



---

**LEGAL IMPLICATIONS OF LESSEE BANKRUPTCY ON THE STATUS OF  
LEASED ASSETS IN INDONESIA**

**Ajeng Pramesthy Hardiani Kusuma<sup>1</sup>**  
University Jember, Jember, Indonesia  
[199308212022032018@mail.unej.ac.id](mailto:199308212022032018@mail.unej.ac.id)

**Emi Zulaika<sup>2</sup>**  
University Jember, Jember, Indonesia

**Tegar Raffi Putra Jumantoro**  
University Jember, Jember, Indonesia

**Nur Alfi Fauziyah<sup>4</sup>**  
University Jember, Jember, Indonesia

---

**Abstract**

In a leasing agreement, the lessee acquires the right to use the leased assets with the option to purchase them after the leasing period ends. However, when the lessee goes bankrupt, the problem that arises is regarding the position of the leasing goods in relation to other creditors, considering that all of the lessee's assets, including leased assets that are the object of leasing, can be confiscated to pay off debts. Although leasing agreements have not been regulated in detail in the law, the principles of freedom of contract and an open system contained in the Indonesian Civil Code (KUHPerdata) provide a flexible legal basis for the parties in drafting agreements that govern their rights and obligations. The results of the analysis show that in the case of bankruptcy, the goods that are the object of leasing remain the property of the lessor, although there is a risk to the lessor if the lessee is unable to continue the payments. In this case, the court-appointed receiver has the authority to decide whether the leasing agreement will be continued or terminated. If the agreement is terminated, the lessee must return the goods to the lessor, and the lessor has the right to claim compensation for the losses suffered. While leasing provides and beneficial financing solutions for the business sector, the need for clearer regulations is important to protect the rights of lessors as well as other creditors in a lessee's bankruptcy situation. This aims to minimize the risk of legal conflicts and create stronger legal certainty for all parties involved in the leasing agreement.

**Keywords:** Leasing, Bankruptcy, Lessee, Agreement



## INTRODUCTION

Indonesia's economy is currently experiencing rapid growth amid the flow of globalization, which is characterized by increased investment and international trade activities. In addition to banking institutions that have a crucial role in supporting financial stability and providing banking services for the community, Non-Bank Financial Institutions (LKBB) also play a significant role in encouraging economic dynamics. LKBBs, such as financing, insurance, and microfinance institutions, provide a wide range of financial services that expand access to funding for businesses, including small and medium-sized enterprises that are often unreachable by conventional banking services (Hasibuan, 2024). The presence of LKBB enriches financing alternatives, such as leasing, venture capital, and consumer financing, which allows the business sector to grow faster and increase overall economic productivity.

Leasing, as stipulated in Article 1 point 5 of Presidential Regulation No. 9 of 2009, is a form of financing that allows the provision of leased assets for business actors, either with a purchase option (finance leasing) that provides an opportunity for the lessee to own the asset at the end of the leasing period, or without a purchase option (operating leasing) where the assets remain the property of the lessor (Iriyanto et al., 2024). Although specific rules regarding leasing agreements are not listed in the Indonesian Civil Code, legal flexibility can still be applied. Book III of the Indonesian Civil Code adheres to the principle of an open system, which gives the parties the freedom to formulate mutually agreed agreements, including types of agreements that have not been specifically regulated in the law (Harahap et al., 2023). This allows various agreements to be drawn up based on the needs and trust between the parties involved in the leasing transaction, without having to be bound by strict regulations. As a complement, Book III of the Indonesian Civil Code is supplementary in nature, meaning that its provisions will apply if the parties do not determine otherwise in their agreement, making it a flexible and adaptive basis for the implementation of leasing agreements in Indonesia.

If the debtor is unable to fulfill their obligations according to the agreement, the creditor has the right to demand legal liability in order to obtain the fulfillment of their rights (Sibli et al., 2023). One way to resolve such disputes is by filing a bankruptcy application with the Commercial Court, where the debtor may be declared bankrupt if proven unable to pay their debts. In bankruptcy conditions, all of the debtor's assets become joint collateral for creditors and will be distributed proportionally in accordance with the principle



of *pari passu pro rata parte*, meaning that all creditors have equal rights and will receive a proportionate share of the available assets, unless there are creditors with special privileges or security rights (Maharani & Sudiro, 2024). Creditors holding security rights such as pledges, mortgages, or fiduciary security rights have priority in the repayment of debts from the proceeds of the sale of such collateral. This provides additional protection for secured creditors and ensures that they are in a stronger position in the face of the debtor's inability to fulfill their obligations.

In addition to filing a bankruptcy application against the debtor to demand the fulfillment of obligations, creditors also have other options to file claims outside the bankruptcy mechanism, such as through a regular civil lawsuit. Based on Article 3 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law), the court authorized to decide cases related to applications for declaration of bankruptcy and other matters regulated in this Law is the Commercial Court whose jurisdiction includes the debtor's domicile.

