

# Analysis of Evidence of Warehouse Rental Agreement Order in The Supreme Court Decision of the Republic of Indonesia Number 2368 K/Pdt/2019

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## ABSTRACT

Whereas in the lease agreement, both oral & written, there are elements that must be carried out by the respective parties that bind themselves to one another, where if one of the parties does not fulfill its obligations as agreed in the beginning, then the act will cause default. This thesis discusses the warehouse lease agreement which was carried out verbally that occurred in Mempawah City. Making a verbal agreement is a habit of the people in the area because they prioritize their trust in each other. The problem raised in this thesis is the proof of the warehouse lease agreement which is carried out orally. In the court of first instance and the appeal level the oral agreement was declared invalid and could not be proven. Then in the Decision of the Supreme Court Court Number 2368 K / Pdt / 2019, then the oral agreement was declared valid and the defendant was declared default. The form of research in this thesis is normative legal research with qualitative and descriptive methods. This study concludes that an oral agreement based on the concept of contract law adopted by Indonesia is indeed valid and binding once there is an agreement so that the oral agreement in the case can be said to be valid. Meanwhile, the status of the defendant's existing property that is still in the warehouse can be categorized as default.

**Keywords:** Oral Agreement, Warehouse Lease, Default

## 1. INTRODUCTION

In order to meet economic needs, humans depend on others. Humans carry out various economic activities to improve their welfare. Indonesia strives to improve the welfare of its people to realize national goals. To improve the standard of living and welfare of the people, it is necessary to have a regulation for the benefit of individuals by regulating the legal relationship between one party and another. [1] In book III of the Civil Code Article 1233, it is stated that the engagement in the law is born because of an agreement between one party and another. Since April 30, 1847 the Civil Code (Burgerlijk Waetboek) was officially announced to become law (St. No. 23/1847). Book III of the Civil Code talks about engagement (Van verbintenissen) because of its open nature, the parties can determine the necessary conditions as long as they are in accordance with the law, decency, and public order. Thus, the parties to the engagement have a relationship in carrying out legal obligations. The engagement is regulated in Article 1233 of the Civil Code, it is emphasized that due to legislation or intentionally made between one party and another, giving rise to civil obligations. [2] The term lease is an agreement whereby one party binds himself to give the other party the enjoyment of an item, for a certain period of

time and with the payment of a price, which the party is later agreed to pay. Whereas in the lease agreement both verbally and in writing, there are elements that must be carried out by each party that binds itself to one another, where if one of the parties does not fulfill its obligations as agreed at the beginning, then the act will result in default. [3]. The case that the author uses as material in writing the thesis on leasing is the default of the lessee in the lease agreement which is located in Pontianak, West Kalimantan, precisely in Wajok Hulu Village, Siantan District, Mempawah Regency. In this case, there are two parties, namely, Mr. Flavianus Fexa as the owner of the land, in this case the Plaintiff, and Mr. Cau Phen as the tenant, in this case the Defendant. Has entered into a lease agreement on a plot of land on which there are two warehouse units and a dock building verbally valued at Rp. 75,000,000 (seventy-five million rupiah) per year. On October 30, 2006 the Defendant had paid the rent amounting to Rp. 15,000,000 (fifteen million rupiah) for one-year rental period (30 October 2006 – 30 October 2007) the remaining unpaid Rp. 60,000,000 (sixty million rupiah), when this payment is made, it is determined as the time the lease agreement occurs.

Since the Defendant rented, the Defendant had never paid rent to the Plaintiff, therefore the Plaintiff filed a lawsuit to

the Mempawah District Court demanding the Defendant to make payment for the warehouse he rented, the claim was rejected by the Mempawah District Court in its decision Number 1/Pdt.G/ 2018/PN Mpw because the Plaintiff did not have sufficient evidence stating that a lease agreement had occurred between the two parties.

