

## LEGAL PROTECTION TO BUYERS OF LAND RIGHTS THAT ARE STILL CONTROLLED BY THE LESSEE DUE TO UNLAWFUL ACTIONS

Sudarwaty

Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia.

Email: damarpamenang.gp@gmail.com

Widyarini Indriasti Wardani

Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia.

Email: widyorini-indriasti@untagsmg.ac.id

---

### ABSTRACT

*The reality in society is that there is often a reluctance on the part of lessees to hand over the land and buildings they rent to the land and building owners after the end of the lease period. The problem is formulated as follows: 1) What is the legal protection for buyers of land rights that are still controlled by the lessee due to default? 2) What is the basis for the judge's consideration in examining the decision on the lawsuit against the law in case Number: 739/PDT/2021/ PT SBY? 3) What are the legal consequences for the parties of the Surabaya High Court decision in Case Number: 739/PDT/2021/ PT SBY? This research uses a normative juridical approach (normative legal research). The data analysis used is a qualitative approach to secondary data as main data and primary data as supporting data. The research results show that legal protection for buyers of land rights that are still controlled by the lessee due to default is provided on the basis of an agreement that is legally made and recognized. The judge's basic considerations in examining the decision on the lawsuit against the law in Case Number: 739/PDT/2021/PT SBY, stated that the decision of the Jember District Court dated 21 September 2021, Number 24/Pdt.G/2021/PN Jmr could be maintained and therefore had to be strengthened. The legal consequences for the parties of the Surabaya High Court Decision in Case Number: 739/PDT/2021/PT SBY which has obtained permanent legal force (inkraht van gewisjde), the Plaintiff is recognized as the legal owner, the Defendant is sentenced to vacate and hand over the Object of the Dispute, now The Defendant was also ordered to submit and comply with the contents of this decision.*

Keywords: Buyer; Lessee; Legal protection; Default

---

### A. INTRODUCTION

One form of agreement known in contract law is a leasing agreement.

The leasing agreement according to Article 1548 of the Civil Code is:

- 1) an agreement, by which one party binds himself to provide the enjoyment of an item to another party for a certain period of time, with payment of a price agreed by the latter party.
- 2) People can lease out various types of goods, both fixed and movable.

Leasing, like buying and selling and other agreements in general, is a consensual agreement, meaning that it is valid and binding at the moment an agreement is reached regarding the two main elements of goods and price. The consensual principle is a principle which states that an agreement arises or is emerged from the moment an agreement is reached as long as the parties do not determine otherwise.

The consensual principle is the implementation of the provisions of Article 1320 of the Civil Code which states that there are four conditions for a valid agreement: 1) the parties agree, 2) the parties are competent, 3) a certain object, and 4) something that is *halal*. One of the conditions for the validity of an agreement is the agreement of those who bind themselves. One party's obligation is to hand over the goods for the other party to enjoy, while the other party's obligation is to pay the leasing price. Goods are not handed over to be owned as in buying and selling, but only to be use and to enjoy their usefulness. Submission only means handing over power over the rented item.

The parties in leasing agreement are the owner of the goods as the lessee and user of the goods as the lessee so that the leasing agreement is binding on both parties. Between the lessee and the owner of the goods there has been a legal relationship of renting.

Lessees generally enter into a leasing agreement with the owner directly for a certain period of time. There are times when the leasing agreement is still in progress; the leasing object changes ownership from old owner to new one due to a sale and purchase. The old owner who is the renting party has sold the leasing object to another party, so that ownership of the leasing object passes from old owner to new owner.

The transfer of ownership of leasing object does not necessarily terminate leasing agreement that has existed between old owner and lessee. The leasing agreement continues until the end of leasing agreement period. This is confirmed in the provisions of Article 1570 of the Civil Code which states that "If a lease is made in writing, the lease ends by law if the specified time has passed without the need for termination for that purpose."

