The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

JURIDICAL REVIEW OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LEASING AGREEMENT

DANI KUSTONI [1], BUDI SANTOSO [2] and SITI MALIKHATUN [3]

[1] Doctoral Program in Law, Faculty of Law, Diponegoro University, Jl. Prof. Soedarto, SH., Tembalang, Semarang. Email: danikustoni@studnets.undip.ac.id.
[2, 3] Lecturer in Law, Faculty of Law, Diponegoro University, Jl. Prof. Soedarto, SH., Tembalang, Semarang.

Abstract

The purpose of this study is to analyze: 1) What is the process of Leasing Agreement? 2) What is the juridical review of the rights and obligations of the parties to the Leasing agreement?. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The process of Leasing agreement includes two stages, including: a. Pre-contractual stage (before the occurrence of the agreement) includes: Negotiation (bargaining), Confirmation (notification), Feasibility evaluation, Decision; b. Contractual Stage (occurrence of agreement), At this stage is a series of activities for signing an agreement by the prospective lessee with the lessor. The signing of the agreement is a sign that the prospective lessee has agreed on the content of the standard agreement that has been made by the lessor. At this stage, both parties have agreed to exercise their respective rights and obligations in accordance with the content of the agreement. 2) Article 1338 paragraph (1) of the Indonesian Civil Code regarding agreements applies as law to the parties, meaning that the agreement has binding and coercive force and provides legal certainty for the parties who make it. So that the parties must obey the agreement the same as obeying the law or in other words the parties must carry out the rights and obligations contained in the agreement properly.

Keywords: Review, Juridic, Rights, Obligations, Parties, Leasing Agreement.

INTRODUCTION

Background

The term Leasing has a diverse and varied meaning, but in general leasing means equipment *funding*, which is the financing of equipment / capital goods to be used in the production process of a company either directly or indirectly. Leasing also means corporate financing in the form of providing capital goods with periodic payments by companies that use such capital goods, and can purchase or extend the term based on residual value. A leasing agreement is [1] not only limited to a contract or lease agreement whose object is capital goods, and the lessee has option rights at prices based on residual value, but is more complex, because in leasing there can be purchase rights, and this is very close to the sale and purchase transaction of installment assets and can also be like an ordinary lease.[2]

In Indonesia itself leasing first appeared in 1947 and after the issuance of a Joint Decree (SKB) between the Minister of Finance, Minister of Industry, and Trade Number: Kep. 122/MK/IV/2/1974, Number: 32/M/SK/2/74 and Number: 30/Kpb/1/74 dated February 7, 1974 concerning Leasing Business Licensing in Indonesia, this leasing was officially able to operate. In subsequent developments, regulations on leasing then underwent several changes, especially the regulation of the Minister of Finance until finally in 2009 it has not changed anymore.[3]

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

The definition of leasing according to the Decree of the Minister of Finance of the Republic of Indonesia Number 1169 / KMK. 01/ 1991 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") for periodically".

As an agreement, leasing has a basic legal basis, namely the principle of freedom of contract.[4] As contained in Article 1338 of the Civil Code, which states:

"All agreements made lawfully are valid as Law for those who make them. An agreement is irrevocable other than by agreement of both parties, or for reasons which the Act declares sufficient for it. An agreement must be executed in good faith".[5]

The emergence of this leasing institution provides many benefits, including the availability of funds that can be an attractive alternative for entrepreneurs because some entrepreneurs have difficulty getting capital. 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.[6]

Leasing as a financing institution in its work system will connect the interests of five different parties, namely: Lessor is the leasing party itself as the owner of capital, Lessee is a customer, Vendor or Leveransir or called Supplier as a third party, Bank and Insurance. 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.[7] The relationship between the lessor and the *lessee* is a reciprocal relationship, concerning the implementation of obligations and the transfer of a right or claim of obligation from the enjoyment of using financing facilities, for that between the lessor and lesseedi make a financial lease agreement leasing contract, where the agreement contained and agreed must be in the form of a written agreement, there is no specific provision whether it must be in the form of an authentic deed or a deed below hand.[8]

Leasing activities are carried out in the form of procurement of capital goods for lessees either with or without option rights, namely to purchase these goods. Therefore, leasing is divided into two forms, namely Finance lease and Operating lease. Leasing in Finance lease is leasing in which the tenant of Guna Usaha has option rights at the end of the lease period, namely the right to own the leasing object at the end of the lease period by paying a sum of money in accordance with the agreement, while Leasing in the form of Operating leasee is Leasing without option rights after the lease period is over, the leasing object must be returned to the Lessor.[9]

Problem Statement

1. What is the process of a Leasing Agreement?
2. How is the juridical review of the rights and obligations of the parties to the Leasing agreement?

