

LEGAL ANALYSIS OF THE LEASE AGREEMENT FOR ELECTRIC POWER PLANTS

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Abstract

Leasing consists of two types, namely finance lease with an option right and operating lease without an option right. A finance lease refers to an action by a financing company in carrying out financing activities by providing capital goods to the debtor, which will subsequently be utilized by the debtor for a specific period as agreed upon in the contract. Meanwhile, an operating lease is a type of lease that does not result in a substantial transfer of economic benefits or risks associated with the leased asset to the lessee. Generally, leasing in the electricity sector adopts the finance lease scheme due to the minimal risks posed to both parties. The issue the author seeks to examine pertains to the implementation, regulation, and accountability of leasing activities in the electricity sector. The type of research employed is normative legal research. The term 'juridical' refers to an approach based on applicable laws and regulations, while 'normative' refers to an approach conducted through primary legal materials. Normative juridical research utilizes primary legal sources as well as legal literature. Any party intending to lease electrical power must submit an application to PT PLN (Persero) in accordance with the provisions of the Decree of the Minister of Finance Number 1169/KMK.01/1991 concerning Leasing Activities. A juridical analysis of lease agreements for power plants is essential. This analysis seeks to identify potential legal issues that may arise and provide recommendations for improvements and enhancements in the execution of such lease agreements, thereby supporting the development of a sustainable and efficient electricity sector in Indonesia.

Keywords: Leasing, Electric Power, Finance Lease Agreement

INTRODUCTION

With current developments, Indonesia is becoming increasingly open in the energy sector, which will be beneficial for the future. When first introduced to the concept of sustainable finance, particularly within the financial sector, some segments of society may find it unusual. This is because, generally, the sector does not produce physical goods directly related to the environment; instead, it provides financial services. However, in reality, there are at least two primary channels through which banking institutions can make an impact on society, namely, through environmental and economic aspects: first, a direct impact through daily operational activities, such as the use of recycled materials, and second, an indirect impact through financial products and services delivered to the community.

In this regard, it undoubtedly draws the attention of the contemporary public, as awareness of quality of life and the quality of economic development continues to rise. Economic development now emphasizes the principles of sustainable development. One important aspect of this development is the advancement of renewable energy. Public participation in businesses that produce new and renewable energy is also increasing. The new and renewable energy sector is regarded as a strategic industry for the future. All nations, including Indonesia, are moving in this direction. Indonesia holds significant potential to develop and build its renewable energy sector.

Electricity is an essential form of energy required by society to meet daily needs. As we know, society's need for electricity has become a primary necessity, such as for lighting, cooking rice, and for work, including internet access, among other uses. The electricity used to power various equipment also aids society in producing economically valuable goods. Pursuant to Law No. 30 of 2009 on Electricity, the provision of electric power is controlled by the State, with its administration conducted by the Central Government and Regional Governments, based on the principle of regional autonomy. Furthermore, the operation of such enterprises is also managed by Regional-Owned Enterprises and State-Owned Enterprises, specifically PT. Perusahaan Listrik Negara (Persero), commonly referred to as PT. PLN (Persero), which holds the business license for electricity provision in Indonesia (Hutabarat and Slamet, 2015).

The electrical power may be leased through a leasing scheme to meet the needs of the community. The types of leasing available are finance lease with an option right and operating lease without an option right. A finance lease refers to an activity undertaken by a financing company, where it provides capital goods to the debtor, who will subsequently utilize the goods for a specified period in accordance with the terms agreed upon in the contract. Meanwhile, an operating lease is a type of lease that does not result in a substantial transfer of economic benefits or risks associated with the leased asset to the lessee. Generally, electrical power leasing schemes use finance leases, as this arrangement poses minimal risk to both parties involved. At present, to obtain electricity, individuals may submit an application to PT. PLN (Persero) by adhering to all procedures and requirements. Once the application is accepted by PT. PLN (Persero), a Power Purchase Agreement (PPA), known in Indonesian as Perjanjian Jual Beli Tenaga Listrik (PJBTL), will be established between PT. PLN (Persero) and the customer. Subsequently, the term Power Purchase Agreement refers to an agreement for the purchase of electricity conducted by PT. PLN (Persero) with Independent Power Producers (IPPs).

