

Juridical Analysis of Lease Object Conversion in Lease Agreements for Shop-Houses in Tangerang Regency

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Abstract

This study aims to analyze the implementation of lease object conversion in lease agreements for shop-houses in Tangerang Regency and the legal consequences arising from such conversion. The research uses an empirical juridical approach, employing primary and secondary data collected through interviews and literature reviews. The findings indicate the following: (1) Tenants intending to repurpose or convert the use of leased shop-house objects must inform the lessor (property owner) of their intention and obtain written consent. It is recommended that both parties draft an addendum to amend the existing lease agreement to reflect the new purpose. (2) If tenants fail to inform the lessor and obtain consent for the conversion, the lease agreement may be subject to termination.

Keywords: Lease Object Conversion, Lease Agreements, Shop-Houses

A. Introduction

The conversion of lease objects without prior notification to the shop-house owner, either orally or in writing, often leads to conflicts between tenants and property owners. Such unauthorized conversions may cause financial or physical damage to the property, resulting in disputes and losses for the owner. To prevent this, lease agreements must include specific clauses addressing the issue of lease object conversion to ensure the protection of property owners' rights. Mutual consent between parties, legal capacity to act, a specific object or performance, and a lawful purpose that does not violate public order or morality.

Lease agreements are common contracts between individuals or entities and involve a series of reciprocal rights and obligations between lessors and lessees. The essence of a lease agreement is that the lessor agrees to provide a property or facility to the lessee, who in turn agrees to use the property as stipulated in the contract. However, in practice, lease object conversions often occur without the owner's knowledge or consent, leading to legal and practical complications.

Under Article 1338 of the Civil Code, agreements legally made between parties have the force of law and must be executed in good faith. Changes to agreed terms require mutual consent or grounds deemed sufficient under the law. Article 1551 further stipulates that the lessor must deliver the leased property in good condition, while Article 1555(3) allows tenants to terminate the lease if the property becomes uninhabitable due to required repairs. Additionally, Article 1554 prohibits lessors from altering the structure or layout of the leased property during the lease period.

For example, consider a lease agreement for a shop-house initially intended for use as a grocery store. If the tenant's business fails or goes bankrupt before the lease term ends, the tenant

might convert the shop-house into a workshop without informing the lessor. Such unauthorized conversion can result in noise, disorder, and damage to the property, inconveniencing neighbors and prompting complaints to the property owner. Consequently, conflicts arise between the tenant and the lessor, underscoring the need for clear contractual provisions governing lease object conversions.

B. Research Methods

The research methodology refers to a systematic way of conducting activities with thorough reasoning to achieve objectives by searching, recording, formulating, analyzing, and compiling reports.

1. Approach Method

The approach method used in this study is the **empirical juridical method**, which is a type of sociological legal research or field research. This method examines the applicable legal provisions and compares them with real-world conditions within society.

2. Data Sources

Research data sources are generally categorized into data obtained directly from the community and data derived from literature studies. Data obtained directly from the community is referred to as **primary data**, while those gathered from literature are termed **secondary data**.

- a. **Primary Data** in this research are obtained through interviews. Interviews involve a question-and-answer process conducted orally, where two or more individuals engage face-to-face to directly obtain information. This study uses a **guided free interview**, which is a combination of structured and unstructured interviews. According to Peter Mahmud Marzuki, primary legal materials consist of legal regulations, including their drafting records and official notes.
- b. **Secondary Legal Materials** are materials that provide explanations or support for primary legal materials, such as draft laws and research results. According to Soerjono Soekanto, secondary legal materials strengthen and clarify primary legal sources, making analysis and understanding easier. In this research, secondary legal materials include books, journals, and other related literature.
- c. **Tertiary Legal Materials** serve as complementary materials that provide additional explanations or references for primary and secondary legal materials, such as dictionaries. According to Soerjono Soekanto, tertiary legal materials act as supplementary sources offering guidance and clarification.

