

Lease-Purchase Arrangements In Indonesia's Legal System

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Abstract

In Indonesia, a notary is a government officer who performs many of his/her primary government functions in the area of private law. Law No. 30 of 2004 on Notary Positions was revised in 2014 by the enactment of Law 2 of 2014. A notary has obligations as a public official and the ability to execute authentic deeds among other authorities regulated by the UUJN and other laws. An authentic deed is one that is made in the form prescribed by law. An engagement is a property-related legal relationship between two parties. The scope of the engagement is to do something, or to refrain from doing something, and to contribute something. Leasing purchase agreements are a cross between sales and buy and lease agreements. Under a lease purchase agreement, the risk of destruction of the items stays with the owner, but ownership rights do not pass to the purchaser until the installment payment is paid in full. If the buyer assumes the risk, the seller has the guarantee that the buyer will not abuse the things in his/her possession.

Keywords: Lease-Purchase; Agreement; Authentic Deeds; Notary; Indonesia

Introduction

A notary is a government officer who performs many of his/her primary government functions in the area of private law. In Indonesia, this notary post is governed by Law No. 30 of 2004 on Notary Positions. It was revised in 2014 by the enactment of Law No. 2 of 2014, amending Law No. 30 of 2004 concerning Notary Positions, henceforth referred to as UUJN.

According to article 1 number 1 of the UUJN, a notary is defined as a public official who is authorized to sign authentic deeds and has additional authority as specified in the UUJN or other laws. As per the UUJN's definition of a notary, a notary has obligations as a public official and the ability to execute authentic deeds, among other authorities regulated by the UUJN and other laws.

According to Article 1868 of the Civil Code, an authentic deed is one that is made in the form prescribed by law and is seen by or before public officials with authority for that purpose in the location where the deed was made.

An engagement is a property-related legal relationship between two parties. The scope of the engagement is to do something, or to refrain from doing something, and to contribute something. Concerning the source of the engagement, which in this instance is an agreement, Article 1320 of the Civil Code establishes the following elements for the agreement's validity: Consensus on those who bind themselves; the ability to make something; a certain thing; a lawful reason.

An innominate or anonymous agreement is one sort of agreement derived from an agreement in which the name and arrangement are not specified in the Civil Code. The origins of this innominate agreement may be traced back to the parties' idea of contract freedom, under which the parties are allowed to:

- Decide whether to get into an arrangement or not.
- They will decide who will be the party to the agreement (the parties).
- Determine the agreement's substance.
- Decide on the agreement's format, whether written or oral.

Since agreements are developed out of a community's habits, it is not unusual to refer to the root of the engagement as a habit. The agreement is a response to society's fast growth, which necessitates innovation in the way legal contacts in the sphere of property are conducted.

In general, based on the introduction above, this paper's statement of the issue is as follows:

- What is a lease-purchase deal and how does it work?
- The Subject and Object of the Lease-Purchase Agreement
- What are the lease-purchase agreement's clauses?
- When does a lease-purchase arrangement begin and end?
- What is the difference between a lease-purchase agreement and a sale-purchase deal with installments, purchasing, selling, and leasing?

Discussion

Definition of "Lease-Purchase Agreement"

Article 1338, paragraph 1 of the Civil Code, guarantees everyone the right to enter into an agreement. This is strongly connected to the notion of contract freedom. As a result of this article's evolution, there exist agreements in society that are not controlled by the Civil Code, such as a rental agreement, colloquially referred to as a "HUURKOOP."

This lease-purchase agreement is an anonymous form of agreement (*innominaat*), which has a legal foundation in Article 1319 of the Civil Code. Additionally, since the lease-purchase agreement is an *innominate* agreement, it must adhere to the Civil Code's general requirements, such as Article 1337, which provides that all kinds of agreements are permissible provided they are not forbidden by law or are contrary to common decency or public order.

The lease purchase agreement is governed by Article 1 of the Decree of the Minister of Trade and Cooperatives No. 34/KP/II/1980, which specifies that a lease purchase is a sale of goods in which the seller completes the transaction by accounting for each payment made by the seller. The buyer serves as payment for the agreed-upon price of the goods, and ownership rights to the items are transferred from the seller to the buyer only once the buyer has paid the seller the agreed-upon amount in full.

