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Legal Protection of Tenants as a Result of Lease Transfer of Grocery Store Stands

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ABSTRACT

This article analyzes the legal protection for tenants regarding the practice of transferring the lease of grocery store stands, which is often done to avoid losses but often does not comply with legal provisions. Based on Article 1559 KUHPdt, the transfer of lease requires permission from the landlord, and violation of this rule can lead to legal conflicts. The research uses a normative juridical approach, with an analysis of primary and secondary legal materials. The results show that prudence in lease agreements, such as ensuring a written lease transfer permit, inspection of ownership documents, and communication between the relevant parties, is essential to avoid disputes. In the event of an illegal lease transfer, negotiation is recommended as a dispute resolution step. This article emphasizes the importance of good faith in business practices to ensure fairness and legal protection for all parties involved.

KEYWORDS

Legal Protection;
Lease Transfer;
Grocery Store



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INTRODUCTION

People's income determines the economic growth of a country. So whether we want it or not, this situation must be taken into consideration to determine government policies. One of them is government support for several economic activities in Indonesia. This support can be in the form of regulations, subsidies, investment, promotion, or other development programs.¹

The real support that the Government has provided regarding economic policy regulations is the ease of licensing. Before the existence of Law Number 11 of 2020 concerning Job Creation commonly called the Job Creation Law, the business licensing process was considered long and complicated. This is one of the obstacles that can harm micro, small, and medium enterprises (MSMEs). However, after the Job Creation Law, licensing is made easier through the Online Single Submission (OSS) system, and MSME business actors can obtain their business licenses more quickly and easily.²

MSMEs are a key sector in supporting increased economic growth in Indonesia.³ This is because MSMEs can create broad employment opportunities to reduce unemployment, provide great assistance in the economic field to equalize and increase community income, and function in increasing economic growth to achieve national economic stability.⁴

Data from the Ministry of Cooperatives and Small and Medium Enterprises in 2023 recorded that there were 66 million micro, small, and medium enterprises (MSMEs) in Indonesia. The number of MSMEs has a positive impact, as this business plays a very important role in economic development, contributing 66% of Indonesia's Gross Domestic Product (GDP).⁵ In the business world, MSMEs are a business sector that includes businesses with a small to medium scale. With relatively few employees and limited capital. Therefore, MSMEs are the most attractive business option for individuals who want to start their own business.

Business is an essential part of economic activity, covering various activities related to producing, distributing, and marketing goods and services.⁶ Businesses aim to make a profit. Business activities vary from small-scale to large-scale. Examples of small-scale businesses are those conducted by MSMEs, while large-

¹ Fathul Hamdani, Ana Fauzia & Deny Noer Wahid, "Pembangunan Sistem Pelayanan Publik melalui Penyederhanaan Instrumen Perizinan: Kajian Pasca Pengesahan Perppu Cipta Kerja sebagai Undang-Undang" (2023) 2:4 Natl Multidiscip Sci 365–374.

² Kementerian Koordinator Bidang Perkonomian, "Mudahkan Perizinan Berusaha UMKM, Pemerintah Dorong Penguatan Ekosistem UMKM melalui UU Cipta Kerja", (2022), online: <<https://www.ekon.go.id/publikasi/detail/4736/mudahkan-perizinan-berusaha-umkm-pemerintah-dorong-penguatan-ekosistem-umkm-melalui-uu-cipta-kerja>>.

³ Nurma Yuwita et al, "Pendampingan Legalitas Usaha Mikro Kecil dan Menengah Melalui Sistem Online Single Submission di Desa Lemahbang Kecamatan Sukorejo" (2021) 2:1 KHIDMATUNA J Pengabdian Kpd Masyarakat 41–48.

⁴ Dindin Abdurrohman, *Strategi Pengembangan Kelembagaan UMKM* (Yogyakarta: Bintang Pustaka Madani, 2020).

⁵ KADIN, "Data UMKM Indonesia", (2023), online: *Kamar Dagang dan Industri Indonesia* <<https://kadin.id/data-dan-statistik/umkm-indonesia/>>.

