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RE-EXAMINING THE CONSTRUCTION OF UNNAMED HIRE PURCHASE CONTRACTS FOR MOTOR VEHICLES AND THEIR RELATIONSHIP WITH LEASING

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Abstract
The agreement is the right of every person to enter into an agreement, but entering into an agreement must see the rules or provisions governing the agreement so that the agreement is valid. The lease-purchase agreement is a creation of practice based on the principle of freedom of contract. Freedom of contract is not purely as free as possible, there are limitations in carrying out or making contracts. One of the limitations of the principle of freedom of contract is Article 18 of Law Number 8 of 1999 concerning Consumer Protection, which lists several things that cannot be done in a contract. As a result, if this is done, the contract is null and void by law. Many lease agreements nowadays are agreements made unilaterally by the seller, which should have been made by both parties, what determines everything is that the seller and the consumer just have to agree and comply. This weak consumer position and cause many losses. It is this weak position that is exploited by the seller by imposing several things in the articles of the agreement such as taking back the unit if it does not pay without taking into account the payment made by the consumer beforehand. This research is a normative legal research that uses a statutory approach, a conceptual approach, and case approach that aims to find out the re-examination of motor vehicle lease-purchase agreement construction.

Keywords: *agreement, consumer protection, re-examination.*

I. INTRODUCTION

Agreement is a foundation for performing an act, whether it is regulated by law or not. In Indonesia, agreements fall under the realm of civil law, and their regulation is found in the Burgerlijk Wetboek (Civil Code). Agreements are governed by Article 1313 of the Civil Code, which states that "an agreement is an act by which one or more parties bind themselves to one or more persons." Agreements have several types that are studied based on their legal sources, names, forms, obligations, and prohibitions.

Agreements can also be referred to as contracts. In this study, agreements will be referred to as contracts. The contract to be discussed is a lease-purchase contract, which, according to the understanding of various types of contracts, is an unnamed contract. This is because lease-purchase contracts are not regulated in the Civil Code. The definition of lease-purchase can be found in the Minister of Trade and Cooperatives Decree Number 34 of 1980 concerning Licensing of Installment Lease-Purchase Activities. Lease-purchase is defined as “the sale of goods in which the seller carries out the sale by taking into account each payment made by the buyer in full

payment of the agreed-upon price of the goods, and ownership of the goods only transfers from the seller to the buyer after the full price is paid."

The regulation regarding lease-purchase can be found in the Circular of the Director of Business Development Number 408/Binus-3/IX/1985 regarding Lease-Purchase Business License Application, as well as in the Letter of the Director of Business Development Number 719/Binus-2/VIII/1986 regarding Lease-Purchase Business License. These regulations are administrative guidelines that do not regulate the material conditions of lease-purchase contracts. Therefore, in case of disputes arising from lease-purchase contracts, the conditions and principles of agreements adopted by the Civil Code are applied.

Lease-purchase is equated with sale-purchase in this regulation. In the Civil Code, sale-purchase is a mutual agreement in which one party (the seller) promises to transfer ownership of a property, while the other party (the buyer) promises to pay a price consisting of a certain amount of money as consideration for acquiring ownership. The sale-purchase agreement is formed at the moment when the agreement on the price and the property is reached. Based on the principle of consensualism, a valid sale-purchase occurs. The consensual nature of the sale-purchase is emphasized in Article 1458 of the Civil Code, which states that "a sale-purchase is considered to have occurred between the parties as soon as they agree on the goods and the price, even if the goods have not been delivered or the price has not been paid."

As known, the Civil Code adheres to the system where a sale-purchase contract is merely obligatoir, meaning that the sale-purchase contract establishes reciprocal rights and obligations between the two parties, namely the seller and the buyer. It imposes on the seller the obligation to transfer ownership of the sold goods and grants them the right to demand payment of the agreed price. On the other hand, it imposes on the buyer the obligation to pay the price as consideration for their right to demand the transfer of ownership of the purchased goods. In other words, according to the Civil Code, a sale-purchase contract does not transfer ownership.

Ownership rights are only transferred through delivery or handover. Regarding the existence of two legal systems, namely the Civil Law System and the Common Law System, the characteristics of lease-purchase contracts differ significantly between these two legal systems. In the Common Law System, lease-purchase contracts are more focused on lease agreements with an option for the lessee to purchase the goods after the lease period ends. Conversely, countries that follow the Civil Law System consider lease-purchase contracts to be more inclined towards sale-purchase contracts (Melati, 1999).