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

Theoretical Framework

The Grand Theory or the main theory that forms the basis of the analysis knife in this study is the Theory of Treaty Law. In the Law of Treaties contains a number of legal principles, namely:

a. The Principle of Consensualime

The principle of consensualism can be summed up in article 1338 paragraph 1 BW which states that, "all agreements made validly line that by the author apply as law to those who make them."

b. Binding force principle

This principle of binding force is the principle that states that the agreement is only binding on the Parties binding to the agreement and is only binding inward.

c. The principle of good faith (*geode trouw*)

The principle of good faith is contained in Article 1338 paragraph (3) of the Civil Code which reads: "The agreement must be executed in good faith." The principle of good faith in the subjective sense as one's honesty is what lies with a person at the time of the legal act.

d. The principle of legal certainty

The principle of legal certainty or also called the principle of pacta sunt servanda is a principle related to the consequences of the agreement.

e. The Principle of Freedom of Contract

The principle of freedom of contract is a principle that occupies a central position in contract law, although this principle is not written into legal rules but has a very strong influence on the contractual relationship of the parties. [10]

Then, *Middle* Theory in this study uses the Hierarchy Theory of Legislation. Hans Kelsen in the "General Theori of Law and State" translation of the general theory of law and [11] state elaborated by Jimly Assihiddiqie[12] under the title Hans Kelsen's theory of law among others that Legal analysis, which reveals the dynamic character of the system of norms and the functions of basic norms, also reveals a further peculiarity of law: law governs its own formation because one legal norm determines the way to create another legal norm, and also to some degree, determine the content of the other norms. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm is the basis for the validity of the first legal norm.

According to Hans Kelsen, norms are tiered in layers in a hierarchical order. In this sense, the legal norms below apply and originate, and are based on higher norms, and higher norms also originate and are based on higher norms and so on until they stop at a highest norm called the Basic Norm (*Grundnorm*) and still according to Hans Kelsen is included in a dynamic norm system. Therefore, law is always formed and abolished by its authorities who are authorized to form it, based on higher norms, so that lower norms (*Inferior*) can be formed based on higher norms (*superior*), in the end the law becomes tiered and multi-layered forming a hierarchy.[13]

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

Then, *Applied Theory* in this study uses Legal Protection Theory and Legal Certainty theory. Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. In other words, legal protection as an illustration of the function of law, namely the concept where law can provide justice, order, certainty, expediency and peace. Legal protection is an effort to protect a person's interests by allocating a human right power to him to act in the framework of his interests.[14] while certainty is an inseparable feature of the law, especially for written legal norms. Laws without certainty value will lose meaning because they can no longer be used as a code of conduct for everyone. Certainty itself is referred to as one of the goals of the law. The order of society is closely related to certainty in law, because order is at the core of certainty itself. According to Sudikno Mertokusumo, [15]legal certainty is a guarantee that the law is carried out, that those entitled according to the law can obtain their rights and that decisions can be implemented.

RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The normative juridical approach is to understand the problem using the approach of legal regulations or applicable laws and regulations.[16] The normative legal research method is also called positive law science referred to here is a law that applies at a certain time and place, namely a written rule and norm that is officially formed and promulgated by the ruler, in addition to written laws that regulate the behavior of community members.[17]

In this study, a statutory approach and a comparative approach were used.[18] Legal research conducted by examining library materials or secondary data.[19] Statute approach: an approach taken by examining laws and regulations related to the focus of research.