According to Subekti, leasing is a kind of buying and selling, or at least, leasing is closer to buying and selling than leasing, despite the fact that leasing is a hybrid of the two and is referred to as a lease sale. Meanwhile, according to Sri Soedewi Masychoen Sofwan, HIRE PURCHASE (HUUR KOOP) is a guarantee institution that is often used in practice in Indonesia, but has remained unregulated by legislation until now. A lease purchase agreement is one in which the lease buyer's rights terminate upon full payment of the goods price (Anggryawan, 2011).

According to Wirjono Prodjodikoro, a lease-purchase deal is effectively a lease of goods, with the receiver being a user rather than the owner. Only when the rent is equal to the purchase price does the renter become a buyer, i.e., the goods become his own (Djuhaendah, 1996).

Thus, the lease purchase agreement is a hybrid between a sale and purchase agreement and a lease. However, the lease purchase agreement is more likely to result in a sale and purchase agreement given the lease purchase agreement's primary objective is the transfer of ownership rights. Thus, leasing exists to facilitate the sale of goods, not to rent or become tenants of goods.

The Subject and Object of the Lease-Purchase Agreement

According to some experts, this is referred to as "sellers and purchasers" or "tenants." Subekti asserts that the purchaser becomes the first renter of the items he wishes to acquire. The parties' duties are as follows:

Rights of the Seller:

- Request and receive the payment price for the leased object's installments.
- Demand recompense and terminate the agreement if the purchaser does not pay the installments.
- Withdraw the object from the purchaser if the purchaser transfers it to a third party or falls behind on installment payments.

Obligations of the seller:

- Submit the agreement's subject matter to the purchaser.
- Take appropriate care of the leased products to ensure their optimal usage.

- Give the purchaser complete ownership rights once the price of the leased item is paid in full.

Additionally, the purchaser or lease buyer's rights and obligations, commonly referred to as the second party.

Purchaser rights:

- Obtaining leased goods from the seller and purchaser, even if the object's property rights have not yet been transferred to the rental buyer, until the entire price is paid.
- Sue the person who rents the products for concealed faults in the leased or purchased goods.
- Obtain complete ownership rights to the rented or purchased item if the payment for the object's price has been made in accordance with the agreement.

Obligations of the Purchaser:

- Pay the down payment and then the agreed-upon payments in full.
- Maintain the leased or acquired item and behave like a good housewife; we may not move it in any way until all payments are paid.

The Lease Purchase Agreement covers all durable commercial items that are new and have not undergone technical modifications, whether from their own manufacture or from other domestic production/assembly products, unless domestic production does not permit it. For instance, bikes and automobiles.

Rent-Purchase Agreement Clauses

Exoneration Clause

An exoneration clause is a provision that restricts the creditor's obligation. This clause seeks to absolve or restrict one party's responsibility for the other party's claim in the event that the person in question fails to perform or performs improperly their contractual responsibilities. Badruzaman outlined the following features of the exoneration clause:

- The creditor, who is much stronger than the debtor, determines the contents unilaterally.
- The debtor has no responsibility for the agreement's substance.
- This is a textual form.
- Produced in bulk or on an individual basis ahead of time (Badruzaman, 1980).

The written agreement is the defining feature of a lease-purchase arrangement, but it is not required for lease-purchase agreements to be legitimate. Agreements with the form and substance defined by one of the parties come from this written form. Typically, the person who creates this standard agreement is a business actor, creditor, or seller who has a better negotiating position.

The creditor provides an agreement in the form of a blank or a completed form, except for the price, mode of payment, time period; kind of products, quantity, and type. These clauses include exclusions or restrictions on the obligations of the contracting party; in this scenario, the business actor seeks to shield his party's interests from any hazards, which is referred to as an exoneration clause.

Risk Clause

In principle, it is recognized that risk is transferred to the purchaser since the purchaser is regarded required to retain the goods he leases until the goods are paid for and the ownership rights remain with the owner of the goods, even if the purchaser now owns the goods. If the risk is assumed by the buyer, this provides the seller with an assurance that the buyer will not treat the goods under his control arbitrarily (Subekti, 1985).