In principle, the allocation of risks in a lease-purchase contract is borne by the owner of the goods, as stated in Article 1460 of the Civil Code, which was further clarified by Supreme Court Circular Number 3 of 1963. However, in practice, the risks are often shifted to the lessee buyer, even though the legal transfer of ownership has not occurred. As a result, in lease-purchase contracts, the dominant position lies with the lessor seller, while the lessee buyer is in a weaker position.

When lease-purchase contracts are used as the basis for buying and selling cars between dealers (sellers) and consumers (buyers), the lease-purchase contract is considered one-sided, placing the consumer (buyer) in a weak position. Therefore, lease-purchase contracts, which are standard clauses in contract terms, violate Article 18 paragraph (1) letter d of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as Law 8/1999). Standard clauses, as regulated in Article 18 paragraph (1) letter d of Law 8/1999, are defined as granting authority

from the consumer to the business entity, directly or indirectly, to take unilateral actions related to the goods purchased by the consumer on an installment basis.

Regarding standard clauses, Miriam Darus Badrulzaman also argues that it is illogical to consider that credit agreements are unilaterally drafted by the provider. If the interests of the creditor are not protected by the agreement, the question arises as to the extent to which the interests of the debtor are protected, as the debtor does not have the right to modify or amend the agreement. Therefore, standard agreements are referred to as forced agreements or all size or take it or leave it contracts (Badrulzaman, 1994).

As a consequence of violating the provisions of Article 18 paragraphs (1) and (2) of Law 8/1999, Article 18 paragraph (3) of Law 8/1999 states that any standard clause established by business entities in documents or agreements that contain provisions prohibited under Article 18 paragraph (1) of Law 8/1999 or standard agreements or standard clauses that comply with the provisions as referred to in Article 18 paragraph (2) of Law 8/1999 shall be null and void. This reaffirms the nature of freedom to contract as regulated in Article 1320 in conjunction with Article 1337 of the Civil Code. This means that agreements containing standard clauses prohibited under Article 18 paragraph (1) of Law 8/1999 or having formats prohibited under Article 18 paragraph (2) of Law 8/1999 are considered to have never existed and do not bind the parties, business entities, and consumers who engage in the trade of goods and/or services (A. Yani, 2003).

When it comes to explaining a business, a legal entity (natural person) must comply with the applicable laws and not rely solely on agreements that are considered as laws by the parties involved, as stated in Article 1338 of the Civil Code. However, there are mechanisms and provisions that must be adhered to.

For example, in conducting their business, a financing company must not act arbitrarily when faced with defaulted payments. Such a financing company is subject to legal provisions, both legislation and regulations, that govern its operational activities. A finance company cannot be exempted from the regulations set forth in Law Number 42 of 1999 regarding Fiduciary Security, Law Number 4 of 1996 regarding Mortgage Rights over Land and Related Objects, Law Number 8 of 1999, and Ministry of Finance Regulation Number 130/PMK.010/2012. These laws and regulations provide guidelines and restrictions to ensure fair and lawful business practices for financing companies.

II. PROBLEM FORMULATION

Based on the previous introduction, this research examines the following legal issues:

1. What are the characteristics of motor vehicle leasing contracts?
2. What are the unique clauses in motor vehicle leasing contracts and how do they differ from leasing?

III. RESEARCH METHODS

This legal research adopts a normative legal research approach. The normative legal research aims to examine the provisions of positive law, and the positive legal framework being studied will be used as a source of legal materials. Legal research should be conducted at the normative level of law. Morris L. Cohen, who shares the same opinion as Peter Machmud Marzuki, states that “Legal research is the process of finding the law that governs activities in

human society." (Marzuki, 2017). This legal research employs the statute approach, conceptual approach, and case approach.

IV. RESULTS AND DISCUSSIONS

1. The development of leasing contracts in the national legal system.

Lease-purchase is a legal practice that has been recognized by jurisprudence. In the Netherlands, lease-purchase has been incorporated into the Civil Code (Burgerlijk Wetboek or BW). Lease-purchase has been widely practiced before World War II, initially focusing on sewing machines, particularly the well-known "SINGER" brand machines manufactured in the United States. Over time, it expanded to include household furniture and eventually extended to automobiles (vehicles) as well (Salim, 2010).

