

Legal Contract of Stall Lots to Support Business and Merchants Security

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Abstract

Making a contract for business needs to follow the legal procedures to protect the merchants from any problems in future. This study was conducted to seek the legal contract of stall lots in a traditional market of Medan Municipality of North Sumatra, Indonesia. This research used a qualitative research with questionnaires and interviews with traders and employees of Local Government Corporation (PD Pasar Petisah) of Medan Municipality. It collected data from the legal formal procedures of leasing stall lots in the forms of contracts in the lease agreement documents. Data obtained revealed that legal contract of stall lots indicate that the agreement between the Merchants and Local Government Corporation Office (PDP) has been made in the legal procedures; the lease agreement applied the Indonesian Law article 1548 of the Civil Code. It is such an agreement with which one party binds itself to give the other party the benefits agreement. It mentions the lease period of time and with payment of contract at which the party will be later able to pay.

Keywords: *legal; lease; business contract; security merchants;*

1. INTRODUCTION

Lease agreements are one of the many types of agreements that are often carried out by members of the community both between one person against another person and between legal entities. Leasing emerges as an equilibrium solution to this double-sided asymmetric information problem. Various contractual provisions in leasing contracts (e.g., short-term versus longterm leases with non-cancellation provisions, option to buy at lease termination, and service leases) also emerge as equilibrium solutions under alternative setting

Legal Agreement of contract is necessarily to be made by two parties which involves the business sector (Gunawan, 2006). One of them is the lease agreement which can help the parties, namely the tenant get profit from the object he is renting and the renter gets profit from the rental price paid from the renter. Leases with metering provisions emerge in equilibrium when, in addition to the maintenance cost, entrepreneurs differ in other dimensions, such as their intensity of usage of the capital good (Chemmanur, T., et al, 2009).

This research took the lease agreement relating to the merchants and local government corporation (PDP) of Medan Municipality as case study of legal contract. In article 1 number 6 of Regional Regulation No. 10 of 2014 mentions that Perusahaan Daerah Pasar of Medan Municipality, hereinafter referred to as (PD) is a business entity whose capital is the separated regional wealth and its establishment was initiated by the Regional Government.

Additionally, a lease is an agreement whereby one party undertakes to surrender an object to be used for a certain period of time while the other party undertakes to pay the price that has been set for that use at the specified times (Subekti, 2005). Renting as stipulated in Article 1548 of the Civil Code, a lease is an agreement by which one party binds itself to give the other party the enjoyment of an item for a certain time and with payment of a price by that party later the payment is fulfilled. The example of *forcemajour* includes fire, explosion or unwanted danger if the agreement does not indicate that this matter can become a legal problem. In the case of business as inheritance, of course this can also be a legal problem especially the legal issues regarding the agreement. In modern inheritance law makes the inheritance mechanism based on ownership. In principle, the search for wealth by someone in modern society is intended for his heirs, for the benefit of the family and future social security for the next generation.

Based on article 1313 the Civil Code is an act by which one or more people commit themselves to one or more people. So this research on legal contracts aims to find out the practice of agreements that contain legal relations between individuals or persons are things that are located and within the legal environment. The private legislation of the rules of the attestation requires a written

document to approve the legal act (Shnikat, et al. 2017). The legal relationship in an agreement is not a legal relationship that arises by itself, but the relationship is created because of legal action or *rechtshandeling*.

2. RESEARCH DESIGN

This research is a Qualitative Approach study for normative juridical testing, the research conducted aims to examine the application of the provisions of civil law in relation to the rental of stalls in the separating market. Qualitative research comprises of the following methods: logic, ethnography, discourse analysis, case study, open-ended interview, participant observation, counseling, therapy, grounded theory, biography, comparative method, introspection, casuistry, focus group, literary criticism, meditation practice, historical research, etc. (Cibangu in Mohajan, 2018). Thus the research conducted is a legal research normative juridical will be presented in the form of a documentary that is making a thesis about the reality faced. The data collection techniques are related to primary data; through observations from the field, as well as the distribution of questionnaires, all of which are directly to traders or Perusahaan Daerah Pasar (PDP) by conducting research. Field Research, namely by conducting field in this case directly conducting a study to the Pasar Petisah, Medan Petisah district to conduct research by conducting interviews with the Employees and Market Heads of Perusahaan Daerah Pasar.

