# DILEMMA'S OF USE OF LEASING AGREEMENT OBJECT AS FIDUCIARY GUARANTEE OBJECT

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## ABSTRACT

Fiduciary guarantee on lease agreements, usually use the object of *lease* object fiduciary guarantee of the us too. It is not in accordance with the principles of fiduciary, because the giver of the fiduciary, fiduciary (the lessee) should be the owner of the object which is the object of fiduciary guarantee, and ownership rights that exist on the giver of fiduciary is delivered to the recipient of fiduciary (lessor), while in a leasing agreement, leasing object shall belong to the lessee if at the end of the agreement the lessee choose the option to purchase the lease object.

This study uses legal pluralism approach which focuses on the study of philosophical, juridical and sociological.

In the lease agreement should have ownership rights of lease object remains with the lessor, the lessee is yet. Practice fiduciary guarantee in such a lease agreement can actually be detrimental to the lessor, the lessee because the actual has become giver of fiduciary exposure of the ownership rights to her yet, so in such cases it should not have happened fiduciary guarantee. Nonetheless such practices carried out by finance companies, because they do not know clearly how the fiduciary concept when applied to the lease agreement. In general, they only know that the fiduciary is a guarantee that in this case the objects still controlled by the guarantor. In fiduciary only parties who have ownership rights of objects that can be givers, fiduciary as a prerequisite the fiduciary is the transfer of ownership rights of the giver to the recipient of fiduciary fiduciary.

*Key words: leasing agreements, ownwership rights, guarantee object, transfer of ownership rights*

## A. INTRODUCTION

The capital is an important requirement for the company is good at the beginning of its business activities as well as for further business development. In line with the technological developments and the more distant specializes in companies as well as the increasing number of companies that became great, then capital has the meaning as the main factors of

production[1]. Capital is not only limited to money but rather leads to the whole collectivity or accumulation of capital goods by Jackson and Mc Connell called as investment[2]. There are various ways that can be reached by the company for fulfillment of capital goods, one of which is through*leasing*. According to Beckman and Joosen (1980), *leasing* is actually a symptom of the economy, because the incidence of effected by various economic considerations that must be decided by a business entity that requires a capital goods/means of production. When the capital goods required that the price is very expensive so that businesses faced with two choices[3], namely:

1. Buy yourself a capital goods is concerned, so that business entity that may use such items at once obtain ownership rights over it; or
2. Use the capital goods belonging to others without obtaining the property rights over the goods.

*Leasing*it is the institution that originated from the improvised rent (*lease)* developed in Sumer since 4500 years Bc. *Leasing* in the modern sense was first developed in the United States with the railway in 1850, and its development was very rapid. During the 1980s *leasing* increased an average of about 15%, and a third of new business equipment procurement there done with *leasing.* Subsequent *Leasing* spreads to Europe, even to the rest of the world. [4]In Indonesia, *leasing* is a relatively new institution compared with other financing institutions and practices in other countries.

In the regulation of the Minister of finance Number 84/FMD. 012/2006 Concerning the financing of the company mentioned that the lease (*leasing*) is financing activities in the form of provision of capital goods both in the lease with the right options (*finance lease*) nor the lease without the right options (*operating lease*) for use by Tenants in order to attempt (*the lessee*) for a certain period based on payment at regular intervals.

In fact *leasing* is one of the ways of financing similar to bank credit, only the difference between *leasing* provides assistance in the form of capital goods, while providing assistance in the form of bank capital. [5]L*easing* capital equipment procurement Process relatively faster and does not require any collateral material, the procedure is simple and there is no necessity of doing a feasibility study takes a long time; The procurement of capital needs heavy equipment and expensive high-tech is very ease to the needs of *cash flow* given the long-term installment payment system; The position of the *cash flow* of the company will be better and the costs of capital are becoming cheaper and more attractive; Financial planning firm providing opportunities of interest to entrepreneurs, as it has the advantage-advantage as an alternative of financing outside the banking system, for example,[6]easier and simpler.

Legal relations in the *leasing* agreement is essentially. *Leasing* agreements are not recognized in the books of civil law Act. The entry of *leasing* agreement to Indonesia, because of the principle of freedom of contracts (article 1338 of the books of civil law Act.). This agreement is subject to the books of civil law Act, under article 1319, which determine that all of the good that agreement has a specific name, famous or not with a specific name, subject to the General rules contained in this chapter or chapter ago.

