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THE LEGAL CONCEPT OF OWNERSHIP OF FINANCE LEASE OBJECTS FROM THE PERSPECTIVE OF LEGAL CERTAINTY FOR THE LESSOR

M. Kholid Artha
M. Kholid Artha Notary Office, Indonesia,
emkaartha@gmail.com

Abstract

Among various sources of capital financing for companies, whether for working capital or investment in production equipment, leasing has become a very popular option. This popularity is due to its straightforward process, quick approval, tax deductibility, and lack of collateral requirements. Despite the existence of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector and Minister of Finance Decree No. 1169 of 1991 on Leasing Activities, and OJK Regulation No. 35 of 2018 on the Implementation of Financing Company Business, there are no regulations governing the civil aspects of leasing that address the rights and obligations of the parties involved and the legal certainty protecting the lessor's ownership of leased goods. Existing regulations primarily address public and institutional aspects, leading to potential legal uncertainties in practice. The purpose of this research is to explore the legal concept of the lessor's ownership of leased assets and the importance of establishing legal certainty in this context. This research employs a normative juridical legal research method, using document and field studies. The data utilized is secondary data or library studies supplemented with primary data obtained through interviews with relevant sources. Qualitative analysis is used in the writing. The research findings indicate the need for regulations that provide legal certainty regarding the lessor's ownership of leased goods and mechanisms for maintaining such ownership, potentially at the level of a statute. The legal protection of the parties, particularly the lessor, currently relies heavily on the leasing agreements they enter into. The ownership function needs to be regulated explicitly, clearly, and comprehensively to ensure legal certainty for the lessor. Further, for such legal certainty, considerations should include a system for recording leased goods in an asset registry, a straightforward, cost-effective, and expeditious process for reclaiming leased goods if the lessee defaults, and the drafting of leasing agreements in the form of authentic deeds before a notary, containing complete and clear clauses to ensure legal certainty for the lessor.

Keywords: *Legal Concept; Ownership; Legal Certainty*

1. INTRODUCTION

The financial services sector plays a significant role in supporting national economic development. This sector is crucial for enhancing financial intermediation and strengthening the resilience of the national financial system. According to data released by the Central Statistics Agency, the financial services sector has experienced the highest growth compared to other service sectors in terms of economic growth. The enactment of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (hereinafter referred to as "**P2SK Law**"), which was promulgated on January 12, 2023, represents a concerted effort to refine various provisions related to the financial sector in Indonesia. This law was drafted using the omnibus law method, thereby consolidating all regulations related to the financial sector into a single comprehensive statute. The P2SK Law has reformed the financial sector extensively, with the objective of deepening and enhancing the efficiency of Indonesia's financial sector. This reform seeks to expand the reach, product offerings, and investor base,

promote long-term investment, increase competition to foster efficiency, strengthen risk mitigation, and enhance investor and consumer protection. An innovative, efficient, inclusive, trustworthy, strong, and stable financial sector is vital for supporting robust, balanced, inclusive, and sustainable economic growth. Such growth is essential for realizing an equitable, prosperous, and welfare-oriented society in Indonesia, in accordance with the principles of Pancasila and the 1945 Constitution.[1]

Banking is a fundamental pillar of the financial system in every country, including Indonesia. Banking institutions continue to dominate Indonesia's financial sector, providing financing for various productive business activities such as investment credit, working capital loans, multipurpose loans, and other types of credit. However, the substantial funding needs of companies cannot always be fully met by banking institutions. There is a need for alternative financing options beyond banks, given the limited access to bank funding, restricted credit distribution coverage by banks, limited funding sources, and the necessity to adhere to the highly regulated conservative prudent banking principles.[2] Moreover, banking institutions are still grappling with their own fundamental issues. One alternative source of business funding is through entities known as Financing Institutions.

Financing Institutions, like Banking Institutions, are financial intermediaries that serve as reliable infrastructure supporting the smooth operation of the economy. Financing Institutions were first recognized in 1988 through Presidential Decree No. 61 of 1988 on Financing Institutions (hereinafter referred to as "**Presidential Decree No. 61 of 1988**"), which was subsequently followed by several Ministry of Finance Regulations (PMKs) governing financing companies as lastly regulated by PMK No. 84/PMK.012/2006 concerning Financing Companies. These regulations are fundamentally the government's effort to create opportunities for business entities to engage in financing activities as an alternative means of providing capital, thereby supporting Indonesia's economic growth.[3] According to Article 2 of PMK No. 84/PMK.012/2006, Financing Companies may engage in activities such as leasing, factoring, credit card business, and/or consumer financing. Each type of financing company activity is technically and legally distinct, with its own characteristics. However, they all share a common objective: to provide financial facilitation to other businesses.[4] Following the establishment of the Financial Services Authority (*Otoritas Jasa* Keuangan or OJK) under Law No. 21 of 2011, regulations concerning financing companies were further specified in OJK Regulation No. 35/POJK.05/2018 on the Implementation of Financing Company Business (hereinafter referred to as "**OJK Regulation No. 35 of 2018**").

[1] General Explanation of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector.
[2] Munir Fuady, *Hukum Tentang Pembiayaan* (Bandung: PT Citra Aditya Bakti, 2006), 2.
[3] This financing institution, which is still relatively new, was introduced when the government issued the Economic Deregulation Package in October 1988 (commonly known as Pakto 88) and the Economic Deregulation Package in December 1988 (commonly known as Pakdes 88). The purpose of these economic packages was to stimulate macro and microeconomic growth in Indonesia, which was experiencing a downturn due to the global economic crisis in 1988.
[4] Johannes Ibrahim Kosasih and Hassanain Haykal, *Kasus Hukum Notaris di Bidang Kredit Perbankan* (Jakarta: Sinar Grafika, 2021), 4.

Among the various business activities, leasing has become a popular choice for entrepreneurs seeking to expand their operations. This popularity is largely due to the fact that leasing allows debtors/lessees to obtain working capital and capital goods in the form of production equipment without undergoing a complicated and lengthy process. Additionally, leasing provides tax savings, as lease installment payments can be treated as tax-deductible expenses, reducing taxable income. Furthermore, there is no need to provide additional collateral. These advantages make leasing an attractive option for companies in need of working capital and equipment investments. It is not surprising that, despite being relatively new in Indonesia, leasing has rapidly grown and shows promising prospects. Leasing has introduced a new method for acquiring capital equipment and increasing working capital, serving a function equivalent to that of banks.