In addition, lease agreements are based on the principle of freedom of contract as stipulated in Article 1338, Paragraph (1) of the Indonesian Civil Code,

which states: 'Every agreement made in accordance with legal provisions shall serve as law for the parties who have entered into it. This article grants the parties the freedom to decide whether or not to enter into a contract, choose with whom they wish to contract, determine the contents of the agreement, its execution, and its terms, as well as to decide the form of the contract, whether orally or in writing, either through an authentic deed (notarial deed) or a private agreement.

The principle of freedom of contract in an agreement provides an incentive for business actors to expand their businesses through purchase and/or lease schemes. When transactions are conducted through cash sale and purchase methods, entrepreneurs, both producers and distributors, may face challenges in selling their goods, given the low socioeconomic conditions and limited incomes that restrict cash purchases. The presence of a hire-purchase scheme benefits both parties, allowing the buyer to immediately utilize the desired goods while enabling the seller to expand the scope of their business. Furthermore, from a legal standpoint, the hire-purchase scheme also provides protection to the seller, as ownership of the goods remains with the seller throughout the hire-purchase period

In a hire-purchase agreement, there is a possibility that the hire-purchase buyer, for some reason, may be unable to fulfill their obligations as agreed upon in the contract between the seller and the hire-purchase buyer. This situation may result in the buyer being classified as in default or in breach of contract. In practice, hire-purchase agreements are typically documented in writing as a private deed, signed only by the relevant parties. Generally, hire-purchase agreements are structured with the following provisions (Salim and Erlies, 2003):

1. The hire-purchase seller will unilaterally draft the agreement
2. The content of the agreement, which determines everything, is set by the hire-purchase seller; and
3. The hire-purchase buyer is requested to read and sign the agreement.

In this case, the lessor does not have the opportunity to alter the terms set by the hire-purchase seller, as the economic position of the hire-purchase buyer is weaker and more limited, coupled with an urgent need for the goods while lacking the cash funds to pay for them. However, in certain circumstances, both parties may conduct a legal review beforehand to establish a mutual understanding regarding their contract/agreement. This lease agreement is commonly referred to as a Finance Lease Agreement, which serves as an alternative arrangement due to the significant costs associated with utilizing a Power Purchase Agreement. The Finance Lease Agreement represents an innovation in electricity provision practices where the government and private enterprises collaborate in the supply of electric power. Furthermore, the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 11 of 2021 and other regulations related to electricity will serve as an important legal foundation in the regulation of electricity enterprises. These regulations have established provisions regarding the implementation of businesses, including technical, administrative, and legal obligations that must be adhered to by all parties involved

With clear regulations in place, it is hoped that legal certainty can be created for investors while protecting public interests in the provision of safe and sustainable electricity. However, despite the existence of regulations, the implementation of electricity leasing agreements often faces challenges, such as potential disputes, misunderstandings regarding the rights and obligations of each party, and compliance with environmental standards. Therefore, a juridical analysis of the lease agreements for power plants becomes crucial. This analysis aims to identify potential

legal issues that may arise and provide recommendations for improvements and enhancements in the execution of lease agreements, to support the development of a sustainable and efficient electricity sector in Indonesia.

RESEARCH METHOD

The research method serves as a supporting tool in the legal writing process through relevant data. The type of research employed is normative legal research. The definition of 'juridical' refers to an approach based on applicable laws and regulations, while 'normative' refers to an approach conducted by primary legal materials. Normative juridical research utilizes primary legal sources as well as legal books (Matheus and Ariawan, 2024). This research will focus on a juridical analysis of the Power Purchase Agreements for power plants based on the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 11 of 2021 concerning the Implementation of Electricity Enterprises and other regulations related to electricity. Additionally, this method is used to present the analysis conducted in the research as a guide or recommendation relevant to the observed phenomena. This study will provide an overview of power purchase agreements for power plants.

RESULTS AND DISCUSSION

Implementation of Lease Agreements Related to Electricity Power Plants

Lease agreements are a business and institutional arrangement that involves the provision of goods through either finance leases or operating leases. Based on the definition of lease agreements, they consist of two forms: finance leases with an option to purchase and operating leases without an option to purchase. There are several parties involved in lease agreements, namely (Fuady, 2002):

- a) The leasing company or lessor

The party that provides financing to the lessee who requires it through leasing. In terms of financing, the company may operate in the multi-finance sector; however, there are also companies specifically engaged in leasing.

