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Research Paper

Is leasing a debt? According to suspension of debt payment obligations law

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ABSTRAK

Setiap perusahaan ingin tumbuh dan untuk mencapai itu, perusahaan membutuhkan pendanaan. Ada berbagai cara bagi perusahaan untuk mendapatkan pendanaan, baik itu eksternal maupun internal. Salah satu alternatif bentuk pendanaan adalah *leasing*. *Leasing* adalah penyewaan alat-alat produksi oleh perusahaan (*lessee*) kepada *lessor*. Perusahaan harus membayar biaya sewa. *Leasing* memiliki beberapa keunggulan dibandingkan pembiayaan pinjaman. Biaya sewa akan dibebankan atas biaya perusahaan. Sedangkan untuk pinjaman dari lembaga keuangan, hanya biaya bunga yang dibebankan sebagai biaya. Penelitian ini mengkaji tentang status *leasing* atau *leasing* pada perusahaan yang mengalami kebangkrutan. Penelitian ini menggunakan metode hukum normatif yang dikaitkan dengan teori struktur modal perusahaan. Penelitian ini menyimpulkan bahwa sewa bukan merupakan bagian dari hutang. Sewa adalah salah satu bentuk kontrak sewa. Sewa tidak memiliki catatan sebagai hutang di neraca perusahaan. Selain itu, jaminan atau alat produksi yang disewakan adalah milik *lessor* atau *lessor*. Perusahaan tidak memiliki hak untuk memiliki mesin sampai dilunasi. Sewa yang belum dibayar yang sudah lewat jatuh tempo dapat dimasukkan dalam tagihan pengeluaran seperti biaya lainnya.

Kata Kunci: Kebrangkutan, Restrukturasi Hutang, Sewa

Keywords: Bankruptcy, Debt Restructuring, Lease

ABSTRACT

Every company wants to grow and in order to achieve that, a company needs funding. There are various ways for a company to get funding, be it external or internal. One alternative form of funding is leasing. Leasing is the rental of production equipment by the company (lessee) to the lessor. The company should pay rental fees. Leasing has several advantages over loan financing. The rental fee will be charged at the company's expense. As for loans from financial institutions, only interest costs are charged as fees. This study examines the status of leasing or leasing in companies experiencing bankruptcy. This study uses a normative legal method associated with the company's capital structure theory. This study concludes that the lease is not part of the debt. A lease is a form of a rental contract. Leases do not have a record as a debt on the company's balance sheet. In addition, the guarantee or production equipment leased is the property of the lessor or the lessor. The company does not have the right to own the machines until it is fully paid off. Unpaid rent that is past due can be included in an expense bill like any other expense.

I. INTRODUCTION

Every company wants to grow. Companies need funding for business growth (Johan, 2021a). Financing has always been a significant factor in development. Various ways can be done by entrepreneurs, including micro, small and medium enterprises, in financing for the development of their businesses (Badriyah et al., 2019).

Funding sources can come from external and internal (Indriyani, 2017). Funding sources can come from loans from financial institutions, issuance of debt securities, and other sources. Other funding sources can be loans from alternative financial institutions such as leasing, asset-backed securitization, and factoring.

Leasing is a midterm financial instrument mainly used to procure machinery, equipment, tools, and/or property (Lubonja, Gjylameti, & Kurti, 2019). Leasing can be an exciting financing option from an economic point of view. However, family businesses are found to be less prone to lease (Michiels et al., 2021)

There is a substitute relation between debt and leases (Chukwu et al., 2018). The substitution relation is robust even after correcting endogeneity through instrumental variables and simultaneous equation modeling of debt and leases (Chigurupati, 2020). The leasing contract represents an essential tool through which companies find the capital goods necessary to meet their needs for production, technological modernization, and, in general, growth. Despite the widespread use, the national regulations on financial leasing contracts still appear often inadequate (Blandini & Alfano, 2018)

Many airlines (lessees) go bankrupt due to their inability to pay their debts to lessors (Hijriya, 2017). The acquisition of an asset in transport financing is capital intensive (Solanke, Raji, & Alli, 2021). Airline companies have enormous liability for aircraft leasing costs and engine rental fees (Wareza, 2022). Garuda Indonesia's total debt is USD 9.75 billion, of which aircraft leasing is USD 6.35 billion, and bank loans are USD 0.97 billion (Aldin, 2021). Other service companies shipping companies also use leases to provide ships (Zuhra, 2015). In addition to service companies, printing companies also use machine rental as alternative financing (Laoli, 2014)

