

Legal Protection for Boarding House Owners for The Transfer of Rent to a Third Party (Study on 8888 Boarding House in North Sumatra)

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Abstract. *In everyday life, as social beings, humans always interact with other humans to meet their needs, especially students. Students who pursue education come not only from educational centers but also from various regions. Residents living in the surrounding area take advantage of this opportunity to start businesses by temporarily renting out their buildings and residences, including rooms. The type of research used in this study is legal research, using an empirical juridical legal research approach. Empirical legal research takes the form of community legal behavior. The data source for empirical legal research is not based on written positive law, but rather on observations at the research location. The binding relationship is based on the provisions of Article 1548 of the Civil Code, first between the boarding house owner and the tenant, second between the tenant and a third party. The relationship that occurs between the boarding house owner and the tenant occurs legally based on an agreement to enter into a rental agreement for the object of the rental, namely the boarding house owned by the boarding house owner himself, and the second relationship that occurs is between the tenant and the third party. The legal consequences arising from the transfer or re-renting of the Boarding House for the parties based on the provisions of Article 1267 of the Civil Code are that the owner of the boarding house has the right to immediately terminate the agreement and can cancel the agreement that was made by the parties and ask for compensation, as a result of the cancellation of the Boarding House rental agreement, the rental agreement made by the tenant with the third party is also null and void by law. Efforts made to resolve the rental of this Boarding House are carried out by taking action independently and through deliberation.*

Keywords: *Boarding House Owner; Legal Protection; Third Party.*

1. Introduction

In everyday life, as social beings, humans always interact with other humans to meet their needs, especially students. Students who pursue education come not only from educational

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centers but also from various regions. Residents living in the surrounding area take advantage of this opportunity to start businesses by temporarily renting out their buildings and residences, including rooms.

The current business development can be said to be growing rapidly, seen from a business perspective, the room rental business is very popular among local residents as a side business, this business can also be said to be a very promising business, and inseparable from all of this, in a business there is certainly a collaboration that will eventually aim for a good agreement. This collaboration is carried out between the tenant and the owner of the rental room business, namely the tenant pays an amount of money according to the agreement to the renting party, maintains the order of the surrounding environment in accordance with applicable regulations, maintains actions in accordance with religious norms and with the provisions that have been agreed upon previously, such as not being allowed to re-rent the Boarding House to a third party, the payment of the Boarding House rent is no later than three days after the due date. To run this business there is an agreement between the parties to rent out the rental room called a rental agreement.

Lease agreements are regulated in the provisions of Book Three, Chapter 7, Articles 1547 to 1600 of the Civil Code. The definition of a lease as provided by Article 1548 of the Civil Code is:

“Rental is an agreement by which one party binds himself to give another party the enjoyment of an object for a certain period of time and the payment of a price, which the latter party undertakes to pay.”

Leasing involves a reciprocal act between two parties, where the parties involved in the lease agreement are the lessor and the lessee. The lessor is the person or legal entity that rents the goods or objects to the lessee, while the lessee is the person or legal entity that rents the goods or objects from the lessor. Therefore, it can be said that the lessee has responsibility for what happens to the leased goods if it deviates from what was agreed upon, which gives rise to legal consequences called breach of contract.

The object of a lease agreement, according to Chapter 7, Book III of the Civil Code, does not have to be a specific item. The regulations on leases, contained in Chapter 7, Book III of the Civil Code, apply to all types of leases. This applies to all types of goods, both movable and immovable, whether for a specific period or not. In this regard, Subekti stated that leases are temporary in nature, and the transfer of goods is not for ownership, but only for use. Therefore, the important thing in a lease is that the goods will not be destroyed by use. This is because the goods will be withdrawn or returned to the lessor if the rental period has expired.¹ In this case, the object of the rental agreement in the rental agreement is the goods and the price. With the condition that the goods being rented are halal goods,

¹ Nada Felicia Rahman. Implementation of Village Treasury Land Lease Agreement between Banyuraden Gamping Village Government, Sleman and PT. Sari Rezeki Agung. Thesis, Undergraduate Program in Law, Kalijaga State Islamic University, Yogyakarta. Page 15.

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meaning they do not conflict with the law, order, and morality.²

Rental agreements are often used by parties in general, because the purpose of this rental agreement is to help the parties, both the lessee and the renting party, gain mutual benefits. Every agreement made has several principles or principles that should be considered during the agreement.

The principles in contract law include the principle of freedom of contract, which is only summarized in Article 1338 paragraph (1) of the Civil Code, which reads: all agreements that are legally made are valid as law for those who make them.³

The articles in contract law constitute what is called complementary law (optimal law), meaning that these articles may be set aside if desired by the parties making an agreement. They are permitted to make their own provisions that deviate from the articles.