The end of leasing agreement has consequences for the lessee; they are obliged to hand over the building land they rented to the owner of the land and building after the term of the leasing agreement ends. The lessee in good faith must hand over the land and building he rented to the owner, unless it has been agreed to extend the lease.

The reality in society is that there is often a reluctance on the part of lessees to hand over the land and buildings they rent to the land and building owners after the end of the lease period even though they have received warnings from the land and building owners. One example is a dispute that occurred between the London shop building owner and a lessee in Jember. The land and building of the London shop originally belonged to the old owner who then transferred ownership to the new owner through a sale and purchase process as evidenced by the Sale and Purchase Deed Number: 271/KLW/VIII/2007, dated 10 August 2007, before the Land Deed Official, Bambang Hermanto, S.H. Based on the Deed of Sale and Purchase Number: 271/KLW/VIII/2007, dated 10 August 2007, the ownership rights to the land and building of the London shop were completely transferred to the new owner as the buyer.

## **B. PROBLEM FORMULATION**

1. What is the legal protection for buyers of land rights that are still controlled by the lessee due to unlawful actions?
2. What is the basis for the judge's consideration in examining the decision on the lawsuit against the law in the cassation case number 3353 K/Pdt /2022?
3. What are the legal consequences for the parties of the cassation decision number 3353 K/Pdt /2022?

## **C. RESEARCH METHODS**

### **1. Approach Method**

The legal research used in this research was a normative legal approach.; a legal research that is not based on the research or primary data research, relating to legal protection for buyers of land rights against control of land rights by the lessee legal protection for buyers of land rights against control of land rights by the lessee of land rights due to default.

### **2. Research Specifications**

The research used the specific research specifications of analytical descriptive; a research intended for humans and other conditions/symptoms, regarding legal protection for buyers of land rights against control of land rights by the lessee, legal protection for buyers of land rights against control of land rights by the lessee, and land rights due to default.

### **3. Data Sources and Types**

The data source used in this research was secondary data obtained through library data that includes primary, secondary, and tertiary legal materials. The type of data used in this research was secondary data.

### **4. Data Analysis Methods**

The data analysis used was a qualitative approach to primary and secondary data. The descriptive one included the content and structure of positive law; an activity carried out by the author to determine the content or meaning of legal rules which were used as references in resolving legal problems which were the object of study.

## **D. RESULTS AND DISCUSSION**

### **1. Legal Protection for Buyers of Land Rights that are Still Controlled by the Lessee Due to Unlawful Actions**

Based on the results of the research, it was found that Sofiah Amar, a.k.a Sofiah Binti Amar, is an adult and the holder of the Ownership Certificate Number 2078. Together with other heirs, she had the power of attorney from the other heirs with the authority to carry out buying and selling of inherited property as recorded in the Ownership Rights Number 2078, fulfilling the requirements as a person capable of buying and selling.

Based on the research results, it is found that Suudi Gaeiti Bin Muhammad is an adult person who had no obstacles in carrying out buying and selling due to disability, court decisions and other reasons, so he is competent in carrying out legal actions, including making agreements.

#### 1) A certain thing

A certain thing or object means that when making an agreement, what is agreed must be clear so that the rights and obligations of the parties can be determined. It is stated in Article 1332 of the Civil Code that traded goods can be the subject of agreements. Furthermore, in the provisions of Article 1333 of the Civil Code, it is stated:

An agreement must have its principal in the form of an item at least which is specified in its type. The quantity of goods does not need to be certain, as long as the quantity can then be determined or calculated.

Based on Article 1333 of the Civil Code, it can be seen that at least the type of object of the agreement must be determined, regarding movable, tangible or intangible objects. The object of the agreement can also be some goods which are only expected to be available at a later date, so the

goods have not existed yet at the time the agreement is made (Article 1334 of the Civil Code). An agreement that has no object is null and void by law.