- b) Lessee

The party that requires capital for the purchase of goods, with the capital being provided by the requested company.

- c) The provider of leased goods or supplier

The party that supplies the capital goods to be used as the object of leasing, which will then be paid for by the company on behalf of the lessee.

Here are five types of finance leases, namely (Andasasmita, 1983):

- a) *Direct Finance Lease*

The lessee submits a request to the company that possesses the funds to purchase goods from a supplier designated by the lessee, including the determination of the price and type of goods to be purchased.

- b) *Sale and Lease back*

The company, upon the request of the lessee, purchases the goods already owned by the lessee with the aim of providing the lessee with additional capital.

- c) *Leverage Lease*

It is a form of financing provided by the company to the lessee, where the company does not utilize all of its funds, and part of the financing is sourced from third-party creditors. Furthermore, there is a guarantee to the creditor in the form of the leased object.

d) *Syndication Lease*

It is a form of financing provided by several companies for the supply of leased objects to the lessee

e) *Cross Border Lease*

Namely, a transaction between a company and a lessee from different countries.

Meanwhile, an operating lease is an agreement made between the company and the lessee as follows:

- a) The lessee agrees to utilize the company's services for the provision of goods for a short duration.
- b) The company receives payments from the lessee, and the lessee also has the option to cancel the agreement.
- c) The company is responsible for bearing the economic risks and maintenance of the goods.

Operating leases and finance leases each have distinct characteristics that differentiate the two. The characteristics found in finance leases are as follows:

- a) The company provides financing for the procurement of goods for the lessee.
- b) The greatest risk in a finance lease lies with the lessee, as the lessee is obligated to repay the capital provided by the company.
- b) The duration of the contract is aligned with the period of use of the goods.
- c) At the end of the leasing term, the lessee has the option to purchase the leased goods from the company at a significantly reduced price.
- d) There is no provision of services from the company to the lessee.

Meanwhile, operating leases also have distinct characteristics, namely:

- a) It places greater emphasis on the use of services
- b) The risk associated with the goods rests with the company
- c) The contract duration is not aligned with the period of use of the goods
- d) The option for the lessee to purchase the goods after the usage period is typically at the original price, resulting in a higher price
- e) The company may provide services related to the use and maintenance of the leased goods.

A leasing activity begins with the lessee's need for capital goods and limited capital resources. Subsequently, a leasing company acts as an investor to provide the necessary funding from the company to the supplier. After that, the supplier is obligated to deliver the goods to the lessee; however, the lessee is required to repay the funds provided by the company through periodic installments based on the price and quantity of goods needed by the lessee. The leasing company, as the provider of capital to the lessee, must have confidence that the lessee is capable of repaying the established installments.

Any party that requires financing for the procurement of goods may contact a company willing to provide the necessary funds for that procurement. Subsequently, the lessee and the company enter into an agreement regarding the financing of the lease. This agreement is binding on both parties and establishes rights, obligations, and responsibilities based on the terms outlined in the agreement. If either party acts outside the terms of the established agreement, that party will be considered to have committed a breach of contract, as their actions result in losses for the other party (Andasmita, 1983).

The leasing activity conducted between the lessee and the company does not occur immediately, as it must go through several processes in an agreement

between both parties. The processes involved in the leasing activity are as follows

a) Pre-contractual stage (before the agreement is made)

In this stage, there are various sequences, namely (Anwari, 1987):

- 1) Negotiation process, which is the initial step taken between the lessee and the supplier to reach an agreement on the price of the goods that will serve as the object of the lease.
- 2) Confirmation is necessary as a form of agreement resulting from the initial negotiations conducted between the lessee and the supplier regarding the price of the lease object. After that, the lessee submits an application to a company with the aim of obtaining financing related to the lease. Subsequently, the lessee fulfills several requirements set by the company, such as completing a personal data form.
- 3) A feasibility evaluation, which is a form of examination of the application submitted by the lessee to the company.
- 4) Decision, which is the final stage stating whether the application submitted by the lessee is accepted by the company or, conversely, rejected for failing to meet the evaluation criteria established by the company providing financial facilities to the lessee.

b) Contractual stage (the occurrence of the agreement)