Article of the law of agreements. They are allowed to regulate their own interests in the agreements they enter into.⁴ This means that everyone can enter into any agreement, whether it is regulated by law or not.

Renting also uses the principle of consensualism, where this principle is valid and binding at the moment an agreement is reached regarding its main elements, and no formalities are required.⁵ This means that this principle states that agreements are generally not made formally, but rather simply with the agreement of both parties.

For the validity of a rental agreement, the parties must first fulfill the conditions stipulated in Article 1320 of the Civil Code, so that the agreement is recognized by law, as regulated in Article 1320 of the Civil Code, namely the agreement of those who bind themselves, the capacity to make a contract, a certain thing, and a lawful cause. In every rental agreement, the lessor and the lessee both fulfill their respective rights and obligations to carry out the performance and rental agreement.

A lease agreement can terminate normally or abnormally. A normal termination means the lease agreement has been properly fulfilled within the timeframe agreed upon by both parties. An abnormal termination occurs when the lease agreement has not been properly fulfilled due to various factors.

which influences it, so that before the agreed period ends the lease is terminated.

The lessee is also not permitted or prohibited from repeating the lease to another person as stated in Article 1559 of the Civil Code, namely:

"The lessee, if he has not been given permission, cannot rent out the goods he rents or

² Salim HS 2003. Contract Law: Theory & Techniques of Contract Drafting. Jakarta: Sinar Grafika. Page 59.

³ Cindi Kondo. "Legal Responsibility in Shophouse Rental Agreements (Roko)", Published by Sam Ratulangi University Vol.1.2013. Page 145.

⁴ R. Soeroso. 2010. Private Agreements: Practical Guidelines for the Preparation and Application of Law. Jakarta: Rineka Cipta. Page 16.

⁵ PNH Simanjuntak. 2015. Indonesian Civil Law. Jakarta: Prenadamedia Group. Page 286.

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relinquish the lease to another person on threat of canceling the rental agreement and reimbursing costs, losses and interest, while the party who rented it out, after the cancellation, is not obliged to comply with the rental agreement again.

"The tenant, carrying out activities such as adultery which are contrary to religious norms and local regulations, based on all actions that occur can be canceled unilaterally and the agreement can be null and void by law.

If the thing being rented is a house, which the tenant lives in himself, then he can, on his own responsibility, rent out part of it to another person, if that power is not prohibited in the agreement."

However, in reality, there is still a problem with renting that is transferred to a third party, as happened in 8888 boarding houses in North Sumatra, where during the rental agreement, the tenant transferred his rental rights or rented the boarding house again to a third party without asking for permission and the knowledge of the boarding house owner.

This is not permitted as stated in Article 1559 paragraph (1) of the Civil Code. This problem arises because the boarding house owner feels that the tenant has violated the agreement made by the tenant.

Losses must ultimately be accepted by the rental homeowner. Losses such as if there is damage to the rental object, then when there is a loss of any property in the rental object, as well as losses due to not receiving rent fees that should belong to the rental homeowner for the rent incurred and third parties who do not understand the rules can do whatever they want so that There are many actions that do not comply with moral norms. These losses are elements of the act of breaking the rental agreement that has been agreed upon by the boarding house owner and the tenant. Therefore, this study aims to find answers to these problems so that later conclusions can be drawn in accordance with the problem formulation contained in this study, namely:

2. Research Methods

The type of research used in this study is legal research, using an empirical juridical legal research approach. Empirical legal research takes the form of community legal behavior. The data source for empirical legal research is not based on written positive law, but rather on observations at the research location.

3. Results and Discussion

3.1. Legal Relationship between Boarding House Owner and Tenant

1. Causes and Effects of the Birth of Legal Relations

A legal relationship is a relationship governed by law. A legal relationship governed by law is the rights and obligations of citizens, one individual towards another, in social life. Therefore, a legal relationship is the legal rights and obligations of every citizen or individual

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in social life. In this study, the legal relationship that occurs involves several parties: the boarding house owner, the tenant, and a third party.

Regarding the birth of a legal relationship, a person who is a legal subject is important, because the parties who are legal subjects are the ones who will eventually bind themselves to a (legal) relationship. This subject is a person who is legally declared fit and proper to form a legal relationship. When the legal subject has complied with the applicable regulations, the next thing that causes the birth of a legal relationship is the existence of an object that is of interest in the ongoing legal relationship. This object corresponds to what is in the interests of the parties in their goal of establishing a legal relationship.

