

LEASING AGREEMENT ON FINANCING SMEs IN FISHERIES INDUSTRY

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ABSTRACT

Financing has always been a major factor in development, including in the development of the fishing industry. Various ways can be done by entrepreneurs including micro, small and medium enterprises in financing for the development of their businesses in the fishing industry, including with leasing. Leasing agreements are generally made in standard contracts. The aim of the study was to uncover and analyze the implementation and protection of law in leasing agreements for micro, small and medium enterprises in the development of the fishing industry. The results show that leasing can be used as an alternative financing for micro, small and medium enterprises in the development of the fishing industry. Regarding the unbalanced legal irregularities and relationships result in lack of legal protection for micro, small and medium enterprises in the fishing industry. Therefore, in the future special rules are needed regarding leasing agreements, more optimal government supervision, government guarantees, breeding of the principles.

Keywords: Legal Protection, Micro, Small And Medium Enterprises (Msmes), Leasing Agreements, Lessors, Lessees, Fishing Industries.

INTRODUCTION

Financing is one of the main factors needed by entrepreneurs including micro, small and medium enterprises in various countries including Indonesia. One of the micro, small and medium enterprises that has great potential in developing the country's economy is in the fishing industry. The fishing industry is an industry or activity of capturing, cultivating, processing, preserving, storing, distributing, and marketing fish products. Until now, many business sectors, especially micro, small and medium enterprises, face a variety of problems in their business activities, which generally relate to the ability and limited sources of capital, weak marketing capabilities, weaknesses in the field of credit management which causes more bad loans (Huda, 2012; Abor & Quartey, 2010) . Here, leasing can be relied on by SMEs as a source of financing. The main principle in the procurement of financial institutions is to help small and medium entrepreneurs in procuring capital for business continuity. Leasing is very relevant for the development of small and medium enterprises, especially for starting businesses and developing markets (Laziz, 2018). This can be seen from the absence of an obligation for employers to submit collateral to obtain funds through financial institutions, one of which is through leasing. Leasing is different from a bank, which has been determined in Law No. 7 of 1992 which was later amended by Law No. 10 of 1998, which requires debtors to submit collateral.

The legal relationship in leasing is basically an agreement (Berger & Udell, 2006). The entry of a leasing agreement in Indonesia is based on the principle of freedom of contract. The leasing agreement is generally made in a standard form, in this case the agreement is determined unilaterally by one of the parties, the lessor who has a stronger bargaining position than the lessee (Badriyah, 2017). As the compiler of the agreement, the lessor usually determines the rights and obligations that are not balanced between the two parties. Among other things, the necessity to submit collateral, can attract leasing objects in any way, which is actually contrary to the principle of leasing. This resulted in the emergence of an imbalance of legal relations between the parties which led to a lack of legal protection for one party. Therefore research on legal protection for micro, small and medium enterprises in a leasing agreement for the development of the fishing industry is very urgent. Based on the relationship between leasing and the need for financing in the medium-scale fishing industry, research questions are formulated as follows:

1. What is the legal protection for micro, small and medium enterprises in a leasing agreement for the development of the fishing industry in Indonesia?
2. What is the future leasing agreement that can provide legal protection for micro, small and medium enterprises?

METHOD

The research method in this case uses a qualitative method with a socio legal research approach that integrates research on state law and living law. The data used are sourced from primary data obtained by field research with interview techniques with informants to obtain data on the implementation of leasing agreements for the development of the fishing industry. Informants in this study were those from Ministry of Fisheries and Marine Affairs, Financial Services Authority, Financing Company and Fishermen and Small and Medium Enterprises. Moreover, secondary data obtained by library research with techniques of literature study by collecting various laws and regulations, books and journals relating to the theory and concept of leasing agreements for the development of the fishing industry.

Data validation was conducted with source triangulation and methods. Data analysis technique is by using an interactive model analysis by reducing data, presenting data and drawing conclusions from the start of field research by taking data on the implementation of leasing agreements for financing the fisheries industry, an analysis was conducted using inductive logic towards cases of leasing agreements. After that, conclusions were made regarding the implementation of leasing agreements in the fishing industry to provide input on the need for reconstruction of leasing agreements in the future that can provide balanced legal protection for the parties.

RESULTS AND DISCUSSION

Implementation of Leasing Agreement for Small and Medium Enterprises in the Development of the Fisheries Industry

The fisheries sector has a strategic role in national development. Indonesia is known as the largest maritime country in the world because it has a relatively large potential wealth of fisheries resources (Allison et al., 2009; Anderson et al. 2011). Therefore, the development of the

fisheries sector including the fishing industry cannot be ignored by the Indonesian government. The fishing industry is an industry engaged in fish management systems from fishing, processing, storing, distributing, marketing to meeting the food needs of the community (Bell et al., 2009). Along with the development of the fishing industry community is always experiencing growth. The development of the fishing industry is in line with the growth in fish consumption and fish production which has always been increasing from year to year. Increased fish consumption can be seen in Table 1.

