
Implementation of Leasing Contract in Non-Banking Finance Institutions

Lina Maulidiana¹

Abstract:

The purpose of this article is to analyze the legal relationship of a Leasing Business financing contract of three legitimate parties and bind between supplier, lessor and lessee.

The research methodology is classified as an applied normative-empirical legal research that examines the implementation of positive legal provisions and factual contracts on each lease contract. The type of research is descriptive, which describes the legal events in the form of leasing of business procurement of goods to run the company and analyzed qualitatively.

The results refer to Dipo Star Finance companies in Bandar Lampung, Indonesia, concluded that the details of the rights and obligations of the parties were not balanced. The lessor's obligations are limited by a fairly strict exoneration clause.

The lessee is responsible for default by the settlement of paying capital goods rent along with late penalties, or withdrawal of capital goods by the lessor. Goodwill of the parties is a supporting factor in the lease contract while the inhibiting factor is the failure to run a business.

In order not to burden the lessee, the lessor should be able to set a contract standard containing equal rights and obligations and the parties can enter into a joint agreement in an additional clause that is not separate from the lease contract.

Keywords: *Contracts, Leasing, Non-Bank Financing Institutions*

¹S.H.,M.H., Lecturer at the Faculty of Law University of Sang Bumi Ruwa Jurai, Lampung, linamaulidiana@fh-saburai.ac.id

1. Introduction

Capital needs in the business sector are very important. With the capital, every entrepreneur can develop a business that is headed towards a better direction. To overcome this, the finance company provides the capital goods used by the entrepreneur to run his business by paying the rent for a certain period of time.

Lease activity is a financing activity, the concept of financing institution is reaffirmed in the stipulation of Regulation of the Minister of Finance No. 84/PMK.012/2006 concerning Financing Company, that the finance company is a non-bank Business Entity and Non-Bank Financial Institution specifically established to conduct activities which are included in the business field of the financing institution. Lease contract is one form of agreement that grows in practice because of business needs based on the principle of freedom of contract. The background of the lease is a development of lease agreement among entrepreneurs.

Special forms of lease of capital financing from a leasing company (hereinafter referred to as lessor) leases a company's tool kit (machinery) including services, maintenance and others to the lessee for a period of time. Lease activities may be initiated by the need of the lessee party for capital goods and limited funds (Aprilianti, 2011). As with all leases and other contractual relationships, the entire legal relationship between the leased corporate party, the lessor and the lessee are bound by a lease contract, as defined in Article 8 Paragraph (1) of the Decree of the Minister of Finance No.48/KMK.013/1991 regarding lease: *"Every lease transaction must be bound in a leasing agreement"*.

Until now Leasing Company in Indonesia continues to experience growth, both the number of companies, leased equipment, and users of leases services. Based on data from the Ministry of Trade and Industry of the Republic of Indonesia until 2017 Financing companies include leases of Industrial Number of 198 units with a turnover of 462,317 billion. The advantage of leasing is that the acquisition of a leased asset is easier than foreclosure of collateral from a secured loan, which implies that the lease has a higher debt capacity than a secured loan (Eisfeldt *et al.*, 2009; Permana, 2017).

The increasing growth of leasing companies is encouraged and supported by the large number of service users of this institution, this is due to an increase in user orders of capital goods in the business field of the company. The factors that cause lease business grow so fast because it is a system that fits the direction of today's highly profitable economy in terms of management (Nahrowi, 2013; Baldacchino *et al.*, 2017).

The development of leases in Indonesia is not only limited to business activities but for everyday consumer needs that have nothing to do with business, such as two-wheeled motor vehicles. Of course, the legal institutions for such leases are not in

accordance with the objectives and functions, the nature of the Lease Agreement itself. Based on this background the problem in this study is as follows:

- a. *What are the details of the rights and obligations of the parties in the lease contract?*
 - (1) *Between lessors as buyers and suppliers as sellers?*
 - (2) *Between lessee as tenant and lessor as rent party?*
- b. *How to implement lease financing contracts in non-bank companies?*
- c. *Who is responsible and how the settlement of defaulting?*
- d. *What are the supporting and inhibiting factors in the implementation of lease contracts in non-bank companies?*

The contribution of this study is theoretically for the development of legal science, especially economic law related to the provision of capital goods which is financed through leasing company, practically useful as research material and community service in the form of reading material, legal counseling material, reference material of legal research and donations of thought to legal practitioners and employers.