*Leasing*Agreements, has similarities to the lease, lease purchase, sale and purchase by installments, consumer finance, however, has certain characteristics that differentiate it from the treaties. Thus a treaty *leasing* represents a new kind of independent (*sui generis*). This agreement including agreements *innominaat*, because it is not regulated specifically in the books of civil law Act..The settings regarding *leasing* that exist, only administrative and taxation only. About the civil aspects, in particular the Covenant, among others, govern the rights and obligations of the parties are still very less, so the parties can decide on its own.

In general *leasing* agreement made in standard form (raw). In this case the rights and obligations of the parties had been determined by *the lessor*. As the maker of the agreement, *the lessor* is easier to anticipate the possibility of losses on its side, while *the lessee* lives accept or reject the agreement, so that *the lessee* can be said to be on the weak side. As a result, often in a treaty *leasing* are various deviations against the legal principles of the agreement, as well as a diversion against the principles of *leasing that is* in practice there is a confusion between provision of capital goods and consumer goods, the existence of confusion in regard to its object fiduciary guarantee corresponding to *leasing*. This is not in accordance with the principles of fiduciary guarantee, due to the occurrence of the fiduciary, fiduciary guarantee of the giver must have property rights over objects into objects fiduciary guarantee. In *leasing*, property rights over goods that became the object of *leasing* a new switch from *the lessor* to *the lessee* when at the end of the agreement, *the lessee* to use the right of option to purchase the object of *leasing* is concerned. Thus, if the goods become the object of *leasing* object becomes a guarantee of *fiduciary,* to guarantee the payment of the obligations of *the lessee* to *the lessor,* then the fiduciary guarantee does not occur, because the property rights over the objects remained on the part of *the lessor* should be the recipient of the fiduciary the absolute terms, while the occurrence of fiduciary guarantee is the existence of property rights over objects object fiduciary guarantee on the part of the giver of the fiduciary.

## II. RESEARCH METHODS

This research use approach *triangular concept of legal pluralism* Werner Menski expressed as,[7] whichperfect integration is to understand and enforce the law in a society plural (plural), i.e. between the docking between *state law* (*positive law*), the civic aspect (*socio legal approach)*[8], and *natural law* (*moral/ethic/religion*). A philosophical approach to do the understanding of legal consistency between the values, morals and ethics (*natural* law) that developed in the community. The normative approach is done with the inventory of various legal regulations, rules, norms and principles of existing law relating to the use of the object of *leasing* agreement goods as fiduciary guarantee object that developed within the community. The sociological approach is done by doing research on social reality, namely the reality of being part of the awareness and knowledge of the community, which is done by holding the interaction among researchers with a problem is examined through the speakers and informants who have been determined to see the facts while simultaneously capturing the

aspirations that appear in community practice with fiduciary guarantee of the same object with the object of leasing that developed in the community. Location of research in Jakarta and Semarang.

## III. PROBLEMS

1. how the legal consequences jaminanan fiduciary with object object that becomes the object of leasing that is guaranteed?
2. how the legal protection of the parties in respect of the object of leasing object fiduciary guarantee as well as a guaranteed?

## IV. DISCUSSION

### 1. A Legal Fiduciary Jaminanankibat with object object that Becomes the object of the agreement L*easing*

#### a. Fiduciary Guarantee of the implementation of the agreement on *Leasing*

Term *lease* language comes from the United Kingdom *lease*. In Black's Law Dictionary[9] mentioned that the *lease as a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually Rent. The lease term can be for life, for a fixed period, or for a period terminable at will.*

*The Financial Accounting Standards Board, Statement of Financial Accounting Standard No. 13 Accounting for Leases, November 1976, par. 1. International Accounting Standard Committee*mendefenisikan*leasing*are as follows:

> *"Lease: An agreement where by the lessor conveys to the lessee in return for rent the right to use an asset for an agreed period of time. The definition of a lease includes contracts for the hire of an asset which contain of provision giving the hirer an option to acquire the title of the asset upon the fulfilment of the toofgreed conditions. These contracts are described the us hire puchase contracts In some countries, different names are used for agreement which have the last of a lease (e. g. bareboat characters).*