In addition, in cases where a third party feels aggrieved because the debtor's confiscated assets turn out to be their own property, the third party has the right to file a *derden verzet*, or third-party opposition, against the *conservatoir beslag* (seizure of collateral) (Rustam & Abdiansyah, 2024). This procedure allows a third party to defend their rights over the seized goods so that they can maintain ownership of their assets and avoid losses that would otherwise arise from a seizure carried out in bankruptcy proceedings. This mechanism provides additional legal protection for third parties and ensures that their rights are also taken into account in the debtor's debt settlement process, thereby creating a balance between the interests of creditors and the property rights of other parties involved.

## LITERATURE REVIEW

Leasing has developed into one of the important financing mechanisms used by business actors to obtain capital goods without the need for immediate full ownership. Through a leasing arrangement, a financing company provides certain assets for use by another party for a specific period of time based on an agreement between the parties. This arrangement allows business actors to access equipment or operational assets while maintaining financial flexibility, especially when capital resources are limited. In practice, leasing has become a practical alternative to conventional credit financing because it enables companies to use



productive assets while spreading the cost of acquisition over time (Kholid et al., 2023).

From the perspective of Indonesian contract law, leasing agreements are generally categorized as unnamed contracts because they are not specifically regulated in the Indonesian Civil Code. Nevertheless, the absence of detailed statutory regulation does not diminish the legal validity of such agreements. Leasing contracts derive their legal basis from the general provisions governing agreements in Book III of the Civil Code. The Indonesian contract law system adopts an open system, which allows parties to create contractual arrangements according to their needs, provided that the agreement does not violate statutory law, public order, or morality (Amanda et al., 2024). This flexibility makes it possible for various forms of modern business contracts, including leasing, to develop within the framework of general civil law principles.

The principle of freedom of contract plays a fundamental role in the formation of leasing agreements. This principle allows parties to determine the content of their contractual relationship, including rights, obligations, payment mechanisms, and dispute resolution procedures. As long as the agreement is made voluntarily and does not contradict applicable legal norms, the parties are generally free to regulate the terms of their relationship. The freedom granted to contracting parties reflects the broader function of contract law in supporting economic activities and facilitating business transactions (Priyono & Birauti, 2022).

Another important principle that underlies leasing agreements is the doctrine of *pacta sunt servanda*, which requires that agreements that have been legally concluded must be respected and performed in good faith. This doctrine ensures that the commitments made by the parties in a leasing agreement are legally binding and enforceable. Once the parties reach an agreement, the contract creates rights and obligations that must be fulfilled by both sides. In this sense, leasing agreements function not only as economic instruments but also as legally binding relationships that require compliance and good faith from the contracting parties (Haris & Yuningsih, 2024).

In order for a leasing agreement to be considered legally valid, it must satisfy the general requirements for the validity of contracts as regulated in Article 1320 of the Indonesian Civil Code. These requirements include the existence of mutual consent between the parties, the legal capacity of the parties to enter into an agreement, a clearly identifiable object, and a lawful purpose. These elements serve as the fundamental legal framework that ensures the



legitimacy and enforceability of contractual relationships in civil law. If one of these requirements is not fulfilled, the agreement may be declared void or voidable depending on the nature of the deficiency.

In business practice, leasing arrangements generally take two main forms, namely finance leasing and operating leasing. Finance leasing provides the lessee with the possibility of acquiring ownership of the leased asset at the end of the leasing period through the exercise of a purchase option. Under this model, the lessee typically bears most of the costs associated with the use of the asset, including maintenance, insurance, and taxes. In contrast, operating leasing does not include a purchase option, and the leased asset must be returned to the lessor once the contractual period ends. This distinction reflects different economic objectives and risk allocations between the contracting parties (Syofyan, 2017).

The existence of leasing as a financing mechanism also contributes to broader economic development by expanding access to capital goods for business actors. Leasing enables companies, particularly small and medium-sized enterprises, to obtain equipment that might otherwise be difficult to acquire through conventional financing channels. In this way, leasing supports productive activities and helps improve the operational capacity of businesses (Hasibuan, 2024). The availability of alternative financing schemes such as leasing also strengthens the role of non-bank financial institutions in supporting economic growth.

Despite its practical benefits, leasing agreements may give rise to legal issues when disputes occur between the parties or when one party fails to fulfill its contractual obligations. One of the most complex situations arises when the lessee becomes bankrupt. Bankruptcy law introduces a collective mechanism for settling the debts of an insolvent debtor by placing all of the debtor's assets under the control of a receiver for the purpose of distribution among creditors. In this context, questions may arise regarding the legal status of assets that are used by the debtor but are not actually owned by the debtor (Makmur, 2016).