Article 1865 of the Civil Code states that "Everyone who argues that he has a right, or, in order to confirm his own right or to refute a right of another, points to an event, is obliged to prove the existence of that right or event." Although the Plaintiff has presented a witness H. Eddy Dwi Pribadi, S.H. a Notary who said that the Defendant and the plaintiff had come to the witness' office to enter into a lease agreement for the Plaintiff's warehouse to the Defendant. After the draft was made and given to the Plaintiffs and Defendants for correction, the draft was never returned. In other words, the written lease agreement never happened. After filing a lawsuit at the first level court, the Plaintiff appealed to the Pontianak High Court, in decision Number 50/PDT/2018/PT PTK the judge rejected the Plaintiff's appeal and upheld the Mempawah District Court's decision Number 1/Pdt.G/2018/PN Mpw with the reason that the evidence owned by the Plaintiff is not sufficient to prove the existence of a lease agreement. Therefore, the judge considered that the oral agreement between the Plaintiff and the Defendant was a one-sided confession.

Because it was deemed not fair enough with the Pontianak High Court's decision, the Plaintiff filed an appeal to the Supreme Court. Judges' Considerations in the Decision of the Supreme Court of the Republic of Indonesia Number. 2368 K/Pdt /2019 said that the Defendant was proven to have not paid the warehouse rent to the Plaintiff in accordance with what was agreed in the oral agreement dated October 30, 2006, besides that the Defendant also did not vacate the warehouse, so it could not be sold or handed over by the Plaintiff to another person, so it is appropriate and correctly stated that the Defendant was in default and the Defendant had to pay the rent that had been agreed upon to the Plaintiff.

Based on the description above, a thesis has been compiled with the title "ANALYSIS OF EVIDENCE OF WAREHOUSE RENT AGREEMENTS IN THE JURISDICTION OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA NUMBER 2368 K/PDT/2019".

## **2. RESEARCH METHOD**

### **2.1. Types of research**

In writing this research, the writer uses normative research. This normative legal research or library research is a research that examines document studies, which uses various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions of scholars.

### **2.2. Nature of Research**

This research is descriptive analysis, because this study explains the rental agreement verbally. Descriptive is research that is directed to provide symptoms, facts or events in a systematic and accurate manner, regarding the characteristics of a particular population or area.

### **2.3. Types and Techniques of Data Collection**

- 1) Primary Legal Material
  - i. Civil Code
  - ii. Herzien Inlandsch Reglement (H.I.R)
  - iii. Law Number 48 of 2009 concerning Judicial Power
  - iv. Mempawah District Court Decision Number 1/Pdt.G/2018/PN Mpw
  - v. Pontianak High Court Decision Number 50/PDT/2018/PT PTK
  - vi. Decision of the Supreme Court of the Republic of Indonesia Number. 2368 K/Pdt /2019
- 2) Secondary Legal Material  
Is a collection of materials or scientific doctrines, articles, seminars, and other scientific works related to consumer protection issues as well as articles from the internet.

### **2.4. Research Approach**

Normative legal research recognizes several approaches:

- 1) Statute approach
- 2) Case approach
- 3) Historical approach
- 4) Comparative approach; and

### **2.5. Conceptual approach**

The approach that will be used in this research is the statute approach and the case approach.

### **2.6. Data analysis technique**

The data analysis technique used in this study is to use qualitative legal materials analysis methods, namely research that emphasizes legal materials obtained from various sources, such as books, articles, journals, and related laws and regulations.

## **3. DISCUSSION**

In this study, the author discusses the verbal proof of the lease agreement, which without realizing it in social life, verbal agreements are often carried out. A simple example is buying vegetables at the market, but what if the verbal agreement is made in the act of leasing? How to prove it if in the future there is a dispute between the parties? The

definition of an oral agreement itself is an agreement made enough with the agreement of the parties. Book III of the Civil Code regulates that contract law is an open system. This means that everyone is given the freedom to enter into a written or oral agreement, not bound by a certain form, as long as it can be accounted for if there is a dispute in the future.

