



Legal consequences of oral lease agreements: A review of supreme court decision number 2368 K/Pdt/2019 in Indonesia

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Abstract

An agreement, whether written or oral, binds both parties, and a breach of contract occurs when one party fails to fulfill their obligations to the other. In Supreme Court Decision Number 2368 K/Pdt/2019, the Court overturned the decisions of the District Court (Case Number 1/Pdt.G/2018/PN Mpw) and the High Court (Case Number 50/PDT/2018/PT PTK), both of which had ruled in favor of the defendant. The lower courts based their decisions on the argument that the agreement had no legal standing since it was made orally and lacked documentation. This study aims to analyze the legal consequences of oral lease agreements and assess the tenant's liability for any damages caused. This research adopts normative legal methodology, often referred to as doctrinal or library-based legal research. Oral lease agreements, like written ones, remain binding and enforceable, provided they meet the legal requirements for a valid contract and do not violate the essential elements of an agreement. As per Article 1338 of the Indonesian Civil Code, such contracts are considered legally binding, meaning all the consequences outlined in the agreement must be honored, in accordance with Article 1320.

Keywords: Oral lease agreement, legal consequences, breach of contract

Introduction

One of the most populous countries in the world is Indonesia. This inevitably leads to numerous legal engagements among its citizens as they seek to meet their interests. The significant population also presents Indonesia with a considerable number of legal issues, particularly in the context of civil law. A common problem arises when individuals lack a sense of self-awareness. This concept is crucial in human life, especially as people interact with one another. Such relationships are also referred to as obligations, which may arise from agreements or legal provisions.

With the rapid population growth, the demand for housing continues to rise as a consequence of modern development. According to Article 1 of the Indonesian Law No. 1 of 2011 on Housing and Settlement Areas, "Housing refers to a group of houses that form part of a settlement, whether in urban or rural areas, functioning as a residential environment or a habitat that supports life and livelihood activities." One way to meet the need for housing is through renting a house ^[1].

Sometimes, we do not realize how many agreements we make, such as oral agreements. Verbal agreements often occur within society, and we are frequently unaware that we are part of an agreement, even when the nature of the agreement is unclear. Complex agreements can take place in various situations, for example, when we buy vegetables at the market, park a car on the side of the road, or borrow money from someone we know. Moreover, we often encounter and even engage in oral agreements in our daily lives, where such agreements take the form of simple legal relationships. If one party fails to fulfill their promise, the consequences are usually not significant. An agreement, whether written or oral, binds both parties, and a breach of contract occurs when one party fails to fulfill their promise to the other.

Based on the example of the Supreme Court Decision Number 2368 K/Pdt/2019, which overturned the District

Court's ruling (Case Number 1/Pdt.G/2018/PN Mpw) and the High Court's ruling (Case Number 50/PDT/2018/PT PTK), the District Court and the High Court ruled in favour of the Defendant. Their legal consideration was that the agreement lacked evidence because it was made verbally, and thus, the Defendant won, as the agreement was deemed nonexistent. However, the Supreme Court considered the agreement valid. In the author's view, while the Supreme Court declared the agreement valid, why did it not include an order in its ruling for the Defendant to bear the renovation costs for the damage caused? Typically, when someone rents a house or building, they are expected to maintain and care for it properly.

As outlined in Article 1550 of the Indonesian Civil Code (KUHPERDATA), the obligations of the lessor include: handing over the rented property to the lessee and maintaining the property so that it can be used for the agreed-upon purpose. On the other hand, one of the lessee's responsibilities is to take care of the rented property in line with the terms of the rental agreement and for the intended purpose of the lease. If the rented property is used for a purpose other than what was intended in the lease agreement, the lease can be terminated, as stated in Article 1561 of the Indonesian Civil Code (KUHPERDATA).