In leasing arrangements, ownership of the leased asset generally remains with the lessor during the duration of the contract. However, because the asset is physically controlled and utilized by the lessee, the declaration of bankruptcy may create uncertainty regarding whether the asset can be treated as part of the bankruptcy estate. Such circumstances may potentially affect the legal position of the lessor, particularly when the lessee still has outstanding payment obligations under the leasing agreement.

Legal scholars have therefore highlighted the importance of legal protection for the parties involved in leasing transactions. The lessor, as the party



that retains ownership of the leased asset, may face financial losses if the contractual relationship is disrupted due to the lessee's inability to perform its obligations. Ensuring clear legal recognition of ownership rights and contractual protections becomes essential in preventing disputes and minimizing risks associated with insolvency situations (Lasut & Karamoy, 2022).

Furthermore, the development of commercial transactions and financing arrangements requires a legal framework that provides adequate certainty for business actors. Legal certainty is crucial to maintain confidence in contractual relationships and to ensure the stability of economic activities. Harmonization between contract law principles and other areas of law, including bankruptcy law, is therefore necessary in order to create balanced protection for all parties involved in commercial transactions (Barkatullah, 2016).

Based on these considerations, the relationship between leasing agreements and bankruptcy law represents an important legal issue that requires careful examination. The interaction between contractual rights and insolvency procedures raises significant questions regarding ownership, creditor protection, and the status of leased assets during bankruptcy proceedings. Understanding these legal aspects is essential for evaluating the consequences of a lessee's bankruptcy and determining the appropriate legal position of leased assets within the Indonesian legal system.

## RESEARCH METHOD

The juridical-normative research method is an approach that focuses on the study of applicable legal norms and laws and regulations to analyze the legal issues raised in the research (Benuf & Azhar, 2020). This research uses a juridical-normative method with a research approach that focuses on the study of applicable legal norms and laws and regulations related to the role of Non-Bank Financial Institutions (LKBB), leasing agreements, and debt settlement mechanisms through bankruptcy and other legal remedies. This research will examine various regulations such as Presidential Regulation No. 9 of 2009 concerning leasing activities, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy and PKPU Law), and the Indonesian Civil Code (KUHPerdara), especially regarding the application of the open system in Book III of the Indonesian Civil Code.

The analysis is carried out by examining how these norms are interpreted and applied in practice by the courts, especially the Commercial Court in handling bankruptcy cases, as well as the rights of creditors and third parties



involved in legal proceedings. Through this approach, it is hoped that the research can provide a comprehensive overview of the application of laws related to debt settlement and the role of financing institutions in supporting the Indonesian economy in the era of globalization.

## **RESULTS AND DISCUSSION**

### **Legal Characteristics of Leasing Agreements in the Indonesian Legal System**

Leasing is an important form of legal engagement in the business world in Indonesia and must comply with the applicable laws and regulations in the country (Sudjana, 2023). Although leasing has been widely used as a financing solution to acquire leased assets, there is still no specific law in Indonesia that regulates leasing activities in detail. The absence of such specific regulation encourages the use of the Indonesian Civil Code (BW) as a legal basis for regulating various aspects of leasing agreements. The BW, which contains the fundamental principles of contract law, provides a legal framework that can be used by the parties in drafting agreements, including leasing agreements. This allows for clearer and more structured contractual arrangements so that the parties can minimize potential losses arising from their contractual relationship. In addition, the use of the BW as a legal reference in leasing also provides legal certainty for the parties, namely the lessor and the lessee, by guaranteeing the protection of their rights and obligations during the validity period of the agreement.

A leasing agreement is a type of agreement that has not been specifically regulated in statutory law; therefore, it is categorized as an unnamed (innominate) agreement (Amanda et al., 2024). In this context, leasing agreements arise from the principle of freedom of contract, where each party has the right to determine the terms and conditions of the agreement according to their interests. This principle is reflected in Article 1338 paragraph (1) of the Indonesian Civil Code, which states that agreements that are legally formed shall bind the parties as law. Consequently, even though leasing agreements are not specifically regulated, the parties are still required to formulate their contracts carefully and clearly, including provisions regarding their respective rights and obligations as well as mechanisms for dispute resolution. Through the application of the principle of freedom of contract, leasing agreements can function as effective legal instruments to meet financing needs while still ensuring legal certainty and protection for all parties involved.

The freedom possessed by the parties in drafting agreements, as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code, also reflects the



principle of privity of contract, which is regulated in Article 1340 of the Civil Code. According to this principle, agreements only bind the parties who conclude them and do not create rights or obligations for third parties (Barkatullah, 2016). Therefore, the legal consequences arising from a contract will only affect the parties involved in the agreement. In the context of leasing agreements, the principle of privity of contract emphasizes that the contractual rights arising from the agreement are exclusive to the parties who made the agreement and cannot be enforced by third parties. This principle provides legal certainty for the contracting parties because they have full control over the rights and obligations that arise from their agreement.

