

THE BASIC CONSTRUCTION OF THE LEGAL RELATIONSHIP BETWEEN THE PARTIES IN *LEASING FINANCING* IS VIEWED FROM THE LEVEL OF REGULATION AND THEORY

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Abstract

The basic construction of the legal relationship between the parties in *leasing financing* is viewed from the level of regulation and theory. The purpose of this study is to analyze: a. To what extent is *Leasing* financing able to provide benefits as an alternative to company financing in the form of providing capital goods?; b. How far is the government's attention in providing regulations in the field of corporate financing in the form of *Leasing*?; c. How is the basic construction of the legal relationship between the parties built with practical regulations made by the government, how is it studied in theoretical aspects? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: a) in general, *leasing* means financing equipment/capital goods to be used in the production process of a company, either directly or indirectly. *Leasing* is a financing activity through the provision of capital goods to be used by a company (debtor or *lessee*) for a certain period of time, and *Leasing* is also based on periodic financing accompanied or without the right of choice from the company to buy the capital goods concerned to extend the *Leasing* period. It is based on a mutually agreed residual value. b) *Leasing* has received attention from the Indonesian government. This is evidenced by the issuance of the Civil Code and the Joint Decree of Three Ministers: Minister of Finance, Minister of Trade and Minister of Industry in 1974 concerning *Leasing activities*. c) The legal relationship between *the lessor, supplier and lessee* is that the lessor provides the cost of purchasing goods in cash to the supplier. The supplier delivers the goods to the *lessee*. After the *lessee* acquires the goods, he makes a *lease* payment to *the lessor*. Meanwhile, regarding the mechanism so that legal relations occur between the parties, namely *lessors, lessees, and suppliers*

Keywords: Construction, Leasing, Law, Financing, Regulation, Theory.

INTRODUCTION

Background

Leasing is a form of business that can be used as an alternative to overcome capital difficulties in the context of financing a company. The presence of leasing for companies has an important role in helping entrepreneurs in Indonesia, both for small, medium and large businesses. Through leasing activities, these entrepreneurs will quickly be able to overcome financing methods to obtain the equipment and capital goods they need. With non-burdensome requirements and a flexible funding system, entrepreneurs like it very much. This condition among others causes the leasing business in Indonesia to develop quickly.¹

In Indonesia, *Leasing* is a relatively new institution compared to other financing institutions and practices in other countries. The entry of *Leasing* into Indonesia is based on the Joint Decree of the Minister of Finance, Minister of Industry, and Minister of Trade Number: KEP-

122/MK/IV/2/1974, Number: 32/M/SK/2/1974 , and Number: 30/Kpb/I/1974 concerning Leasing Business Licensing. Since the introduction of this institution has shown encouraging developments, both in terms of the number of *leasing companies* operating and when viewed from the development of the value of contracts that are closed every year.²

Leasing or leasing is a financing activity in the form of providing capital goods either by lease with option rights (finance lease) or *lease without option rights* (operating lease) to be used by lessees for a certain period of time based on payment in installments. Understanding *Leasing as any agreement in the company's payment activities in the form of providing capital goods for use by a company, for a certain period of time based on periodic payments accompanied by the right of choice for the company to buy the capital goods concerned or extend the Leasing period based on the mutually agreed residual value.*³

The emergence of this *Leasing institution is an alternative that is quite attractive for entrepreneurs because at that time it was difficult to obtain capital for the medium and long term, while through Leasing can obtain funds to finance the purchase of capital goods with a payback period with returns between three to five years or even more. In addition, entrepreneurs also benefit from the existence of applicable regulations where for tax purposes Leasing transactions are calculated as operating leases so that lease rentals are considered as costs that can reduce taxable income.*⁴

*Leasing business is shown to meet the needs of capital goods and the existence of leasing companies has felt the benefits can help the development of the Indonesian economy. In terms of economic development, Leasing can be said to be one way to raise funds available to the community, and reinvest in certain economic sectors that are considered productive and profitable. Therefore, Leasing is a good financing alternative for companies that lack capital, or who want to save money without losing the opportunity to invest. Apart from the fact that development requires large funds, while the government is limited in its ability to bear all the burden of development activities, the presence of Leasing as an alternative financing is a complementary means that supports development activities.*⁵

The *Leasing* financing system is still quite young in Indonesia, but its work in the world of financing until now still plays a considerable role, increasingly here, of course, continues to grow. In practice, the use of *leasing* services often occurs problems between *the lessor and the lessee, resulting in capital goods that were agreed at the beginning to be taken back by the lessor without any claims through civil court. However, every system will not escape the name of a shortcoming, as well as the work of Leasing financing, of course, there are still some events that actually harm one party. Like some cases that are also reported in some media are cases about the lessee's incomprehension of the contents of the agreement, so that conflicts can occur and can also harm the community.*⁶

Based on the description above, the author is interested in conducting research in the context of writing a dissertation entitled; *"The Basic Construction of the Legal Relationship of the Parties in Leasing Financing Reviewed from the Regulatory and Theoretical Levels"*.