The term "Contract/Agreement" in Dutch is known as "*overeenkomst*," while in Indonesian, it is referred to as "*kontrak/perjanjian*." These terms have the same meaning, so it is not surprising to see them used interchangeably to refer to a legal construction (Hartana, 2016). The practice of lease-purchase is allowed because, in the contract law adopted in the Civil Code (Burgerlijk Wetboek/BW), there is an open principle of freedom to contract. Lease-purchase is a form of sale rather than a mere lease, although it is actually a combination of both. Article 1576h of Book IV of the Civil Code defines lease-purchase as "a sale with installments in which the parties agree that the sold goods do not immediately become the property of the buyer upon delivery of the goods." (Hartana, 2016).

The main reason for the emergence of lease-purchase contracts is the narrowing market for industrial goods and the limited purchasing power of the public. In addition, lease-purchase contracts exist due to the principle of freedom to contract, which is regulated in Article 1338 of the Civil Code. According to Subeki, the way to emphasize this principle of freedom to contract is by focusing on the word "all" that precedes the word "agreement." (Salim, 2010).

The construction of leasing agreements (sewa-beli) in the Common Law System and the Civil Law System differs. This was studied by Sri Gambir Hatta, who stated that in the Common Law System, leasing is considered a lease agreement, and it is never construed as a sale agreement, so ownership remains with the seller. The leasing agreement is construed as a lease agreement with an option to purchase at the end of the lease. On the other hand, in the Civil Law System, leasing is constructed as a sale agreement, where installment payments are considered installments towards the purchase price, and ownership transfers directly to the buyer at the end of the payment period without any specific legal act.

In Indonesia, there is currently no specific law governing leasing agreements. However, the Indonesian government has issued several regulations through its apparatus in the form of Minister of Trade and Cooperatives Decree Number 34/KP/II/1980, which regulates licensing issues for companies engaged in leasing activities. Additionally, there is Circular Letter from the Director of Trade Business Development Number 408/Binus-3/IX/1985 regarding applications for leasing business licenses. These provisions are further clarified by Circular Letter from the Director of Trade Business Development Number 719/Binus-3/VIII/1986, which explains the licensing for leasing businesses and the definition of installment sales according to Minister of Trade and Cooperatives Decree Number 34/KP/II/1980. According to Minister of Trade and Cooperatives Decree Number 34/KP/II/1980, the vehicles that can be leased are durable

commercial goods that are new and have not undergone technical changes, whether they are produced domestically or assembled elsewhere.

In its development, the legal sources found in the *Burgerlijk Wetboek* (Civil Code) are no longer able to meet the needs of society. Many provisions in the BW are no longer applicable due to the changing times, making the Civil Code outdated. An example is the lack of specific regulations on leasing agreements within the Civil Code.

The legal basis for leasing agreements in the BW can only be related to Article 1338 of the BW, which deals with freedom of contract. Leasing is not recognized in the BW and is considered an unnamed agreement, so generally, leasing is equated with sales. Therefore, sales must refer to Book III, Chapter V, Articles 1457 to 1540 of the BW/ Civil Code.

Looking at the requirements for the validity of an agreement (contract) as regulated in Article 1320 of the Civil Code, agreements are distinguished according to their parts, namely the core part, the sub-core part called essentialia, and the non-core part called *naturalia* and *aksidentialia* (Badrulzaman, 1994). In a lease-purchase agreement, there are certain aspects that need to be considered regarding the validity of the lease-purchase agreement, specifically regarding standard agreements or standard exemption clauses found in an agreement. In a motor vehicle lease-purchase agreement, there are several standard clauses, including the following:

a. Prohibition of transferring the object of the agreement;
b. Maintenance clause;
c. Repossession by the buyer;
d. Risk clause;
e. Clause allowing entry into the premises where the goods are stored;
f. Delay in the transfer of rights;
g. Due date clause;
h. Power of attorney.

The non-binding nature of the standard contract is due to the presence of clauses that burden one party. Therefore, such clauses are legally void and not binding. The limitations regarding standard contracts are stated in the Civil Code (BW) and also Law 8/1999. According to Article 1337 of the Civil Code, "a clause is prohibited if it is prohibited by law or contrary to morality or public order," and Article 1339 of the Civil Code states that "agreements are binding not only for the matters expressly stated therein but also for everything that is required by the nature of the agreement, custom, and law."

