

**VALIDITY OF LEASE AGREEMENT SIGNED BY UNAUTHORIZED
LEGAL SUBJECT REPRESENTING A BUSINESS ENTITY (CASE STUDY
OF PANGKALPINANG DISTRICT COURT VERDICT NUMBER:
36/PDT.G/2020/PN.PGP Jo. BANGKA BELITUNG HIGH COURT
VERDICT NUMBER: 24/PDT/2020/PTBBL)**

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ABSTRACT

An agreement is a legal relationship of wealth/property between two or more people, which gives the power inherent in certain rights to one party to obtain achievement and at the same time obliges the other party to fulfill the achievement. The validity of an agreement is determined by the fulfilment of the conditions contained in the provisions of Article 1320 of the Civil Code. Regardless of the protection by these legal norms, the majority of business actors or investors in Indonesia often make decisions based on trust in their close colleagues or relatives in running or managing their businesses. This sense of trust often causes problems in business activities. The consideration of appointing someone as an employee especially as a business manager/manager solely on the grounds that they have been long-time close friends (even considered as a family member) is not a guarantee that someone has the ability, integrity, and responsibility to develop and run a business as was the case in Pangkalpinang. The author describes the legal consequences that occur following lease transactions carried out on the basis of trust in friends. The method used is a normative juridical research method, while the data collected in this study is secondary data.

Keywords: *Legal Consequences; Rent Transactions; Trust in Friends*

1. PREFACE

Investment is one of the important factors in encouraging the growth and economic development of a country. Improving the economy of a country can be done by anyone, both entrepreneurs and individuals, by making investments, which are marked by the presence of a certain amount of invested capital and the purchase of capital goods to support production activities (activities which are not consumptive by nature). This is because business actors are broadly defined, namely "every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to organize business activities in various economic fields." In accordance with Article of Indonesian Law number 8 year 1999 concerning Consumer Protection

The increase in the number of business actors greatly helps the economy by creating new jobs, increasing national income, creating added value for goods and services, reducing economic and social disparities, and creating a more prosperous society. The development of business and investment in Indonesia itself is currently increasing and continues to change along with time. One of the promising businesses in the Indonesian entertainment industry is the karaoke business. It generates significant profit value and is in great demand, often operated by business

actors especially from artists/public figures such as Inul Daratista (Inul Vizta Family KTV) and Rossa (Diva Karaoke).

One of the oft-made supporting agreements in setting up this business is the Lease agreement, which is a civil legal act regulated in Chapter VII and Chapter VII A (Article 1548 to Article 1600 of the Civil Code). It is an agreement, whereby one party binds himself to give the other party enjoyment of an item for a certain period of time and with the payment of a price, which the party agreed to pay.

Lease agreement creates a reciprocal relationship between the two parties, such that is mutually beneficial, because the tenant benefits from the object he leases while the lessor benefits from the payment made by the tenant. In starting a lease-rental relationship, both parties must make an agreement or contract. Although the provisions of Article 1320 of the Civil Code does not require to disclose the rights and obligations between the tenant and the lessor in writing, a transaction involving particularly large value and a long lease period is best made in writing, better yet in the form of a Notary Deed. The making of the agreement aims to ensure the existence of legal certainty in the event of future problems. Lease agreements, therefore, can be made in writing or orally, both having equal binding legal force, but agreements made orally are more difficult to prove in the event of future problems.

An agreement or *Verbinteris* is a legal relationship of wealth/property between two or more people, which gives the power inherent in certain rights to one party to obtain achievements and at the same time obliges the other party to reap achievements. The validity of an agreement is determined by the fulfilment of all conditions contained in the provisions of Article 1320 of the Civil Code, namely:

1. Agreements among parties involved in the agreement;
2. Capacity in doing the legal action;
3. Certain things as the object of the agreement;
4. Caused by the legal reasons.

Despite the protection by these legal norms, the majority of business actors or investors in Indonesia often make decisions based on trust in friends or family to run or manage a business. This sense of trust often causes problems in business activities, for the consideration of appointing someone as an employee especially as a business manager/manager in charge on the grounds that they have been childhood friends and are close (considered a family member) does not a guarantee that he has the ability, integrity, and responsibility to develop the business.

