

The Transfer of Marine Ship Ownership as an Immovable Object Based on Sale and Leaseback Agreement

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ABSTRACT

Sale and Leaseback agreements are one of the increasingly popular financing methods in strategic asset management. This agreement is considered to allow the owner of the ship to sell his assets to a third party with an agreement to re-lease the ship for a certain period of time. This method offers financial flexibility, but also presents various legal challenges, particularly related to ownership and certainty of the rights of the parties involved. This study aims to analyze the legal basis, characteristics of agreements, and their implications for the transfer of ship ownership. The approach used in this study is normative with analysis of relevant laws and regulations and case studies. The results of the study show that although the Sale and Leaseback agreement provides great benefits in terms of financing, the implementation in Indonesia still faces obstacles, especially for marine capital goods that include immovable objects. In addition, there is a potential for legal disputes if one party fails to fulfill its obligations. For this reason, more detailed legal arrangements are needed to protect the rights and obligations of the parties. This study recommends harmonization between the rules in the field of financing institutions and the rules applicable in shipping as well as stricter supervision of the implementation of Sale and Leaseback agreements on ship assets. With adequate arrangements, this agreement can be an effective solution in supporting financing in the shipping sector.

Keywords : sale and leaseback, ship, transfer of ownership, legal certainty, financing

INTRODUCTION

The downstreaming policy by the Government of Indonesia to increase the added value of the nickel commodity mining industry in Indonesia has a positive impact on the shipping business in Indonesia because barges and tugboats are a means of sea transportation to transport mining commodities to smelters for processing and refining processes. However, the procurement of capital goods such as barges and tug boats certainly requires relatively large funds (Kahar, Nur, Hasri, & Setiawati, 2023).

Sale and Leaseback agreements are considered an effective financial solution, allowing ship owners to gain liquidity while maintaining the use of the vessel for their operational activities. However, legal certainty in the transfer of ownership of a ship is essential to ensure that the transfer is legal and recognized by law, as well as to protect the rights and obligations of the parties involved (Pratama & Priandhini, 2023).

Based on Article 8 of POJK Number 35 /POJK.05/2018 concerning the Business Administration of Finance Companies during the leasing agreement, the leased goods remain the property of the lessor and the lessee only has the right to use the goods for the period specified in the agreement.

In practice, there are still legal problems with the Sale and Leaseback Lease Financing Agreement as happened with PT CFI and PT RSA, when the Grosse Deed of

the Ship is still listed in the name of PT RSA as the owner, aka the name has not been changed because according to the Lessor based on Article 8 POJK Number 35 /POJK.05/2018 the ownership has been transferred to the Lessor with the Agreement Sale and Leaseback so that there is no need to do a sale and purchase deed and name change, on the other hand, also for reasons of convenience, both economically and taxingly and the impossibility of the finance company owning assets (Suparmi, Rizkianti, Maisya, & Saptarini, 2018).

From an economic point of view, it looks advantageous for Lessor, but on the other hand, it will bring considerable losses even materially if the transfer is not carried out in accordance with the applicable legal provisions. Moreover, if there is a claim from a third party because the transfer is carried out by a Party whose name is not listed in the Grosse of the Ship Registration Deed.

Both in POJK, the Shipping Law and its implementing regulations have not regulated the recording and transfer of ships based on Sale and Leaseback Agreements, unlike mortgages that must be recorded and issued Gross Mortgage Deeds.

This creates legal uncertainty for the parties over the ownership of the ship, if there is a rule that regulates the necessity of recording and transferring the ship based on the Sale and Leaseback Agreement, of course, it will provide legal certainty for the parties, when checking the legal status of the ship will be stated that the ship was acquired based on the Sale and Leaseback Agreement and has not been renamed or the ship has been re-registered under the Sale and Leaseback Agreement (Wijaya, 2009).

With the unregulated provisions, the finance company should continue to carry out buying and selling and record or register related to the ownership of the ship. This is done to ensure that the goods are not transferred or pawned without permission from the financing company (Suwikromo, 2015).

The objectives of this research are to analyze the legal arrangements regarding the recording of the transfer of ownership of marine vessels under a sale and leaseback agreement, examine the legal implications for ownership of marine vessels as immovable objects based on sale and leaseback agreements with a case study of PT CFI and PT RSA, and compare the sale and leaseback mechanism for immovable objects and movable objects secured by fiduciary guarantees.

Legal Certainty Theory

As a country based on law or "Rechtsstaat" as formulated in Article 1 paragraph (3) which states "The State of Indonesia is a State of Law."

In the concept of the State of Law, it is idealized that what must be made the commander in the dynamics of state life is the law, not politics or economics. So it is in line with the adage that is commonly used to call the principle of the State of Law is 'the rule of law, not of man'.

