

Juridical Overview of Under Hand Lease Agreement

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ABSTRACT

House renting becomes an alternative for people who have limited funds to own a house. The legal form of a house renting contract between a lessor and a lessee requires an agreement. The private deed becomes one of its legal forms. This research aims to determine the process of a private deed agreement, the regulation between the rights and obligations of the parties, and legal responsibility if one of the parties does not carry out its obligations. This research uses a normative approach based on legal aspects, rules, principles, and regulations related to house-renting agreements. The type of research used is a descriptive approach by describing a comprehensive and coherent situation regarding the private deed agreement in renting houses. The results showed that there were 3 (three) stages in this process. Firstly, the stage before the occurrence of the contract where there is a process of offering rent, acceptance, administrative and legal requirements that need to be considered. Secondly, the current agreement stage where there is an approval process with the prior adjusted contracts. Thirdly, the stage after the agreement is contract implementation. The bound parties from an agreement position the rights to one party and position the obligations on the other party. The agreement formed becomes law for both. Those who do not carry out their obligations must be responsible for the violation made.

Keywords: *House renting, Private deed, Legal responsibility*

1. INTRODUCTION

The surge in the Indonesian population has surely brought an impact on the building demands every year, not to mention houses. According to Bratt, housing demand is generally an urgent issue since it serves as the basic foundation of human activity [1]. For those with limited funds, leasing becomes an alternative effort to possess premises. Occupying the house with the right authority should the parties make attempts, such as lease agreement [2].

The regulation regarding the non-owner-occupied house states that leasing is a state in which the house can be occupied by a non-owner based on a lease agreement [3]. This aims to guarantee legal certainty where it is necessary to prove that a leasing relationship as stated in a written agreement between the lessor or person authorized to rent out the house, and the lessee as mandated in the prevailing laws and regulations in Indonesia stipulated in Government Regulation Number 44 of 1994 on Occupancy of Houses by Non-Owners.

Given the demand for housing, many parties take advantage of the buildings for leasing, as done by Mrs. Suwarni, a lessor who also rents out premises. The lease agreement is made of an underhand deed or simple contract besides an authentic agreement or

through a notary. The agreement is a standard contract where the contents of the provisions therein have been provided by the lessor to be offered to the prospective lessee to choose to agree or otherwise. Prospective lessee who undertakes the agreement constructs rights and obligations between the parties based on the freedom of contract principle as regulated in Article 1338 of the Civil Code asserting t parties to a contract are free to include any provisions they wish.

Meanwhile, the implementation of a lease agreement can occur unwanted effects, such as negligence in fulfilling obligations and rights by one party or unlawful acts in form of damage that may harm one party, therefore the party should be held accountable for the action and should compensate for the loss suffered.

Based on the background, the problems studied are: how is the process of the lease agreement between lessor and lessee? What are the rights and obligations between lessor and lessee? What is the legal responsibility if the party does not subject to obligations?

The objectives of this study are to determine the process of the lease agreement between the lessor and the lessee, to understand the rules of rights and obligations between the lessor and the lessee, and to

find the legal responsibility if the party fails to subject to obligations agreed upon.

2. METHOD

The authors employed a normative juridical approach comprising legal aspects, legal rule, legal principle, and regulation associated with house leasing agreements. This study used descriptive, which describes a comprehensive and coherent situation regarding the private agreement process in house leasing.

Based on the approach and method applied, the authors conducted the research using data sources from laws and regulations in house leasing agreements, legal literature in house leasing agreements to support this research, as well as a legal dictionary to describe the information of the data source.

Data collection was done using literature study and field study, such as interviews as a supporter of this research. All data obtained were then analyzed qualitatively to determine the purpose of writing, therefore conclusions could be drawn from the materials.

3. RESULTS AND DISCUSSION

3.1 The Process of the House Leasing Agreement between Lessor and Lessee

The first process is offering an agreement. The lessor invites the prospective lessee to inspect the premises. In this agreement, the prospective lessee can ask the lessor to show documents proof of the establishment. Following that, the lessor describes the terms, information to the prospective lessee and the parties negotiate which of the provisions should be included, such as purpose to lease, lease period, lease rate, facilities, lease payment conditions, monthly payment, and regulations applied on the premise.

