



Lease Agreement for Land and/or Building on Land Assets of Pekanbaru City

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Abstract

The lease agreement for Regional Properties in the form of land and/or buildings has been regulated by Legislation. The lease agreement for State Property or Regional Property is made on paper signed by the parties and affixed with stamp duty. However, in fact the Pekanbaru Government leased some properties of land and/or building to PT. Hutama Karya for creating the infrastructure to support the Riau 275 Megawatt Electric Steam Power Plant (PLTU) project and there is no stamp duty on the agreement. Moreover, there is also an agreement that has been made between the Pekanbaru Government and PT. Medco Ratch Power which was made with a notarial deed in the form of land and/or buildings on the Tenayan Industrial Estate (KIT). The problems that can be raised in the research: (1) How is the process of making a lease with the status of an asset belonging to the Pekanbaru Government? (2) How is the validity of the lease agreement for land and or buildings owned by the government of Pekanbaru without stamp duty? (3) How is the validity of the lease agreement for land and or buildings that has been made based on a notarial deed? This research method uses an empirical legal research with analytical descriptive. The main data sourced used in legal research is primary data which contains interview, and the secondary data which contains documentation study. All of the data is processed and analyzed by qualitative methods in a juridical perspective. The results showed that : (1) The process of making and signing the lease agreement was found desynchronization with the regulations. in fact, it was found that an agreement was made without being affixed with the Stamp. Moreover, there are also agreements made legally which are carried out with authentic deeds. (2) a letter of lease agreement without a stamp is still legally valid. Although legally valid, an agreement without a stamp duty cannot be an evidence in court. In consequence, stamp duty has an important function as a requirement to be used as evidence in court. (3) to prove the evidence, the letter of lease agreement on regional property in the form of land and/or buildings as the form of a notarial deed becomes null and void, if there are no letter of lease agreement, no stamp duty and didn't signed by parties that have been regulated by law. So, that it has no power of law to bind the parties.

Keywords: *Agreement; lease; Land and/or Building; Regional Assets*

Introduction

Indonesia is a country that has abundant natural wealth, both natural wealth on the maritime side and on the agrarian side, because the territory of the Republic of Indonesia is very wide and is in a very

strategic position, which is flanked by two continents and two oceans, and has natural wealth. layers, from above ground to underground. Therefore, the State's wealth will be very beneficial for the welfare of the community if it is managed and utilized properly by the Government with a good governance system or commonly called "Good Governance", because the Government is the fulcrum in creating regulations and policies, and determine the direction of the country's development.

In the context of utilizing land controlled by the state, the UUPA regulates the use of rights to use. According to Article 41 paragraph (1) of the UUPA, the Right to Use is the right to use and/or collect proceeds from land controlled directly by the State or land owned by another person, which gives the authority and obligations specified in the decision to grant it by the official authorized to give it or in an agreement with the owner of the land, which is not a lease agreement or a land management agreement, everything as long as it does not conflict with the spirit and provisions of this Law. According to Article 43 paragraph (1) of the UUPA, as long as the land is directly controlled by the State, the right of use can only be transferred to another party with the permission of the authorized official.

According to Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Use Rights, land that can be granted a use right is State land, land with management rights and land with ownership rights. Right to use state land and right to management are granted for a maximum period of twenty five years and can be extended for a maximum period of twenty years or granted for an indefinite period as long as the land is used for certain purposes. After the term of use of the right of use or its extension has expired, the right holder may be granted a renewal of the right of use on the same land

Normatively, the implementation and form of regional property rental agreements have also been regulated in detail down to even the lowest hierarchy of laws and regulations. In Pekanbaru Mayor Regulation number 77 of 2018 in Article 19 paragraph (1) it is stated that the rental of BMD is stated in an agreement on sufficient stamped paper, which is signed by the tenant and the Mayor for BMD who is in the goods manager or goods manager for BMD who is at the user. goods. In Pekanbaru Mayor Regulation number 77 of 2018, the rental agreement for Regional Property is only carried out on paper with sufficient stamp duty and signed by the parties and does not need to use an authentic deed made before a Notary public official, so it is not in the form of an authentic deed. Deed is a signed written statement made by one or more parties with the intention that it can be used as evidence in a legal process. The deed is divided into authentic or official deed and private deed. According to Article 1868 of the Civil Code, an authentic deed is a deed whose form is determined by law, made by or before a public official who is authorized for that at the place where the deed was made.¹

In reality, in the field, there are agreements for leasing Regional Property in Pekanbaru City which are carried out with authentic deeds made before a Notary and some are only by deed under the hand on paper without stamp duty. According to Pekanbaru Mayor Regulation Number 77 of 2018, the rental agreement for Regional Property is only carried out with two parties between the Government and the lessee, not made by or before a public official authorized to do so at the place where the agreement was made. So how is the validity of the deed and how strong is the proof in court. On the other hand, it was also found in this study that the agreement made was not affixed with a stamp duty. So what is the actual function of the stamp in the agreement, whether it is a valid reference or not an agreement and what is the strength of the proof of an agreement that does not use stamp duty.