Then, after there is a legal subject and object, a legal relationship that gives rise to a legal event such as an agreement, must be in accordance with the legal rules regarding that action.

Agreements in the civil law system in Indonesia have valid conditions for agreements according to the provisions of the Civil Code.

In general, a rental agreement involves two parties: the tenant and the boarding house owner. This legal relationship entails rights and obligations for both parties. In addition to the rights and obligations of each party as mentioned above, it is also important to consider the fulfillment of the obligations stipulated in the boarding house rental agreement. In each agreement, each party is obligated to fulfill its obligations, or the parties are obligated to fulfill their obligations.⁶

An agreement will then also give rise to a legal relationship between the parties who made it. 1338 of the Civil Code states that an agreement becomes law for anyone bound by it. This explains that the relationship that occurs between the provider and the lessee in a rental agreement is binding both personally and publicly. Personally, the legal relationship that occurs in a rental agreement between the provider and the lessee is related to private law provisions that regulate the content and provisions for fulfilling the performance of the agreement. Meanwhile, publicly, the relationship that occurs between the parties involved in the agreement is related to public rules that are generally binding regarding the rules that exist in the jurisdiction where the agreement is made.

This legal relationship arises from the existence of elements that ultimately give rise to a legal event in the form of a boarding house rental agreement. These elements are the legal subject as the party with an interest, the existence of an object being agreed upon, and the valid conditions for an agreement.

a. Legal Subjects in Boarding House Rental Relations

According to Van Apeldoorn, a legal subject is anything that has legal authority, namely the ability to be a supporter (subject) of law. According to Chidir Ali, a legal subject is a human

⁶ AA Dalem Jagat Krisno, et al. "Legal Consequences Arising from Default in Authentic Land Lease Agreements." In the Public Knowledge Project journal, Faculty of Law, Udayana University, Vol. 03, No. 04, May 2015. Page 3.

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being with legal personality and anything that is based on the demands of the needs of society is recognized by law as a supporter of rights and obligations.⁷ Furthermore, Algra states that a legal subject is every person who has rights and obligations, so has legal authority.⁸

From the definitions above, the legal subjects appear to be different, but all three imply a similarity: a legal subject is a supporter of rights and obligations. Therefore, it can be said that a legal subject is anything that can support rights and obligations.⁹

The legal subject in a contract is the subject or actor of a contract as a legal relationship generally referred to as creditor and debtor.

The creditor is any person (can consist of an individual or a legal entity) who has the right to receive a performance. While the debtor is the party (can consist of individuals or legal entities) who are obliged to fulfill the obligations. As parties in a legal relationship, the parties must be able to act freely in expressing their will, without any coercion, fraud, or negligence from any party.¹⁰

Legal subjects have a very important position and role in the legal field, especially civil law because these legal subjects can have legal authority.¹¹ Currently, in private law or civil law, it is generally accepted that legal subjects include humans (individuals) and legal entities.¹²

In the rental agreement, the parties to renting the boarding house are:

1) Boarding House Owner

A boarding house owner is a person or legal entity who rents goods or objects to another party, so that the tenant can enjoy the use of the goods. The party who rents the goods or objects does not have to be the owner of the goods themselves, but anyone who, based on the right of control to transfer the use of the goods, can also be the lessor. This is because in a lease, what is transferred to the tenant is not the right of ownership of an item but only the use or collection of the proceeds from the rented goods.¹³ If referring to the research results, then the position The party renting here also acts as the owner of the boarding house. This applies to all boarding houses that are the object of this research.

⁷ Donald Albert Rumokoy and Frans Maramis. 2014. Introduction to Legal Science. Jakarta: Rajawali Press. Page 114.

⁸ Titik Triwulan Tutik. 2008. Civil Law in National Law. Jakarta: Kencana. Page 40.

⁹ Donald Albert Rumokoy and Frans Maramis. Op. Cit., Page 114.

¹⁰ Kelik Wardiono, et al. 2018. Civil Law Textbook. Surakarta: Muhammadiyah University Press. Page 163.

¹¹ Quarterly Point Tutik. Op.Cit., Page 41.

¹² Donald Albert Rumokoy and Frans Maramis. Op. Cit., Page 114 .

¹³ Zaeni Asyhadie. Op.Cit., Page 139.

2) Tenant Party

According to Zaeni Asyhadie in his book Civil Law, a lessee is a person or legal entity that rents goods or objects from a lessor.¹⁴ Meanwhile, in the Civil Code, referring to 1548 of the Civil Code, a lessee is a party who enjoys an item for a certain period of time and by paying a price. Based on research on boarding house rental agreements between the lessee and a third party, the lessee also serves as the lessor.

