



The Legality of Rental Agreements are Still Binded by Third Parties (Study at PT SBT Batam)

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Abstract

In the past, relations between communities were limited to people who knew each other based only on mutual belief. However, human life and environment are increasingly developing so that the relationship between communities is not only based on trust, but is based on an agreement that explains the rights and obligations of the parties, as well as a means of evidence if problems arise in the future. Such adjustments can be in the form of changes to the provisions of the agreement contents and / or due to things that have not been regulated or have not been sufficiently regulated in the original agreement. There are no provisions and rules that prohibit the parties from making an addendum while the parties know and agree to the addendum to the agreement. In accordance with the actions that have been taken by the company, namely PT SBT which is located in Batam. The company entered into several agreements one of which is the land lease agreement that has been proven in the Deed of Lease Agreement between PT SBT and PT TDC with Deed Number 155 dated December 28, 1994, made by a Notary, with a period of up to 2001. After the lease agreement period expires, PT TDC conducted a lease with PT SPG in the context of an extension of the land lease agreement in Batam and the release / transfer of the shares of PT SBT which was made in Deed No. 28 dated 12 February 2002 made by a Notary, with a period of up to 2021. After several months on the extension of the lease according to Deed No. 28 dated February 12, 2002, an addendum to the agreement on Deed No. 155 dated December 28, 1994, was carried out by the parties, namely PT TDC and PT SBT with Deed No. 153 dated June 28, 2002 made by a Notary. This creates uncertainty over the implementation of the agreement because the objects of the agreement are the same, namely a land area of 10,000 M2 (ten thousand square meters) located in Batu Ampar, Batam. With the existence of 2 (two) deeds with the same purpose and purpose, namely land leasing, there is an overlap in the implementation of the agreement as evidenced in different deeds. This has an impact on the absence of legal certainty, where certainty is an action to provide clarity in carrying out legal actions when implementing a lease agreement. Based on the description above, the writer will examine the problem.

Keywords: *Legality; Agreement; Third Parties*

Introduction

In the Civil Code ("KUHPerdata"), the law of agreement is regulated in Book III which gives freedom to humans to enter into agreements with other humans. Basically, an agreement is a legal act in which one party promises the other party to carry out something as stated in Article 1313 of the Civil Code. The agreement is legally binding on the parties with the implementation of the rights and obligations specified in the agreement. The agreement is intended to clarify the legal relationship.¹

So that an agreement becomes law for the parties who make it as stated in Article 1338 of the Civil Code. The agreement will arise after there is an agreement by the parties which is called the engagement. An engagement is a legal condition that binds 2 (two) or more legal subjects with obligations that are related to one another.² Agreement in general is divided into several types, namely, one of which is a reciprocal agreement. A reciprocal agreement is an agreement that provides rights and obligations to both parties. An example of such an agreement is a lease. Lease agreements, which are a form of reciprocal agreement, are currently growing among the public, especially those related to land leasing. The lease agreement will be valid and binding on the parties after reaching an agreement on 2 (two) things, namely goods and prices. The obligation of the first party to deliver goods to the other party so that the other party has an obligation to pay. With this, the goods submitted are not to be owned but to be enjoyed by their use. The surrender is only a transfer of power over the goods to be leased.

The agreement will end when the objectives of the agreement have been fulfilled by each party as desired by the parties in entering into the agreement. There are also several other ways that the agreement can be terminated as stated in Article 1381 of the Civil Code regarding the termination of the engagement.³ Such adjustments can be in the form of changes to the provisions of the agreement contents and / or due to things that have not been regulated or have not been sufficiently regulated in the original agreement. There are no provisions and rules that prohibit the parties from making an addendum while the parties know and agree to the addendum to the agreement.

In accordance with the actions that have been taken by the company, namely PT SBT which is located in Batam. The company entered into several agreements one of which is the land lease agreement that has been proven in the Deed of Lease Agreement between PT SBT and PT TDC with Deed Number 155 dated December 28, 1994, made by a Notary, with a period of up to 2001. After the lease agreement period expires, PT TDC conducted a lease with PT SPG in the context of an extension of the land lease agreement in Batam and the release / transfer of the shares of PT SBT which was made in Deed No. 28 dated 12 February 2002 made by a Notary, with a period of up to 2021.

