

# THE LEGAL ASPECTS AND URGENCY OF LEASE AGREEMENTS MADE BEFORE A NOTARY AND REGISTERED AT THE LAND OFFICE ACCORDING TO ARTICLE 127B OF THE REGULATION OF THE MINISTER OF AGRARIAN AFFAIRS AND SPATIAL PLANNING/NATIONAL LAND AGENCY NUMBER 16 OF 2021

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## Abstract

*The lease agreement for land and buildings plays an important role in providing legal certainty and protection for the parties involved. In practice, however, such agreements are often not registered at the Land Office as specified in Article 127 B of the Regulation of the Minister of Agrarian Affairs and Spatial of the National Land Agency Number 16 of 2021. This leads to various legal issues that can affect certainty and legal protection for the parties. Based on this issue, this study formulates three main research questions: (1) What is the urgency of lease registration by the interested parties with the Land Office? (2) How is legal protection provided for tenants who register their lease objects at the Land Office under Article 127 B of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2021? (3) What are the possible legal impacts, both disadvantages and advantages, of registering lease agreements with the Land Office as regulated by Article 127 B of the said regulation? This research employs a normative juridical method. This research approach also uses a conceptual approach (Conceptual Approach), the conceptual approach is intended "to analyze legal materials so that the meaning contained in legal terms can be known". Data was obtained through literature studies, reviews of relevant regulations, and legal document analysis. The findings indicate that lease agreements made before a notary provide authentic evidentiary strength, while registration at the Land Office offers legal certainty to third parties. However, challenges remain in implementing this registration, including a lack of public awareness and minimal dissemination of the importance of registration. The conclusion of this study emphasizes that lease agreements made before a notary and registered at the Land Office not only provide stronger legal protection but also enhance transparency in managing land and building assets. The proposed recommendations include increasing legal education for the public the benefits of agreement registration, simplifying registration procedures, and strengthening the role of notaries in ensuring compliance with the relevant regulations.*

**Keywords:** Lease Agreement, Notary, Registration, Land Office, Article 127.

## INTRODUCTION

Human life cannot be separated from social interaction with other humans or with the surrounding community, no human being can live perfectly by relying only on their own potential. It is human nature to interact and have natural relationships with other humans, with other communities and even with the natural environment of the universe. This is very relevant to the process and purpose of human creation by Allah SWT, to become caliphs on earth and in the universe.<sup>1</sup>

Basically, the purpose of having a rule of law in the life of society is to protect or provide a sense of security, certainty, benefit, and justice for the life of society as a whole or for every person who is a member of society who lives in it. In general, law as a set of rules

certainly contains an order, prohibition, action, or legal act that must be implemented and obeyed by the entire community.

Agreement is one of the legal products or legal acts that are often found in people's lives. The agreement may occur if there is a real act, either in the form of speech, or physical action, and not only in the form of thoughts alone.<sup>2</sup> The sources of the obligation are things that give rise to an obligation between one legal subject and another legal subject. Broadly speaking, what are the sources of the obligation? There are 2 (two) groups, namely obligations that originate from the law and obligations that originate from the Contract Agreement as regulated in Article 1233 of the Civil Code, which states that every obligation is born either because of an agreement or because of a law.

Basically, an agreement will run well if the parties entering into the agreement are based on good faith, but if one of the parties does not have good faith or does not carry out their obligations, an act of breach of contract will arise.

The implementation of the agreement that is always used by the community in making an agreement is using the method of oral agreement and written agreement. Oral agreements often occur in the lives of simple people, and are often not realized but an agreement has been made, for example in shopping activities in stores, in markets with the aim of meeting daily needs. Oral agreements are completed by handing over and receiving an item. In other words, an oral agreement will be valid if the rights and obligations of the parties have been fulfilled. While written agreements are usually carried out in more modern societies, related to businesses whose legal relationships are more complex, and generally use authentic deeds or private deeds. Therefore, in a written agreement it is very easy to prove if one of the parties is in default (breaks a promise) because the written agreement uses two deeds, namely an authentic deed and a private deed.

The definition of rent is an agreement by which one party binds himself to give another party the enjoyment of an item, for a certain period of time and with the payment of a price which the latter party agrees to pay (Article 1548 of the Civil Code).<sup>6</sup>

A reciprocal agreement is an agreement that creates rights and obligations for both parties, and those rights and obligations have a relationship with each other. What is meant by having a relationship between one and the other is that if in the agreement that arises from the agreement, one has rights, then the other party is in the position of the party that bears the obligations. So that in this case there is a balance between the lessee and the lessor. The position of the lessee and the lessor is strengthened by the legal basis contained in Article 1548 of the Civil Code. Article 1548 of the Civil Code which reads. "Lease is an agreement by which one party binds himself to give the other party the enjoyment of an item for a certain period of time and with the payment of a price that the latter party is willing to pay."

