liable for Damage

The EMPLOYER shall not at any time be liable for the loss of or damage to any of the CONSTRUCTION PLANT, TEMPORARY WORKS and MATERIALS.

54.5 Customs Clearance

The EMPLOYER will endeavor to render reasonable assistance to the CONTRACTOR, where required, in obtaining clearance through the Customs of CONSTRUCTION PLANT, MATERIALS and other things required for the WORKS, but such assistance shall not relieve the CONTRACTOR from his duties, obligations, responsibilities and liabilities under the CONTRACT.

54.6 Construction Plant and Facilities

The CONTRACTOR shall provide at the SITE, all the CONSTRUCTION PLANT required for the WORKS including but may not be limited to the same as specified in the CONTRACT and shall permit EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES the reasonable use thereof for the purpose of executing and completing their respective works.

54.7 Approval of Materials, Not Implied

The operation of this Clause 54 shall not be deemed to imply any APPROVAL by the ENGINEER of the quality or suitability of the CONSTRUCTION PLANT, TEMPORARY WORKS and MATERIALS or other matters referred to therein nor shall it prevent the rejection of any of the same at any time by the ENGINEER.

54.8 Conditions of Hire of Construction Plant

With a view of securing, in the event of termination under Clause 61, the continued availability, for the purpose of executing the WORKS, of any hired CONSTRUCTION PLANT, the CONTRACTOR shall not bring on to the SITE any hired CONSTRUCTION PLANT unless with the ENGINEER'S written APPROVAL or unless there is an agreement for the hire thereof which contains a provision that the owner thereof

will, on request in writing made by the ENGINEER for and on behalf of the EMPLOYER within seven (7) days after the date on which any termination has become effective, and on the EMPLOYER undertaking to pay all hire charges in respect thereof from such date, hire such CONSTRUCTION PLANT to the EMPLOYER on the same terms on all respects as the same was hired to the CONTRACTOR save that the EMPLOYER shall be entitled to permit the use thereof by any other contractors employed by the EMPLOYER for the purposes of executing and completing the WORKS and remedying any defects therein, under the terms of Clause 61.

In the event of the EMPLOYER entering into any agreement for the hire of the CONSTRUCTION PLANT pursuant to the aforesaid, all sums properly paid by the EMPLOYER under the provisions of any such agreement and all costs incurred by him in entering into such agreement shall be deemed for the purposes of Clause 61 to be part of the cost of executing and completing the WORKS and remedying any defects therein.

54.9 Incorporation of Clause in Sub-Contracts

The CONTRACTOR shall, where entering into any sub-contracts for the execution of any part of the WORKS, incorporate in such sub-contracts (by reference or otherwise) the provisions of Clause 54 in relation to CONSTRUCTION PLANT, TEMPORARY WORKS or MATERIALS brought on to the SITE by the sub-contractors.

MEASUREMENT

55.1 Bill of Quantities

The BILL OF QUANTITIES and the rates and prices therein, are compiled for the purpose of assisting the ENGINEER in matters related to :

(a) the breakdown of the CONTRACT SUM;

(b) preparation and evaluation of progress claims pursuant to Clause 58; and

(c) providing a cost basis for valuation of variations subject always to Clause 52.

The items, quantities, rates and prices in the BILL OF QUANTITIES shall be determined by the CONTRACTOR. and the CONTRACTOR shall bear full responsibility as to the accuracy of this document, and the EMPLOYER shall not be held liable for any errors. shortcomings in this document should such become evident during the progress of the WORKS. Further and for the avoidance of doubt, the description of any item not included in the BILL OF QUANTITIES shall be deemed to have been covered in other items described in the BILL OF QUANTITIES.

56.1 Works to be Measured

Not Applicable.

57.1 Method of Measurement

Notwithstanding any general or local custom, the method of measurement used in the BILL OF QUANTITIES shall be employed for the measurement of any variations or when no applicable method of measurement is specified therein or inferable thereto, any method of measurement as shall be decided by the ENGINEER as reasonable. All works shall be measured net as fixed and finished and no separate allowance will be made for waste or laps or for bulking and compaction, etc which shall be deemed to be included in the rates or prices.

57.2 Make up of Contractor's Rates and Prices

To facilitate the valuation of variations pursuant to Clause 52, the CONTRACTOR shall without prejudice to any express requirement in the CONTRACT to do so earlier, submit to the ENGINEER not less than fourteen (14) days before the scheduled commencement of the WORKS, a breakdown of his rates and prices in the BILL OF QUANTITIES. Such breakdown shall indicate the following and with special attention drawn to any unusual or important items:

(a) all proportionate amounts attributable to labor, materials and goods, plant and equipments, profits and overheads, and any other expenditure; and

(b) all types of plant and equipment, labor, materials and goods or other expenditure allowed for in sufficient detail for pricing purposes.

CERTIFICATES AND PAYMENTS

58.1 Certification and Payment

At the end of each completed month's work, the CONTRACTOR shall submit to the ENGINEER a statement giving the estimated values of the following:

(a) parts of the PERMANENT WORKS executed to the satisfaction of the ENGINEER; and

(b) unused MATERIALS on SITE subject to Sub-Clause 58.7

up to the end of that month, and the ENGINEER shall then value the parts of the PERMANENT WORKS executed and unused MATERIALS on SITE (subject to Sub-Clause 58.7) as follows:

(i) One hundred percent (100%) of the value of completed WORKS properly carried out under the CONTRACT as of that date and allocable to labor, MATERIALS and equipment **PLUS** sixty percent (60%) of the value properly allocable to PERMANENT MATERIALS delivered, properly stored and protected at the SITE for subsequent incorporation into the WORKS and not brought prematurely thereon **LESS** the aggregate of previous payments made by the EMPLOYER and **LESS** any amounts deducted by the EMPLOYER pursuant to the CONTRACT including but not limited to any Advance Payments paid to the CONTRACTOR.

