



**UNIVERSITAS INDONESIA**

**“Mitigasi Risiko Para Pihak Dalam Pemberian Kredit  
Ke Perusahaan Menara Telekomunikasi  
(Analisis Perjanjian Kredit)”**

**TESIS**

**NAMA: RURY TISYANA  
NPM : 0806427814**

**FAKULTAS HUKUM  
PROGRAM MAGISTER KENOTARIATAN  
DEPOK  
JULI 2011**



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**Diajukan sebagai salah satu syarat  
untuk memperoleh gelar Magister Kenotariatan**

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**FAKULTAS HUKUM  
PROGRAM MAGISTER KENOTARIATAN  
DEPOK  
JULI 2011**

## HALAMAN PERNYATAAN ORISINALITAS

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

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Perjanjian Kredit)

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

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## KATA PENGANTAR/UCAPAN TERIMA KASIH

Puji syukur saya panjatkan kepada Tuhan Yang Maha Esa, karena atas berkat dan rahmat-Nya, saya dapat menyelesaikan tesis ini. Penulisan tesis ini dilakukan dalam rangka memenuhi salah satu syarat untuk mencapai gelar Magister Kenotariatan, Jurusan Kenotariatan, pada Fakultas Hukum, Universitas Indonesia. Saya menyadari bahwa, tanpa bantuan dan bimbingan dari berbagai pihak, dari masa perkuliahan sampai pada penyusunan tesis ini, sangatlah sulit bagi saya untuk menyelesaikan tesis ini. Oleh karena itu, saya mengucapkan terima kasih kepada:

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Depok, 1 Juli 2011

Rury Tisyana

**HALAMAN PERNYATAAN PERSETUJUAN PUBLIKASI  
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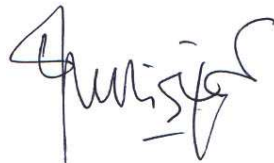
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## ABSTRAK

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Judul : Mitigasi Risiko Para Pihak Dalam Pemberian Kredit Ke Perusahaan Menara Telekomunikasi (Analisis Terhadap Perjanjian Kredit)

Tesis ini membahas aspek-aspek penting yang dapat meminimalisir risiko para pihak yang berpotensi timbul sehubungan perjanjian kredit Perusahaan Menara Telekomunikasi. Tesis ini juga membahas hal-hal penting apa sajakah yang seharusnya dilakukan pihak perusahaan sehingga bank mau memberikan kredit ke perusahaannya. Oleh karena itu, tesis ini merupakan pedoman yang berguna baik untuk bank ataupun perusahaan. Penelitian ini adalah penelitian kualitatif deskriptif. Hasil penelitian adalah informasi detail yang dibutuhkan sehubungan dengan pemilihan aset perusahaan untuk jaminan kredit. Informasi tersebut perlu dicantumkan dalam klausul persyaratan pendahuluan. Pada akhirnya tesis ini berguna sebagai pedoman berdasarkan pengalaman faktual bagi notaris maupun para praktisi hukum baru.

Kata kunci:

Kredit Bank, Perjanjian Kredit, Menara Telekomunikasi.

## ABSTRACT

Name : Rury Tisyana  
Study Program : Kenotariatan  
Title : The Parties Risk Mitigation in the Loan Offer for Tower Telecommunication Company (an Analysis for Loan Agreement)

This thesis discusses critical aspects that can minimize risk exposure for the parties in regards to loan agreement for tower telecommunication company. Important steps and requirement for tower telecommunication company to be able to have the loan facility from a bank will also be researched in this thesis. Therefore it is a useful guidance for either company or bank. This thesis is a descriptive qualitative based research. This thesis found that specific details information will be needed especially in regards to bank security in company assets and credibility. Those security detail information will be set out in the specific condition precedents clause. Finally this thesis will be beneficial as standard procedure that is based on factual case for notary or general law practicion.

Key words:

Bank Credit, Loan Agreement, Tower Telecommunication.



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# BAB 1

## PENDAHULUAN

### 1.1. Latar Belakang Permasalahan

Kehidupan masyarakat di kota-kota besar memiliki pergerakan yang aktif dan dinamis. Kita bisa melihat pergerakan-pergerakan itu dari banyaknya pertumbuhan pembangunan baik pembangunan *cluster* rumah tinggal, apartemen, perkantoran, *shopping mall*, sekolahan, tol ataupun jembatan layang yang setiap tahunnya terus saja dilakukan. Seiring dengan hal tersebut, lalu lintas transaksi bisnis baik secara internal di dalam negeri maupun transaksi bisnis ke luar negeri, juga bergerak dengan aktif dan dinamis karena transaksi-transaksi bisnis pada dasarnya merupakan bagian dari usaha manusia dalam rangka pemenuhan kebutuhannya. Kondisi ini didukung dengan perkembangan peralatan-peralatan telekomunikasi yang semakin canggih, yaitu, adanya metamorfosis *laptop*, *handphone* menjadi sebuah *smart-phone* yang sudah membumi di kehidupan masyarakat perkotaan seperti *i-phone*, *blackberry* dan berbagai model *tablet*, seperti *i-pad*, *galaxy tab*. Serta tentu saja, perkembangan kecanggihan peralatan telekomunikasi tersebut harus didukung dengan tersedianya penyediaan jaringan komunikasi, dimana saat ini jaringan komunikasi semakin lama semakin terbuka luas mencakup hingga jaringan internasional. Interaksi manusia secara nasional dan internasional pun semakin dekat karena komunikasi yang semakin terbuka luas walaupun secara fisik berjauhan. Hal-hal seperti itulah pada akhirnya menyebabkan komunikasi dalam kehidupan kota-kota besar memiliki peran krusial. Bahkan saat ini hampir secara merata, setiap orang, baik dari kalangan atas, kalangan menengah, kalangan bawah, baik tua, dewasa muda, remaja bahkan anak-anak, sudah terbiasa dan bahkan bergantung terhadap penggunaan telepon seluler.

Perkembangan di industri telekomunikasi jelas mengalami perkembangan yang pesat. Fenomena ini ditandai dengan semakin banyak pelaku usaha yang menjalankan bisnis khusus di sektor telekomunikasi, baik sebagai operator

telekomunikasi<sup>1</sup> yang melakukan penyelenggaraan telekomunikasi<sup>2</sup>, sebagai penyedia menara telekomunikasi, sebagai pengelola menara telekomunikasi, atau sebagai penyedia jasa konstruksi jaringan telekomunikasi. Mereka melihat telekomunikasi menjadi peluang bisnis yang menguntungkan. Terutama di Indonesia, yang jumlah penduduknya berdasarkan hasil statistik kependudukan terakhir yaitu pada tahun 2000 adalah 206.264.595 orang<sup>3</sup>. Fakta ini membuka peluang bagi setiap operator telekomunikasi untuk menarik pelanggan baru dan melakukan ekspansi ke seluruh wilayah Republik Indonesia. Di Indonesia hingga tahun 2009 saja, telah beroperasi sejumlah 10 operator telekomunikasi, yaitu PT Telekomunikasi Selular, Tbk/Telkomsel (dengan produk Kartu As, Kartu Halo, Simpati, Telkomsel-Reg 1 sampai 9), PT Telekomunikasi Tbk (dengan produk Flexi), PT Indosat Tbk. (dengan produk IM3, Matrix, Mentari, dan Star One), PT Exelcomindo Pratama Tbk (dengan produk XL), PT Bakrie Telecom Tbk (dengan produk Esia), PT Hutchison CP Telecommunications/HCPT (dengan produk “3”/“three”), Mobile-8 (dengan produk Fren dan Hepi), Smart Telecom (dengan produk Smart), PT Natrindo Telepon Seluler (dengan produk Axis), dan Sampoerna Telekom (dengan produk Ceria).<sup>4</sup> Jumlah pengguna seluler di Indonesia hingga Juni 2010 diperkirakan telah mencapai 180 juta pelanggan. Menurut catatan ATSI<sup>5</sup>, pelanggan Telkomsel hingga Juni 2010 sudah mencapai 88 juta nomor, XL sekitar 35 juta, Indosat sekitar 39,1 juta, selebihnya merupakan pelanggan Axis dan “3”/“Three”<sup>6</sup>.

Pertumbuhan operator telekomunikasi itu mengakibatkan juga pertumbuhan di sektor yang lebih khusus lagi yang merupakan bagian dari penyelenggaraan telekomunikasi, yaitu di sektor usaha pembangunan menara/tower telekomunikasi/*Base Transceiver Station* (BTS)<sup>7</sup>, termasuk

<sup>1</sup>Operator telekomunikasi disebut juga sebagai penyelenggara telekomunikasi. Berdasarkan Pasal 1 butir 8 Undang-undang Nomor 36 Tahun 1999 tentang Telekomunikasi (“UU Telekomunikasi”), penyelenggara telekomunikasi adalah perseorangan, koperasi, Badan Usaha Milik Daerah, Badan Usaha Milik Negara, badan usaha swasta, instansi pemerintah dan instansi pertahanan dan keamanan.

<sup>2</sup>Berdasarkan Pasal 1 butir 12 UU Telekomunikasi, penyelenggaraan telekomunikasi adalah kegiatan penyediaan dan pelayanan telekomunikasi sehingga memungkinkan terselenggaranya telekomunikasi.

<sup>3</sup>Data Penduduk Indonesia, <http://data.menkokesra.go.id/content/penduduk-indonesia>, diunduh 14 Desember 2010

<sup>4</sup>Wikipedia, [http://id.wikipedia.org/wiki/Telekomunikasi\\_seluler\\_di\\_Indonesia](http://id.wikipedia.org/wiki/Telekomunikasi_seluler_di_Indonesia), diunduh 14 Desember 2010

<sup>5</sup>ATSI adalah Asosiasi Telekomunikasi Seluler Indonesia.

<sup>6</sup>Wikipedia, [http://id.wikipedia.org/wiki/Telekomunikasi\\_seluler\\_di\\_Indonesia](http://id.wikipedia.org/wiki/Telekomunikasi_seluler_di_Indonesia), diunduh 14 Desember 2010

<sup>7</sup>*Base Transceiver Station* (BTS) adalah perangkat transmisi pada jaringan telekomunikasi seluler yang terdiri dari beberapa *transceivers* yang digunakan untuk mengirim dan menerima suara dan data (pemancar

menyewakan *space* menara/tower telekomunikasi/BTS untuk penempatan peralatan-peralatan telekomunikasi milik para operator dan juga *maintenance* menara/tower telekomunikasi/BTS. Pelaku usaha yang menjalankan di sektor usaha tersebut dikenal dengan sebutan Penyedia Jasa Infrastruktur Telekomunikasi (selanjutnya penulis menyebutnya dengan istilah “Perusahaan Menara Telekomunikasi”). di Indonesia sudah ada beberapa perusahaan yang menjalankan usaha khusus tersebut, yaitu beberapa diantaranya adalah dikenal dengan nama Protelindo (PT Profesional Telekomunikasi Indonesia), Indonesian Tower<sup>8</sup>, Tower Bersama Group, PT AJN Solusindo dan PT Solusi Tunas Pratama.

Perkembangan telekomunikasi ini semakin didukung oleh Pemerintah dengan disahkannya berbagai peraturan perundang-undangan di sektor telekomunikasi baik ditingkat pusat maupun di daerah-daerah. Diawali dengan disahkan Undang-Undang Nomor 36 Tahun 1999 tentang Telekomunikasi, Peraturan Pemerintah Nomor 52 Tahun 2000 tentang Penyelenggaraan Telekomunikasi, Peraturan Pemerintah Nomor 53 Tahun 2000 tentang Penggunaan Spektrum Frekuensi Radio dan Orbit Satelit, Keputusan Menteri Perhubungan Nomor 20 Tahun 2001 tentang Penyelenggaraan Jaringan Telekomunikasi sebagaimana telah diubah terakhir dengan Peraturan Menteri Komunikasi dan Informatika Nomor 30/PER/M.KOMINFO/09/2008, Peraturan Menteri Komunikasi Dan Informatika Nomor 02/PER/M.KOMINFO/3/2008 tentang Pedoman Pembangunan Dan Penggunaan Menara Bersama Telekomunikasi, serta lebih lanjut pada tanggal 30 Maret 2009 akhirnya ditetapkan Peraturan Bersama 4 Menteri dari Menteri Dalam Negeri, Menteri Pekerjaan Umum, Menteri Komunikasi Dan Informatika, serta Kepala Badan Koordinasi Penanaman Modal, masing-masing dengan Nomor 18 Tahun 2009, Nomor 07/PRT/M/2009, Nomor 19/PER/M.Kominfo/03/2009 dan Nomor 3/P/2009 tentang Pedoman Penggunaan Bersama Menara Telekomunikasi. Peraturan Bersama ini dikenal dengan nama SKB 4 Menteri. SKB 4 Menteri ini

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sinyal dari operator) dari dan ke telepon seluler baik untuk teknologi CDMA atau GSM di suatu area tertentu. Di dalam Keputusan Direktur Jenderal Pos dan Telekomunikasi Nomor: 23/DIRJEN/2004 Tentang Persyaratan Teknis Alat Dan Perangkat Jaringan Global System For Mobile (GSM) 900 Mhz/Digital Communication Sytem (DCS) 1800 Mhz: BTS adalah tempat dari radio transceiver yang menangani radio link protocol dengan mobile station.

<sup>8</sup> Pada saat penulisan ini dibuat, Indonesian Tower sedang dalam proses diakuisi dan akhirnya telah menjadi bagian dari Tower Bersama Group, hasil wawancara dengan Ibu Dina Piero S.H, Jabatan Internal Konsultan Hukum Pihak Tower Bersama Group, pada tanggal 3 Maret 2010.

muncul karena sudah semakin banyaknya menara telekomunikasi yang dibangun seperti jamur yang tumbuh di wilayah Republik Indonesia, sehingga Pemerintah berpendapat pembangunan dan penggunaannya sudah harus memperhatikan efisiensi, keamanan lingkungan dan estetika lingkungan.

Di balik layar pertumbuhan usaha di sektor telekomunikasi tersebut, tentu saja para pelaku usaha memiliki kebutuhan mendapatkan dana cepat yang besar, pelaku usaha yang bergerak di sektor telekomunikasi, dituntut untuk dapat mengembangkan bisnisnya secara cepat dan baik karena teknologi selalu berkembang dengan cepat. Jika pergerakan bisnisnya lambat maka pelaku usaha akan tertinggal dari pergerakan *trend* bisnis masyarakat dan tidak akan mendapatkan keuntungan lebih yang signifikan. Sumber dana yang dibutuhkan pelaku usaha itu dapat berasal dari dana sendiri (*direct capital*) atau kredit (*indirect capital*). Namun, biasanya dana cepat yang besar itu akan didapat dari fasilitas kredit perbankan.

Lembaga perbankan merupakan lembaga keuangan yang memberi jasa keuangan yang paling lengkap<sup>9</sup>, cepat dan relatif aman. Lembaga ini juga merupakan salah satu lembaga yang memiliki nilai strategis dalam perekonomian suatu Negara. Dimana lembaga tersebut memiliki fungsi sebagai perantara antara pihak-pihak yang memiliki masalah kekurangan dana dengan pihak-pihak yang memiliki kelebihan dana<sup>10</sup>. Lembaga ini ada untuk mendukung kegiatan para pelaku usaha di suatu negara. Sehingga adalah wajar jika lembaga perbankan dipercaya untuk digunakan oleh masyarakat khususnya oleh para pelaku usaha, untuk dijadikan jalan keluar dari masalah memerlukan dana cepat yang besar. Lembaga perbankan sebagai lembaga terpopuler dalam memberikan bantuan penyediaan dana melalui layanan fasilitas kreditnya, dalam menjalankan usahanya tentu menghadapi berbagai risiko. Risiko yang dimaksud adalah peluang terjadinya kerugian. Menurut pasal 1 ayat 2 peraturan Bank Indonesia Nomor 5/8/PBI/2003 tentang Penerapan Risiko Bagi Bank Umum, risiko adalah potensi terjadinya suatu peristiwa (*events*) yang dapat menimbulkan kerugian bank. Risiko yang bisa terjadi adalah jika nasabah debitur mengalami kegagalan bayar

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<sup>9</sup> Kasmir, *Bank Dan Lembaga Keuangan Lainnya*, Edisi Revisi Cet.7, (Jakarta: PT RajaGrafindo Persada, 2003), hlm. 4.

<sup>10</sup> Muhamad Djumhana, *Hukum Perbankan Indonesia*, Cet.V, (Bandung: PT Citra Aditya Bakti, 2006), hlm.11.

atau dengan sengaja ingkar janji untuk mengembalikan dana pinjaman atau pihak bank sendiri yang telah lalai tidak melaksanakan prinsip kehati-hatian dalam memberikan fasilitas kredit kepada debitur. Kedua-duanya tentu menimbulkan kerugian bagi kedua belah pihak. Untuk menghindari pengalaman perbankan Indonesia mendapatkan krisis ekonomi akibat dari salah satu masalah yaitu dari kegagalan perbankan Indonesia dalam mengelola risiko, maka penulis berpendapat perlu membiasakan melakukan analisis risiko dengan disiplin dan tepat di berbagai aspek perbankan. Salah satunya melakukan pada proses pemberian fasilitas kredit perbankan, khususnya kepada Perusahaan Menara telekomunikasi.

Penulis melihat bahwa saat ini sektor bisnis telekomunikasi dimulai dari operator telekomunikasi hingga penyedia jasa infrastruktur telekomunikasi sedang banyak diminati dan sektor perbankan mulai ramai juga untuk turut ambil bagian mendukung kelancaran perkembangan bisnis telekomunikasi ini. Bank-bank yang memiliki jaringan baik secara nasional maupun internasional banyak yang mulai mengambil bagian, seperti Bank Rakyat Indonesia yang berkomitmen untuk menyalurkan kredit sebesar Rp 8 triliun ke sektor telekomunikasi, dari komitmen itu fasilitas kredit sebesar RP 5 triliun diberikan kepada PT Telekomunikasi Indonesia Tbk<sup>11</sup>, Bank Negara Indonesia bersama CIMB Niaga melalui kredit sindikasi memberikan fasilitas kredit sebesar Rp 1,6 triliun kepada PT Excelcomindo Pratama Tbk<sup>12</sup>, *Standard Chartered Bank*, *The Royal Bank of Scotland*, PT Bank CIMB Niaga Tbk, dan PT Mandiri (Persero) Tbk juga melalui kredit sindikasi memberikan fasilitas kredit sebesar 120 juta \$USD atau senilai dengan Rp 1,08 triliun kepada PT Solusi Tunas Pratama<sup>13</sup>, serta PT Bank UOB Buana yang memberikan fasilitas kredit sebesar Rp 8597 miliar kepada Trikomsel<sup>14</sup>. Dengan maraknya lembaga perbankan ambil bagian di sektor

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<sup>11</sup> Eva Fitriani, "BRI Siapkan Kredit Telekomunikasi Rp 8 T" <http://bataviase.co.id/node/418645>, diunduh 13 Maret 2011.

<sup>12</sup> PT Bank Negara Indonesia, "Sindikasi BNI-CIMB Niaga Berikan Fasilitas Kredit Kepada XL Senilai Rp 1,6 Triliun" <http://www.bni.co.id/BeritaBNI/SiaranPers/tabid/246/articleType/ArticleView/articleId/285/Sindikasi-BNI-CIMB-Niaga-Berikan-Fasilitas-Kredit-Kepada-XL-Senilai-Rp-16-Triliun.aspx>, diunduh 13 Maret 2011.

<sup>13</sup> Ruslan Burhani, "PT STP Raih Kredit Sindikasi 120 Juta Dolar AS" <http://www.antaraneews.com/berita/246377/pt-stp-raih-kredit-sindikasi-120-juta-dolar-as>, diunduh 13 Maret 2011.

<sup>14</sup> Usman Iskandar, "[www.mediaindonesia.com](http://www.mediaindonesia.com)", diunduh 2 April 2011.

telekomunikasi melalui pemberian fasilitas kredit, penulis melihat beberapa risiko yang berpotensi dapat menimbulkan masalah sehubungan perjanjian kredit, antara bank berskala internasional dan nasabahnya, dalam hal ini yaitu Perusahaan Menara Telekomunikasi. Potensi risiko tersebut adalah tidak tercapainya target atau pembatalan pencairan dana kredit yang dibutuhkan oleh Perusahaan Menara Telekomunikasi oleh pihak bank. Bagaimana jika Perusahaan Menara Telekomunikasi tidak dapat memenuhi syarat-syarat yang diajukan oleh bank tepat waktu akibat faktor dari luar perusahaan seperti proses pendaftaran jaminan hak tanggungan yang lambat sehingga perusahaan tidak bisa mencapai pemenuhan syarat-syarat sesuai waktu yang telah disepakati? Tentu saja akan merugikan perusahaan. Lalu, bagaimana jika Perusahaan Menara Telekomunikasi ternyata tidak memiliki aset perusahaan yang beragam. Oleh karena aset jaminan nasabahnya itu tidak beragam maka bank akan melihat bahwa nasabah memiliki potensi tingkat risiko yang tinggi. Misalnya, bagaimana jika suatu Perusahaan Menara Telekomunikasi ternyata gagal bayar atau *wanprestasi* dan bank harus melakukan penyitaan terhadap menara telekomunikasi miliknya? Padahal jenis aset yang dijamin bukan termasuk jaminan yang likuid mudah untuk dijual dan apabila dilakukan pemblokiran terhadap pemancar telekomunikasi tersebut dapat dibayangkan, kondisi ini tidak hanya merugikan pihak Perusahaan Menara Telekomunikasi tetapi juga merugikan masyarakat luas yaitu sebagai pihak pengguna jaringan telekomunikasi. Kekhawatiran bank ini semakin didukung dengan kebijakan pemerintah yang *unpredictable* dalam menetapkan peraturan-peraturan. Misalnya, terkait dengan kebijakan pemerintah adalah diundangkannya peraturan SKB 4 Menteri. Dengan berlakunya SKB 4 Menteri ini, yaitu Pasal 16 yang mewajibkan para operator telekomunikasi melakukan penggunaan menara bersama atau dikenal dengan istilah *tower sharing* dan Pasal 28 yang mewajibkan setiap pemilik menara segera menyesuaikan diri dengan peraturan ini, mengakibatkan dalam waktu 2 tahun pemilik menara telekomunikasi harus segera melakukan *tower sharing*. Jika mereka tidak berhasil, mereka harus merobohkan menaranya karena tidak sesuai dengan peraturan. Permasalahannya adalah bagaimana jika ada dari menara-menara tersebut yang telah dijamin sebagai jaminan kredit kepada bank? Bukankah jika hal ini terjadi, berarti akan terjadi

pengurangan nilai penjaminan? Tentu saja kondisi ini akan merugikan pihak bank. Disisi lain Penulis juga melihat masih banyak para notaris Indonesia yang belum paham secara mendalam tentang transaksi fasilitas kredit di sektor bisnis telekomunikasi<sup>15</sup>. Padahal persaingan notaris juga sudah semakin ketat. Untuk meningkatkan kualitas para notaris di Indonesia, penting jika para notaris dibekali pengetahuan yang bersifat praktis. Sehubungan dengan mulai maraknya fenomena kredit di sektor telekomunikasi namun disisi lain terbatasnya pengetahuan praktis para notaris di sektor ini, dan juga kondisi tata peraturan hukum di Negara Republik Indonesia saat ini masih belum stabil, maka menarik bagi penulis untuk melakukan analisis terhadap proses pemberian fasilitas kredit bank di sektor telekomunikasi tersebut. Sehingga harapan penulis adalah dapat diminimalisir risiko masing-masing pihak dalam perjanjian fasilitas kredit antara bank, terutama bank yang berskala internasional, dengan nasabahnya tersebut yaitu secara khusus, Perusahaan Menara Telekomunikasi.

Hal ini tentunya akan melibatkan pembahasan tentang hal-hal apa sajakah yang penting dilakukan oleh Perusahaan Menara Telekomunikasi sehubungan adanya perjanjian kredit dan aspek-aspek apa sajakah yang dapat meminimalisir risiko bank sebagai kreditur dalam pemberian fasilitas kredit ke Perusahaan Menara Telekomunikasi. Sehingga, mitigasi risiko para pihak dapat diminimalisir sekecil mungkin dan dapat terhindar dari *wanprestasi*. Kepentingan para pihak serta juga kepentingan masyarakatpun tetap terlindungi dan bank juga tidak ragu-ragu membantu Perusahaan Menara Telekomunikasi untuk memberikan fasilitas kredit dalam rangka pengembangan bisnisnya, yang secara tidak langsung juga berefek membantu pemerataan komunikasi masyarakat di Indonesia.

Mengingat industri telekomunikasi dan perbankan sama-sama memegang peranan penting dalam kehidupan masyarakat, maka berdasarkan uraian latar belakang diatas, akhirnya penulis mengambil judul:

*“Mitigasi Risiko Para Pihak Dalam Pemberian Kredit Ke Perusahaan Menara Telekomunikasi (Analisis Terhadap Perjanjian Kredit)”*

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<sup>15</sup> Wawancara dengan Ibu Dewi Rafaldini Notaris Kabupaten Bandung, tanggal 27 Desember 2010.



## 1.2. Pokok Permasalahan

Berdasarkan latar belakang yang telah diuraikan oleh penulis, terdapat beberapa pokok permasalahan yang menarik untuk dikaji secara mendalam dalam tesis ini, yaitu:

1. Hal-hal apa sajakah yang harus dilakukan oleh Perusahaan Menara Telekomunikasi sehingga memperoleh fasilitas kredit dari bank?
2. Apakah aspek-aspek yang dapat meminimalisir risiko bank sebagai kreditur dalam pemberian fasilitas kredit ke Perusahaan Menara Telekomunikasi?

## 1.3. Metode Penelitian

Dalam melakukan penulisan karya ilmiah diperlukan adanya penelitian.

*“Penelitian merupakan sarana pokok dalam pengembangan ilmu pengetahuan dan teknologi. Hal ini disebabkan oleh karena penelitian bertujuan untuk mengungkapkan kebenaran secara sistematis, metodologis, dan konsisten. Melalui proses penelitian tersebut diadakan analisa dari konstruksi terhadap data yang telah dikumpulkan dan diolah.”<sup>16</sup>*

Dalam penelitian ini penulis menggunakan pendekatan yuridis normatif, pendekatan ini dilakukan dengan mengungkapkan kebenaran secara sistematis dan metodologis terhadap data hukum, yaitu pendekatan dengan melakukan pengkajian dan analisis terhadap data hukum, yaitu pendekatan dengan melakukan pengkajian dan analisis terhadap Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan beserta perubahannya, peraturan-peraturan Bank Indonesia tentang perkreditan bank umum, serta peraturan-peraturan lain yang terkait.

Tipologi penelitian yang penulis gunakan adalah deskriptif-preskriptif analitis, yaitu dengan menggambarkan keadaan yang sebenarnya terjadi pada saat penelitian dilakukan, kemudian menganalisis fakta dan data tersebut untuk

<sup>16</sup> Soerjono Soekamnto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, ed.1, cet. 10, Jakarta:RajaGrafindo Persada, 2007, hlm.1.

memperoleh kesimpulan yang terakhir. Penelitian ini juga memiliki tujuan untuk memberikan solusi dari suatu masalah.

Dalam penelitian ini diperlukan adanya data untuk menunjang kebenaran penelitian. Data yang akan dipergunakan Penulis adalah data primer dan sekunder. Data primer diperoleh melalui wawancara dengan Karyawan Perusahaan Menara Telekomunikasi. Sedangkan data sekunder yang dipergunakan terdiri dari bahan kepustakaan, yang mencakup dokumen-dokumen resmi. Data sekunder yang dipergunakan dibedakan atas:

1. Bahan hukum primer, yang berupa Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan beserta perubahannya, peraturan-peraturan Bank Indonesia tentang perkreditan ataupun peraturan perundang-undangan lainnya yang mendukung penelitian ini. Bahan hukum primer tersebut sebagai landasan hukum yang berkaitan dengan permasalahan dalam penelitian.
2. Bahan Hukum Sekunder, yang berupa beberapa buku acuan dan dokumen-dokumen resmi. Bahan hukum sekunder tersebut sebagai landasan teori dalam menjawab permasalahan yang diangkat dalam penulisan ini.

Alat pengumpulan data yang digunakan oleh penulis dalam penelitian ini adalah studi dokumen dengan tambahan wawancara kepada narasumber.

Metode analisis data yang digunakan adalah kualitatif. Dimana pendekatan ini bertujuan untuk mengerti atau memahami gejala yang diteliti. Data yang diperoleh kemudian disusun secara sistematis dan selanjutnya dianalisis secara kualitatif yuridis.

#### **1.4. Sistematika Penulisan**

Untuk mempermudah pemahaman dan pembacaan tesis ini maka penulis menguraikan sistematika penulisan sebagai berikut:

- BAB 1:** Berisikan uraian tentang Latar Belakang permasalahan, Pokok Permasalahan, Metode Penelitian dan Sistematika Penulisan ini.

**BAB 2:** Berisikan pembahasan secara teoritis tentang dunia perbankan secara umum dan secara khusus pembahasan tentang aspek-aspek dan prinsip-prinsip perbankan sebagai salah satu lembaga pembiayaan dan lembaga penjaminan di Indonesia. Penulis juga membahas mengenai perjanjian dan jaminan kredit yang mencakup pengertian perjanjian kredit, syarat sahnya perjanjian kredit, bentuk-bentuk perjanjian kredit, klausul penting di dalam perjanjian kredit, risiko yang berpotensi muncul dari perjanjian kredit, wanprestasi, saat berakhirnya perjanjian kredit, macam-macam jaminan kredit. Disini juga dilakukan pembahasan tentang dunia telekomunikasi seluler secara umum, berupa sejarah penyelenggaraan telekomunikasi seluler di Indonesia dan secara khusus tentang dunia usaha dan risiko usaha Perusahaan Menara Telekomunikasi.

**BAB 3:** Berisikan pemaparan kasus posisi yang diambil dari pemberian fasilitas kredit sindikasi yaitu oleh beberapa Bank kepada Perusahaan Menara Telekomunikasi dan beberapa anak perusahaannya, yang dikoordinir oleh bank koordinator berdasarkan perjanjian kredit sindikasi tanggal 7 Januari 2009. Serta analisis risiko-risiko yang berpotensi muncul khususnya dari perjanjian kredit tersebut beserta mitigasi risikonya.

**BAB 4:** Berisikan uraian kesimpulan dan saran-saran yang didapat oleh penulis setelah penulis melakukan pembahasan secara menyeluruh.

## BAB 2

### FASILITAS KREDIT PERBANKAN UNTUK PERUSAHAAN MENARA TELEKOMUNIKASI DI INDONESIA

#### 2.1. Tinjauan Umum Tentang Perbankan Di Indonesia

Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Perbankan (selanjutnya disebut “UU Perbankan”), menyebutkan definisi bank yaitu:

*“Bank adalah badan usaha yang menghimpun dana dari masyarakat dalam bentuk simpanan dan menyalurkan kepada masyarakat dalam bentuk kredit dan atau bentuk-bentuk lainnya dalam rangka meningkatkan taraf hidup rakyat banyak”.*

Dari pengertian tersebut, kita dapat melihat bahwa perbankan memiliki dua aktivitas, yaitu yang pertama adalah menghimpun dana dari masyarakat luas, yang dikenal dengan istilah kegiatan *funding*<sup>17</sup>. Pengertian *funding* ini maksudnya, bank akan mengumpulkan dana atau mencari dana dengan cara membeli dari masyarakat. Pembelian dana ini dilakukan oleh bank dengan cara memasang berbagai strategi agar masyarakat mau menanamkan dananya dalam bentuk simpanan. Jenis simpanan yang dapat dipilih contohnya adalah giro, tabungan, sertifikat deposito dan deposito berjangka. Agar masyarakat tetap mau menyimpan uangnya di bank, bank akan memberikan kepada nasabahnya itu berupa balas jasa yang dapat berupa bunga, bagi hasil, hadiah, pelayanan. Setelah memperoleh dana dalam bentuk simpanan dari masyarakat, maka oleh perbankan dana tersebut diputar kembali atau dijual kembali ke masyarakat dalam bentuk pinjaman atau dikenal dengan istilah kredit (*lending*)<sup>18</sup>. *Lending* ini adalah aktivitas kedua dari bank. Biasanya dalam aktivitas *lending* di bank berdasarkan prinsip konvensional akan dikenakan jasa pinjaman kepada nasabah penerima kredit (*debitur*) dalam bentuk bunga dan biaya administrasi. Sedangkan bagi bank yang berdasarkan prinsip syariah, berdasarkan bagi hasil atau penyertaan modal.

<sup>17</sup> Kasmir, *Bank Dan Lembaga Keuangan Lainnya*, Edisi Revisi Cet.7, (Jakarta: PT RajaGrafindo Persada, 2003), hlm. 24.

<sup>18</sup> *Ibid.*, hlm. 24.

Besarnya bunga kredit ini sangat dipengaruhi oleh besarnya bunga simpanan. Semakin besar atau semakin mahal bunga simpanan, maka semakin besar pula bunga pinjaman dan demikian sebaliknya. Besar atau kecilnya bunga pinjaman ini juga dipengaruhi oleh keuntungan yang diambil, biaya operasi yang dikeluarkan, cadangan risiko kredit macet, pajak serta pengaruh lainnya. Bank selain melakukan kegiatan *funding* dan *lending*, juga melakukan kegiatan jasa-jasa pendukung lainnya seperti: Jasa Pemindahan Uang (transfer), Jasa Penagihan (Inkaso), Jasa Kliring (Clearing), Jasa Penjualan Mata Uang Asing (Valas), Jasa Safe Deposit Box, Travellers Cheque, Bank Card, Bank draft, Letter of Credit (L/C), Bank Garansi dan Referensi Bank. Jasa-jasa ini diberikan untuk mendukung kelancaran kegiatan menghimpun dan menyalurkan dana, baik yang berhubungan langsung dengan kegiatan simpanan dan kredit maupun tidak langsung.<sup>19</sup>

Hukum yang mengatur tentang perbankan itu sendiri disebut hukum perbankan atau *banking law*. Hukum ini mengatur kegiatan lembaga keuangan bank yang meliputi segala aspek, dilihat dari segi esensi dan eksistensinya serta hubungannya dengan bidang kehidupan yang lain. Artinya pengaturan hukum perbankan ini akan menyangkut:

- (a) Dasar-dasar perbankan, yaitu menyangkut asas-asas kegiatan perbankan, seperti norma efisiensi, keefektifan, kesehatan bank, profesionalisme pelaku perbankan, maksud dan tujuan lembaga perbankan serta hubungan hak dan kewajibannya.
- (b) Kedudukan hukum pelaku di bidang perbankan, misalnya kaidah-kaidah mengenai pengelolanya, seperti dewan komisaris, direksi, karyawan, ataupun pihak terafiliasi. Juga mengenai bentuk badan hukum pengelolanya serta mengenai kepemilikannya.
- (c) Kaidah-kaidah perbankan yang secara khusus yang memerhatikan kepentingan umum, seperti kaidah-kaidah yang mencegah persaingan yang tidak wajar, *antitrust*, perlindungan terhadap konsumen/nasabah, dan lain-lain. Di Indonesia bahkan mempunyai kekhususan sendiri yaitu harus memerhatikan

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<sup>19</sup> *Ibid.*, hlm. 26.

keserasian, keselarasan dan keseimbangan unsur-unsur pemerataan pembangunan, pertumbuhan ekonomi dan stabilitas nasional.

- (d) Kaidah-kaidah yang menyangkut struktur organisasi yang mendukung kebijakan ekonomi dan moneter pemerintah, seperti dewan moneter dan bank sentral.
- (e) Kaidah-kaidah yang mengarahkan kehidupan perekonomian yang berupa dasar-dasar untuk perwujudan tujuan-tujuan yang hendak dicapainya melalui penetapan sanksi, insentif dan sebagainya.
- (f) Keterkaitan satu sama lainnya dari ketentuan dan kaidah-kaidah hukum tersebut sehingga tidak mungkin berdiri sendiri malahan keterkaitannya merupakan hubungan logis dari bagian-bagiannya.<sup>20</sup>

Apabila kita melihat pada tujuan dari UU Perbankan, terlihat bahwa perbankan di Indonesia dituntut untuk mampu menunjang pelaksanaan pembangunan nasional dalam rangka meningkatkan pemerataan, pertumbuhan ekonomi dan stabilitas nasional kearah peningkatan kesejahteraan rakyat banyak<sup>21</sup> serta secara lebih nyata dalam rangka mewujudkan masyarakat adil dan makmur berdasarkan Pancasila dan Undang-undang Dasar 1945. Dari tujuan itu terlihat jelas bahwa lembaga perbankan memiliki peran penting strategis, juga dituntut agar mampu menampung tuntutan jasa perbankan, mampu berperan secara lebih baik dalam mendukung proses pembangunan. Artinya lembaga perbankan harus mampu menjadi *agent development*. Bank sebagai *agent development* tidak terlepas dari jasa bank sebagai pemberi fasilitas kredit. Hal ini selaras dengan kegiatan utama bank yang kedua yaitu *lending*. Melalui *lending* atau pemberian fasilitas kredit ini adalah bukti nyata bahwa bank mampu mendukung pelaksanaan pembangunan nasional yang senantiasa memperhatikan keserasian, keselarasan dan keseimbangan berbagai unsur pembangunan. Dalam menjalankan perannya sebagai penyalur dana melalui pemberian fasilitas kredit kepada nasabah, bank memiliki risiko yang tinggi, berupa gagal bayar atau kemacetan dalam pelunasan oleh nasabah yang dapat berpengaruh terhadap kesehatan bank. Sehingga tingkat kesehatan suatu bank juga merupakan aspek penting yang harus dijaga dan

<sup>20</sup> Muhamad Djumhana, *Hukum Perbankan Indonesia*, Cet.V, (Bandung: PT Citra Aditya Bakti, 2006), hlm.1-2.

<sup>21</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, Edisi Revisi, Cet.5 (Jakarta: Kencana, 2009), hlm.20

merupakan kepentingan semua pihak yang terkait, baik pemilik dan pengelola bank, masyarakat pengguna jasa bank maupun Bank Indonesia sebagai pembina dan pengawas bank. Sesuai dengan tanggung jawabnya, masing-masing pihak tersebut perlu mengikatkan diri dan secara bersama-sama berupaya mewujudkan bank yang sehat. Oleh karena itu, adanya ketentuan mengenai tingkat kesehatan bank adalah dimaksudkan sebagai:

- (i) Tolak ukur bagi manajemen bank untuk menilai apakah pengelolaan bank telah dilakukan sejalan dengan asas-asas perbankan yang sehat dan sesuai dengan ketentuan-ketentuan yang berlaku;
- (ii) Tolak ukur untuk menetapkan arah pembinaan dan pengembangan bank, baik secara individual maupun perbankan secara keseluruhan.

Berikut ini adalah contoh beberapa ketentuan yang tercantum dalam Peraturan Bank Indonesia yang mewajibkan bank melakukan penilaian tingkat kesehatan usahanya, sehingga kepentingan nasabah terlindungi, yaitu:

Pasal 2 ayat (1) PBI No. 13/1/PBI/2011 tentang Penilaian Tingkat Kesehatan Bank Umum: *“Bank wajib memelihara dan/atau meningkatkan Tingkat Kesehatan Bank dengan menerapkan prinsip kehati-hatian dan manajemen risiko dalam melaksanakan kegiatan usaha”*.

Pasal 3 (1) dan (2) PBI No. 13/1/PBI/2011:

*Bank wajib melakukan penilaian sendiri (self assessment) atas Tingkat Kesehatan Bank sebagaimana diatur dalam Pasal 2 ayat (3)”*.

*“Penilaian tersebut dilakukan paling kurang setiap semester untuk posisi akhir bulan Juni dan Desember*

Pasal 6 PBI No. 13/1/PBI/2011:

*Bank wajib melakukan penilaian Tingkat Kesehatan Bank secara individual dengan menggunakan pendekatan risiko (Risk-based Bank Rating) sebagaimana dimaksud dalam Pasal 2 ayat (3), dengan cakupan penilaian terhadap faktor faktor sebagai berikut:*

- a. Profil risiko (risk profile);*
- b. Good Corporate Governance (GCG);*
- c. Rentabilitas (earnings); dan*

*d. Permodalan (capital)”.*

Berikut ini adalah contoh beberapa ketentuan yang tercantum dalam Peraturan Bank Indonesia yang mewajibkan bank melakukan penilaian tingkat kesehatan usahanya, sehingga kepentingan nasabah terlindungi, yaitu:

Pasal 2 ayat (1) PBI No. 13/1/PBI/2011 tentang Penilaian Tingkat Kesehatan Bank Umum: *“Bank wajib memelihara dan/atau meningkatkan Tingkat Kesehatan Bank dengan menerapkan prinsip kehati-hatian dan manajemen risiko dalam melaksanakan kegiatan usaha”.*

Pasal 3 (1) dan (2) PBI No. 13/1/PBI/201:

*Bank wajib melakukan penilaian sendiri (self assessment) atas Tingkat Kesehatan Bank sebagaimana diatur dalam Pasal 2 ayat (3)”.*

*“Penilaian tersebut dilakukan paling kurang setiap semester untuk posisi akhir bulan Juni dan Desember*

Pasal 6 PBI No. 13/1/PBI/201:

*Bank wajib melakukan penilaian Tingkat Kesehatan Bank secara individual dengan menggunakan pendekatan risiko (Risk-based Bank Rating) sebagaimana dimaksud dalam Pasal 2 ayat (3), dengan cakupan penilaian terhadap faktor faktor sebagai berikut:*

- a. Profil risiko (risk profile);*
- b. Good Corporate Governance (GCG);*
- c. Rentabilitas (earnings); dan*
- d. Permodalan (capital)”.*

Ketentuan-ketentuan ini menunjukkan bank benar-benar memiliki tanggung jawab terhadap pada nasabahnya. Hal ini penting bagi bank dalam rangka menjaga hubungan baik dan berkelanjutan dengan nasabahnya.

Ketentuan-ketentuan ini menunjukkan bank benar-benar memiliki tanggung jawab terhadap pada nasabahnya. Hal ini penting bagi bank dalam rangka menjaga hubungan baik dan berkelanjutan dengan nasabahnya.



Di Negara Republik Indonesia setiap permasalahan keuangan baik masalah keuangan di dalam negeri maupun permasalahan ke luar negeri diatur oleh bank sentral yaitu Bank Indonesia. Secara garis besar ada tiga tugas Bank Indonesia, yaitu<sup>22</sup>:

- (a) Menetapkan dan melaksanakan kebijakan moneter.
- (b) Mengatur dan menjaga kelancaran sistem.
- (c) Mengatur dan mengawasi bank.

Dalam rangka melaksanakan tugas untuk mengatur dan mengawasi bank, Bank Indonesia berwenang untuk:

- (a) Menetapkan peraturan, ketentuan-ketentuan perbankan yang memuat prinsip kehati-hatian.
- (b) memberikan dan mencabut izin atas kelembagaan dan kegiatan usaha tertentu dari Bank.
- (c) melaksanakan pengawasan, pemeriksaan Bank dan mengenakan sanksi terhadap Bank sesuai dengan peraturan perundang-undangan.
- (d) Bank Indonesia mewajibkan Bank untuk menyampaikan laporan, keterangan dan penjelasan sesuai dengan tata cara yang ditetapkan oleh Bank Indonesia<sup>23</sup>.

Jadi, kewenangan untuk mengatur peraturan-peraturan dan atau ketentuan-ketentuan terkait dengan dunia perbankan di Indonesia, selain ditetapkan oleh pemerintah melalui Dewan Perwakilan Rakyat Indonesia, juga ditetapkan oleh Bank Indonesia.

Apabila kita melihat isi dari UU Perbankan, maka kita dapat mengetahui bahwa di dalam UU Perbankan diatur beberapa hal dasar tentang bank itu sendiri, beberapa diantaranya adalah jenis-jenis bank, cakupan usaha bank dan cara pelaksanaan kegiatan perbankan. Jenis-jenis bank diatur di dalam Pasal 5, yaitu bank terdiri dari dua jenis yaitu:

- (a) Bank Umum. Bank Umum adalah bank yang melaksanakan kegiatan usaha secara konvensional dan atau berdasarkan prinsip syariah yang dalam kegiatannya memberikan jasa dalam lalu lintas pembayaran.
- (b) Bank Perkreditan Rakyat. Bank perkreditan rakyat adalah bank yang melaksanakan kegiatan usaha secara konvensional dan atau berdasarkan

<sup>22</sup> Indonesia, *Undang-Undang Bank Indonesia*, UU No. 23 tahun 1999, Ps. 8.

<sup>23</sup> *Ibid.*, Ps. 24-35.

prinsip syariah yang dalam kegiatannya tidak memberikan jasa dalam lalu lintas pembayaran.

Cakupan usaha bank diatur di dalam Pasal 6 dan 13 UU Perbankan. Dalam Pasal 6 disebutkan bahwa secara umum usaha dari bank umum itu meliputi beberapa hal yaitu:

- (a) Menghimpun dana dari masyarakat dalam bentuk simpanan berupa giro, deposito berjangka, sertifikat deposito, dan/atau bentuk lainnya yang dipersamakan dengan itu.
- (b) Memberikan kredit.
- (c) Menerbitkan surat pengakuan hutang.
- (d) Membeli, menjual atau menjamin atas risiko sendiri maupun untuk kepentingan dan atas perintah nasabahnya: (i) surat-surat wesel termasuk wesel yang diakseptasi oleh bank yang masa berlakunya tidak lebih lama daripada kebiasaan dalam perdagangan surat-surat dimaksud; (ii) surat pengakuan hutang dan kertas dagang lainnya yang masa berlakunya tidak lebih lama dari kebiasaan dalam perdagangan surat-surat dimaksud; (iii) kertas perbendaharaan Negara dan surat jaminan pemerintah; (iv) sertifikat Bank Indonesia (SBI); (v) obligasi; (vi) surat dagang berjangka waktu sampai dengan 1 (satu) tahun; (vii) Instrumen surat berharga lain yang berjangka waktu sampai dengan 1 (satu) tahun; (viii) memindahkan uang baik untuk kepentingan sendiri maupun untuk kepentingan nasabah; (ix) menempatkan dana pada, meminjam dana dari atau meminjamkan dana kepada bank lain, baik dengan menggunakan surat, sarana telekomunikasi maupun dengan wesel unjuk, cek atau sarana lainnya; (x) menerima pembayaran dari tagihan atas surat berharga dan melakukan perhitungan dengan atau antar pihak ketiga; (xi) menyediakan tempat untuk menyimpan barang dan surat berharga; (xii) melakukan kegiatan penitipan untuk kepentingan pihak lain berdasarkan suatu kontrak; (xiii) melakukan penempatan dana dari nasabah ke nasabah lainnya dalam bentuk surat berharga yang tidak tercatat di bursa efek; (xiv) melakukan kegiatan anjak piutang, usaha kartu kredit dan kegiatan wali amanat; (xv) menyediakan pembiayaan dan atau melakukan kegiatan lain berdasarkan Prinsip Syariah, sesuai dengan ketentuan yang ditetapkan oleh Bank

Indonesia; (xvi) melakukan kegiatan lain yang lazim dilakukan oleh bank sepanjang tidak bertentangan dengan UU Perbankan dan peraturan perundang-undangan yang berlaku.

Sedangkan dalam Pasal 13 UU Perbankan mengatur usaha dari bank perkreditan rakyat yang meliputi beberapa hal yaitu:

- (a) Menghimpun dana dari masyarakat dalam bentuk simpanan berupa deposito berjangka, tabungan dan/atau bentuk lainnya yang dipersamakan dengan itu.
- (b) Memberikan kredit.
- (c) Menyediakan pembiayaan dan penempatan dana berdasarkan Prinsip Syariah, sesuai dengan ketentuan yang ditetapkan oleh Bank Indonesia.
- (d) Menempatkan dananya dalam bentuk Sertifikat Bank Indonesia (SBI), deposito berjangka, sertifikat deposito, dan/atau tabungan pada bank lain.

Dalam menjalankan kegiatan usahanya perbankan dapat dilaksanakan baik secara konvensional dan atau berdasarkan prinsip syariah. Mayoritas bank yang berkembang di Indonesia adalah bank yang dilaksanakan secara konvensional. Namun di Indonesia dewasa ini, bank-bank yang melaksanakan kegiatannya berdasarkan prinsip syariah sudah mulai berkembang. Saat ini *trend* nya adalah bank-bank konvensional itu membuka cabang baru yaitu cabang yang khusus melaksanakan kegiatan perbankan berdasarkan prinsip syariah. Pengertian dari prinsip syariah itu sendiri adalah menggunakan aturan perjanjian berdasarkan hukum Islam antara bank dengan pihak lain untuk menyimpan dana atau pembiayaan usaha atau kegiatan perbankan lainnya<sup>24</sup>. Keuntungan utama dari bisnis perbankan berdasarkan prinsip konvensional diperoleh dari selisih bunga simpanan yang diberikan kepada nasabah penyimpan dengan bunga pinjaman atau kredit yang disalurkan. Keuntungan dari selisih bunga bank ini dikenal dengan istilah *spread based*. Apabila bank mengalami kerugian dari selisih bunga, dimana suku bunga simpanan lebih besar dari suku bunga kredit, maka istilah ini dikenal dengan nama *negatif spread*. Sedangkan bagi bank berdasarkan prinsip syariah tidak dikenal istilah bunga dalam memberikan balas jasa kepada nasabah penyimpan atau nasabah debitur. Di bank dengan prinsip syariah memberikan balas jasa yaitu dengan pembiayaan berdasarkan prinsip bagi hasil (*mudharabah*),

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<sup>24</sup> Kasmir, *op. cit.*, hlm. 39.

pembiayaan berdasarkan prinsip penyertaan modal (*musharakah*) prinsip jual beli barang dengan memperoleh keuntungan (*murabahah*) atau pembiayaan barang modal berdasarkan prinsip sewa murni tanpa pilihan (*ijarab*) atau dengan adanya pilihan pemindahan kepemilikan atas barang yang disewa dari pihak bank oleh pihak lain (*ijarab wa iqtina*).<sup>25</sup>

### 2.1.1. Prinsip-Prinsip Perbankan Dalam Fasilitas Kredit

Salah satu kegiatan perbankan yang utama adalah penyaluran dana masyarakat yang disimpan pada bank melalui pemberian fasilitas kredit. Berdasarkan Pasal 1 ayat (11) UU Perbankan, yang dimaksud dengan kredit adalah:

*“Penyediaan uang atau tagihan yang dapat dipersamakan dengan itu, berdasarkan persetujuan atau kesepakatan pinjam meminjam antara bank dengan pihak lain yang mewajibkan pihak peminjam melunasi utangnya setelah jangka waktu tertentu dengan pemberian bunga”.*

Dalam pemberian fasilitas kredit ini, bank wajib untuk memperhatikan hal-hal sebagaimana ditentukan dalam Pasal 8 ayat (1), ayat (2) dan dalam penjelasannya UU Perbankan, dimana dinyatakan bahwa pemberian fasilitas kredit atau pembiayaan yang dilakukan oleh bank mengandung risiko<sup>26</sup>, sehingga dalam pelaksanaannya bank wajib memperhatikan prinsip-prinsip perkreditan dan Prinsip Syariah yang sehat. Bank umum dalam memberikan fasilitas kredit wajib memiliki keyakinan berdasarkan analisis yang mendalam terhadap itikad, kemampuan, kesanggupan debitur untuk melunasi hutangnya tersebut sesuai dengan diperjanjikan. Adapun Prinsip Syariah yang wajib diterapkan oleh bank dalam pemberian fasilitas kredit adalah:

- (a) Pemberian kredit wajib dibuat secara tertulis;
- (b) Bank wajib memiliki keyakinan terhadap itikad, kemampuan, kesanggupan debitur. Keyakinan diperoleh dengan melihat seksama watak, kemampuan,

<sup>25</sup> Kasmir, *op. cit.*, hlm. 25.

<sup>26</sup> Pengertian dari risiko ini menurut Pasal 1 ayat (2) Peraturan Bank Indonesia Nomor 5/8/PBI/2003 tentang Penerapan Risiko Bagi Bank Umum adalah *suatu potensi terjadinya suatu peristiwa (events) yang dapat menimbulkan kerugian bank”*

modal, agunan, dan prospek usaha dari debitur. Agunan disini dapat hanya berupa barang proyek atau hak tagih yang dibiayai oleh kredit, tanah yang bukti kepemilikannya masih berupa girik, petuk. Bank tidak wajib meminta agunan berupa barang yang tidak terkait langsung dengan obyek yang dibiayai;

- (c) Bank wajib memberikan informasi yang jelas tentang prosedur dan persyaratan kredit kepada debitur;
- (d) Bank dilarang memberikan kredit berdasarkan Prinsip Syariah dengan persyaratan yang berbeda kepada debitur dan/atau pihak-pihak terafiliasi;
- (e) Penyelesaian sengketa.

Terlihat bahwa unsur penting dalam pemberian fasilitas kredit adalah adanya unsur kepercayaan dari bank sebagai kreditur kepada perusahaan sebagai debitur karena bank baru memutuskan memberikan fasilitas kredit apabila bank telah mempercayai debitur. Selain unsur kepercayaan tersebut dalam permohonan dan pemberian kredit juga mengandung unsur lain, yaitu unsur waktu, risiko, dan prestasi<sup>27</sup>. Penjabaran unsur-unsur dalam fasilitas kredit tersebut adalah sebagai berikut:

- (a) Kepercayaan. Kepercayaan adalah keyakinan dari si pemberi kredit bahwa prestasi yang diberikan baik dalam bentuk uang, barang, atau jasa akan benar-benar diterimanya kembali dalam jangka waktu tertentu di masa yang akan datang.
- (b) Tenggang waktu. Tenggang waktu atau jangka waktu adalah suatu masa yang memisahkan antara pemberian prestasi dengan kontra prestasi yang akan diterima pada masa yang akan datang. Dalam unsur waktu ini terkandung pengertian nilai *agio* dari uang, yaitu uang yang ada sekarang lebih tinggi nilainya dari uang yang akan diterima pada masa yang akan datang. Jangka waktu dalam perjanjian kredit dapat diberikan untuk jangka pendek, jangka menengah ataupun jangka panjang. Sebagai akibat adanya unsur nilai *agio* dari uang, semakin panjang jangka waktu kredit maka bunga yang diberikan akan semakin tinggi dan kewajiban hutang debitur juga akan semakin besar.

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<sup>27</sup>Unsur-unsur kredit tersebut adalah berdasarkan pendapat dari Drs. Thomas Suyatno dalam bukunya yang berjudul *Dasar-dasar Perkreditan*, sebagaimana diuraikan oleh Hermansyah, *Hukum Perbankan Nasional Indonesia*, Edisi Revisi, Cet.5 (Kencana Prenada Media Group:Jakarta, 2009), hlm.58-59

Berdasarkan Pasal 5 ayat (4) PBI No.7/3/PBI/2005 tentang Batas Maksimum Pemberian Kredit Bank Umum ("PBI No.7/3/PBI/2005") mengatur apa yang harus dilakukan kreditur jika kualitas debitur menurun menjadi kurang lancar, diragukan, atau bahkan macet. Dalam PBI No.7/3/PBI/2005 tersebut mengatur bahwa bank wajib mengambil langkah penyelesaian berupa yaitu debitur wajib melunasi hutang kreditnya dalam jangka waktu 60 (enam puluh) hari sejak turunnya kualitas pembayaran kredit oleh debitur atau melakukan restrukturisasi kredit.

