



## Validity of Clause Automatic Renewal Land Lease Agreement for Telecommunication Towers

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### **Abstract**

The lease agreement is generally a consensual agreement, meaning that it is binding on the second the agreement is reached and the respective parties are bound in it. The Civil Code does not explicitly determine the form of a rental agreement made, whether written or oral. The parties are given the freedom to determine the contents of the agreement, its implementation and terms. In practice, lease agreements for buildings or land are made in written form and the contents of the agreement have been formulated by the parties or just one of the parties, either in the form of an authentic deed or a deed under hand. Lease agreement made between PT. Profesional Telekomunikasi Indonesian with land owners is an agreement in which there are certain conditions, one of which is the automatic renewal clause of the lease term, however, this clause often creates disputes between the parties in its implementation. The problems discussed in this thesis are: 1). Is the inclusion of clauses for automatic renewal land lease agreements for telecommunication towers owned by PT. Profesional Telekomunikasi Indonesian are allowed under the engagement law? 2). What is the settlement if the land owner does not accept the automatic renewal land lease agreement for the telecommunication tower owned by PT. Profesional Telekomunikasi Indonesian? This research is descriptive in nature. The data used are primary data and secondary data. Sources of data in this study are library research and field research. Data were collected through interviews and document study. The data obtained were processed through editing and coding, then analyzed using qualitative analysis. Furthermore, the data is presented descriptively. Based on the research results, the authors concluded: 1). Inclusion of clauses for automatic renewal land lease agreements for telecommunication towers owned by PT. Profesional Telekomunikasi Indonesian have complied with the legal provisions of the agreement, and have fulfilled the legal requirements of the agreement even though in its implementation it still creates conflicts with land owners because it does not provide a sense of justice for land owners. 2) The settlement if the land owner does not accept the automatic renewal land lease agreement for the telecommunication tower owned by PT. Profesional Telekomunikasi Indonesian can be carried out by means of deliberation if the conflict remains unresolved, then the attempt for an arbitration lawsuit will be the final way to resolve it.

**Keywords:** *Agreement; Lease; Clause; Automatic Renewal*

## **Background of Research**

Provision of telecommunications tower infrastructure, of course, requires a place to build and operate it. The place can be in the form of land or buildings. Land or building as a place to be used for the construction of a tower owned by a company can be procured by leasing or buying and selling. However, tower provider companies usually prefer to rent and buy instead of buying and selling because the process is easier.

Article 44 of Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles explains that:

- (1) A person or legal entity has a right to lease land, if he is entitled to use other people's land for building purposes, by paying to the owner a sum of money as rent.
- (2) Payment of rent can be made
  - a. once or at any given time;
  - b. before or after the land is used.
- (3) The land lease agreement referred to in this Article may not be accompanied by conditions that contain elements of extortion.

In granting lease rights, what the parties must do is to make an agreement and to ensure legal certainty, the lease agreement must be made in the form of a written agreement. The purpose of making a written agreement is to provide legal certainty for the parties and as perfect evidence, when a dispute arises in the future.<sup>1</sup>

Leasing in Dutch is called *huurenverhuur*, leasing is a reciprocal agreement. According to the Big Indonesian Dictionary, lease means using something by paying lease and renting means using it by paying rent.

Yahya Harahap in this case also provides an opinion regarding the meaning of the lease that:

"Agreement between the renting party and the lessee. The lessee delivers the goods to be rented to the lessee to be fully enjoyed. " <sup>2</sup>

The provisions regarding the lease agreement are regulated in Article 1548 of the Civil Code which reads as follows:

"A lease is an agreement whereby one party binds himself to give the other party the enjoyment of something, for a certain time and with the payment of a price the payment is agreed by the latter party. "

A lease agreement is generally a consensual agreement, meaning that it is binding on the second the agreement is reached and the parties are reached each bound therein. In the lease agreement, there are several specific criteria, namely:

1. There are two parties that are mutually binding. The first party is the party that rents out, namely the party who owns the goods. The second party is the tenant, namely the party who needs the enjoyment of an item. The parties to the lease agreement can act for themselves, the interests of other parties, or the interests of certain legal entities.

<sup>1</sup> Salim H.S, Agreement Law, Theory and Practice of Arrangement of Agreements, Sinar Grafika, Jakarta 2008, p. 33.

<sup>2</sup> Yahya Harahap, In terms of Agreement Law, Alumni, Bandung, 1991, p. 220

2. There are main elements, namely goods, price, and lease term. Goods are assets in the form of material objects, both movable and immovable. Price is the rental fee in the form of compensation for the use of rental objects. The right to enjoy the goods delivered to the lessee is limited to the period specified in the agreement.<sup>3</sup>

The Civil Code does not explicitly determine the form of the lease agreement made by the parties. Lease agreements can be made in written or oral form. In practice, rental agreements, for example, such as buildings or land, are made in written form and the contents of the agreement have been formulated by the parties both in the form of a notary deed and a deed under hand.

