

## EFFECTIVITY OF IMPLEMENTSTION ON LEASING AGREEMENT OF FLATS (STUDY CASE OF SEMARANG CITY INDONESIA)

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### ABSTRACT

*The growth of the population today is increasingly widespread, it also affects the needs of residential land used for the survival of the community. Population growth in Indonesia is not directly proportional to the land available for housing, especially in urban areas. Therefore, the government provides solutions to the urban community by building units of flats above the collective rights that can be rented by every local resident who meets the requirements as a resident apartment. Flats (Rumah Susun Sederhana dan Sewa, or Rusunawa) Kaligawe is an apartment unit owned by Government of Semarang, Indonesia whose arrangement is contained in Regulation of Mayor of Semarang Number 7 of 2009 concerning to Residential and Leasing of Flats owned by government. This study discusses two important things related to Flats, the first is about the implementation of leasing agreement Rusunawa Kaligawe and second is roles of the city government in handling the problem. The main purpose of this study is to determine the extent of the effectiveness of the implementation of rental lease agreements in the city of Semarang. Data collected through interviews with 48 randomly selected apartment residents of kaligawe show that there are still many violations committed by residents, such as transferring apartment units to others or sold, renting units of sarusun, unmarried residents, more than One unit, as well as the use of public facilities for the personal use of tenants. In addition to the residents of the flats, interviews with authorities relevant to the research of the Office of Housing and Settlements (Disperkim) Rental House and House Swadaya Semarang City and Regional Technical Implementation Unit (UPTD) Rental House Semarang City. This research is expected to assist the authorities in handling violation of lease agreement of apartment unit and provide additional knowledge about civil law especially agreement.*

Keyword: Flats; Leasing Agreement, Semarang;

### A. Introduction

Flats in Indonesia particularly in the city of Semarang contained in Regulation No. 7 of 2009 Concerning to Residential and Leasing of Flats owned by government. To implement the rules of the Mayor of Semarang made renting agreement between prospective residents with City Government. The lease agreement includes a number of the clause be a reference implementation of renting units rusunawa. In its application, there is behavior that deviates from what has been provided for in the Treaty of renting the units of flats Kaligawe and regulations the Mayor No 7 in 2009. Ironically, these practices are already considered to be reasonable and not be a novelty for the residents of Kaligawe Rusunawa units. But if we view on article 1338 book of civil law mentioned that everything legal agreement is valid as legislation for those who make it. Legitimately an agreement is if the qualified in the formulation of article 1320 book of civil law. The main case is how the implementation of the Treaty of renting flats should be effective?

The author chose the research location in flats Kaligawe Semarang due to geographical factors. Semarang is one of the urban areas (the capital of central java province) with the population increasing steadily from year to year with the increase of rural to urban migrants, besides also the soaring of economic dynamics condition and demand of residence which can not be inevitable by Semarang City Government. As well as decreasing urban land is also a factor driving the need to build a rental apartment that is expected to minimize the needs of the community. A simple rental house (Rusunawa) is a Government program that is realized in a densely populated city with narrow land, such as Semarang.

The agreements set forth in the lease agreement are many that are violated, for example, it is still often found the act of repeating and releasing the lease of an apartment unit by individuals who have received apartment units. Ironically it seems like it is not new anymore in a flat. In addition, there are still some apartment owners who have more than one unit of flats, whether it is for habitation itself or rented lease rights to others who have not got part apartment unit.

This is a fundamental problem in the sustainability of a flat. Active role of Semarang City Government which in this case DISPERKIM Field of Flats and House Swadaya Semarang city is expected to handle it of course with reference to Regulation of Mayor of Semarang Number 7 Year 2009, so that the purpose of development of flats can be achieved as expected and right target.

### Subject to Agreement

According to Article 1313 Book III of the Civil Code states that: "A treaty is an act by which one or more persons bind himself with one or more other persons." Thus the agreement is a legal relationship of wealth or property between two or more parties gives strength rights on the one hand to gain achievements and at the same time require the other party to perform the feat (Harahap, 1986: 13). Terms of validity of the agreement under Article 1320 of the Civil Code stipulates that an agreement can't be separated from the three basic principles, which are called by asas- the basic principle (gronbeginselen). According to

Herliene Boediono was quoted Evi Ariyani in his book law of treaties, the principles of fundamental melingkup contract law is the principle consensualism, principle Strength Binds and the principle of freedom of contract (Ariyani, 2013: 11). Terms of validity of a treaty Itself according to Article 1320 Civil Code that is agreed, competent, there are things ter Of course and the cause is lawful.