3) Third party

Here in this research, he is positioned as someone who binds himself to a boarding house rental transfer agreement with a second party or the tenant. The agreement made was in another agreement that had been made before the boarding house rental transfer agreement was made.

b. Legal Objects in Boarding House Rental Relations

Apart from legal subjects, legal objects are known as the opposite of legal subjects. A legal object is anything that is useful for a legal subject (human or legal entity) and which can become the subject (object) of a legal relationship (right), because that something can be controlled by the legal subject.

In civil law, the legal object is an object with the provision that it has an effective monetary value, is a single unit and can be controlled by humans. Legal objects in civil law are discussed specifically in the law of objects.

A legal object is anything that can become the object of a legal relationship. In more detail, E. Utrecht states that what is meant by a legal object is anything that is useful for legal subjects (humans and legal entities) and that can become the subject (object) of a legal relationship (can also be called: rights), because something can be controlled by the legal subject.¹⁵

According to Article 499 of Book II of the Civil Code concerning property, property is every item and every right that can be controlled by ownership rights. Thus, property, as an object, includes goods and rights, where the goods and rights can be controlled by ownership rights.¹⁶

Regarding objects or goods that can be rented according to Hofman and De Burger, what can be rented are only physical goods, but there is another opinion, namely from Asser and Van Brekel and VollMar who argue that not only physical goods can be objects of rent but rights (which are not physical) can also be rented. This opinion is strengthened by the decision of the Hoge Raad dated December 8, 1922 which considered the possibility of renting a right to hunt animals.

¹⁴ Ibid.,Page 139.

¹⁵ Donald Albert Rumokoy and Frans Maramis Op.Cit., Page 120.

¹⁶ Ibid.,

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The purpose of a lease agreement is to grant the lessee the right of use, allowing the lessee to lease non-owned property to the lessee who has the right to control the property. Therefore, the property that can be leased by the lessor can be in the form of property rights cultivation rights, use rights, usufructuary rights, lease rights (second lease rights) and building rights.

According to Van Brekel, the rental price can be in the form of goods other than money, but these goods must be tangible goods, because the nature of the rental agreement will be lost if the rental price is paid with a service. This opinion contradicts the opinion of Subekti who argues that in a rental agreement there is no objection if the rental price is in the form of money, goods or services. Thus, the object of a rental agreement is all types of objects, both movable and immovable, tangible and intangible.¹⁷

The objects in the rental agreement are the house and the price. Provided that the house being rented is a halal house, meaning that it does not conflict with the law, order and decency. Based on this research, the rental object is a boarding house which is rented to a tenant and then rented out again to a third party.

In this study, the legal object is a boarding house rented to a tenant by the boarding house owner. These objects are owned by each boarding house owner, so the boarding house owner has full authority over any actions or deeds related to the legal object, namely the boarding house.

c. Valid Conditions for a Lease

As a type of agreement, the conditions for the validity of an agreement as regulated in Article 1320 of the Civil Code also apply to agreements lease. Therefore, for a lease to be valid, the first thing to consider is whether the person entering into the lease agreement is considered competent to perform legal acts, whether according to the provisions of the Civil Code, Islamic Law, or Customary Law. However, Chairuman Pasaribu and Suhrawadi K. Lubis wrote that in addition to fulfilling the requirement of competence, the requirements for a valid lease must also meet the following requirements: each party is willing to enter into the lease agreement, the object of the agreement must be clear and transparent, the object of the lease can be used according to its intended purpose, the object of the lease can be transferred, and the benefits of the object agreed upon are permitted by religion.

Each party is willing to enter into a rental agreement, here intended to for party in make something The contract/agreement must be made voluntarily without any coercion or pressure between the parties, free from any element of intervention by either party, or any discrimination or threats by the parties bound by the contract. If these things occur, the lease becomes invalid. This is also based on religious philosophy based on Surah An-Nisa' verse 29, which means:

¹⁷ Zaeni Asyhadie. Op. Cit., Page 139

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"O you who believe, do not consume each other's wealth in a false way, except by means of business that is mutually agreed between you. And do not kill yourselves, indeed Allah is Most Merciful to you."

The provisions of QS An-Nisa' verse 29 above seem very general and apply to all types of contracts, which of course also applies to rental contracts. Based on research on the parties in the first agreement between the lessor and the lessee in the Boarding House rental agreement, there is a clear agreement of willingness of each party. However, regarding the object of the lease, namely the Boarding House which belongs to the lessor, from the overall results of the research it was found that the lessor was unaware of and did not want the transfer of the Boarding House lease to a third party carried out by the lessee.