Then the conceptual *approach is* an approach that departs from the views and doctrines that develop in legal science. A concept is a mental integration of two or more units isolated according to characteristics and united by a distinctive definition.[20]

RESEARCH RESULTS

The Process of Occurrence of Leasing Agreements

In Indonesia, the presence of the multi-finance industry, especially leasing, has only been known since 1974. Its birth was based on the Decree of the Minister of Finance, Industry and Minister of Trade No. 122/MK/IV/2/74, No. 32/M/SK/2/74, No. 30/ Kpb/I/74 concerning leasing business licensing. A year after the issuance of the decree, PT. Construction of the National Commercial Fleet. Then through Presidential Decree No. 61/1988, which was followed up with a decree. Minister of Finance No. 1251/KMK.013/1998, the government opened up again for the financing business so that leasing companies increased in number marked by an increase in transaction volume. In addition, the presence of foreign companies in the form of joint ventures with national companies or with individual investors has increasingly popularized leasing business activities as a source of financing in addition to conventional financing methods commonly known through banking.[21]

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

The authority to grant leasing business was issued by the Minister of Finance based on Decree Number 649 / MK / IV / 5/1974 dated May 6, 1974 which regulates the provisions of licensing procedures and leasing business activities in Indonesia. The next development was the issuance of the Deregulation Policy of December 20, 1988 (Pakdes) which regulates leasing business, revising the previous provisions. Then in Presidential Decree No. 61 of 1988 and Decree of the Minister of Finance number 1251 / KMK.013 / 1988 dated December 20, 1988.The latest basis is the Decree of the Minister of Finance No. 1169 / KMK.01 / 1991 concerning Leasing Activities.[22]

The process of Leasing agreement includes two stages, including:

a. Pre-contractual stage (before the occurrence of the agreement)

This stage consists of several series of activities which include:

1. Negotiation (bargaining), is the first step that occurs between prospective lessees and suppliers, where between the two there is a process of mutual bargaining regarding the determination and quotation of prices and lease objects;
2. Confirmation (notification), is a further step after the lessee and supplier agree on the leasing object goods and their prices, then the prospective lessee submits an application to the lessor to obtain a lease financing facility. At this stage the prospective lessee is required to fill out the application form provided by the lessor;
3. Eligibility evaluation, examination stage of application form, completeness of requirements, direct observation of the business of the prospective lessee;
4. Decision, is the stage where the lessor assesses whether the lease facility can be given or not to the prospective lessee.

b. Contractual Stage (occurrence of agreement)

At this stage, it is a series of activities to sign an agreement by the prospective lessee with the lessor. The signing of the agreement is a sign that the prospective lessee has agreed on the content of the standard agreement that has been made by the lessor. At this stage, both parties have agreed to exercise their respective rights and obligations in accordance with the content of the agreement.[23]

In reality, leasing is a contract to rent something within a certain period of time. There are two global categories of leasing activities, as described in Kepmenkeu No. 1169/KMK.01/1991, namely *operating lease* and *financial lease*. *Operating* lease is a process of renting an item to get only the benefits of the goods it rents, there is no transfer of ownership (*transfer of title*) assets, both at the beginning and at the end of the lease period. This first type of lease is equivalent to the concept of ijarah in sharia. The *financial leasse* is a form of rental where at the end of the rental period the tenant is given the option to buy or not buy the leased goods. However, in practice (especially in Indonesia) there is no option right because it has been "locked" at the beginning of the period. So that the type of contract becomes double, namely if in the end of the lease the tenant cannot pay off the rent, the item still belongs to the lessee

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

(leasing company). The contract is considered a lease contract. Meanwhile, if at the end of the lease, the tenant can pay off the installments, then the item becomes the property of the tenant. In essence, in *financial lease* there are two contract processes at once: rent and purchase. And this is why this form of leasing is referred to as lease-purchase.[24]

Viewed from the lessor, Leasing contracts can be qualified into capital leases and operating leases. Lease capital is a lease contract that gives the tenant the right to use the benefits of the leased asset materially covering a larger share of the overall benefit of the asset, or the tenant has a great opportunity to own the leased asset so as to result in the tenant being able to recognize the existence of the lease asset. The operating lease is a lease contract that gives the tenant the right to use assets within a certain period that does not include greater benefits of the assets concerned so that the tenant cannot recognize the existence of lease assets. Capital lease contracts occur if they meet certain conditions, namely: (1) Lease contracts result in the transfer of asset property rights; (2) The lease contract contains the right to purchase assets; (3) The lease period is equal to 75% or more of the estimated economic life of the leased asset and the beginning of the lease period does not fall when the remaining life of the asset is 25%; and (4) The present value of the minimum lease payment is equal to 90% or more of the fair market price of the asset.[25]

