

## The Implementation of Leasing *Bengkok* Land and Its Legal Consequences

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**Abstract.** *This research was motivated by the renting of crooked land in Pecangaan District, Jepara Regency which was carried out by the Village Head and Village Apparatus with an open auction with the community. The empirical juridical approach is used in this study, used to analyze various laws and regulations in the agrarian sector. The result of this research is that the village head takes legal action, namely the implementation of the village land lease is correct with an open auction procedure to the community. The implementation of the rent of the crooked land is correct, in accordance with laws and regulations, and produces benefits for the village and the community. The lease agreement made before a notary is then set forth in the form of a deed. In principle, every legal act must adhere to the principle of Nemo plus juris. Dispute resolution if the parties are by default can be resolved by deliberation, and if the deliberation is not reached, it is resolved through a general court.*

*Keywords: Dispute; Land; Resolution.*

### 1. Introduction

The State of Indonesia as a developing country, land in this case is very important for the life and livelihood of the nation as a principal means of development. This is confirmed in the 1945 Constitution Article 33 paragraph 3 which reads "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The law that regulates land is Act No. 5 of 1960, concerning Basic Agrarian Fundamentals (UUPA). To carry out the government's function in regulating the use, control and ownership of land in Indonesia, it is regulated in Article 2 of Act No. 5 of 1960 concerning Basic Agrarian Regulations<sup>1</sup>.

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<sup>1</sup>Boedi Harsono, Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law,

There are several systems of transfer of land rights, among others according to the law and according to customary law. Land rights can be transferred by way of inheritance or by way of transfer of rights in accordance with applicable legal provisions,<sup>2</sup> in which the transfer of rights is carried out with the deed of the Official for Making Land Deeds (PPAT) and registered at the Agrarian Office or the Land Office of the Regency/City concerned (Article of Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Position Regulations for Officials for Making Land Deeds). The transfer of rights by inheritance is the transfer of rights that occurs due to law with the death of the heir, while the transfer of land rights can occur by buying and selling, exchange and grants.

Land rights are rights that give authority to the holder of the right to use or take advantage of the land that is claimed.<sup>3</sup> On the basis of the provisions of Article 4 paragraph (2) of the Basic Agrarian Law, holders of land rights are given the authority to use the land in question, as well as bodies of earth and water and space above which are only needed for direct interests related to land use that is within the limits according to the UUPA and other higher legal regulations.

According to customary law, buying and selling land is an act of transferring land rights in a clear and cash manner. There are two (2) important things to observe in the transfer of rights subject to customary law, namely:<sup>4</sup>

1. The transfer of rights must be cash and clear, meaning that the seller delivers the goods according to the agreed price and receives the money immediately, while the buyer immediately receives the goods. The transition must be made before an authorized official (usually before the Village Head or the Head of the Customary Law Alliance) in the presence of several witnesses.
2. There is a guarantee from the head of the tribe/village legal community so that the rights of the heirs, neighbors (*buren recht*) and fellow tribesmen (*naasting recht*) are not violated if their rights are to be transferred, either loosely sold, sold annually or sold as a pawn. If the transaction or transfer of land rights does not have support (guarantee) from the tribal chief/community magistrate of the village, then the act is considered an act that is unclear, illegal and does not apply to third parties.

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Contents and Implementation, (Jakarta: Djbatan, 2005), p. 232

<sup>2</sup>Urip Santoso, *Agrarian Law and Land Rights*, (Jakarta: Kencana Prenada Media, 2009), p. 11

<sup>3</sup>J. Andy Hartanto, *Land Law, Characteristics of buying and selling land without registered land rights*, (Surabaya: Laksbang Justisia, 2013), p. 10

<sup>4</sup>*Ibid.*, p. 14

Land is one of the most important things in village government, such as *bengkok* land. According to Permendagri Number 4 of 2007 concerning Guidelines for Village Wealth Management, in Article 2 and Article 3, *Bengkok* Land which is Village Treasury Land is part of Village Assets and Village Assets belongs to the Village. The wealth of the village is proven by documents of legal ownership in the name of the village. So that it can be understood that crooked soil has the following elements:<sup>5</sup>

1. The land is part of the village land.
2. The land was given to villagers who were currently serving as village officials
3. The grant of land is only temporary as long as the person concerned serves as the village head or village apparatus
4. The purpose of giving the land as wages is to fulfill and support themselves and their families.