According to Article 1 point a of Minister of Finance Decree No. 1169/KMK.01/1991 (abbreviated as "**KMK No. 1169 of 1991**")[5] on Leasing Activities, leasing is defined as a financing activity in the form of providing capital goods, either through a finance lease (leasing with an option to purchase) or an operating lease (leasing without an option to purchase), for use by the lessee for a specified period, with periodic payments. Under Article 1 point 5 of OJK Regulation No. 35 of 2018, a finance lease is referred to as "*sewa-pembiayaan*" and is defined as a financing activity in the form of providing goods by a financing company for use by the debtor for a specified period, which substantially transfers the benefits and risks associated with the financed goods.

In practice, financing through leasing is quite similar to providing credit by a bank, however with different operational schemes. The main distinction lies in the financing object and asset ownership. In leasing, the leasing company provides capital goods such as vehicles, equipment, or machinery to businesses through a leasing agreement. Conversely, in bank credit, the bank provides financial assistance in the form of cash to the borrower through a credit agreement. Another advantage of leasing over bank credit is capital saving, as leasing requires fewer documentation requirements, enhances cash flow (with installment amounts adjustable to the lessee's cash flow capabilities), and offers simpler accounting practices.[6]

In addition to its advantages, leasing financing also has certain drawbacks, notably the high interest rates imposed on lessees. These elevated rates result from the fact that most leasing companies source their working capital from banks.[7] Another significant drawback is related to legal aspects. Unlike the more regulated banking sector, the leasing industry operates with relatively loose regulation, leading to legal uncertainties and limited legal

[5] Decree of the Minister of Finance Number No. 1169 of 1991 implements Presidential Decree No. 61 of 1988, issued to provide greater legal certainty, particularly regarding the tax treatment of leasing activities. This KMK remains in effect today with respect to leasing matters.

[6] Munir Fuady, *Hukum Tentang Pembiayaan*, 27; Eddy P. Soekardi, *Mekanisme Leasing* (Jakarta: Ghalia Indonesia, 1986), 24; Budi Rachmat, *Multi Finance, Sewa Guna Usaha, Anjak Piutang dan Pembiayaan Konsumen* (Jakarta: CV Novindo Pustaka Mandiri, 2002), 41.

[7] Unlike banks, financing companies are not permitted to raise funds directly from the public in the form of checking accounts, savings, or deposits and to provide guarantees. In addition to bank loans, non-bank financial industries, government institutions, and other agencies or enterprises, financing companies can only obtain funding through capital increases not via public stock offerings, subordinated loans, asset securitization, issuance of securities through public offerings, and/or issuance of debt securities not through public offerings (see Article 69 of POJK No. 35 of 2018).

protection for lessors when seeking to enforce their ownership rights over leased assets. Lessors often encounter difficulties in executing asset repossession due to the lack of regulations governing the reclamation of leased assets, which serve as the primary collateral for the financing provided. This risk arises because leased assets under the lessee's control can be easily transferred or assigned to third parties.

Unlike the goods that are the object of credit pledged to the Bank, the legal basis that provides legal protection for finance companies for goods financed by Leasing is the Lessor's ownership of the goods concerned. There is no separate collateral binding (accesoir agreement), which is made separately or specifically for goods that become Leasing objects as is the case with fiduciary guarantees or mortgages commonly used in bank loans.

As is the case in a lease agreement (Article 1548 of the Indonesian Civil Code), in the Leasing scheme, the Lessor is the owner of the Leasing object goods. The position of the Lessor as the owner of the Leasing object capital goods is very absolute and most important. There is no Leasing financing transaction (either Direct Finance Lease or Sale and Lease Back) without the ownership status of the Leasing object capital goods by the Lessor. The understanding and clarity regarding the lessor's ownership status are crucial, as this ownership provides the legal protection necessary for the lessor.

The legal concept of the lessor's ownership of leased assets fundamentally differs from the collateralization of assets in bank credit transactions. Unlike collateral arrangements in banking, there are no specific provisions for securing leased assets akin to tangible collateral. Consequently, there is no specialized collateral agreement, no registration of leased assets for publicity purposes, no preferential position, and no executory title. The lessor's legal strength is derived from their ownership status of the leased assets. This underscores the importance of clear understanding and definition of the lessor's ownership rights.[8]

Legal certainty regarding the lessor's ownership of leased assets is crucial for protecting the lessor from potential issues such as lessee default, asset transfer or encumbrance, or lessee insolvency. The absence of comprehensive legislative regulations at the level of "law" governing leasing institutions and asset ownership in Indonesia creates potential legal uncertainties in leasing transactions. At present, leasing regulation in Indonesia is limited to Presidential Regulations, Minister of Finance Decrees, and OJK regulations, which are primarily administrative and tax-related.[9] Although the Financial Services Authority Law (UU P2SK) addresses Financing Services (Chapter X, Articles 106 to 129), it does not provide detailed provisions on the rights and obligations of the parties involved (lessor and lessee) or other relevant aspects required for effective leasing operations. This paper will explore the legal concept of the lessor's ownership of leased assets and the importance of establishing legal certainty in this context.

[8] J. Satrio, *Hukum Jaminan Hak Jaminan Kebendaan* (Bandung: PT Citra Aditya Bakti, 2002), 178.
[9] Siti Malikhatun Badriyah, "Pemuliaan (Bleeding) Asas-asas Hukum Perjanjian dalam Perjanjian Leasing di Indonesia," *Jurnal Yustisia* 1, no. 2 (May–August 2012), https://doi.org/10.20961/yustisia.v1i2.10624.

2. RESEARCH METHODS

2.1. Type of Research

The research method employed in this study is normative legal research, which emphasizes the use of secondary data through the examination and analysis of legal norms, specifically positive legal rules related to the research topic. Doctrinal analysis within the realm of positive law involves the effort to collect secondary legal materials that can support the development of law and legal science. These secondary materials generally consist of academic works, both descriptive and critical, which expand knowledge about existing law (*ius constitutum*) and/or the law as it should be (*ius constituendum*) to achieve justice. Although not directly part of the applicable law, these secondary materials are invaluable for enhancing the quality of positive law.

2.2. Data Collection Techniques

The data collection methods used in this research are document studies and field studies. The document study phase involves gathering secondary data related to the research topic by reviewing legal literature, books, research papers, and regulations pertinent to the lessor's ownership rights in leasing transactions. Field studies, on the other hand, are conducted to obtain primary data by interviewing relevant sources to gain firsthand information.

2.3. Type of Data

This scholarly work is based on secondary data, or library research, involving the review of literature found in books, reports, academic papers, and regulations related to the research topic. Additionally, to gain a comprehensive understanding, the study is complemented by primary data obtained through interviews with several key informants. These informants are individuals with relevant experience and knowledge pertaining to the research topic.