Judging from the technical implementation, leasing transactions can be carried out in two ways, namely direct leasing and sale and lease back. In *a direct* leasing type transaction, the lessee has never owned the capital goods / assets that are the subject of leasing so at his request the leasing company buys the goods. The main purpose of business tenants in this type is to obtain financing through leasing to obtain capital goods that can be used in the production process. As for the sale and lease back transaction, the lessee first sells the capital goods/assets he already owns to the leasing company and on the same capital goods, then a leasing contract is carried out between the lessee and the leasing company (lessor).[26] The underlying motive for this form of transaction lies in the need for working capital. The types of sale and lease back transactions can be divided into two, namely *technical sales and lease back,* and true sales and lease back.[27]

Juridical Review of the Rights and Obligations of the Parties to the Leasing Agreement

In principle, in the leasing financing system, there are parties, namely:

1. Lessor, which is a party that provides financing by leasing to those who need it. In this case, the Lessor can be a finance company that is "*multi finance*" but can also be a company that specializes in leasing.
2. This Lessee is a party that requires capital goods, which are financed by the Lessor and allocated to the Lessee.
3. Supplier is a party that provides capital goods that are objects.[28]

Article 1338 paragraph (1) of the Indonesian Civil Code regarding agreements applies as law to the parties, meaning that the agreement has binding and coercive force and provides legal certainty for the parties who make it. So that the parties must obey the agreement the same as

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

obeying the law or in other words the parties must carry out the rights and obligations contained in the agreement properly.

1. Rights and Obligations of Lessee

Rights of the Lessee party in the lease agreement:

a. Obtain lease financing facilities from the lessor to finance the purchase of goods that are the object of the lease agreement. For these goods, the ownership juridically (legal owner) is still held by the lessor while the lessee only controls physically (economic owner). The lessee may acquire title to the property after paying off all lease payments and exercising its option rights.

b. Receive the goods that are the object of the agreement from the supplier on time in accordance with the time stated in the purchase order.

c. At the end of the contract term, the lessee may exercise his option rights.

Lessee's obligations in the lease agreement:

a. Pay monthly installments of rent and at a predetermined amount and at a predetermined time;

b. Insure the object of the lease, either the lessee appoints his own insurance company or submits to the lessor;

c. Pay the residual value at the time of exercising the option right to purchase the leased object;

d. Organizing books that have been audited by public accountants and submitted to lessors.

2. Rights and Obligations of the Lessor

Rights for the Lessor in the lease agreement:

a. Receive monthly rent payments with a predetermined amount and time;

b. Hold evidence of ownership of leasing objects;

c. Order the lessee to pay all installments, demand the return of the goods object of the agreement from the lessee, terminate the agreement unilaterally, if certain events occur, for example due to negligence on the decline in the price of goods, bankruptcy of the lessee's business, the lessee is involved in civil or criminal cases, the goods are abandoned by the lessee so that the goods are lost or severely damaged.

Obligations for the lessor in the lease agreement:

a. Provide financing to the lessee, namely by providing funds in the event of purchasing goods that are the object of the agreement.

b. Deliver goods on time by contacting the supplier concerned in advance.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

c. Submit proof of transfer of ownership of the object of the agreement after the lessee exercises his option right to purchase.

3. Rights and Obligations of Suppliers

a. Receive complete payment from the Lessor for purchased capital goods.

b. Capital products are delivered directly.

c. The supplier is entitled to receive full payment from the lessor for the direct purchase of capital goods required by the lessee in the leasing transaction. In an operating lease, the lessee must supply capital goods directly to the lessor, whereas in a financing lease, the lessee must deliver the product directly to the lessee in good health. In the leasing agreement, an agreement can be reached between the lessee and the lessor in terms of setting the amount and amount of installments in accordance with the lessee's ability.[29]

4. Responsibilities of the Parties

The lessee's responsibilities include:

a. For the use of goods, the lessee must be responsible for the goods that are the object of the agreement and use the goods properly;

b. Maintenance of goods, the lessee has the responsibility to comply with any recommendations from suppliers regarding the storage and maintenance of goods;

c. If the lessee knows there is a visible or hidden defect in the goods object of the agreement and he does not immediately report (7 days after delivery of the goods) to the supplier then the lessee remains responsible for fulfilling his obligations as a party to the agreement;

d. Lessee is solely responsible for the risk, loss, damage or destruction of the goods due to any cause except force majeure.

