

## Transfer Juridical Review of Rental Object Function in A Rental Agreement to Rent a Shop House (*Ruko*) based on the Good Faith Principle

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**Abstract.** *The purpose of this study was to find out the juridical review regarding the transfer of the function of the object of the shop house rental based on the principle of good faith. The research methodology used is normative juridical with secondary data sources. The results showed that the standard of good faith in the shop house rental agreement (ruko) was carried out before and after the implementation of the agreement. Prior to the implementation of the agreement in the form of honesty and openness, while the objective of good faith in the lease agreement is the fulfillment of achievements in the implementation of the agreement. Regarding the transfer of the function of the object for renting a shop house (ruko) to other than the original purpose, which was legally agreed upon, the Civil Code does not explicitly regulate but the transfer of the function of the object for renting a shop house (ruko) can be seen in the provisions of Article 1560 of the Civil Code where the tenant is obliged to maintain and care for the rented house properly. . Then in Article 1561 of the Civil Code that tenants are prohibited from using the leased object for purposes other than its purpose. These two provisions serve as points for interpreting that the transfer of the object of lease that causes damage is not permitted. 201/Pdt.G/2015/PN Dps regarding the judge's interpretation of the existence of a default in the dispute over the object of the lease from which losses arise due to the use of a shop house (ruko) outside the agreement.*

**Keywords:** Agreement; Lease; Shop; Transfer.

## 1. Introduction

The development of rental shop houses (*ruko*) is very rapid considering the rapid development of shop houses (*ruko*) in Indonesia which makes shop houses (*ruko*) an important building for humans because apart from being a place to live but also as a business area, the existence of shop houses (*ruko*) is very influential on the economy. At the beginning of its development, the shop house (*ruko*) was the identity of the Chinese merchants who at that time had stopped in Indonesia who later built settlements for residence as well as a place for business.<sup>1</sup>At that time shop houses (*ruko*) in Indonesia had formed a measurable and definite geometric pattern, namely the shape of the building was rectangular with a small width on the front and extended towards the back. The shape of the shop house building (*ruko*) is due to the motive for trading.<sup>2</sup>

The increasing development of shop houses (*ruko*) in Indonesia is influenced by the need for housing and the urgent need for a place of business in the midst of a growing population. By building a shop house (*ruko*) then the need for a place to live as well as a place of business is met at once. But unfortunately not all people can build a shop house (*ruko*) because it costs a lot, so for business needs, those who are unable to build a shop house (*ruko*) or for other reasons they rent a shop house (*ruko*) to the shop house owner. (*ruko*) which in this case would lead to a rental agreement as long as the shop house (*ruko*) will continue to grow and appear in Indonesia.<sup>3</sup>

The lease agreement is regulated in Article 1547 to Article 1600 of the Civil Code. As for the lease agreement, it follows the terms and conditions of Article 1320 Civil Code. In a rental agreement, rights and obligations arise that follow Article 1550 of the Civil Code for the parties. One of the obligations of the lessee is to use the goods according to the rental agreement in accordance with the purpose of the goods according to the lease agreement.<sup>4</sup>In Article 1559 of the Civil Code it is also explained that if the tenant is not permitted by the owner, he may not misuse the goods he rents or release his lease to other people. Then in Article 1561 of the Civil Code it is also stated that the tenant is not allowed to use the rented item for a purpose other than its purpose.

However, in practice there are still leases that transfer the function of the object of rent to another purpose without the knowledge of the owner, for example the transfer of the function of the object of renting a shop house or shop house

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<sup>1</sup>Marlisa Rahmi & Irma Handayani Lubis, "Persepsi Warga Mengenai Fenomena Perkembangan Rumah Toko (Rumah toko (*ruko*)) di Kota Banda Aceh", in *Jurnal Lingkungan Binaan Indonesia* 7 (1) 2018, p. 10.

<sup>2</sup>Erdiono, "Studi Pengamatan Terjadinya Pola Pergeseran Fungsi Ruang Pada Bangunan Rumah-Toko di Manado", in *Media Matrasain* Vol. 9 No. 3. 2012, p. 4.

<sup>3</sup>R.Subekti, (2014) *Aneka Perjanjian*, Bandung: PT Citra Aditya Bakti, p. 39

<sup>4</sup>See Article 1560 of the Civil Code.

