

Lease Purchase Agreement and Possession of Ship Deed with Purchase Option Rights

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Abstract

The Lease Purchase Agreement operated by the financing company involves the provision of capital goods for the lessee's benefit. The lessor provides facilities for the procurement of capital goods that are delivered to the lessee for a specified period, with the obligation to make periodic payments. In a lease-purchase agreement, the lessor acts as the owner, and the goods are in the possession of the lessee. At the end of the lease period, the lessee is given the option to extend the lease term or exercise the right to purchase the leased capital goods. Since the capital goods belong to the lessor, it is not possible to use the leased object as collateral in the financing agreement. Ownership of the leased object with the option to buy should occur at the end of the lease agreement. However, in the Lease Purchase Agreement with Reference Number PPAF/PSGUP/2014/VIII/133, the lessee has become the owner of the capital goods from the beginning, both in physical and legal terms, because the capital goods were transacted through a notarial deed and registered under the lessee's name with the harbor master's office. Nevertheless, the lessor, as the provider of capital goods financing, has not returned the deed of the ship to its owner, even though the sale and lease-purchase agreement have been completed without any defects. The research questions addressed in this study are: 1. How is the implementation of the lease-purchase agreement for the Blue Star Tanker capital goods in Lease Agreement Number PPAF/PSGU-P/2014/VIII/133? 2. What is the basis for the lessor's possession of proof of ownership of the capital goods in the PPAF/PSGU-P/2014/VIII/133 agreement? This research employs a normative legal research method, which involves optimizing secondary data sources, including various primary legal materials, secondary legal materials, and tertiary legal materials. The primary data collection method used is a literature review. The research findings lead to the following conclusions: 1. The implementation of the lease-purchase agreement with Reference Number PPAF/PSGU-P/2014/VIII/133 does not meet the criteria for a lease-purchase agreement. The lease-purchase agreement with a clear option to buy states that the lessee will exercise the option to buy. This option to buy is provided at the end of the lease-purchase period. However, the legal ownership of the capital goods has been with the lessee from the outset when the ship sale agreement was registered with the harbor master's office on November 20, 2014, while the lease-purchase agreement ended in August 2017. 2. The legal basis for the lessor's possession of proof of ownership of the capital goods in Lease Agreement Number PPAF/PSGU-P/2014/VIII/133 is not valid. If based on ownership, the legal ownership documents are with PT. Sarana Multi Sejahtera as the lessee. If based on collateral rights, the lease-purchase agreement does not use the concept of collateral for the leased goods because the leased goods are actually owned by the lessee

Keywords: Lease Purchase, Deed of Conveyance, Ship Financing.

INTRODUCTION

One of the goals of Indonesia's independence is to provide protection for all its citizens (Preamble of the 1945 Constitution of the Republic of Indonesia, the first paragraph). The improvement of the people's welfare is one of the objectives of Indonesia's independence. A contemporary interpretation of the concept of the rule of law also includes broad interpretations of the people's rights, including the level of welfare and economic growth (Munir Fuady, 2009). According to Radbruch, the law embodies the value of justice for concrete human life (Bernard L, 2010). Furthermore, it is stated that justice has both normative and constitutive characteristics for the law. According to Meuwissen (Arif Sidharta, 2009), the scope of the law is to regulate human social life. In this way, peace and harmony can be achieved fairly, ensuring that each person's needs are met. In essence, the purpose of the law lies in realizing justice.

Indonesia is the world's largest archipelagic nation with the potential to become a global maritime axis. The global maritime axis aims to establish Indonesia as a great, strong, and

prosperous maritime nation by reasserting its identity as a maritime nation, ensuring the security and safety of maritime interests, and harnessing maritime potential to achieve economic equality in Indonesia. To achieve the status of a global maritime axis, comprehensive development is required, encompassing maritime development processes in terms of infrastructure, politics, socio-culture, law, security, and the economy. Upholding the sovereignty of Indonesia's maritime territory, the Unitary State of the Republic of Indonesia (NKRI), requires the revitalization of maritime economic sectors, strengthening and developing maritime connectivity, rehabilitating environmental damage, and conserving biodiversity. Furthermore, improving the quality and quantity of human resources (HR) in the maritime sector is a fundamental program in the effort to realize Indonesia as a global maritime axis.

