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The Difference between Leasing, Loans and Financing Referring to the Law and Regulations

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Informasi Artikel	Abstrak
<p>Histori Artikel: Diterima : 27-03-2023 Direvisi : 31-05-2023 Disetujui : 19-06-2023 Diterbitkan : 30-06-2023</p> <p>Kata Kunci: Kredit Pinjaman; Pembiayaan; Sewa Guna Usaha</p> <p>DOI: 10.28946/sc.v30i1.2780</p>	<p>Istilah leasing, pembiayaan dan pinjaman sering disalahgunakan karena orang sering menganggap ketiga istilah memiliki arti yang sama. Padahal, istilah-istilah tersebut merupakan skema dan peran yang berbeda berdasarkan undang-undang yang berlaku. Masing-masing pembiayaan memiliki tujuan penggunaan yang berbeda. Kajian yuridis normatif ini membahas tentang perbedaan antara sewa, pembiayaan dan pinjaman atau kredit berdasarkan peraturan perundang-undangan yang berlaku. Penelitian ini menggunakan penelitian kepustakaan dan peraturan perundang-undangan terkait. Hasil penelitian ini menunjukkan adanya perbedaan yang signifikan antara skema leasing, pembiayaan dan pinjaman. Leasing untuk kegiatan usaha produktif dan pembiayaan untuk kegiatan konsumtif, sedangkan kredit untuk semua segmen. Leasing dipergunakan untuk pembelian barang-barang produktif dan pembiayaan konsumen untuk pembelian barang-barang konsumtif. Ketiga jenis pembiayaan disediakan oleh lembaga keuangan. Leasing dan pembiayaan disediakan oleh perusahaan pembiayaan. Pinjaman disediakan oleh bank. Setiap skema menargetkan pasar nasabah yang berbeda dan memiliki keuntungan serta kerugian yang berbeda bagi penyedia dan pelanggan. Leasing memberikan keuntungan dari segi perpajakan dibandingkan pembiayaan lainnya. Selain itu, hak kepemilikan barang juga berbeda antara leasing, pembiayaan dan pinjaman. Perjanjian dengan jaminan barang disesuaikan dengan jenis pembiayaan juga berbeda antara pembiayaan yang satu dengan lainnya. Penelitian lanjut dapat dilakukan dengan melakukan penelitian empiris melalui survei lapangan hingga focus group discussion. Dengan focus group discussion, maka pendapat para pelaku usaha dapat disimpulkan dalam diskusi bersama tersebut. Dengan demikian, hasil penelitian akan melengkapi penelitian yang telah ada.</p>
<p>Article Info</p> <p>Article History: Received : 27-03-2023 Revised : 31-05-2023 Accepted : 19-06-2023</p>	<p>Abstract</p> <p><i>The terms leasing, financing and lending are often misused because people often think that all three terms mean the same thing. In fact, these terms are different schemes and roles based on applicable laws. Each financing has a different purpose of use. This normative juridical study</i></p>

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discusses the differences between leasing, financing and loans or credit based on the applicable laws and regulations. This study uses library research and related laws and regulations. The results of this study indicate that there are significant differences between leasing, financing and loan schemes. Leasing for productive business activities and financing for consumptive activities, while credit is for all segments. Leasing is used to purchase productive goods and consumer financing to purchase consumer goods. The three types of financing are provided by financial institutions. Leasing and financing is provided by finance companies. Loans are provided by banks. Each scheme targets a different customer market and has different advantages and disadvantages for providers and customers. Leasing provides advantages in terms of taxation compared to other financing. In addition, property rights also differ between leasing, financing and loans. Agreements with collateral for goods are adjusted to the type of financing that also differs from one financing to another. Further research can be carried out by conducting empirical research through field surveys to focus group discussions. With a focus group discussion, the opinions of business actors can be concluded in the joint discussion. Thus, the research results will complement existing research.

