

REPUBLIC OF INDONESIA GOVERNMENT REGULATION
NUMBER 35 OF 2004

ON

UPSTREAM OIL AND GAS BUSINESS ACTIVITIES

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering: that to implement the provisions of Article 8, Article 18, Article 19 clause (2), Article 20 clause (6), Article 21 clause (3), Article 22 (2), Article 31 (5), Article 37, and Article 43 of Law Number 22 of 2001 on Oil and Gas, it is necessary to establish a Government Regulation on Upstream Oil and Gas Business Activities;

Bearing in mind:

1. Article 5 clause (2) of the 1945 Constitution, as revised through the Fourth Amendment to the 1945 Constitution;
2. Law Number 22 of 2001 on Oil and Gas (State Records of the Republic of Indonesia for 2001 Number 136, Supplement to State Records Number 4152);
3. Government Regulation Number 42 of 2002 on the Implementing Body for Upstream Oil and Gas Business Activities (State Records of the Republic of Indonesia for 2002 Number 81, Supplement to State Records Number 4216);
4. Government Regulation Number 31 of 2003 on Change of Status of the State Oil and Gas Mining Company (Pertamina) into a Limited Liability Company (Persero) (State Records of the Republic of Indonesia for 2003 Number 69);

HAS DECIDED:

To promulgate this: **GOVERNMENT REGULATION ON UPSTREAM OIL AND GAS BUSINESS ACTIVITIES.**

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Government Regulation, the following terms are defined as follows:

1. "Crude Oil," "Natural Gas," "Oil and Gas," "Mining Authority," "General Survey," "Upstream Business Activities," "Exploration," "Exploitation," "Legal Mining Zone of Indonesia," "Work Area," "Business Entity," "Permanent Establishment," "Cooperation Contract," "Central Government" (hereinafter referred to as the "Government"), "Regional Government," "Implementing Body," and "Minister" are defined as mentioned in Law Number 22 of 2001.
2. "Coalbed Methane" is a natural gas (hydrocarbon), in which methane gas is the main component, that occurs naturally in the process of formation of coal (coalification) in trapped and absorbed conditions within coal and/or coal layers.

3. An "Open Area" is a part of the Legal Mining Zone of Indonesia that has not yet been designated as a Work Area.
4. A "Production Sharing Contract" is a form of Cooperation Contract in Upstream Business Activities based on the principle of sharing the proceeds of production.
5. A "Service Contract" is a form of Cooperation Contract for the execution of Exploitation of Oil and Gas based on the principle of granting compensation for services for the production that is produced.
6. A "Contractor" is a Business Entity or Permanent Establishment that is granted the authority to carry out Exploration and/or Exploitation in a Work Area on the basis of a Cooperation Contract with the Implementing Body.
7. "Data" are all facts, indicators, indications, and information, whether in written form (characters), numerical form (digital), figures (analog), magnetic media, documents, samples of rocks or fluids, or other form, that are obtained from General Surveys, Exploration, and Exploitation of Oil and Gas.
8. The "Department" is the department whose area of duties and authority includes Oil and Gas business activities.
9. "Pertamina" is the State Oil and Gas Mining Company established on the basis of Law Number 8 of 1971 on the State Oil and Gas Mining Company in conjunction with Law Number 22 of 2001 on Oil and Gas.
10. P.T. Pertamina (persero) is a "Limited Liability Company (Persero) established on the basis of Government Regulation Number 31 of 2003 regarding Change of Status of the State Oil and Gas Mining Company (PERTAMINA) to that of a Limited Liability Company (Persero).

CHAPTER II WORK AREAS

Article 2

- (1) An Upstream Business Activity shall be conducted in a certain Work Area.
- (2) Work Areas as mentioned in clause (1) shall be planned and prepared by the Minister with attention to considered opinions from the Implementing Body.

Article 3

- (1) The Minister shall determine and announce the Work Areas that are to be offered to Business Entities and Permanent Establishments.
- (2) In determining Work Areas as mentioned in clause (1), the Minister shall consult with the Governor whose administrative area includes the Work Area that is to be offered.
- (3) The consultation as mentioned in clause (2) is intended to provide explanations and obtain information regarding the plans to offer certain areas that are believed to potentially contain Oil and Gas resources as Work Areas.

Article 4

- (1) The Minister shall determine policy on offers of Work Areas based on considerations of technical aspects, economics, degree of risk, and efficiency, and on the basis of openness, fairness, accountability, and competition.
- (2) The policy on offers of Work Areas as mentioned in clause (1) may be in the form of offers through tender or through direct offers.

Article 5

- (1) Offers of Work Areas to Business Entities and Permanent Establishments shall be made by the Minister.
- (2) In executing offers of Work Areas as mentioned in clause (1), the Minister shall coordinate with the Implementing Body.
- (3) A Business Entity or Permanent Establishment may submit a request to the Minister to obtain a Work Area.
- (4) In the case that PT Pertamina (Persero) submits a request to the Minister to obtain a given open Work Area, the Minister may approve the request, considering the work program and technical and financial capability of PT Pertamina (Persero) and as long as 100% (one hundred percent) of the shares of PT Pertamina (Persero) are owned by the State.
- (5) PT Pertamina (Persero) as mentioned in clause (4) may not submit a request for an Open Area that has already been offered.

Article 6

- (1) The Minister shall determine the Business Entities and Permanent Establishments as the Contractors that are granted the authority to conduct Upstream Business Activities in Work Areas as mentioned in Article 2 clause (1).
- (2) In carrying out the determination of Business Entities or Permanent Establishments as mentioned in clause (1), the Minister shall coordinate with the Implementing Body
- (3) Every Business Entity or Permanent Establishment as mentioned in clause (1) shall be granted only one Work Area.

Article 7

- (1) A Contractor is required to return parts of its Work Area in stages, or all of it, to the Minister through the Implementing Body, in accordance with its Cooperation Contract.
- (2) Other than as mentioned in clause (1), a Contractor may return part or all of its Work Area to the Minister through the Implementing Body before the term of its Cooperation Contract ends.

- (3) A Contractor is required to return its entire Work Area to the Minister through the Implementing Body, once the term of its Cooperation Contract has ended.

Article 8

In the case that a Contractor returns its entire Work Area as mentioned in Article 7 clause (2), it is required first to fulfill all of its definite commitments for Exploration and other obligations under its Cooperation Contract.

Article 9

A Work Area that is returned by a Business Entity or Permanent Establishment as mentioned in Article 7 shall become an Open Area.

Article 10

Regarding parts of Work Areas that are not being used by the Contractor, the Minister may request these parts of Work Areas and determine policy on enterprises in them, based on considerations of optimizing the utilization of Oil and Gas resources, after receiving the considered opinions of the Implementing Body.

CHAPTER III GENERAL SURVEYS AND OIL AND GAS DATA

Article 11

- (1) To support the preparation of Work Areas, the Minister shall carry out General Survey activities.
- (2) General Survey activities as mentioned in clause (1) shall be conducted in Open Areas within the Legal Mining Zone of Indonesia.
- (3) The activities of a General Survey shall include, among other matters, geological surveys, geophysical surveys, and geochemical surveys.

Article 12

Other than as specified in Article 11 clause (2), a General Survey may be conducted across the borders of a Work Area after prior coordination with the Implementing Body to notify the Contractor concerned.

Article 13

- (1) In the conduct of General Survey as mentioned in Article 12, the Minister may grant a permit to a Business Entity as the executor of a General Survey.

- (2) Performance of a General Survey by a Business Entity as mentioned in clause (1) shall be done at its own expense and risk.
- (3) Before conducting a General Survey, a Business Entity as mentioned in clause (1) is first required to submit to the Minister the schedule and procedure for the conduct of the General Survey.

Article 14

A Business Entity that conducts a General Survey as mentioned in Article 13 clause (1) may retain and make use of the Data resulting from the General Survey until the end of its permit as mentioned in Article 13 clause (1).

Article 15

- (1) Data obtained through General Surveys and Exploration and Exploitation are the property of the state and shall be controlled by the Government.
- (2) The Minister shall determine arrangements for the management and utilization of Data obtained through General Surveys and Exploration and Exploitation as mentioned in clause (1).

Article 16

The management of Data as mentioned in Article 15 shall include the collection, administration, processing, organization, storage, maintenance, and destruction of Data.

Article 17

- (1) For the transmission, surrender, and/or transfer of Data as mentioned in Article 15, permission must be obtained from the Minister.
- (2) The Minister shall determine the types of Data for which permits must be obtained as mentioned in clause (1).

Article 18

- (1) A Contractor may manage Data resulting from Exploration and Exploitation activities in its Work Area during the period of its Cooperation Contract as mentioned in Article 16, except for destruction of Data.
- (2) If, in managing its Data as mentioned in clause (1), a Contractor appoints another party, it must obtain the approval of the Minister.
- (3) Another party that is appointed to manage Data as mentioned in clause (2) must fulfill requirements in accordance with the applicable laws and regulations.
- (4) Contractors are obliged to store the Data that are used as mentioned in clause (1) within the Legal Mining Zone of Indonesia.

- (5) Contractors may keep copies of Data outside the Legal Mining Zone of Indonesia, after obtaining permission from the Minister.