3. Data Collection

The data collection methods used in this research include both primary and secondary data sources:

- a. **Primary Data** are obtained directly from sources through interviews, observations, or informal reports, which are then processed by the researcher.
- b. **Secondary Data** are collected through **library research**, involving systematic activities such as gathering literature, reading, recording, and analyzing research materials. Literature review is an essential step in the research process as it involves carefully exploring and examining existing sources to prepare for the study.

4. Data Analysis Method

Data analysis is conducted after all data have been collected. It is the process of systematically organizing, arranging, and synthesizing data obtained from interviews, field notes,

and other sources, making the findings easier to understand and present to others. This analysis involves organizing data, breaking it down into units, synthesizing it, identifying patterns, selecting essential information, and drawing conclusions that can be communicated to others.

C. Results and Discussion

1. Juridical Analysis of the Conversion of Lease Object Function in Rental Agreements for Shop Houses in Tangerang Regency

An agreement is a legal act whereby one or more parties bind themselves to one or more other parties. The term "legal act" refers to actions regulated by law, while "binding oneself" implies a mutual commitment. For instance, in a sales agreement, the seller is obligated to deliver the goods, and the buyer is required to pay the price. The benefits of having a written agreement include:

- a. It can serve as evidence in the future.
- b. It ensures binding obligations and rights for each party.
- c. It acts as a control mechanism during the execution of the agreement.

The subjects of rights in an agreement can be individuals or legal entities, whereas the objects of rights can be categorized as follows:

- a. Movable property
- b. Immovable property
- c. Tangible goods
- d. Intangible goods

Legal Principles in Agreements Several fundamental legal principles must be observed in agreements:

- a. *Lex Superior Derogat Legi Inferiori*: Higher laws take precedence over lower laws.
- b. *Lex Specialis Derogat Legi Generali*: Specific laws override general laws.
- c. *Lex Posteriori Derogat Legi Priori*: More recent laws take precedence over older ones.

Additional principles essential in agreements include:

- a. *Nemo Plus Juris* Principle: A person or legal entity may only exercise rights to the extent that they lawfully possess them.
- b. *Pacta Sunt Servanda* Principle: Agreements made lawfully shall act as binding laws for the parties involved.
- c. *Freedom of Contract* Principle: Parties are free to:
 - a. Decide whether or not to enter into an agreement.
 - b. Determine with whom they enter into the agreement.
 - c. Specify the terms and conditions of the agreement, provided they do not contravene the law, public order, or morality.

As long as an agreement does not conflict with these limitations, the courts do not have the authority to intervene in the contractual obligations of the parties.

- a. *Principle of Personality*: Agreements generally only apply to the parties directly involved.
- b. *Proportionality* Principle: Agreements must reflect a fair and balanced exchange of rights and obligations.
- c. *Good Faith* Principle: Agreements must be performed in good faith, meaning the parties must act reasonably and fairly throughout the agreement's execution.
- d. *Consensuality* Principle: An agreement is formed through mutual consent, ensuring that it is free of fraud, error, or coercion.
- e. *Open System* Principle: The provisions of Book III of the Civil Code regarding agreements are not mandatory. There are no strict requirements on the form or content of

agreements, aligning with the principle of freedom of contract, whereby parties are free to determine the form, content, and conditions of their agreements.

In addition to adhering to these principles, agreements must meet the legal requirements stipulated in Article 1320 of the Indonesian Civil Code:

- a. Mutual consent of the parties binding themselves.
- b. Legal capacity of the parties entering the agreement.
- c. A specific subject matter
- d. A lawful cause (purpose) that aligns with prevailing legal norms.

2. Explanation of Article 1320 of the Civil Code

Mutual consent in an agreement refers to the requirement that all parties must agree on the essential terms or subject matter of the contract without coercion, fraud, or mistake. Consent is valid when it reflects the genuine will of the parties. The party making the offer is referred to as the "offeror" (Offerte), and the party accepting the offer is referred to as the "acceptor" (Acceptatie). For instance, mutual consent may involve agreements on the sale of land, its price, payment methods, dispute resolution, etc.