Protelindo and landowners are generally based on underhand lease agreements for the construction of telecommunications towers. The tower is built on leased land by entering into a land lease agreement with the land owner. The lease agreement between Protelindo and the land owner is carried out before the tower is built, by going through several stages and conditions that must be met. The lease agreement that is made is an underhand lease agreement which is in a standard form in which the format and contents of the agreement clauses have been determined by Protelindo. In the initial process, what was carried out by the two parties was negotiation, namely regarding the area of land to be rented, the rental price and the lease period as outlined in the Minutes of Agreement. Other provisions that have become standard clauses must also have been agreed upon by the land owner. Therefore, the existence of negotiations at an early stage reflects an agreement of the will by the parties.

In the tenant lease agreement between Protelindo and the land owner, there is a clause that regulates the extension or renewal of the lease period that applies automatically. The clause reads: "This agreement is valid for an initial period of 5 (five) years, starting on \_\_\_\_ and ending on \_\_\_\_ ("Initial Term"), and will be renewed automatically for a further 5 (five) years. ("First Renewal Period"), respectively based on the will of Protelindo. Inclusion of an automatic renewal clause in the lease agreement is an absolute condition that must be agreed upon by the land owner at the signing of the agreement.

The inclusion of an auto-renewal clause is a guarantee so that the land owner does not reject the extension of the lease for various reasons. The problem that often occurs in the automatic extension of the rental period is the problem of increasing the rental price which has also been included in the clause of the rental agreement. Land owners object to the increase in rental prices agreed at the beginning of the agreement on the grounds that additional tower user operators will also increase the rental price increase beyond what has been agreed upon, so that for this reason the land owner refuses to extend the lease if the rental price increase is not met by Protelindo. On the other hand, of course, Protelindo will force to exercise its rights in accordance with the terms of the agreement.

This clause underlies the problem of renting land for the construction of telecommunications towers that occurred in Jorong Kubu, Nagari Panampung, Ampek Angkek District, Agam Regency. This problem occurs in land controlled by Wirda, where Wirda as the land owner made a land lease agreement for the construction of telecommunications towers by Protelindo.

The agreement began on September 30, 2010, with a land lease term of 20 years until September 29, 2030 based on the Land Lease Agreement between Protelindo with Wirda Number LGL-SUM-WSM-0006-HB, where after the expiration of the first period starting on September 30, 2010 to September 29, 2015 which is called the Initial Term, then the agreement has a clause three times extension and renewal of the period, which is divided into the First Renewal Period starting from 30 September 2015 to 29 September 2020, then the Second Renewal Period from 30 September 2020 to 29 September 2025 and the last is called the Third Renewal Period on September 30, 2025 to September 29, 2030.

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<sup>3</sup> R. Subekti, *Various Agreements*, Citra Aditya Bakti, Bandung, 1995, p. 40

In the rental agreement there is an automatic renewal clause for every 5-year renewal of the agreement contained in Article 3 of the Protelindo Land Lease Agreement with Wirda, there is an increase in rental value of 10% from the previous rental value of Rp.61,111,111, - every 5 years. when renewing the agreement. However, this increase, Mrs. Wirda as the owner of the land refused, because it was considered not in accordance with economic growth. Thus there was a dispute in the agreement, so that Protelindo requested the Lubuk Basung District Court for a consignment / deposit of the rental fee to Wirda.

Based on this background, the authors are interested in conducting further research on the inclusion of the automatic extension clause of the land lease agreement. Therefore, the title that the author takes is " **validity of clause automatic renewal land lease agreement for telecommunication towers** "

### ***Research Method***

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.<sup>4</sup> To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.<sup>5</sup> The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research<sup>6</sup>

### ***Result of Research***

In practice, the principle of freedom of contract is not applied in making an agreement that is standard in nature, but considering that standard contracts have become a necessity for the community and business actors. With the principle of freedom of contract, it can be concluded that the parties may enter into any agreement even though it has not been regulated in the Civil Code, as well as in the lease agreement.

A lease is an agreement, whereby one party binds himself to provide the other party the enjoyment of an item, for a certain time and with the payment of a price, the party is later agreed to pay as regulated in Article 1548 of the Civil Code. Leasing is a reciprocal agreement between the tenant and the lessee. Rent means use by paying rent and renting means using by paying rent and renting means using by

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<sup>4</sup> Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5

<sup>5</sup> Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31

<sup>6</sup> Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, Page 32

paying rent. So the lease agreement is an agreement or agreement in which the lessee must pay or provide a reward or benefit from the objects or goods that are owned by the owner of the goods being loaned.