As stated by Jimly Asshiddiqie, government is essentially the law as a system, not individual people who only act as 'puppets' of the scenario of the system that regulates it (Asshiddiqie, 2016).

According to Kelsen, the law is a system of norms. A norm is a statement that emphasizes the aspect of "should" or *das sollen*, by including some rules about what to do. Norms are deliberative products and human actions.

According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He argued that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country. Finally, positive laws must always

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be obeyed. Based on the theory of legal certainty and the values to be achieved, namely the values of justice and happiness (Ali, 2002).

If the theory of legal certainty is associated with the Lease Agreement with the Sale and Leaseback scheme has been regulated in POJK 35/2018 in practice, this Sale and Leaseback Agreement has not provided legal certainty for the parties who made it, especially in the event that the Sale and Leaseback Agreement has expired either because of Lessee's default or when Lessee does not exercise its option right to buy back.

When the Lessor intends to sell the capital goods to a third party, there are often obstacles in the sale and purchase process at the Notary who is hesitant to make a sale and purchase deed only based on the Sale and Leaseback Agreement and/or Sale and Purchase Binding without changing the name first.

He has not yet regulated the procedures and implementation of how the ship can be switched, how the process of changing the name to the recording of the ship's ownership to belong to another party based on the Sale and Leaseback Agreement.

Legal Protection Theory

Legal protection is an overview of the function of law, namely the concept where the law can provide justice, order, certainty, usefulness and peace.

Legal protection is a protection provided to the subject in the form of legal instruments, both preventive and repressive, both written and unwritten.

In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, usefulness and peace.

As according to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a human right to him or her power to act in the context of his interests.

The theory of legal protection is a theory whose study is somewhat centered on the legal protection provided to the community, namely people who are in a weak position, both in terms of juridical and economic aspects.

According to Philipus M. Hadjon, it is always related to power. There are two powers: government power and economic power. In relation to government power, the problem of legal protection for the people (who are ruled), for the government (who rules).

In relation to economic power, the problem of legal protection is the protection of the weak (economy) against the strong (economy), for example the protection of workers against employers (Wijayanti, 2009).

The essence of legal protection for investors is a protection that provides a guarantee for an investor, that he will be able to invest his capital in a fair situation to parties related to the law, society, and other parties.

Especially in terms of getting access to information about the market situation, political and public situations, assets managed by investors, laws and regulations, and so on.

External legal protection established by the government in the form of regulations for the interests and needs of weak parties, as the core of the provisions of regulations that cannot be biased and biased, is proportionally obliged to provide fair legal protection to other parties (Armeilia, 2021).

The importance of legal certainty for the parties, especially for the Lessor to provide legal protection, especially for the Lessor who is a buyer in good faith, namely buying goods from Lessee and renting them back to Lessee.

Therefore, in the case of transferring the rights of capital goods that have been obtained with the purchase in good faith, it should be protected by law, so that the Lessor does not experience uncertainty both during the buying and selling process at the Notary and the provisions for changing the name in Syahbandar.

Utility Theory

Usefulness has always been associated with Jeremy Bentham's theory of utilitarianism. The term "The greatest happiness of the greatest number" has always been identified as happiness determined by many people. Basically, the conception of happiness determined by the majority, is the most recent breakthrough when Jeremy Bentham elaborated it in his time.

The enjoyment of a life free from suffering is the meaning of happiness according to Jeremy Bentham. The measuring tool for determining whether an action is good or bad is how much it brings happiness (Pratiwi, Negoro, & Haykal, 2022).

Bentham defines utility as something that is able to bring benefits, benefits, pleasure, and happiness, as well as something that can prevent damage, displeasure, evil, or unhappiness. The value of benefits is found at the individual level which gives birth to individual happiness (happiness of individual) and community (happiness of community).

For Bentham, the morality of actions is determined by considering their usefulness to achieve the happiness of all humans, not the happiness of selfish individuals as embraced by classical hedonism (Pratiwi et al., 2022).

Bentham does not recognize the human rights of individuals, therefore he places justice only as subordinate to the utility. The Theory of Utility can be used as a reference in every policy issued by the Government of Indonesia (Fios, 2012).

The benefits of the law can be measured by providing great happiness for people. The usefulness of the Utilitarianism school means that happiness exists regardless of whether a law is good or bad, but what is considered is whether or not the law is able to provide happiness to society.

The principle of utilitarianism is that man can create happiness with the intention of reducing suffering with the actions he wants.

The existence of happiness and distress human beings have ideas, all opinions and provisions that exist in human life are influenced by them. The goal of the Jeremy Bentham school is simply to obtain happiness that is far from suffering. Jeremy Bentham's teachings have basic principles, namely: (Salman, 2010)

The purpose of law is to provide a guarantee of happiness to every human being. This principle is known as "the greatest happiness of the greatest number" (legislation should provide the greatest happiness to the majority of society)

- a. It is applied qualitatively, due to the consistency of the quality of the baahagian.
- b. In creating community happiness, legislation must achieve 4 (four) goals:
 1. To provide subsistence (to provide for living)
 2. To provide abundance (to provide abundant food)
 3. To provide security (to provide protection)
 4. To attain equity (to achieve an equation).

