

FACTORS AFFECTING DEVIATIONS IN LEASING PRACTICES TOWARDS THE PRINCIPLES OF AGREEMENT LAW

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ABSTRACT

In Indonesia, leasing is a relatively new institution compared to other financing institutions and practices in other countries. The purpose of this research was to examine and to analyze the principles of consumer protection for leasing and the factors that influence the occurrence of deviation. This research approach method used was an empirical juridical method. Data collection techniques were done through literature study and field research. The results of the study found that the implementation of the leasing principle was made in writing as outlined in the form of standard agreements containing standard clauses. In the formation of financing agreements that reflect commercial contracts should be based in good faith. Where in the inclusion of the standard clause must pay attention to the provisions contained in Article 18 of the UUPK. The problem of facts shows that there is a tendency to not be able to change the existing clauses, even though the other party does not approve it.

Keywords: Leasing, Deviation, Principles of Agreement Law

A. Introduction

With the development of society, the contract law has always evolved, even more with the rapid development of science and technology and the emergence of the era of globalization. These factors are very influential on the economy, especially in the business field. One agreement that is widely practiced by the community is an agreement in the field of financing for the provision of capital goods.¹

The problem of capital in a company is a problem that will never end up because the problem of capital contains so many and various aspects². Capital is not only limited to money but rather leads to the overall collectivity or accumulation of capital goods which Jackson and Mc Connell call investment³. There are various ways that a company can fulfill capital goods, one of which is through leasing. According to Beckman and Joosen (1980), leasing is actually an economic phenomenon, because the emergence of a variety of economic considerations must be decided by a business entity that requires capital goods/production equipment. If the capital goods needed are very expensive, the business entity is faced with two kinds of options⁴, namely: buying the capital

¹ Essentially economic activity is the activity of running a company, which is an activity that implies that the activity in question must be carried out in several ways, namely: a) continuously and uninterruptedly or a sustainable activity; b) openly valid (not illegal) in accordance with the provisions of the applicable regulations; c) these activities are carried out in order to obtain benefits for themselves and others. see Sri Redjeki Hatono, *Hukum Ekonomi Indonesia*, Bayumedia, Malang, 2007, page 40

² Until now, among the economists, there has not been a common opinion about what is called capital. When viewed from its history, the definition of initial capital is physical oriented. In terms of classical capital, "the meaning of capital itself is as a result of production which is used to produce further". In its development, the notion of capital began to be non-physical oriented, which emphasized more on value, purchasing power or power to use or use, contained in capital goods. Jackson and Mc Connell at [http // www. forumbebas.com](http://www.forumbebas.com), June 9, 2009, stated capital or investment goods related to the entire material and equipment involved in the production process such as tools (tools), machinery, equipment, factories, warehouses, transportation, and distribution facilities used to produce goods and services for end consumers. Mansfield is of the same opinion, capital is related to buildings, equipment, supplies, and other production resources that contribute to the activities of production, marketing and distribution of goods

³ [http//www.wikipedia.org](http://www.wikipedia.org), 10 March 2017

goods themselves, so that the business entity can use the goods and obtain ownership rights; or use capital goods owned by other parties without obtaining ownership rights on the goods.

Leasing is an institution that originated from an improvised lease which was developed in Sumeria since 4500 BC. Leasing in the modern sense first developed in the United States with a train object in 1850, and its development was very rapid. During the 1980s leasing increased by an average of around 15%, and a third of the procurement of new business equipment there was carried out with leasing. Furthermore Leasing spread to Europe and even to the whole world.⁵