Consumers can also purchase goods on credit or with financing. They can apply for credit to the financing institution. The goods were purchased to serve as collateral for funding (Chen et al., 2020). If the consumer fails to pay, the goods purchased will be withdrawn as collateral. The financing institution will determine the type of goods used as collateral. The financing company will also decide on the type of financing (Johan, 2021d)

This research is unique in its discussion of alternative funding sources in terms of legislation at the time of bankruptcy. Research on this matter is still scarce. Whereas alternative financing such as leasing has existed in Indonesia since the 1980s. Meanwhile, bankruptcy has been rampant since the 2000s. The relationship between the two is still rarely discussed academically.

Leasing may be the most important legal institution that has received virtually no systematic scholarly attention (Merrill, 2021). How firm financing varies over business cycles is an important research question. An increase or decline in the number of external funds that firms can raise is directly related to firm investment and thus, in turn, further alleviates or worsens the recession. Research often focuses on debt and equity finance, but it is essential to include leasing finance (Zhang, 2018)

A contract must fulfill several principles of contracting according to article 1338 Civil Law, namely: freedom of contract, the principle of balance, the principle of consensualism, the principle of legal certainty, the principle of good faith, and the principle of personality (Johan & Markoni, 2021).

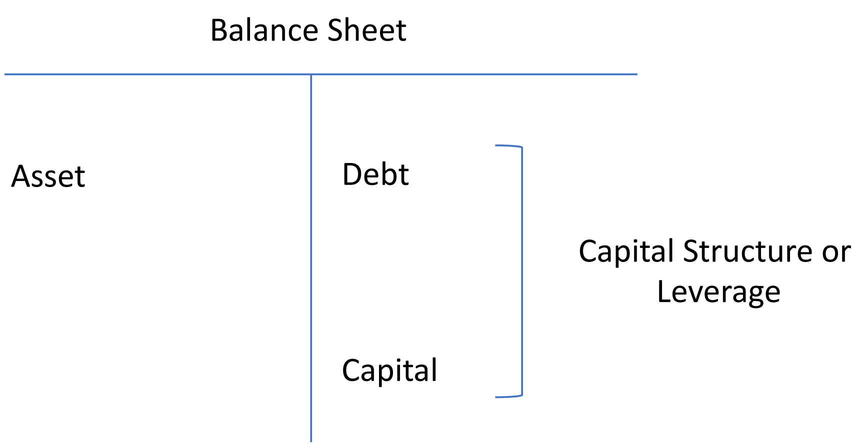
If the corporation cannot pay its commitments that are due, the corporation will experience default (Macey & Salovaara, 2019). Creditors can apply for Liquidation or Suspension of Debt Payment Obligations. After the Liquidation or Suspension of Debt Payment Obligations process, it will review the BOD and BOC's responsibilities if the corporation goes bankrupt. (Johan & Ariawan, 2021) According to law, the creditor of a company consists of concurrent and separatist creditors. (Johan, 2021c)

Leasing is looked upon as an effective means of business support and a powerful tool of sustainable development, as well as a way of acquiring credit income and renewing principal capital (Gerasimova, 2018).

Capital goods in bankruptcy lessee not boedel bankrupt, the lessor is its owner and domiciled as creditor holder of the privilege of unpaid rent as regulated in Article 1139 Civil Code (Mahmudah, 2018) Bankruptcy the lessor against the object of leasing in leasing agreements have not expired (Sitinjak & Ngakan, 2004)

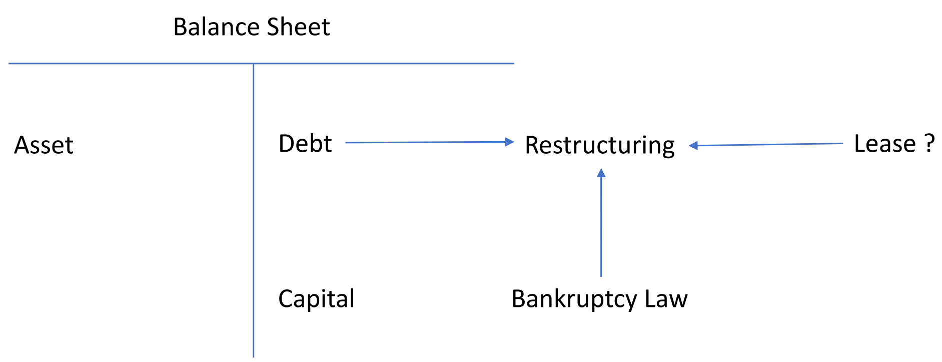
Debt is one of the company's sources of capital that supports growth (Indriani & Napitupulu, 2020). Debt is a loan from a financial institution and the issuance of debt securities. While determining the composition of financing is called the theory of capital structure (Pramana & Darmayanti, 2020). Capital structure or leverage determines the composition of financing to achieve maximum company value (Putri & Rahyuda, 2020). This is explained in Figure 1.