The agreement will remove if it meets at least one of the various ways abolishment pursuant to Article 1381 of the Civil Code, namely through payments, offer cash payments with care, with the renewal of the debt, the encounter of debt (compensation), mixing of debt, debt relief, the destruction of objects that are owed, the cancellation of the agreement, The validity of the terms void, and expired (Evi Ariyani, 2013: 23).

### **Subject Rent-Renting**

Lease rental is included in the named agreement, this means the lease is an agreement provided for by law. The lease term is a translation of the Dutch term "huur en verhuur" (Hadikusuma, 1992: 102). According to everyday language, rent means the use of something by paying money. According to the provisions of Article 1548 of the Civil Code, the definition of a lease is an agreement with which the party binds itself to give the other party the pleasure of a good, for a certain period of time and with the payment of a price which the latter party is willing to pay (Djoko Prakoso, 1987: 56).

### **Achievements and Default in Lease-Renting**

A covenant is an event in which one promises another, or where two people promise to do something. Article 1234 Civil Code: "Each engagement is to give something, do something, or to do nothing". Achievements to be made in the lease by the lease party in accordance with Article 1560 Civil Code that is to pay the rent at predetermined times and use the goods he rented as a good father of the house and use the leased goods in accordance with the agreement and if not promised, The leased goods are used in accordance with the allegations of how to use them.

Wiryo Prodjodikoro argues that wanprestasi is the absence of an achievement in the law of the treaty, meaning a matter to be performed as the contents of an agreement. Perhaps in the Indonesian language it can be used as "the promise of achievement and the absence of the promise of wanprestasi" (Prodjodikoro, 2011: 17).

A tenant can not be directly declared wanprestasi but must be determined a reasonable grace period with the existence of "negligent statement" or "ingebrekestelling", as well as to the agreement where has been determined grace period of achievement. In Article 1238 the Civil Code states that: "The debtor is negligent, if he by warrant or by a similar deed has been declared negligent, or for his own engagement, is if he establishes that the debtor shall be deemed negligent by the passage of time which is determined". Such a negligent statement is a legal remedy by which the creditor notifies, reprimands, warns the debtor at the latest when he / she is obliged to fulfill the achievement and if the moment is exceeded then the debtor has neglected (Badruzaman, 1996: 18).

### **Repeat and Release Rent**

Article 1559 The Civil Code says that the tenant, if it has not been authorized, is not allowed to repatriate the leased goods, or relinquish the lease to others, on the threat of cancellation of the rental price agreement, and reimbursement of costs, losses and interest, while the leasing party, after the cancellation It is not required to comply with the approval of rental rates (Prakoso, 1987: 70). Subekti defines two terms in Article 1559 of the Civil Code, namely by "repeating" which means the party of the goods acting itself as a party in a second lease agreement held by it with a third party. While the second term is "to release the lease" which means the tenant resigns as a council and asks another person (third party) to replace himself as a tenant, so that the third party is dealing with the leasing party (Subekti 1984: 46).

### **Flats**

Flats are multilevel buildings constructed in an environment divided into functionally structured sections, both horizontally and vertically and are units that each can be owned and used separately, especially for shelter equipped With joint shares, common objects, and common ground, according to Article 1 number (1) of Law Number 20 Year 2011 on Flats.

Regarding apartment units, in Article 1 number (3) of Law No.20 Year 2011 on Flats formulates that: "The apartment unit, hereinafter referred to as sarusun is a flats unit whose main purpose is used separately with the main function as a dwelling place And have means of connecting to public roads. "

## **B. Research Methods**

The research method is qualitative with the juridical sociological approach. And the location was in Unit Pelaksana Teknis Daerah (UPTD) Rumah Sewa, Dinas Perumahan dan Pemukiman (Disperkim) city of Semarang and 48 occupants of flats Kaligawe. We choose the primary data and secondary where collected with the study documents, observation and depth interview that results will be presented in the form of a descriptive. A descriptive analysis of the study sought to describe the legal issues, the legal system and analyse it according to the needs of the research question (Sunggono, 1997:37). The technique of triangulation used to prove the validity of the data is triangulation sources and triangulation theory. Triangulation source done by comparing the results obtained from the interview questions were put to the parties of DTKP, UPTD and most residents of the units of flats kaligawe. While the theory of triangulation is used to check the correctness of the data the results of interviews with data and compare results found are then examined with related theories.

