

JURIDICAL REVIEW OF SHARIA LEASING ACTIVITIES IN INDONESIA

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Abstract

The purpose of this study is to determine the position of legislation which directly regulates sharia leasing activities viewed from the hierarchy of laws and to find development opportunities leasing of sharia in Indonesia in other laws and regulations.

Methodology of this study used a qualitative approach by way of viewing the normative juridical side. The collection and processing of data is done using secondary data and primary data through a literature search to view the various laws and regulations that exist and the results of the researches, the results of the assessment and other references. The data is then analyzed qualitatively and supported by primary data to confirmed the secondary data through interviews with the Bapepam-LK, the Financial Services Authority and other concerned parties.

The conclusion of this study indicates that the Presidential Decree No. 9 of 2009 on Financing Institution is the highest legislation that directly regulates leasing activities of sharia in Indonesia. Furthermore fatwa issued by the DSN-MUI has become a reference point for sharia leasing businesses and accommodated by the government into the sharia leasing legislation. In addition, there are three other regulations that indirectly provide opportunities for the development of leasing sharia

in Indonesia, namely: (1) UUD/ 1945 Constitution, Article 33, paragraph 4 on National Economy; (2) Civil Code, Article 1338, paragraph 1 on Leasing; and (3) of Law No. 40 of 2007 on Limited Liability Companies, Article 1, paragraph 1 on Corporate Capital.

Keywords: Lease, Leasing, Bapepam-LK.

A. Introduction

The role of finance companies currently is greatly needed, in line with the growth of business and the business competition that is tight enough. The lease (*leasing*) can be an alternative solution for the development of some business sectors. The role of financial service industry is to provide funds for people who require sources of funding, both for the needs of investment, working capital, or consumption which are expected to be beneficial to raise the national¹ economy.

Although *leasing* is still relatively new but it is already quite popular in the business world today.

¹NiningWahyuningsih, Leasing in Sharia Perspective. *SewaGuna Usaha (Leasing) DalamPerspektifSyariah*. See:

https://www.google.co.id/webhp?sourceid=chromeinstant&rlz=1C1HOPT_enID594ID604&ion=1&espv=2&ie=UTF8#q=nining+wahyuningsih+leasing+syaria

²It was begun with the publication of several regulations in 1974 that set about leasing regulation. Then in 1980 total of leasing company was not more than 6 companies and increasing in 1984 became 48 companies. In 1984 - 1990, the growth of leasing company was quite rapid. In 1986 it had reached 89 and kept developing into 122 in 1990. Some operational or mechanism of leasing were changed, for example in terms of the method of calculating the assets for the benefit of the tax with regard to establishment of tax provision in 1984. In 1991 until now, the licensing process is facilitated so there are more and more leasing company and also multi finance companies. See: Nurwidiatmo, *KompilasiBidangHukumTentang Leasing*,

Starting from the *leasing* of valuable capital goods until the needs of offices and household, as well as *leasing* of motor vehicle which notabene is not directly related to business activities. In terms of the coverage area, *leasing* activity already operates in various major cities in Indonesia. Community can really feel the positive impact of *leasing*, especially when community is faced with the complexity of bureaucracy to obtain bank credit facilities so that leasing can be chosen as an alternative option³.

Through the activity of *leasing*, company can obtain operational capital with ease compared to the submission process of credit to a bank that needs requirements, and guarantees.⁴ The Company with capital is not very much, with a leasing it will be able to assist the company in running its business and by leasing will further save costs and time. The emergence of *leasing* institutions is an attractive alternative for entrepreneurs because they currently tend to use rupiah in cash for operational activities of the company.⁵ Through *leasing*, it can raise funds to finance the purchase of capital goods with period of repayment and other benefits, such as the ease of the process. There are some ease of *leasing* compared to other legal

Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2011.

³ Sutan Remy Sjahdeini, *Perbankan Islam Dalam Kedudukannya Dalam Tata Hukum Perbankan Indonesia*, Jakarta: Pustaka Utama Grafiti, 2007, 70.

⁴ Kasmir, *Bank dan Lembaga Keuangan Lainnya*, PT Raja Grafindo, 2004, Jakarta.

⁵ Suwardi K. Lubis, *Hukum Ekonomi Islam*, Jakarta: Sinar Grafika, 2000, Ed. 1, Cet. 93, 2.

institution, namely: (1) flexibility; (2) the cost is relatively cheap; (3) tax savings; (4) the process is simple; and (5) a lot of leeway for the lessee.⁶

Financing through *leasing* company has some fundamental differences compared to the method of financing provided through other financial institutions, such as banks or with other financing techniques, such as lease and lease-purchase.

Table 1 Leasing Financing and Other Financing Techniques

Description	Financing Method			
	Leasing	Buying-Leasing	Leasing	Bank Credit
Type of goods	Movable and immovable goods	Movable goods	Moving goods that need maintenance	All kind of investment
Lessee/ buyer	Company/ Individual	Company/ Individual	Company/ Individual	Company/ Individual
Type of Company	Legal entity	Supplier	Supplier	Bank
Right of goods	Leasing company	Goods owner	Goods owner	Debitur
Period	Medium	Short	Medium/ short/	Short /

⁶ Nurwidiatmo, *Kompilasi Bidang Hukum Tentang Leasing, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2011*

Total	100%	80%	long term Lower	medium 80%
Financing				
End of contract	1. Using the option to buy with the remain value to the debtor 2. Extend the contract 3. Return to the lessor	The goods become the property of the lessor	Goods returns to the owner	1. Loans paid-off 2. Guarantee return

Source: Amanita Novi Yushita has been modified.