An agreement may be considered legally defective or lacking consent under the following circumstances:

- a. **Coercion (Dwang):** Coercion involves any unjust act or threat that interferes with a party's free will, including intimidation or duress aimed at compelling one party to surrender their rights. It may also involve exploitation of mental impairment or undue influence.
- b. **Fraud (Bedrog):** Fraud refers to deliberate deception through false representations. Fraud involves not just false statements but a series of false representations (samenweefsel van verdichtsel) and deceitful conduct. Fraud consists of four key elements:
 - 1) It involves malicious intent (except in cases of negligence regarding hidden defects).
 - 2) It occurs before the agreement is made.
 - 3) It aims to induce the other party to sign the agreement.
 - 4) It is motivated purely by malicious intent.
- c. **Mistake (Dwaling):** A mistake occurs when one or both parties hold incorrect perceptions about the subject or object of the contract. There are two types of mistakes:
 - 1) *Error in person*: Mistake concerning the identity of a person, such as contracting with someone believed to be a famous artist but later realizing it is someone else with the same name.
 - 2) *Error in substantial*: Mistake regarding the essential characteristics of an object.
- d. **Abuse of Circumstances (Misbruik van Omstandigheden):** Abuse of circumstances occurs when one party exploits a condition that impairs the other party's ability to make independent judgments, often due to dominance, fiduciary relationships, or unequal positions.

3. Capacity to Enter into Agreements

The second requirement for a valid contract, as stipulated in Article 1320 of the Civil Code, is the legal capacity of the parties to enter into agreements. The term "capacity" implies that each party must have the intention or deliberate will to form the agreement. Article 1330 outlines exceptions for individuals lacking legal capacity, including:

- a. **Minors:** According to Articles 47 and 50 of Law No. 1 of 1974, a minor is under the guardianship of parents or a legal guardian until the age of 18, for both males and females. This replaced the previous age limit of 21 under Article 330 of the Civil Code, as affirmed by Supreme Court Decision No. 447/Sip/1976 of October 13, 1976.
- b. **Individuals Under Conservatorship (Curatele):** Persons placed under conservatorship

include those who are insane, feeble-minded, or wasteful (e.g., due to mental impairment, rage, or recklessness). Such individuals lack the capacity to act in their own best interest.

Additionally, a person declared bankrupt by a court loses the capacity to engage in specific contracts from the moment the bankruptcy ruling is issued.

- a. **Women in Marriage** Following the issuance of Supreme Court Circular No. 3 of 1963 and the enactment of Law No. 1 of 1974, Article 31 Paragraph 2, women in marriage are recognized as legally competent.
- b. **A Specific Object** The third condition for the validity of an agreement is that the subject matter of the agreement (the object of the obligation) must be clear. Article 1333 of the Indonesian Civil Code (KUH Perdata), Paragraph 1, states that an agreement must have an object that can at least be identified by its type. An agreement must pertain to a specific matter. Therefore, the object of an agreement is not limited to tangible goods but can also include services. The requirement for *certainty of terms* means that the rights and obligations of both parties must be clear. The Civil Code further specifies that the object does not necessarily need to be explicitly named, as long as it can be calculated or determined at a later time.
- c. The term *cause* (from the Dutch *oorzaak* or Latin *causa*) does not refer to the reason a person enters into an agreement but rather to the content and purpose of the agreement itself. For example, in a sales contract, the content and purpose (cause) are that one party desires ownership of an item, while the other party seeks payment in return.

Based on this explanation, if someone buys a knife in a store with the intent to commit murder, the purchase itself still has a lawful cause. However, if the intent to murder is explicitly stated in the agreement for instance, if the seller agrees to sell the knife only if the buyer uses it to kill someone then the agreement lacks a lawful cause.