Problem Statement

1. To what extent *is Leasing* financing able to provide benefits as an alternative to corporate financing in the form of providing capital goods?
2. How far is the government's attention in providing regulations in the field of corporate financing in the form of *Leasing*?
3. How is the basic construction of the legal relationship between the parties built with practical regulations made by the government, how is it studied in theoretical aspects?

Theoretical Framework

1. Macroeconomic Theory

Adam Smith wrote that macroeconomics is a form of analysis of the state or causes of state wealth using research that is viewed thoroughly from economic activity. Meanwhile, Robert S. Pindyck and Daniel L. Rubinfeld wrote that the definition of macroeconomics is an economic science that deals with aggregate economic variables, such as: 1) The rate and average growth of national production; 2) Unemployment rate; 3) Interest rates and 4) Inflation.⁷

In macroeconomics there are several relationships that occur. The relationships discussed in it include relationships between aggregated variables, as for these relationships, including: a. National income level b. Household consumption c. National investment (government or private) d. Savings rate (institutional or individual) e. Government expenditure (APBN or APBD) f. Price level (general price or market price) g. The amount of money circulating in society. h. The interest rate earned i. Employment opportunities and employment j. Balance of payments k. Export and import,⁸

2. State Welfare Theory and Development Theory

According to Jimly Asshiddiqie the idea of the welfare state was an influence of socialist ideas that developed in the 19th century, which was popular at that time as a symbol of resistance against the Capitalist-Liberalist colonizers. In a legal perspective, Wilhelm Lunstedt argued: *Law is nothing but the very life of mindkind in organized groups and the condition which make possible peaceful co-existence of masses of individuals and social groups and the cooperation for other ends than mere existence and propagation.*⁹

The concept of welfare state is an idea of a state that uses a democratic system of government that is responsible for the welfare of its people. This program aims to reduce community suffering such as poverty, unemployment, health problems and so on. Therefore, a country that applies the concept of a *welfare state* has a public policy that is service, assistance, protection or prevention on social problems.¹⁰

In his book, Michael P. Todaro quotes Professor Gouelet and others as saying that there are at least three basic components or core values that must be used as a conceptual basis and practical guide to understand the most essential meaning of development. The three basic components are *sustenance*, *self-esteem*, and *freedom*. These three things are the main values or core goals that must be achieved and obtained by every society through development. These three

components are directly related to the most basic human needs, manifested in a wide variety of manifestations throughout society and culture throughout the ages.¹¹

3. Fiduciary Duties, Respondeat Superior, Agency Theory

Fiduciary in Latin is known as *fiduciarius* which means belief. Technically, the term *fiduciary* is interpreted as someone who holds something in trust for the benefit of others. A person has a fiduciary duty *when* he has a *fiduciary capacity*.¹² then, the superior *respondeat* theory implies that the employer is responsible for the servant-service actions for which he is responsible, including actions that cause harm to others.¹³ the theory of *superior respondeat* is a doctrine taken from civil law. The concept of *superior respondeat* usually applies in law to the *torts of law*.¹⁴

Agency *theory* is a contract that is designed appropriately to align the interests of principals and agents in the event of differences in interests.¹⁵ this theory assumes that conflicts of interest between *principals* and *agents* arise because each individual is solely motivated by self-interest. Jensen & Meckling states that the contract between the manager (*agent*) and the investor (*principal*) is an agency relationship.¹⁶

RESEARCH METHODOLOGY

This type of research is juridical-normative, namely legal research that lays down the law as a building system of norms. The norm system that is built is about principles, norms, rules of laws and regulations, court decisions, presentations, and doctrines (teachings). More about normative legal research, namely research that has the object of study of rules or legal rules. Normative legal research examines legal rules or regulations as a system building related to a legal event. This research was conducted with the intention of providing legal argumentation as a basis for determining whether an event has been true or false according to law.¹⁷

The type of research that the author uses in the preparation of this writing is normative legal research or literature, namely legal research carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research or literature includes research on legal principles, research on legal systematics, research on the level of verbal and horizontal synchronization, legal history and legal comparison.¹⁸ the approach method used in the preparation of this research is normative juridical research. The normative juridical research method is literature law research¹⁹ carried out by examining library materials or mere secondary data.