As is well known, the Pekanbaru City Government leases some land and/or building assets that stand on the Pekanbaru City Government land, such as some land and buildings in the Pekanbaru City Regional Revenue Agency Building and some land assets belonging to the Pekanbaru City Government in the Tenayan Industrial Estate (KIT). Pekanbaru City for the Site Office and Work Shop of PT. Hutama Karya in the context of developing supporting infrastructure for the Riau 275 Megawatt Steam Gas Power

¹ R.Soeroso, *Perjanjian Dibawah Tangan (Pedoman Praktis Pembuatan Dan Aplikasi Hukum)*, Sinar Grafika, Jakarta,2010, pg.7.

Plant (PLTU). In addition, there is also an agreement between the Pekanbaru city government and PT. Medco Power which is carried out by a notarial deed with the object in the Tenayan Industrial Estate (KIT).

Research Method

The method is a process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge, if the two syllables are combined into a "research method" and can be interpreted as a process. principles and procedures for solving problems encountered in conducting research.² In this research, the approach method used is an empirical juridical approach. Empirical juridical is legal research that uses secondary data as initial data, which is then continued with primary data or field data, examines the effectiveness of a law and research that wants to find a relationship (correlation) between various symptoms or variables as a data collection tool consisting of observations (observation) and interview (interview).³

Discussion

1. Process of Land and/or Building Lease Agreement with the Status of Pekanbaru City Government Assets

In the Regulation of the Minister of Home Affairs No. 19 of 2016 it has been explained a little about the procedures for carrying out leasing of Regional Property. Provisions regarding the lease of Regional Property is regulated and contained in CHAPTER VII Part Five of the Minister of Home Affairs No. 19 of 2016 concerning Technical Guidelines for the Management of Regional Property. However, in Chapter VII Part Five of the Minister of Home Affairs Regulation No. 19 of 2016 concerning Technical Guidelines for the Management of Regional Property, it does not explain in detail what types of goods will be rented, such as movable and immovable objects. There needs to be regulations that accommodate the implementation of rental agreements for regional property in certain types and forms, such as movable and immovable objects. However, on the other hand, Permendagri No.19/2016 Article 1 paragraph (5) states that the Regional Head as the holder of the power to manage Regional Property, has the authority to determine the use of Regional Property. For this reason, the Pekanbaru City Government through the Pekanbaru Mayor issued Pekanbaru Mayor Regulation Number 77 of 2018 concerning procedures for leasing Regional Property in the form of land and/or buildings that have accommodated all legal needs for the implementation of leasing of Regional Property in the form of land and/or buildings. which has not been regulated in the Regulation of the Minister of Home Affairs No. 19 of 2016 concerning Technical Guidelines for the Management of Regional Property.

The process of the lease agreement for Regional Property (BMD) in the form of land and/or buildings begins with the prospective tenant or applicant submitting an application in written form accompanied by supporting documents to the user of the goods. The written application in question has been regulated in Pekanbaru Mayor Regulation Number 77 of 2018 concerning procedures for leasing Regional Property in the form of land and/or buildings whose contents consist of:

a. Data of prospective tenants,

For prospective individual tenants, it is enough only to prove a photo of ID card or family card and for prospective non-individual tenants with evidence showing a photocopy of ID card, photocopy of NPWP, photocopy of SIUP and other supporting data if needed.

² Soejono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1986, pg.6.

³ Amiruddin dan zainal asikin, *Pengantar Metode Penelitian Hukum*, PT.Raja Grafindo Persada, Jakarta, 2003, pg.167.

- b. application background,
- c. Desired lease term and;
- d. Rent allocation.

The supporting documents consist of:

1. Statement/approval from the owner/manager if the prospective tenant is not an individual.
2. A statement of the willingness of the prospective tenant to take care of the regional property to be rented out and comply with the prevailing laws and regulations during the rental period.
3. Data belonging to the area to be rented. Includes photos or pictures, addresses of property belonging to the area to be rented and the estimated amount/area/volume.

After the application is submitted by the prospective tenant, the user of the property forms an internal team to conduct research on the regional property to be leased and determine whether or not the Regional Property which is under his control is leased to the prospective tenant. In addition, the assessment carried out is also necessary to determine the fair value of the BMD lease, an assessment of the fair value of the lease can be carried out by a government appraiser or a public appraiser. After the appraisal team from the property user has approved the application from the prospective tenant, the property user provides recommendations to the property manager for approval. The property manager conducts an assessment and re-examination of the feasibility of the regional property proposed by the goods user. Based on the assessment and research by the property manager, the goods manager can give approval and can give rejection to the proposal for leasing Regional Property that is submitted by the user of the Regional Property and if the application is approved, the goods manager issues a letter of approval for the rental of Regional Property.