For example, the government authority in issuing regulations in the field of financing (POJK 35/2018) which is expected to provide benefits for Finance Companies in the ownership of leased capital goods.

However, often found in the practice of lease financing with the Sale and Leaseback scheme, the Lessor experiences difficulties in the transfer of capital goods based on the

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Sale and Leaseback Agreement, resulting in the Lessor not feeling the benefits of the Sale and Leaseback itself.

Jeremy Bentham's teaching explains that the measuring tool for judging the good or bad of an action is how much the action brings happiness. According to him, a good law is a law that gives great happiness to the community.

Therefore, in every regulation and then implemented, it is hoped that it will be able to give birth to a law that is fair for the entire community. The judgment of whether the law is fair or not, good or bad depends on whether the law is able to create happiness for the community.

Jeremy Bentham stated that the happiness of the people is how the state and the law can be used as an instrument to achieve an absolute benefit.

RESEARCH METHOD

This research employs a normative legal research method by examining existing problems and analyzing them based on legal theories in conjunction with applicable laws and regulations. The study focuses on the regulation and legal implications of Sale and Leaseback Agreements in the transfer of ownership to a third party. The research is descriptive-analytical, aiming to describe and analyze the object of study through collected data, leading to conclusions applicable to the public. This method elaborates on existing facts and provides a comprehensive analysis of the transfer of ship ownership rights under Sale and Leaseback Agreements and Sale and Purchase Binding. Data collection is conducted through literature studies, examining legal documents, books, journals, and other references. The data used are secondary, including primary legal materials (laws and regulations), secondary legal materials (books, legal theories, expert opinions), and tertiary legal materials (dictionaries and encyclopedias).

The research adopts multiple approaches, including the statute approach, case approach, and analytical approach, focusing on analyzing regulations related to ship ownership under POJK 35/2018 and Law No. 17/2018 on Shipping. A case study of Sale and Leaseback Agreements and Ship Sale and Purchase Binding between PT CFI and PT RSA is used to identify and address legal issues descriptively. The data analysis technique applied is qualitative, referencing legal norms in legislation and societal norms. By inductively analyzing empirical facts, the research identifies relationships among data, interprets findings, and draws conclusions to provide meaningful insights into the studied legal phenomena. This approach ensures a thorough understanding of the legal framework and its practical implications.

RESULT AND DISCUSSION

Legal Arrangements Regarding the Recording of Ship Ownership Transfer Based on Sale and Leaseback Agreements

In material law, the nature of objects is divided into 2, namely movable objects and immovable objects, the nature of the object will determine the type of transfer that must be made, for immovable objects the transfer of property rights to the object must be carried out in accordance with Articles 616-620 of the Civil Code, namely by way of changing the name, or also known as juridical surrender (Juridische Levering/tradition. Meanwhile, in casu for seagoing ships, the arrangements regarding the transfer of property rights are regulated in Stb. 1938-38.

There are criteria for ships to be determined as immovable objects as stated in Article 314 paragraph (1) of the Criminal Code that Indonesian ships, which measure at

least twenty cubic meters of gross content, can be recorded in a ship register. In addition, ship registration as regulated in the Ship Registration Regulation (Regeling van de Teboekstelling van Schepen, Ord. February 4, 1933 Stb. 33-48 jo. 38-2, effective April 1, 1938) states:

"Schip: een vaartuig als bedoeld in art. 309 het Wetboek van Koophandel ter groote van ten minste 20m³ bruto inhoud."

Means:

"Ship: a sailboat as referred to in Article 309 of the Criminal Code measuring at least 20m³ gross (gross content). Therefore the ships that have been listed are actually equated with immovable objects. Meanwhile, ships with an acknowledgment of less than 20m³ are considered immovable objects in accordance with the provisions of Article 510 of the Civil Code."

From the point of view of Public Law based on Law 17/2008 concerning Shipping Article 158 paragraph (2):

Ships that can be registered in Indonesia are:

- a. ships with a gross tonnage measure of at least GT 7 (seven gross tonnage);
- b. ships belonging to Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia; and
- c. The ship is owned by an Indonesian legal entity which is a joint venture in which the majority of shares are owned by Indonesian citizens.

Article 158 paragraph (3):

"Ship registration is carried out by making a registration deed and recorded in the list of Indonesian ships."

Article 158 (4)

As proof that the ship has been registered, the owner is given a grosse deed of ship registration which serves as proof of ownership of the registered ship.