Based on the table above, *leasing* is an alternative source of financing that has several advantages compared to other financing sources. Leasing transactions are often carried out without the need for cash advance and its finance can be given to 100%. This would help cash flow especially for company (lessee) who are trying to stand up or operate and the company that begins to grow. Looking from the terms of its agreement, *leasing* is more flexible because it is easier to adjust the financial state of the lessee as compared with banking. Periodic installment payment will be set based on revenue generated the lessee, so periodic installment payment settings can be adjusted with revenues generated objects that are rented. It means a new lease payments made after the leased capital goods have been productive. In addition the *leasing* company can do payment arrangements bubbled at the beginning or the end of their lease, seasonal payments in particular companies

engaged in farming, forestry and farm. In fact, it is probably also a grace period of payment in accordance with the State of the finances.⁷

In addition to the operating system based on conventional system, *leasing* can also operate based on sharia principle. Sharia principle is the principle based on the teachings of the Qur'an and Sunnah.⁸ In the context of Indonesia, sharia principle is the principle of sharia law in the activities of the financial institution on the basis of a fatwa issued by agencies that have the authority in the determination of the fatwa in the Islamic fields. Islamic finance system based on two major principles, namely: (1) the principle of *syar'i*; and (2) the principle of *tab'i*. The *syar'i* principle is the principle of free transactions, free of the manipulation of prices, free of *maghrib* (*maysir, gharar, riba* and *batil*).⁹ Transacting parties must consider the interests of the stakeholders who may be compromised, the transaction is based on mutually beneficial cooperation and solidarity, every transaction in order to benefit mankind.¹⁰ Whereas the principle of *tab'i* is produced through the interpretation of the principles of reason and science in running a business, such as capital management, cash flow management, risk management and more.¹¹

⁷ Amanita Novi Yushita, *Bank dan Lembaga Keuangan Lainnya*. See: <http://staff.uny.ac.id/sites/default/files/pendidikan/amanita-novi-yushita-se-msi/sewa-guna-usaha.pdf>

⁸ Muhammad Shafi'i Antonio, *Bank Syariah Suatu Pengenalan Umum*, Jakarta: Tazkia Institute, 1999.

⁹ Muhammad, *Aspek Hukum dalam Muamalat*, Yogyakarta: Graha Ilmu, 2007, Edition.1

¹⁰ Yahya Abdurrahman, *Mengungkap Keharaman Leasing*, Bogor: Al-Azhar Press, 2010, Cet. 2, 13-32

¹¹ Nining Wahyuningsih, *Sewa Guna Usaha (Leasing) Dalam Perspektif Syariah*. See: https://www.google.co.id/webhp?sourceid=chromeinstant&rlz=1C1HOPT_enID594ID604&ion=1&espv=2&ie=UTF-8#q=nining+wahyuningsih+leasing+syaria

The lease (*Leasing*) of sharia is financing activities is in the form of capital goods, either in the lease with the right of options (finance lease) or the lease without the right of options (operating lease) to be used by tenants in order to attempt (*lessee*) over a certain period based on payment in installments in accordance the principles of sharia. There are currently 10 sharia-compliant finance companies in Indonesia, namely: (1) PT Federal International Finance; (2) PT Semesta Citra Dana; (3) PT Mandala Multifinance Tbk; (4) PT Wahana Ottomitra Multiartha, Tbk; (5) PT Amanah Finance; (6) PT Fortuna Multi Finance; (7) PT Trust Finance Indonesia, Tbk; (8) PT Capitalinc Finance; (9) PT Al-Ijarah Indonesia Finance; and (10) PT Trimamas Finance.¹²

The currently legislation in force and becomes the main base of the operational leasing is Presidential Regulation (Regulation) No. 9 in 2009 about the Financing Institution. This Regulation No. 9 in 2009 about the Financing Institution becomes the main legal basis and it does not regulate leasing based on sharia principles. However, the Chairman of Bapepam-LK Ministry of Finance of Indonesia with an authority that has issued two owned regulations that govern sharia *leasing*, namely: (1) Regulation of Chairman of Bapepam-LK Number: PER-03/BL/2007 about the Finance Company Activities based on sharia principles; and (2) Regulation of Chairman of Bapepam-LK Number: PER-04/BL/2007 about the contracts used in the Finance Company Activities based on sharia principles.¹³ This second rule is absorbed from Fatwa DSN-MUI No. 09/DSN-MUI/IV/2000 on *Ijarah*¹⁴ and Fatwa

¹²See: <http://iecourse.blogspot.co.id/2010/09/lembaga-bisnis-syariah.html>

¹³Bapepam-LK, *Annual Report 2007* (Jakarta: Bapepam-LK, 2008).

¹⁴Sudarsono, *Pokok-Pokok Hukum Islam*, Jakarta: Rineka Cipta, 1996

DSN-MUI No. 27/DSN-MUI/III/2002 about *Ijarah Muntahiyah bi Tamlik*¹⁵ as done by other Islamic financial institutions, such as banking and sharia insurance adopt many fatwa into law and regulation.¹⁶

The next issue, whether the second rule becomes a strong legal basis for the sharia *leasing* operational in Indonesia. If it is seen from a positive law aspect, there is a juridical problem in it. This regulation product is only issued by officials like Chairman of Bapepam-LK and setting up sharia principles in it is not hierarchical, as well as the lack of harmony in legislation. This is caused in the regulations made by officials that are not mentioned and related to sharia principles.¹⁷

In practice, the regulation of related activities of sharia *leasing* has been reinforced by Fatwa DSN-MUI as authorities in the field of sharia economy.¹⁸ There are two types of contract that became a cornerstone of sharia *leasing*, namely that: (1) Fatwa DSN-MUI No. 09/DSN-MUI/IV/2000 about *Ijarah*.¹⁹ (2) Fatwa DSN-MUI No.

¹⁵Hendi Suhendi Fiqh Muamalah, Jakarta: PT Raja Grafindo Persada

¹⁶Isa Ansori, *the lease (Leasing) of sharia according to Regulation of Chairman of Bapepam-LK* Number: Per-04/BL/2007 and Per-03/BL/2007 and Juridical Problems enclosing them, *Journal Shariah law and Economics*, Vol.02 No. 1.

¹⁷Article 18 paragraph (2) of Regulations No. 10 in 2004 on Formation of the Regulations specify "Harmonization, rounding and establishment of the conception of proposed legislation comes from the President, coordinated by the Minister that the task and the responsibility in the field of legislation." Ministry of Justice and Human Rights Directorate General of Legislation, "*Harmonisasi Peraturan Perundang-undangan*".

See: <http://ditjenpp.kemenkumham.go.id/kegiatan-umum/49-kegiatan-direktorat-harmonisasi.html> (March 8, 2014).

¹⁸Assembly of Indonesia Ulama (MUI), *Himpunan Fatwa* (Jakarta: MUI, 2002), 20.