*Bengkok* Land which is part of the Village Assets is managed and utilized by the Village Government for the benefit of the local community based on the Regent/Mayor Regulation. Permendagri Number 4 of 2007 Article 15 concerning Guidelines for Village Asset Management states that Village Assets in the form of Village land are not allowed to relinquish ownership rights to other parties, unless needed for public purposes. Relinquishment of village land ownership rights is carried out after receiving compensation according to a price that benefits the village by taking into account market prices and the Selling Value of Tax Objects (NJOP). Compensation in the form of money must be used to buy other land that is better and located in the local village, but leasing is still possible for *bengkok* land. In the framework of village development, one source of village income comes from village treasury lands. This can be seen in Law 32 of 2004 concerning Regional Government Article 212 paragraph (3) letter a, namely that one of the village's original income comes from the results of village treasury lands. In practice, village treasury land lease agreements are usually carried out by the Village Head or Village Government Officials. The Village Head in this case acts as the subject who leases the village treasury land through the BPD or the Village Consultative Body to lease it to the community. In the lease agreement, the village treasury land in Pecangaan District, Jepara Regency is adjusted to the principle of deliberation and consensus.

According to the UUPA system, this land is included in the type of usage rights (special), namely the use rights over state land that are given to government

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<sup>5</sup>Eman Ramelan, The Existence of Crooked Land or Rewards in the Perspective of Law in Indonesia, (Yuridika Volume 14, March-April 1999), p. 111

agencies for a certain period of time and must also be registered in order to achieve legal certainty with the aim that villages have a source of income in administering village governance.

Land lease agreements are often carried out by the village community, leasing is considered very important, including the village treasury land lease. Where people who do not have ownership or rights to a land can rent it to meet their needs and cultivate it. So that in practice it sometimes creates a problem, where the lessee defaults on the contents of the lease agreement made by the lessor.

In reality, there was a problem between the second party, namely Suhadi (tenant) and the first party, namely Mr. Karmisan (owner) of the crooked rice field, there was a case, namely the second party, Mr. Suhadi (tenant) who leased the land again, which was leased from the first party, Mr. Karmisan (owner) of the crooked rice field, namely Mr. Suhadi (second party) renting out the leased land again to a third party, namely Mr. Muryanto without the knowledge of the owner/first party even though the land belongs to the first party, namely Mr. Karmisan, while Mr. Suhadi only has the right to cultivate the land, not renting it out to other people. So that in the end there was a dispute between the two parties.

One of the causes of default in Pecangaan Subdistrict was because the tenants did not correctly understand the purpose of the lease agreement being made and did not understand the procedures and conditions in the rental agreement process for the village treasury land lease in Pecangaan Subdistrict which was conveyed orally by the village administration for development. Many tenants do not fully understand the lease agreement and the benefits of leasing.

## **2. Research Methods**

The normative juridical approach is used in this research. This approach is used as a reference in highlighting problems based on applicable legal aspects, from a normative approach used to analyze various laws and regulations, in the agrarian sector which have a correlation with land issues.

The research specifications applied in this study are analytical descriptive, which is always a form of research that aims to describe or describe the object of research in general. The descriptive analytical research specification used in this study is to describe the land registration process with crooked land evidence at the Jepara District Land Office and analyze how it implies for legal standing and legal protection for crooked landowners in land registration and as proof of land ownership.

### 3. Results and Discussion

#### 3.1. Procedures for Implementing Leases for Leasing *Bengkok* Land in Pecangaan District, Jepara Regency

It is not permissible to manage village assets in the form of village land or *bengkok* land done arbitrarily on the personal authority of a Village Head alone but has been regulated in valid laws and regulations. Village-owned wealth management is carried out based on the principles of public interest, functional, legal certainty, transparency, efficiency, effectiveness, accountability and certainty of economic value. Village-owned management is discussed by the village head together with the Village Consultative Body based on the procedures for managing village-owned assets regulated in Article 77 paragraph (3) of Law no. 6 of 2014 concerning Villages.

*Bengkok* land in Troso Village, Pecangaan District, Jepara Regency is managed based on the Regulation of the Minister of Villages for Development of Disadvantaged Regions and Transmigration of the Republic of Indonesia Number 01 of 2015 concerning Guidelines for Authority Based on Origin Rights and Local Scale Authority Village.