2.4. Data Analysis Techniques

In this study, the researcher employs qualitative analysis. According to Bogdan and Taylor, qualitative analysis is a method used to analyze data by describing it through words, and is utilized to interpret and interpret verbal or written data from specific individuals and observed behaviors. Research using qualitative analysis aims to describe and interpret existing conditions or relationships, ongoing processes, current outcomes, or emerging trends. [10]

3. ANALYSIS AND DISCUSSION

3.1. The Legal Concept of the Lessor’s Ownership of Leased Assets

Law serves as the primary guide for social conduct within a nation. Its presence in society functions as a tool to ensure peace and order, protecting the interests of

[10] Sunarto, *Metode Penelitian Deskriptif* (Surabaya: Penerbit Usaha Nasional, 1990), 47.

individuals and the relationships between them. This framework aims to uphold the ideals of equality and equitable prosperity.

Mochtar Kusumaatmadja asserts that in the context of a developing society, law is not only a set of rules and principles governing human relations but also includes the institutions and processes necessary to implement these laws in practice.[11] Satjipto Rahardjo contends that the purpose of law is to protect human rights from being infringed upon by others, thereby allowing individuals to fully enjoy the rights guaranteed by law. At the highest authority, law establishes and protects essential human interests.[12] Gustav Radbruch posits that law must embody three fundamental values: justice, certainty, and utility. In the business world, legal certainty is crucial as it ensures predictability in operations. Normatively, legal certainty is achieved when a regulation is clearly and logically written and enacted. Currently, legal certainty is a general principle underpinning national legal systems in most European countries. The historical development of the concept of legal certainty can be traced back to the post-French Revolution era of 1789. Legal certainty relies heavily on having codified legal provisions within a single collection.[13] It refers to the application of law in a precise, logical, consistent, and independent manner, free from subjective influences.

Disbursing funds through leasing involves risks such as default or non-payment by the lessee. The lessor is the party most concerned with the leased asset after the financing has been disbursed to the lessee, who is the debtor. This is because the lessor has fulfilled their obligation under the leasing agreement by providing or disbursing the financing, while the lessee, who has fully utilized the leased asset, may not have fully met their obligations under the leasing agreement. The lessor has the “right” to performance from the lessee, specifically in the form of installment payments, while the lessee has the “obligation” to fulfill this performance to the lessor. Defaults are generally committed by the lessee. It may seem unusual for a creditor to default in a debt agreement, although it is not entirely impossibl.[14]

The risks associated with financing through leasing can encompass economic risks related to the condition of the leased asset, such as asset depreciation during the lease term, damage or wear and tear due to lack of maintenance, and other similar issues. From a legal perspective, risks include the lessee's inability to fulfill their obligations, the lessee selling or encumbering the asset, or the lessee being declared bankrupt by other creditors. To mitigate these risks, repossession of the leased asset becomes a critical task for the lessor. In this context, it is essential to establish a strong legal foundation that ensures legal certainty regarding the lessor's ownership of the asset. Legal regulations are needed to provide a clear and definite framework for asset ownership and the rights and obligations of both lessor and lessee concerning the asset.

[11] Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembinaan Hukum Nasional: Suatu Uraian tentang Landasan Pikiran, Pola dan Mekanisme Pembaharuan Hukum di Indonesia* (Bandung: Binacipta, 1976), 15.
[12] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2000), 53.
[13] FX Adjie Samekto, *Penelitian Hukum dalam Aliran Legal Positivisme* (Depok: Rajawali Pers, PT RajaGrafindo Persada, 2023), 75–76.
[14] J. Satrio, *Wanprestasi Menurut KUHPerdata, Doktrin, dan Yurisprudensi* (Bandung: PT Citra Aditya Bakti, 2014), 65.

To provide leasing financing, the lessor must own the asset. In a direct finance lease, the lessor first purchases the asset from a supplier or seller and then leases it to the lessee. In a sale and leaseback arrangement, the asset, which was previously owned by the lessee, is sold to the lessor, who then leases it back to the lessee. This distinction highlights that the lessor's ownership of the leased asset is full ownership, not merely nominal or superficial. As the full owner, the lessor has the legal rights to manage and control the asset, alongside fulfilling their obligations. In the context of leasing transactions, the lessor acts as the asset owner rather than as a holder of collateral rights over the asset. Understanding this distinction is crucial, as it has significant legal implications for both parties involved.

3.2. Implementation of Ownership Functions by the Lessor

Legal certainty regarding the lessor's ownership of leased assets is crucial for providing legal protection to the lessor in various situations, such as default by the lessee, the sale or encumbrance of the asset, or the lessee being declared bankrupt by other creditors.

3.2.1. In the case the Lessee is Default

A primary risk faced by lessors is when the lessee fails to fulfill the obligations agreed upon in the leasing agreement. In legal terminology, this situation is referred to as "default." The term "default" originates from Dutch and means "poor performance".[15] According to Abdul Kadir Muhammad, default refers to the failure to meet obligations as stipulated in the contract.[16] J. Satrio defines default as a situation where the debtor does not adequately fulfill their contractual obligations, and there is an element of fault on the part of the debtor.[17]

According to Abdul Kadir Muhammad, a debtor's failure to meet obligations to a creditor might occur due to two reasons: (a) the debtor's fault, whether intentional or negligent, and (b) force majeure, a situation beyond the debtor's control. In the latter case, the debtor is not at fault. According to R. Setiawan, a default may occur due to intentional conduct, error, or negligence.[18] R. Setiawan, on the other hand, asserts that default can result from intention, fault, or negligence.[19] To determine whether the lessee is at fault for default, it is necessary to identify the specific circumstances under which the lessee has intentionally or negligently failed to meet their obligations. These circumstances include: (a) the lessee has not fulfilled the obligation at all, (b) the lessee has fulfilled the obligation inadequately, incorrectly, or inappropriately, (c) the lessee has fulfilled

[15] Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2020), 45.
[16] Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: PT Citra Aditya Bakti, 1993), 203.
[17] J. Satrio, *Wanprestasi Menurut KUHPerdata, Doktrin, dan Yurisprudensi,* 3.
[18] J. Satrio, *Wanprestasi Menurut KUHPerdata, Doktrin, dan Yurisprudensi,* 241.
[19] R. Setiawan, *Pokok-pokok Hukum Perikatan* (Bandung: Binacipta, 1977), 18.

the obligation but has done so late, and (d) the lessee has engaged in actions prohibited by the agreement.[20]