Articles 1337 and 1339 of the Civil Code serve as benchmarks for standard contracts, meaning that standard contracts must comply with the law, morality, and public order. A standard contract is defined as a reference or benchmark. Ideally, an agreement should be made by both parties, but for the sake of convenience and business efficiency, standard contracts are commonly used in motor vehicle lease-purchase agreements. A standard contract is a unilateral agreement made by one party or predetermined by one party, especially by the creditor or seller. Standard contracts are allowed by law as long as they do not harm either party, but in practice, many clauses are detrimental to consumers. The characteristics of a standard contract (Exemption Clause) are as follows: (Kahalid, 2016).

a. Its content is unilaterally determined by the party in a higher position.
b. The weaker party is not involved in determining the non-core elements of the agreement.
c. The weaker party is forced to accept the agreement due to factors of necessity.

d. It is in written format.
e. It is prepared in advance either in a mass or individual manner.

The use of standard contracts demonstrates a development that greatly endangers the interests of the public. Considering the general public's lack of knowledge regarding the legal aspects of standard contracts, it is the government's obligation to oversee them. As representatives of the public interest, the government is required to monitor the implementation of standard contracts.

The background of using standard contracts is related to socio-economic factors. By using standard contracts, businesses can achieve cost, labor, and time efficiency. According to Hondius, a standard contract is a concept of a written agreement prepared without discussing its content and is commonly incorporated into numerous unlimited specific agreements (Kahalid, 2016). It can be observed that the difference in the parties' positions when a standard contract is established does not provide an opportunity for the debtor to negotiate with the creditor. The debtor does not have the power to express their will and freedom in determining the content of this standard contract because it does not meet the elements required by Article 1320 of the Civil Code in conjunction with Article 1338 of the Civil Code. Therefore, it does not have legal consequences.

There are several viewpoints regarding whether standard contracts violate the principle of freedom of contract or not. Sluijter states that standard contracts are not agreements because the position of the entrepreneur within the contract is like that of a private legislator (Kahalid, 2016). The conditions stipulated by the entrepreneur in this contract are laws, not agreements. Furthermore, Pitlo refers to it as a forced agreement. Although theoretically, standard contracts do not meet the legal requirements and have been rejected by some legal experts, the reality is that societal needs contradict legal desires. Stein argues that standard contracts can be accepted as agreements based on the presence of the will and belief that the parties bind themselves to the contract (Kahalid, 2016). If the debtor accepts the document of the agreement, it means they voluntarily agree to its contents. Standard contracts contradict the principle of responsible freedom of contract.

Regarding the principle of responsible freedom of contract, Soepomo's opinion states that this principle supports a balanced position between the parties (Kahalid, 2016), ensuring that a contract is stable and beneficial to both sides. However, in standard contracts, the positions of the creditor and debtor are not balanced. Standard contracts should not be allowed to grow uncontrollably, and existing standard contracts need to be regulated. In this regard, the legislative body, government, courts, notaries, and legal consultants can play a role. Good faith is one of the benchmarks that can be used to supervise the existence of standard contracts.

According to Wirjono Prodjodikoro, the limitation of good faith with the terms "Dengan Jujur" or "*Secara Jujur*" (Hermoko, 2018) encompasses the entire process of a contract and can be likened to "The Rise and Fall of Contract," as suggested by J.M. van Dunne. Furthermore, Arthur S. Hartkamp states that there are three functions of good faith: first, contracts should be interpreted in accordance with good faith; second, it can be used to add or supplement terms; and third, it can be used to restrict or eliminate terms. Regarding the obligations of business operators, they can be found in Article 7 of Law No. 8/1999, which includes the following:

1. Acting in good faith in carrying out their business activities.
2. Providing accurate, clear, honest, and non-discriminatory information.
3. Providing explanations regarding usage, repairs, and maintenance.

4. Treating or serving consumers correctly, honestly, and without discrimination.
5. Guaranteeing the quality of goods and/or services produced and/or traded.
6. Complying with the applicable standards of quality for goods and/or services (Suhadi & Fadilah, 2021)

In addition, the Indonesian Civil Code (BW) defines good faith in Article 1338 paragraph (3) as the dynamic implementation of a contract with good faith, and Article 1963 states that good faith refers to the good intentions or honesty of a person when they acquire ownership of an item, which is similar to Article 1977 of the BW. Sewa-beli (leasing) is a mixed agreement between sale and lease. According to Article 1319 of the BW, every named or unnamed agreement is subject to the general provisions of contract law. To determine the legal relationship between the parties in a leasing agreement, three theories can be used:

1. The Akumulasi Theory.
2. The Ero Aborsi Theory.
7. The Sui Generis Theory (Suhadi & Fadilah, 2021).

In the case of the Surabaya District Court Decision Number 263/1950Pdt between N.V Handel L'auto and Jordan, the Surabaya District Court applied the Aborsi Theory. The legal considerations mentioned that the title of the agreement was a lease, and the stamp duty paid was for a lease. Conversely, in the appellate court (Pengadilan Tinggi Surabaya), the Sui Generis Theory was applied because a leasing agreement was considered to be a distinct agreement from a sale and lease agreement, and the provisions of sale were applied analogously to the leasing agreement.

In several European countries, courts have developed a doctrine regarding the risks involved in leasing agreements. The party that is most capable of efficiently managing the risks should bear them (Suhadi & Fadilah, 2021). In the case of leasing, the business operator is considered to be more capable of efficiently managing the risks because they can transfer the risks to affiliated insurance companies. The insurance companies then distribute the risks to the lessee by collecting insurance premiums. The cost of risk management is cheaper than if each lessee were to individually pay insurance premiums to different insurance companies.

2. Form of Clauses Demonstrating Uniqueness in Hire-Purchase Agreements and Their Differences with Leasing

The agreement made by the parties therein governs the nature and extent of their rights and obligations, referred to as the content of the agreement. The content of the agreement is set forth in articles and clauses. In the context of contract drafting, it is important to understand that a contract is a process that involves two stages: the Formation Stage and the Implementation Stage. Prior to signing the contract, there are preceding stages, namely research, outlining, and drafting of the contract. Creating a contract hastily without considering legal principles, legal norms, and methods in design can have fatal consequences, as the agreed-upon contract may be legally flawed. The principles of predict, protect, and provide are applied during the outlining stage. The designer has obtained materials from research before proceeding with outlining. The content of the contract is the primary focus for someone creating a contract (Bahan Ajar, 2005)

In practice, to resolve issues regarding lease-purchase agreements, three theories are commonly used, as mentioned earlier: the Accumulation Theory, the Ero Abortion Theory, and the Sui Generis Theory. According to the Accumulation Theory, the elements of a mixed agreement are separated. The provisions of a sales agreement are used for the sale element, while the provisions of a lease agreement are used for the lease element (Suharnoko, 2004). The

criticism of this theory is that there may be conflicting provisions between the sales and lease elements, especially regarding risk and ownership rights.

Under the Ero Abortion Theory, the most dominant element of the mixed agreement is applied. However, determining the dominant element in a mixed agreement is not always straightforward. According to the Sui Generis Theory, specific agreement provisions regulated in the Civil Code are applied analogously to the mixed agreement.

There is also jurisprudence concerning default in lease-purchase agreements where ownership rights to the goods remain with the seller-lessee until the buyer-lessee completes the payment. The seller-lessee has the right to repossess the goods if the buyer-lessee defaults on installment payments. Legal experts and practitioners differ in opinion as to whether default is a condition for repossession, allowing the seller to reclaim the goods without a court decision. In relation to the enactment of Article 18 of Law No. 8/1999, it is stated that any standard clause stating that a business entity has the right to take unilateral actions on goods purchased by consumers in installments is null and void. Consequently, the business entity must file a default lawsuit in the District Court to reclaim the goods.

Supreme Court jurisprudence No. 935/Pdt/1985 dated September 30, 1986, in the case of Lie Tjiu Hoa and Achmad Kartawijaya alias A Liong v. Unda bin H. Marsan, states that from the perspective of justice and morality, it is not appropriate for the form and content of an agreement to extinguish the buyer-lessee's rights to the purchased goods merely due to late payment or difficulty in paying the final installment, without considering the amount of installments already paid. Therefore, it can be concluded from this Supreme Court decision that the leased goods cannot be repossessed immediately after the buyer-lessee pays installments almost in full.

Furthermore, there is Supreme Court jurisprudence No. 3272K/Pdt/1988 in the case of Sie Gio Tong v. Agus Setiawan, where the Supreme Court provided greater protection to the buyer-lessee. It was decided in that case that ownership rights to the goods had transferred to the buyer-lessee, even though they had only paid a down payment and two installments, with the remainder considered as debt. Similarly, in Supreme Court jurisprudence No. 1241K/Pdt/1986 in the case of Arifin Samoga v. La Ode Latief, the Supreme Court ordered the buyer-lessee to pay the remaining lease-purchase installments, but ownership rights had already transferred to the buyer-lessee. Although according to the theory of transfer of rights, ownership only transfers after full payment, there has been a shift in theory in accordance with Supreme Court jurisprudence No. 1241K/Pdt/1986, where lease-purchase is considered as a sales agreement, and ownership rights transfer upon delivery from the seller-lessee to the buyer-lessee.