In Indonesia, this leasing is a relatively new institution compared to other financing institutions and practices in other countries. The entry of leasing into Indonesia is based on a Joint Decree of the Minister of Finance, Minister of Industry and Minister of Trade No. KEP-122/MK/IV/2/1974, Number: 32/M/SK/2/1974, and Number: 30/Kpb/I/1974 concerning Licensing of Leasing Business; Decree of the Minister of Finance Number: KEP-649/MK/IV/5/1974 concerning Leasing Business Permit; Decree of the Minister of Finance of the Republic of Indonesia Number 1169/KMK.01/1991 concerning Leasing Activities; Decree of the Minister of Finance of the Republic of Indonesia Number: 448/KMK.017/2000 concerning Financing Companies; Decree of the Minister of Finance of the Republic of Indonesia Number: 172/KMK.06/2002 concerning Amendment to Decree of the Minister of Finance No. 448/KMK.017/2000, which was later declared invalid with the issuance of Minister of Finance Regulation Number 84/PMK.012/2006 concerning Financing Companies on September 29, 2006, the Presidential Regulation of the Republic of Indonesia Number 9 year 2009 concerning Financing Institutions, which has revoked the Presidential Decree Number 61 year 1988 concerning Financing Institutions.

In the Regulation of the Minister of Finance Number 84/PMK.012/2006 concerning Financing Companies stated that, leasing is a financing activity in the form of the provision of capital goods either by leasing with option (finance lease) or leasing without option rights (operating lease) to be used by the lessee for a certain period based on regular payments.

In essence, leasing is one way of financing that is similar to bank credit, except that leasing provides assistance in the form of capital goods, while banks provide assistance in the form of capital.⁶

The results of Irma Hasibuan's⁷ research in 2006 in Medan, North Sumatra, Titin Mutinah⁸ in Medan City in 2003 and Andi Sulistiono⁹ in Medan City in 2001 showed that the leasing agreement was made in the standard form. This leasing agreement is made unilaterally by the Leasing Company, while the lessee only has the opportunity to accept or reject the agreement. Because of economic needs, even though in the agreement there are clauses that actually have the potential to harm the lessee, but the lessee still signs the agreement.

According to M. Sembiring¹⁰, leasing financing is the biggest cause of consumer losses to date. Based on data from the Ministry of Commerce in Medan, in the 5 months to May 2009 out of 35 cases were based on complaints from the public in Indonesia. Leasing was ranked first cause of consumer losses. Based on the description above, it is interesting to conduct research related to the implementation of leasing principles in providing protection to consumers, and the problems that arise in the implementation of leasing principles in providing protection for consumers, as well as the ideal construction of consumer protection in the future.

B. Research Methods

This research approach method is an empirical juridical method. Data collection techniques were done through literature study and field research. For literature study, the media used to collect data in this study include books, legislation, journals, papers, and supporting literature. Whereas in conducting field research, the tool used to collect data was to use interview guidelines that

⁴ See Beckman and Joosen in Siti Ismijati Jenie, *Kedudukan Perjanjian Leasing di dalam Hukum Perikatan Indonesia, serta Prospek pengaturan Aspek Hukumnya di masa mendatang*, Disertasi, Universitas Gadjah Mada Yogyakarta, 1998, page 14

⁵ Munir Fuadi, *Hukum tentang Pembiayaan dalam Teori dan Praktik*, PT Citra Aditya Bakti, Bandung, 1995, page 14-15

⁶ Richard Burton Simatupang, *Aspek Hukum dalam Bisnis*, Cetakan Kedua, Rineka Cipta Jakarta, 2003, page 102

⁷ Irma Hasibuan, *Perlindungan Konsumen dalam Perjanjian Financial Leasing Kendaraan Bermotor*, Sekolah Pascasarjana Magister Humaniora, Universitas Sumatera Utara, 2006

⁸ Titin Mutinah, *Perlindungan Hukum Terhadap Lessor dalam Praktek Perjanjian Leasing di PT ORIF (Oris Indonesia Finance) Cabang Semarang*, Program Pascasarjana Magister Kenotariatan Universitas Diponegoro, Semarang, 2003

⁹ Andi Sulistiono, *Pelaksanaan Perjanjian Leasing Kendaraan Bermotor pada PT Mitsui Leasing & Capital Indonesia*, Fakultas Hukum Universitas Diponegoro, Semarang, 2001.