Figure 1. *Capital Structure*



Based on the research gap above and the research objectives. This study has the following research questions: is the leasing obligation included in the debt category? Can the leasing obligation be included in the postponement of the debt payment obligation? What is the solution for unpaid leasing obligations at the time of bankruptcy?

Figure 2. *Research Framework*



II. RESEARCH METHOD

This study used a literary or normative legal research approach to address the background and research subjects described above. This research was done through secondary or library materials. Normative or literature legal research includes studies of legal norms and principles, the systematics of statutory regulations, and the level of vertical and horizontal synchronization between applicable laws and regulations in Indonesia for concerns relating to copying rights. This study examines all of the statutory regulations in order to apply a statutory approach to normative law. This is a statutory approach, which is guided by-laws and rules. This technique is used to look at legislation, detect illegal practices in the financial services industry, and adjust to them.

Normative legal research materials include primary legal materials, secondary legal materials, and other supporting items (Marzuki, 2017). The primary legal materials studied in this study are the Republic of Indonesia's 1945 Constitution and statutes and other regulations related to the research topic. Secondary legal materials include literature reviews in books, legal journals published in scientific journals related to study issues, seminar results/calls for papers, and scientific publications. Other legal materials discuss primary and secondary legal elements. This tertiary resource includes coverage of internet news (Johan, 2021b).

III. RESULT AND DISCUSSION

3.1. Leasing Obligations Not Included in the Debt

Based on the Regulation of the Financial Services Authority (POJK) of the Republic of Indonesia Number 35 /Pojk.05/2018 concerning the Business Implementation of Financing Companies, Leases are divided into Finance Lease and Operating Leases. A Finance Lease is a financing activity in the form of providing goods by a Financing Company to be used by the debtor for a certain period, which substantially transfers the benefits and risks of the goods being financed. While Operating Lease is a lease that does not substantially transfer the benefits and risks of leased goods. In addition, there is a Sale and Leaseback, which is a financing activity in the form of selling an item by a debtor to a Financing Company accompanied by leasing and refinancing the item to the same debtor.

Table 1. *Comparison of Lease and Loan*

No	Variable	Lease	Loan
1	Collateral Ownership	Lessor	Borrower
2	Monthly Installment consisted of	Rental Expense	Interest Expense plus Principal
3	Default Amount	Rental Expense Due	Total Loan
4	Lender	Financial Company	Bank

The comparison between leases and loans is described in table 1. The company's status on the lease is a tenant, while on loan, it is a borrower. The owner of the collateral on the lease to the lessor or financial institution, while the owner of the collateral is the borrower. The monthly installment payments on the lease represent rental costs, while loan payments on bank loans represent interest and principal payments. If there is a default, the unpaid rent can be collected, while in bank loans, all obligations become due and can be collected.

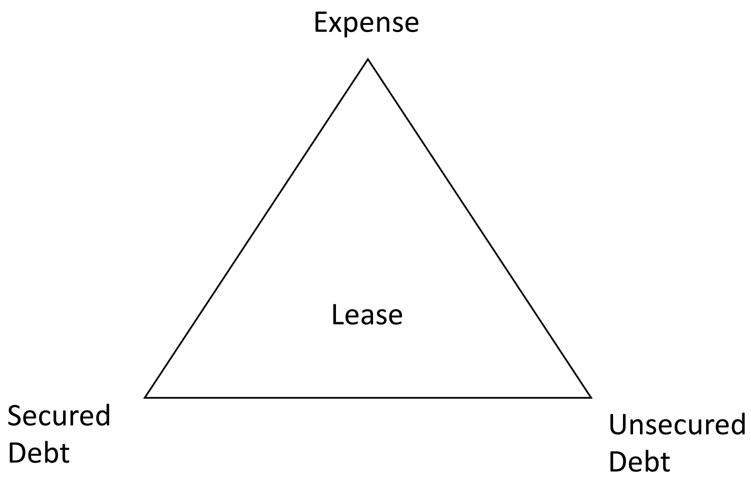
A lease is investment financing. Investment financing is devoted to productive business and productive business development. The definition of productive business is an effort to produce goods or services, including businesses that provide added value and increase income for the debtor.