The difference in the application of the law by judges regarding lease-purchase cases is due to the absence of specific legislation on lease-purchase in Indonesia. Consequently, when disputes arise, they are left to the discretion of the judges (Suhadi & Fadilah, 2021). Lease-purchase is an example of a legal practice that demonstrates society's desire for legal reform and development. Legal phenomena have taken shape through the establishment of jurisprudence, as wherever there is a relationship between humans, there is law. Legal values within society have been shaped by judges in the courts and are now used as precedents. Legal doctrine has influenced jurisprudence concerning lease-purchase.

Regarding ownership rights, as defined in Article 570 of the Civil Code, it is a right to fully enjoy the benefits of a thing and to exercise unrestricted control over it, as long as it does not contradict the law or general regulations established by an authorized authority. The methods of acquiring ownership rights are regulated by Article 584 of the Civil Code, as follows:

1. Occupation;
2. Withdrawal from another object;
3. Passage of time/expiry;
4. Inheritance;
5. Delivery.

Through the lease-purchase scheme, ownership rights in the lease-purchase agreement are said to transfer only after the full payment of the price. However, in practice, this is not always the case. In the context of lease-purchase agreements, particularly for motor vehicles, the transfer of ownership does not occur when the price is fully paid, but rather when the object of the agreement is delivered. This is accompanied by the issuance of the Vehicle Ownership Certificate (BPKB) and Vehicle Registration Certificate (STNK) in the name of the buyer, even if the payment has not been fully settled. The practice of lease-purchasing motor vehicles in Indonesia leans more towards credit sales rather than true lease-purchase, considering the immediate transfer of ownership to the buyer and the possibility of installment payments.

The BPKB and STNK serve as indicators of ownership since they contain the owner's identity information. Regarding ownership rights, Vollmar states that ownership only transfers after payment or after the provision of security for the purchase price (Vollmar, 992). From the aforementioned points, there is considerable confusion surrounding motor vehicle lease-purchase agreements, mainly due to non-compliance with applicable laws. Business operators can be said to engage in “fraus legis” or “legal smuggling” by disregarding the full intent of the law for the sake of business efficiency.

According to the general opinion among legal experts and judges, the Civil Code applies what is called the “Causaal Stelsel” (causal system) (Syahrani, 1992), which means the validity of the transfer of ownership depends on the validity of the obligatory agreement. There are various theories regarding ownership rights. Some argue that ownership does not transfer to the buyer, and the delivery that occurs merely signifies the transfer of possession (factual delivery). However, it should be noted that the issuance of the BPKB and STNK is a legal act aimed at transferring ownership to another person (legal delivery). Therefore, the condition for transferring ownership is fulfilled through delivery, which is one of the methods of acquiring ownership rights as regulated in Article 548 of the Civil Code. In fact, for movable property, the transfer of ownership is sufficient with the transfer of possession alone (Syahrani, 1992).

Based on the aforementioned explanations, the ownership of motor vehicles in lease-purchase agreements belongs to the buyer after the delivery of the vehicle. The existence of ownership in the hands of the buyer contradicts the definition of lease-purchase itself, which is the transfer of ownership after full payment. Therefore, what currently exists in practice is no longer a proper lease-purchase agreement, or in other words, it is an erroneous lease-purchase agreement.

The connection between lease-purchase and leasing can be traced back to the etymology of “leasing,” which means to rent. Leasing as a type of activity can be considered relatively new in Indonesia and was first used in 1974. In Indonesia, there are already several companies categorized as non-bank financial institutions. Leasing functions at a level similar to banks as a medium-term financing source (Simatupang, 1996). From the perspective of the national economy, leasing has introduced a new method to obtain capital equipment and increase working capital.

Fundamentally, leasing resembles a rental agreement. According to Article 1 paragraph (1) of the Joint Decree of the Minister of Finance, Minister of Industry, and Minister of Trade dated February 7, 1974, leasing is defined as a company's financing activity in the form of providing capital goods for a certain period, based on periodic payments. The lessee has the option to purchase the relevant capital goods or extend the leasing period based on the agreed residual value.