⁶ Sadono Sukirno, *Pengantar Bisnis* (Jakarta: Kencana Prenada Media Group, 2004).



scale businesses include state-owned enterprises, privately-owned national businesses, or foreign businesses operating in Indonesia.⁷

Grocery stores are one of the most popular forms of small and medium enterprises in Indonesia, especially in densely populated areas. Grocery stores are known to be traditional businesses that sell basic commodities. It is called traditional because grocery stores still use a simple sales system. By selling household products such as rice, cooking oil, egg sugar, LPG gas, salt, and others. The target market of a grocery store is fairly broad, both the lower middle economic class to the upper middle economic class have shopped at the store. This is because the products sold by the store are daily necessities. In addition, the prices offered are also relatively cheaper than minimarkets. This is the reason why grocery stores have been able to survive until now. So it's no wonder the store has a wide target market.

The grocery store business is an important element of household life. With net income per day reaching hundreds to millions of rupiah, depending on the sale of products. This makes it a promising business to run. One of the well-known grocery stores in Indonesia is the Madura store. Madura Grocery Store is an example of a grocery store that does not have significant differences from other stores. The uniqueness of Madura Store which is a differentiator from stores in general is that its population is spread almost throughout Indonesia, with the slogan "Open 24 hours, doomsday open half a day". In addition, the ownership of this shop is only owned by Madurese people. Despite their uniqueness, Madurese shops and stores are the same form of business, namely businesses that focus on selling the daily needs of residents.

Being reliable, grocery stores strive to always meet the needs of consumers, especially in the neighborhood where the store is located. In addition, the trust built by traders with buyers is the key to the loyalty of their buyers. Starting with friendly service, comfort, and giving bonuses in the form of THR ahead of the holidays.⁸ Grocery stores often occupy strategic locations, especially in populated areas. By bringing the store closer to residential areas, sales at the store will likely increase. This can be due to the ease of access and the daily needs of the surrounding community. Therefore, choosing a strategic location near residential areas can be a key factor in increasing store revenue.

To get a strategic location, shopkeepers prefer to rent shop stands. This step is taken for several reasons, namely; ready-to-use facilities, more affordable costs, and flexibility, meaning that if the location does not provide the expected results, the tenant can more easily move to another location. Consideration of these factors can provide greater success for shop owners. Leasing a shop stand includes an agreement between one party as the grantor of a right to an object (shop stand) to the other party as the recipient of the right, during a specified time. With the payment of the object from the recipient of the right to the grantor of the right. In the legal context, leasing activities are regulated in the Civil Code (KUHPdt).

The lease agreement is regulated in the KUHPdt Article 1548 which is a named agreement. This means that the agreement is regulated and named by the maker

⁷ Devi Lianovanda, "Mengenal UMKM: Ini Pengertian, Jenis, dan Contoh Usahanya", (2024), online: *Ski Acad* <<https://blog.skillacademy.com/umkm-adalah>>.

⁸ Nuradifa Cikha Puspitasari & Agus Machfud Fauzi, "Modal Sosial Pedagang Toko Kelontong Madura di Perantauan" (2023) 12:1 Paradigma 241–250.



(the parties). This kind of agreement is often found in the daily life of the community, for example leasing a car, renting a house, and so on. What often happens in the activities of the lease agreement is the act of repeating the rental object. This situation can occur when the main tenant leases the object of the lease to a third party. Regarding the act of transferring the lease or repeating the lease, the KUHPdt has provided a limitation, namely in Article 1559. The act of transferring the lease is prohibited although in other cases it is also allowed.

The rise of over-contracting of shop stands has made shopkeepers worried. This concern relates to accountability, which should be simple but instead creates uncertainty. For this reason, before entering into an agreement or engagement, it is better to check carefully the contents of the agreement (contract) and ownership of rights. The goal is that events that can harm business people can be avoided. So that it does not have an impact on decreasing profits or assets. The act of transferring leases is often found by shopkeepers, and it is not uncommon for them to be the perpetrators of these actions. Because of the flexibility factor, namely, if the location of the shop stand that has been rented from the owner does not provide the expected results, the tenant is easier to move to another location. In order not to suffer losses, the shop stand that has been rented will be leased to another party. The party who becomes the tenant for the re-rental of this shop stand can be another shopkeeper or other business actor.