Thus, a lease is a lease agreement for goods produced by a company in carrying out production activities. The lessee is called the lessor, and the company that rents it is the lessee. The lessee pays a monthly rental fee to the lessor. The rental fee is recorded as a deduction from the lessee's income. The lessor records it as rental income. The contract between the lessee and the lessor is a lease contract.

Ownership of the equipment being leased remains with the lessor. Lessee only uses equipment that is rented out. The lessee has no rights to the goods being leased. The lessee can have the equipment if it has been agreed. An operating lease is a lease in which the lessee cannot own the equipment at the end of the settlement period. However, a financial lease provides an opportunity for the lessee to own the product at the end of the period. During the installment period, the lessee has no rights to the goods being leased.

The lease agreement cannot be classified as a loan based on the explanation above. A lease contract is a lease contract and other equipment or office leases. Rental fees that are not paid during the period of use are bills that have not been paid off. However, the lease contract is not a debt contract. The explanation above clarifies the position of the lease between costs, secured debt, and unsecured debt. This is explained in Figure 3.

Figure 3. *Lease Position*



3.2. Lease Agreement Obligations Cannot Be Included In The Suspension of Debt Payment Obligations

A lease agreement is a rental agreement for production equipment. The lease agreement for production goods is the same as the lease agreement for the office building or the rental agreement for other production support equipment. The lease agreement contract has approximately 36 months to 60 months. This contract is subject to negotiation between the lessee and the lessor.

The lessee has a contract with the lessor for 60 months or five years. In the middle of this period, the lessee experiences financial distress. The lessee defers the payment of the rent on the 23rd month. The lessor makes a subpoena and takes over the lease in the 26th month. Between the 23rd month to the 26th month, the lessor collects the rental fee from the lessee. The costs for these four months are billable to the lessee.

Lessee submits a postponement of the obligation to pay debts (PKPU) at the same time as the 26th month. Then the lessor can submit a bill of 4 months of rental fees into the lessee's debt list. The lessor cannot collect the remaining tenor of the lease from the lessee. The lessee has signed a contract for 60 months, but the lessee has not used the equipment since the 26th to 60th months of the contract. The lessor has taken over the production equipment.

The basis for consideration are:

1. Lessee has not used her equipment since the 26th month
2. The lessor has taken over the production equipment since the 26th month
3. The relationship between the lessee and the lessor is based on an operating lease agreement.
4. The lease agreement is not a debt agreement.

So that the lessee's obligations cannot be classified as part of the PKPU restructuring.

3.3. Solution for Unpaid Leasing Obligations at the time of Bankruptcy

The lessor can take over the leased production equipment to the lessee if the lessee is unable to pay off his obligations. The lessor taking over the production equipment can be classified as a separatist creditor. Separatist creditors are creditors who have guarantees and can be executed. The lessor in the lease agreement is the party who has the right to the production equipment. Ownership of the goods is still in the name of the lessor. This item's ownership is proof of bill or invoice and a signed lease agreement between the lessor and the lessee.

The lessor can only collect the rent that the lessee has not paid. This rental fee can be classified as a bill or unsecured debt. This rental fee is part of the bill of other suppliers.

The lessor can avoid more significant losses by taking over the goods produced when the lessee begins to experience payment difficulties. The lessee can return production goods as soon as possible to save production costs.

IV. CONCLUSION

A lease is a rental agreement. Lease is not a debt agreement between the lessee and the lessor. The lessor can collect the lessee's rental fee debt at the time of PKPU. The rental fee that can be billed is the rental fee for using production goods that have matured. The lessor cannot collect the entire rental fee that is not yet due. The leases discussed are operating leases. The lessor can take over the production equipment if the lessee defaults. The lessor's position can be equated with the position of a separatist creditor. Lease or another consumer financing needs to be discussed. Meanwhile, bills for rent are classified as concurrent creditors. This study has a drawback regarding the type of lease discussed is an operating lease. Other research can be developed regarding the effects of the laws and regulations regarding taxation related to leases.

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Author Declaration

Author contributions and responsibilities - The authors contributed substantially to the conception and design of the study. The author is responsible for data analysis, interpretation, and discussion of the results. The authors read and approved the final manuscript.

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