Every individual is free to enter into agreements based on the principle of contractual freedom. A contract is formed when the parties reach an agreement to create either a written or oral contract. Once this agreement is established, a contract exists between both parties concerning the fundamental aspects of the subject matter of the agreement. Consensus refers to a clear agreement and intention between the two parties involved in the contract. What one party desires is also desired by the other, even if the goals differ; the mutuality of these intentions creates a meeting point ^[2]. The foundation of this contractual freedom allows parties to enter into any agreements, whether those already exist in the Civil Code or not, as long as the agreement itself is valid.

Every contract made "lawfully" must meet the following requirements: there must be an agreement to enter into a contract, the parties involved must be competent to enter into the agreement, and the specific performance and objectives of the parties must be clearly stated without violating laws, morals, or public order. Consequently, the contract binds the parties who make it, unlike laws that are binding in a more general sense ^[3].

There is no way for a legally made contract to be unilaterally cancelled. Termination can only occur through mutual agreement between the parties involved in the contract. Therefore, a lawfully created contract becomes binding, and the parties must adhere to all provisions contained within it. Chapter VII of Book III of the Civil Code (KUH Perdata), titled "On Lease Agreements," defines a lease agreement in Article 1548 as a contract whereby one party commits to providing another party with enjoyment of a property for a specified period, in exchange for a price. A written lease agreement ends after the rental period expires. This is because Article 1570 of the Civil Code states: "If the lease is made in writing, the lease shall terminate by law when the specified time has elapsed, without the need for any notice." Therefore, it can be terminated without prior notice or summons.

In contrast, Article 1571 of the Civil Code states that "if the lease is not made in writing, it does not terminate at the specified time, unless the other party expresses their intention to terminate the lease, observing the notice period required by local customs." Based on the above background, the main issues addressed in this writing are:

1. What are the legal consequences of oral lease agreements?
2. What are the responsibilities of the lessee for any damages they cause?

Research method

In this study, the author employs a normative legal research methodology, as defined by Soerjono Soekanto and Sri Mamuji ^[4]. This approach involves examining legal literature or secondary data, utilizing library methods that include reading, comparing, and analyzing relevant materials. The research is descriptive in nature, aiming to provide a comprehensive overview of the legal conditions surrounding oral lease agreements and their implications under the Civil Code, specifically Articles 1548, 1550, 1551, 1552, and 1557. The study will be conducted over approximately six months from the signing of the research contract, focusing on Supreme Court Decision Number 2368 K/PDT/2019. Data will be collected through document studies, and the analysis will use a qualitative normative method to interpret the processed data comprehensively, presenting the findings in a descriptive-analytical format ^[5].

Result and discussion

Legal consequences of oral lease agreements

Although oral or unwritten agreements are often regarded as weaker than those made in writing, according to Article 1320 of the Civil Code, both written and oral agreements must fulfil four criteria to determine their validity. These criteria are as follows:

1. Mutual consent from the parties entering into the agreement;
2. The capacity to enter into a contract;
3. A specific subject matter;
4. A lawful cause.

In accordance with Article 1338, paragraph (1) of the Civil Code, the parties are bound by this agreement to fulfil their respective rights and obligations. Consequently, contracts generate legal consequences, and the parties must act in good faith, comply, and adhere to the terms without involving third parties. According to Article 1338 of the Civil Code, the consequences of a valid contract are as follows:

1. It serves as law for the parties involved, meaning they must adhere to the agreement as they would to a law; breaching the contract results in legal consequences, specifically legal sanctions. Therefore, individuals who violate the agreement will be penalised in accordance with the law.
2. It cannot be unilaterally revoked, signifying that a lawfully created contract binds both parties and cannot be withdrawn or cancelled unilaterally. Any such action requires the agreement of the other party. However, a contract may be revoked or terminated unilaterally if there is sufficient cause under the law.
3. To be considered fair, the execution must comply with standards of good faith and morality ^[6].