4. Conditions for the Validity of Agreements Beyond Article 1320 of the Indonesian Civil Code

In addition to Article 1320 of the Indonesian Civil Code, an agreement is considered valid if it meets the following conditions:

- a. It must be conducted in good faith.
- b. It must not conflict with customary practices.
- c. It must adhere to the principles of propriety and fairness.
- d. It must not violate public order or contradict public interest.

Furthermore, specific agreements must meet additional requirements to be deemed valid. For example:

- a. The agreement must be notarized (drafted by or conducted before a notary).
- b. The agreement must be executed before specific officials.

Agreements should be written in proper Indonesian, using clear and unambiguous terminology to avoid multiple interpretations. Each clause or sentence in an article must provide a complete explanation before moving to the next article, ensuring continuity and coherence throughout the document. Moreover, the drafting of each article should anticipate potential situations to avoid legal gaps or unforeseen circumstances.

5. Lease Agreements According to Article 1548 of the Indonesian Civil Code

Article 1548 defines a lease agreement as a contract where one party commits to allowing the other party to enjoy a particular object for a specified period and for an agreed price. The

purpose or intended use of the leased object must be clearly stated. If the object's use is altered, the terms for such changes must be clarified. A lease agreement for a shop-house (rumah toko or *ruko*) is a consensual agreement, meaning it becomes valid upon mutual agreement on its essential elements: the leased object (shop-house) and the rental price. These elements are critical because the purpose of the lease agreement is to grant usage rights over the object, not ownership rights.

Proper use of the leased object, in accordance with its agreed purpose, is the primary obligation of the tenant. If the agreement does not specify the purpose, the use must align with what is deemed appropriate under prevailing circumstances. This proper use reflects the principle of good faith in lease agreements.

Implementation of shop-house lease agreements in Tangerang regency. The execution of shop-house (*ruko*) lease agreements in Tangerang Regency involves several stages:

- a. **Negotiation** At this stage, both parties—the shop-house owner and the tenant—meet to discuss key details of the lease, such as the size of the building, available facilities, lease duration, and rental price. Direct negotiations without intermediaries are intended to facilitate mutual agreement. Both parties actively participate in drafting the lease agreement.
- b. **Discussion of Agreement Terms** In this phase, the shop-house owner and the tenant finalize the lease terms, including the rental period, rental price, payment terms, and the rights and obligations of both parties. Once both parties agree, they sign the lease agreement. Upon signing, the agreement becomes legally binding, as stipulated in Article 1338 of the Indonesian Civil Code, which states that all legally executed agreements serve as law for the contracting parties. In Tangerang Regency, it is common practice to formalize lease agreements before a notary to ensure legal security and binding force.
- c. **Handover of the Leased Object And Payment.** After agreeing on the lease terms, the next step is the handover of the shop-house and payment. The shop-house owner delivers the object of the lease to the tenant, who, in turn, makes the agreed rental payment as specified in the lease agreement.

6. Legal Validity of Shop-House Lease Agreements

A shop-house lease agreement is deemed valid if it fulfills the general conditions for contract validity as outlined in Article 1320 of the Indonesian Civil Code:

- a. Mutual consent of the parties.
- b. Legal capacity to enter into a contract.
- c. A specific object of the agreement.
- d. A lawful cause or purpose.

As a consensual contract, a shop-house lease agreement becomes valid once both parties reach an agreement to execute it. This agreement must adhere to established legal procedures to ensure its enforceability.

7. There are two parties bound by the agreement. The first party is the lessor, who owns the property. The second party is the lessee, who needs to benefit from the property.

The parties involved in a lease agreement may act on their own behalf, on behalf of others, or for a legal entity's interests. The parties involved in a lease agreement include: a. The lessor: An individual or legal entity who leases out property or goods to another party for use. The lessor does not transfer ownership of the property, but rather the right to use it. b. The lessee: An individual or legal entity who rents property or goods from the lessor.