¹⁹*Ijarah* is fund transfer of right of use (benefits) of an item in a certain time with rental payments (*ujrah*), among the Finance Company as the rent giver (*mu'ajjir*) and tenants

27/DSN-MUI/III/2002 about *IjarahMuntahiyahbiTamlik*.²⁰²⁰ Fatwa DSN-MUI became the Foundation for the sharia *leasing* operational because Sharia as a product marketed by Islamic financial institutions should have a grounding fatwa and the rule of law. When positive law that does not exist, then the fatwa DSN-MUI be replacement prior to the positive law of the sharia.²¹²¹

The regulation mentioned above, basically it is been good enough for sharia *leasing* operational because it has been arranged in the form of Presidential Regulation and legitimized by the Government in the form of Regulation of the Chairman of Bapepam-LK, as well as DSN-MUI in the form of a fatwa. But still found the weakness of both regulations, for example, there is no detailed description of related mechanism of supervision performed by the Sharia Supervisory Board (DPS).²² Therefore, to optimally run the sharia *leasing* activities, it is required regulation of other supporters that indirectly provide opportunities for development of

(*musta'jir*) without the transfer of ownership of goods followed. See: Wahbah Al Zuhaily, Al-Fiqh Al-Islamiy wa Adillatuhu, Juz IV, Beirut: Dar al-Fikr, 1983, 427-429.

²⁰*IjarahMuntahiyahBitamlik* is fund transfer of right of use (benefits) of an item in a certain time with rental payments (*ujrah*), among the Finance Company as the rent giver (*mu'ajjir*) and tenants (*musta'jir*) accompanied by the option of property transfer rights over goods that are rented to tenants after completion of the period of the lease. See: Hendi Suhendi, Fiqh Muamalah, Jakarta: PT Raja Grafindo Persada, 2002.

²¹Ade Sofyan Mulazid, *Kedudukan Sistem Pegadaian Syariah dalam Sistem Hukum di Indonesia*, (Jakarta: Balitbang of Religious Ministry RI, 2012).

²²At first, the financing companies supervision are the Government authority in this case the Minister of Finance, as stated in the Regulation of the Minister of Finance Number: 84/FMK.012/2006 about Finance Companies. Then be affirmed again with Regulation No. 9 in 2009 about Financing Institution. See: Luthfi Asshiddieqy, *Tinjauan Hukum Tentang Perlindungan Konsumen Dalam Perjanjian Pembiayaan Konsumen Setelah Terbentuknya Otoritas Jasa Keuangan (OJK)*, *Journal of Ilmu Hukum Legal Opinion*, 5th ed., vol. 2, 2014.

sharia leasing business in Indonesia. With the supporters, it is hoped that sharia *leasing* business in the future can be maintained well and appropriate to the principles of sharia. Ministry of Finance of Indonesia continues to seek optimal function through improving coaching and supervision on an ongoing basis. Its goal is to ensure that the management of the leasing activities is in accordance with the applicable laws and regulations, including the sharia *leasing* in it.²³ This research aims to provide input for the businessman on how to operationalize sharia *leasing* and provide input to the authorities, Chairman of the Bapepam-LK, OJK and stakeholders.

Based on the background above, Juridical Review against Sharia Lease (*Leasing*) in Indonesia becomes relevant for further research. Through this study, it will be known the position of the regulations which directly govern the lease (*Leasing*) of sharia in terms of the hierarchy of legislation. In addition, it is also sharia *leasing* development opportunities in Indonesia in other legislation. Thus, this study deemed worthy to do.

B. Understanding the Leasing

Term of *leasing* is derived from the word "lease" which means a lease. Thus, *leasing* is a form of derivatives of the tenancy. But later in the developing world of business, tenancy in a more specific form called *leasing* and has changed its function into one of the finance types. *Leasing* cannot be separated with the activity of financing institution and *leasing* is one of the forms of business field done by the financing institutions, i.e.: venture capital, trade securities, credit cards and consumer

²³The research team, the study of financial reporting systems Implementation of financing Company, (Jakarta: the Bureau of Research and Information Technology, Ministry of Finance of Bapepam-LK RI, 2007), 1-3.

finance. While the financing institution is a business entity that engages capital financing in the form of the provision of funds or capital goods with not withdraw funds directly from the public. In article 2 paragraph 1 of the President Decree (No. 61 in 1988 about Corporate Financing, it is true *leasing* and venture capital still merged as one line of financing business. The regulation is the basis for the activity of leasing companies, venture capital, trade securities, factoring, credit cards and consumer finance. But 10 years later it has published also Presidential Regulation No. 9 in 2009 about Financing Institution include three companies, namely: (1) finance company; (2) venture capital; and (3) infrastructure financing. Whereas in Article 3, it is stated that *leasing* is one of the business activities of the finance company.²⁴

According to the Regulation of Finance Minister Number: 84/PMK.012/2006 about Finance Company, leasing means a financing activity in the form of provision of capital goods, either in the lease with the right of options (*finance lease*) or the lease without the right of options (*operating lease*) over a certain period based on payment at regular intervals. Thus, the lease is a contract or tenancy agreement. The object of the lease is capital goods and the *lessee* has the right of options at a price based on the value of the rest.

Whereas the definition of sharia leasing (*Leasing*) is financial activities in the form of capital goods, either in the lease with the right of options (*finance lease*) or the lease without the right of options (*operating lease*) for use by tenants in order to

²⁴ Nurwidiatmo, *Kompilasi Bidang Hukum Tentang Leasing, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2011.*

attempt (*lessee*) over a certain period based on payment in installments in accordance the principles of sharia.²⁵

If viewed from management and administration aspects, sharia *leasing* is not much different from the conventional *leasing*. Sharia *leasing* has the principle, function and purpose that align with national leasing. In the implementation of operational activities, sharia *leasing* is similar to conventional *leasing* because both are equally disburse funding to the advantages-oriented community. Both also equally located in the frame of the system of national leasing that is subject to the same legal rules, i.e. the national leasing law. Although in general there are some similarities, but *leasing* has own principles of sharia especially in performing its business activities that might not be compromised with the prevailing system in conventional *leasing*. By itself in some aspects between sharia and conventional *leasing*, there is a difference of principle. The general differences between sharia with conventional *leasing* can be showed in the form of the following table.