Civil evidence has been regulated in Article 163 HIR/283 RBG, whoever claims to have rights or an event, must prove the existence of that right or event. The process of proving civil cases in court can be carried out by judges by investigating whether a legal relationship that forms the basis of the lawsuit actually exists or not. The existence of this legal relationship must be proven if the plaintiff wants to win in a case. Legal evidence according to civil procedural law as regulated in Article 164 HIR/284 RBG, namely: letters, witnesses, confessions, oaths, judge's suspicions. In addition to article 164 HIR/284 RBG evidence must also be linked to article 131 (1) HIR which regulates the reading of evidence submitted by a party by a judge at trial to be heard by the opposing party, article 137 HIR/163 RBG which regulates the opposing party can request in order to show him the evidence of the letter submitted by the opposing party, article 167 HIR regarding litigants may request a copy of the evidence belonging to the opposing party.

The power of proof is perfect and binding, meaning that perfect means that the judge must consider everything contained in the deed submitted as evidence to be true, unless the opposing party can prove with another deed that the deed submitted is not true. Binding means that the judge is bound by the deed submitted by the party as evidence, as long as the deed is made in accordance with the provisions of the law regarding the validity of a deed. A piece of evidence is considered valid and has value as evidence that has the power of proof, if it has reached the minimum limit of proof. In this case it is related to preliminary evidence which is evidence that does not meet the minimum limit of evidence, so that the evidence cannot be accepted as evidence to support the argument of the lawsuit unless it is added with at least one more piece of evidence Things that do not need to be proven in the proving procedure at trial include: everything that is considered to have been known by the public, things that the judge himself saw in the trial during the trial process, such as the defendant's absence, things that were proposed by the judge. plaintiff recognized by the defendant.

From the explanation that the author has described above, then reviewing the verbal lease case carried out by Cau Phen as contained in the Mempawah District Court Decision No. 1/Pdt.G/2018/PN.Mpw and the Pontianak High Court Number. 50/PDT/2018/PT.PTK where the judge stated that Cau Pen had not committed any acts of default, in connection with this the author does not agree with the judge's considerations on the Mempawah District Court Decision Number. 1/Pdt.G/2018/PN.Mpw which says:

*"That based on the provisions in Article 163 HIR/283 RBG which stipulates that "Whoever argues that he has a right or proposes an event to assert his rights or to deny the*

*existence of another person's rights must prove the existence of a right to the event", then the Plaintiff is obliged to prove the above"*

There are also judges' considerations in the Pontianak High Court Decision Number. 50/PDT/2018/PT.PTK where the author also disagrees, namely:

*"Considering that as for evidence in civil cases according to article 1886 of the Civil Code, it is evidence of witnesses, letters, confessions, suspicions and oaths. What if linking the evidence that has been submitted in the trial, the Appellant/Plaintiff cannot provide witnesses or documentary evidence that can explain concretely that there has been a verbal lease agreement between the Appellant/Plaintiff and the Appellant/Defendant. There is no acknowledgment, statement, or other documents that can be used as an allegation to explain this, so that the statement of the Appellant/Plaintiff in his lawsuit that there has been a verbal lease agreement agreed upon by the Appellant/Plaintiff with the Appellant/Defendant cannot be proven and constitutes a mistake. big because the lease agreement never existed."*

The two judges' considerations can be refuted by providing evidence in the form of Certificate of Ownership Number 157/Desa Wajok Hulu dated August 1, 1990, on behalf of F. Michael Murep as the parent of the Plaintiff and of course the warehouse belongs to the Plaintiff legally according to laws and regulations. - applicable invitation. In addition, the Defendant also did not vacate the warehouse, so that it could not be sold or handed over by the Plaintiff to another person, so it is correct and correct to state that the Defendant is in default and the Defendant must pay the agreed rent to the Plaintiff in the amount of Rp. 1,713,000,000 (one billion seven hundred thirteen). million rupiah).

In contrast to the Decision of the Supreme Court of the Republic of Indonesia Number. 2368.K/Pdt/2019 that the judge canceled the Mempawah District Court Decision and the Pontianak District Court Decision on the grounds that the judge had misapplied the law. In this case, the author agrees with the decision given by the judge of the Supreme Court of the Republic of Indonesia, that there are legal considerations that determine the oral agreement between Flavianus Fexa and Cau Phen still has legal force, even though Cau Phen does not acknowledge/deny the oral agreement. The legal force in question is the power to bind the parties who make the agreement and also the power of law in terms of the evidentiary value when the agreement is used as evidence. According to the author, the oral agreement made by Flavianus Fexa and Cau Phen is a reciprocal agreement because not only Cau Phen binds himself to Flavianus Fexa, but Flavianus Fexa also binds himself to Cau Phen.

