

IMPLEMENTATION OF LAND LEASE AGREEMENT MANAGED BY PT. INDONESIA RAILWAYS IN THE OPERATING AREA 4 SEMARANG

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ABSTRACT

The right to control from the state over land originates from the right of the Indonesian nation to land, which in essence is an assignment to carry out the duties of the nation's authority which contain elements of public law. PT. Kereta Api Indonesia (Persero) may diversify its business by utilizing its land in collaboration with third parties to support its main business. The purpose of this research is to determine the implementation procedure, the form of land lease agreements to the settlement of land lease defaults managed by PT. Kereta Api Indonesia (Persero) Operation Area 4 Semarang. This research is a sociological juridical research. The results of this research indicate that the implementation of the land lease agreement managed by PT. Kereta Api Indonesia (Persero) is carried out by submitting an application to the Executive Vice President of Daop 4 Semarang. If the contents of the contract have been agreed upon by both parties, the contract is made in 2 (two) copies and signed by both parties on a stamp duty. The form and content of the lease agreement is standard in nature, the contents of which are an agreement of two or more parties or a reciprocal standard agreement. Efforts made by PT. Kereta Api Indonesia (Persero) if there is default, but the contract period has expired and does not make an extension if 2 (two) months before the due date the tenant has not made an application letter for contract extension, the Asset Management Manager makes a notification letter to the tenant that the contract will end and concerned in order to complete the contract extension process.

A. INTRODUCTION

Land as a natural resource is a gift from God Almighty to the Indonesian people.¹ The existence of a close relationship between humans and land can be viewed as a legal fact, namely a fact or fact that is regulated and given the consequences by law, so it can also be called rechtsfeiten. Rechtsfeiten here is defined as legal events, namely events that occur in society which are regulated and given consequences by law. The relationship between humans and land, including in Indonesia, is always regulated by law. The law that regulates the relationship between humans and land in Indonesia before independence, on the one hand is governed by customary law, on the other hand also regulated by the Dutch colonial land law which is based on Agrarische Wet Staatblad 1870 Number 55. Since the independence of the Republic of Indonesia, the relationship between humans and land in Indonesia, the basic principle is stipulated by Article 33

1 Arie Sukanti Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Lembaga Pemberdayaan Hukum Indonesia, Jakarta, 2005, page 10

Paragraph (3) of the 1945 Constitution. The provisions of Article 33 Paragraph (3) of the 1945 Constitution. since September 24, 1960, it is further elaborated by the Basic Agrarian Law Number 5 of 1960.²

The right to control from the state over land originates from the right of the Indonesian nation to land, which is essentially an assignment to carry out the duties of the nation's authority which contain elements of public law.³ Land problems are fundamental problems that are related to the public interest, including the community, government, and business entities requiring land parcels either for settlement or for other business activities. Due to this, it is felt as if the land has become narrower to a little while the demand is always increasing, it is not surprising that the value of land increases, the imbalance between the supply of land and the need for land, has created many multi-faceted problems. segments, and of course the laws relating to land will also be involved. The delegation of authority to exercise control rights from the state in the existing regulations is referred to as Management Rights⁴

PT. Kereta Api Indonesia (Persero) may diversify its business by utilizing its land in collaboration with third parties to support its main business. In this connection, PT. Kereta Api Indonesia (Persero) can utilize the land by leasing, KSO or an automatic working program (BOT). Basically the land assets of PT. Kereta Api Indonesia (Persero) will not be released to third parties. Therefore, the land assets of PT. Kereta Api Indonesia (Persero) which has the potential to be utilized by collaborating with third parties. If the land use of PT. Kereta Api Indonesia (Persero) is carried out in collaboration with a third party, so the land assets of PT. Kereta Api Indonesia (Persero) issued a Management Rights certificate on behalf of PT. Kereta Api Indonesia (Persero), then to a third party issued The Building Rights Title or Right to Use certificate based on the agreement, which burdens the Management Rights of PT. Kereta Api Indonesia (Persero). After the Building Rights Title or the Right to Use a third party ends, the Management Rights of PT. Kereta Api Indonesia (Persero) still exists. Then the third party can be given Building Use Rights or Use Rights again based on the renewal of the agreement, and so on.⁵