Indonesia, as a maritime nation with a vast territory stretching from Sabang to Merauke, consists of thousands of islands. Indonesia has 17,499 islands, with a total land area of approximately 7.81 million square kilometers. Out of this total land area, 3.25 million square kilometers are comprised of oceans, and 2.55 million square kilometers fall under the Exclusive Economic Zone (Zona Ekonomi Eksklusif). Only about 2.01 million square kilometers are considered land. Of the overall land area of Indonesia, 70 percent is water, predominantly in the form of marine areas. To connect one island to another for economic activities, transportation is essential.

In maritime transportation, ships are the primary means of moving from one island to another, docking, embarking or disembarking passengers, as well as loading and unloading cargo at a port. The legal framework governing maritime affairs in Indonesia is established by Law No. 17 of 2008 concerning Shipping (hereinafter referred to as the Shipping Law). This is further regulated by Government Regulation No. 51 of 2002 concerning Shipping (PP Perkapalan), which was promulgated in the State Gazette of the Republic of Indonesia in 2002, Number 9. Marine vessels are a vital mode of water transportation required by a maritime nation. Article 314 of the Commercial Code (Kitab Undang-Undang Hukum Dagang or KUHD) states that ships with a minimum gross tonnage of 20 M3 can be registered in a ship register and fall under the category of immovable property. The determination of ships with a minimum size of 20 M3 as immovable property is a criterion defined by the law.

The Commercial Code (KUHD) distinguishes marine vessels into two categories, namely, seafaring vessels as movable property and seafaring vessels as immovable property. Seafaring vessels as movable property refer to vessels that are not registered. Seafaring vessels as immovable property, on the other hand, are marine vessels with a minimum of twenty cubic meters of gross volume and are registered with the Harbor Master's Office and the Port Authority of the Directorate General of Sea Transportation under the Ministry of Transportation. Upon registration, they are legally recognized as Indonesian vessels (Azizir Riady, 2019).

Legal science treats movable and immovable property differently. The distinction is related to aspects of possession (be^zit), encumbrance (be^zwaring), delivery (le^zvering), lapse of time (ver^zjaring), and seizure (be^zslag). One significant difference lies in the context of delivery (le^zvering) (Riduan Syahrani, 2004). In the case of movable property, delivery occurs physically (hands by hands), whereas for immovable property, the transfer is carried out through an acta van transport, in the form of a title transfer. A title transfer is a legal instrument for transferring ownership of immovable property from the previous owner to the new owner. The acquisition of ships as registered means of transportation involves relatively substantial costs. In the effort to enhance the quality and quantity of shipping, entrepreneurs require an increase in their fleet of vessels. This necessitates a substantial amount of capital. One of the sources of financial support for entrepreneurs is capital facilities provided by financing institutions. The presence of capital is crucial for starting or expanding a business. Without capital, it is impossible for a

business unit to operate and grow. The maritime industry relies on ships as capital goods. Capital goods, in this context, refer to assets used for business purposes or for production.

At present, Indonesia has not yet fully recovered from the COVID pandemic, but is making efforts to bounce back faster and become stronger in order to support economic activities in all sectors. The financial sector plays a significant role in driving the economy through the provision of funds, capital, or financing. Business activities can be simplistically described as a negotiation or exchange of promises, each of which may differ but is separable, and these promises, in line with human dignity, must be fulfilled (Moch. Isnaeni, 2015).

Financial institutions, in practice, are supported by both banking and non-banking financial institutions. Non-banking financial institutions include financing companies, venture capital, and infrastructure financing. Financing companies, as non-bank business entities specifically established to engage in financing activities, are involved in activities such as leasing, consumer financing, factoring, and credit card businesses, often referred to as multi-finance companies (Marhaeni Rita Siombo and Emmanuel, 2022), which allow for the implementation of various financing schemes.

Non-banking financial institutions, with financing companies as fund or capital providers, play a role in providing funds and capital to support economic growth. The legal basis for financing institutions is Presidential Regulation No. 9 of 2009 concerning Financing Institutions. In the general provisions, it is stipulated that financing institutions are business entities engaged in financing activities through the provision of funds or capital goods. One of the activities of financing companies is the provision of funds and capital goods through leasing activities. According to the Financial Services Authority Regulation Number 35/Pojk.05/2018 concerning the Implementation of Financing Company Business Activities, one of the financing activities is installment payments for the purchase of goods and/or services acquired by the debtor from the supplier of goods and/or services through installment payments.

