

LEASING: LEGAL CONSTRUCTION AND ROLE AS A CORPORATE FINANCING INSTITUTION

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Abstract

The purpose of this study is to analyze: 1) How is the Legal Construction of Leasing Transactions? 2) What is the role of leasing as a corporate financing institution? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) 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. Then the legal basis for 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; 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. 2) The existence of Leasing is very strategic for economic actors, especially those engaged in industry. Because, in an effort to answer the challenges of the business world that demands fast-paced handling, especially for the procurement of capital goods in the form of heavy machinery, it is necessary to have and experienced handling in the field of handling capital goods. The existence of Leasing companies is very helpful for entrepreneurs who face capital procurement problems.

Keywords: Leasing, Leasing, Legal Construction, Role, Institution, Financing, Company.

INTRODUCTION

Background

Given the increasing need for funds for the community, forms of funders other than banking have emerged. The presence of funders other than banks is intended to help business actors and consumers in order to meet their needs. These non-banking funding institutions are more flexible and moderate funding institutions compared to banking institutions, namely in the form of non-bank financial institutions (NBFIs) and financing institutions. Financial institutions classified as non-bank financial institutions (NBFIs) are financing institutions, insurance institutions, pension fund institutions, pawnshops, capital market institutions (*Capital Market*).

There are five types of financing institutions, namely:

- a. A venture capital company is a business entity that conducts financing/capital participation business into a company that receives financing assistance (Investee Company) for a certain period of time in the form of share participation, participation through the purchase of convertible bonds, and/or financing based on the distribution of operating results.
- b. An infrastructure finance company is a business entity established specifically to conduct financing in the form of providing funds for infrastructure projects;
- c. 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;¹

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 only then officially this leasing can 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.²

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.³

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.*⁴

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.⁵

Economic actors who run the business in economic law are referred to as those who run the company. A term that is either the equivalent of trader or trading activity. Running a company means carrying out continuous, overt activities in order to seek profit. Institutions that can carry out these activities can basically be in the form of legal entities, for example Limited Liability Companies (PT) or can also not have the status of legal entities; it can also be a State-Owned Enterprise (BUMN) or a Private-Owned Enterprise (BUMS). To run a company, capital or funds are needed Capital or funds can be sourced from their own strength (internal) or from outside the company (external).⁶

To overcome these problems, forms of funders are sought that are expected to help parties engaged in the business sector and outside the business, both with business and social connotations. The presence of such institutions is directed towards the creation of flexible and modern funding institutions rather than banks, which in certain cases the level of risk is even higher. This is what has come to be known as a financing institution, which in its operations offers new formulation models for providing funds, such as in the form of Leasing, Factoring, and so on. Leasing as one of the finance companies has its own specifications, especially in relation to alternatives for a company.⁷

Based on the description above, the author is interested in conducting research in the context of writing a dissertation entitled; "*Leasing: Legal Construction and Role as a Corporate Financing Institution*".

Problem Statement

1. How is the Legal Construction of Leasing Transactions?
2. What is the role of leasing as a corporate financing institution?

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.⁸

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,⁹

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 Linstedt 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.*¹⁰ 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.¹¹ 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.¹²

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.¹³

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.¹⁴

The approach method used in the preparation of this research is normative juridical research. The normative juridical research method is literature law research¹⁵ carried out by examining library materials or mere secondary data.

RESEARCH RESULTS

Legal Construction of Leasing Transactions

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.¹⁶ 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.¹⁷

The term leasing comes from English, namely from the word "*lease*" which means lease. Basically, leasing is a form of derivative from leasing which then develops in a special form and changes its function into one type of financing. In Indonesian, leasing is often termed leasing.¹⁸ In Article 1 letter a SK. Minister of Finance of the Republic of Indonesia No. 1169 / KMK.01 / 1991 concerning leasing activities stated that the definition of leasing is a financing activity in the form of providing capital goods, both in lease with option use rights (finance lease) and lease without option rights (*operating lease*) to be used by lessee for a certain period of time based on periodic payments.¹⁹

According to Steven H. Gifis in the Law Dictionary, leasing is defined as: *An agreement whereby one party (called the landlord) relinquishes his right to immediate possession of property, while retaining ultimate legal ownership (title). Ordinary when a lease is made we find an agreement by the owners (lessor) to turn over specifically described premises to the exclusive possession of the lessee for a definite of time and for a consideration commonly called rent*".²⁰

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.²¹ Then the legal basis for *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; 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

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.²³ 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.²⁴

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. 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.²⁵

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.²⁶

Then, Decree of the Minister of Finance No. 125/KMK. 013/1988 dated December 20, 1988, the type of leasing activities has been expanded as implied in article 1 of the decree which contains the following definitions: "A *Leasing Company* is a business entity that carries out financing activities in the form of providing capital goods in a Financial Lease or operating lease to be used 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".²⁷