2. Validity of the Land and/or Building Lease Agreement as Assets Owned by the Pekanbaru City Government without being affixed with a stamp duty

The regulations regarding the lease agreement of land and/or buildings belonging to the Pekanbaru city government as the use of regional property have basically been determined starting from the Act to the smallest regulation, namely the Pekanbaru Mayor Regulation. Until the form and content have been regulated in detail by these regulations, so that between the Government and the prospective tenant it is only a matter of pouring it into an agreement. In Pekanbaru Mayor Regulation Number 77 of 2018 concerning Procedures for Lease Agreements for Leasing Regional Property in the Form of Land and/or Buildings, which in article 19 states that the rental agreement for regional property leases of the Pekanbaru City Government is stated only to be made on stamped paper and signed by the parties. However, in practice in the field there are also some agreements that are only signed without using a stamp duty.

Article 1 paragraph (4) of Law Number 10 of 2020 concerning Stamp Duty (Stamp Duty Law) provides the meaning of Stamp, namely a label or strip in the form of a sticker, electronic, or other form that has characteristics and contains a security element issued by the Government. Republic of Indonesia, which is used to pay taxes on the Document. Meanwhile, Stamp Duty is a tax on Documents. The function of the stamp duty in the agreement letter is stated in Article 1 paragraph (4) of Law Number 10 of 2020 concerning Stamp Duty (Stamp Duty Law) which states that the actual function of stamp duty is as an element of security for a document and taxes on documents for certain types of documents. subject to stamp duty. So that the affixing of stamp duty in the document can be interpreted as an object of income for the state treasury. According to Article 3 Paragraph (1) of Law Number 10 of 2020

concerning Stamp Duty (Stamp Duty Law), Stamp Duty shall be imposed on: Documents created as a tool to explain about a civil incident; and Documents used as evidence in court.

It can be concluded that the agreement without a stamp is still valid in the eyes of the law. However, even though it is legally valid, an agreement without a seal cannot be valid evidence before a court. Therefore, stamp duty has an essential function as a condition for certain documents to be used as evidence in court. So there is no need to use other evidence in addition to convincing the judge.

The evidence includes written evidence, witness evidence, allegations, confessions, and oaths. In civil cases, especially regarding agreements, one of the things that can be used as evidence at trial is written evidence in the form of a letter of agreement. The letter can be classified in the sense of a deed, then the letter must be signed, this signature requirement is implied in Article 1869 of the Civil Code. The requirement for a signature is nothing but the purpose of distinguishing one deed from another. So, the function of the signature on a deed is to characterize a deed. Written evidence submitted in a civil procedure must be stamped so that it can be used as court evidence. However, this does not mean that the absence of a seal in written evidence will invalidate the legal act committed, only that the deed of the legal act committed does not meet the requirements to be used as court evidence.⁴

3. *Validity of the Land and/or Building Lease Agreement Based on a Notary Deed*

When talking about a Notary deed as an authentic evidence, it must first be considered Article 1868 of the Civil Code, an authentic deed is a deed made in the form determined by law by or before a public official authorized for that at the place where the deed was made. Authentic deeds must meet what is required in Article 1868 of the Civil Code, are cumulative in nature or must cover everything. Deeds made, even though signed by the parties, do not meet the requirements of Article 1868 of the Civil Code, cannot be treated as authentic deeds, only have the power as written under the hand as contained in Article 1869 of the Civil Code.

Provisions regarding the authority of a Notary to make an authentic deed are regulated in Law no. 30 of 2004 concerning the Position of a Notary as amended by Law no. 2 of 2014 (UUJN). In Article 1 point 1 UUJN, it is stated that a Notary is a public official, authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. The phrase "at the place where the deed was made" in Article 1868 of the Civil Code, relates to the place of domicile of the Notary, that the Notary has his domicile in the regency or city area. The territory of a Notary's office covers the entire Province of his place of domicile.

Regarding the authority of a Notary, Article 15 paragraph (1) of the UUJN provides a description that a Notary, in his position, is authorized to make an authentic deed regarding all actions, agreements, and stipulations required by legislation and/or desired by those with an interest to be stated in Authentic Deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and excerpts of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

Notary Deed or Notary Deed, in Article 1 point 7 UUJN, is interpreted as an authentic deed made by or before a Notary, according to the form and procedure stipulated in this Law. Grammatically, in the Big Indonesian Dictionary, a deed is defined as a letter of evidence containing a statement (description, confession, decision, etc.) Up to this point, it is clear about the position, function, duties and authority of a Notary. Whereas in his position, a Notary has the authority to make an authentic deed. A notarial deed is said to be authentic evidence if the notarial deed is made in accordance with or meets the cumulative

⁴ Bambang Waluyo, *Sistem Pembuktian Dalam Peradilan Indonesia*, Sinar Grafika, Jakarta, 1996, pg.3.

requirements as required in Article 1868 of the Civil Code. However, if one of them is not fulfilled, then the Notary Deed is relegated to only being a private deed.