What are the legal consequences if a lessee commits one of these instances of negligence? The law requires the lessor to issue a notice of default to the lessee.[21] Article 1238 of the Indonesian Civil Code, to determine if a lessee is in default, or to ascertain from when the lessee is deemed to be in default, it is necessary first to examine the due date stipulated in the leasing agreement. According to this provision, a lessee is deemed to be in default if they fail to meet the agreed deadline specified in the leasing agreement. If the default is not based on a specific due date, the lessee must first be formally notified in writing, requiring them to fulfill their obligations within the specified time. This notification can be issued formally through a court order (referred to as *sommatie*) or informally through a registered letter addressed to the lessee (referred to as *ingebreke stelling*).[22]

Generally, Article 1267 of the Indonesian Civil Code provides that if a debtor is in default, the creditor has several possible courses of action.[23] In simpler terms, the article allows a creditor to demand one of the following actions from the debtor in cases of default:[24] (a) demand the fulfillment of the obligation (*nakomen*) (b) demand the termination of the obligation or if the obligation is reciprocal, demand the cancellation of the obligation (*ontbinding*) (c) demand compensation (*schade vergoeding*) (d) demand the fulfillment of the obligation with compensation (e) demand the termination or cancellation of the obligation with compensation and (d) demand that the debtor pay court costs if the case is brought to court and the debtor is found guilty.

In practice, if the Lessee's performance cannot be relied upon, the Lessor's course of action is to terminate the leasing agreement. For termination by the Lessee, the leasing agreement usually includes a clause that overrides the provisions of Articles 1266 and 1267 of the Indonesian Civil Code, thus eliminating the need for judicial or court order to terminate the leasing agreement.

The termination of an agreement can occur through termination, where the contract is ended before the agreed-upon term expires, usually due to the Lessee's default, or through discharge, for example, if the Lessor and Lessee agree to renew the contract, rendering the old contract invalid. To safeguard the Lessee, the termination of the leasing agreement is followed by efforts to reclaim the leased item. In reclaiming the leased item, as long as the Lessee acknowledges their default on the leasing agreement and accepts the calculation of principal obligations and penalties from the Lessor, and willingly agrees to return the item

[20] R. Setiawan, *Pokok-pokok Hukum Perikatan, 18;* see also Subekti, *Hukum Perjanjian*, 45; Mariam Darus Badrulzaman, *Sistem Hukum Benda Nasional* (Bandung: Penerbit Alumni, 2015).
[21] R. Setiawan, *Pokok-pokok Hukum Perikatan,* 48.
[22] Abdulkadir Muhammad, *Hukum Perdata Indonesia*, 242.
[23] Johannes Ibrahim Kosasih and Hassanain Haykal, *Kasus Hukum Notaris di Bidang Kredit Perbankan* (Jakarta: Sinar Grafika, 2021), 217.
[24] Mariam Darus Badrulzaman, *Sistem Hukum Benda Nasional*, 18; See also Abdul Kadir Muhammad, *Hukum Perdata Indonesia*, 242.

to the Lessor, there is generally no further issue. However, in practice, the process of reclaiming the leased item is not always smooth and peaceful. Issues can arise if the Lessee does not acknowledge their default, if the Lessee acknowledges default but disputes the principal and penalty calculations provided by the Lessor, or if the Lessee acknowledges default, accepts the calculations, but is unwilling to voluntarily return the item for certain reasons. In such cases, legal problems related to the reclamation of the leased item by the Lessor may occur.

The Lessor's right to repossess the leased asset is an inherent legal right, as the Lessor is the owner of the asset. This differs from rights such as those of a mortgagee, a fiduciary recipient, or a pledge or hyphotec holder, which are granted by law and formalized through authentic deeds.[25] The right to repossess the leased asset is guaranteed by law under Article 574 of the Indonesian Civil Code, known as the right of revendication.[26] This provision states that any owner of an object is entitled to claim its return from anyone who possesses it, in its current state.[27] According to the aforementioned Article 574 of the Indonesian Civil Code, the owner of an object has the right to sue for the return of their property from those who hold it. Mariam Darus Badrulzaman clarifies that the lawsuit pertains to the object itself, not the ownership rights. A lawsuit cannot be filed if the claimant is not the owner.[28] The right of revendication is a characteristic of property rights (*zakelijk recht*). Sri Soedewi Masjchoen Sofwan explains that every property right includes the right of revendication (*revindicatie*), which allows for the demand or lawsuit for the return of the asset to its original state. This claim may involve demanding the return of the asset, restoring it to its original condition, seeking compensation, and the others.[29] In the leasing industry, the right of revendication empowers the Lessor to lawfully repossess the leased asset, either through direct action or legal proceedings as regulated by applicable laws. The purpose of this right is to protect the Lessor's interests and ensure the recovery of assets or financing that has not been fully repaid.

Understanding the procedures and requirements for exercising the right of revendication is crucial for the Lessor to ensure lawful execution of this right. In addition to Article 574 of the Indonesian Civil Code, relevant references include Law No. 42 of 1999 on Fiduciary Guarantees, the Constitutional Court Decision

[25] The right or authority of a creditor to execute on their own authority (*eigenmachtig verkoop*) over fiduciary guarantee assets, as stipulated in Article 15 paragraph (3) in conjunction with Article 29 of Law No. 42 of 1999 on Fiduciary Guarantees, is a power granted by law (by operation of the law), not an automatic right that arises by itself. Similar provisions are found in Article 1155 of the Indonesian Civil Code for Pledge, Article 1178 of the Indonesian Civil Code for Mortgage, and Article 6 of Law No. 4 of 1996 for Land Rights Security.

[26] Nikolaas Egbert Algra, *Kamus Istilah Hukum Fockema Andreae: Belanda-Indonesia* (Bandung: Binacipta, 1983), 482.

According to the Legal Terms Dictionary by Fockema Andreae, p. 482, *'Revindicatie'* is defined as a claim or demand for one's own property, sometimes referred to as a demand for return. It involves a claim by the owner of an object against anyone possessing it, with a revindication seizure (*revindicatoir beslag*).

[27] Article 574 of the Indonesian Civil Code.

[28] Mariam Darus Badrulzaman, *Sistem Hukum Benda Nasional*, 49.

[29] Sri Sudewi Masjchoen Sofwan, *Hukum Perdata: Hukum Benda* (Yogyakarta: Liberty, 1975), 28.

No. 18/PUU-XVII/2019, and Financial Services Authority Regulation No. 35 of 2018.[30] As the owner of the asset, the Lessor should not need to resort to litigation for execution, which can be time-consuming, costly, and procedurally complex. The right of the Lessor to reclaim ownership of the asset is inherently embedded in the leasing agreement, unlike execution rights in fiduciary guarantees or mortgages, which are stipulated by agreement. If the Lessee defaults, the Lessor has the legal right to reclaim the asset without requiring a court judgment. However, if the Lessee refuses to voluntarily return the asset, the Lessor may take legal action by requesting a court order for execution of the asset.