(c) *Degree of risk*. *Degree of risk* adalah tingkat risiko yang akan dihadapi sebagai akibat dari adanya jangka waktu yang memisahkan antara pemberian prestasi dengan kontra prestasi yang akan diterima kemudian hari. Semakin lama jangka waktu kredit diberikan, semakin tinggi pula tingkat risikonya karena sejauh-jauhnya kemampuan manusia untuk menerobos hari depan selalu terdapat unsur ketidakpastian yang tidak dapat diperhitungkan. Risiko mendasar yang dihadapi bank adalah risiko kredit akibat kegagalan atau ketidakmampuan nasabahnya mengembalikan jumlah pinjaman dan bunga sesuai jangka waktu yang telah ditentukan atau dijadwalkan<sup>28</sup>. Upaya yang dilakukan bank untuk meminimalisir risiko tersebut adalah pertama dengan mensyaratkan adanya *collateral* atau agunan atau jaminan dalam pemberian fasilitas kredit, yang kedua adalah dengan asuransi. Asuransi menjaga agar usaha dan jaminan mendapatkan perlindungan.

(d) Prestasi. Prestasi atau objek kredit tidak saja diberikan dalam bentuk uang, tetapi dapat berbentuk barang dan jasa. Namun kehidupan ekonomi modern didasarkan pada uang maka transaksi-transaksi kredit dalam bentuk uang yang sering dijumpai dalam praktek perkreditan<sup>29</sup>.

Unsur kepercayaan yaitu berupa keyakinan diperoleh bank dengan mendasarkan pada hasil analisis bank yang seksama dan mendalam. Prinsip-prinsip umum perkreditan yang biasa dipakai dalam dunia perbankan untuk melakukan analisis kredit sehingga dapat tercipta suatu perkreditan yang sehat adalah prinsip yang dikenal dengan 5C. Cara penilaian demikian bukan hal baru

<sup>28</sup> Dahlan Siamat, *Manajemen Lembaga Keuangan*, Cet.2, (Jakarta: Fakultas Ekonomi Universitas Indonesia, 1999), hlm. 83.

<sup>29</sup> Thomas Suyatno, *et al.*, *Dasar-dasar Perkreditan*, Cetakan ketiga, (Jakarta: Gramedia, 1990), hlm.12-13.

bagi bank karena cara ini sudah ada sejak undang-undang perbankan yang lama masih berlaku yaitu dalam penjelasan Pasal 24 ayat (1) Undang-Undang Nomor 14 Tahun 1967 tentang Pokok-Pokok Perbankan: “...*bahwa bank-bank dalam menilai suatu permintaan kredit biasanya berpedoman kepada faktor-faktor antara lain watak, kemampuan, modal, jaminan dan kondisi-kondisi ekonomi*”.

Prinsip 5C tersebut adalah sebagai berikut<sup>30</sup>:

- (a) *Character*. Seorang analisis harus memiliki keyakinan bahwa calon debitur memiliki sifat atau *character* yang dapat dipercaya. Kepercayaan timbul karena calon debitur memiliki *character* berupa moral, watak atau sifat personality yang positif, kooperatif dan memiliki rasa tanggung jawab. Calon debitur yang memiliki *character* yang baik adalah calon debitur yang memiliki tingkat kejujuran dan integritas yang tinggi untuk memenuhi kewajiban-kewajibannya. Kita dapat mengetahuinya hal itu semua dengan melihat pada latar belakang kehidupan, sejarah kredit calon kreditur dan diperoleh dari data-data yang disampaikan oleh debitur dalam permohonan kredit. Dari hal tersebut dapat diketahui apakah data-data yang disampaikan terdapat hal yang tidak benar misalnya data itu palsu. Dari hal tersebut dapat dinilai apakah nasabah memang beritikad baik atau tidak jujur, nantinya akan berpengaruh terhadap kelancaran pengembalian kredit. Hal ini semua merupakan ukuran “kemauan” membayar calon kreditur.<sup>31</sup>
- (b) *Capacity*. *Capacity* atau kemampuan adalah untuk melihat kemampuannya dalam mengembalikan kredit atau pelunasan hutang kredit yang diberikan. Contohnya bagaimana kemampuan calon debitur dalam menjalankan usahanya, bagaimana kemampuan bisnisnya<sup>32</sup> untuk mendatangkan penghasilan guna pelunasan hutang kredit.
- (c) *Capital*. *Capital* untuk melihat penggunaan modal apakah efektif, dengan melihat pada laporan keuangan. Capital juga harus dilihat dari sumber mana saja modal yang ada sekarang<sup>33</sup>. Semakin besar modal sendiri yang dimiliki oleh calon debitur maka semakin tangguh untuk menghadapi kemungkinan

<sup>30</sup> Taswan, *Manajemen Perbankan: Konsep, Teknik dan Aplikasi*, Edisi II (UPP STIM YKPN Yogyakarta: Yogyakarta, 2010), hlm. 310-311.

<sup>31</sup> Kasmir, *Bank Dan Lembaga Keuangan Lainnya*, Edisi Revisi Cet.7, (Jakarta: PT RajaGrafindo Persada, 2003), hlm. 104.

<sup>32</sup> *Ibid.*, hlm. 105.

<sup>33</sup> *Ibid.*, hlm. 105.

risiko yang dihadapi dikemudian hari. *Capital* ini umumnya dcerminkan oleh necara calon debitur dengan melihat pada komponen modal.

(d) *Collateral*. Merupakan jaminan yang diberikan oleh calon debitur, dengan jumlah melebihi jumlah kredit yang diberikan. Jaminan ini merupakan pengaman bagi bank untuk menutup kemungkinan risiko terburuk yaitu calon debitur tidak mampu mengembalikan hutang kreditnya. Semakin besar nilai jaminan itu dapat meng-*cover* kredit maka semakin aman dana bank itu. Jaminan itu akan dianggap aman apabila mampu meng-*cover* 120% dari total kreditnya. Disamping aman, jaminan yang semakin likuid akan semakin diminati sebab dapat segera diual apabila terjadi kredit macet. Sehingga, jaminan ini harus diteliti keabsahannya, jika terjadi masalah debitur gagal bayar dikemudian hari maka jaminan dapat dieksekusi secepatnya oleh bank.<sup>34</sup> Lebih lanjut perihal *collateral* atau agunan atau jaminan ini akan dibahas oleh penulis pada bagian tersendiri yaitu bagian 2.1.1.1 Perjanjian Dan Jaminan Kredit.

(e) *Condition of economics*. Sebagai analisis, harus juga menilai bagaimana kondisi ekonomi dan politik sekarang dan dimasa yang akan datang sesuai sektor masing-masing, serta bagaimana prospek usaha dari sektor bisnis yang dijalankan oleh calon debitur? Apakah usaha debitur akan mendapat keuntungan yang memadai sehingga debitur mampu mengembalikan hutang tepat waktu. Penilaian prospek bidang usaha hendaknya benar-benar memiliki prospek yang baik sehingga kemungkinan kredit bermasalah relatif kecil.<sup>35</sup>

Bahwa sebagaimana diatur di dalam Pasal 2<sup>36</sup> dan penjelasan UU Perbankan, bank wajib untuk memegang teguh prinsip kehati-hatian dalam menjalankan kegiatan usahanya. Prinsip kehati-hatian atau *prudential banking principle* adalah suatu prinsip atau asas yang menyatakan bahwa dalam menjalankan fungsi dan kegiatan usahanya wajib bersikap hati-hati (*prudent*) dalam rangka melindungi dana masyarakat yang dipercayakan padanya<sup>37</sup>. Hal menarik dalam ketentuan prinsip kehati-hatian bank adalah adanya kewajiban bagi

<sup>34</sup>*Ibid.*, hlm. 105.

<sup>35</sup>*Ibid.*, hlm. 105.

<sup>36</sup> Indonesia, *Undang-Undang Perbankan*, UU No. 10 tahun 1998, Ps. 2: “Perbankan Indonesia dalam melakukan usahanya berasaskan demokrasi ekonomi dengan menggunakan prinsip kehati-hatian”.

<sup>37</sup> Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia*, (Jakarta: PT Gramedia Pustaka Utama, 2001), hlm. 8.



bank untuk memberikan informasi mengenai kemungkinan timbulnya risiko sehubungan dengan adanya transaksi antara nasabah dan bank tersebut, sebagaimana tertuang dalam Pasal 29 ayat (4) UU Perbankan. Penyediaan informasi mengenai kemungkinan timbulnya risiko kerugian nasabah dimaksudkan agar akses untuk memperoleh informasi perihal kegiatan usaha dan kondisi bank menjadi lebih terbuka yang sekaligus menjamin adanya transparansi dalam dunia perbankan. Informasi tersebut perlu diberikan dalam hal bank bertindak sebagai perantara dana dari nasabah atau pembelian/penjualan surat berharga untuk kepentingan dan atas perintah nasabahnya (sebagaimana tercantum di dalam penjelasan pasal 19 ayat (4) UU Perbankan.

Pada tanggal 18 Juni 2001 Bank Indonesia mengeluarkan peraturan mengenai pentingnya diterapkan oleh bank-bank tentang penerapan mengenai nasabah. Peraturan mengenai penerapan prinsip tersebut tertuang dalam Peraturan Bank Indonesia No 3/10/PBI/2001 tentang Penerapan Prinsip Mengenal Nasabah (*Know Your Customer Principles*). Peraturan ini kemudian dirubah dengan Peraturan Bank Indonesia No 3/23/PBI/2001 tertanggal 13 Desember 2001. Prinsip Mengenal Nasabah yang lebih dikenal dengan *Know Your Customer Principles (KYCP)* adalah prinsip yang diterapkan bank untuk mengetahui identitas nasabah, memantau kegiatan transaksi nasabah termasuk pelaporan transaksi yang mencurigakan dan sudah menjadi kewajiban bank untuk menerapkannya. Prinsip Mengenal Nasabah diartikan sebagai prinsip yang diterapkan bank untuk mengetahui segala sesuatu yang berhubungan dengan identitas nasabah yang dilanjutkan kemudian dengan memantau kegiatan transaksi nasabah dan bilamana terdapat kegiatan transaksi yang mencurigakan supaya dilaporkan. Prinsip Mengenal Nasabah membantu melindungi reputasi dan integritas sistem perbankan dengan mencegah perbankan digunakan sebagai alat kejahatan keuangan. Kewajiban untuk menerapkan prinsip mengenal nasabah tidak hanya terdapat dalam Peraturan Bank Indonesia saja, tetapi juga ditegaskan dalam Undang-Undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang yang diubah dengan Undang-Undang Nomor 25 Tahun 2003, selanjutnya disebut dengan UUTPU. Pasal 17 UUTPU menjelaskan bahwa setiap orang yang melakukan usaha dengan penyedia jasa keuangan harus menyerahkan identitas

diri secara lengkap, disamping itu penyedia jasa keuangan juga harus memastikan orang yang melakukan hubungan usaha bertindak untuk diri sendiri atau orang lain. Jika bertindak untuk orang lain, maka penyedia jasa keuangan harus meminta informasi mengenai identitas pihak lain tersebut. Penyedia jasa keuangan yang dimaksud dalam penulisan hukum ini hanya terbatas pada bank.

Penerapan prinsip mengenal nasabah ini didasari pertimbangan bahwa prinsip ini penting dalam rangka *prudential banking* atau prinsip kehati-hatian untuk melindungi bank dari berbagai risiko dalam berhubungan dengan nasabah. Untuk melindungi kepentingan perbankan dan dalam hal penegakan *prudential system*, maka bank harus melakukan berbagai upaya antara lain:

- (a) Bank harus mengetahui identitas nasabah yang akan atau sedang menggunakan jasa perbankan (*know your customer principles*);
- (b) Manajemen bank harus menjamin bahwa transaksi yang dilakukan telah sesuai dengan kode etik dan peraturan atau ketentuan yang berkaitan dengan transaksi tersebut (*prudential system*) UU No 10 Tahun 1998 Tentang Perbankan;
- (c) Dalam kaitannya dengan pelaksanaan ketentuan rahasia bank, bank harus bekerjasama dengan aparat penegak hukum sesuai ketentuan yang berlaku (*bank secrecy*).

Sedangkan kewajiban pokok dari lembaga bank dalam Prinsip Mengenal Nasabah terdiri dari 4 (empat) hal, yakni:

- (a) Menetapkan kebijakan penerimaan nasabah;
- (b) Menetapkan kebijakan dan prosedur dalam mengidentifikasi nasabah;
- (c) Menetapkan kebijakan dan prosedur pemantauan terhadap rekening dan transaksi nasabah;
- (d) Menetapkan kebijakan dan prosedur manajemen risiko.

Implementasi dari Peraturan Bank Indonesia di atas telah disusun sebuah pedoman yang disebut Pedoman Standar Penerapan Prinsip Mengenal Nasabah. Pedoman ini dikeluarkan berdasarkan Surat Edaran Bank Indonesia (SEBI) tanggal 13 Desember 2001 No 3/29/DPNP, yang dapat dipergunakan bank-bank sebagai acuan standar minimum yang wajib dipenuhi oleh bank-bank dalam menyusun Pedoman Pelaksanaan Penerapan Prinsip mengenal

Nasabah. Pedoman ini memperinci hal-hal penting mengenai kebijakan umum, prosedur penerimaan dan identifikasi (*procedures for customer acceptance and identification*), pemantauan dan laporan (*monitoring and reporting*) dan pelatihan pegawai (*employee training*). Dalam rangka mendukung atau menjamin terlaksananya proses pengambilan keputusan dalam pengelolaan bank yang sesuai dengan prinsip kehati-hatian, bank wajib memiliki dan menerapkan sistem pengawasan intern dalam bentuk *self regulations*.

Salah satu bentuk *self regulation intern* dari bank tersebut adalah adanya prosedur pemberian kredit, yang harus dipenuhi oleh nasabah selain penilaian kredit yang telah dibahas diatas. Di dunia perbankan, secara umum prosedur pemberian kredit antara bank yang satu dengan bank yang lain tidak terlalu jauh berbeda. Prosedur secara umum ini biasanya dibedakan antara nasabah perorangan dan nasabah badan hukum, serta dapat pula dibedakan dengan melihat segi tujuannya yaitu apakah untuk konsumtif atau produktif. Prosedur secara umum untuk nasabah badan hukum adalah sebagai berikut<sup>38</sup>:

- (a) Pengajuan berkas-berkas. Antara lain latar belakang perusahaan, jenis bidang usaha, identitas perusahaan seperti akta pendirian, akta notaris, TDP, NPWP, nama pengurus beserta *curriculum vitae* para pengurus, bukti diri pimpinan perusahaan, maksud dan tujuan perusahaan, besarnya rencana kredit dan jangka waktunya, cara pengembalian kembali dana kredit, jaminan kredit yang akan diajukan disertai fotocopy sertipikat jaminan (jika ada yang telah dijaminkan), neraca dan laporan laba rugi 3 tahun terakhir.

Penilaian terhadap neraca dan laporan laba rugi dapat dilakukan dengan menggunakan rasio-rasio yaitu: *current ratio*, *acid test ratio*, *inventory turn over*, *sales to receivable ratio*, *profit margin ratio*, *return on net worth*, *working capital*.

- (b) Penyelidikan berkas. Penilai akan menyelidiki apakah nasabah mampu untuk mengajukan berkas dengan tepat waktu dan benar sesuai dengan segala persyaratan yang diajukan bank. Apabila tidak sanggup maka sebaiknya permohonan kredit sebaiknya dibatalkan.

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<sup>38</sup> Kasmir, *op.cit.*, hlm. 110-114.

- (c) Wawancara I. hal ini merupakan penyelidikan secara langsung terhadap nasabah, untuk meyakinkan apakah berkas-berkas yang telah diajukan sudah lengkap dan benar serta untuk mengetahui keinginan dan kebutuhan nasabah sebenarnya.
- (d) *On the spot*. Pemeriksaan ini sebaiknya dilakukan tanpa sepengetahuan dari nasabah. Penilai akan melakukan *cros-check* kesesuaian antara hasil wawancara I dengan fakta dilapangannya misalnya mengenai jaminan dan usaha dari nasabah.
- (e) Wawancara II. Merupakan perbaikan data, jika ada kekurangan-kekurangan setelah dilakukan pengecekan lapangan.
- (f) Keputusan kredit.
- (g) Penandatanganan perjanjian kredit dan/atau perjanjian-perjanjian lainnya.
- (h) Realisasi kredit. Realisasi kredit dilakukan dengan membuka rekening giro atau tabungan di bank yang bersangkutan.
- (i) Penyaluran/penarikan dana. Penyaluran/penarikan adalah pencairan dana fasilitas kredit.

#### **2.1.1.1 Perjanjian Dan Jaminan Kredit**

Setiap fasilitas kredit yang telah disetujui dan disepakati oleh para pihak maka wajib dituangkan secara tertulis dalam perjanjian kredit. Pasal 1313 Kitab Undang-undang Hukum Perdata (“KUH Perdata”) menyebutkan:

*“Perjanjian kredit adalah suatu perbuatan dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang atau lebih”.*

Perjanjian kredit itu sendiri mengacu pada perjanjian pinjam meminjam. Dalam Pasal 1754 KUH Perdata diatur definisi pinjam meminjam yaitu:

*“Suatu perjanjian dengan mana pihak yang satu memberikan kepada pihak yang lain suatu jumlah tertentu barang-barang yang menghabiskan karena pemakaian, dengan syarat bahwa pihak yang terakhir ini akan mengembalikan sejumlah yang sama dari jenis dan mutu yang sama pula”.*

Selanjutnya Pasal 1765 KUH Perdata mengatur bahwa adalah diperbolehkan memperjanjikan bunga atas peminjaman uang atau lain barang yang menghabiskan karena pemakaian. Jika telah diperjanjikan dilakukan pinjam meminjam dengan bunga maka bunga ini harus dibayar sampai saat pengembalian uang pokoknya. Bunga yang diperjanjikan boleh melampaui bunga menurut undang-undang dalam segala hal yang tidak dilarang oleh undang-undang. Pasal 1767 KUH Perdata menyebutkan bahwa besarnya bunga yang diperjanjikan dalam perjanjian harus ditetapkan secara tertulis. Hal ini selaras dengan pengertian kredit sebagaimana diatur dalam Pasal 1 ayat (11) UU Perbankan, yaitu:

*“Kredit adalah penyediaan uang atau tagihan yang dapat dipersamakan dengan itu, berdasarkan persetujuan atau kesepakatan pinjam meminjam antara bank dengan pihak lain yang mewajibkan pihak peminjam melunasi utangnya setelah jangka waktu tertentu dengan pemberian bunga”.*

Sedangkan berdasarkan Peraturan Bank Indonesia yaitu PBI No.7/3/PBI/2005 yang dimaksud dengan kredit adalah:

*Penyediaan uang atau tagihan yang dapat dipersamakan dengan itu, berdasarkan persetujuan atau kesepakatan pinjam meminjam antara bank dengan pihak lain yang mewajibkan pihak peminjam untuk melunasi utangnya setelah jangka waktu tertentu dengan pemberian bunga, termasuk a) cerukan (overdraft) yaitu saldo saldo negatif pada rekening giro nasabah yang tidak dapat dibayar lunas pada akhir hari; b) pengambilalihan tagihan dalam rangka kegiatan anjak piutang; c) pengambilalihan atau pembelian kredit dari pihak lain.*

Perjanjian kredit harus memenuhi persyaratan dasar agar perjanjian kreditnya sah secara hukum. Syarat sahnya suatu perjanjian tersebut dapat kita lihat pada Pasal 1320 KUH Perdata yaitu dipersyaratkan:

- (a) Telah terjadi kesepakatan antara mereka yang mengikatkan diri. Menurut Pasal 1321 KUH Perdata kesepakatan itu harus terjadi tanpa ada kekhilafan/kekeliruan atau paksaan atau penipuan mengenai isi dan tujuan (hal pokok) dari perjanjian kredit itu sendiri. Apabila terjadi pengaruh sebagaimana tercantum dalam Pasal 1321 KUH Perdata tersebut maka perjanjian kredit

tersebut tidak lagi dapat dikatakan sah sebagai suatu perjanjian yang mengikat.

- (b) Kecakapan dari masing-masing pihak untuk membuat suatu perjanjian. Artinya masing-masing pihak harus memenuhi persyaratan sebagai orang yang cakap menurut ketentuan Pasal 1330 KUH Perdata. Dalam Pasal 1330 KUH Perdata menyebutkan yang dimaksud sebagai orang yang tidak cakap adalah: (i) Anak-anak atau orang yang dianggap belum dewasa. Orang yang dianggap belum dewasa adalah orang yang belum mencapai umur genap 21 tahun dan tidak lebih dahulu telah menikah; (ii) Orang yang telah dewasa tetapi ditaruh di bawah pengampuan. Golongan ini adalah orang-orang yang tidak sanggup menjalani kehidupannya sendiri karena kurang waras, yaitu orang yang tidak sehat pikirannya, sehingga tidak dapat menyadari tanggung jawab yang harus dipikulnya dalam mengambil tindakan atau melakukan suatu perbuatan hukum. (iii) Orang perempuan. Berdasarkan Pasal 108 dan 110 KUH Perdata, orang perempuan yang telah bersuami, untuk mengadakan perjanjian harus mendapat ijin terlebih dahulu dari suaminya. Tetapi, berdasarkan Surat Edaran Mahkamah Agung Nomor 3 Tahun 1963, hal ini sudah tidak berlaku lagi. Lebih lanjut, keputusan ini dipertegas dengan ditetapkannya Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan, yaitu pada Pasal 31 yang menyatakan suami dan istri memiliki hak dan kewajiban seimbang serta masing-masing pihak berhak untuk melakukan perbuatan hukum.

Syarat pertama dan kedua tersebut diatas disebut syarat subyektif, karena mengenai orang-orang atau subyek yang mengadakan perjanjian. Apabila syarat subyektif tidak terpenuhi maka perjanjian kredit dapat dimintakan pembatalannya oleh salah satu pihak. Pihak yang memiliki hak mengajukan permohonan pembatalan kepada hakim adalah pihak yang dianggap tidak cakap melakukan tindakan hukum atau pihak yang memberikan sepakatnya secara tidak bebas. Prof. Subekti berpendapat, bahwa nasib perjanjian tersebut menjadi tidak pasti tergantung pada kesediaan suatu pihak untuk mentaatinya. Perjanjian demikian dinamakan *voidable* dalam bahasa inggris atau *vernietigbaar* dalam bahasa belanda.

- (c) Harus disepakati hal tertentu. Hal tertentu yang dimaksud adalah pokok dan objek dari perjanjian, serta yang merupakan prestasi yang harus dilaksanakan dalam perjanjian. Artinya, apa yang diperjanjikan antara bank dan nasabahnya harus jelas ditentukan jenis, jumlah, dan waktu pelaksanaan. Syarat bahwa prestasi harus ditentukan, supaya dapat menentukan hak dan kewajiban masing-masing dari pihak, jika di kemudian hari terjadi sengketa dalam perjanjian.
- (d) Harus disebabkan oleh unsur yang halal. Pasal 1337 KUH Perdata menyebutkan: “*Suatu sebab adalah terlarang apabila dilarang oleh undang-undang atau apabila berlawanan dengan kesusilaan baik atau ketertiban umum*”.

Syarat ketiga dan keempat tersebut diatas disebut syarat objektif, karena mengenai objek dari perjanjian tersebut. Apabila syarat objektif tidak terpenuhi maka perjanjian kredit batal demi hukum. Artinya, dari semula dianggap tidak pernah dilahirkan suatu perjanjian dan tidak pernah ada suatu perikatan. Hal ini diatur dalam Pasal 1135 KUH Perdata. Apabila salah satu pihak sudah melaksanakan kewajibannya, maka ia tidak dapat menuntut bantuan hukum di depan hakim karena tidak ada dasar hukum yang melandasi perbuatannya tersebut. Perjanjian demikian dinamakan *null and void*.<sup>39</sup> Dengan memenuhi persyaratan sebagaimana tercantum dalam pasal 1320 KUH Perdata maka perjanjian kredit telah sah secara hukum.

Fasilitas kredit yang diberikan bank terdiri dari berbagai jenis. Dapat terbagi jenisnya dilihat dari segi kegunaannya (kredit investasi, kredit modal kerja), dilihat dari segi tujuannya (kredit produktif, kredit konsumtif, kredit perdagangan), dilihat dari segi jangka waktu (kredit jangka pendek, kredit jangka menengah, kredit jangka panjang), dilihat dari segi jaminan (kredit dengan jaminan atau kredit dengan jaminan), dilihat dari segi sektor usaha (kredit pertanian, kredit peternakan, kredit industri, kredit pertambangan, kredit

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<sup>39</sup> Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 2005), hlm.21.

pendidikan, kredit profesi, kredit perumahan)<sup>40</sup>, dilihat dari segi pencairannya (*non cash loan, cash loan, kredit afbetaling/self liquidating credit, revolving credit, contingency financing*), dan dilihat dari sumber dananya (kredit dana internal bank, kredit eksternal bank, kredit sindikasi)<sup>41</sup>. Dari banyak jenis kredit ini, penulis mengambil jenis kredit sindikasi sebagai contoh kasus yang akan dibahas pada Bab 3 penulisan ini. Perjanjian kredit sindikasi atau *syndicated loan* adalah kredit yang sumber dananya diperoleh dari beberapa bank atau dengan kata lain kredit tersebut diberikan oleh beberapa kreditur sindikasi kepada debitur yang biasanya adalah badan hukum, untuk membiayai satu atau beberapa proyek milik debitur, dengan jumlah dana yang sangat besar, sehingga tidak mungkin jika kredit diberikan oleh satu kreditur saja<sup>42</sup>. Didalam perjanjian kredit sindikasi biasanya terdiri dari pihak-pihak atau terdiri dari bagian yaitu Agen Fasilitas, Agen Jaminan, Bank Rekening. Masing-masing tugasnya adalah mencari calon kreditur yang mau memberikan sejumlah dana tertentu sehingga dapat tercapai total dana yang dibutuhkan calon debitur, mengumpulkan dan menganalisis aset yang dimiliki calon debitur untuk dijadikan sebagai jaminan atas fasilitas kredit, pihak yang membuka dan menyediakan rekening tempat dana fasilitas kredit dikumpulkan dan dicairkan<sup>43</sup>.

Sesuai dengan asas utama dari perjanjian atau perikatan yaitu asas kebebasan berkontrak, maka dalam praktek perbankan bentuk dan format dari perjanjian kredit diserahkan sepenuhnya kepada bank. Dalam perkembangannya kebebasan berkontrak ini kemudian mendapat pengaruh dari peraturan ekonomi yang memuat ketentuan yang bersifat memaksa, yang ditujukan untuk menyeimbangkan kemampuan pihak-pihak pelaku ekonomi secara lebih adil dalam rangka pelaksanaan pembangunan nasional. Dalam praktek bentuk dan materi perjanjian kredit antara satu bank dan bank lainnya tidaklah sama karena diperlukan penyesuaian dengan kebutuhan masing-masing. Namun penulis berpendapat ada hal-hal yang tetap wajib dipedomani dan ada banyak hal yang biasanya perlu dicantumkan dalam perjanjian kredit. Misalnya, berupa definisi

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<sup>40</sup> Kasmir, *op. cit.*, hlm. 99-102.

<sup>41</sup> [www.wealthindonesia.com/commercial-bank/jenis-jenis-kredit-perbankan.html](http://www.wealthindonesia.com/commercial-bank/jenis-jenis-kredit-perbankan.html), diunduh 30 April 2011.

<sup>42</sup> [www.karimsyah.com/imagescontent/article/20050923140944.pdf](http://www.karimsyah.com/imagescontent/article/20050923140944.pdf), diunduh 30 April 2011.

<sup>43</sup> Wawancara dengan Ibu Dina Piero S.H, Jabatan Internal Konsultan Hukum Pihak Tower Bersama Group, pada tanggal 3 Maret 2010.



istilah-istilah yang akan dipakai dalam perjanjian (terutama dalam perjanjian kredit dengan pihak asing), jumlah dan batas waktu pinjaman, tujuan pinjaman, ketentuan tentang pembayaran kembali pinjaman (*repayment*), juga mengenai apakah si peminjam berhak mengembalikan dana pinjaman lebih cepat dari ketentuan yang ada, penetapan bunga pinjaman dan dendanya jika debitur lalai membayar bunga, klausul hukum yang berlaku untuk perjanjian tersebut. Sering pula dalam prakteknya peminjam diminta memberikan *representations*, *warranties*, dan *covenants*. Yang dimaksud *representations* adalah keterangan-keterangan yang diberikan oleh debitur guna pemrosesan pemberian kredit. *Warranties* adalah suatu janji, misalnya janji bahwa si debitur akan melindungi kekayaan perusahaannya atau aset yang telah dijadikan jaminan untuk mendapatkan kredit tersebut. Sedangkan *covenant* biasanya adalah janji untuk tidak melakukan sesuatu, misalnya seperti janji bahwa debitur tidak akan mengadakan merger dengan perusahaan lain atau menjual atau memindahtangankan seluruh atau sebagian besar asetnya tanpa seijin bank (kreditur)<sup>44</sup>.

Ada beberapa klausul yang selalu dan perlu dicantumkan dalam setiap perjanjian kredit, yaitu<sup>45</sup>:

(a) Syarat-syarat Penarikan Kredit Pertama Kali (*Predisbursement Clause*).

Klausul ini menyangkut: (i) Pembayaran provisi, premi asuransi kredit, dan asuransi barang jaminan, serta biaya pengikatan jaminan secara tunai; (ii) Penyerahan barang jaminan, dan dokumennya serta pelaksanaan pengikatan barang jaminan; (iii) Pelaksanaan penutupan asuransi barang jaminan dan asuransi kredit dengan tujuan untuk memperkecil risiko yang terjadi di luar kesalahan debitur maupun kreditur.

(b) Klausul Mengenai Maksimum Kredit (*Amount Clause*). Klausul ini mempunyai arti penting dalam beberapa hal, yaitu: (i) merupakan objek dari perjanjian kredit sehingga perubahan kesepakatan mengenai materi ini menimbulkan konsekuensi diperlukannya pembuatan perjanjian kredit baru (sesuai dengan Pasal 1381 butir 3 dan Pasal 1314 KUH Perdata – Norma objektif); (ii) merupakan batas kewajiban kreditur yang berupa penyediaan

<sup>44</sup> Muhamad Djumhana, *op. cit.*, hlm.503.

<sup>45</sup> *Ibid.*, hlm.229-232

dana selama tenggang waktu perjanjian kredit, yang berarti pula batas hak debitur untuk melakukan penarikan pinjaman; (iii) merupakan penetapan besarnya nilai agunan yang harus diserahkan, dasar perhitungan penetapan besarnya provisi atau *commitment fee*; (iv) merupakan batas dikenakannya denda kelebihan tarik (*due draft*).

- (c) Klausul Mengenai Jangka Waktu Kredit. Klausul ini penting mengenai beberapa hal, yaitu: (i) merupakan batas waktu bagi bank, kapan keharusan menyediakan dana sebesar maksimum kredit berakhir dan sesudah dilewatinya jangka waktu ini sehingga menimbulkan hak bagi pengembalian kredit dari nasabah; (ii) merupakan batas waktu kapan bank boleh melakukan teguran-teguran kepada debitur jika tidak memenuhi kewajiban tepat pada waktunya. (iii) merupakan suatu masa yang tepat bagi bank untuk melakukan *review* atau analisa kembali apakah fasilitas kredit itu perlu diperpanjang atau perlu segera ditagih kembali.
- (d) Klausul Mengenai Bunga Pinjaman (*Interest Clause*). Klausul ini diatur secara tegas dalam perjanjian kredit dengan maksud untuk: (i) memberikan kepastian mengenai hak bank untuk memungut bunga pinjaman dengan jumlah yang sudah disepakati bersama karena bunga merupakan penghasilan bank yang baik secara langsung maupun tidak langsung akan diperhitungkan dengan biaya dana untuk penyediaan fasilitas kredit tersebut; (ii) pengesahan pemungutan bunga di atas 6% per tahun. Dengan mendasarkan pada pedoman keterangan pasal 1765 dan pasal 1767 KUH Perdata yang memungkinkan pemungutan bunga pinjaman di atas 6% per tahun asalkan diperjanjikan secara tertulis.
- (e) Klausul Mengenai Barang Agunan Kredit. Klausul ini bertujuan agar debitur tidak melakukan penarikan atau penggantian barang jaminan secara sepihak, tetapi harus ada kesepakatan dengan pihak bank.
- (f) Klausul Asuransi (*Insurance Clause*). Klausul ini bertujuan untuk pengalihan risiko yang mungkin terjadi, baik atas barang agunan maupun atas kredit sendiri. Adapun materinya perlu memuat mengenai maskapai asuransi yang ditunjuk, premi asuransinya, keharusan polis asuransi untuk disimpan di bank, dan sebagainya.

- (g) Klausul Mengenai Tindakan Yang Dilarang Oleh Bank (*Negative Clause*). Klausul ini terdiri atas berbagai macam hal yang mempunyai akibat yuridis dan ekonomi bagi pengamanan kepentingan bank sebagai tujuan utama. Adapun contoh tindakan yang tidak diperkenankan dilakukan oleh debitur, diantaranya: (i) larangan meminta kredit kepada pihak lain tanpa seijin bank; (ii) larangan mengubah bentuk hukum perusahaan debitur tanpa seijin bank (iii) larangan membubarkan perusahaan tanpa seijin bank.
- (h) *Tiger Clause* atau *Opeisbaar Clause*. Klausul ini mengatur hak bank untuk mengakhiri perjanjian kredit secara sepihak walaupun jangka waktu perjanjian kredit itu belum berakhir.
- (i) Klausul Mengenai Denda. Klausul ini dimaksudkan untuk mempertegas hak-hak bank untuk melakukan pungutan, baik mengenai besarnya atau kondisinya.
- (j) *Expence Clause*. Klausul ini mengatur mengenai beban biaya dan ongkos yang timbul sebagai akibat pemberian kredit, yang biasanya dibebankan kepada nasabah dan meliputi antara lain biaya pengikatan jaminan, pembuatan akta-akta perjanjian kredit, pengakuan hutang dan penagihan kredit.
- (k) *Debet Authorization Clause*. Pendebitan rekening debitur haruslah dengan seijin debitur.
- (l) *Representation and Warranties*. Klausul ini sering juga disebut dengan istilah *materiil adverse change clause*. Maksudnya adalah pihak debitur menjanjikan dan menjamin bahwa semua data dan informasi yang diberikan kepada bank adalah benar dan tidak diputarbalikkan.
- (m) Klausul Ketaatan Pada Ketentuan Bank. Klausul ini dimaksudkan untuk menjaga kemungkinan jika terdapat hal-hal yang tidak diperjanjikan secara khusus tetapi dipandang perlu, maka sudah dianggap telah diperjanjikan secara umum. Misalnya mengenai masalah tempat dan waktu melakukan pencairan dan penyeteroran kredit, penggunaan formulir, format surat, konfirmasi atau pemberitahuan saldo rekening bulanan.
- (n) *Miscellaneous* atau *Broiler Plate Provision*. Merupakan pasal-pasal tambahan yang sudah baku.

(o) *Dispute Settlement (Alternative Dispute Resolution)*. Klausul mengenai metode penyelesaian perselisihan antara kreditur dan debitur (jika terjadi).

(p) Pasal Penutup. Pasal penutup memuat eksemplar perjanjian kredit yang maksudnya mengadakan pengaturan mengenai jumlah alat bukti dan tanggal mulai berlakunya perjanjian kredit serta penandatanganan perjanjian kredit.

Dengan demikian dapat disimpulkan bahwa dalam perjanjian kredit minimal sepatutnya memuat klausul-klausul yang berhubungan dengan:

- (a) Ketentuan pokok perjanjian kredit yaitu jumlah maksimum kredit, jangka waktu kredit, tujuan kredit, bentuk kredit dan batas ijin penarikan.
- (b) Ketentuan mulai berlakunya perjanjian dan penandatanganan perjanjian kredit.
- (c) Suku bunga serta biaya-biaya yang muncul sehubungan dengan pelaksanaan perjanjian kredit seperti biaya provisi atau *commitment fee*, denda, biaya-biaya *facility agent, lawyer, notary public*, bea materai, kelebihan tarik.
- (d) Kuasa bank kepada debitur untuk melakukan pembebanan atas rekening giro dan/atau rekening kredit dari debitur untuk bunga denda apabila terjadi kelebihan tarik dan bunga tunggakan serta segala macam biaya yang muncul akibat pelaksanaan hal-hal yang ditentukan yang menjadi beban debitur.
- (e) *Representation and warranties*, yaitu pernyataan dan jaminan dari debitur atas pembebanan segala harta kekayaannya yang menjadi jaminan kredit untuk pelunasan kreditnya.
- (f) *Conditions precedent*, yaitu syarat-syarat tangguh yang harus dipenuhi terlebih dahulu oleh debitur agar dapat menarik kredit untuk pertama kalinya.
- (g) Agunan/jaminan kredit dan asuransinya
- (h) *Affirmative and negative covenant*, yaitu kewajiban-kewajiban dan pembatasan tindakan debitur selama perjanjian kredit masih berlaku.
- (i) Tindakan-tindakan bank dalam rangka pengawasan dan penyelamatan kredit.
- (j) *Event of default/ trigger clause/ opeisbar clause/wanprestasi/cidera janji*, yaitu tindakan-tindakan bank sewaktu-waktu dapat mengakhiri perjanjian kredit dan untuk seketika akan menagih semua hutang pokok beserta bunga dan biaya-biaya lain yang muncul.
- (k) Pilihan domisili/forum/hukum apabila terjadi perselisihan dalam penyelesaian kredit antara kreditur dan debitur.

Klausul-klausul diatas pada dasarnya tidak terlepas pada unsur-unsur kepatutan dan asas umum hukum perjanjian yaitu itikad baik. Dengan demikian debitur atau pihak kreditur yang bersikap tidak jujur atau tidak beritikad baik, maka tidak perlu diberi perlindungan.

Inti dari suatu perjanjian adalah kewajiban untuk melakukan apa yang telah disepakati oleh masing-masing pihak yang saling mengikatkan diri, karena semua perjanjian yang dibuat secara sah, berlaku seperti undang-undang bagi mereka yang membuatnya (Pasal 1338 KUH Perdata). Apabila debitur tidak melakukan apa yang diperjanjikan maka dapat dikatakan ia telah lalai atau ingkar janji atau *wanprestasi*. *Wanprestasi* berasal dari bahasa belanda yang berarti prestasi yang buruk.

*Wanprestasi* seorang debitur dapat berupa 4 macam, yaitu<sup>46</sup>:

- (a) Tidak melakukan sesuatu yang disanggupi akan dilakukan.
- (b) Melaksanakan apa yang diperjanjikan namun tidak sesuai dengan apa yang diperjanjikan.
- (c) Melakukan apa yang diperjanjikan tetapi terlambat.
- (d) Melakukan sesuatu yang menurut perjanjian tidak boleh dilakukan.

Terhadap kelalaian debitur tersebut dapat diancamkan beberapa sanksi atau hukuman yaitu:

- (a) Membayar kerugian yang diderita oleh kreditur atau disebut dengan ganti rugi.
- (b) Pembatalan perjanjian atau juga dinamakan pemecahan perjanjian.
- (c) Peralihan risiko.
- (d) Membayar biaya perkara apabila sampai diperkarakan di depan hakim.

*Wanprestasi* ini merupakan salah satu bentuk dari risiko kredit yang mendasar dimana salah satu upaya menanggulangi risiko akibat *wanprestasi* adalah dengan *collateral* atau agunan atau jaminan. Jaminan ini diperlukan untuk menanggung pembayaran apabila debitur lalai atau ingkar janji atau gagal bayar atau *wanprestasi* yang mengakitatnya tidak dibayarnya hutang pokok dan bunga oleh debitur kepada bank. Jaminan pada dasarnya membantu mempertinggi tingkat keyakinan bank bahwa debitur mampu melunasi kredit, karena jaminan ini berfungsi untuk menjamin pelunasan hutang jika ternyata dikemudian hari debitur

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<sup>46</sup> Subekti, *op. cit.*, hlm. 45.

tidak dapat melunasinya. Jaminan diatur di dalam Buku II KUH Perdata. Di dalam hukum jaminan mengatur tentang jaminan piutang seseorang. Hak-hak jaminan berkaitan erat dengan masalah eksekusi. Didalam KUH Perdata tidak ditemukan rumusan tentang jaminan. Petunjuk yang dapat dipakai untuk menentukan rumusan jaminan adalah pasal 1131 dan 1132 KUH Perdata yang mensyaratkan bahwa tanpa diperjanjikan pun seluruh harta kekayaan debitur merupakan jaminan bagi pelunasan hutangnya.<sup>47</sup> Mariam Darus Badruzaman merumuskan jaminan sebagai hak tanggungan yang diberikan oleh seorang debitur dan atau pihak ketiga kepada kreditur jaminan merupakan sifat *accessoir* yaitu perjanjian tambahan yang tergantung pada perjanjian pokoknya. Perjanjian pokok adalah perjanjian pinjam meminjam atau hutang piutang yang diikuti dengan perjanjian tambahan tersebut dimaksudkan agar keamanan kreditur lebih terjamin, dan bentuknya dapat berupa jaminan kebendaan maupun jaminan perorangan. Sifat *accessoir* dari hak jaminan menimbulkan akibat hukum sebagai berikut:

- (a) adanya dan hapusnya perjanjian tambahan tergantung pada perjanjian pokok;
- (b) jika perjanjian pokok batal maka perjanjian tambahan juga batal;
- (c) jika perjanjian pokok beralih karena *cessie*, *subrogatie* maka perjanjian tambahan juga beralih tanpa penyerahan khusus<sup>48</sup>.

Dalam jaminan kredit, terdapat bermacam-macam jenis jaminan, yaitu<sup>49</sup>

- (a) Jaminan umum adalah jaminan yang diberikan bagi kepentingan semua kreditur dan menyangkut semua harta kekayaan debitur. Hal ini diatur dalam Pasal 1131 KUH Perdata yaitu: *“Segala kebendaan si berutang, baik yang bergerak maupun yang tidak bergerak, baik yang sudah ada maupun yang baru akan ada di kemudian hari, menjadi tanggungan untuk segala perikatan perseorangan.”*

Jadi apabila terdapat lebih dari satu kreditur maka otomatis semua harta benda debitur akan digunakan untuk membayar keditur-keditur tersebut. Mana yang akan didahulukan dalam pembayaran tidaklah penting karena walaupun kedudukan mereka seimbang (*concurrent*) kedudukannya, masing-masing akan mendapatkan bagian sesuai dengan piutang-piutangnya.

<sup>47</sup> Frieda Husni Hasbullah, *Hukum Kebendaan Perdata: Hak-hak Yang Memberikan Jaminan Jilid II*, Cetakan kedua, (Jakarta: Ind-Hill-Co, 2005), hlm. 5.

<sup>48</sup> *Ibid.*, hlm. 7.

<sup>49</sup> Hasbullah, *op.cit.*, hlm.7-21

- (b) Jaminan khusus. Undang-undang memungkinkan adanya jaminan khusus, hal ini tersirat dari Pasal 1132 KUH Perdata yaitu: “...kecuali apabila diantara para berpiutang itu ada alasan-alasan yang sah untuk didahulukan”. Kemudian Pasal 1133 KUH Perdata member pernyataan yang lebih tegas yaitu: “Hak untuk didahulukan diantara orang-orang berpiutang terbit dari hak istimewa, dari gadai dan dari hipotik”.

Jadi dalam jaminan khusus mengandung unsur *privilage* yaitu hak kreditur untuk didahulukan pembayaran utangnya dibandingkan kreditur lainnya. Jaminan khusus yang diatur dalam KUH Perdata apabila dilihat dari objeknya dapat berupa jaminan barang (disebut sebagai jaminan kebendaan atau *zakelijke - zekerheidsrechten*) atau orang (disebut sebagai jaminan perorangan atau *persoonlijke zekerheidsrechten/ personal guaranty*). Untuk jaminan berupa barang, debitur akan menyediakan barang-barang tertentu yang kemudian dibuat perjanjian jaminannya. Sehingga apabila debitur *wanprestasi* barang tersebut akan dijual untuk pembayaran hutang. Sedangkan jaminan berupa orang adalah ada orang yang menanggung utang orang lain dengan cara apabila debitur *wanprestasi* maka barang-barang si penjamin utang bersedia untuk dijual untuk pembayaran hutang debitur tersebut.

Penjelasan secara lebih terperinci tentang jaminan kebendaan dan perorangan adalah sebagai berikut:

- (a) Jaminan perorangan (*personal guaranty*). Merupakan jaminan yang diberikan oleh pihak ketiga atau *guarantee* kepada kreditur, yang menyatakan pihak ketiga tersebut akan membayar kembali dana kredit yang dipinjam oleh debitur, apabila debitur tidak mampu memenuhi kewajibannya untuk membayar kembali dana kredit tersebut. Jaminan seperti itu diatur dalam Pasal 1820 KUH Perdata yaitu disebut penanggungan: “Penanggungan adalah suatu perjanjian dengan mana seorang pihak ketiga, guna kepentingan si berpiutang, mengikatkan diri untuk memenuhi perikatan si berpiutang manakala orang ini sendiri tidak memenuhinya”.

Dalam praktek, jaminan perorangan ini ada yang dikenal sebagai *company guarantee*. *Company guarantee* ini biasanya berbentuk surat keterangan dari

pimpinan perusahaan perihal keabsahan, kedudukan, dan penghasilan dari pihak yang meminta jaminan<sup>50</sup>.

Dalam perjanjian penanggungan ini, harta benda si penanggung atau penjamin dapat disita dan dilelang menurut ketentuan-ketentuan perihal pelaksanaan atau eksekusi putusan pengadilan<sup>51</sup>

- (b) Jaminan kebendaan. Yaitu jaminan yang memberikan kepada kreditur atas suatu kebendaan milik debitur hak untuk memanfaatkan benda tersebut jika debitur melakukan wanprestasi<sup>52</sup>. Jika debitur wanprestasi maka dalam jaminan kebendaan kreditur mempunyai hak yang didahulukan dalam pengambilan pelunasan daripada kreditur-kreditur lain, atas hasil penjualan suatu benda tertentu atau sekelompok benda tertentu yang secara khusus diperikatkan.<sup>53</sup> Macamnya jaminan kebendaan adalah sebagai berikut:

- (i) Gadai. Diatur didalam Bab XX Buku II KUH Perdata Pasal 1150 sampai dengan Pasal 1160. Pasal 1150 KUH Perdata menyatakan definisi tentang gadai yaitu “*suatu hak jaminan yang diberikan oleh debitur kepada kreditur untuk mengambil pelunasan dari barang tersebut secara terlebih dahulu daripada kreditur lainnya*”. Objek dari gadai sendiri adalah benda bergerak, yang menurut pasal 1150, 1152 ayat (1) dan 1153 KUH Perdata dapat berupa benda bergerak berwujud kecuali kapal-kapal yang terdaftar pada register kapal maupun benda bergerak tidak berwujud/tak bertubuh yang berupa hak-hak.<sup>54</sup> Sedangkan subyek dari gadai tidak ditetapkan, artinya siapapun baik manusia selaku pribadi (*natuurlijke person*) maupun setiap badan hukum (*rechts person*) dapat menggadaikan bendanya.

Hal terpenting dalam gadai adalah gadai memiliki syarat *inbezitstelling*, sebagaimana diatur dalam pasal 1152 ayat (2) KUH Perdata yaitu adanya kewajiban melepaskan secara fisik benda-benda dari kekuasaan si pemberi gadai ke pemegang gadai.

<sup>50</sup> Sentosa Sembiring, *Hukum Perbankan*, (Bandung: Mandar Maju, 2000), hlm. 72-73.

<sup>51</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, Edisi Revisi, Cet.5 (Jakarta: Kencana, 2009), hlm.74

<sup>52</sup> Hasbullah, *op.cit.*, hlm.17.

<sup>53</sup> J.Satrio, *Hukum Jaminan Hak jaminan Kebendaan*, (Bandung: PT Citra Aditya Bakti, 2007), hlm. 17.

<sup>54</sup> Hasbullah, *op.cit.*, hlm.23.



Pada pelaksanaannya gadai berupa benda bergerak berwujud dilakukan dengan membuat perjanjian gadai baik secara otentik atau dibawah tangan atau secara lisan yang menyatakan bahwa kreditur telah menyerahkan sejumlah uang kepada debitur dan debitur sebagai pemberi gadai menyerahkan benda bergerak yang digadaikan, diikuti dengan penyerahan benda bergerak yang digadaikan secara nyata. Gadai berupa benda bergerak tidak berwujud berbentuk piutang pembawa dilakukan dengan membuat perjanjian gadai serupa diikuti dengan penyerahan surat piutang yang dibuat oleh debitur dimana didalamnya menerangkan debitur memiliki piutang sejumlah uang tertentu, gadai berupa piutang atas unjuk dilakukan dengan membuat perjanjian gadai serupa diikuti dengan endosemen atas nama pemegang gadai serta gadai berupa piutang atas nama dilakukan dengan membuat perjanjian gadai serupa diikuti dengan melakukan pemberitahuan oleh debitur tentang adanya gadai kepada orang yang memiliki hutang kepadanya.

(ii) Hipotik. Diatur di dalam Buku II KUH Perdata Bab XXI Pasal 1162 sampai dengan 1232. Namun, sejak Undang-undang Nomor 4 Tahun 1996 Tentang Hak Tangungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah (“UUHT”), maka hipotik atas tanah dan segala benda-benda yang berkaitan dengan tanah menjadi tidak berlaku lagi. Saat ini, hipotik berlaku hanya terhadap kapal terbang, helikopter, serta kapal laut dengan bobot 20 m<sup>3</sup> keatas. Pasal 1175 KUH Perdata mengatur bahwa hipotik hanya dapat dibebankan terhadap benda-benda yang telah ada.

(iii) Fidusia. Fidusia/Fiducia atau disebut dengan *Fiduciare Eigendoms Overdracht* berasal dari kata fides yang berarti kepercayaan. Fidusia ini tidak diatur dalam KUH Perdata, merupakan salah satu lembaga jaminan yang dulu pernah hanya dapat dijaminan atas benda-benda bergerak seperti pada lembaga gadai<sup>55</sup>. Fidusia ini sebenarnya timbul atas dasar kebutuhan masyarakat akan kredit dengan jaminan benda-

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<sup>55</sup> *Ibid.*, hlm.43.

benda bergerak tetapi masih memerlukan benda-benda tersebut untuk dapat dipakai sendiri. Jika menggunakan lembaga gadai tentu benda-benda itu tidak dapat dipergunakan sendiri karena terbentur syarat *inbezitstelling* (pasal 1152 ayat (2) KUH Perdata). Fidusia di Indonesia saat ini diatur didalam Undang-undang Nomor 42 Tahun 1999 tentang jaminan fidusia (UU Fidusia). Pasal 1 angka (2) dan (4) UU Fidusia menyatakan bahwa yang dapat dijadikan objek jaminan fidusia adalah benda yang dapat dimiliki dan dialihkan baik berwujud maupun tidak berwujud, yang terdaftar maupun tidak terdaftar, yang bergerak maupun tidak bergerak yang tidak dapat dibebani hipotik atau hak tanggungan. Berdasarkan Pasal 5 UU Fidusia, pengikatan fidusia dilakukan dengan cara membuat akta notaris dalam bahasa Indonesia disebut sebagai Akta Jaminan Fidusia. Akta ini minimal memuat identitas pemberi dan penerima fidusia, data perjanjian pokok, uraian benda yang menjadi objek jaminan fidusia, nilai penjaminan dan nilai benda yang menjadi objek jaminan fidusia. Berdasarkan Pasal 11 UU Fidusia, Pembebanan jaminan fidusia ini wajib didaftarkan di Kantor Pendaftaran Fidusia. Untuk wilayah DKI Jakarta, jaminan fidusia didaftarkan di Departemen Hukum dan Hak Asasi Manusia. Fidusia lahir pada tanggal dicatatkannya jaminan fidusia pada Buku Daftar Fidusia. Sebagai bukti bagi kreditur ia merupakan pemegang jaminan fidusia adalah pada tanggal yang sama pada tanggal permohonan pendaftaran diterbitkan Sertifikat Jaminan Fidusia yang memuat irah-irah “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa”. Apabila debitur *wanprestasi* pada masa yang akan datang, berdasarkan Pasal 27 UU Fidusia, krediturnya mendapat hak yang didahulukan terhadap kreditur lain untuk mengambil pelunasan piutang atas hasil eksekusi benda yang menjadi objek fidusia. Cara eksekusinya adalah kreditur dapat secara langsung tanpa melalui pengadilan menjual benda yang menjadi objek jaminan fidusia (akibat adanya title eksekutorial yaitu dalam sertifikat jaminan fidusia dicantumkan kata-kata “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa”).

Penjualan tersebut dapat dilakukan melalui pelelangan umum atau penjualan dibawah tangan. Apabila hutang pokok telah lunas maka jaminan fidusia akan hapus. Sehubungan dengan hal tersebut, kreditur sebagai penerima fidusia akan memberitahukan kepada Kantor Pendaftaran Fidusia tentang hapusnya jaminan fidusia dengan melampirkan pernyataan mengenai hapusnya jaminan fidusia, maka Kantor Pendaftaran akan mencoret pencatatan jaminan dari Buku Daftar kemudian menerbitkan surat keterangan yang menyatakan Sertifikat Jaminan Fidusia sudah tidak berlaku lagi.

- (iv) Hak Tanggungan. Bentuk jaminan yang disebut Hak Tanggungan, lahir untuk melaksanakan amanat di dalam Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (“UUPA”). Dengan berlakunya UUPA, dalam rangka mengadakan unifikasi hukum tanah, maka disediakan hak jaminan khusus atas tanah yang baru, diberi nama Hak Tanggungan. Hak tanggungan di Indonesia saat ini diatur didalam Undang-undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah (“UUHT”). Berdasarkan pasal 1 UUHT, Hak tanggungan adalah hak jaminan yang dibebankan pada hak atas tanah berikut atau tidak berikut benda-benda lain yang merupakan satu kesatuan dengan tanah itu, untuk pelunasan hutang tertentu, yang memberikan kedudukan yang diutamakan kepada kreditur tertentu terhadap kreditur-kreditur lain. Hal ini berarti Hak Tanggungan memberikan kedudukan yang diutamakan (*preference*) kepada kreditur, artinya kreditur tersebut dapat memperoleh pelunasan terlebih dahulu atas piutangnya dari kreditur-kreditur lain. Jadi, Hak tanggungan berkaitan dengan hak jaminan khusus atas tanah, dapat dibebankan tidak hanya terhadap benda-benda yang telah ada tetapi juga terhadap benda-benda yang akan ada<sup>56</sup>. Di dalam Hak Tanggungan juga dimungkinkan pembebanan atas bangunan, tanaman atau hasil karya yang telah ada atau akan ada yang merupakan satu

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<sup>56</sup> Indonesia, *Undang-Undang Hak Tanggungan*, UU No. 4 tahun 1996, Ps. 4 ayat (4).

kesatuan dengan tanah tersebut yang tidak dimiliki oleh pemegang hak atas tanah (dimiliki oleh orang lain), dengan syarat harus dilakukan penandatanganan pada Akta Pemberian Hak Tanggungan oleh pemiliknya atau yang diberi kuasa untuk itu olehnya dengan akta otentik.<sup>57</sup> Jadi dapat disimpulkan bahwa hak tanggungan memiliki ciri-ciri sebagai berikut:

- (A) *Droit de preference* (Pasal 1 angka 1 dan Pasal 20 ayat (1) UUHT).
- (B) *Droit de suite* (Pasal 7 UUHT).
- (C) Memenuhi asas spesialisitas dan asas publisitas. Asas spesialisitas yaitu asas yang mewajibkan dalam muatan akta pemberian hak tanggungan harus mencantumkan ketentuan-ketentuan seperti ditegaskan dalam Pasal 11 UUHT. Sedangkan asas publisitas yaitu asas yang mewajibkan didaftarkannya hak tanggungan pada kantor pertanahan setempat (Pasal 13 UUHT).
- (D) Mudah dan pasti pelaksanaan eksekusinya.
- (E) Obyek hak tanggungan tidak masuk dalam boedel kepailitan pemberi hak tanggungan sebelum kreditor pemegang hak tanggungan mengambil pelunasan dari hasil penjualan obyek hak tanggungan (Pasal 21 UUHT).

