

# Juridical Review of The Settlement of Lessee Agreements Due To Breach Conducted By Lessee To PT Angkasa Finance

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**Abstract:** In Indonesia, over 50% of motor vehicle purchases are financed through credit. However, it is important to note that leasing and credit are two distinct financing options. Unlike credit, leasing does not necessarily involve finance companies or credit providers. Leasing, which originates from the English word "lease," refers to the activity of providing capital goods for use by individuals or companies for a specific period of time. According to the Financial Services Authority (OJK), leasing is a form of financing that involves providing capital goods on a lease with an option (finance lease) or a lease without an option (operating lease). The purpose of this study is to examine the consequences and resolution of a leasing agreement default. This research utilizes a descriptive normative juridical method, which aims to describe the legal process of handling a default on a leasing agreement.

**Keywords** Leasing, wanprestasi, lessee

## 1. Introduction

### 1.1 Background

In line with the increasing national development activities in all fields, the participation of the private sector is increasing in the implementation of development. This situation either directly or indirectly requires more active business activities. One of the business sectors of the private sector that is experiencing development is the automotive trade. As it is known, the number of motorized vehicles today is increasing, and this number continues to increase in line with the times. In an increasingly competitive human life, it is demanded to always be able to move faster so that supporting facilities are needed in the form of goods or objects that can be used as a means of transportation to meet their needs. For example: motorcycles, cars, ships and airplanes.

Leasing was first introduced in the United States and then spread to Europe and even the whole world, including Indonesia. In the United States, leasing in the modern sense was introduced for the first time, namely leasing with railroad objects. In fact, in 1850 it was recorded that the first leasing company in the United States operated in the field of railroad leasing. Seeing the fact that the community's need to have transportation facilities is increasing, while purchasing power is very limited and low, business actors compete to provide a way out so that in such conditions consumers can still obtain the desired goods or capital, the role of financial institutions is highly expected as alternative to loans from banks.

A leasing company is a financial institution whose activities provide capital for businesses, to buy equipment and rent it out for a certain period of time. Financing institutions are business entities that carry out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the public in the form of current accounts, deposits, savings and or other equivalents, and are prohibited from issuing Promissory Notes unless as collateral for debts to the Bank which is the creditor.

In 1974, Indonesia introduced a financing option called leasing, which was authorized through a joint decree issued by the Minister of Finance, Minister of Industry, and Minister of Trade. This decree, known as Kep-122/MK/IV/2/1974, Number: 32/ M/SK/2/1974 and Number: 30/Kpb/1974, provided guidelines for obtaining a license to conduct a leasing business.

Leasing is an alternative financing for companies that need capital goods, carried out by means of a simple agreement between the owner of the equipment (lessor or lessee) and the user of the equipment (lessee). The agreement includes the cost of using the equipment and all the regulations that underlie this leasing business. Financing provides convenience compared to loans from banks, because in leasing the entrepreneur does not need to spend a lot of capital to finance the capital goods used. The presence of the leasing business in Indonesia has created a new vehicle for investment development for the business world, both small, medium and large businesses. With this leasing service, entrepreneurs can expand production and add capital goods quickly and can also be used as an alternative funding.

In the leasing agreement, the lessee is considered as a lessee because full payment is made by the lessor to the supplier. However, if the price of capital goods plus interest and other costs has been met by the lessee, then the goods are entirely handed over to the lessee in accordance with the agreed agreement.

## **1.2 Definition of leasing**

The concept of leasing is rooted in the term "lease" which means to lease, and leasing is essentially a form of leasing. However, in the business sector, leasing has evolved into a distinct form of financing referred to as leasing or lease, and its purpose has shifted to providing financing. In Indonesia, the term leasing is often used interchangeably with the term "leasing".