RESEARCH RESULTS

A. Leasing Financing as an Alternative to Corporate Financing in the form of Capital Goods Provision

Leasing is a financing activity through the provision of capital goods to be used by a company (debtor or *lessee*) for a certain period of time, and *Leasing* is also based on periodic financing accompanied or without the right of choice from the company to buy the capital goods

concerned to extend the Leasing period. It is based on a mutually agreed residual value.²⁰ The legal basis used in the implementation or business process *of this Leasing is the Leasing contract made between the two parties who are the subject of law in this Leasing and also legislation in the field of finance and financing.*²¹

The legal basis of *Leasing* is contained in several presidential regulations and Decrees of the Minister of Finance. This is because *Leasing does not yet have an intact legal umbrella or legislation regarding Leasing.* Some of these regulations include Presidential Regulation No. 110 of 2020 concerning the Revocation of Presidential Regulation Number 9 of 2009 concerning Financing Institutions; Kepmenkeu RI No. 1169/KMK.01/1991 concerning *Leasing Activities*; Joint Decree (SK) of the Minister of Finance, Minister of Industry and Minister of Trade Number N.KEP122/MK/IV/2/1974, Number 32/M/SK/2/1974, Number 30/Kpb/1/1974 concerning Leasing Business Licensing; Decree of the Minister of Finance of the Republic of Indonesia No.1251/KMK.013/1988 concerning Provisions and Procedures for the Implementation of Financing Institutions; and Decree of the Minister of Finance of the Republic of Indonesia No.634/KMK.013/1990 concerning Procurement of Facilitated Capital Goods through *Leasing Companies*.²²

Every *Leasing* activity, there will always be 3 (three main parties involved, including:

a) Lessor

A *lessor* is a *Leasing company* that has ownership rights over capital goods. Leasing companies provide funds to those in need. In the business of procurement of capital goods, usually the *Leasing company* deals directly with the seller (*Supplier*), and has paid off the capital goods. *The lessor* aims to recover costs that have been incurred to finance the provision of capital goods by making a profit, or obtaining profits from the provision of capital goods and the provision of maintenance services and the operation of capital goods.

b) Lessee

A *lessee* is a company or user of capital goods that can have option rights at the conclusion of a *Leasing contract*. *The lessee* that requires capital goods is directly related to the *Lessor*, who has financed the capital goods and has the status of the owner of the capital goods. The capital goods financed by the *Lessor* are then handed over to and to be used by the *Lessee* in running its business. At the conclusion of the *Leasing* contract, the *Lessee returns the capital goods to the Lessor, unless there is an option right to purchase the capital goods at a price based on residual value.*

c) Supplier

Supplier is a seller of capital goods that are the object of *Leasing*. The price of the capital goods is paid in cash by *the Lessor* to the *Supplier* for the benefit of the *Lessee*. The *Supplier* can be a capital goods producer company or an ordinary seller. There is also a type of *Leasing* that does not involve *Suppliers*, but bilateral relations between *the Lessor and the Lessee, for example in the form of Sale and Leaseback.*²³

Leasing *business activities* as non-bank alternative financing have a long history. Although it is not known with certainty, it is believed that *Leasing* transaction activities have occurred since 2000 BC. According to the document, initially *Leasing* transactions were carried out by the Sumerians starting from agricultural equipment, land and water use rights to livestock. In subsequent developments, many legal systems were found that listed *Leasing* transactions as one of the financing methods. The next trip in 1284, in England, the *Leasing business was regulated in a law (common law) and in the 1800s began to see an increase in the types of goods that could be used as objects of Leasing.*²⁴

Juridically, *Leasing* is a form of nameless engagement that arises due to developments in the economic and legal fields. If we look for provisions in the Civil Code and the KUHD, there will be no article that regulates or states a form of engagement called *Leasing*. However, because our engagement law adheres to an open system—that anyone can enter into an engagement based on any agreement, whether regulated by law or not—the presence of *Leasing* in Indonesia is accepted with open arms. This provision is then called the principle of freedom of contract.²⁵ *Leasing* provides the possibility to acquire the necessary tools, equipment and facilities, although the finances for it cannot be immediately provided. Increase the efficiency of existing finances and prevent difficulties in administration.²⁶

Based on OJK's audited Financial Statements for 2021, the total assets of Financing Institutions amounted to IDR 583.19 trillion, consisting of the assets of Multifinance Companies of IDR 432.91 trillion (74.23%); assets of Venture Capital Companies amounting to Rp21.22 trillion (3.64%); and assets of Infrastructure Finance Companies amounting to Rp129.05 trillion (22.13%).²⁷ Throughout 2021, there are 15 Multifinance Companies that have had their licenses revoked. Thus, the number of Finance Companies until the end of 2021 became 161 companies. Graph 02 below shows the number of Finance Companies over the last five years. Of the 161 Finance Companies, there are 24 companies that have assets above Rp5 trillion and dominate all assets of Financing Companies, amounting to Rp301.95 trillion or 69.75%.²⁸

In an effort to increase the development of the economic sector, many business actors, both individuals and legal entities, need funding in running their businesses.²⁹ Business actors cannot only rely on funds or capital owned by themselves, but must also get funds from a lending and borrowing mechanism or credit agreement from a financial institution. Credit is given on the basis of trust by providing credit facilities to the debtor itself with the aim and purpose so that the credit facility that has been given can be returned safely and profitably.³⁰ In conditions like this, the role of *Leasing* is needed as an alternative so that business activities continue to run.