Berdasarkan Pasal 10 ayat (2) pengikatan jaminan dengan Hak Tanggungan dilakukan dengan cara membuat Akta Pembebanan Hak Tanggungan (APHT) oleh Pejabat Pembuat Akta Tanah (PPAT). Akta ini wajib memuat nama dan identitas pemegang dan pemberi Hak Tanggungan, domisili para pihak atau domisili kantor PPAT, penunjukan secara jelas utang-utang yang dijamin, nilai tanggungan dan uraian jelas objek Hak Tanggungan. Berdasarkan Pasal 13 UUHT, pembebanan jaminan dengan Hak Tanggungan wajib didaftarkan di Kantor Pertanahan selambat-lambatnya 7 (tujuh) hari setelah penandatanganan APHT. Hak Tanggungan lahir pada hari tanggal pencatatan jaminan Hak Tanggungan di buku tanah oleh Kantor

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<sup>57</sup> *Ibid.*, Ps. 4 ayat (4) dan Ps. 5.

Pertanahan, kemudian Kantor Pertanahan akan menyalin catatan tersebut pada sertifikat hak atas tanah yang bersangkutan. Dan menerbitkan Sertifikat Hak Tanggungan yang memuat irah-irah “Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa”. Apabila debitur *wanprestasi* pada masa yang akan datang, berdasarkan Pasal 1 UUHT krediturnya mendapat hak yang didahulukan terhadap kreditur lain untuk mengambil pelunasan piutang atas hasil eksekusi benda yang menjadi objek Hak Tanggungan. Berdasarkan Pasal 20 UUUHT, cara eksekusinya adalah kreditur dapat secara langsung menjual objek Hak Tanggungan melalui pelelangan umum atau penjualan dibawah tangan. Apabila hutang pokok telah lunas maka jaminan akan hapus dan Kantor Pertanahan akan melakukan pencoretan pada catatan (*roya*) di buku tanah dan sertifikat hak atas tanahnya serta sertifikat Hak Tanggungan ditarik dan dinyatakan tidak berlaku. Permohonan pencoretan tersebut dapat diajukan oleh pihak yang berkepentingan dengan melampirkan sertifikat Hak Tanggungan yang telah diberi catatan oleh kreditur bahwa Hak Tanggungan hapus karena piutang yang dijamin pelunasannya dengan Hak Tanggungan itu sudah lunas, atau pernyataan tertulis dari kreditur bahwa Hak Tanggungan telah hapus karena piutang yang dijamin pelunasannya dengan Hak Tanggungan itu telah lunas atau karena kreditur melepaskan Hak Tanggungan yang bersangkutan.

#### **2.1.1.2. Risiko Dan Mitigasi Risiko**

Dalam hubungan perikatan antara debitur dan kreditur tidak terlepas memiliki kemungkinan muncul suatu risiko. Juga dalam rangka menjalankan usahanya, Bank dan Perusahaan Menara Telekomunikasi memiliki risiko. Risiko yang dimaksud adalah peluang terjadinya kerugian. Menurut Pasal 1 ayat 2 Peraturan Bank Indonesia Nomor 5/8/PBI/2003 tentang Penerapan Risiko Bagi Bank Umum: “*risiko adalah potensi terjadinya suatu peristiwa (events) yang dapat menimbulkan kerugian bank*”.

Risiko yang dapat terjadi dalam hubungan perikatan antara debitur dan kreditur adalah (a) risiko kredit (*default risk*). Yaitu suatu risiko akibat kegagalan atau ketidakmampuan nasabah mengembalikan jumlah pinjaman yang diterima dari bank beserta bunganya sesuai dengan jangka waktu yang telah ditentukan dan/atau dijadwalkan; (b) pihak kreditur sendiri yang telah lalai tidak melaksanakan prinsip kehati-hatian dalam memberikan fasilitas kredit tersebut kepada debitur; (c) jika ditetapkannya suatu kebijakan oleh pemerintah baik pemerintah pusat atau daerah yang mengakibatkan perjanjian kredit tidak dapat dilaksanakan baik seluruh atau sebagian klausulnya; (d) terjadi peristiwa *force majeure* atau keadaan memaksa<sup>58</sup>, seperti bencana alam yang mengakibatkan salah satu atau kedua belah pihak tidak dapat melaksanakan hak dan kewajibannya berdasarkan perjanjian kredit. Misalnya muncul gempa bumi dasyat yang mengakibatkan cabang bank yang memberikan pinjaman hancur sehingga bank harus melakukan perhitungan ulang perihal pendanaan fasilitas kredit.

Sehubungan dengan risiko ini, Pasal 1545 KUH Perdata mengatur:

*“Jika suatu barang tertentu, yang telah diperjanjikan untuk ditukar, musnah diluar salah pemilikinya, maka perjanjian dianggap sebagai gugur, dan siapa yang dari pihaknya telah memenuhi perjanjian, dapat menuntut kembali barang yang ia telah berikan dalam tukar menukar”.*

Menurut Prof.Subekti, risiko disini diletakkan diatas pundak si pemilik objek perjanjian, dan hapusnya objek perjanjian sebelum penyerahan membawa pembatalan perjanjian. Asas inilah yang harus dipandang sebagai asas yang berlaku pada umumnya terhadap perjanjian-perjanjian yang meletakkan kewajiban pada kedua belah pihak. Beliau juga berpendapat bahwa risiko adalah kewajiban memikul kerugian yang disebabkan karena suatu kejadian di luar kesalahan salah satu pihak. Artinya persoalan risiko itu berpokok pangkal pada terjadinya suatu peristiwa di luar kesalahan salah satu pihak yang mengadakan perjanjian. Dengan kata lain, persoalan risiko berpokok pangkal pada kejadian yang dalam Hukum

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<sup>58</sup> Menurut Subekti, *Hukum Perjanjian*, hlm. 56: dulu para sarjana berpendapat bahwa keadaan memaksa berarti sudah tidak mungkin sama sekali bagi debitur untuk memenuhi kewajibannya. Pikiran mereka tertuju pada bencana-bencana alam atau kecelakaan-kecelakaan yang sebegitu hebatnya hingga debitur tidak bisa memenuhi janjinya.

Perjanjian dinamakan keadaan memaksa. Persoalan risiko adalah buntut dari suatu keadaan memaksa, sebagaimana ganti rugi adalah buntut dari *wanprestasi*.<sup>59</sup>

Risiko Bank adalah keterbukaan terhadap kemungkinan rugi (*exposure to the change of loss*). Menurut Peraturan Bank Indonesia, risiko bisnis Bank adalah risiko yang berkaitan dengan pengelolaan usaha Bank sebagai perantara keuangan. Sejalan dengan perkembangan dunia usaha, risiko bisnis yang dihadapi juga berkembang secara luas, antara lain mencakup<sup>60</sup>:

- (a) Risiko Kredit. Risiko kredit diartikan sebagai risiko yang timbul sebagai akibat kegagalan counterparty memenuhi kewajibannya atau risiko kerugian yang berhubungan dengan kemungkinan bahwa suatu Counterparty akan gagal untuk memenuhi kewajiban-kewajibannya ketika jatuh tempo (Basel II).
- (b) Risiko Pasar. Risiko yang muncul yang disebabkan oleh adanya pergerakan variabel pasar (adverse movement) dari portofolio yang dimiliki oleh Bank, yang dapat merugikan bank. Variabel pasar dalam hal ini adalah suku bunga dan nilai tukar serta termasuk perubahan harga option. Risiko pasar antara lain terdapat pada aktivitas fungsional Bank seperti kegiatan tresuri dan investasi dalam bentuk surat berharga dan pasar uang maupun penyertaan pada lembaga keuangan lainnya, penyediaan dana, dan kegiatan pendanaan dan penerbitan surat hutang, serta kegiatan pembiayaan perdagangan.
- (c) Risiko Likuiditas. Risiko yang antara lain disebabkan karena bank tidak mampu memenuhi kewajiban yang telah jatuh waktu. Risiko likuiditas dikategorikan menjadi: (i) Risiko Likuiditas Pasar, yaitu risiko yang timbul karena Bank tidak mampu melakukan Offsetting posisi tertentu dengan harga pasar karena kondisi likuiditas pasar yang tidak memadai atau gangguan pasar (market disruption); (ii) Risiko likuiditas pendanaan, yaitu risiko yang timbul karena bank tidak mampu mencairkan asetnya atau memperoleh pendanaan dari sumber dana lain.
- (d) Risiko Operasional. Risiko yang antara lain disebabkan oleh adanya ketidakcukupan dan atau tidak berfungsinya proses internal, kesalahan manusia, kegagalan sistem, atau adanya problem eksternal yang

<sup>59</sup> Subekti, *op. cit.*, hlm.59.

<sup>60</sup> Ferry N. Idroes, *Manajemen Risiko Perbankan: Pemahaman Pendekatan 3 Pilar Kesepakatan Basel II Terkait Aplikasi Regulasi dan Pelaksanaannya di Indonesia*, Edisi 1 (Jakarta: Rajawali Pers, 2008), hlm. 22-23.

mempengaruhi operasional Bank. Risiko operasional melekat pada setiap aktivitas fungsional Bank, seperti kegiatan perkreditan, treasury dan investasi, operasional dan jasa, pembiayaan perdagangan, pendanaan dan instrumen hutang, teknologi sistem informasi dan sistem informasi manajemen dan pengelolaan sumber daya manusia.

- (e) Risiko Kepatuhan. Risiko akibat Bank tidak mematuhi dan/atau tidak melaksanakan peraturan perundang-undangan dan ketentuan yang berlaku.
- (f) Risiko Hukum. Risiko yang disebabkan oleh adanya kelemahan aspek yuridis. Kelemahan aspek yuridis antara lain disebabkan oleh adanya tuntutan hukum, ketiadaan peraturan perundang-undangan yang mendukung atau kelemahan perikatan seperti tidak dipenuhinya syarat sahnya kontrak dan pengikatan agunan yang tidak sempurna dari berbagai risiko tersebut.
- (g) Risiko Reputasi. Risiko akibat menurunnya tingkat kepercayaan *stakeholder* yang bersumber dari persepsi negatif terhadap Bank.
- (h) Risiko Strategik. Risiko akibat ketidaktepatan dalam pengambilan dan/atau pelaksanaan suatu keputusan strategik serta kegagalan dalam mengantisipasi perubahan lingkungan bisnis.

Dari semua jenis risiko yang dihadapi Bank, risiko kredit atau *credit risk* memang merupakan jenis risiko yang sangat mendasar dari semua *product market risk* suatu bank, karena risiko ini merupakan *erosion of value* atau erosi nilai yang disebabkan oleh terjadinya wanprestasi atau *non payment* dari debitur. Debitur tidak mau atau tidak mampu memenuhi kewajiban membayar bunga dan hutang pokok/angsuran hutang pokok kreditnya atau “tidak prospek untuk membayar” (tidak memperlihatkan tanda-tanda mampu membayar karena gagal usaha). Dihitung dari *time value of money* bank (TVOM), *delay of payment* saja sesungguhnya sudah mendatangkan dampak kerugian bagi bank.<sup>61</sup> Kredit merupakan proses pembentukan aset bank. Kredit merupakan *risk asset* bagi bank karena aset bank dikuasai oleh pihak di luar bank yaitu para debitur. Setiap bank menginginkan dan berusaha keras agar kualitas *risk asset* ini sehat dan arti produktif dan *collectable*. Namun kredit yang diberikan kepada para debitur selalu ada risiko. Berupa kredit tidak dapat kembali tidak tepat pada waktunya yang

<sup>61</sup> Muhamad Tjoekam, *Perkreditan Bisnis Inti Bank Komersial*, (Jakarta: PT Gramedia Pustaka Utama, 1999), hlm.59.



dinamakan kredit bermasalah atau *non performing loan*. Untuk itu perlu dilakukan pengecekan secara cermat berdasarkan peraturan-peraturan yang berlaku di Indonesia, sehingga mitigasi risiko kredit bank dapat ditekan sekecil mungkin. Risiko kredit merupakan risiko yang paling signifikan dari semua risiko yang menyebabkan kerugian potensial. Secara garis besar, risiko kredit dapat dibagi menjadi 3 (tiga): risiko *default*, risiko *exposure*, dan risiko *recovery*. Risiko kredit dapat bersumber dari berbagai aktivitas Bank, antara lain: pemberian kredit, transaksi *derivatif*, perdagangan instrumen keuangan, serta aktivitas Bank yang lain, termasuk yang tercatat dalam *banking book* maupun *trading book*.

Menurut Peraturan Bank Indonesia Nomor 11/25/PBI/2009 tentang Perubahan Atas Peraturan Bank Indonesia tentang Penerapan Manajemen Risiko Bagi Bank Umum (“PBI No. 11/25/PBI/2009”), produk dan aktivitas bank sudah semakin kompleks oleh karena itu peningkatan risiko tersebut perlu diimbangi dengan diwajibkannya bank untuk menerapkan sistem manajemen risiko. Dinyatakan bahwa proses Manajemen Risiko Bank sekurang-kurangnya mencakup pendekatan pengukuran dan penilaian risiko, struktur limit dan pedoman serta parameter pengelolaan risiko, sistem informasi manajemen dan pelaporannya, serta evaluasi dan kaji ulang manajemen. Berdasarkan PBI No. 11/25/PBI/2009 Pasal 1 angka 5:

*“Manajemen Risiko adalah serangkaian metodologi dan prosedur yang digunakan untuk mengidentifikasi, mengukur, memantau, dan mengendalikan Risiko yang timbul dari seluruh kegiatan usaha Bank”.*

Bank perlu melakukan manajemen terhadap risiko kredit yang melekat pada seluruh portofolio, yaitu dengan mengidentifikasi, mengukur, memonitor, mengontrol risiko kredit, serta memastikan modal yang tersedia cukup, dan dapat diperoleh kompensasi yang sesuai atas risiko yang timbul.

Beberapa upaya yang dapat dilakukan bank untuk meminimalisir risiko yang ditanggung oleh bank sehubungan menjalankan usahanya adalah:

- (a) Pengawasan oleh Bank Indonesia
- (b) Pegawai bank harus bersertifikasi manajemen risiko

- (c) Melaksanakan prinsip kehati-hatian yang diamanatkan oleh bank Indonesia melalui Peraturan Bank Indonesia Nomor 3/10/PBI/2001 tentang Penerapan Prinsip Mengenal Nasabah (*Know Your Customer Principles*) yang diubah melalui Peraturan Bank Indonesia Nomor 3/23/PBI/2001 tanggal 13 Desember 2011 (PBI No. 3/10/PBI/2001).

Khusus mengenai risiko bisnis Perusahaan Menara Telekomunikasi, penulis akan melakukan pembahasan di bagian yang terpisah yaitu pada bagian 2.2.2 tentang Perusahaan Dan Risiko Perusahaan Menara Telekomunikasi.

### **2.1.2. Peraturan Terkait Fasilitas Kredit**

Sehubungan dengan adanya kegiatan perkreditan, pemerintah juga menyadari betapa pentingnya dilakukan perlindungan baik bagi nasabah ataupun bagi Bank. Terbukti pemerintah sudah banyak menetapkan berbagai peraturan dimulai dari berbentuk undang-undang sampai dengan peraturan yang bersifat teknis baik secara langsung maupun tidak langsung, dalam upaya meminimalisir risiko terkait dengan kegiatan perkreditan ini.

Berikut ini adalah beberapa peraturan yang ditetapkan oleh pemerintah sehubungan untuk meminimalisir risiko terkait dengan kegiatan perkreditan, yaitu:

- Undang-undang Nomor 7 Tahun 1992 tentang Perbankan yang diubah melalui Undang-undang Nomor 10 Tahun 1998.
- Peraturan Bank Indonesia Nomor 3/10/PBI/2001 tentang Penerapan Prinsip Mengenal Nasabah (*Know Your Customer Principles*) yang diubah melalui Peraturan Bank Indonesia Nomor 3/23/PBI/2001 tanggal 13 Desember 2011
- Peraturan Bank Indonesia Nomor 5/8/PBI/2003 tentang Penerapan Risiko Bagi Bank Umum
- Peraturan Bank Indonesia Nomor 7/3/PBI/2005 tentang Batas Maksimum Pemberian Kredit Bank Umum yang diubah melalui Peraturan Bank Indonesia Nomor 8/13/PBI/2006.
- Peraturan Bank Indonesia Nomor 13/I/PBI/2011 tentang Penilaian Tingkat Kesehatan Bank Umum.

- Surat Keputusan Direktur Bank Indonesia Nomor 27/162/KEP/DIR tanggal 31 Maret 1995 tentang Pedoman Penyusunan Kebijakan Perkreditan.
- Surat Edaran Bank Indonesia Nomor 3/29/DPNP tanggal 13 Desember 2001 tentang Pedoman Standar Penerapan Prinsip Mengenal Nasabah.
- Surat Edaran Bank Indonesia Nomor 7/14/DPNP tanggal 18 April 2005 tentang Batas Maksimum Pemberian Kredit Bank Umum.

## 2.2. Tinjauan Umum Tentang Telekomunikasi Di Indonesia

Kegiatan ekonomi pada dasarnya adalah satu proses, yaitu sebagai bagian dari usaha manusia dalam rangka pemenuhan kebutuhannya. Dalam kehidupan di masyarakat sederhana, kegiatan memenuhi kebutuhan tentu saja akan dapat dilakukan secara sangat sederhana. Namun, pada suatu masyarakat modern, perkotaan, dimana kehidupannya telah menyebar serta maju dan berkembang, seperti sekarang ini, tidak mungkin jika satu kegiatan atau transaksi ekonomi dapat berlangsung tanpa ada dukungan dari sistem ataupun jasa telekomunikasi. Terlebih pada era sekarang ini, dimana peranan manusia semakin dikurangi dan digantikan oleh teknologi, sehingga ketergantungan pada telekomunikasi sudah semakin dominan. Betapa besar peranan telekomunikasi sekarang ini dalam sektor produksi atau distribusi atau dalam sektor moneter atau perbankan. Tanpa di dukung oleh satu sistem telekomunikasi yang tangguh dan solid, maka semuanya tidak akan dapat berjalan sesuai rencana.

Telekomunikasi sendiri terdiri dari kata "*Tele*" yang berarti jarak jauh (*at a distance*) dan "*Komunikasi*" yang berarti hubungan pertukaran ataupun penyampaian informasi. Teknologi telekomunikasi modern mencakup beberapa tipe komunikasi jarak jauh yang mencakup *audio*, *oral* dan *visual*. Oleh karena itu, umumnya orang mengatakan bahwa *Tele-vision* adalah melihat jarak jauh. *Tele-phone* adalah bicara jarak jauh, dan *tele-graph* adalah menulis jarak jauh. Di Indonesia, telekomunikasi ini diatur dalam Undang-undang Nomor 36 Tahun 1999. Berdasarkan UU Telekomunikasi ditegaskan bahwa Telekomunikasi adalah setiap pemancaran, pengiriman dan atau penerimaan dari setiap jenis informasi

dalam bentuk tandatanda,tulisan, gambar, suara dan bunyi melalui sistem kawat, optik, radio atau sistem elektromagnetik lainnya.

### **2.2.1. Sejarah Penyelenggaraan Telekomunikasi Seluler**

Telekomunikasi seluler mulai dikenal di Indonesia sejak tahun 1984. Teknologi seluler yang digunakan saat itu adalah NMT (Nordic Mobile Telephone) dari Eropa, disusul oleh AMPS (Advance Mobile Phone Sistem), keduanya merupakan sistem analog atau sering disebut sebagai teknologi seluler generasi pertama (1G). Ketika itu, pihak yang menyelenggarakan pelayanan komunikasi dengan NMT adalah PT Telkom bersama dengan PT. Rajasa Hazanah Perkasa yang menggunakan frekuensi 450 MHz. Kerjasama itu dilakukan dengan pola bagi hasil, yaitu Telkom mendapat 30% sedangkan Rajasa 70%. Sedangkan teknologi AMPS yang mempergunakan frekuensi 800 MHz (merupakan cikal bakal CDMA saat ini) di samping teknologi NMT-470 dan modifikasi NMT-450 (berjalan pada frekuensi 470 MHz, khusus untuk Indonesia), dioperasikan oleh PT. Rajasa Hazanah Perkasa. Pada saat itu, teknologi AMPS ditangani oleh empat operator, yaitu PT. Elektrindo Nusantara, PT. Centralindo Panca Sakti, PT Telekomindo Prima Bakti, dan PT. Telkom sendiri. Regulasi yang berlaku saat itu mengharuskan para penyelenggara layanan telephony dasar bermitra dengan PT. Telkom.

Pada Oktober 1993, PT. Telkom memulai *pilot-project* pengembangan teknologi yaitu teknologi GSM (Global System for Mobile) yang membawa teknologi telekomunikasi seluler di Indonesia ke era generasi kedua (2G). Sebelumnya, Indonesia dihadapkan pada dua pilihan: melanjutkan penggunaan teknologi AMPS atau beralih ke GSM yang menggunakan frekuensi 900 MHz. Akhirnya, Menristek saat itu, BJ Habibie, memutuskan untuk menggunakan teknologi GSM pada sistem telekomunikasi digital Indonesia. Pada waktu itu dibangun 3 BTS, yaitu satu di Batam dan dua di Bintan. Tepat pada 31 Desember 1993, pilot-project tersebut sudah on-air. Daerah Batam dipilih sebagai lokasi dengan alasan bahwa Batam adalah daerah yang banyak diminati oleh berbagai kalangan, termasuk warga Singapura dan jarak yang cukup dekat antara Batam dengan Singapura membuat sinyal seluler dari negara itu bisa ditangkap juga di

Batam. Jadi pilot-project ini juga dimaksudkan untuk menutup sinyal dari Singapura sekaligus memberikan layanan komunikasi pada masyarakat Batam. PT. Satelit Palapa Indonesia (Satelindo) muncul sebagai operator GSM pertama di Indonesia, melalui Keputusan Menteri Pariwisata No. PM108/2/MPPT-93, dengan awal pemilik saham adalah PT. Telkom, PT. Indosat, dan PT. Bimagraha Telekomindo, dengan wilayah cakupan layanan meliputi Jakarta dan sekitarnya. Pada periode ini, teknologi NMT dan AMPS mulai ditinggalkan, ditandai dengan tren melonjaknya jumlah pelanggan GSM di Indonesia. Beberapa faktor penyebab lonjakan tersebut antara lain, karena GSM menggunakan SIM card yang memungkinkan pelanggan untuk berganti *handset* tanpa mengganti nomor. Kesuksesan pilot-project di Batam dan Bintan membuat pemerintah memperluas daerah layanan GSM ke provinsi-provinsi lain di Sumatera. Untuk memfasilitasi hal itu, pada 26 Mei 1995 didirikan sebuah perusahaan telekomunikasi bernama Telkomsel, sebagai operator GSM nasional kedua di Indonesia, dengan kepemilikan bersama Satelindo.

Akhir 1996, PT. Excelcomindo Pratama (Excelcom) yang berbasis GSM muncul sebagai operator seluler nasional ketiga. Telkomsel yang sebelumnya telah sukses merambah Medan, Surabaya, Bandung, dan Denpasar dengan produk Kartu Halo, mulai melakukan ekspansi ke Jakarta. Pemerintah juga mulai turut mendukung bisnis seluler dengan dihapuskannya bea masuk telepon seluler. Akibatnya adalah harga telepon seluler dapat ditekan hingga Rp1 juta. Pada 29 Desember 1996, Maluku tercatat menjadi provinsi ke-27 yang dilayani Telkomsel. Pada tahun yang sama, Satelindo meluncurkan satelit Palapa CII, dan langsung beroperasi pada tahun itu juga. Pada tahun 1997, Pemerintah bersiap memberikan 10 lisensi regional untuk 10 operator baru yang berbasis GSM 1800 atau PHS (Personal Handy-phone System. Keduanya adalah sama seperti GSM biasa, namun menggunakan frekuensi 1800 MHz). Namun, krisis ekonomi 1998 membuat rencana itu batal. Pada tahun yang sama, Telkomsel memperkenalkan produk prabayar pertama yang diberi nama Simpati, sebagai alternatif Kartu Halo. Lalu Excelcom meluncurkan Pro-XL sebagai jawaban atas tantangan dari para kompetitornya, dengan layanan unggulan roaming pada tahun 1998. Di tahun tersebut, Satelindo tak mau ketinggalan dengan meluncurkan produk Mentari,

dengan keunggulan perhitungan tarif per detik. Walaupun pada periode 1997-1999 ini Indonesia masih mengalami guncangan hebat akibat krisis ekonomi dan krisis moneter, minat masyarakat tidak berubah untuk menikmati layanan seluler. Produk Mentari yang diluncurkan Satelindo pun mampu dengan cepat meraih 10.000 pelanggan. Padahal, harga kartu perdana saat itu termasuk tinggi, mencapai di atas Rp100 ribu dan terus naik pada tahun berikutnya. Hingga akhir 1999, jumlah pelanggan seluler di Indonesia telah mencapai 2,5 juta pelanggan, yang sebagian besar merupakan pelanggan layanan prabayar. Telkomsel dan Indosat memperoleh lisensi sebagai operator GSM 1800 nasional sesuai amanat Undang-undang Telekomunikasi No. 36/1999. Layanan seluler kedua BUMN itu direncanakan akan beroperasi secara bersamaan pada 1 Agustus 2001. Pada tahun yang sama, layanan pesan singkat atau SMS (*Short Message Service*) mulai diperkenalkan, dan langsung menjadi primadona layanan seluler saat itu. Pada tahun 2001, Indosat mendirikan PT. Indosat Multi Media Mobile (IM3), yang kemudian menjadi pelopor layanan GPRS (General Packet Radio Service) dan MMS (Multimedia Messaging Service) di Indonesia. Pada 8 Oktober 2002, Telkomsel menjadi operator kedua yang menyajikan layanan tersebut. Masih di tahun 2001, pemerintah mengeluarkan kebijakan deregulasi di sektor telekomunikasi dengan membuka kompetisi pasar bebas. PT. Telkom pun tak lagi memonopoli telekomunikasi, ditandai dengan dilepasnya saham Satelindo pada Indosat. Pada akhir 2002, Pemerintah Indonesia juga melepas 41,94% saham Indosat ke Singapore Technologies Telemedia Pte. Ltd. Kebijakan ini menimbulkan kontroversi, yang pada akhirnya membuat Pemerintah terus berupaya melakukan aksi beli-kembali.

Pada Desember 2002, TelkomFlexi hadir sebagai operator CDMA pertama di Indonesia, di bawah pengawasan PT. Telekomunikasi Indonesia, menggunakan frekuensi 1.900 MHz dengan lisensi FWA (Fixed Wireless Access). Artinya, sistem penomoran untuk tiap pelanggan menggunakan kode area menurut kota asalnya, seperti yang dipergunakan oleh telepon berbasis sambungan tetap dengan kabel milik Telkom. Satelindo meluncurkan layanan GPRS dan MMS pada awal 2003, dan menjadi operator seluler Indonesia ketiga yang meluncurkan layanan tersebut. Melalui Keputusan Dirjen Postel No. 253/Dirjen/2003 tanggal 8 Oktober

2003, pemerintah akhirnya memberikan lisensi kepada PT. Cyber Access Communication sebagai operator seluler 3G pertama di Indonesia melalui proses tender, menyisihkan 11 peserta lainnya. CAC memperoleh lisensi pada jaringan UMTS (Universal Mobile Telecommunications System) atau juga disebut dengan W-CDMA (Wideband-Code Division Multiple Access) pada frekuensi 1.900 MHz sebesar 15 MHz. Pada November 2003, Indosat mengakuisisi Satelindo, IM3, dan Bimagraha. Pada akhirnya, ketiganya dilebur ke dalam PT. Indosat Tbk. Maka sejak saat itu, ketiganya hanya menjadi anak perusahaan Indosat. Di bulan yang sama, PT. Bakrie Telecom meluncurkan produk esia sebagai operator CDMA kedua berbasis FWA, yang kemudian diikuti dengan kehadiran Fren sebagai merek dagang PT. Mobile-8 Telecom pada Desember 2003, namun dengan lisensi CDMA berjelajah nasional, seperti umumnya operator seluler berbasis GSM.

Pada 2004 mulai muncul operator 3G pertama, PT Cyber Access Communication (CAC), yang memperoleh lisensi pada tahun 2003. Saat ini, teknologi layanan telekomunikasi seluler di Indonesia telah mencapai generasi ketiga-setengah (3,5G), ditandai dengan berkembangnya teknologi HSDPA (High Speed Downlink Packet Access) yang mampu memungkinkan transfer data secepat 3,6 Mbps.<sup>62</sup> PT. Indosat menyusul kemudian dengan StarOne pada Mei 2004, juga dengan lisensi CDMA FWA.

Pada Februari 2004, Tekomsel meluncurkan layanan EDGE (Enhanced Data Rates for GSM Evolution), dan menjadikannya sebagai operator EDGE pertama di Indonesia. EDGE sanggup melakukan transmisi data dengan kecepatan sekitar 126 kbps (kilobit per detik) dan menjadi teknologi dengan transmisi data paling cepat yang beroperasi di Indonesia saat itu. Bahkan menurut GSM World Association, EDGE dapat menembus kecepatan hingga 473,8 kilobit/detik. Sejak April 2004, para operator seluler di Indonesia akhirnya sepakat melayani layanan MMS antar-operator. Pada akhir 2004, jumlah pelanggan seluler sudah menembus kurang lebih 30 juta. Pada Mei 2004, PT. Mandara Seluler Indonesia meluncurkan produk seluler Neon di Lampung pada jaringan CDMA 450 MHz. Namun Neon tak bisa berkembang akibat kalah bersaing dengan operator telekomunikasi

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<sup>62</sup> [http://id.wikipedia.org/wiki/Telekomunikasi\\_seluler\\_di\\_Indonesia](http://id.wikipedia.org/wiki/Telekomunikasi_seluler_di_Indonesia), diunduh 27 Desember 2010.

lainnya, sampai akhirnya diambil alih oleh Sampoerna Telecom pada 2005, dan menjadi cikal bakal Ceria. Pada tanggal 17 September 2004, PT. Natrindo Telepon Seluler (Lippo Telecom) memperoleh lisensi layanan 3G kedua di Indonesia. Perusahaan ini memperoleh alokasi frekwensi sebesar 10 MHz. Pada Mei 2005, Telkomsel berhasil melakukan ujicoba jaringan 3G di Jakarta dengan menggunakan teknologi Motorola dan Siemens, sedangkan CAC baru melaksanakan ujicoba jaringan 3G pada bulan berikutnya. CAC melakukan ujicoba layanan video telephony, akses internet kecepatan tinggi, dan nonton siaran Metro TV via ponsel Sony Ericsson Z800i. Setelah melalui proses tender, akhirnya tiga operator telepon seluler ditetapkan sebagai pemenang untuk memperoleh lisensi layanan 3G, yakni PT. Telkomsel, PT. Excelcomindo Pratama (XL), dan PT. Indosat pada tanggal 8 Februari 2006. Dan pada akhir tahun yang sama, ketiganya meluncurkan layanan 3G secara komersial. Pada Agustus 2006, Indosat meluncurkan StarOne dengan jaringan CDMA2000 1x EV-DO di Balikpapan. Pada saat yang sama, Bakrie Telecom memperkenalkan layanan ini pada penyelenggaraan kuliah jarak jauh antara Institut Teknologi Bandung (ITB) dengan California Institute for Telecommunication and Information (Calit2) di Universitas San Diego (UCSD) California. Pemerintah melalui Depkominfo mengeluarkan Permenkominfo No. 01/2006 tanggal 13 Januari 2007 tentang Penataan Pita Frekuensi Radio 2.1 GHz Untuk Penyelenggaraan Jaringan Bergerak Seluler IMT-2000, menyebutkan bahwa penyelenggaraan jaringan tetap lokal dengan mobilitas terbatas hanya dapat beroperasi di pita frekuensi radio 1.900 MHz sampai dengan 31 Desember 2007. Jaringan pada frekuensi tersebut kelak hanya diperuntukan untuk jaringan 3G. Operator dilarang membangun dan mengembangkan jaringan pada pita frekuensi radio tersebut. Maka, berdasarkan keputusan tersebut, para operator seluler CDMA berbasis FWA yang menghuni frekuensi 1.900 MHz harus segera bermigrasi ke frekuensi 800 MHz. Saat itu ada dua operator yang menghuni frekuensi CDMA 1.900 MHz, yaitu TelkomFlexi dan StarOne. Akhirnya, Telkom bekerjasama dengan Mobile-8 dalam menyelenggarakan layanan Fren dan Flexi, sedangkan Indosat bekerja sama dengan Esia milik Bakrie Telecom. Jumlah pengguna layanan seluler di Indonesia mulai mengalami ledakan. Jumlah pelanggan layanan seluler dari tiga operator



terbesar (Telkomsel, Indosat, dan Excelcom) saja sudah menembus 38 juta. Itu belum termasuk operator-operator CDMA. Hal ini disebabkan oleh murahnya tarif layanan seluler jika dibandingkan pada masa sebelumnya yang masih cukup mahal. Namun jika dibandingkan dengan jumlah penduduk Indonesia yang sekitar 220 juta pada saat itu, angka 38 juta masih cukup kecil. Para operator masih melihat peluang bisnis yang besar dari industri telekomunikasi seluler itu. Maka, untuk meraih banyak pelanggan baru, sekaligus mempertahankan pelanggan lama, para operator memberlakukan perang tarif yang membuat tarif layanan seluler di Indonesia semakin murah. Namun di balik gembor-gembor tarif murah itu, BRTI (Badan Regulasi Telekomunikasi Indonesia) dan KPPU (Komisi Pengawas Persaingan Usaha) menemukan fakta menarik, yaitu para operator seluler telah melakukan kartel tarif layanan seluler, dengan memberlakukan tarif minimal yang boleh diberlakukan di antara para operator yang tergabung dalam kartel tersebut. Salah satu fakta lain yang ditemukan BRTI dan KPPU adalah adanya kepemilikan silang Temasek Holdings, sebuah perusahaan milik Pemerintah Singapura, di PT. Indosat Tbk. dan PT. Telkomsel, yang membuat tarif layanan seluler cukup tinggi. Maka, pemerintah melalui Depkominfo akhirnya mengeluarkan kebijakan yang mengharuskan para operator seluler menurunkan tarif mereka 5%-40% sejak April 2008, termasuk di antaranya penurunan tarif interkoneksi antar operator. Penurunan tarif ini akan dievaluasi oleh pemerintah selama 3 bulan sekali.

### **2.2.2. Perusahaan Dan Risiko Perusahaan Menara Telekomunikasi**

Perkembangan telepon seluler seperti CDMA, GSM dan teknologi telekomunikasinya seperti 2G, 3G, GPRS, EDGE, tidak terlepas juga dari perkembangan pembangunan tempat BTS. Para operator telekomunikasi sebagai pihak yang melakukan penyelenggaraan jaringan telekomunikasi pasti berusaha untuk meningkatkan pelayanan terhadap pelanggannya dengan melakukan perluasan jangkauan wilayah jaringan (*coverage area*) dan memperkuat kualitas jaringan, agar pelanggan menjadi puas dan jumlah pelanggan baru dapat bertambah. Untuk mencapai tujuan tersebut tentu para operator telekomunikasi ini harus melakukan penambahan pembangunan tempat BTS. BTS atau *Base*

*Transceiver Station* adalah perangkat transmisi pada jaringan telekomunikasi seluler yang terdiri dari beberapa *transceivers* yang digunakan untuk mengirim dan menerima suara dan data (pemancar sinyal dari operator) dari dan ke telepon seluler baik untuk teknologi CDMA atau GSM di suatu area tertentu. Pembangunan tempat BTS memang merupakan salah satu komponen penting dalam penyelenggaraan jaringan telekomunikasi. Tempat BTS ini biasa disebut dengan menara atau tower. Sebagai akibat bahwa menara merupakan salah satu komponen penting dalam menunjang penyelenggaraan jaringan telekomunikasi, maka operator-operator gencar dalam melakukan pembangunan menara. Berdasarkan data yang dirilis oleh Asosiasi Pengembang Infrastruktur Menara Telekomunikasi (ASPIMTEL), pada tahun 2008 menara telekomunikasi di Indonesia telah mendekati 60 ribu unit, yaitu Telkomsel memiliki 25.000 lebih menara, Indosat mempunyai 11.000 menara, Excelcomindo Pratama memiliki 7.000 menara, Indonesian Tower memiliki 1800 menara, Protelindo memiliki 900 menara, Komselindo dan Metrosel memiliki 700 menara secara bersama, Tower Bersama Group memiliki 700 menara, Bakrie Telecom memiliki 406 menara, Natrindo memiliki 271 menara, Sampoerna memiliki 270 menara, Komet Konsorsium memiliki 214 menara, dan ditambah perusahaan-perusahaan kecil lainnya, koperasi, dan perseorangan<sup>63</sup>.

Sehubungan dengan penambahan BTS, operator telekomunikasi melakukan cara-cara sebagai berikut:

- (a) Operator melakukan pembangunan sendiri menara;
- (b) Operator bekerja sama dengan pihak lain melakukan pembangunan menara;

Biasanya operator akan menyuruh pihak lain tersebut melakukan pembangunan menara untuk dan atas nama operator dalam jangka waktu tertentu. Pihak ini disebut dengan *vendor*. Bentuk kerjasama yang terjadi antara operator dan *vendor* adalah “*turnkey project*”. Artinya sejak awal *vendor* akan melakukan pengurusan dimulai dari: (i) Perencanaan titik lokasi (*planning*); (ii) Pencarian lahan atau *site* yang strategis; (iii) Survey kelayakan teknis; (iv) Akuisisi lahan (*site acquisition/Sitac*). Proses di dalamnya adalah bernegosiasi dengan pemilik tanah dan/atau penguasa tanah (*landlord*)

<sup>63</sup><http://telco.elmoudy.com/meneropong-peluang-bisnis-tower-provider>, diunduh 10 Maret 2011.

mengenai harga sewa/beli lahan, kesepakatan harga dengan *landlord*, verifikasi dokumen kepemilikan tanah, perolehan ijin dari warga sekitar tempat akan didirikannya BTS/tower/menara yang berada dalam radius yang sama dengan ketinggian BTS/tower/menara di lokasi BTS/tower/menara, tes uji kelayakan tempat.

- (c) Pelaksanaan CME<sup>64</sup>
- (d) Perolehan ijin mendirikan bangunan (IMB)
- (e) Pendirian pembangunan menara/tower/tempat BTS
- (f) Pengaktifan sinyal yang terpasang di BTS tersebut (*on air*)
- (g) Serah terima semua dokumen-dokumen dan/atau berkas-berkas baik dari sisi hukum, sisi finansial, sisi teknis kepada operator.
- (h) Operator menyewa *space* untuk penempatan BTS dan/atau peralatan telekomunikasi miliknya ke pihak lain.

Saat ini sedang menjadi bisnis *trend* baru dalam bisnis telekomunikasi, penyewaan *tower space* untuk menempatkan peralatan telekomunikasi milik operator untuk transmisi sinyal nirkabel pada *sites-menara*<sup>65</sup> telekomunikasi milik Perusahaan Menara Telekomunikasi berdasarkan perjanjian sewa menyewa jangka panjang. Juga membangun *sites shelter-only*<sup>66</sup> dan menyediakan operator telekomunikasi dengan akses terhadap *repeater* dan IBS<sup>67</sup> milik Perusahaan Menara Telekomunikasi yang terletak pada gedung-gedung perkantoran dan pusat-pusat perbelanjaan di wilayah perkotaan. Pelaku usaha yang bergerak di sektor telekomunikasi mulai banyak yang berbenah menyambut peluang baru tersebut. Mulai dari operator telekomunikasi, kontraktor, vendor, konsultan, dan perusahaan-perusahaan yang terkait bisnis infrastruktur telekomunikasi, mencoba

<sup>64</sup>CME adalah *Construction, Mechanical and Electrical*, yang merupakan fungsi dari kegiatan konstruksi *site* menara dan termasuk persiapan dari lokasi fisik untuk konstruksi, persiapan *design* dan gambar konstruksi, membangun pondasi, pendirian menara, pembangunan halaman dan pagar (untuk menara *ground-based*), instalasi *shelter, air conditioning* dan peralatan pendukung lainnya (jika diminta oleh operator telekomunikasi), dan menghubungkan kabel dan sambungan listrik.

<sup>65</sup>*Sites-menara* adalah menara yang berada di atas tanah (*ground based*) atau di atas atap bangunan (*rooftop*) yang dibangun dan dimiliki oleh Perusahaan Menara Telekomunikasi atau pada lahan properti (termasuk *rooftop*) yang umumnya dimiliki atau disewa oleh Perusahaan Menara Telekomunikasi.

<sup>66</sup>*Shelter-only* adalah suatu bangunan *shelter* yang dibuat dan dimiliki oleh Perusahaan Menara Telekomunikasi untuk memasang BTS pada menara yang dimiliki oleh operator telekomunikasi pada lahan properti yang dimiliki atau di sewa oleh operator telekomunikasi.

<sup>67</sup>*Repeatear* dan IBS adalah sistem antena terdistribusi untuk jaringan telekomunikasi seluler yang dapat dipasang di luar (*outdoor*) ataupun di dalam gedung (*indoor*).

menyusun rencana dan bahkan restrukturisasi organisasi guna memenangkan persaingan di segmen bisnis ini<sup>68</sup>.

Perusahaan yang menyelenggarakan bisnis ini dikenal dengan sebutan *tower provider*. *Tower provider* merupakan usaha/unit bisnis yang tidak hanya menyelenggarakan pembangunan tempat BTS, pada dasarnya ia bergerak di bidang jasa penyewaan, penyediaan, pembangunan dan pengelolaan menara telekomunikasi untuk dipergunakan oleh para operator telekomunikasi dalam penyelenggaraan aktivitas telekomunikasi.

Sebelum pemerintah menetapkan kebijakan SKB 4 Menteri, operator-operator biasanya menggunakan cara pertama dan kedua dalam melakukan pembangunan menara. Namun akibatnya, terlalu banyak menara yang dibangun sehingga pemerintah melihat, perlu ditetapkan peraturan untuk menertibkan pembangunan menara-menara tersebut. Sehingga dikeluarkanlah SKB 4 Menteri tersebut, yang pada intinya mewajibkan operator untuk melakukan *tower sharing* atau menggunakan menara secara bersama-sama oleh para operator. Adapun jumlah maksimum penggunaannya adalah dalam 1 menara dapat digunakan untuk 3 operator. Adanya SKB 4 Menteri ini juga merupakan pemicu bisnis tower provider semakin diminati, karena para operator telekomunikasi saat ini lebih memilih tidak akan membangun banyak menara telekomunikasi, tetapi hanya akan menyewa menara milik Perusahaan Menara Telekomunikasi guna efisiensi dan efektifitas jaringan.

Perusahaan Menara Telekomunikasi ini dalam menjalankan usahanya tentu tidak luput dari risiko usaha, karena memang setiap bidang usaha memiliki risiko usahanya masing-masing. Beberapa diantaranya adalah:

- (a) Risiko yang terkait dengan kondisi ekonomi, politik, dan keamanan nasional, regional dan global. Ruang lingkup kegiatan usaha serta aset-aset milik Perusahaan Menara Telekomunikasi berada di dalam wilayah Indonesia. Ketidakstabilan nasional di masa mendatang yang meliputi aspek ekonomi, politik, keamanan, dan juga sosial budaya, serta tindakan yang diambil dan/atau tidak diambil oleh pemerintah dapat berpengaruh buruk terhadap

<sup>68</sup><http://telco.elmoudy.com/meneropong-peluang-bisnis-tower-provider>, diunduh 10 Maret 2011.

kegiatan usaha dan operasional, kinerja keuangan, dan prospek usaha Perusahaan Menara Telekomunikasi di masa yang akan datang.

- (b) Risiko yang terkait dengan Industri Telekomunikasi. Pada sektor industri telekomunikasi, faktor yang berasal dari perubahan dan perkembangan teknologi telekomunikasi yang bersifat dinamis dan padat modal, member pengaruh besar bagi Perusahaan Menara Telekomunikasi.
- (c) Risiko Persaingan Usaha. Faktor yang berasal dari pesaing usaha, yang memiliki cakupan, ruang lingkup dan target pasar serupa dengan perusahaan Menara Telekomunikasi memicu timbulnya persaingan yang ketat antara para pesaing dalam industri penyewaan menara telekomunikasi mengakibatkan pelanggan akan memiliki banyak alternatif dalam menyewa *tower space* termasuk diantaranya: operator telekomunikasi yang memiliki menara telekomunikasi sendiri dan menyewakan *antena sites* kepada pihak ketiga, termasuk dalam hal ini adalah XL dan Indosat; perusahaan menara telekomunikasi independen yang mengoperasikan portofolio *sites* telekomunikasi yang besar, utamanya PT Profesional Telekomunikasi Indonesia (Protelindo); sejumlah besar perusahaan menara telekomunikasi independen yang mengoperasikan portofolio *sites* di daerah yang berskala lebih kecil; dan pada kondisi tertentu, pemilik lokasi alternatif (seperti atap teratas bangunan, jaringan *repeater* dan IBS, papan iklan dan menara transmisi elektrik). Persaingan usaha dalam industri penyewaan menara telekomunikasi di Indonesia sangat bergantung pada lokasi menara, kualitas dan tinggi menara, dan hubungan dengan operator telekomunikasi. Disamping itu, persaingan usaha juga dipengaruhi oleh jumlah portofolio menara, *pricing*, manajemen operasional serta jasa layanan tambahan bagi penyewa. Beberapa pesaing perusahaan, seperti operator telekomunikasi selular nasional yang melakukan kolokasi pada menaranya merupakan pesaing dengan kemampuan keuangan yang lebih kuat dibandingkan Perusahaan. Sebagai tambahan, beberapa pesaing Perusahaan juga memiliki kriteria imbal hasil investasi yang lebih rendah dibanding Perusahaan. Kondisi persaingan yang semakin tinggi dapat secara negatif mempengaruhi harga sewa menara dan pendapatan Perusahaan serta menyebabkan penyewa

menara Perusahaan yang telah ada tidak memperpanjang masa sewa menara dari Perusahaan ataupun penyewa baru yang menyewa menara dari pesaing Perusahaan

- (d) Risiko Dalam Pendanaan. Kebutuhan senantiasa melakukan ekspansi, modernisasi serta memperbaharui teknologi melibatkan investasi modal yang cukup besar. Keterbatasan mendapatkan pendanaan misalnya karena kondisi ekonomi yang berlaku, tingkat suku bunga, faktor-faktor keuangan, dan usaha lainnya yang tidak mendukung perusahaan untuk mendapatkan pendanaan ini akan berdampak pada penurunan kemampuan bersaing sehingga berpengaruh pada kegiatan usaha, kondisi keuangan, hasil operasional, dan prospek usaha Perusahaan Menara Telekomunikasi yang pada akhirnya mengakibatkan menurunnya tingkat keuntungan.

Kemampuan Perusahaan mengakses pembiayaan hutang untuk kepentingan akuisisi dan pembiayaan kembali hutang yang jatuh tempo bergantung pada banyak faktor, yang beberapa di antaranya berada di luar kendali. Sebagai contoh, ketidak stabilan politik, penurunan ekonomi, kesulitan likuiditas rupiah dan dolar AS di perbankan dan pasar hutang, kerusuhan sosial atau perubahan di lingkup peraturan dapat menaikkan biaya pinjaman atau membatasi kemampuan Perusahaan Menara Telekomunikasi untuk mendapatkan pembiayaan hutang.

- (e) Risiko Depresiasi Nilai Tukar Rupiah. Pada masa krisis ekonomi Indonesia pada pertengahan tahun 1997 hingga 1998, nilai tukar Rupiah terhadap mata uang asing, terutama mata uang dollar Amerika Serikat, mengalami depresiasi dan fluktuasi, bahkan hingga kini fluktuasi tersebut tidak menutup kemungkinan masih terjadi. Bila terjadi depresiasi nilai tukar Rupiah. Sementara untuk hutang perusahaan kepada bank disepakati baik dalam bentuk mata uang Rupiah ataupun dollar Amerika Serikat serta pengeluaran belanja modal berupa peralatan dan jaringan telekomunikasi milik Perusahaan Menara Telekomunikasi sebagian besar berdenominasi mata uang dollar Amerika Serikat dapat menyebabkan peningkatan pembiayaan investasi, yang ditimbulkan dari peningkatan beban bunga, sehingga pada

saat yang sama juga akan mempengaruhi laba bersih. Upaya mitigasi risiko atas fluktuasi tersebut dengan melakukan lindung nilai (*hedging*)<sup>69</sup>.

- (f) Risiko Terjadinya Bencana Alam. Kegiatan usaha yang terletak di wilayah Indonesia, dimana sebagian wilayahnya rentan terhadap bencana alam seperti gempa bumi, tsunami, banjir, letusan gunung berapi, atau peristiwa-peristiwa lainnya. Walaupun upaya perlindungan terhadap risiko yang akan terjadi telah diasuransikan ke dalam berbagai polis asuransi kerugian yang meliputi risiko atas bencana alam, kerusakan peralatan telekomunikasi (*property damage*), risiko kehilangan potensi pendapatan (*business interruption*), maupun risiko lainnya yang ditimbulkan atau menimpa pihak ketiga (*third party liability*), Perusahaan Menara Telekomunikasi tidak dapat menjamin bahwa setiap perlindungan tersebut di atas telah mencukupi bagi kelangsungan bisnis Perusahaan Menara Telekomunikasi, karena masih terdapat faktor-faktor risiko lainnya yang sama sekali di luar kendali Perusahaan Menara Telekomunikasi seperti kondisi *force majeure*.
- (g) Risiko Penggabungan usaha atau konsolidasi di antara para pelanggan perusahaan yaitu para operator telekomunikasi, dapat berdampak secara material dan merugikan terhadap pendapatan dan arus kas perusahaan. Pada tingkat harga tarif telepon seluler saat ini, dan juga kebutuhan belanja modal yang besar di kalangan operator telekomunikasi, akan tetap bertahan hanya bagi operator dengan skala operasi yang besar dalam pengertian kapasitas jaringan maupun total jumlah pelanggan. Menimbang jumlah operator telekomunikasi yang besar di Indonesia, dan juga keunggulan skala ekonomis yang dinikmati oleh operator-operator besar, konsolidasi dapat terjadi di antara operator-operator telekomunikasi yang lebih kecil – beberapa di antaranya merupakan pelanggan Perusahaan Menara Telekomunikasi. Konsolidasi secara signifikan di antara pelanggan-pelanggan, dapat

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<sup>69</sup> Dalam buku Stephen A. Ross, Randolph W. Westerfield, Jeffery Jaffe, Bradford D. Jordan, *Modern Financial Management: International Student Edition*, Edisi 8 (New York: McGraw-Hill/Irwin), 2008, menjelaskan *hedging* adalah salah satu metode yang dilakukan perusahaan atau badan usaha untuk mengurangi berbagai risiko dalam keterikatan di dalam satu perjanjian salah satunya adalah nilai tukar mata uang, dengan menggunakan *derivatives* yang tersedia di pasar uang. Semua produk *derivatives* tersebut adalah pilihan-pilihan yang apabila dipergunakan sesuai kebutuhan dapat menjaga risiko bisnis suatu badan usaha.

menyebabkan pengurangan BTS dan/atau kebutuhan kolokasi bagi perusahaan-perusahaan yang berkonsolidasi, karena BTS tertentu dapat menjadi berlebih atau ruang menara tambahan dapat diperoleh dari hasil konsolidasi tersebut. Selain itu, konsolidasi dapat menyebabkan pengurangan belanja modal di masa depan secara agregat, apabila perusahaan-perusahaan yang melakukan konsolidasi memiliki rencana ekspansi yang sama. Sebagai akibatnya, para pelanggan dapat memutuskan untuk tidak memperbaharui sewa mereka dengan Perusahaan Menara Telekomunikasi dengan terjadinya konsolidasi tersebut. Apabila jumlah pengakhiran yang signifikan terjadi akibat konsolidasi industri, maka hal tersebut dapat berdampak terhadap pendapatan dan arus kas secara material dan merugikan, yang selanjutnya membawa efek material yang merugikan pada bisnis, kondisi keuangan dan likuiditas, serta hasil operasi Perusahaan Menara Telekomunikasi.

(h) Risiko Perobohan Menara, akibat dari:

(i) Penentangan dari masyarakat. Perseroan telah mengalami penentangan dari masyarakat setempat terhadap bangunan berupa menara telekomunikasi di beberapa lokasi yang telah dimiliki perusahaan karena berbagai alasan, termasuk kekhawatiran mengenai dugaan risiko kesehatan. Akibat penentangan dari masyarakat setempat tersebut perusahaan dapat diperintahkan oleh pejabat daerah setempat untuk membongkar dan merelokasi beberapa menara miliknya. Apabila Perseroan diharuskan untuk merelokasi menara-menara Perseroan dan tidak bisa menemukan lokasi-lokasi pengganti yang dapat diterima oleh para pelanggan Perseroan, hal ini dapat menimbulkan dampak secara material dan merugikan pada pendapatan dan arus kas Perseroan, yang selanjutnya dapat berdampak negatif secara material pada bisnis, kondisi keuangan dan hasil operasional Perseroan.

(ii) Tidak memiliki IMB. Pembangunan menara telekomunikasi membutuhkan persetujuan sebelumnya dari setiap rumah tangga di lingkungan masyarakat sekitar secara penuh atau sebagian, yang berada dalam radius yang sama dengan ketinggian menara dari lokasi menara. Begitu seluruh persetujuan rumah tangga yang diperlukan telah



diperoleh, permohonan diajukan kepada pejabat daerah setempat untuk mendapatkan izin dan persetujuan terpisah untuk pembangunan menara. Namun menimbang lamanya waktu yang dibutuhkan untuk memproses permohonan persetujuan-persetujuan dan izin-izin dari pejabat daerah setempat, termasuk Izin Mendirikan Bangunan (IMB) atau izin untuk mendirikan dan mengoperasikan menara telekomunikasi (Izin Mendirikan Bangunan Menara atau IMBM) yang mana yang berlaku, dan izin lainnya. Terkadang Perseroan melanjutkan dan menyelesaikan pembangunan menara serta pemasangan BTS bagi para penyewa Perseroan sebelum seluruh persetujuan-persetujuan dan izin-izin yang diperlukan diperoleh dari otoritas-otoritas lokal. Perseroan melalui Anak Perusahaan memiliki *sites* sejumlah 4.048 penyewaan, dimana sebanyak 1.647 atau setara dengan 40,7% diantaranya adalah *sites* menara telekomunikasi. Dari total jumlah *sites* menara telekomunikasi, 1.346 menara telekomunikasi atau setara dengan 81,7% dari jumlah total *sites* menara telekomunikasi telah memiliki IMB atau IMBM, Sedangkan 231 *sites* menara telekomunikasi milik Perseroan melalui Anak Perusahaan belum memiliki IMB atau IMBM, atau setara 14,0% dari *sites* menara telekomunikasi<sup>70</sup>.