2. Literature Review

Based on Article 1319 of the Civil Code all agreements, both those that have a special name and those that do not have a special name, are subject to the general rules of lease contracts. The purpose of the provision is that all agreements made by a person, both those that have been specifically regulated in the Civil Code and those that have not been regulated, are subject to the general provisions of the engagement in the Civil Code.

Each legitimate and binding treaty has four conditions; agreeing those who commit themselves, competent to make an engagement, a certain matter and a lawful cause (Article 1320 of the Civil Code). Terms of consent of the will and the ability of the parties are called subjective requirements. If this condition is not fulfilled the agreement can be canceled. Certain terms and halal causes are called objective conditions. If this objective condition is not fulfilled the agreement is voided (Muhammad, 2010).

Before reaching an agreement, it is preceded by negotiation, either orally or through the mass media. A binding agreement if it is fixed, its function determines when the agreement takes effect. With the enactment of the agreement, the agreement means that the lessor and the lessee must have the freedom of will to determine special conditions that must be fulfilled by both parties, including the freedom of the lessee to use option rights at the end of the agreement.

In connection with the agreement, there are four theories which question the times when the agreement occurs, namely:

- 1) the will theory (*wilstheorie*) says that an agreement occurs at the will of the recipient stated;
- 2) the delivery theory (*verzendtheorie*) says that an agreement occurs when the will of the parties is stated to be sent by the party receiving the offer;
- 3) the theory of knowledge (*vernemingstheorie*) says that the party offering should know that the offer is accepted;
- 4) the theory of trust (*vertrouwenstheorie*) said that the agreement occurred when the statement of will was deemed acceptable by the party offering (Badruzaman, 2001).

In general, leasing means equipment funding, namely the financing of capital goods to be used in the production process of a company either directly or indirectly (Nur, 2007). Contracts financed by Leasing Financing Company involve three parties, the legal status of the parties is as follows: between the lessor (buyer) and the supplier (seller), between the lessee (tenant) and the lessor (the party who rent the capital goods) and between the lessor (owner of capital goods) and leasing company. The finance company may also act as a lessor, if it does not involve other parties in the financing.

In the event of default in the lessee's part (the tenant), among others, does not pay the lease of capital goods, or transfer the capital goods that have not paid off to a third party, thus harming the financing company lease, in this case can be pursued a peace effort such as postponement of installment payments. If it still does not work, it can be taken by legal means through Arbitration, in this case the mediator agreed by both parties, or the capital goods are seized through a petition to the court and auctioned in public. The auction results are calculated from the amount of unpaid rent and auction fee. If there is any rest, it is returned to the eligible party.

The form of collateral in the Lease Fund Contract may be in the form of a principal guarantee, and additional security. The main guarantee is the lessor's trust to the lessee that the lessee can be trusted and able to pay the rent. The underlying guarantee is goods purchased with financing funds. Additional collateral is a guarantee that is always in the form of debt recognition and the power of selling goods, as well as the approval of a spouse. In the lessee in the form of legal entity, the guarantee always gets approval from the Board of Commissioners / GSM, in accordance with the provisions of the Articles of Association (Fuady, 2006).

Lease is a mixed agreement, contained elements of sale and purchase agreement, lease and lease rental. In practice it is not easy to determine which laws apply in mixed agreements such as Leases. According to the theory of absorption in the mixed agreement applied the most dominant agreement (Suharmoko, 2004) which is equivalent to the notion that lease is a form of transaction having double legal aspects, which will someday be termed as lease and at certain times will be considered as a form of purchase mortgage (Muhammad, 2013).

Leases are activities that offer services in the form of leasing of capital goods or means of production with medium or long borders, where the lessee shall pay a sum of money on a regular basis consisting of the depreciation of a lease object plus interest, other costs and benefits expected by the lessor (Prakoso, 1990). The broader definition of the of leasing is a trade and financing method by location, by financial institutions specializing in these operations, by financial institutions or directly by manufacturers, to companies that carry out particular operations, or do not have sufficient borrowed or own funds to buy them (Mohajan, 2012). Lease can also be said to be an agreement whereby the lessor provides an asset with usage rights by the lessee in return for lease payments for a certain period of time (Wahyuningsih, 2013).