Utilization of the land in question is carried out in accordance with the provisions of Article 13 paragraph 5 of the Presidential Decree No. 16 of 1994. It states that movable and immovable property belonging to the State

2 Ramli Zein, S.H.,M.S, *Hak Pengelolaan Dalam Sistem UUPA*, PT. Rineka Cipta, Jakarta, 1995, page 9

3 Amelia Febrina Merry Bogia, I Dewa Gede Palguna, *Implikasi Hak Menguasai Negara Terhadap Hak Milik Perorangan Sebagai Politik Agraria Dalam Penyelenggaraan Atas Tanah, Kertha Negara*, volume 01, No. 05, Juli 2013. Page 2

4 Marihot Pahala, *Bea Perolehan Hak Atas Tanah dan Bangunan- Teori dan Praktek*, PT .Gaja Grafindo Persada, Jakarta, 2003, page 153

5 PT. Kereta Api (Persero), *Tanah Kereta Api : Suatu Tinjauan Historis, Hukum Agraria/Pertanahan dan Hukum Pembendaharaan Negara*, PT. Kereta Api, Bandung, 2006, Page 49

can be utilized by leasing, used by building, operated and handed over based on the Decree of the Minister of Finance.⁶

Basically the land assets of PT. Kereta Api Indonesia (Persero) will not be released to third parties. Therefore, the land assets of PT. Kereta Api Indonesia (Persero) which has the potential to be utilized by collaborating with third parties. If the land use of PT. Kereta Api Indonesia (Persero) is carried out in collaboration with a third party, then the land assets of PT. Kereta Api Indonesia (Persero) issued a Management Rights certificate on behalf of PT. Kereta Api Indonesia (Persero), then to a third party issued a Building Use Right or Right to Use certificate based on the agreement, which burdens the Management Rights of PT. Kereta Api Indonesia (Persero). After the Building Rights Title or the Right to Use a third party ends, the Management Rights of PT. Kereta Api Indonesia (Persero) still exists. Then the third party can be given Building Use Rights or Use Rights again based on the renewal of the agreement, and so on.

Currently being discussed is the lease agreement between PT. Kereta Api Indonesia (Persero) with land users. In determining the land rental rates managed by PT. Kereta Api Indonesia (Persero) is calculated per year per meter in accordance with the NJOP (Tax Object Selling Value) in effect in the current year in the local area / area. However, after several years there were residents in the Mayong area, RT / 3 RW / 6, Mayong Village, Mayong District, Jepara Regency, Central Java, on behalf of Mr. H. Samudi who built the land from the lease rights used for business premises and still occupy the land of PT. Kereta Api Indonesia (Persero) by not making a contract extension. The tenant argues that he has not yet reached a point of agreement in negotiating rental rates between PT. Kereta Api Indonesia (Persero) with Mr. H. Samudi, where PT. Kereta Api Indonesia (Persero) determines the rental rate per meter is Rp.12,000,(Twelve thousands Rupiah) while Mr. H. Samudi wants the per meter rental rate of Rp.1000;(one thousand rupiah).⁷

The purpose of this research is to determine the implementation procedure, the form of land lease agreement managed by PT. Kereta Api Indonesia (Persero) Operation Area 4 Semarang. In addition, the research also aims to determine the efforts made by PT. Kereta Api Indonesia (Persero) if there is a default made by the tenant who still occupies the land but the contract period has expired and does not make an extension.

B. RESEARCH METHODS

This research is a sociological juridical research, which is in finding data not only from a juridical perspective but also observing other aspects, namely from an economic, social, cultural perspective and so on.⁸ This research is qualitative in nature, which is an approach that is also called an

6 Kartika Amiri, *Pengelolaan Barang Milik Negara (Bmn) Secara Akuntabel Menuju Good Governance*, *Potret Pemikiran*, Volume 20 Nomor 2, Juli-Desember 2015, page 32-33

7 Sumber: wawancara dengan Bapak Joko, PKWT/Orsorsing Pengusahaan Aset di daerah Kudus, Jawa Tengah.

8 Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, 2012, page 5-7

investigative approach because researchers usually collect data by way of face to face and interacting with people in the research place.

C. RESULT AND DISCUSSION

1. The procedure for implementing the land lease agreement managed by PT. Kereta Api Indonesia (Persero) Operation Area 4 Semarang.