Based on the definitions above, it can be concluded some elements that should be contained in the *lease* are:

a) *The Lessor*i.e. parties who provide capital goods for *the lessee,* is financing the company received permission from the Ministry of finance;
b) *The Lessee*IE the get the party financing of *lessor* or the parties who need/wear capital goods.
c) Object *leasing* i.e. goods that become the object of *leasing* agreement which covers all sorts of capital goods ranging from high-tech to the medium or technology needs of the Office.
d) The payment of the rent that is periodically within a certain period to do every month, every quarter, or every half year.
e) The value of the remaining (*residual value)* specified before the contract begins.

f) The existence of a right of option for *the lessee* at the end of their *lease*, which in this case *the lessee* has the right to decide whether he wants to buy the item with a price of residual value or return on *the lessor*.
g) *Lease Term*is a period of *leasing*agreement.

In the regulation of the Minister of finance Number 84/FMD. 012/2006 about the company financing the jo. Article 1 point 5 presidential Regulation No. 9 in 2009 About Financing Institutions mentioned that "the lease (*leasing*) is financing activities in the form of provision of capital goods both in the lease with the right options (f*inance lease*) nor the lease without the right options (*operating lease*) for use by Tenants in order to attempt (*the lessee*) for a certain period based on payment at regular intervals.

In fact *leasing* is one of the ways of financing similar to bank credit. Only the difference between *leasing* provides assistance in the form of capital goods, while providing assistance in the form of bank capital. [10]the system of *leasing* provides opportunities of interest to entrepreneurs, as it has the advantage-advantage as an alternative of financing outside the banking system, for example:[11]

*a) capital equipment procurement Process relatively faster and does not require any collateral material, the procedure is simple and there is no necessity of doing a feasibility study takes a long time;*
*b) The procurement of capital needs heavy equipment and expensive high-tech is very ease to the needs of cash flow given the long-term installment payment system;*
*c) The position of the cash flow of the company will be better and the costs of capital are becoming cheaper and more attractive;*
*d) Corporate Financial Planning easier and simpler.*

To provide ease for *the lessee,* in *leasing* should be no collateral material, but in practice generally *leasing* is always accompanied by a guarantee. One of the agencies the guarantee that is widely used in the practice of *leasing* i.e. fiduciary guarantee. Fiduciary according to origin derives from the Latin *fides,* meaning trust. The word is a noun that means confidence in someone or something. In addition there is the word *fido,* which is a verb which means to trust someone or something. [12]Subekti said that in a fiduciary are contained the words "*fides*", means a trust, parties 2 parties believe that the debtor has goods it just for guarantee. [13]in accordance with the meaning of these words, then the legal relationship between the debtor and creditor Fudusia as the giver as the recipient of the Fiduciary is a legal relationship based on trust. The giver of the Fiduciary believes that the recipient of the Fiduciary will return the property rights over the objects that have been submitted after the debt repaid. Instead, the recipient of the Fiduciary believes that the Giver will not misuse the Fiduciary guarantee of the goods that are in his power. [14]

According to a. Hamzah and SerjunManulang, a fiduciary is a new blend of property from its owner (the debtor), based on the existence of a principal agreement (Treaty of debts receivable) to creditors, but only submitted its due course in *yuridische-levering* and only owned by creditors in the belief (as a guarantee of the debts of the debtor), while the

goods remain controlled by the debtor, but not anymore as *eigenaar*nor *bezitter*, but only as a *detentor*or *houder* for and on behalf of the creditor-*eigenaar.*[15]in this case the figure used is the *fiduciaireeigendomsoverdracht*(NATURAL OCCURRING FEO), which translates to the "surrender of property rights on the basis of trust". Popularized here is kedinamisannya, i.e. their surrender or *overdracht*, which in this case meant is a proprietary submission from difidusiakan objects but limited to just trust that is to guarantee the debt. [16]in other words in the fiduciary guarantee transfer of ownership took place on the basis of trust with promises of ownership rights transferred objects remain in the mastery of the owner of the object. Transfer of proprietary rights is done in a *possessoriumconstitutum*, means a transfer of the right of ownership over an object with a far-flung objects could continue for the benefit of the recipient of the Fiduciary. [17]

In article 1 point 1 Act No. 42 of 1999 regarding Fiduciary Guarantee, mentioned that "a fiduciary is the transfer of the possession of an object on the basis of trust on the condition that the objects transferred ownership rights remain in the mastery of the owner of the object".