B. Government Attention in Providing Regulations in the Field of Leasing Company Financing

Leasing is one way for companies to acquire assets or ownership of capital goods without having to go through a long process. For companies that have less capital, they can use *Leasing* to assist their companies in carrying out their activities. *Leasing* is used as one of the steps to avoid high risks felt by entrepreneurs. So that the *Leasing* business can develop rapidly into a

new financial institution that is specialized in providing capital goods and becoming an alternative financing in a business.³¹

The rapid development of *Leasing* in Indonesia is not balanced with balanced regulations. Until now, there are still no regulations at the statutory level that specifically regulate *Leasing*. The provisions governing this issue are still in the form of decrees of the Minister of Finance and other regulations. Minister of Finance Regulation Number 100 / PMK.010 / 2009 concerning Finance Companies and Presidential Regulation Number 9 of 2009 concerning Financing Institutions Jo. Presidential Regulation Number 110 of 2020 concerning Presidential Regulation (PERPRES) concerning the Revocation of Presidential Regulation Number 9 of 2009 concerning Financing Institutions, is still the legal basis for *leasing* today.

Basically, the implementation of *Leasing* is also based on the Civil Code (Civil Code), especially in Article 1313 of the Civil Code which regulates agreements, Article 1548 of the Civil Code regarding leases is an agreement, *Leasing* is a special form of lease regulated in the Civil Code. This specificity shows the essential difference between leasing and *leasing*.

Although there are already technical regulations governing *Leasing in Indonesia*, if we look back at the *leasing business*, it is a business that is quite high risk, because the protection of the parties is only limited to the good faith of each of these intentions as stated in a form of *lease agreement / Leasing*. In this case, there is a possibility that one of the parties to the agreement does not carry out its performance according to the agreement.³²

Talks related to *Leasing* have received attention from the Indonesian government. This is evidenced by the issuance of the Civil Code and the Joint Decree of Three Ministers: Minister of Finance, Minister of Trade and Minister of Industry in 1974 concerning *Leasing* activities. In general, *leasing* means financing equipment/capital goods to be used in the production process of a company, either directly or indirectly.

Leasing is principally a multidisciplinary industry that includes, among others, the fields of taxation, finance and accounting concepts. Generally, the definition of *Leasing* can be concluded that an agreement between the owner of the goods (*lessor*) and the user of the goods (*lessee*). The *Leasing mechanism is the basis for a Leasing transaction* (basic lease). The *lessee* is obliged to pay *rent periodically* to the *lessor* as compensation for the use of the goods.

Then, Decree of the Minister of Finance No. 125/KMK. O13/1988 dated December 20, 1988, the type of *leasing* activities has been expanded as implied in article 1 of the decree which accommodates the following definitions: "*Leasing Company* is a business entity that carries out financing activities in the form of providing capital goods in *Financial Lease* or *operating lease* for use by tenants for business for a certain period of time based on periodic payments. *Financial Lease* is the end of the contract period has the option right to purchase the lease object based on the mutually agreed residual value. *Operating lease* is a *leasing* activity, where the tenant does not have the option right to buy the *leasing* object".³³

C. Basic Construction of Legal Relations between Parties in Leasing Financing in terms of Regulatory and Theoretical Aspects

The legal relationship between *lessor, supplier and lessee is*: The lessor *provides the cost of purchasing goods in cash to the supplier. The supplier delivers the goods to the lessee. After the lessee acquires the goods, he makes a lease payment to the lessor.* Meanwhile, regarding the mechanism so that legal relations occur between the parties, namely *lessors, lessees, and suppliers*, there are various alternatives as follows:³⁴

1. The lessor purchases goods at the request of the *lessee, then provides to the lessee on a leasing basis.*
2. *The lessee purchases the goods as the lessor's agent, and takes the goods by leasing from the lessor.*
3. *The lessee purchases the goods in his own name, but in reality as an agent of the lessor, and takes the goods by leasing from the lessor.*
4. After the *lessee* buys the goods in his own name, then novates, so the *lessor* then wants the goods and pays for them.
5. After the *lessee* buys the goods for and in his own name, then sells them to the *lessor*, and takes back the goods by leasing. This is an example of *Sale and Lease Back*.
6. *The lessor* himself obtains the goods by leasing with the right to subleasing, and provides *subleasing to the lessee* subleasing.