Lease financing is a form of financing that involves providing capital goods, both in the form of finance lease and operating lease, for use by the lessee for a specified period based on installment payments. In this regard, under the prevailing rules, when the lease term ends, the lessee, with the lessor's consent, is given the option to extend the lease period of the capital goods or exercise the purchase option. Leasing financing involves financing for capital goods required in business operations. Financing companies provide and lease capital goods in their capacity as creditors, which will be used by the lessee as the debtor, with the obligation to make lease payments in the form of installments to the lessor. This is a characteristic feature of leasing companies, as the financing is provided in the form of purchasing goods for business capital. Leasing with alternative finance lease options offers more flexibility compared to bank loans, especially for new businesses. Lease financing is a legal relationship based on agreements, typically in the form of standardized contracts. In general, the lessor's performance involves providing and delivering capital goods, while the lessee's obligation is to make regular lease payments. The interaction of rights and obligations is documented in a written lease financing agreement with mutual consent before the performance is executed.

A specific characteristic of a lease financing agreement is that the physical possession of the capital goods is with the lessee, who is the debtor. However, the legal ownership of the capital goods remains with the lessor, who is the creditor. This means that the capital goods are owned by the lessor until the lessee exercises the purchase option by making the required payment. An interesting aspect of the lease financing agreement is the provision of an option for the lessee. With the lessor's consent to exercise the option to purchase the capital goods at the end of the lease period. If the agreement includes the option to purchase, it will result in a change in the legal relationship status between the lessee and the capital goods. Initially, the lessee acts as the

lessee, and at the end of the agreement, with the option to purchase, the lessee has the opportunity to become the owner of the capital goods.

When the capital goods specified in the lease financing agreement are ships with a size exceeding 20M3, and the lessee has agreed to the option clause, the lessee will proceed with the purchase of the capital goods at the end of the lease period. Therefore, further research is needed to plan the change in the lessee's status, who initially acts as a tenant and then becomes the owner based on the lease financing agreement at the end of the lease period. The demand for the transfer of the legal evidence of ownership of the capital goods from the completed lease financing agreement can be made based on a breach of contract or a violation of the law. Therefore, the author is interested in further researching this topic with the title "Lease Financing Agreement And Possession Of The Certificate Of The Ship Deed With The Purchase Option."

RESEARCH METHODS

The method used in this research is the normative juridical research method. According to Sorjono Soekanto and Sri Mamudji, normative juridical research is research based on secondary data, which refers to existing data and is commonly known as a literature study. Normative juridical research relates to the use of legal principles regarding the transfer of ownership of a ship as the object of a lease financing agreement. To resolve this, an approach to legislation is taken, considering the Shipping Law, the Civil Code, regulations related to financing companies, regulations on shipping, and others.

RESULT AND DISCUSSION

The Implementation of the Finance Lease Agreement for the Capital Goods of the Blue Star 5 Tanker Ship in Agreement Number PPAF/PSGUP/2014/VIII/133..

Book III of the Civil Code (KUHPerdata) adheres to and embodies the principle of freedom in making agreements. This principle is encapsulated in Article 1338 of KUHPerdata, which states that "All agreements made legally are valid as law for the parties involved." Article 1338 of KUHPerdata conveys that agreements are binding on both parties who enter into the agreement. This provision portrays that, essentially, individuals are granted the freedom to form agreements on any subject matter, as long as it does not contravene public order or morality. Not only are they given the freedom to make agreements on any subject, with the restriction of not conflicting with statutory regulations, public order, and morality.

According to Subekti (1996), parties entering into an agreement are permitted to override or depart from the regulations contained in Book III of KUHPerdata if they agree otherwise. Therefore, the rules provided in Book III of KUHPerdata are used when the parties entering into the agreement do not establish their own rules regarding the specific agreement they make. This aligns with the nature of legal rules, which can be either mandatory (*dwangrecht*) or regulatory (*aanvullendrecht*). Regulatory legal rules are rules that can be overridden or altered by the parties involved. These regulatory rules only apply when the parties do not set their own rules in their agreement. Meanwhile, mandatory rules are rules that cannot be overridden or altered. In other words, with regard to existing rules, the parties must comply and adhere to them. This means that parties in making agreements by creating rules other than those stipulated by statutory regulations are still allowed. If the rules in the law are purely regulatory, they can be altered. However, if the rules in the law are mandatory, they cannot be changed or overridden by the parties.

