



Principle of Freedom of Contract Land Renting Agreement (Analysis of Supreme Court Decision Number 3693 K/Pdt/2020).

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Abstract

Land is a very basic need for human life. Humans live and carry out activities on land, so it can be said that almost all human life activities, both directly and indirectly, always require land. In this case, the application of the principle of contract can also be linked to the discussion of the author's thesis, namely the principle of freedom of contract, which can be reviewed in Article 1321 of the Civil Code, as the content of this legal rule is: "that no agreement is valid if the agreement was given due to mistake, or obtained by coercion. or fraud.". The problem or violation of the rental agreement carried out by the Defendants A. Miski Hifayat and friends with SAODA ALI as the Plaintiff basically started with the Plaintiff receiving money from Defendant I, then the Plaintiff was required to sign a receipt which only contained the nominal amount of money borrowed, Meanwhile, the description of the payment was filled in by Defendant I himself, namely "extension of contract for empty yard land". The Panel of Judges of the Supreme Court forwarded the Decision of the Surabaya High Court dated January 22 2020, Case Number 867/Pdt.G./2019/PT Surabaya. Meanwhile, in the main case, the Panel of Judges, in its decision stated: 1) Rejected the cassation petition from the cassation petitioner SAODA ALI, referred to as also SA'ODA, 2) Sentencing the Cassation Petitioner to pay case costs at the cassation level in the amount of Rp. 500,000.00 (five hundred rupiah) Decision Number 3693/K/Pdt/2020. The research method applied by the author is normative legal research or library legal research methods. In this decision, the author is of the opinion that there were irregularities or inconsistencies in the two-way relationship in question, namely the relationship between Plaintiff Saoda Ali, and Defendant A. Miski Hifayat and friends. The Supreme Court made a mistake in determining the decision by not considering the causes and effects of the land lease agreement. (Half of Gladak Pakem Market) in the relationship between Plaintiff Saoda Ali, and the evidence should be that there are acts that violate the law in Article 1321 of the Civil Code which were carried out by the Cassation Respondent in his own settlement. This evidence is one of the basic things that legal justice must be applied which should be owned and obtained by Plaintiff Saoda Ali

Keywords: *principle of freedom of contract, land lease agreement, good faith*

INTRODUCTION

Land is a basic need for human life. Humans live and carry out activities on land. It can be said that almost all human life activities, both direct and indirect, cannot be separated from land. Land has a very strategic function both as a natural resource and as a space for development. The availability of land is relatively constant while the need for land continues to increase, so good, firm and careful regulation is needed regarding the control, ownership and use of land, as an effort to to realize the ideals of control and use of land for the greatest prosperity of the people (Andy Hartanto, 2015).

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) confirms that the earth, water, space and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. So land is a very basic need for human life. Humans live and move on land and are always in contact with the land

Basically, everyone cannot meet their own needs. You don't need other people's help to live your own life. There are legal relationships and relationships that do not give

rise to legal consequences. Relationships that have legal consequences will give rise to rights and obligations. Often in building this relationship there is an agreement to reach an agreement. These relationships are realized in an agreement so that they have legal force, including contractual relationships in the case of buying and selling a plot of land. This means that these relationships are expressed in an agreement made and agreed upon by the parties so that they have legal force, including contractual relationships in buying and selling land.

The implementation of civil law justice in Indonesia can be seen in the implementation of Burgerlijk Wetboek which is also known as the Civil Code (hereinafter referred to as the Civil Code). In implementing this provision, it is necessary to remember that there is an article which is the essence of contract law, namely regarding the validity of an agreement which is regulated in Article 1320 of the Civil Code, which reads: In order for an agreement to be valid, there are 4 things (conditions) that must be fulfilled:

1. Their agreement that binds them;
2. Ability to create an agreement;
3. A particular subject matter;
4. A cause that is not prohibited.