Article 19

- (1) A Business Entity as the executor of a General Survey is required to surrender all Data obtained as mentioned in Article 14 to the Minister once the permit that was granted has ended.
- (2) When a Cooperation Contract ends as mentioned in Article 7 clause (3), the Contractor is obliged to surrender all Data obtained from the results of its Exploration and Exploitation to the Minister through the Implementing Body.
- (3) Contractors, through the Implementing Body, are required to surrender to the Minister all Data obtained from the results of their Exploration and Exploitation in their Work Areas when the Work Areas are returned/ relinquished as mentioned in Article 7.
- (4) A Contractor whose Cooperation Contract has ended, or that transfers its entire interest to another Business Entity or Permanent Establishment, may submit to the Minister a request for permission to retain and use copies of the data from its Work Area.
- (5) Data as mentioned in clause (4) may not be transferred to another party without the permission of the Minister.

Article 20

A Contractor, through the Implementing Body, is required to surrender the Data resulting from its Exploration and Exploitation activities to the Minister no later than three (3) months after the end of the collection, processing, and interpretation of the Data.

Article 21

Exchanges of Data between domestic Contractors, or between domestic Contractors and other parties outside the country, may be done after obtaining the permission of the Minister.

Article 22

In terms of secrecy, Data are classified into:

- a. General Data: data regarding identification, geographical location, potential, reserves, and wells of Oil and Gas, and Oil and Gas production.
- b. Basic Data: descriptions or amounts from the results of recording or notation of geological, geophysical, or geochemical investigations or drilling and production activities.
- c. Processed Data: Data obtained from the results of analysis and evaluation of Basic Data.
- d. Interpreted Data: Data obtained from the results of interpretation of Basic Data and/or Processed Data.

Article 23

- (1) Basic Data, Processed Data, and Interpreted Data as mentioned in Article 22 shall be kept secret for certain periods of time.
- (2) The periods of secrecy of Data as mentioned in clause (1) shall be:
 - a. For Basic Data, set at four (4) years;
 - b. For Processed Data, set at six (6) years;
 - c. For Interpreted Data, set at eight (8) years.
- (3) When a Work Area is returned to the Government as mentioned in Article 7, all Data from the Work Area concerned shall no longer be classified as secret Data.

CHAPTER IV EXECUTION OF UPSTREAM BUSINESS ACTIVITIES

Article 24

- (1) Upstream Business Activities shall be conducted by Business Entities and Permanent Establishments on the basis of Cooperation Contracts with the Implementing Body.
- (2) Cooperation Contracts as mentioned in clause (1) shall contain at least the following terms and conditions:
 - a. ownership of Oil and Gas natural resources shall remain in the hands of the Government until the point of delivery;
 - b. management control of operations conducted by the Contractor shall lie with the Implementing Body;
 - c. all capital and risks shall be borne by the Contractor.

Article 25

- (1) The Minister shall determine the forms and the basic provisions of Cooperation Contracts that are to be put into effect for particular Work Areas, with consideration to the level of risk, the greatest possible benefit to the State, and the provisions of prevailing laws and regulations.
- (2) The Minister shall determine the forms and the basic provisions of Cooperation Contracts as mentioned in clause (1) after receiving the considered opinions of the Head of the Implementing Body.

Article 26

Cooperation Contracts are required to contain at least the following basic provisions:

- a. State revenues;
- b. Work Areas and their return;
- c. obligations to expend funds;
- d. transfer of ownership of the proceeds of production of Oil and Gas;
- e. time periods and conditions for extension of contracts;
- f. resolution of disputes;

- g. obligations to supply Crude Oil and/or Natural Gas for domestic needs;
- h. ending of contracts;
- i. obligations following mining operations;
- j. occupational safety and health;
- k. management of the natural environment;
- l. transfer of rights and responsibilities;
- m. required reporting;
- n. field development plans;
- o. priority on use of domestic goods and services;
- p. development of local communities and guarantees of the rights of traditional communities;
- q. priority on use of Indonesian manpower.

Article 27

- (1) The term of a Cooperation Contract as mentioned in Article 24 shall be not more than thirty (30) years.
- (2) The term of a Cooperation Contract as mentioned in clause (1) shall consist of the Exploration period and the Exploitation period.
- (3) The Exploration period as mentioned in clause (2) shall be six (6) years, and may be extended only one (1) time for not more than four (4) years on the basis of a request from the Contractor, provided that the Contractor has fulfilled its minimum obligations under the Cooperation Contract, with the approval to be granted by the Implementing Body.
- (4) If, within the Exploration period as mentioned in clause (3), the Contractor does not discover Oil and/or Gas reserves that can be commercially produced, the Contractor shall be required to return the entire Work Area.

Article 28

- (1) A Cooperation Contract as mentioned in Article 27 clause (1) may be extended for a renewal period of not more than twenty (20) years for each extension.
- (2) The provisions or forms of Cooperation Contracts in extensions of Cooperation Contracts as mentioned in clause (1) must continue to be advantageous to the State.
- (3) A Contractor, through the Implementing Body, must submit a request for extension of its Cooperation Contract as mentioned in clause (1) to the Minister.
- (4) The Implementing Body shall conduct an evaluation of requests for extensions of Cooperation Contracts as material for the Minister's consideration in granting approval or rejection of a Contractor's request.
- (5) A request for extension of a Cooperation Contract as mentioned in clause (3) may be submitted no sooner than ten (10) years and no later than two (2) years before the Cooperation Contract is to expire.
- (6) Notwithstanding the provisions as stipulated in clause (5), if the Contractor has been bound in a Natural Gas sales/purchase contract, the Contractor may request extension of the Cooperation Contract before the time limit specified in clause (5).

- (7) In granting approval for extensions of Cooperation Contracts as mentioned in clause (1), the Minister shall consider factors including potential reserves of Oil and/or Gas from the Work Area concerned, potential or certainty of market/ needs, and technical/ economic feasibility.
- (8) Based on the results of the study and considerations as mentioned in clause (4) and clause (7), the Minister may reject or approve the request for extension of the Cooperation Contract as mentioned in clause (1) with a certain time period, form, and provisions of the Cooperation Contract.
- (9) PT Pertamina (Persero) may submit a request to the Minister for a Work Area whose contract period has ended.
- (10) The Minister may approve a request as mentioned in clause (9), considering the work program and technical and financial capability of PT Pertamina (Persero), as long as 100% (one hundred percent) of the shares of PT Pertamina (Persero) are owned by the State, and other matters related to the Cooperation Contract concerned.

Article 29

- (1) A Contractor, through the Implementing Body, may propose to the Minister amendments to the provisions and terms and conditions of a Cooperation Contract.
- (2) The Minister may approve or reject proposals as mentioned in clause (2) on the basis of the considered opinions of the Implementing Body and of optimum benefit to the State.

Article 30

- (1) Within not more than 180 (one hundred eighty) days from the effective starting date of a Cooperation Contract, the Contractor is required to begin its activities.
- (2) In the case that a Contractor is unable to carry out its responsibilities as mentioned in clause (1), the Implementing Body may propose to the Minister to receive approval for termination of the Cooperation Contract.

Article 31

- (1) During the first three (3) years of the Exploration period as mentioned in Article 27 clause (3), a Contractor is required to carry out a definite work program with the estimated total expenditure as specified in the Cooperation Contract.
- (2) If, in the implementation, it is technically and economically not possible to execute the definite work program as mentioned in clause (1), the Contractor may, through the Implementing Body, propose changes to the Minister to obtain his approval.
- (3) The Minister may approve or reject a definite work program proposal as mentioned in clause (2) based on the considered opinions of the Implementing Body.
- (4) In the case that a Contractor finishes a Cooperation Contract and is unable to perform part or all of the definite work program as mentioned in clause (2), the Contractor shall

be required to pay to the Government through the Implementing Body the amount of the expenses related to the definite work program that it was unable to perform.

Article 32

In the case that a Contractor is unable to carry out its obligations in accordance with its Cooperation Contract and the prevailing laws and regulations, the Implementing Body may propose to the Minister to end the Cooperation Contract.

Article 33

- (1) A Contractor may shift, surrender, or transfer part or all of its rights and responsibilities (participating interest) to another party after obtaining approval of the Minister based on the considered opinions of the Implementing Body.
- (2) In the implementation of the shift, surrender, or transfer of part or all of a Contractor's participating interest as mentioned in clause (1) to a non-affiliated company or to a company other than a working partner in the same work area, the Minister may ask the Contractor to first offer it to a national company.
- (3) For disclosure of Data as part of the shift, surrender, or transfer of part or all of a Contractor's participating interest to another party as mentioned in clause (1), the permission of the Minister must be obtained through the Implementing Body.
- (4) A Contractor may not transfer a majority of its participating interest to another party that is not its affiliate within the first three (3) years of the Exploration period.

Article 34

After the development plan has been approved for a field that is to produce for the first time within a given Work Area, the Contractor is required to offer a participating interest of 10% (ten percent) to a Regionally-Owned Business Entity.

Article 35

- (1) The statement of intent and willingness to take up a participating interest as mentioned in Article 33 shall be submitted by the Regionally-Owned Business Entity within not more than 60 (sixty) days from the date of the offer by the Contractor.
- (2) In the case that the Regionally-Owned Business Entity does not provide a statement of intent within the period mentioned in clause (1), the Contractor is required to offer it to a national company.
- (3) In the case that the national company does not provide a statement of intent and willingness within a period of not more than 60 (sixty) days from the date of the offer by the Contractor to the national company, the offer shall be declared closed.