According to Joint Decisions of the Minister of Finance, the Minister of Industry, and the Minister of Trade Number N.KEP122/MK/IV/2/1974, Number 32/M/SK/2/1974, Number 30/Kpb/1/1974 Regarding Licensing for Financing Businesses, financing business is any financing activity in the form of providing capital goods for use by a company for a specific period, based on periodic payments accompanied by the option for the lessee to purchase the capital goods or extend the lease term based on the agreed residual value.

An agreement that has met its validity requirements, based on the principle of *pacta sunt servanda*, is binding on the parties to be carried out as agreed. The finance lease agreement is a financing agreement aimed at acquiring capital goods used by the lessee in their business operations and is also a source of income to meet their obligations to the lessor. In general, a finance lease agreement is a capital loan agreement under government supervision and falls under the authority of the Financial Services Authority. During the term of the finance lease agreement, ownership of the subject matter of the agreement remains with the lessor. This is because this agreement is for the utilization of capital goods owned by the lessor. The finance lease agreement provides an opportunity for the lessee to own the subject matter of the lease if the use of the purchase option has been agreed upon at the beginning of the agreement.

The implementation of Agreement Number PPAF/PSGU/2014/VIII/133 between PT. PPAFinance and PT. Sarana Multi Sejahtera involves the transfer of ownership of the capital goods that were initially agreed upon in the form of a finance lease agreement. One of the clauses found in Article 13 of the agreement states, "The Lessee acknowledges that the ownership and title to the capital goods shall remain with the Lessor and shall continue during the term of this Agreement, and the Lessee, at its own expense, shall protect and maintain the Lessor's ownership."

Article 19 of Agreement Number PPAF/PSGU/2014/VIII/133 regulates the purchase option with the following agreement:

1. "The Lessee understands that, based on applicable rules, upon the expiration of the lease period with the lessor's approval, the Lessee has the option to extend the lease period for the capital goods for one more year. However, the Lessee hereby explicitly states that it will not exercise the aforementioned extension option and will choose the purchase option. Therefore, the Lessor agrees to the Lessee's request;
2. In accordance with paragraph 1 of this Article, with timely payment of all amounts due and other obligations by the Lessee to the Lessor and/or upon the expiration of the lease period, the Lessee has the right to exercise the option to purchase the entire capital goods.
3. The purchase price for the capital goods is as the residual value as specified in clause 16 of Appendix 1 to the agreement, along with other outstanding amounts. By paying the purchase price and all other amounts due under the agreement, the Lessee acquires full ownership rights to the capital goods."

The agreement formed through Agreement Number PPAF/PSGU/2014/VIII/133 is, in fact, a lease-purchase agreement at the end of the contract. However, what was actually executed is not a lease-purchase agreement. Instead, it is a financing agreement with installment payments. This can be seen in the legal process of transferring ownership rights for the procurement of the Blue Star 5 Tanker Ship, which was initially owned by PT. Nagasaki Trans Segara. The purchase agreement for the capital goods in the form of the Blue Star 5 Tanker Ship occurred between PT. Nagasaki Trans Segara and PT. Sarana Multi Sejahtera. PT. PPAFinance provided financing of Rp. 10,500,000,000 from the total ship price of Rp. 14,150,000,000 (fourteen billion one hundred fifty million rupiah). PT. Sarana Multi Sejahtera made installment payments to PT. PPAFinance for the purchase of the Ship. The monthly installment paid was Rp. 110,745,000 (one hundred ten million seven hundred forty-five thousand rupiah). In the agreement, these payments were referred to as lease financing payments.