Transfer of Ownership Suspension Clause

The transfer of ownership rights may be agreed upon between the two parties, and in practice, ownership rights expire with the completion of the installment payments. Generally, delivery of goods is made only on the basis of a statement, since the buyer already has possession of the goods in their capacity as a renter. This is referred to as "tradito brevimanu" (short-handed delivery).

Clause of Prohibition on Transferring the Object of the Agreement

Since this lease purchase requires payment in installments and the owner of the goods retains ownership rights until the payments are paid in full, ownership rights are transferred to the buyer. If the purchaser transfers the goods or the object of the agreement during the installment term, this is considered embezzlement as defined in Article 372 of the Criminal Code.

Seller's Agreement Object Withdrawal Clause

The Hire-purchase Act 1965 provides provisions to protect the weak party, in this case, the "buying tenant," against abuse of the power of the owner of the property. It prohibits the owner of the goods from taking back the goods just like that if the tenant is in arrears in payment. If more than a third of the price has been paid in installments, the prosecution of the return of the object must go through the intermediary of the judge.

The Lease-Purchase Agreement's Inception and Termination

According to Article 1320 of the Civil Code, the period of this lease-purchase agreement begins when the seller and the buyer or tenant reach an agreement or equation of will. In terms of the formal agreement, a lease purchase agreement occurs when the parties sign it, in accordance with the rules of Article 1320 of the Civil Code on the agreement's legality. While the Lease Purchase Agreement is being terminated, namely:

- The lease payment for the rented item has been made in accordance with the lease agreement.
- The renter's death without heirs continues.
- The lease's purchaser declared bankruptcy.
- The seller of the lease proceeds with the confiscation against the other party. This occurs as a result of the lease buyer transferring the lease's subject matter to another party.
- The second party has defaulted on its obligations.
- There is a court judgment.

The difference between a lease-purchase agreement and an installment sale-purchase agreement, leasing, sale-purchase, and lease-rent

Hire purchase is a method of selling and purchasing goods in which the seller sells the goods by calculating each payment made by the buyer against the agreed-upon price of the goods, and ownership rights to the goods are transferred from the seller to the buyer after the total price has been paid in full by the buyer to the seller. It is controlled by Minister of Trade and Cooperatives Decree No. 34/KP/II/80, which regulates the licensing of rental and purchase operations (hire purchase), installment purchasing and selling, and renting. The price of the goods sold has been constant since the engagement began. Transfer of property rights must occur after the lease term's conclusion.

Sale and purchase in installments is a method of selling and purchasing goods in which the seller completes the sale by receiving payment from the buyer in several installments for the price of goods that have been mutually agreed upon and bound by an agreement, and the seller receives ownership rights to the goods when the seller delivers the goods to the buyer.

Leasing Transfer of ownership occurs when the lease involves use of option rights, which allow the tenant the opportunity to purchase or lease the goods. The price of new products becomes apparent once the debtor decides to purchase them.

Buy and sell: an arrangement in which one party (the seller) agrees to relinquish ownership rights to an object and the other party (the buyer) agrees to pay a monetary amount in return for acquiring the property rights.

A lease is an agreement in which one party (the renter) agrees to provide something to the other party. A contract in which one party (the renter) agrees to provide the other party (the lessee) with the enjoyment of an object for a certain length of time in exchange for the latter party's payment of a price.

Conclusion

Lease purchase agreements are a hybrid of sale and purchase agreements and leases. However, the lease purchase agreement is more likely to result in a sale and buy agreement, given the lease purchase agreement's primary objective is the transfer of ownership rights. Thus, leasing exists to facilitate the sale of goods, not to rent or become tenants of goods. The exoneration clause, the risk clause, the suspension of property transfer clause, the prohibition on transferring the agreement object, and the seller's withdrawal clause are all critical elements in the lease purchase agreement.

The risk of destruction of the goods under a lease purchase agreement remains with the owner of the goods since ownership rights have not been transferred to the purchaser until the installment charge is paid in full. In reality, however, it is normal to agree that risk is transferred to the purchaser since the purchaser is regarded required to maintain the leased items until the goods are paid for and the ownership rights remain with the owner of the products, even if the purchaser owns the goods. If the risk is assumed by the buyer, this provides the seller with an assurance that the buyer will not treat the items under his control arbitrarily.

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