

Juridical review of tenant rent agreements in toll road rest area

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Abstract

Indonesia's economic growth is still centered on the island of Java, thus demanding the Government to conduct development outside Java. PT Hutama Karya (Persero) received a mandate from the Government to develop and build the Trans Sumatra Toll Road through Presidential Regulation No. 100/2014 was then amended through Presidential Regulation No. 117/2015. With the construction of toll roads on the island of Sumatra, economic growth there is hoped to increase. With the Trans Sumatra Toll Road, a rest area is needed to support road users when traveling. PT Hutama Karya entered into a lease agreement with tenants in the managed Toll Road rest area to rent out rental space in the rest area. This study aims to determine whether the laws and regulations regarding the PT Hutama Karya (Persero) OPT Division Rest Area Agreement have fulfilled the Legal Aspects of the Agreement and the Legal Aspects of Justice.

Keywords: Lease, rest areas; BUMN, Benefits, Legal Purposes

1. Introduction

Developing countries like Indonesia need development as one of the economic drivers (Kurniawan et al., 2020). To support the implementation of development in the current era, toll roads are needed for the distribution of economic development in Indonesia so that economic development can be carried out (Firman, 2002). Toll roads are part of the national road network, which requires users to pay a fee. To increase regional economic growth, the Government is making efforts, one of which is by organizing toll roads so that it does not burden Regional Government funds (Salim & Negara, 2020). In this effort, the Government encourages business entities to play an active role in providing toll road infrastructure, especially in economically feasible and financially feasible locations, so that business entities can obtain a reasonable rate of return and profit.

In Indonesia, an archipelagic country, a road network system is needed to connect people to meet their basic needs; it can also reduce logistics costs and increase industrial growth. Presidential Regulation No. 100/2014 was then amended through Presidential Regulation No. 117/2015; the Government gave PT Hutama Karya (Persero) a mandate to develop and build the Trans Sumatra Toll Road. This toll road is planned to connect the City of Lampung to the City of Aceh through 24 toll roads with a length of up to 2,704 km and is planned to be fully operational in 2024. The Government can give an assignment to PT Hutama Karya (Persero) because PT Hutama Karya (Persero) is a BUMN whose shares are wholly owned by the Government of the Republic of Indonesia (Riyanto & Joesoef, 2020).

Sumatra is vital to the country's economy because it is the second-largest island with a population of more than 55 million people (De Koninck & Déry, 1997). There are various commodities and natural potential, including palm oil, rubber, coffee, coal, petroleum, and natural gas. Thus, the economic growth of Sumatra must be maintained for the stability and growth of the region; if the economic growth stops, it will affect the economic growth of the surrounding area. The formulation of the problems in this study include:

- a) Has the OPT Division fulfilled the Legal Aspects of the Agreement and the Legal Aspects of Justice in the PT Hutama Karya (Persero) Rest Area Agreement?

- b) What are the legal benefits of the PT Hutama Karya (Persero) OPT Division Rest Area Agreement?

This study aims to determine whether the laws and regulations regarding the PT Hutama Karya (Persero) OPT Division Rest Area Agreement have fulfilled the Legal Aspects of the Agreement and the Legal Aspects of Justice. Moreover, to examine the legal benefits of the PT Hutama Karya (Persero) OPT Division Rest Area Agreement.

2. Methods

In this study, normative legal research methods were used. Normative legal research is research with a written law approach that is studied according to various aspects, including theoretical aspects, philosophical aspects, comparative aspects, structure/composition aspects, consistency aspects, general explanation aspects and explanation aspects for each article, aspects of formality and aspects of the binding power of law in this approach use legal language. Normative legal research has a fairly broad scope. Normative legal research can be done by collecting primary data whose designation is limited to strengthening secondary data. The normative legal research method must always be accompanied by recommendations and suggestions for finding new norms or complementing the norms being researched so that they are better.