From a formal standpoint, leasing and lease-purchase are contractual agreements, recognized legally as acts performed by two or more parties. Leasing activities can be conducted through both Finance Lease and Operating Lease. Finance Lease refers to a lease agreement in which the lessee has the option to purchase the leased object at the end of the contract period, while in an Operating Lease, the lessee does not have the purchase option. In the leasing industry, several parties are involved in the leasing agreement, including:

1) Lessor: The party that leases the goods, which can consist of several companies. The lessor is also referred to as the investor.
2) Lessee: The party that enjoys the leased goods by paying rent and has the purchase option.
3) Creditor or Lender: Generally, they are banks, insurance companies, or foundations.
4) Supplier: The seller and owner of the leased goods. Suppliers can be domestic or foreign companies (Subekti, 1992).

In leasing, it is stated that the lessee is the economic owner of the leased goods because they receive all the benefits from the goods, while the risk of damage or destruction is borne by the lessor. In an operating lease, the lessee receives the goods ready for use, including maintenance, while in a finance lease, the lessee independently orders the goods with the lessor's financing. In the latter case, maintenance costs and insurance obligations are usually borne by the lessee.

The similarity between a leasing agreement and a lease-purchase is that in a leasing agreement, the lessee pays a fee to the lessor for a specified period. In a lease-purchase agreement, the buyer pays installments to the seller within a specified timeframe according to the agreement. The difference between leasing and lease-purchase occurs with the final payment installment. In a lease-purchase agreement, ownership automatically transfers without an option. In leasing, the lessee remains the lessee until their installment payments end. If there is an option, the lessee can use it to purchase the goods after it is agreed upon by the lessor, and the lessee will pay the agreed residual value.

Another difference is in the timeframe. In leasing, the duration is usually set based on the estimated useful life of the goods and the buyer's ability to pay the price in installments, while in lease-purchase, the timeframe does not consider these aspects.

The international regulation regarding leasing is known as UNIDROIT. The current business and economic issues are becoming more transactional due to rapid technological and informational developments, leading to new challenges. UNIDROIT principles are legal principles that govern the rights and obligations of parties when applying the principle of freedom of contract. The freedom of contract principle, when unregulated, can be harmful to the weaker party in creating an agreement, although it is acknowledged that this principle is flexible (Subekti, 1992). UNIDROIT is also known as an international institution for the unification of private law, established by the decision of the League of Nations on October 3, 1924.

The development of contracts in business law is influenced by the growth of legal practices, particularly in the field of contracts (agreements) that cannot be covered by the Civil Code. Thus, there is still a need for legal provisions that can cover contract clauses made using the principle of freedom of contract. Factors influencing the development of principles regarding contracts (agreements) can be seen as follows:

1) Internal Factors: Government policies to improve the welfare of the country and its people, leading to intervention in the economy through the issuance of various regulations governing contracts.
2) External Factors: International developments that make the national economy more open due to the globalization of the world economy, resulting in foreign elements influencing the national legal system with the opening of free markets and foreign investments, eliminating barriers to international business.
3) Increasing frequency of various forms of standardized contracts, leading to a higher intensity of contract-making activities (Subekti, 1992).

Indonesia became a member of UNIDROIT on January 1, 2009, with the enactment of Presidential Regulation Number 59 of 2008 concerning the Ratification of the Statute of The International Institute of the Unification of Private Law. The establishment of UNIDROIT aims to, **first**, provide legislative unification activities that involve the drafting of international conventions or uniform laws, and **second**, conduct research to understand methodological issues related to ongoing or future unification efforts (Matteucci, 1973).

The definition of leasing in UNIDROIT is similar to that found in Indonesian law, where leasing is essentially a form of temporary rental. The main difference lies in Finance Lease, which does not include an option. Without an option, a lease will still be classified as a Finance Lease if the lessee specifies the leased object and selects the supplier. The supplier is aware that the asset acquisition is for the lessee's use (In Article 1 of the UNIDROIT Model Law on Leasing, Unidroit Study LIXA). Additionally, according to the UNIDROIT definition, lease payments may or may not include the amortization of the object or a significant part of it, which differs from Indonesian law.