The law does not authorize an owner to independently reclaim their property from another's possession through forcible means, without assistance from authorized parties, (which in this case is the police[31]), or judicial support through an execution request according to Articles 196 and 197 of the HIR (*Herzien Inlandsch Reglement*). Such forcible actions could be deemed as self-help (*eigenrichting*) [32] and are not legally permissible.

3.2.2. In the case the Lessee is Bankrupt

Generally, when a debtor defaults and seeks to hold the debtor accountable for settlement, in addition to filing a standard civil lawsuit with the district court, the creditor may also submit a bankruptcy petition against the debtor to the commercial court based on Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the "**Bankruptcy and PKPU Law**"). Bankruptcy is a situation in which the debtor is unable to make payments on their debts to creditors. This inability to pay is typically caused by financial distress resulting from the debtor's deteriorated business conditions. Bankruptcy is a court ruling that results in a general seizure of all the bankrupt debtor's assets, both those currently existing and those that will arise in the future. The administration and settlement of the bankruptcy are managed by a trustee under the supervision of a supervisory judge, with the primary objective of utilizing the proceeds from the sale of these assets to pay all of the bankrupt debtor's debts proportionally (prorate parte) and in accordance with the creditor structure.[33] From the date the bankruptcy declaration is pronounced, the bankrupt debtor loses the right to control and manage their assets that are included in the bankruptcy estate.[34]

[30] The three sources of law generally only apply to the repossession of movable goods bound by a deed of Fiduciary Guarantee. The provisions in these three sources for the leasing industry are only a "reference" and cannot be mutatis-mutandis applied to the leasing object repossession procedure.
[31] See the Indonesian National Police Regulation No. 8 of 2011 concerning the Security of Fiduciary Guarantee Execution.
[32] The act of *eigenrichting* is prohibited in any legal state, including the Republic of Indonesia. *Eigenrichting* refers to unilateral actions that fall under the authority solely vested in the state.
[33] Hadi Subhan, *Hukum Kepailitan: Prinsip, Norma dan Praktik di Peradilan* (Jakarta: Kencana Prenadamedia Group, 2019), 1.
[34] Article 24 paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

In bankruptcy, the trustee will distribute the debtor's assets to all creditors while considering their respective rights. Consequently, individual creditors are not permitted to execute separate seizures. Creditors must act collectively (*concursus creditorum*) in accordance with the principles established in Article 1131 and Article 1132 of the Indonesian Civil Code.[35] Bankruptcy is intended to prevent the occurrence of separate seizures or individual executions by creditors and to halt such actions by conducting a collective seizure, thereby allowing the debtor's assets to be distributed among all creditors in accordance with their respective rights.[36]

In bankruptcy, there are well-known principles such as the principle of *paritas creditorum*, as outlined in Article 1131 of the Indonesian Civil Code, which essentially equalizes the positions of creditors, and the principle of *pari passu prorate parte*, which stipulates that all of the debtor's assets serve as joint collateral for all creditors and must be distributed proportionally among them. This distribution is done proportionally, rather than equally, unless certain creditors are legally entitled to priority in payment. This principle emphasizes a fairer allocation of the debtor's assets to settle debts with creditors according to their proportions and not equal distribution.[37] In addition to these principles, there is also the important principle of *structured creditors*, which involves classifying and grouping various types of creditors into different categories. In bankruptcy, creditors are classified into three types:[38]

1. *Secured Creditors*: Creditors who hold security interests in property, such as mortgages, pledges, or fiduciary guarantees;
2. *Preferred Creditors*: Creditors who, according to the law, are entitled to priority in payment (claims that are privileged according to the provisions of Article 1139 and Article 1149 of the Indonesian Civil Code); and
3. *Unsecured Creditors*: Creditors who do not hold security interests and are not entitled to priority payment under the law.

In the context of bankruptcy asset liquidation, the trustee is responsible for conducting the sale of the estate's assets through auction. Following the successful sale of these assets, the trustee must prepare a distribution list to be submitted for approval by the Supervisory Judge. This distribution list must include detailed accounts of all receipts and expenditures, encompassing the trustee's fees, the

[35] The provisions of Article 1131 and Article 1132 of the Indonesian Civil Code embody the principle of "*paritas creditorum*" (equality of creditors' positions). This principle represents a "general guarantee" that all of the debtor's assets, whether movable or immovable, whether already owned or acquired in the future, serve as collateral for their debts to all creditors.

[36] Ardian Sutedi, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi dan Kepailitan* (Jakarta: Sinar Grafika, 2010), 208.

[37] M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma dan Praktik di Peradilan* (Jakarta: Kencana Prenadamedia Group, 2019), 29–30.

[38] Risma Cahya Yudita Pratama and M. Hadi Shubhan, "Kedudukan Objek Sewa Guna Usaha dengan Hak Opsi (Finance Lease) dalam Kepailitan Lessee," *Journal of Notarial Law* 5, no. 1 (February 2022), https://doi.org/10.20473/ntr.v5i1.33639.

names of creditors, the amounts attributed to each claim, and the portions allocated to each creditor.When preparing the proposed distribution list for the Supervisory Judge's approval, the trustee must carefully consider the status of each creditor, whether they are a secured creditor, a preferred creditor, or an unsecured creditor.[39]

In addition to obligations to the lessor, a lessee may also be a debtor to other financial institutions. Consequently, if the lessee defaults on other creditors, there is a possibility of being declared bankrupt by these creditors. When a lessee is declared bankrupt, questions arise regarding the status of the capital assets subject to leasing, which are owned by the lessor but remain in the possession of the bankrupt lessee. There is also concern about what happens if these leased assets are included in the bankruptcy estate by the trustee. Article 21 of the Bankruptcy and Suspension of Payment Obligations Law (*UU Kepailitan dan PKPU*) stipulates that bankruptcy affects all assets of the debtor at the time of the bankruptcy declaration as well as any assets acquired during the bankruptcy period. Exceptions to this provision are outlined in Article 22 of the same law, which specifies that the following items are excluded from the bankruptcy estate: (1) items that are essential for the debtor's daily needs (for instance, medical equipment, beds and their accessories used by the debtor and their family, and food supplies for the next 30 days); (2) assets acquired by the debtor from their personal labor (e.g., wages, salaries, pensions, severance pay, or allowances); and (3) funds provided to the debtor to fulfill a legal obligation to provide support.

