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Legal Analysis Of The Lease Agreement

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ABSTRACT

Leasing is a form of business that can be used as an alternative to overcome capital difficulties in the framework 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 the financing method to obtain the equipment and capital goods they need. With less burdensome requirements and a flexible funding system, entrepreneurs love it. This condition, among others, causes the leasing business in Indonesia to develop rapidly. Leasing is one of the business fields included in the scope of financing institutions. Based on the decree of the Minister of Finance of the Republic of Indonesia number 1169 / KMK.01/1991 regarding leasing business activities, what is meant by leasing or leasing is financing activities in the form of capital goods provision, either on lease and option rights (finance lease) or operating lease for use by leasing for a certain period of time based on periodic payments.

INTRODUCTION

The rapid economic development in the era of globalization today requires every company to be able to compete in doing business development. Companies in developing their business can use different ways, one of which is to buy the means (capital goods) that support the smooth operation. To provide the necessary goods, the company has several alternatives that can be used, among others:

1. Buy cash, or
2. Borrowing through a Bank, or
3. Obtaining investment financing through leasing or leasing

Buying cash can be done if the company has sufficient funds. However, it is not uncommon for companies to experience problems in terms of lack of capital considering the amount of funds that must be spent on the procurement of capital goods is relatively large. Capital increase in a company can be done by borrowing through a bank, but this method is considered less effective because the procedure is difficult to fulfill so that it takes a relatively long time, the debtor's obligation to include Collateral, and the limited ability of the bank's own capital. Meanwhile, leasing is a more flexible institution compared to banking institutions, because the procedure is simpler.

Leasing is a form of business that can be used as an alternative to overcome capital difficulties in the framework 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 the financing method to obtain the equipment and capital goods they need. With less burdensome requirements and a flexible funding

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system, entrepreneurs love it. This condition, among others, causes the leasing business in Indonesia to develop rapidly.

The involvement of several parties in the leasing agreement, namely the lessor as the party who rents the leasing object, the lessee as the tenant, the supplier as the provider of the goods and the bank as the funder, in the course of time when the implementation of the agreement sometimes faces legal problems. No doubt, alternative options by way of leasing (leasing) in Indonesia can be said to be still new, so the legal protection offered by the government is still inadequate, the existing rules on leasing new stage of Ministerial Decree. This rule becomes ineffective in the event of problems of the parties involved in the leasing financing agreement. The legal protection of the parties is limited to the good faith of each party.

This condition causes the preparation of the clause of the leasing agreement made in the form of a standard agreement by the lessor only oriented to the principles of freedom of contract agreement. This needs to be observed so that leasing as an alternative financing for business activities can guarantee legal certainty for the parties implementing the agreement, because one of the legal objectives is to ensure legal certainty.

METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary data sources / data obtained through library materials.This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

Legal Protection Of The Lease Agreement

Leasing institutions are not known in the Civil Code, but they are known in practice. Historically, Leasing was first introduced in the United States in 1877, by The Bell Telephone Company to market its products, namely telephone equipment. Because at that time the company is difficult to obtain medium and long term credit. In 1952 Leasing experienced rapid development in the United States, namely with the establishment of the United State Leasing Corporation. Around 1960 Leasing activities developed in Western Europe.

While in Indonesia, this institution is formally still relatively new, which only existed in 1974 with the issuance of several ministerial decrees regulating leasing, namely:

a. Joint decree of the Minister of Finance, Minister of Industry, and Minister of Trade No. 122, No. 32, No. 30 of 1974 dated February 7, 1974 on Business Licensing Leasing.

b. Decree Of The Minister Of Finance No. 649 of 1974 dated May 6, 1974 on Business Licensing Leasing.

c. Decree Of The Minister Of Finance No. 650 in 1974 dated May 6, 1974.

d. Decree of the Minister of Finance of the Republic of Indonesia number 1169 / KMK.01/1991 on leasing activities.

In leasing transactions, the legal relationship between the subjects of leasing consists of the lessor, lessee and supplier. Meanwhile, the object of the agreement is capital goods purchased by the lessor at the request of the lessee. Capital goods can be either movable or immovable goods. However, in practice, leasing does not always run smoothly because there are also various problems when leasing takes place which are often carried out by the lessee, including: delaying lease payments, not paying fines for late lease payments, transferring, selling, making the goods as debt collateral with the aim of, among others, releasing themselves from violated lease payments, eliminating goods and so on.

In the event of a dispute, there are several ways that can be used to resolve problems arising from both parties, namely in the following ways:4 1. Peace. Peace here means that between the lessor and the lessee entered into a peace itself outside the court. The implementation of the peace depends on both parties so that there is agreement from both parties so that this dispute does not proceed to court. However, the peace made by both parties here is only in force as an agreement of both parties which if not obeyed by one party then it must be submitted through the process in court. So there is no guarantee that one day there will be no dispute again. In the dispute of leasing agreement if there is peace between the two parties, the lessor will take back the goods owned by the lessee. 2. Court. If the lessor's attempt to take back his belongings controlled by the lessee cannot be carried out peacefully (negotiation) then in this case the lessor can resolve this issue through the competent District Court. To recover the rights of the lessor who has suffered losses due to breach of promise from the lessee as agreed in the agreement and also.

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3. Arbitration. To seek settlement of a dispute by filing a lawsuit in court is a way that takes a very long time. In addition to many procedures that must be done, for example on how to call, how to deliver, also how to check, and so on. If a decision has been obtained from the court of First Instance examination does not mean that the dispute/dispute has been resolved because the litigants if they are dissatisfied with the decision and then appealed to the court above or higher and can also be cassated in the Supreme Court. Therefore, another alternative that can be used in the settlement of disputes/disputes this leasing agreement is through a body outside the court called arbitration. The settlement in this arbitration body can be from the beginning the parties have agreed to be included in the clause of the main agreement or the agreement is done after a dispute arises that a special deed is made. Arbitration is an out-of-court settlement that is very suitable in the world of trade/business, because arbitration processes the settlement of cases quickly because there is no appeal and Cassation so that the arbitrator's decision is the final decision, at this arbitration body the arbitrators are experts in their fields, the examination at the arbitration body is closed. So for the settlement of leasing agreement disputes the parties involved can use the services of the arbitration body provided that the relevant agreement/contract includes a provision (article) which states that any dispute or dispute that may arise from the leasing agreement will be submitted to arbitration for termination. The provision or article in the agreement/contract is called Arbitration Clause and for the arbitration clause, BANI (Indonesian National Arbitration Board) advises the parties who want to use the settlement on the Arbitration Board to include it in their agreement.

CONCLUSION

Leasing is an equipment funding, namely financing activities provided by the lessor in the form of equipment or capital goods needed by the lessee to run his business. In Indonesia, the formal existence of leasing in Indonesia is still relatively new, namely with the issuance of joint decree of the Minister of Finance, Minister of Industry, and Minister of Trade No. 122, No. 32, No. 30 of 1974 on Business Licensing Leasing.The occurrence of leasing transactions is motivated by insufficient funds of the lessee to purchase capital goods, so contact the lessor to finance it. In terms of regulation, the laws and regulations governing the lease is still inadequate until now there has been no law-level regulations that specifically regulate the lease. As a business institution in the field of financing, leasing comes from various fields of law, both in the form of agreements (civil) and legislation (public), especially relevant to leasing activities.

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