Even the habit of shopkeepers when renting a shop stand, will also be accompanied by the sale of merchandise that is already in the store. The goal is to reduce expenses that will be borne if the goods in the store are moved. So that it has an impact on the cost of porters, and transportation modes, and is time-consuming if a store move is held. Although in business ethics the act of transferring leases is prohibited, shopkeepers still often do this act. As a result of the act of transferring the lease of a shop stand, can hurt the tenant. The impact on tenants can be in the form of financial loss and/or conflict with the original landlord.

Profit in a business is a must so that the business can continue to run and grow. In addition to profit for a businessman, safety is the main thing. Safety in this case is the saving of assets and business trust when business people run a business. So it is also necessary to be careful in trying so that bad possibilities are avoided. Getting profit from a business should be done ethically and legally. This means not using methods that are not good or not by applicable laws. So that it will not cause various problems in the future.

METHOD

In this article, the author uses the type of normative juridical legal research, namely legal research conducted through researching primary legal materials in the form of laws and regulations and secondary legal materials in the form of library materials as support for primary legal materials.⁹ The approach to the problem used is the legislative approach (statute approach), which is normative research that must use the legislative approach. Because what will be studied is the rule of law which is the focus of the discussion. In addition, a conceptual approach is also used, which is an

⁹ Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014).



approach that departs from doctrines and views that have been expressed in definitions to give birth to knowledge products.¹⁰

RESULT & DISCUSSION

I. Transfer of Grocery Store Stand Lease Arrangement in the Civil Code

The enactment of the Civil Code or KUHPdt in Indonesia cannot be separated from the long history of Indonesian independence. The colonizers influence the laws that apply in Indonesia. This influence can be felt with the enactment of the KUHPdt until now. The history of civil law in Indonesia is divided into 2 (two) periods, namely before Indonesia's independence and the period after Indonesia's independence.¹¹ This cannot be denied because when Indonesia was colonized by the Dutch, the law enforced was Dutch law. However, the civil law enacted in Indonesia is a special circumstance, meaning that the law is adopted from Customary Law or Religious Law.

a. Before Indonesia's Independence

In 1848 became the initial history of the introduction of law in Indonesia. At that time, private law applicable to European groups was being codified, which is the process of collecting laws in certain areas to produce a statute book.¹² The codification of European law to be enforced in Indonesia was a replica of the codification that had taken place in the Netherlands in 1838. Although there were some exceptions tailored to the laws for Europeans in Indonesia with special circumstances.¹³

The adoption or adjustment of this law is known as the principle of concordance or equality towards the enactment of the legal system in Indonesia.¹⁴ The enactment was based on the provisions of Article 131 paragraph (2) of the Indische Staatsregeling (I.S). The article reads "For the Dutch nation group must be adopted or modeled on the laws in the Netherlands". So Indonesian codified law applies to codified law in the Netherlands on the principle of concordance.¹⁵

The codification of law in Indonesia is based on the principle of concordance, resulting in a diverse legal situation. The diversity of applicable laws stems from the provisions of Article 165 Indische Staatsregeling (I.S). The article divided the population of Indonesia (then the Dutch East Indies) into 3 (three) groups, namely:¹⁶

¹⁰ Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

¹¹ Yulia, *Buku Ajar Hukum Perdata* (Lhokseumawe: CV. BieNa Edukasi, 2015).

¹² Rofiq Hidayat, "Mengenal Konsep Kodifikasi dalam Proses Legislasi", (2022), online: *Huk Online* <<https://www.hukumonline.com/berita/a/mengenal-konsep-kodifikasi-dalam-proses-legislasi-lt62bbd5af13324/>>.

¹³ Rika Aryati, Hamzah Vensuri & M Febrianto, "Sejarah Berlakunya BW dan KUHPerdata di Indonesia" (2022) 2:1 J Criminol Justice 11–16.