Subsequently, the prospective lessee receives the offer upon negotiation and continues the agreement process. Some considerations should be regarded by the lessee, such as administrative and legal requirements as a valid condition of the agreement. The administrative requirement that needs to be questioned by the prospective lessee is completing personal data appending a copy of ID card and mobile phone number to complement data from an agreement and can use this information in the event of issues or disputes, therefore the statute of limitation can be defined clearly by the jurisdiction of the authorized court [4]. The lease agreement should fulfill specifications set out in Civil Code. To refer to a valid conclusion of a contract, it legally requires: (1) Agree, the attainment of a consensus means that the lessor and the lessee agree to

the terms within the agreement and are sealed by a signature on stamp duty, (2) Competent, the capability and stability of the parties to agree to commit legal measures so every action of either party should be accounted for, (3) A certain condition, every agreement should define a clear line of objects because it will allow proper implementation of obligations and rights [5], (4) A lawful cause, it is intended to be faithful, does not conflict with prevailing customs, is based on propriety, and does not violate and disturb the public interest.

After meeting the requirements, the next process is an agreement, signing a contract that has been made and mutually agreed upon. The agreement is in writing and adjustments are made to the statement, especially regarding premise leasing used as a house. Along with affixing the signature on the stamp duty, the lessee is required to pay payment fully in advance according to the contract. The arrangement of the agreement using a standard agreement is known as the concept of "Take it or leave it", which literally denotes "accept it or refuse it" [6]. On this occasion, the prospective lessee has to decide two options: agree or disagree. The bargaining by the prospective lessee should be the least expected or entirely avoided due to the previously mentioned clauses of the lessor [7].

The last stage is the process of commencement of contract or agreement. In this process, after some adjustment on the statements and contract signing, the parties are legally bound in relationship status. The binding parties should fulfill the provisions of the legally arranged contract. In other words, the agreement or contract made under a legal process applies as law for the parties who make it, as referred to as *pacta sunt servanda* principle [8].

3.2 Rights and Obligations of the Lessor and Lessee

The agreed contract between the parties arises rights and obligations to both of them which are continuous. Regulations are applied in premise leasing, especially houses, such as the Government Regulation number 44 of 1994 on the occupancy of houses by non-owners and the Civil Code. These regulations cover several provisions, including the rights and obligations of house leasing.

The rights and obligations of the lessor are: (1) to submit the premise, (2) to maintain the premise, (3) to provide a safe place for the lessee in the premise, (4) to repair the premise during the rental period, excluding those borne by lessee, (5) to cover any damage on the premise. The rights of Suwarni as the lessor are: (1) to inquire lease payments according to determined period, (2) to accept the premise in substantially the same

condition from the lessee, (3) the right to terminate the agreement upon the agreement.

The obligations of the Second Party as the lessee of the house, among others, are: (1) to submit payment, (2) to maintain the premise, (3) to pay monthly utilities, (4) to maintain order, security, and environmental tranquility. Occupancy is the most basic right for the lessee. The following are the rights of the Second Party: (1) the right to accept the premise in optimally maintained condition, (2) the right to advantages of the premise during the rental period, (3) The right to use and utilize the premise, (4) The right to use utilities, such as electricity, water, and (5) The right to request structural repairs outside the responsibility of the Second Party or the fault of the premise construction. For the parties, subject to the agreement made becomes the law. Either party who violates the provisions can be defined as default or tort law.

3.3 *Legal Liability in the Event the Party Does Not Perform Obligations*

The agreement results in a binding status for the parties, hence it is natural to demand the responsibility of the party when failing to perform obligations. If the lessor and lessee commit and abide by obligations faithfully and responsibly, the legal status between the parties will not pose any harm or responsibility claim due to losses suffered from non-performance of obligations.