INTRODUCTION

At the beginning of 2023, forced car repossessions on the road by debt collectors occurred again as customers failed to pay their installments.¹ Companies that provide the loan is often referred to as *Leasing* in Indonesia. Metro Jaya Police Chief Inspector, General Fadil Imran, stated that *Debt Collectors* are banned from speaking harshly, using violence and terrorizing the customers.² The Association of Indonesian Finance Companies/Asosiasi Perusahaan Pembiayaan Indonesia (APPI) has stated that illegal debt collectors that are not assigned by the leasing company should be sued.³ The term leasing company itself does not refer to financing company that specifically finances retail customers but productive activities. In fact, finance companies are companies that finance consumer goods.

Leasing company is an influential legal institution that is rarely analyzed in academic discussions. The law society often refer to this company as *leasing* property.⁴ The term leasing is also more familiar when it is used in aircraft leasing context. Airline companies often rent planes

¹ Shafira Cendra Arini, 'Marak Kasus Debt Collector Tarik Paksa Kendaraan, Begini Tanggapan Leasing' <<https://finance.detik.com/moneter/d-6608089/marak-kasus-debt-collector-tarik-paksa-kendaraan-begini-tanggapan-leasing>>.

² Abdul Haris Maulana, 'Singgung Perusahaan Leasing Yang Pakai Jasa "Debt Collector", Kapolda Metro: Tidak Boleh Menggunakan' <<https://megapolitan.kompas.com/read/2023/02/22/09215091/singgung-perusahaan-leasing-yang-pakai-jasa-debt-collector-kapolda-metro?page=all>>.

³ Syarizal Sidik, 'Nah Lho! Debt Collector Ilegal Leasing Bisa Dilaporkan Polisi' <<https://www.cnbcindonesia.com/market/20210930165346-17-280484/nah-lho-debt-collector-ilegal-leasing-bisa-dilaporkan-polisi>>.

⁴ Thomas W Merrill, 'The Economics of Leasing' (2021) 12 Journal of Legal Analysis, [221].

from aircraft leasing companies as they do not always have their own planes. Leasing is a financing scheme used by productive business activities.

Leasing has been used as a mechanism to achieve business goals in sustainable manner. In the context of sustainable business, the term leasing is often associated with the *green lease* which refers to the labelling of business entity that applies sustainable development criteria.⁵ *Leasing* also refers to a medium-term financing mechanism that helps companies to purchase machines, equipment and property for productive purposes.⁶ Leasing is a form of financing company activities.

A finance company is a business entity that carries out financing activities for the procurement of fund goods / or services based on the Financial Services Authority Regulation (POJK) No. 29 / POJK.05/2014 Article 1 (1).⁷ These goods and/or services are secured by a fiduciary guarantee ⁸ or the transfer of rights to movable goods and/or services, whereby the original owner continues to use the goods. The fiduciary acts as the owner of the goods in accordance with Law No. 42 of 1999 on fiduciary guarantees.⁹ Financing and loans have become a form of activity that can encourage the creation of a sustainable environment.

Besides *green lease*, green financing is one of the financing alternatives that provides positive benefits for the environment.¹⁰ There is also a mechanism called sharia financing provided by sharia financial institutions that applies sharia principles.¹¹ Sharia principles are derived from Islamic law in banking or financing activities as agreed by Islamic ulama institution. The law No. 7 of 1992 on Banking also stipulates the explicit provisions of bank management based on the principle of profit sharing.¹²

⁵ Dave Collins, 'Green Leases and Green Leasing in Theory and in Practice: A State of Art Review' (2019) 11 *Facilities*, [813].

⁶ Suwinto Johan, 'Is Leasing a Debt? According to Suspension of Debt Payment Obligations Law' (2022) 4 *Borobudur Law Review*, [24].

⁷ Tedy Setiawan Saputra, Isnurhadi Isnurhadi and Harsi Romli, 'Pengaruh Inflasi Terhadap Tingkat Piutang Bermasalah (Non Performing Loan) Perusahaan Pembiayaan Di Kota Palembang' (2019) 10 *Jurnal Ilmiah Ekonomi Global Masa Kini*, [99].

⁸ Suwinto Johan, 'Implementation Fiduciary Registration According to Finance Ministry, Police, and Financial Services Authority (OJK)' (2021) 22 *The Winners*, [183].