Even though there are various provisions and doctrines in contract law to prevent these disputes from occurring, civil law is still not free from the potential for problems due to the imperfection of the human mind in expressing intentions and desires in agreements, obeying laws or agreements, or preventing disputes. arise due to misunderstanding or even to avoid concealing the truth of certain circumstances that relate to and bind the subject or object of the agreement for one's own benefit. One of the points of reference is that in 2020 the Supreme Court decided cassation case number 3693 K/Pdt/2020 concerning land control which started from a lease without the good faith of either party.

Leasing is a reciprocal agreement. According to the Big Indonesian Dictionary, rent means using something by paying rent and renting means using it by paying rent (Indonesia Dictionary, 2008). Meanwhile, according to Yahya Harahap, he explained the definition of a lease as follows, "A lease is an agreement between the party renting it and the lessee. The renting party hands over the goods to be rented to the lessee for full enjoyment" (Harahap, 1991).

The research was conducted to determine the judge's legal considerations in rejecting the application of the principle of freedom of contract in land rental agreements) reviewed based on article 1321 of the Civil Code and to determine the application of the principle of freedom of contract in land rental agreements reviewed based on article 1321 of the Civil Code in the Supreme Court Decision Number: 3693 K/Pdt ./2020)

It is hoped that the results of this research can be used as reference material and input for interested parties in Civil Law matters, especially regarding the resolution of land disputes resulting from acts of default, and as information, input and in-depth explanations for the community and all interested parties. .

It is hoped that the results of this research can be useful both theoretically. namely; serve as input for knowledge in the field of civil law which is relevant to decisions on cases determining lease agreements or contracts which are the subject of land disputes and can practically become reference material and provide information, input and in-depth explanations for stakeholders in the field of civil law, especially those related to by resolving land disputes resulting from default. all sectors of society and all stakeholders.

METHOD

Types of research

The type of research used is Normative legal research (Normative juridical), which is a type of research that aims to examine legal principles, legal systematics, legal

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synchronization, legal history and legal comparison, in other words Normative legal research is also defined as research conducted by researching library materials or secondary data only. This type of research is focused on reviewing and researching legal material, namely in the form of statutory regulations and literature related to the main issues discussed (Soerjono Soekanto, 2013).

Research Specifications

The approaches used are the statutory approach, the case approach and the conceptual approach.¹ then identify primary legal materials (legislation, court decisions) and secondary legal materials (textbooks, legal journals, scientific articles). Data collection techniques are carried out by collecting data from document studies, legal literature, and court decisions. The author analyzed the data descriptively qualitatively by reviewing and interpreting the legal materials that had been collected.

RESULTS AND DISCUSSION

That there are many cases that occur between parties in a land rental agreement where it turns out there is bad faith in it. Where the tenant hands over a sum of money to the land owner without even being asked and the amount given is often above the proper value. The land owner, who is an innocent person with little education and knowledge, is exploited by the tenant who is actually his own sibling. The land owner's naivety and ignorance is exploited by providing a value above the actual rental rate. Even when the land owner is in need of money, the land owner will immediately act as a hero to provide assistance in the form of rent payments for the coming year. However, later on, the money that had been paid was included in the agreement and was considered a purchase of the land in installments. That this was contained in the agreement and mutually agreed upon without the land owner understanding the true intent and purpose. Later on, a dispute finally occurred where the corroborating evidence was more on the part of the tenant who had been planning his evil intentions for a long time. After a dispute occurs, the case is brought to justice. One of the cases that occurred was a case decided by the Supreme Court in case Number 3693 K/Pdt/2020.

The judge's consideration in rejecting the application of the principle of freedom of contract is that the land rental agreement is in accordance with article 1321 of the Civil Code

The principle of freedom of contract is a very important principle in contract law. The principle of freedom of contract is the principle where a person is free to enter into an agreement, is free about what is agreed, and is also free to determine the form of the agreement. According to some legal scholars, this freedom of contract is usually based on article 1338 of the Civil Code which states that:

"All agreements legally made are valid as law for those who make them."

According to Ahmadi Miru (2011) Freedom of contract provides Freedom of contract guarantees a person's freedom to be free in several matters related to the agreement, including:

- a. Free to determine whether he will carry out the agreement or not
- b. Free to determine with whom he will enter into an agreement;
- c. Free to determine the contents or clauses of the agreement
- d. Other freedoms that do not conflict with statutory regulations.