The responsibilities of the lessor, include:

a. Fully responsible for the payment of the purchase of goods object of agreement to the supplier after receipt of the letter of acceptance of the goods and the order to pay;

b. The lessor is also responsible for ensuring that the supplier delivers the goods on time as stated in the purchase order.[30]

The relationship between the *Lessor and the Lessee* is a reciprocal relationship, involving the implementation of obligations and the transfer of a right or demand for obligations from the enjoyment of using financing facilities, for that between *the Lessor* and the 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

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

right for the *Lessor*, in the event of default by the *Lessee* to sell or confiscate the lease object.[31]

In the leasing agreement, there are voting rights, namely *Operating Leasee* and *Financial Lease. Operating Leasee* is a leasing in which there is no option to buy leasing objects or objects to the Lessee but simply rent and at the end of the contract period the Lessee *can extend the lease or not and the leasing object at the end of the contract period returns to* the Lessor, *as the owner and* the Lessee *is only the lessee*. While *Financial Leasee* is an option to buy or lease back the leasing object to *the Lessee to remain, only* the Lessee wants to buy or continue to lease. This is regulated in the Decree of the Minister of Finance Number 1169 / KMK.01 / 1991 concerning Leasing Activities in Article 1 letter a, stating that:

"a financing activity in the form of providing capital goods either by lease with option rights, financial lease or lease without option rights (operating lease) to be used by the Lessee for a certain period of time based on periodic financing".[32]

In leasing after and disbursed and given by *the lessor, since then* the position of the lessor becomes crucial, so in practice various guarantees are also needed that make the position of the *lessor* truly guaranteed. These guarantees include: Main Guarantee, this guarantee in leasing transactions is the confidence of the *lessor* that the *lessee* will and is able to pay back the installments as appropriate. Then the Principal Guarantee, this guarantee is in the form of capital goods purchased from the leasing transaction itself. Then Additional Guarantees, can be in the form of both material guarantees, mortgages (if it is for leasing of fixed objects), and individual guarantees.[33]

As with the agreement in general, in the leasing agreement if the lessee (*debtor) defaults, the lessor as a creditor can sue the lessee: fulfillment of performance only, fulfillment of performance accompanied by compensation (Article 1267 of the Civil Code), sue and ask for compensation (only possible losses due to delay (HR November 1, 1918)), cancellation of the agreement, cancellation accompanied by compensation.*[34] In addition, *the lessor* also has the right to settle all installments and costs that have not been paid off by the lessee and has the right to *take back the leasing object that is in the lessee's control* [35] without having to return the excess price[36]. To avoid difficulties in terms of taking back the leasing object concerned, the leasing agreement can include a clause that can facilitate the lessor in the implementation of its rights to the leasing object.[37]

The lessee*'s responsibility* to the lessor for the object of the leasing agreement in the practice of leasing agreements is generally influenced and determined by the type of financing in the agreement. The types of financing that are usually used in the practice of leasing agreements are the types of *financial lease* and *operating lease*. In the type *of financial lease, the regulation regarding responsibility for the object of the lease agreement is entirely borne by the* lessee, *including all risks arising from the use of the object, while in the* operating lease, *the arrangement regarding responsibility for the object of the lease agreement is entirely borne by the* lessor , including any risks arising from the use of the object.[38]

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

In the event of a default by the lessee that causes losses to the lessor, the Civil Code vide Article 1239 specifies that in one party defaulting, the other party can claim compensation in the form of costs, losses and interest.[39] In addition, the obligations arising to the lessee for the default can be in the form of:

1. Indemnify.
2. Objects that are made the object of the engagement from the time they are not fulfilled obligations are the responsibility of the *lessee.*
3. If the engagement arises from a reciprocal agreement, the l*essor* party may request cancellation (termination) of the agreement.[40]

In addition, leasing agreements in their implementation in addition to binding the parties to the agreement are also binding on heirs who acquire rights and third parties, as stipulated in Articles 1315-1318 and Article 1340 of the Civil Code. So that if the lessee dies, the *leasing* agreement will remain valid and all obligations *of the lessee* including its obligations arising from the default must be borne by his heirs.[41]

In the event that the *lessee* commits one of the forms of default, then in the implementation of the law the Law requires the creditor (*lessor*) to give a negligent statement to the debtor (lessee). This can be read in article 1238 of the Civil Code which reads as follows:

"The debtor is negligent, if he by warrant or a deed of the kind has been declared negligent, or by his own engagement, if this provides, that the debtor shall be deemed negligent by the lapse of the time specified".