⁹ *ibid.*

¹⁰ Dayong Zhang, Zhiwei Zhang and Shunsuke Managi, 'A Bibliometric Analysis on Green Finance: Current Status, Development, and Future Directions' (2019) 29 *Finance Research Letters* 425 <<https://doi.org/10.1016/j.frl.2019.02.003>>.

¹¹ Suwinto Johan, 'Complementary or Substitute: Sharia Financing, Green Financing, and Sustainable Development Goals?' (2022) 17 *International Journal of Sustainable Development and Planning* [487].

¹² Dinilah Ardia and Kurnia Yuniar Lestari, 'Analisis Kebijakan Angsuran Paa PT. Adira Finance Syariah Nganjuk Terhadap Hukum Syariah' (2023) 10 *Jurnal Dinamika Ekonomi Syariah*, [120].

Credit or loan debt is a loan provided by financial institutions or banks.¹³ As defined by the Law No. 10 of 1998 on Banking, bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms in order to improve people's living standards.¹⁴ Banks are one of the institutions provide loans with collateral as the guarantees.¹⁵ The Law No. 10 of 1998 on the principles of banking explains loan or credit as the lending of fund, where the borrowing party has an obligation to pay off the debt in a certain time with a predetermined amount of interest.¹⁶

Consumers who use goods purchased by financing, *leasing* and credit is a consumer user.¹⁷ The Consumer Protection Act No. 8 of 1999¹⁸ states that if a user has a child, and the child uses the goods financed or credited, then the child is a consumer finance companies, banks and companies *leasing*. The community often misinterprets the term financing, leasing and loan. The term "leasing" refers to a lease agreement¹⁹, while "financing" refers to the provision of funds for a purchase²⁰. This study explains the definitions and implementation of financing, leasing, and loan for better comprehension of the differences in the meaning among the three.

Based on the research objectives, this study was conducted to answer these following questions.

1. What is the difference between *leasing*, credit and financing based on the law and regulations?
2. What are the implications of *leasing*, credit and financing based on law and regulation?

¹³ Christine Tri Kurniasari, Krisnadi Nasution and Sri Setyadji, 'Dasar Hukum Pelaksanaan Mitigasi Resiko Kredit Pada Sektor Perbankan' (2020) 5, *Jurnal Akrab Juara*, P.112 <<https://doi.org/10.1016/j.jnc.2020.125798>><<https://doi.org/10.1016/j.smr.2020.02.002>><<http://www.ncbi.nlm.nih.gov/pubmed/810049>><<http://doi.wiley.com/10.1002/anie.197505391>><<http://www.sciencedirect.com/science/article/pii/B9780857090409500205>>.

¹⁴ Irvan Muhamad Rizky and Azib, 'Pengaruh Pembiayaan Murabahah, Murabah Dan Musyarakah Terhadap Return on Assets' (2022) 5, *Jurnal Riset Manajemen*, [17].

¹⁵ Ida Kurniasih and Anjar Permana, 'Pembebanan Hak Pada Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Perjanjian Kredit Perbankan' (2020) 3, *Pemuliaan Hukum*, [1].

¹⁶ Oktariansyah Oktariansyah and others, 'Standar Penanganan Pinjaman Bermasalah Pada Koperasi Kredit Himpunan Usaha Bersama Desa Cintamanis Baru Kecamatan Air Kumbang Kabupaten Banyuasin' (2022) 18, *Jurnal Media Wahana Ekonomika*, [527].

¹⁷ Novia Dwi Khariati, 'Perlindungan Hukum Konsumen Bagi Penarikan Paksa Kendaraan Oleh Debt Collector' (2020) 20 *Perspektif Hukum* 347 <<https://perspektif-hukum.hangtuah.ac.id/index.php/jurnal/article/view/84/69>>.

¹⁸ Suwinto Johan, 'Who Is the Real Consumer in a Credit Purchase Transaction ?' (2021) 11, *Jurisprudence*, [17].

¹⁹ Febby Ayu Gurning and others, 'Analisis Manajemen Risiko Pengguna Sewa Guna Usaha (Leasing) Di Indonesia' (2022) 3, *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam*, [988].