Lessee as a party related to leasing and suppliers, *has the right to obtain goods from suppliers and enjoy the leased goods. For this right, the lessee has the obligation to pay the lease price to the lessor at the time and place according to the leasing agreement.* This is in accordance with the provisions of Article 1513 of the Civil Code which states "The main obligation of the buyer is to pay the purchase price, at the time and place as stipulated according to the agreement" and if it is not stipulated in the agreement, then according to Article 1514 of the Civil Code which reads "If at the time of making the agreement it is not stipulated about it, The buyer must pay at the place and time where the delivery must be made", in case there is no provision regarding delivery, then the delivery is made at the place where the goods were at the time the lease purchase agreement was made, in other cases payment is made at the place where the agreement was made.³⁵ In addition, the lessee has obligations, among others, to care for the leasing goods at their own expense.³⁶

The Legal Foundation of Consumer Financing is not only seen in terms of economic needs, but must be supported by a *legal approach* so that it is recognized and applicable in business relationships. The legal institution that regulates consumer financing in a formal legalistic manner began since the announcement of the Policy Package on December 20, 1988 (Pakdes 20, 1988), but previously it can also be seen the legal basis of the existence of consumer financing from the existing legal institutions, namely:

- a. Freedom of contract in Article 1338 paragraph (1) of the Civil Code, which states that a legally made agreement³⁷ applies as law to those who make it. The existence of freedom of contract occurs because of an agreement between the financial company as a creditor and the consumer as the debtor to be financed, which is a manifestation of the free will of both parties.
- b. The loan agreement expires based on Article 1754 of the Civil Code under such conditions a sum of money is lent by the Lender (Consumer Finance Company) who is domiciled as a creditor, while the Borrower is a Consumer who is domiciled as a debtor.

Before making a consumer financing agreement that consumers first contact the finance company by submitting a list of goods and prices contained in the credit application form for consumer content, the finance company checks the requirements needed (*surveyor report*).

On this basis, a financing agreement is made, which makes terms and conditions, namely will pay the price of goods in installments to the consumer finance company, and the consumer finance company will pay the price of goods to the supplier (*supplier*) in cash. Such conditions create a legal relationship between the parties, namely:

1. The relationship between creditors and consumers is formed as a contractual relationship. The creditor is obliged to provide a sum of money for the purchase of a consumer good, while the recipient of the fee (consumer) as the debtor is obliged to pay back the money in installments to the lender. As a juridical consequence of the agreement, all contracts are signed, and the funds have been disbursed and the goods have been handed over by the supplier to the consumer, then the goods concerned have directly become the property of the consumer, although then usually the goods are used as debt collateral through a **fiducia** agreement. The bound Fiducia must be registered no later than 30 (thirty) calendar days from the date of the consumer financing agreement To provide legal certainty for the finance company and consumers in connection with the transfer of title to motor vehicles from consumers in trust (Fiducia) to the finance company, it is necessary to register the Fiducia guarantee at the Fiducia registration office
2. The relationship between consumers and *suppliers* is a relationship between buying and selling people. It is mentioned as a conditional sale and purchase agreement based on Article 1513 of the Civil Code³⁸, because of the agreement that occurs between consumers *as buyers and producers (suppliers) as sellers, provided that those who make cash payments to sellers are consumer finance companies as buyers and producers (suppliers)* as the seller, provided that the person making the payment in cash to the seller is a consumer finance company.
3. Supply relationship with *suppliers*. The fund provider is only required to pay in advance for the request submitted by the consumer to the supplier, which will further create a legal relationship later between the fund provider and the consumer.³⁹

Construction leasing agreement is legal for *the lessor as the owner of capital goods, in the sense that the lessor is the leasing party and the lessee is the borrower / user, which is entitled to enjoy, meaning that as long as the lessee's installments to the lessor have not been paid off, the lessee status as a borrower / user.* However, when the installments are paid off, the *lessee* as the owner of the capital goods. As stipulated in Article 3 Paragraph (3) of the Decree of the Minister of Finance of the Republic of Indonesia No. 1251 / KMK.013 / 1988 concerning Provisions and Procedures for the Implementation of Financing Institutions that "As long as the lease agreement is still valid, the title to the capital goods of the object of the lease transaction is with the leasing company".

The leasing agreement is made in standard form, namely the documents needed to make a contract have been provided or made by the leasing company. In practice, prospective debtors only need to read and understand the contents of the agreement submitted by parties with strong positions, and if he agrees to these terms, the prospective debtor is welcome to sign it (*take it*), but on the contrary, if the prospective debtor does not agree to the terms submitted by business actors, then the transaction cannot be submitted (*leave it*). That is why this standard agreement has come to be known as "take it or leave it contract".⁴⁰

