

Efforts to Resolve Rental Disputes Renting Market Land Rent Back (Supreme Court Cassavior Decision)

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Abstract. *The purpose of this study is to determine and analyze the form of the lease agreement for the Gladak Market land that is being re-leased which can protect the interests of the parties and to determine and analyze the settlement of the lease dispute for the Gladak Market land including the yard and yard that are re-leased by the tenant. This type of research is normative legal research. The approach method in this study is the case approach (case approach). The type and source of data in this study are secondary data. Secondary data is data obtained by researchers from the literature which is the result of research. The data analysis method used is qualitative data analysis, meaning that in writing the thesis it only contains descriptions and does not use statistical data and mathematical figures. As a way to draw conclusions from the results of the research that have been collected, the normative-qualitative normative analysis method will be used, because this study is based on existing regulations as positive legal norms. The results of the study indicate that legally the form of a written lease agreement has a stronger legal basis, especially if a dispute occurs, because the parties can use the written agreement as a basis for resolving disputes that have a strong legal basis. And for the purposes of evidence in court, the ideal form is an agreement made before an authorized official or notary, so that it can be an authentic deed.*

Keywords: *Dispute; Existing; Regulations; Resolution.*

1. Introduction

Land issues is a complicated and very complex problem, because it involves many things such as social conditions, the economy of society, land problems, increasing population and various other problems, all of which cannot be separated from one another.

With the existence of disputes and the consequences that arise from them of course harms one party, then every human being who feels that his rights have been violated certainly needs a place to complain about his problems to get a sense of security, peace and avoid anything that is a danger to him in owning and utilizing all his belongings. In responding to these problems, the government has from time to time attempted to build institutions or agencies that have the authority to resolve land dispute problems, both purely executive and within the judicial scope, including compile regulations Which in family, social, relate with completion and state.

land disputes. This can be seen in Law Number 1 of 1964 concerning the Stipulation of Government Regulation in Lieu of Law Number 6 of 1962 concerning the Principles of Land (State Gazette of 1962 Number 40, Supplement to State Gazette Number 2476) into Law (State Gazette of 1964 Number 3, Supplement to State Gazette Number 2611) is no longer in accordance with the needs and developments of the situation, and therefore it is deemed necessary to re- regulate the provisions regarding land and settlements in a new Law.

Law Number 4 of 1992 as a replacement for Law Number 1 of 1964 seeks to improve and develop land and settlement development with various aspects of its problems that need to be worked on so that they form a functional unity in the form of physical spatial planning, economic life, and socio-culture to support national resilience, be able to guarantee environmental sustainability, and improve the quality of life of the Indonesian people.

But in reality, not everyone can meet the need for land as one of the basic human needs. The more rapid the development of the region, the more difficult it is for people to get land at a price that is affordable for the community, especially those with middle to low incomes, this is what drives them to just rent land rather than buy or build their own land.

In accordance with the letter of the Lease Agreement dated 12 February 1995 which expired on 12 February 1996, in letter (c) it is stated as follows: "That the second party has no right to transfer its rental rights to a third party and if the second party's rental rights have ended then the second party is required to hand over the land mentioned above to the first party. "Then the transfer of rental rights from the defendant to another party without the plaintiff's permission or knowledge is invalid and violates the law."

The existence of problems as described above made the author interested in knowing about the procedures lease agreements in general and the lease agreement for Gladak market land in particular and the steps that

need to be taken to resolve disputes or problems that occur, especially in land lease agreements. Therefore, the author conducted a study entitled Efforts to Resolve Lease Disputes over Market Land that is Leased Back (Supreme Court (MA) Cassation Decision).

According to Philipus M. Hadjon, legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on general provisions against injustice or as a collection of regulations or rules that will be able to protect something else.

2. Research Methods

This type of research is normative legal research, because this research examines the sources of legal materials in the form of laws and regulations and decisions of judicial institutions related to rent and land dispute resolution mechanisms. Furthermore, the author inventories and examines the principles and legal norms contained in the laws and regulations.

The approach method in this research is a case study approach (*case approach*) is carried out by reviewing cases related to the issues faced which have become court decisions which have permanent legal force in the real sense and examining Constitution Including (*Legisprudence*), *Interpretation*.

The type and source of data in this study are secondary data Secondary data is data obtained by researchers from the literature which is the result of research. Which is already available in the form of books that are usually provided in the library. Secondary data sources used in this study include official documents, books, research results in the form of reports.