Furthermore, the lease object must be clear and transparent, namely the goods being leased, witnessed by the owner, including the lease period (the length of time the lease lasts) and the amount of the agreed rent. Based on the results of this study, it is known that the rental agreement for the Boarding House by the lessor to the lessee does not have any unfulfilled elements related to the above matters. However, in the transfer of the Boarding House rental agreement carried out by the lessee to a third party, problems arise. The problem is related to the object of the Boarding House lease which belongs to the lessor, while the one who carries out the transfer of the Boarding House lease is the lessor.

The leased object can be used according to its intended use. This means that the use of the leased item must be clear and can be utilized by the lessee according to its intended use (use). If the item (lease object) cannot be used as agreed, the lease agreement can be canceled. The leased object can be handed over. This means that the item agreed upon in the lease must be able to be handed over according to what was agreed upon, and therefore, the Boarding House that will be occupied, and the Boarding House that is not suitable cannot be used as the object of the lease agreement.

The benefits of the object under contract must be those permitted by religion. A rental agreement for an item whose benefits are not permitted by religious law is invalid and must be abandoned. This applies to a boarding house rental agreement where the boarding house is used for activities that violate the law and the boarding house's rules.

2. Form of Legal Relationship between Boarding House Owner and Tenant in the Boarding House Rental Agreement

Based on the results of field research, in boarding houses in the North Sumatra region there are several cases regarding the implementation of room rental agreements by tenants to third parties. The first case is regarding the implementation of a boarding house rental agreement carried out by tenants at the 8888 boarding house in North Sumatra. In the implementation of the boarding house rental agreement, between the lessor and the lessee, namely before entering into a boarding house rental agreement, a written agreement is first made. In the implementation of the rental agreement, the tenant must repeat the agreement.

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The renter's boarding house to a third party where the renter's friend or third party is looking for a boarding house.

The tenant then offered the boarding house, which he had occupied for about six months, because the tenant was on academic leave and wanted to return to his hometown for a fairly long period of about three months. Ultimately, the tenant did not want to suffer the loss that would require the tenant to pay the full rent for the boarding house, while the tenant did not use the boarding house facilities such as electricity, water, and other facilities while the tenant was away.¹⁸

The third party apparently agreed and agreed to carry out the rental transaction for the boarding house. Therefore, in this case, the rental agreement between the tenant and the third party was not known to the lessor, and the lessor, who was also the owner of the boarding house, was not included in the rental agreement for the transfer of the boarding house rental rights. The tenant and the third party transferred the boarding house rental only based on an oral agreement and did not use any evidence such as receipts and so on. In this case, the third party only paid the amount of money that had been agreed upon by both parties between the tenant and the third party. Another similar case occurred in the Siregar Jaya boarding house. Where the tenant wanted to re-rent the boarding house to a third party. The reason why the tenant transferred the boarding house rental to a third party was because the tenant had to carry out work duties temporarily out of town for more than a month. In this case, the third party is also looking for a boarding house and needs temporary accommodation. Therefore, both parties agree to a mutual agreement. In this case, the tenant does not notify the lessor that they are transferring the boarding house lease to the third party.¹⁹

The tenant and third party in entering into an agreement to transfer the rights of the Boarding House are only based on an oral agreement, not in writing, where in entering into an agreement it is not only based on a written agreement, it depends on the agreement of both parties. The renter also notifies the payment of the boarding house money in advance via transfer via the renter's account, not directly to the boarding house owner.

The third party agreed to a boarding house lease transaction. However, the tenant failed to provide or submit any evidence that could serve as collateral relating to the transfer of boarding house rights to the third party and the lessor or owner of the boarding house. This could lead to legal issues due to the lack of evidence of the agreement between the tenant and the tenant to transfer the boarding house lease to a third party. In the Siregar Jaya boarding house, located in North Sumatra, specifically in the Medan Tembung District, a case of boarding house lease transfer was also discovered. The tenant transferred the boarding house lease to a third party, a similar situation to the previous cases. However, this time the tenant sought out another person or third party to rent out the boarding house

¹⁸ Interview Results with Nurlina, Owner of Bukit Barisan Boarding House 29-30 January 2019.

¹⁹ Results of an interview with Astaman, Owner of Gunung Singgahmata Boarding House No. 38, February 1, 2019.

that had already been leased to continue renting the boarding house. However, the tenant first notified the third party of the time period determined by the tenant, which was only one month in the rental of the boarding house.²⁰ The reason that caused the tenant to transfer the right to rent the boarding house was because the tenant was unable to pay the rent for one month, in this case because the tenant had used the money that had been given by the tenant's parents for other expenses.

