

Legal Analysis of Lease Agreements Without Written Deeds

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Abstract

Lease agreements are one form of contract that is common in society, both in the fields of property, vehicles, and other movable goods. In practice, many of these agreements are made verbally or without a written deed. This article aims to analyze the legal validity of lease agreements without a written deed based on the Civil Code (KUH Perdata) and examine its legal implications in social practice. Using normative legal methods and sociological approaches, it was found that oral lease agreements remain valid as long as they meet the requirements for a valid agreement as regulated in Article 1320 of the Civil Code. However, the absence of written documents has the potential to cause disputes, especially in proof before the law. Legal awareness and contractual education are needed so that the public better understands the importance of written agreements as legal evidence.

Keywords: lease, oral agreement, Civil Code, evidence, civil law

Introduction

Lease agreements are an important part of civil law interactions that are developing dynamically in Indonesian society. In various daily life activities, the practice of renting is widely carried out, both in the housing sector, transportation, business equipment, and other properties. However, this legal practice is often carried out without being followed by the creation of a written deed, especially in informal relations between individuals or micro, small and medium enterprises (MSMEs).

The phenomenon of undocumented rental agreements is not new. People often rely on the principles of trust and social closeness in conducting transactions, especially in villages, rural areas, or urban areas with dense social interaction. This causes many agreements to only be agreed verbally, without any concrete form in the form of a written agreement, even without legally valid witnesses.

Normatively, the Indonesian Civil Code (KUH Perdata), especially in Articles 1548 to 1600, does not require that a rental agreement must be made in writing. In fact, Article 1320 of the Civil Code which regulates the requirements for a valid agreement emphasizes the elements of agreement between the parties, capacity, certain objects, and lawful causes—without mentioning the requirement for a formal written form. Therefore



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Therefore, legally, an oral agreement remains valid and binding as long as it fulfills these elements.

However, problems arise when there is a violation or dispute in the implementation of the agreement. The absence of a written deed weakens the position of the parties in legal evidence, especially in the realm of litigation. When one party commits a breach of contract—such as not paying rent, damaging rented goods, or unilaterally terminating the agreement—the other party often does not have strong evidence to sue in court or seek legal protection.

In this context, a dilemma arises between the legal legitimacy of oral agreements and the importance of evidence in the judicial system. Although agreements are legally valid, the absence of written evidence often results in the loss of legal certainty and protection of the rights of legal subjects. This problem is exacerbated by the low level of legal literacy in society and the lack of socialization regarding the importance of documentation in civil relations.

Therefore, this study aims to analyze in depth the legal position of a lease agreement without a written deed according to the Civil Code and to review the consequences of this practice in people's lives. Through a normative and empirical legal approach, this study is expected to contribute to the understanding of contract law, as well as encourage people to be more aware of the importance of documentation in every form of civil legal relationship.

Research methods

This study uses a normative legal approach, namely by examining the provisions of positive law that regulate agreements, especially in the Civil Code, namely Articles 1548 to 1600 which regulate rental agreements, and Article 1320 which regulates the conditions for the validity of an agreement.

In addition, an empirical legal approach is used by reviewing practices in society through literature studies, interviews with informal rental actors, and reviewing court decisions related to rental disputes without written agreements.

The data was analyzed descriptively-qualitatively, with the aim of understanding the legal validity of lease agreements without written deeds and their impact on evidentiary practices in the realm of litigation.

Results and Discussion

The requirements for a valid agreement in Indonesian civil law are regulated in Article 1320 of the Civil Code (KUH Perdata) which systematically contains four main elements, namely agreement of the parties, capacity to make a contract, a certain thing, and a lawful cause. These four elements are elements that must be fulfilled so that an agreement can be considered valid and legally binding. Of the four elements, none of them require a written form as a requirement for the validity of the agreement. This reflects the principle of consensualism adopted by the Civil Code, namely that an agreement is considered to have been born and is binding since the agreement between the parties, without depending on a certain form as long as it does not conflict with the law or public order. In practice, this principle provides flexibility to the

community to make agreements, including verbally, as long as they fulfill the legal substance regulated in Article 1320.

However, even though it is legally valid, a form of agreement that is only made verbally does not necessarily provide a strong guarantee of legal protection, especially in the event of a dispute or default. In the practice of everyday social life, especially in informal transactions, there are many rental agreements that are made without written documents. For example, in renting boarding rooms, simple houses, daily vehicles without using a service bureau, to renting work tools such as generators, drills, or other electronic goods. These agreements are usually made on the basis of trust, especially if the relationship between the tenant and the owner of the goods is personal such as neighbors, family, or close acquaintances. Even though the agreement has been reached legally, the absence of written evidence often gives rise to legal problems when one party feels disadvantaged or there is a violation of the agreement, such as late payment, damage to goods, or unilateral termination of the lease without legal basis.