The data analysis method used is qualitative data analysis, meaning that in writing the thesis only contains descriptions and does not use statistical data and mathematical Agreement the definition of an agreement can be seen in Article 1313 of the Civil Code, which states as follows: "An agreement is an act by which 1 (one) or more persons bind themselves to 1 (one) or more other persons." In relation to the definition of an agreement, it is necessary to differentiate it from the term obligation, where an obligation is an abstract form that describes the existence of a legal relationship, while an agreement is a concrete form or implementation of a legal relationship (obligation) that is based on an agreement figure. Data obtained from interviews According and all other data are then analyzed using qualitative analysis methods to answer the problems that have been formulated, namely by analyzing the quality of the data obtained so that a clear and relevant picture is obtained about the land lease agreement procedure and the land dispute resolution mechanism according to applicable laws.

An agreement is an event in which two people promise each other to do something. From this event, a relationship arises between the two people called a contract.

According to another legal expert, R. Wirjono Prodjodikoro, that an agreement is a legal relationship regarding property between two parties; in which one party promises or is deemed to have promised to do something or not to do something.

do something, while the other party has the right to demand the implementation of that promise. Types of Agreements and Reasons for the Abolition of Agreements Mariam Darus Badruzaman⁸, in his book, divides the various types of agreements into 14 (fourteen) forms, including the following:

- 1) Reciprocal agreement.
- 2) Free Agreement.
- 3) Agreement on burden
- 4) The agreement is named (*benoemd*)
- 5) Anonymous agreement (*Onbenoemd overeenkomst*)
- 6) Obligatory agreement
- 7) Material agreement
- 8) Consensual agreement
- 9) Real agreement
- 10) Liberator agreement
- 11) Proof of Agreement
- 12) Profit-sharing agreement
- 13) Public agreement

According to Article 1381 of the Civil Code, the reasons for the termination of an obligation include the following: 1. Payment;

- 1) Cash payment offer followed by deposit;
- 2) Debt renewal (Novation);
- 3) Debt Encounter (*Compensation; Set-off*);
- 4) Debt Relief;
- 5) Destruction of goods owed;

- 6) Cancellation/Revocation;
- 7) Applicability of Cancellation Conditions;
- 8) Passage of Time;

House Lease Agreement

A house rental agreement is an agreement by which one party binds himself to give another party the enjoyment of using a house for a certain period of time by paying a price which the latter party has agreed to pay.

According to Law Number 4 of 1992 concerning Housing and Settlements in Article 12 paragraph (1), it is emphasized that "occupancy of a house by a non-owner is only legal if there is an agreement or permission from the owner." And this can be done by means of renting or not renting.

According to Article 1 number 3 of Government Regulation Number 44 of 1994 concerning Occupancy of Houses by Non-Owners, it is stated that what is meant by renting a house is the condition where the house is occupied by a non-owner based on a rental agreement. Renting Back Leased Objects in the Study of Islamic Legal Philosophy Changes in the concept of Islamic law come from established thinking as well as speculative thinking. One of the main principles of Islamic law is justice, which affects many relationships, both relationships between individuals and groups. The existence of Islamic law certainly aims to create welfare for humanity both in the world and in the hereafter, in the study of Islamic law known as the term *maqashid al-syari'ah*. The number of ulama and mujtahids made it *maqashid al-syari'ah* one of the legal theories. Mujtahids, both among the scholars of the khalaf and salaf, have agreed that Islamic law provides convenience and eliminates taklif that the people are unable to carry out.

3. Results and Discussion

3.1. Form of Lease Agreement for Gladak Market Land to be Rented Back that Can Protect the Interests of the Parties

Regarding the form of a house rental agreement, there is no provision stating that it must be written or oral, in the Civil Code there is also no provision regarding this matter. Legally, the written form of a house rental agreement has a stronger legal basis, especially if a dispute occurs, because the parties can use the written agreement as a basis for resolving disputes that have a strong legal basis. And for the purpose of proof in court, the ideal form is an agreement made before an authorized official or notary, so that it can be an authentic deed. As an addition related to the contents of the agreement, it should contain the things that are agreed upon clearly and in writing, namely regarding the object of the agreement, the agreed price, and the term of the rental agreement.

Releasing the lease refers to the act of handing over the rented property to a third party who completely replaces the position of the renter, so that the new person is directly related to the owner.