If the agreement between the *lessor, lessee, and supplier* has been reached, then the rights and obligations will arise for the parties described in the leasing agreement clause. Based on these rights and obligations, it can be concluded about the construction of the legal relationship between the parties, namely between *the lessor and the supplier* there is a cooperative / partner relationship, where the supplier is the party with the goods needed by *the lessee*, while the lessor is the financier. Initially, the lessee needed capital goods, because the lessee *did not have enough funds*, the lessee asked for the help of a leasing company (*lessor*) to buy the capital goods needed. The legal relationship between *the lessor and the supplier* is only limited to financing the goods needed by the *lessee*, then the *supplier* hands over the goods to *the lessee*, and assists in the processing of vehicle documents. Meanwhile, between *the lessor and the lessee* there is a legal relationship based on the leasing agreement, where *the lessor is the owner of capital goods and the lessee as the borrower / user of capital goods* as long as the installments have not been paid off. Then between *the supplier and the construction lessee* based on a sale and purchase agreement with the lessor intermediary, by pouring it into a joint statement. So that based on this construction, there are 3 forms of legal relations, namely between suppliers and *prospective debtors (lessee) based on a sale and purchase agreement with a joint statement*, between suppliers and creditors (*lessors*) based on *cooperative / partner relationships and between lessors and lessees based on leasing agreements*.⁴¹

The relationship between the lessor and *lessee* is a reciprocal relationship, involving the implementation of obligations and the transfer of a right or demand of obligations from the enjoyment of using financing facilities, for that between *the lessor and lessee* a financial lease agreement / leasing contract or a financing agreement. For *the Lessor*, the benefits to be achieved in the financial lease agreement with the Buyer/Lessee, solely depend on the creation of legal certainty for an agreement, about a series of payments by the *lessee for the use of the assets that are the object of the lease, including the Lessee's recognition of the control of the*

object *by the* Lessee whose ownership remains held by *Lessor*, thus giving birth to the legal right for the *Lessor*, in the event of default by the *Lessee* to sell or confiscate the lease object.⁴²

CONCLUSION

The results showed that;

- a. In general, *Leasing* means financing equipment/capital goods to be used in the production process of a company, either directly or indirectly. *Leasing* is a financing activity through the provision of capital goods to be used by a company (debtor or *lessee*) for a certain period of time, and *Leasing* is also based on periodic financing accompanied or without the right of choice from the company to buy the capital goods concerned to extend the Leasing period. It is based on a mutually agreed residual value.
- b. *Leasing* has received attention from the Indonesian government. This is evidenced by the issuance of the Civil Code and the Joint Decree of Three Ministers: Minister of Finance, Minister of Trade and Minister of Industry in 1974 concerning *Leasing activities*.
- c. The legal relationship between *lessor, supplier and lessee is*: The lessor provides the cost of purchasing goods in cash to the supplier. The supplier delivers the goods to the lessee. After the lessee acquires the goods, he makes a lease payment to the lessor. Meanwhile, regarding the mechanism so that legal relations occur between the parties, namely lessors, lessees, and suppliers.

Foot Notes

- 1) Febby Ayu Syahputri Gurning et al., "Risk Management Analysis of Leasing Users (*Leasing*) In Indonesia," *El-Mal: Journal of Islamic Economic & Business Studies* 3, no. 3 (2022), p. 445.
- 2) Siregar et al., *Banks and other financial institutions*.
- 3) Neni Meidawati, "Development *Leasing* In Indonesia," *Economic Journal of Emerging Markets* 2, no. 1 (1994), p 47
- 4) Siti Malikhatun Badriyah, "Breeding the principles of treaty law in financing agreements with capital goods objects that develop in society (study of agreements *Leasing* In Indonesia)" (Undip Postgraduate Program, 2011).
- 5) Noor, et.al, "Legal Aspects of Leasing Financing Agreement (*LEASING*)."
- 6) Rr Rina Antasari, et al., *Economic Law in Indonesia*, Pretone Media, 2020).
- 7) Zaki Izzani A, "Getting to Know Macroeconomics", Binus University, <https://sis.binus.ac.id/2020/11/02/mengenal-ekonomi-makro/> accessed on Tuesday, February 7, 2023
- 8) Posma Sariguna Johnson Kennedy, "Macroeconomics Module", Indonesian Christian University, 2018, p 1
- 9) Soemardi, *General Theory of Law and State: Fundamentals of Normative Law as Descriptive-Empirical Legal Science*, Bandung: Bee Media Indonesia, 2010 p. 9.
- 10) Miftachul Huda. *Social Work & Social Welfare: An Introduction*, Yogyakarta: Pustaka Siswa, 2009, p. 73.
- 11) Askar Jaya, "The Concept of Sustainable Development". *Paper*: Odd Semester Individual Task 2004. Introduction to the Philosophy of Science (PPS-702), 2004, p. 1.