Apabila persetujuan-persetujuan dan izin-izin tersebut tidak diperoleh, pejabat daerah setempat dapat mengeluarkan perintah agar menara-menara Perseroan dibongkar atau dipindahkan. Apabila Perseroan diharuskan untuk merelokasi menara-menara Perseroan dalam jumlah yang material dan tidak dapat menemukan lokasi-lokasi pengganti yang dapat diterima oleh para pelanggan Perseroan dalam jumlah yang material, atau salah satu dari perjanjian sewa diakhiri, maka hal ini dapat berdampak secara material dan merugikan pada pendapatan dan arus kas Perseroan, yang selanjutnya dapat membawa dampak material merugikan pada bisnis, kondisi keuangan Perseroan.

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<sup>70</sup> Berdasarkan data yang dimiliki per tanggal 30 April 2010 sebagaimana tercantum dalam prospektus perusahaan

- (iii) Instruksi dari pejabat daerah akibat adanya SKB 4 Menteri tentang *tower sharing*. Berdasarkan peraturan pemerintah yaitu SKB 4 Menteri, debitur diwajibkan oleh pemerintah untuk melakukan perobohan menara telekomunikasi miliknya, jika debitur tidak segera melakukan *tower sharing* yaitu penggunaan bersama menara telekomunikasi maksimal oleh tiga operator.



### BAB 3

## MITIGASI RISIKO PARA PIHAK DALAM PEMBERIAN KREDIT KE PERUSAHAAN MENARA TELEKOMUNIKASI PT GROUP X

Bank sebagai lembaga yang memegang peranan penting yaitu dituntut untuk mampu menunjang pelaksanaan pembangunan nasional dalam rangka meningkatkan pemerataan, pertumbuhan ekonomi dan stabilitas nasional kearah peningkatan kesejahteraan rakyat banyak<sup>71</sup> serta secara lebih nyata dalam rangka mewujudkan masyarakat adil dan makmur berdasarkan Pancasila dan Undang-undang Dasar 1945 atau dengan kata lain dapat berperan sebagai *agent development*, tidak luput dari kegiatan perkreditan. Di sisi lain sedang terjadi bisnis *trend* baru dalam bisnis telekomunikasi yaitu bisnis *tower provider*, yang mana tidak akan luput dari eksistensi badan usaha yang dikenal sebagai Perusahaan Menara Telekomunikasi. Dimana perusahaan ini memiliki kebutuhan senantiasa melakukan ekspansi, modernisasi serta memperbaharui teknologi, yang melibatkan investasi modal yang cukup besar. Pada akhirnya kedua badan usaha ini bertemu pada satu titik yaitu kerjasama pemberian fasilitas kredit.

Bank dalam menyalurkan dana kepada nasabah debitur melalui fasilitas kredit diwajibkan oleh Bank Indonesia untuk menerapkan prinsip kehati-hatian. Sehubungan dengan hal itu, bank perlu untuk melakukan analisis terhadap nasabah debitur, dalam hal ini Perusahaan Menara Telekomunikasi. Oleh karena itu analisis seksama penting dilakukan sehingga potensi risiko dapat segera teridentifikasi dan dapat segera mencari mitigasi dari setiap risiko yang berpotensi muncul tersebut sehubungan adanya hubungan hukum antara kreditur dan debitur sebagaimana tertuang dalam perjanjian fasilitas kredit sindikasi.

### **3.1. Kasus Posisi Perjanjian Kredit Tanggal 7 Januari 2009**

- PT X, PT A, PT B, PT C, PT D, PT E, PT F, dan PT G merupakan perusahaan-perusahaan yang bergabung menjadi satu group yang dikenal dengan nama PT Group X/debitur. PT Group X berfokus pada

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<sup>71</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, Edisi Revisi, Cet.5 (Jakarta: Kencana, 2009), hlm.20

penyediaan jasa penyewaan menara independen untuk keperluan telekomunikasi.

- Pada tanggal 7 Januari 2009, PT X, PT A, PT B, PT C, PT D, PT E, PT F, dan PT G, menandatangani perjanjian fasilitas kredit sindikasi sebesar US\$ 130.000.000, atau dalam nilai Rupiah yang setara dengan nilai tersebut, dengan kreditur yang terdiri dari beberapa bank yaitu Bank OBI, Bank BCG (yang sekaligus bertindak sebagai agen bank rekening) selanjutnya disebut "kreditur", serta dengan pihak agen lainnya yaitu OBL yang bertindak sebagai pimpinan proyek dan agen fasilitas, serta Bank Intan yang bertindak sebagai agen jaminan.
- Pinjaman kredit ini terbagi menjadi 3 fasilitas yaitu fasilitas A, B dan C dengan maksimum pinjaman masing-masing adalah sejumlah US\$ 50,000,000, US\$ 7,310,000 dan US\$ 7,690,000.
- Waktu pembayaran untuk fasilitas A adalah setiap 3 bulan sekali selama 20 kali, untuk fasilitas B adalah pada akhir periode pinjaman, dan untuk fasilitas C adalah dua tahun setelah periode ketersediaan yaitu 2 tahun dari pinjaman awal yang kemudian baru dibayarkan selama 12 kali sampai dengan akhir periode pinjaman, dan dapat diperpanjang sesuai kesepakatan para pihak.
- Pinjaman kredit ini dikenakan bunga dengan perhitungan tahunan yang melihat dari: (a) margin; (b) LIBOR (untuk pinjaman dalam dollar)/JIBOR (untuk pinjaman dalam rupiah); (c) premi kredit, dan (d) premi likuiditas (diatur dalam klausul 8.1 tentang perhitungan bunga).
- Tujuan penggunaan pinjaman kredit ini adalah untuk membiayai kembali hutang yang ada, untuk pembiayaan umum, dan membiayai modal kerja serta belanja modal debitor (diatur dalam klausul 3 tentang tujuan fasilitas kredit).
- Beberapa hal pembatasan tindakan debitor, yaitu debitor dilarang: (a) melakukan pembayaran dividen, kecuali diperbolehkan dalam dokumen pembiayaan dan tidak melanggar kewajiban keuangan (klausul 21.20 tentang pembayaran yang dilarang) dan (b) menciptakan

agunan baru atas aset yang dijaminkan (klausul 21.3 tentang agunan yang dilarang).

- Pinjaman ini diagun dengan jaminan fidusia terhadap aset berupa menara dan *shelter*, gadai rekening bank, gadai saham milik PT X dan PT E, jaminan penanggungan dari para pemegang saham debitur serta dijamin dengan jaminan-jaminan yang sudah ada berdasarkan perjanjian kredit sebelumnya yaitu berupa: (a) fidusia terhadap piutang usaha (*receivables*) dari PT A, B, dan C; (b) fidusia terhadap aset benda bergerak (*movable assets*) dari PT A, B, dan C; (c) fidusia terhadap aset benda bergerak berupa *inventory (movable assets)* dari PT A dan B; (d) gadai terhadap rekening bank dari PT A, B, C, E, dan G; (e) gadai terhadap saham di PT A, B, C, E dan G; (f) pengalihan polis asuransi dari PT A, B, dan C; (g) pengalihan perjanjian sewa menyewa tanah dari PT A, B, dan C; (h) pengalihan perjanjian sewa menara dari PT A, B, dan C; serta (i) hak tanggungan atas 1 bidang tanah dari PT A, 9 bidang tanah dari PT B, dan 191 bidang tanah dari PT C. Berdasarkan informasi dari perusahaan keseluruhan jaminan tersebut memiliki nilai total penjaminan yaitu sebesar 130% dari nilai fasilitas kredit. Namun pada pelaksanaannya pengikatan debitur mengalami kendala karena dalam proses ini melibatkan banyak pihak seperti notaris di daerah-daerah, *landlord*, instansi pemerintah.
- Pinjaman ini memiliki syarat-syarat terkait rasio kredit yaitu debitur wajib menjaga rasio kredit dengan ketentuan sebagai berikut: (a) Rasio *Net Debt to Annualized Adjusted EBITDA* tidak lebih dari 5,5 kali, (b) Rasio *Interest Service Coverage* harus memenuhi kriteria sebagai berikut: (i) Pada tanggal perjanjian ini tidak lebih dari 1,9 kali; (ii) Dari Periode 1 Januari 2009 sampai dengan 31 Desember 2009 tidak kurang dari 2 kali; (iii) Dari Periode 1 Januari 2010 sampai dengan 31 Desember 2010 tidak kurang dari 2,25 kali; (iv) Setiap saat, tidak kurang dari 2,50 kali; (v) Rasio Minimum *Debt Service Coverage* tidak kurang dari 1,2 kali; (vi) Rasio *Loan to Value* tidak kurang dari 0,8 kali; (vii) Rasio *Contracted Revenue* tidak kurang dari 0,7 kali;

(viii) Minimum *Positive Networth* tidak kurang dari US\$ 15.000.000 (dalam klausul 20 tentang kesepakatan keuangan).

- Pinjaman kredit ini baru akan dicairkan penggunaannya oleh kreditur dengan syarat bahwa debitur wajib terlebih dahulu memenuhi syarat-syarat yaitu untuk penggunaan dana untuk pertama kalinya dalam fasilitas A dan fasilitas B sebagaimana tercantum dalam lampiran 2 bagian 1 tentang persyaratan pendahuluan (*condition precedent*) sedangkan untuk fasilitas C wajib terlebih dahulu memenuhi syarat-syarat sebagaimana tercantum dalam lampiran 2 bagian 1 tentang persyaratan pendahuluan (*condition precedent*) dan dalam lampiran 2 bagian 3 tentang persyaratan pendahuluan tambahan khusus untuk fasilitas C. Serta wajib memenuhi persyaratan lanjutan (*conditions subsequent*) sebagaimana tercantum dalam lampiran 2 Bagian IV.
- Namun, debitur mengalami kendala yaitu penundaan pencairan dana fasilitas kredit akibat (a) proses pengikatan jaminan dan pendaftaran jaminan lama; (b) proses pengumpulan data perjanjian-perjanjian terutama perjanjian sewa menyewa dan pengumpulan data aset menara telekomunikasi yang akan dijaminkan lama.

### **3.2. Analisis Perjanjian Kredit Tanggal 7 Januari 2009**

#### **3.2.1. Hal-Hal Yang Harus Dilakukan Oleh Perusahaan Menara Telekomunikasi Sehingga Memperoleh Fasilitas Kredit Dari Bank**

Sebelum debitur masuk kedalam kesepakatan bersama kreditur terkait dengan kebutuhan debitur untuk mendapatkan dana pinjaman melalui fasilitas kredit dari bank, ada baiknya jika debitur melakukan identifikasi risiko terlebih dahulu sehubungan akan ditandatanganinya perjanjian fasilitas kredit antara debitur dengan bank. Oleh karena itu, debitur perlu mengetahui hal-hal apa sajakah yang digunakan sebagai pedoman dalam melakukan penilaian oleh kreditur, sehingga debitur dapat mengetahui hal-hal apa sajakah yang harus dilakukan oleh debitur sehingga dapat memperoleh fasilitas kredit dari bank dan melakukan pencairan dana fasilitas secara tepat waktu.

Unsur-unsur penting dalam fasilitas kredit yang menjadi landasan bagi bank dalam menyalurkan kreditnya kepada debitur, sehingga terbentuk kesepakatan antara debitur dengan kreditur yang dituangkan dalam perjanjian fasilitas kredit, adalah:

- (a) Kepercayaan. Kepercayaan ini berhubungan dengan subyek dalam pemberian fasilitas kredit. Dimana kreditur wajib untuk memperoleh keyakinan terlebih dahulu bahwa prestasi yang akan diberikan baik dalam bentuk uang, barang, atau jasa akan benar-benar diterimanya kembali dari debitur dalam jangka waktu tertentu di masa yang akan datang.

Dengan ditandatanganinya perjanjian fasilitas kredit pada tanggal 7 Januari 2009 antara kreditur dengan debitur, artinya kreditur telah memiliki keyakinan bahwa debitur mampu dan sanggup mengembalikan prestasi (berupa uang) sesuai dengan jangka waktu yang diperjanjikan. Jika kreditur tidak memiliki keyakinan ini, pemberian fasilitas kredit tentu tidak akan dilakukan oleh kreditur dan perjanjian kredit tidak akan ditandatangani. Untuk mendapatkan kepercayaan dari kreditur seperti itu, tentu saja debitur tidak bersikap pasif. Debitur dituntut mempunyai moral, watak atau sifat personality yang positif, kooperatif dan memiliki rasa tanggung jawab dibuktikan dengan beberapa hal yaitu: (i) mampu menjalankan usahanya sesuai dengan prinsip *Good Corporate Governance*; (ii) mampu menjaga kestabilan usahanya sehingga memiliki pendapatan yang stabil. Menjaga kestabilan usaha, berarti debitur harus mampu mempertahankan usahanya untuk jangka waktu yang panjang bahkan mampu mengembangkan usahanya lebih besar lagi sehingga dapat mempertahankan pendapatan yang ada dan lebih jauh, memperoleh keuntungan usaha; (iii) mampu memperlihatkan bahwa debitur memiliki rasa tanggung jawab yaitu ditunjukkan dengan mau membayar setiap hutang-hutang pokok beserta bunga terhadap hutang-hutang kreditur terdahulu (dapat dilihat pada catatan keuangan debitur). Tanggung jawab ini juga dapat terlihat dari bukti-bukti

pemenuhan kewajiban-kewajiban lainnya seperti bukti pembayaran pajak, tidak terdaftar dalam *black list* Bank Indonesia, tidak terlibat dalam perkara pengadilan sehubungan dengan adanya gugatan wanprestasi, tidak dipailitkan oleh pihak lain.

Apabila debitur mampu untuk melakukan hal-hal tersebut, artinya perusahaan debitur memiliki reputasi yang positif, tentunya dengan reputasi positif akan mendorong pihak lain khususnya bank untuk mempercayainya. Perusahaan yang memiliki reputasi yang positif akan banyak memperoleh keuntungan, karena perusahaan tersebut telah mendapatkan unsur kepercayaan dari pihak lain. Lebih lanjut, akan mengakibatkan dengan mudah melakukan kerjasama dengan pihak lain, salah satunya adalah mendapat fasilitas kredit dari bank.

- (b) *Tenggang waktu*. *Tenggang waktu* atau *jangka waktu* adalah suatu masa yang memisahkan antara pemberian prestasi dengan kontra prestasi yang akan diterima pada masa yang akan datang. Dalam unsur *tenggang waktu* ini terkandung pengertian nilai *agio* dari uang, yaitu nilai uang yang ada sekarang lebih tinggi nilainya dari uang yang akan diterima pada masa yang akan datang. *Tenggang waktu* dalam perjanjian kredit dapat diberikan untuk jangka pendek, jangka menengah ataupun jangka panjang. Sebagai akibat adanya unsur nilai *agio* dari uang, semakin panjang *tenggang waktu* kredit maka bank akan memberikan bunga yang semakin tinggi dan kewajiban hutang debiturpun akan semakin besar. Jika kredit diberikan dalam waktu yang terlampau panjang juga akan membahayakan pihak kreditur karena tingkat risiko juga akan semakin tinggi.

Berdasarkan perjanjian kredit tanggal 7 Januari 2009, kreditur memberikan *tenggang waktu* antara pencairan kredit dengan pelunasan kredit oleh debitur yaitu untuk fasilitas A adalah selama 5 (lima) tahun yang pelunasan kreditnya dilakukan melalui angsuran setiap 3 bulan sekali selama 20 kali, untuk fasilitas B adalah baru dibayar pada akhir periode pinjaman, dan untuk fasilitas C adalah baru dibayar 2 (dua) tahun setelah periode ketersediaan yaitu 2 tahun dari pinjaman awal



melalui angsuran setiap 3 bulan sekali selama 12 kali. Periode peminjaman ini dapat diperpanjang sesuai kesepakatan para pihak dengan pemberian bunga yang besarnya berdasarkan perhitungan tahunan yaitu melihat dari (a) margin; (b) LIBOR (untuk pinjaman dalam dollar)/JIBOR (untuk pinjaman dalam rupiah); (c) premi kredit, dan (d) premi likuiditas. Sesuai perjanjian kredit tersebut, kreditur tidak memberikan dana pinjaman kepada debitur dengan jangka waktu yang terlampau panjang. Hal ini tentu akan lebih meringankan risiko yang akan dihadapi para pihak terutama bank. Bank Indonesia sendiri tidak memberikan anjuran tentang jangka waktu kredit yang mana yang seharusnya diambil debitur karena jangka waktu kredit ini tergantung dari analisis atas kemampuan debitur dalam mengangsur hutang kredit setiap bulannya sampai dengan akhir periode peminjaman. Walaupun, Bank Indonesia tidak memberikan anjuran tentang jangka waktu kredit yang mana yang seharusnya diambil oleh debitur, namun, berdasarkan Pasal 5 ayat (4) PBI No.7/3/PBI/2005 mengatur jika kualitas debitur menurun menjadi kurang lancar, diragukan, atau macet, maka bank wajib mengambil langkah penyelesaian yaitu kredit wajib dilunasi oleh debitur dalam tenggang waktu 60 (enam puluh) hari sejak turunnya kualitas pembayaran kredit oleh debitur atau para pihak perlu mengadakan kesepakatan untuk melakukan restrukturisasi kredit. Namun debitur dapat melakukan upaya mitigasi risiko sehubungan dengan tenggang waktu ini adalah sebisa mungkin debitur mengajukan jangka waktu kredit yang tidak terlampau lama yaitu tidak lebih dari 5 (lima) tahun.

- (c) *Degree of risk*. *Degree of risk* adalah tingkat risiko yang akan dihadapi sebagai akibat dari adanya jangka waktu yang memisahkan antara pemberian prestasi dengan kontra prestasi yang akan diterima kemudian hari. Semakin lama jangka waktu kredit diberikan, semakin tinggi pula tingkat risikonya karena sejauh-jauhnya kemampuan manusia untuk menerobos hari depan selalu terdapat unsur ketidakpastian yang tidak dapat diperhitungkan. Dengan adanya unsur

risiko ini maka jaminan dalam pemberian fasilitas kredit diperlukan. Sebagaimana telah diuraikan, kreditur memberikan kredit kepada debitur untuk jangka waktu 5 (lima) tahun dan dalam upaya transfer risiko yang akan timbul, debitur menyediakan beberapa jaminan berupa jaminan kebendaan berupa hak tanggungan atas tanah, jaminan fidusia, gadai, dan juga menyediakan jaminan penanggungan berupa jaminan pribadi dari para pemegang saham. Berdasarkan informasi dari pihak perusahaan, nilai total jaminan tersebut telah mencukupi bahkan melebihi nilai minimum jaminan yang diperhitungkan oleh bank yaitu sebesar 130 % dari nilai fasilitas kredit.

- (d) Prestasi. Prestasi atau objek kredit tidak saja diberikan dalam bentuk uang, tetapi dapat berbentuk barang dan jasa. Namun kehidupan ekonomi modern didasarkan pada uang maka transaksi-transaksi kredit dalam bentuk uang yang sering dijumpai dalam praktek perkreditan.<sup>72</sup> Dalam perjanjian kredit tanggal 7 Januari 2009, prestasi yang diberikan kepada debitur adalah dalam bentuk uang dengan mata uang dollar Amerika Serikat, dengan jumlah yang berbeda-beda dibagi sesuai dengan bagian fasilitasnya yaitu sejumlah US\$ 50,000,000 untuk fasilitas A, US\$ 30,000,000 untuk fasilitas B dan US\$ 50,000,000 untuk fasilitas C. Prestasi dalam bentuk uang tersebut, akan digunakan oleh debitur untuk membiayai kembali hutang yang ada, untuk pembiayaan umum dan membiayai modal kerja serta belanja modal debitur. Adanya prestasi dalam bentuk uang mata uang dollar Amerika Serikat, debitur harus waspada terhadap kemungkinan muncul depresiasi nilai tukar Rupiah. Upaya mitigasi risikonya adalah dengan melakukan lindung nilai (*hedging*) dan memperkecil transaksi hutang dalam mata uang asing daripada transaksi hutang dalam mata uang Rupiah.

Salah satu upaya mitigasi risiko gagal bayar atau kemacetan dalam pelunasan oleh nasabah, bank memberikan penilaian berdasarkan prinsip-

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<sup>72</sup>Thomas Suyatno, *et al.*, *Dasar-dasar Perkreditan*, Cetakan ketiga, (Jakarta: Gramedia, 1990), hlm.12-13.

prinsip umum perbankan sehubungan dengan pemberian fasilitas kredit adalah menggunakan prinsip 5C, yaitu:

- (a) *Character*. Seorang analisis harus memiliki keyakinan bahwa calon debitur memiliki sifat atau *character* yang dapat dipercaya. Bahwa calon debitur mau dan mampu untuk mengembalikan hutang kredit dalam jangka waktu tertentu. Pada dasarnya bank harus mengenal nasabahnya debitur dan mempercayai nasabahnya debitur. Pengenalan dan kepercayaan kreditur dapat dimiliki bank jika bank dapat melihat bahwa debitur memiliki *character* berupa moral, watak atau sifat *personality* yang positif, kooperatif dan memiliki rasa tanggung jawab. Calon debitur yang memiliki *character* yang baik adalah calon debitur yang memiliki tingkat kejujuran dan integritas yang tinggi untuk memenuhi kewajiban-kewajibannya. Kita dapat mengetahuinya hal itu semua dengan melihat pada latar belakang kehidupan dan sejarah kredit calon debitur. Hal ini semua merupakan ukuran “kemauan” membayar calon debitur.<sup>73</sup> Sesuai dengan perjanjian kredit tanggal 7 Januari 2009, salah satu tujuan penggunaan dana pinjaman ini adalah untuk membiayai kembali hutang-hutang debitur yang ada. Hal ini merupakan salah satu indikasi bahwa debitur memiliki rasa tanggung jawab untuk segera mengembalikan dan menyelesaikan segala hutang-hutang debitur yang ada. Selain itu, debitur juga tidak memiliki sejarah yang negatif yaitu tidak terdaftar dalam *black list* Bank Indonesia, tidak terlibat dalam perkara pengadilan sehubungan dengan adanya gugatan wanprestasi, serta tidak pernah dipailitkan oleh pihak lain. Sehingga adalah wajar jika kreditur memiliki kepercayaan karena calon debitur memiliki *character* berupa moral, watak atau sifat *personality* yang positif, kooperatif dan memiliki rasa tanggung jawab. Upaya mitigasi debitur sehingga debitur dapat secara konsisten memiliki *character* yang baik adalah terus berupaya menjalankan usahanya sesuai dengan prinsip *Good Corporate Governance*, menjaga kestabilan usaha secara berkesinambungan yaitu dengan meningkatkan portofolio menara telekomunikasi, meningkatkan jumlah penyewaan berdasarkan kontrak

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<sup>73</sup> Kasmir, *Bank Dan Lembaga Keuangan Lainnya*, Edisi Revisi Cet.7, (Jakarta: PT RajaGrafindo Persada, 2003), hlm. 104.

jangka panjang dengan operator telekomunikasi yang bereputasi baik, memperluas jaringan di daerah pedesaan dimana kebutuhan menara telekomunikasi baru, menjaga reputasi keuangannya.

- (b) *Capacity*. *Capacity* atau kemampuan adalah untuk melihat kemampuannya dalam mengembalikan kredit atau pelunasan hutang kredit yang diberikan. Contohnya bagaimana kemampuan calon debitur dalam menjalankan usahanya, bagaimana kemampuan bisnisnya<sup>74</sup> untuk mendatangkan penghasilan guna pelunasan hutang kredit.

Salah satu persiapan yang penting dilakukan agar debitur dapat dengan mudah mendapatkan fasilitas kredit adalah debitur dituntut untuk bisa menjadi perusahaan yang sehat yaitu debitur dapat menjaga kestabilan usahanya secara berkesinambungan yaitu melakukan strategi bisnis seperti yang sudah penulis uraikan diatas, serta memiliki kemauan dan kemampuan membayar kredit atau pelunasan hutang kredit. Debitur harus bisa mengidentifikasi sumber dan jumlah pendapatan baik yang telah diperoleh atau yang akan diperoleh perusahaan. Apakah perusahaannya mampu untuk mendapatkan pendapatan yang signifikan dan stabil sehingga perusahaan dapat berjalan dengan baik dalam jangka waktu yang panjang dan lebih jauh mampu untuk mengembalikan setiap angsuran hutang kredit dan bunganya di masa yang akan datang. Disini perencanaan dan pelaksanaan sistem manajemen perusahaan harus bisa berjalan dengan baik, masing-masing pihak baik seperti direktur keuangan, direktur operasional, manager-manager pelaksana hingga para pegawai harus bisa melakukan tugasnya dengan maksimal sehingga perusahaan dapat selalu menjaga *capacity* nya. Debitur juga perlu mengetahui sampai sejauh mana debitur memiliki kemampuan untuk mengangsur hutang kreditnya tersebut. Debitur tentu perlu menyiapkan diri dengan menghitung jumlah pendapatan yang diperoleh setiap bulan hingga akhir periode peminjaman, menghitung biaya atas kewajiban-kewajiban perusahaan yang harus dikeluarkan setiap bulan hingga akhir periode peminjaman, sehingga selama jangka waktu perjanjian kredit masih berlaku, perusahaan bisa

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<sup>74</sup>*Ibid.*, hlm. 105.

melakukan perhitungan sejauh mana perusahaan dapat secara konsisten melakukan pembayaran atas angsuran kredit beserta bunga.

Kreditur juga mensyaratkan debitur wajib untuk menjaga rasio *Net Debt to Annualized Adjusted EBITDA* tidak lebih dari 5,5 kali, rasio *Interest Service Coverage* harus memenuhi kriteria bahwa pada tanggal perjanjian ini tidak lebih dari 1,9 kali, dari periode 1 Januari 2009 sampai dengan 31 Desember 2009 tidak kurang dari 2 kali, dari periode 1 Januari 2010 sampai dengan 31 Desember 2010 tidak kurang dari 2,25 kali, setiap saat, tidak kurang dari 2,50 kali. Serta rasio *Minimum Debt Service Coverage* tidak kurang dari 1,2 kali, rasio *Loan to Value* tidak kurang dari 0,8 kali, rasio *Contracted Revenue* tidak kurang dari 0,7 kali, minimum *Positive Networth* tidak kurang dari US\$ 15.000.000 (klausul 20 tentang kesepakatan keuangan). Persyaratan rasio-rasio yang harus dijaga oleh debitur tersebut merupakan alat bagi kreditur untuk melakukan monitor dan meyakinkan kreditur bahwa debitur akan tetap memiliki *capacity* untuk mengembalikan setiap angsuran hutang kredit dan bunganya di masa yang akan datang. Persyaratan lainnya yang diajukan kreditur terkait memonitor *capacity* debitur adalah debitur terikat untuk menyerahkan laporan keuangan secara berkala kepada kreditur (klausul 19 tentang kesanggupan memberikan informasi), debitur diwajibkan memiliki asuransi, diwajibkan mematuhi peraturan dari bank Indonesia, dilarang untuk menciptakan agunan baru atas aset yang dijaminkan, dilarang melakukan perubahan struktur kepemilikan saham, dilarang melakukan perubahan bisnis, dilarang membubarkan perusahaan tanpa seijin bank, dilarang melakukan perubahan terhadap dokumen penjaminan, dilarang melakukan perubahan terhadap laporan keuangan tanpa persetujuan terlebih dahulu secara tertulis dari agen fasilitas, dilarang melakukan peminjaman fasilitas kredit atau menyediakan jaminan perorangan kepada pihak lain tanpa persetujuan terlebih dahulu secara tertulis dari agen fasilitas, dilarang untuk mengalihkan hak dan kewajibannya berdasarkan perjanjian sewa menyewa tanah dan menara (klausul 21 tentang kesepakatan umum).

- (c) *Capital*. *Capital* juga dipakai oleh kreditur dalam menganalisis debitur yaitu untuk melihat apakah penggunaan modal calon debitur efektif, dengan melihat

pada laporan keuangan. Capital juga harus dilihat dari sumber mana saja modal yang ada sekarang<sup>75</sup>. Semakin besar modal sendiri yang dimiliki oleh calon debitur maka semakin tangguh untuk menghadapi kemungkinan risiko yang dihadapi dikemudian hari. Salah satu bagian dari permodalan yang penting adalah debitur memiliki *cash* atau permodalan yang likuid. Sehingga dapat dipakai untuk melakukan pelunasan hutang kredit. *Capital* ini umumnya dicerminkan oleh necara calon debitur dengan melihat pada komponen modal. Akibat pemakaian modal secara tidak efektif tentu saja berefek negatif terhadap perkembangan usaha debitur dan lebih lanjut akan mengarahkan debitur kepada risiko gagal bayar atas dana pinjaman. Sebagai upaya mitigasi risiko terkait modal debitur ini, dalam perjanjian kredit tanggal 7 Januari 2009, kreditur melakukan monitor debitur terkait dengan pemakaian *capitalnya* yaitu dengan mensyaratkan kepada debitur untuk menyerahkan *copy* atas laporan keuangan debitur secara berkala (klausul 19.1 tentang pernyataan keuangan).

(d) *Collateral*. Merupakan jaminan yang diberikan oleh calon debitur, dengan jumlah melebihi jumlah kredit yang diberikan. Jaminan ini merupakan pengaman bagi bank untuk menutup kemungkinan risiko terburuk yaitu calon debitur tidak mampu mengembalikan hutang kreditnya. Semakin besar nilai jaminan itu dapat meng-*cover* kredit maka semakin aman dana bank itu. Jaminan itu akan dianggap aman apabila mampu meng-*cover* 120% dari total kreditnya. Disamping aman, jaminan yang semakin likuid akan semakin diminati sebab dapat segera diual apabila terjadi kredit macet. Pentingnya fungsi jaminan bagi kreditur maka keabsahan jaminan juga harus diteliti, jika terjadi masalah dikemudian hari maka jaminan dapat dieksekusi secepatnya oleh bank.<sup>76</sup>

Dalam jaminan kredit, terdapat bermacam-macam jenis jaminan, yaitu (i) jaminan umum adalah jaminan yang diberikan bagi kepentingan semua kreditur dan menyangkut semua harta kekayaan debitur. Diatur dalam Pasal 1131 KUH Perdata; (ii) jaminan khusus, jaminan yang mengandung unsur *privilage* yaitu hak kreditur untuk didahulukan pembayaran utangnya dibandingkan kreditur lainnya. Jaminan khusus yang diatur dalam KUH

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<sup>75</sup>*Ibid.*, hlm. 105.

<sup>76</sup>*Ibid.*, hlm. 105.

Perdata dapat berupa jaminan barang (disebut sebagai jaminan kebendaan atau *zakelijke - zekerheidsrechten*) atau orang (disebut sebagai jaminan perorangan atau *persoonlijke zekerheidsrechten/ personal guaranty*).

Macam-macam dari jaminan kebendaan adalah sebagai berikut:

- (A) Gadai, diatur didalam Bab XX Buku II KUH Perdata Pasal 1150 sampai dengan Pasal 1160. Pasal 1150 KUH Perdata. Objek jaminan gadai adalah benda bergerak, yang menurut pasal 1150, 1152 ayat (1) dan 1153 KUH Perdata dapat berupa benda bergerak berwujud kecuali kapal-kapal yang terdaftar pada register kapal maupun benda bergerak tidak berwujud yang berupa hak-hak.<sup>77</sup> Hal terpenting dalam gadai adalah gadai memiliki syarat *inbezitstelling*, sebagaimana diatur dalam pasal 1152 ayat (2) KUH Perdata yaitu adanya kewajiban melepaskan secara fisik benda-benda dari kekuasaan si pemberi gadai ke pemegang gadai;
- (B) Hipotik, diatur di dalam Buku II KUH Perdata Bab XXI Pasal 1162 sampai dengan 1232. Namun, sejak Undang-undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah (UUHT), maka hipotik atas tanah dan segala benda-benda yang berkaitan dengan tanah menjadi tidak berlaku lagi. Saat ini, hipotik berlaku hanya terhadap kapal terbang, helikopter, serta kapal laut dengan bobot 20 m<sup>3</sup> keatas. Pasal 1175 KUH Perdata mengatur bahwa hipotik hanya dapat dibebankan terhadap benda-benda yang telah ada;
- (C) Fidusia. Fidusia/Fiducia atau disebut dengan *Fiduciare Eigendoms Overdracht* berasal dari kata fides yang berarti kepercayaan. Fidusia ini tidak diatur dalam KUH Perdata. Fidusia di Indonesia saat ini diatur didalam Undang-undang Nomor 42 Tahun 1999 tentang jaminan fidusia (UU Fidusia). Pasal 1 angka (2) dan (4) UU Fidusia menyatakan bahwa yang dapat dijadikan objek jaminan fidusia adalah benda yang dapat dimiliki dan dialihkan baik berwujud maupun tidak berwujud, yang terdaftar maupun tidak terdaftar, yang bergerak maupun tidak bergerak yang tidak dapat dibebani hipotik atau hak tanggungan. Berdasarkan Pasal 5 UU Fidusia, pengikatan fidusia dilakukan dengan cara membuat akta

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<sup>77</sup> Hasbullah, *op.cit.*, hlm.23.

notaris dalam bahasa Indonesia disebut sebagai Akta Jaminan Fidusia. Akta ini minimal memuat identitas pemberi dan penerima fidusia, data perjanjian pokok, uraian benda yang menjadi objek jaminan fidusia, nilai penjaminan dan nilai benda yang menjadi objek jaminan fidusia.

(D) Hak Tanggungan, diatur dalam Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA). Berdasarkan pasal 1 UUHT objek Hak Tanggungan adalah hak jaminan yang dibebankan pada hak atas tanah berikut atau tidak berikut benda-benda lain yang merupakan satu kesatuan dengan tanah itu, untuk pelunasan hutang tertentu, yang memberikan kedudukan yang diutamakan kepada kreditur tertentu terhadap kreditur-kreditur lain.

Bahwa dalam proses pengikatan jaminan ini, debitur menemukan kendala-kendala yaitu pengikatan jaminan, pendaftaran jaminan, pengumpulan data perjanjian, pengumpulan data aset menara yang memakan waktu cukup lama.

(a) Proses pengikatan dan pendaftaran jaminan yang lama.

Khusus terhadap jaminan-jaminan existing, kreditur mensyaratkan proses pendahuluan terkait pengikatan jaminannya adalah sebagai berikut:

- Mengirimkan surat pemberitahuan kepada kreditur lama bahwa perusahaan akan melakukan pelunasan atas dana pinjaman berdasarkan perjanjian kredit terdahulu, yang jaminannya akan dipakai dalam perjanjian kredit tanggal 7 Januari 2009.
- Melakukan pengurusan pelepasan hak jaminan atas jaminan *existing* yang perjanjian kredit pokoknya telah dibayar oleh debitur dengan menggunakan dana pinjaman tersebut.
- Melakukan pengikatan jaminan baru atas jaminan *existing* yang sudah bersih berdasarkan perjanjian fasilitas kredit yang baru yaitu tertanggal 7 Januari 2009.

Kreditur juga memberikan persyaratan lanjutan yang harus dipenuhi oleh debitur:

- Mengirimkan surat pemberitahuan kepada semua dan sekaligus mendapatkan persetujuan dari semua *landlord*<sup>78</sup> yang tersebar secara

<sup>78</sup> Jumlah total *landlord* adalah 123 orang.



luas di wilayah Republik Indonesia yaitu wilayah DKI Jakarta, Jawa Barat, Jawa Tengah, Jawa Timur, Bali, Banten, Sumatra Utara, Sumatra Selatan, Jambi, Kepulauan Riau, dan Lampung,, terkait dengan adanya perjanjian sewa menyewa antara perusahaan yang berkedudukan sebagai pihak penyewa dengan *landlord* yang berkedudukan sebagai pihak yang menyewakan. Di dalam surat tersebut, perusahaan menyampaikan informasi bahwa perusahaan akan melakukan peminjaman dana kepada bank dan akan melakukan pengikatan jaminan atas aset perusahaan berupa menara dan/atau peralatan telekomunikasi milik perusahaan yang ditempatkan diatas tanah milik *landlord*, sehingga jika terjadi *wanprestasi* maka akan terjadi pengalihan hak dan kewajiban penyewa, berdasarkan perjanjian sewa menyewa antara perusahaan dengan *landlord*, kepada bank selaku kreditur.

Pada prakteknya, perusahaan mengalami kesulitan terkait dengan kewajiban ini. Kesulitan yang dialami oleh perusahaan adalah: (i) *database* perusahaan tentang alamat *landlord* tidak rapih dan tidak akurat. Ada alamat *landlord* yang tidak tertulis secara lengkap atau ada alamat *landlord* yang tidak sesuai atau ada alamat yang salah atau alamat *landlord* tidak *update* dengan kondisi perubahan alamat di lapangan, (ii) pengetahuan *landlord* yang terbatas. *Landlord* tidak dapat memahami konsep pembebanan jaminan, konsep *wanprestasi*, konsep peralihan hak dan kewajiban terkait adanya perjanjian fasilitas kredit dan perjanjian jaminannya antara perusahaan dengan bank yang diberitahukan oleh perusahaan melalui surat pemberitahuan tersebut, sehingga menimbulkan perbedaan penafsiran serta menyebabkan *landlord* merasa tidak nyaman, takut dan berakibat tidak mau bekerja sama dengan perusahaan untuk menandatangani surat persetujuan. Bahkan ada beberapa diantara *landlord* tersebut yang tidak mau menandatangani surat persetujuan dengan alasan perusahaan belum melakukan penyelesaian kewajiban berdasarkan hal-hal lain diluar fasilitas kredit ini kepada *landlord*, menggunakan kesempatan ini sebagai alat untuk mengancam perusahaan dimana perusahaan harus

terlebih dahulu memenuhi permintaan *landlord* baru *landlord* bersedia menandatangani surat tersebut. Permasalahan semakin kompleks karena kewajiban debitur untuk mengirimkan dan mendapatkan surat persetujuan tersebut ada batasan waktunya. Artinya, perusahaan harus mengatur strategi dan bertindak cepat dalam mencari jalan keluar sehingga hasil akhir yaitu mendapatkan bukti pengiriman surat dan pemberian surat persetujuan dari semua *landlord* dapat terpenuhi tepat waktu. Namun yang menjadi permasalahannya adalah pengumpulan surat persetujuan dari *landlord* tersebut tidak tepat waktu, sehingga mengakibatkan debitur dapat dianggap melakukan wanprestasi karena debitur dapat dianggap tidak melakukan apa yang telah disanggupi akan dilakukannya atau debitur dianggap melakukan apa yang diperjanjikan tetapi terlambat. Hal ini tentu sangat dihindari oleh debitur sehingga para pihak dalam perjanjian perlu untuk melakukan perundingan mencari jalan keluar dari permasalahan ini.

- Mengirimkan surat pemberitahuan kepada operator terkait dengan adanya perjanjian sewa menyewa menara dan *shelter* antara perusahaan yang berkedudukan sebagai pihak yang menyewakan dengan operator yang berkedudukan sebagai pihak penyewa. Di dalam surat tersebut menyatakan informasi bahwa pihak perusahaan akan melakukan peminjaman dana kepada bank dan akan dilakukan pengikatan jaminan atas aset perusahaan berupa menara dan/atau peralatan telekomunikasi milik perusahaan yang disewakan kepada operator, sehingga jika terjadi wanprestasi maka akan terjadi pengalihan terkait hak dan kewajiban penyewa berdasarkan perjanjian sewa menyewa antara perusahaan dengan operator kepada bank selaku kreditur
- Menunjuk notaris yang wilayah kerjanya sesuai wilayah domisili perusahaan untuk melakukan pengikatan atas aset perusahaan yang terletak di wilayah sesuai domisili perusahaan. Notaris ini juga akan ditunjuk sebagai notaris koordinator yang bertugas menunjuk dan menginstruksikan kepada notaris-notaris di daerah sesuai wilayah tempat aset perusahaan berada untuk melakukan pengikatan jaminan,

pendaftaran jaminan, pencoretan pendaftaran atas jaminan ke kantor pemerintah terkait.

Agar pelaksanaan pengikatan jaminan berjalan tepat waktu, debitur harus menunjuk notaris koordinator yang memiliki reputasi bagus dan memiliki jaringan luas dengan notaris-notaris di daerah.

- Mengirim bukti-bukti kepada kreditur terkait dengan kewajiban-kewajiban debitur yaitu sudah melakukan pemberitahuan dan telah diterima dengan baik oleh *landlord*, operator, sudah dilakukan pencoretan atas jaminan *existing*, sudah dilakukan pengikatan dan pendaftarannya atas jaminan yang baru ke kantor pemerintah terkait.

Terkait dalam proses pengikatan jaminan dan pendaftarannya, debitur mengalami hambatan yaitu notaris di daerah memiliki persepsi yang berbeda-beda perihal pelaksanaannya. Untuk keperluan pendaftaran, beberapa notaris mewajibkan untuk melampirkan perjanjian pokok dari jaminan yaitu perjanjian fasilitas kredit karena pihak kantor pendaftaran mewajibkan hal itu. Permasalahannya adalah perjanjian tersebut tidak dibuat dalam bahasa Indonesia, karena para pihaknya melibatkan lembaga swasta Indonesia dan pihak asing, akibatnya tidak semua kantor pendaftaran mau menerima perjanjian yang ditulis dalam bahasa asing, dalam hal ini bahasa Inggris dan mengharuskan perjanjian kredit tersebut ditulis juga dalam bahasa Indonesia. Namun disisi lain, kreditur menginginkan perjanjian fasilitas ini hanya dibuat dalam bahasa Inggris. Jika secara sepihak menerjemahkan isi perjanjian dan menggunakannya sebagai lampiran untuk pendaftaran pengikatan jaminan, dkuatirkan akan timbul risiko interpretasi atau perbedaan penafsiran. Sebetulnya dalam UU Fidusia dan UUHT sehubungan dengan proses pendaftaran jaminan fidusia atau hak tanggungan tidak diwajibkan secara tegas untuk melampirkan perjanjian pokoknya. Peraturan tersebut hanya mewajibkan untuk mencatumkan tentang deskripsi obyek jaminan, nilai jaminan. Serta perihal penggunaan bahasa Indonesia dalam perjanjian, memang diwajibkan oleh pemerintah sebagaimana diatur dalam Undang-undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa, Dan Lambang Negara

Serta Lagu Kebangsaan. Sehubungan dengan permasalahan ini, penulis berpendapat bahwa sebaiknya para pihak membuat perjanjian dengan menggunakan dua bahasa yaitu bahasa Inggris dan bahasa Indonesia. Untuk mengcover kekuatiran pihak dalam perjanjian yang menginginkan penafsiran menggunakan bahasa Inggris, maka dalam perjanjian ada klausul yang menyatakan apabila ada sengketa tentang perbedaan penafsiran maka yang berlaku mengikat adalah bahasa Inggris (*binding language clause*). Dalam perjanjian kredit tanggal 7 Januari 2009 hanya diatur bahwa segala pemberitahuan harus menggunakan bahasa Inggris. Apabila menggunakan bahasa selain Inggris harus melampirkan terjemahannya dalam bahasa Inggris dan jika ada pertentangan antara dua bahasa tersebut maka bahasa Inggrislah yang berlaku (klausul 30 tentang bahasa Inggris).

(b) Proses pengumpulan data perjanjian dan data aset menara yang lama.

Ciri khas Perusahaan Menara Telekomunikasi adalah perusahaan memiliki aset yaitu:

- Berupa banyak menara telekomunikasi<sup>79</sup> yang tersebar secara luas di wilayah Republik Indonesia yaitu wilayah DKI Jakarta, Jawa Barat, Jawa Tengah, Jawa Timur, Bali, Banten, Sumatra Utara, Sumatra Selatan, Jambi, Kepulauan Riau, dan Lampung, baik yang sudah memiliki IMB atau belum memiliki IMB atau yang tidak diharuskan memiliki IMB. Menara mana sajakah yang tidak memiliki IMB, tidak memiliki izin warga setempat sehingga terkena kewajiban pembongkaran akibat peraturan pemerintah pusat ataupun daerah. Menara telekomunikasi ini juga harus dibagi lagi pengelompokannya yaitu menjadi menara (*tower*) saja atau *shelter only* yaitu bangunan yang berbentuk seperti kotak digunakan sebagai tempat peralatan telekomunikasi. Didalam perjanjian, aset menara telekomunikasi perusahaan mengacu pada istilah *New telecom tower* yaitu menara telekomunikasi nirkabel (*wireless*) yang dimiliki dan dikelola oleh perusahaan dan sudah memiliki IMB, *non IMB telecom tower* yaitu

<sup>79</sup> Wawancara dengan Bapak Doddy Bagian Aset Perusahaan, dimana perusahaan memiliki kurang lebih 1.700 menara.

menara telekomunikasi nirkabel yang dimiliki dan dikelola oleh perusahaan namun belum memiliki IMB. Sedangkan *shelter only* mengacu pada *fiduciary security over towers and shelter only assets* yaitu jaminan fidusia dibebankan terhadap menara dan *shelter*-nya. Berdasarkan wawancara dengan bagian hukum perusahaan, pada saat perusahaan mempersiapkan perjanjian ini, internal perusahaan melakukan pengelompokan berdasarkan unsur tertentu dari 1.700 aset menara yang dimiliki perusahaan yaitu dikelompokkan berdasarkan kepemilikan IMB atau tidak, berdasarkan wilayah propinsi dan alamat tempat dimana menara atau shelter berada, berdasarkan jenisnya apakah berupa menara atau *shelter only*.

- Berupa banyak peralatan-peralatan telekomunikasi. Harus dilakukan identifikasi dimana saja peralatan telekomunikasi ditempatkan, apakah ditempatkan diatas tanah yang memang dimiliki oleh perusahaan atau tanah yang hanya disewa oleh perusahaan. Jika status tanah bukan milik perusahaan, namun perusahaan menyewa tempat/tanah untuk penempatan peralatan-peralatan telekomunikasi termasuk penempatan menara, maka perusahaan harus terlebih dahulu mengirimkan pemberitahuan kepada pemilik bahwa peralatan telekomunikasi milik perusahaan yang ditempatkan diatas tanah *landlord* akan dijaminkan. Jadi *landlord* dapat mengetahui adanya kemungkinan apabila perusahaan *wanprestasi*, secara hukum kepemilikan atas peralatan-peralatan telekomunikasi dari perusahaan akan beralih kepada kreditur.

Ciri lain dari Perusahaan Menara Telekomunikasi adalah dengan memiliki banyak perjanjian sewa menyewa. Perjanjian sewa menyewa ini dibagi kedalam dua model yaitu yang pertama dimana perusahaan menjadi sebagai pihak yang menyewakan tempat/menara miliknya kepada operator telekomunikasi dan yang kedua dimana perusahaan sebagai pihak yang menyewa tempat/tanah kepada *landlord* untuk penempatan menara/peralatan telekomunikasi. Jika perusahaan menjadi sebagai penyewa, maka perusahaan berkewajiban untuk melakukan pemberitahuan kepada *landlord*. Pemberitahuan ini berpotensi menjadi masalah dan

bahkan mengakibatkan risiko telatnya penarikan atau pencairan dana karena:

- (i) pemberitahuan itu dilakukan dalam jangka waktu yang relatif pendek antara waktu pemberitahuan dan penarikan dana, apalagi jika perusahaan memiliki daftar *landlord* yang banyak yaitu lebih dari 100 *landlord*; alamat *landlord* tidak di tulis secara lengkap dan benar dalam perjanjian sewa menyewanya, sehingga menyulitkan perusahaan untuk mengirimkan surat pemberitahuan;
- (ii) perusahaan tidak melaksanakan registrasi aset dengan baik dan benar sehingga banyak ditemukan *site* yang sudah tidak relevan karena telah *dicancel* namun masih terdaftar di *database* perusahaan, atau banyak *site* yang memiliki nama yang sama sehingga akan membingungkan perusahaan sendiri.

potensi permasalahannya adalah jika perjanjian sewa menyewa itu ada larangan tidak boleh mengalihkan hak dan/atau kewajiban berdasarkan perjanjian, atau tidak boleh mengalihkan hak dan kewajiban tanpa terlebih dahulu mendapatkan persetujuan dari pihak yang menyewakan, atau tidak mengatur perihal pengalihan hal. Akibatnya perusahaan harus kembali melakukan pengelompokan berdasarkan boleh/tidaknya dilakukan pengalihan perjanjian, hal ini mengakibatkan debitur membutuhkan waktu yang tidak sebentar untuk melakukan pengelompokan tersebut. Sehingga untuk perjanjian yang diperbolehkan dapat langsung dijadikan jaminan. Risiko lain yang timbul adalah tidak terdokumentasikan dengan baik perjanjian-perjanjian sewa menyewa antara debitur dengan *landlord*. Hal ini terjadi karena pada saat pelaksanaan proses perjanjian sewa menyewa dengan *landlord* debitur tidak bisa memantau secara langsung karena proses ini dikerjakan oleh divisi khusus yaitu tim *sitac* yang biasanya pengerjaannya dilempar kepada pihak lain (*partner*). Apalagi jika lokasi berada diluar wilayah domisili debitur. Akibatnya dokumentasi perjanjian sewa menyewa tidak tersimpan dengan baik. Hal ini menjadi masalah jika kreditur mensyaratkan debitur wajib menyerahkan bukti perjanjian-perjanjian tersebut, seperti pada perjanjian 7

Januari 2009, debitur mengalami kesulitan dalam mengumpulkan setiap perjanjian-perjanjian.

Akibat dari kendala-kendala tersebut menyebabkan tertundanya pencairan dana fasilitas kredit, tentu saja merugikan dan mengacaukan target usaha debitur sendiri. Upaya mitigasi risiko tertundanya pencairan dana tersebut, debitur wajib untuk memiliki system registrasi dokumentasi khususnya menara sehingga debitur memiliki *database* yang lengkap dan akurat.

Berdasarkan perjanjian kredit tanggal 7 Januari 2009, pada akhirnya disepakati bahwa pinjaman ini dijamin dengan jenis jaminan berupa jaminan pertanggungan, jaminan kebendaan berupa gadai, fidusia, dan hak tanggungan. Perinciannya adalah sebagai berikut: jaminan fidusia terhadap aset berupa menara dan *shelter*, gadai rekening bank (*account pledge*), gadai saham milik PT X dan PT E, jaminan penanggungan dari para pemegang saham debitur serta dijamin dengan jaminan-jaminan yang sudah ada berdasarkan perjanjian kredit sebelumnya (*existing security*) yaitu berupa: (a) fidusia terhadap piutang usaha (*receivables*) dari PT A, B, dan C; (b) fidusia terhadap aset benda bergerak (*movable assets*) dari PT A, B, dan C; (c) fidusia terhadap aset benda bergerak berupa *inventory (movable assets)* dari PT A dan B; (d) gadai terhadap rekening bank dari PT A, B, C, E, dan G; (e) gadai terhadap saham di PT A, B, C, E dan G; (f) pengalihan polis asuransi dari PT A, B, dan C; (g) pengalihan perjanjian sewa menyewa tanah dari PT A, B, dan C; (h) pengalihan perjanjian sewa menara dari PT A, B, dan C; serta (i) hak tanggungan atas 1 bidang tanah dari PT A, 9 bidang tanah dari PT B, dan 191 bidang tanah dari PT C. Berdasarkan informasi dari perusahaan keseluruhan jaminan tersebut memiliki nilai total penjaminan yaitu sebesar 130% dari nilai fasilitas kredit, berarti jaminan yang diberikan debitur sudah tergolong aman karena jaminan itu akan dianggap aman apabila mampu meng-*cover* 120% dari total kreditnya.

Berdasarkan uraian tersebut diatas, jaminan debitur tergolong bukan jaminan yang bersifat likuid karena tidak banyak jaminan yang berupa *cash* atau barang yang mudah untuk dijual. Namun berdasarkan informasi dari perusahaan keseluruhan jaminan tersebut memiliki nilai total penjaminan yaitu

sebesar 130% dari nilai fasilitas kredit. Nilai penjaminan adalah bagian penting bagi kreditur, untuk dapat mengetahui seberapa jauh risiko dapat di *cover* oleh jaminan tersebut jika dikemudian hari debitur gagal bayar atas dana pinjaman atau wanprestasi.

- (e) *Condition of economics*. Sebagai analisis, harus juga menilai bagaimana kondisi ekonomi dan politik sekarang dan dimasa yang akan datang sesuai sektor masing-masing, serta prospek usaha dari sektor yang dijalankan oleh calon debitur. Penilaian prospek bidang usaha hendaknya benar-benar memiliki prospek yang baik sehingga kemungkinan kredit tersebut bermasalah relatif kecil.<sup>80</sup>

Sebagaimana telah kita ketahui bahwa setiap fasilitas kredit yang telah disetujui dan disepakati oleh para pihak, wajib dituangkan secara tertulis dalam perjanjian kredit. Suatu perjanjian kredit tersebut harus memenuhi persyaratan dasar agar perjanjian kreditnya sah secara hukum. Syarat sahnya suatu perjanjian tersebut dapat kita lihat pada Pasal 1320 KUH Perdata yaitu dipersyaratkan:

- (a) Telah terjadi kesepakatan antara mereka yang mengikatkan diri. Menurut Pasal 1321 KUH Perdata kesepakatan itu harus terjadi tanpa ada kekhilafan/kekeliruan atau paksaan atau penipuan mengenai isi dan tujuan (hal pokok) dari perjanjian kredit itu sendiri. Apabila terjadi pengaruh sebagaimana tercantum dalam Pasal 1321 KUH Perdata tersebut maka perjanjian kredit tersebut tidak lagi dapat dikatakan sah sebagai suatu perjanjian yang mengikat.

Berdasarkan perjanjian kredit tanggal 7 Januari 2009, hal pokok yang diperjanjikan oleh para pihak adalah tentang fasilitas kredit yaitu para pihak sepakat bahwa fasilitas kredit ini terbagi menjadi 3 fasilitas yaitu fasilitas A, B dan C dengan maksimum pinjaman masing-masing adalah sejumlah US\$ 50,000,000, US\$ 7,310,000 dan US\$ 7,690,000 (diatur dalam klausul 2 tentang fasilitas kredit). Fasilitas tersebut akan digunakan oleh debitur untuk membiayai kembali hutang-hutang debitur yang ada, untuk melakukan pembiayaan umum, dan membiayai modal kerja serta belanja modal debitur (diatur dalam klausul 3 tentang tujuan fasilitas kredit).

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<sup>80</sup> *Ibid.*, hlm. 105.