Table 2. The difference of Sharia and Conventional *Leasing*

No	Aspect	Syariah Leasing	Conventional Leasing
1	Law framework	Refer to sharia regulation and positive law	Refer only to positive law
2	Content of agreement	Describe in detail of capital expenditure, margin, insurance, administration and others.	No detail description
3	Level of profite	Profit Margin	Money interest
4	Penalty	To be social fund	To be company income

²⁵AndriSoemitra, *Bank dan Lembaga Keuangan Syariah* (Jakarta: Kencana, 2010), Cet.2, 394.

5	If there is any advance loan paid-off	Client not charge with administration fee (zero administration fee)	Client charges by administration fee
6	If loan settlement over due date	No term of current interest	Charge by current interest
7	Form of transaction	Murabahah with good as the object so it is bying-selling transaction	Leasing with the object of money with interest mechanism
8	Discount	If there is any unit discount, then the discount become the right of customer by reducing the selling price	If there is any unit discount, then the discount may be the right of dealer or customer
9	Insurance	Using Astra BuanaSyariah insurance	Using Astra BuanaConventional insurance
10	Premium Refund	If there is no permanent claim then there will be revenue sharing	If there is no claim then it will be an income for insurance company
11	Supervisor	Advisory Board of Sharia andBapepam LK	Bapepam LK
12	Fund resource	SyariahBank	Conventional Bank

Source: Training Module FIF Sharia YogyakartaBranch, 2007.²⁶

²⁶ Muhaimin, *Perusahaan PembiayaanSyariah di Indonesia (SebuahTinjauanAnalisisTerhadap Perusahaan Pembiayaan PT FIF Syariah)*.
<https://muhaiminkhair.wordpress.com/2010/04/29/perusahaan-pembiayaan-syariah-di-indonesia-sebuah-tinjauan-analisis-terhadap-perusahaan-pembiayaan-pt-fif-syariah/>

Based on the table above, the legal basis of sharia *leasing* activities refer to positive law and Islamic law while conventional *leasing* activities only subject and obedient to positive law only. On the other hand, sharia *leasing* has a similar structure with conventional *leasing*, for example, in this case there are Commissioners, Directors, Managers and others. But element that distinguish between sharia with conventional *leasing* is the necessity of the existence of Sharia Supervisory Board (DPS). DPS which oversees operational *leasing* and its products to conform with sharia lines.²⁷ In carrying out its functions, DPS is mandatory to subject and follow Fatwa DSN-MUI as set forth in the Regulation of Chairman of Bapepam-LK Number: PER-03/BL/2007 about Financing Activities of the Company based on Sharia Principles.

C. Regulations Which Directly Controls Sharia Leasing

1. Presidential Regulation (Perpres) No. 9 in 2009 about Financing Institutions

In general the legal basis of leasing is the Presidential Regulation No. 9 in 2009 about Financing Institution. However, this Regulation does not control *leasing* based on sharia principles.²⁸ Materials in this Regulation are 14 Articles. However, there is no article in this Presidential Regulation which control sharia *leasing*. The description of *leasing* is found in Chapter I about General Provisions Article 1 point 5.

²⁷Zainuddin Ali, *Hukum Ekonomi Islam* (Jakarta: Sinar Grafika, 2008), Cet. 47.

²⁸Isa Ansori, *Sewa Guna Usaha (Leasing) Syari'ah Menurut Peraturan Ketua Bapepam-LK Nomor: Per-04/BL/2007 and Per-03/BL/2007 dan Problem Yuridis Yang Melingkupinya*, *Journal Hukum dan Ekonomi Syari'ah*, vol. 7 No. 1

“The lease (Leasing) is financing activities in the form of provision of capital goods, either *leasing* with the right of options (*Finance Lease*) or leasing without the right of options (*Operating Lease*) for used by the *Lessee* during a certain period based on installment payments.”

In addition, found in Chapter II about Types of Business Activities and Establishment of Financing Institution Article 3 part a.

“The Business Activities of Financing Institution are: (a) Lease; (b) Factoring; (c) Credit Card; and/or (d) Consumer Financing”.

Based on the description above, Article 1 point 5 and Article 3 part a cannot be used as a legal basis for the development of sharia *leasing* in the future. This is because it does not clearly regulate the existence of leasing based on sharia principles, moreover, it does not control how the technical implementation of sharia leasing activity in relation to administration management activities. Similarly, Presidential Regulation No. 9 in 2009 about Financing Institution does not absorb Fatwa DSN-MUI, as carried out by other sharia financial institutions, such as banks and sharia insurance that have adopted fatwa into its regulations.

Whereas, when Presidential Regulation No. 9 in 2009 about Financing Institutions was set, Fatwa DSN-MUI about *Ijarah* and *Ijarah Muntahiyah bi Tamlik* that becomes the operational foundation of sharia *leasing* has been issued by DSN-MUI since 2000.²⁹

However, the Presidential Regulation No. 9 in 2009 about Financing Institutions has given big influence that serves as guideline in the implementation of business activities of sharia *leasing* in Indonesia. If this Regulation is abandoned by

²⁹Fatwa DSN-MUI No. 09/DSN-MUI/IV/2000 about *Ijarah* and Fatwa DSN-MUI No. 27/DSN-MUI/III/2002 about *Ijarah Muntahiyah bi Tamlik*.

sharia *leasing*, then it cannot run its business activities. It is even more when sharia *leasing* does its business activity which contrary to this Regulation, then it will receive sanctions of the administrative activities.³⁰ In the hierarchy of legislation, the position of sharia *leasing* system is less strong because it is only organized in the form of a Presidential Regulation.