Agreements that have been concluded in accordance with the will of the parties will become binding rules for those who enter into them (Medahalyusa & Busro, 2023). The validity of an agreement, both named and unnamed, is regulated in Article 1320 of the Indonesian Civil Code. This provision establishes the essential requirements that must be fulfilled for an agreement to be considered legally valid. These requirements reflect the principle of consensualism, which states that an agreement becomes legally binding once the parties reach mutual consent regarding the essential elements of the contract. The principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code is closely related to Article 1320, because both provisions reinforce the legal foundation of contractual relationships.

As a consequence, agreements that fail to meet the legal requirements stipulated in Article 1320 may not have binding legal force for the parties involved (Haris & Yuningsih, 2024). In practice, this condition requires the parties to exercise caution and responsibility when drafting agreements. Any failure to meet the legal requirements for the validity of a contract may result in the agreement being declared invalid, thereby preventing the enforcement of the rights and obligations that should arise from the contractual relationship.

The legal conditions of an agreement are regulated in Article 1320 of the Indonesian Civil Code (BW), which stipulates four essential requirements that must be fulfilled. First, there must be mutual consent between the parties who agree to be legally bound to one another. Second, the parties must have legal capacity to enter into an agreement, meaning they must be legally competent to understand and accept the terms of the contract. Third, the agreement must concern a certain object that is clearly identifiable and determinable. Finally, the agreement must have a lawful cause, meaning that the purpose or underlying reason for the agreement must not contradict the law, public order, or morality.



By fulfilling these four requirements, the parties can ensure that the agreements they conclude are legally valid and binding, allowing them to exercise their rights and obligations with legal certainty.

An agreement that does not meet the legal requirements, particularly in relation to a lawful cause, will not be recognized by law even if the parties acknowledge its existence (Setiawan et al., 2020). In situations where one of the parties refuses to recognize the agreement and this results in a dispute, the judge has the authority to annul the agreement or declare it null and void. This demonstrates that the validity of an agreement depends on compliance with all legal requirements stipulated by law, including the existence of a lawful cause that does not conflict with applicable legal provisions. Failure to comply with these requirements may lead to serious legal consequences, including the loss of rights that should otherwise arise from the agreement.

The requirements relating to the existence of consent between the parties and the legal capacity to conclude an agreement are categorized as subjective requirements, as they relate directly to the personal circumstances and characteristics of the parties involved (Maramis et al., 2023). On the other hand, the requirements concerning the object of the agreement and the lawful cause are categorized as objective requirements, because they relate to the substance and purpose of the agreement itself. If an agreement fails to meet the subjective requirements, such as the absence of valid consent or the lack of legal capacity of one of the parties, the agreement may be cancelled through legal proceedings. However, if the agreement does not meet the objective requirements, for example due to an unclear object or an unlawful cause, the agreement will be considered null and void by operation of law without the need for a cancellation process. This distinction emphasizes the importance of both categories of requirements in determining the validity of agreements.

An agreement represents a form of alignment between the intentions of the parties, which is manifested through mutual consent regarding certain matters regulated in the contract (Priyono & Birauti, 2022). In this context, the intention refers to the willingness of each party to establish a legally binding relationship. With regard to legal capacity, every individual is presumed capable of performing legal acts unless otherwise stipulated by law, as regulated in Article 1329 of the Indonesian Civil Code. Furthermore, the term “a certain object” referred to in Article 1320 of the Civil Code relates to the subject matter of the agreement, which may take the form of performance or obligations that must be fulfilled by one of the parties. In addition, a lawful cause refers to the legitimate purpose underlying the formation of the agreement, indicating that every



agreement must be based on a valid reason that does not violate the law, public order, or morality. By understanding these elements, the parties can ensure that the agreements they conclude are not only legally valid but also capable of being properly implemented.

Finance leasing, in accordance with the provisions of Article 1 letter (o) of the Decree of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991, refers to a leasing arrangement that grants the lessee the right to purchase the leased asset or extend the leasing period in accordance with the terms agreed upon with the lessor. This type of leasing, also known as a capital lease or full-payout lease, has several characteristics that distinguish it from other forms of leasing agreements. First, the duration of a finance leasing agreement is generally longer than that of other leasing arrangements. Second, the amount of rental payments must be sufficient to cover the acquisition cost of the leased asset as well as provide profit for the lessor. Third, the lessee is granted a purchase option to acquire the leased asset at the end of the leasing period if they choose to exercise that right. Fourth, such agreements are typically provided by financing companies. In addition, the amount of monthly rental payments may vary depending on the applicable financing structure. It is also common for the lessee to bear responsibilities related to maintenance, repairs, taxes, and insurance for the leased assets. Furthermore, finance leasing agreements are generally non-cancellable, which provides a higher degree of legal certainty and protection for both parties in the execution of the contract.