**C. Results**

**Forms of violation of the Treaty of Renting Flats Unit:**

**a. A late Rent payment**

Beside that, it also asserted in a letter tenancy agreement which had been signed by the residents of postage labels above the terms and conditions of the permission letter c second dictum that reads "obliged to pay levy the lease on every 1st up to the 10th of the month in progress".

But the problem of late payment has still not resolved by the existence of two provisions. Based on the results of the study authors conclude that there are factors affecting i.e. internal and external factors. Internal factors caused by the individual or the occupants themselves, most of the residents are not fixed income because most of the residents being seasonal workers and the residents who've been unproductive work, even the necessities of life each month would not necessarily be fulfilled.

Then external factors caused by the Government of the city of Semarang, the residents attitude some spare persons less well City Government in carrying out its task, even a few flats residents tell about the performance of the officer who manages the rental payment is very bad, was recorded three times in one year the officer bring vague charges rent. This is certainly a very influential on a lease payment becomes overdue, the residents feel exasperated by the actions of the officers of such irresponsible and also concerns arise when similar things happen again, because the residents will pay late or debt was recorded at that time.

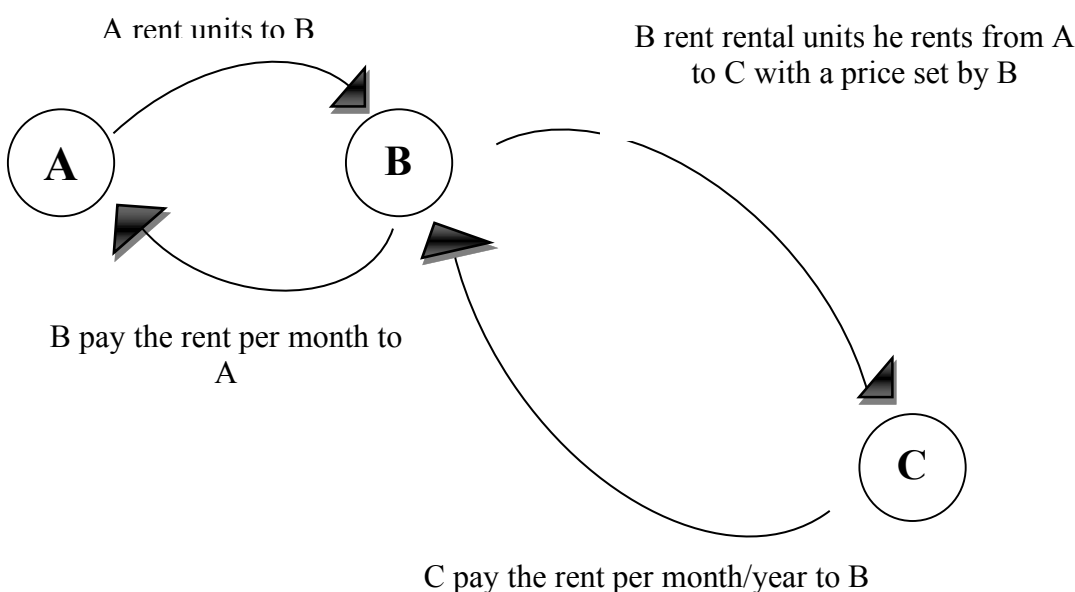
For a little over eight years from the start of the building of flats rent simple kaligawe the absence of Government's efforts in tackling these problems, it does have an impact on both sides at the same time, delay income rental fee flats from residents of flats then hampered the Government's performance in delivering the response when there is a complaint regarding the facilities and infrastructure that needs to be fixed.