- 12) Putu Ratih Purwantar, "Responsibility of Directors Based on the Principle of Fiduciary Duties in Limited Liability Companies", *Kertha Semaya*, Vol.2 No.4, 2014, p. 2.
- 13) Hanifa Romadhoni; Arief Suryono. "Hospital Civil Liability in the Event of Refusal of Poor Patients in Emergencies". *Private Law*. Vol. VI, No 2 July - December 2018, p. 229.
- 14) Sutan Remy Sjahdeini, *Corporate Criminal Liability*, Jakarta: Graffiti Pers, 2006, p 84
- 15) Scott, W. R., & O'Brien, P. C. "Financial accounting theory". Vol. 3. *Prentice hall Toronto*. 2003.
- 16) Jensen, M. C., & Meckling, W. H. "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure". *In Journal of Financial Economics*. Vol 3.1976, p. 305
- 17) Mukti Fajar and Yulianto Achmad , *Dualism of Normative and Empirical Legal Research*, Print IV, Yogyakarta, Student Library, 2017, p. 36.
- 18) Soerjono Soekanto, *Introduction to Legal Research*, Jakarta, UI Press, 1986, p. 34.
- 19) Jhonny Ibrahim, *Theory and Methodology of Normative Legal Research*, p. 301.
- 20) Space Nitaria. "Constraints on the Application of *Leasing* Financing to Meet Community Needs". *DERIVATIVES*. Vol. 10 No. 1, April 2016, p. 73.
- 21) Djoni s. Gazali, *Banking Law*. Jakarta: Sinar Grafita, 2010, p 152
- 22) Aprilianti, "Lease Agreement between *Lessee* and *Lessor*". *Fiat Justisia Journal of Legal Science*. Volume 5 No.3, September – December 2011, p. 318.
- 23) Djoko Prakoso, *Leasing and Problems*. Semarang: Dahara Prize,1996, p 15
- 24) Sumadi, "Measuring *Leasing* Transactions in Review of Sharia Economic Law", *Scientific Journal of Islamic Economics*, Vol.4 No.2, 2018, p. 128.
- 25) Muhammad Izuddin Zakki, "*Leasing* Transactions in Indonesia in the Perspective of Islamic Law", *Epistemé*, Vol. 8, No. 1, 2013, p. 187.
- 26) Achmad Anwari, *Leasing in Indonesia*, Jakarta: Ghalia Indonesia, 1988, pp 9-10.
- 27) OJK, "Statistics of Financing Institutions", Jakarta: OJK, 2021, p 3.
- 28) *Ibid*, p. 4.
- 29) Ni Luh Ayu Regita Cahyani, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti, "Legal Protection for *Leasing* Companies Against Default Debtors", *Journal of Legal Preferences*, Vol.2 No.2, 2021, p. 254
- 30) T. Widiyono, *Credit Collateral in Financial Engineering*. Bogor: Ghalia Indonesia. 2009, p. 8.
- 31) Nur Fadhillah, *op.cit*, p. 136.
- 32) Djoko Setyo Hartono, "Legal Protection for *Lessors* in *Leasing* Agreements (Case Study at PT. ACC Semarang Branch)", *Journal of R&D Universitas Muhammadiyah Semarang*, Vol 3, No 2, 2007, p. 23.
- 33) *Ibid*. p28.
- 34) Supreme Court of the Republic of Indonesia, *Leasing Issues*, Jakarta: *Supreme Court Publishing Section*., 1989, p. 6.
- 35) Suryodiningrat, *Treaty Law*, Yogyakarta: Bintang Terang, 1982, p 26
- 36) Sammy F Kambey, "Legal Protection of Finance Companies in *Leasing* Agreements", *Journal of Legal Opinion* Issue 3, Volume 3, Year 2015
- 37) Freedom of contract in Article 1338 paragraph (1) of the Civil Code

- 38) Article 1513 of the Civil Code: the main obligation of the buyer is to pay the purchase price at the time and place stipulated in the agreement.
- 39) Andrew G. Kairupan. "A Juridical Review of the Benefits of Leasing Financing Institutions in Modern Business in the Global Era", *Lex ET Societatis*, Vol. V/No. 3/May/2017, pp. 128-129.
- 40) Shidarta, *Indonesian Consumer Protection Law*, Jakarta, Grasindo, 2000, p. 120.
- 41) Silvi Triadita Sari, "Review of the Legal Relationship of Motor Vehicle Leasing Agreements", *Privat Law* Volume 9 Number 1 (January-June 2021), p. 196.
- 42) Rianda Dirkareshza et al, "Legal Optimization of Lessees in Default in Leasing Agreements", *Law Enforcement Scientific Journal* 8 (2) December 2021: 160-173, pp 163.