Thus, ships registered as stipulated in Article 314 of the Criminal Code paragraphs (2), (3), and (4) have legal status as immovable objects (onroerend goed), and are also subject to regulations on immovable objects.

According to the Property Law, one of the ways to obtain property rights over an object is a surrender that must be made based on or according to the type of property sold, the implementation of which is carried out according to Article 612, Articles 613 and 616 jo. Article 620 of the Civil Code.

Article 162 of Law No. 17 of 2008 concerning Shipping reads:

1. The transfer of ship catalytic rights must be carried out by changing the name of the ship where it was originally registered.
2. The name change as intended in paragraph (1) is carried out by making a name change deed and recorded in the list of the ship mother concerned
3. As proof that there has been a transfer of ownership of the ship to the new owner who was given a grosse deed of change of the ship's name

The recording of the Transfer of Ownership of Seagoing Ships has been regulated in Law 17/2008 concerning Shipping.

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Article 161 :

"**The transfer of ownership** of the ship must be done by changing the name of the ship where it was originally registered."

Government Regulation No. 31 of 2021 concerning the Implementation of the Shipping Sector jo. PP No. 51 of 2002 concerning Shipping

Article 99 reads:

"Every transfer of rights to a ship that has been registered, the new right holder must submit an application for making a deed and re-recording the name to the Registrar Officer and the Registrar of the Ship Name at the place where the ship is registered"

Sale and Leaseback based on Article 1 number 6 of POJK 35/2018 Sale and Leaseback is one of the Investment Financing and/or Working Capital Financing Activities which is defined as a financing activity in the form of the sale of an item by the debtor to the Finance Company accompanied by renting the refinancing of the goods to the same debtor.

Some of the Companies that use Sale and Leaseback include:

1. Boeing (Aerospace)

Boeing sells aircraft engines to lessors such as:

- a. **AerCap** - One of the largest aircraft engine leasing companies in the world. AerCap has worked with various airlines that operate Boeing aircraft through Sale and Leaseback transactions for aircraft engines.
- b. **GE Capital Aviation Services (GECAS)**, which is then leased back to the airline or Boeing itself in a leasing contract to facilitate timely deliveries.
- c. **SMBC Aviation Capital** - A Japan-based leasing company that focuses on leasing aircraft engines from various manufacturers.

Caterpillar (Construction and mining equipment)

The company uses the Sale and Leaseback scheme on heavy machinery used by its customers to support large construction projects, especially when customers face financial challenges.

Through a subsidiary called **Cat Financial**, which provides financing solutions, including Sale and Leaseback options for their equipment and machinery. Through Cat Financial, customers can sell their equipment to Caterpillar and then lease it back, allowing access to capital without losing use of the asset.

FedEx or DHL

In logistics operations, the company often conducts **Sale and Leaseback** for supporting machinery in warehouses (such as conveyor belts or forklifts) or transportation fleets. DHL is also using a similar strategy to support its logistics expansion globally, particularly by leveraging partnerships with financial institutions or real estate investors.

Some of these companies carry out **Sale and Leaseback** for machines that are used for various purposes, machines can be used as an object of **Sale and Leaseback** because they are movable objects, where the right to control the goods is in the lessor while the ownership right is in the lessor as regulated in Article 8 POJK 35/2018, the transfer is not accompanied by a juridical notice or there is no need to change the name of the name of the lessor but is stated in a fiduciary guarantee deed as per Article 4 of the Law

"The encumbrance of Objects with Fiduciary Guarantees is made by a notary deed in Indonesian and is a deed of Fiduciary Guarantee". Leaseback or renting refinancing is different from renting in general Where usually in leaseback there is an option right to buy the leaseback object.

This means that in Sale and Leaseback there are 2 transactions, the first is a sale, namely the lessor sells his goods to the lessee which is agreed upon by signing the Sale and Leaseback agreement deed and then the lessee rents buy back to the lessor agreed with the signatories of the Credit Agreement and the Fiduciary Guarantee Deed until the end of the lease period, the lessee has the option to buy back the goods.

Ships that are immovable objects are not appropriate to be used as the object of the Sale and Leaseback agreement as stipulated in Law 17/2008 on Shipping does not regulate the transfer of ship ownership based on the Sale and Leaseback agreement, in Article 60 of Law 17/2008.

(1) Ships that have been registered in the Indonesian Ship Register can be used as debt collateral by imposing a mortgage on the ship.

(2) The mortgage on the ship is carried out by making a mortgage deed by the Registrar Officer and the Registrar of the Ship Name in the place where the ship is registered and recorded in the Ship Registration Master List.

Based on the provisions of the regulation, it can be concluded that only ships whose minimum size is categorized as immovable objects can be used as debt collateral, because the ship must be registered in the Indonesian ship register, all legal actions related to the transfer of the ship must be registered so that the parties can know the legal status of the ship.