In the year 2017 is the Government delivering smart solutions rental payments to make it easier for the residents who will pay by eliminating the risk of cash payments carried blurred by irresponsible parties. The solution is done by diverting the entire lease payment purposes using virtual accounts BNI 46 or paying out rent money in the Bank, with a system that has been running for the last 5 months is expected to be the solution of the problems regarding the delay in payment.

**b. Rent-Repeating**

Rent-Repeating is a problem of violations that have become common in the environment rises, it is considered to be one of the investment. This practice is done when the occupants of the rental right holder or rent residential home on his behalf to the people with the new lease agreement that is paid every month to lease holders over flats unit

Shceme 1  
The following illustrations regarding the rental residence of repeaters.



This practice is a violation of article 4 paragraph (1) of lease agreement rent that reads "Prohibited rent both whole and/or as a room of the House which is rented to another party". From these provisions it is clear that rent-repeating in no way authorized by the concerned regulation even with the existence of article also reinforced 1559 book of law civil law, that if it is not allowed in the original agreement then the tenants are prohibited from renting out the stuff he rented land to other people. Upon this, the threat of cancellation of the agreement of rents, and replacement costs, loss and interest can be charged to the tenant. While the parties to the lease, after cancellation, it is not required to obey his rents.

Some members of the law enforcement here instead of letting this deed and even from the testimony of interviewees there are unscrupulous officers who participate instead in the Act should be thought to acts that are against the law by finding an empty dwelling that can be rented out to tenants.

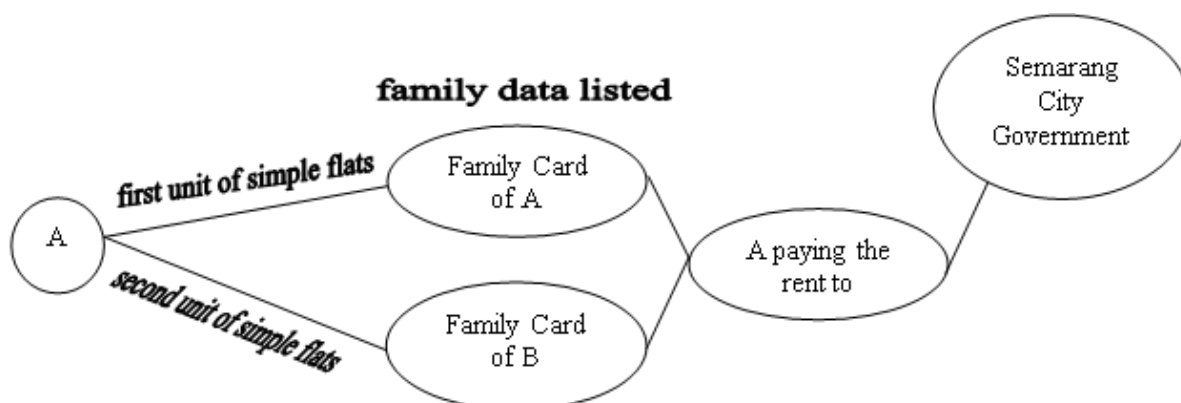
**c. Releasing the unit flats (trade)**

Signing of the mover is the Act by way of trading between resident units of flats with prospective buyers of units flats. 48 of the interviewees we interviewed as many as 14 people say get dwellings from the previous owner. This proves that the practice of signing of the mover unit flats directly to potential buyers in the flats Kaligawe there is still much to do. Some residents benefit reasoned, when flats units returned to the Government of the city dweller flats earlier units did not get anything, whereas when the unit flats for sale residents get a price that is considered sufficient to replace the costs incurred during a stay in the flats Kaligawe Besides potential buyers a flats units said that when conducting geographically to the UPTD for home rental Semarang , the wait time is long enough, competing with other prospective residents of sarusun, so they choose buy despite the price offered is quite expensive ranging from 7 million rupiahs to 15 million rupiahs. This deed is a deed which is not allowed by the Government of the city of Semarang by Surat Perjanjian Sewa Menyewa Rusunawa Kaligawe article 4 paragraph (1). Legal consequences of such a feat was annulled by law, because the terms of an agreement arranged in a legitimate Article 1320 book of civil law act which is a cause that kosher, while objects that are exchanged in the signing of the mover is not the property of the residents of units of flats but the Government city of Semarang. Semarang City Government in this regard reserves the right to revoke, cancel and/or disqualify all the Rental License is a single entity with Treaty of Kaligawe Rusunawa Lease and the City Government of Semarang set other inmates apply for eligible according to applied terms, it is stated in article 7 of the agreement letter of renting flats Kaligawe. In practice, the Government did an abrupt control Semarang and when it was discovered that residents do not have proof of rental units of flats is simple, they are required to re-register.