"Lease agreements are a type of agreement whereby one party binds themselves to provide enjoyment of an item to another party," as stated in Article 1548 of the Civil Code in the third book. This arrangement allows another party to enjoy a property for a specified period in exchange for a payment that the latter party has agreed to make. Article 1571 of the Civil Code regulates oral leases, stating: "If the lease is not executed in writing, it does not terminate at the specified time but continues until one party informs the other of their intention to end the lease, observing the notice period required by local custom."^[7]

Lease agreements are a type of agreement whereby one party binds themselves to provide enjoyment of an item to another party, as stated in Article 1548 of the Civil Code in the third book. This arrangement allows another party to enjoy a property for a specified period in exchange for a payment that the latter party has agreed to make. Article 1571 of the Civil Code regulates oral leases, stating: "If the lease is not executed in writing, it does not terminate at the specified time but continues until one party informs the other of their intention to end the lease, observing the notice period required by local custom."

While oral lease agreements may be considered less formal than written contracts, they are still legally binding under Indonesian law. This means that both parties are required to adhere to the terms and conditions discussed, even if they are not documented. The primary legal consequence of oral lease agreements is that they can lead to disputes regarding the specific terms of the agreement, such as the duration of the lease, the rental amount, and responsibilities for maintenance and repairs.

In the absence of written documentation, proving the existence and terms of an oral lease can be challenging. This lack of clarity can result in conflicts, particularly if one party claims that the terms were different from what the other party understood. Courts may rely on witness testimony and other forms of evidence to establish the existence and terms of the oral agreement, which can lead to uncertainty and prolonged legal proceedings.

Furthermore, oral leases can complicate matters related to eviction and tenant rights. As per Article 1571, if a tenant wishes to terminate the lease, they must provide notice to

the landlord, but the specifics of this notice period may not be clearly defined without a written agreement. This can create confusion and potential legal repercussions for both landlords and tenants if one party fails to adhere to the customary notice period.

In conclusion, while oral lease agreements are recognised by law, they carry significant risks and legal consequences for both parties involved. To mitigate these risks, it is advisable for parties entering into lease agreements to formalise their arrangement in writing, ensuring clarity and mutual understanding of their rights and obligations. By doing so, they can prevent disputes and safeguard their legal interests in the event of conflicts arising from the lease agreement.

The tenant's responsibility for damage caused

In a lease agreement, the lessor retains authority over the use and enjoyment of the property for a specific period as agreed upon in the contract. Consequently, ownership of the property remains with the lessor. The item provided in the lease is not owned by the lessee, except for the purpose of use or enjoyment. Article 1548 of the Civil Code states that “a lease agreement is a contract whereby one party binds themselves to provide another party with enjoyment of an item for a specified time in exchange for a price that the latter party agrees to pay.” This clearly defines the nature of leasing ^[8].

Based on Article 1550 of the Civil Code, the lessor has three obligations ^[9]:

1. **Delivery of the leased item:** The lessor must deliver the leased item to the lessee, which only grants possession (*bezit*) and not ownership. The purpose of the lease is to provide enjoyment for the lessee. According to Article 1551 of the Civil Code, the lessor is required to return the leased item in good condition. Furthermore, during the lease period, the lessor must carry out repairs on the leased item, except for minor repairs, which are the lessee's responsibility. Article 1583 of the Civil Code specifies that minor repairs include the maintenance of cabinets, window panes, internal locks, window glass, etc., as per local custom. In leasing practices, the delivery of the leased object depends on the nature of the lease agreement, whether it is on a daily, monthly, yearly, or predetermined basis. For monthly or yearly leases, delivery occurs simultaneously with the payment for the first month or year. In fixed-term leases, delivery takes place upon payment of the rent.
2. **Lessee's obligation for maintenance:** The second obligation of the lessee is to maintain the leased item. According to Article 1550(2) of the Civil Code, the lessee is required to maintain the leased item so that it can be used for the intended purpose. Article 1551(2) of the Civil Code states that during the term of the lease, the lessee is obliged to repair any damage to the leased item, except for minor repairs, which are the responsibility of the lessor. This maintenance obligation continues from the commencement of the lease until its termination. The primary aim of maintenance is to ensure the safety, security, and enjoyment of the lessee. If repairs are explicitly stated in the lease agreement, their nature must not detract from the lessee's comfort, but rather ensure peace of mind throughout the lease period.
3. **Warranty of the leased item:** The third obligation of the lessor is to guarantee the lessee against defects in the