Therefore, if a notarial deed is challenged for failing to meet subjective conditions, it is considered to invalidate the entire deed, including the objective conditions. A notarial deed serves as a legal instrument of proof if all procedural requirements for its creation are met. If any

procedure is not followed, and this failure is proven, the deed may be considered a private document in court. In such cases, its evidentiary value will be determined by the judge.

The process of drafting a lease agreement should clearly outline the rights and obligations of both the lessor and the lessee, particularly the legal consequences of transferring the leased object or changing its function. Any transfer of the leased object or change in its function should be done with the agreement of the lessor, and the change should be documented in the lease agreement. This ensures legal certainty regarding property rights and the transfer of assets between the parties. Therefore, in lease agreements, the lessee intending to change the function of the leased property should first seek permission from the lessor, which should be formalized in an amended lease agreement. This ensures the agreement is legally binding, especially when made through a notarial deed, which carries permanent legal force.

The goal of this is to ensure legal certainty and protection for both parties, so that if a dispute arises in the future, a solution can be quickly found, preventing the dispute from dragging on. Based on the explanation above, the implementation of the change in purpose or use of the leased shop-house (ruko) in the lease agreement requires the tenant to inform the lessor, as the owner of the property/building, of their intention and purpose. The lessor's approval of this change must be in writing, and it is recommended that both parties, the tenant and the lessor, make an addendum or amend the previous agreement to reflect the change in the lease's purpose. Renting a shop-house requires both parties to be aware of their respective rights and obligations. When each party fully understands their rights and obligations, it will result in mutual benefits.

8. Legal Consequences of Changing the Purpose of the Leased Shop-House in the Lease Agreement in Tangerang Regency for the Parties Involved

The legal consequence is that both parties in a contract are responsible for fulfilling all obligations stipulated in the agreement. If one party fails to fulfill their responsibility, they may face sanctions or liabilities as agreed upon in the contract. Every relationship between individuals governed by law is considered a legal relationship. Each legal relationship has two aspects: one party holds rights, while the other holds corresponding obligations. The obligation that one party must fulfill in a contract is called a performance. Another term for performance is a debt, which refers to an obligation that the debtor must meet. The debtor is the person who carries out the performance in a contract. In a contract or agreement, performance refers to a contractual obligation. These obligations may arise from:

- a. Legal obligations defined by legislation;
- b. Obligations agreed upon by the parties in the contract;
- c. Obligations required by decency and custom.

Performance is an essential element of a contract, as stated in Article 1234 of the Civil Code, and consists of three forms:

- a. Providing something;
- b. Doing or performing something;
- c. Not doing or performing something.

In the execution of a contract, it is inevitable that one party may fail to fulfill their obligations due to fault (intentional or negligent), which is referred to as a default. According to Munir Fuady, default (breach of contract) occurs when a party fails to perform their obligations as stipulated in the contract, leading to a deviation from the contract's implementation, which results in harm caused by the fault of one party. Breach of contract is also known as "failure to fulfill promises."

The term "providing something" as mentioned in Article 1235 of the Civil Code can have two meanings:

- a. A mere transfer of control over the item that is the subject of the contract;
- b. The transfer of ownership of the item, which is called a legal transfer.

According to Abdulkadir Muhamad, claims can involve either the fulfillment of obligations, fulfillment with compensation, a demand for compensation only, cancellation of the contract through the court, or cancellation with compensation. Article 1243 of the Civil Code states that the party causing harm is required to pay compensation. If they continue to fail to fulfill their obligations after being declared negligent, it can result in further losses.

A party can be considered to be in breach of contract if they fail to perform what has been agreed upon or if they violate the terms of the contract. There are four types of breach of contract:

- a. Failing to perform the obligation at all.
- b. Performing the obligation, but not as required.
- c. Performing the obligation, but not on time.
- d. Performing an act prohibited by the contract.