Article 36

- (1) Contractors are required to allocate funds to pay for activities following Upstream Business Activity operations.
- (2) The obligation as mentioned in clause (1) shall be carried out from the start of the exploration period and shall be done through the work plan and budget.
- (3) Placement of allocations of funds as mentioned in clauses (1) and (2) shall be agreed between the Contractor and the Implementing Body and shall function as special reserve funds for activities following Upstream Business Activities in the Work Area concerned.
- (4) Procedures for use of the special post-operations reserve funds as mentioned in clause (3) shall be stipulated in the Cooperation Contract.

Article 37

- (1) Cooperation Contracts shall be made in the Indonesian language and/or the English language.
- (2) If a Cooperation Contract is made in both Indonesian and English and there is a difference of interpretation between the two, the interpretation to be used shall be the interpretation in Indonesian or the one in English, as agreed by the parties.

Article 38

Cooperation Contracts shall submit to and be subject to Indonesian law.

Article 39

- (1) Contractors are obliged to report their discoveries and the results of certification of Oil and/or Gas reserves to the Minister through the Implementing Body.
- (2) In developing and producing from Oil and Gas fields, Contractors are required to carry out conservation and to perform their activities in line with good Engineering Practices.
- (3) Conservation as mentioned in clause (2) shall be done through efforts toward optimization of exploitation and efficiency in the utilization of Oil and Gas.
- (4) Good Engineering Practices as mentioned in clause (1) include:
 - a. complying with the provisions on occupational safety and health and environmental protection;
 - b. producing Oil and Gas in line with the practices of good Reservoir Management;
 - c. producing from Oil and Gas wells using appropriate methods;
 - d. using enhanced oil recovery (EOR) technology as appropriate;
 - e. increasing efforts to increase reservoir capability to flow fluids using appropriate technology;
 - f. complying with the provisions of required standards for equipment.

Article 40

A Contractor must report, through the Implementing Body, to the Minister if it is discovered, and evidence has been obtained, that an Oil and/or Gas reservoir extends into another Contractor's Work Area, an Open Area, or the territory/ continental shelf of another country.

Article 41

- (1) A Contractor is required to conduct unitization if it is proven that its reservoir extends into another Contractor's Work Area.
- (2) For a reservoir extension that enters an Open Area, the Contractor is required to conduct unitization if said Open Area later becomes a Work Area.
- (3) In the case that within a period of no longer than five (5) years an Open Area as mentioned in clause (2) has not become a Work Area, the Contractor concerned, through the Implementing Body, may request a proportionate extension of its Work Area.
- (4) For unitization as mentioned in clause (1) and clause (2), the approval of the Minister must be obtained.

Article 42

The Minister shall determine the operator for the unitization based on the agreement between the Contractors conducting the unitization and the considered opinions of the Implementing Body.

Article 43

For a reservoir extension that enters the territory/ continental shelf of another country, the resolution shall be determined by the Minister based on the continental shelf agreement between the Government of the Republic of Indonesia and the Government of the other country concerned and on considerations of optimum benefit to the state.

Article 44

- (1) The activities of field processing, transportation, storage, and sale of its own production conducted by the Contractor concerned shall be Upstream Business Activities.
- (2) In the case that there is excess capacity at facilities for field processing, transportation, storage, and sale as mentioned in clause (1), with the approval of the Implementing Body, the Contractor may make use of said excess capacity to be used by another party on the basis of proportional sharing of operating costs.

Article 45

- (1) Facilities constructed by a Contractor to carry out the activities of field processing, transportation, storage, and sale of its own production as mentioned in Article 44 shall not be aimed at obtaining a profit.
- (2) In the case that facilities as mentioned in clause (1) are used jointly with another party, with fees or rent collected such as to obtain a profit, the Contractor is required to

establish a separate Business Entity for Downstream Business Activities and is required to obtain a Business Permit.

CHAPTER V UTILIZATION OF CRUDE OIL AND NATURAL GAS TO FULFILL DOMESTIC NEEDS

Article 46

- (1) Contractors are responsible for participating in meeting the demand for Crude Oil and/or Natural Gas for domestic needs.
- (2) The Contractor's share in meeting domestic needs as mentioned in clause (1) shall be determined on the basis of a system of prorated production of Crude Oil and/or Natural Gas.
- (3) The amount of the Contractor's obligation as mentioned in clause (2) shall be a maximum of 25% of its share of the production of Crude Oil and/or Natural Gas.
- (4) The Minister shall determine the amount of each Contractor's obligation in fulfilling the domestic demand for Crude Oil and/or Natural Gas as mentioned in clause (3).

Article 47

The Minister shall determine policy on the demand for Crude Oil and/or Natural Gas for domestic purposes once each year.

Article 48

- (1) For Natural Gas reserves that have newly been discovered, the Contractor is required to first submit a report to the Minister to meet domestic needs as mentioned in Article 46.
- (2) In the case that the Natural Gas reserves as mentioned in clause (1) are to be produced, the Minister shall first provide an opportunity within a period not to exceed one (1) year to domestic consumers to meet their needs.
- (3) Within a period no longer than three (3) months from the end of the one (1) year time limit for granting an opportunity to domestic consumers as mentioned in clause (2), the Minister shall submit a notification to the Contractor regarding the condition of domestic needs.

Article 49

The mechanism for implementation of surrender of Crude Oil and/or Natural Gas by a Contractor as mentioned in Article 46 shall be specified in the Cooperation Contract.

Article 50

- (1) The Minister shall set policy on utilization of Natural Gas from Natural Gas reserves, endeavoring to ensure that domestic needs can be optimally met and giving due consideration to the public interest, the interests of the state, and the national energy policy.
- (2) In setting policy on the utilization of Natural Gas as mentioned in clause (1), the Minister shall consider technical aspects including the reserves of and market opportunities for Natural Gas; infrastructure, both that which is available and that which is planned; and proposals from the Implementing Body.

Article 51

- (1) For Crude Oil or Natural Gas that is discovered, produced, or sold, quality evaluation must be conducted.
- (2) The costs incurred in conducted quality evaluation as mentioned in clause (1) shall be charged as operating costs.
- (3) Further regulation regarding the procedures for evaluation of the quality of Crude Oil and Natural Gas as mentioned in clause (1) shall be determined by the Minister.

CHAPTER VI STATE REVENUES

Article 52

- (1) Contractors that conduct Upstream Business Activities are required to surrender and pay State revenues in the form of taxes and of Non-Tax State Revenues.
- (2) The State revenues in the form of taxes as mentioned in clause (1) shall consist of:
 - a. taxes;
 - b. import duties and other levies on imports and tariffs;
 - c. regional taxes and regional levies.
- (3) The Non-Tax State Revenues as mentioned in clause (1) shall consist of:
 - a. the State's share;
 - b. State levies in the form of fixed fees and Exploration and Exploitation fees;
 - c. bonuses.

Article 53

Before a Cooperation Contracts is signed, the Contractor may choose the provisions regarding tax payment obligations as mentioned in Article 52 clause (2) letter a from among the following options:

- a. to follow the provisions of the laws and regulations in the taxation sector that are in force at the time that the Cooperation Contract is signed; or
- b. to follow the provisions of the laws and regulations currently prevailing in the taxation sector.

Article 54

Provisions regarding determination of the amount of the state's share, state levies, and bonuses as mentioned in Article 52 clause (3), and the procedures for their payment, shall be regulated through a separate Government Regulation.

Article 55

- (1) The division of the production of Oil and Gas from Production Sharing Contracts between the Government and the Contractor shall be done at the point of delivery.
- (2) In delivering Oil and Gas at the point of delivery as mentioned in clause (1), a system of measurement devices must be used as determined by the Minister in accordance with the applicable laws and regulations.

Article 56

- (1) Expenditures of investment and operation costs in Production Sharing Contracts must receive the approval of the Implementing Body.
- (2) Contractors shall be reimbursed for the costs they have expended to conduct Exploration and Exploitation as mentioned in clause (1) in accordance with the work plan and budget and Authorizations for Financial Expenditure approved by the Implementing Body after they have started commercial production.

Article 57

All production of Oil and Gas produced by a Contractor in a Service Contract shall be the property of the State and must be surrendered by the Contractor to the Government.

Article 58

- (1) A Contractor that conducts Exploitation of Oil and/or Gas on the basis of a Service Contract shall be given compensation for services (a fee).
- (2) The amount of the compensation for services as mentioned in clause (1) shall be calculated based on the amount of production of Oil and/or Gas produced and shall be determined based on the offer from the Business Entity/ Permanent Establishment.
- (3) A Contractor that conducts Exploitation of Oil and/or Gas as mentioned in clause (1) shall bear all the costs and risks of producing the Oil and/or Gas.
- (4) The compensation for services (fee) as mentioned in clause (1) shall be provided after commercial production has begun.

Article 59

Provisions regarding Service Contracts shall be further regulated through Decree of the Minister.

Article 60

The non-tax State revenues as mentioned in Article 52 clause (3) shall be revenues of the Government and the Regional Governments, the division of which shall be determined in accordance with the provisions of the applicable laws and regulations.

Article 61

Non-tax State revenues after the revenues of the Regional Governments have been deducted shall be non-tax State revenues from the Oil and Gas sector, part of which may be used by the Department in accordance with the provisions of prevailing laws and regulations.