The problem or violation of the rental agreement in case Number 3693 K/Pdt/2020, which was carried out by the Defendants and the Plaintiff, essentially started with the Plaintiff receiving money from Defendant I, then the Plaintiff was required to sign a receipt which only contained the nominal amount of money borrowed, while The description of the payment was filled in by Defendant I himself, namely it was written "contract extension for empty yard land" even though in reality the land in question was land with economic value

on which there was half of Geladak Pakem Market (the object of the dispute) and not empty yard land. Therefore, this evidence contains an act that violates the law in Article 1321 of the Civil Code, therefore, in the completion of the evidence revealed in the facts of the trial, not all of it was stated in the judge's consideration. Therefore, the reason for the judge's refusal to apply the freedom of contract for the land rental agreement is baseless and does not take into account the information from the Cassation Petitioner at all. According to the author, one fundamental thing is that legal justice must be applied, which the cassation applicant should have and obtain as evidence in civil cases, which is a legal consideration for deciding a case. Evidence is regulated in the Civil Code, Book IV, chapter I, which explains evidence in general, Article 1865 states, namely: "Every person who claims to have a right, or points to an event to confirm his or her right or to dispute another person's right."

Rental agreements are regulated in chapter VII Book III of the Civil Code entitled "Concerning Leases" which includes articles 1548 to article 1600 of the Civil Code. The definition of a rental agreement according to Article 1548 of the Civil Code states that:

"A rental agreement is an agreement by which one party binds himself to give the other party the enjoyment of an item, for a certain time and with the payment of a price, which the latter party has agreed to pay."

"Agreement is defined as a legal relationship regarding property between two parties, where one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the implementation of that promise" (R. Wirjono Prodjodikoro I., 1985)

According to the author, the land rental agreement in this case, which is made in writing, is actually still binding on the parties and does not eliminate the rights and obligations of the parties to the agreement. Agreements made orally have weak legal force or legal certainty if there is a problem or violation by one of the parties to the agreement. As explained above, evidence is a legal consideration for deciding a case. This is one of the important things why agreements must be made in writing because it will make it easier to prove, reference for cooperation and carry out transactions. This is also intended so that if there is a difference of opinion, it can refer back to the agreed agreement, and make the parties more responsible in fulfilling their rights and obligations.

Application of the Principle of Freedom of Contract to Land Rental Agreements Reviewed Based on Article 1321 of the Civil Code in Supreme Court Decision Number: 3693 K/Pdt/2020)

Every case that has been tried and decided by a judge in a decision that has permanent legal force (*inkracht*) gives rise to legal consequences, namely carrying out in accordance with the judge's decision for the parties involved in the case. Therefore, in Case Number 3693 K/Pdt.2020, the Panel of Judges of the Supreme Court, continues the Decision of the Surabaya High Court dated January 22 2020, Case Number 867/Pdt.G./2019/PT Surabaya. Meanwhile in the main case, the Panel of Judges, in the ruling the ruling stated:

1. Reject the cassation petition from the Cassation Applicant, also known as SA'ODA
2. Sentence the Cassation Petitioner to pay case fees at the cassation level in the amount of Rp. 500,000.00 (five hundred rupiah)

It can be seen that, the reason for the Panel of Judges of the Supreme Court rejecting the cassation petition from the Cassation Petitioner by SAODA ALI begins with the Defendant having a legal rental relationship (contract) on the disputed land, where the Plaintiff requests cancellation of the disputed land rental contract or terminating the contract agreement between the Plaintiff and the Defendant. has made a rental agreement (contract) for the disputed land for a certain period of time which was witnessed by the Plaintiff's children, thus the provisions of Article 1320 of the Civil Code regarding the validity of an agreement have been fulfilled, that regarding the Plaintiff's reasons, that the agreement was signed because of compulsion or because he was in a state of urgency. (weak), it turns out from the Minutes of the Trial and the facts revealed at the trial that the Plaintiff came to the Defendant's house so that the lease (contract) for the land object