¹⁰ Radu M. Sembiring, Direktur Jenderal Perlindungan Konsumen Direktorat Jenderal Perdagangan Dalam Negeri Departemen Perdagangan RI, *Penyebab Kerugian Konsumen Terbesar*, ANTARA News, 13 Mei 2009

make a list of both structured and unstructured questions that will be submitted orally and in writing to the respondents and resource persons.

Data analysis was carried out with a qualitative analysis model. As stated by Widoyoko that qualitative methods depart from the post positivism paradigm, where every aspect of social reality is seen holistically as a natural entity that needs to be interpreted in depth, especially social reality is understood as a plurality of diversity.¹¹

C. Research Results and Discussion

C.1. Principles of Responsibility of Leasing Business Actors in Providing Consumer Protection

In the protection of consumers, there are a number of principles, consumer protection is held as a joint effort of all parties concerned, the community, business actors, and the government which is based on five principles as contained in article 2 of the Consumer Protection Act Number 8 of 1999, namely:

1. Benefit principle is intended to mandate that all efforts in the implementation of consumer protection must provide maximum benefit for the interests of consumers and business actors as a whole.
2. The principle of justice is intended to ensure that the participation of the entire community can be maximized and provide opportunities for consumers and businesses to obtain their rights and carry out their obligations fairly.
3. The principle of balance is intended to provide a balance between the interests of consumers, business actors and the government in a material and spiritual sense.
4. The principle of consumer safety and security is intended to provide security and safety guarantees to consumers in the use, use and use of goods and/or services used.
5. The principle of legal certainty is intended for both actors and consumers to obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty.

Seeing the substance of Article 2 of the Consumer Protection Act as well as the explanation, it appears that the formulation refers to the national development philosophy that is the development of Indonesian people as a whole based on the philosophy of the nation of the Republic of Indonesia.

The five principles mentioned in the article, if the substance is considered, can be divided into 3 (three) basic principles, namely:¹²

- a. The principle of benefit which includes the principles of consumer safety and security.
- b. The principle of justice which includes the principle of balance.
- c. The principle of legal certainty.

The principles of Consumer Protection Law are categorized into 3 (three) groups above, namely the principles of justice, principles of benefit, and legal certainty. The principle of legal certainty is aligned with the efficient principle because according to Himawan: "Authoritative law is an efficient law, under the auspices of which a person can exercise his rights without fear and carry out his obligations without deviation".

The purpose of the implementation, development and regulation of the planned consumer protection is to increase consumer awareness, and indirectly encourage business actors to carry out their business activities with full responsibility. This is also regulated in Article 3 of the Consumer Protection Act, namely:

1. Increasing the awareness, ability and independence of consumers to protect themselves.
2. Raising the dignity of consumers by avoiding the negative excesses of the use of goods and/or services.
3. Increasing the empowerment of consumers in choosing, determining and demanding their rights as consumers.
4. Creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information.
5. Growing awareness of business people regarding the importance of consumer protection so that an honest and responsible attitude to business grows.
6. Improving the quality of goods and/or services that guarantee the continuity of the production business of goods and/or services, health, comfort, safety and consumer safety.

Article 3 of the Consumer Protection Act, is the content of national development as mentioned in Article 2 before, because the existing consumer protection objectives are the ultimate goals that must be achieved in the implementation of development in the field of consumer protection law.

The six specific objectives of consumer protection mentioned above when grouped into three general legal objectives, the legal purpose of obtaining justice can be seen in the formulation of the letter c, and letter e. on the other hand, the purpose of providing benefits can be seen in the formulation of letters a, and d, and letter f. Finally, the specific objectives directed for the purpose of

¹¹ M. Edy Sentosa JK Metode-Metode Penelitian, <http://theglobalgenerations.blogspot.com/posted> on Oktober, accessed on 2 december 2016.