3. Results and Discussion

PT Hutama Karya (Persero) As a Toll Road Business Entity

Toll roads are national roads that require users to pay a fee and are part of the road network system (Government of the Republic of Indonesia, 2005a). Toll roads can serve long-distance road users at high speeds with better safety and comfort than public roads. The toll road design has a design that can be used for intercity traffic with a minimum speed of 80 km/hour and for intra-city traffic with a minimum speed of 60 km/hour. All toll roads are required to have traffic signs and road markings. Toll roads must have the following specifications: (a) there are no level meetings with other roads or other transportation; (b) toll roads must have complete control and limit the number of entry and exit routes they have; (c) the height at interchanges is also regulated, namely a minimum of five kilometers for intercity toll roads and two kilometers for intercity toll roads; (d) have at least two lanes in one direction; (e) have a road divider or median and (f) the width of the outer road shoulder must be used for emergency lanes.

Rest areas are needed on intercity toll roads for services to road users who want to rest. Each major route must have a rest area on the toll road section every fifty kilometers. All rest areas are prohibited from being connected by any access from outside the toll road. Ministerial regulations will further regulate the provision of rest areas and services for toll road users (Government of the Republic of Indonesia, 2005b).

Rest and Service Area is a place that toll road users can use to take a temporary rest, and this place is equipped with various public facilities to support it (Ministry of PUPR RI, 2018). The exploitation of Rest and Service Areas is an activity that includes funding, technical planning, and implementation of construction, operation, and maintenance. The Government has a Toll Road Minimum Service Standard, which measures the type and quality of essential services that must be met in the operation of toll roads. Toll Road Business Entity, from now on abbreviated as BUJT, is a legal entity engaged in toll road concessions. The Toll Road Regulatory Agency, here in after abbreviated as BPJT, is a non-structural body formed by the Minister who is under and responsible to the Minister.

There are three types of rest areas:

- a) Type A has at least public facilities like ATMs, toll card filling, toilets, health clinics, kiosks, minimarkets, workshops, prayer rooms, gas stations, restaurants, parking lots, and green open spaces.
- b) Type B has at least public facilities like ATMs, toll card filling, toilets, health clinics, kiosks, minimarkets, prayer rooms, restaurants, parking lots, and green open spaces.
- c) Type C has at least public facilities in the form of toilets, kiosks, prayer rooms, and temporary parking lots, and this type only operates during long holidays, Christmas, and New Year, as well as during Eid.

PT Hutama Karya (Persero) received a mandate from the Government to develop and build the Trans Sumatra Toll Road through Presidential Regulation No. 100/2014 was then amended through Presidential Regulation No. 117/2015. So that previously PT Hutama Karya (Persero) was a construction company, and it became a toll road management company, namely the Toll Road Business Entity.

Until now, PT Hutama Karya (Persero) has operated the 565-kilometer Trans Sumatra Toll Road; the toll roads that have been operated by PT Hutama Karya (Persero) include JORR Section S Section and Tanjung Priok Access Section in Jakarta, Bakauheni- Terbanggi Besar Section, Terbanggi Besar-Pematang Panggang-Kayu Agung Section, Palembang-Indralaya Section, Pekanbaru-Dumai Section, Medan-Binjai Section, Binjai-Stabat Section, and Sigli-Banda Aceh Section. However, until now, the traffic on the Trans Sumatran toll road is still quiet because the toll roads from Lampung to Aceh have not been connected, thus making the company look for other alternatives as a source of income. The toll road rest area business is a new business for PT Hutama Karya (Persero); this is still in the early stages of its journey, so the company is still making many improvements in its implementation to improve services to toll road users. As time goes by, more and more rest area tenants are interested in renting a place in the rest area managed by PT Hutama Karya (Persero). In order to be able to rent a place in a rest area/rest area, a person or legal entity is required to enter into a rest area/rest area rental agreement with PT Hutama Karya (Persero). However, the low number of toll road users affects the number of rest area visitors. This made several rest area tenants default on the rest area tenant lease agreement.