Referring to the provisions of Article 21 of the Bankruptcy and Suspension of Payment Obligations Law, which states that bankruptcy encompasses all assets owned by the debtor, it follows that, as long as the leasing agreement has not concluded and the lessee has not exercised the option to purchase the asset, the leased item remains the property of the lessor and is not part of the lessee's assets. Legally, the lessee does not yet own the item. Consequently, if the lessee is declared bankrupt, the trustee should exclude the leased asset from the bankruptcy estate of the lessee.

A potential issue that may arise is that third parties, including the trustee, may find it challenging to determine that the asset in question is still bound by a leasing agreement. This situation differs from mortgage rights over land, ship mortgages, or fiduciary rights over movable goods, which are subject to the principle of publicity because they are registered with the relevant registration authorities. In contrast, leased assets are not registered and therefore do not meet the principle of publicity. The only legal basis indicating that the lessor is the owner of the asset is the leasing agreement between the lessee and the lessor. While this leasing

[39] Titik Tejaningsih, *Perlindungan Hukum terhadap Kreditor Separatis dalam Pengurusan dan Pemberesan Harta Pailit* (Yogyakarta: FH UII Press, 2016), 19.

agreement functions as a "law" within the context of the parties involved, namely the lessee and the lessor, it is only enforceable between these two parties.[40]

The leasing agreement established between the parties (lessee and lessor) is effective solely between those parties and does not bind external parties or cause harm to others.[41] There is a perspective that the rights arising from such an agreement are personal rights rather than proprietary rights. Personal rights are relative and can only be enforced against parties bound by a legal relationship, whether through contract or statute. For the lessor's ownership of the leased asset to be binding on third parties, it must be established through proprietary rights. Additionally, the lessor's position is further weakened by the fact that many leasing agreements are not executed before a notary and are merely private agreements.

What if the leased asset is subsequently included in the bankruptcy estate by the trustee? The lessor, as a third party and the rightful owner of the asset, can file an objection in the bankruptcy proceedings to have the asset removed from the bankruptcy estate. This objection must be filed against the trustee.[42] This is in line with the principle that a third party who is adversely affected by the inclusion of their property in the debtor's estate, including their own property, has the right to challenge this action. In such a case, the lessor can submit a "*derden verzet*" (third-party objection) against the "*conservatoir beslag*" (preliminary attachment)[43] imposed by the court. The legal status of a third party is governed by Articles 56(1) and 57(2), (3), (4), and (6) of the Bankruptcy and Suspension of Payment Obligations Law. These provisions essentially state that an individual may be recognized as a "third party" if they hold ownership of property that is under the control of the trustee.

In principle, a court ruling is binding only on the parties involved in the case. However, if a third party's rights are adversely affected by a ruling, that party may file an objection against the decision. To be recognized as a legitimate “objector”, the third party must be the owner of the asset that has been seized.[44]

The lessor, as a bona fide objector, is entitled to legal protection. The form of legal protection for the lessor, as the owner of the leased asset, involves litigation through a third-party objection (*derden verzet*) against the bankruptcy ruling in the Commercial Court. Upon the filing of a third-party objection with the court, the court is required to first adjudicate this objection to determine the third party's standing in relation to the bankruptcy estate. The judge should recognize the

[40] Article 1338(1) of the Indonesian Civil Code states that "all agreements made lawfully shall have the force of law for those who have made them”.
[41] Article 1340 of the Indonesian Civil Code contains the principle of "privaty of contract," indicating that agreements are binding only on the parties who enter into them.
[42] Article 26 paragraph (1) of Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.
[43] Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2009), 355.
[44] Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek* (Bandung: Alumni, 1979), 138.

objector as a legitimate and bona fide party and subsequently order that the asset be removed from or excluded from the record of the bankruptcy estate.

The lessor's position is not that of a creditor towards the lessee, but rather as the owner of the asset. Consequently, the lessor's position should be prioritized above that of all creditors, including secured creditors, preferred creditors, and especially unsecured creditors. The lessor has the right to reclaim their asset without undergoing complex procedures, as if no bankruptcy had occurred. Legal protection for creditors holding pledges, fiduciary guarantees, collateral rights, mortgages, or other security interests in the event of the debtor's bankruptcy is explicitly and clearly defined in the law.[45] In contrast, the legal protection for lessors in the event of the lessee's bankruptcy remains unclear and is not yet adequately regulated.

3.2.3. In the case the Leased Object is Sold or Pledged

Another common issue faced by lessors is the transfer, encumbrance, or removal of leased assets by the lessee without the lessor's knowledge. Such transfers can take various forms, including sale, encumbrance, pledge, debt repayment, exchange, or re-leasing of the asset, and others.[46] Although leasing agreements typically include explicit prohibitions against these actions, often accompanied by criminal penalties for embezzlement (Article 372 of the Indonesian Penal Code) and fraud (Article 378 of the Indonesian Penal Code), the practice of transferring, selling, or encumbering leased assets by the lessee to third parties still frequently occurs.

The transfer of leased assets during the term of the finance lease agreement constitutes a breach of the leasing contract. Such a transfer is legally void, as it is carried out by the lessee, who is not the owner of the asset and therefore lacks the capacity to transfer ownership. The sale by the lessee does not fulfill the requirements for transferring ownership in a sales transaction. The transfer of an asset in a sale is legally void if the person making the transfer does not have the right to transfer ownership, as they are not the owner of the asset.[47] According to Article 1471 of the Indonesian Civil Code, the sale of someone else's property is void and may provide grounds for claiming costs, damages, and interest if the buyer was unaware that the property belonged to another person.[48] In addition to civil claims in court, the lessee can also be reported to the authorities for committing criminal acts such as embezzlement (Article 372 of the Indonesian Penal Code), fraud (Article 378 of the Indonesian Penal Code), or the destruction or removal of another person’s property (Article 406 of the Indonesian Penal

[45] See the provisions of Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as well as Law Number 42 of 1999 concerning Fiduciary Security.
[46] The prohibition for the lessee to sublease the leased capital goods is stated in the provisions of Article 6 paragraph (2) of the Decree of the Minister of Finance Number 1169/KMK.01/1991. The same prohibition is also stated in the provisions of Article 9 paragraph (2) of the Financial Services Authority Regulation Number 35/POJK.05/2018.
[47] Subekti, *Aneka Perjanjian* (Bandung: Citra Aditya Bakti, 2014), 14.
[48] Article 1471 of the Indonesian Civil Code.

Code). Parties who receive the transferred asset or accept the encumbrance of a leased asset, besides being liable for costs, damages, and interest, may also face criminal charges for handling stolen goods as stipulated in Article 480 of the Indonesian Penal Code.