According to R. Subekti: "Leasing is actually nothing other than a lease agreement that has developed among entrepreneurs, where the lessor (the party being leased, which is often a leasing company) leases a company equipment (machinery) including service, maintenance etc. to the lessee (tenant) for a certain period of time [1] The definition of leasing according to Kepmenkeu No. 172/KMK.06/2002 are: "Company financing activities in the form of providing capital goods either by leasing with option rights (finance lease) or leasing without option rights (operating lease) to be used by the leasing lessee (leasing) for a period of specified, based on periodic payments

Lessee also has an obligation to pay rent for capital goods that are the object of leasing every month or every period. Meanwhile, regarding the notion of leasing put forward by Sri Soedewi Masjchoen Sofwan,[2] Leasing is an agreement in which the lessee (lessee) rents capital goods for a certain business by making installments for a certain period of time and a certain amount of installments

Based on some of the notions of leasing mentioned above, in principle the notion of leasing has the following elements:

1. Companies acting as providers of capital goods (lessor);
2. Companies or individuals who use leased capital goods (lessee);
3. Certain period of time;

4. Periodic payments;
5. The existence of option rights (rights to vote) at the end of the leasing contract;
6. There is a remainder that is mutually agreed upon.

### **1.3 Leasing Types**

Leasing is divided into five types based on the implementation process. The five types include [3]

1. **Capital Lease**  
Capital lease is a type of company engaged in the leasing sector and originates from a financial institution. This type of leasing can usually serve customers who need freedom in terms of determining capital or goods with certain specifications. In use, the lessor will provide a number of funds to be used to pay for the goods needed by the supplier. Then it will be handed over to the lessee. After that, the lessor will receive a reward in the form of payment in installments or in installments within a mutually agreed period.
2. **Operating Lease**  
Operating Lease is a type of leasing company in which the lessor will buy an item and then lease it to customers within an agreed timeframe. For this, the customer usually only needs to pay the rental fee for the goods. Meanwhile, the price and other costs will be borne by the lessor
3. **Sales Type Lease**  
A sales lease is a type of leasing that is generally carried out by companies operating in the industrial sector. Then they will sell goods lease from the results of the products they make. There are two types of income that can be recognized, the first is income from the sale of goods. Then the second is income that comes from interest on spending over a certain period.
4. **Cross Border Leases**  
It is a type of leasing company carried out by interstates. That means, the lessor and the lessee are not in the same country. However, both are in different countries. Generally, this type of leasing only makes transactions for goods that have a large nominal value. As well as Boeing or Airbus aircraft products.
5. **Leverage Leases**  
Leverage is a type of leasing company that involves a third party. That means, the lessor will not pay 100% for the leasing object, but they only need to pay 20%

### **1.4 Hypothesis development**

1. What is the process for a leasing agreement?
2. What is the settlement process if a default occurs?

## **2. Research methodology**

- a. The research method is normative
- b. The aim of this research is :
  1. To find out how the process of the leasing agreement at PT. Angkasa Finance.
  2. To find out what factors cause defaults in leasing agreements at PT. Angkasa Finance

3. To find out how the process and implementation of the settlement in the event of default at PT. Angkasal Finance.

### **3. Results and Discussion**

#### **3.1 Definition of Agreement**

The definition of an agreement can be found in article 1313 of the Civil Code which states that "A contract is an act in which one or more people bind themselves to one or more people". According to R. Setiawan, Agreement is a legal act in which one or more people bind themselves or mutually bind themselves to one or more people [4] R. Subekti[1], giving the definition of an agreement is an event where one person promises to another or where two people promise each other to do something.

According to Sudikno Mertokusumo provides a definition of an agreement with a legal relationship between two or more parties based on an agreement to give rise to legal consequences leasing is an agreement, according to Article 1320 of the Indonesian Civil Code, the validity of agreement in the following

1. Agreement of the Parties

The contract between two or more parties can be summarized as an agreement. Essentially, this agreement represents the mutual understanding and willingness of all parties involved regarding the main aspects of the contract. Therefore, each party should willingly and voluntarily agree to abide by the terms of the agreement, which can be either explicitly or implicitly expressed. The meaning of being free is being free from mistakes, coercion, and deception. If there is an element of oversight, coercion, or fraud, this means violating the legal terms of the agreement. These provisions are as stipulated in Article 1321 of the Civil Code which explains that no agreement has any force if it is given due to an oversight or obtained by force or fraud.

2. Competence of the Parties

In the context of the ability to make an agreement, the subject is the parties involved in the agreement. Article 1329 of the Civil Code states that every person has the authority to enter into an agreement, unless he is declared incapable of doing so. Regarding who is declared incompetent, Article 1330 of the Civil Code explains that those who are incapable of making consent are minors; people who are put under guardianship; and married women in cases determined by law and in general all persons prohibited by law from making certain agreements.