What has been carried out under Agreement Number PPAF/PSGU/2014/VIII/133 does not actually meet the criteria of a lease-purchase agreement. Instead, it is a financing agreement for the purchase of capital goods with installment payments to PT. PPAFinance. In a lease-purchase agreement, the prominent aspect is that ownership and property rights over the capital goods will remain with the lessor throughout the agreement's duration. Although physical possession of the goods is in the hands of the lessee, the lessee has an obligation to pay lease financing costs during the agreement's duration. The agreement specifies that the lessee is obligated to protect and maintain the lessor's ownership at their own expense. This implies that from the beginning, it was agreed that the capital goods belonged to PT. PPAFinance as the lessor. Ownership of the Blue Star 5 Tanker Ship never belonged to PT. PPAFinance from the outset because the sale of the Blue Star 5 Tanker Ship took place between PT. Nagasaki Trans Segara and PT. Sarana Multi Sejahtera on November 11, 2014, through a Notarial Deed. The legal transfer from the seller to the buyer occurred on November 20, 2014, through the registration of the bill of sale with the harbor master's office.

In the Agreement No. PPAF/PSGU/2014/VIII/133, despite being labeled as a lease-purchase agreement, what actually occurred was a financing agreement for the purchase of capital goods with the lessee's obligation to make installment payments to the lessor. In the said agreement through Notarial Deed No. 25 dated November 11, 2014, there was a transfer of ownership of the Blue Star 5 Ship from PT. Nagasaki Trans Sarana to PT. Sarana Multi Sejahtera. Based on the aforementioned bill of sale, the deed was then registered with the Class I Tanjung Emas Harbor Master's and Port Authority Office by the Registrar and Ship Transfer Registrar. This legal action resulted in the juridical transfer of the Blue Star 5 Ship from its original owner, PT. Nagasaki Trans Sarana, to become the property of PT. Multi Sarana Sejahtera, effective from November 20, 2014. Therefore, from a legal standpoint, PT. Sarana Multi Sejahtera has been the full owner of the Blue Star 5 Tanker Ship since November 20, 2014, both in terms of physical possession and juridical control. As a result, the use of an option clause, as commonly found in lease-purchase agreements, to extend the lease period or select the purchase option becomes meaningless.

The purchase option, as stipulated in Agreement No. PPAF/PSGU/2014/VIII/133, was enforced at the end of the lease period. However, from the outset, at least before the agreement ended, PT. Sarana Multi Sukses already had ownership of the capital goods, as evidenced by the Ownership Certificate in the form of the Act of Transfer of Ship Ownership (Grosse Akta Balik Nama kapal), issued by the competent authority, the Class I Tanjung Emas Harbor Master's and Port Authority Office, under Registrar and Ship Transfer Registrar number 531. In the case of a finance lease agreement for the purchase with installment payments for the procurement of goods, the transfer of ownership rights to the agreement's object as capital goods can only occur after the lease period has concluded. As per the Regulation of the OJK No. 35 of 2018.

In Agreement No. PPAF/PSGU/2014/VIII/133, PT. Sarana Multi Sejahtera assumes the position of a debtor because it is provided with financing facilities in the form of the purchase financing of the Blue Star 5 Tanker by PT. PPAFinance. In reality, the debtor's position in this case does not correspond to that of a lessee with the right to lease financing. Instead, what has been provided to PT. Sarana Multi Sejahtera is a financing facility, which allows the debtor to become the legal owner of the agreement's object or the object whose purchase is facilitated by the financing company. In contract law, the principle of freedom of contract is recognized, as outlined in Book III of the Civil Code. The principle of freedom of contract grants the parties the authority to enter into or not enter into an agreement. It provides the freedom to make agreements with anyone, set the content and terms of the agreement on any subject, and determine the form of the agreement, whether oral, written, in an instrument under private signature, or in an

authentic instrument. However, the principle of freedom of contract also has limitations as long as it does not contradict the law, public order, and morality.

In the context of financing agreements, according to POJK No. 35 of 2018, they must be made in writing. Thus, in this case, there is no freedom for the parties to determine the form of the agreement. At a minimum, the law mandates a written form, which can go beyond the legal standards, but it cannot be in the form of an oral agreement. The implementation of the freedom of contract principle relates to the formation of the agreement, meaning this freedom is granted by the law when forming the agreement, not during its execution. In connection with the implementation of Agreement No. PPAF/PSGU/2014/VIII/133 between PT. PPAFinance and PT. Sarana Multi Sejahtera, the agreement did not proceed as the parties originally intended. Initially, the parties agreed to a lease financing agreement that would benefit the lessee, who would lease the lessor's capital goods for a duration of 3 years. However, what actually took place was a financing agreement with payments made in installments.