Definition of the Agreement

Agreement law is a legal form that plays a fundamental role in people's lives. The word agreement is originally from Dutch, namely *overeenkomst*, and in English, we know it as a contract/agreement. Article 1313 of the Civil Code has been formulated regarding agreements: "An agreement is an act by which one person or more binds himself to one or more other people" (Republic of Indonesia, 1847b). The word "Agreement" has a broader meaning than "Agreement" because in Chapter I, Subekti defines an engagement as a legal relationship between two people or two parties, based on which one party has the right to make demands on the other party. Then the other party is obliged to fulfill the demands. Subekti (2001) thus, the engagement and the agreement have a relationship in that the agreement can issue an engagement. A lease agreement is made to transfer material rights. However, it is limited to giving individual rights to the person renting to enjoy the object being leased, not the ownership rights to the object being leased (Dolo, 2018).

Principle of Pacta Sunt Servanda and Freedom of Contract

The theory of Pacta Sunt Servanda is basically from the continental European legal system, then written in the French civil law code and then written by most countries that follow the continental European system. Verbatim, *pacta sunt servanda* is "a binding contract" legally. The full term for *pacta sunt servanda* is *pacta convent quae neque contra leges neque dalo malo inita sunt omnido observanda sunt*, which means a contract must be strictly followed as long as it is not made illegally or originates from fraud. Suppose a contract has been made legally, follows applicable law, and is also by custom. It can be assumed that the contract was made in good

faith. In that case, all clauses in such a contract can be binding on all parties who have made it; in this case, the binding power of a contract is the same as a law so that in the implementation of this contract, it must not be detrimental to both parties and third parties in the contract itself. In the Anglo-Saxon legal system, this *pacta sunt servanda* theory is known as the "sacred contract." If one of the parties to the contract does not comply with the contract's provisions without lawful reasons, that party can be said to be in default. It must compensate the other party according to applicable law and can be forced through the intervention of a court or other competent party. From the point of view of international law, the theory of *pacta sunt servanda* places more emphasis on compliance by states that carry out the contents of international agreements that have been signed.

There is a close relationship between the *pacta sunt servanda* theory and the theory of freedom of contract. In the *pacta sunt servanda* theory, if a contract does not conflict with applicable law, then the contract has been binding on both parties, but in the theory of freedom of contract freeing both parties to enter into a contract if it is still in line with the legal terms of the contract. The principle of freedom of contract is essential in exercising human free will. Freedom of contract originally came from the notion of individualism born in the Greek era, which taught that everyone is free to get what they want.

A valid and binding agreement is an agreement that fulfills the elements and conditions stipulated by law. Legal and binding agreements are recognized and have legal consequences. There are four conditions for a valid agreement to occur, including: (a) their agreement binds him; the first requirement for a valid contract is an agreement between the parties executing the agreement. (b) The ability to form an engagement. According to Soeroso (2010): what is meant by competence is the competence to carry out an agreement. According to law, competence is the authority to carry out legal actions, and everyone is competent in making agreements except for people declared incompetent by law (Soeroso, 2010). (c) A particular subject matter. This is to determine the boundaries in an agreement, covering everything that becomes the rights and obligations of all parties who carry out the agreement. (d) A cause that is not forbidden. What is meant by things that are not prohibited are all clauses in the contract that comply with and do not conflict with laws and regulations.

Juridical Review of the Implementation of Tenant Lease Agreements on Toll Roads

The lease agreement for renting space is a consensual agreement, which means that it is valid if there is an agreement regarding the main elements, namely the space for rent and the rental price. The lease agreement aims to provide material rights but only provide individual rights to the person who rents out the leased space for his enjoyment, not ownership rights to the rented space. The subject of the agreement is the parties involved in the lease agreement, namely the lessor and the lessee. The party giving the lease has three obligations to fulfill, including:

a) Delivering the rented item to the lessee.

The definition of handing over goods here is that what is surrendered is only the right to control the object or use the object, not the ownership rights to the object being leased. At the time of delivery of the goods, the party giving the lease is obliged to provide the rented goods in the best condition so that they can be used according to the agreement.

b) Take care of the goods adequately to be used according to the agreement.

During the lease period, the lessor must maintain the goods so that they can always be used as needed according to the agreement.

c) Give rights to tenants to be able to enjoy the rented item safely during the rental period.