¹⁴ Tri Jaya Ayu Pramesti, "Pengertian Asas Konkordansi dan Sejarahnya di Indonesia", (2022), online: *Huk Online* <<https://www.hukumonline.com/klinik/a/asas-konkordansi-lt5979a0202a993/>>.

¹⁵ Aryati, Vensuri & Febrianto, *supra* note 13.

¹⁶ Yulia, *supra* note 11.



- a) The European group, the KUHPdt applies to all Dutch, Japanese, and other people who in their home country are subject to Dutch law as well as legal children and recognized according to the law born in the Dutch East Indies.
- b) The Bumiputra group, namely the Indonesian people. For this group, customary law or law that has existed since before the colonizers and has been applicable to the community applies. Although some of the customary laws known by the Indonesian people have not been recorded.
- c) East Asian groups, namely the law of the Commercial Code (KUHD) also known as *Wetboek Van Koophandel*, applies to East Asian groups originating from China, India, Arabia, and others who are not included in the European and Bumiputra groups.

b. After Indonesia's Independence

The long struggle of the Indonesian people to achieve independence has yielded satisfactory results. On August 17, 1945, the Indonesian people declared their independence. This had an impact on changing the Indonesian government system. The Indonesian government system adheres to the presidential system, which is a system that places the head of state and head of government led by the president. The use of this system is by the agreement of the founding fathers expressed at the session of the Indonesian Independence Preparation Investigation Board (BPUPKI). That is, at the second session which took place from July 10 to July 17, 1945.¹⁷

Changes in the Indonesian government system were accompanied by changes in the legal system. This is because the sources of law and values that form the basis of Indonesian law have just been formulated. These sources and values are the ideology and constitutional state, namely Pancasila and the 1945 Constitution.¹⁸ It is known that after declaring its independence, the Indonesian nation did not have a law that originated from its traditions. To fill the legal vacuum, Indonesia utilized Dutch colonial legacy legislation. This situation was based on Indonesia's political considerations, which at that time still had to obtain recognition of independence from other countries.

Although it does not yet have a law that comes from its traditional values. The Indonesian people through the leaders tried to create a breakthrough. One of them is through the use of colonial law which undergoes a process of nationalism. This process is carried out by changing the name of the law and replacing or adding articles to the law. This is done so that the laws used reflect an independent, sovereign, and religious country.¹⁹ Like the *Burgerlijk Wetboek* (BW) which underwent a process of nationalism, thus changing its name to *Kitab-Undang- Hukum Perdata* (KUHPdt).

¹⁷ Cut Novisar Syahfitri, Irfan Setiawan & Nurul Khoiriah Putri, "Penerapan Sistem Pemerintahan Indonesia Ditinjau dari Pendekatan Berbasis Teori Maupun Praktik" (2021) 13:1 J Ilm Adm Pemerintah Drh 49-59.

¹⁸ Imam Syaukani & A Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Jakarta: Raja Grafindo Persada, 2004).

¹⁹ Andi Maysarah, "Perubahan dan Perkembangan Sistem Hukum di Indonesia" (2017) 52 J War Dharmawangsa 1-14.



Until now, the civil law inherited from the Dutch East Indies government is still valid. This statement is based on Article 1 of the Transitional Rules of the 1945 Constitution (UUD 1945) resulting from the fourth amendment. In this article, the Government of Indonesia stipulates that Dutch East Indies law remains in force until it is replaced by a new law based on the 1945 Constitution.²⁰ Along with the times, the KUHPdt is no longer complete and intact. This is because some parts are no longer valid and have been replaced by legal unification. That is efforts to unify the enforcement of national law. Such as the Basic Agrarian Law No. 5 of 1960, the Basic Marriage Law No. 1 of 1974, the Limited Liability Company Law No.1 of 1995, and others.²¹

The scope of the KUHPdt specifically relates to the rules of law governing human relations with humans, humans with legal entities, and legal entities with legal entities. Prof. Subekti in the book Principles of Civil Law argues civil law is defined broadly, namely covering all the main laws governing individual interests. So in the development of society, many areas of civil law are colored by public law. For example marriage law, labor law, and so on.²²