CHAPTER VII PROCEDURES FOR SETTLEMENT OF USE OF LAND UNDER RIGHTS OR STATE LAND

Article 62

- (1) A Contractor that intends to use parcels of land under rights or state land within its work area is required first to make a settlement for the use of the land with the holder of rights to the land or the user of state land, in accordance with the provisions of the applicable laws and regulations.
- (2) The community holding the land rights or user of land located on state land is required to permit a Contractor that has shown the Cooperation Contract or a legalized copy of it, to conduct Exploration and Exploitation on the land concerned, if the Contractor concerned has achieved a settlement for the use of the land or provided the guarantee of a settlement, approved by the holder of the land rights or the user of the land located on state land.

Article 63

- (1) Settlements for use of land by Contractors shall be done through consultation and consensus with the holder of the land rights or the user of land located on state land, in accordance with the provisions of prevailing laws and regulations.
- (2) The consultation and consensus as mentioned in clause (1) may be done directly with the holder of land rights or user of land located on state land through the methods of sale and purchase, exchange, suitable indemnification, recognition, or other form of compensation.
- (3) If the land concerned is collectively owned land of a traditional law community (*tanah ulayat*), the methods of consultation and consensus must pay due attention to the decision-making procedures of the local traditional law community.

Article 64

- (1) If the number of community members holding rights to the land or users of state land is so large as to make effective consultations impossible, the consultations may be done

partially or with a representative appointed by and acting on behalf of the holders of the rights, with a power of attorney duly made in accordance with the provisions of the applicable laws and regulations.

- (2) In the case that consensus cannot be achieved through deliberations as mentioned in Article 63 clause (1), the parties may appoint another party in accordance with the applicable laws and regulations.

Article 65

- (1) Determination of indemnification for land shall use as guidelines the results of consultations, with due attention to the most recent assessed property value.
- (2) Determination of indemnification for buildings, plants, and other things located on the land shall use as guidelines the relevant technical standards.

Article 66

- (1) Together with the granting of indemnification, a letter of statement of release or surrender of the rights to the land shall be produced, signed by the parties and witnessed by at least two (2) witnesses.
- (2) At the time of the making of the statement letter as mentioned in clause (1), the holder of land rights shall surrender the certificate and/or original of the land documents concerned to the Contractor.

Article 67

- (1) Land for which settlement has been reached by a Contractor as mentioned in Article 62 shall become the property of the Government and shall be managed by the Implementing Body, except for rented land.
- (2) For land as mentioned in clause (1), a certificate for rights to the land must be requested in accordance with the provisions of the applicable laws and regulations.

Article 68

- (1) A Contractor's Work Area that is not yet being used for Exploration and Exploitation may be used by another party for activities other than Exploration and Exploitation after a recommendation from the Minister and a use permit from the local Regional Government have been obtained.
- (2) The other party as mentioned in clause (1), with a recommendation from the Minister, may request rights to the land in accordance with the provisions of the applicable laws and regulations.

Article 69

- (1) A Contractor may conduct Exploration and Exploitation activities other than the activities mentioned in Article 44 within the Work Area of the Contractor concerned in accordance with the Cooperation Contract.
- (2) A Contractor may construct facilities as mentioned in Article 44 upon parcels of land within and/or outside the Contractor's Work Area after conducting procurement in accordance with the provisions in this Chapter.
- (3) Ownership, registration of land rights, and bookkeeping for parcels of land used by a Contractor as mentioned in clause (2) shall be subject to the provisions of Article 68.

Article 70

- (1) A Contractor that holds a Right of Way for an Oil and Gas transmission pipeline is required to permit another Contractor to use such Right of Way for construction and use of an Oil and Gas transmission pipeline.
- (2) The granting of permission as mentioned in clause (1) shall be based on technical and economic considerations, as well as those of safety and security.
- (3) A Contractor that plans to use a Right of Way as mentioned in clause (1) may negotiate directly with the Contractor/ other party that holds the Right of Way.
- (4) In the case that the negotiation as mentioned in clause (3) is unable to achieve an agreement, the Contractors shall submit to the Minister through the Implementing Body to determine the further settlement.

Article 71

For land that is used for the Right of Way for an Oil and Gas transmission pipeline as mentioned in Article 69 *[sic! should be 70 – tr.]*, land rights may be requested in accordance with the provisions of the applicable laws and regulations.

CHAPTER VIII OCCUPATIONAL SAFETY AND HEALTH, ENVIRONMENTAL MANAGEMENT, AND COMMUNITY DEVELOPMENT

Article 72

Contractors that conduct upstream business activities are required to ensure and abide by the provisions regarding occupational safety and health, management of the natural environment, and development of local communities.

Article 73

Provisions regarding occupational safety and health, environmental management, and community development as mentioned in Article 72 shall be in accordance with the applicable laws and regulations.

Article 74

- (1) Contractors, in conducting their activities, share responsibility for developing local communities.
- (2) The responsibilities of Contractors in developing local communities as mentioned in clause (1) are participation in development and utilization of the potential capabilities of the local community, including by employing workforce in specified quantities and qualities in line with the required competencies, and upgrading the living environment of the community in order to achieve harmonious relations between the Contractor and the surrounding community.

Article 75

In participating in the development of local communities as mentioned in Article 74 clause (1), Contractors shall allocate funds in the formulation of each year's annual work plan and budget.

Article 76

- (1) Contractors' community development activities shall be done in coordination with the Regional Government.
- (2) Priority in the activities for development of local communities as mentioned in clause (1) shall be on communities near the areas where Exploitation is carried out.

Article 77

Implementation of a Contractor's participation in development of local communities as mentioned in Article 74 clause (1) shall be provided in kind, in the form of physical facilities and infrastructure or of empowerment of local enterprises and workforce.

CHAPTER IX UTILIZATION OF DOMESTIC GOODS, SERVICES, TECHNOLOGY, AND ENGINEERING AND DESIGN CAPABILITIES

Article 78

- (1) All goods and equipment directly used in Upstream Business Activities that are purchased by Contractors shall become the property/assets of the state, under the guidance of the government and the management of the Implementing Body.
- (2) In the case that the goods and equipment as mentioned in clause (1) come from outside the country, the procedures for the import of such goods and equipment shall be determined jointly by the Minister, the Minister of Finance, and the minister whose area of duties and responsibilities includes trade affairs.
- (3) Goods and equipment [used] by Contractors as mentioned in clause (1) must fulfill the applicable standards in line with laws and regulations.

- (4) Contractors may use the goods and equipment as mentioned in clause (1) throughout the terms of their Cooperation Contracts.

Article 79

- (1) Contractors are obliged to place priority on the use of domestic goods, services, technology, and engineering and design capabilities in a transparent and competitive manner.
- (2) The priority on use of domestic goods, services, technology, and engineering and design capabilities as mentioned in clause (1) shall be implemented if said goods, services, technology, and engineering and design capabilities are already produced or available domestically and meet the requirements of quality/grade, delivery time, and price in accordance with the provisions for procurement of goods and services.

Article 80

Goods and equipment, services, technology, and engineering and design capabilities as mentioned in Article 79 may be imported as long as they are not yet produced domestically and as long as the goods and equipment, services, technology, or engineering and design capabilities that are to be imported fulfill the requirements of quality/grade, efficiency of operating costs, and guaranteed delivery time, and can provide guarantees of after-sales service.

Article 81

- (1) Management of goods and equipment used in Upstream Business Activities shall be done by the Implementing Body.
- (2) Excess supplies of goods and equipment as mentioned in clause (1) may have their use transferred to other Contractors within the Legal Mining Zone of Indonesia with the approval of the Implementing Body and reported to the Minister and the Minister of Finance.
- (3) In the case that excess supplies of goods and equipment as mentioned in clause (2) are not being used by another Contractor, the Implementing Body is required to surrender them to the Minister of Finance through the Minister for determination of policy on their use.
- (4) In the case that goods and equipment as mentioned in clause (3) are to be donated, sold, exchanged, used for capital participation by the state, destroyed, or used by another party through rental or joint use, this must first receive the approval of the Minister of Finance on the recommendation of the Implementing Body through the Minister.
- (5) When a Cooperation Contract ends, the Contractor's goods and equipment must be surrendered to the government for determination of policy on their use in accordance with the applicable laws and regulations.

CHAPTER X MANPOWER AFFAIRS

Article 82

- (1) In meeting their manpower needs, Contractors are required to place priority on the use of Indonesian manpower, with due attention to the use of local manpower in accordance with the competency standards required.
- (2) Contractors may use foreign manpower for certain types of positions and expertise that cannot yet be fulfilled by Indonesian personnel, in line with the competence required for the positions.
- (3) Procedures for use of foreign manpower as mentioned in clause (2) shall be done in accordance with the provisions of the applicable laws and regulations.

Article 83

Provisions regarding labor relations, job protection, and job requirements and on surrendering part of the execution of work to other companies shall be stipulated in accordance with the laws and regulations in the manpower affairs sector.

Article 84

To develop the capabilities of Indonesian workers to enable them to meet work competency standards and the qualifications of their positions, Contractors are required to carry out guidance and education and training programs for Indonesian workers.

Article 85

The guidance and development of Indonesian workers shall be carried out in accordance with the provisions of the applicable laws and regulations.