However, in accordance with article 1238 of the Civil Code, the obligation to give a negligent statement or warning can be waived by specifying in the agreement, that a default committed by the *lessee* is sufficiently evidenced by the lapse of the time of payment of rent installments, or from the time of the execution of acts prohibited by the agreement, without the need for a written statement or reprimand from the party *lessor*. And also please note that article 1238 of the Civil Code is *regulating (regelent recht*) and is not obligatoir (coercive).

As explained above, that as a result of a default on the part of the lessee, the *lessor* has the right to take back the lease object that is within the lessee's power. If the retrieval of these items is not hampered by the *lessee*, then nothing will arise. However, problems will arise when the *lessee* without rights prevents or hinders the return of the lessor's property .

To avoid such difficulties, it is better if the leasing agreement includes a clause stating that in the event of default by the lessee, the *lessee* gives irrevocable approval / permission to the lessor to enter the yard or place where the leased goods are located, and take back the goods that are the object *of* the *leased* That, with or without the help of the police. The retrieval of the lease object is called the termination or cancellation of the unilateral leasing agreement by the lessor. As it is known that the leasing agreement cannot be decided unilaterally, but in the event of default charged to the lessee, it gives rise to the right for the lessor to terminate the leasing agreement concerned. And according to article 1266 of the Civil Code, it is determined that even if a void condition has been included in a reciprocal agreement, and one of the parties

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

does not fulfill its obligations, but the termination of a unilateral mutual agreement must be carried out by a judge's decision. However, because the provisions of article 1266 of the Civil Code are only regulating, it can be set aside by the parties. Therefore, in a leasing agreement, a clause should be included that overrides the enactment of article 1266 of the Civil Code. [42]

CONCLUSION

The results showed that;

a. The process of the Leasing agreement includes two stages, including: a. Pre-contractual stage (before the occurrence of the agreement) includes: Negotiation (bargaining), Confirmation (notification), Feasibility evaluation, Decision; b. Contractual Stage (occurrence of agreement), At this stage is a series of activities for signing an agreement by the prospective lessee with the lessor. The signing of the agreement is a sign that the prospective lessee has agreed on the content of the standard agreement that has been made by the lessor. At this stage, both parties have agreed to exercise their respective rights and obligations in accordance with the content of the agreement.

b. Article 1338 paragraph (1) of the Indonesian Civil Code regarding agreements applies as law to the parties, meaning that the agreement has binding and coercive force and provides legal certainty for the parties who make it. So that the parties must obey the agreement the same as obeying the law or in other words the parties must carry out the rights and obligations contained in the agreement properly.

Footnote

1) Ainun Naim. 1992. Financial Accounting 2. Yogyakarta: BPFE. p. 150

2) Agus Waluyo Nur, "Leasing Financing System in Islamic Banking", La Riba: Journal of Islamic Economics Vol. I, No. 2, December 2007, p. 172.

3) Dhanisiwara K Harjono, Understanding Business Law, (Jakarta: PT Raja Grafindo Persada, 2006), p. 3

4) Ibid., p.6

5) R.. Subekti, Civil Code, Jakarta: PT. Pradnya Paramita, 1999, p 342

6) Eddy P. Soekadi, Leasing Mechanism, (Jakarta: Ghalia Indonesia, 1987), p. 20

7) Muhammad Izuddin Zaki, "Leasing Transactions in Indonesia in the Perspective of Islamic Law", Episteme Volume 8 Number 1 (June 2013), p. 184

8) J. Satrio, Law of Guarantees, Property Rights, Bandung: Citra Aditya Bakti, 1991, p. 319.

9) Khotibul Umam, Law of Financing Institutions, Publisher Pustaka Yustisia, Yogyakarta, 2010, p. 11

10) Mega Bintang Pamungkas, "Legal Principles of Agreement in Bank Bri Credit Agreement in Hermeneutic Studies," economics and business; UNMUH Jember 2, no. 1 (2018): 44–54.

11) Hans Kelsen, General Theory of Law and State The original title (Theory of Law and State) was translated by Muttakin Apostle, Bandung: Nusamedia, 2010), p. 179.

12) Aziz Syamsuddin, Process and Technique of Lawmaking, First Print, Jakarta: Sinar Grafika, 2011, p. 14.