No.	Year	Fish Consumption (Kg/Capita/Year)	Fisheries Production (Million Tons/Year)
1	2011	n/a	13.64
2	2012	n/a	15.50
3	2013	n/a	19.42
4	2014	38.14	20.84
5	2015	41.11	22.15
6	2016	43.94	23.51
7	2017	46.49	23.26*
* data until the fourth quarter of 2017			

Source: Fisheries Productivity Data, Ministry of Maritime Affairs and Fisheries 2018

The development of the fishing industry has become one of the sectors that greatly determines economic growth in Indonesia. Various fisheries sector businesses are carried out by businesses including micro, small and medium enterprises. Small and medium enterprises are productive economic enterprises carried out by individuals or business entities that are not subsidiaries or branches of large companies that carry out business activities in the capture fisheries industry, both fishing, processing, distributing, transporting and marketing (Ayyagari et al., 2003; Beck & Demirguc-Kunt, 2006).

In business development, capital is one of the main determinants of the success of a business (Pena, 2002). Capital problems are problems that will never end because the capital problem contains so many and various aspects. Provision of funds for financing a business can be made by banks or non-bank institutions, among others, those carried out by financing institutions as specified in Presidential Regulation No. 9 of 2009 concerning Financing Institutions. The main principle in the procurement of Financing Institutions is to help small and medium entrepreneurs in procuring capital for business continuity.

Leasing can be an alternative financing for small and medium enterprises for the continuity of their business in the fishing industry (Jaabi & Esemu, 2017). Increasing access to capital will greatly help entrepreneurs in developing their businesses and improving community welfare (Wilson, 2012). Leasing is an attractive option for public authorities. Small and medium enterprises choose leasing because of the continuity of liquidity. Leasing is a financial investment instrument by separating ownership with economic ownership. Unlike a classic bank loan, the lessor remains the owner of the asset. Because of the ability to repossess, the lessor can implicitly extend leases guaranteed by the same assets. Therefore this financing has a higher security, so it is very profitable for financial companies (Neuberger & R athke-D oppner, 2013).

A lease is an agreement involving compensation for a payment or a series of payments for the right to use an asset for a period of time agreed upon between the lessor and the lessee. In this case, there is a substantial transfer of all risks and benefits associated with ownership of an asset (Maheshwari, 2013). Throughout the year 2016, there are two new business licenses issued and five revocations of business license of finance company. Therefore, the total number of finance company by the end of 2016 are 200 companies. Table 2 shows the growth of total finance company during the last five years.

Year	Total Companies	New Business Licences	Revocations of Business License
2012	200	9	4
2013	202	4	2
2014	201	3	4
2015	203	3	1
2016	200	2	5

Source: Finance Institution Statistics, OJK, 2016

In the practice of leasing, there is always an increase and decrease in the number of finance companies. This leasing has not been widely used in the development of the fishing industry carried out by micro, small and medium enterprises, due to a lack of understanding of the community regarding leasing financing and the confusion of the notion of leasing with other agreements, especially with consumer financing developing in people's lives. Leasing is generally used for the procurement of large vessels which are generally carried out by large businesses. The legal relationship in leasing is basically an agreement. The lessor in this case is a finance company that provides funds in the procurement of capital goods for the lessee. The lessee is the one who receives financing in the form of capital goods, which in this case is a small and medium micro business in the fishing industry. In practice, the leasing agreement is prepared unilaterally by the lessor.

Legal Protection for SMEs on Leasing Agreements in the Fisheries Industry

This study finds that in its implementation, there is an imbalance and deviation of the legal relationship between the financing company (lessor) and the lessee. In general, the types of deviations can be classified in 3 aspects, namely, philosophical, juridical and sociological deviations. First, philosophical deviations are deviations from the principles of treaty law. This includes deviation from the principle of consensualism which seen in the pre-contractual stage, namely the existence of a pseudo agreement between the lessor and the lessee, while deviations from the principle of freedom of contract seen in the pre-contractual and contractual stages which indicate the existence of false contractual freedom because the lessee does not participate in determining the contents of the agreement. Moreover, this deviation refers to deviation from the principle of *pacta sunt servanda* which is seen in the post contractual stage which indicates that the lessor can change and cancel the agreement at any time without the agreement of the lessee.

Table 3 IMBALANCE AND DEVIATION OF LEGAL RELATIONS BETWEEN THE LESSOR AND THE LESSEE IN THE SME FISHING INDUSTRY			
No.	Philosophical Deviations	Juridical Deviations	Sociological Deviations
1.	Deviation from the principle of consensualism	The agreement process indicates an imbalance	The practice of using leasing with consumer financing agreements and installment sales
2.	Deviations from the principle of freedom of contract	The form of standard indicates an imbalance	Imbalance of legal relations
3.	Deviation from the principle of pacta sunt servanda	More emphasis on the obligations of the lessee than its rights	Imbalance of bargaining position
4.		The application of fiduciary guarantees	Guarantee from the government
5.			State supervision of leasing agreements
6.			Transfer of ownership rights

Second, juridical deviations, namely deviations from the principles of leasing. This includes that the form of a leasing agreement in the form of standard so that it is take it or leave it which indicates an imbalance and the substance of the agreement that indicates an imbalance because it emphasizes the rights of the lessor rather than its obligations and places more emphasis on the obligations of the lessee than its rights. Moreover, the application of fiduciary guarantees that is not in accordance with the principle of fiduciary guarantee.