Article 1 point 2 of the Act mentions the Fiduciary Guarantee

*Fiduciary guarantee is a guarantee of rights over moving objects either tangible or intangible, and not moving especially buildings that cannot be burdened with the rights of a dependent who remain in the mastery of the giver of the Fiduciary, as collateral for the repayment of certain debt, which gives precedence to the Receiver position against other creditors of Fiduciary.*

The elements of Fiduciary guarantee, i.e.[18]:

1) *Fiduciary guarantee of the Subject is the Giver and recipient Fiduciary Fiduciary*
2) *Fiduciary Guarantee is the Object moving objects and the objects do not move that cannot be burdened with the rights of a dependent*
3) *The existence of a transfer of ownership rights over an object from the giver of the Fiduciary to recipients on the basis of Fiduciary Trust*
4) *Objects object fiduciary guarantee remains in the mastery of the giver of the Fiduciary.*
5) *Transfer of proprietary rights is only as a guarantee for the repayment of certain debt*
6) *Gives the position of the preferred (droit de preference) to the recipient against other creditors of Fiduciary.*

**b. the subject and object of Fiduciary Guarantee**

Fiduciary guarantee of the subject is the Giver and recipient Fiduciary Fiduciary. The giver of the Fiduciary is a person an individual or Corporation owners of objects that become the object of a fiduciary Guarantee. Recipient of the Fiduciary is a person, the individual or corporation who has accounts receivable the payment secured by Fiduciary Guarantee.

The giver of the Fiduciary must be the owner of the object into the object Fiduciary Guarantee (article 1 point 5 Fiduciary Guarantee law), because in the Fiduciary Guarantee submitted to the recipient of the Fiduciary is property rights over objects, whereas his remains on the giver of fiduciary relationships (article 1 point 2 of the Act Fiduciary Guarantee). Fiduciary guarantee can not be separated from the delivery of the property in the trust of the

giver of the Fiduciary to the Fiduciary Recipients. Therefore the giver of the Fiduciary shall have authority against a fiduciary guarantee object objects to be able to overload the objects with the fiduciary guarantee. This is because the authority is one of the conditions to be met in the transition of ownership rights over a material. The requirement that must be met for the beralihnya property of a material is the following.

1. the authority of the person who submitted;
2. the legitimate rights of the pedestal, which require a person to submit a material;
3. submission.

Recipient of the Fiduciary is a person, the individual or corporation who has accounts receivable the payment secured by fiduciary guarantee (article 1 point 6 Fiduciary Guarantee legislation).

Objects become objects of Fiduciary Guarantee are objects that can be owned and transferred the right of ownership, whether tangible or intangible objects, registered or not registered, move or not move that cannot be burdened with the right mortgage or mortgages (section 1 number 4 Fiduciary Guarantee legislation).

Fiduciary guarantee process is done through a two-stage, i.e. the stage of loading and Fiduciary Guarantee registration stage [25].

**1) The Imposition Of Fiduciary Guarantee**

In article 5 paragraph (1) the Fiduciary Guarantee law mentioned that the imposition of a fiduciary Guarantee of objects made by deed of notary public in the language of Indonesia and it is the Fiduciary Guarantee deed.

**2) Fiduciary Guarantee Registration**

The purpose of the registration is Warranties Fiduciary fiduciary guarantee, is giving birth to give legal certainty to the parties concerned, entitles the precedence (*preferred*) to the recipient of the Fiduciary against creditors other creditors-and of the principle of publicity because of the Fiduciary registry offices open to the public. Registration Fiduciary Warranties set forth in section 11-18 Fiduciary Guarantee legislation. Objects that are burdened with mandatory Fiduciary Guarantee are listed, as well as items that are burdened with Fiduciary Guarantee is outside the territory of the Republic of Indonesia. Fiduciary Guarantee registration is done at the registration office of the Fiduciary. Fiduciary Registration Office is a section in the Justice Department's environment and not an independent agency or unit technical implementers.

Fiduciary guarantee is often used in practice agreement *lease,* to guarantee the party *lessor* in providing finance to *the lessee*. At issue is a fiduciary guarantee in general object is the object of *leasing* agreement yang question. In *leasing,* property rights over objects recently switched to *the lessee* when at the end of the agreement *the lessee* to use the option to buy the *leasing* object, whereas the absolute requirement is the existence of fiduciary guarantee of the inception of the surrender of the right of ownership of the objects from *the giver of fiduciary*

*relationships (*in this case *the lessee* to *the lessor)*. Thus, it should be done at the time of the surrender of property rights, the giver of fiduciary already have ownership rights over objects that become the object of a fiduciary guarantee.