Basically, the implementation of *Leasing* is also based on the Civil Code (KUH Percivil), 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 leasing regulated in the Civil Code. This specificity shows the essential difference between leasing and leasing. Article 1338 of the Indonesian Civil Code is the basic legal basis, because this article stipulates engagement. Every engagement made by the parties shall act as law for the parties making it. This article is a reflection of the principle of "freedom of contract". This principle means that the parties are free to make a contract and regulate the content of the contract themselves, as long as it meets the provisions of the conditions for the validity of the agreement (Article 1320 KUHPPdt), is not prohibited by law, in accordance with applicable custom, carried out in good faith.²⁸

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".³⁹*

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 became known as "*take it or leave it contract*".³⁰

Based on the Decree of the Minister of Finance No1169/KMK.01/1991 Article 9, the contents of the lease agreement, at least contain several things, including:

- a. type of leasing transaction;
- b. Name and address of each party;
- c. Name, type, type and location of use of capital goods;
- d. Lease period;
- e. Options for the lessee in the case of leasing transactions;
- f. The responsibility of the parties for the capital goods that are the object of lease;
- g. Acquisition price, financing value, lease payment, principal installment, leasing service fee, residual value, security deposit and insurance provisions for leased capital goods;
- h. Provisions regarding the termination of expedited lease transactions and the determination of losses to be borne by the lessee in the event that capital goods with option rights are lost, damaged or malfunctioning for any reason.³¹

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*.³²

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*.³³

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 agreement³⁴ 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.³⁵

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*.³⁶

The Role of Leasing as a Corporate Financing Institution

In Indonesia, the regulation on financing institutions is outlined in Presidential Decree Number 61 of 1998 concerning Financing Institutions, which was then followed up by the Decree of the Minister of Finance of the Republic of Indonesia Number 1251 / KMK.013 / 1988 concerning Provisions and Procedures for the Implementation of Financing Institutions.

In the said laws and regulations, it is detailed that the company's activities include:

- a. Leasing
- b. Venture capital
- c. Securities trading
- d. Factoring
- e. Credit Card Business, and
- f. Consumer financing

Of the six types of finance companies, each has its own distinguishing power and characteristics. However, it turns out that there is also an element of similarity in terms of purpose, to provide financial convenience for other companies that need operational capital.³⁷

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.³⁸

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.³⁹ 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.⁴⁰ In conditions like this, the role of *Leasing* is needed as an alternative so that business activities continue to run.

According to the Joint Decree (SKB) of the Minister of Finance, Minister of Industry and Minister of Trade of the Republic of Indonesia No. KEP/122/MK/2/1974, No. 32/M/SK/2/1974, No.30/Kpb/I/1974 dated February 7, 1974 concerning Leasing Business Licensing in article 1, what is meant by Leasing is any company financing 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 (option) for the company to purchase the capital goods concerned or extend the Leasing period based on the agreed residual value.

Since the first birth of Leasing in Indonesia in 1974, many Leasing companies have emerged, but only since 1980 have Leasing companies in Indonesia carried out activities that are quite meaningful in nature presenting capital goods needed by the business world. Until now, thousands of Leasing transactions have been carried out by Leasing companies in Indonesia.⁴¹

Leasing is an alternative financing that can be a complement to bank credits because in general banks tend to provide short-term credit for working capital, while leasing provides alternative spending with a longer period of one year to five years for capital goods. So an entrepreneur can contact the bank for working capital purposes and for the purposes of capital goods can contact the Leasing company.⁴²

Thus, it is clear how the existence of Leasing is very strategic for economic actors, especially those engaged in industry. Because, in an effort to answer the challenges of the business world that demands fast-paced handling, especially for the procurement of capital goods in the form of heavy machinery, it is necessary to have and experienced handling in the field of handling capital goods. The existence of Leasing companies is very helpful for entrepreneurs who face the problem of procurement of capital goods.⁴³

The advantages of using this Leasing institution are as follows:

- a. Flexibility
- b. Relatively cheap fare
- c. Tax savings
- d. Simplified setup
- e. Loose provisions for *Lessee*
- f. Termination of the leasing contract by the Lessee
- g. Easier bookkeeping.⁴⁴

CONCLUSION

The results showed that;

- a. 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. Then the legal basis for *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; 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*.
- b. The existence of Leasing is very strategic for economic actors, especially those engaged in industry. Because, in an effort to answer the challenges of the business world that demands fast-paced handling, especially for the procurement of capital goods in the form of heavy machinery, it is necessary to have and experienced handling in the field of handling capital goods. The existence of Leasing companies is very helpful for entrepreneurs who face capital procurement problems.

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