(b) Kecakapan dari masing-masing pihak untuk membuat suatu perjanjian. Artinya masing-masing pihak harus memenuhi persyaratan sebagai orang yang cakap menurut ketentuan Pasal 1330 KUH Perdata. Dalam Pasal 1330 KUH Perdata menyebutkan yang dimaksud sebagai orang yang tidak cakap adalah: (i) Anak-anak atau orang yang dianggap belum dewasa. Orang yang dianggap belum dewasa adalah orang yang belum mencapai umur genap 21 tahun dan tidak lebih dahulu telah menikah; (ii) Orang yang telah dewasa tetapi ditaruh di bawah pengampuan. Golongan ini adalah orang-orang yang tidak sanggup menjalani kehidupannya sendiri karena kurang waras, yaitu orang yang tidak sehat pikirannya, sehingga tidak dapat menyadari tanggung jawab yang harus dipikulnya dalam mengambil tindakan atau melakukan suatu perbuatan hukum. (iii) Orang perempuan. Berdasarkan Pasal 108 dan 110 KUH Perdata, orang perempuan yang telah bersuami, untuk mengadakan perjanjian harus mendapat ijin terlebih dahulu dari suaminya. Tetapi, berdasarkan Surat Edaran Mahkamah Agung Nomor 3 Tahun 1963, hal ini sudah tidak berlaku lagi. Lebih lanjut, keputusan ini dipertegas dengan ditetapkannya Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan, yaitu pada Pasal 31 yang menyatakan suami dan istri memiliki hak dan kewajiban seimbang serta masing-masing pihak berhak untuk melakukan perbuatan hukum.

Berdasarkan perjanjian kredit tanggal 7 Januari 2009, sebagai bukti bahwa debitur telah memenuhi unsur kecakapan sebagaimana diuraikan dalam Pasal 1330 KUH Perdata, kreditur mensyaratkan debitur untuk menyerahkan *copy* dari: (i) dokumen-dokumen perusahaan debitur, seperti: anggaran dasar, akta pendirian, surat keterangan domisili, NPWP; (ii) keputusan-keputusan rapat debitur, seperti: keputusan para pemegang saham, keputusan direktur dan komisaris; (iii) contoh tandatangan beserta bukti identitas dari pihak-pihak yang berwenang di perusahaan dalam hal mewakili perusahaan menandatangani perjanjian kredit dan dokumen-dokumen lain terkait dengan perjanjian fasilitas kredit, seperti: tandatangan dan KTP para direktur dan komisaris.

- (c) Harus disepakati hal tertentu. Hal tertentu yang dimaksud adalah pokok dan objek dari perjanjian, serta yang merupakan prestasi yang harus dilaksanakan dalam perjanjian. Artinya, apa yang diperjanjikan antara bank dan nasabahnya harus jelas ditentukan jenis, jumlah, dan waktu pelaksanaan. Syarat bahwa prestasi harus ditentukan, supaya dapat menentukan hak dan kewajiban masing-masing dari pihak, jika di kemudian hari terjadi sengketa dalam perjanjian.

Berdasarkan perjanjian kredit tanggal 7 Januari 2009, pinjaman diberikan dalam fasilitas A, B dan C dengan maksimum pinjaman masing-masing adalah sejumlah US\$ 50,000,000, US\$ 7,310,000 dan US\$ 7,690,000. Waktu pembayaran untuk fasilitas A adalah setiap 3 bulan sekali selama 20 kali, untuk fasilitas B adalah pada akhir periode pinjaman, dan untuk fasilitas C adalah dua tahun setelah periode ketersediaan yaitu 2 tahun dari pinjaman awal yang kemudian baru dibayarkan selama 12 kali sampai dengan akhir periode pinjaman, dan dapat diperpanjang sesuai kesepakatan para pihak. Pinjaman kredit ini dikenakan bunga dengan perhitungan tahunan yang melihat dari: (a) margin; (b) LIBOR (untuk pinjaman dalam dollar)/JIBOR (untuk pinjaman dalam rupiah); (c) premi kredit, dan (d) premi likuiditas (diatur dalam klausul 8.1 tentang perhitungan bunga). Fasilitas-fasilitas tersebut akan digunakan oleh debitur untuk membiayai kembali hutang-hutang debitur yang ada, untuk melakukan pembiayaan umum, dan membiayai modal kerja serta belanja modal debitur (diatur dalam klausul 3 tentang tujuan fasilitas kredit). Secara terperinci para pihak mengatur hak dan kewajiban dalam perjanjian kredit dengan sistematika sebagai berikut: bagian 1 mengatur tentang penjelasan definisi dan interpretasi istilah-istilah yang dipakai dalam perjanjian kredit, bagian 2 tentang uraian fasilitas kredit, bagian 3 tentang tujuan penggunaan fasilitas kredit, bagian 4 tentang kondisi penggunaan fasilitas kredit, bagian 5 tentang penggunaan dana fasilitas kredit, bagian 6 tentang pembayaran kembali dana pinjaman, bagian 7 tentang pembayaran sebelum waktunya dan pembatalannya atas dana pinjaman, bagian 8 tentang bunga, bagian 9 tentang periode pembayaran bunga, bagian 10 tentang perubahan perhitungan bunga, bagian 11 tentang

provisi, bagian 12 tentang pajak dan ganti rugi, bagian 13 tentang ongkos-ongkos yang meningkat yang dibebankan kepada debitur, bagian 14 tentang ganti rugi lainnya, bagian 15 tentang mitigasi para kreditur, bagian 16 tentang ongkos-ongkos dan biaya-biaya, bagian 17 tentang rekening bank, bagian 18 tentang pernyataan jaminan, bagian 19 tentang kesanggupan memberikan informasi, bagian 20 tentang kesepakatan keuangan, bagian 21 tentang kesepakatan umum, bagian 22 tentang hal-hal yang dianggap sebagai wanprestasi, bagian 23 tentang perubahan kreditur, bagian 24 tentang perubahan debitur, bagian 25 tentang peran agen dan pimpinan proyek, bagian 26 tentang bisnis dari pihak keuangan, bagian 27 tentang pihak-pihak keuangan, bagian 28 tentang mekanisme pembayaran dana pinjaman, bagian 29 tentang *set-off* (penghapusan hutang-hutang debitur yang memiliki nilai setara), bagian 30 tentang pemberitahuan, bagian 31 tentang perhitungan dan sertifikasi, bagian 32 tentang ketidakabsahan sebagian isi perjanjian, bagian 33 tentang perbaikan dan dispensasi, bagian 34 tentang perubahan dan dispensasi, bagian 35 tentang keterpisahan, bagian 36 tentang hukum yang berlaku, bagian 37 tentang pelaksanaan. Serta, perjanjian ini terdiri dari beberapa lampiran yaitu lampiran 1 tentang pihak-pihak awal, lampiran 2 tentang persyaratan pencairan dana pinjaman, lampiran 3 tentang format permohonan pencairan dana, lampiran 4 tentang format sertifikat transfer hak dan kewajiban kreditur lama ke kreditur baru, lampiran 5 tentang jadwal pembayaran, lampiran 6 tentang ketentuan jaminan, lampiran 7 tentang klien yang disetujui terkait faktor kredit, lampiran 8 tentang format surat penambahan debitur/penjamin, lampiran 9 tentang format surat pengunduran debitur/penjamin, lampiran 10 tentang daftar polis asuransi, lampiran 11 tentang format sertifikat pemenuhan rasio keuangan, lampiran 12 tentang hutang dan jaminan yang telah ada, lampiran 13 tentang jadwal waktu, lampiran 14 tentang format surat komitmen kreditur tambahan, lampiran 15 tentang daftar rekening penunjukan.

- (d) Harus disebabkan oleh unsur yang halal. Berdasarkan Pasal 1337 KUH Perdata suatu sebab adalah terlarang apabila dilarang oleh undang-undang atau apabila berlawanan dengan kesusilaan baik atau ketertiban umum. Hak dan

kewajiban yang tercantum dalam perjanjian fasilitas kredit bukan merupakan suatu sebab yang dilarang oleh undang-undang, kesusilaan maupun ketertiban umum.

Berdasarkan uraian diatas, syarat subyektif dan obyektif telah terpenuhi sehingga perjanjian kredit tanggal 7 Januari 2009 telah memenuhi persyaratan keabsahan perjanjian.

### **3.2.2. Aspek-Aspek Yang Dapat Meminimalisir Risiko Bank Sebagai Kreditur Dalam Pemberian Fasilitas Kredit Ke Perusahaan Menara Telekomunikasi PT Group X**

Berdasarkan pasal 8 ayat (1), ayat (2) dan penjelasannya UU Perbankan, dinyatakan bahwa pemberian fasilitas kredit atau pembiayaan yang dilakukan oleh bank mengandung risiko, dimana risiko terburuk yang dapat terjadi sehubungan dengan pemberian fasilitas kredit ini adalah gagal bayar atau kemacetan dalam pelunasan oleh debitur, sehingga dapat berpengaruh terhadap kesehatan bank itu sendiri. Oleh sebab itu, dalam pelaksanaannya bank wajib memegang teguh prinsip kehati-hatian atau *prudential banking principle* yaitu suatu prinsip atau asas yang menyatakan bahwa dalam menjalankan fungsi dan kegiatan usahanya wajib bersikap hati-hati (*prudent*) dalam rangka melindungi dana masyarakat yang dipercayakan padanya<sup>81</sup>. Dalam rangka melaksanakan prinsip kehati-hatian tersebut, bank wajib memperhatikan prinsip-prinsip perkreditan dan Prinsip Syariah yang sehat.

Adapun Prinsip Syariah yang wajib diterapkan oleh bank dalam pemberian fasilitas kredit adalah:

(a) Pemberian kredit wajib dibuat secara tertulis.

Bahwa sebagaimana diamanatkan dalam pemberian kredit wajib dibuat secara tertulis, maka para pihak menuangkan hak dan kewajibannya dalam perjanjian kredit yaitu ditandatangani pada tanggal 7 Januari 2009. Upaya bank untuk meminimalisir risiko bank sebagai kreditur dalam pemberian fasilitas kredit ke Perusahaan Menara Telekomunikasi PT Group X, bank harus dapat membuat perjanjian kredit yang cukup baik. Berikut ini karakteristik klausul yang perlu

<sup>81</sup> Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia*, (Jakarta: PT Gramedia Pustaka Utama, 2001), hlm. 8.

mendapat perhatian sehubungan dengan perjanjian kredit dalam pemberian fasilitas kredit ke Perusahaan Menara Telekomunikasi PT Group X adalah sebagai berikut:

- (i) Klausul mengenai definisi istilah khusus seperti *acquisition*, IMB (Ijin Mendirikan Bangunan), IMB *telecom tower*, *tower*, *site*, *shelter only assets*, *telecom assets*, *telecom assets agreement*, *site lease agreement*. Dalam perjanjian kredit tanggal 7 Januari 2009 ada dalam klausul 1 tentang *Definitions and interpretation*. Klausul ini wajib ada untuk menghindari risiko perbedaan penafsiran sehubungan dengan pelaksanaan hak dan kewajiban masing-masing pihak, terutama bagi debitur. Perbedaan penafsiran dapat membawa akibat tidak dilaksanakan kewajiban debitur dengan baik hal ini tentu juga akan berefek merugikan pihak bank.
- (ii) Klausul mengenai aset jaminan. Kreditur dan debitur perlu bersepakat tentang aset debitur yang mana yang akan dijadikan jaminan. Salah satu ciri perusahaan menara telekomunikasi, ia memiliki aset yaitu berupa banyak menara telekomunikasi dan banyak peralatan-peralatan telekomunikasi. Hal ini perlu di identifikasikan dengan seksama oleh debitur. Dengan melakukan identifikasi, dapat diketahui aset debitur mana yang status hukumnya stabil, yang memiliki risiko rendah, sehingga layak dijadikan jaminan. Teridentifikasinya aset yang akan digunakan sebagai jaminan dengan baik akan meminimalisir risiko kerugian bagi kreditur.

Bahwa berdasarkan perjanjian kredit tanggal 7 Januari 2009, ada jaminan berupa jaminan yang sudah ada (*Existing Security*). Perlu dilihat posisi kreditur menjadi peringkat keberapakah saat ini? Jika posisi kreditur ada pada peringkat kedua atau ketiga, lebih baik meminta kepada debitur untuk melakukan pembayaran terlebih dahulu atas kredit yang lama dan mendaftarkan kreditur baru sebagai pemegang jaminan yang baru sehingga posisi kreditur dapat berada pada peringkat pertama.

Salah satu upaya mitigasi risiko kreditur untuk memonitor sehingga debitur mampu mengembalikan pelunasan setiap angsuran hutang kredit di masa yang akan datang adalah kreditur mensyaratkan dalam perjanjian kredit, agar debitur menjaminkan rekening bank yaitu rekening operasional debitur.

(iii) Klausul mengenai eksekusi jaminan. Eksekusi yang berkaitan dengan jaminan menara telekomunikasi tidak dapat dilakukan eksekusi dengan cara konvensional yaitu dengan menjual menara telekomunikasi dan hasilnya dipakai untuk membayar pelunasan hutang. Apabila terjadi wanprestasi, salah satu upaya yang dilakukan bank adalah bank menjadi pihak menggantikan posisi debitur dalam perjanjian sewa menyewa dengan pihak operator, sehingga pendapatan dari pengoperasian tersebut dapat langsung didapatkan oleh bank tanpa harus melakukan penyitaan atas aset telekomunikasi. Hal ini sejalan dengan bentuk pengikatan yang dilakukan oleh para pihak dalam perjanjian kredit tanggal 7 Januari 2009, yaitu bank menjaminkan perjanjian-perjanjian debitur dengan operator dimana yang beralih disini adalah haknya saja dan debitur tetap menguasai objek jaminan dengan fidusia.

(b) Bank wajib memiliki keyakinan terhadap itikad, kemampuan, kesanggupan debitur. Keyakinan diperoleh dengan melihat seksama watak, kemampuan, modal, agunan, dan prospek usaha dari debitur. Dalam upaya memperoleh keyakinan terhadap itikad, kemampuan, kesanggupan debitur, bank diwajibkan untuk mengetahui identitas nasabah yang akan atau sedang menggunakan jasa perbankan (Prinsip Mengenal Nasabah atau *know your customer principles*). Kewajiban pokok dari bank dalam Prinsip Mengenal Nasabah terdiri dari 4 (empat) hal, yakni: (i) menetapkan kebijakan penerimaan nasabah; (ii) menetapkan kebijakan dan prosedur dalam mengidentifikasi nasabah; (iii) menetapkan kebijakan dan prosedur pemantauan terhadap rekening dan transaksi nasabah; (iv) menetapkan kebijakan dan prosedur manajemen risiko.

Upaya bank ini dapat terlihat secara implisit dimana bank mensyaratkan debitur untuk memenuhi beberapa ketentuan sebelum bank mencairkan dana fasilitas kredit. Persyaratan tersebut terurai dalam persyaratan pendahuluan atau dikenal dengan sebutan *condition precedent*.

- (c) Bank wajib memberikan informasi yang jelas tentang prosedur dan persyaratan kredit kepada debitur. Pada perjanjian kredit 7 Januari 2009, persyaratan pendahuluan diberikan kepada debitur setelah para pihak menandatangani perjanjian kredit tersebut. Mengingat banyak hal-hal yang harus dilakukan debitur, sebaiknya persyaratan tersebut diberikan pihak bank sebelum menandatangani perjanjian kredit sehingga hal ini sejalan dengan prinsip perbankan bahwa bank wajib memberikan setiap informasi termasuk persyaratan kredit dengan jelas.

Standar prosedur nya minimal harus melalui beberapa tahap yaitu:

- (i) Melakukan pemeriksaan hukum atas debitur oleh *lawyer* yang berpengalaman sesuai spesifikasi bidangnya, yaitu:
- Cek kabsahan pendirian perusahaan. Jika tidak sah maka perjanjian dapat dibatalkan (melanggar ketentuan syarat subyektif).
  - Cek aset perusahaan apakah layak untuk dijadikan jaminan kredit. Jika tidak layak, apabila debitur wanprestasi maka bank akan dirugikan karena dana tidak segera diperoleh kembali oleh bank.
  - Cek dokumen kredit perusahaan apakah debitur terlalu banyak hutang sehingga akan membahayakan kreditur jika ia melakukan perjanjian serupa.
  - Cek pendapatan debitur apakah ia memiliki kemampuan untuk melakukan pembayaran.
  - Cek data catatan keuangan: *cash flow* dan *income* debitur. Apakah penggunaan modal telah dipakai secara efisien, apakah ada kewajiban-kewajiban keuangan lainnya yang memberatkan debitur sehingga dapat mempersulit proses pelunasan hutang.

- Cek segala macam perjanjian kerjasama yang menyangkut jaminan.

Pemeriksaan ini sebaiknya dilakukan di tempat domisili debitur karena kreditur dapat langsung terjun dan mengecek lokasi bagaimana kondisi internal sesungguhnya debitur.

(ii) Melakukan identifikasi risiko usaha debitur.

(iii) Memastikan bahwa debitur telah memenuhi persyaratan pendahuluan (*condition precedent*) dengan benar sehingga dana dapat ditarik atau dicairkan.

(d) Bank dilarang memberikan kredit berdasarkan Prinsip Syariah dengan persyaratan yang berbeda kepada debitur dan/atau pihak-pihak terafiliasi;

(e) Penyelesaian sengketa. Didalam perjanjian kredit tanggal 7 Januari 2009, penyelesaian sengketa tercantum dalam klausul 12)

Berdasarkan perjanjian fasilitas kredit tersebut berikut ini adalah beberapa potensi risiko yang dapat muncul, yaitu:

#### A. Jika melihat dari sisi Bank

1. Credit risk. Risiko ini merupakan erosi nilai atau *erotion of value* akibat adanya wanprestasi. Kondisi ini muncul jika debitur tidak mau atau tidak mampu memenuhi kewajiban membayar hutang pokok dan bunga atau tidak mampu membayar angsuran hutang kreditnya atau memperlihatkan tanda-tanda tidak mampu memenuhinya karena misalnya faktor kegagalan usaha.

Mitigasi yang dapat dilakukan sehubungan risiko ini adalah:

- Kreditur harus melakukan penelitian secara teliti tentang kondisi pribadi debitur, sehingga sejak awal risiko dari debitur bisa dianalisis dan dinilai dengan cermat.
- Diadakan diversifikasi peminjam dalam portofolio kreditur.
- Harus ada pihak ketiga yang menjamin sehingga bila ada *wanprestasi* seluruh atau sebagian kredit dapat ditanggung misalnya asuransi.



2. Strategic business risk. Risiko meliputi seluruh bidang usaha, dimana ada kemungkinan bank kalah bersaing atau sudah ketinggalan dalam bersaing.
3. Operating risk. Risiko yang berkaitan dengan system prosedur yang kurang layak atau tepat dan mungkin menyebabkan kerugian atau menurunnya nilai services yang diberikan kepada nasabahnya.
4. Regulatory risk. Risiko yang berkaitan dengan berbagai peraturan atau perundang-undangan-undangan, dimana jika bank melanggarnya maka manajemen bank harus mempertanggungjawabkannya kepada otorita moneter dan mungkin membawa akibat pada kesehatan bank.

B. Jika melihat dari sisi Debitur

1. Kedudukan antara kreditur dan debitur yang tidak seimbang dalam pemberian fasilitas kredit ini. Sehingga ada pencantuman klausul-klausul di dalam perjanjian kredit yang dapat merugikan debitur, seperti:
  - dimungkinkan terjadi perubahan nilai bunga tanpa memerlukan persetujuan terlebih dahulu hanya melakukan pemberitahuan secara sepihak jika kondisi tertentu muncul. Akibatnya hutang debitur dapat meningkat akibat bunga yang melonjak misalnya
  - Kewajiban debitur untuk tunduk memenuhi persyaratan yang diajukan oleh bank.
  - Pihak kreditur memiliki hak untuk menentukan harga atas jaminan dalam hal dilakukan penjualan barang agunan karena kredit macet.
2. Kebijakan Pemerintah yang memberatkan debitur.
3. Bencana alam.
4. Risiko terjadi kemungkinan bank tidak segera melakukan pencairan dana fasilitas kredit dengan alasan debitur belum memenuhi persyaratan yang diajukan bank.

## BAB 4

### SIMPULAN DAN SARAN

#### 4.1. Simpulan

Berdasarkan latar belakang dan perumusan masalah pada Bab 1, kemudian setelah melakukan studi pustaka tentang dunia perbankan dan dunia penyelenggaraan telekomunikasi seluler sebagaimana ditulis pada Bab 2 dan uraian tentang unsur-unsur dan prinsip-prinsip pemberian fasilitas kredit, subyek, obyek, jaminan perjanjian kredit serta apa saja mitigasi risiko bank sebagaimana dituangkan dalam Bab 3, maka sampailah penulis menarik beberapa kesimpulan sebagai berikut:

1. Hal-Hal Yang Harus Dilakukan Oleh Perusahaan Menara Telekomunikasi Sehingga Memperoleh Fasilitas Kredit Dari Bank:
  - (a) Debitur wajib untuk memperhatikan unsur-unsur dalam perkreditan yaitu kepercayaan, tenggang waktu, tingkat risiko dan prestasi dan memenuhi kriteria berdasarkan 5C yaitu *character*, *capital*, *capacity*, *collateral* dan *condition of economic*.
  - (b) Debitur wajib memperluas bisnisnya
  - (c) Disiplin dalam melakukan pembayaran kewajiban atas hutang-hutang yang ada.
  - (d) Mengajukan tenggang waktu kredit yang tidak terlampau panjang.
  - (e) Memiliki jaminan atas hutang kreditnya dengan nilai penjaminan minimal yang mampu meng-*cover* 120% dari total hutang kreditnya.
  - (f) Melakukan *hedging*.
  - (g) Debitur memiliki system registrasi dokumen sehingga memiliki dokumentasi yang lengkap, rapih dan akurat. Terutama atas data menara-menara telekomunikasi, perjanjian-perjanjian, transaksi-transaksi keuangan baik internal maupun eksternal.

2. Aspek-Aspek Yang Dapat Meminimalisir Risiko Bank Sebagai Kreditur Dalam Pemberian Fasilitas Kredit Ke Perusahaan Menara Telekomunikasi:

- (a) Bank wajib melaksanakan manajemen risiko di dalam internal bank dan selalu menjaga kesehatan bank.
- (b) Bank wajib memiliki kebijakan dan prosedur secara tertulis dalam mengidentifikasi nasabah dan dalam proses pemberian fasilitas kredit.
- (c) Memberikan fasilitas kredit dengan waktu yang tidak terlalu panjang. Bank mewajibkan pelaksanaan penutupan asuransi terhadap barang jaminan dan asuransi kredit dengan tujuan untuk memperkecil risiko yang terjadi di luar kesalahan debitur maupun kreditur.
- (d) Membuat perjanjian kredit yang baik. Terkait dengan karakteristik dalam pemberian fasilitas kredit ke Perusahaan Menara Telekomunikasi PT Group X, perlu dicantumkan klausul-klausul yang perlu ada sehubungan dengan fasilitas kredit tersebut.
- (e) Apabila para pihak melibatkan pihak asing dan perjanjian ditulis dalam bahasa nasional pihak asing dalam hal ini bahasa Inggris, maka wajib membuat terjemahannya dalam bahasa nasional Indonesia.
- (h) Memastikan nilai penjaminan berada pada posisi aman sesuai kesepakatan awal serta memastikan prosedur pengikatan jaminan sudah sesuai dengan hukum yang berlaku.
- (i) melakukan pemantauan secara berkala terutama mengenai keuangan transaksi nasabah yang dapat mempengaruhi proses pelunasan hutang.

#### 4.2. Saran

1. Pihak perusahaan/debitur wajib untuk membiasakan dirinya menjaga kestabilan perusahaan, mempersiapkan secara internal dengan menyelenggarakan dokumentasi berupa suatu sistem registrasi berdasarkan pengelompokan menara telekomunikasi berdasarkan *site id* , *site name*,

*site address, site issues* misalkan dengan nama *tower registration management system*, serta membiasakan membuat *time table*.

2. Pihak bank/kreditur memastikan prosedur persyaratan sudah diajukan dari awal sebelum perjanjian kredit ditanda tangani termasuk melakukan pemilihan aset jaminan debitur, membuat perjanjian kredit secara lengkap dalam bahasa Indonesia. Apabila dibuat dalam bahasa asing dalam hal ini bahasa Inggris maka wajib dibuat terjemahannya dalam bahasa Indonesia.



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**DATED** 7 January 2009

**PT X  
PT A  
PT B  
PT C  
PT D  
PT E  
PT F  
PT G**

as Borrowers and Original Guarantors

arranged by

**BANK OBL**  
as Mandated Lead Arranger

with

**BANK OBL**  
acting as Facility Agent

**BANK INTAN**  
acting as Security Agent

**BANK BCG**  
acting as Account Bank

and

**THE FINANCIAL INSTITUTIONS NAMED THEREIN**  
as Original Lenders

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**US\$ 130,000,000**

**FACILITY AGREEMENT**

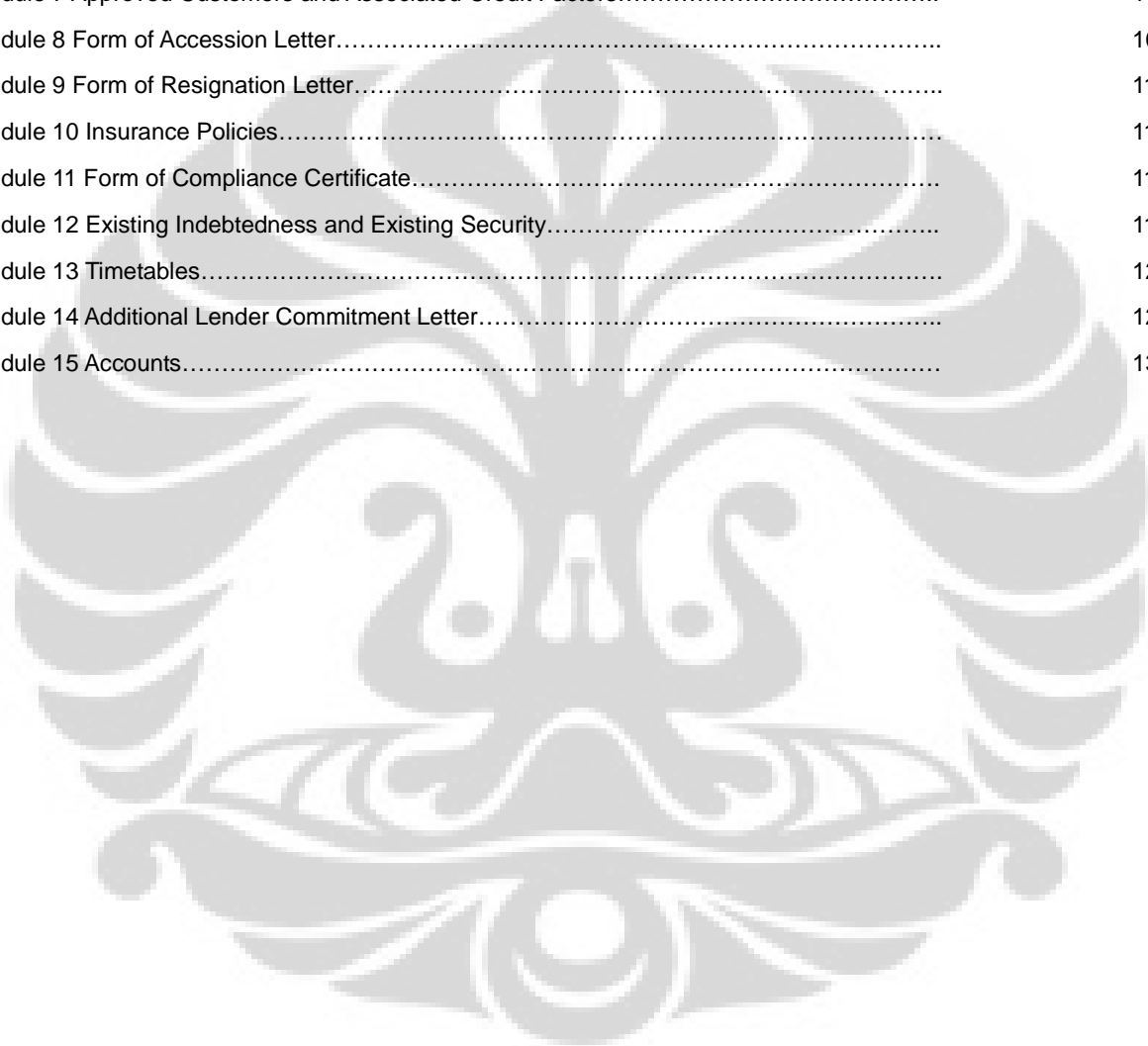
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THIS AGREEMENT is dated 7 January 2009 and made between:

- (1) THE COMPANIES listed in Part I of Schedule 1 (*The Original Parties*) as original borrowers (together, the **Original Borrowers**);
- (2) THE COMPANIES listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together, the **Original Guarantors**);
- (3) BANK OBL (the **Mandated Lead Arranger**);
- (4) THE FINANCIAL INSTITUTIONS listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the **Original Lenders**);
- (5) BANK OBL as facility agent of the Finance Parties (the **Facility Agents**);
- (6) BANK INTAN, as security agent of the Finance Parties (the **Security Agent**); and
- (7) BANK BCG. As the account bank (the **Account Bank**).

IT IS AGREED as follows:

## SECTION 1 – INTERPRETATION

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

**Accession Letter** means a document substantially in the form set out in Schedule 8 (*Form of Accession Letter*)

**Account Pledge** means each Indonesian law account pledge dated on or about the date of this Agreement given by each Borrower (other than PT X and PT E) in favour of the Security Agent on behalf of the Finance Parties pursuant to which a pledge is created over such Borrower's Accounts as security, amongst other things, for the discharge of the Secured Liabilities

**Accounts** means the Rental Proceeds Accounts, the DSRAs, the Operating Accounts and the Mandatory Prepayment Accounts and Account means each of them

**Acquisition** means, with respect to any Borrower, any transaction or series of related transactions for the direct or indirect (whether by purchase, lease, exchange, issuance of stock or other equity or debt securities, merger, reorganization or any other method) acquisition by such Borrower of:

- (a) any person, which shall then become consolidated with such Borrower in accordance with GAAP;
- (b) all or a substantial part of assets of any person; or
- (c) any communications tower facilities, communication tower management businesses or related contracts

**Additional Borrower** means a company which becomes an Additional Borrower in accordance with clause 24 (*Changes to the Obligors*)

**Additional Guarantor** means a company which becomes an Additional Guarantor in accordance with clause 24 (*Changes to the Obligors*)

**Additional Lender** means a bank, financial institution, trust, fund or other entity which becomes an Additional Lender in accordance with clause 23.7 (*Additional Lenders*)

**Additional Lender Commitment Letter** means a letter substantially in the form as set out in Schedule 14 (*Additional Lender Commitment Letter*)

**Additional Obligor** means an Additional Borrower or an Additional Guarantor

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company

**Agent** means the Facility Agent, the Security Agent or the Account Bank

**Aggregate Outstanding Debt** means the principal amount of all Loans then outstanding

**Approved Auditor** means such auditor as the Facility Agent (acting on the instruction of the Majority Lenders) may appoint from time to time which, as at the date of this Agreement, is BDP Tanubrata Sutanto & Rekan

**Approved Customer** means those Customers and prospective Customers listed in Schedule 7 (*Approved Customers and Associated Credit Factors*), as the same may be amended from time to time with the consent of the Majority Lenders, through the Facility Agent, acting in their absolute discretion

**Assignment of Contracts** means each Indonesian law security assignment dated on or about the date of this Agreement given by each Borrower (other than PT X or PT E) in favour of the Security Agent on behalf of the Finance Parties pursuant to which that Borrower assigns by way of security, all its rights, title and interest, under, amongst other things, each Telecom Asset Agreement, each Site Lease Agreement and each Derivative Contract entered into by that Borrower, to secure the discharge of the Secured Liabilities

**Authorisation** means:

(a) an authorisation, consent, approval, resolution, license, exemption, filing, notarisation, lodgment or registration; or

(b) in relation to anything which will be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action

**Availability Period** means:

(a) in relation to Facility A, the period from and including the date of this Agreement to and including the Facility A Termination Date;

(b) in relation to Facility B, the period from and including the date Facility A is completely utilised to and including the Facility B Termination Date; and

(c) in relation to Facility C, the period from and including the date Facility B is completely utilised to and including the Facility C Termination Date

**Available Commitment** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

(a) the amount of its participation in any outstanding Loans under that Facility; and

(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date

**Available Facility** means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility

**Balance** means:

(a) in relation to a particular Account or sub-account of an Account, all monies standing from time to time to the credit of that Facilities Account or sub-account (as the case may be); or

(b) as the context may require, the aggregate of all monies standing from time to time to the credit of the Accounts and sub-account of the Accounts

**Borrower** means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 24 (*Changes to the Obligors*)

**Break Costs** means the amount (if any) by which:

(a) the interest which a Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of the principal amount of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount of that Loan or Unpaid Sum received been paid on the last day of that Interest Period exceeds:

- (b) the amount of interest which that Lender would be able to obtain by placing an amount equal to the principal amount of that Loan or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business:

- (a) in relation to determination of a Quotation Day, Jakarta and London;
- (b) in relation to the payment in US Dollars, Singapore, Jakarta and New York; and
- (c) for all other purpose, Singapore and Jakarta

**Co-Locator** means any Customer that is not the primary tenant under a Telecom Asset Agreement

**Commitment** means a Facility A Commitment, a Facility B Commitment or a Facility C Commitment

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 11 (*Form of Compliance Certificate*)

**Contracted Annual Revenue** means:

- (a) for the purpose of clause 4.2(c) (Further conditions precedent), in relation to each Facility C Loan, the aggregate contracted cash revenue of:
- (i) all Telecom Asset Agreement entered into in respect of such New Telecom owner(s) and/or Shelter Only Asset(s) for which capital expenditure incurred by the relevant Borrower in respect of the acquisition and/or construction thereof is proposed to be reimbursed by the proposed Utilisation; and
- (ii) such other Telecom Asset Agreements as the Facility Agent (acting on the instructions of the Majority Lenders) and the relevant Borrower may mutually agree,
- (each being a Secured Asset) annualised based on the contracted cash revenue data for the calendar month immediately preceding the date of the relevant Utilisation Request as calculated on and certified by the Approval Auditor on the date of the relevant Utilisation Request; and
- (b) for the purpose of clause 8.1(d) (Calculation of interest), the aggregate contracted cash revenue (including cash revenue earned and to be earned) of all Telecom Asset Agreements (which are Secured Assets), for the remaining term of such Telecom Asset Agreements, entered into by the relevant Approved Customer as calculated on and certified by the Approved Auditor on the relevant Credit Premium Determination Date

**Control** means, in relation to an entity, the power to direct the management and policy decisions of that entity and/or to appoint the majority of directors on the board of the entity, whether through the ownership of voting share capital, by contract or any other means whatsoever

**Controlling Shareholders** means PTWAS and PTPCI

**Credit Factor** means, in respect of an Approved Customer, the number set opposite its name under the heading **Credit Factor** in Schedule 7 (*Approved Customers and Associated Credit Factors*), subject to such reclassification as the Facility Agent may make (acting on the instructions of the Majority Lenders) on any Credit Premium Determination Date

**Credit Premium** has the meaning given to it in clause 8.1(d)(ii) (*Calculation of interest*)

**Credit Premium Determination Date** means each date on which Credit Premium is determined in accordance with clause 8.1 (*Calculation of interest*)

**Customer** means a counterparty, being a telecommunication operator (as lessee, sub-lessee or otherwise), under a Telecom Asset Agreement

**Debt Service Minimum Balance** means one third of the aggregate amount of Finance Costs falling due for payment by a Borrower under the Finance Documents in the immediately succeeding three month period

**Default** means an Event of Default or any event or circumstances specified in clause 22 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the

Finance Documents or any combination of any of the foregoing) be an Event of Default

**Derivative Contract** means any interest rate swap or cross currency swap entered or to be entered into by any Obligor in accordance with the prevailing laws and regulations of Indonesia

**Dollar or US\$** means the lawful currency for the time being of the United States of America

**DSRA** means a IDR DSRA or a US\$ DSRA

**Environment** means living organisms including the ecological systems of which they form part and the following media:

- (a) air (including air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including land under water)

**Environmental Law** means all applicable laws and regulations which:

- (a) have as a purpose or effect the protection of, and/or prevention of harm or damage to, the Environment;
- (b) provide remedies or compensation for harm or damage to the Environment; or
- (c) relate to Hazardous Substances or health and safety matters

**Environmental License** means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Obligor conducted on or from the properties owned or used by that Obligor

**Event of Default** means any event or circumstance specified as such in clause 22 (*Events of Default*)

**Existing Indebtedness** means Financial Indebtedness referred to in Part I of Schedule 12 (*Existing Indebtedness and Existing Security*)

**Existing Security** means each Security relating to Existing Indebtedness referred to in Part II of Schedule 12 (*Existing Indebtedness and Existing Security*)

**Facilities** means Facility A, Facility B and Facility C and **Facility** means each of them

**Facility A** means the term loan facility made available under this Agreement as described in clause 2.1(a) (*The Facilities*)

**Facility A Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility A Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement;
- (b) in relation to an Additional Lender, the amount of Facility A Commitment set out in the relevant Additional Lender Commitment Letter and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (c) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement,

to the extent not canceled, reduced or transferred by it under this Agreement

**Facility A Lender** means:

- (a) any Original Facility A Lender;
- (b) any Additional Lender which has become a Facility A Lender in accordance with clause 23.7 (*Additional Lenders*); and

- (c) any bank, financial institution, trust, fund or other entity which has become a Facility A Lender in accordance with clause 23 (*Changes to the Lenders*),

which in each case has not ceased to be a Facility A Lender in accordance with the terms of this Agreement

**Facility A Loan** means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan

**Facility A Repayment Date** means, in relation to the Facility A Loan, each date on which a repayment of principal is to be made in accordance with clause 6 (*Repayment*) and Schedule 5 (*Repayment Schedule*)

**Facility A Termination Date** means the date which falls three Months from (and including) the date of this Agreement

**Facility B** means the term loan facility made available under this Agreement as described in clause 2.1(b) (*The Facilities*)

**Facility B Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility B Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement;
- (b) in relation to an Additional Lender, the amount of Facility B Commitment set out in the relevant Additional Lender Commitment Letter and the amount of any other Facility B Commitment transferred to it under this Agreement; and
- (c) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement,

to the extent not canceled, reduced or transferred by it under this Agreement

**Facility B Lender** means:

- (a) any Original Facility B Lender;
- (b) any Additional Lender which has become a Facility B Lender in accordance with clause 23.7 (*Additional Lenders*); and
- (c) any bank, financial institution, trust, fund or other entity which has become a Facility B Lender in accordance with clause 23 (*Changes to the Lenders*),

which in each case has not ceased to be a Facility B Lender in accordance with the terms of this Agreement

**Facility B Loan** means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan

**Facility B Repayment Date** means the Final Maturity Date

**Facility B Termination Date** means the date which falls six Months from (and including) the date of this Agreement

**Facility C** means the term loan facility made available under this Agreement as described in clause 2.1(b)(i) (*The Facilities*)

**Facility C Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility C Commitment" in Part II of Schedule 1 (*The Original Parties*) (any increase to such amount made prior to the Facility C Termination Date with the mutual agreement of all the Obligors and all the Lenders in accordance with clause 2.1(a)(iii) (Facility A) and the amount of any other Facility B Commitment transferred to it under this Agreement;
- (b) in relation to an Additional Lender, the amount of Facility C Commitment set out in the relevant Additional Lender Commitment Letter and the amount of any other Facility C Commitment transferred to it under this Agreement; and

- (c) in relation to any other Lender, the amount of any Facility C Commitment transferred to it under this Agreement,

to the extent not canceled, reduced or transferred by it under this Agreement

**Facility C Lender** means:

- (a) any Original Facility C Lender;
- (b) any Additional Lender which has become a Facility C Lender in accordance with clause 23.7 (*Additional Lenders*); and
- (c) any bank, financial institution, trust, fund or other entity which has become a Facility CD Lender in accordance with clause 23 (*Changes to the Lenders*),

which in each case has not ceased to be a Facility C Lender in accordance with the terms of this Agreement

**Facility C Loan** means a loan made or to be made under Facility C or the principal amount outstanding for the time being of that loan

**Facility C Repayment Date** means, in relation to the Facility C Loans, each date on which a repayment of principal is to be made in accordance with clause 6 (*Repayment*) and Schedule 5 (*Repayment Schedules*)

**Facility C Termination Date** means the date which falls 18 Months from (and including) the date of this Agreement

**Facility Office** means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligation under this Agreement

**Fee Letter** means any letter or letters dated on or about the date of this Agreement between the Mandated Lead Arranger and the Borrowers (or an Agent and the Borrowers) setting out any of the fees referred to in clause 11 (*Fees*)

**Fiduciary Transfers** means the Fiducia Security Over Insurance Proceeds, the Fiduciary Security Over Receivables and the Fiduciary Security Over Towers and Shelter Only Assets

**Fiduciary Security Over Insurance Proceeds** means each Indonesian law notarial deed of fiducia security over insurance proceeds dated on or about the date of this Agreement given by each Borrower (other than PT X and PT E) in favour of the Security Agent on behalf of the Finance Parties as security, amongst other things, for the discharge of the Secured Liabilities

**Fiduciary Security Over Receivables** means each Indonesian law notarial deed of fiducia security over receivables dated on or about the date of this Agreement given by each Borrower (other than PT X and PT E) in favour of the Security Agent on behalf of the Finance Parties as security, amongst other things, for the discharge of the Secured Liabilities

**Fiduciary Security Over Towers and Shelter Only Assets** means the Indonesian law notarial deed of fiducia security over towers dated on or about the date of this Agreement given by each Borrower (other than PT X and PT E) in favour of the Security Agent on behalf of the Finance Parties as security, amongst other things, for the discharge of the Secured Liabilities

**Final Maturity Date** means:

- (a) in relation to Facility A and Facility B, the date which falls 60 Months from (and including) the date of this Agreements; and
- (b) in relation to Facility C, subject to clause 6.5 (*Extension*), the date which falls 60 Months from (and including) the date this Agreement

**Financial Costs** means for any period, all amounts required to be paid by the Obligors (or any amounts any Obligor is permitted to elect to pay) during such period by way of:

- (a) principal amounts payable in respect of the Loans;
- (b) interest, guarantee fees, fees, commissions, costs (including Break Costs), indemnities and expenses owing to any Finance Party under the Finance Documents and the Derivative Contracts; and



- (c) any Taxes in respect of the matters contemplated by paragraphs (a) to (b) above

**Finance Document** means this Agreement, and Security Document, any Fee Letter, any Utilisation Request, any Accession Letter, any Resignation Letter and any other document designated as such by the Facility Agent and the Borrowers

**Finance Party** means an Agent, the Mandated Lead Arranger or a Lender

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility, bill acceptance or bill endorsement facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) shares which are expressed to be redeemable or preference shares; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above

**GAAP** means generally accepted accounting principles in Indonesia

**Good Industry Practice** means compliance with all laws and regulations and standards applicable in Indonesia to the industry in which the Borrowers operate

**Governmental Agency** means any government or any governmental agency, semi-governmental or judicial entity, public department or statutory authority (including, without limitation, any stock exchange or any self-regulatory organisation established under statute)

**Group** means the Borrowers and their Subsidiaries for the time being

**Guarantee** means the Indonesian law irrevocable and unlimited guarantee dated on or around the date of this Agreement given by the Guarantors in favour of the Security Agent on behalf of the Finance Parties pursuant to which each Guarantor guarantees, amongst other things, the Secured Liabilities

**Guarantor** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 24 (*Changes to the Obligors*)

**Hak Tanggungan** means each deed to establish second rank hak tanggungan (Akta Pemberian Hak Tanggungan Peringkat Dua as referred to in Law No. 4 of 1996 of Indonesia) granted or to be granted by each Borrower (other than PT X and PT E) to the Security Agent in respect of all Secured Sites owned by it and all immovable properties built on such Secured Sites as security, amongst other things, for the discharge of the Secured Liabilities

**Hazardous Substance** means any waste, pollutant, contaminant or other substance (including any liquid, solid, gas, ion, living organism or noise) that may be harmful to human health or other life of the Environment or a nuisance to any person or that may make the use or ownership of any affected land or property more costly

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary

**IDR DSRA** means the Rupiah denominated account established by each Borrower (other than PT X and PT E) in Indonesia with the Account Bank (and any sub-account or substitute account from time to time) as more particularly described in Schedule 15 (*Accounts*)

**IMB** means a license to construct (*Ijin Mendirikan Bangunan*) issued by the relevant regional Indonesian government authorities in relation to a Telecom Tower or any other licenses having the same effect

**IMB Telecom Tower** means each wireless telecommunications tower (including all associated movable and immovable structures and equipment, concrete pads, lighting and fences situated thereon) owned and managed by a Borrower as at the date of this Agreement in respect of which IMB has been obtained

**Indirect Tax** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature

**Indonesia** means the Republic of Indonesia

**Information Memorandum** means the document in the form approved by the Borrowers concerning the Group which, at the Borrowers' request and on their behalf, was prepared in relation to this transaction and distributed by the Mandated Lead Arranger to selected financial institutions before the date of this Agreement

**Insurance Policies** means the policies of insurance described in Schedule 10 (*Insurance Policies*) and all other insurance policies or cover required to be take out and/or maintained at any time by any Borrower in accordance with Good Industry Practice or pursuant to the terms of any Finance Documents, each in such content, form and amount reasonably satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) and **Insurance Policy** means any one of them

**Insurance Proceeds** means any amount payable by insurers in respect of any Insurance Policy or Insurance Policies, including proceeds of claims, return premiums and ex gratia payments

**Insurer** means each insurer party to an Insurance Policy

**Interest Period** means, in relation to a Loan, each period determined in accordance with clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 8.3 (*Default Interest*)

**IPO** means the initial public offering of shares of PT X on a recognised stock exchange

**JIBOR** means, in relation to any Loan denominated in Rupiah:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for Rupiah for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the relevant Reference Banks to leading banks in the Jakarta interbank market,

as of the Specified Time on the Quotation Day for which an interest rate is to be determined for the offering of deposits in Rupiah and for a period comparable to the Interest Period for that Loan

**Lender** means a Facility A Lender, a Facility B Lender or a Facility C Lender

**LIBOR** means, in relation to any Loan denominated in Dollars:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for Rupiah for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the relevant Reference Banks to leading banks in the London interbank market, as of the Specified Time on the Quotation Day for which an interest rate is to be determined for the offering of deposits in Dollars and for a period comparable to the Interest Period for that Loan

**Liquidity Premium** has the meaning given to it in clause 8.1(d)(iii) (*Calculation of Interest*)

**Loan** means a Facility A Loan, a Facility B Loan or a Facility C Loan

**Made Bagus** means Made Bagus, passport number P6231234 or Permata Hijau RT02/002, Kebayoran, Jakarta Selatan, Indonesia

**Majority Lenders** means:

- (a) where there are three or more Lenders;
  - (i) if there are no Loans then outstanding, two or more Lenders whose Commitments aggregate more than 51% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 51% of the Total Commitments immediately prior to the reduction); or
  - (ii) at any other time, two or more Lenders whose participations in the Loans then outstanding aggregate more than 51% of all the Loans then outstanding; and
- (b) where there are less than three Lenders, all the Lenders to the Facilities

**Mandate** means any bank mandate (including all such other documents and agreements entered into between the Borrowers and the Account Bank in relation to the opening and operation of each Account) agreed between the Borrowers and the Account Bank and/or an electronic funds transfer system or services

**Mandatory Prepayment Account** means each Rupiah denominated account established by each Borrower (other than PT X and PT E) in Indonesia with the Account Bank (and any sub-account or substitute account from time to time) as more particularly described in Schedule 15 (*Accounts*)

**Margin** means:

- (a) in relation to Facility A, 2.25% per annum for Offshore Lenders and 2.35% per annum for Onshore Lenders; and
- (b) in relation to each of Facility B and Facility C, 2.75% for Offshore Lenders and 2.85% per annum for Onshore Lenders

**Material Adverse Effect** means a material adverse effect on:

- (a) the business, operations, property, asset, condition (financial or otherwise) or prospects of any Obligor or the Group taken as a whole;
- (b) the ability of any of the Obligors to perform its obligations under any Finance Document; or
- (c) the validity, legality or enforceability of any Finance Document or the rights or remedies of any Finance Party under any Finance Document; or
- (d) the validity, legality or enforceability of any Security expressed to be created pursuant to any Security Document or the priority and ranking of any such Security

**Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end

The above rules will only apply to the last Month of any period

**Net Debt to Annualised Adjusted EBITDA Ratio** has the meaning given to it in clause 20(h) (*Financial Covenants*)

**New Telecom Tower** means any wireless telecommunications tower (including all associated movable and immovable structures and equipment, concrete pads, lighting and fences situated thereon) acquired, owned

and managed by a Borrower after the date of this Agreement and for which IMB have been obtained

**Non IMB Telecom Tower** means each wireless telecommunications tower (including all associated movable and immovable structures and equipment, concrete pads, lighting and fences situated thereon) acquired, owned and managed by a Borrower after the date of this Agreement and for which IMB has not been obtained

**Obligors** means the Borrowers and the Guarantors and **Obligor** means each of them

**Offshore Commitment** means the Commitment of an Offshore Lender

**Offshore Lender** means a Lender whose Facility Office is located outside Indonesia

**Onshore Commitment** means the Commitment of an Onshore Lender

**Onshore Lender** means a Lender whose Facility Office is located in Indonesia

**Operating Account** means each Rupiah denominated account established by each Borrower (other than PT X and PT E) in Indonesia with the Account Bank (and any sub-account or substitute account from time to time) as more particularly described in Schedule 15 (*Accounts*)

**Original Facility A Lender** means a Lender listed in Part II of Schedule 1 (The Original Parties) shown as having a Facility A Commitment

**Original Facility B Lender** means a Lender listed in Part II of Schedule 1 (The Original Parties) shown as having a Facility B Commitment

**Original Facility C Lender** means a Lender listed in Part II of Schedule 1 (The Original Parties) shown as having a Facility C Commitment

**Original Financial Statements** means:

- (a) in relation to the Group, the Group's audited consolidated financial statements for the financial year ended 31 December 2007; and
- (b) in relation to each Obligor, its audited unconsolidated financial statements for the financial year ended 31 December 2007

**Original Obligor** means an Original Borrower or an Original Guarantor

**Party** means a party to this Agreement

**Permitted Acquisition** means an Acquisition that complies with each of the following conditions:

- (a) no Default is continuing on the closing date for that Acquisition or would occur as a result of that Acquisition;
- (b) the acquired person or business (as the case may be) is incorporated and carries on its principal business or is established in, Indonesia;
- (c) the acquired person or business (as the case may be) has assets or businesses of the same nature and scope as the assets or businesses carried on by the Group on the date of this Agreement; and
- (d) in respect of an Acquisition where one or more Borrowers acquire the issued share capital of a person, such Borrowers will, following completion of the Acquisition hold, in the aggregate, legally and beneficially more than 50% of the issued voting share capital of the acquired person and will Control that acquired person

**Permitted Indebtedness** means:

- (a) any unsecured trade payables not evidenced by a note and arising out of purchases of goods or services in the ordinary course of business provided that each trade payable is paid not later than 90 days after the original invoice date relating to the relevant trade;
- (b) Financial Indebtedness incurred in the financing of equipment or other personal property purchased for the use at any Site in the ordinary course of business; or
- (c) any financing by way of inter-company or shareholder loans subordinated to the Facilities

**Power of Attorney** means each power of attorney dated on or about the date of this Agreement given by each Borrower (other than PT X and PT E) in favour of the Security Agent enabling the Security Agent at any time to withdraw funds in each Account in the name and on behalf of that Borrower

**PT F** means PT F, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at GKBI Lt. 17 Suite 111, Jl. Jend. Sudirman No. 18, Bendungan Hilir, Jakarta Pusat, Indonesia

**PT X** means PT X, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Wisma BCA I, Lt. 17, Jalan Jenderal Sudirman Kaveling 22-23, Kelurahan Karet, Kecamatan Setiabudi, Jakarta Selatan 12920, Indonesia

**PT X Share Pledge** means the Indonesian law pledge of shares dated on or around the date of this Agreement given by each of PTPCI and PTWAS pursuant to which each of PTPCI and PTWAS pledges all its shareholding in PT X as security, amongst other things, for the discharge of the Secured Liabilities

**PT X Site Lease Agreement** means each real property lease agreement pursuant to which PT X, as lessee, leases and obtains the rights to a Site

**PT D** means PT D, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Ruko Palace Blok B1, Jl. Prof. DR. Soepomo SH., Menteng Dalam, Tebet, Jakarta Selatan, Indonesia

**PTPCI** means PT Provident Capital Indonesia, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Wisma BCA Tower 2, 6<sup>th</sup> floor, Jalan Jenderal Sudirman Kaveling 22-23, Jakarta 12920, Indonesia

**PT G** means PT G, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Wisma BCA Tower 2, Lt. 9, Jl. Jend Sudirman Kav. 22-23, Setiabudi, Jakarta Selatan, Indonesia

**PT C** means PT C, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Jl. Teluk Betung No. 39, Kebon Melatai, Tanah Abang, Jakarta Pusat, Indonesia

**PT B** means PT B, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Wisma BCA Tower 2 Lt. 6, Jl. Jend. Sudirman Kav. 22-23, Setiabudi, Jakarta Selatan, Indonesia

**PT E** means PT E, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Menara Anugerah, 21<sup>st</sup> floor, Jalan Mega Kuningan Lot 8, Kuningan Timur, Setiabudi, Jakarta Selatan, Indonesia

**PT E Share Pledge** means the Indonesian law pledge of shares dated on or around the date of this Agreement given by each of PT X, Made bagus and Winoto Suroyo pursuant to which each of PT X, Made bagus and Winoto Suroyo pledges all its shareholding in PT E as security, amongst other things, for the discharge of the Secured Liabilities

**PT E Site Lease Agreement** means each real property lease agreement pursuant to which PT E, as lessee, leases and obtains the rights to a Site

**PT A** means PT A, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Jalan Kyai Maja 6, Kelurahan Kramat Pela, Kecamatan Kebayoran Baru, Jakarta Selatan, Indonesia

**PTWAS** means PT Wahana Anugerah Sejahtera, domiciled in Jakarta, a limited liability company duly established and existing under the laws of Indonesia having its registered office at Jalan Ir. H. Juanda 5, Kelurahan Kebon Kelapa, Kecamatan Gambir, Jakarta 10120, Indonesia

**Rental Proceeds Account** means each Rupiah denominated account established by each Borrower (other than PT X and PT E) in Indonesia with the Account Bank (and any sub-account or substitute account from time to time) as more particularly described in Schedule 15 (*Accounts*)

**Quotation Day** means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the

Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days)

**Reference Bank** means, subject to clause 25.16 (*Reference Banks*), in relation to:

- (a) LIBOR, the principal London offices of OBL and/or such other banks as may be appointed by the Facility Agent in consultation with the Borrower; and
- (b) JIBOR, the principal Jakarta offices of Bank BCG. and PT OBI or such other banks as may be appointed by the Facility Agent in consultation with the Borrowers

**Relevant Interbank Market** means:

- (a) in relation to Dollars, the London interbank market; and
- (b) in relation to Rupiah, the Jakarta interbank market

**Repayment Date** means a Facility A Repayment Date, a Facility B Repayment Date or a Facility C Repayment Date

**Repayment Installment** means each amount set out in Schedule 5 (*Repayment Schedules*)

**Repeating Representations** means each of the representations set out in clause 18 (*Representations*)

**Resignation Letter** means a letter substantially in the form set out in Schedule 9 (*Form of Resignation Letter*)

**Restricted Payment** shall mean payment or declaration of any dividend on any shares, redemption of any shares or any debt subordinated to the Facilities or any other distribution to the shareholders or repayment of any debt prior to its scheduled maturity

**Rupiah or IDR** means the lawful currency of Indonesia

**Rupiah Equivalent Amount** means, in relation to an amount quoted in Dollars, the amount in Rupiah converted from the relevant specified notional amount in Dollars using the exchange rate of US\$1 : IDR 10,000

**Screen Rate** means, in relation to:

- (a) LIBOR, the British Bankers' Association Interest Settlement Rate for US Dollars for the relevant period displayed on page LIBO of the Reuters Monitor Money Rates Service screen. If the agreed page is replaced or the service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Borrowers and the Lenders; or
- (b) JIBOR, the rate for Rupiah for the relevant period displayed on the JIBOR page of the Reuters screen. If the agreed page is replaced or the service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Borrowers and the Lenders

**Secured Assets** means all assets over which Security is created pursuant to the Security Documents

**Secured Liabilities** means all present and future moneys, debts and liabilities due, owing or incurred by the Borrowers to any Finance Party from time to time under or in connection with any Finance Document (in each case whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently or whether as principal, surety or otherwise)

**Secured Site** means each parcel of real property (whether owned or leased by a Borrower) on which a Borrower owns, operates, manages or maintains a Telecom Tower and all associated structures and equipment, built-in antenna, concrete pads, lighting and fences situated thereon, that is part of the Existing Security

**Security** means a mortgage, charge, pledge, fiducia security, hak tanggungan, lien, security assignment or other security interest of any kind constituted securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Document** means:

- (a) each Assignment of Contracts;

- (b) the Fiducia Transfers;
- (c) each Hak Tanggungan;
- (d) each Power of Attorney;
- (e) each Share Pledge;
- (f) the PT X Share Pledge;
- (g) the PT E Share Pledge;
- (h) each Account Pledge;
- (i) the Guarantee;
- (j) any other document evidencing any Security held by the Security Agent as security, amongst other things, for the discharge of the Secured Liabilities; and
- (k) any other document designated as such from time to time by the Facility Agent (acting on the instructions of the Majority Lenders)

**Share Pledge** means each Indonesian law pledge of shares dated on or around the date of this Agreement given by each of the shareholders of each Borrower (other than shareholding in each of PT X and PT E) pursuant to which each of the shareholders of each Borrower (other than shareholding in each of PT X and PT E) pledges all its shareholding in each Borrower (as the case may be, other than shareholding in each of PT X and PT E) as security, amongst other things, for the discharge of the Secured Liabilities

**Shelter Only Asset** means any structure, shelter or equipment (including any in-building antenna system) situated on any parcel of real property or telecommunications tower which is not owned or leased by a Borrower but which a Borrower has (as at, or after, the date of this Agreement) full, unconditional access for the purpose of conducting maintenance thereof

**Site** means any Unsecured Site or Secured Site

**Site Leas Agreement** means each real property lease agreement pursuant to which a Borrower, as lessee, leases and obtains the rights to a Site

**Specified Time** means a time determined in accordance with Schedule 13 (*Timetables*)

**Subsidiary** means in relation to any person, company or corporation a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned person, company or corporation;
- (b) more than half the issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned person, company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned person, company or corporation,  
and for this purpose, a company or corporation shall be treated as being controlled by another if that person, company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body

**Substantial Subsidiary** means any Subsidiary of PT X with business in the same nature and of the same scope as the businesses carried on by the Group

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)

**Telecom Assets** means all fixed and movable, tangible and intangible telecom assets owned and/or managed by a Borrower including the following:

- (a) all Sites;
- (b) all Telecom Towers;
- (c) all Shelter Only Assets;

- (d) all Site Lease Agreements; and
- (e) all Telecom Asset Agreements

**Telecom Asset Agreement** means any agreement entered into between a Customer (as primary tenant, Co-Locator or otherwise) and a Borrower in relation to one or more Telecom Towers or Shelter Only Assets

**Telecom Tower** means any IMB Telecom Tower, Non IMB Telecom Tower or New Telecom Tower

**Total Commitment** means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments

**Total Facility A Commitments** means the aggregate of the Facility A Commitments, being the Rupiah Equivalent Amount of US\$50,000,000 at the date of this Agreement

**Total Facility B Commitments** means the aggregate of the Facility B Commitments, being the Rupiah Equivalent Amount of US\$310,000 at the date of this Agreement

**Total Facility C Commitments** means the aggregate of the Facility C Commitments, being the Rupiah Equivalent Amount of US\$7,690,000 at the date of this Agreement

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrowers

**Transfer Date** means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Facility Agent executes the Transfer Certificate

**Unpaid Sum** means any sum due and payable but unpaid by an Obligor under the Finance Documents

**Unsecured Site** means each parcel of real property (whether owned or leased by a Borrower) on which a Borrower owns, operates, manages or maintains a Telecom Tower and all associated structures and equipment, built-in antenna, concrete pads, lighting and fences situated thereon, that is not part of the Existing Security

**US\$ DSRA** means the US\$ denominated account established by each Borrower (other than PT X and PT E) in Indonesia with the Account Bank (and by sub-account or substitute account from time to time) as more particularly described in Schedule 15 (*Accounts*)

**Utilisation** means a utilisation of a Facility

**Utilisation Date** means the date of an Utilisation, being the date on which the relevant Loan is to be made

**Utilisation Request** means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*)

**Winoto Suroyo** means Winoto Suroyo, passport number R704333 of Jl. Bandengan Utara 15, RT001/011, Pekojan, Tambora, Jakarta Barat, Indonesia

## 1.2 Construction

- (a) unless a contrary indication appears, any reference in this Agreement to:
  - (i) an **Agent**, the **Mandated Lead Arranger**, any **Finance Party**, any **Lender**, any **Obligor** or any **Party** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description;
  - (iii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;
  - (iv) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;



- (v) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (vi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted;
  - (viii) **including** means including, without limitation; and
  - (ix) a time of day is a reference to Indonesian time.
- (b) Section, clause and schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived,
  - (e) Where this Agreement specifies an amount in a given currency (the **specified currency**) or its **equivalent**, the **equivalent** is a reference to the amount of any other currency which, when converted into the specified currency utilising the Facility Agent's spot rate of exchange for the purchase of the specified currency with that other currency at or about 11 am on the relevant date, is equal to the relevant amount in the specified currency.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Right of Third Parties) Act 1999 (the Third Parties Act) to enforce or to enjoy the benefit of any term of this Agreements.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## SECTION 2 – THE FACILITIES

### 2 The Facilities

#### 2.1 The Facilities

Subject to the terms of this Agreement, the Lenders make available to the Borrowers:

(a) **Facility A**

(i) Subject to the terms of this Agreement, the Facility A Lenders make available to:

- (A) PT A a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$4,799,997;
- (B) PT B a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$4,500,000;
- (C) PT C a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$30,600,000;
- (D) PT D a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$9,300,000;
- (E) PT F a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$800,000;
- (F) PT G a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1;
- (G) PT X a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1; and
- (H) PT E a term loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1,

all of which in aggregate equals the Total Facility A Commitments.