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of dispute was continued and both parties signed a receipt, the Defendant regarding the Plaintiff's reasons, that he had signed the agreement Due to compulsion or due to being in a state of urgency (weakness), it turns out from the Minutes of the Trial and the facts revealed at the trial that the Plaintiff came to the Defendant's house so that the lease (contract) for the land object of dispute was continued and both parties signed a receipt, the Defendant which was witnessed by the Plaintiff's children, so that the plaintiff's reasons or arguments as stipulated in Article 1321 of the Civil Code were not proven, namely that there was an error of coercion or fraud.

It turns out that the defendant was unable to prove his argument regarding the existence of a rental agreement (contract) for the disputed land, on the other hand, the plaintiff was able to prove the argument of his claim. Moreover, these reasons relate to the assessment of the results of evidence which are of an appreciative nature regarding a fact, these matters cannot be considered in the examination at the cassation level, because the examination at the cassation level only concerns errors in the application of the law, violations of applicable law, negligence in fulfill the requirements required by statutory regulations which threaten such negligence with the annulment of a decision.

In this decision, the author is of the opinion that there were irregularities or inconsistencies in the two-way relationship in question, namely the relationship between the Plaintiff SAODA ALI, and the Defendant A. Miski Hifayat and his friends (15 people). The Supreme Court was wrong in determining the decision by not considering cause and effect. land rental agreement (Half of Gladak Pakem Market) in the relationship between Plaintiff SAODA ALI, and Defendant A. Miski Hifayat and his friends (15 people) which was not stated and explained in the cassation petition. The panel of judges at the Supreme Court did not see whether or not there was a reason for the Plaintiff to be required to sign a receipt which only contained the nominal amount of money borrowed, while the description of the payment was filled in by Defendant I himself, namely written "extension of the contract for the vacant plot of land, even though in reality the land in question was half Geladak Pakem Market (the object of the dispute) and not empty yard land. Therefore, Defendant I has deliberately included the statement "empty yard land contract".

In the description of the receipt there is an intention/desire that the contract value is very low, which is not in accordance with the contract value in general. The Supreme Court should not be able to decide on a land rental agreement case without a clear reason and looking at the incident of the land rental agreement, an element of fraud was found where in the content of the land rental agreement the agreement was stated: "yard land contract" even though in reality it was contracted is the traditional "HALF OF THE MARKET LAND", namely the Geladak Pakem market, which is the object of dispute in this case in accordance with article 1321 of the Civil Code (BW): "There is no valid agreement if the agreement was given or obtained by mistake, or coercion or fraud."

Basically, fulfilling a sense of justice in the form of decision making at least takes into account rights apart from obligations because rights are something that is inherent in a person in his role as part of society who is bound completely and comprehensively as a form of balance for the obligations imposed on him in living in society. . "Rights are an inherent condition of human life. This right is owned by a person and can be enjoyed. If a person has these rights, then that person can freely exercise his rights without any pressure or threat from any party." This means that an agreement can be submitted for cancellation if it was obtained based on mistake or coercion or fraud;

Where it can be found in this case that the Defendants have abused the situation, to:

1. Making 6 (six) contract receipts for empty plots of land, even though in reality it was Half the Market/Dispute Object, in the period from January 1, 1996 to December 31, 2007
2. Executed a Contract Agreement Letter dated 21-12-2002 regarding a contract for yard land in the name of SAODAH ALI covering an area of 495 M2, plot 136, C.160 DI, for a period of 10 (ten) years amounting to Rp. 10,000,000,- (ten million rupiah) which only comes into effect from 01 January 2008 to 31 December 2017;

Therefore, in this case the Defendant has also deliberately included the statement "empty yard land contract" in the description of the receipt with the intention or desire that the contract value is very low, not in accordance with the contract value in general, which is in accordance with:

1. Contract receipt from 1 January 2018 to 31 December 2020 dated 18-4-2007 for a loan amount of IDR 3,000,000 (three million rupiah)
2. Contract receipt from January 1, 2021 to December 31, 2023 dated January 8, 2008 for a loan amount of IDR 3,000,000 (three million rupiah)
3. Contract receipt from January 1, 2024 to December 31, 2026 dated 02-04-2008 for a loan amount of IDR 6,000,000 (six million rupiah)
4. Contract receipt from January 1, 2027 to December 31, 2027 dated January 11, 2009 for a loan amount of IDR 2,000,000 (two million rupiah)
5. Contract receipt from 1 January 2028 to 31 December 2030 dated 20-3-2009 for a loan amount of Rp. 7,500,000,- (seven million five hundred thousand rupiah);
6. Receipt of contract from 1 January 2031 to 31 December 2034 dated 17-10-2009 for a loan amount of IDR 12,000,000 (twelve million rupiah)
7. Contract receipt from January 1, 2035 to December 31, 2040
8. Contract receipt from January 1, 2041 to December 31, 2042 dated 8-14-2014 for a loan amount of IDR 10,000,000 (ten million rupiah)

The signing of the receipts mentioned above was actually intended and was a form of agreement to borrow and borrow money and not as an extension of the contract for the object of the dispute, but by Defendant I it had been used as money for an extension of the contract for the Object of the Segketa, in which case when the Plaintiff received the money at that time the Defendant I handed him a receipt which only included the nominal amount of money borrowed by the Plaintiff and the Plaintiff had to sign, while the description of the payment was blank. This matter was witnessed by the Plaintiff's children, and then the description of the payment in the receipt was filled in by Defendant I himself, namely regarding "extension of the yard land contract and the extension period";

Unbalanced economic conditions and a psychological state of dire need of money as well as a very low level of knowledge or education have encouraged the Plaintiff to close or sign a receipt for borrowing and borrowing money, even though the contents of the description in the receipt were then filled in by Defendant I himself regarding the extension of the land contract. yard along with the extension period, without the Plaintiff realizing it and wanting it; From the facts described above, it is clear that the clause "Extension of Yard Land Contract" written in each of the receipts above clearly contains CAUSA DEFECTS or DEFECTS OF WILL of the Plaintiff, because the Plaintiff is not free to express his will to state that the money loan is ordinary loans/debts and receivables and not an extension of the contract over the object of the dispute that, in 2007 for half of the Geladak Pakem Market land (the Object of the Dispute) a certificate was submitted for issuance.

Whereas from the facts revealed at the trial as explained above, it is clear that Defendant I has the desire to control and manage the Dispute Object for a very long time using the Plaintiff's very weak economic and psychological condition, so that the Plaintiff's only desire is to borrow money or debt. money to the Defendants was ignored and set aside and the Defendants misused this situation to extend the contract for the object of the dispute.

Looking at the case above, it can be linked to the principle of freedom of contract, which is one of the basic principles of an agreement. This principle is closely related to human freedom in determining "what" and "with whom" an agreement is made. In a material sense, the parties to an agreement have agreed regarding the content or substance of the agreement. The principle of freedom of contract for philosophers is an emphasis on individual freedom based on the theory of natural law which was highly developed in the enlightenment era (enlightment or aufklarung). The main idea of the principle of freedom of contract lies in emphasizing the agreement of the parties. And the principle

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of freedom of contract also discusses the view that agreements are the result of free choice. The principle of good faith has an important function in contract law. The boundaries of this principle are difficult to determine, but in general it can be understood that the principle of good faith is a contractual obligation. Thus, what is binding is not just what is explicitly stated by the parties but also what is required (Gary Hadi, 2017).

In contract law, according to Ridwan Khairandy (2017), good faith has three functions, namely:

1. All contracts must be interpreted in good faith, so that the interpretation or interpretation can clearly determine the intentions of the parties to the agreement.
2. the function of adding to the content or words of statutory provisions regarding a particular agreement, where the application of this second function can only be carried out when the rights and obligations arising between the parties are not expressly stated in the contract.
3. limiting and eliminating functions. This means that several provisions in an agreement can be set aside if the circumstances of the agreement have changed since it was made so that the implementation of the agreement creates injustice.