Should the legal construction in the fiduciary guarantee on *leasing* agreement is when *the lessee* as the owner of the goods, then *the lessee* surrendered the rights of ownership of the goods to the juridical *lessor* in order to secure the trust accounts *of the lessor.* However, When seen from a practical concept of fiduciary guarantee object, is at once the object of *leasing.* In this case the object ownership legally in *leasing* is fixed on *the lessor,* whereas in the fiduciary guarantee should the giver of the fiduciary is the owner of objects into objects, fiduciary guarantee in construction guarantees the ideal fiduciary is that the giver of the fiduciary rights ownership of objects to the recipient in fiduciary trust. So there is a mismatch between the practice with ideally.

## 2. Legal protection of the parties in respect of the object of Leasing Object Fiduciary Guarantee as well as a guaranteed

The right of option is a right of *the lessee* in a treaty *leasing the kind of financial lease* to choose whether to buy capital goods that became the object of *leasing* or will extend the *leasing* or return goods *leasing* at the end of the agreement. In practice it turns out that there is a financing company in which case the right of option to purchase capital goods thus already in use at the beginning of the making of the agreement, especially the *leasing* of motor vehicles. Even *the lessee* had already signed a letter of agreement is also selling capital goods. This is not in accordance with the principle of *leasing*.

In general the *leasing* in practice determined that *the lessor* has the right to set bail *leasing* or rental *lease* in advance. In such case, then guarantee *leasing* or rental *lease* in advance is a guarantee of top obedience and willingness to perform the *lessee* agreement *lease,* as well as any changes and updates. Guarantees of *lease* or rental *lease* in advance not flowering and can not be taken into account as a *leasing* or lease a portion of it and is the purchase price of the goods *leasing* when *the lessee* to use the right options to purchase goods *leasing*, or refunded to *the lessee* at the end of the period of *lease* if *the lessee* cannot use the option to purchase goods *leasing* , having reduced by the amount of money that may be indebted to *the lessor.*

If in *leasing* agreements set out the other form of guarantee in addition to the guarantee of the *leasing* and/or tenancy *lease* in advance, then the guarantee is considered guaranteeing all the claims *of the lessor* in the order the use of guarantees established by *the lessor.*

Usually in the *lease, the lessor* requires other additional guarantees as guarantees, either material or guarantee individual guarantee (*borgtocht*). One of the collateral material that is widely used is the fiduciary guarantee, that in fact there are problematic in the execution of this fiduciary guarantee. Fiduciary guarantee as additional agreement (*accessoir*) that follows the agreement *lease,*its object is usually the object of *leasing* itself. It is thus not in accordance with the principle of fiduciary guarantee, as collateral in a fiduciary, fiduciary giver (*the lessee*) should own the objects into objects, fiduciary guarantee and proprietary rights on the giver of

this fiduciary delivered to recipients of fiduciary relationships (*the lessor*). In the agreement , *the leasing* of goods that become the object of *leasing* a new switch on the part of *the lessee* if at the end of the agreement *the lessee* to use the right of option to purchase goods *leasing.* On the *leasing* agreement should have ownership rights over objects of the object *of leasing* remains in *the lessor.* Fiduciary assurance practice in *leasing* agreements of the sort can actually be detrimental to *the lessor, the lessee* because in fact has become the giver of the fiduciary guarantee against the rights of ownership of the object has not been there for him, so that in such a thing should not happen guarantee fiduciary. In spite of such practices by finance companies, for not knowing clearly how the concept of fiduciary guarantee when applied on a treaty *leasing.* In general they only know that the fiduciary guarantee is a guarantee that in this case the objects are still controlled by the party giver guarantee.