3. Certain matters

Regarding a subject matter or a certain matter, it means what is the agreement or agreed upon by both parties. In essence, the goods referred to in the agreement are determined by type, namely goods that can be traded. This is in accordance with the provisions of Article 1332 of the Civil Code which explains that only goods that can be traded can become the subject of an agreement.

In the leasing agreement, the lessee is considered as a lessee because full payment is made by the lessor to the supplier. However, if the price of capital goods plus interest and other costs has been met by the lessee, then the goods are entirely handed over to the lessee in accordance with the agreed agreement.

### **3.2 Default in the Leasing Agreement**

When it comes to leasing agreements, lessees often default, either temporarily by falling behind on payments and then catching up, or permanently where legal action needs to be taken. In such cases, the law stipulates that the lessor (creditor) must issue a statement of negligence to the lessee (debtor). This is based on Article 1238 of the Civil Code.

So in the case of negligence (default) by the lessee who is in debt, in principle it must be stated formally, namely by warning the debtor (lessee) that the creditor (lessor) wants immediate payment or a specified short period of time. In short, it must be billed and the negligent must be reprimanded with a warning or subpoena.

The word default comes from the Dutch language "wanprestatie", which means not fulfilling the obligations stipulated in the agreement, so if the debtor (debtor) is negligent with what has been promised, then it is said that he has committed a default which will result in one of the parties suffering losses, then the person causing the loss must be responsible to find out whether the debtor actually committed a default.

In the leasing agreement, broken promises or defaults caused by the negligence of the lessee (debtor) regarding the matter of payment of rent or other payments that are already the obligation of the lessee in connection with the implementation of the agreement and also regarding violations or non-compliance with obligations or restrictions for the lessee as stated in the agreement.

Things that can result in default, among others, are as follows:

1. The lessee delays the payment of the rent that should be paid or pays only a few days after a certain date or he makes the payment, but not as agreed;
2. Failure to pay the fine for the late payment of the rent or the late payment of the fine;
3. In a state of being unable or unwilling to pay rent anymore. This happens with the possibility that the lessee will become bankrupt so that he cannot pay the rent for the goods he rents. Or indeed the lessee deliberately does not pay the rent that is due for payment;
4. Commit acts that clearly violate the leasing agreement itself, for example transferring the leased goods without the permission of the lessor (in writing), transferring the leased goods to another party so that the goods become collateral for the debt, or selling the goods with the aim of, among other things, getting rid of the lease payment that was violated, or remove the item label.

### **3.3 Implementation of the Leasing Agreement at PT.Angkasa Finance**

PT. AngkasaFinance is a leasing finance firm that offers financial lease or capital lease or a complete pay out lease. This type of leasing business requires the lessee to pay the agreed-upon rent and purchase the capital goods based on the remaining contract period. The lessee is given the option to purchase, return, or extend the leased item.

Where before determining the prospective lessee, PT. Angkasa Finance held a strict election so that later there will be no default by lessees who are in arrears in payment installments. In the leasing agreement PT. Angkasa Finance, the lessee is considered a tenant because the full payment is made by PT. Angkasa Finance to Suppliers. However, if the price of capital goods plus interest and other costs has been met by the lessee, then the goods are entirely handed over to the lessee in accordance with the agreed agreement.

The procedures for implementing the leasing agreement carried out by PT. Angkasa Finance, that is, the lessee first selects the goods at the supplier's place (for example, needing a motorcycle or electronic goods), the lessee determines the brand, price, condition of the goods, model and year of manufacture.