In this lease agreement there are a number of obligations that must be borne by the lessee in an absolute and irreversible form in the agreement made by the lessor, which are elements that have been implemented, including:

a. Price

The lessee agrees to pay the rent and pay in rupiah currency as much as Rp. 15,000,000 (fifteen million rupiah) as a down payment that the parties agree to enter into a

warehouse rental agreement and any request from the lessor is calculated from the rented and must pay the shortfall.

**b. Items**

The lessor agrees to rent out and the lessee agrees to rent from the party who rents out the warehouse with the agreed area.

**c. The agreed period**

Whereas Article 1571 of the Civil Code states that if the lease is not made in writing, then the lease does not expire at the specified time, but if the other party notifies that he or she wishes to terminate the lease, taking into account the grace periods required by custom.

Besides, the author also agrees with Mrs. Liza Pribadi, she said: "The expiration of the lease term is not extended, making the lease agreement terminate by law, without the need for a court order. Article 1570 of the Civil Code states that if this agreement is made in writing, then this lease agreement ends by law without the need for a termination for it. Meanwhile, according to Article 1571 of the Civil Code, if the lease agreement is made orally, then the lease does not end at the specified time, but if the other party wishes to terminate the lease, taking into account the grace period required according to the local.

Whereas the evidence in civil cases according to article 1886 of the Civil Code, is evidence of witnesses, letters, confessions, suspicions and oaths. What if linking the evidence that has been submitted in the trial, the Appellant/Plaintiff cannot provide witnesses or documentary evidence that can explain concretely that there has been a verbal lease agreement between the Appellant/Plaintiff and the Appellant/Defendant. There is no acknowledgment, statement, or other documents that can be used as an allegation to explain this, so that the statement of the Appellant/Plaintiff in his lawsuit that there has been a verbal lease agreement agreed upon by the Appellant/Plaintiff with the Appellant/Defendant cannot be proven and constitutes a mistake. big because the lease agreement never existed

In order to meet economic needs, humans depend on each other. Humans carry out various economic activities to improve their welfare. Indonesia strives to improve the welfare of its people to realize national goals. To improve the standard of living and welfare of the people, it is necessary to have a regulation for the benefit of individuals by regulating the legal relationship between one party and another. Make or not make an agreement; Entering into an agreement with anyone; Determine the contents of the agreement, its implementation, and its requirements; and Determine the form of the agreement, namely written or oral. An oral agreement cannot be applied in an agreement that has been stipulated by the law, in other words as long as it is not regulated in the law regarding an agreement must be in written form, then an oral agreement remains valid as an agreement that binds the parties who make it.

In the warehouse rental agreement carried out by Flavianus Fexa and Chau Pen, it creates rights and obligations, namely the lessee and the lessor. According to the author's research, these rights and obligations must be fully implemented in accordance with the applicable agreement. Furthermore, the

author also agrees with the resource person, Mrs. Liza Pribadi, S.H. which says that every right and obligation for both parties should be carried out in accordance with the agreement made in advance and has been agreed, so that it is in line with the principle of *pacta sunt servanda*. The author would also like to add regarding the rights and obligations of the lessor and the lessee as follows:

**3.1. The right of the renter**

- i. Receive a sum of money in accordance with the agreed agreement;
- ii. Create, add, improve, use, revoke legal regulations that are part of the agreement. Any amendment to the law of the agreement requires the consent of the lessee;
- iii. The party who rents out has the right to change the object of the lease in the warehouse area if deemed necessary for the common interest to a place agreed by both parties
- iv. The right at any time or if necessary to see the condition of the kiosk for rent.