CHAPTER XI GUIDANCE AND SUPERVISION OF UPSTREAM BUSINESS ACTIVITIES

Article 86

- (1) Guidance of upstream business activities shall be exercised by the Government and implemented by the Minister.
- (2) The guidance as mentioned in clause (1) shall cover:
 - a. conduct of Government affairs in the upstream business activity sector, and;
 - b. setting policy on upstream business activities on the basis of the oil and gas reserves and resource potential possessed, production capability, domestic demand for oil- and gas-based fuels, mastery of technology, aspects of the environment and environmental conservation, national capabilities, and development policy.
- (3) Responsibility for activities of supervision of work and implementation of upstream business activities with regard to compliance with the provisions of the applicable laws and regulations shall lie with the Minister.

- (4) Upstream Business Activities shall be executed and controlled through Cooperation Contracts between the Implementing Body and Business Entities or Permanent Establishments.
- (5) The Implementing Body shall exercise supervision and control over the execution of Cooperation Contracts as mentioned in clause (4).
- (6) In exercising supervision and control over the execution of Cooperation Contracts as mentioned in clause (5), the Implementing Body shall have the authority to sign other contracts related to Cooperation Contracts.
- (7) The exercise of supervision and control as mentioned in clause (5) shall be done by the Implementing Body through management control of the execution of Cooperation Contracts.

Article 87

1. The conduct of Government affairs in the Upstream Business Activity sector as mentioned in Article 86 clause (2) letter a shall include:
 - a. planning;
 - b. licensing, approvals, and recommendations;
 - c. management and utilization of Oil and Gas Data;
 - d. education and training;
 - e. technological research and development;
 - f. application of standardization;
 - g. granting of accreditation;
 - h. granting of certification
 - i. guidance of support industries/ business entities;
 - j. guidance of small/medium-scale enterprises;
 - k. use of domestically produced goods and services;
 - l. maintenance of occupational health and safety;
 - m. conservation of the natural environment;
 - n. creation of a conducive investment climate;
 - o. maintenance of security and order.
2. Determination of policy regarding upstream business activities as mentioned in Article 86 clause (2) letter b shall include regulation of:
 - a. execution of General Surveys;
 - b. management and utilization of Oil and Gas Data;
 - c. preparation, determination, and offers and returns of Work Areas;
 - d. forms and terms and conditions of Cooperation Contracts;
 - e. extensions of Cooperation Contracts;
 - f. plans for first-time developments of fields;
 - g. development of fields and production of Oil and Gas reserves;
 - h. utilization of natural gas;
 - i. application of good engineering practices;
 - j. obligation to surrender a part of the Contractor's share of Oil and Gas to fulfill domestic needs (Domestic Market Obligation, DMO);
 - k. mastery, development, and application of Oil and Gas technology;
 - l. obligation to pay state revenues;
 - m. management of the natural environment;
 - n. occupational health and safety;

- o. use of Foreign Manpower
- p. development of Indonesian Manpower;
- q. development of local communities;
- r. standardization;
- s. use of domestic goods, services, technology, and engineering and design capabilities;
- t. conservation of Oil and Gas resources and reserves;
- u. enterprises for coalbed methane;
- v. other activities in Oil and Gas business activity sector, insofar as they involve the public interest.

Article 88

The supervision as mentioned in Article 86 clause (3) shall cover:

- a. conservation of Oil and Gas resources and reserves;
- b. management of Oil and Gas data;
- c. good engineering principles;
- d. occupational safety and health;
- e. management of the natural environment;
- f. use of domestic goods, services, technology, and engineering and design capabilities;
- g. use of foreign manpower;
- h. development of Indonesian manpower;
- i. development of local communities;
- j. mastery, development, and application of Oil and Gas technology;
- k. other activities in the Oil and Gas business activity sector insofar as they affect the public interest.

Article 89

- (1) The responsibility for guidance as mentioned in Article 87 shall lie with the Department and other relevant departments in line with their respective areas of duties and authority.
- (2) The responsibility for supervision as mentioned in Article 88 shall lie with the Department and other relevant departments in line with their respective areas of duties and authority.

Article 90

In the framework of control and supervision as mentioned in Article 86 clause (5), the Implementing Body shall have the following duties:

- a. to provide considered opinions to the Minister on his policies on matters of preparation and offers of Work Areas and Cooperation Contracts;
- b. to conduct the signing of Cooperation Contracts;
- c. to evaluate plans for development of fields that are to produce for the first time in a given Work Area and to submit these to the Minister to obtain his approval;
- d. to grant approval for field development plans other than those mentioned in letter c;
- e. to grant approval for work plans and budgets;
- f. to conduct monitoring of, and report to the Minister on, the implementation of Cooperation Contracts;

- g. to appoint sellers of the State's share of Crude Oil and/or Natural Gas that can provide the greatest possible advantage to the state.

Article 91

The Implementing Body shall exercise control and supervision over the execution of the provisions of Cooperation Contracts.

Article 92

In exercising supervision over compliance with the execution of the provisions of Cooperation Contracts as mentioned in Article 91, the Implementing Body shall coordinate the Contractors in their relations with the Department and other relevant departments.

Article 93

- (1) Contractors are required to periodically submit written reports to the Minister regarding matters related to supervision as mentioned in Article 88.
- (2) Contractors are required to periodically submit written reports to the Implementing Body regarding matters related to supervision as mentioned in Article 91.

Article 94

- (1) In conducting the signing of Cooperation Contracts as mentioned in Article 90 letter b, the Implementing Body shall act as the party that enters into contracts with Business Entities and Permanent Establishments.
- (2) The signing of Cooperation Contracts with Business Entities and Permanent Establishment as mentioned in clause (1) shall be done after obtaining the approval of the Minister on behalf of the Government.
- (3) The Implementing Body shall inform the People's Representative Assembly of the Republic of Indonesia in writing of every Cooperation Contract that is signed by attaching a copy of it.

Article 95

- (1) Plans for development of fields that are to produce for the first time in a given Work Area as mentioned in Article 90 letter c, including any changes to them, must receive the approval of the Minister on the basis of considered opinions from the Implementing Body.
- (2) In granting approval as mentioned in clause (1), the Minister shall engage in consultation with the Governor whose administrative jurisdiction covers the field that is to be developed.
- (3) The consultation as mentioned in clause (2) is intended to provide explanations and obtain information, especially in connection with land use planning and plans for regional revenues from Oil and Gas.

Article 96

- (1) In the case that a Contractor [that] has received approval as mentioned in Article 95 clause (1) does not conduct activities in accordance with the field development plan within a period of not more than five (5) years from the approval of the first field development plan, the Contractor shall be obliged to return its entire Work Area to the Minister.
- (2) Notwithstanding the provision as mentioned in clause (1), for development of Natural Gas fields, if within the period as mentioned in clause (1) no binding Natural Gas sales agreement has been reached, the Minister may determine the policy on an extension of the time period as mentioned in clause (1) for the Contractor concerned.

Article 97

In conducting studies as mentioned in Article 90 letter c and granting approval as mentioned in Article 90 letter d, the Implementing Body must give due consideration to matters including the following:

- a. estimated reserves and production of Oil and Gas;
- b. estimates of the costs required for field development and of the production costs of Oil and Gas;
- c. plans for the use of the Oil and Gas;
- d. the Oil and Gas exploitation process;
- e. estimates of the State revenues from the Oil and Gas;
- f. use of manpower, and use of domestically produced goods and services;
- g. occupational health and safety, management of the natural environment, and development of local communities.

Article 98

In granting approval for work plans and budgets as mentioned in Article 90 letter e, the Implementing Body must give due consideration to :

- a. long-term plans;
- b. success in achieving activity targets;
- c. efforts to increase oil and gas reserves and production;
- d. technical activities and viability of cost units for each activity to be performed;
- e. efficiency;
- f. field development plans previously approved;
- g. time allocation of activities and the end of the Cooperation Contract;
- h. operational safety, occupational health, and management of the environment;
- i. use and development of manpower;
- j. development of local communities.

Article 99

On the basis of the results of the monitoring as mentioned in Article 90 letter f, the Implementing Body is required to periodically submit reports to the Minister on matters including the following:

- a. each Contractor's work plan and budget, and its realization;
- b. estimates and realization of Oil and Gas production;
- c. estimates and realization of State revenues;
- d. estimates and realization of costs of investment in Exploration and Exploitation;
- e. realization of the operating costs of each Contractor;
- f. management of the use of assets and operational goods by Contractors.

Article 100

- (1) In implementing the appointment of sellers of the State's share of Crude Oil and/or Natural Gas as mentioned in Article 90 letter g, the Implementing Body may appoint the Business Entity or Contractor concerned.
- (2) A Business Entity or Contractor appointed as seller of the State's share of Crude Oil and/or Natural Gas is granted the authority to transfer the right to ownership of the state's share of Oil and/or Gas to the purchaser at the point of delivery based on the relevant Oil and/or Gas sales-purchase agreement.
- (3) The Implementing Body may appoint a Contractor to sell the State's share of the Oil and/or Gas that comes from its Work Area on the basis of a Cooperation Contract.
- (4) The Implementing Body may appoint a Contractor to sell the State's share of the Gas that comes from its Work Area on the basis of a Cooperation Contract and from other Work Areas.
- (5) Before appointing a Business Entity as a seller of the State's share of Oil and/or Gas as mentioned in clause (1), the Implementing Body shall consult with the Contractor and shall be required to consider:
 - a. the smooth execution, continuity, and efficiency of sales of Oil and/or Gas;
 - b. the capability of the seller;
 - c. the selling price of Oil and/or Gas;
 - d. the rights and responsibilities of the seller.
 - e. that there is no conflict of interest between the Business Entity appointed as the seller and the Contractor.
- (6) The appointment of a Business Entity or Contractor as seller of the State's share of Oil and/or Gas as mentioned in clause (1), together with its terms and conditions, shall be put into the form of a cooperation agreement.
- (7) In the case that the party appointed as the seller is the Contractor concerned, the costs incurred from the sale of Oil and/or Gas will be treated as operating costs as regulated in the Cooperation Contract with the Contractor concerned, except if such costs or consequences result from deliberate errors by the Contractor concerned.
- (8) In the case that the party appointed as the seller is not the Contractor concerned, the compensation provided to the seller shall be charged to the state's share of the revenues from the proceeds of sale of Oil and/or Gas.