Based on the explanation of the legal rules attributed to the author of this case, it is that, based on article 1321 of the Civil Code (BW):

"There is no valid agreement if the agreement was given or obtained through mistake, or coercion or fraud." This means that an agreement can be submitted for cancellation if it was obtained based on mistake, coercion or fraud. And also based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 3641.K/Pdt/2001 dated September 11 2002, it is stated: "Under the principle of freedom of contract, the judge has the authority to examine and declare that the position of the parties is unequal so that one of the parties is deemed not free to express his will";

With the explanation of the legal rules above, the land rental agreement between the Plaintiff and the Defendants should be legally flawed and should be declared null and void, so the Defendants or anyone who obtains rental rights from them must hand over the Object of the Dispute to the Plaintiff voluntarily in empty and free from any material rights, if they are not willing to hand them over voluntarily then they can be executed through State instruments since the decision in this case has permanent legal force.

Basically, fulfilling a sense of justice in the form of decision making at least takes into account rights apart from obligations because rights are something that is inherent in a person in his role as part of society who is bound completely and comprehensively as a form of balance for the obligations imposed on him in living in society. "Rights are an inherent condition of human life. This right is owned by a person and can be enjoyed. If someone has these rights, then that person can freely exercise their rights without any pressure or threat from any party

Apart from that, with the many decisions like those mentioned above, it at least appears that the right to land ownership which should be owned by people like SAODA ALI as Plaintiff, where the mandate of the labor law cannot be realized due to the considerations of the Panel of Judges alone. . Moreover, it causes disruption of the sense of justice for the Plaintiff who is a party to the case.

CONCLUSION

Based on the studies and research carried out, taking into account the previous descriptions, a conclusion can be drawn that:

1. The Judge's Legal Considerations in Rejecting the Application of the Principle of Freedom of Contract to the Land Rental Agreement (Half Pasar Geladak Pakem) Reviewed Based on Article 1321 of the Civil Code where the Plaintiff received money from Defendant I, then the Plaintiff was required to sign a receipt containing only the nominal amount of money borrowed, while the description The payment was filled in by the Defendants themselves, namely it was written "extension of the contract for

empty yard land, even though in reality the land in question was half of Geladak Pakem Market (the object of the dispute) and not empty yard land. Therefore, the reasons for the judge's refusal to implement the freedom of contract for land rental agreements are not fundamental and do not take into account at all the information from the Cassation Petitioner, namely Saoda Ali. According to the author, one fundamental thing is that legal justice must be applied which should be had and obtained. by the Applicant for the cassation. And the evidence should be that there are acts that violate the law in Article 1321 of the Civil Code that the Cassation Respondent committed in his own settlement. This evidence is one of the basic things that legal justice must apply which should be owned and obtained by the Plaintiff. Evidence in civil cases is a legal consideration for deciding a decision. case.

2. Application of the Principle of Freedom to Contract Land Rental Agreements (Half of Geladak Pakem Market) Reviewed Based on Article 1321 of the Civil Code in the Supreme Court Decision Number: 3693 K/Pdt/2020) is where in the judge's consideration from the facts revealed at the trial it was the Plaintiff who came to the Defendant's house so that the lease (contract) for the land object of dispute is continued and both parties sign a receipt, the Defendant hands over the money agreed upon and received by the Plaintiff, witnessed by the Plaintiff's children, this is an erroneous and unfounded consideration and has nothing to do with it. once considered about the causes and effects of the contents of the agreement. And all the arguments expressed by the plaintiff are set aside. If seen from the applicable legal provisions, namely in Article 1321 of the Civil Code, the elements are met if there is an intention from the Defendant to commit fraud which has been proven to violate the law, namely on the basis that the Plaintiff is required to sign a receipt which only contains the nominal amount of money borrowed, while the description of the payment is filled in by himself. by the Defendants, it was written "extension of the contract for empty yard land, even though in reality the land in question is Half of Geladak Pakem Market (the object of the dispute) and not empty yard land.

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