Provided further that the ENGINEER when valuing the parts of the PERMANENT WORKS executed and unused MATERIALS on SITE of the CONTRACTOR shall have the power to reduce such value on account of:

(a) defective or omitted works or works not carried out to the ENGINEER'S satisfaction; and

(b) MATERIALS prematurely delivered, not approved or not properly protected.

From this amount, the following and all sums previously paid to the CONTRACTOR shall be deducted:

(a) the installment for the CONTRACTOR'S repayment of the Advance Payment in accordance with Clause 58.2;

(b) any deduction for taxes and charges required by Law or whether ascertained or unascertained under the CONTRACT or any other requirements;

(c) allowance for the any probable amount of liquidated damages due as a result of any probable delay occurring to the WORKS according to the context of the CONDITIONS OF CONTRACT; and

(d) any other deductions that are or may be owed by the CONTRACTOR according to the context of the CONDITIONS OF CONTRACT.

The monthly progress payment shall then be due from the EMPLOYER to the CONTRACTOR four (4) weeks after issuance of the ENGINEER'S certificate.

58.2 Advance Payment

If permitted under the FORM OF AGREEMENT, the EMPLOYER shall make an Advance Payment to the CONTRACTOR in the amount stated therein the FORM OF AGREEMENT against a Bank Guarantee in an acceptable form and from a Bank acceptable to the EMPLOYER. The CONTRACTOR shall submit the aforesaid Bank Guarantee to the EMPLOYER within the time-frames as required in the CONTRACT. and thereupon the EMPLOYER shall make an Advance Payment as specified in the FORM OF AGREEMENT.

The Advance Payment shall be repaid to the EMPLOYER in the corresponding Advance Payment percentage out of the monthly installments through out the period of CONTRACT and shall be repaid and taken into account at the time of and by way of the monthly progress payments, in accordance with the provisions of Sub-Clause 58.1 and Sub-Clause 58.3, so that the Advance Payment is completely repaid upon completion of the WORKS. The afore-said notwithstanding, the EMPLOYER also reserves all rights to recover any outstanding Advance Payment still un-recovered, in its entirety at any point of time in the event the EMPLOYER shall have valid reasons to proceed as such including but may not be limited to reasons of imminent financial difficulties of the CONTRACTOR.

All and any extensions to the validity of the Advance Payment Bond shall be to the account of the CONTRACTOR.

58.3 Payment Currency

All payment to the CONTRACTOR shall be made in the Currency as provided in the FORM OF AGREEMENT.

58.4 Retention Monies

The Retention Monies or any balance thereof in the event of any certification by the ENGINEER of monies still to be with-held pursuant to CONTRACTOR'S duties, obligations, responsibilities and liabilities under Sub-Clause 49.3, will be returned to the CONTRACTOR upon issuance of Maintenance Certificate for the whole of the WORKS in accordance with Sub-Clause 60.1. Notwithstanding and without prejudice to the aforesaid, the EMPLOYER may, at his sole discretion, return any portion of Retention Monies to the CONTRACTOR after the ENGINEER issues the Certificate of Practical Completion or the last Certificate of Practical Completion in the event of completion of any section, phase or sub-phase thereof the WORKS, in accordance with the conditions set out in the Clause 48 against a Bank Guarantee in an acceptable form and from a Bank acceptable to the EMPLOYER.

The Bank Guarantee shall be valid for the Period of Maintenance with an obligation of the CONTRACTOR to renew until a Maintenance Certificate has been issued by the ENGINEER under the provision of Clause 60 or any amount thereof the Bank Guarantee to be renewed to cover any balance of Retention Monies in the event of any certification by the ENGINEER of monies still to be with-held pursuant to CONTRACTOR'S duties, obligations, responsibilities and liabilities under Sub-Clause 49.3. The EMPLOYER shall, upon the expiry of the Bank Guarantee and upon the written request of the Bank or the CONTRACTOR, return the aforesaid Bank Guarantee to the Bank. All and any extensions to the validity of such Bank Guarantee shall be to the account of the CONTRACTOR.

58.5 Obligations and Rights

On payment of the monthly certificate, all parts of the PERMANENT WORKS and MATERIALS paid for shall become the property of the EMPLOYER, but the same shall be at the risk and custody of the CONTRACTOR until the CONTRACT is certified completed pursuant to Clause 48.

58.6 Correction or Modification in Monthly Certificates

All the quantities in the monthly certificates and also the payments that have been made to the CONTRACTOR shall be considered provisional and not final and they are on account and any mistake in measurement or computation in the monthly certificates shall be corrected and payment adjusted accordingly.

The ENGINEER or the ENGINEER'S REPRESENTATIVE may by any certificates make any correction or modification in any previous certificate and shall have the power to withhold any monthly certificate if the WORKS or any part thereof and/or

MATERIALS are not being carried out to the satisfaction of the ENGINEER.

58.7 Payment of Stockpiled Materials

Cement, reinforcing steel, structural steel, asphalt materials, aggregate and other materials required for the performance of the WORKS, when already on the SITE and not yet incorporated in the WORKS may, on the request of the CONTRACTOR, be included by the ENGINEER in the monthly certificate. Payment for MATERIALS on SITE shall be valued at sixty percent (60%) of the unit price of the MATERIALS indicated in the BILL OF QUANTITIES - Daywork or at the rate to be agreed if the MATERIALS does not appear in this Section. Provided always that the above MATERIALS shall comply with all the conditions prescribed in the CONTRACT.

The value of these MATERIALS will be deducted from the subsequent monthly certificates.