¹² Ahmadi Miru, *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*, Rajawali Pers, Jakarta: 2011, page 33

legal certainty can be seen in the formulation of the letter d. This grouping is not absolutely valid, because as can be seen in the formulation in letters (a) to letter (f) there are objectives that must be qualified as multiple objectives.

Consumer protection arrangements are carried out in several ways, including:

1. Creating a system of consumer protection that contains access and information, and guarantees legal certainty;
2. Protecting the interests of consumers in particular and the interests of all business actors in general;
3. Improving the quality of goods and services;
4. Providing protection to consumers from business practices that are deceptive and misleading;
5. Integrating the implementation, development and regulation of consumer protection with the areas of protection in other fields.

The responsibility of business actors for consumer losses in the Consumer Protection Act is specifically regulated in one chapter, namely Chapter VI, starting from Article 19 to Article 28 of the UUPK (Consumer Protection Law). From the ten articles we can sort it as follows:

1. Seven Articles namely Article 19, Article 20, Article 21, Article 24, Article 25, Article 26 and Article 27 of Law Number 8 year 1999 concerning Consumer Protection which regulates the accountability of business actors;
2. Two Articles, namely Article 22 and Article 28 of Law Number 8 year 1999 concerning Consumer Protection which regulate proof;
3. One Article is Article 23 of the UUPK (Consumer Protection Law) which regulates the settlement of disputes in the event that a business actor does not fulfill the obligation to provide compensation to consumers.

From the seven articles governing the accountability of business actors, there are several articles that explicitly regulate the accountability of business actors for losses suffered by consumers, namely Article 19, Article 20 and Article 21 of the UUPK (Consumer Protection Law).

According to Widjajadan Yani¹³ stated that Article 19 of Law Number 8 of 1999 concerning Consumer Protection regulates the responsibility of manufacturers and/or distributors in general, to provide compensation for damage, pollution and/or loss to consumers due to consuming goods and/or services produced or traded, provided that the compensation can be carried out in the form of: refunds or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the prevailing laws and regulations.

Compensation must be given within 7 (seven) days from the date of transaction. Article 20 applies to advertising business people to be responsible for the advertisements produced, and all the consequences of these advertisements. Article 21 paragraph (1) of Law Number 8 year 1999 concerning Consumer Protection imposes responsibility on the importer of goods as is the case for the imported goods in case that the import is not carried out by agents or representatives of foreign producers. Article 21 paragraph (2) of Law Number 8 year 1999 concerning Consumer Protection requires service importers to be responsible as foreign service providers in case that the foreign service provider is not carried out by agents or representatives of foreign service providers.

C.2. Factors affecting Deviations in Leasing Practices towards the Principles of the Law of Agreement

In the practice of leasing that develops in the community, there are various deviations in the principles of contract law, both the principle of consensualism, the principle of freedom of contract and the principle of *pacta sunt servanda*, whereas the principles of treaty law should be the basis for all Indonesians to take certain actions, namely in making agreements. Therefore, the glorification of the principles of agreement law is an urgent matter that must be done so that in the agreement (including the Leasing agreement) there can truly be a balanced legal relationship for the parties. This conclusion is based on several reasons as follows:

1. Deviations from the principle of consensualism are seen in various stages of the agreement, both the pre-contractual, contractual and post contractual stages. In the agreement there should be negotiations to reach an agreement, because the agreement between these parties determines the occurrence of the agreement (Article 1320 paragraph (1) KUH Perdata/Civil Code), but in practice the agreement is only false, because the lessee has no right to determine or change the agreement. Lessees only have the option to accept or reject the agreement altogether. Even in the implementation of the agreement the lessor may at any time change the provisions in the agreement without the approval of the lessee.
2. Deviations from the principle of freedom of contract are seen from three stages in the agreement. Article 1338 paragraph (1) states that all agreements made legally apply as laws for those who make them. In this case the parties, both the lessor and the lessee are free to determine whether to enter into an agreement or not, the party to the agreement, the form of the agreement, the contents of the agreement, choice of law. In practice, it turns out that this freedom is only false, because the lessee has no freedom at all to determine the contents and form of the agreement at all. Lessees only have the option to accept all the terms of the agreement or reject it completely (take it or leave it). Even in a leasing agreement in practice, there is an imbalance in legal relations between the parties, even though it should even though the agreement is made in standard form but there must be good faith (*goede trouw*) from the parties (Article 1338 paragraph (3) KUH Perdata/Civil Code).
3. Deviations from the principle of binding power are seen in the post contractual stage. In implementing the agreement (in this case the leasing agreement), to find out the nature and extent of rights and obligations arising from contractual relations, Nieuwenhuis¹⁴ emphasized on two main aspects namely interpretation¹⁵ and factors that influence the nature

¹³Gunawan Widjaja dan Ahmad Yani, *Hukum Arbitrase*, RajaGrafindo Persada, Jakarta, 2001, page 65-66

¹⁴ See Nieuwenhuis in Agus Yudha Hernoko, *Hukum Perjanjian, Asas proporsionalitas dalam Kontrak*

and extent of contractual rights and obligations which include both autonomous and heteronomous. The autonomous factor is what has been agreed upon by both parties, while heteronomous factors are factors outside the parties, namely law, public order, justice and propriety that develops in the community. Article 1339 of the Civil Code states that the contract is not only binding on matters expressly stated in it (autonomous factors), but also for everything that is according to the nature of the contract, required by propriety, customs and laws (heteronomous factors) In the practice of leasing agreements often both autonomous and heteronomous factors are ignored.

The conditions described above are in line with Ralf Dahrendorf's¹⁶ idea of Conflict Theory which suggests that human actions involved in social and political events, socio-economics and other fields always have conflicts. Matindale said that conflict theory is a human creation that experiences it. Conflict theory is actually a theory that seeks to criticize Talcott Parsons's Functional Structural Theory which views society as a balanced entity (equilibrium)¹⁷. Political and social observers stress the importance of conflict in human life. In summary, Dahrendorf said that class conflict caused structural changes and soaked up everywhere. In relation to agreements, especially in the provision of capital goods through leasing, conflicts have the potential to arise, among others;

1. Conflict of Interest is the interest of the lessor with the interests of the lessee;
2. Institutional conflicts (leasing with consumer financing and fiduciary guarantees);
3. Justice conflict, namely justice between business actors, namely between the lessor and the lessee.

These conflicts require management and a wise attitude so that the purpose of the leasing agreement in Indonesia can really bring benefits to the parties in a balanced manner, so that it is ultimately directed to the achievement of people's prosperity.

Philosophical, normative and sociological leasing agreements have the potential to cause irregularities. In the practice of leasing agreements there have been irregularities in the process of the agreement (the pre-contractual, contractual or post contractual stages), the elements and principles of leasing, the form of the agreement, the substance of the agreement and the deviation from the principles of the treaty law, while the special law no leasing agreement exists yet. These deviations can be analyzed through elements involved in the process of working the law in the area of agreement, especially the leasing agreement. This phenomenon can be illustrated by the Law of Work Theory put forward by William J. Chambliss and Robert B. Seidman. The work of law in society involves several elements or aspects that are interrelated as a system.