The lease agreement is generally a consensual agreement, which means it is binding on the second the agreement is reached and the parties are bound in it. The subject of the lease agreement is the parties who make the agreement, namely the tenant and the party renting out, while the object is the object which is the object of the lease, can be determined and does not conflict with statutory regulations, morals and public order. In this study, the problem is the implementation of the agreement extension, which contains the automatic extension clause of the lease agreement between Protelindo and the land owner named Mrs. Wirda as the owner of the leased land, while the object for lease is the land, where telecommunication tower owned by Protelindo will be built

In accordance with the provisions of Article 44 of Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles which are the legal basis for granting lease rights for building purposes on land owned by other people, which reads:

- 1) A person or a legal entity has lease rights on land, if he has the right to use other people's land for building purposes, by paying the owner a sum of money as rent.
- 2) Payment of rent can be made a. once or at any given time; b. before or after the land is used.
- 3) The land lease agreement referred to in this Article may not be accompanied by conditions containing elements of extortion.

The land lease agreement to be used for the tower is made between Protelindo with the land owner, Mrs. Wirda, takes place before the tower is built, by going through several stages and conditions that must be met. The lease agreement that is made is an underhand lease agreement in the form of a standardized format which the terms of each clause in the agreement have been determined by Protelindo. There are only a few articles that the land owner can negotiate with Protelindo, namely in the form of articles that contain the scope of the agreement, the lease period and the rental price.

One of the clauses that often becomes a problem between land owners and Protelindo when the lease extension is carried out is the automatic extension clause of the lease agreement contained in article 3 regarding the lease period which is renewed automatically. The provisions of this clause often lead to conflicts between land owners and Protelindo due to the owner's refusal to extend the lease for various reasons. Meanwhile, in every agreement that the parties intend to make, both parties already know the contents of the agreement so that a good achievement is born between the two promised parties.

From the interview the author conducted with Mrs. Wirda, as the owner of the land, she stated that at the beginning of the lease agreement, and before the signing of the agreement, Mrs. Wirda had known the article by article of the agreement described by Protelindo including the automatic extension clause which became the problem. after a second 5 year extension between the land owner and Protelindo. The refusal was made on the grounds that the land owner did not receive a contract extension with a rental increase value of 10% as in the initial agreement and would not continue the lease for the next time if the nominal request for the increase in rent was not fulfilled by Protelindo, because it put pressure on other parties. The company embeds the auto-renewal clause in the agreement for the future benefit of the company, increasing the company's revenue and profitability and reducing the risk of rejection of the lease extension.

Often this clause is used in conjunction with other unfair practices such as the inclusion of rental rates at the time of lease extension that are too low. But again, that justice is abstract and who makes the agreement, he is bound to the agreement. In accordance with the provisions of Article 1338 of the Civil Code, which states that all agreements are made legally valid as law for those who make it. This means

that both parties are obliged to obey and carry out the agreed agreement as in compliance with the law. The inclusion of the auto-renewal clause legitimates that landowners cannot refuse extension of the lease.

The inclusion of the clause of automatic extension of the land lease agreement for Protelindo's telecommunication towers has met the provisions of Article 1320 of the Criminal Code, however this clause does not fulfill the principle of justice because in principle an agreement must have a balanced position between the land owner and the company. However, an agreement whose clause has been determined by only one party (standard) is indeed more profitable for the party with a stronger position.

This clause binds unilaterally to the land owner so that it is considered unfair by the land owner because it is bound by the lease agreement until the entire agreed lease period ends. The land owner cannot refuse to extend the lease or want the lease to end in the lease period that has already expired. The inclusion of this clause gives Protelindo full power to be able to extend or terminate the agreement according to the agreement's wishes, so that the principle of freedom of contract as stipulated in Article 1338 of the Civil Code is not implemented properly.

To fulfill its legal obligations for the rent for the next lease period, Protelindo made a request for a deposit of rent (consignment) to the Lubuk Basung District Court. Even though the court order accepted the request, the effort failed to be implemented because Mrs. Wirda still refused to accept the extension rent. Mrs. Wirda's refusal to receive rental money intends not to extend the lease if Protelindo does not meet the demands for an increase in rental rates and to avoid prolonged conflict, Protelindo chooses the path by making a re-agreement between Mrs. Wirda and Protelindo even though there is a dispute settlement option through Arbitration. So that a decision was reached that the automatic renewal clause would still exist and changes to the rental price increase were in line with Mrs. Wirda's demands.

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