The minimum amount of the certified payment of Stockpiled Materials for the monthly certificate shall be ten million Rupiahs (Rp 10,000,000,-)

58.8 Final Account

Upon the issuance of the Certificate of Practical Completion or the last Certificate of Practical Completion in the event of completion of any section, phase or sub-phase thereof the WORKS, the ENGINEER and the CONTRACTOR shall together determine the final account of the WORKS. The CONTRACTOR shall submit the final account to the ENGINEER within ninety (90) days of receipt of the last Certificate of Practical Completion. The ENGINEER shall assess and render a Final Account Certificate within a period of one hundred and twenty (120) days upon receipt of the CONTRACTOR's final account. In the event of the CONTRACTOR disagreeing with the ENGINEER'S Final Account Certificate, the CONTRACTOR shall in writing give notice to the ENGINEER of his disagreement no later than thirty (30) days from receipt of Final Account Certificate failing which the ENGINEER'S Final Account Certificate shall be final, binding on and conclusive against the CONTRACTOR. The CONTRACTOR shall so state in his written notice the reasons for disagreement with the ENGINEER'S Final Account Certificate and any assessment therein. The ENGINEER shall within a period of thirty (30) days respond to the CONTRACTOR'S notice of disagreement.

59.1 Approval Only by Maintenance Certificate

No certificate other than the Maintenance Certificate referred to in Clause 60 shall be deemed to constitute approval of the WORKS or part thereof subject to Sub-Clause 49.3.

60.1 Maintenance Certificate

The CONTRACT shall not be considered fully fulfilled until a Maintenance Certificate shall have been issued by the ENGINEER and delivered to the EMPLOYER with a copy to the CONTRACTOR stating that the WORKS have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the ENGINEER within twenty-eight (28) days after the expiration of the Period of Maintenance, or, if different Periods of Maintenance shall become applicable to different section, phase or sub-phase

thereof the WORKS, upon the expiration of the latest such period, or as soon thereafter as any works ordered during such period, pursuant to Clauses 49 and 50 hereof, shall have been completed to the satisfaction of the ENGINEER and full effect shall be given to this Clause 60, notwithstanding any previous entry on the WORKS or the taking possession, working or using thereof or any part thereof by the EMPLOYER.

Provided always that in the event Sub-Clause 49.3 is applicable, the ENGINEER may but shall not be bound to issue a Maintenance Certificate stating that the WORKS subject to Sub-Clause 49.3 have been completed and maintained to his satisfaction. The Maintenance Certificate issued subject to Sub-Clause 49.3 shall be without prejudice to the CONTRACTOR'S duties, obligations, responsibilities and liabilities under Sub-Clause 49.3.

60.2 Cessation of Employer's Liability

It shall be a condition precedent herein that the EMPLOYER shall not be liable to the CONTRACTOR for any matter or thing arising out of or in connection with the CONTRACT or the execution of the WORKS, unless the CONTRACTOR shall have made a claim in writing in respect thereof not later than fourteen (14) days before the giving of the Maintenance Certificate.

REMEDIES AND POWERS

61.1 Default of Contractor

If the CONTRACTOR shall become bankrupt, or have a receiving order made against him, or shall present his petition in bankruptcy, or shall make an arrangement with or assignment in favor of his creditors, or shall agree to carry out the CONTRACT under a committee of inspection of his creditors, or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or if the CONTRACTOR shall assign the CONTRACT without the consent in writing of the EMPLOYER first obtained, or shall have an execution levied on his MATERIALS, or if the ENGINEER shall certify in writing to the EMPLOYER that, in his opinion, the CONTRACTOR:

(a) has abandoned the CONTRACT; or

(b) without reasonable excuse has failed to commence the WORKS or has suspended the progress of the WORKS for fourteen (14) days after receiving from the ENGINEER written notice to proceed; or

(c) has failed to remove WORKS and/or MATERIALS from the SITE or to pull down and replace work for fourteen (14) days after receiving from the ENGINEER written notice that the said WORKS and/or MATERIALS had been condemned and rejected by the ENGINEER under the CONTRACT; or

(d) despite previous warnings by the ENGINEER in writing, is not executing the WORKS in accordance with the CONTRACT, or is persistently or flagrantly neglecting to carry out his obligations under the CONTRACT; or

(e) has, to the detriment of good workmanship or in defiance of the ENGINEER'S instructions to the contrary, sub-let any part of the CONTRACT; or

(f) has failed to provide the PERFORMANCE BOND pursuant to Clause 10;

then the EMPLOYER may, after giving fourteen (14) days notice in writing to the CONTRACTOR in the event the WORKS are carried out on SITE, enter upon the SITE and the WORKS and terminate the employment of the CONTRACTOR without thereby releasing the CONTRACTOR from any of his duties, obligations, responsibilities or liabilities under the CONTRACT, or affecting the rights and powers conferred on the EMPLOYER or the ENGINEER or the ENGINEER'S REPRESENTATIVE by the CONTRACT, and may himself complete the WORKS or may employ any other contractors to complete the WORKS. The EMPLOYER or such other contractors may use for such completion so much of the CONSTRUCTION PLANT, TEMPORARY WORKS and MATERIALS, which have been deemed to have become the property of the EMPLOYER under Sub-Clause 54.1 and reserved exclusively for the execution of the WORKS under the provisions of the CONTRACT, as he or they may think proper, and the EMPLOYER may, at any time, sell any of the said CONSTRUCTION PLANT, TEMPORARY WORKS and unused MATERIALS and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to the EMPLOYER from the CONTRACTOR under the CONTRACT.

In the event WORKS are carried out in the CONTRACTOR'S FACTORY, the aforesaid provisions herein Sub-Clause 61.1 shall apply mutatis mutandis. The EMPLOYER shall in addition, himself or employ any other contractors remove the WORKS from the CONTRACTOR'S FACTORY together with so much of the CONSTRUCTION PLANT, TEMPORARY WORKS and MATERIALS, which have been deemed to have become the property of the EMPLOYER under Sub-Clause 54.1 for the completion of the WORKS outside the CONTRACT by the EMPLOYER.