Thus it can be interpreted that lease contract is an agreement between a finance company (lessor) that is the party who finance capital goods with the lessee being the party that runs the business. At the end of the contract, the lessee has the option right namely the right to purchase the capital goods or extend the lease term based on the mutually agreed upon value. While making the decision about signing a leasing agreement, an entity need to take into account the current legislation in force. It is the regulations that will have impact on the rights and obligations of the parties to the agreement, their tax charges and the requirements to be met by them (Wyslocka and Szczepaniak, 2012).

Lease activities require certain guarantees, so that funds that have been issued by the lessor following certain benefits can be received again. But in practice various possibilities may occur that cause the lessor's position to be unsafe. For example, a lessee transfers lease goods to another person without the knowledge of the lessor, or the lessee does not return the capital goods even in circumstances of default and others.

In particular, the license for the establishment of a Leasing Company must obtain a business license from the Minister of Finance. Grant of such business license upon hearing consideration or recommendation from Bank Indonesia. For Leasing Company that is not a financial institution it is necessary to recommend or consider by the Ministry of Trade. This is regulated in a joint Decree of the Minister of Finance, Minister of Industry and Minister of Trade No. Kep-122/MK/ IV/2/1974, Number 32/M/SK / 2/1974 and Number 30/Kpb/I/74 dated February 7th, 1974.

Legal relationship contracts are always made in writing as legal documents on which legal certainty is based. The contract is based on the principle of freedom of contract, containing the formulation of the will in the form of rights and obligations of the lessor as a finance company and a lessee as a financed company. Lease contracts with the Civil Code have a very close relationship. The Civil Code is a general legal provision, while lease contract is a special provision. Then apply the principle of *Lex Specialis Derogat Lex Generalis* means the law that is specific to rule out general laws. If the lease contract is not regulated in detail, then the provisions of the Civil Code as a general law shall apply.

3. Research Methodology

The research method used in this study is an applied normative-empirical legal research. The type of research is descriptive. We approach the problem with a case study regarding the Lease Contract between a non-Bank financing institution, PT Dipo Star Finance Bandar Lampung Indonesia and a tenant by using secondary and primary data, data collection through literature searches and interviews supported by documents and analyzed qualitatively.

4. Research Results and Discussion

Leasing is a financing contract with three parties, whereby the lessor binds itself as a buyer of capital goods, and a supplier as a seller. Leasing Business Financing Company attaches itself to the lessor to finance the capital goods purchased from the supplier. Finance companies can also act as lessors. Lessees who require capital goods bind themselves as tenants to the lessor as the party who leases capital goods.

Before an agreement is reached, it is preceded by a bargaining act, which functions the determinants because a three-party permanent agreement occurs. Since the permanent agreement of the three parties has been established, the contract for financing the lease is only valid and binding, so it must be carried out by the parties. The form of the implementation of the lease financing contract between three legitimate and binding parties is the supplier (seller) who submits capital goods to the lessor and receives the agreed price from the leasing finance company on behalf of the lessor, or the lessor can also be a finance company. The lessor as the owner of capital goods leases capital goods to the lessee. Then the lessee pays rent and receives capital goods from the lessor. All of these implementation actions are evidenced by legal documents.

4.1 Details of rights and obligations of lessors and suppliers

a. Rights and duties of lessors as buyers:

The legal relationship of the lessor with the supplier, the lessor acts as the buyer and the supplier acts as the seller. Under a lease contract, the supplier's position is merely a provider of goods purchased by a Leasing Company, not a party to a lease contract.

b. Rights and obligations of supplier as seller:

The supplier does not enter into a contract with the Lease Company, as the supplier's position is merely a provider of goods / suppliers. The right of the supplier as a seller is to receive cash payments from the lessor on goods ordered by the lessee and is obligated to deliver capital goods to the lessee. Supplier's obligation is to make a vehicle order letter (SPK) containing the full price of the item and the amount of down payment paid by the lessee to the supplier.