leased item that hinder its use, even if the lessor was unaware of these defects at the time the lease was created. If such defects cause losses to the lessee, the lessor is obliged to provide compensation, as specified in Article 1552 of the Civil Code. However, the lessor is not required to guarantee the lessee against disruptions in use caused by third parties unless a claim on the leased item is made. This does not diminish the lessee's right to pursue a claim against those third parties. For instance, the lessee can sue a third party that disrupts their enjoyment of the leased item on the grounds of tort. Conversely, if the leased item is subject to a lawsuit regarding ownership, the lessee has the right to seek a reduction in rent according to the proportional amount, provided that the disruption has been duly notified to the owner.

The efforts made by the homeowner regarding tenants who have not taken responsibility for repairing damage to the rented house include attempting to resolve the matter amicably by requesting the tenants to make the necessary repairs and to compensate for the damage through informal discussions. However, this approach has not been accepted by the majority of tenants. Despite this, the homeowner has never pursued legal action through a lawsuit in the District Court due to the tenants' lack of accountability for the damage to the rented property ^[10].

The tenant's responsibility for any damage that occurs to the rented property is crucial for both parties to understand. According to applicable legal provisions, tenants have an obligation to maintain and care for the rented property to keep it in good condition. Under Article 1550 (2) of the Indonesian Civil Code (KUHPerdata), tenants are required to preserve the rented goods so that they can be used according to the intended purpose. This obligation includes routine maintenance and the prevention of damage that may arise from the tenant's negligence.

In the event of damage to the rented property, tenants must promptly report and take steps to rectify the damage. Article 1551 of the KUHPerdata states that tenants must return the rented goods in good condition, meaning they are responsible for any damage caused by their negligence. If the damage results from normal use, the tenant may not be held liable for repairs or replacement of the damage.

However, in practice, many tenants are either unaware of or disregard this responsibility, which can lead to conflicts with landlords. Therefore, it is important for landlords to provide clear understanding of the rights and obligations of each party in the rental agreement. Through appropriate socialisation of the legal aspects of rental agreements, it is hoped that both landlords and tenants can fulfil their rights and obligations effectively, thereby reducing the potential for disputes that may arise from misunderstandings regarding responsibility for damage to the rented property.

Conclusion

1. Although oral or unwritten agreements are considered weaker than those made in writing, Article 1320 of the Civil Code states that both written and oral agreements must fulfill four conditions to determine their validity. Article 1571 of the Civil Code regulates oral leases, stating: “If the lease is not made in writing, it does not terminate at the specified time, but only after one party notifies the other that they intend to terminate the lease, observing the notice period required by local custom.”

2. According to Article 1551 of the Civil Code, the lessor must return the leased item in good condition. Additionally, during the lease period, the lessor is also responsible for repairing the leased item, except for minor repairs that are the tenant's responsibility. The second obligation the tenant must fulfill is the maintenance of the leased property. According to Article 1550, paragraph 2 of the Civil Code, the tenant is required to maintain the leased item to ensure it can be used for the intended purpose. The third obligation of the lessor is to guarantee the tenant against defects in the leased item that hinder its use, even if the lessor was unaware of these defects when the lease was created.

Suggestions

1. To government institutions and community organizations, it is essential to provide socialization regarding the legal consequences of oral lease agreements.
2. To the public, it is advised to exercise greater caution when engaging in legal agreements and to prefer written contracts to ensure stronger legal certainty.

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