This stage is a process of signing the agreement between the lessee and the company. The agreement states that the prospective lessee and the company have mutually agreed upon the contents of the agreement. At this stage, both parties are obligated to fulfill their rights and obligations as stipulated in the agreement that has been made. The following elements must be included in the lease contract or agreement (Sunaryo, 2019):

- 1) Identity of the parties, between the company and the lessee
- 2) Leasing object
- 3) Duration of the lease contract
- 4) Leasing service compensation and payment procedures
- 5) Option rights
- 6) Tax obligations
- 7) Insurance coverage
- 8) Liability for the leasing object

Leasing for the provision of power plants generally utilizes a finance lease agreement. In the context of electricity, to create more efficient costs for the sake of profits and the renewal of renewable electricity endeavors, a financial lease agreement can be beneficial. The stages of implementation of this agreement are quite similar but have different significance compared to a Power Purchase Agreement (PPA). A finance lease agreement is a type of leasing that ultimately grants the lessee the option to purchase the leased object from the electricity lease. Typically, the implementation of electricity leasing through a finance lease agreement has a long term, which aligns with the electricity object that has a relatively long usage period.

Currently, one of the challenges in implementing leasing activities is that the regulatory framework governing leasing in Indonesia has not undergone significant updates. This is evident from the primary regulation that continues to serve as the main reference, namely the Decree of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991 concerning Leasing Activities, which has been in effect for several decades without

comprehensive revisions. This situation underscores the urgency for the government to establish specific regulations addressing leasing activities

Regulation and Accountability of Leasing Agreements Related to Power Generation

According to the Joint Decision of the Minister of Finance, the Minister of Industry, and the Minister of Trade Number N.KEP - 122/MK/IV/2/1974, Number 32/M/SK/2/1974, and Number 30/Kpb/I/1974 concerning Business Licensing for Leasing, leasing is defined as a financing activity of a company that provides capital goods for use by another company for a specified period. Payments are made periodically, and the company has the option to purchase the relevant capital goods or extend the leasing period based on the agreed residual value.

The Finance Lease Agreement is a type of leasing agreement, and the regulations governing such agreements can be found in the applicable legislation, namely:

- a) Civil Code Law
- b) Presidential Regulation Number 9 of 2009 concerning Financing Institutions;
- c) Minister of Finance Regulation Number 84 of 2006 concerning the Business Activities of Financing Companies;
- d) Joint Decision of Three Ministers, comprising the Minister of Finance, the Minister of Industry, and the Minister of Trade No. Kep-22/MK/IV/2/1974, No. 32/M/SK/2/1974 concerning Licensing of Leasing Businesses;
- e) Decision of the Minister of Finance Number 634/KMK.013/1990 concerning the Procurement of Capital Goods with Facilities Through Leasing Companies;
- f) Decision of the Minister of Finance Number 1169/KMK.01/1991 concerning Leasing Activities; and
- g) Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11 of 2021 concerning the Implementation of Electricity Business.

In addition to the legal basis for administrative matters, the lease agreement also has a fundamental legal basis for leasing, namely Article 1338 of the Civil Code, which serves as the primary legal foundation governing obligations. Every obligation made by the parties involved has the force of law akin to that of legislation for them. This article reflects the principle of "freedom of contract," which means that the parties have the right to enter into contracts and determine the content of the contract according to their wishes, provided that the essential requirements of a valid agreement, as stipulated in Article 1320 of the Civil Code, are met. Furthermore, the contract must not contradict applicable legal provisions, must comply with existing customs, and must be executed in good faith.

A concrete example of the use of electrical power through a finance lease can be seen in the Tanjung Jati power plant project carried out by PT Central Java Power. The advantage of utilizing a finance lease in this context is that PT PLN, as the provider, can exercise oversight regarding the use of electrical power. Meanwhile, PT Central Java Power benefits from the ability to repurchase electrical power at an affordable price (Ghiffari, et.al., 2017).

The parties involved in the Finance Lease Agreement are PT PLN (Persero) as the lessee and a private business entity as the lessor. The object of the agreement in the Finance Lease Agreement is an electricity generation installation that will be leased by the private business entity as the lessor. Furthermore, within a certain period as stipulated in the Finance Lease Agreement, this duration will be agreed

upon by both parties, which is typically over 20 years. Subsequently, the rights and obligations of the parties in the Finance Lease Agreement are generally as follows:

a) Lessee

Has the right to lease the use of the electricity generation installation and is responsible for making the lease installment payments.

b) Lessor

Grants the lease rights for the electricity generation installation and receives the lease installment payments.