2. RESEARCH METHODS

This is a normative legal research, thus the research method used is juridical-normative. The writer chose to do so as the main problem brought up in this writing (Pangkalpinang District Court Verdict Number: 36/PDT.G/2020/PN.PGP *Jo.* Bangka Belitung High Court Verdict Number: 24/PDT/2020/PTBBL) is reviewed by taking into account the principles of applicable

laws and regulations. Then analysis is made and the problems to be discussed are answered. The specification used in this legal research is descriptive analytical, aimed to describe and systematically analyze the validity of a Lease Agreement unduly signed by a legal subject without the authority to represent a business entity.

3. RESULTS AND DISCUSSIONS

Validity of the Lease Agreement Number: 07 Dated September 26th 2018 Made Before Notary Fatiah, S.H., M.Kn.

The principle of freedom of contract contained in Article 1338 paragraph 1 of the Civil Code states that "all agreements made lawfully apply as Law to those who make them." The explanation referred to in this principle of freedom of contract is that each party has the freedom to make or not to make an agreement as long as it is not contrary to the applicable law.

The author is of the opinion that the Deed of Lease Agreement Number: 07 dated September 26th, 2018 made in the presence of Notary Fatiah, S.H., M.Kn. does not meet the legal requirements of an agreement in Article 1320 of the Civil Code. Based on the facts of the trial, the deed was not signed by the real owners of the karaoke business Pub and Lounge Oxtagon consisting of Daniel, Andri Wijaya, and Rudyanto Salim, who also never gave a written or oral power of attorney to Steven (Plaintiff who was a mere manager). In making Deed of Lease Agreement Number: 07 Dated September 26th 2018 before the Notary, Steven (Plaintiff) has clearly violated the principles of good faith contained in Article 1338 paragraph 3 of the Civil Code as he has given incorrect information by declaring himself the owner of the business. Based on the facts in the trial submitted by the Defendant with the testimony of witnesses from the business owners, Steven (Plaintiff) only has the capacity to act as a manager/employee.

Therefore, in signing the Deed of Lease Agreement, Steven did not have the authority and legal standing to act on behalf of the owners of the Oxtagon Pub and Lounge karaoke business because his capacity was limited to that of a manager. In addition, Steven acted without the power of attorney from the business owners, so that the Lease Agreement Number: 07 dated September 26th 2018 contained legal defects and its validity questioned, until finally a District Court decision was issued which cancelled the agreement.

One of the points of putting contractual terms in writing is to ensure legal certainty and ease the burden of presenting evidence. Therefore, the provisions laid out in a contract need to reflect the truth surrounding the contractual relationship, including the subjects involved. In this matter, those commencing into a contract and a contract drafter need to be clear about which legal subjects are involved, the rights and obligations of each parties, and which party shall be held responsible for certain actions undertaken during the execution of the contract. Fraudulent representation as in the case of nominee agreement may result in the contract being voidable by submission of an interested party, therefore nullifying the chance to ensure legal certainty.

Representation via selected proxies are allowed in signing contracts to accommodate the availability of time and difference in places of the signing parties. It remains, however, that the

contract needed to be signed only by the duly authorized representative, usually given the authority through a written authorization letter. Where a legal entity is involved as a legal subject, the authorized representative can usually be determined through its Articles of Association. In most entities, that authority lies in the position of Director or the person at the top position. Depending on the nature of legal action, they need the approval of the appointed Board of Commissioners too.

When no Director or members of the Board of Commissioners are available to sign a contract, they are allowed to appoint any person, usually an employee under their command, to attend the signing on their behalf. In that case, clarity of the contract wordings matter. The contract shall be clear that the signing person is only acting on behalf of the entity and not for his own self, as shown by the supporting documents presented to the contracting counterpart, whether authorization letter, articles of association, or often both.