In the event *the lessee* to use the right option at the beginning of the agreement, which was later continued with the sale and purchase agreement between *lessor* and *lessee*, the agreement anyway, i.e. *leasing* agreement does not comply with the principle of *leasing,* so that agreements such as the Treaty of selling in installments. With the agreement of that sort, then since the surrender of property objects already on *the lessee,* so agreement *accessoir*-guarantee agreement, fiduciary relationships with objects of the same Treaty with the *leasing* agreement can be made, because in the fiduciary guarantee of the only party that has the right of ownership over objects that can become givers fiduciary the absolute terms, because of the occurrence of the fiduciary guarantee is the delivery of the possession of the giver of the fiduciary fiduciary to the recipient. The practice of the use of the fiduciary guarantee with the same object with the object of *leasing* a lot done on the *leasing* object with a motor vehicle. For *leasing* agreement with the object of heavy equipment is usually *the lessee* also requested additional guarantees, but its object is not the object of *leasing*. To guarantee repayment of the financing granted by finance companies, usually *the lessee* requested submit additional guarantees. The object of this additional warranty is not the same as the object of *leasing,* because on the *leasing* agreement the ownership rights over the objects still exist on *the lessor,* so there might be financing undertaken by *the lessor* is secured with its own objects. Although the option is actually used by *the lessor* at the beginning of the agreement, but property rights over an object the object of *leasing* remains in *the lessor.*[19]

Just as in bank credit agreement, agreement on the *lease,the lessor* requires in order to guarantee *the lessee* responsilities to pay installments on time. The main guarantee of the bank credit in the form of the belief that the debtor will be able to pay in installments, unequivocally determined in law number 7 of 1992 About banking, which has been amended by Act No. 10 of 1998, in article 8 that "in providing credit, public bank is obligated to have confidence over the ability and willingness to pay off the debt the debtor is exchanged. This principle is also applied generally in the *leasing.*

In the practice of financing undertaken by finance companies, in this case there are also provisions on the principle of know your customer, which is set in the FMD No. 30/ FMD. 010/2010 On the application of the principle of know your Customer For a Non Bank

financial institutions. In the FMD is mentioned on how to recognize the customer to acquire beliefs in conducting the legal relationship with the customer in question.

The guarantee can be one of the things that can be used to convince creditors in providing financing. However, if the return on the principle of financing by *leasing the* wrongone goal is to help small and medium entrepreneurs to obtain financing in an easy way and should by no special warranties, as this can be an obstacle for businessmen who do not have enough objects to be used as a guarantee. It turns out that in the practice of *leasing,* although the material guarantee agreement is referred to as an additional guarantee, but usually always required the existence of a guarantee for *the lessee* who get financing by *leasing* .

Article 3 paragraph (3) the number 84/FMD FMD. 012/2006, which mentions that all lease agreements, property rights over capital goods object of the lease transactions are on Company financing.

Fiduciary assurance practice in *leasing* agreements with the same assurance object with the object of *leasing* that is secured by fiduciary guarantee in questionasposed above can actually be detrimental to *the lessor, the lessee* because in fact has become the giver of the fiduciary guarantee against the rights of ownership of the object has not been there for him, so that in such a thing should not happen guarantee fiduciary.

*Leasing* agreements secured by fiduciary guarantee with the same object with the object of *leasing* agreement by finance companies, due to not knowing clearly how the concept of fiduciary guarantee when applied on a treaty *leasing.* In general they only know that the fiduciary guarantee is a guarantee that in this case the objects are still controlled by the party giver guarantee.

In the event *the lessee* to use the right option at the beginning of the agreement, which was later continued with the sale and purchase agreement between *lessor* and *lessee*, the agreement anyway, i.e. *leasing* agreement does not comply with the principle of *leasing,* so that agreements such as the Treaty of selling in installments. With the agreement of that sort, then since the surrender of property objects already on *the lessee,* so agreement *accessoir*-guarantee agreement, fiduciary relationships with objects of the same Treaty with the *leasing* agreement can be made, because in the fiduciary guarantee of the only party that has the right of ownership over objects that can become givers fiduciary the absolute terms, because of the occurrence of the fiduciary guarantee is the delivery of the possession of the giver of the fiduciary fiduciary to the recipient.

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[1] to this day among economists there are also not yet in common opinions about what constitutes capital. If seen from its history, then the notion of capital was *physical oriented*. In terms of the capital classic, "the meaning of capital itself is as a result of production that was used to produce more". In the process it turns capital began to sense are *non-physical oriented*, more emphasis on value, buying power or power wear or use, contained in capital goods. Jackson and Mc Connell in http//www. forumbebas.com, June 9, 2015, stated capital or investment goods related to the overall material and tools involved in the production process as a tool (utensil), machinery, equipment, plant, warehouse, transportation, and distribution facilities that produce goods and services used for the end consumer.