Ideally, this Presidential Regulation No. 9 in 2009 about Financing Institutions also explains the operational leasing based on sharia principles. Then, it is acted upon and clarified by related Regulation or Ministry Decision, such as Finance Minister. In fact, the regulation of minister level as the descriptors of this Regulation also does not exist. Regulation of Ministry Level that controls *leasing* and is still valid to this day is the Decision of Finance Minister No. 1169/KMK.01/1991 about *Leasing* Activities replaces KMK No. 48/KMK/013/1991 about *Leasing*. Ironically, the Ministry Decision is not explanatory of Presidential Regulation No. 9 in 2009 about Financing Institutions because seen from the copyright, it had first appears rather than Regulation No. 9 in 2009 about the Financing Institution. The decision of the Minister is explanatory from Presidential Regulation No. 61 in 1988 about Financing Institutions, regulations that have quit earlier that also does not accommodate sharia principles in it.³¹

The impact of the absence of Finance Minister Regulation related to sharia *leasing*, finally Chairman of Bapepam-LK which makes the regulations refers to regulations made by the Ministry. But the regulations are not harmonized with the

³⁰ Default of this rule will be subject to sanctions as set forth in the Regulation of the Minister of Finance Number: 84/PMK. 012/2006 about the Finance Company

³¹ Isa Ansori, *Sewa Guna Usaha (Leasing) Syari'ah Menurut Peraturan Ketua Bapepam-LK Number: Per-04/BL/2007 and Per-03/BL/2007 dan Problem Yuridis Yang Melingkupinya*, *Journal Hukum dan Ekonomi Syari'ah*, vol. 7 No. 1.

regulations above, namely the Regulation of the Chairman of Bapepam-LK Number: PER-03/BL/2007 about Finance Company Activities based on Sharia Principles and Regulations of the Chairman of Bapepam-LK Number: PER-04/BL/2007 about the contracts used in the company's Financing influences based on sharia principles. However, the breakthrough of the Chairman of Bapepam-LK should be appreciated because it gives umbrella and certainty legal that is necessary a written mainly business related in dealings many parties and big capital.³²

According to author opinion, because of the increase of growing business in the sector of sharia leasing in recent times, it is needed to be regulated more specifically, whether the legality of operations, types of business activities, business licensing, regulatory restrictions, a form of legal entity, share ownership, mergers, takeovers, smelting and supervision.

There is no regulation that controls sharia *leasing* autonomously, causing this business cannot developed optimally. Therefore, the realization of the Bill (RUU) about Financing Institutions that control sharia *leasing* can soon be published to become an umbrella law for the business people in running their business.³³ As author searches, this Bill (RUU) has been proposed by Bapepam-LK to DPR and has already entered into the Prolegnas 2010-2014, and entered in the list of priorities.³⁴ It hopes that not in a long time, DPR can ratify the Bill (RUU). If this is passed, it will help the development of sharia *leasing* business in the future. Sharia

³² Isa Ansori, *Sewa Guna Usaha (Leasing) Syari'ah Menurut Peraturan Ketua Bapepam-LK Number: Per-04/BL/2007 and Per-03/BL/2007 dan Problem Yuridis Yang Melingkupinya*, *Journal Hukum dan Ekonomi Syari'ah*, vol. 7 No. 1.

³³ FX Soekarno, Chairman of DPR-RI, Directions of Legislation Policy for Preparing the Prolegnas 2010-2014, *Research which* delivered in Prolegnas Workshop held by BPHN, Department of Law and Human Rights, on June 10, 2014.

³⁴ Interview with Diana, the staff of Baleg DPR RI, March 30, 2016.

leasing in the corporation remains in one entity with conventional *leasing*. At a future date at a specified period and conditions ideally needs to be split off into a Sharia Business Units (UUS) as performed by banking. Of course with the meet of ordinances and requirements set by the government.

It is important to know, at this time the function and authority of the Bapepam-LK have been taken over by Financial Services Authority (OJK) under the Law No. 21 of 2011 about Financial Services Authority. Chapter XIII Transitional Provision of Article 55 paragraph 1 mentions that since December 31st, 2012 the functions, duties and powers of the setting, as well as the supervision of the financial services activities in capital market, insurance, pension funds, financing institutions and other financial services institutions switch from Bapepam-LK to OJK. Although, the Act still not expressly authorizes OJK to regulate financial services with sharia principle.³⁵

However, OJK with the tasks and authorities owned and is the direct mandate of the Act can set up valid and legal sharia financial services. OJK is hoped soon determines the Regulation of the Chairman of Bapepam-LK as the basis for sharia *leasing* operational that is valid and remains valid.³⁶

With the enactment of Act No. 21 in 2011 about Financial Services Authority, then the Government's authority as aforesaid moves to OJK and effectively applies to the organization of venture financing, including sharia *leasing*.³⁷ POJK also sets

³⁵ Isa Ansori, *Sewa Guna Usaha (Leasing) Syari'ah Menurut Peraturan Ketua Bapepam-LK Number: Per-04/BL/2007 and Per-03/BL/2007 dan Problem Yuridis Yang Melingkupinya*, *Journal Hukum dan Ekonomi Syari'ah*, vol. 7 No. 1.

³⁶ Isa Ansori, *Sewa Guna Usaha (Leasing) Syari'ah Menurut Peraturan Ketua Bapepam-LK Number: Per-04/BL/2007 and Per-03/BL/2007 dan Problem Yuridis Yang Melingkupinya*, *Journal Hukum dan Ekonomi Syari'ah*, vol. 7 No. 1.

about good corporate governance for companies financing and licensing efforts and POJK is about institutional finance companies.³⁸ Chairman of OJK, Muliaman D. Hadad,³⁹ has issued a policy on number allowances of down payment of sharia-based motor vehicle financing in sharia *leasing* company. This new rule has been implemented since March 2015. Motor vehicle financing for productive, the down payment will be reduced from 20% to 15%. While the advance financing of motor vehicles consumerist sharia down from 25% to 20%. According to Muchlasin, the Director of Financial Industry of Non Islamic Bank OJK, with the decreasing of deposit, it is expected to increase sharia-compliant financing *leasing*. The reason is because the sharia financing market deflating since there are provisions to finance the minimum threshold value (FTV) of 20%-25%.⁴⁰

Based on the description above, the position of sharia *leasing* system is in integral part of national financing institutions system which is recognized and remains valid to this day. However the position of Regulation No. 9 in 2009 about Financing Institutions viewed in the hierarchy of the legislations is less strong because only organized in the form of a Regulation. In addition, it does not absorb Fatwa DSN-MUI, as carried out by other Islamic financial institutions, such as banks and insurers that have adopted fatwa into laws. However, since 2010 the

lah Terbentuknya Otoritas Jasa Keuangan (OJK), Journal of Ilmu Hukum Legal Opinion, 5th ed., vol. 2, 2014.

³⁸ [#http://bisnis.news.viva.co.id/news/read/559922-ojk-terbitkan-aturan-baru-perusahaan-pembiayaan-apa-saja](http://bisnis.news.viva.co.id/news/read/559922-ojk-terbitkan-aturan-baru-perusahaan-pembiayaan-apa-saja)

³⁹ Interview with Muliaman D. Hadad, Chairman of OJK on February 25, 2015.