61.2 Valuation at Date of Termination

The ENGINEER shall, as soon as may be practicable after such termination by the EMPLOYER, fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify what amount, if any, had at the time of such entry and termination been reasonably earned by or would reasonably accrue to the CONTRACTOR in respect of works then actually done by him under the CONTRACT and the value of any of the said unused or partially used MATERIALS, any CONSTRUCTION PLANT any TEMPORARY WORKS.

61.3 Payment after Termination

If the EMPLOYER shall terminate the employment of the CONTRACTOR under the CONTRACT under this Clause 61, the EMPLOYER shall not be liable to pay to the CONTRACTOR any money on account of the CONTRACT until the expiration of the Period of Maintenance and thereafter until the costs of execution, completion and maintenance, damages for delay in completion, if any, and all other costs, expenses and damages incurred by the EMPLOYER have been ascertained and the amount thereof certified by the ENGINEER. The CONTRACTOR shall then be entitled to receive only

such sum or sums, if any, as the ENGINEER may certify would have been payable to him upon due completion by him after deducting the said amount and unrepaid Advance Payment. If such amount shall exceed the sum which would have been payable to the CONTRACTOR on due completion by him, then the CONTRACTOR shall, upon demand, pay to the EMPLOYER the amount of such excess and it shall be deemed a debt due by the CONTRACTOR to the EMPLOYER and shall be recoverable accordingly.

61.4 Liquidated Damages after Termination

In the event final completion of the WORKS by the EMPLOYER has been delayed beyond the DATE(S) FOR COMPLETION (as revised or extended or notionally extended by the ENGINEER in accordance with Clause 41 and Clause 44 or any other provisions of this CONTRACT entitling the CONTRACTOR to an extension of time and also in accordance with the provisions of this Sub-Clause 61.4), the following provisions shall have effect:

(a) the EMPLOYER shall be entitled to the same liquidated damages for delay as those which would have applied under the terms of the CONTRACT if the CONTRACTOR had himself completed the WORKS on the actual completion date of the other contractors or persons engaged by the EMPLOYER;

(b) the ENGINEER shall, upon completion of the WORKS, issue a notice in writing stating the date upon which the CONTRACTOR should have completed the WORKS and shall also state the full period of delay for which the CONTRACTOR is responsible and shall compute the total damages due to the EMPLOYER therefor. The notice shall give credit for matters following the termination which would in any event have entitled the CONTRACTOR to an extension of time had he completed the WORKS himself and applied for such extension, and in assessing the period and date of delay to be certified in the certificate, the ENGINEER shall also reduce the period of delay to be determined to the extent that there has been any failure by the EMPLOYER or by other contractors or persons engaged by the EMPLOYER to use due diligence and due expedition in arranging for or completing the remaining parts of the WORKS. Provided always that in the evaluation of any extension of time, the ENGINEER shall consider any savings or reduction in time for completion of the WORKS or any section, phase or sub-phase thereof by reason of any instruction requiring the omission of any WORKS and the like pursuant to Clause 51 either by the CONTRACTOR and/or by other contractors or persons engaged by the EMPLOYER and/or any other reason as the ENGINEER shall decide as fair and reasonable; and

(c) upon issue of the notice pursuant to Sub-Clause 61.4 (b), the damages for liquidated damages for delay certified therein shall be immediately payable by the CONTRACTOR to the EMPLOYER.

61.5 Assignment of Benefit of Agreement

Unless prohibited by law, the CONTRACTOR shall, if so instructed by the ENGINEER and accepted by the EMPLOYER, within fourteen (14) days of such entry and termination referred to in Sub-Clause 61.1, assign to the EMPLOYER the benefit of any agreement for the supply of any MATERIALS, CONSTRUCTION PLANT, TEMPORARY WORKS or services and/or for the execution of any works for the purposes of the

CONTRACT, which the CONTRACTOR may have entered into. Provided always and for the avoidance of doubt, such assignment shall not prejudice the duties, obligations, responsibilities and liabilities of the CONTRACTOR under such agreements which occurred or due to any cause(s) which occurred prior to their assignment to the EMPLOYER.

62.1 Urgent Repairs

If, by reason of any accident, or failure, or other event occurring to in or in connection with the WORKS, or any part thereof, either during the execution of the WORKS, or during the Period of Maintenance, any remedial or other work or repair shall, in the opinion of the ENGINEER, be urgently necessary for the safety of the WORKS and the CONTRACTOR is unable or unwilling at once to do such work or repair, the EMPLOYER shall be entitled to employ and pay other persons to carry out such work or repair as the ENGINEER may consider necessary. If the work or repair so done by the EMPLOYER is work which, in the opinion of the ENGINEER, the CONTRACTOR was liable to do at his own expense under the CONTRACT, all expenses properly incurred by the EMPLOYER, shall be deducted by the EMPLOYER from any monies due or which may become due to the CONTRACTOR or recoverable as a debt due from the CONTRACTOR to the EMPLOYER, all at the discretion of the EMPLOYER. Provided that the ENGINEER, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the CONTRACTOR thereof in writing.

62.2 Payment of Debts by Contractor

The CONTRACTOR shall at all times promptly pay all wages, bills and other debts accrued in connection with the proper execution of the WORKS, and shall upon request by the ENGINEER furnish to him reasonable proof of payment of the same. If the ENGINEER is aware that any such wages, bills and other debts are owing by the CONTRACTOR, the ENGINEER may direct payment thereof from monies due or becoming due to the CONTRACTOR.

SPECIAL RISKS

63.1 Special Risks related to Contract Performance

The special risks are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressure waves risk described in Sub-Clause 20.4. or insofar as it relates to the country in which the WORKS are being or are to be executed or maintained, rebellion, revolution, insurrection, military or usurped power, or civil war, or, unless solely due to the employees of the CONTRACTOR or of his sub-contractors and arising from the conduct of the WORKS, riot, commotion or disorder.