²⁰ *ibid.*

3. How should a customer choose between *leasing*, loans, and financing?

These three types of financing have different characteristics and different implications for consumers or customers. In addition, the three types of financing are also provided by different financial institutions. Leasing, financing and loans already have a sharia version. In-depth discussions regarding the advantages and disadvantages of leasing, financing and loans are still rare. Leasing is a financing alternative that rarely gets research in finance, economics and law. In fact, leasing and consumer financing is one source of financing. This source of financing has advantages not obtained from bank loans. Bank loans receive a lot of attention from both the financial side and the form of the debt agreement. The discussion only focuses on profits rather than leasing. However, discussion by specifically discussing comparisons is still rare.

METHOD

This normative juridical study or legal study was performed by analyzing the literatures relevant to this matter. This method examines literature materials or secondary research materials as the basis in discussing the issues. The materials included legal norms and legal principles that are analyzed based on the legal systematics to draw vertical and horizontal synchronization between laws and regulations of the topic.

This study regarded primary, secondary data gained from legal materials and tertiary materials.²¹ Secondary data were gained from the review of publications with strong relevancy to the topic. literature reviews of various publications. Tertiary materials were materials that support the primary and secondary materials. In general, the data of this study were collected from a variety of sources, including the laws and regulation, data on loans with collateral and execution of collateral with interviews of business actors.

This study employed a legal approach to examine relevant laws and regulations. The use of normative juridical method allowed the researchers to examine, identify, and propose adjustment to the existing laws and regulations. The primary materials included the 1945 Constitution of Indonesia and other regulations, while secondary materials sourced from journal articles on law, scientific books, legal theories, seminar *proceedings* and other scientific articles as secondary

²¹ Mahmud Peter Marzuki, *Penelitian Hukum: Edisi Revisi* (Revisi, Kencana Prenada Media Grup 2017) <<https://opac.perpusnas.go.id/DetailOpac.aspx?id=1409842>>.

material. Whereas, tertiary materials were materials that further described the primary and secondary materials.²²

DISCUSSIONS

1. The differences between *Leasing Loans, credits and financing*

Finance companies provide leasing and financing services. Financing service is stipulated in several regulations, including the Letter of the Minister of Finance, Minister of Industry and Minister of Trade number N.KEP-122/MK/IV.2/1974, 32/M/SK/1974, and 30/KPB/I/1974 on Business Licensing Leasing. As a legal entity, a finance company conducts their business based on the Financial Services Authority Regulation No. 35/POJK.05/2018 on financing company business, and the Law No. 4 of 2023 on strengthening and developing the financial sector. Banking, on the other hand, is regulated by Law NO. 8 of 1998 on Banking. Leasing, including leasing for consumer finance, is regulated by POJK Regulation No. 35/POJK.05/2018 as the main business activities of finance companies aside consumer finance services.

According to POJK regulations, finance companies are authorized to conduct investment financing, working capital financing, and multipurpose financing. Investment and working capital financing are mainly directed towards business activities, while multipurpose financing targets consumer goods or retail. Leasing, or the act of granting the use of a product or property in exchange for periodic payments, is neither classified as investment or working capital. Consequently, finance companies start using the term "financing" or "finance" rather than "lease" in their company names. The accounting of leasing follows the Financial Accounting Standards (PSAK) No. 30.²³

Table 1 Law

No.	Types	Legal Foundation
1.	Leasing	Decree (SK) with the Minister of Finance, Minister of Industry and Minister of Trade number N.KEP-122 / MK / IV.2/1974, 32/M/SK/1974

²² Suwinto Johan, "Perbedaan Perlindungan Privasi Konsumen," *Masalah Masalah Hukum* 51, no. 3 (2022): [250–58].

²³ Muhammad Idrus, 'Penerapan PSAK No. 30 Tentang Akuntansi Leasing Aktiva Tetap Pada Pt Bumi Sarana Beton' (2016) 19 Jurnal Imiah BONGAYA (Manajemen & Akuntansi) 1907 <<https://ojs.stiem-bongaya.ac.id/index.php/JIB/article/view/12>, diakses pada 17 Maret 2020>.