After that, the lessee holds talks with the lessor (PT. Angkasa Finance) by bringing the data and specifications of the leasing goods that the lessee wants. The lessee fills out the leasing facility application form and submits it to the lessor accompanied by the requirements in the form of data and information, among others

1. For Companies:
  - a. Client Company Establishment Deed and its amendments;
  - b. Letter of approval for the establishment of the company from the Ministry of Justice and the State Gazette;
  - c. The company's operating license;
  - d. Company Registration Certificate
  - e. Tax ID number
  - f. Financial Statements for the Last 3 Years;
  - g. Company Financial Report from the bank for the last 3 months;
  - h. Client Company Organizational Structure
2. For Individuals:
  - a. Identity card, if already married, accompanied by Spouse's KTP and Marriage Certificate;
  - b. Family card;
  - c. Salary slip;
  - d. property tax

### **3.4 Leasing Agreement Guarantee**

Capital goods leased to PT. Angkasa Finance, namely in the form of motorized vehicles, company machinery and land on which there are buildings. Each month is determined on the 14th, but for disbursement it is determined on the 15th of each month. This is to make it easier to remember the due date of payment by the lessee party PT. Angkasa Finance asks for guarantees from the lessee.

In the implementation of leasing at PT. Angkasa Finance, there are several forms of guarantees that must be given by the lessee to the lessor in the form of material or in the form of individuals. The form of the guarantee is as follows

1. Material guarantee

This statement is referring to a type of guarantee that involves an unconditional right to a specific object, which is directly related to the debtor. This guarantee can be enforced against anyone and will always be tied to the object, even if it is transferred to a different owner. The typical form of material guarantee given by the lessee in the leasing agreement with PT. Angkasa Finance involves land with collateral for immovable objects. The definition of mortgage rights, according to Article 1 point 1 of Law No. 5 of 1960, pertains to security rights that are imposed on land rights as defined in the Act No. 5 of 1969 concerning Basic Agrarian Regulations, including or excluding other objects that form an integral part of the land for specific settlements, giving preference to specific creditors over others.
2. Delegation of leasing invoices to the lessor

The form of guarantee in this case involves trust from the lessor towards the lessee. This means that the lessee hands over or pledges the bills and receivables they have received or will receive to the lessor. To ensure greater security, the lessor requests a list of invoices and receivables that the lessee has received, making it easier to contact or inform the lessee's debtors to make payments according to the agreement in case of a breach. The bills and receivables, or profits from the business, and so on, may

either already exist at that time or may come into existence in the future, depending on the nature of the lessee's company. The Lessee's Default and Settlement in the leasing agreement at PT. Angkasa Finance. An agreement made with the terms of the validity of the agreement, sometimes it is not implemented as promised. In contract law, there are two things that cause an agreement not to be implemented, namely default and overmatch.

The forms of default committed by the lessee in the leasing agreement at PT. Angkasa Finance:

1. The lessee fails to make the rent payments according to the agreed-upon schedule in the leasing contract between the lessor and the lessee.
2. The lessee violates a term or fails to perform an obligation specified in the leasing contract, and doesn't correct the problem within 15 days of receiving a notification from the lessor.
3. The lessee's representations and warranties are found to be untrue or not in line with the actual circumstances.
4. The lessee is negligent or fails to meet its obligations to the lessor in other financing agreements made before or after the current leasing contract with the lessor was signed.

The lessee grants the lessor full authority, including the right of substitution, to enter the premises where the leased equipment is located or stored, and retrieve the equipment from the lessee or any other parties in control. The lessor is then authorized to sell or dispose of the equipment in a manner that is deemed appropriate, including setting the price and determining the conditions of the sale. The lessee is released from all claims or demands by the lessor and/or any third parties in regards to the equipment. The money from the sale of the leasing object at the will of the lessor will be used:

1. The lessee is responsible for any costs resulting from their negligence.
2. Any remaining funds after fulfilling all obligations under the agreement will be returned to the lessee, without the lessor incurring any fees or charges.

#### **4. Conclusion**

Defaults in the leasing agreement, because the lessee often provides data and information that is not in accordance with the actual conditions of the lessee. Apart from that, the lessor is less thorough in studying the data submitted by the lessee.

Efforts to resolve defaults made by the lessee, in the case of late paying installment payments, namely the lessor giving a somasi to the lessee. The first subpoena is given for 7 days, if the lessee does not respond to the subpoena, the lessor gives a second subpoena for 7 days. If the lessee still does not respond to the second subpoena, the lessor will give a third somasi within 7 days

The lessor should be more careful in studying and approving the application submitted by the lessee. The conditions put forward in the leasing agreement to be more complete in order to meet the criteria of a responsible lessee.

The contents of the agreement should be explained better to the lessee, so that the lessee can understand it first before the agreement is mutually agreed upon.

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