The same documents are even set as mandatory requirements when the contracting parties decide to appoint a notary to witness the signing of their contract; it is part of notarial duties to ensure the legality of an agreement, in addition to witnessing and therefore ensuring the time and place of signing. Many times this requires meticulous documentary assessment and preparation, which the parties shall be cooperative in supplying, otherwise the notary will be at liberty to rightfully refuse to serve the parties concerned.

When the contracting parties act in good faith and committed no fraud, the document issued by the notary based on what is conveyed to him by the parties and the documents presented shall be considered authentic (i.e., authentic deed, which means it serves before the court of law as the perfect evidence of both parties' intentions at the stage of contract commencement unless otherwise proven). That way, legal certainty concerning the constitution and commencement of the contract shall be preserved.

The basis for the authority of a Notary to make a deed of a lease agreement is regulated in Article 15 paragraph 1 (one) of the UUN which states that:

“The notary is authorized to make authentic deeds on all acts, agreements, and verdicts required by law and/or intended by the interested parties to be stated in the authentic deed, guarantee the certainty of the date of making the deed, store and provide *grosse*, copy, and citation of the deed, all of which insofar as the making of the deeds have not been assigned or exempted to another offices or persons prescribed by law.”

Judging from the provisions of Article 15 paragraph 1 of Notary Position Act, the Deed of Lease Agreement Number: 07 dated September 26th, 2018 drawn up before Notary Fatiah, S.H., M.Kn. is valid and binding on both parties. However, according to the author, Notary Fatiah, S.H., M.Kn. was not careful in assessing the truth of Steven's statement who represented himself as the

owner of Oxtagon Pub and Lounge karaoke business as she did not dig and confirm further by asking to show other evidence that proves that Steven is really the business owner who is authorized to represent the karaoke business Oxtagon Pub and Lounge in carrying out legal actions with other parties. In accordance with Pangkalpinang District Court Verdict Number: 36/PDT.G/2020/PN.PGP, page 29.

Validity of Deed Number: 22 Dated August 30th 2020 Construed to Cancel the Lease Agreement Number: 07 Dated September 26th, 2018 Made Before Notary Fatiah, S.H., M.Kn.

The ground for unilateral cancellation of the Lease Agreement Number: 07 dated September 26th, 2018 made before Notary Fatiah, SH, M.Kn., by making the Deed of Cancellation of Lease Agreement Number: 22 dated July 30th, 2020 is the fulfilment of cancellation conditions stated in Article 4 paragraph (9) of the Deed of Lease Agreement Number: 07 dated September 26th, 2018 which reads as follows: "The First Party may terminate this cooperation agreement unilaterally if the Second Party violates the agreement of the contents of this Lease Agreement and without any demands anything in the future."

According to the author, these provisions cannot immediately render the Agreement "null and void" or justify the cancellation of the Lease Agreement unilaterally. First of all, the provisions in Article 1338 paragraph 2 of the Civil Code stipulates in general that: "An agreement cannot be withdrawn other than with the agreement of both parties, or for reasons which are declared sufficient by law." In this case, Notary Fatiah, S.H., M.Kn., should have provided counsel to Mrs. Hidaryati and the investors that they must include Steven (Plaintiff) when cancelling the Deed of Lease Agreement Number: 07 dated September 26th, 2018 because it was Steven who signed the initial Lease Agreement and thus has the right to cancel it.

Without the consent of Steven in accordance with the provisions of Article 1338 of the Civil Code, the cancellation of the lease agreement must still be requested from the Judge as stipulated in Article 1266 of the Civil Code, which reads: "Cancellation conditions are considered to be always included in reciprocal agreements, while one of the parties does not fulfil its obligations," and Article 1266 paragraph 2 of the Civil Code which reads: "in such case the consent is not void by law, but cancellation must be requested from the judge." This request to the judiciary body must also be made even if the conditions for annulment due to non-fulfilment of obligations is stated in the agreement. If such conditions are not stated, the judge is free to, according to the circumstances, at the request of the Defendant, give a period of time to fulfil his obligations which shall not exceed 1 (one) month.