AND, 30/KPB/I/1974

2.	Loans	The Law No. 8 year 1998
3.	Financing	The Law No. 4 of 2023 on the development and strengthening of the financial sector and Financial Services Authority Regulation No. 35 / POJK.05/2018 on the implementation of the financing company business.

Leasing focuses on the provision of productive equipment such as machinery, equipment and other capital goods. Leasing targets business entities or companies as explained in Table 1. Leasing has the advantage that the ownership of financing goods is on behalf of the finance company.

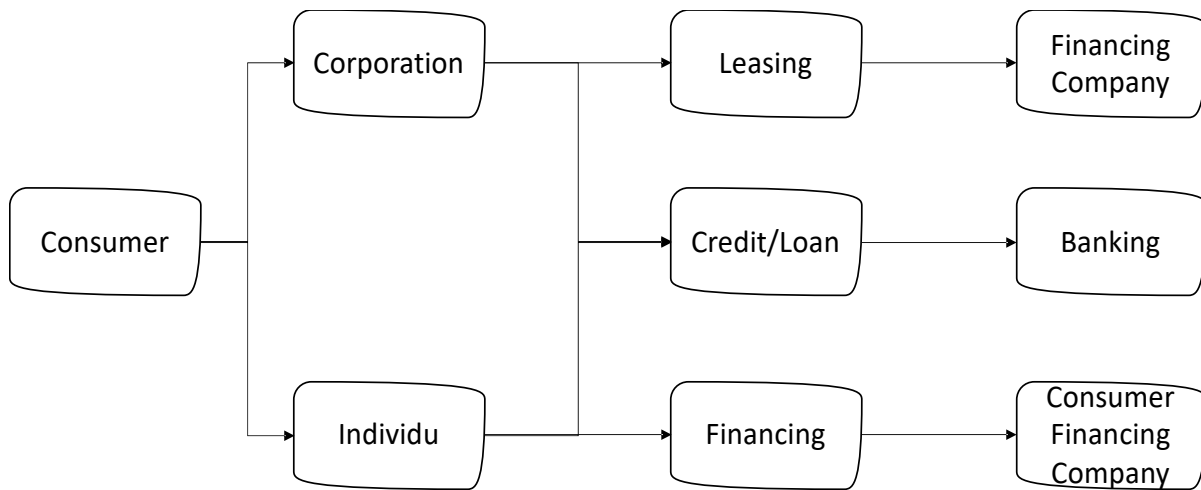
Table 2 Differences in Leasing, financing and Credit / Debt based on laws and regulations

No.	Parameters	<i>Leasing (Lease)</i>	Financing	Credit / Debt
1.	Financing Focus	Productive business activities such as companies or business entities	Consumer loans such as consumer finance	Productive and consumptive activities.
2.	Provision of Services	Finance Company	Finance Company	Banking
3.	Forms of Guarantee	Machinery, production equipment	Consumer goods such as electronics, motorcycles and cars	Both productive and consumptive.
4.	Ownership	Company <i>Leasing</i>	Consumers	Consumers
5.	Target Consumers	Business Entity	Individual	Business entities and individuals
6.	Forms of Agreement	Agreement <i>Leasing</i>	Financing Agreement	Loan Agreement

Unfortunately, the financing between business entities and individual often causes issues due to some restrictions. For instance, medium and small micro-businesses may encounter difficulties when purchasing a commercial vehicle, which is used both for daily business and

family activities on weekends, making it unclear to be either classified as business financing or consumptive financing. Meanwhile, leasing of machinery or equipment is more straightforward compared to multipurpose financing. Financing is a type of retail or consumptive financing with retail customers as end users. This mechanism usually helps the customer to buy motorcycles, cars, *mobile phone*, and other electronic equipment with more flexible policy adjusted to customers' needs as illustrated in Figure 1.

Figure 1 Schemes of Leasing, Financing, and Loan



Credit or bank loan or bank debt is a financial facility provided by the bank. Banks can provide both B2B and B2C loan facilities with a more stringent system compared with financing and *leasing*. The Bank provides financing for productive and consumptive business activities.

2. Implications for Customers Regarding *Leasing*, Loans and Financing

Leasing is preferred as it records all installment costs, while loans include bank interest as costs. In addition, the interest expense in *leasing* is tax deductible. Interest costs on financing are not tax deductible.