- (9) The Implementing Body is required to present reports to the Minister on the realization of appointment of sellers of the State's share of Oil and/or Gas as mentioned in clause (1), and on contracts as mentioned in clause (2).

Article 101

- (1) A seller as mentioned in Article 100 clause (1) shall be fully responsible to the purchaser for the smoothness and continuity of the sales of Oil and/or Gas.
- (2) A seller as mentioned in clause (1) shall engage in marketing, negotiate with prospective buyers, and sign sales/purchase contracts and other related contracts.
- (3) The signing of contracts as mentioned in clause (2) shall be done after obtaining the approval of the Implementing Body.
- (4) Signing of contracts as mentioned in clause (2) by a seller other than the Contractor shall be done after obtaining the approval of the Contractor concerned.
- (5) The Implementing Body shall carry out supervision of the implementation of contracts as mentioned in clause (3).
- (6) Further provisions regarding the appointment of sellers of the state's share of Oil and/or Gas shall be stipulated through Decree of the Head of the Implementing Body.

Article 102

- (1) The Minister may further stipulate the provisions regarding the scope of implementation of supervision of Upstream Business Activities by the Department as mentioned in Article 88.
- (2) The Head of the Implementing Body may further stipulate the provisions regarding the scope of implementation of supervision of Upstream Business Activities by the Implementing Body as mentioned in Article 91.
- (3) If necessary, the Minister and the Head of the Implementing Body may jointly regulate the scope of supervision of Upstream Business Activities.

CHAPTER XII OTHER PROVISIONS

Article 103

Provisions regarding enterprises for Coal Bed Methane, including the forms and terms and conditions of their Cooperation Contracts, shall be further regulated through Decree of the Minister.

CHAPTER XIII TRANSITIONAL PROVISIONS

Article 104

At the time that this Government Regulation comes into force:

- a. Production Sharing Contracts and other contracts related to Production Sharing Contracts between Pertamina and other parties shall remain in force until the end of the contracts concerned.
- b. Production Sharing Contracts and other contracts related to Production Sharing Contracts as mentioned in letter a shall be transferred to the Implementing Body.
- c. Contracts between Pertamina and other parties in the form of Joint Operating Agreements (JOA)/ Joint Operating Bodies (JOB) shall be transferred to the Implementing Body and shall remain in force until the end of the contracts concerned.
- d. Rights and responsibilities (participating interest) in JOAs and JOBs as mentioned in letter c shall be transferred from Pertamina to PT Pertamina (Persero).
- e. Contracts between Pertamina and other parties in the form of Technical Assistance Contracts (TAC) and Enhanced Oil Recovery (EOR) Contracts shall be transferred to PT Pertamina (Persero) and shall remain in force until the end of the contracts concerned.
- f. When the JOA/JOB EOR [contracts] as mentioned in letter c have ended, the Minister shall determine policy on the forms and provisions of cooperation in the former areas of such contracts.
- g. When the Technical Assistance Contracts (TAC) and Enhanced Oil Recovery (EOR) contracts as mentioned in letter e that are in the former Mining Concession Area of Pertamina have ended, said former contract areas shall continue to be part of the work areas of PT Pertamina (Persero).
- h. In the case that before the end of the term of a contract as mentioned in letter e an agreement has been reached between the parties, the Minister may determine policy on another form for the contract concerned.
- i. PT Pertamina (Persero) is required to enter into Cooperation Contracts with the Implementing Body to continue Exploration and Exploitation in the former Mining Concession Area Pertamina.
- j. Within a period of not more than two (2) years, PT Pertamina (Persero) as mentioned in letter i shall be required to establish subsidiaries and enter into Cooperation Contracts with the Implementing Body for each of its Work Areas, with a Cooperation Contract period of 30 (thirty) years, which may be extended in accordance with the prevailing laws and regulations.
- k. The amounts of payment obligations to the state of PT Pertamina (Persero) as mentioned in letter d, letter i, and letter j shall be in accordance with the provisions applying in the former Mining Concession Area of Pertamina.
- l. The Minister shall determine the forms and provisions of Cooperation Contracts for PT Pertamina (Persero) and its subsidiaries as mentioned in letter h, letter i, and letter j.
- m. The transfer of contracts as mentioned in letter b shall not alter the provisions of the contracts.
- n. The Implementing Body and PT Pertamina (Persero) shall settle amendments to contracts as mentioned in letter b to obtain the approval of the Minister.

- o. LNG sales and transportation contracts between Pertamina and other parties shall be transferred to PT Pertamina (Persero).

CHAPTER XIV CONCLUSION

Article 105

This Government Regulation shall come into force as of the date of its enactment.

So that all persons may know of it, it is ordered that this Government Regulation be enacted by placing it in the State Gazette of the Republic of Indonesia.

Promulgated in Jakarta on 14 October 2004

PRESIDENT OF THE REPUBLIC OF INDONESIA
signed
MEGAWATI SUKARNOPUTRI

Enacted in Jakarta
on 14 October 2004
STATE SECRETARY OF THE REPUBLIC OF INDONESIA
signed
BAMBANG KESOWO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA FOR 2004, NUMBER 123

This copy is in accordance with the original,

Deputy Cabinet Secretary
Legal and Legislation Section
[signed and sealed]
Lambock V. Nahattands

CLARIFICATION OF

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 35 OF 2004

ON

UPSTREAM OIL AND GAS BUSINESS ACTIVITIES

GENERAL

Since the promulgation of Law Number 22 of 2001 on Crude Oil and Natural Gas, it has been stressed that Oil and Gas, as strategic and non-renewable resources contained within the Legal Mining Zone of Indonesia, are national assets controlled by the state. This control by the state is executed by the Government as the holder of the Mining Authority.

As strategic natural resources, Oil and Gas are a national asset and play an important role as a source of finances, as a source of energy, and as raw materials for the nation's economic development.

As Oil and Gas are non-renewable natural resources, Upstream Oil and Gas Business Activities must be conducted in the best possible way, and the policies to regulate them must follow the guidelines of the spirit of Article 33 clause (2) and clause (3) of the 1945 Constitution.

The aims of Upstream Oil and Gas Business Activity enterprises include ensuring the effectiveness of the implementation and control of Exploration and Exploitation business activities for Oil and Gas in an efficient, effective, highly competitive, and sustainable way through open and transparent mechanisms.

Taking the need for a legal basis for Upstream Oil and Gas Business Activity enterprises as our starting point, regulation is needed in the form of a Government Regulation.

This Government Regulation regulates Upstream Oil and Gas Business Activities, covering, among other matters, regulation of the execution of Upstream Business Activities including their guidance and supervision, the mechanism for granting of Work Areas, General Surveys, Data, Cooperation Contracts, use of Oil and Gas for domestic needs, state revenues, procurement and use of land, development of local communities, use of domestic goods, services, technology and engineering and design capabilities, and use of manpower in Upstream Oil and Gas Business Activities.

ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Sufficiently clear

Article 3

Sufficiently clear

Article 4

clause (1)

Sufficiently clear

clause (2)

A direct offer of a Work Area may be an offer of a Work Area directly by the Minister to a Business Entity or Permanent Establishment, or an offer/request for a Work Area directly from a Business Entity or Permanent Establishment to the Minister. Direct offers of Work Areas shall be openly announced through the mass media. Determination of the Business Entity or Permanent Establishment that is granted the authority to carry out Exploration and Exploitation in said Work Area shall be based on the results of direct technical and economic evaluation by the Work Area Offer Team.

Article 5

Sufficiently clear

Article 6

clause (1)

For offers of Work Areas through tender, determination by the Minister shall be based on results of evaluations by the Work Area tender team, while for direct offers to a Business Entity or Permanent Establishment, the determination by the Minister shall be based on results of evaluation by an evaluation team established by the Minister.

clause (2)

The Implementing Body may provide input to the Minister regarding the performance of the Business Entity or Permanent Establishment concerned based on records of the operations that have been conducted.

clause (3)

Sufficiently clear

Article 7

clause (1)

Sufficiently clear

clause (2)

This provision is intended to enable the Minister to appoint another Business Entity or Permanent Establishment to conduct operations in a part of a Work Area that has been relinquished by a Contractor so that Oil and Gas resources can be optimally utilized.

clause (3)

Sufficiently clear

Article 8

Sufficiently clear

Article 9

Sufficiently clear

Article 10

The intention of this provision is that Oil and/or Gas fields that a Contractor considers non-economic (marginal) may be optimally utilized.