The party giving the lease is obliged to guarantee the lessee if a defect in the rented object interferes with its use, even though the party giving the lease did not know when the rental agreement was made (Republic of Indonesia, 1847c). In terms of determining the end of an agreement, you can use the contents of Article 1381 of the Civil Code, namely:

a) Due to payment;

- b) Due to the offer of cash payment, followed by safekeeping or safekeeping;
- c) Due to debt renewal;
- d) Due to encounter of debt or compensation;
- e) Due to the mix of debts;
- f) Due to debt relief;
- g) Due to the destruction of the goods owed;
- h) Due to cancellation or cancellation;
- i) Due to the enactment of a cancellation condition, which is regulated in chapter I of this book; and
- j) Due to time running out, that will be arranged in a chapter.

When used as a general guideline, the articles in the Civil Code regarding the termination of agreements are broad, which in short, are outlined in the ten provisions described, namely 1). Payment, 2. Consignment, 3. Novation (renewal of debt), 4. Compensation, 5. Confucius (mixing of debts), 6. Liberation of debts, 7. Destruction of debts, 8. Cancellation or cancellation, 9. Cancellation conditions apply, and 10. Expiration. Cancellations can also be made based on default, namely not fulfilling the agreement at all or fulfilling but not as it should, or violating the specified terms of the agreement. Cancellation based on default, for example:

- a) Do not use/use the rented object within a predetermined period from the signing; the rental agreement is canceled.
- b) Use the rented object for purposes other than the intended use or for purposes that may cause harm to the lessor (Republic of Indonesia, 1847e).
- c) Re-leasing or sub-leasing objects to third parties without the owner's consent (Republic of Indonesia, 1847d).

The debtor can be negligent if there is a warrant or similar deed or based on the agreement itself if the debtor has passed the specified time. Republic of Indonesia (1847a) the default can be interpreted as when one party in the agreement commits negligence and poor performance. The court can make legal discoveries through interpretation to determine the law that applies to all parties who agree if a dispute occurs in the agreement. At the same time, there is no precise regulation, and this does not mean that the agreement can be null and void, but the agreement is binding on each party (Suharnoko, 2004).

The Linkage of Jeremy Bentham's Utilitarianism Theory with Economic Development in Sumatra

The theory of utilitarianism initiated by Jeremy Bentham was a form of reaction against the conception of natural law in the eighteenth and nineteenth centuries. According to Bentham, the purpose of the law is to provide the most significant benefit and happiness to as many people as possible. So, the concept puts expediency as the primary goal of the law. In this study, there is a link between the theory of utilitarianism and the benefits of having a tenant leasing agreement at the toll road rest area managed by PT Hutama Karya (Persero) can increase economic growth on the island of Sumatra. In the fourth quarter of 2022 gross domestic product (GDP) growth data, Sumatra Island contributed 22.04 percent to the Indonesian economy, with a growth of 4.69 percent (Central Bureau of Statistics, 2023). This shows that the legal objective of providing benefits can be realized from the implementation of the lease agreement on tenant rest areas on toll roads managed by PT Hutama Karya (Persero).

Conclusion

The lease agreement for tenant rest areas on the toll road managed by PT Hutama Karya (Persero) has fulfilled the elements and conditions of a valid agreement according to the Civil Code, in particular, Article 1320 must have 4 (four) elements, and each element refers to legal requirements. Legal and binding contracts are recognized and have legal consequences. The factors and conditions concerned include the will or agreement of the parties, the authority to

act/ability to carry out legal actions, and the existence of particular objects (performances) in the form of transfer of said movable property. Alternatively, real estate, both material and immaterial, carrying out specific actions or not carrying out specific actions, and what the parties want to achieve must meet the requirements, and the purpose of the agreement reached between the parties must be legal. Implementing the lease agreement on tenant rest areas on toll roads managed by PT Hutama Karya (Persero) aligns with the utilitarianism theory initiated by Jeremy Bentham, which is the legal objective of providing benefits and happiness to the community. This is indicated by the increasing contribution of the island of Sumatra to the Indonesian economy by 22.04 percent.

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