⁴⁰ Interview with Muchlasin, the Director of Non Sharia Financing Industry of OJK on February 25, 2015.

Government has compiled a bill on Financing Institutions including sharia leasing in it so it will get recognition and high legal position because the set-level legislation.

2. The Regulation of Chairman of Bapepam-LK No. PER-03 / BL / 2007 on Financing Company Activities Based on Sharia Principle and the Regulation of Chairman of Bapepam-LK No. PER-04 / BL / 2007 on Akad/contract used in the Financing Company Activity Based on Sharia Principles

One of the fundamental issues relating to the leasing of sharia is the absence of regulations which governing autonomously on the business. Therefore, Bapepam-LK has imposed the regulation regarding to sharia leasing. The regulation has been established by A. FuadRahmany, chairman of Bapepam-LK in Jakarta on December 10, 2007. As for the content material of Regulation of Chairman of Bapepam-LK PER-03 / BL / 2007 consists of Six Chapters and 16 Articles. Meanwhile, Regulation of Chairman of Bapepam-LK PER-04 / BL / 2007 consists of Six Chapters and 60 Articles.

According to Article 6 letter a of Regulation of Chairman of Bapepam-LK No. PER-03 / BL / 2007 on Financing Activity based on Sharia reads:

"The financing activity based on Sharia principles as referred to article 5 is:
(a) Leasing, which perform based on: (1) *Ijarah*; or (2) *IjarahMuntahiyah bi Tamlik*."

Pursuant to Article 53 letters a, b, c of Regulation of Chairman of Bapepam-LK No. PER-04 / BL / 2007 on Akad/contract used in Financing Company Activities Based on Sharia Principles reads:

"Akad/contract sharia that has been signed by both parties cannot be canceled unilaterally, unless it meets the conditions: (a) the parties are agreed to terminate; (b) the contract is contrary to Sharia, or (c) the contract is null and void because it raised the legal conditions that may hinder the implementation or completion of the contract."

From the foregoing, it is understood that leasing in operation can be performed based on Syaria principles. By legitimacy sharia leasing by the government, then by itself in the system of national leasing there are two systems of leasing at once. Leasing sharia is an integral part of the national leasing system that prevailing in Indonesia. Consequences of enforced sharia in operational leasing system should be subject to the Regulation of the Chairman of Bapepam-LK above, in addition to obey the provisions of DSN-MUI Fatwa and must be subject to all the general rules which become the legal foundations for the leasing company itself.

Previously, there are two rules governing the leasing activities, among others: (1) The Regulation of Minister of Finance No. 84 / PMK.012 / 2006 on Financing Company. Under the regulation, the source of funds from financing companies may only be from the stock and bank credit. Financing companies cannot mobilize funds directly from the public, either in the form of savings, current accounts, including funds from pension funds and capital markets. Financing companies also are not allowed to issued promissory notes, commercial papers or provide guarantees to other parties; (2) The Decree of Minister of Finance No. 1169 / KMK.01 / 1991 on Leasing Activity. The lease agreement shall at least contain the following: (a) the type of lease

transactions; (b) the name and address of each party.⁴¹ Mean that, a leasing agreement must contain at least the above materials, whenever such matters are fulfilled then the lease agreement becomes valid and the lessor and lessee may sign the lease contract properly. In the practice of the substance in the leasing agreement can be added by mentioning the matters like defaults, insurance, interest on arrears, and others.

Several amendments to the rule of leasing law and regulation form above, shows the dynamics in the development of the leasing business in Indonesia. The first milestone of these changes began since the issued of Regulation of Chairman of Bapepam-LK No. PER-03 / BL / 2007 on Financing Company Activities based on Sharia Principles and Regulation of Chairman of Bapepam-LK No. PER-04 / BL / 2007 on Akad/contract used in the Financing Company Activities Based on Sharia Principles.

In the opinion of the author, the arrangement of leasing activity is relatively slow and lagging far behind if compared with the legislation of other financial institutions. For example, Government Regulation (PP) No. 51, 2011 on the Legal Entity PT Pegadaian(Persero), which regulates the activities of sharia mortgage, it is slightly more advanced if compared with the Presidential Decree 9 of 2009 on Financing Institutions that have not been expressly stated on the position of sharia leasing. However, the development in the field of sharia mortgage law is still far below the banking and Takaful especially in

⁴¹ Nurwidiatmo, *Kompilasi Bidang Hukum Tentang Leasing, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2011.*

terms of the legal device.⁴² The PP's legal position was strong enough when viewed from the hierarchy of legislation. According to Ismail Sunny the position of PP at a glance is under the law, but the legal position is considered quite strong. It is based on the fact that in the practice of governance, the president as head of government often excludes PP.⁴³

Hamid S. Attamimi stated that to determine the legal position of an institution whether is strong or not, can be seen in sequence order and tiered from top to bottom.⁴⁴ The order sequence of legislation referred to Article 7 paragraph (1) of the Law No.12 201 on the Establishment of Legislation as follows: (1) 1945 Constitution; (2) The Decree of People's Consultative Assembly; (3) Law / Government Regulation in Lieu of Law; (4) Government regulation; (5) The Provincial Regulation; and (6) Local / City Regulation.⁴⁵

Based on the above description, the existence of Regulation of Chairman of Bapepam-LK cannot be a strong legal basis for the development of sharia leasing in the future. Moreover, it does not regulate the technical implementation of sharia leasing activities in relation to the management administrative activities. By this, the legal status of sharia leasing is still needs to be improved. For practitioners and experts in the field of sharia leasing expected that it will be a law that specifically regulates sharia leasing.

⁴² Ade Sofyan Mulazid, *Kedudukan Sistem Pegadaian Syariah dalam Sistem Hukum di Indoensia*, (Jakarta: Balitbang Kementerian Agama RI, 2012).

⁴³ Ismail Sunny in Abdurrahman book, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1992), 23.

⁴⁴ A. Hamid S. Attamimi, *Peranan Keputusan Presiden RI dalam Penyelenggaraan Pemerintahan Negara, Disertasi S3, Fakultas Pascasarjana UI, Jakarta, 1999*, 286-290.