After several months on the extension of the lease according to Deed No. 28 dated February 12, 2002, an addendum to the agreement on Deed No. 155 dated December 28, 1994, was carried out by the parties, namely PT TDC and PT SBT with Deed No. 153 dated June 28, 2002 made by a Notary. This creates uncertainty over the implementation of the agreement because the objects of the agreement are the same, namely a land area of 10,000 M2 (ten thousand square meters) located in Batu Ampar, Batam. With the existence of 2 (two) deeds with the same purpose and purpose, namely land leasing, there is an overlap in the implementation of the agreement as evidenced in different deeds. This has an impact on the absence of legal certainty, where certainty is an action to provide clarity in carrying out legal actions when implementing a lease agreement.

¹ I Ketut Artadi, I Dwa Nyoman Rai Asmara Putra, *Implementasi Ketentuan-Ketentuan Hukum Perjanjian Ke Dalam Perancangan Perjanjian*, Udayana University Press, Denpasar, 2010, pg. 27.

² Salim H.S., *Hukum Kontrak Teori & Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta, 2014, pg. 164-175.

Research Methodology

The research method is a way of doing something by using thought carefully to achieve a goal by searching, recording, formulating, and analyzing to compile a report.⁴

Discussion

1. The Contents of the Lease Agreement, the Object of which is Still Bound by a Third Party

The subject of legal action is referred to as the legal subject. Legal action is every act of a legal subject, whether human or legal entity, which is carried out deliberately to create rights and obligations. The result of this action is regulated by law, which causes the effect to be considered as the will of the parties who carry out the law. The parts of a legal act are, i) unilateral legal action, is a legal act committed by 1 (one) party only and creates rights and obligations by 1 (one) party only. For example, making a will or giving a grant. And ii) legal actions of 2 (two) parties, in which a legal act is committed by 2 (two) parties and creates mutual rights and obligations for the 2 (two) parties. One example is an agreement.

The agreement is carried out by 2 (two) or more of the legal subjects that have been approved by the parties who have a legal relationship, giving rise to rights and obligations for the maker. The legal subject of an agreement can be divided into 2 (two) types, namely human / person (*natuurlijke persoon*) and legal entity (*rechts person*). Humans are considered as legal subjects from the time they are born and will end when they die. A child who is still in his mother's womb is considered to be a right bearer if there is an interest that needs it, namely from the side of being an heir.

Humans as legal subjects have the authority to take legal actions or are considered legally capable if the human being is considered mature, spiritually healthy, and not under interdiction. Therefore, human figures who by law have been declared incapable of committing legal acts themselves and must be represented by others are, i) humans who are underage (immature), ii) humans who are under guardianship, such as a fool, mental illness, or extravagant, and iii) a woman in a marriage that is subject to the Civil Code. Besides humans as rights bearers, in law also bodies or associations are seen as legal subjects who can have rights and carry out legal actions like humans. Agencies and associations which have their own assets, participate in legal traffic through their management, can be sued and sued in court

On December 28, 1994, it was discovered that PT SBT and PT TDC entered into a lease agreement with a land object located in Batam for a period of 10 (ten) years and ended on November 15, 2001. With the termination of the agreement, PT TDC entered into an agreement with PT SPG in the framework of extending the lease of land in Batam on February 12, 2002 and valid until February 28, 2021. However, on June 28, 2002, PT TDC and PT SBT made an addendum I to the lease agreement dated December 28, 1994 which had already ends on November 15, 2001. The addendum I is valid until February 28, 2021 with the object of land is a plot of land covering an area of 10,000 m² (ten thousand seventy-four point seventy-six square meters) which is located on the east side of the land parcel with t ducks coordinates A, B, C, D which are located in Batam. As is well known, leasing is regulated in Article 1548 of the Civil Code. In the lease agreement conducted by PT SBT in 1994, it has fulfilled the provisions stipulated in Article 1320 of the Civil Code, where the legal terms of the agreement are as follows, i) agreement of the parties, where the parties to the agreement agree to carry out the agreement so that it meets the conditions as referred to in the Book of Law (KUHPerdata), ii) the ability of the parties,

³ Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian*, PT Bumi Aksara, Jakarta: 2003, pg. 1.

that the party signing the agreement is a person who is capable of taking legal actions, in this case iii) certain things, and iv) lawful reasons.⁵

In the lease agreement between PT SPG and PT TDC, the Notary explained that the agreement was an umbrella deed that bridged the extension of the lease agreement between PT SBT and PT TDC. Thus, the existence of the deed of the lease agreement between PT SPG and PT TDC does not replace PT SBT as the party leasing land with PT TDC. This is understood because the lease agreement regulates 2 (two) things, namely i) an extension (addendum) to the lease agreement, and ii) the release or transfer of PT SBT's shares to be carried out by means of a share sale and purchase deed.