Results of an interview with the Head of Troso Village that the village treasury land auction is carried out by means of an open auction, by means of local people wishing to auction attend the village hall then the bidder with the highest price from other bidders wins the auction.<sup>6</sup>

Based on the results of interviews with the Head of Troso Village, Pecangaan District. That the management and utilization of *bengkok* land has been carried out properly in accordance with the established regulations, namely Getaspejaten Village Regulation Number 01 of 2015 concerning Village Wealth Management. Each village has conducted an auction of Village Treasury Land and has also reported the results of the Village Treasury Land Auction to the Pecangaan District. The village treasury land auction is also carried out in accordance with the rules set by the Pecangaan District Government. The Village Head makes a Decree on the Establishment of the Village Treasury Land Auction Committee to facilitate the running of the Village Treasury Land Auction and divides the task each committee.

The Management of Village Treasury land is carried out by means of village treasury land auctions aimed at improving the standard of living and welfare of the village community and also increasing village income. By auctioning it to the

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<sup>6</sup>Interview with Abdul Basir as Head of Troso Village, Pecangaan District, Jepara Regency on January 25, 2021

community, the benefits of village treasury land can be felt directly by the community as well as the village head and village apparatus receiving money from the village treasury land auction. Everyone can feel the benefits and results of the village treasury land, in contrast to if the village treasury land is directly managed personally by the village head and village apparatus, the community cannot take advantage of the local village treasury land.

Management and Utilization of *Bengkok* Land after the promulgation of Act No. 6 of 2014 concerning Villages, that implementation of the utilization and management of *Bengkok* Land is through the Village Treasury Land Auction Process where the Village Treasury is auctioned off to the community and the results of the auction are given to the Village Treasurer to then be distributed To the Village Head and Village Apparatuses as the salary of the Village Head. The giver of land rights to the public who is auctioning is with rent.

Based on Article 44 UUPA, Lease Rights are a person or legal entity who has the right to lease land, if he has the right to use land belonging to another person for building purposes by paying the owner a sum of money as rent. Land rights that can be leased are property rights and leased objects for buildings are non-building land. The existence of a system of leasing village treasury land or *bengkok* land with the use of cooperation with the community or other parties is carried out within a policy framework to increase village income.

The village head is responsible for the management and utilization of *Bengkok* Land, in addition to that the village head is also responsible for village property rights and interests. Village property rights, for example village lands consisting of village treasury land, drip land, *bengkok* land, pangonan land and burial land. Village buildings consist of village halls, village schools, village markets, waterways, bridges, village roads and so on. On the other hand, the Village Head is obliged to maintain and secure finances village, which comes from the results of the village treasury land and the results of land tax collection from villagers.

### **3.2. The Legal Consequences Born From the Establishment of a Notarized Association of Farmers Using Water**

Renting is an agreement whereby one party binds himself to give the other party the enjoyment of an item, for a certain time and with the payment of a price that the latter party has agreed to pay. Such is the definition given by Article 1548 BW regarding rental agreements. According to R. Subekti, leasing, like buying and selling and agreements in general, is a consensual contract agreement. That is,

the agreement is valid and binding at the moment an agreement is reached regarding its main elements, namely goods and prices.<sup>7</sup>

According to RM Sudikno Mertokusumo, there are several types of agreements, namely underhand agreements signed only by the parties concerned, agreements with notary witnesses to legalize the signatures of the parties, and agreements made before and by a notary in the form of a notary deed.<sup>8</sup>

The responsibilities of a notary as a public official include the responsibilities of the notary's own profession related to the deed, including: First, the notary's civil responsibility for the deed he made. Responsibility in this case is the responsibility for the material truth of the deed, in the construction of acts against the law. Acts against the law here are active or passive. Active, in the sense of carrying out actions that cause harm to other parties. While passive, in the sense of not doing an act that is a must, so that the other party suffers a loss. So the elements of unlawful acts here are unlawful acts, mistakes and losses incurred. Second, the notary's criminal responsibility for the deed he made. Criminal in this case is a criminal act committed by a Notary in his capacity as a public official authorized to make deeds, not in the context of individuals as citizens in general. Third, the notary's administrative responsibility for the deed he made. Administrative sanctions based on Law no. 2 of 2014 states that there are 5 (five) types of administrative sanctions given if a Notary violates the provisions of Act No. 2 of 2014, namely: a. verbal warning; b. written warning; c. temporary stop; d. Honorable discharge; and e. Dishonorable discharge.