In 2021, a regulation was issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 (hereinafter referred to as Permen ATR/BPN 16/2021) specifically in Article 127B of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 (Permen ATR/BPN 16/2021)) regulates the registration of the Sale and Purchase Agreement (PPJB) and lease agreements for registered land at the land office. Prior to the

existence of Article 127B of Permen ATR 16/2021, PPJB and lease agreements were not regulated to be registered. There are intents, purposes and legal implications of Article 127B of Permen ATR 16/2021.

## **LITERATURE REVIEW**

Legal theory can be seen as a continuation or replacement of the "Algemeine rechtslehre" which emerged in the 19th century when interest in the philosophy of law waned because it was seen as too abstract and speculative and dogmatic, law was seen as too concrete and tied to place and time,<sup>14</sup>

Theory must examine the essence of law with the aim of providing an explanation of everything related to law.<sup>15</sup>

Theory must express a thesis or argument about a certain phenomenon that can explain the form of substance or its existence, and a theory must be consistent about what is known about the social world by participants and other experts, at least there must be translation rules that can connect the theory with other sciences or knowledge, while the theoretical framework is a framework of thought or points of opinion of the theory, a thesis about a case or problem that becomes the material for comparing theoretical references<sup>16</sup>. In this case, the author uses a theory that is directly related to the main problem to be discussed. The theories that will be used as references in this thesis are:

- a. Theory of legal certainty.
- b. Legal protection theory
- c. Theory of Legal Responsibility.

## **METHOD**

This research is descriptive analytical in nature, namely the research data, both in the form of data from document studies that describe the applicable laws and regulations in relation to legal theories and in concreto legal implementation practices concerning the problems and field research in the form of observation results are analyzed qualitatively.

The empirical legal method is a legal research method that examines law in reality or its application in society. This method is often used in sociological and criminological legal research to understand how law operates in real life, not just based on its normative rules.

This research approach also uses a conceptual approach (Conceptual Approach), the conceptual approach is intended "to analyze legal materials so that the meaning contained in legal terms can be known". This is done as an effort to obtain new meanings contained in the terms studied.

## RESULTS AND DISCUSSION

### Legal Impact of Both Losses and Profits on Lease Agreements Registered at the Land Office in Accordance with Article 127 B Of the Regulation of the Minister of Agrarian Affairs and Spatial Planning and National Land Affairs Number 16 Of 2021

Regarding the protection and certainty of the subject matter of the rental agreement, it is regulated in the Civil Code on Leases, so as to better protect the parties in implementing the rental agreement.

#### a. Benefits of Recording Lease Agreements at the Land Office

##### 1. Legal Certainty for Parties

Registration at the Land Office provides a clearer legal status to the lease agreement, thereby reducing the risk of legal disputes between the landlord and tenant.

##### 2. Legal Protection for Tenants

By registering, the tenant has certainty of rights to rent land or buildings for an agreed period of time. This protects the tenant from unilateral eviction by the owner or other party claiming rights to the leased object.

##### 3. Binding Third Parties

Recording a lease agreement at the Land Office has an impact on third parties, for example in the case of land or buildings being leased being transferred. The new party who obtains rights to the land or building must respect the lease agreement that has been recorded.

##### 4. Preventing Abuse of Rights and Potential Disputes

Recording helps prevent potential abuse by one party, such as a landlord attempting to rent the same property to more than one tenant.

##### 5. Increasing Credibility and Transparency

Having records increases the credibility of owners and tenants in legal transactions. Banks or investors have more confidence in assets that have clear legal records.

#### b. Disadvantages or Challenges in Recording Lease Agreements at the Land Office

##### 1. Complex Procedures and Additional Costs

Recording a lease agreement requires a longer administrative process as well as notary fees and recording fees which can be a burden for both the owner and the tenant.

##### 2. Lack of Awareness and Socialization

Many people do not understand the benefits of recording rental agreements, so many agreements are still made privately without official recording.

##### 3. Potential Delays in Document Processing

The registration process at the Land Office can take a long time, especially if there are administrative obstacles or a lack of support documents from one of the parties.

##### 4. Flexibility Restrictions in Lease Transactions

If the agreement has been recorded, then changes or cancellation of the agreement must go through clear legal procedures, which may require additional time and costs.

##### 5. Possible Abuse by Irresponsible Parties

Certain parties may exploit this registration for personal gain, for example by using a lease agreement as a basis for obtaining certain rights without the knowledge of the actual owner.

### **Aspects of legal protection for parties in land rental agreements made before a notary**

Land lease agreements are one form of agreement that is often carried out in Indonesian civil law. As a form of transaction involving land rights, land lease agreements require strong legal protection for the parties, especially when the agreement is made before a notary. Notaries have an important role in providing legal and valid guarantees of an agreement, as well as protecting the rights of the parties involved in the agreement.