63.2 Outbreak of War

If, during the currency of the CONTRACT, there shall be an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the WORKS, the CONTRACTOR shall, unless and

until the CONTRACT is terminated under the provisions of this Clause 63, continue to use his best endeavors to complete the execution of the WORKS. Provided always that the EMPLOYER shall be entitled, at any time after such outbreak of war, to terminate the CONTRACT by giving written notice to the CONTRACTOR and, upon such notice being given, this CONTRACT shall, except as to the rights of the parties under this Clause 63 and to the operation of Clause 65, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

63.3 Removal of Construction Plant on Termination

If the CONTRACT shall be carried out on SITE and shall be terminated under the provisions of Sub-Clause 63.2, the CONTRACTOR, with approval of the EMPLOYER, shall, with all reasonable dispatch, remove from the SITE all CONSTRUCTION PLANT and shall give similar facilities to his sub-contractors to do so.

63.4 Payment if Contract Terminated

If the CONTRACT shall be terminated as aforesaid and provided always that the CONTRACTOR has not committed any default as provided in Clause 61 and in which case any valuation of WORKS upon termination shall be based on similar principles in Clause 61, the CONTRACTOR shall be paid by the EMPLOYER, insofar as such amounts or items shall not have already been covered by payments on account made to the CONTRACTOR, for all work executed prior to the date of termination at the rates and prices provided in the CONTRACT and in addition:

(a) The amounts payable in respect of any preliminary items, so far as the work or service comprised therein has been carried out or performed, and a proper proportion, as certified by the ENGINEER, of any such items, the work or service comprised in which has been partially carried out or performed.

(b) The cost of materials or goods reasonably ordered for the WORKS which shall have been delivered to the CONTRACTOR or of which the CONTRACTOR is legally liable to accept delivery, such materials or goods becoming the property of the EMPLOYER upon such payments being made by him.

(c) A sum, after certified by the ENGINEER, being the amount of any expenditure reasonably incurred by the CONTRACTOR in the expectation of completing the whole of the WORKS insofar as such expenditure shall not have been covered by the payments in this Sub-Clause 63.4.

Provided always that against any payments due from the EMPLOYER under this sub-clause, the EMPLOYER shall be entitled to be credited with any outstanding balances due from the CONTRACTOR for any advances made to the CONTRACTOR under the CONTRACT and any other sums which are recoverable by the EMPLOYER from the CONTRACTOR under the CONTRACT.

FRUSTRATION

64.1 Payment in Event of Frustration

If a war or other circumstances outside the control of both parties arises after the CONTRACT is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the CONTRACT, the parties are released from further performance, then the sum payable by the EMPLOYER to the CONTRACTOR in respect of the work executed shall be the same as that which would have been payable under Clause 63 if the CONTRACT had been terminated under the provisions of Clause 63. Provided always that prior to the occurrence of the aforesaid event(s), the CONTRACTOR has not committed any default as provided in Clause 61 and in which case any valuation of WORKS upon termination shall be based on similar principles in Clause 61.

SETTLEMENT OF DISPUTES

65.1 Settlement of Disputes-Arbitration

If any dispute or difference of anything whatsoever shall arise between the EMPLOYER and the CONTRACTOR or between the ENGINEER and the CONTRACTOR in connection with, or arising out of the CONTRACT or the execution of the WORKS, whether during the progress of the WORKS or after their completion and whether before or after the termination, abandonment or breach of the CONTRACT, it shall, in the first place, be referred to and settled by the ENGINEER who shall, within a period of ninety (90) days after being requested by either party to do so, give written notice of his decision to the EMPLOYER and the CONTRACTOR.

Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final, binding on and conclusive against the EMPLOYER and the CONTRACTOR and shall forthwith be given effect to by the CONTRACTOR, who shall proceed with the execution of the WORKS with all due diligence whether he or the EMPLOYER requires arbitration, as hereinafter provided, or not. If the ENGINEER has given written notice of his decision to the EMPLOYER and the CONTRACTOR and no written claim to arbitration has been communicated to him by either the EMPLOYER or the CONTRACTOR within a period of ninety (90) days from receipt of such notice, the said decision shall remain final, binding on and conclusive against the EMPLOYER and the CONTRACTOR. If the ENGINEER shall fail to give notice of his decision, as aforesaid, within a period of ninety (90) days after being requested as aforesaid, or if either the EMPLOYER or the CONTRACTOR be dissatisfied with any such decision, then and in any such case either the EMPLOYER or the CONTRACTOR may within ninety (90) days after receiving notice of such decision, or within ninety (90) days after the expiration of the first-named period of ninety (90) days, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision, if any, of the ENGINEER has not become final, binding on and conclusive as aforesaid shall be finally settled under the Rules of Indonesian National Board of Arbitration (B.A.N.I.) by one or more arbitrators appointed under such Rules. The said arbitrators shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the ENGINEER. Neither party

shall be limited in the proceedings before such arbitrator's to the evidence or arguments put before the ENGINEER for the purposes of obtaining his said decision.

No decision given by the ENGINEER in accordance with foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrator(s) as aforesaid. The reference to arbitration may proceed notwithstanding that the WORKS shall not then be or alleged to be completed, provided always that the obligations of the EMPLOYER, the ENGINEER and the CONTRACTOR shall not be altered by reason of the arbitration being conducted during the progress of the WORKS.

NOTICES

66.1 Notice to Contractor

All certificates, notices or written instructions to be given by the EMPLOYER or by the ENGINEER or the ENGINEER'S REPRESENTATIVE to the CONTRACTOR under the CONTRACT shall be served by sending by post to or delivering the same to the CONTRACTOR'S principal place of business, or such other address as the CONTRACTOR shall nominate for that purpose.

To the CONTRACTOR: *_____

_____

_____

_____

Attn.: Mr. _____

* To be inserted by the CONTRACTOR.