Some of these aspects are: the Law Making Institution, the Sanction Activity Institution, the Role Occupant and the Societal Personal Force, Legal Culture¹⁸ and the Elements of the Bait Feedback from the process of working the law that is running. Factors that can affect the workings of law in society, especially in the field of implementing leasing agreements:

1. Philosophical factors, which involve principles, values. In the practice of leasing agreements, there are various irregularities in the principles of treaty law, both the principle of consensualism, the principle of freedom of contract and the power of binding agreements (principle *pacta sunt servanda*) as well as deviations from the principles of leasing, as stated above. These deviations occur because of an imbalance in the legal relationship between the parties to the standard agreement made by one of the parties, the lessor, the conflict of interest between the lessor and the lessee. Leasing agreements are made in standard form, with consideration for the lessor to be more efficient because it can save costs, time and effort. In addition, in this case the lessor can determine agreement clauses that benefit him, can anticipate possible losses in the future and can guarantee the security of the financing he does. On the other hand, the lessee is based on consideration to be able to obtain capital goods quickly and at low cost, not paying too much attention to the formalities of the agreement. Moreover, in the case of users of non-business financing services at this time in society, there is a growing consumptive attitude. There is a mentality that wants to achieve goals quickly in an easy way without a long consideration in accordance with what was said by Kuntjaraningrat as a mental breakdown.

Komersial, LaksBang Mediatama, Yogyakarta, 2008, page 20

¹⁵ The Interpretation Method is a method of finding law in the case that the rules exist but it is not clear to be applied to the event. See Sudikno Mertokusumo, & Mr. A. Pitlo, *Op. Cit*, p. 11-30. The importance of interpretation in this contract was also stated by several legal experts including Paul Scholten, Ulpianus, Vollmar, Corbin, A. Joanne Kellermann (see in Agus Yudha Hernoko, *Op.Cit*, page. 204) Dharma Pratap (lihat dalam Yudha Bhakti Ardhiwisastra, *Penafsiran dan Konstruksi Hukum*, ALUMNI, Bandung, 200, page 19),

¹⁶ Ralf Dahrendorf dalam George Ritzer dan Douglas J. Goodman, *Teori Sosiologi (Sociological Theory)*, diterjemahkan oleh Nurhadi, Kreasi Wacana, Yogyakarta, 209, page 257

¹⁷ See Talcot Parsons in Ronny Hanitijo Soemitro, *Perspektif Sosial dalam Pemahaman Masalah-masalah Hukum*, CV. Agung, Semarang, 1989, page 30. See also Ronny Hanitijo Soemitro, *Masalah-masalah Sosiologi Hukum*, Sinar Baru, Bandung, 1984, page. 62. Bandingkan dengan Bredemeier dalam Khudhaifah Dimiyati, *Op.Cit*, page 76.

¹⁸ See, Lawrence M. Friedman, *The Legal System, A Social Science Perspective*, Russel Sage Foundation, New York, 1975, page 14-15

- ¹⁹Changes in values that develop in the community are very influential on the emergence of various irregularities in the principles of agreement law and an imbalance of legal relations between the parties.
2. Normative factors; making legislation); The entry of leasing into Indonesia is based more on economic considerations. The law specifically regulating leasing agreements in Indonesia does not yet exist. Until now the existing legislation is still limited to administrative and taxation aspects. There is no specific regulation governing the leasing agreement from civil aspects, which regulates the rights and obligations of the parties so that in the agreement there is a balance of legal relations. The lack of attention to the civil aspects of the leasing institution is due to the rationale used by the Ministry of Finance as the authority authorized to provide guidance and supervision to financial institutions. According to the Ministry of Finance, the need for funds in the community can be met by banking institutions and financial institutions. Banking institutions in their efforts to raise funds directly from the public in the form of deposits and then channel them back to the community. Because this banking institution absorbs funds directly from the community, this institution is strictly regulated by various laws and regulations. In addition to banking institutions, financial institutions are known, namely institutions that carry out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the public. Because this institution does not withdraw funds directly from the community, the activities of these financial institutions are not strictly regulated by the government. The government only issues provisions that regulate the administrative and fiscal aspects of the institution, while the provisions relating to legal relations between financial institutions and the people who need funds and or capital goods are left to the agreement between them. By not specifically regulating, the legal relationship between the lessor and the lessee is returned to the general provisions that apply in accordance with Article 1319 of the Civil Code which states that all good agreements known as a special name or an unknown name apply to the provisions of the engagement in the Book III Civil Code. The Civil Code originates from the civil law legal system, while the leasing itself comes from the Anglo American (Anglo Saxon) legal system. Indonesia as one of the countries in the world cannot ignore the influence of economic and business relations between countries that are interdependent and influence the applicable treaty law, especially in the current era of globalization which makes the boundaries between countries become increasingly vague. The shift in patterns of social, political, and economic relations at both national and international levels cannot be avoided. As a result, the development of society in the field of agreement is growing rapidly, various new agreements that are not yet known in the legislation continue to grow and become a habit in society. It can be said that the development of society in the field of agreement is faster than the arrangement of the treaty law. This is in tune with the adage that the law always lags behind the event (*het recht hinkt achter de feiten aan*). For this reason, the treaty law must follow the reality factors that occur in society so that there is no legal vacuum.