Article 11

Sufficiently clear

Article 12

The aim of conducting a General Survey across Work Area boundaries is to provide a thorough picture of the Geological surface conditions in one sediment basin system, the technical requirements for processing of one certain type of survey, and other aims in the sense of efficiency of operations in the field.

Article 13

Clause (1)

A Business Entity as mentioned in this provision is a Business Entity that has the expertise, experience, and financial capability to conduct a General Survey.

The granting of a General Survey Permit to one Business Entity for a particular location does not eliminate the possibility of granting a permit to another business entity to conduct a General Survey in the same location.

Clause (2)

Sufficiently clear

Clause (3)

Sufficiently clear

Article 14

Sufficiently clear

Article 15

Clause (1)

Sufficiently clear

Clause (2)

Management and Use of Data is aimed at supporting the determination of Work Areas, formulation of technical policy, execution of Government affairs, and supervision in the sectors of Exploration and Exploitation, execution of Exploration and Exploitation, publication of Data to users, and exchanges of Data.

Article 16

Sufficiently clear

Article 17

Sufficiently clear

Article 18

Sufficiently clear

Article 19

Sufficiently clear

Article 20

Sufficiently clear

Article 21

Sufficiently clear

Article 22
Sufficiently clear

Article 23
Clause (1)
Sufficiently clear

Clause (2)
The secrecy periods for Data shall be calculated from when their status as Basic Data, Processed Data, or Interpreted Data is determined by the Government.

Clause (3)
The meaning of “no longer clarified [*sic! still should read “classified” – tr.]* as Data of a secret nature” in this provision is that these Data may be accessed by all parties with an interest in Exploration and Exploitation.

Article 24
Clause (1)
Sufficiently clear

Clause (2)
Letter a
The meaning of “point of transfer” in this provision is the point (location) where the Contractor is obliged to surrender the State’s share to the Government and is entitled to receive its share of the production. This point of transfer shall be agreed by the Implementing Body and the Contractor and specified in the Cooperation Agreement, and may be the same point as the point of transfer to the purchaser of the production.

Letter b
The meaning of “management control of operations” in this provision is the granting of approval for work plans and budgets and field development plans, and supervision of the realization of such plans.

Letter c
Sufficiently clear

Article 25
The forms of Cooperation Contracts are Production Sharing Contracts or other forms of Cooperation Contracts such as Service Contracts. The level of risk is based on the stage of activity, the location, and the availability of data and of infrastructure.

Article 26
Sufficiently clear

Article 27
Clause (1)
Sufficiently clear

Clause (2)
Sufficiently clear

Clause (3)
Sufficiently clear

Clause (4)
The meaning of “commercial production” in this provision is production that is commercially profitable to both the State and the Contractor.

The obligation to return a Work Area in this provision shall be executed by the Contractor when the field development plan for said reserves (first field development) does not receive the approval of the Minister.

Article 28

Clause (1)
In the case that the extension of a Natural Gas Sales Purchase [agreement] exceeds the 20-year extension period, the Contractor appointed to continue Exploration and Exploitation in the Work Area is required to ensure the continuity of sales to the end of the sales purchase agreement.

Clause (2)
Sufficiently clear

Clause (3)
Sufficiently clear

Clause (4)
Sufficiently clear

Clause (5)
Sufficiently clear

Clause (6)
The meaning of “agreement” in this provision is a Letter of Intent (LoI) or Memorandum of Understanding (MoU) or Head of Agreement (HoA) or sales/purchase contract.

Clause (7)
The meaning of “technical feasibility” in this provision is based, among other matters, on production capability (deliverability), reservoir pressure, and the specifications of the Natural Gas, while “economic feasibility” is based, among other matters, on the amount of investment, costs (cost recovery), the price of Oil and/or Gas, and state revenues.

Clause (8)
Sufficiently clear

Clause (9)
Sufficiently clear

Clause (10)
Sufficiently clear

Article 29
Sufficiently clear

Article 30

Sufficiently clear

Article 31

Sufficiently clear

Article 32

The meaning of “Contractor is unable to carry out its obligations” in this provision is that the Contractor does not fulfill its obligations in accordance with its Cooperation Contract and the prevailing laws and regulations, whether deliberately or through negligence or through lack of good faith to carry out its obligations or as a result of incidents other than force majeure that make the Contractor unable to carry out its obligations.

Article 33

Clause (1)

Sufficiently clear

Clause (2)

The meaning of “national company” in this provision is a State-Owned Business Enterprise (BUMN), a Regionally-Owned Business Enterprise (BUMD), a cooperative, a small enterprise, or a private national company all of whose shares are owned by Indonesian Citizens. The offer shall be made between the Contractor and the national company in line with normal business practice.

In this provision, in the case that the Contractor has made an offer to national companies and none has expressed interest, the Contractor may offer it to another party.

Clause (3)

Sufficiently clear

Clause (4)

In this provision, the meaning of “affiliate” is a company or other entity that controls or is controlled by one of the parties, or a company or other entity that controls or is controlled by a company or other entity that controls one of the parties, with the understanding that “controlling” means ownership by one company or other entity of not less than 50% of the shares with voting rights or rights of control or profits, if the other entity is not a company.

Article 34

The meaning of “Regionally-Owned Business Enterprise (BUMD)” in this provision is a BUMD established by the Regional Government whose administrative area includes the field concerned. This BUMD must have sufficient financial capability to participate. The participating interest shall be made between the Contractor and the BUMD in line with normal business practices.

If in a given area there is more than one (1) BUMD, regulation of the allocation of interest shall be left to the discretion of the Governor.

Article 35

Clause (1)

Sufficiently clear

Clause (2)

The meaning of “national company” in this provision is a State-Owned Business Enterprise (BUMN) or private national company all of whose shares are owned by Indonesian citizens.

Clause (3)
Sufficiently clear

Article 36
Sufficiently clear

Article 37
Sufficiently clear

Article 38
Sufficiently clear

Article 39
Clause (1)
Sufficiently clear

Clause (2)
Sufficiently clear

Clause (3)
The meaning of “optimization of exploitation” in this provision is producing Oil and Gas over the longest possible time. The meaning of “efficiency in use” is reducing to the greatest possible extent waste and losses in the use of Oil and Gas and flaring of Natural Gas in the field.

Clause (4)
Sufficiently clear

Article 40
Sufficiently clear

Article 41
Clause (1)
Sufficiently clear

Clause (2)
Sufficiently clear

Clause (3)
The determination of a maximum period of five (5) years is meant to ensure that if development is needed for a field that must be done through unitization, it is not impeded, especially for development of Natural Gas to meet the needs of the market.

Clause (4)
Sufficiently clear

Article 42
Sufficiently clear

Article 43

Sufficiently clear

Article 44

Clause (1)

Sufficiently clear

Clause (2)

In the provisions of this Article, the granting of facilities to another party is an Upstream Business Activity and does not require a business permit from the Government.

Assessment of costs will be determined by calculating investment costs, operation costs, and maintenance costs.

Article 45

Sufficiently clear

Article 46

Clause (1)

The meaning of “domestic needs” in this provision is the entire national requirement for Crude Oil and/or Natural Gas. The provision regarding the obligation to surrender Natural Gas in this provision shall apply to Cooperation Contracts with effective dates after Law Number 22 of 2001 came into force.

Clause (2)

The meaning of a pro-rata system in this provision is that the percentage amount of crude oil that must be surrendered by a Contractor is a maximum of 25% (twenty-five percent) of its share to meet domestic requirements as calculated on the basis of national needs.

Clause (3)

Sufficiently clear

Clause (4)

Sufficiently clear

Article 47

Sufficiently clear

Article 48

Sufficiently clear

Article 49

Sufficiently clear

Article 50

Clause (1)

Sufficiently clear

Clause (2)

The meaning of “considerations of reserves” in the provisions of this clause covers amounts, specifications of the Natural Gas, and location. The meaning of “considerations of market opportunities” in the provisions of this clause

covers market demand (volume and specifications of the Natural Gas) and location of the market.

Article 51
Sufficiently clear

Article 52
Sufficiently clear

Article 53
Sufficiently clear

Article 54
Sufficiently clear

Article 55
Sufficiently clear

Article 56
Clause (1)
Sufficiently clear

Clause (2)
Cost recovery shall be approved by the Implementing Body with reference to the relevant provisions in the Cooperation Contract concerned.

Article 57
In a Service Contract, all production of Oil and Gas produced by the Contractor is the share of the State as stipulated in this Government Regulation.

Article 58
Sufficiently clear

Article 59
Sufficiently clear

Article 60
Sufficiently clear

Article 61
The use of part of Non-Tax State Revenues by the Department is part of the effort to support Exploration and Exploitation activities and efforts to attract investors to increase exploration for and discovery of new reserves. Furthermore, use of part of the Non-Tax State Revenues is also intended to permit conducive efforts to support upstream oil and gas business activities, execution of surveys, promotion of Work Areas, Consultation with Regional Governments, and so on.

Article 62
Clause (1)
The holder of land rights or user of land located on state land in this provision includes:

- a. holders of rights to land, whether with or without certificates;
- b. traditional law communities whose traditionally used land (*tanah ulayat*) is affected by construction;

- c. a party that controls land based on an agreement with the land's owner;
- d. the supervisor (*nadzir*), for religious endowment land;
- e. users of land located on state land;
- f. owners of buildings, plants, or other objects related to the land, or;

Clause (2)

The meaning of "Guarantee" in this provision includes a statement of willingness to reach a settlement for granting of indemnification by the Contractor that is agreed by the holder of land rights.