Referring to the provisions of Article 1266 of the Civil Code, according to the author, Notary Fatiah, S.H., M.Kn., should not have issued the Deed of Cancellation of Lease Agreement Number: 22 dated July 30th, 2020 nor should she have made a Deed of Lease Agreement Number: 02 dated August 1st, 2020 because the actual tenants are Daniel, Andri Wijaya, and Rudyanto Salim as the owners of Insanity KTV and Lounge (formerly Oxtagon Pub and Lounge), so that the right action must be taken by Notary Fatiah, SH, M.Kn., namely by making changes (*addendum*) in Deed of Lease Agreement Number: 07 dated September 26th, 2018 involving Steven in the signing process.

Breach of Contractual Provision As A Ground for Filing Lawsuit

In the lawsuit, the Plaintiff in his *posita* argued that the Defendant/Mrs. Hidaryati has changed the brand of the business from Pub and Lounge Oxtagon to Insanity KTV and Lounge and made a new agreement with Daniel as the owner of Insanity KTV And Lounge (formerly Pub and Lounge Oxtagon). The author considers that the more fitting reason for the Plaintiff's lawsuit is an unlawful act (*Onrechtmatigedaad*) as regulated in Article 1365 of the Civil Code, not a reason for Default. The actions taken by the Defendant in the case were contrary to the Lease Agreement Number: 07 dated September 26th, 2018. This proved the first element of Unlawful Acts, namely the occurrence of an "action". Then according to the Plaintiff, the actions taken by the Defendant actually harmed the Plaintiff because said actions disabled the Plaintiff to carry out his works as manager of Oxtagon Pub and Lounge. Thus, the author considers the element of "loss" suffered by the Plaintiff to also have been proven.

After determining the actions of the Defendant and the loss of the Plaintiff, a causal relationship is identifiable between the two. According to the Plaintiff, the Defendant's act of replacing Oxtagon Pub and Lounge nameplate and lock key directly has caused the Plaintiff to be unable to carry out his work resulting in his loss. Thus, all the elements needed to prove whether the Defendant's action is against the law have actually been fulfilled. However, the Plaintiff sued the Defendant on the ground of default. If we look at the material/content of the Lease Agreement Number: 07 dated September 26th, 2018, which was made before Notary Fatiah, S.H., M.Kn., the act of changing the nameplate of the business entity and changing the premise's lock key are against the law because in the Agreement, there is no mention of prohibition "...to change the nameplate of the business entity and the lock key of the business premise". The Defendant did not violate or perform the achievements contained and mandated in the agreement, but did other things outside the agreement which harmed the Plaintiff as a party to the agreement. Therefore, the actions of the Defendant/Mrs. Hidaryati cannot be qualified as an act of default (breach of any contractual provisions).

The author considers that the lawsuit is actually *obscuur libel* because A lawsuit is vague or *obscuur libel* when it has ambiguous contents, leaving the examiner in the dark (*onduidelijk*) due to the unclear formulation of the lawsuit, whereas in order for the lawsuit to be deemed to have met the formal requirements, the arguments for the lawsuit must be clear or firm (*duidelijk*). The Plaintiff's error in compiling the arguments in the *posita* of his lawsuit has made it, according to the author, unclear or *obscuur libel*. The legal consequence of filing a vague lawsuit is the possibility that the opposing party becomes aware of this defect and submits a denial/exception to the lawsuit. If the Judges accept the exception, the lawsuit is considered to be formally flawed so that the Plaintiff cannot proceed the trial process to discuss or prove his arguments concerning the subject matter of the case. In the case *a quo*, if the Plaintiff disputes the making of a new agreement between the Defendant/Mrs. Hidaryati and Daniel as the owner of Insanity KTV and Lounge, then the Plaintiff should have included Daniel as the owner of Insanity KTV and Lounge as a Co-Defendant.