66.2 Notice to Employer and Engineer

Any notice to be given to the EMPLOYER or the ENGINEER under the terms of the CONTRACT shall be sent by post or delivered and addressed to the respective addresses as set forth herein.

A. To the EMPLOYER: PT GRAND INDONESIA
Jl. MH Thamrin No. 1
Jakarta 10310

Attn.: Mr. Frans H Lazaro

B. To the ENGINEER: PT CIPTA KARYA BUMI INDAH
Gedung WTC Mangga Dua, Jl. Mangga Dua Raya,
Kelurahan Ancol, Jakarta Utara

Attn.: Mr. Suradji H Darmadji

C. To the ENGINEER'S REPRESENTATIVE:

Site Office of PT Grand Indonesia
Jl. M H Thamrin No. 1,
Jakarta 10310

Attn.: Mr. Charles Kunarta

66.3 Change of Address

Either party may change a nominated address to another address in the country where the WORKS are being executed by prior written notice to the other party, with a copy to the ENGINEER, and the ENGINEER may do so by prior written notice to both parties.

DEFAULT OF EMPLOYER

67.1 Default of Employer

In the event of the EMPLOYER:

(a) failing to pay to the CONTRACTOR the amount due under any certificate of the ENGINEER within eight (8) weeks after the same shall have become due under the CONTRACT, subject to any deduction that the EMPLOYER is entitled to make under the CONTRACT; or

(b) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation or

(c) giving formal notice to the CONTRACTOR that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations,

the CONTRACTOR shall be entitled to terminate his employment under the CONTRACT after giving twenty eight (28) days prior written notice to the EMPLOYER, with a copy to the ENGINEER.

CURRENCY AND RATES OF EXCHANGE

68.1 Increase or Decrease of Cost

Adjustment to the CONTRACT SUM and all rates and prices therein and the CONTRACT shall not be made in respect of rise or fall in the costs of labor and/or materials or any other matters affecting the cost of the execution of the WORKS.

68.2 Change in Cost and Legislation

No change in costs and other expenses will be made for any change in legislation to the CONTRACTOR. The CONTRACT SUM and the rates and prices in the "BILL OF QUANTITIES" are valid for the entire duration of the CONTRACT including but not

limited to any maintenance and guarantee thereto, and any period of delay caused by the CONTRACTOR and any period of extension of time (if any) granted by the ENGINEER.

69.1 Currency Restriction

Unless otherwise stated subject and limited to the period herein stated, if, within the thirty (30) days subsequent to the latest date for submission of tenders for the WORKS the Government or authorized agency of the Government of Indonesia imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the payments under the CONTRACT are to be paid and provided always that it shall be condition precedent for any reimbursement thereto that written notice had been served to the ENGINEER within seven (7) days of the event and the ENGINEER shall be satisfied that the CONTRACTOR has used all endeavors to mitigate any effects thereto, the EMPLOYER may, at his sole discretion, consider reimbursement of any loss or damage to the CONTRACTOR arising therefrom insofar as they are reasonable.

70.1 Rates of Exchange

Not Applicable

70.2 Fluctuation in Exchange Rates

It is a condition of this CONTRACT that the EMPLOYER shall not become liable for claims from the CONTRACTOR or that arising from any of his sub-contractors, suppliers and the like in respect of increase in the cost of materials, labor, plant, overheads and the like resulting from market fluctuations in the rate of exchange of the Rupiah against foreign currencies.

OTHERS

71.1 Taxation and other Duties

The CONTRACTOR and his personnel shall be liable for income tax and such other taxes, duties, contributions and other charges levied on any payment made to him under this CONTRACT in accordance with the Laws and regulations of the Republic of Indonesia.

72.1 Compensation

For and in consideration of the WORKS to be carried out by the CONTRACTOR in accordance with the CONTRACT to the satisfaction of the ENGINEER, the EMPLOYER agrees to pay the CONTRACT SUM as stated in the signed FORM OF AGREEMENT, and subject to any additions or deductions as provided in the CONTRACT, all according to the terms of payment specified in the CONTRACT.

Without prejudice to the generality of the aforesaid nor of the CONTRACT:

(a) the CONTRACT SUM and all rates and prices therein the CONTRACT are and shall remain fixed and firm, and inclusive of all ancillary and other works and expenditures, whether separately of specifically mentioned or described in the CONTRACT or not,

which are either necessary to carry out and bring to completion the WORKS or which may become necessary to overcome difficulties before completion. Save as otherwise expressly provided in the CONTRACT, there shall be no change in the amount payable by the EMPLOYER to the CONTRACTOR.

(b) change in the price of MATERIALS, labor rate, commodity price, hire rate, etc shall not be grounds for the adjustment of the CONTRACT SUM or any rates and prices therein or the CONTRACT.

72.2 Contractor's All Risks Insurance

The EMPLOYER shall procure a "CONTRACTOR'S All Risks Insurance" (CAR) in joint name of the EMPLOYER and the CONTRACTOR (including any other party(ies) as the ENGINEER and/or the EMPLOYER shall deem necessary) under provision of Clause 21 for WORKS carried out at SITE.

73.1 Records

The CONTRACTOR shall maintain an accurate report system and submit the same to the ENGINEER for record purposes. The reports shall be submitted daily, weekly and monthly as applicable and when otherwise requested by the ENGINEER and amongst other items shall indicate the following:

(a) Daily Reports

- Labor level and type
- CONSTRUCTION PLANT and other equipments
- WORKS executed during the day
- MATERIALS delivered
- Any daywork record sheets

(b) Weekly Reports

- WORKS and progress throughout the week
- Proposed work schedule for the following week
- A summary of instruction (if any) issued during the week
- Information requested by the CONTRACTOR
- The overall progress situation

(c) Monthly Reports

- The overall progress situation, a revised programme for the WORKS and re-planning strategy adopted or to be adopted to overcome delay
- A summary of financial situation giving approximate monthly and cumulative details
- A list of variations (if any) and adjustment to the original CONTRACT
- A list of any outstanding matters for discussion or resolution

The ENGINEER may convene meetings as and when required either for routine or specific purposes and when required will issue minutes to confirm matters raised and their

outcome. The CONTRACTOR shall produce and maintain a systematic photographic record of the WORKS and progress thereof.