**3.2. Obligations of the renter**

- i. Must guarantee the warehouse function as a place suitable for rent and/or will not change at least in a short period of time in accordance with the requirements;
- ii. Return the security deposit at the end of the lease term after deducting the costs that are the obligations of the lessee such as damage to the rented motorcycle taxi and also unexpected costs which are the obligations of the lessee;
- iii. The party who rents out is obligated to guarantee that the land and buildings being leased are really the property of the party that rents out and are not related as a dependent or a receivable or are burdened with an expense, are not in dispute, and are not subject to confiscation so that as long as the agreement lasts, the second party there will be no demands or lawsuits from other parties who also have the first rights.

**3.3. Tenant's rights**

- i. The tenant can enjoy safely and peacefully what is being rented without getting obstacles and interference from the renting party or from other third parties;
- ii. Enjoy the facilities and infrastructure provided by the party who rents out in accordance with the initial agreement of both parties;

**3.4. Tenant's obligations**

- i. Pay a certain amount of money in accordance with the agreed agreement;

- ii. The lessee is obliged to pay the rent per month in accordance with the value agreed by both parties;
- iii. Maintain cleanliness and tranquility during the duration of the agreement;
- iv. Maintain facilities
- v. Hand over properly and in an empty condition the rented warehouse to the party who rents out at the end of the agreement or immediately after the termination of the agreement;
- vi. Make a written application to the lessor if the lessee wishes to extend the lease term;
- vii. Using the leased object in accordance with its pre-agreed designation, in this case the leased object will be used as a warehouse, all agreements and matters relating to the business are the responsibility of the lessee;
- viii. Maintain the leased land and buildings as well as existing facilities properly and use these items properly;
- ix. Obligated to hand over the keys to the building to the lessor when this agreement ends or when the tenant cancels this agreement earlier than has been agreed by both parties;
- x. Obligated to bind themselves to hand over the building in good condition and maintained on time to the tenant when the agreement ends;
- xi. Obligated to return the building to the renter in a state of empty all occupants and if not implemented, then the party who rents out has the right to give a warning to the tenant
- xii. Obligated to comply with all regulations from the authorities, especially those related to public decency/order, cleanliness, health;
- xiii. Mandatory not to rent out what he rents to other parties, either partially or wholly to other parties
- xiv. Must use what he rents as a business warehouse, not as a place to live.
- xv. It is obligatory to use the leased object for purposes that do not violate applicable laws in the Unitary State of the Republic of Indonesia.

## 4. CONCLUSION AND SUGGESTION

### 4.1. Conclusion

The description above can be concluded, an oral agreement is still valid and has legal force to declare someone to be in default, but if the oral agreement is denied/not recognized by the party suspected of being in default, the oral agreement has no legal force to declare someone to be in default, the right the renter receives a sum of money in accordance with the agreed agreement, Makes, adds, improves, uses, revokes legal regulations that are part of the agreement. Any amendment to the law of the agreement requires the consent of the lessee.

The party who rents out has the right to change the object of rent in the warehouse area if deemed necessary for the common interest to a place agreed by both parties, has the

right at any time or if necessary to see the condition of the kiosk being rented out The leasing obligations include, being obliged to guarantee the function of the warehouse as a suitable place to be rented out and/or will not change at least in a short period of time in accordance with the requirements, returning the security deposit at the end of the lease term after deducting the costs which are the obligations of the lessee. such as damage to the rented ojek and also unexpected costs which are the obligations of the lessee, the lessor is obliged to guarantee that the land and buildings being leased are truly the property of the lessor and are not bound as dependents or a receivable or burdened with an expense, not in dispute, and also not subject to a confiscation so that during the time of the agreement the second party will not receive a claim or lawsuit from another party who also has the first rights.

### 4.2. Suggestion

We recommend that the elements that are absolute and cannot be changed in the agreement made by the lessor, which are the elements that have been implemented, must be considered, namely, first, the price means that the lessee agrees to pay the rent and is paid in rupiah as a down payment. that the parties agree to enter into a warehouse rental agreement and any request from the tenant is calculated from the one being rented out and is obliged to pay for the shortage, both goods, namely the lessor agree to rent out and the lessee agrees to rent from the party who rents out the warehouse with the agreed area. And finally the third, the agreed period.

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