In implementing the land lease agreement managed by PT. Kereta Api Indonesia (Persero) Operational Region 4 Semarang, the first thing to do is with the contract creation process, which is as follows:

- a. Application Letter
- b. Analyze and review the application letter
- c. Lease rate Calculation
- d. Negotiation
- e. Contract Draft
- f. Final Contract

Submission of contracts by prospective tenants to the Commercial Section of Operation Area 4 Semarang PT. Kereta Api Indonesia (Persero), using a letter of application addressed to the Executive Vice President of Daop 4 Semarang. Then, the area of operation analyzes and reviews the lease application letter according to asset utilization with the supporting data (NJOP, HBU, and asset data) needed for calculating rental costs. NJOP is the one in effect in the current year. In calculating rental rates, rates are made in accordance with the Decree of the Board of Directors regarding applicable Rental Rates and compared to the surrounding market prices, if the calculation result is less than one hundred million the contract process is processed in the area, if it is equal to or greater than one hundred million rupiah, it will be followed up by the Head Office. The rental rates offered are above the baseline up to the best commercial value.

Tariff negotiations are carried out during the meeting of prospective tenants and offer of rental rates. If there is still no agreement, the cooperation is canceled or submits the approval of the Commercial Director by attaching justification for the tariff below the baseline. After the agreement between the two parties, a Draft Contract is made to be corrected by the Legal Department. The contract contains the date, the contract number, the subject of the contract, the data of the two parties that bind themselves, the aims and objectives, the location of the land, the obligations and rights of the parties, prohibitions, rental rates, cancellation of agreements, force majeure, disputes, fees and taxes, supervision, changes and additions, notices, others and closings.

As for matters that need to be included in the contract, among others:

- a. Comparisons;
- b. Premise
- c. Preamble

- d. the purpose and objectives of the Lease
- e. Lease Object
- f. Rights and Obligations of both parties
- g. Time Period
- h. Lease rates
- i. Procedure of Payment

On the basis of the contract, the commercial department enters the data base into asset data and contract data, contract data which includes: contract number, location leased, land area, building area, lease designation, lease rate, contract value, payment method, costs and taxes, grace period. The commercial department makes a note to the finance department (accounts receivable) to issue G.215 as a billing document when the lease is due for payment. Contracts that have been made and signed by both parties are then filed by each party. If during the current contract period there are changes, an addendum is made as an attachment to the contract. The commercial department monitors contracts against contracts that have been signed by both parties until the contracts are due. Delete, add or change the contents of the agreement which is still valid. The addendum shall be prepared by the first party if deemed necessary.

The process of making a rental agreement contract is followed up by being analyzed and reviewed and processed within 3 (days) of work. After that the tenant is invited to negotiate the rental price, it will be processed within 3 (three) working days until a decision is continued or it is decided / rejected. 3. Preparation of a draft contract to be corrected by the Legal Department and agreed upon by both parties, is processed within 3 (three) working days. The signing of the contract signed by both parties is followed by making a note for billing to the billing department to be processed within 1 (one) working day.

2. Forms of Land Lease Agreement Managed by PT. Kereta Api Indonesia (Persero).

The form and content of the lease agreement is standard or standard. Standard or standard agreement is a contract that is made based on the enactment of standard regulations whose contents are standardized and set forth in the form of a form, the form and contents are prepared in advance containing standard requirements, which the business actor then proceeds to another party for approval by the consumer. This agreement contains weaknesses because the terms are determined unilaterally and the other party is forced to accept the situation because of its weak position. Some experts also pointed out the weakness of this standard agreement. Pitlo stated that the standard agreement is a double contract, because the freedom of the parties guaranteed by Article 1338 paragraph 1 of the Civil Code has been violated. The weaker party (the debtor) is forced to accept this because they are unable to do anything else.⁹

9 Subekti, R., *Aneka Perjanjian*, Alumni, Bandung, 1985, page 91

In the standard land lease agreement managed by PT. Kereta Api Indonesia (Persero) there are rights and obligations of the parties, namely:

- a. Obligations of the First Party:
 - 1) provides a lease object;
 - 2) Take measurements of leased objects.
- b. Obligations of the The Second Party:
 - 1) Pay rent to the first party
 - 2) Maintain the rental object properly, maintain security, cleanliness, order and beauty in the area of the rental object and its surroundings.
 - 3) Using the object for lease in accordance with its designation in the agreement.
 - 4) If the second party wants to make changes to the building, all or part of the rental object must obtain written permission from the first party.
 - 5) Empty and hand over the object for lease to the first party when the lease period has ended.
- c. The rights of The First Party:
 - 1) Receive rent payments from the second party.
 - 2) Reprimand / warn the second party if the second party has misused the designation or violated this agreement.
 - 3) Terminate the agreement after being given written warnings 3 (three) consecutive times within a grace period of 7 (seven) calendar days, if the second party has committed acts that may harm the first party and or the second party violates this agreement.
 - 4) Receive back the object for lease when the lease period has ended or before the end of the period if it is to be used by the first party.
 - 5) Take measurements and recalculate rates for changes in the object for lease.
- d. The rights of The Second Party:
 - 1) Use the object for lease for the purpose as intended in Article 2 during this Agreement period.
 - 2) Obtain proof of payroll deductions for rent.

Standard agreements that are widely available in society can be distinguished into several types, among others, in terms of which party determines the content and terms of the contract before they are offered to consumers in bulk. The type of standard agreement used in the lease agreement for land managed by PT. Kereta Api Indonesia (Persero) which contains an agreement of two or more parties or what is called a reciprocal standard agreement, where PT. Kereta Api Indonesia (Persero) as the first party as the lessor determines the content and requirements in terms of offering rental rates above the base line (best commercial value) from the results of negotiations.

Negotiation in general is a dialogue to solve problems, to produce agreements, bargaining for individual or collective benefit and to fulfill various interests. In leasing assets of PT. Kereta Api Indonesia (Persero) what is meant by negotiation is a dialogue to produce an agreement on: rental rates, payment procedures and all applicable rental conditions, to meet the interests of both parties, both PT. Kereta Api Indonesia (Persero) as the owner of the assets and the lessee of the assets. The results of the negotiations are a number of things that become a collective agreement which will later be outlined in the rental cooperation contract agreement, including: rental rates, land and building designation, development plans, payment procedures.

If the prospective tenant does not agree on the expected rental rate, then negotiations are carried out until there is an agreement on the rental price from both parties and it complies with the provisions of PT. Kereta Api Indonesia (Persero). If there is no agreement, the cooperation is canceled or submits the approval of the Commercial Director by attaching justification for the tariff below the base line (best commercial value). In the land lease agreement managed by PT. Kereta Api Indonesia (Persero), the position of PT. Kereta Api Indonesia (Persero) is more dominant than tenants.

According to the author's analysis, the standard agreement made by the PT. Kereta Api Indonesia (Persero) is already efficient, in the standard agreement content is more dominant to the party making the agreement, in this case, PT. Kereta Api Indonesia (Persero), and offered to consumers for approval even though there are consumers who feel benefited and some feel disadvantaged by the agreement, but in practice this standard agreement is very much needed by the community.

3. Efforts Made by PT. Kereta Api Indonesia (Persero) If There Are Defaults Conducted By Tenants Who Still Occupy The Land, But The Contract Period Has Ended And Did Not Make An Extension

If within 2 (two) months before the due date the lessee has not made a contract extension application letter, the Asset Management Manager makes a notification letter to the tenant that the contract will expire and he / she must complete the contract extension process. If the tenant does not respond to the notification letter, a warning letter is made. There is a warning letter, if after being given the Tax Return the concerned does not come to finish, and the contract period is due, the Asset Management Manager is obliged to provide a Warning Letter (SP), the warning letter can be given up to 3 (three) times.

If up to the 3rd (third) Warning Letter the person concerned has not completed the lease extension, an official report on the termination of the contract is made, coordinated with the legal department and agreed by both parties to be forwarded to the asset section for asset security and updating of the latest data and emptying it through the process. summons and coordinates with the security unit and the asset division.