(ii) For the avoidance of doubt, notwithstanding the facility limit set out above in respect of each Borrower, the facility limit of one Borrower may be transferred to and utilised by one of more other Borrower(s) provided that the facility limits and Utilisations of all the Borrowers in respect of Facility A, when aggregated together, shall not exceed the Total Facility A Commitments.

(iii) In the event that the Total Facility A Commitments is not utilised in full by the Borrowers as at the Facility A Termination Date, one or more Original Facility A Lenders may, with the written agreement of all the Obligors and the other Lenders, increase the Facility C Commitments by such unutilised portion prior to the Facility C Termination Date and the Facility C Commitments shall be deemed to be so increased provided that the aggregate of:

- (A) the Available Commitment in respect of all the Facilities;
- (B) the Aggregate Outstanding Debt;
- (C) the amount of each Lender's participation in any Loans that are due to be made under all the Facilities on or before the proposed date of execution of such Additional Lender Commitment Letter; and
- (D) all Additional Lender Commitment,

does not exceed US\$130,000,000 or the Rupiah Equivalent Amount of US\$130,000,000.

(b) **Facility B**

(i) Subject to the terms of this Agreement, the Facility B Lenders make available to:

- (A) PT A a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$809,997;
- (B) PT B a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$800,000;
- (C) PT C a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$3,000,000;
- (D) PT D a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$2,200,000;
- (E) PT F a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$500,000;
- (F) PT G a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1;

- (G) PT X a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1; and
- (H) PT E a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1,

all of which in aggregate equals the Total Facility B Commitments.

- (ii) For the avoidance of doubt, notwithstanding the facility limit set out above in respect of each Borrower, the facility limit of one Borrower may be transferred to and utilised by one of more other Borrower(s) provided that the facility limits and Utilisations of all the Borrowers in respect of Facility B, when aggregated together, shall not exceed the Total Facility B Commitments.

**(c) Facility C**

- (i) Subject to the terms of this Agreement, the Facility C Lenders make available to:

- (A) PT A a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$489,998;
- (B) PT B a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$500,000;
- (C) PT C a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$500,000;
- (D) PT D a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$500,000;
- (E) PT F a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$500,000;
- (F) PT G a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$5,200,000;
- (G) PT X a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1; and
- (H) PT E a term of loan facility in an amount equal to the Rupiah Equivalent Amount of US\$1,

all of which in aggregate equals the Total Facility C Commitments.

- (ii) For the avoidance of doubt, notwithstanding the facility limit set out above in respect of each Borrower, the facility limit of one Borrower may be transferred to and utilised by one of more other Borrower(s) provided that the facility limits and Utilisations of all the Borrowers in respect of Facility C, when aggregated together, shall not exceed the Total Facility C Commitments.

**2.2 Finance Parties' rights and obligations**

- (a) The obligations of the Finance Parties under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of the Finance Parties under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

**3 Purpose**

**3.1 Purpose**

- (a) Each Borrower shall apply all amounts borrowed by it under Facility A towards;
  - (i) refinancing any of its Existing Indebtedness (including the payment of any costs and expenses incurred in refinancing such Existing Indebtedness); and
  - (ii) any fees and other costs payable by any Borrower under this Agreement.

- (b) Subject to sub-clause (c) below, each Borrower shall apply all amounts borrowed by it under Facility B towards general funding requirements (including funding any leveraged recapitalization exercise).
- (c) Notwithstanding the provision of sub-clause (b) above, in addition to the purpose set out therein, PT X may apply all or any part of the amounts borrowed by it under Facility B towards the extension of inter-company or shareholder loans to one or more of the other Borrowers provided that such inter-company or shareholder loans shall be subordinated to the Facilities.
- (d) Each Borrower shall apply all amounts borrowed by it under Facility C towards reimbursement of capital expenditure incurred by it in relation to the acquisition and/or construction of:
  - (i) Telecom Towers; and/or
  - (ii) Shelter Only Assets,
 which have not previously been financed using any Facility.

### 3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## 4 Conditions of Utilisation

### 4.1 Initial conditions precedent

- (a) Facility A and Facility B may not be utilised unless the Facility Agent has received all of the documents and other evidence listed in and appearing to comply with the requirements of Part I of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Borrowers and the Lenders promptly upon being so satisfied.
- (b) Facility C may not be utilised unless the Facility Agent has received all of the documents and other evidence listed in and appearing to comply with the requirements of Part I of Schedule 2 (*Conditions Precedent to Initial Utilisation*) and Part III of Schedule 2 (*Additional Conditions Precedent for Facility C*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Borrowers and the Lenders promptly upon being so satisfied.
- (c) Subject to:
  - (i) sub-clause (a) above and clause 4.2 (*Further conditions precedent*) below, the Borrowers may then utilise Facility A and/or Facility B; and
  - (ii) sub-clause (b) above and clause 4.2 (*Further conditions precedent*) below, the Borrowers may then utilise Facility A and/or Facility C,
 by delivering to the Facility Agent a Utilisation Request pursuant to clause 5.1 (*Delivery of a Utilisation Request*).

### 4.2 Further conditions precedent

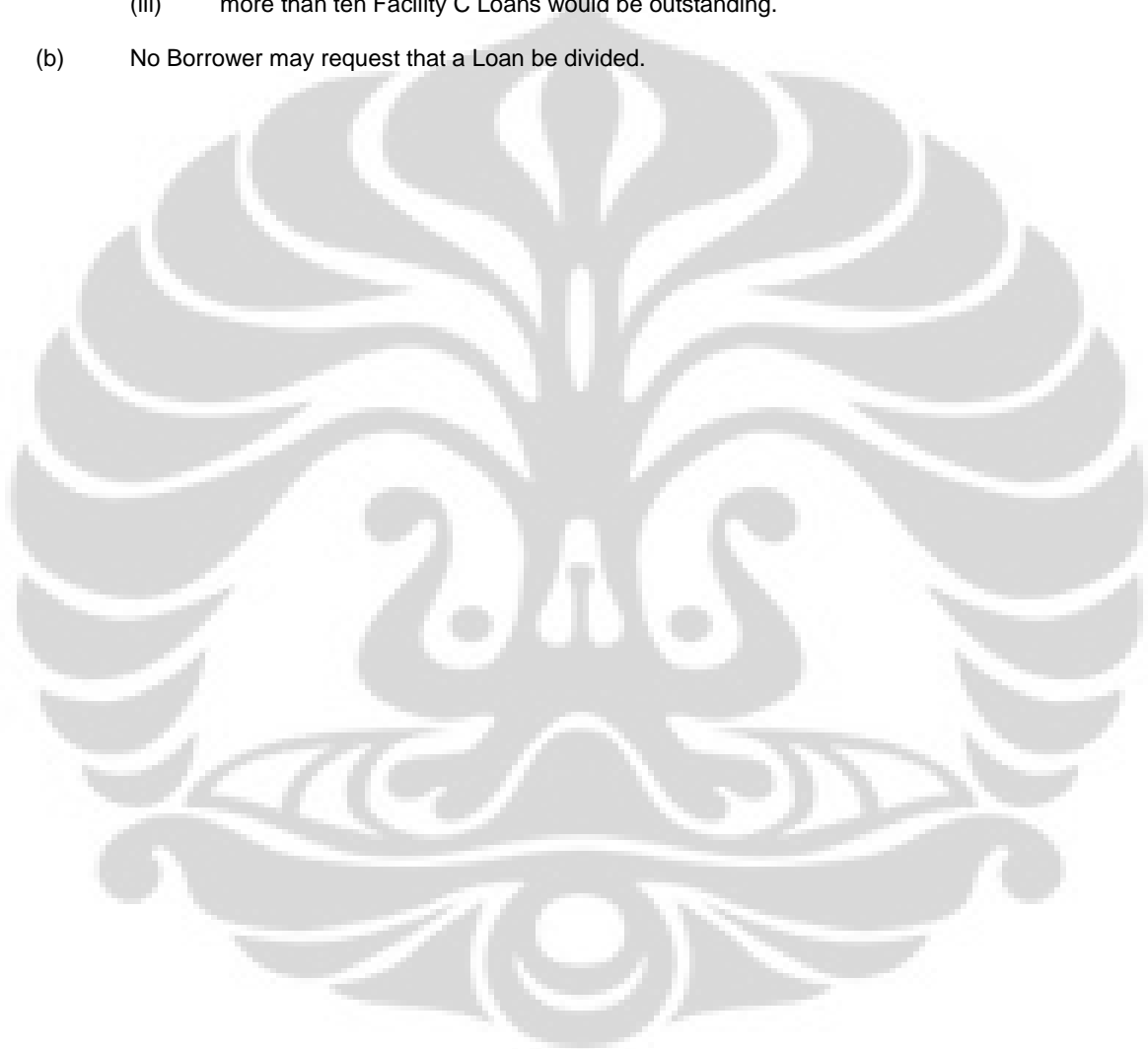
The Lenders will only be obliged to comply with clause 5.4 (*Lender's participation*) if on the date of the relevant Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of Facility A, certification by the Approved Auditor that the Net Debt to Annualised Adjusted EBITDA Ratio is not more than 3 times, tested by reference to the Group's unaudited consolidated financial statements in respect of the calendar month immediately preceding the date of the relevant Utilisation Request and certified by the Approved Auditor on the date of the relevant Utilisation Request;
- (b) in the case of Facility B, certification by the Approved Auditor that the Net Debt to Annualised Adjusted EBITDA Ratio is not more than 2 times, tested by reference to the Group's unaudited consolidated financial statements in respect of the calendar month immediately preceding the date of the relevant Utilisation Request and certified by the Approved Auditor on the date of the relevant Utilisation Request;
- (c) in the case of Facility C, certification by the Approved Auditor that the proposed Utilisation does not exceed four times the Contracted Annual Revenue;

- (d) in the case of any Loan, no Default is continuing or would result from the proposed Loan;
- (e) the Repeating Representations to be made by each Obligor are true in all material respects; and
- (f) no event set out in clause 5.2(c) (*Completion of a Utilisation Request*) has occurred.

4.3 **Maximum number of Loans**

- (a) Subject to clause 5.3(f) (Currency and amount), no Borrower may deliver a Utilisation Request if as a result of the proposed Utilisation;
  - (i) more than one Facility A Loan would be outstanding;
  - (ii) more than six Facility B Loans would be outstanding; and/or
  - (iii) more than ten Facility C Loans would be outstanding.
- (b) No Borrower may request that a Loan be divided.



## SECTION 3 - UTILISATION

### 5 Utilisation

#### 5.1 Delivery of a Utilisation Request

A Borrower may utilise a Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.

#### 5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (iii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*);
  - (iv) the proposed Interest Period complies with clause 9 (*Interest Periods*); and
  - (v) in respect of a Utilisation Request for the utilisation of Facility A, it specifies that all the proceeds of the proposed Utilisation are to be paid into a bank account of PT Bank UOB Indonesia towards repayment of the Existing Indebtedness;
- (b) A Borrower may request for only one Loan in each Utilisation Request.
- (c) In the event that the currency specified in a Utilisation Request is unavailable to the Lenders and/or the liquidity of the Lenders is affected leading to their inability to comply with clause 5.4 (Lender's participation) by reason of any material adverse change in:
  - (i) the international financial and capital markets;
  - (ii) national or international financial, political or economic conditions; or
  - (iii) currency availability or exchange rates or control,

#### 5.3 Currency and amount

- (a) Subject to sub-clauses (c) and (d) below, as applicable, the currency specified in a Utilisation Request for a Facility must be Dollars or Rupiah, as the case may be.
- (b) Where the currency specified, in a Utilisation Request for a Facility is Dollars, the Dollar amount of the proposed Loan, taken together with the Dollar amount of all outstanding Loans in respect of that Facility must in each case, be an amount which is not more than the Offshore Commitment applicable to that Facility.
- (c) Where the currency specified in a Utilisation Request for a Facility is Rupiah, the Rupiah amount of the proposed Loan, taken together with the Rupiah amount of all outstanding Loans in respect of that Facility must in each case, be an amount which is not more than the Onshore Commitment applicable to that Facility.
- (d) Subject to sub-clause (f) below, the aggregate amount specified in the Utilisation Request of a proposed Facility A Loan or a Facility B Loan must be an amount which is not more than the Available Facility applicable to Facility A or Facility B (as the case may be) and which is a minimum of the Rupiah Equivalent Amount of US\$2,000,000 and thereafter, in integral multiples of the Rupiah Equivalent Amount of US\$1,000,000 or, if less, the Available Facility applicable to Facility A or Facility B (as the case may be).
- (e) Subject to sub-clause (f) below, the aggregate amount specified in the Utilisation Request of a proposed Facility C Loan must be an amount which is not more than the Available Facility applicable to Facility C and which is a minimum of US\$2,000,000 or the Rupiah Equivalent Amount of US\$2,000,000 (as the case may be) and thereafter, in integral multiples of US\$1,000,000 or the Rupiah Equivalent of US\$1,000,000 (as the case may be) or, if less, the Available Facility applicable to Facility C.
- (f) Notwithstanding the provision of sub-clauses (d) and (e) above, in the event that more than one

Borrower shall each deliver a Utilisation Request in respect of the same Facility and with the same Utilisation Date, currency and Interest Period, the amount of the proposed Utilisation specified in each such Utilisation Request shall be aggregated, and all such Utilisations shall be regarded as one Loan for the purpose of satisfying the provisions of :

- (i) sub-clause (d) or sub-clause (e) above (as the case may be) in relation to the minimum amount of a Loan; and
- (ii) clause 4.3(a) (*Maximum number of Loans*) provided that:
  - (A) for Utilisation Request in respect of Facility A and Facility B, the amount specified in each such Utilisation Request is a minimum of the Rupiah Equivalent Amount of US\$250,000 and thereafter, in integral multiples of the Rupiah Equivalent Amount US\$250,000; and
  - (B) for Utilisations Requests in respect of Facility C, the amount specified in each such Utilisation Request is a minimum of US\$250,000 or the Rupiah Equivalent Amount of US\$250,000 (as the case may be) and thereafter, in integral multiples of US\$250,000 or the Rupiah Equivalent Amount of US\$250,000 (as the case may be).

#### 5.4 **Lenders' participation**

- (a) If the conditions set out in clauses 4 (Conditions of Utilisation) and 5.1 (Delivery of a Utilisation Request) to 5.3 (Currency and amount) above have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

## SECTION 4 – REPAYMENT, PREPAYMENT AND CANCELLATION

### 6 Repayment

#### 6.1 Repayment of Facility A Loans

- (a) Subject to clause 7 (*Prepayment and cancellation*) and sub-clause (b) below, each Borrower shall repay the principal amount of all Facility A Loans it has borrowed in accordance with the repayment schedule set out in Part I Schedule 5 (*Repayment Schedules*).
- (b) If the contracted cash revenue of any Telecom Asset Agreement with a contract period of less than seven years is used for the calculation of the Net Debt to Annualised Adjusted EBITDA Ratio pursuant to the terms of clause 4.2(a) (*Further conditions precedent*), the Facility Agent may (acting on the instructions of the Majority Lenders) without consultation with any Borrower, revise the percentage of Repayment Installment applicable to any or all of the Repayment Dates set out in Part I of Schedule 5 (*Repayment Schedules*) (the **Original Facility A Repayment Schedule**) and shall provide a revised Facility A Repayment Schedule (the **Revised Facility A Repayment Schedule**) to the Borrowers no later than 30 days prior to the first Repayment Date for Facility A Loans following which such Revised Facility A Repayment Schedule shall apply in replacement of the Original Facility A Repayment Schedule.

#### 6.2 Repayment of Facility B Loans

- (a) Subject to clause 7 (*Prepayment and cancellation*) and sub-clause (b) below, each Borrower shall repay the principal amount of all Facility B Loans it has borrowed on the Final Maturity Date.
- (b) If the contracted cash revenue of any Telecom Asset Agreement with a contract period of less than seven years is used for the calculation of the Net Debt to Annualised Adjusted EBITDA Ratio pursuant to the terms of clause 4.2(b) (*Further conditions precedent*), the Facility Agent may (acting on the instructions of the Majority Lenders) without consultation with any Borrower, require all Facility B Loans to be repaid on a date earlier than the Final Maturity Date (the **Facility B Revised Final Maturity Date**) by provision of a notice in writing to the relevant Borrowers no later than 30 days prior to the Facility B Revised Final Maturity Date.

#### 6.3 Repayment of Facility C Loans

- (a) Subject to clause 7 (*Prepayment and cancellation*) and sub-clause (b) below, each Borrower shall repay the principal amount of all Facility C Loans it has borrowed in accordance with the repayment schedule set out in Table A of Part II of Schedule 5 (*Repayment Schedules*).
- (b) If the contracted cash revenue of any Telecom Asset Agreement with a contract period of less than seven years is used for the calculation of Contracted Annual Revenue pursuant to the terms of clause 4.2(c) (*Further conditions precedent*), the Facility Agent may (acting on the instructions of the Majority Lenders) without consultation with any Borrower, revise the percentage of Repayment Installment applicable to any or all of the Repayment Dates set out in Table A of Part II of Schedule 5 (*Repayment Schedule*) (the **Original Facility C Repayment Schedule**) and shall provide a revised Facility C Repayment Schedule (the **Revised Facility C Repayment Schedule**) to the Borrowers no later than 30 days prior to the first Repayment Date for Facility C Loans following which such Revised Facility C Repayment Schedule shall be deemed to apply in replacement of the Original Facility C Repayment Schedule.

#### 6.4 Reborrowing

The Borrower may not reborrow any part of a Facility which is repaid.

#### 6.5 Extension

- (a) Notwithstanding the provisions of clause 6.3(a) (*Repayment of Facility C Loans*) above, the Borrowers may request in writing, no later than 60 days prior to the Final Maturity Date of Facility C, to the Facility Agent for the Final Maturity Date of Facility C to be extended by a further 24 Months.
- (b) A Lender may, at its sole discretion, agree to such request for extension and shall, if it so agrees, notify the Facility Agent in writing no later than 30 days prior to the Final Maturity Date of Facility C who shall, in turn, promptly so notify the Borrowers following which:
  - (i) the Borrowers and the Facility Agent shall execute the Fee Letter (in such form satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) provided for in clause



11.5 (*Extension fee*); and

- (ii) the Final Maturity Date of Facility C shall be so deferred to a date falling 24 Months after the last day of the original Final Maturity Date of Facility C (the **Extension Period**).
- (c) Where a Lender rejects such request for extension (**the Rejecting Lender**), the other Lender(s) who agree to such request (**the Accepting Lender(s)**) may, but shall not be obliged to, require that the Rejecting Lender transfers all or part of its rights and obligations in relation to Facility C Loans to the Accepting Lender(s) and such transferred Facility C Loans shall be deemed to be extended in accordance with sub-clause (b) above. Any Rejecting Lender's rights and obligations in relation to Facility C Loans which are not transferred to the Accepting Lender(s) in accordance with this sub-clause (c) may be transferred to such New Lender(s) willing to assume such rights and obligations and such transfer shall be effected in accordance with the provisions of clause 23 (*Changes to the Lenders*) whereupon the Facility C Loans so transferred shall be deemed to be extended in accordance with sub-clause (b) above. All transfers to be made pursuant to this sub-clause (c) shall be effected, in accordance with the provisions of clause 23 (*Changes to the Lenders*), no later than the date falling 10 days prior to the start of the Extension Period.
- (d) All or part of a Rejecting Lender's rights and obligations in relation to Facility C Loans not transferred to an Accepting Lender(s) and/or a New Lender(s) shall be repaid by each Borrower in accordance with clause 6.3 (*Repayment of Facility C Loans*) above.
- (e) Following the extension of Final Maturity Date of Facility C in accordance with sub-clause (b) above, subject to clause 7 (*Prepayment and cancellation*), each Borrower shall repay the principal amount of the Facility C Loans outstanding as at the original Final Maturity Date for Facility C in accordance with the repayment schedule set out in Table B of Part II of Schedule 5 (*Repayment Schedules*).
- (f) On the date falling 10 days prior to the start of the Extension Period, the Borrowers shall pay to the Facility Agent the extension fee provided for in clause 115 (*Extension fee*).
- (g) Subject to sub-clause (h) below, if:
  - (i) no Default is continuing or would result from the deferral of the original Final Maturity Date of Facility C pursuant to sub-clause (b) above; and
  - (ii) the amounts payable in accordance with sub-clause (f) above are paid,when all of the steps and conditions set out in paragraphs (i) and (ii) (inclusive) are completed, the Final Maturity Date of Facility C shall be the last day of the Extension Period.
- (h) Notwithstanding any other provision of this Agreement, there shall not be more than one Extension Period.

## **7 Prepayment and cancellation**

### **7.1 Illegality**

- (a) If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:
  - (i) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
  - (ii) upon the Facility Agent notifying the Borrowers, the Commitment of that Lender will be immediately canceled; and
  - (iii) subject to sub-clause (b) below, each Borrower shall prepay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law).
- (b) Notwithstanding the provisions of sub-clause (a)(iii) above, each Borrower shall not be required to prepay that Lender's participation in the Loans made to that Borrower in accordance with the terms of sub-clause (a)(iii) above if a New Lender is willing to assume that Lender's participation in the Loans made to that Borrower and that Lender's participation in the Loans is transferred to such New Lender in accordance with the provisions of clause 23 (*Changes to the Lenders*) as at such date on which that Lender's participation was required to be prepaid by the relevant Borrower in accordance with sub-clause (a)(iii) above.

## 7.2 Change of control

If:

- (a) prior to an IPO, the Controlling Shareholders cease to own, directly or indirectly, 75% of the voting share capital of PT X and cease to Control PT X;
- (b) following an IPO the Controlling Shareholders cease to own, directly or indirectly, at least 51% of the voting share capital of PT X and cease to Control PT X;
- (c) PT X ceases to own, directly or indirectly, free from any Security (other than Security arising under the Security Document or permitted under the Finance Documents):
  - (i) 99.5% of the voting share capital of PT B and ceases to Control PT B;
  - (ii) 75% of the voting share capital of PT A and ceases to Control PT A;
  - (iii) 98% of the voting share capital of PT C and ceases to Control PT C; and/or
  - (iv) 85% of the voting share capital of PT E and ceases to Control PT E;
- (d) at any time from (and including) the initial Utilisation Date:
  - (i) PT X ceases to own, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) one share in the voting share capital of PT D; and
  - (ii) PT E ceases to own, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents), 100% less one share of the voting share capital of PT D and Controls PT D; and/or
- (e) PT A ceases to own, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents), 89.9% less one share of the voting share capital of PT F and Controls PT F;

the Borrowers shall promptly notify the Facility Agent upon becoming aware of such event and if the Majority Lenders so require, the Facility Agent shall, by not less than five days notice to the Borrowers, cancel the Facilities and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facilities will be canceled and all such outstanding amounts will become immediately due and payable. For the avoidance of doubt, the Majority Lenders shall not cancel the Facilities and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Document immediately due and payable if any of the events in sub-clause (a) to (e) was effected with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

## 7.3 Voluntary prepayment of Loans

- (a) A Borrower to which a Loan has been made may, if it gives the Facility Agent not less than 30 days' (or such shorter period as the Majority Lenders may agree) prior written notice, prepay on the last day of an Interest Period applicable thereto the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$5,000,000 (or, if higher, in integral multiples of US\$1,000,000) or the Rupiah Equivalent Amount of US\$5,000,000 (or, if higher, in integral multiples of the Rupiah Equivalent Amount of US\$1,000,000, as the case may be);
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero); and
- (c) Any prepayment under this clause 7.3 shall satisfy the obligations under clause 6 (*Repayment*) in inverse chronological order and be applied rateably among the participations of all Lenders.
- (d) Subject to sub-clause (e) below, any Borrower making a prepayment under this clause 7.3 during the period up to the third anniversary of the date of this Agreement shall, upon prepayment, pay a prepayment fee to the Facility Agent (for the account of the Lender(s) being prepaid) equal to 0.75% of the amount prepaid. This prepayment fee is in addition to the obligation to pay any Break Costs.
- (e) Notwithstanding the provisions of sub-clause (d) above, no prepayment fee shall be payable in respect

of any prepayment made by a Borrower under this clause 7.3:

- (i) pursuant to clause 8.1(c) (*Calculation of interest*); or
  - (ii) solely to avoid payment by such Borrower of any Tax, Indirect Tax, stamp duty and/or, Increased Costs as a result of the invocation by any Finance Party of clauses 12.2 (*Tax gross-up*), 12.3 (*Tax indemnity*), 12.5 (*Stamp taxes*), 12.6 (*Indirect Tax*) and/or 13 (*Increased costs*).
- (f) Where any Borrower has entered into any Derivative Contract, that Borrower shall effect an unwinding of the corresponding amount of such Derivative Contract concurrent with any voluntary prepayment of any Facility in accordance with the provisions of this clause 7.3 so that the aggregate amount of all Derivative Contracts entered into by such Borrower shall not, at any time, exceed the aggregate of all Loans outstanding in respect of that Borrower.

#### 7.4 Right of prepayment and cancellation in relation to a single Lender

- (a) if:
- (i) any sum payable to any Lender by an Obligor is required to be increased under clause 12.2(a) (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under clause 12.3 (*Tax indemnity*) or clause 13.1 (*Increased costs*),
- the Borrowers may, whilst the circumstance giving rise to the requirement or indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the prepayment of that Lender's participation in the Loans.
- (b) On receipt of a notice referred to in clause 7.4(a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each interest Period which ends after the Borrowers has given notice under clause 7.4(a) above (or, if earlier, the date specified by the Borrowers in that notice), each Borrower to which a Loan is outstanding shall prepay that Lender's participation in the relevant Loan.

#### 7.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty save for any fee payable pursuant to clause 7.3(d) (*Voluntary prepayment of Loans*).
- (c) No Borrower may reborrow any part of a Facility which is prepaid in accordance with clause 7.3 (*Voluntary prepayment of Loans*).
- (d) The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments canceled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this clause 7 it shall promptly forward a copy of that notice to either the Borrowers or the affected Lender, as appropriate.

#### 7.6 Mandatory Prepayment

- (a) On the date on which a Compliance Certificate is supplied pursuant to clause 19.2(a) (*Compliance Certificate*), if the Aggregate Outstanding Debt to Annualised Adjusted EBITDA Ratio (as defined in clause 20 (*Financial covenants*)) save that the reference to Relevant Period therein shall be replaced by "the calendar month immediately preceding the date on which the relevant Compliance Certificate is supplied", for the purpose of this sub-clause (a)) is:

- (i) more than five times, the Borrowers shall apply 100% of the amounts standing to the credit of each Mandatory Prepayment Account: or
- (ii) equal to or less than five times but more than four times, the Borrowers shall apply 60% of the amounts standing to the credit of each Mandatory Prepayment Account,

towards prepayment of such Loans as shall be selected by the Borrowers.

- (b) The Borrowers shall repay such Loan(s) on the last day of the then current Interest Period.
- (c) Any prepayment under this clause 7.6 shall satisfy the obligations under clause 6 (*Repayment*) in inverse chronological order and be applied rateably among the participations of all Lenders.
- (d) At least 7 days prior to each anniversary of the date of this Agreement, each Borrower shall deliver to the Facility Agent a certificate, signed by a duly authorised director of such Borrower, setting out (in reasonable detail) computations regarding such Borrower's Annualised Adjusted EBITDA.
- (e) For purposes of this clause 7.6:

**Aggregate Outstanding Debt to Annualised Adjusted EBITDA Ratio** means the ratio between:

- (i) Aggregate Outstanding Debt;
- and
- (ii) Annualised Adjusted EBITDA

**Annualised Adjusted EBITDA** has been meaning give to it in clause 20 (*Financial covenants*).

## SECTION 5 – COSTS OF UTILISATION

### 8 Interest

#### 8.1 Calculation of Interest

- (a) Subject to sub-clause (c) below, the rate of interest on each Dollar denominated Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
- (i) Margin;
  - (ii) LIBOR;
  - (iii) Credit Premium; and
  - (iv) Liquidity Premium

- (b) Subject to sub-clause (c) below, the rate of interest on each Rupiah denominated Loan for each interest Period is the percentage rate per annum which is the aggregate of the applicable:
- (i) Margin;
  - (ii) LIBOR;
  - (iii) Credit Premium; and
  - (iv) Liquidity Premium

- (c) The Borrowers may, no later than 30 days prior to:
- (i) the date falling three Months from (and including) the date of this Agreement;
  - (ii) the date falling six Months from (and including) the date of this Agreement; and/or
  - (iii) each anniversary of the date falling six Months from (and including) the date of this Agreement,

(each, a **Request Date**) submit a written request to the Facility Agent that the Liquidity Premium be reduced or cancelled, as the case may be.

The Majority Lenders may, at their sole and absolute discretion, agree to such request and shall notify the Facility Agent of its decision in writing no later than 7 Business Days prior to the date on which the applicable rate of interest for the Interest Period immediately following the relevant Request Date is fixed and the Facility Agent shall, in turn, promptly so notify the Borrowers. Notwithstanding the foregoing, where the number of Lenders is less than three, any such request by the Borrower shall be agreed upon by all the Lenders (at their sole and absolute discretion).

To avoid doubt, in the event that such written requested is rejected, the Liquidity Premium shall continue to apply in accordance with sub-clauses (a) and (b) above provided that the Borrowers may prepay (using funds not deposited in any Account or the subject of any Security Document) the whole or any part of any Loan outstanding (in which event the provisions of clause 7.3 (*Voluntary prepayment of Loans*) shall apply or may require that all the Lenders transfer their rights and obligations under the Finance Documents to such New Lenders nominated by the Borrowers in accordance with the provisions of clause 23 (*Changes to the Lenders*)).

- (d) For the purpose of this clause 8.1:
- (i) **Credit Index** means such numerical value calculated as follows:
    - (A) firstly, for each Approved Customer, calculate its Contracted Annual Revenue;
    - (B) secondly, beginning with the Approved Customer having the lowest Credit Factor, add the Contracted Annual Revenue (or part thereof) of each Approved Customer until the sum of such Contracted Annual Revenue (**the Sum**) equals 125% of the Aggregate Outstanding Debt (**the Debt Factor**).

The balance of the Contracted Annual Revenue of such Approved Customer last used in arriving at the Sum shall be the **Balance Amount**;

- (C) thirdly, divide the Contracted Annual Revenue of each Approval Customer used in the computation in paragraph (B) above against the Debt Factor, then multiply the resulting quotient by the Credit Factor for such Approved Customer (each a Weighted Quotient) provided that in respect of the Approved Customer last used to calculate the Sum, its Contracted Annual Revenue for the purpose of this paragraph (C) shall only be such amount used in arriving at the Sum and the Balance Amount shall be disregarded for the calculation of its Weighted Quotient.
- (D) the Credit Index is the sum of the Weighted Quotients.

(ii) **Credit Premium** means:

- (A) from the date of this Agreement to 30 June 2009, 0.625% per annum;
- (B) at all times thereafter, such percentage per annum determined by an Approved Auditor on a rolling six Months basis based on the formula below, rounded up to the nearest 1/8. The first calculation shall be determined no later than 1 June 2009 based on Contracted Annual Revenue commencing from 1 July 2009. Each calculation thereafter shall be finalised no later than 1 June and 1 December of each year. The resultant Credit Premium shall be applied for the subsequent half yearly periods of 1 January to 30 June and 1 July to 31 December of each year.

Credit Premium = Risk Premium x (1 – Discount)

1) For the purpose of this sub-clause (d)(iii)(B):

Discount means the percentage determined based on the applicable Security Coverage Ratio as set out in the table below:

Security Coverage

Ratio

≤ 125% 0% > 125% - 200% 25% > 200% - 300% 50% > 300% 100%

**Risk Premium** means such percentage per annum determined based on the applicable Credit Index as set out in the table below:

Credit Index = Risk Premium

≤ 1.50% > 1.5 – 2.0 + 0.25% > 2.0 – 3.0 + 0.625% > 3.0 – 4.0 + 1.50% > 4.0 + 3.00%

(iii) **Liquidity Premium** means 1.25% per annum, subject to such revision in accordance with sub-clause (c) above from time to time.

(iv) **Security Coverage Ratio** means the ratio of the aggregate Contracted Annual Revenue of all Borrowers and the Aggregate Outstanding Debt.

## 8.2 Payment of interest

The Borrowers to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period.

## 8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to clause 8.3(b) below, is two percent higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this clause 8.3 shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two per cent higher than the rate which would have applied if the Unpaid Sum had not become due.

- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

#### 8.4 Notification of rates of Interest

The Facility Agent shall promptly notify the Lenders and the relevant Borrower of the determination of a rate of interest under this Agreement.

### 9 Interest Periods

#### 9.1 Interest Periods

- (a) Subject to sub-clause (b) below, all Interest Periods shall be for three Months.
- (b) An Interest Period for a Loan shall not extend beyond the Final Maturity Date applicable to its Facility.
- (c) Each Interest Period for a Loan shall start on the relevant Utilisation Date or (if a Loan has already been made) on the last day of the preceding Interest Period of such Loan. The first Interest Period for the first Loan relating to a Facility shall end of the day falling three Months after its Utilisation Date. The first Interest Period for each other Loan relating to the same Facility shall end on the same day as the then current Interest Period for such first Loan ends.

#### 9.2 Changes to Interest Periods

- (a) Prior to determining the interest rate for a Loan, the Facility Agent may shorten an Interest Period for any Loan relating to the same Facility to ensure that there are sufficient Loans for that Facility (with an aggregate amount equal to or greater than the Repayment Date relating to that Facility for the Borrower(s) to make the Repayment Installment relating to that Facility due on that date.
- (b) If the Facility Agent makes any of the changes to an Interest Period referred to in this clause 9.2. it shall promptly notify the Borrowers and the Lenders.

#### 9.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

#### 9.4 Consolidation of Loans

If two or more Interest Periods:

- (a) relate to Facility A Loans, Facility B Loans or Facility C Loans;
- (b) and on the same date; and
- (c) are made to the same Borrower,

those Facility A Loans, Facility B Loans or Facility C Loans will be consolidated into, and treated as, a single Facility A Loans, Facility B Loans or Facility C Loans (as the case may be) on the last day of the Interest Period. For the avoidance of doubt, no Loans of one Facility shall be consolidated with the Loans of another Facility.

### 10 Changes to the calculation of interest

#### 10.1 Absence of quotations

Subject to clause 10.2 (*Market disruption*), if LIBOR or, if applicable, JIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11 am on the Quotation Day, the applicable LIBOR or JIBOR shall be determined on the basis of the quotations of the remaining Reference Banks (if any).

#### 10.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest

on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the Revised Interest Rate.

(b) In this Agreement:

**Average COF** means the percentage per annum equal to the average of the COF advised to the Facility Agent by each of the Lenders (but excluding the highest and lowest COF quoted by the Lenders) of the relevant Loan for the relevant Interest Period

**COF** means the percentage per annum of the cost of funds of a Lender of the relevant Loan for the relevant Interest Period

**Market Disruption Event** means:

- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available or the Screen Rate is zero or negative and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine LIBOR for Dollars, or as applicable, JIBOR for Rupiah, for the relevant Interest Period; or
- (ii) at or about noon at the Relevant Interbank Market on the Quotation Day for the relevant Interest Period, the Facility Agent:
  - (A) receives notification(s) from:
    - 1) the Lender(s) whose participations in a Loan exceed 33% of that Loan, where there are 3 or more Lenders; or
    - 2) any Lender, where there are less than 3 Lenders in respect of any Loan, that its COF + 1% is in excess of the aggregate of Margin + LIBOR/JIBOR (as the case may be) + Credit Premium + Liquidity Premium;
  - (B) requests for, and receives, the COF of each Lender of the relevant Loan;
  - (C) computes the Average COF (where there are three or more Lenders); and
  - (D) determines that such Average COF + 1% is in excess of the aggregate of Margin + LIBOR/JIBOR (as the case may be) + Credit Premium + Liquidity Premium (where there are three or more Lenders)

**Revised Interest Rate** means:

- (i) Average COF +1%, where there are three or more Lenders of the relevant Loan; or
- (ii) The highest of the COF notified to the Facility Agent by each Lender in accordance with paragraph (ii)(B) of the definition of Market Disruption Event above plus 1%, where there are less than three Lender.

### 10.3 Break Costs

- (a) Subject to sub-clause (b) below, each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) No Break Costs shall be payable in respect of a prepayment made pursuant to clause 7.1 (*Illegality*).
- (c) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

## 11 Fees

### 11.1 Commitment fee

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a fee in Dollars or Rupiah (as the case may be) computed at the rate of:



- (i) in respect of Facility B, 0.25% per annum on that Lender's Available Commitment under Facility B for the Availability Period applicable to Facility B; and
- (ii) in respect of Facility C:
  - (A) where less than 50% of the Total Facility C Commitment has been utilized, 0.50% per annum on that Lender's Available Commitment under Facility C for the Availability Period applicable to Facility C; and
  - (B) where 50% or more of the Total Facility C Commitment has been utilized, 0.25% per annum on that Lender's Available Commitment under Facility C for the Availability Period applicable to Facility C.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

**11.2 Arrangement fee**

The Borrowers shall pay to the Mandated Lead Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

**11.3 Facility Agency fee**

The Borrowers shall pay to the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

**11.4 Security Agency fee**

The Borrowers shall pay to the Security Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

**11.5 Extension fee**

The Borrowers shall pay to the Facility Agent (for the account of the Lenders) an extension fee for the extension of Facility C in accordance with clause 6.5 (*Extension*) in an amount and at the time agreed in a Fee Letter.

**11.6 Account Bank fee**

The Borrowers shall pay to the Account Bank (for its own account) an account bank fee in the amount and at the times agreed in Fee Letter.

## SECTION 6 – ADDITIONAL PAYMENT OBLIGATIONS

### 12 Tax gross-up and indemnities

#### 12.1 Definitions

- (a) In this clause 12:

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document

**Tax Payment** means an increased payment made by an Obligor to a Finance Party under clause 12.2 (*Tax gross-up*) or a payment under clause 12.3 (*Tax indemnity*).

Unless a contrary indication appears, in this clause 12 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

#### 12.2 Tax gross-up

- (a) All payments to be made by an Obligor to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction unless such Obligor is required to make a Tax Deduction, in which case the sum payable by such Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
- (b) A Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.
- (c) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (d) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (e) In the event that any payment to be made by any Obligor to any Lender (the **Affected Lender**) under the Finance Documents will be subject to a Tax Deduction of more than 10%, the Borrower(s) may prepay (using funds not deposited in any Account or the subject of any Security Document) the whole or any part of any Loan outstanding to the Affected Lender (in which event the provisions of clause 7.3 (*Voluntary prepayment of Loans*) shall apply) or may require that the Affected Lender transfers its rights and obligations under the Finance Documents to such New Lender nominated by the Borrower(s) in accordance with the provisions of clause 23 (*Changes to the Lenders*).

#### 12.3 Tax indemnity

- (a) Without prejudice to clause 12.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purpose of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Borrowers shall,

within three Business Days of demand of the Facility Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, provided that this clause 12.3 shall not apply to:

- (i) ny Tax Imposed on and calculated by reference to the net income actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which such Finance Party is incorporated; or
- (ii) ny Tax Imposed on and calculated by reference to the net income of the Facility Office of such Finance Party actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which its Facility Office is located.

(b) A Finance Party intending to make a claim under clause 12.3(a) above shall notify the Facility Agent of the event giving rise to the claim, whereupon the Facility Agent shall notify the Borrowers thereof.

(c) A Finance Party shall, on receiving a payment from an Obligor under this clause 12.3, notify the Facility Agent.

- (i) solely to avoid payment by such Borrower of any Tax, Indirect Tax, stamp duty and/or Increased Costs as a result of the invocation by any Finance Party of clauses 12.1 (*Tax gross-up*), 12.3 (*Tax indemnity*), 12.5 (*Stamp taxes*), 12.6 (*Indirect Tax*) and/or 12 (*Increased costs*).

(d) The Borrower(s) may prepay (using funds not deposited in any Account or the subject of any Security Document) the whole or any part of any Loan outstanding to any Lender (in which event the provisions of clause 7.3 (*voluntary prepayment of Loans*) shall apply) or may require that that Lender transfers its rights and obligations under the Finance Documents to such New Lender nominated by the Borrowers in accordance with the provisions of clause 23 (*Changes to the Lenders*) for the purpose of avoiding the payment of any claim made by that Lender under clause 12.3(a) above.

#### 12.4 Tax credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) that Finance Party has obtained, utilized and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Obligor.

#### 12.5 Stamp taxes

The Borrowers shall (a) pay and, (b) within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 12.6 Indirect Tax

- (a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.

## 13 Increased costs

### 13.1 Increased costs

- (a) Subject to clause 13.3 (*Exceptions*) the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement. The terms **law** and **regulation** in this clause 13.1(a) shall include, without limitation, any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.
- (b) In this Agreement **Increased Costs** means:
- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Finance Party);
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

### 13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

### 13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) compensated for by clause 12.3 (*Tax indemnity*) (or would have been compensated for under clause 12.3 (*Tax indemnity*) but was not so compensated solely because the exclusion in clause 12.3(a) (*Tax indemnity*) applied); or
  - (iii) attribute to the willful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this clause 13.3, a reference to a **Tax Deduction** has the same meaning given to the term in clause 12.1 (*Definitions*).

## 14 Other indemnities

### 14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
- (i) Making or filling of a claim or proof against that Obligor; or
  - (ii) Obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

That Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a

result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

#### 14.2 Other indemnities

The Borrowers shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) the Information Memorandum or any other information produced or approved by the Borrowers being or being alleged to be misleading or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under this Agreement;
- (d) a failure by an Obligor to pay any amount due under a Finance Document on its due date or in the relevant currency, including without limitation, any cost, loss or liability arising as a result of clause 27 (*Sharing among the Finance Parties*);
- (e) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (f) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Borrowers.

#### 14.3 Indemnity to the Agents

The Borrowers shall promptly indemnify each Agent against any cost, loss or liability incurred by that Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

### 15 Mitigation by the Lenders

#### 15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality*), clause 12 (*Tax gross-up and indemnities*) or clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Clause 15.1(a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

#### 15.2 Limitation of liability

- (a) The Borrowers shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

### 16 Costs and expenses

#### 16.1 Transaction expenses

The Borrowers shall, within three Business Days of demand, pay the Agents and the Mandated Lead Arranger

the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement,

provided that the aggregate of all costs and expenses incurred shall not exceed US\$50,000 (or its equivalent in any currency or currencies) without the prior consent of Borrowers.

#### 16.2 **Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to clause 28.9 (*Change of currency*), the Borrowers shall, within three Business Days of demand, reimburse each Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by that Agent in responding to, evaluating, negotiating or complying with that request or requirement.

#### 16.3 **Enforcement costs**

The Borrowers shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.



## SECTION 7 – BANK ACCOUNTS

### 17 Bank accounts

#### 17.1 General

- (a) For so long as any amount is outstanding under the Finance Documents or any Commitment is in force, each Borrower (other than PT X and PT E) shall at all times open and maintain each Account relating to such Borrower with the Account Bank.
- (b) The terms and conditions relating to the establishment and maintenance of each of the Accounts and each Borrowers' ability to deal with each Account shall be as set out in this clause 17 as supplemented, to the extent the same are not inconsistent, by the Mandate with the Account Bank relating to each Account. To the extent of any inconsistency, the terms of this Agreement shall prevail.

#### 17.2 Interest

- (a) The Balance in each Account shall bear interest at such rate (if any) as may from time to time be determined by the Account Bank consistent with the Mandate relating to that Account and shall be credited to the relevant Account in accordance with such Mandate.
- (b) Unless a Default is continuing and subject to the terms of any Finance Document, any interest which has occurred on an Account shall be for the account of the Borrowers.

#### 17.3 Withdrawals from the Accounts

- (a) The Account Bank will not make any withdrawal from the Accounts:
  - (i) otherwise than in accordance with the provisions of this Agreement, including this clause 17 and any other Finance Document;
  - (ii) if any Account is overdrawn or would become overdrawn as a result;
  - (iii) if the Facility Agent has notified the Account Bank that such withdrawal is not or would not be permitted under the Finance Documents, such notice to specify the provision of the relevant Finance Document pursuant to which such withdrawal is not or would not be permitted; or
  - (iv) if a Default has occurred.
- (b) The Facility Agent will give any confirmation or notice required pursuant to this clause 17 within three Business Days of receipt of the relevant request for withdrawal from the relevant Borrower if the relevant withdrawal is permitted and is in accordance with the Finance Documents.

#### 17.4 Access to Accounts

17.4.1 The Borrowers irrevocably consent to the Facility Agent and the Security Agent or any of their respective appointed representatives:

- (a) having access to review the books and records of the Account Bank relating to each Account;
- (b) passing on any information so obtained to any Finance Party in accordance with the provisions of the Finance Documents

and for these purposes only, irrevocably waives any right of confidentiality that may exist in respect of such books and records. The Account Bank shall give to the Facility Agent and the Security Agent unrestricted access on reasonable prior notice to review such books and records of any Account held by the Account Bank.

17.4.2 Nothing in this clause 17 will require the Account Bank to disclose to any person any books, records or other information which the Account Bank would not be required to disclose to the Borrowers.

#### 17.5 Administration

17.5.1 Without prejudice to the Account Bank's obligations under this clause 17, the Account Bank will not be obliged to make available to or for the account of any Borrower any sum which it is expecting to receive for the account of such Borrower until it has been able to establish that that sum has been credited to the relevant Account held with the Account Bank.

17.5.2 All signatories in respect of each Account must be a person(s) duly and properly authorized by the directors of the relevant Borrower except as otherwise agreed by the Account Bank.

17.6 **No assignment**

No Account nor any part of any Borrower's right, title and interest to or in any Account shall be capable of being assigned, transferred or otherwise disposed of or encumbered (whether in whole or in part) other than pursuant to the Security Documents.

17.7 **Right of set-off**

The Account Bank agrees not to claim or exercise any security in, set-off, counterclaim or other rights in respect of any Account save as expressly contemplated in this clause 17.

17.8 **Repayment obligations**

None of the restrictions contained in this Agreement on the withdrawal of funds from the Accounts will affect the obligations of the Obligors to make all payments required to be made to the Finance Parties on the due date for payment thereof in accordance with the Finance Documents.

17.9 **Prohibition on exercise of rights by Borrowers**

The Borrowers agree with the Facility Agent and Security Agent not to exercise any rights after the occurrence of a Default which it may have under any applicable law to direct the Account Bank or (as the case may be) the Security Agent to transfer any amount standing to the credit of an Account to any Borrower or to its order where the same would be prohibited by this Agreement or any other Finance Document.

17.10 **Rental Proceeds Account**

(a) Payments into the Rental Proceeds Account

Without prejudice to any provisions of any Security Document:

- (i) the Borrowers shall procure that all sums (including rental and service fees) received or receivable by any or all of them under a Telecom Asset Agreement shall be paid directly into the relevant Rental Proceeds Account; and
- (ii) if any amounts referred to in sub-clause (a) are not paid directly into the relevant Rental Proceeds Account, the Borrowers shall transfer those amounts into the relevant Rental Proceeds Account immediately upon their receipt.

(b) Withdrawals from the Rental Proceeds Account

(i) Each Borrower hereby irrevocably authorizes and instructs the Account Bank to transfer:

- (A) On the first Business Day of each calendar month following the first Utilisation Date, an amount equal to the Debt Service Minimum Balance falling to be paid by it to the relevant DSRA; and
- (B) On each anniversary of this Agreement (each, a **Fee Payment Anniversary Date**), an amount equal to aggregate of the agency fees and account bank fee (as the case may be) due to be paid to all the Agents in accordance with clause 11 (*Fees*) on the next Fee Payment Anniversary Date following such Fee Payment Anniversary Date.

(ii) Following such transfer in accordance with sub-clause (b)(i) above, the Account Bank shall (without the need for authorization or signature of such Borrower) transfer the Balance remaining in such Borrower's Rental Proceeds Account to such Borrower's Operating Account and such Borrower's Mandatory Prepayment Account in the ratio of 75 : 25.