In a finance leasing scheme, the lessee obtains a purchase option to acquire the leased assets at the end of the agreement period based on the residual value previously agreed upon by the parties (Syofyan, 2017). In contrast, under an operating leasing arrangement, the leased assets must be returned to the lessor after the leasing period ends. Although finance leasing provides the lessee with the opportunity to acquire ownership of the assets, this type of agreement may pose greater risks and disadvantages for the lessee compared to operating leasing. This is because the lessee is generally responsible for maintenance costs, damages, and taxes related to the leased assets. In addition, the lessee is usually bound by a longer leasing period and higher rental payments, which may affect the company's cash flow and liquidity. On the other hand, operating leasing offers greater flexibility, since the lessee does not bear full ownership responsibilities and can avoid the risks associated with asset depreciation.

Operating leasing does not involve the transfer of ownership of the leased property; under this arrangement, the lessee only enjoys the right to use the asset



without obtaining ownership rights (Kholid et al., 2023). At the end of the leasing period, the lessee is required to return the leased goods to the lessor. In practice, operating leasing requires specific expertise and resources, particularly in relation to the maintenance and remarketing of leased assets. The lessor is responsible for maintaining the value and condition of the asset, including carrying out regular maintenance and repairs when necessary. This ensures that the leased assets remain in good condition and can be leased again to other parties after the completion of the leasing period.

The legal institutions governing various forms of agreements in modern society, including leasing, hire purchase, and installment sales, are grounded in civil law principles that provide a clear legal framework for economic transactions. Two fundamental principles serve as the foundation of these contractual arrangements: the principle of freedom of contract, as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code, and the principle of consensualism, as reflected in Article 1320 of the same Code. The principle of freedom of contract allows the parties to determine the terms of their agreement according to their respective interests, while the principle of consensualism emphasizes that an agreement becomes legally binding once mutual consent has been reached between the parties without the need for additional formalities.

In the context of hire purchase, ownership of the goods will automatically transfer to the buyer after the installment payments have been completed. This differs from leasing agreements, where ownership will only transfer to the lessee if the purchase option is exercised at the end of the leasing period. Based on the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Indonesian Civil Code in conjunction with Article 1320 of the same Code, hire purchase can be viewed as a development of the sale and purchase agreement that incorporates elements of installment transactions. Therefore, hire purchase not only facilitates the acquisition of goods through installment payments but also reflects contractual flexibility that may benefit both parties involved in the agreement.

### **3.2 Consequences of the Lessee's Bankruptcy Law on the Position of the Leased Object for Business**

Bankruptcy is a court decision that results in all of the assets of a bankrupt debtor, both present and future assets, being subject to general seizure (Makmur, 2016). The basic concept of bankruptcy is rooted in the legal principles contained in Article 1131 of the Indonesian Civil Code (BW). This provision states that all assets belonging to the debtor, whether movable or immovable, present or future,



serve as collateral for the fulfillment of all obligations owed to creditors. Therefore, all of the debtor's assets may be used to satisfy outstanding debts. In addition to these general provisions, more specific legal rules regarding bankruptcy are regulated in detail in the Law concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law).

According to Article 1 number 1 of the Bankruptcy and PKPU Law, bankruptcy is defined as the general seizure of the debtor's assets, where the authority to manage and settle those assets no longer lies with the debtor but is transferred to a curator, who performs these duties under the supervision of a supervisory judge. A debtor may be declared bankrupt if the conditions stipulated in Article 2 paragraph (1) of the Bankruptcy and PKPU Law are fulfilled, namely that the debtor has at least two creditors and there is at least one debt that has matured and is collectible. If these requirements can be proven in a simple manner, the Commercial Court is obligated to grant the bankruptcy petition, as stipulated in Article 8 paragraph (4) of the Bankruptcy and PKPU Law.

A lessee who is declared bankrupt will likely be unable to fulfill all obligations that have been agreed upon with the lessor (Manginsela et al., 2018). These obligations may include unpaid installment payments that remain outstanding at the time the bankruptcy decision is issued. The cessation of installment payments may cause financial losses for the lessor. Based on Article 21 in conjunction with Article 24 of the Bankruptcy and PKPU Law, a declaration of bankruptcy against the lessee includes all assets owned by the lessee at the time the bankruptcy judgment is rendered, as well as assets acquired during the bankruptcy process. As a consequence, the debtor loses the legal authority to control and manage their property. Debtors who have been declared bankrupt are only permitted to perform legal acts that may increase or preserve the value of their assets, which will then become part of the bankruptcy estate.