In the Finance Lease Agreement, the provisions regarding contract termination clearly stipulate the options available to the lessee. Meanwhile, the definition of Force Majeure can be found in the appendix of the document. If legal issues arise within the agreement, both parties are required to accept and fulfill compensation in accordance with the unlawful acts violated by each party.

Legal liability arises when one party in an agreement violates the legal provisions that have been agreed upon. Such violations can lead to various consequences, including the obligation to provide compensation to the aggrieved party. Additionally, the violating party may face sanctions in accordance with applicable laws and regulations, which can include fines, contract cancellation, or other legal actions. Therefore, it is crucial for each party to understand and adhere to existing rules to avoid adverse legal consequences (Herawaty, 2002).

In a contract, if one party fails to fulfill its obligations according to the terms of the agreement, that party is considered to be in "default." Default essentially refers to a situation in which a contract is not executed or a party is unable to perform its obligations. Additionally, default can occur due to negligence, breach of promise, or violation of the agreement, which includes actions that should not have been taken. In the context of a leasing agreement, default can occur if:

- a) The lessee is late and/or negligent in paying the installment payments that have been established in the agreement;
- b) The lessee is unable to fulfill the obligation to pay the costs as requested within the time frame established in the agreement; and
- c) The lessee has engaged in actions prohibited by the agreement for personal gain, causing harm to the lessor.

If the lessee defaults as previously mentioned, the step taken by the lessor is to send a formal notice informing the lessee that they are required to fulfill their performance or obligations that are overdue within the time frame specified in the notice. If, after receiving the notice, the lessee still fails to perform their obligations, the lessor has the right to reclaim the capital goods that are the subject of the leasing agreement, with the costs of retrieval charged to the lessee. This action is taken following confirmation, feasibility evaluation, and a decision regarding the provision of financing by the lessor. Once all conditions are met, the signing of the agreement document takes place, which must subsequently be executed by both parties in good faith. Leasing agreements typically refer to standard agreements, the forms of which are provided by the lessor, whereby the lessee merely needs to agree to them. As a result of this standard agreement, more rights, obligations, and responsibilities are imposed on the lessee. In the event of default and the emergence of disputes, resolution can be achieved through two methods: deliberation (mediation and/or negotiation) and/or litigation (court), although generally, the parties prefer the deliberation route. At the end of the agreement, the lessee is granted the option to either return the capital goods or purchase them.

CONCLUSION

In the provision of renewable electricity, PT PLN (Persero), as a state-owned enterprise, cannot carry out this function independently. Therefore, the participation of private enterprises is crucial to support this initiative. One relevant instrument in this regard is the Finance Lease Agreement, which is a leasing agreement. This agreement encompasses various aspects that can provide benefits to both parties involved. Leasing, as a financing activity, includes the provision of capital goods either in the form of a finance lease with an option to purchase or an operating lease without an option. This process occurs over a specified period with periodic payments made by the lessee. Thus, leasing activities involve the lessor, which is a financing company or a leasing company, in providing financing for the goods desired by the relevant party.

The regulation regarding leasing in Indonesia has undergone updates; however, in practice, it still depends on the agreements made between the lessee and lessor. Therefore, it is important to deepen the understanding of leasing agreements in accordance with the provisions of the Minister of Finance Regulation Number 1169/KMK.01/1991. In this regulation, leasing transactions are defined as financing activities focused on the provision of capital goods for use by business operators, referred to as the lessee. In leasing transactions in the form of sales and leaseback, business operators can obtain funds upfront. In this mechanism, the business operator first sells its capital goods to the lessor, who then can lease the capital goods back to the respective business operator.

In this research, it is recommended that there be regulations regarding leasing transactions or agreements in the form of legislation, rather than merely ministerial regulations or presidential regulations that have been in effect so far. With regulations equivalent to laws, clearer legal certainty will be created regarding the positions of the parties, their respective rights and obligations, and the mechanism for the exercise of the lessor's rights in the event of default by the lessee. Additionally, this regulation will also provide better protection for the lessee.

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