However, it is undeniable that in the implementation of the agreement a party may neglect obligations of default or tort law addressing. It is understood that default arises from a problem in the event a party fails to perform clause or being negligent intentionally or unintentionally, and occurs due to the imposed [9], a party is known as a default under four (4) specifications of default, including (1) Perform the agreement however late, (2) Breach the agreement, (3) Perform agreement wrongly, (4) Fail to perform the provisions [10]. An illustration of the default case is when the lessee without the knowledge and permission of the lessor subleases to a third party. For this fault, the lessee is deemed default due to agreement violation as stated in the lease agreement. In addition, another default is when the lease has expired, however, the premise is vacated 2 (two) weeks after the termination so that the handover process to the lessor exceeds the due date. Thus, in this case, the lessee is deemed at default due to negligence of obligations.

As a form of responsibility and cooperative attitude resulting from failing to perform obligations, the case can be resolved by an effort that promotes goodwill of the parties in dispute, namely deliberation. In this process, both parties agree upon compensation that the

lessee submits until it reaches a fair resolution. The imposition of compensation can be in form of costs, losses, and interest [11]. On the other hand, if in the dispute settlement the lessee does not display goodwill, therefore it does not conclude and or the parties do not satisfy, the settlement should be resolved through the District Court on the basis of default and compensation according to the judge's decision.

That being said, tort is defined if the wrong is contrary to the legal obligations of the perpetrator, violates the rights of other legal subjects, and contradicts the value of propriety that should be upheld in life against the integrity of legal subjects [12]. The act results in material and immaterial damages [13].

The case instance of the lessor, for example, is an agreement to lease a premise for a period of 12 (twelve) months. However, in the middle of the agreement, the lessor unilaterally terminates the agreement and demands the lessee to vacate the premises as soon as possible, while the lease period is not voided in 5 (five) months. It is requested on the baseless reason that is acceptable to the lessee because it is believed there are no prior mistakes. Whereas due to the mistake, the lessee has to suffer material losses of the valid leasing period for 5 (five) months of rental payment which have been paid fully in advance and immaterial damage is the lessee has to experience disturbance due to the right infringement to live in peace.

From the description of the case, disputes can be resolved firstly by deliberation, which is identifying the reason for the unilateral termination of the agreement. If the termination is intentional and baseless, the conclusion is that the lessor can be held responsible and should compensate for material and immaterial losses according to the damages suffered by the lessee. However, if the parties are dissatisfied and the settlement has not been achieved, and the lessor shows no goodwill, thus the dispute, which is qualified as a tort (onrechtmatige daad), should proceed through a lawsuit to the District Court by paying compensation decided by the judge.

4. CONCLUSION

In this study, the leasing process is divided into 3 (three) stages. First is the pre-agreement stage, in which offer from the lessor and acceptance from the prospective lessee occurs, and administrative as well as legal requirements need to be considered. Second is the commencement of the agreement, in which the approval process by signing a contract is made after undergoing adjustment to the statement beforehand. Third is the post-agreement stage, in which a contract is implemented.

The relationship emerging between the parties in the lease agreement indicates the parties who are bound

by an agreement juxtapose the rights to a party and the obligations to the other party. For both parties, implementing the agreement made becomes law for either party. Thus, the party who occur to violate the provisions can be referred to as default or trot.

For a party who does not perform assigned obligations, the responsibility is based on mistakes made, such as defaults or trot. In case of default, the responsibility for the adverse party is to compensate for the loss according to the provisions in Article 1243 of the Civil Code. In legal measure, a party who commits mistakes is required to be held accountable for both material and immaterial damages according to the loss of the affected party by referring to Article 1365 of the Civil Code.

Lessor and lessee should maintain a good relationship during the implementation of the agreement while fulfilling their obligations because disputes will result in tension, it will be difficult for the parties to reconnect. Moreover, the judicial process takes a lot of time and expenses.

The lessor should assure that the premise remains safe and undisturbed during occupancy of the lessee, by including a copy of the building permit because land and building are occupied simultaneously. For this reason, the lessor should attach complete documents albeit the lessor does not request them.

In under hand lease agreement, the parties should present at least 2 (two) witnesses and their identities should be written in the agreement.

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