**d. Residents have more than one flats Unit**

The results of research that the author did, there are residents who have more than one unit of flats. Residents who have more than one of these units of flats knowing that it is forbidden, but they reasoned that the flats units owned by the narrow and cannot accommodate the whole family. So he borrowed other people's family card to get the unit flats. This violates Rule number 7 of 2009 Mayor article 9 letter c that mentions that "inmates are prohibited from renting or rental house to inhabit more than one residential unit". The consequence is when the occupants do not abide by the rules the Government reserves the right to revoke the permission of semarang and cancel the lease agreement unilaterally by the head of UPTD .

Scheme 2  
How to get over the units of flats



**D. Discussion**

**Implementation of Lease Rental Agreement**

Implementation of lease agreement rusunawa kaligawe there are still some violations and also the lack of fulfillment of the obligations of both parties. Some of the frequent violations include:

1. The alienation of units (buy-sell), evidenced by the results of interviews that show 14 occupants get occupancy from previous occupants;
2. Rent the unit as many as 5 occupants;
3. 2 Unmarried inhabitants are inhabiting rusunawa units;
4. 9 Occupants have more than one unit;
5. 4 Occupants who come from outside the city of Semarang; and
6. 2 Occupants use public facilities for their personal use.

While the fulfillment of the obligations of both parties is also lacking, in the first instance, related to facilities and infrastructure of less attention paid apartments such as: leaking water channels and clogged, broken roof towers, until the security fence is less high, damaged and broken. On the second the most frequent occasions are rent payments, electricity bills and often late accounts.

#### E. The Role of Government

The role of Semarang City Government in handling the above practices is to conduct sudden control to the residents of sarusun kaligawe regarding the authenticity and accuracy between the names in the agreement with the actual occupants. If there is a difference then the residents are asked to make a name change or can be called pendataftaran re-Unit Regional Technical Executive (UPTD) Rental House Semarang City. This is caused by the Local Revenue (PAD) that must be fulfilled by Agus Julianto as Head of Housing and Housing Section of the Office of Housing and Settlements (DISPERKIM) Semarang City said that it is difficult to handle tenants who committed violations, especially about the delay in paying retribution fees (Nunggak) and the Municipal Government, especially the managers of apartment units, namely the Technical Implementation Unit of the Region is also difficult to find unequal occupancy between the names listed in the initial agreement and occupants who occupy, this makes the data plan owned by the UPTD then the policy of the City Government Is to re-register new tenants to be recorded and more clear in the data collection because it would be difficult to find a previous tenant who probably already owns his own home outside the flat. Officers assume that the important new tenants are routinely in paying rent retribution because UPTD must also follow and meet the original revenue area (PAD) Semarang city.

In addition, the Semarang City Government has not maximized Article 1561 Civil Code which explains that if the lessee uses the leased goods for other purposes of the purpose, or the need for the losses to the leasing party, according to circumstances can be canceled lease agreement. So the tenants who rented the rental unit should be canceled by the Semarang City Government.

#### F. Conclusion

The majority of residents who live in rusunawa kaligawe do many violations that are inconsistent with the Mayor Regulation and injure the Agreement that has been made between the City Government of Semarang with the residents of Rusunawa themselves. The problems that occur include the transfer of goods, the hiring of units, the unmarried residents, the occupants have more than one unit, the residents from outside Semarang, the use of public facilities for personal use, and the lack of fulfillment of obligations by the government and Residents. The government's role in dealing with these issues is by: socialization, abrupt control, giving warning letters, changing keys, and special re-registration for the alienation of the right to sarusun.

This proves that the implementation of lease agreement rental unit based on Mayor regulation number 7 of 2009 in Semarang City was still not effective. Factors that influence include the lack of legal awareness of the community, among others, and less specific implementation of sanctions by Semarang City Government against offenders. Less specific sanctions of Semarang City Government result in new violations.

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