⁴⁵ UU No.12 Year 2011 regarding to *Pembentukan Peraturan Perundang-Undangan* quoted from State Gazette Year 2011 No.53

3. DSN-MUI Fatwa No.09 / DSN-MUI / IV / 2000 on Ijarah and DSN-MUI Fatwa No.27 / DSN-MUI / III / 2002 on IjarahMuntahiyah bi Tamlik

It is necessary to acknowledge that the institution which absorbs the most of DSN-MUI into legislation is Bank Indonesia (BI). BI has a great importance to the edicts of sharia economy that defined by DSN-MUI fatwa because it will be adopted by Bank Indonesia into the Regulation of Bank Indonesia (PBI) or Bank Indonesia Circular Letter (SEBI). In fact, the absorption of fatwa is not limited to the preparation of PBI or SEBI for DSN-MUI fatwa, it also absorbed into Law No.21 of 2008 on Islamic Banking.

According to KH. Ma'ruf Amin, actually it is not only BI who adopt fatwas of DSN-MUI sharia economics law, but the Ministry of Finance also has the same interest for the purposes of financial institutions which are under its supervision, such as Syariah insurance/Takaful, Islamic capital markets, pawn shops and sharia islamic finance.⁴⁶

CholilNafis stated that the fatwas are used as a reference for the adoption of legislation by Bapepam-LK which partly refers to the fatwa that relied upon the Islamic banking including the fatwa on Ijarah and IjarahMuntahiyah bi Tamlik.⁴⁷ This point of view is confirmed by Barlinti, between the regulations issued by the Ministry of Finance related to sharia leasing institution are: (1) Regulation of Chairman of Bapepam LK No. Per-03 / BI / 2007 on Financing Company Activities Based on Sharia. In this regulation

⁴⁶KH. Ma'ruf Amin, *Era Baru Ekonomi Islam Indonesia; dari Fikih Ke Praktek Ekonomi Islam*, (Jakarta: eLsas, 2011), 186.

⁴⁷M. Cholil Nafis, *Teori Hukum Ekonomi Syariah; Kajian Komprehensif tentang Teori Hukum Ekonomi Islam*, (Jakarta: UI-Press, 2011), 97-98.

besides recognizing the existence of DSN and DPS, also arranged the contracts which used in Islamic financing activities; and (2) the Regulation of Chairman of Bapepam LK No. Per-04 / BI / 2007 on-contracts Used in Financing Company Activity Based on Sharia. These regulations are governing the contracts used in capital market activities in accordance with Islamic principles. This regulation is mostly influenced by DSN-MUI Fatwa on the contracts.⁴⁸

In addition, the institution which adopted a fatwa to the legislation is the Ministry of Cooperatives and Small and Medium Enterprises (Ministry of Cooperative and SMEs). Kemenkop and SMEs is a government agency who authorized to oversee the operations of microfinance institutions in Indonesia, especially cooperatives. Currently, there are two models of cooperatives which operating in accordance with Islamic principles, namely: (a) Cooperative of Sharia Financial Services (KJKS) and (a) Sharia Financial Services. In principle, the practice of KJKS or UJKS refers to the general provisions of cooperatives, namely as nonbank financial institutions which obtain the authority to collect and distribute funds from, for and by members. In general, fatwas on the collection and distribution of funds which used by the Islamic banking industry is also apply to the operational of KJKS and UJKS. For example, the process of raising funds on KJKS and UJKS refers to the fatwa on wadiah and mudarabah. While the process of distribution of funds in

⁴⁸Yeni Salma Barlinti, *Kedudukan Fatwa*

DewanSyariahNasionaldalamSistemHukumNasional di Indonesia, (Jakarta: BalitbangDiklatKementerian Agama RI, 2010), 556.

KJKS and UJKS refers to the fatwa on musharakah, mudaraba, murabaha, salam, istisnaa, ijarah, qard, and others.⁴⁹

The next problem is whether the fatwa position on this Sharia leasing is strong enough? When referring to the hierarchy of law in Indonesia, DSN-MUI fatwa is not included in the order sequence of legislation.⁵⁰ Zubairi Hasan stated that DSN fatwa -MUI fatwa as well as other Islamic organizations in the state system of Indonesia is not a positive law so that it only binds Muslim community personally.⁵¹ Therefore, the state is not entitled to issue sanctions against those who violate the fatwas because the position is not the same with other written legislation.⁵² Maftukhatusolikhah and M. Rusydexpress that the fatwa did not legally binding and does not have the legal power to force as the written legislation. Fatwa is an answer to the problems of Sharia or the law that has not been cleared yet.⁵³ The function and existence of fatwa was seen

⁴⁹KH. Ma'ruf Amin, *Era Baru Ekonomi Islam Indonesia; dari Fikih Ke Praktek Ekonomi Islam*, (Jakarta: eLsas, 2011), 186-196.

⁵⁰Abd Aziz Dahlan *et al* (ed.) *Ensiklopedi Hukum Islam* (Jakarta: PT Ichtiar Baru van Hoeve, 1999), 715; See: Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Jakarta: Logos Wacana Ilmu, 1995); See: Dede Rosyada, *Metode Kajian Hukum Dewan Hisbah Persis* (Jakarta: Logos Wacana Ilmu, 1999); See: Kholidah, *Metode Ijtihad Dewan Fatwa al-Jam'iyatul Washliyah Periode 1988-1998*, *Tesis S2*, IAIN Sumatera Utara, Medan; Also see M. Atho Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia 1975-1988* (Jakarta: INIS, 1993), 41.

⁵¹ Zubairi Hasan, *Undang-undang Perbankan Syariah Titik Temu Hukum Islam dan Hukum Nasional*, (Jakarta: Rajawali Pers, 2009), 26.

⁵²Yeni Salma Barlinti, *"Kedudukan Fatwa Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia,"* Disertasi S3, Sekolah Pascasarjana, Universitas Indonesia Jakarta: 2010, 447.