Legal consequences refer to the outcomes of actions performed by legal subjects, either with or without intention, that result in legal implications for the object of law or due to specific events governed by law. Legal actions are those undertaken by legal subjects that lead to legal consequences intentionally desired by the subjects. Regarding the consequences of changing the function of a leased object in a lease agreement, such a lease agreement is consensual, meaning it becomes valid and binding when both parties agree on the key elements of the lease, namely the property and the price. Legally, the Civil Code does not explicitly state the form of lease agreements, allowing them to be either oral or written. However, in practice, written agreements are commonly used. If the leased object is repurposed from its original intended use, and this change is documented in the agreement, such a shift in usage constitutes a breach of contract.

Cindi Kondo, in her journal on lease agreements, expresses the view that the lease object should be used according to its intended purpose. This means that the leased property must have a clear purpose and be usable by the tenant in accordance with the property's designated function. If the leased property cannot be used as agreed, the lease agreement can be canceled.

The transfer of a leased object for a purpose other than the one initially intended, as specified in the lease agreement, constitutes a breach of contract. This is considered a form of *wanprestasi* because it deviates from the agreement and occurs without the landlord's knowledge. This is due to the fact that the lease agreement, once agreed upon and signed by both the lessor and the lessee, acts as a binding law for both parties and must be adhered to. This provision is outlined in Article 1338, paragraph 3 of the Civil Code and carries strict penalties if violated. As a result of *wanprestasi*, the tenant is held responsible for their actions. In legal terms, responsibility refers to the obligation for someone to carry out what they are required to do. In law, responsibility is the consequence of a person's actions, particularly in relation to ethics or morality, and includes the obligations set out in contracts. The unauthorized change in the use of the leased property, without informing or obtaining approval from the lessor (the property owner), may result in the termination of the lease agreement.

The first two conditions in Article 1320 are called subjective requirements because they relate to the parties involved in the agreement. If these conditions are not met, the lease agreement can be annulled. However, if no annulment is sought from the court, the agreement remains binding on the parties, even if annulment is threatened before five years have passed (Article 1454 of the Civil Code). The third and fourth conditions are objective requirements, as they concern the subject matter of the agreement. If these conditions are not met, the agreement is void. This voidness can be confirmed if the lease agreement fails to achieve its purpose because one party did not fulfill their obligations, and the case is brought before a judge who declares the lease agreement void due to unmet objective conditions.

This can result in legal consequences, including giving the lessor (property owner) the right to demand compensation from the lessee, the annulment of the agreement, or both. Therefore, legal protection is achieved for the aggrieved party. From the above explanation, the consequences of a lease agreement being breached due to a change in the use of the leased property, where the lessee

fails to inform the lessor and does not obtain approval, lead to the lease agreement being considered as a breach of contract. The contract may be annulled, and the lessor, as the injured party, has the right to claim compensation if the lessee's actions caused damage to the leased property or resulted in a loss to the lessor.

D. Conclusion and Suggestion

1. Conclusion

Based on the analysis conducted, the following conclusions can be drawn:

- a. The implementation of changing the purpose of the leased property (shop house) in a lease agreement requires the lessee to notify the lessor (property owner) of their intention to change the purpose of the lease. The lessor's approval must be obtained, and it should be provided in writing. It is also recommended that the parties—both the lessee and the lessor—prepare an addendum or amendment to the original agreement to reflect the change in the lease's purpose.
- b. If the lessee does not inform the lessor of their intention to change the purpose of the leased property, and the lessor has not provided approval, the ongoing lease agreement can be canceled.
- c. The lease agreement drafted by the author includes an introduction (detailing the location and time of the agreement and the parties involved), the main content (including the purpose of the agreement, the rights and obligations of the parties, the lease term, the rent amount and payment method, building renovations, other provisions, deed costs, legal domicile, and the identities of the parties involved).

2. Suggestion

- a. For the parties involved or the public intending to enter into a lease agreement, particularly for a shop house, it is important to ensure that the lease's purpose is clearly stated, and that the rights and obligations of both parties are properly understood and outlined.
- b. Notaries, as the drafters of lease agreements, should provide clear explanations to the parties involved to prevent any future issues.

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