The implementation of this boarding house lease transfer is almost identical to the previous case. In this boarding house lease transfer agreement, the agreement was made verbally. The tenant did not provide any evidence to the third party as collateral related to the transfer of the boarding house lease. This again raises the possibility of future conflict due to the lack of evidence of the tenant's transfer of the boarding house lease to the third party.

So then, when viewed based on the results of research in the field, the binding relationship occurs in two types of relationships, first between the boarding house owner and the tenant, second between the tenant and a third party. The relationship that occurs between the boarding house owner and the tenant occurs legally based on an agreement to enter into a rental agreement for the rental object, namely the boarding house owned by the boarding house owner himself. This is based on the fact that the rental object is fully under the control of the boarding house owner as the legal owner, and has the right to carry out actions and/or actions towards the rental object, including legal actions.

The second relationship that occurs is between the tenant and a third party. The tenant, as one of the parties bound by a previous relationship with the boarding house owner, has the right to use and enjoy the leased object. However, it should be noted that the tenant only has limited authority and power in using the leased object, as previously agreed upon when agreeing to the lease agreement with the boarding house owner. The results obtained from the field findings also mention that the contents of the lease agreement include provisions that prohibit re-renting during the lease period of the tenant for the agreed leased object.

If the rules have been created and agreed upon, but the tenant then commits an act or action that violates and contradicts the rules, then the tenant's actions on the leased object by repeating the lease to a third party can be declared legally flawed and null and void. The relationship between the tenant and the third party is a relationship that creates losses for the boarding house owner on the leased object, so the boarding house owner has the right to take legal action or demand compensation for the losses he has experienced.

3.2. Legal Consequences of Renting Boarding Houses Made by Tenants to Third Parties

Legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events which the law in question itself has determined or considered as legal consequences. Or the

²⁰ Results of an interview with Sondang, Owner of the Pondok Atika Boarding House, February 3 2019.

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consequences of an action carried out to obtain a desired result by the perpetrators regulated by law.²¹

In short, legal consequences are the consequences that arise from legal events. These legal consequences can take the form of: the birth, change, or disappearance of a legal situation, the birth, change, or disappearance of a legal relationship between two or more legal subjects, where the rights and obligations of one party clash with the rights and obligations of another party.

According to Sadi, legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events that have been determined or considered as legal consequences by the law in question. Or the consequences of an action carried out to obtain a result desired by the perpetrator that is regulated by law.²²

According to Sudikno Martokusumo, the primary purpose of law is to create an orderly society, fostering order and balance. By achieving order in society, it is hoped that human interests will be protected. To achieve this goal, law serves to define the rights and obligations of individuals within society, distribute authority, regulate how legal problems are resolved, and maintain legal certainty.²³

The act of transferring the rent by the tenant to a third party without the knowledge of the boarding house owner is an act of violation The provisions of the applicable lease agreement. The authority to perform actions and/or actions regarding the leased property rests with the lessor unless further regulations govern it. However, if the parties bound by the agreement, in this case the lessee, continue to violate these provisions, then such actions will result in legal consequences.

In the implementation of the boarding house rental agreement by the tenant to a third party, as previously explained, there are several problems caused by the tenant to the boarding house owner and to the third party. The renter and the boarding house owner have violated the agreement as previously agreed upon by both parties. In this case, the tenant commits a violation of this agreement by repeating or transferring the rental of the boarding house to another person or third party without the knowledge or consent of the boarding house owner.

In this case, in the Siregar Jaya boarding house, the boarding house owner or the party who rented it felt disappointed with the actions of the tenant who transferred or re-rented the boarding house to a third party without the knowledge of the boarding house owner, because the boarding house owner was still related to the tenant. The party who rented or the boarding house owner, it turned out that the tenant never informed the boarding house

²¹ Muhammad Sadi Is. 2015. Introduction to Legal Science. Jakarta: Kencana. Page 90.

²² Ni Putu Dian Pradnyawati, et al. "Legal Consequences of Default in Car Rental Agreements in Klungkung Regency." In the Journal of the Yustisia Community, Ganesha University of Education, Department of Law, Vol. 1 No. 2, 2018. Page 8.

²³ Muhammad Sadi Is. Op. Cit., page 177.