In line with the provisions in Law 42/1999 concerning Fiduciary Guarantees Article 3 letter b:

"Mortgage on a registered ship with gross contents of 20 (twenty) M3 or more."

Juridical submission by renaming the ship is required in the ship purchase transaction, especially in the event that it turns out that the lessee defaults or does not pay the rent during the Sale and Leaseback agreement, of course, it will cause legal problems because the Grosse Deed of Ship Ownership is still in the name of the lessee.

So for ships whose size is included in the category of movable objects, they can be leased with fiduciary guarantees, while for ships that fall into the category of immovable objects, the burden is charged with Grosse mortgage deeds not with Sale and Leaseback agreements.

What are the legal implications for seagoing ships as immovable objects that are the object of the Sale and Leaseback Agreement? (Case Study of PT CFI and PT RSA)?

The downstreaming of natural resources has a significant impact on the shipping industry, especially related to the increase in domestic cargo volume and exports. This increase in logistics activities occurred because raw materials such as nickel, bauxite, and coal were further processed domestically before being exported as value-added products. As a result, the demand for transportation services has increased, pushing the performance of shipping companies in a positive direction.

Several shipping companies, such as PT Pelayaran Nasional Ekalya Purnamasari (ELPI), recorded an increase in net profit of up to 56.8% in the first quarter of 2024 compared to the previous period. However, behind this positive impact, shipping companies have challenges to develop their business, namely requiring an additional fleet with a large amount of capital.

Not a few shipping companies also install ship mortgages as collateral to get funding from banks or financial institutions to support their smooth operations, mortgage installation is often considered an appropriate financial solution for shipping companies in Indonesia.

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Some shipping companies that have installed ship mortgages as funding collateral to support their business operations:

1. PT Berlian Laju Tanker Tbk (BLT)

During the debt restructuring period (around 2012-2013), BLT installed their tanker mortgage as collateral to obtain funding from creditors to pay off debts. Collateralized Assets: Some of the tankers owned are used as collateral. This is commonly done in the shipping industry which requires large capital.

2. PT Arpeni Pratama Ocean Line Tbk (APOL)

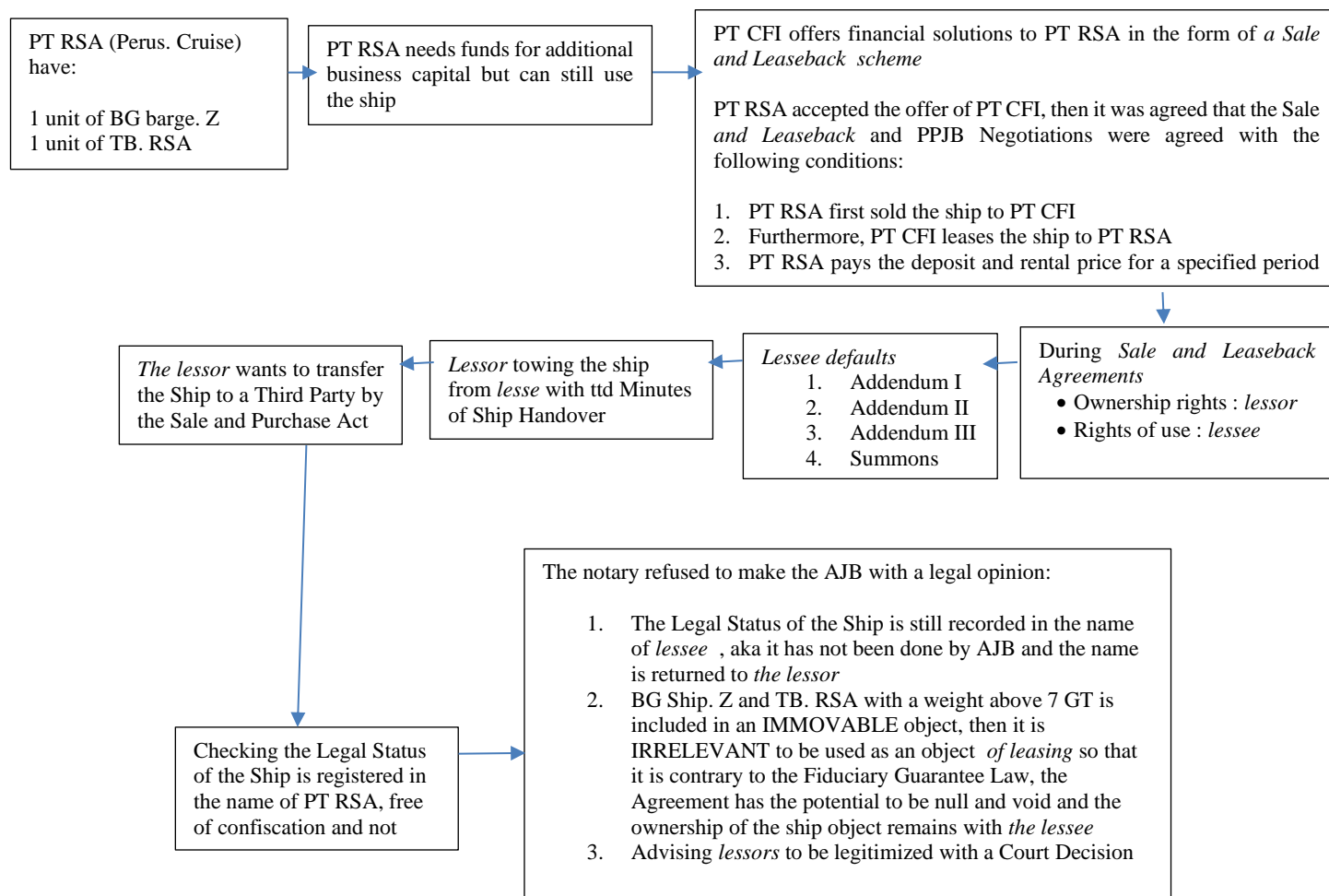
APOL once applied for a loan from a financial institution with a ship mortgage as collateral. This situation occurs when the company is experiencing financial difficulties and needs additional capital to maintain ship operations.