The main problem that arises from oral agreements is the weak position of proof before the law. In civil procedural law, as regulated in the *Herziene Indonesisch Reglement (HIR)* and *Reglement Buitengewesten (RBg)*, valid evidence that can be submitted to the court includes written evidence, witnesses, confessions of the parties, oaths, and allegations. Among these evidence, written evidence has the highest evidentiary value and strength. In the context of an oral agreement, the party who feels aggrieved cannot show written evidence, so they can only rely on witnesses or confessions of the opposing party. However, proof through witnesses is also limited by legal regulations, including that witnesses must not have a conflict of interest or close personal ties with the disputing parties, and must be able to show that they are truly aware of the legal events that occur.

In the study of evidentiary law, written evidence is often referred to as the "queen of evidence" because it plays a central role in strengthening the legal position of the parties to the case. As explained by Prof. Subekti, written evidence makes it easier for judges to assess the truth of the arguments and legal position of each party. The agreement document provides clarity regarding the object of the lease, duration, costs, rights and obligations of each party, and the condition of the goods being leased. Without this document, the proof process becomes complicated and often relies on subjectivity or free interpretation which risks harming the party who is actually right. Therefore, the existence of written evidence is not only a means of proof, but also a safety net in the implementation of the agreement.

From the perspective of law and economics, written agreements are also considered capable of reducing transaction costs and dispute resolution costs. Richard Posner, a leading figure in the school of law and economics, argues that law should be directed to increase efficiency in social and economic relations. Verbal agreements that are prone to disputes will create hidden costs such as loss of time, damage to social relations, and high litigation costs, while written agreements can prevent most potential conflicts and increase legal certainty. Thus, although not legally mandatory, the use of written documents is a practical and rational necessity in the legal interactions of modern society.

To reduce the risk of disputes and provide maximum legal protection, people are advised to draft a written lease agreement, even in a simple form. The format of this agreement does not have to be complicated or use rigid legal language, but rather simply include basic information such as the identities of the parties, the object being rented, the rental period, the amount of the rental fee, and the signatures of both parties. In the event of a dispute, this simple document can be valid and strong evidence in the eyes of the law, as well as a guideline for resolving problems for both parties without having to directly involve the courts.

In addition to written documents, the use of stamps as part of the agreement is also highly recommended. Based on Law Number 10 of 2020 concerning Stamp Duty, documents that state the existence of an agreement and have economic value should be stamped to fulfill administrative aspects while strengthening the evidentiary power of the document. Although the absence of a stamp does not make the agreement invalid, the presence of a stamp confirms the seriousness of the parties in making the agreement and shows that the document was made in full awareness of the legal consequences that arise.

In the context of legal socialization, the state and legal apparatus have an important role in increasing public awareness of the importance of written contracts. Legal education should not only be carried out in academic or formal bureaucratic spaces, but must directly reach the community who often transact without adequate legal protection. Dissemination of examples of simple agreements through digital media, village or sub-district applications, to cooperation with village legal counselors can be concrete steps to bridge the legal needs of the lower classes with the formal legal framework of the state.

Thus, it can be concluded that although civil law provides freedom for people to bind themselves in oral agreements, ideal legal practice should lead to written agreements in order to ensure legal certainty, protection, and efficiency. The existence of agreement documents is not only useful in the context of evidence, but also in building a healthy legal culture that is oriented towards justice. Therefore, legal awareness and contractual literacy of the community are important foundations in strengthening the role of civil law as an instrument that serves social and economic life fairly and sustainably.

Conclusion

From the perspective of Indonesian civil law, a lease agreement made orally remains valid and legally binding as long as it meets the four requirements stipulated in Article 1320 of the Civil Code, namely agreement of the parties, legal capacity, certain objects, and lawful causes. However, even though it is valid, an oral agreement has significant weaknesses in terms of proof, especially when there is a dispute or default, due to the absence of strong written evidence. This practice is still common in society, especially in informal transactions, and is rooted in personal trust and ignorance of the legal risks that may arise. Therefore, it is highly recommended to put the agreement into a written agreement, even if it is simple, complete with signatures, basic information, and a stamp as supporting evidence. An efficient, inclusive, and preventive legal approach needs to be implemented by the state through legal education to the public in order to encourage awareness of the importance of written contracts as a real legal protection tool, while strengthening legal culture and creating certainty in legal lease relations.

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