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owner that the tenant transferred his boarding house to his friend or a third party, because the tenant was on academic holiday and wanted to go home for a fairly long period of time, around 3 months. In the end, the tenant did not want to experience losses that require the tenant to pay the full rent for the boarding house.²⁴

Because the boarding house owner is not close to the boarding house, once every month the boarding house owner comes to see and monitor the condition of the boarding house, which is when the boarding house owner comes to see the condition of the boarding house in one of the boarding houses where the tenant who occupies the boarding house is not a tenant he knows but a third party. When he found out about this, the boarding house owner immediately asked the third party regarding the transfer or re-renting of the boarding house by the tenant. After listening to the explanation from the third party, the boarding house owner still felt disappointed with the actions taken by the tenant, and if there was loss or damage due to not paying the boarding house money, and informed the third party and the tenant to immediately move from the boarding house he was renting.

In other words, the boarding house owner terminates the rental agreement with both the tenant and the third party. This is because, before the rental agreement was signed, the boarding house owner provided the tenant with a written agreement. One of the terms of this agreement clearly prohibits re-renting the boarding house to another party or even a third party without the owner's knowledge.

Almost similar to the problem that occurred at the 8888 boarding house in North Sumatra regarding the transfer of rent for a boarding house, where the tenant had to carry out work assignments out of town temporarily for more than 1 month and the tenant also did not want to bother looking for another place.

Another boarding house, the tenant temporarily transfers the boarding house to another person, where a third party is also looking for a boarding house and is in need of temporary accommodation, so the tenant transfers the boarding house to the third party. When the third party has occupied the boarding house, it turns out that there is a report from the boarding house guard to the boarding house owner, where the tenant is not in the boarding house but the one who occupies the boarding house is not the tenant but another person or party third.²⁵

Upon learning of this, the boarding house owner immediately approached the third party regarding the transfer of the boarding house lease and asked both the third party and the tenant whether the previous tenant had indeed transferred their lease rights to another person or a third party. The boarding house owner then did not object to the third party temporarily transferring the lease to the third party and also allowed the third party to stay in the boarding house. Furthermore, the problem of transferring the boarding house lease at 8888 Kos is also almost the same as the previous cases, namely not notifying the boarding house owner. The tenant this time sought another person or a third party, because

²⁴ Results of an Interview with Nurlina, Owner of Bukit Barisan Boarding House, January 29-30, 2019.

²⁵ Results of an Interview with Astaman, Owner of Gunung Singgahmata Boarding House No. 38, February 1, 2019.

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the tenant was unable to pay the boarding house rent for one month which he used for other needs. However, almost similar to the case at the Siregar Jaya boarding house, the homeowner after learning about this did not allow it and terminated the boarding house rental agreement, because if there was a loss and losses due to not paying boarding fees and then notifying third parties or the tenant.²⁶

1. Third Party Agreements are Revoked and Null and Void

A rental agreement is a consensual agreement, meaning it is valid if there is agreement on its main elements, namely the boarding house and the rental price. The rental agreement aims to grant property rights, but only grants the individual renter the right to enjoy the house, not ownership of the boarding house.²⁷

The legal consequences of an agreement are that the agreement can be canceled and null and void by law, where the agreement can be canceled if the first condition (the existence of an agreement) and the second condition (the existence of capacity) are called subjective conditions, because they are attached to the person who is the subject of the agreement. If the subjective conditions are not met, it will result in the agreement being canceled. As long as they are not canceled, the agreement remains binding. Meanwhile, it is null and void by law if the third condition (the existence of a certain thing) and the fourth condition (the existence of a lawful cause/reason) are objective conditions, because they concern something that is the object of the agreement. If these objective conditions are not met, it will result in the agreement being null and void, which means the agreement is considered never to have existed so there is no basis for suing each other before a judge (court).²⁸

The practice of renting a boarding house always begins with an agreement between the lessor and the lessee. As we know, this agreement requires the lessor to provide benefits to the lessee for the leased property, while the lessee provides compensation or rent for the enjoyment or use of the leased property to the lessor. In this case, both parties are also required to comply with all agreed-upon provisions to ensure the lease is sound and meets expectations.

Based on the description above, we can see several factors or reasons, it is clear that there are several efforts made by the parties, especially the owners of the 8888 kos and Siregar Jaya boarding houses in maintaining the boarding houses they rent. The efforts made by the boarding house owners do not take legal action. But the efforts made by the boarding house owners are taking action themselves or taking direct action and notifying third parties to immediately move out of the boarding house rented by third parties through tenants without the consent of the boarding house owners who feel disappointed and worried if things that cause losses occur such as loss and non-payment of boarding houses.

²⁶ Results of an Interview with Sondang, Owner of the Pondok Atika Boarding House, February 3 2019.