3. PT Humpuss Intermoda Transport Tbk (HITS)

In its financial statements in recent years, HITS used LNG (Liquefied Natural Gas) vessels as collateral for mortgages to obtain funding from banks.

Purpose: This funding is used for business expansion and supporting the company's operations.

In contrast to companies that charge mortgages as collateral for their business capital loans, PT RSA which is a domestic shipping company that runs a sea transportation business using barges and tugboats to transport mining products to smelters which requires a lot of additional capital for the smooth running of its business, then PT CFI which is a financing company (leasing) offers financial solutions with a scheme Sale and Leaseback, The scheme is carried out in the following stages:



The financial solution with the Sale and Leaseback Scheme offered and agreed upon by the signing of the Sale and Leaseback Scheme Agreement Deed, PPJB turned out to cause legal uncertainty for the parties, especially when Lessee defaulted and the Lessor wanted to withdraw the financing object to be transferred to a third party.

The object of sale and purchase as well as the object of financing agreed in the Deed of Lease Agreement "Sale and Leaseback" Number 49 dated May 27, 2013 Jo. Number 10 dated June 10, 2013 is:

Barge

A Barge Named "Z99" formerly named H3001 as described in the Survey Letter dated May 6, 2013 Number: 6614/Bc with the following measurements:

- Long : 87.86 meters;
- Wide : 24.40 meters;
- Deep : 5.59 meters;
- Gross Tonnage (GT) : **3065**
- Net Tonnage (NT) : 919
- Badge : GT 3065 No. 6614/BC

The ship was made in China in 2012, mainly from Steel with 1 (one) deck and is used in shipping at sea in accordance with Grosse Ship Registration Deed Number 1234 dated May 8, 2023 issued by Mardiaty, Bachelor of Law, Master of Law, Registration

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Assistant Officer and Ship Name Reversal in Jakarta. Listed on behalf of PT RSA Limited Liability Company domiciled in Samarinda as the owner.

Tug Boat

A Barge Named "RSA" formerly named as described in the Survey Letter dated May 6, 2013 Number: 0000/xx with the following measurements:

- Long : 26.70 meters;
- Wide : 8.30 meters;
- Deep : 3.75 meters;
- Gross Tonnage (GT) : **236**
- Net Tonnage (NT) : 71
- Badge :GT. 236 No. 5396/IIIk

The ship was made in Samarinda in 2012, mainly from Steel with 1 (one) mastless deck 2 (two) chimneys equipped with YANMAR-2x100 HP Brand master engine used in shipping at sea in accordance with Grosse Registration Deed Number 6653 dated May 31, 2023 issued by BAY MOKHAMAD HASANI, Head of the Samarinda Port Authority and Municipal Office, Directorate General of Sea Transportation, Ministry of Transportation.

Based on the description above, it is clear that the two objects of the agreement **weigh 3065 GT and 236 GT**, so according to the law, the ship is an immovable object which based on Article 60 of Law 17/2008 concerning Shipping if used as a collateral for debt can only be done with a mortgage and not with a lease. Therefore, it is irrelevant for ships that are immovable objects to be used as objects of financing (leasing).

When the Lessor offers and agrees to the Sale and Leaseback Scheme, the Lessor should understand that the object being leased is a movable object, which when associated with the fiduciary guarantee law must be followed by a Fiduciary Agreement. In fact, the parties did not impose fiduciary guarantees on the object of the ship.