In leasing practice, the objects that may become the subject of a leasing agreement are not limited solely to capital goods but may also include consumer goods (Makmur, 2018). Consumer goods refer to goods that are used to satisfy daily personal needs rather than for productive business activities. Examples of consumer goods commonly used as objects of leasing agreements include motorcycles and cars. These goods are categorized as movable property, making them easier to transfer and adjust according to the needs of the lessee. In addition, capital goods used for productive activities are also frequently the subject of leasing agreements. For example, washing machines used in laundry businesses



may be leased as part of business operations. In this context, such equipment functions as a means of production and is therefore more appropriately categorized as capital goods within the framework of leasing activities.

During the validity period of a leasing agreement, ownership of the leased assets remains with the lessor (Lasut & Karamoy, 2022). In an operating leasing scheme, the lessee merely rents the goods to utilize their functions and benefits, while the legal title to the goods remains with the lessor throughout the duration of the agreement. This type of leasing is generally used when the lessee requires the asset only for a short period or has no intention of acquiring ownership permanently. In contrast, under a finance leasing arrangement, the leased assets are initially owned by the lessor, but there is a potential transfer of ownership to the lessee at the end of the leasing period, provided that the lessee has fulfilled all installment payment obligations in accordance with the terms of the agreement. If the lessee fails to make the required installment payments, ownership of the leased assets remains with the lessor. Finance leasing is generally applied to assets of significant value that are required for long-term use, thereby providing an opportunity for the lessee to acquire ownership once all financial obligations have been fulfilled.

The classification of leased assets in leasing activities serves as an important basis for distinguishing the tax treatment between leasing arrangements with a purchase option and those without a purchase option (Badriyah, 2012). This classification is regulated in Article 3 letter (b) of the Decree of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991, which is implemented in accordance with Article 11 of Law Number 7 of 1983 concerning Income Tax. The regulation explains that leased assets under a finance leasing arrangement possess specific cumulative characteristics, meaning that all predetermined criteria must be satisfied in order for the assets to be categorized as finance lease assets. This distinction has direct implications for the applicable tax treatment. Leasing arrangements with a purchase option may allow the transfer of ownership to the lessee at the end of the leasing period, thereby influencing the tax obligations borne by both parties. In contrast, leasing arrangements without a purchase option do not provide the lessee with the possibility of acquiring ownership of the asset, which results in a different method of tax calculation.

After the expiration of the leasing agreement, if the lessee does not exercise the purchase option or extend the leasing period, the lessee is obligated to return the leased assets to the lessor (Abriwati et al., 2024). The return of the leased assets must be carried out at the expense of the lessee, and the assets must be returned



in good condition in accordance with the provisions stipulated in the agreement. Furthermore, the assets must be returned to the location designated by the lessor. This obligation is essential to ensure that the leased assets remain in good condition and can be used again by the lessor or leased to other parties after the termination of the agreement. The requirement to return the assets in proper condition also reflects the lessee's responsibility in fulfilling the terms of the leasing agreement.

### **Synthesis of Discussion (Policy Synthesis)**

The discussion presented in this study demonstrates that leasing agreements in Indonesia operate within the framework of general contract law principles due to the absence of comprehensive statutory regulation governing leasing activities. Based on the principle of freedom of contract contained in the Indonesian Civil Code, parties are given broad autonomy to determine the contents of their agreements, including the rights and obligations related to the use of leased assets. As a result, leasing agreements are legally recognized as valid contractual relationships as long as they fulfill the general requirements for the validity of contracts.

The analysis of the legal characteristics of leasing agreements shows that ownership of the leased assets generally remains with the lessor during the duration of the agreement, while the lessee only obtains the right to use the assets. This legal structure is particularly significant when the lessee experiences financial distress or is declared bankrupt. Under the Indonesian bankruptcy system, the declaration of bankruptcy places the debtor's assets under the administration of a receiver for the purpose of debt settlement. However, assets that legally belong to third parties should not automatically be treated as part of the bankruptcy estate.

In the context of leasing agreements, the bankruptcy of the lessee does not necessarily eliminate the contractual relationship between the parties. The receiver has the authority to evaluate the continuation of ongoing contracts, including leasing agreements, based on considerations related to the interests of the bankruptcy estate and the creditors involved. If the continuation of the agreement is considered unfavorable, the contract may be terminated and the leased assets must be returned to the lessor in accordance with the terms agreed upon by the parties.

The findings of this study indicate that although the existing legal framework provides a basis for resolving disputes related to leasing agreements in bankruptcy situations, there is still a need for clearer regulatory provisions



regarding the legal status of leased assets in insolvency proceedings. The absence of specific legal rules may create uncertainty regarding the protection of ownership rights and the position of financing institutions as parties that provide leased assets.