4.2 Details of rights and obligations of the lessee and lessor

Leases are generally multidisciplinary industries related to taxation, finance, accounting and law. Legal aspects of the implementation of leases are realized in transactions based on lease agreements. Before the agreement is reached, it begins with the negotiation through the offering of capital goods through print media aimed at the public regarding the type of capital goods that can be leased. Before the lessor and the lessee enter into an agreement to carry out the contents of the agreement, it is preceded by a lease request from an employer or an individual requiring goods as working capital to the Leasing Company by filling in the form provided completely and correctly, including:

1. A description of the identity of the lessee;
2. Description of goods and their specifications;
3. Duration of time specified by prospective lessee;
4. Cash Security deposit. The amount of cash security deposit is mutually agreed between the lessee and the supplier between 25% and 30% of the price of the goods;
5. Residual value. The amount of residual value is equal to the value of cash security deposit;
6. Insurance. To protect his capital goods the lessor appoints the insurer to file claims in case of an event;
7. Supplier;
8. Administrative fee;
9. Other requirements copy of ID card and others.

When the negotiation of goods with the supplier has been completed, the supplier makes a vehicle order letter (SPK) and sends it to the lease company equipped with general requirements such as the identity of the lessee, savings account and other information required. Furthermore leasing company will conduct a survey to the applicant to see his business.

Information about the lessee is very important for the lessor, as an evaluation of the company's feasibility. Fundamentally, what needs to be assessed is the ability of the lessee to fulfill the lease obligation to the lessor during the lease period, the lessor must be able to assess the condition and potential of the lessee in the future that always contain elements of uncertainty. If the survey results is determined eligible, then the lessee is required to pay the supplier the down payment, after which the supplier asked the lease company to make a warrant for the release of goods so that goods ordered can be given to the lessee. The signing of the lease contract between lessor and lessee is executed after the lessee pays the advance and receives the goods ordered from the supplier. Payments are preceded by a pay order accompanied by supporting documents:

1. Vehicle booking letter from supplier;
2. Receipt of advance payment from supplier;
3. The warrant for the release of goods from the leasing company to supplier;

4. Receipt of goods signed by the lessee;
5. Request for payment of goods from suppliers to rental companies;
6. Business lease contracts that have been signed by the lessor and lessee.

After all the conditions offered by the lessor are accepted by the lessee and the parties agree to enter into legal relationship in the form of a lease contract, the exercise of the rights and obligations shall be carried out immediately.

a. Rights and Duties of Lessee:

Lessee in lease contract has several rights. These rights are included in the contract. Generally in the execution of the contract, the lessee shall be entitled to receive capital goods from the lessor, and shall be entitled to take the proceeds of the capital goods he has leased. In addition to the above rights, the lessee has the option right namely the right to purchase the goods, or the lessee may choose to renew the lease contract with terms agreed upon by the parties. If the lessee chooses the option to purchase the goods, the lessee shall pay the residual value to the lessor. Lessee shall declare its choice to purchase or renew lease contract at least 30 days before the lease term expires, and if within that time the lessee has not made a choice, the lessee shall be deemed to have chosen the option to purchase the goods.

The obligation of the lessee to the lessor must be carried out, especially paying the rent to the lessor at the time and the amount is determined in full contract without deduction in any form. If the lessee uses the option right to purchase the item, the lessee is obliged to pay the remaining value of the goods to the lessor. Deposit guaranteed money is not an advance and installment of lease money. Neither a reserve to repay a lease payment but is a guarantee that during the term of lease shall be deposited by the lessor and terminates after the lessee choosing the option right to purchase the goods. The money of such deposit shall be offset against the residual value of the goods without prejudice to the lessor's right to continue to use the lessee if the guarantee deposit is not sufficient to settle the residual value of the goods and to pay the other's financial obligations to the lessor.

In addition to the obligations with respect to fees to be paid by the lessee, on the order of the lessor who has other obligations with respect to the goods in the form of the installation of brands, plates or other marks indicating that the goods belong to the lessor. Lessees are also obliged to use goods in a good manner, to follow with full responsibility every recommendation from suppliers or manufacturers regarding the use, storage and maintenance of goods, check the condition of goods and keep the goods not seized due to a legal process or controlled by other parties, including pay on time all maintenance costs, repairs and replacement of parts.

The above provisions state that the lessor is only allowed to provide capital goods financing to the lessee who already has a tax ID number, has business activities or independent work in accordance with the Decree of the Minister of Finance No. 1169 / KMK.01 / 1991 concerning Leasing Activities.