Treatment of agreements whose validity period has ended before the issuance of the decree of the board of directors KEP.U / LL.003 / V / 1 / KA-2009 dated May 14, 2009 :

- a. The Head of the Operational Area / Head of the Regional Division makes and sends a Notification Letter to the occupants / tenants to make an agreement on the use of the leased object, with a grace period of 14 days from the issuance of the Notification Letter.
- b. If the summons or notification does not get a response from the occupant / tenant, then the Senior Manager / Asset Manager assisted by the Senior Manager / Legal Manager Daop / Drive will do the evacuation.
- c. The tenant who will make the agreement must agree on the following matters:
 - 1) Calculation of the Rental Price since the end of the agreement period until the enactment of the Decree of the Board of Directors No. KEP.U / LL.003 / V / 1 / KA-2009 dated May 14, 2009, is calculated using the provisions of the Decree of the Board of Directors No. Kep.U / A.106 / KU.303 / U.2004 dated December 1, 2004 and the payment method will be regulated in the Minutes of Agreement for payment of the Use of the Object for Lease in that Period which is attached along with the agreement / contract.
 - 2) The calculation of the rental price since the enactment of the Decree of the Board of Directors KEP.U / LL.003 / V / 1 / KA-2009 dated May 14, 2009, is calculated using the provisions of the SK and is regulated in the Rental Agreement for the object for lease in accordance with the applicable provisions in the PT. Kereta Api Indonesia (Persero)
 - 3) If during the period of land use there is a change in designation, area and others, the amount of the rental price will be recalculated based on the Minutes of re-measurement and designation and will be enforced since the beginning of the Agreement or according to the agreement.
- d. The Asset Management Unit performs the data entry process into the database system to validate the extended Agreement data.
- e. Asset Management Unit makes a billing note for the agreement that has been extended and submitted to the collection department.
- f. The asset management unit sends an official report acknowledgment of the utilization of strategic House assets that has been issued to the archiving / documentation section.
- g. Occupants / tenants will receive a G.215 account bill to make payments and as proof of payment and the billing department will issue a payment receipt in the form of proof of payment on behalf of the Tenant / Tenant along with VAT and PPh deposits.

The process for contract extension in the regions is as follows:

- a. Check the Income Data Base.
Check the income data base whether the previous rental rates have been paid and make sure the expiration date is over.
- b. The application letter is addressed to the Executive Vice President of Operation Area 4 Semarang at JL. MH. Thamrin No.3 Semarang.
- c. Analyzing and Reviewing Application Letter.
The Operational Area analyzes and studies the application letter for lease extension according to asset utilization with the supporting data (NJOP, HBU and asset data) required for calculating rental costs based on the NJOP in effect in the current year.
- d. Tool Return Statement (Stamp 6000).
- e. Copy of the old Articles of Association.
- f. Cover letter from SATKER.
- g. Power of Attorney Signing the contract if the party signing the contract is not a Director of the Company.
- h. Copy of Company Tax Payment Number (NPWP).
- i. Copy of ID card who signed the contract.
- j. Details of KM and Total Length of Meter Spoor.

D. CONCLUSION

Based on the research conducted by the author on the Implementation of Land Lease Agreement Managed by PT. Kereta Api Indonesia (Persero) Operational Area 4 Semarang, a conclusion can be drawn that in the implementation of the land lease agreement managed by PT. Kereta Api Indonesia (Persero) is carried out by submitting an application to the Executive Vice President of Daop 4 Semarang on Jl. MH. Thamrin No.3 Semarang. If the contents of the contract have been agreed upon by both parties, the contract is made in 2 (two) copies and signed by both parties on a stamp duty. The form and content of the lease agreement is standard in nature, the contents of which are an agreement of two or more parties or a reciprocal standard agreement. Where the PT. Kereta Api Indonesia (Persero) as the first party as the lessor determines the content and requirements in terms of offering rental rates above the base line (best commercial value) from the results of the negotiations. Efforts made by PT. Kereta Api Indonesia (Persero) if there is default, but the contract period has expired and does not make an extension if 2 (two) months before the due date the tenant has not made an application letter for contract extension, the Asset Management Manager makes a notification letter to the tenant that the contract will end and concerned in order to complete the contract extension process. There is a warning letter, if after being given the Tax Return the concerned does not come to finish, and the contract period is due, the Asset Management Manager is obliged to provide a Warning Letter (SP), the warning letter can be given up to 3 (three) times.

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INTERVIEW

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