(*ruko*) into a warehouse or a place that has the potential to damage a shop house (*ruko*) or even a shop house. The shop house (*ruko*) has been leased back to a third party and it is the third party who then changes the purpose of the shop house (*ruko*) rental object. This can happen because the principle of good faith is not applied in the lease agreement or the clauses of the agreement are not clear so that legal certainty over the justice of the owner is not fulfilled, especially for those who rent out.<sup>5</sup>

## 2. Research Methods

The type of research used is normative legal research, namely legal research conducted by examining library materials consisting of primary legal materials and secondary legal materials.<sup>6</sup> Meanwhile, regarding the approach used is the legal approach (statue approach) which is carried out by examining the laws and regulations and regulations related to the legal issues being handled.

## 3. Results and Discussion

### 3.1. Good Faith Standards in Lease Agreements and Legal Basis for Its Implementation

R. Subekti believes that the importance of the principle of good faith is to remember that an agreement must be carried out honestly and cleanly so that in its implementation justice and legal certainty are reflected. Good faith in the agreement is implemented in two ways, namely, firstly in the formation of a contract, and secondly in the context of the implementation of an agreement or performance of a contract before the contract or execution of the contract.<sup>7</sup>

Juridically good faith in the agreement is stated in Article 1338 Paragraph (3) of the Civil Code which states that:

“All agreements made in accordance with the law apply as law to those who make them. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith.”

In Yahya Harahap's opinion that the standard of the principle of good faith in the agreement is the implementation of good faith before the agreement and in the implementation of achievements in the agreement. Moreover, in the lease agreement, the importance of the principle of good faith is that leasing activity is a leasing activity that creates an economic relationship, so of course the

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<sup>5</sup>Cindi Kondo. “Tanggung Jawab Hukum Dalam Perjanjian Sewa-menyewa Rumah Toko (Roko)”, in *Sam Ratulangi Journal*. Vol. 1. 2013.. p.145

<sup>6</sup>Ahmadi Miru, (2011) *Hukum Kontrak: Perancangan Kontrak*, Jakarta: PT. Raja Grafindo Persada, p.55

<sup>7</sup>R. Subekti, (1976), *Asas-Asas Hukum Perikatan Nasional*, Bandung: Alumni, p. 45

implementation of the lease agreement must be carried out in good faith. The formulation of the agreement is said to meet good faith according to Yahya is to meet the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code.<sup>8</sup>

Although it has been regulated in Article 1338 of the Civil Code and also 1320, the problem of the meaning of good faith has not yet come to light. As a result, the meaning of good faith in an agreement is often carried out by judges when a dispute occurs.<sup>9</sup> On this basis, it is necessary to formulate good faith in the entire substance of the agreement which refers to the provisions of Article 1320 of the Civil Code both in the form of subjective and objective good faith<sup>10</sup>.

The lease is one type of agreement which in terms of its implementation refers to the terms of the agreement in general, so that according to Badruzaman the standard of the lease agreement that meets the principle of good faith is like an agreement in general which is seen from before the agreement is implemented and after the agreement is carried out or subjective good faith and objective. The following is an analysis of the standard lease agreement that meets the principle of good faith:<sup>11</sup>

- Subjective Good Faith before the lease agreement

Good faith at the pre-agreement stage is an obligation to notify or explain and examine material facts for the parties relating to the subject being negotiated. The negotiating parties each have an obligation of good faith, namely the obligation to research and the obligation to notify or explain the Civil Code with the following provisions or formulations:<sup>12</sup>

- Agreed
- A certain thing
- A lawful reason

- Good faith after the lease agreement

Post-agreement is a real manifestation of the application of the principle of good faith which is implemented in the obligation to carry out the contents of the agreement. The implementation of the contents of the agreement is the realization of the fulfillment of the rights and obligations that have been agreed and agreed upon by the parties who make the agreement. The realization is carried out in order to achieve the objectives of the agreement.<sup>13</sup> The fulfillment

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<sup>8</sup>M. Yahya Harahap, (1986) *Segi-Segi Hukum Perjanjian*, Bandung: Alumni, p. 220

<sup>9</sup>Manaon Damianus Sirait, "Asas Itikad Baik dalam Perjanjian Sewa-Menyewa Rumah Kantor" in *Jurnal Analogi Hukum*, Vol.2, No.2 2020, p. 221–227

<sup>10</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

<sup>11</sup>Mariam Darus Badruzaman, (2001) *Kompilasi Hukum Perikatan*, Bandung : PT. Citra Aditya Bakti, p. 74

<sup>12</sup>Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian" in *Jurnal Ius Constituendum*, Vol. 5 No. 1 April 2020, p.67

<sup>13</sup>Ridwan, Op.cit, p. 7

of obligations in the agreement or the fulfillment of contractual achievements by the parties is the essence of the application of the principle of good faith. If the parties carry out their contractual obligations, it means that the parties have carried out the principle of good faith objectively.<sup>14</sup> That is, if there is a default by one of the parties who bind themselves to the lease agreement, the good faith cannot be fulfilled in the agreement.