This qualitative analysis is basically a description of the theory, so that from this theory several things can be drawn as conclusions as a discussion of the data.

3. DATA AND DISCUSSION

Data collection found the procedures of leasing stall lots in Medan of Indonesia which obtained in oral and written contracts. Two ways of having the use rights of stall lots in the traditional markets this city was following the Medan Municipality Regulation Number 43 of 2014. It is concerning Procedures for applications, conditions and arrangements for the use of regional assets for leasing land and / or buildings, there are several provisions in the use of a place to rent, namely a Lease Agreement is a letter containing an agreement with which the Party the Regional Government binds itself to give the land and / or building lease rights to the lessee, for a certain period of time and with payment of fees that the lessee is able to pay.

Section 2

(1) Objects for leasing land and / or buildings, including:

- a. land and / or buildings; and
- b. a portion of land and / or buildings.

(2) Objects for leasing land and / or buildings as referred to in paragraph (1), include:

- a. Soil;
- b. mess, guesthouse, cinema, and the like;
- c. warehouse / building; and
- d. shop / stall.

Article 3

(1) The subject of land and / or building rent is the Regional Government and Tenant.

(2) Tenants as referred to in paragraph (1), are:

- a. every Indonesian citizen;
- b. governmental and non-regional government agencies, or established Bodies according to Indonesian law and domiciled in Indonesia;
- c. every Foreign Citizen domiciled in Indonesia; and
- d. foreign legal entities that have official representation in Indonesia.

Article 8

The lease agreement must contain:

- a. data on land and / or buildings belonging to the leased Regional Government;

- b. rights and obligations of both parties;
- c. the amount / amount of the rental fee that must be paid by the lessee in accordance with the provisions regarding Regional Property Usage Levy.

Also described in the local regulation No. 31 of 1993 on the use of a selling in chapter 3, 4 and 5 in local regulation the evident argued, if the stall government-owned dismantled to rejuvenation, the tenants given priority to sell on location rejuvenated it. While the article 4 to explain, permission can be removed if contribution not paid tenants for 3 consecutive months or let stall in a state of empty and given alert 3 times to tenant. According to article 27 paragraph 2 of the Indonesian Constitution of 1945, "every citizen entitled to work and decent living for humanity". In this case, the government growing business climate in aspects of protection, by setting legislation and discretion, especially in determining the designation place of business in the Pasar Petisah. Also explain in article 6 Medan Mayor Regulation No. 43 of 2014 of the procedures for the application, the terms and usage settings wealth of the area of land lease and / or the building about making process lease agreement:

- a. Applicant apply by filling the application form and complete the requirements document required correctly and complete, the next submitted to users of goods;
- b. Users goods verify and completeness of the application form and requirements document if has in accordance with the provisions will continue to the next stages, if there is still the error and lack of the application form and requirements document will be returned to the applicant for improved and equipped lack requirements;
- c. Application form and requirements document correct complete and will be followed up with the survey location, making the image situation, survey location according to the designation, and making a recommendation letter, if the location is requested not according to the intended the application is rejected;
- d. Users stuff then make a letter lease agreement with equipped application form, requirements document, survey location, pictures situation, and recommendation letter to be signed by the user goods on behalf of manager goods with the tenant;
- e. In terms of application for rent cannot be granted, then a letter answer rejection done within a maximum of 10 (ten) business days of the application is received.
- f. And if within 3 (three) months after the expiration of the letter lease agreement land and / or the building, the tenants not file extension, then the holder of a letter lease agreement considered to have resigned and lease agreement declared no longer valid.

Article 14

Lease agreement of land and/or building and permit the use of the land and / or building has expired and not apply for an extension before the enactment of regulation of the Mayor of this, must:

- a. Pay rent along with the fine in accordance with the lease agreement land and / or the building and / or permit the use of the land and / or building; and / or breakfast.
- b. Empty the land and / or building and submit to the regional government.