In addition to the irrelevance regarding the object of financing, there is an irrelevance, namely the lessor being the party who buys the ship as an immovable object with PPJB and the Power of Attorney, the lessor should be subject to material law by transferring ownership juridically, aka changing the name of the ship first and then leasing it to Lessee.

The legal implication arising from the irrelevance of a ship that includes immovable objects as the object of Sale and Leaseback is that the Agreement has the potential to be null and void because from the beginning the agreement on goods is contrary to the provisions of the law, both the provisions of the Fiduciary Guarantee rules and the provisions of the shipping rules.

So any deed that will be made based on the Agreement that is contrary to the rules will have the same legal implications, which of course the most disadvantaged is the buyer in good faith who buys the goods from the proceeds of the withdrawal of the ship carried out by the lessor.

In line with the opinion of Notary Dr. Buntario Tigris, S.E., S.H., M.H:

"The power of attorney in the PJB cannot be used and must go through a court decision for the execution of the Sale of the Ship."

The researcher agrees with the Notary's action of refusing to make a Deed of Sale and Purchase of Ship between the Lessor who claims to be the owner of the ship based on the Sale and Leaseback Agreement to the Third Party as the buyer.

The Grosse Deed of Ship and Legal Status of the Ship issued by the relevant KSOP is recorded in the name of Lessee and there is no confiscation or charge as collateral, it is enough to prove that Lessee remains the rightful owner of the ship.

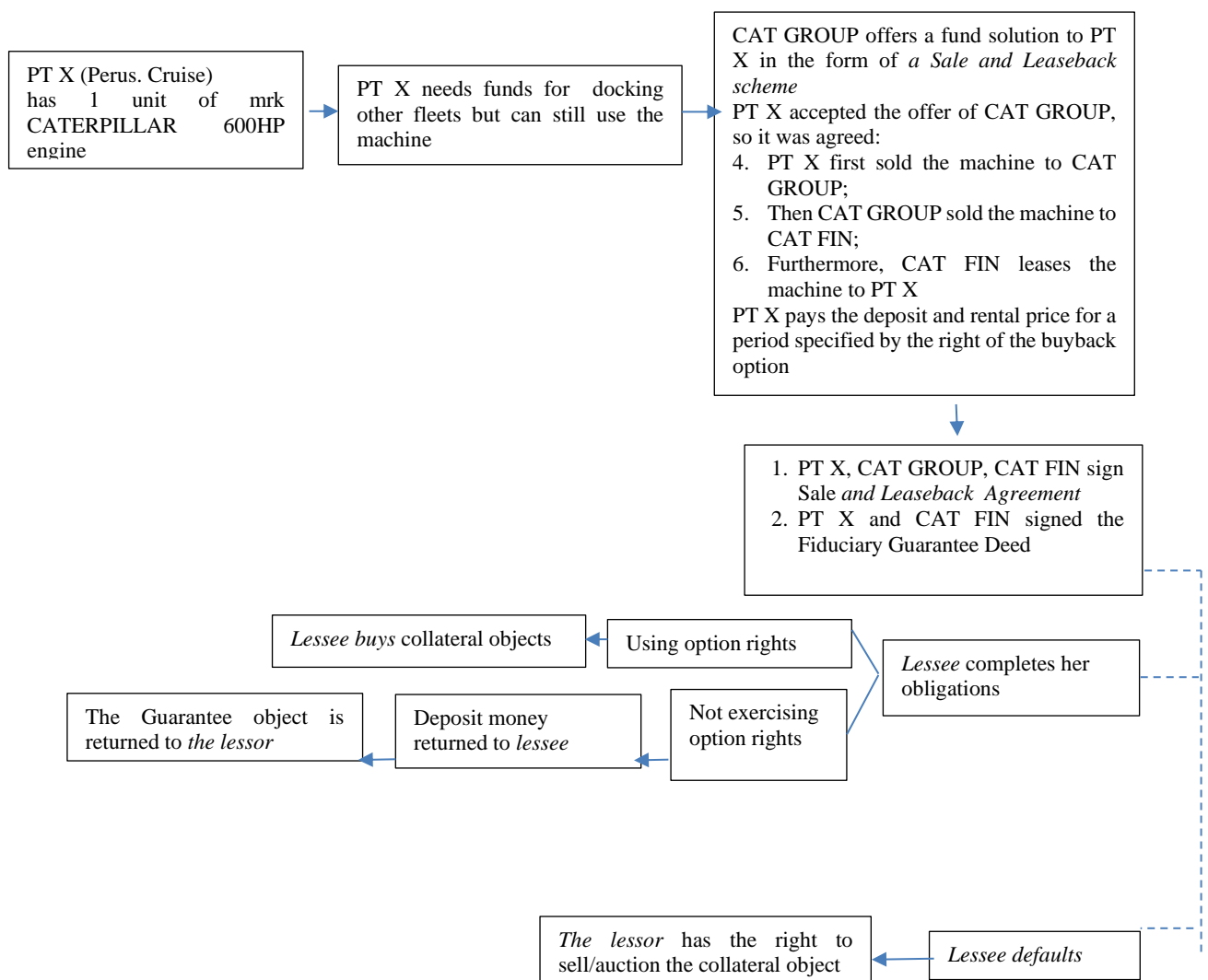
It can be concluded that during the Sale and Leaseback, the lessee rented its own ship because the ship that had previously been purchased by the lessor had never been deed of sale and purchase in the name of the lessor.