The making of a deed by a notary, in addition to paying attention to Article 1320 of the Civil Code and Article 1868 of the Civil Code, must also pay attention to the things contained in the UUJN and the Notary Code of Ethics. A notary as a public official who is authorized to make a deed, must not ignore other legal rules, such as administrative law, constitutional law, civil law, criminal law, and so on, because in making a deed indirectly the notary must still obey the rules. other laws, especially those related to the deed he made. The authority of a notary as referred to in Article 15 of the UUJN with his profession as an authentic deed maker accompanied by the rapid and dynamic development of community needs has increased the intensity and complexity of legal relations which of course require certainty, order, and legal protection with the core of truth and justice. According to Pieter E. Latumeten, understanding the terms of authenticity and the reasons for the cancellation of a notary deed, it is very important to prevent preventively any juridical defects of a notarial deed that can result in loss of authenticity and the cancellation of the notary deed, as well as making it easier for every notary in making the deed. Notary deed in accordance with the Notary Position Act and other applicable legal rules.⁵

Conclusion

1. The large number of Pekanbaru City Government assets in the form of land and/or buildings that are not used optimally opens up opportunities for outside parties, be it the public or private parties to rent the Pekanbaru City Government assets in the form of land and/or buildings so that they have economic value, so that there must be certainty and clarity on the part of the prospective tenant, there must be conditions that must be met by the tenant and the processes that must be passed by the prospective tenant so that not just any party can exploit government assets and not misuse government assets by irresponsible parties. . In practice, the agreement made by the Pekanbaru City Government with one of the tenants of Regional Property, namely PT. Hutama Karya, is not affixed with Stamp. And besides that, there are also agreements made with authentic deeds made by Notary public officials. While the Legislation has stated that the rental agreement for Regional Property is carried out with an agreement with stamped paper and signed by the parties.
2. The lease agreement for regional property in the form of land and/or buildings is an agreement whose terms and forms have been determined by law so that there are rules that must be followed in making the agreement, the form of the agreement is in the form of an underhand deed signed by the parties. on paper with sufficient stamp duty, but there is an agreement made by the Pekanbaru city government with the prospective tenant which is carried out without stamp duty, so that the deed of legal action that has been carried out does not meet the requirements as court evidence.
3. An authentic deed is a deed that has perfect or independent evidentiary power, but an authentic deed can be said not to be considered and degraded to a private deed if the law does not require an agreement to be made with an authentic deed, such as in a property rental agreement. Areas in the form of land and/or buildings are only required to be carried out only with an underhand deed, but the Pekanbaru City Government has carried out a notarial deed, because the form and content of the agreement have been determined by the Prevailing Laws so that it becomes a formal agreement so that the agreement becomes a formal agreement. null and void if it is done by notarial deed.

⁵ Pieter E. Latumeten, *Cacat Yuridis Akta Notaris Dalam Peristiwa Hukum Konkrit dan Implikasi Hukumnya*, Tuma Press, Jakarta, 2011, pg.31.

Suggestion

A new statutory regulation is urgently needed to support the management of state land so that it can run well. Reviewing the regulations governing lease agreements on land objects because they are related to the interests of the state and the Indonesian people. In other words, there is a need for a law that regulates Management Rights, not only in the form of regulations at the level of a Ministerial Regulation such as Minister of Home Affairs Regulation Number 1 of 1977 concerning procedures for applying for and completing the granting of rights to parts of land with management rights and their registration. Also review and evaluation of UUPA Articles 44 and 45 as well as clarity on Law Number 1 of 2004 concerning State Treasury. So that, there is no misinterpretation in the two laws, so that there is a clear legal basis regarding the leasing of land and/or buildings owned by the State, if the land and/or buildings owned by the State can be used properly then it will have good economic value for the people. Public. In addition, the Government in implementing the lease agreement must also adhere to the principle of prudence, because regional assets involve the livelihood of many people and basically regional assets are also owned by the community at large, not solely owned by the Government, the Government only controls and manages them. If the government makes a few mistakes in asset management, regional assets can fall into the hands of irresponsible parties. In addition, the role of the Notary in understanding the Legislation is also very necessary, because in addition to only making a deed, a Notary is also obliged to provide legal counseling to his or her appearers and notify what deeds can be made before a Notary.

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