In Agreement No. PPAF/PSGU/2014/VIII/133, the lessee was given the right to use the lessor's property for a specified period, and at the end of the agreement, the lessee was provided with the option to extend the lease term or the option to purchase the capital goods being leased. In the case of Agreement No. PPAF/PSGU/2014/VIII/133, the lessee explicitly chose to exercise the option to purchase the capital goods at the end of the lease period. In practice, what actually occurred was not a lease financing agreement as originally agreed. This is because what PT. Sarana Multi Sejahtera actually desired was a financing facility for the purchase of the Blue Star 5 Tanker. It appears that this was approved by PT. PPAFinance because ownership of the capital goods was entirely within the purview of PT. Sarana Multi Sejahtera and PT. Nagasaki Trans Segara. There was no involvement by PT. PPAFinance in the transaction with PT. Nagasaki Trans Segara. The implementation of the agreement's content, which did not align with the agreement's intended purpose, is also not accurately referred to as the principle of freedom of contract. This is because the principle of freedom of contract only applies during the formation of the agreement, not during its execution.

In contract theory, when an agreement is not executed as originally agreed, it can be categorized as non-performance or breach of contract, and the risk of loss from the agreement falls under the responsibility of the defaulting debtor. In the implementation of Agreement No. PPAF/PSGU/2014/VIII/133, PT. Sarana Multi Sejahtera, as the lessee, performed well and fulfilled its obligations within the stipulated 36-month period, ending in August 2017. Based on Agreement No. PPAF/PSGU/2014/VIII/133, it appears that there was a lack of precision in conveying the parties' intentions. In practice, the objectives of the parties have been achieved. PT. PPA Finance achieved its goal of receiving installments from PT. Sarana Multi Sejahtera, and conversely, PT. Multi Sarana Sejahtera also achieved its goal of becoming the owner of the Blue Star 5 ship, the purchase of which was facilitated by PT. PPAFinance. However, the construction and structure of the agreement did not align with what was initially agreed. While the original agreement was for a lease financing agreement, what transpired was actually a financing agreement with payments made in installments.

Basis for Control of Evidence of Ownership of Capital Goods by the Lessor in Agreement Number PPAF/PSGU-P/2014/VIII/133

The Operating Lease Agreement can be terminated for three (3) reasons, namely:

1. The lease period ends as agreed, with the option for the lessee to return the capital goods to the lessor, or the lessee can purchase the capital goods.
2. A breach of contract has occurred, with one party not fulfilling their obligations as per the contract.
3. Force majeure events have occurred for the lessee, involving circumstances beyond the parties' control, leading to the termination of the agreement.

In the execution of Agreement No. PPAF/PSGU/2014/VIII/133, the lessee fulfilled their obligations on time by making periodic payments for a period of 36 months until August 2017. The agreement ended with the lessee exercising the option to purchase the capital goods, as approved by the lessor.

In the lease financing agreement with number PPAF/PSGU/2014/VIII/133, provisions regarding guarantees are found in clauses such as Articles 5 and 24 of the agreement, as follows:

1. Article 5, paragraph 1: "The Lessee is obliged to pay a security deposit amounting to IDR 1,305,000,000 (one billion three hundred five million Rupiah), as a guarantee for the payment of lease financing and the fulfillment of other lessee's obligations. The security deposit will not accrue interest, and the lessor is allowed to hold it by any means."
2. The lessor has the right to withhold the security deposit until the lessee fulfills all obligations, and the lessor may use the security deposit, either in part or in whole.
3. At the end of the lease period, the security deposit will be used as payment toward the residual value."

Pasal 24 "lessee harus memberikan jaminan kepada lessor suatu agunan dalam hal jaminan tersebut dimintakan oleh lessor".

Based on the Operating Lease Agreement with number PPAF/PSGU/2014/VIII/133, the provisions regarding the guarantees for the financing provided are found in Article 5 of the agreement.

1. The provision of a guarantee in the form of a deposit certificate.
2. The provision of a guarantee with the Original Deed Certificate No. 3323, dated October 7, 2013, for the vessel named KM Sarana Utama, owned by PT. Sarana Multi Sejahtera. The deed certificate was handed over on August 21, 2014.