In relation to the object of the lease agreement which is leased back, the Civil Code has stipulated in Article 1559 as follows:

“The lessee, if not permitted, may not misuse the goods he has rented or release the lease to another person, on threat of cancellation of the lease agreement and reimbursement of costs, losses and interest while the lessor, after the cancellation, is not obliged to comply with the re-lease agreement. If the leased thing is a house occupied by the lessee himself, then he may, on his own responsibility, rent part of it to another person if that right is not prohibited in the agreement.”

According to these provisions, the lessee may not repeat the rental of the object he has rented or hand over/ transfer the rental rights to another person, if this authority is not given to him by the lessor, then if the lessor does so, the lessor can demand cancellation of the rental agreement plus compensation, costs and interest based on Article 1267 of the Civil Code.

Article 1267 of the Civil Code states the following:

“The party to whom the obligation is not fulfilled, may choose to; force the other party to fulfill the agreement, if this can still be done, or demand the cancellation of the agreement, with compensation for costs, losses and interest.”

And after the court decision regarding the cancellation of the lease agreement, the lessor is not obliged to continue because there is no legal basis (*ground law*).

This is also emphasized in Article 5 of Government Regulation Number 43 of 1963 concerning Housing Rental Relations.¹⁷ which states that “Only with the owner's permission and during the rental period can the tenant rent out part of the housing to a third party.” departure time out of town or it could be a serious problem and have legal consequences, for example regarding land boundaries with neighbors or disputes over previously made agreements.

A dispute arises on the surface, among other things, because each feels right, feels entitled to what is disputed. Because if one of the parties to the dispute feels guilty and knows that he has no right to something that is disputed, the dispute does not exist or ends when the wrongness and the rightlessness are realized.

In social interaction, peace is the Dispute Resolution Lease agreement In ideal of

every member of society. Peace will be realized, among other In social interactions, where we live among people with different personalities and interests, we will certainly not be able to avoid conflict at all. The conflict can be caused by trivial matters, and have no legal consequences whatsoever, such as differences of opinion with a wife/ husband regarding the determination of things, if the various different interests of each member of society do not collide/conflict with each other.

Conflicting interests are what cause disputes/conflicts and to avoid these symptoms, they seek a way to establish order, namely by making provisions or legal rules, which must be obeyed by every member of society, in order to maintain community life. In the specified legal rules, everyone is required to behave 196 about the Rental Relationship Housing has been declared invalid by Government Regulation Number 44 of 1994 concerning Home Occupancy by Non-Owners, except Article 5 in the regulation remains valid, See. Article 24 PP No. 44 of 1994. in such a way that interests of other members of society will be safeguarded and protected. If the legal rules are violated, then the person concerned will be subject to sanctions or punishment.

In social interactions, peace is the dream of every member of society. Peace will be realized, among other things, if the different interests of each member of society do not collide/ conflict with each other. It is the conflict of interests that gives rise to disputes/disputes and to avoid these symptoms, they look for ways to establish order, namely by making legal provisions or rules, which must be obeyed by every member of society, in order to maintain social life. Within the specified legal rules, everyone is required to behave in such a way that the interests of other members of society will be safeguarded and protected. If the legal rules are violated, then the person concerned will be subject to sanctions or punishment.

What is meant by the interests as mentioned above are civil rights and unwritten, is a guideline for society on how people should or should not act in society. Provisions such as: "Whoever takes someone else's property with the intention of owning it illegally. and so on", "whoever by his fault causes loss to another person is required to compensate the loss to the other person", all of these are guidelines or rules that are essentially aimed at protecting people's interests.

The forms of disputes are diverse and their diversity determines the core of the problem; each problem has many twists and turns but in the end the core will emerge to the surface.

Various individual factors and environmental influences can control the emotions of the disputing parties through certain conflicts that sometimes cannot be resolved in a short time. Therefore, it will be more effective if it

can be resolved with a final and binding decision through alternative dispute resolution, either through Alternative forms obligations regulated in material civil law. Civil law (material) is embodied in laws or provisions that Certain Dispute Resolution (APS) or arbitration.

Dispute resolution that arises today is more directed towards non-litigation dispute resolution either in the form of negotiation, mediation, conciliation or through arbitration. Dispute resolution through litigation is not a method that is the main choice. again, if you are not satisfied with the decision of the panel of judges.

The judicial process is generally the last step (*the last resort*). Communities try to resolve disputes among themselves by various methods of negotiation, and only if this fails do they resort to the judicial process. In fact, often the settlement Completion dispute through through the court system becomes very litigation process - going to court - often does not meet the expectations of justice seekers. Because courts in any country, not only in Indonesia, are not effective and efficient in resolving disputes. This is because courts often do not solve problems, but instead add to them. expensive and the results are not satisfactory for both parties. Aspects of a long-standing relationship that is mutually trusting and carried out repeatedly (*repeated games*), and arbitration (dispute resolution through negotiation) have become very common ways of resolving business issues.