Table 3 Implications for Customers Following the *Leasing*, Loans, and Financing

No.	Parameters	<i>Leasing</i> (Lease)	Financing	Credit / Debt
1.	Customer benefits are based on recording in the financial	Monthly installments include the	The installment and the fees include principal	Only interest charges as fees, principal

	statements	principal debt and interest installments counted as rental costs, which can reduce taxes	and interest installments.	payments are not counted as fees
2.	Submission Process	Intermediate process	Fast process	Longer process
3.	Financing Value	Medium size amount	Small amount	Large amount
4.	Customer Options	Ownership rights when paid off	No options	No options

The verification process for leasing takes a few weeks due to the relatively high amount of fund involved. An analyst will examine the business performance of the applicants. On the other side, retail financing requires only hours to complete the verification process depending on the data and the goods. A customer must pay the down payment in a certain amount which is generally around 20% of the purchase value. Bank loans also require longer verification time as the banks need to analyze the feasibility of the loan debtors as explained in Table 2.

In leasing, customers that are business entities have the option to own the equipment being purchased based on the scheme outlined in the agreement. In financing, the property rights of the pledged goods are under the customers' ownership and goods are pledged on a fiduciary basis to the finance company. In loans, collateral remains customers' property yet they are transferred or pledged to the bank. Another difference also relates to the ownership of goods. For financing and leasing, finance companies ask for new items except for the scheme *sale and lease back*. Meanwhile in loans, customers need to provide collateral first before they are considered eligible to apply for the loans.

Islamic financing is also an alternative to the provision of working capital. Islamic financing applies a fixed margin mechanism unlike conventional financing which applies floating interest. In addition, some penalty or administrative costs are different between Islamic financing with conventional financing or bank loans. Expropriation of collateral will differ between leasing with financing and credit. Leasing does not require a fiduciary certificate and the ownership of the leased goods depends on its type. In general, in *leasing*, the goods are under the finance company's ownership, while finance *lease or sale and lease back*, the ownership is

on the consumer or customer. Whereas, in bank loans, the collateral remains under the ownership of the customers that any withdrawal requires document verification including loan agreements or financing and guarantee agreements such as fiduciary agreements.

Consumer financing uses a loan agreement with an additional agreement in the form of a fiduciary guarantee, while leasing does not require a loan agreement because the collateral is owned by the finance company. With the exception of sale and lease back financing, the ownership of the goods must be transferred to the financing company. While credit or loans can use a fiduciary agreement or guarantee agreement.

3. Choosing between *Leasing*, Loans, and Financing

These three mechanisms should be selected depending on the respective need, amount and time measurement of each customer. For a business entity that requires large financing, banks make good choice. Meanwhile, customers who need fast financing with relatively low amount of fund, leasing is a good option to take. In case of customers being in need to purchase certain goods, they could apply for financing that offers faster process. In bank loan, approval should be obtained in advance before purchases can be processed using credit cards. Loans allow customers to choose the goods they want to purchase, including houses through the public housing loans yet verification process takes longer time compared to finance company.

Business activities have limited capital, so leasing is an alternative. Purchasing machinery, purchasing equipment and other means of production, then leasing is the best choice. Meanwhile, consumer financing is for the purchase of consumer goods. Consumptive goods such as purchases of cell phones, cellphones, refrigerators, washing machines and others. Meanwhile, loans from banks are used to finance productive and consumptive goods.

CONCLUSION

Leasing, financing and loans have different characteristics with respective advantages and disadvantages. Customers can choose either of the three to fit their needs. The fundamental differences between those three relate to the different law and other relevant regulations, such as PSAK for financial statements. This study discusses the general implications on customers and financial service provider companies arising from the regulations related to these financial services. Future researchers are encouraged to develop this study by conducting empirical studies to examine customers' needs and perceptions on leasing, financing and loans. Leasing provides

financing for companies and consumer financing for individual consumers. Financing is provided by banks for individual consumers and companies. Leasing has tax advantages compared to credit or loans from banks from a consumer perspective. In addition, the ownership of goods is also different between leasing, financing and credit.

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