Article 63

Clause (1)

Sufficiently clear

Clause (2)

Settlements for use of land in the form of recognition or other compensation may be in the form of:

- a. Indemnification for traditional collectively owned land (*tanah ulayat*) shall be done on the basis of deliberations to achieve consensus in accordance with local traditional law;
- b. plots of land ready for building;
- c. replacement land;
- d. Basic or Very Basic housing, with Home Ownership Loan (KPR) facilities;
- e. apartments with KPR facilities;
- f. real estate with KPR facilities;
- g. relocation; or
- h. other form of compensation that may be undertaken by the Contractor and/or Regency/City Government.

Clause (3)

Compensation for a plot of land that is controlled by traditional land rights (*hak ulayat*) that is determined based on Regional Regulations (Qonun for the Province of Nanggroe Aceh Darussalam, and Provincial Regional Regulations for the Province of Papua) shall be given in the form of construction of public facilities or other form of benefit to the local community, and for religious endowment land (*wakaf*)/ other religious observance land, indemnification shall be given in the form of land, buildings, and facilities as necessary.

The criteria for existence of *tanah ulayat* shall be determined in accordance with the applicable laws and regulations.

Article 64

Clause (1)

Sufficiently clear

Clause (2)

The meaning of "other party" in this provision may be in the form of a team or committee established by an authorized official.

Article 65

Clause (1)

Sufficiently clear

Clause (2)

The meaning of “technical standards” in this provision is standards issued by an authorized official.

Article 66

Sufficiently clear

Article 67

Clause (1)

Sufficiently clear

Clause (2)

The Certificates mentioned in this provision shall be issued in the name of the Government.

Article 68

Sufficiently clear

Article 69

Sufficiently clear

Article 70

Sufficiently clear

Article 71

Sufficiently clear

Article 72

Sufficiently clear

Article 73

Sufficiently clear

Article 74

Clause (1)

Community development activities shall be conducted by Contractors to assist Government programs to increase the community’s productivity and the people’s social/economic capabilities to make efficient use of regional potential in a sustainable and self-reliant way.

Clause (2)

Sufficiently clear

Article 75

Sufficiently clear

Article 76

Sufficiently clear

Article 77

Sufficiently clear

Article 78

Clause (1)

The guidance exercised by the Government is a consequence of the status of goods as State Owned Goods such that they must follow the prevailing laws and regulations, and is not intended to stipulate guidance of the micro aspects of the use of State Owned Goods by Contractors as mentioned in Article 12 letter d of Government Regulation No. 42 of 2002 on the Implementing Body for Upstream Oil and Gas Business Activities.

Clause (2)
Sufficiently clear

Clause (3)
Sufficiently clear

Clause (4)
Sufficiently clear

Article 79

Clause (1)
Priority on the use of domestic goods and services in this provision must still give consideration to technical requirements, quality, promptness of delivery, and price.

Clause (2)
Sufficiently clear

Article 80
Sufficiently clear

Article 81
Clause (1)
Sufficiently clear

Clause (2)
Sufficiently clear

Clause (3)
Sufficiently clear

Clause (4)
In the case that goods and equipment are sold to another party, the proceeds from the sale must be deposited to the State Treasury.

Clause (5)
Sufficiently clear

Article 82
Sufficiently clear

Article 83
Sufficiently clear

Article 84
The meaning of Contractor in this provision includes support service companies.

Article 85

Sufficiently clear

Article 86

Clause (1)

Sufficiently clear

Clause (2)

Sufficiently clear

Clause (3)

Sufficiently clear

Clause (4)

Sufficiently clear

Clause (5)

Sufficiently clear

Clause (6)

The meaning of “other contracts” in this provision is contracts related to a contractor’s activities within the framework of a Production Sharing Contract, including contracts related to third-party financing, Offtake Agreements, Supply Agreements/ Seller Appointment Agreements, Producers Agreements, Processing Agreements, and Trustee Paying Agent [Agreements], all of which are parts of the contracts that support the sale of Oil and Gas.

Clause (7)

Sufficiently clear

Article 87

Sufficiently clear

Article 88

Sufficiently clear

Article 89

Sufficiently clear

Article 90

Letter a

In providing considered opinions to the Minister on his policies in preparing and offering Work Areas and Cooperation Contracts, the Implementing Body may, among other matters, recommend provisions and terms and conditions for Cooperation Contracts and locations of Work Areas to be offered, and present recent developments in the investment climate for Upstream Business Activities.

Letter b

The meaning of “Cooperation Contracts” in this definition includes extensions to and amendments of Cooperation Contracts.

Letter c

Sufficiently clear

Letter d

Sufficiently clear

Letter e

Sufficiently clear

Letter f

Sufficiently clear

Letter g

In executing the appointment of sellers of the state's share of Oil and/or Gas, the Implementing Body has the authority to transfer the rights to ownership of the state's share of Oil and/or Gas at the point of delivery to the Business Entity or Contractor that is appointed as the seller.

Article 91

The supervision of execution of Cooperation Contracts by the Implementing Body is based on its scope of authority, and does not reduce the authority of the Minister in supervising the execution of Cooperation Contracts.

Article 92

Sufficiently clear

Article 93

Sufficiently clear

Article 94

Clause (1)

As the party that enters into the contracts, in conducting the signing of Cooperation Contracts, the Government guarantees that the Implementing Body can carry out the provisions of Cooperation Contracts and of other Contracts related to Cooperation Contracts.

clause (2)

Sufficiently clear

clause (3)

Sufficiently clear

Article 95

Clause (1)

Field development plans that are presented to the Minister shall contain, at the least, supporting data and evaluation of Exploration, evaluation of the nature of the reservoir fluids and rocks, descriptive evaluation of the reservoir, calculation of reserves, methods for drilling development wells, number and location of production and/or injection wells, production testing/ well testing (including pilot injection tests), pattern of extraction, estimated production, methods for lifting the production, production facilities, plans for use of the Oil and Gas, plans following operations, economics, and state and regional revenues.

Clause (2)

Sufficiently clear

Clause (3)

The Regents/Mayors whose administrative areas include the fields to be developed must also be included in these consultations. These consultations are not to request permission from the Regional Governments.

Article 96

Clause (1)

In this provision, the meaning of “not carrying out activities in line with the field development plan” is not carrying out the activities through deliberate intent or through negligence of the Contractor, or lack of good faith in carrying out the activities, or other events, other than force majeure, that cause the activities not to be carried out.

Clause (2)

The meaning of “binding agreement” in this provision is a sales/purchase agreement between the seller and a buyer.

Article 97

Sufficiently clear

Article 98

Sufficiently clear

Article 99

Sufficiently clear

Article 100

Clause (1)

Sufficiently clear

Clause (2)

Sufficiently clear

Clause (3)

Sufficiently clear

Clause (4)

Sufficiently clear

Clause (5)

Sufficiently clear

Clause (6)

As the appointment of sellers of Oil and/or Gas involves rights and responsibilities of both parties (the Implementing Body and the seller that is appointed), to ensure legal certainty these rights and responsibilities shall be formally placed in the form of a cooperation agreement.

Clause (7)

Sufficiently clear

Clause (8)

Sufficiently clear

Clause (9)

Sufficiently clear

Clause (10)
Sufficiently clear

Article 101

Clause (1)
Sufficiently clear

Clause (2)
In the case that the seller of Natural Gas appointed is not the Contractor, the seller, in conducting its negotiations with purchasers, shall base these on the provisions agreed jointly between the seller, the Contractor, and the Implementing Body.

In conducting these negotiations, the seller is required to pay due attention to the policy of the Minister in determining the price of Oil or Gas.

Clause (3)
In the case that the seller of Natural Gas appointed is not the Contractor, the Implementing Body shall grant approval after coordinating with the Contractor.

clause (4)
Sufficiently clear

clause (5)
Sufficiently clear

clause (6)
Sufficiently clear

Article 102

Further regulation by the Minister and/or the Head of the Implementing Body is intended to ensure that the execution of supervision of Upstream Business Activities is done effectively and efficiently.

Article 103

Sufficiently clear

Article 104

Letter a
The meaning in this provision of "other contracts" is contracts related to a Contractor's activities within the framework of the Cooperation Contract, including contracts related to third-party financing, Offtake Agreements, Exchange Agreements, Supply Agreements, Producers Agreements, Transportation Agreements, Plant Processing Agreements, and Plant Use Agreements, all of which are parts of the contracts that support the sales of Oil and Gas.

Letter b
Sufficiently clear

Letter c
Sufficiently clear

Letter d

Sufficiently clear

Letter e

Sufficiently clear

Letter f

Sufficiently clear

Letter g

Sufficiently clear

Letter h

Sufficiently clear

Letter i

Sufficiently clear

Letter j

The subsidiary companies that have contracts with the Implementing Body are obliged to conduct separate bookkeeping for each Work Area.

Letter k

The intent of this provision is that Pertamina, as a State-Owned Business Entity, can grow and develop as a competitive Business Entity. In the case that Pertamina desires that other parties participate as holders of participating interest, this needs to be regulated in Cooperation Contracts, which shall still use as their guidelines the aims as mentioned above.

Letter l

Sufficiently clear

Letter m

Sufficiently clear

Letter n

Sufficiently clear

Letter o

Sufficiently clear

Article 105

Sufficiently clear