As a reference, the prohibition against transferring, pledging, or leasing to other parties is outlined in Article 23 point 2 of the Fiduciary Security Law. The criminal penalty for violating Article 23 point 2 of the Fiduciary Security Law is specified in Article 36 of the same law, which stipulates a maximum imprisonment of 2 years and a fine of up to IDR 50,000,000. This penalty (i.e. 2 years of imprinsonment) is distinct from the punishment outlined in Article 372 of the Indonesian Penal Code, which provides for a maximum imprisonment of 5 years. It can be said that Article 36 of the Fiduciary Security Law serves as a specific provision compared to Article 372 of the Indonesian Penal Code, reflecting the principle in criminal law known as "*lex specialis derogat legi generali*" (the specific law overrides the general law).

Criminal provisions are fundamentally intended to protect society and to punish unlawful behavior. In criminal law, one of the principles recognized is *ultimum remedium*, which posits that criminal law should be used as a last resort in enforcing legal actions against debtors. Similarly, for the lessee, the lessor should use the penal provisions in the Indonesian Penal Code as a final measure if civil litigation against the lessee fails. The principle of *ultimum remedium* means that if a matter can be resolved through other means (such as family reconciliation, negotiation, mediation, civil law, or administrative law), those alternative methods should be pursued first. Sudikno Mertokusumo defines *ultimum remedium* as a last resort. Wirjono Prodjodikiro suggests that norms or rules in the fields of constitutional and administrative law should first be addressed with administrative sanctions. Likewise, norms in civil law should be addressed with civil sanctions. Only if administrative and civil sanctions prove insufficient to achieve the goal of correcting social balance should criminal sanctions be considered as a final resort or *ultimum remedium*. However, in practice, lessors sometimes opt for a shortcut by directly reporting the lessee to the police on charges of embezzlement, fraud, or the removal of the leased asset. The lessor may argue that this approach is more practical, straightforward, and effective in compelling the lessee to fulfill their obligations to the lessor.

Why does criminal law possess the principle of *ultimum remedium*? Wirjono Prodjodikiro[49] explains that this is due to the nature of criminal sanctions as a “last weapon” or *ultimum remedium* arises from their role as a more severe and ultimate form of punishment compared to civil or administrative penalties. This characteristic creates a tendency to conserve the use of criminal penalties. Therefore, ultimum remedium is a term that describes the inherent nature of criminal sanctions.

[49] Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia* (Bandung: Refika Aditama, 2003), 50.

3.3. The Ideal Legal Concept of Ownership of Assets by the Lessor to Ensure Legal Certainty.

There are several concepts proposed by the author regarding the ownership of leased assets that could provide legal certainty for the lessor, thereby ensuring legal protection and operational comfort for the lessor. The following concepts will be detailed by the author.

3.3.1. Regulation Affirming the Ownership Function of Assets by the Lessor.

Supportive regulation is needed that explicitly, clearly, and definitively addresses the ownership of assets by the lessor. There must be a clear legal ownership relationship between the leased asset and the lessor (*eigendom recht*). This ownership by the lessor should be absolute, complete, and full, distinct from the ownership of assets by creditors in fiduciary security arrangements. Such ownership forms the legal basis that provides legal certainty for the lessor to secure repayment of the leasing financing extended to the lessee. This ownership function arises automatically (by law) and does not need to be explicitly stated in the leasing agreement, as it is inherent in the leasing contract itself. In the event of default, the lessee is obligated to return the asset to the lessor. If the lessee fails to return the asset during execution, the lessor has the right to repossess or reclaim the asset and may, if necessary, seek assistance from the appropriate authorities..

3.3.2. Inclusion of the Lessor's Name on Ownership Documents

Leased assets are typically movable property, such as vehicles or production machinery. In practice, the ownership documents for vehicles, such as the Vehicle Ownership Book (BPKB) and the Vehicle Registration Certificate (STNK), list the lessee as the owner for reasons of practicality and cost efficiency. However, this practice poses significant risks. The inclusion of the lessor's name on ownership documents is crucial because leasing financing is not registered, thus failing to meet the principle of publicity. If the lessee defaults or becomes bankrupt, the lessor will face difficulties in reclaiming the asset.

3.3.3. Obligation to Attach a Plaque as a Mark of the Leased Object

Article 9 point 2 of the OJK Regulation No. 35 of 2018 and Article 7 of KMK No. 1169 of 1991 mandate that the lessor attach a plaque or label to leased assets, including the name and address of the lessor and a statement indicating that the asset is subject to a lease agreement. The plaque or label must be placed in such a way that the asset can be easily distinguished from other assets. During the lease term, the lessee is responsible for ensuring that the plaque or label remains attached to the asset, well-maintained, and not removed, damaged, or covered in any manner.

During the lease term, the lessee is responsible for ensuring that the plaque or label remains attached to the asset, in good condition, and not removed, damaged, or covered in any way. The requirement to attach plaques or labels does not meet the criteria for the principle of publicity, as it does not involve the official

registration of the asset with recognized registration authorities nor does it provide the public with access to important information about the leased asset. This provision primarily serves to mitigate the risk of misuse or unauthorized transfer of the asset by the lessee or other parties lacking good faith.

3.3.4. Registration of the Leased Objects in the Asset Registry

Unlike fiduciary security and mortgage rights, there is no requirement to register or publicly announce assets bound by a leasing agreement to fulfill the principle of publicity (*openbaarheid*). The absence of this publicity principle in leasing transactions constitutes a significant weakness. It not only leads to legal uncertainty but also potentially complicates the lessor's ability to monitor the asset, exposing them to risks such as unauthorized transfers, collateralization, or sub-leasing without the lessor's knowledge.

In the Academic Manuscript for the Draft Law on Security Interests in Movable Assets prepared by the National Legal Development Agency of the Ministry of Law and Human Rights in 2021[50] this issue was addressed with the proposal of categorizing leasing activities as a type of security interest within a "quasi-security" framework for movable assets. Incorporating "leasing" as one of the "quasi-security" interests means classifying leasing as a form of security interest in movable assets, following the processes of creation, registration, notification to third parties, and execution in accordance with the provisions governing security interests in movable assets.