Standard agreements that fulfill good faith post-agreement can be interpreted as an interpretation that is in accordance with Article 1338 and also Article 1339 of the Civil Code, namely the agreement is not only binding on things that are expressly stated therein, but also for everything which according to the nature of the agreement is required by propriety, custom or law. This is in accordance with what Subekti explained that good faith according to Article 1338 paragraph (3) of the Civil Code is one of the most important joints of contract law because it gives judges the power to oversee the implementation of a contract so as not to violate propriety and justice. This means that the judge is authorized to deviate from the contract if the execution of the contract violates the feeling of justice (*recht gevoel*) between two parties.<sup>15</sup>

In the case of a lease agreement, the application of good faith after the agreement is to carry out achievements for the parties, especially for the lessee. The form of the implementation of good faith in the lease agreement by the lessee can be carried out through maintaining the leased object properly, maintaining security and order and not re-leasing and transferring the leased object without the consent of the lease owner.

### **3.2 Juridical Overview of the transfer of the function of the Shop House Rental Object (*Ruko*) in the rental agreement based on the principle of good faith**

A shop house rental agreement (*ruko*) is a consensual agreement that is declared valid if there is an agreement on the main element, namely the object of the lease, namely a shop house (*ruko*) and the rental price.<sup>16</sup> The object of the lease and the rental price are the main elements of the lease agreement because the purpose of the lease agreement is to provide material rights that are enjoyed, not ownership rights to the object of the lease. According to Abdulkadir Muhammad, related to objects as leased objects, the lessee is obliged to use the leased object properly. In relation to the use of the leased object in the lease agreement, it must be carried out in accordance with:<sup>17</sup>

- Use rental objects properly according to the purpose

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<sup>14</sup>Ahmadi Miru, Op.cit, p. 9

<sup>15</sup>Muhammad Syaifuddin, (2012) *Hukum Kontrak*, Bandung: Mandar Maju, p. 94

<sup>16</sup>Milano Dolo, "Tinjauan Yuridis Terhadap Pelaksanaan Perjanjian Sewa Menyewa Rumah" in *Lex Privatum* Vol. VI, No. 10, December 2018, p. 143

<sup>17</sup>Abdulkadir Muhammad, (2014) *Hukum Perdata Indonesia*, Bandung: PT Citra Aditya Bakti, p. 345-346

Proper use of the leased object is the first obligation of the lessee. Proper use of the leased object means the use of the leased object in accordance with the purpose given to the object according to the lease agreement or if there is no agreement regarding it, according to the purpose deemed appropriate to the circumstances.<sup>18</sup>The proper use of the leased object is a manifestation of the performance of the lease agreement, which means that the proper use of the leased object is an implementation of good faith in the lease agreement.

The use of a good rental object is a very important thing in a lease agreement. Regarding the proper use of the leased object, Subekti is of the opinion that as a tenant, you must apply the principle of "a good father of the house" which means to treat the leased object as if it were your own and in accordance with the purpose given to the object according to the agreed rental agreement.<sup>19</sup>

In relation to the object of rent in the form of a shop house (*ruko*) because the form of the shophouse is in the form of a building or property, in the author's opinion, the use of the object for renting a shop house (*ruko*) refers to the provisions of Article 1560 of the Civil Code which states that the tenant must maintain the object of his rent as his own house.

The importance of using the object of the lease properly is to avoid damage that occurs that can trigger conflicts in the lease. The form of good use of the leased object is to maintain and use it as the original purpose of the agreement. The condition of the leased object must be the same as the condition of the leased object at the beginning of the lease agreement without any changes.

The importance of regulating the use of the leased object is to realize legal certainty in the lease agreement. According to Gustav Radburch, legal certainty is a legal guarantee that contains justice. Certainty and justice are a permanent part of the law. Legal certainty must be considered because it leads to order.<sup>20</sup>

Provisions regarding leased objects cannot be used for other purposes other than those for which the purpose is written in Article 1561 of the Civil Code. The meaning of the article is that in the context of renting a shop house (*ruko*) in the author's opinion, the object of the lease is a shop house unit (*ruko*) if in the original purpose of its use it was intended for one thing, it cannot be used for anything else. For example, if at the beginning of the agreement the tenant wants to rent a shop house (*ruko*) as an office, then in practice it cannot be converted into residential or other purposes other than what is desired. Regarding this matter, it is strengthened by the decision on the case of the lease dispute, namely the use of the object of the lease outside the objectives agreed in the agreement. The rental dispute was then decided at the Denpasar Bali District Court in Decision No. 201/Pdt.G/2015/PN Dps. The judge's consideration