Based on the research results, it is recognized that the object of the sale and purchase agreement agreed upon by Sofiah Amar a.k.a. Sofiah Binti Amar and Suudi Gaeiti Bin Muhammad is the sale and purchase of land and buildings in the form of houses and shops (RUKO) known as "London Shop" as recorded in the Certificate of Ownership Rights Number 2078, which is located on Jalan Raya Sultan Agung Number 109, Lingkungan Kampung Tengah, Rt. 001/Rw. 015, Kepatihan Village, Kaliwates Sub-District, Jember Regency, covering an area of 56 m<sup>2</sup>, with the borders as follows:

North side	:	Sewers (Jember Regency Public Works and Irrigation Department assets).
East side	:	Bima Furniture Store.
South side	:	Alex Land.
West side	:	Jalan Sultan Agung Gang X

2) A legitimate reason

An agreement is valid if it does not conflict with law, morality and public order. It is confirmed in Article 1336 of the Civil Code: if a cause is not stated, but there is a lawful cause, or if there is another cause than stated, the agreement is nevertheless valid.

In the provisions of Article 1337 of the Civil Code, it is stated that a cause is prohibited if it is prohibited by law, or it is contrary to good morality or public order.

Article 1335 of the Civil Code stipulates that an agreement will be declared invalid if it is made without reason or based on a prohibited reason. An agreement is considered to be made without reason if the purpose intended by the parties at the time the agreement is made will not be achieved.

A false reason is a reason made by the parties that covers the true reason of the agreement. Then, a prohibited reason is a reason that is contrary to the Law, public order, or morality.

For an agreement made with the *causa* which is not *halal*, if the implementation is requested from the Court, it will not be successful, because such an agreement from the start is null and void by law.

Based on the research results, it is identified that the sale and purchase agreement between Sofiah Amar a.k.a. Sofiah Binti Amar and Suudi Gaeiti Bin Muhammad, as stipulated in the Sale and Purchase Deed Number 271/KLW/VIII/ 2007, does not violate the law, morality, religion or public order.

Based on the description above, it can be explained that an agreement made is legally recognized and has legal protection. This can be seen in the provisions of Article 1338 which confirms that the agreement made by the parties apply as a law for those who make them.

**2. The Judge's Basic Considerations in Examining and Deciding on a Lawsuit for Unlawful Acts in the Case Number: 739/PDT/2021/PT SBY**

The panel of judges at the Surabaya High Court which examined the case number 739/PDT/2021/PT SBY gave the consideration regarding the appeal submitted by the Appellant's Attorney, initially Defendant I, stating that it was submitted within the time limit and in the manner and other conditions determined by Law so that the appeal request can be formally accepted.

According to the considerations of the panel of judges at the Surabaya High Court, the memorandum of appeal from the Appellant, initially Defendant I, and the counter-appeal memorandum from the Appellee, initially Plaintiff I, did not contain any new matters and very principled matters for further consideration which could annul the decision of the Panel of First Instance Judges so that the reasons in the appeal memorandum and in the counter appeal memorandum should be disregarded.

According to the panel of judges at the Surabaya High Court, they read and examined and carefully examined the case files and the official copy of the decision of the Jember District Court dated 21 September 2021, Number 24/Pdt.G/2021/PN Jmr, the appeal memorandum, the contact for the appeal memorandum, and the letters submitted. In connection with this case, the High Court is of the opinion that the decision of the Panel of the First Instance Judges had been properly and correctly considered according to the law, so that these considerations could be approved and used as the basis for its own legal considerations by the High Court in deciding the case. at the appellate level, so that the legal considerations of the Court of First Instance were taken over completely and used as legal considerations of the High Court in deciding this case at the appellate level. This means that the decision of the Jember District Court dated 21 September 2021, Number 24/Pdt.G/2021/PN Jmr could be maintained and therefore had to be strengthened.