UNIDROIT explains the object of the lease. UNIDROIT provides a definition of assets as all property used for trade, craftsmanship, or business activities of the lessee, including immovable property, capital goods, equipment, future assets, specially made assets, plants, and animals. Regarding the principle of freedom of contract, the Model Law also adheres to this principle. The parties involved in a leasing agreement according to the Model Law are the lessee and the lessor. The supplier is not considered a party or required to be a party to the agreement. The supplier is positioned as an extension of a leasing agreement. This can be seen from the lessee's right to request the lessor to demand performance based on Article 1 of the Indonesian Ministry of Finance Decree Number 48/KMK.013/1991 concerning Lease Financing Activities. Unlike Indonesia, which only recognizes two parties, the lessee and the lessor.

The proposal for a Model Law on Leasing was first made by a member representing countries from various continents during a meeting of the UNIDROIT Governing Council. At that time, the UNIDROIT Secretary-General stated that due to the lack of regulations on leasing in developing countries, a Model Law was needed to be presented to the UNIDROIT Governing Council. This initiative originated from discussions within the UNIDROIT Governing Council. The formation of the Model Law on Leasing was a renewal of the Ottawa Convention. Leasing was still considered a form of financing in the private sector needed by both developing and

developed countries' economies, as reported by the International Finance Corporation (Please refer to UNIDROIT, Model Law on Leasing: Official Commentary, 2010). The UNIDROIT Advisory Council presented the initial draft of what is now known as the UNIDROIT Model Law on Leasing in November 2008. The UNIDROIT Model Law on Leasing was completed and adopted by 33 countries, including Indonesia.

Based on the provisions of the UNIDROIT Model Law on Leasing, there are two scopes of regulation within the law. First, it applies substantively to both Financial Lease and Operating Lease. Consumer Leasing is a definition that is set aside and not included in the types of leasing regulated by the Model Law on Leasing. The provisions in the Model Law on Leasing only govern leasing used for production goods. Second, geographically, there are two criteria for the application of the Model Law on Leasing: either it applies within the participating country or when the lessee is located within the territory of the participating country (Center of Main Interest).

V. CONCLUSION

The hire-purchase agreement is a contract that arose out of practice. One of the reasons for the emergence of this agreement is the decrease in the purchasing power of the public, which led to a decline in the marketing of goods by producers. Therefore, a model was created where people could still buy desired goods even if they didn't have the funds to purchase them directly and in cash. This model is called hire-purchase. Over time and with the development of the times, hire-purchase has become increasingly popular among the public because it is seen as a convenient way to obtain desired goods even if they are unable to afford them in cash. The growing popularity of hire-purchase among the public has not been accompanied by specific regulations in the form of laws governing hire-purchase. However, hire-purchase continues to thrive and develop within society. The existing regulations regarding hire-purchase only take the form of Circular Letter of the Director of Trade Development Number 408/Binus-3/IX/1985 regarding Applications for Hire-Purchase Business Permits, and further updated with Circular Letter of the Director of Trade Development Number 719/Binus-3/VIII/1986, which clarifies the definition of hire-purchase and installment sales based on the Minister of Trade and Cooperatives Decree Number 34/KP/II/1980.

The standardized nature of hire-purchase contracts is necessary due to their large volume, which often neglects the principles of contract formation. The principles of provide, protect, predict, which can lead to future problems, are often disregarded. The lack of precise regulations can be seen in various hire-purchase court decisions, which vary and essentially rely on the judge's discretion. This lack of clarity also affects the ownership rights of the leased goods. In the regulations, it is stated that ownership rights only transfer after the goods have been fully paid for, but in practice, ownership rights are transferred to the hirer-purchaser even after the first payment, with the issuance of vehicle registration documents and vehicle ownership certificates (STNK and BPKB) in the hirer's name. This is the problem that arises when the importance of hire-purchase, which is a significant aspect of people's lives, is not adequately addressed.

Based on the discussion above, the suggestion that can be derived is that considering the long-standing history of hire-purchase in Indonesia, it is necessary to establish a specific law governing hire-purchase agreements. The fundamental reason for the need for detailed regulations on hire-purchase is that this practice is closely related to the lives of the public as the weaker party. Clear regulations will provide better legal certainty and protection to the public as consumers who are currently in a vulnerable position and require protection. Additionally, the

drafting of hire-purchase contracts should be revised by considering the principles of contract formation and avoiding elements that should not be included in the contract. These are often violated by sellers or lessors. The violation of these factors leads to numerous issues that are ultimately borne by the public as hire-purchasers.

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