Therefore, it is necessary to develop more comprehensive regulations governing leasing activities in order to provide stronger legal certainty for business actors. Clear legal provisions regarding the status of leased assets, the rights of lessors, and the authority of the receiver in bankruptcy proceedings would help minimize legal disputes and ensure a balanced protection of the interests of all parties involved. Through such regulatory development, leasing can continue to function as an effective financing mechanism that supports economic growth while maintaining legal certainty in commercial transactions.

## CONCLUSION

In the Indonesian legal system, leasing is a form of financing agreement that allows the lessee to use leased assets with the option to purchase or return the goods after the leasing period ends. While there are no specific regulations governing leasing, general legal principles such as freedom of contract and open systems provide flexibility for the parties involved in drafting agreements. If the lessee is declared bankrupt, all assets including leasing objects can be confiscated to pay off debts to creditors, which puts the lessor at risk of losing items that are still under leasing.

On the other hand, the bankruptcy of the lessee does not automatically cancel the leasing agreement, but gives the receiver and creditor the right to decide on the continuation of the agreement. If the agreement is not continued, the leasing goods must be returned to the lessor, and the lessor can claim damages. In practice, leasing still provides benefits to the business sector and the economy, but the risk of the lessee's bankruptcy needs to be anticipated by the lessor with proper legal protection through a clear agreement.

Leasing agreements should be regulated in more detail in specific regulations to provide better legal certainty for the parties involved. The regulation should cover the rights and obligations of the lessee and lessor in various situations, including bankruptcy, in order to minimize potential conflicts of law and provide protection against risks that may arise. In addition, the rules regarding the ownership of goods in the leasing agreement also need to be clarified, especially regarding the status of leased assets during the the bankruptcy process of the lessee. This will help ensure a stronger legal position



for the lessor as well as minimize losses due to the lessee's inability to meet its obligations.

For the parties involved in the leasing agreement, it is important to draft the agreement more thoroughly, including provisions on dispute resolution mechanisms and asset protection in the event of bankruptcy. The lessor is advised to consider risk mitigation strategies such as including additional collateral or insurance, especially in situations where the lessee has the potential for bankruptcy. With these measures, the parties will have stronger protections and can execute the agreement with a sense of security without facing excessive legal uncertainty.

## REFERENCES

- Abriwati, Riya Dwi, Rini Puji Astuti, Hafifatul Fitria, and Niki Kurniasari. "Sewa Guna Usaha (Leasing) Dalam Perspektif Ekonomi Syariah." *Gudang Jurnal Multidisiplin Ilmu* 2, no. 12 (2024): 615–22.
- Amanda, Nauva, Vina Verensia Liandi, Nabila Karimah, and Puandita Dhaniswara. "Perjanjian Tidak Bernama." *Res Nullius Law Journal* 8, no. 3 (2024): 135–53.
- Barkatullah, Abdul Halim. "Harmonisasi Hukum sebagai Perlindungan Hukum oleh Negara bagi Para Pihak dalam Transaksi Elektronik Internasional." *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 1 (2016): 1–22. <https://doi.org/10.20885/iustum.vol23.iss1.art1>.
- Benuf, Kornelius, and Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33. <https://doi.org/10.14710/gk.2020.7504>.
- Harahap, Fany Renaldy, Muthia Aulia Azhari Daulay, and Nikmah Dalimunthe. "Studi Literatur: Pemetaan Hukum Perjanjian Bisnis dan Alur Pelaksanaanya." *INNOVATIVE: Journal Of Social Science Research* 3, no. 2 (2023): 6495–6507.
- Haris, Oheo Kaimuddin, and Deity Yuningsih. "Perjanjian di Bawah Tangan Ditinjau dari Asas Pacta Sunt Servanda." *Halu Oleo Legal Research* 6, no. 2 (2024): 247–57.
- Hasibuan, Indra Mualim. "Kendala Aksesibilitas Pembiayaan Usaha Mikro Kecil dan Menengah (UMKM) dari Lembaga Keuangan." *Aksioma: Jurnal Manajemen* 3, no. 1 (2024): 15–24.
- Iriyanto, Gatot, Cora Elly Noviati, Encik Lukmanul Hakim, and Ana Laela