And according to article 14 of paragraph 3 in the case of the object rent land and / or building that have not been submitted by users goods to Mayor but already rent, stated remain valid with the provisions of the goods soon convey the proposal use to set the status of use and approval of the Mayor's longest 6 (six) months to refer to the provisions in the regulation of the Mayor of this.

4. FORM OF TENANCY AGREEMENT

Data analysis showed that the form of tenancy agreement of PD Pasar Petisah followed a standard procedure of Local Government Corporation or Perusahaan Daerah Pasar (PDP). Agreement between the merchants and PD pasar agreed to article 1338 Indonesian Civil Code. Agreement was submitted to Office and has been approved; signed by of both sides equipped with a cap. If the stall is rent then the tenant pay money to the PDP office and it gives the use rights and also signed an agreement in the notary.

For the next, party of Perusahaan Daerah Pasar (PDP) remains collects the monthly payment of retribution. The Perusahaan Daerah Pasar (PDP) issued a certificate of use rights to the stall traders. Merchants that have been obtained stalls still pay contribution to the Perusahaan Daerah Pasar

(PDP) the form of rent on the use of use rights building belong to the local government. For the merchant that already has a certificate of use rights to the stall already purchased, they can do the lease to the other party or other merchants who wish to rent the stalls.

Writing legal contract applies the article 1570 of Indonesian Civil Code. According to the provisions of the article if lease made in writing, lease it ended up for the sake of legal if time rent established has the past, with no required notice for it (Abdulkadir, 2012). The unwritten mean if agreement unwritten the applicable provisions of article 1571 Civil Code. If the tenancy agreement made not written, lease is not over in proper time but if the parties rent want to stop the lease at heed the Grace of time required by local Customs so, without notice of the parties rent considered to be approved an extension of the lease for the same period.

Although lease is a testament consensual, but by the law held difference (in the consequences) between written and unwritten lease. If lease was held in writing, then rent it ended by-law (automatic) if the specified time out-of-print, no need something notice of termination for it. Conversely, if the lease is not made with writing, then the lease is not over in proper time, but if the rent parties tell the tenant that he would stop the lease, notice should be done with heed the period of time required by local Customs (Soeroso, 2004).

If there is no such notification, then it is considered that the rent was extended to the same time. In written lease, it is set in article 1570 Civil Code and about unwritten (oral) lease is set in article 1571 Civil Code. If a tenant of House or the room, after the end of time-rent established in a rental agreement in writing, left Occupy home or the room, then it is considered that the tenant has a permission to use the goods rent on the basis of the terms of the same, to the specified time by local Customs, and not it can be he left the House or the room was or removed from there, but after done notice the termination of the rent by local Customs (article 1587 Civil Code).

Based on the above explanation, it could be said that the written lease, after expire and tenants let occupies a home-rent, lease oral without certain time that can only be terminated according to local customs. A leasing is including types of nominaat contract which is meant contract that has been set in the Indonesian Civil Code (book III chapter 5 up to chapter 8 within 15 articles). One of them is to load on lease. In Indonesian Civil Code, its an unspecified expressly about the form of tenancy agreement is made by the parties. Therefore, the tenancy agreement can be made in writing and oral. In the tenancy agreement building, especially in the practice made in writing and agreement it has been formulated by the parties (Salim, 2013).

5. CONCLUSIONS

Data analysis and interpretation gives two conclusions:

1. The implementation of lease agreement has made two parties (Merchants as tenants and Official of Medan Municipality) in security position; none of them is lost. It been set in the regulation of Local Government Corporation or Perusahaan Pasar Daerah (PDP) with load article 1320 Civil Code and administration as identity card, family card and payment contribution also explained in section 6 Medan Municipality Regulation number 43 of 2014 on the procedures for the application, the terms and usage settings wealth of the area of land lease and / or the building.
2. the provisions of article 1570 Civil Code that if the lease made in writing, lease it ended up for the sake of legal if time rent established has the past, with no required notice for it. Agreement unwritten explained in section 1571 kuhperdata (Indonesian Civil Law). Provisions of article 1571 Civil Code, if leasing agreement is in oral, lease is not over in proper time and if the tenant wants to go extending the contract.

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