According to the Panel of Judges at the Surabaya High Court, because the appellant, initially Defendant I, was still on the losing side, all case costs incurred at both levels of justice were borne by him. Furthermore, the panel of judges at the Surabaya High Court, which examined the case Number 739/PDT/2021/PT SBY, gave a decision which read as follows:

JUDGE

- Receiving an appeal from the Attorney of the Appellate, initially Defendant I;
- Strengthening the Decision of the Jember District Court dated 21 September 2021, Number 24/Pdt.G/2021/PN Jmr, which was requested to be appealed;
- Sentencing the Appellant, initially Defendant I, to pay the court costs at both levels of court which at the appeal level were determined at IDR 150,000.00 (one hundred and fifty thousand Rupiahs);

The appellant, initially Defendant I, after receiving a copy of the Surabaya High Court Decision in the case Number 739/PDT/2021/PT. SBY, on December 8 2021, then submitted a cassation action to the Supreme Court which received the Case Number 3553 K/Pdt/2022.

According to the panel of judges of the Supreme Court who examined the cassation case Number 3553 K/Pdt/2022, the *a quo* cassation petition and its reasons had been thoroughly notified to the opposing party, submitted within the time limit and in the manner specified in the law because the cassation request could be formally accepted;

According to the panel of judges of the Supreme Court who examined cassation the case number 3553 K/Pdt/2022, regarding the cassation memo, the Cassation Respondent submitted a Counter-Cassation Memorandum on January 26 2022 which essentially rejected the cassation petition from the Cassation Petitioner. Regarding these reasons, according to the panel of judges of the Supreme Court who examined the cassation case number 3553 K/Pdt/2022, after examining the Cassation Memorandum dated January 17 2022 and the Contra Cassation Memorandum dated January 26 2022 linked to *Judex Facti* considerations, in this case, the Surabaya High Court confirmed the Jember District Court's decision, and in fact it was not wrong to apply the law in the *a quo* case, with the following considerations:

- a. The Convention Plaintiff can prove to be the legal owner of the disputed object which was obtained by purchasing it from Ali Amar's heir named Mrs. Sofiyah Ali Amar and friends made before Notary Bambang Hermanto, S.H. with the Sale and Purchase Deed Number 271/KLW/ VIII/2007, dated 10 August 2007;
- b. The leasing period for the disputed object/London Shop between Ali Susanto and Ali Amar from 1 January 2004 to 31 December 2014 had ended so that the control of the disputed object by Defendant I of the Convention was an unlawful act;

**3. Legal Consequences for the Parties to the Surabaya High Court Decision with the Case Number: 739/PDT/2021/PT SBY**

The Jember District Court decision in the case number 24/Pdt.G/2021/PN. Jmr., dated September 21 2021 which was confirmed by the Surabaya High Court Decision in the Case Number 739/PDT/2021/PT. SBY, dated 8 December 2021 and which obtained permanent legal force (*inkraht van gewisjde*), provided the following legal consequences for the parties:

a. For the Plaintiff

Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., dated 21 September 2021 number 2, the Plaintiff was recognized as the legal owner of a plot of land and buildings located in Lingkungan Kampung Tengah, Rt. 001/ Rw. 015, Jember Kidul Village, Kaliwates Sub-District, Jember Regency, covering an area of 56 m2 (hereinafter referred to as the Dispute Object).

Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., dated 21 September 2021 number 3, the sale and purchase between the Plaintiff and the heirs of ALI AMAR named NY.SOFIYAH ALI AMAR et al which was made before Notary BAMBANG HERMANTO, SH., as per AJB Number 271/KLW/VIII/2007 dated 10 August 2007 was recognized as true and considered valid;

b. For the Defendant

- Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., 21 September 2021 number 4, the lease for the London Shop between ALI SUSANTO and ALI AMAR from 01-01-2004 to 12-31-2014 had ended.
- Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., dated 21 September 2021 number 5, the Defendant I's actions in illegally controlling, occupying, and using the disputed object as a place of business under the name "London Shop" from 2015 to 2021 was an Unlawful Act (*onrechtmatige daad*).
- Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., dated 21 September 2021 number 6, Defendant I or anyone who obtained rights from him was sentenced to vacate and hand over the Object of Dispute in the form of London Shop to the Plaintiff in an empty and safe condition and without any conditions whatsoever or if necessary to hand it over with the assistance of the Party's Officials. The authorities were the Police of the Republic of Indonesia;

- Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., September 21 2021 number 7, the Defendants were sentenced to pay forced money (*dwangsoom*) for the Defendants' delay in carrying out the Court's decision starting from the time the decision obtained permanent legal force in the amount of IDR 100,000.00 (one hundred thousand Rupiahs) per day to be handed over to the Plaintiff;
- c. For the Co-Defendants
  - Based on the decision of the Jember District Court in the case number 24/Pdt.G/2021/PN. Jmr., September 21 2021 number 8, the Co-Defendants I and II were ordered to submit and comply with the contents of this decision.

Based on the description above, it can be understood that every court decision that has permanent legal force (*inkraht van gewisjde*) will have legal consequences for the parties involved in the case as well as third parties who are indirectly related to the legal issue. Legal consequences generally take the form of granting conflicting rights and imposing obligations between one party and another. For example, the plaintiff, based on a court decision, obtains the right as the party who legally owns the object of dispute, then the opposing party will be burdened with the obligation to hand over the object of dispute under his control or to a third party who controls the object to vacate it.

## E. CLOSING

Based on the results of the research and data analysis regarding legal protection for buyers of land rights that are still controlled by the lessee due to unlawful acts, it can be concluded:

1. Buyers of land rights that are still controlled by third parties can be given legal protection through criminal and civil instruments. Criminally, they may report illegal encroachment/use of land/buildings as regulated in Article 167 (1) of the Criminal Code, while civilly it can be done through the instrument of a claim for breach of contract or unlawful act or a combination of both based on the provisions of Article 1338 of the Civil Code and Article 1548 of the Civil Code.
2. The judge considers the validity of the sale and purchase agreement for objects controlled by a third party because the sale and purchase agreement is valid. When a third party still controls/utilizes an object whose lease has expired, the lessee no longer has the right to use/utilize it without the permission of the right owner (buyer).
3. The legal consequences of a decision that has permanent legal force are: 1. increasingly strengthening the buyer as the absolute and legal owner of an object controlled by a third party whose lease term has expired, 2. the obligation of the lessee to immediately return the building as a leasing object to the legal owner accompanied by threats fines if, after the decision becomes legally binding, they do not immediately return and vacate the building which is the object of the leasing.
4. Based on the results of the research and data analysis regarding legal protection for buyers of land rights that are still controlled by the lessee due to unlawful acts, the following suggestions can be given:
  1. To ensure legal certainty and due to the presence of a decision that has permanent legal force, the parties respect and implement the injunctions of the court decision which has permanent legal force.
  2. Therefore, the parties prioritize good faith, consensuality and agreements are to be kept in implementing the contents of the agreement. This refers to the provisions of Article 1338 of the Civil Code which basically states that the agreement applies as law for the parties.

## BIBLIOGRAPHY

### Book

- Bambang Sunggono. (2007). *Metodologi Penelitian Hukum*. Rajawali Press. Jakarta.  
Purwahid Patrik. (2006). *Asas-asas Itikad Baik dan Kepatutan Dalam Perjanjian*. Badan Penerbit UNDIP. Semarang.  
R.Setiawan. (2014). *Pokok-Pokok Hukum Perikatan*. Bina Cipta. Bandung.  
Zainuddin Ali. (2010). *Metode Penelitian Hukum*. Sinar Grafika: Jakarta.

### Laws

- The Civil Code  
The Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas  
The Cassation Decision Number 3353 K/Pdt /2022  
The Surabaya High Court Decision Number 739/PDT/2021/PT SBY  
The Jember District Court Decision Number 24/Pdt.G/2021 PN Jmb