Agreement law (including leasing agreements) and society are two variables that are interrelated and influence each other. Changes in society always affect changes in agreement law. The change includes two legal dimensions, namely:²⁰

- a. The dimension of legal reality is the material that forms the relationship between the community and its environment;
- b. Dimensions of legal ideal, including legal ideals, legal principles that are used as guidelines or directions in the preparation of positive law
3. Enforcement factors (empirical/sociological) (parties and the role of government). Because there are no specific rules regarding leasing agreements, the entry of leasing agreements in Indonesia is based on the principle of freedom of contract, which gives anyone the opportunity to make good agreements on agreements that have special regulations or no specific regulations. Because the law on the civil aspect of leasing does not yet exist, it is returned to the general regulation regarding the engagement, namely Book III of the Civil Code, based on Article 1319 of the Civil Code. It turns out that in practice, as stated above there are various irregularities and imbalances in the legal relationship in the leasing agreement; Sociological factors (concerning economic considerations and legal culture of business actors from role occupant). There are various factors that influence the emergence of various irregularities in the leasing agreement. Agreements that form the basis of the legal relationship between the parties in the leasing agreement are made in standard form, with consideration for the lessor to be more efficient because it can save costs, time and energy. In addition, in this case the lessor can determine agreement clauses that benefit him, can anticipate possible losses in the future and can guarantee the security of the financing he does. On the other hand, the lessee is based on consideration to be able to obtain capital goods quickly and at low cost, not paying too much attention to the formalities of the agreement. Moreover, in the case of users of financing services not business actors, at present in the community there is a growing attitude of the more consumptive society. There is a mentality that wants to reach the goal quickly in an easy way without a long consideration in accordance with what was said by Kuntjaraningrat as a mental breakdown.

Based on the functionalist "symbolic interactionist" approach proposed by Blumer²¹, the legal relationship in the leasing agreement can be described as follows:

¹⁹ The piercing mentality is a mentality that is eager to reach its goal as quickly as possible without much willingness to strive from the beginning step by step. Koentjaraningrat, *Kebudayaan, Mentalitas dan Pembangunan*, PT Gramedia Pustaka Utama, Jakarta, 1993, page 46.

²⁰ Tan Kamelo, *Hukum Jaminan Fidusia Suatu Kebutuhan yang Didambakan*, Alumni, Bandung, 2006, page 54

- a. Humans act on the meaning that they think is in something. An act sometimes is only based on the meaning that is assumed to exist in something. That is, in something that has meaning, something is just a symbol of meaning. Human action is intended to pursue meaning itself (people do not act toward things, but toward their meaning)²¹. In the leasing agreement both the lessor and the lessee carry out an action, namely a legal relationship due to a certain purpose. The lessor has the aim to benefit from providing financing services by leasing to the lessee. Lessees also have the purpose of obtaining capital goods that are handed over to them by the lessor by means of leasing.
- b. The meaning is the result of social interaction;

The meaning of something develops from or through human interaction in everyday life. This is in line with the flow of cultural development itself as a result of sharing the system of meaning (shared system of meanings). The meanings are studied, revised, maintained, and given limitations in the context of human interaction. Thus, meaning can narrow, expand and something can also lose meaning because of the development of a social interaction. The interaction between the lessor and the lessee in meeting the needs of the parties then in the practice of life in the community is referred to as leasing. As a basis for the relationship between the parties is an agreement made by the parties.