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<sup>18</sup>Harus Rashid, (2010) *Upaya Penyelesaian Sengketa Sewa Menyewa Perumahan Menurut Perundang – undangan*. Jakarta: Balai Aksara, p.13

<sup>19</sup>Subekti. Loc.cit p.51

<sup>20</sup>Achmad Ali, (2002) *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Jakarta: Penerbit Toko Gunung Agung, p. 82-83

in the decision is that the tenant is in default because he does not carry out the achievements agreed in the agreement. The achievement that was violated in the lease agreement was the use of the object of the lease other than the original purpose of the lease, initially it was used for occupancy but later when the agreement was made it was agreed upon in the use agreement for residential dwellings, but when the agreement was completed the owner found severe damage caused by the use not for housing but for office activities which then cause damage.<sup>21</sup>Juridically, the judge does have the authority to interpret contract clauses containing bad faith that are not in accordance with Articles 1338 and 1339 of the Civil Code.<sup>22</sup>

Seeing from the court's decision, it can be concluded that the transfer of the object of lease that is not in accordance with the original purpose is an act that is not allowed, especially if the clause on the use of the object of the lease is written in the agreement. But back again to the theory that the agreement is a law for the parties who bind themselves in it, so if the clause of the agreement does not mention the purpose of using the object of lease, then in the implementation there is a transfer of the function of the object of the lease, then the lessee is not in breach of contract because not stated in the agreement.

Regarding the responsibility for the leased object being transferred, it refers to the provisions of Article 1566 of the Civil Code which states that regarding the responsibility for all damage and also losses arising from the leased object due to the act of transferring the lease or other actions that have the potential to damage the leased object due to use which is the responsibility from the tenant. This means that the transfer of the function of the rental object that causes damage is the responsibility of the tenant. The tenant is obliged to be responsible for the object of the lease, especially the object for renting a house or shop house (*ruko*). The tenant's responsibility for the house he rents in the rental agreement based on the Civil Code is that the tenant is obliged to maintain, maintain and care for the house he rents as his own ( as a good host).

The use of rental objects that are not in accordance with the original purpose is also a violation of the principle of good faith in the implementation of the agreement. The principle of good faith that is violated because of the fulfillment of achievements in the form of using the object of the lease as agreed is not implemented. In addition, the act of transferring the function of the object of the lease which then damages the object of the lease also violates the principle of the provisions of the tenant as a good host.<sup>23</sup>

Looking at the provisions of the Civil Code regarding the tenant having to act as both the host of the rental property, it is the obligation of the tenant to

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<sup>21</sup>See Denpasar District Court Decision No. 201/Pdt.G/2015/PN Dps

<sup>22</sup>Ridwan Khairandy, "Kewenangan Hakim untuk Melakukan Intervensi terhadap Kewajiban Kontraktual; Berdasarkan Asas Iktikad Balk" in *Jurnal Hukum*, No. 15 Vol. 7. December 2000, p. 92- 117

<sup>23</sup>Einal Bawarodi, "Penerapan Perjanjian Sewa Beli Di Indonesia Dan Akibat Hukumnya" Dalam *Lex Privatum*, Vol. 2, No. 3, August 2014, p. 152



maintain, maintain and care for the shop house (*ruko*) that he rents as if the shop house (*ruko*) is his own. If the tenant does not maintain, maintain and care for the house he rents like his own house, or uses the house at will, causing damage, then the tenant has committed an act of breach of promise (default) to the contents of the lease agreement that has been approved and signed. Especially if the transfer of the leased object is not known to the owner, which then causes losses.

#### 4. Conclusion

The standard of good faith in a lease agreement is to fulfill good faith subjectively, namely before the implementation of the agreement in the form of honesty and openness, while the objective of good faith in a lease agreement is the fulfillment of achievements in the implementation of the agreement. Regarding the transfer of the function of the object for renting a shop house (*ruko*) to other than the original purpose, which was legally agreed upon, the Civil Code does not explicitly regulate but the transfer of the function of the object for renting a shop house (*ruko*) can be seen in the provisions of Article 1560 of the Civil Code where the tenant is obliged to maintain and care for the rented house properly. Then in Article 1561 of the Civil Code that tenants are prohibited from using the leased object for purposes other than its purpose. These two provisions serve as points for interpreting that the transfer of the leased object causing damage is not allowed. This is reinforced by the jurisprudence of decision no. 201/Pdt.G/2015/PN Dps regarding the judge's interpretation of the existence of a default in the dispute over the object of the lease from which losses arise due to the use of a shop house (*ruko*) outside the agreement.

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