The lease agreement is one of the named agreements, namely agreements listed and regulated in the Civil Code which consist of sale and purchase agreements, exchange agreements, lease agreements, agreements to do work, partnership agreements, association agreements, safekeeping agreements, loan-use agreements, and loan agreements. Like a sale and purchase agreement, a lease agreement is an agreement that obtains detailed arrangements from the Civil Code. If a sale and purchase agreement requires detailed arrangements because it relates to the transfer of ownership so that there are many legal issues that may arise, The lease agreement relates to the transfer of the use of benefits for a certain period of time so that it will cause legal issues related to the object promised during the agreement and when the agreement ends. In the agreement known as the principle of freedom of contract, where the parties according to their free will each can make an agreement and each person is free to bind himself with whoever he wants. The parties can also freely determine the scope of the contents and requirements of an agreement provided that the

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<sup>7</sup>R. Subekti, *Various Agreements*, (Bandung: PT. Citra Aditya Bakti, 1995), p. 3

<sup>8</sup>Sudikno Mertokusumo, *Introduction to Written Civil Law (BW)*, (Yogyakarta: Sinar Graphic, 2001), p. 166

agreement may not conflict with coercive laws and regulations, either public order or decency.

In the case of making a lease agreement deed, the notary must first explain to the parties what matters are needed to fulfill the requirements so that the lease transaction can be carried out. One of these conditions is the right of the object being leased. To carry out a lease agreement, the owner of the leased object must show the basis for the rights of the object. Sometimes the basis for such rights must be in the form of an original letter, be it in the form of a certificate or in the form of another letter.

In the lease agreement made before a notary which is then stated in the form of a deed, in principle, in every legal action, it must adhere to the principle of "Nemo plus iuris", which means that people cannot transfer rights beyond the rights they have which aims to protect the right holders who always can claim back the rights registered in the name of anyone.<sup>9</sup>This principle is a guarantee for a notary to protect his client in terms of obtaining legal certainty that what is used as an object in the lease really belongs to the lessor.

### **3.3. Settlement If the Parties are in Default and the Legal Consequences in Leases Leasing *Bengkok* Land**

In this case, the Village Head and Village Officials issue policies to the community or other people to lease village treasury land or *bengkok* land by auction and openly. In the village treasury or *bengkok* land lease agreement, there are two parties that are interconnected, namely between the lessee and the lessor. In this legal relationship there are rights and obligations for the parties. In addition to the rights and obligations of each party as referred to in this case, it is also necessary to pay attention to the fulfillment of the achievements by the parties in accordance with the land lease agreement. In each agreement each party is required to fulfill what is the contents of the agreement or the parties are required to fulfill their achievements.

In accordance with the provisions in Article 1234 of the Civil Code (KUHPerdata), 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 those parties who do not fulfill the contents of the agreement are said to be in default. The legal consequences that arise from a debtor who defaults on an agreement where the debtor does not fulfill his obligations, it can be seen that as a result the agreement cannot be fulfilled or implemented correctly, then a creditor does not get the fulfillment of his rights which should be obtained in accordance with the agreement. .

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<sup>9</sup>Adrian Sutedi, Transfer of Land Rights and Registration, Jakarta: Sinar Graphic, 2008, p. 117-121

The legal consequences arising from default in the land lease agreement, namely the party who is harmed as a result of the default action can demand the fulfillment of his achievements in accordance with the contents of the land lease agreement. If the party committing the default does not fulfill its achievements as well, then the party who feels disadvantaged can prosecute the fulfillment of the achievement accompanied by compensation.

Legal remedies that can be taken by the parties in accordance with the provisions provided by the law are non-litigation legal remedies and litigation legal remedies. Non-litigation legal remedies consist of Consultation, Negotiation, Mediation, Conciliation or expert opinion in order to create a win win solution, as well as through arbitration, where the parties voluntarily have the case decided by a neutral arbitrator.

If the dispute between the parties cannot be resolved through non-litigation legal remedies, then litigation legal efforts can be made, namely through the process of proceeding in court by filing a lawsuit. Based on the research results, if the land lease agreement deed meets the requirements as an authentic deed and has the strength of authentic deed proof, then the legal remedy that can be taken by the landlord is by submitting a request for execution of the object in dispute. In this case, the request for execution is based on Article 1870 of the Civil Code and the principle of a judicial trilogy, in which trials are carried out simply, quickly and at low cost.