⁵³Maftukhatusolikhah dan M. Rusydi, *Riba dan Penyelesaian Sengketa Dalam Perbankan Syariah* (Yogyakarta: Politea Press, 2008), 113.

as an unwritten law, so it will only be applied and used as a basis in a particular problem when there are no written laws governing the matter. In such circumstances fatwa DSN-MUI can be regarded as one of the implementing regulations of the legislation.⁵⁴

Contrary to the view above, Maskun stated that the fatwa indeed does not have a binding capacity, either to the requester of fatwa itself and to others.⁵⁵ However, in the hearing of Syariaeconomic case in the Religious Court, apparently DSN-MUI has no place and needs to be treated separately. This is not the same as fatwas in general, so it is natural if there is a dispute regarding to such business activities, the judges are often make the fatwa as one of the main sources of law to be a basis in judging a case in Religious Court. This is supported by KH. Ma'ruf Amin, who said that the fatwa is as an answer to the law (legal opinion) is not binding. However, if this fatwa later on adopted into the court's decision and it is a common thing, only then it can be a binding legal force. Moreover, if it adopted becomes positive law or regulation of a particular territory.⁵⁶

It can be concluded that DSN-MUI is not included in the order sequence of legislation, but the position of DSN-MUI is so urgent for sharia leasing in running its business. An Islamic product cannot be marketed to the public without any fixed ground rules. When the positive law does not exist,

⁵⁴Yeni Salma Barlinti, "*Kedudukan Fatwa*

Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia, "Disertasi S3, Sekolah Pascasarjana, Universitas Indonesia Jakarta: 2010, 556.

⁵⁵Yeni Salma Barlinti, "*Kedudukan Fatwa*

Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia, "Disertasi S3, Sekolah Pascasarjana, Universitas Indonesia Jakarta: 2010, 556.

⁵⁶KH. Ma'ruf Amin, *Fatwa dalam Sistem Hukum Islam*, (Jakarta: eLSAS, 2008), 21.

then the fatwa from the institution which shade the sharia (DSN-MUI) will be a substitute before the existence of positive law about the product.

D. Islamic Leasing Development Opportunities in Others Legislation Regulation

As has been described above, a number of regulations issued by the government or DSN-MUI is an attempt to complete the regulation of law so that sharia leasing may operate optimally, but this arrangement is not sufficient to form to be the basis of sharia operational leasing. As a result, sharia leasing cannot develop as an appropriate Islamic banking.

1. 1945 Constitution, Article 33, paragraph 4 on National Economic

In terms of the constitution, actually sharia leasing issue has already in the 1945 Constitution namely Republic of Indonesia that believe in the one supreme God. This means that the aspirations of society which based on believe in the one supreme God shall accommodate in the life of the nation.⁵⁷

Constitution Support towards sharia leasing may be seen in Article 33, paragraph 4 of the 1945 Constitution which stipulates that: "The national economy organized based on economic democracy with the principles of justice, solidarity, efficiency, sustainability and environmental insight, independence and by keeping a balance between progress and national economic unity."

According to the author, the Islamic financial institutions which is the most appropriate to translate the above matter is leasing sharia. At least there are

⁵⁷Team of Academic Transcript *Laporan Akhir Tim Naskah Akademik Rancangan Undang-Undang (RUU) tentang Pergadaian*, (Jakarta: Badan Pembinaan Hukum Nasional, 2011), 40.

several reasons including the following: (1) leasing of sharia could be used as an alternative financing solution for the community; (2) leasing of sharia has been able to integrate the demands of the business with the demands of Sharia; and (6) the leasing of sharia is very concerned about the development of the real sector, as well as supporting the national economy.

2. Civil Code, Article 1338, paragraph 1 on Leasing

Article 1338, paragraph 1 of the Civil Code states that all agreements which made legally is valid as law for those who make it. This means that everyone is allowed to make any agreement, either the one that has been regulated by law and not regulated by law so that there are many new forms of agreements emerge that describe the purpose and will of the people which is always dynamic. This is not surprising due to people are always looking for satisfaction in various ways.

The purpose and the will of the lease agreement (leasing) of sharia is not contrary to the provisions of Article 1337 of the Civil Code which states that any reason is prohibited if prohibited by law or public order. So if the content and purpose of the agreement is contrary to law or public order, then none of any those agreements are allowed. Similarly, islamic leasing agreement as long as the contents are not contrary to law and public order, then sharia leasing agreement are still permitted.⁵⁸

Sharia Leasing is a special form of *Koop en verkoop op afbetaling* (buying and selling by installments), showed its specificity on the issue of ownership

⁵⁸ Nurwidiatmo, *Kompilasi Bidang Hukum Tentang Leasing, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2011.*

of the objects traded goods is still remains to the seller until the payment has in full price. This means that the buyer status only as a lessee before the payment is full, the lessor is not possible to make these items right transferred to another person and the lessor must be assured that the items rented is in a perfect state, free from any claims from third parties.

3. Law No. 40 of 2007 on Limited Liability Companies, Article 1, paragraph 1 of the Corporate Capital

Article 1, paragraph 1 of Law 40 of 2007 on Limited Liability Company, mean as Limited Liability Company is a legal entity which is a capital alliance, established under the agreement, engage in business with a capital base that is entirely divided into shares and meet the requirements set which regulated in this law, as well as the implementation of other regulations.⁵⁹

Leasing institution, despite is a legal entity of PT whose the scope of business is within the scope and authority of the Ministry of Finance and the FSA, but the management shall remain apply the principles of good management so that the company may operate optimally. Therefore, besides subject to the regulation of Perpres No. 9 of 2009 on Financing Institutions, it also can use Law No.40 of 2007 on Limited Liability Company.

By referring to the Law, the sharia leasing institution had the opportunity to develop their business because it allowed gaining the capital in the form of shares or cash from other parties. This is in accordance with Article 1

⁵⁹Team of Academic Transcript, *Laporan Akhir Tim Naskah Akademik Rancangan Undang-Undang (RUU) tentang Pergadaian* (Jakarta: Badan Pembinaan Hukum Nasional, 2011), 46.

paragraph 1 of Law 40 of 2007 on Limited Liability Company as described above.

E. Conclusion

Based on the foregoing description, it can be concluded that the Presidential Decree 9 of 2009 on Financing Institution is the highest legislation that directly regulate sharia leasing activities in Indonesia. Furthermore the fatwa which issued by DSN-MUI has become a reference point for sharia business leasing and accommodated by the government into the sharia leasing legislation. In addition, there are three other regulations that indirectly provide opportunities for the development of sharia leasing in Indonesia, namely: (1) 1945 Constitution, Article 33, paragraph 4 on National Economic; (2) Civil Code, Article 1338, paragraph 1 on the Leasing; and (3) LawNo. 40 of 2007 on Limited Liability Companies, Article 1, paragraph 1 onCorporate Capital.

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