#### **1. Legal Position of Land Lease Agreement**

In Indonesian law, land rental agreements are regulated in the Civil Code (KUHPerduta) and also in the provisions of laws and regulations relating to agrarian affairs and land rights. A land rental agreement is an agreement between the lessee and the land owner regarding the use of the land for a certain period of time in exchange for rent.

However, in order for the land lease agreement to have more legal force, it is often made and legalized before a notary. This provides legal certainty for the parties, especially regarding the rights and obligations of each in the agreement.

#### **2. Legal Protection for the Parties**

Notaries have the responsibility to ensure that agreements made before them meet the applicable legal provisions and are legally valid. The legal protection provided to the parties in a land lease agreement made before a notary can be explained in the following aspects:

##### **a. Legal Certainty and Validity of Notarial Deeds**

A deed made by a notary has higher evidentiary power compared to a regular deed. Based on Article 1868 of the Civil Code, a deed made by a notary is an authentic deed that can be used as valid evidence in court. This provides legal protection to the parties in the event of a dispute in the future, because a notarial deed has stronger evidentiary power.

##### **b. Rental Term and Fee Arrangement**

In a land lease agreement made before a notary, the notary ensures that all provisions regarding the lease term, the amount of rent, and the obligations and rights of each party are clearly stated. This is to ensure that no party is harmed and that each obligation can be carried out in accordance with the existing agreement.

##### **c. Dispute Resolution Obligations**

Land lease agreements made before a notary can also include dispute resolution clauses in the event of a dispute between the parties. In this case, the parties can choose alternative dispute resolution such as mediation, arbitration, or even court. This dispute resolution provides legal protection for the parties, because they have agreed to the dispute resolution mechanism beforehand.

##### **d. Protection for the Weaker Party**



An agreement made before a notary also guarantees that the provisions in the agreement do not conflict with the principles of justice and balance. If one party is considered weaker or less aware of the rights they have in the agreement, the notary is required to provide sufficient explanation so that the party fully understands before signing the agreement.

### 3. Relevant Articles in Legal Protection

#### a) Article 1868 of the Civil Code

"A deed made by a notary or an official authorized to do so is an authentic deed and can be used as valid evidence." This article explains that a deed made by a notary, including in a land lease agreement, has high legal force and can be used as valid evidence in court.

#### b) Article 1320 of the Civil Code

"The conditions for a valid agreement are: agreement of the parties, capacity to make an agreement, lawful object, and lawful cause." This article regulates the conditions for a valid agreement. The notary is tasked with ensuring that the land lease agreement meets all of these requirements in order to be valid and legally accountable.

#### c) Article 16 UUJN (Law Number 2 of 2014)

"Notaries are required to act with great care, independence, and objectivity in carrying out their duties." This article regulates the obligations of notaries to carry out their duties professionally, provide legal protection to all parties involved in the agreement, and ensure that the deeds made are legally valid.

#### d) Article 71 UUJN

"A notary who violates the applicable legal provisions in carrying out his duties may be subject to criminal sanctions." This article provides a guarantee of protection to the parties in the agreement that the notary is legally responsible if he commits a violation in carrying out his duties.

Land lease agreements made before a notary provide strong legal protection for the parties involved. With an authentic deed, clear provisions agreed upon, and a dispute resolution mechanism, this agreement can avoid potential disputes that could harm the parties involved. In addition, the role of an independent and professional notary also provides a sense of security for the parties that their rights and obligations are legally protected.

## CONCLUSION

1. The urgency of registration at the Land Office is in accordance with the regulations, namely Article 127 b of the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the National Land Agency Number 16 of 2021, however, the implementation process at the Land Office, especially in Binjai City, has never occurred or has never been recorded, due to several factors, one of which is the lack of optimal socialization to the community, so that the community does not know much about the process in question.

2. Legal protection for tenants, whose land is registered at the land office, includes formal legal protection and substantive legal protection, where formal legal protection is received with guaranteed rights to the land, the land is not transferred by the owner as long as it is still under lease with the tenant, so that the tenant gets more legal certainty because the land has been registered at the rental land office, while for the substantive protection received by the tenant, he gets the land cannot be rented back to someone else, or used as collateral while still in the rental period.
3. The legal impact on renting in order to obtain legal certainty in accordance with the provisions of Article 127B of the Regulation of the Minister of ATR, so that there is no dispute over the leased land legally, regarding legal protection regulated in the civil code, therefore regarding the Regulation of the Minister of ATR Article 127 B, the government, especially the land agency, should provide socialization to the community for the benefit of legal protection for leased land and the government should also make technical instructions for Article 127B of the Regulation of the Minister of ATR.

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