To protect the interests of the parties against the risk of loss, damage and theft until the death of a third party caused by the item or its use and other risks, the lessee is obliged to insure the item on behalf of the lessor during the lease period and must submit to the original lessor insurance policy along with changes and extensions of the policy. The agreement contains a clause that the lessor is entitled to receive compensation payments from the insurance company.

b. Lessor's Rights and Obligations:

The lessor as the owner of the capital good has the right to supervise the lease transaction so that it can be known whether the lessee has fulfilled all of its obligations. The failure to carry out the obligation by the lessee will result in the lessee losing his rights and bearing the risk arising from breach of contract. The rights of the lessor mentioned above can be read in a contract stating that from the delivery of goods from the supplier to the lessee until the lessee repays the purchase price to the lessor based on the option to buy under this contract, the item is entirely owned by the lessor even if on the document or in the list of proof of ownership, it is written on behalf of the lessee or on behalf of a third party, while the lessee is a tenant. On its own decision the lessor has the right to transfer or guarantee all or part of his rights with collateral rights.

Provisions on the rights of the lessor to capital goods, confirms that contracts for leasing are different from other financing contracts, for example consumer financing and delivery of goods to the lessee is only the handover of non-ownership power, therefore the delivery of capital goods cannot be done fiduciary.

The lessor shall be entitled to take measures so that the lessee pays all the lease payments and the deposit guarantee, demands the return of the goods or directly collects the goods wherever the goods are situated without a decision or Court Decision and without the Court's Trial or other warning issues as follows:

- a. The negligent lessee does not perform the obligations under the contract;
- b. Stop or threaten the cessation of lessee's business;
- c. Lessee is involved in civil or criminal cases whose case has been terminated or has not been terminated by the court or is still under investigation by the Police executed or exposed to Confiscated Guarantees by the legal apparatus;
- d. Lessee is holding negotiations to settle debts with its creditors or transferring its rights to the benefit of creditors;
- e. The leased item is abandoned by the lessee and is lost, destroyed, destroyed or damaged.

In addition the lessor in a lease contract is also burdened with liability. Contractual obligations include the transfer of power over capital goods to the lessee through suppliers. The lessor will endeavor to make the supplier deliver the goods to the lessee exactly at the time specified in the purchase order issued by the lessor.

4.3 Implementation of lease financing contract

Based on the results of the study, the implementation of the lessee always uses the option to buy capital goods that are a rent contract. This is because in addition to expediting the business the main purpose of the lessee in the lease contract is to increase working capital by owning capital goods.

Other lessee's obligations in the contract are to pay a sum of money as collateral deposit. Conceptually, a guarantee deposit in a leasing contract is a guarantee that during the period the lease will be retained by the lessor and compensated by the remaining value of goods if the lessee chooses the option to buy goods. Based on the results of the research, the implementation of the guarantee is given by the lessee when receiving the goods from the supplier. The amount of the deposit is equal to the value of the remaining goods; Proof of Motorized Vehicle Ownership (BPKB), vehicle invoices and other letters which constitute the validity of the items that are deemed to be in the lessor's authority. This is reasonable considering the status of the goods is the property of the lessor.

The lessee is obliged to insure capital goods on behalf of the lessor, during the lease period to protect the interests of the parties against the risk of loss, damage, loss and so forth. Non-bank financing company as the lessor retains ownership rights over goods that are deemed to be assigned to the lessee even though the goods document is written in the name of the lessee. Based on the results of this research, the implementation of the authority to determine the insurance company is in the lessee and the payment is charged to the lessee. All costs, including the obligation to bear losses and risks that may arise on capital goods indicate that the lessee is positioned as a weak party, because the lessee is very interested in the business capital, the lessee's requirements and obligations determined by the lessee to get the goods capital needed.

If the lessee does not carry out his obligations, while the time limit given is sufficient to fulfill the obligation, then the lessee is considered default and the lessor has the right to confiscate the goods without going through the court in accordance with the contents of the lease contract.