Similarly, Prof. Mrs. Sri Soedewi Mahsjoen Sofwan argues that civil law is a law that regulates the interests of individual citizens with one another.²³ This opinion simply means that the law governing individual citizens is civil law. Both jurists view civil law as the law governing the legal relations of individual citizens. Civil law among others then regulates related to lease agreements. The lease agreement is reciprocal, meaning that the parties to the agreement must fulfill the performance according to the agreement. (Satjipto Rahardjo, 2006) Fulfillment of achievements in the contents of the agreement can be said to be an effort to fulfill the element of good faith. Where this is regulated in Article 1338 paragraph (3) KUHPdt, that "Agreements must be made in good faith".

Lease agreements give rise to rights and obligations that must be fulfilled for each party. The following are the rights and obligations that must be fulfilled by the parties:

1) Rights and obligations of the renting party:

- a) Entitled to receive rent from the party receiving the rent at a certain time by the lease agreement.²⁴ This is implied in Article 1560 paragraph (2) KUHPd, in this case explaining the tenant's obligation to pay rent to the landlord.
- b) Obligated to deliver the leased goods to the tenant (Article 1550 paragraph (1) KUHPdt). In addition, the leased goods must be maintained or in good condition (Article 1551 KUHPdt).
- c) Maintain the goods or objects leased so that they can be used properly (Article 1550 paragraph (2) KUHPdt).
- d) Give the right to the tenant to be able to enjoy the goods or objects leased (Article 1550 paragraph (3) KUHPdt).

²⁰ Yulia, *supra* note 11.

²¹ Aryati, Vensuri & Febrianto, *supra* note 13.

²² Rosa Agustina, *Modul Pengertian dan Ruang Lingkup Hukum Perdata* (2020).

²³ *Ibid.*

²⁴ R M Suryodiningrat, *Asas - Asas Hukum Perikatan* (Bandung: Tarsito, 1985).



- e) Obligation to guarantee the tenant against defects in the object of rent, which may interfere with the use of the object of rent (Article 1552 KUHPdt).
- f) Have the right to request cancellation and compensation of the lease agreement if the lessee repeats the lease of the goods or the object of the lease to another party (Article 1559 KUHPdt).
- 2) Rights and obligations of the party receiving the lease:
 - a) Pay rent at the specified time, and is entitled to the delivery of goods or objects of rent in a state of maintenance (Article 1560 paragraph (2) KUHPd).
 - b) The tenant has the right to enjoy the object of the lease with peace (Article 1550 paragraph (3) KUHPdt).
 - c) Does not change the form or arrangement of the goods or objects leased (Article 1554 KUHPd).
 - d) The lessee has the right to terminate the lease if the leased object cannot be used properly (Article 1555 paragraph (3) KUHPdt).
 - e) After the lease period ends, the lessee is obliged to return the goods or objects to the lessor (Article 1562 KUHPdt).
 - f) Liable for damage caused by the tenant either his friends or by those to whom he has passed the lease (Article 1566 KUHPdt).
 - g) The tenant has the right to dismantle or bring everything he has at the end of the lease (Article 1567 KUHPdt).
 - h) And the lessee does not have the right to lease the goods or the object of the lease to another party (Article 1559 KUHPdt).

The rights and obligations that have been regulated in the articles above should be carried out properly by the parties. In anticipation of the occurrence of adverse accusations from the party who participated in the agreement. So it is hoped that in the act of leasing, there will be no default. Default is regulated in Article 1243 of the KUHPdt, which is an improper implementation of the agreement, either concerning time or improperly carried out or not carried out at all.²⁵ In general, a person can be declared in default if he does not fulfill the promised performance at all. Default can also be declared to a party who has made an achievement but is imperfect, late, and/or does things that are prohibited in the agreement and can harm other parties. For these actions, the party who commits default must be responsible.²⁶

II. Protection of Tenant's Rights as a Result of Transfer of Lease of Grocery Store Stand

a. Grocery Store Stand Rental Transfer

According to Article 1313 of the KUHPdt, an agreement is an act of one or more people binding themselves to another person. This event then creates a legal relationship between the two parties, each of which has rights and obligations.