Based on the foregoing, the basis for the emergence of addendum I between PT TDC and PT SBT did not refer to the lease agreement dated February 12, 2002, only to the lease agreement dated December 28, 1994. Also, in addendum I the lease agreement between PT SBT and PT TDC have no information stating that with the enactment of addendum I to the lease agreement, it will revoke the lease agreement between PT SPG and PT TDC. So that this will lead to 2 (two) lease agreements with the same object of the agreement however with a different subject. Therefore, it can be said that the lease agreement does not fulfill the objective elements of an agreement which will cause the agreement to be flawed and null and void.

In accordance with Article 1320 of the Civil Code, the legal conditions for an agreement are an agreement between the parties, the skills of the parties, a certain matter, and a lawful cause. In subjective terms, it must meet the agreement of the parties and the skills of the parties. If one of these conditions does not meet, the agreement can be canceled (voidable). Therefore, one of the parties can request the cancellation of the agreement through the court. When the parties dispute the agreement notarized by the notary public, the parties can bring themselves back to the notary concerned so that the deed can be canceled. Thus, the deed will no longer be binding on the parties making it and all matters regarding the cancellation of the deed will be the responsibility of each party. When the parties agree not to make cancellation, then one party can sue the other party with a lawsuit to degrade the deed into an underhand deed. If this has been done, the judge can give an interpretation whether it remains binding or cancellation of the deed that has been degraded.

In the objective element of an agreement, addendum I between PT SBT and PT TDC that has been carried out is considered the object of the agreement itself. lost. This is because, the land object is an area of land PT TDC, namely PT SPG, has previously conducted a lease with another party, namely PT SPG, so that the object of the lease no longer exists. When in an agreement the objective conditions are not fulfilled, the agreement is null and void. The point of the matter is that of agreement.

2. *Legal Consequences of Leasing Agreements that Are Still Binding with Third Parties*

An engagement that has been approved by the Parties is carried out in an agreement to fulfill their rights and obligations. The agreement has binding power and applies as law The validity of an agreement is regulated in Article 1320 of the Civil Code, where it consists of, i) agreement of the parties, ii) the ability of the parties, iii) a certain matter, and iv) a cause that is lawful.⁶ In the agreement there are certain legal consequences that arise if the subjective conditions or the objective conditions cannot be fulfilled. If the subjective conditions are not met, the agreement can be canceled as long as there is a request by certain interested parties. These subjective terms will give the impact that the agreement will be canceled

⁴ CST Kansil, *Pengantar Ilmu Hukum*, Balai Pustaka, Jakarta, 1989, pg. 216.

⁵ Yunanto, *Hakikat Asas Pacta Sunt Servanda Dalam Sengketa Yang Dilandasi Perjanjian*, Law, Development & Justice Review Volume 2 Nomor (2019) Mei 2019, pg. 38.

by the parties concerned. In order for this not to happen, interested parties can ask for clarity and / or confirmation that the agreement will remain binding and valid for the parties. With requesting the cancellation of an agreement that does not meet subjective requirements, then it can be done by actively prosecuting the court or waiting for the other party to cancel the agreement in front of the judge, so that the lawsuit filed by the other party is due to not fulfilling the achievements of the agreement and submits a defense of the agreement. who do not meet the subjective conditions that allow the cancellation of the agreement.⁷

The objective conditions of the agreement are certain things with the intention that in carrying out an agreement, what is the object of the agreement must be clear. The consequence of not fulfilling these conditions is that the agreement is deemed to have never existed or it can be said that the agreement has been null and void. PT SBT will have a loss impact, but here PT SBT does not feel that. This is because, the implementer of the agreement is PT SBT. So, from the side of the loss, the impact should have been felt by PT SPG. Where, PT SPG can sue PT TDC for the losses it feels. PT SPG can claim damages with costs incurred by submitting it to the court or PT SPG asks to cancel the lease agreement that has been made, however, this is not done by PT SPG to PT TDC until the term of the agreement expires. the lease. In addendum I carried out by PT SBT, it is better to include the lease agreement between PT TDC and PT SPG, so that it cancels the agreement and is replaced with a lease agreement made with PT SBT. So that from the start, PT TDC has entered into an agreement that contains a flaw in its will. Where, an agreement that contains a defect in the will is not based on the pure will or agreement of each party, but the agreement was caused by mistake, coercion, fraud, and / or was under the influence of another person who was abusing the conditions that occurred. Thus, the agreement given is not a valid agreement as stipulated in Article 1320 of the Civil Code and therefore it can be prosecuted for annulment.