With the end of the originally agreed upon period, in August 2017, PT. Sarana Multi Sejahtera had fulfilled all its obligations for installment payments to PT. PPAFinance. With this completion, the deposit certificate and the Deed Certificate for the vessel Sarana Utama were returned to PT. Sarana Multi Sejahtera. However, the Deed Certificate for the vessel Blue Star 5 has not been returned by PT. PPAFinance up to this point. Based on the agreement, there is no clause that grants PT. PPAFinance the authority to possess the Certificate of Ownership for the vessel, Deed Certificate for the vessel Tanker Blue Star 5. Lease Agreement No. PPAF/PSGU/2014/VIII/133 does not require any mortgage or guarantees for the vessel Blue Star 5. And from a legal standpoint, as of November 20, 2014, the vessel Tanker Blue Star 5 has been the property of PT. Sarana Multi Sejahtera, as stated in the name transfer certificate. Thus, since the deed of sale for the vessel was registered and the name was transferred as a legal transfer from PT. Nagaksakti Trans Segara to PT. Sarana Multi Sejahtera, the physical and legal ownership of the vessel has been under the control of PT. Sarana Multi Sejahtera. PPAFinance has no legal authority over the vessel Tanker Blue Star 5, either as a possessory property or as a collateral property.

The possession of the Certificate (Grosse Akta Balik Nama) for the Blue Star 5 vessel by PT. PPAFinance in the agreement with PT. Sarana Multi Sejahtera can be analyzed in terms of property law relationships as follows:

1. Possessory property rights
2. Collateral property rights

In Lease Agreement No. PPAF/PSGU/2014/VIII/133 between PT. PPAFinance and PT. Sarana Multi Sejahtera, there is no agreement to provide collateral property rights in the signed agreement for the Blue Star 5 tanker. The Lease Agreement PPAF/PSGU/2014/VIII/133 specifies the agreed-upon collateral as determined in item 14 of Appendix 1 of the agreement, which is the provision of a sum of Rp. 1,305,000,000. There is no article that specifies collateral

for the Blue Star 5 tanker. Furthermore, the agreement is referred to as a lease agreement, and the agreement specifies that the capital goods are owned and under the ownership of the lessor. However, collateral property rights should be directed at property owned by other parties. If a vessel with a weight exceeding 20M3 is to be used as collateral, it should be done through a hypothecation agreement. A hypothecation can only be imposed on property owned by others, such as property owned by the debtor or third parties, and not on property owned by the creditor themselves (Suharnoko, Endah Hartati, 2006). Therefore, there is no basis for PT. PPA Finance to take possession of the Certificate of the Deed Certificate for the Blue Star 5 vessel, either during the term of the lease agreement or after all lessee obligations have been fulfilled.

In the agreement with number PPAF/PSGU-P/2014/VIII/133 dated August 27, 2014, the parties involved are PT. PPA Finance and PT. Multi Sarana Sejahtera. The object agreed upon is the Financing Lease of the Acquisition of the Blue Star 5 Vessel. The Blue Star 5 vessel was originally named Kyokuei Maru No. 1 and was owned by PT. Nagasaki Trans Segara. There was an agreement from PT. Nagasaki Trans Segara to transfer the ownership rights of the Kyokuei Maru No. 1 vessel to PT. Multi Sarana Sejahtera. This agreement was documented in Deed No. 25 dated November 11, 2014, prepared by Notary Anne Djoenardi, S.H., MBA., located at Jl. Dharmawangsa Raya No. 8, Kebayoran Baru, South Jakarta. The essence of the agreement was the legal act of PT. Nagasaki Trans Sagara to sell and deliver the Motor Tanker Vessel, Ex. Kyokuei Maru No. 1, to PT. Sarana Multi Sejahtera, as described in the Survey Letter dated June 27, 2014, based on Ship Registration Deed No. 283 dated July 14, 2014. The sale and purchase were done at a price of Rp. 15,000,000,000 (fifteen billion) Rupiah. The vessel's purchase price was paid in full by PT. Multi Sarana Sejahtera to PT. Nagasaki Trans Segara. Based on Notary Deed No. 25, PT. Multi Sarana Sejahtera registered the deed of sale and transfer of ownership on November 20, 2014. Therefore, legally, as of November 20, 2014, PT. Multi Sarana Sejahtera had physical and legal possession of the Blue Star 5 vessel.