Third, sociological deviations which include that there is confusion in the practice of using leasing with consumer financing agreements and installment sales, so that leasing is actually used for financing consumptive goods instead of capital goods. There is also an imbalance of legal relations between the lessor and the lessee, and imbalance of bargaining position. Moreover, there is no guarantee from the government in leasing financing to procure capital for small and medium enterprises in the fishing industry, and that state intervention has not reached the supervision of leasing agreements, existing arrangements are only administrative and taxation. This includes a confusion of leasing agreements with other agreements similar to leasing, especially consumer finance, whereas the two agreements have very different legal consequences, especially in terms of the transfer of ownership rights from one party to another.

There are various kinds of factors that cause irregularities and imbalances, namely due to conflict of interest, differences in legal culture, differences in bargaining positions because the leasing agreement is made in standard form, so the lessor as the agreement maker has made a more stressful agreement the liability of the lessee rather than his rights, the lack of knowledge of the parties regarding the leasing agreement while there is no specific law regarding the leasing agreement.

Various irregularities and imbalances in the legal relationship between the parties result in the lessee as a party having a weak position lacking legal protection. Therefore, in the future a leasing agreement is needed in the development of the fishing industry that can truly provide

balanced legal protection between the parties. Reconstruction of social relations is considered an important source for achieving public order. Nonet and Selznick (1989), suggest that law is responsive, namely by law as a facilitator of responses to social needs and aspirations - social aspirations. Responsive law can more easily adopt a political paradigm in interpreting disobedience and chaos. This paradigm raises a plurality model of the structure of community groups, thus underscoring the reality and reinforcing the legitimacy of social conflict (Nonet and Selznick, 2017). The existence of various obstacles in the implementation of leasing in the development of small and medium enterprises in the fisheries industry requires legal reform, especially contract law that regulates leasing agreements in a comprehensive manner which includes all components in the legal system (Wahyudi, 2019).

According to Friedman (1975) the legal system consists of substantial components, structural components and cultural components because the three elements are closely related. Contracts are designed to prevent efficient transaction from collapsing (Jacobi & Weiss, 2013). In the development of national law the basic principle is the Pancasila philosophy and the state constitution (the 1945 Constitution). The grand Indonesian legal political design is based on the Pancasila paradigm which includes the paradigm of Godhead, humanity, nationalism, democracy and social justice.

Radbruch (2006) suggests the concept of progressive law, which is the basis of the law, namely regulation and behavior. Here, law is placed as an aspect of behavior at the same time as a rule. Law is for humans and not humans for law. If in its development the law is unable to guarantee legal protection for humans, legal reconstruction must be carried out. Because the law is for humans, its existence must be adjusted to the conditions of the community where the law is located. Therefore, in carrying out national legal reforms, efforts need to be made to examine and explore national values originating from Pancasila and the values that exist in people's lives (religious values, moral values and cultural values) (Arief, 2015). The law must reflect the three basic values of justice, benefit and certainty of law which Gustave Radbruch (2006) referred to as "*idee des recht*" (basic legal idea).

Based on the various realities that occur in the practice of people's lives and various concepts and theories that are discussed above, it is necessary to reconstruct leasing agreements in the future that can provide balanced legal protection for the parties in developing small and medium enterprises in the fishing industry. First, there is a need for special regulations regarding leasing agreements that can serve as guidelines for implementing legal relations for small and medium enterprises in the fishing industry in the procurement of capital goods that can provide legal protection for the parties. Second, the government has increased supervision not only in terms of administrative aspects, but also in all aspects of leasing, including leasing agreements, because the role of the government is very necessary to realize the balance of legal relations in agreements between the parties. The supervision is carried out directly and with cumulative legislation. Third, guarantees from the government for small and medium enterprises in the fishing industry, making it easier to obtain leasing financing in the procurement of capital goods for business development. Fourth, agreements that are balanced between the parties in all stages. Fifth, it is necessary to breed the principles of treaty law by integrating the principles of treaty law (the principle of freedom of contracts, consensus, *pacta sunt servanda*), the principle of economic law based on the philosophical foundation of Pancasila and the 1945 Constitution, the Unidroit Principles.

CONCLUSION

Leasing can be used as an alternative financing for micro, small and medium enterprises in the development of the fishing industry. The legal relationship in leasing is basically an agreement between the lessor and the lessee. The leasing agreement is made in a standard form determined unilaterally by the lessor. In the practice of leasing agreements there are various irregularities and imbalances in the legal relations of the parties. Unbalanced legal irregularities and relationships result in lack of legal protection for micro, small and medium enterprises in the fishing industry. Therefore, in the future special rules are needed regarding leasing agreements, more optimal government supervision, government guarantees, breeding of the principles. The principles of the principle of the law are based on Pancasila and the Constitution. Breeding of the principles is made by integrating the principles of main contract law.

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