The parties to one of the lease agreements, either PT SBT, PT SPG, or PT TDC, can file a lawsuit by submitting to the court to cancel the agreement they have made. From the PT TDC side, this action is unnecessary because it is not detrimental to it. As for PT SBT and PT SPG, it will be detrimental to the costs that have arisen as a result of the implementation of the agreement. PT SBT and PT SPG can seek compensation from PT TDC by filing a lawsuit with the court and canceling the previously made agreements. In Article 1243 of the Civil Code, one of which can be requested for compensation is compensation for expenses incurred as a result of negligence (default) of the tenant or the benefits obtained when the land object is still used. In this case, the rental fee has been agreed by PT SBT with PT TDC as well as PT SPG and PT TDC. This is also strengthened by Article 1249 of the Civil Code that the compensation for default arising from the negligent party, then the compensation must pay an amount.

Certain money to other parties. When filing a lawsuit in the form of compensation on the basis of default, it can also be linked to unlawful actions arising from people's actions in accordance with Article 1365 of the Civil Code. Where, Article 1365 of the Civil Code states that every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss. So that it can be seen that PT TDC's actions in renting both PT SPG and PT SBT are detrimental to these parties.

⁶ Gerry R. Weydekamp, 2013, *Pembatalan Perjanjian Sepihak Sebagai Suatu Perbuatan Melawan Hukum, Lex Privatum* Volume I Nomor 4 Oktober 2013, pg. 149.

Conclusion

1. The contents of the lease agreement, the object of which is still bound by the other party, must be stated completely and clearly. When the parties do not write down in detail and in detail the rights and obligations of each party in implementing the agreement, then this will have an impact and problems for the parties making it in the future. One of the parties can file a suit for default by asking for compensation from PT TDC which is also strengthened by Article 1249 of the Civil Code that the compensation for default arising from the negligent party, the compensation must pay a certain amount of money to the other party.
2. The legal consequence of a lease agreement that is still bound with another party is due to the fact that the objective conditions cannot be fulfilled in an agreement. When the objective conditions are not met, the agreement will be null and void. This objective condition will have an impact on the agreement that the agreement made is considered never existed. So that this cannot happen, interested parties can ask for clarity and / or confirmation that the agreement remains binding and valid for the parties. In fulfilling the terms of the agreement in accordance with Article 1320 of the Civil Code, with the object of the agreement that is deemed never to exist, the notary has been deemed negligent in fulfilling the obligations in providing legal counseling which lead to errors due to a lack of prudence in the agreement. Based on the foregoing, the notary is considered to be held accountable in a civil manner which has an impact on a request for compensation by one of the parties in the agreement.

Suggestion

1. The parties who will enter into the agreement must state completely and clearly the rights and obligations of each party. When the parties do not write down in detail their rights and obligations, the implementation of the agreement will give each party problems for a later date. If an agreement has previously been made, it is better if the parties wait for the agreement period to expire or the parties agree to terminate the agreement first before the agreement period expires in accordance with the terms agreed in the agreement. The parties as the contractor must provide true information to the notary before it is written in the authentic deed. Where, the notary has the responsibility for the material correctness of the deed he makes. So that in order to avoid problems that could harm the parties to the deed, the parties must be careful in carrying out a legal action. because in making deeds it is done to provide evidence of a legal act he has committed.
2. In exercising its authority, a notary must be able to act honestly, impartially and independently in accordance with the provisions of the prevailing laws and regulations, which can be done by providing legal counseling relating to legal consequences that may arise when applicable legal provisions are violated. So, the notary must be able and capable of the impact of the legal consequences of the actions of the parties before it is written down in the deed he is going to make.

References

- Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian*, PT Bumi Aksara, Jakarta: 2003.
- CST Kansil, *Pengantar Ilmu Hukum*, Balai Pustaka, Jakarta, 1989.
- Gerry R. Weydekamp, 2013, *Pembatalan Perjanjian Sepihak Sebagai Suatu Perbuatan Melawan Hukum, Lex Privatum* Volume I Nomor 4 Oktober 2013.

I Ketut Artadi, I Dwa Nyoman Rai Asmara Putra, *Implementasi Ketentuan-Ketentuan Hukum Perjanjian Ke Dalam Perancangan Perjanjian*, Udayana University Press, Denpasar, 2010.

Salim H.S, *Hukum Kontrak Teori & Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta, 2014.

Yunanto, *Hakikat Asas Pacta Sunt Servanda Dalam Sengketa Yang Dilandasi Perjanjian*, Law, Development & Justice Review Volume 2 Nomor (2019).

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