The operational control of the Blue Star 5 tanker vessel has been achieved by PT. Sarana Multi Sejahtera in accordance with the notary deed number 25 dated November 11, 2014. The registration of Deed No. 25 with the Ministry of Transportation, Directorate General of Sea Transportation, Office of the Port Authority Class I Tanjung Emas in Semarang was carried out to obtain a transfer of ownership, marking the legal handover from PT. Nagasaki Trans Segara to the ownership of PT. Sarana Multi Sejahtera. In the deed of sale and purchase, the sale was carried out at a price of Rp. 15,000,000,000 (fifteen billion) Rupiah, and the purchase price was fully paid by PT. Multi Sarana Sejahtera to PT. Nagasaki Trans Segara. This means that legally, as of November 20, 2014, PT. Multi Sarana Sejahtera has acquired physical and legal ownership of the Blue Star 5 vessel.

Please note that the information provided here is a translation of the given Indonesian text, and it does not constitute legal advice or a legally binding document. Legal matters may require consultation with legal professionals or authorities.

Based on Article 19, paragraph (1) of Government Regulation No. 51 of 2002 regarding shipping, it is determined that: The registration of ships includes the registration of ownership rights, encumbrance by mortgage, and other property rights on the ship. Government Regulation No. 51 of 2002 on Shipping, in Article 23, stipulates:

1. "The registration of ownership rights in a ship is carried out by making a registration deed by the Registrar and Ship Ownership Transfer Registrar."
2. For each registration deed of ownership rights in a ship, one gross deed is issued and given to the ship's owner.
3. The gross deed is a copy of the first draft deed, which is an original registration deed. In relation to the Blue Star 5 vessel, the registration deed is in the name of PT. Sarana Multi

Sejahtera as the owner. And the gross deed is given to the ship's owner. No legal relationship has been established between PT. PPAFinance and the Blue Star 5 tanker vessel at present.

Therefore, there is no legal basis for the possession of the Blue Star 5 vessel's Gross Deed by PPAFinance. The lack of control over the Gross Deed of the Blue Star 5 vessel by PT. Sarana Multi Sejahtera has led to operational challenges for the vessel. One example is the contract between PT. Sarana Multi Sejahtera and PT. Waragonda Mineral.

The contract that had been agreed upon and had the potential to bring profit to PT. Sarana Multi Sejahtera has been unilaterally terminated by PT. Waragonda because PT. Sarana Multi Sejahtera was unable to produce the original Gross Deed Certificate for the Blue Star 5 vessel as proof of ownership. The possession of the Gross Deed Certificate of the Blue Star 5 vessel by PT. PPAFinance can be categorized as an unlawful act. The elements of an unlawful act have been fulfilled, namely:

1. The act of taking possession of the Gross Deed Certificate for the Blue Star 5 vessel by PT. PPAFinance;
2. The possession is contrary to the law because there is no legal basis for PT. PPAFinance, both as the holder of the property rights that provide enjoyment and as the holder based on a mortgage guarantee.

The absence of the Gross Deed Certificate for the Blue Star 5 vessel in the possession of PT. Sarana Multi Sejahtera has resulted in significant losses. At the very least, there are material losses in terms of the contract value and immaterial losses due to a loss of trust from business partners.

CONCLUSION

The implementation of the finance lease agreement with Number PPAF/PSGUP/2014/VIII/133 does not meet the elements of a finance lease agreement. In the finance lease agreement with a specific option that lessee will exercise the purchase option, this purchase option is provided at the end of the lease period. However, in terms of the legal ownership of the capital goods, it has been in the hands of the lessee since the beginning when the purchase agreement with the ship's bill of sale was registered at the Harbour Office on November 20, 2014, while the finance lease agreement ended in August 2017. The legal basis for the lessor's ownership of the capital goods in the finance lease agreement with Number PPAF/PSGU-P/2014/VIII/133 is not valid. If based on ownership, then the legal documents of ownership are held by PT. Sarana Multi Sejahtera as the lessee. If based on collateral, the finance lease agreement does not use the concept of collateral for the leased property because the leased property actually belongs to the lessor.

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