- c. The meaning is modified and handled through the interpretation process used by individuals in dealing with the "signs" they encounter. The meanings are held, used as a reference, and interpreted by someone in dealing with something they face. It is used as a reference for interpreting a situation, situation, object, or other in various fields of life. Based on the elements (the subject that entered into the agreement, the object of the agreement, payment in installments, the existence of option rights, the residual value) contained in the interaction between the lessor and the lessee can be interpreted that the agreement made between the lessor and the lessee is a leasing agreement, which is actually in the legislation in Indonesia it has not been specifically regulated, so that it can be categorized as an *innominaat* agreement (a not named agreement) because it is not specifically regulated in the Civil Code.

The Intertionalist description by Meltzer can be said to be based on the belief that "Individuals and society are units that cannot be separated. Understanding one unit comprehensively also requires understanding the other unit as a whole. Society must be understood in terms of individuals who make up society, individuals must be understood in terms of the community in which they are members. Because most environmental influences are felt in the form of social interaction, behavior is something that is constructed and circular, not innate and released.

Through the symbolic interactionist theory, the hidden meanings behind the subject in law enforcement can be traced. What is the meaning behind their behavior? Subject behavior in law enforcement, is always determined by various disciplines concerning them, which Chambliss and Seidman stated as the resultant results. In the practice of leasing agreements, the behavior of the agreement subject (lessor and lessee) is strongly influenced by various factors both because there are no specific laws and regulations governing leasing (existing regulations are only administrative in nature that regulate licensing and taxation), lack of supervision of leasing agreements or because of the existence of personal societal forces, namely the existence of economic considerations for obtaining profits, and security considerations of the risks that arise with the occurrence of the agreement. All of these factors ultimately result in an imbalance in the relationship between the lessor and the lessee, which results in irregularities in the principles of agreement law, and there are confusion in the practice of leasing agreements.

According to Deane J regarding this imbalance there is a difference between undue influence and unconcionability. *Undue influence* is seen from the result of the imbalance towards the giving of agreement from the affected party, while unconcionability is seen from the strong behavior of the party in its effort to impose or utilize the transaction against the weak whether it is in accordance with propriety (Goog conscience). The imbalance in this dissertation is more likely due to unconcionability.

D. Conclusion

The implementation of the principle of leasing is made in writing as outlined in the form of standard agreements containing standard clauses. In the formation of financing agreements that reflect commercial contracts should be based in good faith. Where in the inclusion of the standard clause must pay attention to the provisions contained in Article 18 of the UUPK (Consumer Protection Law). The problem of facts shows that there is a tendency to not be able to change the existing clauses, even though the other party does not approve it. Indeed there is formally a consensus, but materially it is not. The division and regulation of the responsibilities of the parties in leasing is generally influenced and determined by the type of financing contained in the leasing agreement itself, but specifically the distribution and regulation basically must be based on the agreement of the parties in the agreement.

²¹ Blumer in Wayne Parsons, *Public Policy: Pengantar Teori dan Praktik Analisis Kebijakan*, translated by Tri Wibowo Budi Santoso, Kencana, Jakarta, 2005, page. 99. Compare it with Sanafiah Faisal, *Penelitian Kualitatif: Dasar-dasar dan Aplikasinya*, Yayasan Asah Asih Asuh, YA3, Malang, 1990, page 14-15.

²² Sanafiah Faisal, *Loc. Cit.*

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