Settlement of disputes through the courts is very expensive and only Related rent dispute with rent settlement in Indonesia wastes time. The courts provide alternatives to the disputing parties to question each decision made by the panel of judges at a certain level, for example through the appeal, cassation and judicial review (PK) mechanisms.

In fact, the disputing parties who feel aggrieved can still file a case or lawsuit There are several arrangements. The author tries to divide it into several stages to better understand the resolution of rental disputes into several parts, namely as follows:

Based on Article 24 of PP No. 44 of 1994 concerning Occupancy of Houses by Non-Owners, it is stated that "With the enactment of this Government Regulation, all provisions of Government Regulation Number 17 of 1963 concerning the Main "Disputes relating to ownership and use of houses are resolved through the courts in accordance with the provisions of applicable laws and regulations."

The system for resolving housing rental disputes was then reaffirmed with the issuance of Government Regulation Number 44 of 1994 as contained in Article 22, which states the following:

Principles of Government Implementation of the Regulations Substitute Law

"Resolution of disputes between residents of a house and non-owners is carried out through Housing except for the provisions of Article 5 and Government Regulation out through the District Court."

Based on Article 10 paragraph Number 49 of 1963 concerning Housing Rental Relations as amended by Government Regulation Number 55 of 1981 and all implementing regulations, insofar as they regulate house rentals, are declared null and void."

Dispute resolution according to Government Regulation Number 49 of 1963 and Government Regulation Number 55 of 1981, along with its instruments, is declared no longer valid. (2) Law Number 4 of 2004 concerning Judicial Power, it is known that:

"The judicial bodies under the Supreme Court include judicial bodies in the general judicial system, religious judicial system, military judicial system, and state administrative judicial system."

If we look at the substance of a housing rental dispute, then the dispute falls within the competence of general courts with Civil Procedure Law and the resolution of housing Under examination in front rental disputes is stated in Article 14 of Law Number 4 of 1992 concerning Housing and Settlements as follows: trial, in accordance with simplicity, speed and low cost, the Panel of Judges is obliged to reconcile the disputing parties before continuing the examination of the case.

Based on provision the, Really to strive peace the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Court.

Article 2 of PERMA No. 2 of 2003 states that "all civil cases submitted to the first instance court must first be by implementing the provisions of Article 130 HIR/154 RBg, it is not just a formality to advocate peace.

3.2. Settlement of Rental Disputes Through Arbitration Institutions and Alternative Dispute Resolution Outside the Court resolved through peace with the Completion dispute rent assistance of a mediator."

Renting a house can also be resolved through a mediation institution or other So that parties Which alternative resolution institution outside the dispute before entering the stage of examining the main case in court, the Panel of Judges will attempt to reach a peace. By providing a grace period to hold peace talks.

It should be noted that the existence of PERMA No. 2 of 2003 is a replacement for Article 130 HIR/154 Rbg, where the judge who adjudicates is obliged to first reconcile the parties to the case, before the case is examined by adjudication. The issuance of PERMA was motivated by the issuance of SEMA No. 1 of 2002

District Court, as long as it is regulated in the agreement or consensus of the parties. As for arrangement about Dispute resolution through alternative dispute resolution institutions outside the courts is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

As for dispute resolution through Alternative Dispute Resolution (APS) or an Arbitration institution, it should be based on an arbitration agreement made in writing by the disputing parties.

Alternative Dispute Resolution concerning the Empowerment of First- Which what is meant is an institution Instance Courts to Implement Peace Institutions (Ex. Article 130 HIR/154 RBg), where in the SEMA the Chief Justice of the Republic of Indonesia emphasized that all Judges (Panels) who hear cases seriously resolution of disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court through consultation, negotiation, mediation, conciliation, or return the kiosk or shop mentioned expert assessment.

With the clause stating that above to the First Party” That then stage rental disputes are resolved either through Arbitration or APS, the resolution of housing rental disputes through litigation in the District Court can be set aside.

There are several things that should be noted before examining and discussing the decision of the court, both at first instance and cassation level, that the kiosk or shop was rented to someone (now deceased) for 1 (one) year from February 12, 1995 to an unwritten or verbal agreement to the kiosk owner, so that the kiosk can be used by his or her heirs as long as it is still needed for selling.