It is understood that registering leasing assets can enhance transparency and provide better legal protection for the lessor as the owner of the assets. However, on the other hand, this requirement may increase operational costs for the lessee and extend bureaucratic processes[51] potentially undermining the advantages of leasing in terms of convenience and cost efficiency, and could make leasing financing less competitive compared to services offered by banks. Therefore, the author believes that mandating the registration of leasing assets at present may not be entirely appropriate. However, in the long term, with the increasing volume of leasing transactions and the complexity of issues that arise, the idea of asset registration should be considered. The author prefers to further develop the existing asset registry managed by APPI, with full support and assistance from the OJK. The OJK could require every financing company to conduct online checks and record each leasing transaction. The recorded data would include the leasing agreements and asset specifications. This asset recording system would greatly assist financing companies in detecting potential misuse by parties engaging in double pledges or multi-pledges on assets being financed. An Asset Registry could provide initial information about the status of

[50] See the Academic Manuscript of the Draft of Indonesian Law on Security Interests in Movable Property.

[51] Several financing service providers whom the author interviewed expressed objections to this idea, arguing that it would increase costs for the lessee and make the bureaucracy and procedures of leasing financing longer and more complex.

assets to be financed and is highly useful for preliminary document checks to avoid double financing of the same asset among financing companies. This registry would be digital, with a single database encompassing all information about assets under leasing agreements, accessible in real-time to the public at an affordable cost. However, it is important to understand that the purpose of registration is solely for public disclosure and not as a means of creating new security interests.

3.3.5. Use of Authentic Deeds in Leasing Agreements

Currently applicable regulations do not explicitly require that leasing agreements be executed in the form of authentic deeds or private deeds, allowing parties to decide whether to formalize the agreement as a notarial deed or a private deed. Leasing agreements made as private deeds are often standardized contracts, which typically place the lessee in a weaker position. These standardized contracts are usually pre-printed, leaving the lessee with little bargaining power. In contrast, leasing agreements executed as notarial deeds offer significant advantages in terms of legal certainty. A notarial deed is an authentic deed that provides perfect evidentiary power as stipulated in Article 1870 of the Indonesian Civil Code. Perfect evidentiary power means that in a civil dispute, the judge must and is bound to consider the notarial deed as true and complete, and must use it as a basis for judgment.[52] A notary also ensures that the agreement complies with applicable regulations and treats all parties fairly. The involvement of a notary allows for broader negotiation regarding the terms of the agreement, enabling the parties to reach a more detailed and structured consensus. In the absence of specific regulations governing leasing in the form of legislation, a notarial deed becomes crucial as the legal basis for the parties in case of disputes. The notary will formalize the parties' intentions into the leasing agreement and will thoroughly examine the requirements that must be fulfilled. Additionally, psychologically, a lessee is more likely to be attentive to their obligations if the agreement is executed as a notarial deed.

3.3.6. Dispute Resolution related to Ownership of Leased Objects

The preferred and ideal method for resolving disputes is through amicable means, where the parties engage in negotiation and deliberation to settle their disagreements independently. If an agreement is reached, a settlement deed or dispute resolution agreement can be formalized before a notary to ensure that the agreement is well-documented and the dispute is resolved.

Other non-litigation dispute resolution methods can also be pursued through Alternative Dispute Resolution (ADR).[53] In this case, OJK has issued POJK No. 1/POJK.07/2014, which was later replaced by POJK No. 61/POJK.97/2020 concerning the Financial Services Sector Alternative Dispute Resolution

[52] M. Yahya Harahap, *Hukum Acara Perdata*, 583.
[53] Rachmadi Usman, *Pokok-pokok Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2012), 8.

Institution (*LAPS Sektor Jasa Keuangan*). This regulation was introduced to meet the needs of consumers in the financial services sector for out-of-court dispute resolution. According to the aforementioned POJK, out-of-court dispute resolution in the financial services sector for all financial service providers is handled by LAPS Sektor Jasa Keuangan.[54] Article 4 point a specifies that the Financial Services Sector Alternative Dispute Resolution Institution (*LAPS Sektor Jasa Keuangan*) is responsible and authorised to handle and resolve consumer disputes, including providing consultations, conducting research, and collaborating with national and international consumer protection agencies. The presence of LAPS Sektor Jasa Keuangan is expected to benefit both consumers and the financial industry by facilitating the resolution of disputes without lengthy and complex court proceedings, through methods such as mediation, adjudication, or arbitration.

If a resolution is not achieved through non-litigation means, the dispute resolution process will escalate to litigation in court. In this judicial proceeding, the parties involved seek to obtain legal certainty and justice regarding their case.[55] In such a scenario, the lessor may initiate a lawsuit for breach of contract and request the execution of a revindication seizure (*Revindicatoir Beslag*) of the asset subject to the lease. This legal remedy is aimed at recovering the lessor's property currently in the possession of the lessee. Additionally, the lessor may seek compensation for breach of contract from the lessee, including claims for outstanding and unpaid rent, penalties, interest, collection costs, legal fees, and other related expenses.[56]

The legal procedure for reclaiming leased assets should be designed to be expeditious, straightforward, cost-effective, and efficient. This process should be streamlined, recognizing that the lessor is the rightful owner of the asset, rather than merely a holder of collateral rights. Simplifying the execution of leased assets will incentivize lessors to extend their financial resources to companies in need. Should lessors be deprived of a rapid and economical mechanism for recovering outstanding claims through the execution of leased assets, it may lead to a contraction in the availability of funds from financing companies to businesses requiring capital. Such a situation could, in turn, impede economic activity and obstruct the smooth operation of the economy.

4. CONCLUSION

The ownership of leased objects by the lessor is a critical issue in leasing transactions because it pertains to the guarantee of returning funds disbursed by the lessor to the lessee. This guarantee is similar to fiduciary security or collateral rights. Legal certainty regarding

[54] Article 6 and Article 7 of POJK No. 61/POJK.97/2020 concerning the Financial Services Sector Alternative Dispute Resolution Institution.
[55] Moh. Taufik Makarao, *Pokok-pokok Hukum Acara Perdata* (Jakarta: PT Rineka Cipta, 2014), 124.
[56] Andasasmita Komar, *Serba-serbi tentang Leasing (Teori dan Praktek)* (Bandung: Ikatan Notaris Indonesia Komsariat, 1989), 689; Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung: PT Citra Aditya Bakti, 2019), 225.

ownership, efforts to maintain and preserve ownership, and the right to reclaim ownership from any party in the event of default, bankruptcy, or transfer or encumbrance of the asset is crucial for financing companies. Effective regulation is required to provide legal certainty on these matters. In the long term, this necessitates legislative action in the form of a law. In the short term, the role of the OJK (Financial Services Authority) as the regulator and supervisor of financing institutions is essential, particularly through the issuance of regulations that ensure a comfortable business environment and legal protection for financing companies, especially in leasing. This will enable optimal capital equipment financing for productive enterprises. Optimizing leasing financing will positively contribute to economic growth, ultimately creating more job opportunities and improving the standard of living for the community.

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