13) Satjipto Rahardjo, Legal Studies, Bandung: Citra Aditya Bakti, 2000, p. 121.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

14) Sudikno Mertokusumo, Know the Law of a Challenger, Yogyakarta: Liberty Press, 2007, p 150.
15) Abdulkadir Muhammad, Law and Legal Research, Bandung: Citra Aditya Bakti, 2004, p. 134.
16) Johan Nasution, Legal Research Methods, Bandung: Mandar Maju, 2008, p. 81.
17) Abdulkadir Muhammad, 2004, Law and Legal Research, Bandung :P T Citra Adiya Bakti:, p. 113.
18) Soerjono, Soekanto &; Sri Mamudji, Normative Legal Research: A Brief Review, Jakarta: PT Raja Grafindo Persada, 2009, pp 13-14.
19) Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana Prenada Media Group, 2008, p. 95.
20) Dahlan Siamat, Financial Institution Management (Jakarta: Intermedia, 1995), p. 142.
21) Sumadi, "Measuring Leasing Transactions in Review of Sharia Economic Law", Scientific Journal of Islamic Economics, 4(02), 2018, p. 127.
22) Eukadi, Eddy. P. 1990. Leasing mechanism. Second printing. Ghalia Indonesia, Jakarta.
23) Budy Bhudiman, "Legal Protection For Creditors In Leasing Agreements At Pt. Era Cepat Transportindo", Yustisi Vol. 3 No. 2 September 2016, p. 6.
24) Tajuddin Noor et al, "Legal Aspects of Leasing Financing Agreements", Journal of Law and Society Al-Hikmah Vol. 2 No. 3, September 2021, p. 502.
25) Febby Ayu Syahputri Gurning et al, "Risk Management Analysis of Leasing Users in Indonesia", El-Mal: Journal of Islamic Economic & Business Studies, Volume 3, Number 3, 2022, p. 444.
26) Aprilianti, "Lease Agreement between Lessee and Lessor", Fiat Justisia Journal of Legal Sciences Volume 5 No.3, September-December 2011, p. 320.
27) Sunaryo, Financing Institution Law (I), Jakarta: Sinar Grafika, 2008, p. 43.
28) Fransiska, "Leasing Agreement", Law, Development & Justice Review 4 (2), p. 171.
29) Salim, Contract Law Theory and Techniques of Contract Drafting, Cet. VII, Jakarta: Sinar Grafika, 2010, p. 99.
30) Amin Widjaja Tunggal oidan Arif Djohan Tunggal, , Juridical Aspects in Leasing, Cet. I, Jakarta: PT Rineka Cipta, 1994, p 99
31) RUSDI, "Legal Review Of Motor Vehicle Leasing Agreements In Finance Companies", Journal of Legal Science Legal Opinion Issue 5, Volume 3, Year 2015, p. 5.
32) Aprilia Try Savika, "Risk Management Evaluation for Leasing Users in Indonesia", AKUNTANSI '45 Vol 4 No. 1 May 2023, p. 111.
33) Moris Pantow, "Analysis Of Leasing Agreements According To The Civil Code", Lex Privatum Vol. IX/No. 3/Apr/2021, p. 108.
34) Agus Riyanto, Indonesian Business Law, (Batam, Riau Island: CV Batam Publisher, 2018) p. 62
35) Salim II, op.cit, p. 99.
36) Marco I. Ratumbanua, "Dispute Resolution of Leasing Agreements in the Event of Default (Default)", Lex Privatum volume 5 number 1 (February 2017), p. 157
37) Kavin Ludgerus Dimpudus, et.al, "Default in Financial Lease Agreements and Their Legal Implementation1", Lex Privatum Vol. IX/No. 12/Nov/2021, pp. 232-233.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