²⁵ M Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Peryitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005).

²⁶ Niru Anita Sinaga & Nurlely Darwis, "Wanprestasi dan Akibatnya dalam Pelaksanaan Perjanjian" (2015) 7:2 J Mitra Manaj 43-57.



Agreement is a source of engagement, in the agreement there is the principle of consensuality. Namely, an agreement and an obligation have been born since a matter has been agreed upon. This principle is by the provisions of Article 1320 of the Civil Code, which states the conditions for the validity of an agreement, namely agreement, capability, a certain thing, and the existence of a halal or not prohibited cause.

Agreements based on what is promised to be done (achievement) are divided into three types:²⁷

- 1) An agreement to deliver or give an item (object).
- 2) Agreement to do a certain thing, for example, an agreement to complete the construction of a house, a labor agreement.
- 3) a covenant not to do something, for example, a covenant not to transfer the object of rent.

From these three forms of agreement, it can be stated that in an agreement there is something that can be done and something that cannot be done. In addition, agreements can be distinguished based on their form, where agreements can be divided into two, namely written and unwritten. A written agreement is an agreement made in writing by the parties. Meanwhile, an unwritten agreement, also known as an oral agreement, is an agreement made by the parties in oral form or simply by agreement of the parties.²⁸

Both forms of agreement have their advantages and disadvantages. Where a written agreement has advantages in terms of evidence, so this agreement is commonly used in an engagement. While unwritten agreements have evidentiary weaknesses, although in simple terms this agreement is more efficient. As an agreement that is often chosen in conducting legal relations, a written agreement is divided into three forms, namely:²⁹

- 1) Underhand agreement, this written agreement is signed by the parties concerned only.
- 2) Agreement with a notary witness as a party who legalizes the signatures of the parties. The function of notary testimony in this case is solely to legalize the correctness of the signatures of the parties. In addition, notary testimony does not affect the contents of the agreement.
- 3) Agreements made before a notary in the form of a notarial deed. Namely, a deed made before and in front of an authorized official. Officials who have this authority are notaries, sub-district heads, and PPATs.

The written agreement described above can be an option in every agreement, including in a lease agreement. Written agreements have many advantages, both as a reminder document of rights and obligations, provide legal certainty, minimize the risk of misunderstanding, and facilitate dispute resolution as an effort to obtain compensation or other legal remedies.

²⁷ Budiman N P D Sinaga, *Hukum Kontrak dan Penyelesaian Sengketa dari Perspektif Sekretaris* (Jakarta: Raja Grafindo Persada, 2005).

²⁸ Aan Handriani & Edy Mulyanto, "Kepastian Hukum Terkait Pentingnya Melakukan Perjanjian Tertulis dalam Bertansaksi" (2021) 4:1 Pamulang Law Rev 1-10.

²⁹ HS Salim, *Perkembangan Hukum Kontrak Innominaat di Indonesia* (Jakarta: Sinar Grafika, 2003).



Based on the provisions in Article 1548 KUHPt, leasing is an agreement. Where one party binds himself to give another party enjoyment of an item or object. With a predetermined time limit and the price that has been agreed to be paid by the recipient of the lease. All types, and forms of goods or objects can be leased, both movable and/or immovable. In addition, only goods that can be traded and do not conflict with the law. In this case, the leased object is an immovable object, namely a grocery store stand. Namely, an object that specializes as a place to conduct a business selling household needs.

Based on Article 1559 KUHPdt, the tenant is not allowed to repeat the lease of the object that has been rented to him. This provision can be interpreted that the lessee may re-rent the leased object to another party, as long as the lessee gets permission from the lessor (right owner). Permission in this case is very necessary as a fulfillment of good faith. Is an effort on the part of the tenant to protect his rights so that cancellation and compensation are not made. Permission can be made at the beginning of the agreement and during the running of an agreement.