Dispute resolution if it occurs between the parties in the contents of the lease agreement for *bengkok* land in the village of Getaspejaten can be resolved by means of mediation.

Settlement of crooked land disputes according to the Village Head, in general explained in 3 stages, namely:<sup>10</sup>

#### 1. Deliberation Stage

At this stage there are 3 processes that must be passed by the parties, including:

1. The first process is preparation in which in this process it will be determined who will be the intermediary or mediator, the mediator or mediator will make an understanding of the dispute that occurs, determine the place of settlement, time and other parties involved, as well as other matters necessary to support deliberations.

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<sup>10</sup>Interview with Abdul Basir as Head of Troso Village, Pecangaan District, Jepara Regency on January 25, 2021

2. The second process is opening in which in this process statements will be obtained from the applicant/defendant relating to the dispute and hearing statements from witnesses from the plaintiff and the defendant.

3. The third process is closing which includes concluding the conversation, making a peace statement, signing by the disputing parties (if it has been agreed), witnesses and closing the deliberations.

## 2. Implementation stage of deliberation results

At this stage, the parties will carry out the agreement reached in voluntary deliberations, so that the implementation is relatively inexpensive.

## 3. The closing stage of the deliberation

After an agreement is reached, the deliberation will be closed by the party who is competent to do so and is usually carried out by the deliberation leader.

Based on the results of research and interviews with the Village Head and Troso Village Officials, Pecangaan District, Jepara Regency. Problems that have occurred so far and settlement of disputes in the village by conciliation. However, this does not mean that the dispute resolution mechanism in the legal system in the village ignores the aspect of justice. The goal is never separated from the goal to find a solution, which collectively is believed to be fair as a reward for the violations committed.<sup>11</sup>

A Notary appointed by the Minister of Justice, has the duty and authority to make deeds. An authentic deed is a deed made and formalized in a legal form, by or before public officials who are authorized to do so at the place where the deed was made. Notary comes from the Latin word *notarius* which means a person who makes notes. Pursuant to Article 1 of the Regulations on the Notary's Office where the Notary is made a public official who is the only one authorized to make authentic deeds regarding all actions, agreements and stipulations required by a regulation or by interested parties who wish to be stated in an authentic deed, guarantee date certainty, save the deed and provide grosse, copies and excerpts thereof,

From the above understanding, it can be seen that the main task of a Notary is to make authentic deeds. As for the authentic deed, according to Article 1870 of the Civil Code, it provides absolute proof to the parties who make it. In addition to what is stated in the law on the duties of a notary, including:

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<sup>11</sup>Interview with Abdul Basir as Head of Troso Village, Pecangaan District, Jepara Regency on January 25, 2021

1. register private deeds/letters (syukken), commit;
2. validation (waarmeking);
3. legalize signatures;
4. make and certify (waarmeking) copies/derivatives of various documents;
5. seek legalization of bodies, such as limited liability companies and associations in order to obtain approval/authorization as legal entities from the Minister of Justice;
6. make a statement of inheritance rights (under the hand);
7. other jobs related to juridical and taxation fields, such as stamp duty matters and so on.<sup>12</sup>

Thus, in making a deed, the people or parties must have prior approval of the will which is preceded by holding negotiations. According to Abdul Kadir Muhammad, what is meant by consent of will is: "A unanimous agreement between the parties regarding the main points of the agreement made. The principal of the agreement is the object of the agreement and the terms of the agreement. What is desired by one party with the other party is equally desired".<sup>13</sup>

#### **4. Conclusion**

The process of making an authentic lease deed before a Notary that the Notary has the authority to make an authentic deed, in the case of making a lease agreement deed, the Notary must first explain to the parties what matters are needed to fulfill the conditions for the lease transaction can be implemented. The lease agreement made before a notary is then set forth in the form of a deed, in principle in every legal action it must adhere to the principle of "Nemo plus iuris" which means that people cannot transfer rights beyond the rights they have which aims to protect the right holder who can always sue return the rights registered in the name of anyone.

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<sup>13</sup>R. Subekti, *Fundamentals of Civil Law*, Jakarta: PT. Intermedia, 1996, p. 89

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