In addition to the rights of the lessor mentioned above, the obligation of the lessor is to hand over the goods to the lessee through the supplier and place a placard or plate on the capital goods leased by the lessee. The lessor does not carry out its obligation to attach placards, plates or other marks that indicate the item is bound in a lease, so that it is difficult to distinguish it from other capital goods financing. This is contrary to the Regulation of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991 concerning Leasing Activities Article 7 which states the obligation of the lessor to attach a plate to capital goods.

Based on the Regulation of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991 concerning leasing activities, Article 6 stipulates that the lessor is only allowed to provide capital goods financing to the lessee who already has a tax ID number, has business activities and or free work.

In its implementation, the items that are the object of the lease are not always in the form of capital goods that are of economic value to increase production, but consumer goods can also be leased, this is because at the time of application for a lease facility, to determine the feasibility or unworthiness of the applicant to obtain leasing facilities, the lessor only sees in terms of ability to fulfill all requirements, regardless of the main purpose of the applicant applying for a lease. In addition, the lessee who does not have a tax ID number, can obtain a lease facility by making a statement that is processing the tax ID number without a specified time limit.

4.4 Accountability of the lessee default

A signed contract will create a legal relationship that contains rights and obligations. The parties always demand that a right be fulfilled, but do not carry out the obligation in accordance with the contents of the contract, the default made by the lessee in the leasing contract, not paying the rent according to the predetermined schedule due to the failed lessee's business. Default or breach of contract is one of the reasons so that the contract runs out (Yanuaria, 2016). Sanctions given by the lessor to the lessee are paying fines for the amount specified in the contract, which is 3% per month.

The method of settlement if the lessee neglects or intentionally does not carry out the obligation, then the lessor can withdraw or retrieve the item and if within seven days after the item is withdrawn the lessee does not carry out the obligation, the lessor has the right to sell the item to any party according to the market price at that time, where the proceeds from the sale of goods will be used to pay off the obligations of the lessee who are still in arrears, including the costs of withdrawal of goods arising at that time. And if there is still a shortage, the lessor will still charge the lessee until all the obligations are paid off. If the lessee does not implement the provision, it will be pursued through legal channels, this has been determined in the lease contract.

4.5 Supporting and inhibiting factors in the implementation of leasing contracts with non-bank financing companies

Based on results the supporting factors in the implementation of a lease business contract is that the lessor has sufficient business capital without being dependent on other companies / banks so that it can finance the capital goods needed by the lessee. The lessor and the lessee have a good relationship with suppliers so that capital goods desired by the lessee can be obtained quickly and easily. Personal aspects that are very supportive are the goodwill of both parties. While the inhibiting factor is that the lessee is less able to run a business. Failure to run a business and operate

capital goods required that the lessee incur additional costs and production is hampered, thereby inhibiting rental payments.

5. Conclusions and suggestions

Based on results coming from Dipo Star Finance Bandar Lampung Indonesia company case we can concluded the following:

1. In case where the rights and obligations of the lessor and the lessee in the lease contract is not balanced it reflects that the principle of freedom of contract in determining the contents of the agreement is not carried out by the lessor and lessee. The lessor's obligations are limited by a fairly strict exoneration clause.
2. The implementation of the lease funding contract is not implemented in accordance with the contract, the lessee does not pay the rent in accordance with the schedule specified in the contract, but the parties can settle the matter in accordance with the agreement.
3. The liability for default in the leasing contract is charged to the lessee and the settlement is carried out peacefully with the full payment of the lease and the late payment interest by the lessee. If no peace is achieved, the lessor withdraws capital goods without going to court.
4. The supporting factor is that the lessor has sufficient business capital, the lessor and the lessee have a good relationship with the supplier so that the capital goods desired by the lessee can be obtained quickly and easily. The good faith of both parties strongly supports the contract of leasing while the inhibiting factor, the lessee is less able to run the business and the capital goods, are not precisely used by the lessee. Failure to operate capital goods in the form of vehicles requires the lessee to incur additional costs which causes production to be hampered, thereby inhibiting rental payments.

Based on the conclusions above, the recommendations given are as follows:

1. Bearing in mind that the leasing contract is a standard contract, the lessor can set contract terms that reflect the balance of the parties, especially for the lessee who needs capital goods to increase the production of his business.
2. In the leasing contract, the lessor and lessee enter into a joint agreement that does not impose the lessee in an additional clause which is an integral part of the lease contract.

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