As a rule, permission to transfer the lease is made at the beginning of the agreement and is a point in the contents of the agreement. In addition, as a reminder, the agreement must be in writing and signed by the grantor and the lessee. So that the evidentiary power of the lease transfer permit becomes strong and can be used as the basis for the act of transferring the lease. In connection with the discussion in this section, the grocery store stand is the object agreed upon in the lease. For this reason, it is necessary to examine more deeply both the lease agreement and the object of the grocery store stand. So the act of leasing a grocery store stand can be classified as a civil act, which can cause civil legal consequences.

The lease agreement for a grocery store stand must be based on the provisions of Article 1320 of the Criminal Code. This provision regulates the validity of an agreement, namely the existence of an agreement, the competence of the parties, a certain thing (object) of the agreement, and a lawful cause (not prohibited by law). These conditions must be met as a valid agreement according to the KUHPdt. In addition to these conditions, the fulfillment of achievements is also mandatory. As a fulfillment of the element of good faith that can be carried out by the parties, this rule is contained in Article 1338 paragraph (3) of the KUHPdt. Good faith is important at all stages of the agreement, starting from the negotiation stage, making an agreement to the completion of the agreement being implemented.³⁰

In substance, the act of leasing a grocery store stand does not have a significant difference with leasing agreements in general. However, in this discussion, what makes the difference is the object of the lease agreement, the object in question is a grocery store stand. That is an object that is used as a place to sell various household needs. So the grocery store stand is a more specialized object, as a place to sell products for household needs.

The specificity of the object of the grocery store stand only distinguishes the utilization of the object and has no significant difference. So the rules of reference in the act of leasing a grocery store stand are the rules on leasing activities in general. Where the act of leasing is classified as a civil act regulated in the KUHPdt. If the permit is not heeded, then the act is unlawful. As long as the grocery store leaser

³⁰ Afif Khalid, "Analisis Itikad Baik sebagai Asas Hukum Perjanjian" (2023) 5:2 J Leg Reason 109–122.



(the owner of the lease right) feels deprived of the act of transferring the lease. Because in the rules of Article 1559 KUHPdt, the transfer of a lease is very clearly prohibited if it does not get permission from the landlord.

If the lessee takes the action of transferring the lease of the grocery store stand to another party. Then a lease transfer agreement should be made, which is done at the beginning of the making of the lease agreement. However, if the permission to transfer the lease is made while the lease is still ongoing, the lessee must still obtain permission from the lessor. In transferring the lease, the lessee should also convey to the lessee the transfer of the lease. The agreement to transfer the lease of the grocery store stand can be made by making a written agreement. This kind of agreement can provide legal force and as a reminder of the parties to fulfilling their rights and obligations. In addition, a written agreement provides ease of proof both in the trial and outside the trial.³¹

b. Protection of Tenants' Rights to Transfer the Lease of Grocery Store Stands

Humans as creatures of God have the same rights as other humans. The right to life is an invaluable gift given by God. A person who is allowed to live means that he has received great trust to fulfill his strategic role.³² Humans in social life have various roles. This division of roles comes from abilities, opportunities, and gifts from God. Although the various roles are different from one another, their lives must be mutually beneficial. So that a harmonious life situation will be created.

A harmonious life is a condition that all humans add. However, in the process, some of them have to justify all means to get it. Although the means chosen should be considered the consequences that will be caused. As with the act of renting a grocery store stand, the act of renting is simple. Will lead to simplicity and complexity if done in ways that are not good. So that it can affect the harmony of the parties.

Transferring the lease of a grocery store stand is the act of transferring the lease of a grocery store stand to another party. Either to make a profit or with other intentions for business purposes. Grocery store business people often do this for the reason of protecting their business, because income and expenses are not balanced. Transferring the lease of a grocery store stand is one way to save the business. By transferring the lease, the tenant tries to avoid losses when ending the lease period before the specified time. So that this step is used to save his business as a seller of household needs products.

The act of transferring the lease of a grocery store stand creates disharmony for the parties involved. Because the transfer of rent can be detrimental, both materially and non-materially. The disadvantage for the hirer is that the responsibility for using the object of the grocery store stand is unclear. While the loss for the tenant of the lease transfer, namely there is no openness in the act of leasing.