Mansfield argued similar statements, capital associated with buildings, equipment, supplies, and other production resources which contribute to the activities of production, marketing, and distribution of goods.

[2] http//URwww.wikipedia.org, 4 November 2015

[3] See Beckman and Joosen in SitiIsmijatiJenie, *the position of Leasing Agreements in the Legal Alliance Indonesia, as well as the prospect of its legal aspects of the setting in the future*, dissertation, University of GadjahMada in Yogyakarta, 1998, pp. 14.

[4] MunirFuadi's, *Law on Financing in theory and practice,* PT Citra AdityaBakti, Bandung, 1995, pp. 14-15.

[5] Richard Burton Simatupang, *legal aspects in business*, a second Mold, Rineka Copyright Jakarta, 2003, pp. 102.

[6] *Ibid*, pp. 103

[7] Werner Menski, *Comparative Law in A Global Context, The Legal Systems of Asia and Africa,* Second Edition, United Kingdom: Cambridge University Press, 2006, PG. 24. 187.

[8] In this case, there are two aspects of the research, namely the aspects of *legal research,* i.e. Research object still exists in the form of law within the meaning of the "*norm",* and *socio research*, namely the use of the methods and theories of social science of law to help researchers in conducting the analysis. This approach remains in the realm of law, just a different perspective. See Zamroni, *the development of social theory, introduction to* Yoga, Tiara, 1992, pp. 80-81. Authors disagree with Peter Mahmud Marzuki who suggested that *socio legal research* (research socio legal) instead of legal research. See Peter Mahmud Marzuki, *legal research,* Kencana, Jakarta, 2005, pp. 87-91. Isn't science development has now been experiencing a shift towards a holistic approach. The method of science began to leave the ways atomisasi the subject, i.e. works by memecah-mecah, separated, menggolong-golongkan (*fragmented*). The underlying philosophy is the Cartesian and Newtonian. SatjiptoRahardjo, see *legal science: search, liberation and enlightenment* (Editor KhudzaifahDimyati), Muhammadiyah Surakarta University Press, 2004, pp. 42-48. See also in Ahmad Gunawan and Mu'amar Ramadan (Editor), *initiated a Progressive Law Indonesia,* Yogyakarta, Student Library-IAIN WaliSanga, Semarang, 2006, pp. 13. Compare also with Terry Hutchinson opinion which recognizes that *socio legal research* as part of legal research with the term *Fundamental Research.* View Terry Hutchinson, *Last and Writing in Law,* Piramont-NSW, 2002, pp. 9

[9] Bryan a. Gardner, *Black's Law Dictionary*, eighth edition, Thomson West, United States of America, 2004.

[10] Richard Burton Simatupang, *legal aspects in business*, a second Mold, Rineka Copyright Jakarta, 2003, pp. 102.

[11] *Ibid*, pp. 103

[12] see the Tan Kamello, *the law of Fiduciary Guarantee a need the coveted*, Alumni, Bandung, 2006, pp. 39.

[13] r. Subekti, *issues of civil law,* Intermasa, London, 1982, pp. 82.

[14] GunawanWidjaja and Ahmad Yani, *a series on business law, Fiduciary Guarantee,* King GrafindoPersada, Jakarta, 2000, pp. 115.

[3] a. Hamzah and Serjun M, *Fiduciary Institution and its application in Indonesia* , Jakarta, Indhill, 1987, pp. 34

[16] a. Hamzah and Serjun M, *loc. cit.*

[17] GunawanWidjaja and Ahmad Yani, *Op. Cit*. PG. 129.

[23] SitiMalikhatunBadriyah, *Fiduciary Guarantee in Indonesia (after the enactment of Act No. 42 of 1999)*, the Publisher UniversitasDiponegoro, Semarang, 2005, pp. 28.

25 Kashadi, *op. Cit,* p. 173

[19] personal interview with Anwar Ali, PT. Clemont Finance in Jakarta on January 28, 2010.

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**Original**

It is not in accordance with the principles of fiduciary, because the fiduciary, the giver of fiduciary (lessee) should be the owner of the object which is the object of fiduciary guarantee, and ownership rights that exist on the giver of fiduciary is delivered to the recipient of fiduciary (lessor), while in leasing agreement, leasing object shall belong to the lessee if at the end of the agreement lessee choose the option to purchase the lease object.