Bibliography

- 1) A, Zaki Izzani. "Getting to Know Macroeconomics", Binus University, <https://sis.binus.ac.id/2020/11/02/mengenal-ekonomi-makro/> accessed on Tuesday, February 7, 2023
- 2) Antasari, Rr Rina et al. 2020. *Economic Law in Indonesia*. Pretone Media.
- 3) Cahyani, Ni Luh Ayu Regita., & I Nyoman Putu Budiarta, Ni Made Pupasutari Ujianti, "Legal Protection for Leasing Companies Against Default Debtors", *Journal of Legal Preferences*, Vol.2 No.2, 2021
- 4) Dirkareshza, Rianda et al., "Legal Optimization of Lessees in Default in Leasing Agreements", *Law Enforcement Scientific Journal* 8 (2) December 2021: 160-173
- 5) Djoko Prakoso. 1996. *Leasing and Problems*. Semarang: Dahara Prize
- 6) Djoni s. Gazali. 2010. *Banking Law*. Jakarta: Sinar Grafita. p 1] Aprilianti. "Lease Agreement between Lessee and Lessor". *Fiat Justisia Journal of Legal Science*. Volume 5 No.3, September – December 2011
- 7) Gurning, Febby Ayu Syahputri et al., "Risk Management Analysis of Leasing Users (*Leasing*) In Indonesia," *El-Mal: Journal of Islamic Economic & Business Studies* 3, No. 3 (2022): 440–49.
- 8) Hartono, Djoko Setyo, "Legal Protection for Lessors in Leasing Agreements (Case Study at PT. ACC Semarang Branch)", *Journal of R&D Universitas Muhammadiyah Semarang*, Vol 3, No 2, 2007
- 9) Huda, Miftachul. 2009. *Social Work & Social Welfare: An Introduction*. Yogyakarta: Student Library. p 73
- 10) Jaya, Askar. 2004. "The Concept of Sustainable Development". *Paper: Odd Semeseter Individual Task 2004*. Introduction to the Philosophy of Science (PPS-702).
- 11) Jensen, M. C., & Meckling, W. H. "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure". *In Journal of Financial Economics*. Vol 3.1976. pp. 305–36
- 12) Jhonny Ibrahim, *Theory and Methodology of Normative Legal Research*
- 13) Kairupan, Andrew G. "Juridical Review of the Benefits of Leasing Financing Institutions in Modern Business in the Global Era", *Lex et Societatis*, Vol. V/No. 3/May/2017
- 14) Kambey, Sammy F "Legal Protection of Finance Companies in Leasing Agreements", *Journal of Legal Opinion* Issue 3, Volume 3, Year 2015
- 15) Supreme Court of the Republic of Indonesia, *Leasing Issues*, *Supreme Court Publishing Section*, Jakarta. 1989, p.6.
- 16) Meidawati, Neni. "Development *Leasing* In Indonesia," *Economic Journal of Emerging Markets* 2, no. 1 (1994): 49–57.

- 17) Mukti Fajar and Yulianto Achmad, 2017, *Dualism of Normative and Empirical Legal Research*, Print IV, Yogyakarta, Student Library
- 18) Space Nitaria. "Constraints on the Application of *Leasing* Financing to Meet Community Needs". *DERIVATIVES*. Vol. 10 No. 1, April 2016
- 19) Noor, Masnun, and Putri, "Legal Aspects of Lease Financing Agreement (*LEASING*)."
- 20) OJK, "Statistics of Financing Institutions", Jakarta: OJK, 2021
- 21) Posma Sariguna Johnson Kennedy, "Macroeconomics Module", Indonesian Christian University, 2018
- 22) Purrwantar, Putu Ratih. "Responsibility of Directors Based on Fiduciary Duties Principle in Limited Liability Company", *Kertha Semaya*, Vol.2 No.4, 2014
- 23) Romadhon, Hanifah., & Arief Suryono. "Hospital Civil Liability in the Event of Refusal of Poor Patients in Emergencies". *Private Law*. Vol. VI, No 2 July - December 2018
- 24) Sai, Silvi Triadita. "Review of the Legal Relationship of Motor Vehicle Leasing Agreements", *Privat Law* Volume 9 Number 1 (January-June 2021)
- 25) Scott, W. R., & O'Brien, P. C. "Financial accounting theory". Vol. 3. *Prentice hall Toronto*. 2003.
- 26) Shidarta. 2000. *Indonesian Consumer Protection Law*, Jakarta, Grasindo, 2000, p. 120
- 27) Soemardi. 2010. *General Theory of Law and State: Fundamentals of Normative Legal Science as Descriptive-Empirical Legal Science*. Bandung: Bee Media Indonesia
- 28) Soerjono Soekanto, 1986, *Introduction to Huku m Research*, Jakarta, UI Press
- 29) Sumadi, "Measuring *Leasing* Transactions in Review of Sharia Economic Law", *Scientific Journal of Islamic Economics*, Vol.4 No.2, 2018
- 30) Suryodiningrat, *Law of Treaties*, Bintang Terang, Yogyakarta. 1982
- 31) Sutan Remy Sjahdeini, 2006. *Corporate Criminal Liability*, Jakarta: Graffiti Press.
- 32) T. Widiyono, *Credit Collateral in Financial Engineering*. Bogor: Ghalia Indonesia. 2009
- 33) Zakki, Muhammad Izuddin "Leasing Transactions in Indonesia in the Perspective of Islamic Law", *Epistémé*, Vol. 8, No. 1, 2013]Achmad Anwari, *Leasing in Indonesia*, Jakarta: Ghalia Indonesia, 1988, pp 9-10