The photographs shall be in sufficient numbers and locations to accurately portray and detail the WORKS and one copy of each negative and a print of each picture shall be submitted to the ENGINEER each month or when required and be marked with the date and geographical location and direction.

The CONTRACTOR shall submit one (1) set sepia or original and two (2) copies of "As-built drawings" and one (1) set of CD to the ENGINEER within four (4) weeks of the completion of the WORKS.

74.1 Gratuities

The CONTRACTOR warrants that it has not paid and will not pay any fee commission or compensation, and that it has not granted and will not grant any gift, gratuity or rebate of any kind, directly or indirectly, to any officer, employee, agent or representative of the EMPLOYER or of any company or corporation affiliated or connected with the EMPLOYER, whether generally or in connection with this CONTRACT, either an inducement to obtain this CONTRACT or as an acknowledgement of any other contracts.

75.1 Safety of Visitors

The CONTRACTOR is required to pay particular attention to the safety and well being of visitors including tenants and shall where and whenever required provide secure, safe and protected area for visitors and to allow for and take whatever additional protective measures such as additional fencing, walkways, signs, etc, as may be deemed necessary, or requested by the ENGINEER.

EMPLOYER'S OTHER CONTRACTORS AND EMPLOYER'S OWN FORCES

76.1 Definition

As provided in Sub-Clause 1.1, the person(s), firm(s) or company(ies) other than the CONTRACTOR who may be present on the SITE or otherwise, to carry out works or to supply goods and materials or otherwise pursuant to the PROJECT, simultaneously, contemporaneously, sequentially or otherwise with the WORKS undertaken by the CONTRACTOR and with whom the CONTRACTOR shall be required to liaise, work, coordinate, cooperate, supervise and all of the like with, shall be known as and called:

(a) EMPLOYER'S OTHER CONTRACTORS if they are employed by the EMPLOYER under separate contracts; or

(b) EMPLOYER'S OWN FORCES if they are the same of the EMPLOYER.

The EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES shall be generally as described in the BILLS OF QUANTITIES and/or as may from time to time be advised by the ENGINEER.

76.2 Contractor's Acknowledgement and Acceptance

For all purposes and intent of the CONTRACT, the CONTRACTOR shall be deemed to have acknowledged and accepted that the EMPLOYER has engaged and/or will engage EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES who will be in the occupation of the SITE at the same time as the CONTRACTOR is carrying out his CONTRACT and in this respect, the CONTRACTOR:

(a) shall have no claims against the EMPLOYER in respect of any acts or omissions or otherwise by the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES; and

(b) shall further save harmless and indemnify the EMPLOYER against all claims by the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES in consequence of the CONTRACTOR's failure to fulfill its duties, obligations and responsibilities under the CONTRACT;

(c) shall accept that all defaults of the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES in consequence of the CONTRACTOR's failure to fulfill its duties, obligations and responsibilities under the CONTRACT shall be deemed and construed to be the default of the CONTRACTOR.

For the avoidance of doubt, the principles herein shall apply and continue to bind the CONTRACTOR notwithstanding that the WORKS are carried out at the SITE or otherwise, and the CONTRACTOR shall be deemed to have waived all defenses whether in contract and/or the law as regards to the absence of any privities of contract or otherwise.

76.3 Contractor's Obligations with regards to Employer's Other Contractors and Employer's Own Forces

Without prejudice to any provisions of the CONTRACT nor to any of the duties, obligations, responsibilities and liabilities of the CONTRACTOR thereto arising, the CONTRACTOR:

(a) shall liaise, work, coordinate, cooperate, supervise and all of the like with works carried out by the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES in relation with the WORKS;

(b) shall not delay or obstruct or interfere with the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES in their carrying out of their respective works;

(c) shall where reasonably possible afford to the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES the free use of the CONSTRUCTION PLANT, TEMPORARY WORKS and the like simultaneously, contemporaneously or otherwise used by the CONTRACTOR; and

(d) shall carry out everything necessary whether specified or not to ensure that the works

of the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES are properly integrated and interphased into the WORKS and the completion of the WORKS within the DATE(S) OF COMPLETION.

76.4 Contractor to Notify the Engineer

Without prejudice to the any provisions of the CONTRACT nor to any of the duties, obligations, responsibilities and liabilities of the CONTRACTOR thereto arising thereto, the CONTRACTOR shall notify the ENGINEER in writing together will all necessary details thereto as to any events or acts or omissions of the EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES which in the reasonable opinion of the CONTRACTOR has affected or will affect the WORKS, not later than seven (7) days after the occurrence of the said event, act or omission and the ENGINEER shall if he considers necessary thereto issue instructions to the CONTRACTOR. Such aforesaid written notice by the CONTRACTOR together with the ENGINEER'S reasonable satisfaction that the CONTRACTOR has carried out everything reasonably necessary to mitigate any effects thereto arising shall be condition precedent to any of the CONTRACTOR'S rights under the CONTRACT.

The ENGINEER'S decision on any of the matters which arise thereto and/or under Clause 76 as to the CONTRACTOR'S proportional or entire responsibility and/or accountability and/or liability as regards to such said matters arising thereto shall be final, binding on and conclusive against the CONTRACTOR.

The CONTRACTOR shall also be fully responsible to check on the works of EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES so long as their works shall affect the WORKS of the CONTRACTOR, and to immediately advise the ENGINEER in writing of any inadequacies and/or lack of precision, quality, etc. In the event the CONTRACTOR shall fail to advise the ENGINEER as aforesaid, the CONTRACTOR shall be fully responsible for all subsequent rectification works etc. to such works of EMPLOYER'S OTHER CONTRACTORS and EMPLOYER'S OWN FORCES if they are so required for the proper integration of the WORKS of the CONTRACTOR.