- Fatikhatul. "Perbandingan Leasing Dan Ijarah Dalam Hukum Pembiayaan." *SAKINAH: Jurnal Hukum Keluarga Islam* 2, no. 1 (2024): 53–67.
- Kholid, Rafi Raihan, Alya Azzahra Indrawulan, and Adelia Syahira Rizqillah. "Leasing: Analisis Dampak Terhadap Operasi Bisnis dan Kinerja Keuangan Perusahaan." *ULILALBAB:JurnalIlmiahMultidisiplin* 2, no. 8 (2023): 3245–50.
- Lasut, Roosje, and Roy Victor Karamoy. "Analisis Perlindungan Hukum Bagi Lessor Terhadap Kerugian yang Dialami Akibat Wanprestasi." *Lex Privatum* 10, no. 2 (2022): 1–11.
- Maharani, Rava Syhafa, and Amad Sudiro. "Tanggung Jawab Hukum Pelaku Usaha Terhadap Konsumen Dalam Perjanjian Jual Beli Properti di Indonesia." *UNES Law Review* 6, no. 4 (2024): 10008–16.
- Makmur, Syafrudin. "Kepastian Hukum Kepailitan Bagi Kreditur dan Debitur Pada Pengadilan Niaga Indonesia." *Mizan: Jurnal Ilmu Syariah* 4, no. 2 (2016): 337–68.
- — —. "Penerapan Undang-Undang Kepailitan dalam Menciptakan Iklim Berusaha Yang Sehat Bagi Seluruh Pelaku Usaha." *Ajudikasi : Jurnal Ilmu Hukum* 2, no. 1 (July 20, 2018): 97. <https://doi.org/10.30656/ajudikasi.v2i1.599>.
- Malikhatun Badriyah, Siti. "Pemuliaan (Breeding) Asas-Asas Hukum Perjanjian dalam Perjanjian Leasing di Indonesia." *Yustisia Jurnal Hukum* 1, no. 2 (May 2, 2012): 47–53. <https://doi.org/10.20961/yustisia.v1i2.10624>.
- Manginsela, Raynaldi, David P. E. Saerang, and Heince R. N. Wokas. "Analisis Penerapan Akuntansi Leasing atas Perolehan Aset Tetap pada PT. Bank SulutGo Kantor Pusat." *GOING CONCERN: JURNAL RISET AKUNTANSI* 14, no. 1 (December 31, 2018): 811–18. <https://doi.org/10.32400/gc.13.04.22039.2018>.
- Maramis, Stephanie Nathania, Merry Elisabeth Kalalo, and Rudolf Sam Mamengko. "Kajian Hukum tentang Keabsahan Jual Beli Online pada Aplikasi Facebook." *Lex Privatum* 11, no. 4 (2023): 1–8.
- Medahalyusa, Jeanette Agire, and Achmad Busro. "Akibat Hukum Pembatalan Perjanjian Yang Dibuat Atas Dasar Penyalahgunaan Keadaan." *Notarius* 16, no. 2 (August 31, 2023): 631–47. <https://doi.org/10.14710/nts.v16i2.38358>.
- Priyono, Ery Agus, and Katya Nabila Saka Birauti. "Implementasi Asas Kebebasan Berkontrak Dalam Praktek Pembuatan Perjanjian Kerja Perancangan." *Law, Development and Justice Review* 5, no. 1 (May 8,



- 2022): 24–43. <https://doi.org/10.14710/ldjr.v5i1.15003>.
- Rustam, Dewi Ratnasari, and Audina Al Amira Abdiansyah. “Perlindungan Hukum Terhadap Pihak Ketiga atas Aset yang Dirampas Terkait dengan Tindak Pidana Narkotika.” *LAKIDENDE Law Review* 3, no. 1 (2024): 534–45.
- Setiawan, Yudi, Budi Sutrisno, and Ari Hakim Budiawan Firdaus. “Pelaksanaan Pasal 1338 Ayat (1) (3) KUHPdt Tentang Kebebasan Berkontrak Dan Itikad Baik Dalam Pembiayaan Kendaraan Bermotor.” *Journal Kompilasi Hukum* 5, no. 1 (June 30, 2020): 154–74. <https://doi.org/10.29303/jkh.v5i1.5>.
- Sibli, Nurlita, Ronny A Maramis, and Deasy Soeikromo. “Perlindungan Hukum Bagi Kreditor Separatis Terkait Jaminan Hak Tanggungan yang Ditetapkan Sebagai Boedel Pailit.” *Lex Et Societatis* 11, no. 1 (2023): 5–19.
- Sudjana, Sudjana -. “Perlindungan Terhadap Lessee Usaha dalam Perjanjian Sewa Guna Sebagai Kontrak Baku.” *Res Nullius Law Journal* 5, no. 2 (October 9, 2023): 135–53. <https://doi.org/10.34010/rnlj.v5i2.7858>.
- Syofyan, Syofrin. “Asas Freies Ermessen dan Aspek Perpajakan Leasing Menurut Keputusan Menteri Keuangan No. 1169/KMK.01/1991 tentang Kegiatan Sewa Guna Usaha (Leasing).” *Veritas et Justitia* 3, no. 1 (June 3, 2017): 1. <https://doi.org/10.25123/vej.2522>.