In this case, the author needs to remind us of the provisions on evidence in Civil Procedure Law, that according to Article 164 HIR and Article 1866 of the Civil Code, which emphasize that the means of evidence are:

- 1). Written evidence;
- 2). Witness evidence;
- 3). Suspicion;

This is known through the wording of the Rental Agreement dated 12 February 1995 which ended on 12 February 1996, in letter (c) which confirms the following:

"that the second party does not have the right to transfer its lease rights to a third party and if the second party has ended it is required to hand over of Judges, that written evidence has higher evidentiary power than other

evidence. However, written evidence or in this case a lease agreement letter has different strengths depending on the process of making it. A letter as an authentic deed has a higher evidentiary position compared to a letter as a private deed.

The rental agreement between the kiosk owner and the tenant is a private deed, because not made before a public official (such as a notary or civil registrar). According to Article 1875 of the Civil Code, if a deed under the signature of the person whose writing is to be used is acknowledged by the person against whom the writing is to be used, then the deed can be a perfect means of proof against the person who signed it and his heirs and the people who receive rights from it made before an authorized official or notary is an authentic deed and is perfect evidence and is an ideal form of agreement.

In this case, the Notary as an official appointed based on Law Number 30 of 2004 concerning the Position of Notary is the party authorized to make authentic deeds concerning all agreements. As stated based on results interview in Article 15 paragraph (1) of Law with Notary & PPAT, that the heirs of the tenant in the examination process before the court, if directly acknowledge the existence of the written agreement. So that the lease agreement becomes perfect as evidence. So that the legal consequence is that the lease agreement binds both parties and their heirs, because the death of one party does not cancel a lease agreement. 30 of 2004, which states the following:

"A notary has the authority to make authentic deeds regarding all deeds, agreements and provisions that are required by statutory regulations and/or that are desired by those interested to be stated in authentic deeds, guarantee certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed, all of this as long as the making of the deeds is not to void dispute also assigned or excluded to other regarding the power of proof of an agreement, it should not only be in written form, but the agreement should be made before an authorized official or a notary. So that there is no need for an acknowledgement of an agreement from the parties because the agreement that officials or other persons determined by law."

In relation to this, both parties are bound by the time period agreed upon in the agreement letter, where there are provisions in Article 1570 of the Civil Code which state the following:

"If the lease is made in writing, the lease ends by law when the specified time has passed, without any need for termination for that purpose. "if that right is not prohibited in the agreement."

According to these provisions, the lessee may not re-rent the object he has

rented or hand over/transfer

Based on provision the, the rental rights to another person, if

so lessee obliged this authority is not given to him by to fulfill his obligation For the lessor, then if the lessee does so, vacate the kiosk before the agreed time expires. A nother problem that arose was that it turned out that the lessee rented it back to a third party to be used as a place of business. The third party, although he was the son-in-law of the lessee, was outside the line of heirs of the lessee the lessor can demand cancellation of the rental agreement plus compensation, costs and interest based on Article 1267 of the Civil Code.

So the author agrees with the decision of the High Court and the Supreme Court that the third party is an unlawful occupant based on Chapter 1559 and must vacate the kiosk.

The Civil Code states as follows:

“The lessee, if not permitted, may not misuse the goods he has rented or release the lease to another person, on threat of cancellation of the lease agreement and reimbursement of costs, losses and interest while the lessor, after the cancellation, is not obliged to comply with the re-lease agreement. If the leased thing is a house that is occupied by the lessee himself, then he may, on his own responsibility, rent part of it to another person.

4. Conclusion

Legally, the written form of a lease agreement has a stronger legal basis, especially if a dispute occurs, because the parties can use the written agreement as a basis for resolving disputes that have a strong legal basis. And for the purposes of evidence in court, the ideal form is an agreement made before an authorized official or notary, so that it can be an authentic deed. Settlement land lease disputes that are re-leased land latest Which protect by the tenant are regulated in Government Regulation Number 44 of 1994 concerning Ownership by Non- Owners and in Law Number 4 of 1992, namely through the state judicial body interests of the parties. There is a need to disseminate Law Number 30 of 2004 concerning the Position of Notary to all levels of society, so that the public or District Court with a procedural process, namely the Civil Procedure importance know making how agreement Code. However, in the process of resolving disputes through the courts, the Panel of Judges is obliged to reconcile the parties first. The peace process can be carried out through a mediation institution, either within the judicial environment as regulated in the form of an authentic deed/notarial deed.

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