The importance of prudence in agreeing on the object of guarantee is very important for the sake of legal certainty for the parties, especially in the event of default, so that the lessor also does not feel disadvantaged because he has purchased and leased the object of the guarantee.

Comparison of Sale and Leaseback with Immovable Objects and Movable Objects with Fiduciary Guarantees?

The classification of objects used as collateral objects will have different legal implications, especially in Sale and Leaseback Agreements.

As a comparison, the Sale and Leaseback that has been carried out between PT X, a company in the construction sector that first sells heavy equipment machinery to CAT GROUP, then CAT GROUP through its subsidiary Cat Financial leases the machine to PT X so that PT X still gets the right to use the machine with the scheme below:



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From the Sale and Leaseback scheme above, it can be concluded that the object of the agreement, namely the machine, is sold first to CAT GROUP, which is a machine manufacturing company whose business purpose and purpose is to trade the machine, then it is leased using a financing company, namely Cat Financial, so that PT X rents the machine from Cat Financial with the option right when the lease has expired to be able to buy back the machine.

When compared to the Sale and Leaseback Scheme which makes immovable objects as collateral objects that require juridical handover, aka name change, is an agreement that is contrary to the applicable law because leasing companies are prohibited from buying assets for commercial purposes.

Based on related regulations, leasing activities must be carried out in accordance with its main function, namely financing capital assets to be used by the lessee (lessee), not for the purpose of investment or commercialization of assets by the leasing company itself.

The legal basis includes:

1. Joint Decree of the Minister of Finance, Minister of Industry, and Minister of Trade No. 122/MK/IV/1/1974 which regulates the initial definition of leasing as a financing activity for the provision of capital goods in the form of finance lease or operating lease.
2. Decree of the Minister of Finance No. 1169/KMK.01/1991 which emphasizes that leasing is a financing activity for the provision of capital goods to lessee with periodic payments.
3. Regulation of the Minister of Finance No. 84/PMK.012/2006 which restricts leasing activities only for financing, not the ownership of commercial capital assets

A Financing Company is a business entity that carries out goods and/or services financing activities. One of the businesses of finance companies is leasing. In general, leasing means financing equipment/capital goods to be used in the production process of a company, either directly or indirectly (Harnani, 2022).

In finance lease or operating lease, the leasing company acts as a provider of capital goods, but the economic rights and the purpose of its use must remain in the hands of the lessee. Ownership of assets for commercial purposes is contrary to the function of leasing itself, namely as a non-bank financing institution.

As Mardiasmo argues, leasing companies function as financing providers for capital goods, but not to become permanent owners of these assets. This corresponds to the main function of leasing which is 'more focused on the transfer of the use of assets, rather than permanent ownership by the leasing company itself. Therefore, leasing activities should focus on financing and not commercial investment in assets (Mardiasmo, 2021).

In addition, according to Sularso, A leasing as a non-bank financial institution is indeed prohibited from owning assets commercially. Leasing functions as a financing provider for capital goods used by other parties (lessee), not for investment or asset management. This is related to the main purpose of leasing which is financing, where the assets acquired for lease remain the property of the leasing company only for a certain period of time and are not used as investment instruments (Sularso, n.d.).

If a leasing company buys assets for commercial purposes, it goes beyond the core activities that have been regulated, and has the potential to violate laws and regulations related to non-bank financial institutions in Indonesia.

CONCLUSION

The Sale and Leaseback Agreement serves as a financial solution for business actors to acquire additional capital equity without losing the right to use their assets. However, its practical application often encounters issues related to the agreement's object and involved parties. For instance, PT CFI, a non-bank financial institution, purchased a ship classified as an immovable object, which necessitates a juridical transfer of ownership, including a name change. This requirement conflicts with regulations prohibiting financial institutions from owning assets for commercial purposes. The notary's decision to reject the sale and purchase deed involving PT CFI as the claimed owner was appropriate, as such transactions could lead to future legal complications. Consequently, it is concluded that ships classified as movable objects (e.g., those under 7 GT, ship engines, heavy machinery, motor vehicles) can be leased with fiduciary guarantees. In contrast, ships categorized as immovable objects should be encumbered with a Grosse mortgage deed rather than through Sale and Leaseback agreements.

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