(iii) For the purpose of calculating the amounts to be transferred by the Account Bank pursuant to this sub-clause (b), the Facility Agent shall supply to the Account Bank in writing, no later than 10 am Jakarta time three Business Days prior to the relevant transfer date, information on:

- (A) the aggregate amount of Finance Costs falling due for payment by such Borrower under the Finance Documents in the immediately succeeding three month period; and
- (B) the amount of agency fee(s) and/or account bank fee to be transferred in accordance with sub-clause (b)(i)(B) above.



#### 17.11 DSRA Account

(a) Payments into the DSRA

Each Borrower shall ensure that payments are made into the relevant DSRA in accordance with clause 17.1(b)(i) (*Rental Proceeds Account*) and clause 17.13(b)(i) (*Mandatory Prepayment Account*).

(b) Withdrawals from the DSRA

Each Borrower hereby irrevocably authorizes and instructs the Facility Agent to order the Account Bank (and the Account Bank shall comply with any such instruction without the need to give such Borrower notice) to make payments of:

- (i) any Finance Costs falling due for payment by such Borrower (without the need for authorization or signature of such Borrower) on its due date; and
- (ii) such agency fee(s) and/or account bank fee (whether due or not due to be paid) to the relevant Agent on each Fee Payment Anniversary Date,

from the relevant DSRA. Such order shall be made by the Facility Agent to the Account Bank in writing no later than 10 am Jakarta time three Business Days prior to the date of payment of such Finance Costs, agency fee(s) or account bank fee (as the case may be) by the relevant Borrower.

#### 17.12 Operating Account

(a) Payments into the Operating Account

The Account Bank shall transfer such Balance remaining in each Borrower's Rental Proceeds Account into each Borrower's Operation Account in accordance with clause 17.10(b) (*Rental Proceeds Account*).

(b) Withdrawals from the Operating Account

Subject to the Security Documents, any Borrower shall be free to make withdrawals from its Operating Account to meet its operating expenses and/or to make any Restricted Payment.

#### 17.13 Mandatory Prepayment Account

(a) Payments into the Mandatory Prepayment Account

The Account Bank shall transfer such Balance remaining in each Borrower's Rental Proceeds Account into each Borrower's Mandatory Prepayment Account in accordance with clause 17.10(b) (*Rental Proceeds Account*).

(b) Withdrawals from the Mandatory Prepayment Account

- (i) In the event that the amount transferred pursuant to 17.10 (*Rental Proceeds Account*) is insufficient to meet the Debt Service Minimum Balance for the relevant period (the balance being the **Shortfall**), each Borrower hereby irrevocably authorizes and instructs the Account Bank to transfer an amount equal to the Shortfall to the relevant DSRA.
- (ii) Each Borrower hereby irrevocably authorizes and instructs the Facility Agent to order the Account Bank (and the Account Bank shall comply with any such instruction without the need to give the Borrower notice) to make such mandatory prepayments in accordance with clause 7.6(a) (*Mandatory Prepayment*) provided that the relevant Borrower shall be entitled to select the Loan(s) to be so prepaid. Such order shall be made in writing by Facility Agent to the Account Bank no later than 10 am Jakarta Time three Business Days prior to the date of payment of such mandatory prepayments.
- (iii) On every date on which a Compliance Certificate is supplied with each set of financial statements delivered pursuant to clause 19.1(a) (*Financial statements*), provided that all mandatory prepayments required to be made in accordance with sub-clause (b)(i) above have been made, the Account Bank shall (without the need for authorization or signature of the relevant Borrower), on the instructions of the Facility Agent, transfer the Balance remaining in each Borrower's Mandatory Prepayment Account to each Borrower's Operating Account. Such instruction shall be made in writing by the Facility Agent to the Account Bank no later than 10 am Jakarta time three Business Days prior to the date of such transfer.

## SECTION 8 – REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

### 18 Representations

Each Obligor makes the representations and warranties set out in this clause 18 to each Finance Party on the date of this Agreement.

#### 18.1 Status

- (a) It is a limited liability company, duly established and validity existing under the laws of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

#### 18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

#### 18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

#### 18.4 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
  - (ii) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and
  - (iii) for it to carry on its business, and which are material, have been obtained or effected and are in full force and effect.
- (b) All Authorisations (including IMB) required for the construction, management and operation of each IMB Telecom Tower and the maintenance of the Shelter Only Assets have been obtained and are in full force and effect.

#### 18.6 Governing law and enforcement

- (a) The choice of English law or Indonesian law (as the case may be) as the governing law of the Finance Documents will be recognized and enforced in its jurisdiction of incorporation
- (b) Any judgment obtained in England or Indonesia (as the case may be) in relation to a Finance Document will be recognized and enforced in its jurisdiction of incorporation.

#### 18.7 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

**18.8 No misleading information**

- (a) Any factual information contained in or provided by any member of the Group for the purposes of the Information Memorandum was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections contained in the Information Memorandum have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the Information Memorandum and no information has been given or withheld that results in the information contained in the information Memorandum being untrue or misleading in any material respect.
- (d) All information (other than the Information Memorandum) supplied by any member of the Group is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.

**18.9 Financial statements**

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied save to the extent expressly disclosed in such Original Financial Statements.
- (b) The Original Financial Statements give a true and fair view and represent its financial condition and operations (consolidated in the case of the Borrowers) during the relevant financial year save to the extent expressly disclosed in such Original Financial Statements.
- (c) There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group as a whole) since 31 December 2007.

**18.10 No undisclosed liabilities**

As at the date as of which its most recent audited financial statements were prepared (which, at the date of this Agreement, are the Original Financial Statements), it had no material liabilities (contingent or otherwise) which were not disclosed thereby (or by the notes thereto) or reserved against therein nor any unrealized or anticipated losses arising from commitments entered into by it which were not so disclosed or reserved against.

**18.11 Pari passu ranking**

Its payment obligations and the claims of the Finance Parties against it under each Finance Document to which it is a party rank at least pari passu with all its other present or future, actual or contingent, unsecured or unsubordinated obligations, except for those which are mandatorily preferred by applicable law.

**18.12 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including any arising from or relating to Environmental Law) which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or threatened against it.

**18.13 No winding-up**

It has not taken any corporate action, not have any other steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution, administration, reorganization or similar proceedings or for the appointment by it (or on its behalf) of a receiver, administrator, administrative receiver, trustee or similar office in relation to itself or all or any of its assets or revenues.

**18.14 No immunity**

- (a) It is subject to civil and commercial law with respect to its obligations under each of the Finance Documents to which it is a party.
- (b) The entry into and performance by it of the Finance Documents to which it is a party constitutes private and commercial acts (rather than governmental or public acts).
- (c) Neither it nor any of its assets will be entitled to claim any right of immunity from set-off, suit, execution, attachment or other legal process in respect of its obligations under the Finance Documents.

**18.15 No breach of laws**

It is in compliance with applicable laws and regulations and it has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

**18.16 Security**

(a) Save for:

- (i) the Existing Security;
- (ii) any Security permitted to be created by the Finance Documents; and
- (iii) any Security created for the benefit of the Finance Parties on execution of the Security Documents,

no Security exists over all or any of its present or future revenues or assets.

- (b) Each Security Document creates (or once entered into will create) in favour of the Security Agent of the Facility Agent (as the case may be) for the benefit of the Finance Parties, the Security which it is expressed to create fully perfected and with the ranking and priority it is expressed to have.
- (c) All Existing Security relating to any Existing indebtedness proposed to be refinanced by any Facility A Loan in accordance with the purpose set out in clause 3.1 (*Purpose*) shall be released and discharged in full within such time period as provided in this Agreement.

**18.17 No obligation to create Security**

Its execution of any Finance Documents to which it is a party and its exercise of its rights and performance of its obligations thereunder will not result in the existence of, nor oblige it to create, any Security over all or any of its present or future revenues or assets (excluding any Security the subject of the Security Documents).

**18.18 Shares of the Borrowers**

- (a) The shares of each of PT X and PT E which are subject to any Security Document are issued, fully paid and freely transferable and not subject to any option or warrant (conditional or unconditional) to purchase or similar rights.
- (b) Upon the full release and discharge by the relevant existing lenders of the relevant Existing Security over the voting share capital of each Borrower (other than PT X and PT E) to secure the relevant Existing indebtedness, the shares of each Borrower (other than PT X and PT E) which are subject to the relevant Share Pledge (such shares, with the shares referred in sub-clause (a) above being **Secured Shares**) are issued, fully paid and freely transferable and not subject to any option or warrant (conditional or unconditional) to purchase or similar rights.
- (c) The Secured Shares constitute all of the issued share capital of the Borrowers and there are no depository receipts issued in respect of any Secured Share.
- (d) The constitutional documents of each Borrower do not and could not restrict or inhibit any transfer of any such Secured Shares on creation or enforcement of any Security Document.
- (e) There are no agreements in force or corporate resolutions passed which provide or require or might provide or require the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Borrower (including any option or right of pre-emption or conversion).
- (f) There are no silent partnership agreements, profit and loss pooling agreements or equivalent arrangements by which a third party is entitled to a participation in the profits or revenue of a Borrower to which any Secured Share relates.

**18.19 Use of proceeds**

All the proceeds of each Loan advanced under this Agreement have been used strictly in accordance with the purpose set out in clause 3.1 (*Purpose*).

#### 18.20 **Ownership of assets**

- (a) It has good and marketable title to, and is the sole legal owner of all of its assets and properties (tangible and intangible, real or personal) owned by it and a valid leasehold interest in all of its leased assets.
- (b) Except for any Security granted pursuant to any Security Document, neither this Agreement nor any other Finance Document, nor any transaction contemplated under any such agreement, will affect any of its rights, title or interest in and to any of its assets in a manner that would have or could reasonably be expected to have a Material Adverse Effect.

#### 18.21 **Arm's length dealings**

Other than shareholder loans permitted under the Finance Document, it has no arrangement, agreement or commitment with any person or has paid or is obliged to pay any fees, commissions or other sums on any account whatsoever to any persons other than in the ordinary course of trading, on an arm's length basis and on normal commercial terms.

#### 18.22 **Taxes**

It has filed all tax returns and supporting information required to be filed by it in any relevant jurisdiction and has paid or discharged all Taxes due and payable by it on or before the due date except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP and, to the extent that any Taxes are not due and payable, it has provided adequate reserves for the payment of those Taxes in accordance with GAAP.

#### 18.23 **Deduction of Tax**

It is not required under the law applicable where it is established or resident or at its address specified in this Agreement to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

#### 18.24 **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents save for the following:

- (a) payment of stamp duty of IDR 6,000 for the stamping of each Finance Document which is executed or used in Indonesia;
- (b) reporting by the Borrowers of this Agreement and the application of proceeds hereof with Bank Indonesia, the Ministry of Finance of Indonesia and the Team for the Co-ordination of the Management of Offshore Commercial Loans of Indonesia;
- (c) registration of each Fiduciary Transfer at the relevant fiduciary registration office in Indonesia and the payment of associated registration fees;
- (d) registration of each Hak Tanggungan at the relevant land office in Indonesia and the payment of associated registration fees.

#### 18.25 **Insurances**

- (a) It has in place all Insurance Policies with reputable Insurers.
- (b) It has not done, or omitted to do anything, and no event or circumstance has occurred, which has made, or could make, any Insurance Policy void, voidable or subject to any restriction or limitation.
- (c) It has not received any notification from any Insurer that its liability under any Insurance Policy has been reduced or avoided.

#### 18.26 **Ownership and Control**

- (a) Prior to an IPO, the Controlling Shareholders own, directly or indirectly, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents), 75% of the voting share capital of PT X and Control PT X.

- (b) Following an IPO, the Controlling Shareholders own, directly or indirectly, at least 51% of the voting share capital of PT X and Control PT X.
- (c) PT X owns, directly or indirectly, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents):
  - (i) 99.5% of the voting share capital of PT B and Controls PT B;
  - (ii) 75% of the voting share capital of PT A and Controls PT A;
  - (iii) 98% of the voting share capital of PT C and Controls PT C; and
  - (iv) 85% of the voting share capital of PT E and Controls PT E;
- (d) Upon the full release and discharge by the relevant existing lenders of the relevant Existing Security over the voting share capital of PT D to secure the relevant Existing Indebtedness:
  - (i) PT X shall own, directly or indirectly, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) one share in the voting share capital of PT D; and
  - (ii) PT E shall own, directly or indirectly, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) 100% less one share of the voting share capital of PT D and Controls PT D; and
- (e) PT A owns, directly or indirectly, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) 89.9% of the voting share capital of PT F and Controls PT F.

**18.27 Environmental Laws and Environmental Licences**

It has:

- (a) Complied with all Environmental Laws to which it may be subject;
- (b) Obtained all Environmental Licences required or desirable in connection with its business; and
- (c) Complied with the terms of those Environmental Licences,

in each case where failure to do so might have a Material Adverse Effect.

**18.28 Environmental releases**

No:

- (a) Property currently or previously owned, leased, occupied or controlled by it (including any offsite waste management or disposal location utilized by it) is contaminated with any Hazardous Substance: and
- (b) Discharge, release, leaching, migration or escape of any Hazardous Substance into the Environment has occurred or is occurring on, under or from that property.

In each case in circumstances where this might have a Material Adverse Effect.

**18.29 Environmental claims**

So far as it is aware, having made all reasonable enquiries, there are no Environmental claims pending or threatened and there are no past or present acts, omissions, events or circumstances that might form the basis or any Environmental claim against it.

**18.30 Central bank approvals**

Each Loan is being or will be borrowed in accordance with the approvals, guidelines, regulations and circulars (which are in effect from time to time) of the Bank Indonesia, the government of Indonesia and each other applicable Governmental Agency in Indonesia.

### 18.31 **Compliance with laws**

It has complied in all respects with all laws to which it may be subject, where failure to do so might have a Material Adverse Effect.

### 18.32 **Intellectual Property**

- (a) It owns, has licence to use or otherwise has the right to use, free of any pending or threatened liens, all intellectual property or intellectual property rights, which are required or desirable for the conduct of its business and operations and it does not, in carrying on its business and operations, infringe any intellectual property rights of any person.
- (b) None of the intellectual property or intellectual property rights owned or enjoyed by it, or which it is licensed to use, which are material in the context of its business and operations are being infringed nor, so far as it is aware, is there any infringement or threatened infringement of those intellectual property or intellectual property rights licensed or provided to it by any person.
- (c) All intellectual property or intellectual property rights owned by it or which it is licensed to use are valid and subsisting, and all actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken.

### 18.33 **Certified Copies**

Any copy of a document (the original document) provided to any Finance Party by or on behalf of a Borrower which purports to be certified by a duly authorized officer or director of the relevant person as a true, complete and up-to-date copy of the original document is a true, complete and accurate copy of the original document and is up to date as at the date on which it was provided.

### 18.34 **Authorised Signatures**

Any person specified as its authorized signatory under Schedule 2 (*Condition precedent*) or clause 19.4(e) (*Information: miscellaneous*) is authorized to sign Utilisation Requests (in the case of Borrowers only) and other notices on its behalf.

### 18.35 **Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (a) the date of each Utilisation Request and the first day of each Interest Period; and
- (b) In the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor.

## 19 **Information undertakings**

The undertakings in this clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 19.1 **Financial statements**

Each Borrower shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as the same become available, but in any event within 120 days after the end of the each of the Group's financial years, the Group's audited consolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 120 days after the end of the each of its financial years, its audited unconsolidated financial statements for that financial year;
- (c) as soon as the same become available, but in any event within 60 days after the end of the first half of each of the Group's financial years, the Group's unaudited consolidated financial statements for that financial half year; and
- (d) as soon as the same become available, but in any event within 60 days after the end of the first half of each of its financial years, its unaudited consolidated financial statements for that financial half year.

## 19.2 Compliance Certificate

- (a) PT X shall (for itself and on behalf of the other Borrower) supply to the Facility Agent, with each set of financial statements delivered pursuant to clauses 19.1(a) and 19.1(c) (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 20 (*Financial covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate delivered pursuant to sub-clause (a) above shall be signed by a duly authorized director of PT X and countersigned by PT X's independent auditors.

## 19.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrowers pursuant to clause 19.1 (*Financial statements*) shall be certified by a duly authorized directors of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- (b) Each Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to clause 19.1 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices of reference periods and its auditors (or, if appropriate, the auditors of that other Obligor) deliver to the Facility Agent:
  - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 20 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

## 19.4 Information: miscellaneous

The Borrowers shall supply to the Facility Agent (in sufficient copies for all the Finance Parties, if the Facility Agent so requests):

- (a) all documents relating to or in respect of any Finance Document and/or the transactions contemplated thereby which are dispatched by any Borrower to any of its shareholders at the same time as they are dispatched;
- (b) all documents dispatched by any Borrower to its creditors generally at the same time as they are dispatched;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect.
- (d) Promptly, such further information regarding the financial condition, business and operation of any member of the Group as any Finance Party (through the Facility Agent) may reasonably request; and
- (e) Promptly, notice of any change in authorized signatories of any Obligor signed by a director or company secretary of such Obligor accompanied by specimen signatures of any new authorized signatories.

## 19.5 Notification of default

- (a) Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Borrowers shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## 19.6 "Know your customer" checks

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of, or the circumstances affecting, an Obligor after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer;



obliges any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall, as soon as reasonably possible upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (on behalf of any Lender or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender, to carry out and be satisfied it has complied with all necessary "know you customer" or other similar identification procedures under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(b)

Each Lender shall promptly, upon the request of the Facility Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19.7

**Insurances information**

(a) Each Borrower shall promptly inform the Facility Agent upon becoming aware of:

(i)

any event which gives rise to a claim under any Insurance Policy which exceeds or is expected to exceed US\$10,000 (or its equivalent), on the date on which the claim is made;

(ii)

the cancellation or variation for any reason of any Insurance Policy;

(iii)

any act, omission or circumstance which has rendered or might reasonably be expected to render any Insurance Policy take out by it void or voidable; or

(iv)

any failure to disclose or any other event or circumstance which might entitle any Insurer to avoid any Insurance Policy taken out by it or which might entitle any Insurer to reduce its liability thereunder to zero or to an amount less than limit of liability expressly stated in the relevant policy.

(b)

Upon request from time to time by the Facility Agent, each shall promptly deliver such information concerning any Insurance Policy held by it (or held by another person but relating to any of its asset or any part of its business) as the Facility Agent may request, including duplicate originals or any such Insurance Policy or any document relating to any such Insurance Policy.

20

**Financial covenants**

(a) The covenants in this clause 20 shall:

(i)

remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force; and

(ii)

be tested by reference to the audited consolidated financial statements delivered pursuant to clauses 19.1(a) and 19.1(c) (*Financial statements*) above and the Compliance Certificate delivered pursuant to clause 19.2 (*Compliance Certificate*) above in respect of the Relevant Period.

(b) **Net Debt to Annualised Adjusted EBITDA Ratio**

The Borrowers shall ensure that the Net Debt to Annualised Adjusted EBITDA Ratio is not more than 5.5 times.

(c) **Interest Service Cover Ration**

The Borrowers shall ensure that the Interest Service Cover Ratio is:

(i)

as at the date of this Agreement, at least 1.9 times;

(ii)

for the period from 1 January 2009 to 31 December 2009, at least 2 times;

(iii)

for the period from 1 January 2010 to 31 December 2010, at least 2.25 times; and

(iv)

at all times thereafter, at least 2.5 times.

(d) **Minimum Debt Service Coverage Ratio**

The Borrowers shall ensure that the Minimum Debt Service Coverage Ratio is at least 1.2 times.

(e) **Loan to Value Ratio**

The Borrowers shall ensure that the Loan to Value Ratio is not less than 0.8 times.

(f) **Contracted Revenue Ratio**

The Borrowers shall ensure that the Contracted Revenue Ratio is not less than 0.7 times.

(g) **Minimum Positive Networth**

The Borrowers shall ensure that the Minimum Positive Networth is at least US\$15,000,000 (or its Rupiah Equivalent Amount).

(h) **Definitions**

For the purpose of this clause 20:

**Adjusted EBITDA** means:

(i) total consolidated operating profit of the Borrowers;

(A) before taking into account:

1) Interest Expenses;

2) Taxes;

3) exchange rate gains (or losses) arising due to the re-translation of balance sheet items and mark-to-market adjustments on currency swaps; and

4) other non-cash reducing operating profit (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash charges in any future period);

(B) after excluding (to the extent included) any gains or losses on the disposal or revaluation of assets (other than in the ordinary course of trading);

(C) after adding back all amounts provided for depreciation and amortization (including acquisition goodwill);

plus

(ii) Ending Unearned Income – Beginning Unearned Income

minus

(iii) Ending Accrued Income – Beginning Accrued Income

**Annualised Adjusted EBITDA** means Adjusted EBITDA annualized base on the Adjusted EBITDA for the Relevant Period

**Beginning Accrued Income** means the amount of accrued income of the Group:

(i) for the preceding financial year, in the case of a Compliance Certificate supplied with a set of financial statements delivered pursuant to clause 19.1(a) (*Financial statements*).

(ii) for the preceding Relevant Period, in the case of a Compliance Certificate supplied with a set of financial statements delivered pursuant to clause 19.1(b) (*Financial statements*).

**Beginning Unearned Income** means the amount of unearned income of the Group:

(i) for the preceding financial year, in the case of a Compliance Certificate supplied with a set of financial statements delivered pursuant to clause 19.1(a) (*Financial statements*).

(ii) for the preceding Relevant Period, in the case of a Compliance Certificate supplied with a set of financial statements delivered pursuant to clause 19.1(b) (*Financial statements*).

**Contracted Revenue Ratio** means the ratio between the contracted cash revenue for the remaining term of the Telecom Asset Agreements (which are Secured Assets) entered into with Approved Customers with Credit Factor of between 1 and 3, (both numbers inclusive) and the number being 125% of the Aggregate Outstanding Debt

**Ending Accrued Income** means the amount of accrued income of the Group for the Relevant Period

**Ending Unearned Income** means the amount of unearned income of the Group for the Relevant Period

**Interest Expense** means the aggregate amount of interest and any other finance charges (whether or not paid, payable or capitalized) accrued by the Group in respect of any Financial Indebtedness, including:

(i) the interest element of leasing and hire purchase payments;

(ii) commitment fees, commissions, arrangement fees and guarantee fees; and

(iii) amounts in the nature of interest payable in respect of any shares other than equity share capital, adjusted (but without double counting) by:

- (A) Adding back the net amount payable (or deducting the net amount receivable) by members of the Group under any interest or interest related currency hedging arrangements; and
- (B) Deducting interest income of the Group to the extent freely distributable to a member of the Group in cash

**Interest Service Cover Ratio** means the ratio between:

- (i) Adjusted EBITDA; and
- (ii) Interest Expense

**Loan to Value Ratio** means the ratio between Aggregate Outstanding Debt and Value

**Minimum Debt Service Coverage Ratio** means the ratio between Adjusted EBITDA and Interest Expense

**Net Debt** means aggregate of all interest bearing Financial Indebtedness, but excluding any Financial Indebtedness to the extent subordinated to the Loans less cash at hand and at bank

**Net Debt to Annualised Adjusted EBITDA Ratio** means the ratio of between Net Debt and Adjusted EBITDA

**Net Worth** means the aggregate of shareholders' equity (including retained earnings) and any shareholders' loans subordinated to the Loans

**Relevant Period** means each successive period of 6 Months with the first Relevant Period ending on 31 December 2008

**Value** means, in relation to Telecom Asset Agreements (which are Secured Assets) at the relevant date, the future cash flow for such Telecom Asset Agreements over the remaining term of such Telecom Asset Agreement, discounted to present value using the prevailing 3 month JIBOR plus Margin as the discounting factor

## 21 General undertakings

The undertakings in this clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 21.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of, any Authorisation required to enable it to perform its obligations under the Finance Documents and each Derivative Contract and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document and each Derivative Contract.

### 21.2 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents or any Derivative Contract.

### 21.3 Negative pledge

- (a) No Obligor shall create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into or permit to subsist any title retention arrangement;
  - (iv) enter into or permit to subsist any other preferential arrangement having a similar effect including escrow arrangements;

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Clauses 21.3(a) and (b) above do not apply to:
  - (i) any Existing Security;
  - (ii) any Security created pursuant to any Finance Document;
  - (iii) any Security created to secure the performance of bids, leases, statutory obligations, surety and appeal bonds, performance bonds, bid bonds, letters of credit, trade bills, bank acceptances, bank guarantees, permitted forward currency purchases and other obligations of a like nature incurred in the ordinary course of trading of that Obligor;
  - (iv) any Security over or affecting any asset acquired by any Obligor after the date of this

Agreement if:

- (A) that Security was created to secure any Financial Indebtedness incurred by the relevant Obligor to finance the acquisition of that asset; and
- (B) the principal amount of that Financial Indebtedness which is secured on that asset is no greater than 80% of the purchase price paid by the relevant Obligor for that asset;
- (v) any netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; and
- (vi) any lien arising by operation of law and in the ordinary course of trading provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned.

#### 21.4 Disposals

- (a) No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Clause 21.4(a) above does not apply to any sale, lease, transfer or other disposal:
  - (i) made in the ordinary course of business, on an arm's length basis, for fair market value and on normal commercial terms;
  - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose;
  - (iii) the proceeds of which are used solely for the purpose of prepaying or repaying the whole or any part of any Loan;
  - (iv) of the building owned by PT D located at Royal Palace Building, Indonesia provided that the proceeds of such disposal is used by PT D solely on operational costs incurred by or in respect of its business; or
  - (v) made with the prior written consent of the Facility Agent (acting on the instruction of the Majority Lenders).

#### 21.5 Merger

No Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction.

#### 21.6 Acquisitions

Save for Permitted Acquisitions, no Obligor shall acquire any company, business, assets (or any kind of interest in any of the forgoing, whatsoever) or undertaking or make any investment.

#### 21.7 Insurance

Each Borrower shall:

- (a) punctually pay all premiums and other amounts necessary to effect and maintain in force each Insurance Policy and provide evidence, in such form satisfactory to the Security Agent, of such payment to the Security Agent;
- (b) procure that every Insurance Policy (other than Commercial General Liability Insurance):
  - (i) is taken out in such Borrower's name, notes the Security Agent (on behalf of the Finance Parties) as an insured and insures each of their insurable interests (provided this is not illegal in the relevant jurisdiction);
  - (ii) names the Security Agent as the loss payee;
  - (iii) cannot be terminated or varied by the Insurer for any reason including the non-payment of the premium or any other amount in respect of the relevant insurance policy;
  - (iv) provides that notice of any occurrence given by one insured party will be regarded as notice given by all insured parties and that failure by one insured party to observe and fulfill the conditions of the relevant Insurance Policy will not prejudice the rights of any other insured party; and
  - (v) includes any other terms and conditions which the Facility Agent (acting on the instructions of the Majority Lenders) may reasonably require;
- (c) take up each Insurance Policy with a reputable and substantial Insurer acceptable to by the Facility Agent (acting on the instructions of the Majority Lenders);
- (d) procure that each Insurance Policy, to the fullest extent permitted by law, contains a waiver of subrogation clause acceptable to the Facility Agent (acting on the instructions of the Majority Lenders);
- (e) procure that each Insurance Policy covering Telecom Assets subject to any of the Hak Tanggungan contains an endorsement entitling the Security Agent (on behalf of the Finance Parties) to receive any and all Insurance Proceeds under such Insurance Policy and that the Insurer of such Insurance Policy waives any claim or defence against the Finance Parties for premium payment, deductible, self-insured retention or claims reporting provisions. In the event that the Security Agent reasonably determines that any Insurance Proceeds received by the Security Agent (on behalf of the Finance Parties) in accordance with this sub-clause (e) relates to any Telecom Assets which is not subject to any of the Hak Tanggungan, the Security Agent shall, following written notification to the Lenders, pay to the relevant Borrower such Insurance Proceeds as soon as practicable following receipt of the same;
- (f) not do or omit to do, or allow or permit to be done or not done, anything which may materially prejudice any Insurance Policy;

- (g) not vary, rescind, terminate, cancel or make a material change to any Insurance Policy without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders);
- (h) do all things reasonably required by the Security Agent to enable the Security Agent to recover any money due in respect of an Insurance Policy;
- (i) ensure that all Insurance Proceeds received in respect of the Property Insurance (as described in Schedule 10 (*Insurance Policies*)) shall be applied towards the repair, reinstatement and/or replacement of the relevant assets for which such Insurance Proceeds are paid;
- (j) subject to sub-clause (i) above, ensure that all Insurance Proceeds exceeding US\$10,000 (or its equivalent) received in respect of a claim, save for any Insurance Proceeds received from any Commercial General Liability Insurance that are to be paid to a person entitled to be compensated under the such Commercial General Liability Insurance, shall be paid to the Security Agent (on behalf of the Finance Parties); and
- (k) not settle, compromise or discharge any claim which exceeds US\$10,000 (or its equivalent) without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

## **21.8 Environmental undertakings**

Each Obligor shall:

- (a) comply with all Environmental Laws to which it may be subject;
  - (b) obtain all Environmental Licences required or desirable in connection with its business; and
  - (c) comply with the terms of all those Environmental Licences,
- in each case where failure to do so might have a Material Adverse Effect.

## **21.9 Environmental claims**

Each Obligor shall promptly notify the Facility Agent of any claim, proceeding, investigation, notice or other communication received by it in respect of any actual or alleged breach of or liability under Environmental Law which, if substantiated, might have a Material Adverse Effect.

## **21.10 Change of business**

No Obligor shall, without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders):

- (a) make any substantial change to the general nature of its business from that carried on at the date of this Agreement; or
- (b) make any substantial change to the general nature of its operations (including any change in its capital structure, business and investment policies, legal structure or corporate status) from that carried on at the date of this Agreement.

## **21.11 Conduct of business and affairs**

Each Obligor shall at all times carry on and conduct its business and affairs in a lawful manner.

## **21.12 Taxation**

Each Obligor shall ensure that its payment obligations under the Finance Documents rank and continue to rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

## **21.13 Pari Passu ranking**

Each Obligor shall ensure that its payment obligations under the Finance Documents rank and continue to rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to company generally.

## **21.14 Arm's length dealings**

No Obligor shall enter into any arrangement, agreement or commitment with any person or pay any fees, commissions or other sums on any account whatsoever to any persons other than:

- (a) on an arm's length basis and on normal commercial terms;
- (b) as required by the Finance Documents; or
- (c) those to which the Facility Agent (acting on the instructions of the Majority Lenders) has given its prior written consent.

## **21.15 Corporate matters**

(a) No Obligor shall, unless such amendment or alteration is required under, or contemplated by, the Finance Documents, amend or alter any of the provisions of its constitutional documents relating to its borrowing powers or its principal objects,

(b) Each Obligor shall keep proper books of records and account and maintain proper accounting, management information and control system in accordance with GAAP for the time being in force in the relevant jurisdiction applicable to it from time to time.

(c) No Obligor shall change its financial year or its auditors without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

(d) Each Obligor shall maintain its corporate existence.

- 21.6 **Use of proceeds**  
Each Obligor shall ensure that all the proceeds of each Loan advanced under this Agreement are used strictly in accordance with the purpose set out in clause 3.1 (*Purpose*).
- 21.17 **Compliance with central bank regulations**  
Each Obligor shall ensure that each Loan is being or will be borrowed in accordance with the approvals, guidelines, regulations and circulars (including Bank Indonesia Regulation No. 10/7/PBI/2008 on Offshore Loans of Non-Bank Companies) of Bank Indonesia, the government of Indonesia and each other applicable Governmental Agency applicable to it and shall as soon as practicable, upon the request of the Facility Agent (acting on the instruction of any Lender), provide evidence of such compliance to the Facility Agent.
- 21.17 **No other borrowings**  
Each Obligor shall not, without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Financial Indebtedness except:  
(a) Financial Indebtedness incurred under or pursuant to the Financial Documents; and  
(b) Permitted Indebtedness.
- 21.19 **Guarantees**  
No Obligor shall, without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), give any guarantee or indemnity (except as required under any Finance Document or given in the ordinary course of trading on normal commercial terms) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation or any person.
- 21.20 **Restricted Payment**  
No Obligor shall make any payment which is a Restricted Payment except for any Restricted Payment permitted under the Finance Documents and provided that no financial covenant set out in clause 20 (*Financial covenants*) will be breached as a result of the making of such Restricted Payment.
- 21.21 **Performance of Lease Agreements**  
Each Obligor shall:  
(a) duly perform and observe all its obligations under the Site Lease Agreements and the Telecom Asset Agreements;  
(b) not novate, assign or transfer any of its rights or obligations under or in connection with the Site Lease Agreements and/or the Telecom Asset Agreements other than to the Security Agent under the relevant Security Document;  
(c) not do (or omit to do) anything which reasonably could be expected to have an adverse effect on the performance by any counterparty of any of its obligations under the Site Lease Agreements and the Telecom Asset Agreements;  
(d) not exercise or rely upon any right of set-off, counterclaim or analogous right so as to reduce any amount payable to it under any Site Lease Agreement and/or the Telecom Asset Agreement.
- 21.22 **Amendment of and exercise of rights under the Lease Agreements**  
(a) No Obligor shall:  
(i) amend, supplement, vary, waive or modify or concur in the amendment, supplement, variation, waiver or modification of any Site Lease Agreement or the Telecom Asset Agreement;  
(ii) cancel, terminate, rescind, suspend or surrender or exercise any right to cancel, terminate, rescind, suspend or surrender any Site Lease Agreement or any Telecom Asset Agreement or any provision of any Site Lease Agreement or any Telecom Asset Agreement;  
(iii) release any counterparty from any obligation under any Site Lease Agreement or the Telecom Asset Agreement; or  
(iv) waive any breach by any counterparty to any Site Lease Agreement or any Telecom Asset Agreement or consent to any act or omission which would otherwise constitute such a breach,  
except, in each case,  
(A) with the prior consent of the Facility Agent; or  
(B) as to operational matters which do not materially affect the interest of the Finance Parties.  
(b) Each Obligor shall exercise all its rights, powers and discretions under each Site Lease Agreement and the Telecom Asset Agreement, except as to operational matters which do not materially affect the interests of the Finance Parties, in accordance with the instructions of the Facility Agent.
- 21.23 **Ownership and Control**  
Subject to such Security created pursuant to the Security Documents, each Obligor shall ensure that:  
(a) Prior to an IPO, the Controlling Shareholders own, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents), 75% of

the voting share capital of PT X and Control PT X;

(b) Following an IPO, the Controlling Shareholders own, legally and beneficially, at least 51% of the voting share capital of PT X and Control PT X;

(c) PT X owns, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents):

(i) 99.5% of the voting share capital of PT B and Controls PT B;

(ii) 75% of the voting share capital of PT A and Controls PT A;

(iii) 98% of the voting share capital of PT C and Controls PT C; and

(iv) 85% of the voting share capital of PT E and Controls PT E;

(d) as at the initial Utilisation Date and at all times thereafter:

(i) PT X owns, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) one share in the voting share capital of PT D; and

(ii) PT E owns, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) 100% less one share in the voting share capital of PT D; and

(e) PT A owns, legally and beneficially, free from any Security (other than Security arising under the Security Documents or permitted under the Finance Documents) 89.9% the voting share capital of PT F and Controls PT F.

**21.24 No winding-up**

No Obligor shall, without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), take any corporate action, nor take any other steps or legal proceedings for its winding-up, dissolution, administration, reorganization or similar proceedings or for the appointment by it (or on its behalf) of a receiver, administrator, administrative receiver, trustee or similar officer in relation to itself or all or any of its assets or revenues.

**21.25 Financial covenants**

The Obligors shall ensure that none of the financial covenants set out in clause 20 (*Financial covenants*) are breached at any time.

**21.26 Further assurance**

The Obligors shall from time to time on request by the Facility Agent (or by any other Finance Party through the Facility Agent) do or procure the doing of all such acts and will executed or procure the execution of all such documents as any Finance Party may reasonably consider necessary for giving full effect to each of the Finance Documents or securing to the Finance Parties the full benefits or all rights, powers and remedied conferred upon the Finance Parties in any of the Finance Documents to which it is a party.

**21.27 Hedging**

If any Obligor proposes to enter into any Derivative Contract, that Obligor shall offer the Mandated Lead Arranger and Bank BCG and its respective Affiliates or nominees the opportunity to enter into the proposed Derivative Contract as its counterparty on that transaction. If the Mandated Lead Arranger and Bank BCG. or its respective Affiliates or nominees choose not to enter into the proposed Derivative Contract with that Obligor, that Obligor may enter into the proposed Derivative Contract with a third party on terms no different to those offered to the Mandated Lead Arranger and Bank BCG. and their respective Affiliates or nominees.

**21.28 Conditions subsequent**

The Borrowers shall ensure the compliance of each condition subsequent set out in Part IV of Schedule 2 (*Conditions Subsequent*) within the time period stipulated therein.

**21.29 PT G Telecom Asset Agreements**

In relation to each Telecom Asset Management pertaining to PT G with a contract period of less than seven years which is used for the calculation of Contracted Annual Revenue pursuant to the terms of clause 4.2(c) (*Further conditions precedent*), the Obligors shall ensure that such Telecom Asset Agreement be renewed, for such further period as is satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), no later than six Months prior to the termination date of such Telecom Asset Agreement.

**22 Events of Default**

Each of the events or circumstances set out in the following sub-clauses of this clause 22 (other than 22.25 (*Acceleration*)) is an Event of Default.

**22.1 Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by administrative or technical error; and

(b) payment is made within two Business Days of its due date.

- 22.2 **Financial covenants**  
Any requirement of clause 20 (*Financial covenants*) is not satisfied.
- 22.3 **Other obligations**  
An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 22.1 (*Non-payment*) and clause 22.1 (*Financial covenants*)).
- 22.4 **Misrepresentation**  
Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- 22.5 **Cross default**
- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
  - (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
  - (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
  - (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
  - (e) No Event of Default will occur under this clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clauses 22.5(a) to (d) above is less than IDR 25,000,000,000 (or its equivalent in any other currency or currencies).
- 22.6 **Insoveny**
- (a) A member of the Group is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
  - (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
  - (c) A moratorium is declared in respect of any indebtedness of any member of the Group.
- 22.7 **Insolvency proceedings**  
Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganization of any member of the Group;
  - (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
  - (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group), receiver, trustee, judicial manager, administrator, administrative receiver, compulsory manager, provisional supervisor or other similar officer in respect of any member of the Group or any of its assets; or
  - (d) enforcement of any Security over any assets of any member of the Group, or any analogous procedure or step is taken in any jurisdiction.
- 22.8 **Creditors' process**  
Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group having an aggregate value of IDR 25,000,000,000 (or its equivalent in any other currency or currencies) and is not discharged within 30 days.
- 22.9 **Litigation**  
Any claim, litigation, arbitration or administrative proceeding is taking place or threatened against an Obligor which, in the option of any Finance Party, could have a Material Adverse Effect.
- 22.10 **Unlawfulness**  
It is or becomes unlawful for an Obligor or any Approved Customer to perform any of its obligations under the Finance Documents or any Telecom Asset Agreement (as the case may be).
- 22.11 **Repudiation**  
An Obligor or any Approved Customer repudiates a Finance Document or a Telecom Asset Agreement (as the case may be) or evidences an intention to repudiate a Finance Document or a Telecom Asset Agreement (as the case may be).



- 22.12 **Security in jeopardy**  
If, in the opinion of any Finance Party:
- (a) any material assets held by the Finance Parties as security for the Facilities is in jeopardy, under threat or ceases to have effect unless the circumstances giving rise to such material assets being in jeopardy, under threat or ceasing to have effect are capable of being remedied and are so remedied within 30 days of such circumstances occurring;
  - (b) any Finance Documents executed or furnished by or on behalf of an Obligor becomes illegal, invalid, unenforceable or otherwise fails or ceases to be or fails or ceases to provide the benefit of the liens, rights, powers, privileges or security interests purported or sought to be created thereby; or
  - (c) any such Finance Document shall be assigned or otherwise transferred, amended or terminated, repudiated or revoked without the approval of the Facility Agent.
- 22.13 **Cessation of business**  
Any Obligor suspends or ceases to carry on all or a material part of its business.
- 22.14 **Material adverse change**  
One or more events, conditions or circumstances (including any change in law or regulation) shall occur or exist which in the opinion of any Finance Party, could have a Material Adverse Effect.
- 22.15 **Expropriation events**  
Any Government Agency takes or threatens any action:
- (a) for the dissolution of an Obligor, or any action which deprives or threatens to deprive an Obligor:
    - (i) from conducting any of its businesses or carrying out its operations in the manner it is being conducted or carried out; or
    - (ii) of the use of any of its assets;
  - (b) to revoke or terminate or to refuse to provide or renew any Authorisation or to impose onerous conditions on the grant or renewal of any Authorisation; or
  - (c) with a view to regulate, administer, or limit, or assert any form of administrative control over the rates applied, prices charged or rates of return achievable, by an Obligor in connection with its business,
- which, in each case, in the opinion of any Finance Party, could have a Material Adverse Effect.
- 22.16 **Compulsory acquisition**
- (a) Any asset of an Obligor is seized, expropriated, nationalised, acquired, confiscated, requisitioned or administered (whether compulsorily or not).
  - (b) All or any part of an Obligor's rights under the Finance Documents are forfeited, suspended or otherwise abrogated by any government entity.
- 22.17 **Corporate reconstruction**  
An Obligor enters into any into any amalgamation, demerger, merger or corporate reconstruction.
- 22.18 **Material agreements**
- (a) Any agreement is suspended, terminated or cancelled without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) and such suspension, termination or cancellation has resulted in or is reasonably likely to result in a Material Adverse Effect.
  - (b) Any Site Lease Agreement, Telecom Asset Agreement and/or Derivative Contract is suspended, terminated or cancelled or ceases to be valid and in full force and effect and such suspension, termination or cancellation has resulted in or is reasonably likely to result in a Material Adverse Effect.
  - (c) Any of the events set out in clauses 22.6 (*Insolvency*) to 22.9 (*Litigation*) occurs in relation to any counterparty to a Site Lease Agreement, a Telecom Asset Agreement and/or a Derivative Contract which results in a Material Adverse Effect or which, in the reasonable opinion of the Facility Agent (acting on the instructions of the Majority Lenders), would have a Material Adverse Effect.
- 22.19 **Loss of Authorisations**
- (a) Any Authorisation or other requirement required by any Borrower:
    - (i) is revoked or refused or does not remain in full force and effect in accordance with its terms once granted;
    - (ii) is not renewed before its expiry; or
    - (iii) is modified or amended,which has or is likely to have a Material Adverse Effect.
  - (b) No Event of Default under sub-clauses (a)(i) or (a)(ii) above will occur if that Borrower has taken such steps as are reasonably available to it to obtain a new Authorisation and/or reinstate the original Authorisation and the new Authorisation is given or the original Authorisation is reinstated within 30 days of the event under sub-clauses (a)(i) or (a)(ii).
- 22.20 **Insurances**  
Any of the following occurs:
- (a) any Insurance Policy is not, or ceases to be, in full force and effect, is unavailable at the time it is required to be effected, is avoided or avoidable, is suspended or any Insurer reduces or claims that it is or becomes entitled to avoid, suspend or reduce its liability under any Insurance Policy, or any claim

- made under such Insurance Policy;
- (b) any Insurer is not bound, or ceases to be bound, to meet its obligations in full under any Insurance Policy to which it is a party; or
- (c) any Insurer gives notice that an Insurance Policy to which it is a party will be cancelled and the relevant Borrower has not procured a replacement Insurance Policy on terms and conditions and with an Insurer reasonably satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) prior to the date of cancellation of such Insurance Policy.

**22.21 Environmental Laws and licences**

Any Borrower does not:

- (a) comply with any Environmental Laws to which it is subject;
- (b) maintain, and comply with the terms of, all Environmental Licences required or desirable in connection

with its business,

which results in a Material Adverse Effect or which, in the reasonable opinion of the Facility Agent (acting on the instructions of the Majority Lenders), would have a Material Adverse Effect, unless the circumstances giving rise to the non-compliance are capable of being remedied and are so remedied within 14 days of the relevant breach.

**22.22 Validity and Admissibility**

In relation to a Borrower, any Authorisation at any time required to be taken, fulfilled or done in order:

- (a) to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under any Finance Documents to which it is a party;
- (b) to ensure that those obligations are legally binding and enforceable; and
- (c) to make any Finance Document to which it is a party admissible in evidence in the courts of England or Indonesia, as the case may be,

is not taken, fulfilled or done and, if capable of remedy, such action, condition or thing is not taken, fulfilled or done within 14 days of notice thereof being given to that Borrower by the Facility Agent.

**22.23 Moratorium**

The government of Indonesia, Bank Indonesia, or any relevant Governmental Agency declares a general moratorium (or any order or directive having a similar effect) against the repayment of any indebtedness (whether in respect of principal, interest, fees accruing therefrom or otherwise) owed by companies incorporated, situated or established in Indonesia to foreign creditors which are of general application to companies incorporated, situated or established in Indonesia.

**22.24 Approved Customers**

if any of the events set out in clauses 22.5 (*Cross default*) to 22.9 (*Litigation*) occurs in relation to any Approved Customers which results in a Material Adverse Effect or which, in the reasonable opinion of the Facility Agent (acting on the instructions of the Majority Lenders), would have a Material Adverse Effect.

**22.25 Acceleration**

On and at any time after the occurrence of an Event of Default, the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, power of discretions under the Finance Documents.

## SECTION 9 – CHANGES TO PARTIES

### 23 changes to the Lenders

#### 23.1 Assignments and transfers by the Lenders

Subject to this clause 23, a Lender (the **Existing Lender**) may:

- (a) assign any of its rights; or
  - (b) transfer by novation any of its rights and obligations,
- to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

#### 23.2 Conditions of assignment of transfer

- (a) Subject to sub-clause (b) below, the consent of the Obligors shall not be required for any assignment or transfer by an Existing Lender of any of its rights and obligations under the Finance Documents effected in accordance with clause 23.1 (*Assignments and transfers by the Lenders*).
- (b) Notwithstanding the generality of sub-clause (a) above, the consent of the Obligors (which consent shall not be unreasonably withheld) shall be required for any assignment or transfer by an Existing Lender of any of its rights and obligations under the Finance Documents effected in accordance with clause 23.1 (*Assignments and transfer by the Lenders*) to a New Lender to whom any payment to be made by any Obligor under the Finance Documents will be subject to a Tax Deduction of more than 10%.
- (c) Where a New Lender is an Offshore Lender, it shall deliver to the Facility Agent, together with the delivery of the completed Transfer Certificate pursuant to clause 23.5 (*Procedure for transfer*) below, its certificate of residency. The Facility Agent shall deliver such certificate to PT X (for itself and on behalf of the other Borrowers) as soon as practicable on receipt thereof.
- (d) An assignment will only be effective on receipt by the Facility Agent of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender.
- (e) A transfer will only be effective if the procedure set out in clause 23.5 (*Procedure for transfer*) is complied with.
- (f) If:
  - (i) a Lender assigns or transfer any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 12 (*Tax gross-up and indemnities*) or clause 13 (*Increased costs*).

Then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

#### 23.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of US\$2,500.

#### 23.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this clause 23; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

23.5 **Procedure for transfer**

- (a) Subject to the conditions set out in clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with clause 23.5(b) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate. The Obligors and the other Finance Parties irrevocably authorise the Facility Agent to execute any Transfer Certificate on their behalf, without any consultation with them. For the avoidance of doubt, the Facility Agent shall be fully entitled to rely on any Transfer Certificate delivered to the Facility Agent in accordance with the foregoing provisions of this sub-clause (a) which is complete and regular on its face as regards its contents and purportedly signed on behalf of the relevant Existing Lender and New Lender and the Facility Agent shall not have any liability or responsibility to any party as a consequence of placing reliance on and acting in accordance with such Transfer Certificate if it proves to be the case that the same was not authentic or duly authorized.
- (b) On the Transfer Date:
- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and Obligations under the Finance Documents each of the Obligor and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another shall be cancelled (being the **Discharged Rights and Obligations**);
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender.
  - (iii) the Facility Agent, the Security Agent, the Account Bank, the Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Mandated Lead Arranger and the Existing Lender shall each be released from further obligations to each other under this Agreement;
  - (iv) the New Lender shall become a Party as a "Lender"; and
  - (v) each Security Document that is governed by Indonesian law will continue to be the legally valid, binding and enforceable obligation of each party thereto and the Security created by each such Security Document will continue to be valid and effective.

23.6 **Disclosure of information**

Any Lender may disclose to:

- (a) any of its Affiliates;
  - (b) its head office and any other branch;
  - (c) any other Finance Party; and
  - (d) any other person;
    - (i) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
    - (ii) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor; or
    - (iii) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,
- any information about any Obligor, the Group and the Finance Documents as that Lender shall consider appropriate.

23.7 **Additional Lenders**

- (a) Subject to this clause 23.7, a bank, financial institution, trust, fund or other entity may become a Lender of the Facilities (an **Additional Lender**) by the delivery by such entity of a duly completed Additional Lender Commitment Letter no later than the Specified Time and the execution and acknowledgement by the Facility Agent (on behalf of the Obligors and the other Finance Parties) of such Additional Lender Commitment Letter.
- (b) Where the Additional Lender is an Offshore Lender, it shall also deliver to the Facility Agent, together with the delivery of the completed Additional Lender Commitment Letter, its certificate of residency. The Facility Agent shall deliver such certificate to PT X (for itself and on behalf of the other Borrowers) as soon as practicable on receipt thereof.
- (c) Each Obligor and each other Finance Party irrevocably authorises the Facility Agent to execute any Additional Lender Commitment Letter on its behalf, without consultation.
- (d) Each Additional Lender Commitment Letter is irrevocable and will not be regarded as having been duly completed unless it contains the following details:
  - (i) the currency and the amount of Commitment in respect of the relevant Facility proposed to be committed by the Additional Lender (the **Additional Lender Commitment**);

- (ii) the proposed date commitment of the Additional Lender Commitment, which shall be a date within the Specified Time (the **Commitment Date**); and
- (iii) the Additional Lender's address details for the purposes of clause 30 (*Notices*).
- (e) The Facility Agent shall only be obliged to execute an Additional Lender Commitment Letter delivered to it:
  - (i) once it is satisfied it (and/or the Mandated Lead Arranger, as the case may be) has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such Additional Lender; and
  - (ii) the Mandated Lead Arranger has notified the Facility Agent that the Borrowers have executed a Fee Letter (in such form and substance satisfactory to the Mandated Lead Arranger) pursuant to which the Borrowers undertake to pay to the Mandated Lead Arranger an arrangement fee in the amount and at the times agreed in such Fee Letter.
- (f) On the date the Facility Agent executes an Additional Lender Commitment Letter:
  - (i) the Obligors and the Additional Lender shall assume obligations towards one another as provided in the Finance Documents;
  - (ii) the Agents, the Mandated Lead Arranger, the Original Lenders and the Additional Lender shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the additional Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the execution of the Additional Lender Commitment Letter;
  - (iii) the Additional Lender shall become a party to the Finance Documents as an "**Original Lender**" and an "**Original Facility A Lender**", an "**Original Facility B Lender**", and/or an "**Original C Lender**" (as the case may be);
  - (iv) each Security Document will continue to be legally valid, binding and enforceable obligations of each party thereto and the Security Interest created by each Security Document will continue to be valid and effective as between the parties; and
  - (v) the Borrowers shall pay to the Mandated Lead Arranger an arrangement fee in the amount and at the times agreed in the Fee Letter referred to in sub-clause (e)(ii) above.
- (g) The Facility Agent shall not execute an Additional Lender Commitment Letter if, upon Facility Agent's execution of such Additional Lender Commitment Letter, the aggregate of:
  - (i) the Available Commitment in respect of all the Facilities;
  - (ii) the Aggregate Outstanding Debt;
  - (iii) the amount of each Lender's participation in any Loans that are due to be made under all the Facilities on or before the proposed date of execution of such Additional Lender Commitment Letter; and
  - (iv) all Additional Lender Commitment, would exceed US\$130,000,000 or the Rupiah Equivalent Amount of US\$130,000,000.

## 24 Changes to the Obligors

### 24.1 Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Document.

### 24.2 Additional Borrower

A Borrower may request that any of its Substantial Subsidiaries becomes an Additional Borrower. That Substantial Subsidiaries shall become an Additional Borrower if:

- (a) the Borrowers delivers to the Facility Agent a duly completed and executed Accession Letter;
- (b) the Borrowers confirms that no Default is continuing or would occur as a result of that Substantial Subsidiary becoming an Additional Borrower;
- (c) the Facility Agent as received all of the documents and other evidence listed in and appearing to comply with the requirements of Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower; and
- (d) the Facility Agent accepts the Accession Letter and notifies the Borrower and the Lenders of its acceptance.

### 24.3 Resignation of a Borrower

- (a) The Borrower may request that a Borrower ceases to be a Borrower by delivering to the Facility Agent a Resignation Letter.
- (b) The Facility Agent shall accept a Resignation Letter and notify the Borrowers and the Lenders of its acceptance if:
  - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrowers has confirmed this is the case); and
  - (ii) the resigning Borrower has no actual or contingent obligations as a Borrower under any Finance Documents,

whereupon that person shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents.

### 24.4 Additional Guarantors

- (a) An Obligor may request that any of its Subsidiary becomes an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
  - (i) the Obligors deliver to the Facility Agent a duly completed and executed Accession Letter; and
  - (ii) the Facility Agent has received all of the documents and other evidence listed in and

appearing to comply with the requirements of Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor.

- (b) The Facility Agent shall notify the Obligors and the Lenders promptly upon receiving such documents and other evidence.

**24.5 Repetition of Representation**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

**24.6 Resignation of a Guarantor**

- (a) The Obligors may request that a Guarantor ceases to be a Guarantor by delivering to the Facility Agent a Resignation Letter.
- (b) The Facility Agent shall accept a Resignation Letter and notify the Borrowers and the Lenders of its acceptance if:
  - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrowers has confirmed this is the case);
  - (ii) all the Lenders have consented to such request.



## SECTION 10 – THE FINANCE PARTIES

### 25 Role of the Agents and the Mandated Lead Arranger

#### 25.1 Appointment of the Agents

- (a) Each of the other Finance Parties appoints the Facility Agent to act as its agent (but not its trustee) under and in connection with the Finance Documents.
- (b) Each of the other Finance Parties appoints the Security Agent to act as its agent (but not its trustee) under and in connection with the Finance Documents and the Secured Assets.
- (c) Each of the other Finance Parties appoints the Account Bank to act as its agent (but not its trustee) under and in connection with the Finance Documents.
- (d) Each of the other Finance Parties authorities each Agent to:
  - (i) exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions; and
  - (ii) to execute each of the Finance Documents (to which that Agent is expressed to be a party) and all other documents that may be approved by (in the case of the Facility Agent) the Majority Lenders or (in the case of the Security Agent other Account Bank) the Facility Agent (acting on instructions of the Majority Lenders), for execution by it.

#### 25.2 Duties of the Agents

- (a) The Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any documents it forwards to another Party.
- (c) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- (d) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or the Mandated Lead Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The duties of each Agent under the Finance Documents are solely mechanical and administrative in nature. No Agent shall have any other duties save as expressly provided for in the Finance Documents.

#### 25.3 Role of the Mandated Lead Arranger

Except as specifically provided in the Finance Documents, the Mandated Lead Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

#### 25.4 Role of the Account Bank

Except as otherwise provided in this Agreement, the Account Bank has not obligation of any kind to any other Party under or in connection with any Finance Document.