EMPLOYER'S MATERIALS

77.1 Employer's Materials

As provided in Sub-Clause 1.1, all materials, machineries, plants, equipments, apparatus, goods and all other things supplied by the EMPLOYER and which are intended to form or be forming part of the PERMANENT WORKS by the CONTRACTOR shall be known as and called EMPLOYER'S MATERIALS. The EMPLOYER'S MATERIALS shall be generally as described in the BILLS OF QUANTITIES and/or as may from time to time be advised by the ENGINEER.

77.2 Contractor's Obligations with regards to Employer's Materials

If applicable to the WORKS, EMPLOYER'S MATERIALS shall be supplied by and/or for and on behalf of the EMPLOYER and will be delivered to the SITE without charge to

the CONTRACTOR for the CONTRACTOR'S incorporation into the WORKS. The CONTRACTOR shall be responsible for all unloading, security, warehousing, storage, protection and all of the like.

The CONTRACTOR shall thereupon inspect all quantities, qualities and the like thereto and shall notify the ENGINEER in writing within seven (7) days upon the respective MATERIALS to SITE in the event of any deficiencies and/or discrepancies and the like in the quantities and/or qualities of the MATERIALS and/or any other matter which shall require the attention of the ENGINEER, failing which the CONTRACTOR shall be fully responsible and accountable for any deficiencies thereto. Save unless written notice had been served by the CONTRACTOR to the ENGINEER as aforesaid and the ENGINEER shall issue instructions thereto, the CONTRACTOR shall thereupon assume full risk and responsibilities of the qualities and quantities of the MATERIALS as if the MATERIALS were supplied by the CONTRACTOR for the WORKS. However, in considering the CONTRACTOR'S responsibility and accountability as aforesaid as regards to any deficiencies and/or discrepancies on quantities and/or qualities of the EMPLOYER'S MATERIALS, the ENGINEER may consider any mitigation of the CONTRACTOR'S responsibility and accountability insofar as:

(a) the CONTRACTOR is not directly or indirectly in default nor has directly or indirectly contributed to deficiencies and/or discrepancies on quantities and/or qualities of the EMPLOYER'S MATERIALS;

(b) the damages for the deficiencies and/or discrepancies on quantities and/or qualities of the EMPLOYER'S MATERIALS are claimable and had in fact been paid by the supplier(s) of the EMPLOYER'S MATERIALS to the EMPLOYER; and

(c) the deficiencies and/or discrepancies on qualities of the EMPLOYER'S MATERIALS are inherent and/or latent and not foreseeable notwithstanding reasonable inspection.

77.3 Contractor to Submit Quantity and Delivery Time

If EMPLOYER'S MATERIALS are to be incorporated into the WORKS, the CONTRACTOR shall be responsible for advising the ENGINEER regarding the quantities, etc of the EMPLOYER'S MATERIALS required and their required date(s) on SITE so as not to cause any delay in the completion of the WORKS. The CONTRACTOR'S failure to do the aforesaid shall not relieve him of any of his duties, obligations, responsibilities and liabilities under the CONTRACT. The CONTRACTOR shall be responsible for ensuring that the quantities of MATERIALS supplied to the SITE include sufficient but reasonable allowance for wastage, cutting, laps, breakage, etc which shall be agreed between the CONTRACTOR and the ENGINEER subject to Sub-Clause 77.3. In the event that mutual agreement cannot be realized then the ENGINEER shall decide on the allowances and his decision is final, binding on and conclusive against the CONTRACTOR. The quantities delivered to SITE shall be final and any insufficiencies thereto due to any causes whatsoever shall be the CONTRACTOR'S responsibility.

Provided always and notwithstanding the ENGINEER'S aforesaid agreement as regards to the CONTRACTOR'S requirement as to quantities of EMPLOYER'S MATERIALS, the ENGINEER may but shall not be bound to measure the EMPLOYER'S MATERIALS as used and installed by the CONTRACTOR for the WORKS and if such measurement

with reasonable allowances for wastage, cutting, laps, breakage, etc shall be less than the quantities earlier agreed between the ENGINEER and CONTRACTOR and save unless the CONTRACTOR had reasonable justifications thereto, the costs of such difference in the quantities of the EMPLOYER'S MATERIALS shall be recovered by the EMPLOYER from monies due or becoming due to the CONTRACTOR or as a debt due from the CONTRACTOR to the EMPLOYER.

Any of the EMPLOYER'S MATERIALS unused upon the completion of the CONTRACT shall be returned to the EMPLOYER.

The responsibilities described above include any accessories and ancillaries required and shall be deemed to have been allowed for by the CONTRACTOR when pricing "Fix Only" items in the BILL OF QUANTITIES.

APPENDIX
TO
CONDITIONS OF CONTRACT

DESCRIPTION	CLAUSE	DETAILS
Amount of Advance Payment	58.2	10% of the Contract Sum
Amount of Performance Bond	10	10% of the Contract Sum
Phased Completion	43.2	To be advised later
Date(s) for Completion	43.1	* _____ days from the date of Notice To Proceed *To be inserted by the Contractor
Amount of Liquidated Damages	47.1	0.1% of the Contract Sum per day of delay in achieving the DATE FOR COMPLETION. The maximum amount of liquidated damages for delay under the CONTRACT shall be 10% of the Contract Sum
Period of Maintenance	49	12 months from the Certificate of Practical Completion
Percentage of Retention Monies	58.1	10% of progress payment
Limit of Retention Monies	58.1	5% of Contract Sum
Time within which payment to be made after certificate	58.1	4 weeks
Currency	58.3	Indonesian Rupiah Only
Minimum amount certifiable for Materials On Site	58.7	Rp10,000,000.00