³¹ Bimo Prasetyo & Asharyanto, "Perlunya Perjanjian Dibuat Secara Tertulis", (2013), online: *Huk Online* <<https://www.hukumonline.com/klinik/a/perlunya-perjanjian-dibuat-secara-tertulis-cl7034/>>.

³² Siti Marwiyah & Nur Handayati, *Hak untuk Hidup dalam Perspektif Hak Asasi Manusia* Universitas Dr. Soetomo, 2015) [unpublished].



To prevent the occurrence of losses for the parties, the act of transferring the lease needs to be anticipated. Ways that can be done before making a lease should be:³³

- 1) Ask to see the title document of the object of lease of the grocery store stand. The document can be in the form of land rights which must be proven by a letter in the form of a certificate/petok D/leter C.
- 2) Ask to see the Tax Notification Letter for Land and Building Tax (SPPT PBB), and if there is a building permit (IMB). This needs to be considered in anticipation of things that are not wanted during the lease.
- 3) Ask the rental object to other parties involved in the right ownership documents such as RT / RW / Village or Village, this needs to be done to ensure that the object is not in dispute.
- 4) If the rental object is the result of a lease agreement, the lease agreement document is required. To analyze the contents of the agreement. So that it can be ascertained whether the object of the lease has received permission or not from the landlord (right owner) to be leased.
- 5) Ask the landlord (right holder) as stated in the agreement and agreement documents. As well as asking for permission to transfer the lease in the previous lease agreement. In addition, this is also one of the good intentions of the new tenant, to introduce himself as the leaseholder in the transfer of the lease.

The above methods anticipate the occurrence of illegal lease transfers (not getting permission from the landlord). So through this preventive method, it is hoped that the act of illegal lease transfer can be avoided. If there has been an act of illegal lease transfer, namely a lease transfer that does not get permission from the tenant (right owner) after the lease transfer occurs. Then what can be done is to communicate to protect their rights and obligations. Communication is carried out by contacting the tenant and the landlord, to reach an agreement to transfer the lease. So a lease transfer permit will be obtained by the provisions of Article 1559 KUHPdt.

Communication is carried out in the form of negotiation, which is one of the out-of-court dispute resolution procedures. The method used is by involving the parties to negotiate or bargain. This is by Article 10 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.³⁴ In the discussion on the protection of rights for tenants of lease transfers, negotiation becomes a repressive method, if illegal lease transfers have been carried out. Negotiations are intended to obtain permission to transfer the lease from the landlord (right owner). So that the tenant in the lease transfer can enjoy the object of the grocery store stand.

³³ Wahyu Prawesthi, Mohammad Dwi Febriyanto & Fajar Rahmad Dwi Miarsa, "Settlement of Disputes over Rice Field Land Ownership Rights Due to Unauthorized buying and selling" (2023) 19:2 YURISDIKSI J Wacana Huk Dan Sains 213–226.

³⁴ Syafrida & Ralang Hartati, "Keunggulan Penyelesaian Sengketa Perdata Melalui Negosiasi" (2020) 7:2 J Surya Kencana Dua Din Masal Huk Keadilan 248–264.



CONCLUSION

This article discusses the legal protection of tenants related to the practice of transferring the lease of a grocery store stand. In practice, lease transfers are often carried out by tenants to avoid losses, although legally such actions require permission from the landlord as stipulated in Article 1559 KUHPdt. Non-compliance with this rule can lead to legal conflicts between the parties involved. This article emphasizes the importance of prudence in the drafting and execution of lease agreements, including ensuring the agreement is in writing and includes the permission to transfer the lease. Preventive measures such as checking ownership documents and permits, as well as communication between tenants and landlords, are identified as ways to minimize the risk of conflict. If illegal lease transfers occur, a negotiated approach is recommended to resolve disputes and ensure the protection of the rights of all parties involved. By complying with the principle of good faith and applicable regulations, the practice of leasing shop stands can be carried out more fairly and harmoniously.

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