#### 25.5 No fiduciary duties

- (a) Nothing in this Agreement constitutes any Agent or the Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agents or the Mandated Lead Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### 25.6 Business with the Group

Each Agent and each Mandated Lead Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

#### 25.7 Rights and discretions of the Agents

- (a) Each Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised and shall have no duty to verify any signature on any document; and
  - (ii) any statement purportedly made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) Each Agent may assume (unless it has received notice to the contrary in its capacity as agent and for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 22.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or requested made by a Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) Subject to sub-clause (d) below, each Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts or advisers.
- (d) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent shall not incur any fees, costs, expenses, loss or liability aggregating in excess of US\$50,000 (or its equivalent in any currency or currencies) in any financial year without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) and shall not be indemnified for such excess amount incurred if such prior written consent is not obtained.

- (e) Each Agent may act in relation to the Finance Documents through its personnel and agents.
- (f) Each Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (g) Each Agent may retain for its own benefit and without liability to account any fee or other sum received by it for its own account.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, non of the Agents or the Mandated Lead Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty or duty of confidentiality.

#### 25.8 **Instructions**

Unless a contrary indication appears in a Finance Document:

- (a) the Facility Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it as Facility Agent in accordance with any instruction given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Facility Agent); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with such an instruction of the Majority Lenders.
- (b) the Security Agent and the Account Bank shall:
  - (i) exercise any right, power, authority or discretion vested in it as Security Agent or Account Bank in accordance with any instructions given to it by the Facility Agent (or, if so instructed by the Facility Agent, refrain from exercising any right, power, authority or discretion vested in it as Security Agent or Account Bank); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with such an instruction of the Facility Agent.
- (c) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders (in the case of the Facility Agent) or the Facility Agent (in the case of the Security Agent or the Account Bank) will be binding on all the Finance Parties.
- (d) Each Agent may refrain from acting in accordance with the instructions of the Majority Lenders (in the case of the Facility Agent) or the Facility Agent (in the case of the Security Agent or the Account Bank) or under sub-clause (e) below until it has received such security as it may require for any cost, loss or liability (together with any associated Tax) which it may incur in complying with the instructions.
- (e) In the absence of instructions from the Majority Lenders, or if appropriate the Lenders (in the case of the Facility Agent) or the Facility Agent (in the case of the Security Agent or the Account Bank), each Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (f) No Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

#### 25.9 **Responsibility for documentation**

None of the Agents or the Mandated Lead Arranger:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agents, the Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Finance Document or the Information Memorandum; or
- (b) is responsible for the authenticity, legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

#### 25.10 **Exclusion of liability**

- (a) Without limiting sub-clause (b) below, no Agent shall be liable for any cost, loss or liability (including special, punitive, indirect or consequential loss (including loss of profits) or damage of any kind whatsoever) incurred by any Party as a consequence of:
  - (i) that Agent having taken or having omitted to take any action under or in connection with any Finance Document, unless directly caused by that Agent's gross negligence or willful misconduct; or
  - (ii) any delay in the crediting to any account of an amount required under the Finance Documents to be paid by that Agent, if that Agent shall have taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by that Agent for the purpose of such payment.
- (b) No Party (other than the relevant Agent) may take any suits, actions and/or proceedings against any officer, employee or agent or any Agent in respect of any claim it might have against that Agent of in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of that Agent may rely on this clause in accordance with the provisions of clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige any Agent or any Mandated Lead Arranger to conduct any "know your customer" or other procedures in relation to any person on behalf of any other Finance Party and each Finance Party confirms to the Agents and the Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any Agent or any Mandated Lead Arranger.
- (d) In relation to any assignment or transfer pursuant to clause 23 (*Changes to the Lenders*), each Party acknowledges and agrees that no Agent shall be obliged to enquire as to the accuracy of any



representation or warranty made by a New Lender in respect of its eligibility as a Lender.

25.11 **Lenders' indemnity to the Agents**

- (a) Each Agent may resign:
- (i) by appointing one of its Affiliates acting through an office in:
    - (A) in the case of the Facility Agent, Singapore or Indonesia; or
    - (B) in the case of the Security Agent, Indonesia; or
    - (C) in the case of the Account Bank, Indonesia,as successor by giving notice to the other Finance Parties and the Borrower; or
  - (ii) by giving notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Facility Agent, Account Bank or Security Agent (as the case may be).
- (b) if the Majority Lenders have not appointed:
- (i) a successor Facility Agent or Account Bank (as the case may be) within 30 days;
  - (ii) a successor Security Agent within 60 days,
- after notice of resignation was given in accordance with sub-clause (a)(ii) above (each, the **Appointment Period**), the relevant Agent may, at its discretion, appoint a successor agent acting through an office consistent with sub-clause (a)(i) above.
- (c) in the case of the Security Agent, if it elects not to appoint a successor agent pursuant to sub-clause (b) above solely as a result of a failure by the Borrowers and/or the Lenders to pay the Security Agent all fees, costs, loss or liability incurred by the Security Agent under the Finance Documents, its resignation shall nevertheless become effective on the last day of the Appointment Period set out in sub-clause (b)(ii) above and the Lenders shall perform all the duties of the resigning Security Agent under the Finance Documents until such time (if any) as the Majority Lenders appoint a successor Security Agent which accepts such appointment. During the period between the effectiveness date of the Security Agent's resignation until such successor Security Agent is appointed, all authorities, powers and duties conferred or imposed upon the Security Agent hereunder shall be exercised as determined by a decision of the Majority Lenders or all the Lenders (as the case may be).
- (d) the retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as the relevant Agent under the Finance Documents.
- (e) Subject to sub-clause (c) above, a resignation notice by an Agent shall take effect only upon the appointment of a successor.
- (f) Upon the appointment of a successor or where no successor is replaced as contemplated by sub-clause (c) above, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this clause 25.12. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to an Agent, required it to resign in accordance with sub-clause (a)(ii) above. In this event, the Agent shall resign in accordance with sub-clause (a)(ii) above.
- (h) At any time after the appointment of a successor Security Agent or where no successor is replaced as contemplated by sub-clause (c) above, the retiring Security Agent shall do and execute all acts, deeds and documents reasonably required by its successor or the Lenders (where no successor is replaced as contemplated by sub-clause (c) above) to transfer to the successor Security Agent or the Lenders or the successor Security Agent's or the Lenders' nominee, as the successor Security Agent or the Lenders may direct (as the case may be), any Security Property vested in the retiring Security Agent pursuant to the Security Documents and which shall not have vested in its successor by operation of law. All such acts, deeds and documents shall be done or, as the case may be, executed at the cost of the Borrowers.

25.13 **Confidentiality**

- (a) in acting as agent for the Finance Parties, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) if information is received by another division or department of an Agent, it may be treated as confidential to that division or department and that Agent shall not be deemed to have notice of it.

25.14 **Relationship with the Lenders**

Subject to clause 28.2 (*Distributions by the Agents*), the Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

25.15 **Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agents and the Mandated Lead Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by any Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.
- 25.16 **Reference Banks**  
If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall (in consultation with the Borrowers) appoint another Lender or an Affiliate of a Lender or any bank approved by the Majority Lenders to replace that Reference Bank.
- 25.17 **Deduction from amounts payable by the Agents**  
If any Party owes an amount to an Agent under the Finance Documents, that Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which that Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.
- 25.18 **Agent's Management Time**  
Any amount payable to an Agent under clause 14.3 (*Indemnity to the Agents*), clause 16 (*Costs and expenses*) and clause 25.11 (*Lenders' indemnity to the Agents*) shall include the cost of utilising the that Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrowers and the Lenders, and is in addition to any fee paid or payable to that Agent under clause 11 (*Fees*).
- 25.19 **Security provisions**  
The provisions of Schedule 6 (*Security Provisions*) shall bind each Party.
- 25.20 **Parallel Debt**
- (a) Each Borrower hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to any amounts owing from time to time by it to any Finance Party under any Finance Document as and when those amounts are due.
- (b) Each Borrower and the Security Agent acknowledge that the obligations of the Borrower under paragraph (a) are several and are separate and independent from, and shall not in any way limit or effect, the corresponding obligations of it to, any Finance Party under any Finance Document (its **Corresponding Debt**) nor shall the amounts for which the Borrower is liable under paragraph (a) (its **Parallel Debt**) be limited or affected in any way by its Corresponding Debt provided that:
- (i) the Parallel Debt of that Borrower shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
- (ii) the Corresponding Debt of that Borrower shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
- (iii) the amount of the Parallel Debt of that Borrower shall at all times be equal to the amount of its Corresponding Debt.
- (c) For the purpose of this clause 25.20, the Security Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Security granted under the Finance Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- (d) All monies received or recovered by the Security Agent pursuant to this clause 25.20, and all amounts received or recovered by the Security Agent from or by the enforcement of any Security granted to secure the Parallel Debt, shall be applied in accordance with clause 28.5 (*Partial payments*).
- (e) Without limiting or affecting the Security Agent's rights against any Borrower (whether under this clause 25.20 or under any other provision of the Finance Documents), each Borrower acknowledges that:
- (i) nothing in this clause 25.20 shall impose any obligation on the Security Agent to advance any sum to it or otherwise under any Finance Document, except in its capacity as Lenders; and
- (ii) for the purpose of any vote taken under any Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.
- 26 **Conduct of business by the Finance Parties**  
No provision of this Agreement will:
- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.
- 27 **Sharing among the Finance Parties**
- 27.1 **Payments to Finance Parties**  
If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than

in accordance with clause 28 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 28.5 (*Partial payments*).

27.2 **Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with clause 28.5 (*Partial payments*).

27.3 **Recovering Finance Party's rights**

(a) On a distribution by the Facility Agent under clause 27.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

(b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under clause 27.3(a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

27.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to clause 27.2 (*Redistribution of payments*) shall, upon request of the Facility Agent, pay to the Facility Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

27.5 **Exceptions**

(a) This clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

- (i) it notified that other Finance Party of the legal or arbitration proceedings; and
- (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## SECTION 11 – ADMINISTRATION

### 28 Payment mechanics

#### 28.1 Payments to the Facility Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement or transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such banks as the Facility Agent specifies.

#### 28.2 Distributions by the Agents

- (a) Each payment received by an Agent under the Finance Documents for another Party shall, subject to clause 28.3 (*Distributions to an Obligor*) and clause 28.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to that Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency.
- (b) Each Agent shall distribute payments received by it in relation to all or any part of a Loan to the Lender indicated in the records of such Agent as being so entitled on that date Provided that such Agent is authorised to distribute payments to be made on the date on which any transfer becomes effective pursuant to clause 23 (*Changes to the Lenders*) to the Lender so entitled immediately before such transfer took place regardless of the period to which such sums relate.

#### 28.3 Distributions to an Obligor

Each Agent may (with the consent of the Obligor or in accordance with clause 29 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### 28.4 Clawback

- (a) Where a sum is to be paid to an Agent under the Finance Documents for another Party, that Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another Party and it proves to be the case that such Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by such Agent shall on demand refund the same to such Agent together with interest on that amount from the date of payment to the date of receipt by such Agent, calculated by such Agent to reflect its cost of funds.

#### 28.5 Partial payments

- (a) Subject to any prepayment made to a specific Lender in accordance with the provisions of 12.2 (Tax gross-up) and/or 12.3 (Tax indemnity), if the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

under the Finance Documents;

- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of any Agent
- (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee (other than as provided in clause 28.5(a)(i) above) or commission due but unpaid under this Agreement;
- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in clauses 28.5(a)(ii) to (iv) above.

- (c) Clauses 28.5(a) and (b) above will override any appropriation made by an Obligor.

#### 28.6 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 28.7 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under clause 28.7(a) above, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### 28.8 Currency of account

- (a) Subject to sub-clauses (b) to (e) below, Rupiah is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a party of a Loan or an Unpaid Sum shall be made in the

- (c) currency in which that Loan or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than Rupiah shall be paid in that other currency.

**28.9 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be transferred into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrowers); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

**29 Set-off**

- (a) A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Neither the Security Agent nor the Account Bank shall set-off or apply any proceeds held or recovered by it in connection with the Accounts or the Security Documents against any indebtedness due by any Obligor to the Security Agent or the Account Bank (as the case may be) which is not indebtedness due to the Security Agent or the Account Bank (as the case may be) under any Finance Documents or due to any Finance Party pursuant to any Secured Liabilities).

**30 Notices**

**30.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**30.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or documents to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrowers. That identified with its name below;
- (b) in the case of each Lender or any other Obligor, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of each Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

**30.3 Delivery**

- (a) Any communication or documents made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or three Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and, if a particular department or officer is specified as part of its address details provided under clause 30.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to an Agent will be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer identified with that Agent's signature below (or any substitute department or officer as that Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Facility Agent.
- (d) Any communication or document made or delivered to a Borrower in accordance with this clause will be deemed to have been made or delivered to each of the other Borrowers and Obligors.

**30.4 Electronic communication**

- (a) Any communication to be made between an Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the relevant Agent

and the relevant Lender:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their email address or any other such information supplied by them.
- (b) Any Lender which sets out an email address as part of its "administration details" provided by it to an Agent from time to time in connection with the Finance Documents is deemed to agree to receiving communications from that Agent by electronic mail to that email address.
- (c) Any electronic communication made between an Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to an Agent only if it is addressed in such a manner as that Agent shall specify for this purpose.
- (d) An Agent or a Lender shall notify any affected Parties promptly upon becoming aware that such Agent's or that Lender's (as the case may be) electronic mail system is not functioning due to technical failure (and that failure is or is likely to continue for more than 24 hours). Having given such notice, until that Agent or that Lender (as the case may be) notifies the other affected Parties that such technical failure has been remedied, all notices between those Parties shall be sent by fax or letter in accordance with this clause 30.

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30.5

#### **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is an constitutional, statutory or other official document.

31

#### **Calculations and certificates**

31.1

##### **Accounts**

In any litigation, arbitration or other legal proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

31.2

##### **Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3

##### **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

32

#### **Partial invalidity**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33

#### **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

34

#### **Amendments and waivers**

34.1

##### **Required consents**

- (a) Subject to clause 34.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause.

34.2

##### **Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" in clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) an increase in or an extension of any Commitment;
  - (v) a change to the Borrowers or Guarantors other than in accordance with clause 24 (*Changes to the Obligors*);
  - (vi) any provision which expressly requires the consent of all the Lenders; or
  - (vii) clause 2.2 (*Finance Parties' rights and obligations*), clause 23 (*Changes to the Lenders*) or

this clause 34,  
shall not be made without the prior consent of all Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of an Agent or the Mandated Lead Arranger may not be effected without the consent of that Agent or that Mandated Lead Arranger.

**35 Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## SECTION 12 – GOVERNING LAW AND EFORCEMENT

### 36 **Governing law**

This Agreement and any non-contractual obligations in connection with this Agreement are governed by English

law.

### 37 **Enforcement**

#### 37.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Dispute and accordingly no Party will argue to the country.
- (c) This clause 37.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

#### 37.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor:

- (a) irrevocably appoints Progress Corporate Services Private Limited of 5 Northampton Road, Croydon, Surrey, London, CR0 7HB as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

#### 37.3 **Waiver of Immunity**

Each Obligor waives generally all immunity it or its assets or revenues may otherwise have now or in the future in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the attachment or sale of any of its assets and revenues.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**



**Schedule 1  
The Original Parties**

**Part I**

**The Original Obligors**

**NAME OF ORIGINAL BORROWER AND ORIGINAL GUARANTOR**

PT X  
PT A  
PT B  
PT C  
PT D  
PT E  
PT F  
PT G

**Part II**  
**The Original Lenders**

**Schedule 2  
Conditions**

**Part I**

**Conditions Precedent to Initial Utilisation**

**1 Original Obligors**

- (a) A copy of the constitutional documents of each Original Obligor:
- (b) A copy of a resolution of the board of directors and the board of commissioners (as applicable) of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (iv) in the case of an Original Guarantor, resolving that it is in the best interests of such Guarantor to enter into the transactions contemplated by the Finance Documents to which it is a party, giving reasons.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A copy of a resolution signed by all the shareholders in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.
- (e) A certificate of the relevant Obligor (signed by its authorised signatory):
  - (i) certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; and
  - (ii) confirming that borrowing, securing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, security, guaranteeing or similar limit binding on it to be exceeded.

**2 Legal opinions**

- (a) A legal opinion in relation to English law from Flower Rose (Asia) LLP in a form acceptable to the Original Lenders.
- (b) A legal opinion as to Indonesian law from Hadiputranto, Hidinoto & Partners in a form acceptable to the Original Lenders.

**3 Finance Documents**

- (a) Each Finance Document duly executed by the parties thereto.
- (b) Evidence that all necessary or desirable notarisation, filings or registrations of, or in relation to, any Finance Document or other document, or in relation to the subject matter of any of the foregoing, has been fully and satisfactorily completed including the notarisation, filing or registration of each Security Document together with the relevant, duly signed forms against the relevant charging party in each case in the relevant jurisdiction(s), including:
  - (i) reporting by each Borrower of this Agreement (and the offshore commercial loan made hereunder) to Bank Indonesia, the Ministry of Finance of Indonesia and the Foreign Commercial Loan Co-ordinating Team in Indonesia;

- (ii) the Security Agent has been named as co-insured and/or loss payee in respect of each Insurance Policy (other than the Business Interruption Policy) and that all premia in respect of the Insurance Policies (other than the Business Interruption Policy) have been paid;
- (iii) with regard to each Hak Tanggungan, a letter from the relevant land deed official in Indonesia (Pejabat Pembuat Akta Tanah) stating that the registration of such Hak Tanggungan has been made with the relevant land office in Indonesia and a receipt (in a form acceptable to the Security Agent) from such land office in Indonesia of such registration.
- (iv) With regard to each of the PT X Share Pledge and the PT E Share Pledge:
  - (A) evidence (in the form of a certified true copy) that such share pledge has been registered in the shareholders register books of the relevant shareholder(s) giving that share pledge;
  - (B) delivery of the original share certificates in respect of all the voting share capital of PT X and PT E;
  - (C) execution and delivery of the notices of pledge and instruction (in substantially the form set out in schedule 2 of each of the PT X Share Pledge and the PT E Share Pledge);
  - (D) execution and delivery of the notices of the instruction acceptance (in substantially the form set out in schedule 3 of each of the PT X Share Pledge and the PT E Share Pledge);
  - (E) duly executed irrevocable powers of attorney (in substantially the form set out in schedule 4 and 5 of each of the PT X Share Pledge and the PT E Share Pledge); and
  - (F) duly executed consents to transfer (in substantially the form set out in schedule 6 of the PT X Share Pledge and the PT E Share Pledge).
- (c) Evidence that any notice of assignment required under the Assignment of Contracts in relation to the assignment of the Site Lease Agreements has been served.

#### 4 Other documents and evidence

- (a) Evidence that any process agent referred to in clause 37.2 (*Service of process*), has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transaction contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) The Original Financial Statements.
- (d) Evidence that the fees, costs and expenses then due from the Borrowers pursuant to clause 11 (*Fees*) and clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (e) Evidence that all stamp, registration or similar taxes as set out in clause 18.24 (*No filing or stamp taxes*) have been paid or will be paid prior to the first Utilisation Date.
- (f) Evidence that the Accounts have been established.
- (g) Evidence that the consent of each counterparty to a Telecom Asset Agreement whose consent is required for the entering into and the performance by any Borrower of the Finance Documents (or any of them), including the granting of security over their respective assets under the relevant Finance Documents, has been obtained.
- (h) Certified true copies of all IMB and any other Authorisation (as the Facility Agent may require) relating to the IMB Telecom Towers and the Shelter Only Assets.
- (i) Evidence that each Borrower's existing lenders have given their respective:
  - (i) consent to such Borrower entering into the Finance Documents, including the granting of

security over their respective assets under the relevant Finance Documents; and

- (ii) undertakings to release all Security interests which such existing lenders have in Existing Security securing the Existing Indebtedness which is refinanced in full by one or more of the Facilities, such refinancing to be evidenced by way of the relevant MT103 payment transfer.
- (j) A technical report, in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders, with respect to the Indonesian telecom tower market, technology and infrastructure and a portfolio analysis of the assets of the Borrowers prepared by Detecon Asia-Pacific Ltd and issued to the Facility Agent and capable of being relied upon by the Finance Parties.
- (k) A legal due diligence report, in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), with respect to the Borrowers and their businesses prepared by Makarim and Taira S. and issued to the Facility Agent and capable of being relied upon by the Finance Parties.
- (l) Written verification from the Mandated Lead Arranger and/or its consultations or agents that the remaining tenor of each Telecom Asset Agreement over which Security is created to secure the Facility will not expire or terminate within the term of this Agreement or any other Finance Document.
- (m) Originals of all Telecom Asset Agreements and Site Lease Agreements which are the subject of any Security Document.
- (n) Such documents and/or evidence of steps taken as may be deemed necessary or desirable by, acting reasonably, the Facility Agent or any Mandated Lead Arranger (or any legal counsel to the foregoing).

## Part II

### Conditions Precedent required to be delivered by an Additional Obligor

- 1 An Accession Letter, duly executed by the Additional Obligor and the Borrowers.
- 2 A copy of the constitutional documents of the Additional Obligor.
- 3 A copy of a resolution of the board of directors and the board of commissioners (as applicable) of the Additional Obligor:
  - (a) approving the terms of, and the transaction contemplated by, the Accession Letter and the Finance Document and resolving that it execute the Accession Letter;
  - (b) authorising a specified person or persons to execute the Accession Letter on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents; and
  - (d) resolving that it is in the best interests of such Additional Obligor to enter into the transactions contemplated by the Finance Documents to which it is a party, giving reasons.
- 4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
- 5 A copy of a resolution signed by all the shareholders of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
- 6 A certificate of the Additional Obligor (signed by its authorised signatory) confirming that borrowing, securing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, security, guaranteeing or similar limit binding on it to be exceeded.
- 7 A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
- 8 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions counterplated by the Accession Letter or for the validity and enforceability of any Finance Document.
- 9 The latest audited financial statements of the Additional Obligor.
- 10 A legal opinion in relation to English law from legal advisers to the Mandated Lead Arranger and the Facility Agent.
- 11 If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers of the Mandated Lead Arranger and the Facility Agent in the jurisdiction in which the Additional Obligor is incorporated.
- 12 If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in clause 37.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
- 13 Such documents and/or evidence of steps taken as may be deemed necessary or desirable by, acting reasonably, the Facility Agent or Mandated Lead Arranger (or any legal counsel to the foregoing).

### Part III

#### Additional Conditions Precedent for Facility C

With respect of any Telecom Towers or Shelter Only Assets (as the case may be) for which capital expenditure incurred by the relevant Borrower in respect of the acquisition and/or construction thereof is proposed to be reimbursed by such proposed Utilisation under Facility C, the following, as applicable:

- (a) evidence that such Telecom Towers have been completed and approved for use by the Approved Customers;
- (b) certified true copies of signed Telecom Asset Agreements (with a minimum contract period of seven years in the case of Telecom Asset Agreements to which each Borrower's (other than PT G) is a party and with a minimum contract period of five years in the case of Telecom Asset Agreements to which PT G is a party) (in such form and substance satisfactory to the Facility Agent) in relation to such Telecom Towers and evidence, where appropriate, that such agreement shall be effective based on the related signed BAPS (*Berita Acara Penggunaan Site*) or such similar binding documentation as may be acceptable to the Facility Agent;
- (c) in respect of the Site on which such Telecom Tower(s) is located, evidence satisfactory to the Facility Agent:
  - (i) of the Borrower's ownership of such Site; or
  - (ii) of signed Site Lease Agreement for at least the same tenor as the Telecom Asset Agreement relating to such Telecom Tower.
- (d) in respect of Shelter Only Assets, certified true copies of the signer maintenance agreements (in such form and substance satisfactory to the Facility Agent) relating to such Shelter Only Assets.
- (e) evidence satisfactory to the Facility Agent that the Telecom Towers are covered by relevant Insurance Policy.
- (f) evidence satisfactory to the Facility Agent of instructions given by the relevant Borrowers to all Customers under the Telecom Asset Agreements to remit all payments (including rental and service payments) to be paid to that Borrower directly into the relevant Rental Proceeds Account, with related acknowledgement therefore by such Customer(s).
- (g) execution and delivery of such documents and/or evidence of steps taken as may be required by the Facility Agent (or its legal counsel) for securing to the Security Agent (on behalf of the Finance Parties) all the rights and interest of the relevant Borrower(s) over such Telecom Tower as security, amongst other things, for the discharge of the Secured Liabilities; and
- (h) evidence satisfactory to the Facility Agent that all Authorisation (including IMB) for the management and operation of such Telecom Tower have been obtained.





## Part IV

### Conditions Subsequent

- 1 Within five Business Days following the first Utilisation Date of Facility A (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall, with regard to each Share Pledge (other than the PT X Share Pledge and the PT E Share Pledge);
  - (a) provide evidence (in the form of a certified true copy) that the relevant Share Pledge has been registered in the shareholders register books of the relevant shareholder(s) giving that Share Pledge;
  - (b) procure the delivery of the original share certificates in respect of all the voting share capital of the Borrowers (other than PT X and PT E);
  - (c) execute and deliver the notices of pledge and instruction (in substantially the form set out in schedule 2 of each Share Pledge);
  - (d) execute and deliver the notices of the instruction acceptance (in substantially the form set out in schedule 3 of each Share Pledge);
  - (e) deliver the duly executed irrevocable powers of attorney (in substantially the form set out in schedules 4 and 5 of each Share Pledge); and
  - (f) deliver the duly executed consents to transfer (in substantially the form set out in schedule 6 of each Share Pledge).
- 2 Within six Business Days following the full release and discharge by PT Bank UOB Indonesia of the Existing Security, the Borrowers shall, with regard to each Fiduciary Transfer, deliver:
  - (a) a letter from the relevant notary stating that such Fiduciary Transfer has been filed for registration with the relevant fiduciary registration office in Indonesia; and
  - (b) a receipt (in a form acceptable to the Security Agent) from such fiduciary registration office in Indonesia of such registration.
- 3 Within one Month following the registration mentioned in sub-clause 2 above, the Borrowers shall deliver the relevant original fiduciary certificate issued by the relevant fiduciary registration office in Indonesia in respect of each Fiduciary Transfer.
- 4 Within one Month following the lodgment, and receipt of such lodgment, with the relevant land office in Indonesia of each Hak Tanggungan, the Borrowers shall deliver:
  - (a) the relevant original hak tanggungan certificates issued by the relevant land office in Indonesia; and
  - (b) the relevant original land certificates that has been notated with hak tanggungan, in respect of each Hak Tanggungan.
- 5 Within 10 Business Days following the full release and discharge by PT Bank UOB Indonesia of the Existing Security, the Borrowers shall, with regard to each Hak Tanggungan, provide evidence that the Existing Security over the Secured Sites which are the subject of the Hak Tanggungan, have been released.
- 6 Within 10 Business Days following the entry into any maintenance agreements in respect of any Shelter Only Asset(s) (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall:
  - (a) do or procure the doing of all such acts and shall execute or procure the execution of all such documents as the Facility Agent (acting on the instructions of the Majority Lenders) may reasonably consider necessary for securing to the Security Agent (on behalf of the Finance Parties) all the rights and interest of the relevant Borrower(s) to such Shelter Only Asset(s) as security, amongst other things, for the discharge of the Secured Liabilities; and
  - (b) supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence that all Authorisations for the maintenance of such Shelter Only Asset(s) have been obtained.
- 7 Within 14 days following the full release and discharge by PT Bank UOB Indonesia of the Existing Security, the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence

of notice and due acknowledgement of fiducia from the relevant Insurer pursuant to the Fiduciary Security over Insurance Proceeds.

- 8 Within 30 days following the first Utilisation Date of Facility A (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence of due acknowledgement of assignment and consent from land owners of at least 50% of the Site Lease Agreements assigned pursuant to the Assignment of Contracts.
- 9 Within 60 days following the first Utilisation Date of Facility A (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence of due acknowledgement of assignment and consent from land owners of all the Site Lease Agreements assigned pursuant to the Assignment of Contracts.
- 10 Within 30 days following the first Utilisation Date of Facility A (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence of due acknowledgement of notice of fiducia from the counterparty to each Telecom Asset Agreement and each Derivative Contract (as applicable) pursuant to the Fiduciary Security over Receivables.
- 11 Within one Month from (and including) the date of this Agreement (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence that:
  - (a) the Business Interruption Insurance (as described in Schedule 10 (*Insurance Policies*)) has been taken up;
  - (b) the Security Agent has been named as co-insured and/or loss payee in respect of the Business Interruption Policy; and
  - (c) all premia in respect of the Business Interruption Policy have been paid.
- 12 Within six Months from (and including) the date of this Agreement (or such later deadline as the Facility Agent may agree (acting on the instructions of the Majority Lenders)), the Borrowers shall supply to the Facility Agent (in a form and substance satisfactory to the Facility Agent) evidence that the Borrowers have entered into such Derivative Contract(s) in respect of the Facility satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) and has obtained all Authorisations to enable it to perform its obligations under such Derivative Contract(s).

**Schedule 3**  
**Utilisation Request**

From: [Borrower – state name of all Borrowers if more than one Borrower]

To: [Facility Agent]

Dated:

Dear Sirs

[ ] Facility Agreement  
dated [ ] (the “Facility Agreement”)

- 1 We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement shall have the same meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:  
Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
Facility to be utilised: [Facility A]/[Facility B]/[Facility C]  
Borrower and Amount: [state name of Borrower and amount to be borrowed]  
or, if less, the Available Facility
- 3 We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
- 4 [The proceeds of this Loan should be credited to [account]].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[name of relevant Borrower(s)]

---

\*Deleted as appropriate.

## Schedule 4

### Form of Transfer Certificate

To: [ ] as Facility Agent

From: [The Existing Lender] (the **Existing Lender**) and [The New Lender] (the **New Lender**)

Dated:

[ ] **Facility Agreement**  
dated [ ] (the "Facility Agreement")

- 1 We refer to the Facility Agreement. This is a Transfer Certificate. Terms defined in the Facility Agreement shall have the same meaning in this Transfer Certificate.
- 2 We refer to clause 23.5 (*Procedure for transfer*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with clause 23.5 (*Procedure for transfer*).
  - (b) The proposed Transfer Date is [\_\_\_\_\_].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 30.2 (*Addresses*) are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clauses 23.4(a) and (c) (*Limitation of responsibility of Existing Lenders*).
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate is governed by English law.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

**Transfer Details:**

Nature: [insert description of facility(ies) transferred]

Final Maturity: [ ]

***Participation Transferred***

Commitment Transferred

Drawn Amount: [ ]

Undrawn Amount: [ ]

**Administration Details:**

New Lender's Receiving Account: [ ]

Process Agent: [ ]

Address: [ ]

Telephone: [ ]

Facsimile: [ ]

Telex: [ ]

Attn/Ref: [ ]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [ ].

[Facility Agent]

By:

**Schedule 5**

**Repayment Schedule**

**Part I**

**Facility A Repayment Schedule**

<b>Repayment Date (Months from (and including) the date of this Agreement)</b>	<b>Repayment Installment  (being the percentage shown below of the aggregate amount of all Facility A Loans outstanding under Facility A as at the expiry of the Availability Period for Facility A)</b>
3	4.2
6	4.2
9	4.2
12	4.2
15	4.2
18	4.2
21	4.2
24	4.2
27	4.2
30	4.2
33	4.2
36	4.2
39	4.2
42	4.2
45	4.2
48	4.2
51	4.2
54	4.2
57	4.2
Final Maturity Date for Facility A	20.2
<b>TOTAL</b>	<b>100</b>

**Part II**

**Facility C Repayment Schedule**

**Table A**

The following repayment schedule shall apply prior to an extension of Facility C pursuant to clause 6.5 (*Extension*):

<b>Repayment Date (Months after (and not including) the last day of the Availability Period of Facility C)</b>	<b>Repayment Installment (being the percentage shown below of the aggregate amount of all Facility C Loans outstanding under Facility C as at the expiry of the Availability Period for Facility C)</b>
3	5
6	5
9	5
12	5
15	5
18	5
21	5
24	5
27	5
30	5
33	5
36	5
39	5
Final Maturity Date for Facility C	40
<b>Total</b>	<b>100</b>

**Table B**

On an extension of Facility C pursuant to clause 6.5 (*Extension*), the following repayment schedule shall apply during the Extension Period:

<b>Repayment Date (Months from (and including) the original Final Maturity Date for Facility C)</b>	<b>Repayment Installment (being the percentage shown below of the aggregate amount of all Facility C Loans outstanding as at the original Final Maturity Date for Facility C)</b>
3	5
6	5
9	5
12	5
15	5
18	5
21	5
24	5
<b>Total</b>	<b>40</b>



## Schedule 6

### Security Provisions

#### 1 Declaration of agency

The Security Agent and each other Finance Party agree that the Security Agent shall hold the Secured Assets as agent for the benefit of the Finance Parties on the terms of the Finance Documents.

#### 2 Defect in Security

The Security Agent shall not be liable for any failure or omission to perfect, or defect in perfecting, the Security created pursuant to any Security Document, including:

- (a) failure to obtain any Authorisation for the execution, validity, enforceability or admissibility in evidence of any Security Document; or
- (b) failure to effect or procure registration of or otherwise protect or perfect any of the Security created by the Security Documents under any laws in any territory.

#### 3 No enquiry

The Security Agent may accept without enquiry, requisition, objection or investigation such title as the Obligor may have to any Secured Assets.

#### 4 Retention of documents

The Security Agent may hold title deeds and other documents relating to any of the Secured Assets in such manner as it sees fit (including allowing the Obligors to retain them).

#### 5 Indemnity out of Secured Assets

Subject to clause 25.7(d) (*Rights and discretion of the Agents*), the Security Agent and every receiver, delegate, attorney, agent or other similar person appointed under any Security Document may indemnify itself out of the Secured Assets against any cost, loss or liability incurred by it in that capacity (otherwise than by reason of its own gross negligence or wilful misconduct).

#### 6 Rights of Security Agent

Without prejudice to clause 36 (*Governing law*), the parties hereto agree that the Security Agent shall enjoy, as contractual rights, the rights, privileges and immunities which gratuitous agents have under the Indonesian Civil Code.

**7 No duty to collect payments**

The Security Agent shall not have any duty:

- (a) to ensure that any payment or other financial benefit in respect of any of the Secured Assets is duly and punctually paid, received or collected; or
- (b) to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise in respect of any of the Secure Assets.

**8 Appropriation**

- (a) Each Party irrevocably waives any right to appropriate any payment to, or other sum received, recovered or held by, the Security Agent in or towards payment of any particular part of the Secured Liabilities and agrees that the Security Agent shall have the exclusive right to do so.
- (b) Paragraph 10(a) (*Appropriation*) above will override any application made or purported to be made by any other person.

**9 Investments**

All money received or held by the Security Agent under the Finance Documents may, in the name of, or under the control of, the Security Agent:

- (a) be invested in any investment it may select; or
- (b) be deposited at such bank or institution (including itself, any other Finance Party or any Affiliates of any Finance Party) as it thinks fit.

**10 Suspense Account**

Subject to paragraph 11 (*Timing of Distributions*) below the Security Agent may:

- (a) hold in an interest bearing suspense account any money received by it from any Obligor or any other person; and
- (b) invest an amount equal to the balance from time to time standing to the credit of that suspense account in any of the investments authorised by paragraph 9 (*Investments*) above.

**11 Basis and Timing of Distributions**

- (a) The Security Agent shall, immediately following the receipt of any enforcement proceeds received from the enforcement of any Security under any Finance Documents (**Enforcement Proceeds**), notify the Facility Agent in writing of the amount of such Enforcement Proceeds and the Facility Agent shall, within five Business Days following receipt of such written notification, inform the Security Agent in writing of the exact amount each Finance Party is entitled to receive in accordance with clause 28.2 (*Distributions by the Agents*) and clause 28.5 (*Partial Payments*) (**Distribution Notice**).

- (b) Promptly upon receipt by the Security Agent of the Distribution Notice, the Security Agent shall distribute all the Enforcement Proceeds in like funds to the relevant Finance Party in such manner as described in the Distribution Notice.

## 12 Delegation

- (a) Subject to clause 25.7(d) (*Rights and discretions of the Agents*), the Security Agent may:
  - (i) employ and pay an agent selected by it to transact or conduct any business and to do all acts required to be done by it (including the receipt and payment of money);
  - (ii) delegate to any person on any terms (including power to sub-delegate) all or any of its functions; and
  - (iii) with the prior consent of the Majority Lenders, appoints, on such terms as it may determine, or remove, any person to act either as separate or joint security agent with those rights and obligations vested in the Security Agent by this Agreement or any Security Document.
- (b) This Security Agent will not be:
  - (i) responsible to anyone for any misconduct or omission by any agent, delegate or security agent appointed by it pursuant to paragraph 14(a) (*Delegation*) above; or
  - (ii) bound to supervise the proceedings or acts of any such agent, delegate or security agent,
  - (iii) provided that it exercises reasonable care in selecting that agent, delegate or security agent.

## 13 Unwinding

Any appropriation or distribution which later transpires to have been or is agreed by the Security Agent to have been invalid or which has to be refunded shall be refunded and shall be deemed never to have been made.

## 14 Lenders

The Security Agent shall be entitled to assume that each Lender is a Lender unless notified by the Facility Agent to the contrary.

## Schedule 7

### Approved Customers and Associated Credit Factors

Approved Customer*	Credit Factor**
Telkom	1
Telkomsel	1
Indosat	1
Excelcomindo	1
Bakrie Tel	3
Natrindo	4
Mobile-8	5
Hutch CP	5
Sampoerna	5
Sinar Mas	5

\*\* The list of Approved Customers may be amended from time to time with the consent of the Majority Lenders, through the Facility Agent, acting in their absolute discretion.

\*\*\* The Credit Factor of an Approved Customer may be reclassified not more frequently than on a half yearly basis by the Facility Agent (acting on the instructions of the Majority Lenders) in conjunction with the Credit Premium Determination Date.

Each Approved Customer's Credit Factor is based on its market share, credit rating, and shareholders. A Credit Factor of "1" is assigned only to Approved Customers with a credit rating of BB- and above and/or more than 10% market share by revenue. A Credit Factor of "2" is assigned only to Approved Customers with a credit rating of above B- and below BB- and/or with a market share by revenue of 5%-10%. A Credit Factor of "3" is assigned only to Approved Customers with a credit rating of above B- and below BB- and with less than 5% of market share by revenue.

## Schedule 8

### Form of Accession Letter

To: [\_\_\_\_\_] as Facility Agent

From: [*Subsidiary*] and [*Borrowers*]

Dated:

Dear Sirs

**[\_\_\_\_\_] Facility Agreement  
dated [\_\_\_\_\_] (the "Facility Agreement")**

1 We refer to the Facility Agreement. This is an Accession Letter. Terms used in the Facility Agreement shall have the same meaning in this Accession Letter.

2 [*Subsidiary*] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facility Agreement as an Additional [Borrower]/[Guarantor] pursuant to clause [24.2 (*Additional Borrowers*)]/[clause 24.4 (*Additional Guarantors*)] of the Facility Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].

3. [*Subsidiary's*] administrative details are as follows:

Address:

Fax No:

Attention:

4 This Accession Letter is governed by English law.

[This Guarantor Accession Letter is entered into by deed.]

[Company]

[Subsidiary]

This Accession Letter is accepted by the Facility Agent and the accession date is confirmed as [ ].

[*Facility Agent*]

By

Schedule 9

Form of Resignation Letter

To: [ ] as Facility Agent

From: [*resigning Obligor*] and [*Obligors*]

Dated:

Dear Sirs

[ ] Facility Agreement  
dated [ ] (the "Facility Agreement")

1 We refer to the Facility Agreement. This is a Resignation Letter. Terms used in the Facility Agreement shall have the same meaning in this Resignation Letter.

2 Pursuant to [clause 24.3 (*Resignation of a Borrower*)]/[clause 24.6 (*Resignation of a Guarantor*)], we request that [*resigning Obligor*] be released from its obligations as a [*Borrower*]/[*Guarantor*] under the Facility Agreement.

3 We confirm that:

(a) no Default is continuing or would result from the acceptance of this request; and

(b) [ ]

4 This Resignation Letter is governed by English law.

[Obligors]

[Subsidiary]

By:

By:

This Resignation Letter is accepted by the Facility Agent and the resignation date is confirmed as [ ].

[*Facility Agent*]

By

## Schedule 10

### Insurance Policies

1. Commercial General Liability Insurance (Including death, bodily injury and broad form property damage coverage) with a combined single limit in an amount not less than IDR500,000,000 per occurrence and IDR400,000,000,000 in the aggregate for each policy year.
2. Flood Insurance in respect of each Site located in a flood hazard area.
3. Umbrella Excess Liability Insurance with a limit of not less than IDR 1,000,000,000 over primary insurance, which policy shall include coverage for water damage, so-called assumed and contractual liability coverage, premises medical payment and automobile liability coverage, coverage for safeguarding of personal, and such additional coverage and insured risks as the Facility Agent (acting on the instructions of the Majority Lenders) may require.
4. Business Interruption Insurance and/or Rent Loss Insurance (inclusive of force majeure coverage) with an aggregate limit equal to IDR20,000,000,000 for each policy year.
5. Property Insurance including “extra expense” (I.e soft costs), clean-up, transit and ordinary payroll coverage, and “expediting expense” coverage to facilitate rapid repair or restoration or any affected Sites.

**Schedule 11**  
**Form of Compliance Certificate**

To: [ ] as Facility Agent

From: PT X

Dated:

Dear Sirs

[ ] Facility Agreement dated [ ] (the "Facility Agreement")

1 We refer to the Facility Agreement. This is a Compliance Certificate delivered pursuant to clause 19.2(a) (*Compliance Certificate*) setting out computations as to compliance with clause 20 (*Financial covenants*) of the Facility Agreement. Terms used in the Facility Agreement shall have the same meaning in this Compliance Certificate.

2 We confirm that:

<u>Financial Covenant</u>	<u>Ratio/Value</u>
---------------------------	--------------------

Net Debt to Annualised Adjusted EBITDA Ratio	[Insert ratio/value]
--	----------------------

Interest Service Cover Ratio

Minimum Debt Service Coverage Ratio

Loan to Value Ratio

Contracted Revenue Ratio

Minimum Positive Networth

3 We set out below, calculation establishing the ratio/value set out in paragraph 2 above.

[insert calculation]

4 [We confirm that no Default is continuing.]\*

Signed: ..... ..

Director of PT X

Director of PT X

We have examined management's assertion included in the accompanying [title of management report], that [name of entity] complied with [list specified compliance requirement] during the [period] ended [date]. Management is responsible for [name of entity]'s compliance with those requirements. Our responsibility is to express an opinion on management assertions about [name of entity]'s compliance based on our examination. In our opinion, management's assertion that [name of entity] complied with the aforementioned requirements during the [period] ended [date] is a true and fair view.

.....

for and on behalf of

[name of auditors of PT X]

- 
- If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.



## Schedule 12

### Existing Indebtedness and Existing Security

#### Part I

#### Existing Indebtedness

Obligor	Creditor	Existing Security	Total Principal Amount of Financial Indebtedness secured (INR)
PT C	PT Bank UOB Indonesia	Per below	279,155,160,265
PT B	PT Bank UOB Indonesia	Per below	40,909,948,389
PT A	PT Bank UOB Indonesia	Per below	43,529,686,975
PT F	PT Bank UOB Indonesia	Per below	6,989,926,153
PT D	PT Bank UOB Indonesia	Per below	83,600,000,000
<b>Total</b>			<b>454,184,721,782</b>

#### Part II

#### Existing Security

Obligor	Existing Security
PT C	<ol style="list-style-type: none"> <li>1. First amendment to deed of fiducia security over receivables No. 25 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of IDR 630,603,461,952).</li> <li>2. First amendment to deed of fiducia security over movable assets No. 26 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of IDR 211,501,526,266).</li> <li>3. First amendment to deed of fiducia security over movable assets (Inventory) No. 27 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of IDR 461,116,768).</li> <li>4. Deed of pledge over bank account No. 31 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta.</li> </ol>

**Account Details:**

Account Number

Account Name

28-888-11111-2 (IDR)

Operating Account

28-888-11111-0 (IDR)

Debt Service Reserve Account

28-888-11111-2 (IDR)	Rupiah Rental Proceeds Account
28-888-11111-2 (IDR)	Mandatory Prepayment Account

5. Deed of pledge over shares in PT C No. 41 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta.  
(over 49 shares of PT X and 1 share of PTPCI).
6. Deed of cessie over insurance claim No. 51 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.
7. Deed of assignment of agreement over lease rights of land No. 54 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.
8. Deed of cessie over tower lease contracts No. 57 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.

**Tower lease contract details:**

<u>Operator</u>	<u>Contract Name/Number</u>	<u>Date</u>
Telekomunikasi Indonesia	TEL.906/HK840/DFW-A33/ 204	15 October 2005
Telekomunikasi Indonesia	KTEL.135/HK.810/DFW-A33/ 2005	3 March 2006
Telkomsel	HOC060027	23 March 2007
Telkomsel	HOC060044	3 May 2007
Hutchinson	CPT 381/LGL-AGR/ PT A/ FMS-HW/TECH/V/07	24 May 2008
Mobile-8	034.M8/034.TB-UT.07/ TEK/II/07	8 February 2008
Excelcomindo Pratama	0213-07-DNOT-39034	17 September 2008
Bakrie Telekom	1065/EST-PKS/ United Towerindo/XI/2005	-

9. Deed of hak tanggungan No. 272/2007 dated 23 November 2007 over a 680 m2 plot of land.

10. Deed of hak tanggungan No. 227/2007 dated 7 June 2007 and No. 132/IV/2008 dated 7 April 2008 over a 400 m2 plot of land;
11. Deed of hak tanggungan No. 228/2007 dated 7 June 2007 and No. 131/IV/2008 dated 7 April 2008 over a 1000 m2 plot of land;
12. Deed of hak tanggungan No. 224/2007 dated 12 June 2007 and No. 104/2008 dated 4 April 2008 over a 220 m2 plot of land;
13. Deed of hak tanggungan No. 25/2007 dated 8 June 2007 and No. 183/2008 dated 17 April 2008 over a 500 m2 plot of land;
14. Deed of hak tanggungan No. 080/APHT/2007 dated 11 May 2007 and No. 231/2008 dated 14 April 2008 over a 138 m2 plot of land;
15. Deed of hak tanggungan No. 1/27/PHT/2007 dated 7 May 2007 and No. 10/APHT/XXIV/4/2008 dated 7 April 2008 over a 563 m2 plot of land;
16. Deed of hak tanggungan No. 1/28/PHT/2007 dated 7 May 2007 over a 500 m2 plot of land; and
17. Deed of hak tanggungan No. 09/APHT/XXIV/4/2008 dated 7 April 2008 over a 500 m2 plot of land.

PT A

1. First amendment to deed of fiducia security over receivables of PT B and PT A No. 28 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of PT B of IDR 5,584,848,395 and receivables of PT A of IDR 7,405,565,832).
2. First amendment to deed of fiducia security over movable assets of PT B and PT A No. 29 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of PT B of IDR 54,629,409,043 and movable assets of PT A of IDR 45,126,740,969).
3. First amendment to deed of fiducia security over movable assets (Inventory) of PT B and PT A No. 30 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta (in the total amount of receivables of PT B of IDR 909,291,797 and inventory of PT A of IDR 565,651,726).
4. Deed of Pledge over Bank Account No. 35 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta.

**Account Details:**

<u>Account Number</u>	<u>Account Name</u>
28-88-02177-5 (IDR)	Operating Account
28-88-02177-4 (IDR)	Debt Service Reserve Account
28-88-02177-2 (IDR)	Rupiah Rental Proceeds Account
28-88-02178-0 (IDR)	Mandatory Prepayment Account

5. Deed of Pledge over Bank Account No. 45 dated 19 March 2008 drawn up before James, SH, Notary in Jakarta.  
(pledge over 939 shares of PT X and 313 shares of PTPCI).
6. Deed of cessie over insurance claim No. 51 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.
7. Deed of assignment of agreement over lease rights of land No. 54 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.
8. Deed of cessie over tower lease contracts No. 57 dated 19 March 2008, drawn up before James, SH, Notary in Jakarta.

**Tower lease contract details:**

<u>Operator</u>	<u>Contract Name/Number</u>	<u>Date</u>
Telekomunikasi Indonesia	TEL.906/HK840/DFW-A33/ 204	15 October 2005
Telekomunikasi Indonesia	KTEL.135/HK.810/DFW-A33/ 2005	3 March 2006
Telkomsel	HOC060027	23 March 2007
Telkomsel	HOC060044	3 May 2007
Hutchinson	CPT 381/LGL-AGR/ PT A/ FMS-HW/TECH/V/08	24 May 2008
Mobile-8	034.M8/034.TB-UT.07/ TEK/II/07	8 February 2008

Excelcomindo 0213-07-DNOT-39034 17 September 2008  
Pratama

Bakrie Telekom 1065/EST-PKS/ -  
United Towerindo/XI/2008

9. Deed of hak tanggungan No. 272/2007 dated 23 November 2007 over a 680  
m2 plot of land.

PT F

1. Deed of pledge over bank account No. 37 dated 19 March 2008 drawn  
up before James, SH, Notary in Jakarta.

**Account Details:**

**Account Number**

**Account Name**

28-888-02455-7 (IDR)

Operating Account

28-888-02455-5 (IDR)

Debt Service Reserve Account

28-888-02535-4 (IDR)

Rupiah Rental Proceeds Account

28-888-02435-2 (IDR)

Mandatory Prepayment Account

2. Deed of pledge over shares in PT F No. 92 dated 26 March 2008 drawn up before  
James, SH, Notary in Jakarta.  
(pledge over 899 shares of PT A, 100 shares of Pople H, and 1 share of Suanto).

PT D

1. Deed of pledge over bank account No. 39 dated 19 March 2008 drawn  
up before James, SH, Notary in Jakarta.

**Account Details:**

**Account Number**

**Account Name**

28-888-02477-1 (IDR)

Operating Account

28-888-02477-3 (IDR)

Debt Service Reserve Account

28-888-02477-1 (IDR)

Rupiah Rental Proceeds Account

28-888-02477-9 (IDR)

Mandatory Prepayment Account

2. Deed of pledge over shares in PT C No. 17 dated 19 March 2008 drawn up before  
Siti R, SH, CN, Substitute Notary of Mira Notonagoro, SH, Notary in Jakarta. (pledge  
over 13,449 shares of PT E and 1 share of PT X)

## Schedule 13

### Timetables

“D - [ ]” refers to the number of Business Days before the relevant Utilisation Date or the first day of the relevant Interest Period (as the case may be).

Delivery of a duly completed Utilisation Request (clause 5.1 (*Delivery of a Utilisation Request*)) D – 4

Agent notifies the Lenders of the Loan in accordance with clause 5.4 (*Lenders' participation*) D – 3

LIBOR is fixed Quotation Day as of 11:00 am London time

JIBOR is fixed Quotation Day as of 11:00 am Jakarta time

Delivery of a duly completed Additional Lender Commitment Letter Within 180 days from (and including) the date of this Agreement

**Schedule 14**  
**Additional Lender Commitment Letter**

From: [Additional Lender]

To: [Facility Agent]

Dated: [\*]

Dear Sirs

**US\$[ ] Facility Agreement dated [ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is an Additional Lender Commitment Letter.
2. Unless indicated otherwise, terms defined in the Facility Agreement shall have the same meaning when used in this Additional Lender Commitment Letter.
3. We refer to clause 23.7 (*Additional Lenders*) of the Facility Agreement:
  - (a) the proposed Commitment Date is [ ],
  - (b) the Commitment of the Additional Lender in respect of [Facility A]/[Facility B]/[Facility C] shall be:
    - (i) [[IDR ] in respect of Facility A;]
    - (ii) [[IDR ] in respect of Facility B; and]
    - (iii) [[US\$ ]/[IDR ] in respect of Facility C;]
  - (c) our details for notices for the purposes of clause 30 (*Notices*) of the Facility Agreement are set out in the Schedule to this Additional Lender Commitment Letter.
4. The parties to this Additional Lender Commitment Letter acknowledge and agree to the accession of the Additional Lender and the assumption by each Party of all of the rights and obligations referred to in clause 23.7 (*Additional Lenders*) of the Facility Agreement.
5. This Additional Lender Commitment Letter may be executed in any number of counterparts and this has the same effect as if the signature on the counterparts were on a single copy of this Additional Lender Commitment Letter.
6. This Additional Lender Commitment Letter is governed by English Law.

THE SCHEDULE

*[Facility Office address, fax number and attention details for notices and account details for payments]*

[*Additional Lender*]

By:

This Additional Lender Commitment Letter is accepted by the Facility Agent (on behalf of the Finance Parties) and the Commitment Date is confirmed as [ ].

[*Facility Agent*]

By:

## Schedule 15

### Accounts

#### IDR DSRA

Name of Account Holder	Designation	Account Number
PT A	PT A IDR Debt Service Reserve Account	205-0000632
PT B	PT B IDR Debt Service Reserve Account	205-0001035
PT C	PT C IDR Debt Service Reserve Account	205-0001434
PT D	PT D IDR Debt Service Reserve Account	205-0001833
PT F	PT F IDR Debt Service Reserve Account	205-0002236
PT G	PT G IDR Debt Service Reserve Account	205-0002635

#### US\$ DSRA

Name of Account Holder	Designation	Account Number
PT A	PT A US\$ Debt Service Reserve Account	205-0002830
PT B	PT B US\$ Debt Service Reserve Account	205-0002937
PT C	PT C US\$ Debt Service Reserve Account	205-0003038
PT D	PT D US\$ Debt Service Reserve Account	205-0003035
PT F	PT F US\$ Debt Service Reserve Account	205-0003330
PT G	PT G US\$ Debt Service Reserve Account	205-0003437

#### Mandatory Prepayment Account

Name of Account Holder	Designation	Account Number
PT A	PT A IDR Mandatory Prepayment Account	205-0000000
PT B	PT B IDR Mandatory Prepayment Account	205-0001000
PT C	PT C IDR Mandatory Prepayment Account	205-0001000
PT D	PT D IDR Mandatory Prepayment Account	205-0001000
PT F	PT F IDR Mandatory Prepayment Account	205-0002000
PT G	PT G IDR Mandatory Prepayment Account	205-0002000



**Operating Account**

<b>Name of Account Holder</b>	<b>Designation</b>	<b>Account Number</b>
PT A	PT A IDR Operating Account	205-0000000
PT B	PT B IDR Operating Account	205-0000000
PT C	PT C IDR Operating Account	205-0001000
PT D	PT D IDR Operating Account	205-0001000
PT F	PT F IDR Operating Account	205-0002000
PT G	PT G IDR Operating Account	205-0002000

**Rental Proceeds Account**

<b>Name of Account Holder</b>	<b>Designation</b>	<b>Account Number</b>
PT A	PT A IDR Rental Proceeds Account	205-0000000
PT B	PT B IDR Rental Proceeds Account	205-0000000
PT C	PT C IDR Rental Proceeds Account	205-0001000
PT D	PT D IDR Rental Proceeds Account	205-0001000
PT F	PT F IDR Rental Proceeds Account	205-0002000
PT G	PT G IDR Rental Proceeds Account	205-0002000

Signatures