²⁷ Dhoni Yusra, Sri Lestari Noviyanti. "Legal Review of Protection for Owners of Rental Houses." In *Lex Jurnalica Journal* Vol. 7 Number 3, August 2010. Page 208.

²⁸ Ni Putu Dian Pradnyawati, Op. Cit., page 8.

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The third party here will certainly suffer losses due to their weak position due to accepting the transfer of lease rights without the boarding house owner's knowledge. And because the cancellation of the room rental agreement between the boarding house owner and the tenant, the boarding house rental agreement between the tenant and the third party is also legally void.

What renders a third-party agreement void is that the lessee lacks the right to take legal action against the leased property. This right rests solely with the boarding house owner, as the owner of the leased property. Therefore, a lease agreement with a third party is automatically declared void.

2. The Birth of Compensation for Boarding House Owners by Tenants

In accordance with the provisions of Article 1234 of the Civil Code, the performance of an agreement consists of giving something, doing something, or not doing something. In general, if the contents of the agreement are not fulfilled, then the party who does not fulfill the contents of the agreement is the one who can be said to be in default. The legal consequences that arise from a tenant who commits a default in an agreement where the tenant does not fulfill his obligations, can clearly be seen that the result of the agreement not being able to be fulfilled or implemented properly, then a boarding house owner does not receive the fulfillment of his rights that should be obtained according to the existence of the agreement.²⁹

Default by the tenant can result in losses for the boarding house owner. There are four types of sanctions or legal consequences for the party in default, namely:³⁰

- a. The debtor is required to pay compensation for losses suffered by the creditor (Article 1243 of the Civil Code)
- b. Cancellation of the agreement is accompanied by payment of compensation (Article 1267 of the Civil Code)
- c. Transfer of risk to the debtor from the time of default (Article 1237 paragraph 2 of the Civil Code)
- d. Payment of court fees if the case is brought before a judge (Article 181 paragraph 1 HIR)

From these legal consequences, the injured party can choose between several possible demands against the party who committed the breach of contract, namely demanding fulfillment of the obligation accompanied by compensation or demanding compensation only.

It is clear that the legal consequences that arise for the parties from the transfer or re-renting of the Boarding House are breach of contract. to the tenant for violating the agreement, compensation can be requested and because the boarding house owner has felt

²⁹ AA Dalem Jagat Krisno, Op., Cit., page 3

³⁰ Zaeni Asyhadie. Op., Cit., Page 89

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disappointed and feels disadvantaged towards the tenant and third parties, the loss suffered by the boarding house owner here is the boarding house owner who should receive a sum of money if the third party rents his other Boarding House, and does not transfer the Boarding House between the tenant and the third party without the knowledge of the boarding house owner and if there is a loss and loss does not pay the boarding house fee.

The boarding house owner is also worried or unsure about the third party because he does not know the third party, if something undesirable happens in the boarding house then who can be held responsible, for example, a motor vehicle is lost or the loss of other tenants' belongings, while the boarding house owner does not know that there are other parties boarding in his boarding house, because the boarding house owner here is obliged to provide security and comfort to other boarding house tenants.

So in the end, as a result of these losses, apart from demanding fulfillment of performance by the tenant, the boarding house owner also has the right to demand losses from the third party as the party who entered into an agreement regarding an object that is not his property without the rights and knowledge of the owner of the rental object.

Not to mention the legal consequences of damage caused by a third party, of course the second party and the third party can be sued civilly in court, or reported to the police in accordance with the applicable articles.

4. Conclusion

1. The binding relationship is based on the provisions of Article 1548 of the Civil Code, first between the boarding house owner and the tenant, second between the tenant and a third party. The relationship that occurs between the boarding house owner and the tenant occurs legally based on an agreement to enter into a rental agreement for the object of the rental, namely the boarding house owned by the boarding house owner himself, and the second relationship that occurs is between the tenant and the third party. 2. The legal consequences arising from the transfer or re-renting of the Boarding House for the parties based on the provisions of Article 1267 of the Civil Code are that the owner of the boarding house has the right to immediately terminate the agreement and can cancel the agreement that was made by the parties and ask for compensation, as a result of the cancellation of the Boarding House rental agreement, the rental agreement made by the tenant with the third party is also null and void by law. Efforts made to resolve the rental of this Boarding House are carried out by taking action independently and through deliberation. 3. Legal Protection for Boarding House Owners in Rental Agreements includes, among other things, providing legal protection through Formation of Agreements in Accordance with the Rules in Article 1559 of the Civil Code and also Legal protection through the fulfillment of compensation for losses arising from the rental agreement

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