Bibliography

1) Abdulkadir Muhammad, *Law and Legal Research,* Bandung: Citra Aditya Bakti, 2004,
2) Agus Riyanto, Indonesian Business Law, (Batam, Riau Island: CV Batam Publisher, 2018)
3) Agus Waluyo Nur, "Leasing Financing System in Sharia Banking", La Riba: Journal of Islamic Economics Vol. I, No. 2, December 2007
4) Ainun Naim. 1992. Financial Accounting 2. Yogyakarta: BPFE.
5) Amin Widjaja Tunggal oidan Arif Djohan Tunggal, , Juridical Aspects in Leasing, Cet. I, Jakarta: PT Rineka Cipta, 1994
6) Aprilia Try Savika, "Risk Management Evaluation for Leasing Users in Indonesia", AKUNTANSI '45 Vol 4 No. 1 May 2023
7) Aprilianti, "Lease Agreement between Lessee and Lessor", Fiat Justisia Journal of Legal Sciences Volume 5 No.3, September-December 2011,
8) Aziz Syamsuddin, *Process and Technique of Lawmaking, First Print*, Jakarta: Sinar Grafika, 2011.
9) Budy Bhudiman, "Legal Protection For Creditors In Leasing Agreements At Pt. Fast Era Transportindo", Yustisi Vol. 3 No. 2 September 2016
10) Dahlan Siamat, Financial Institution Management (Jakarta: Intermedia, 1995)
11) Dhanisiwara K Harjono, Understanding Business Law, (Jakarta: PT Raja Grafindo Persada, 2006)
12) Eddy P. Soekadi, Leasing Mechanism, (Jakarta: Ghalia Indonesia, 1987)
13) Febby Ayu Syahputri Gurning et al, "Risk Management Analysis of Leasing Users in Indonesia", El-Mal: Journal of Islamic Economic & Business Studies, Volume 3 Number 3 2022
14) Fransiska, "Leasing Agreement", Law, Development & Justice Review 4 (2),
15) Hans Kelsen, *General Theory of Law and State The original title (Theory of Law and State) was translated by Muttakin Apostle*, Bandung: Nusamedia, 2010).
16) J. Satrio, Law of Guarantees, *Property Rights*, Bandung: Citra Aditya Bakti, 1991
17) Jimly Asshiddiqie, *Hans Kelsen's Theory of Law*, Jakarta: Press Constitution, 2009).
18) Johan Nasution, *Legal Research Methods,* Bandung: Mandar Maju, 2008
19) Karim, A. (2003) Islamic Banks: Fiqh and Financial Analysis. IIIT Indonesia, Jakarta
20) Kavin Ludgerus Dimpudus, et.al, "Default in Financial Lease Agreement and Its Legal Implementation1", *Lex Privatum* Vol. IX/No. 12/Nov/2021.
21) Ministry of Finance of the Republic of Indonesia. Decree of the Minister of Finance No. 1169/KMK.01/1991 concerning Leasing Activities, Jakarta: 1991.
22) Khotibul Umam, Law of Financing Institutions, Publisher Pustaka Yustisia, Yogyakarta, 2010
23) Marco I. Ratumbanua, "Dispute Resolution of Leasing Agreements in the Event of Default (Default)", Lex Privatum volume 5 number 1 (February 2017)
24) Mega Bintang Pamungkas, "Legal Principles of Agreement in Bank Bri Credit Agreement in Hermeneutic Studies," *economics and business; UNMUH Jember* 2, no. 1 (2018): 44–54.
25) Moris Pantow, "Analysis Of Leasing Agreements According To The Civil Code", Lex Privatum Vol. IX/No. 3/Apr/2021

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10369211

26) Muhammad Izuddin Zaki, "Leasing Transactions in Indonesia in the Perspective of Islamic Law", Episteme Volume 8 Number 1 (June 2013)

27) Peter Mahmud Marzuki, *Legal Research,* Jakarta: Kencana Prenada Media Group, 2008,

28) R.. Subekti, *Civil Code*, Jakarta: PT. Pradnya Paramita, 1999,

29) Rachmat, Budi, Multi Finance: Leasing, Factoring and Consumer Financing, Jakarta: Novindo Pustaka Mandiri, 2002

30) RUSDI, "Legal Review Of Motor Vehicle Leasing Agreements In Finance Companies", Journal of Legal Science Legal Opinion Edition 5, Volume 3, Year 2015

31) Salim, Contract Law Theory and Techniques of Contract Drafting, Cet. VII, Jakarta: Sinar Grafika, 2010

32) Satjipto Rahardjo, *Legal Studies*, Bandung: Citra Aditya Bakti, 2000.

33) Soerjono Soekanto & Sri Mamudji, *Normative Legal Research A Brief Review,* Jakarta: PT Raja Grafindo Persada, 2009

34) Sudikno Mertokusumo, *Know the Law of a Challenger*, Yogyakarta: Liberty Press, 2007.

35) Sumadi, "Measuring Leasing Transactions in Review of Sharia Economic Law", Scientific Journal of Islamic Economics, 4(02), 2018

36) Sunaryo, *Financing Institution Law (I),* Jakarta: Sinar Grafika, 2008

37) Tajuddin Noor et al, "Legal Aspects of Leasing Financing Agreements", Journal of Law and Society Al-Hikmah Vol. 2 No. 3, September 2021