In the lawsuit filed by Steven, the Defendant/Mrs. Hidaryati was accused to have changed the nameplate of Oxtagon Pub and Lounge into Insanity KTV and Lounge without the knowledge

and permission of Steven, who represented himself as the owner of Oxtagon Pub and Lounge based on the Lease Agreement Number: 07 dated September 26th, 2018. During the trial examination at the Pangkalpinang District Court however, Daniel as one of the owners of the karaoke business and the witnesses presented by the Defendant/Mrs. Hidaryati revealed that he had himself ordered the security guard stationed at the business premise to change the nameplate of Oxtagon Pub and Lounge into Insanity KTV and Lounge without any coercion/prohibition from any party.

With the legal facts obtained that the act of replacing and changing the nameplate of the place of business from Oxtagon Pub and Lounge to Insanity KTV and Lounge was not on the orders of Mrs. Hidaryati/the Defendant but instead was carried out on the orders of Daniel as one of the owners of Insanity KTV and Lounge, according to the author, if Steven so objected to the change/replacement of the business entity nameplate and the lock key, then he should have sued Daniel instead as one of the owners of Insanity KTV and Lounge.

4. CONCLUSION AND RECOMMENDATIONS

Conclusion

Lease Agreement Number: 07 dated September 26th, 2018 made between Steven who acts as Oxtagon Pub and Lounge Business Owner and Mrs. Hidaryati as the director of CV. Kencana Lestari is not automatically annulled by law, nor it is cancelled by a notarial deed even though Article 4 paragraph (9) of the agreement has regulated the conditions for cancellation. This is because in accordance with the provisions of Article 1266 of the Civil Code, cancellation of an agreement must be requested from the judge. The legal consequence of having a legal subject with no authority to act on behalf of a business entity signing of the Deed of Lease Agreement is that the deed becomes legally flawed and shall have no more legal force.

The Plaintiff (the lessee) in signing the Lease Agreement Number: 07, dated September 26th, 2018 explained to the Notary that he was acting as the owner of the Oxtagon Pub and Lounge karaoke business. However, during the examination of the lawsuit Number: 36/PDT.G/2020/PN.PGP., a legal fact was revealed that the Plaintiff was not the true business owner; instead he only served as an employee, specifically as the business manager, and has acted without any power of attorney from the actual business owners, either in writing or oral form. The real owners of Oxtagon Pub and Lounge are Daniel, Andri Wijaya, and Rudyanto Salim.

Based on these legal facts, the Plaintiff does not have the authority to bind Oxtagon Pub and Lounge into the Lease Agreement with the Defendant and therefore, the Lease Agreement Number: 07, dated September 26th, 2018 contains legal defects and has no legal force. Issuance of the Deed Number: 22 dated August 30th, 2020 which was meant to unilaterally cancel the Deed of Lease Agreement Number: 07 dated September 26th, 2018 based on the provisions in Article 4 Paragraph (9) which was shortly followed by the issuance of the New Deed of Lease Agreement Number: 02 dated August 1st, 2020 between the Defendant and Daniel (as one of the business owners) displayed the notary's carelessness.

Based on the provisions in Article 1266 of the Civil Code, the cancellation of agreement on the ground of fulfillment of the conditions for cancellation does not necessarily cause the agreement

to be null and void, but cancellation must be requested to the Judge. Yet not everyone who uses the services of a Notary is aware of the law, therefore, before issuing a deed, a Notary should provide legal counseling regarding the making of the deed and the ensuing legal consequences as regulated in Article 15 Paragraph (2) letter e of the Law on Notary Profession, which reads that "Notaries are authorized to provide legal counseling in connection with the making of the deed."

Recommendations

In running a business, especially when several affiliates are involved, although the law does not require any arrangements to be stated in writing or by an authentic deed, yet in an increasingly complex society, the agreements, made between business affiliates, blood-related or otherwise, are best bound by a Notarial deed to strengthen its power as a means of evidence as well as to provide certainty and ease of management in the business endeavor. Although according to the Law a Notary only expresses the wills of the parties in a deed and is not responsible for the truth of the contents therein, but the Notary must apply the principle of caution, especially in applying the law relating to the type of deed to be made and in ensuring the legal standing and authority of the parties present before him to act and enter into the agreement.

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