

PRINCIPLE LAW PACTA SUNT SERVANDA IN AGREEMENT RENT PLACE BUSINESS

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ABSTRACT

Objective: Pacta sunt servanda is one of the principles that apply in rental agreements, namely that the contract that has been agreed upon then becomes valid as governing law. However, in reality, rental contracts are not based on the principles of the agreement; therefore, it can lead to default. Thereby causing losses to other parties. This research aims to determine the implementation of the legal regulation of pacta sunt servanda in rental agreements for business premises.

Method: The research method used is normative research by inventorying, studying, analyzing, and understanding the law as a set of regulations or positive norms in the legal system regulating human life. This research collected data through a literature study, namely a review of library materials related to the studied problem.

Result: In an agreement such as a rental agreement, principles or principles are closely related to regulating and directing the parties in a rental agreement; namely, the owner of the business space must adhere to regulations or principles closely associated with the contents of the rental agreement.

Conclusion: this research is the implementation of the legal principle of pacta sunt servanda in the rental agreement for business premises that in the rental agreement for business premises that have been handed over for rent, the parties have agreed to the rental agreement for the business premises, as a form of respect for the rental agreement. According to Article 1338 paragraph (1), the business space must be like the enactment of regulations that can regulate the parties based on one principle of contract law, namely the principle of pacta sunt servanda.

Keywords: principles of Pacta Sunt Servanda, agreement, place of business.

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PRINCÍPIO DA LEI PACTA SUNT SERVANDA EM CONTRATO RENT PLACE BUSINESS

RESUMO

Objetivo: Pacta sunt servanda é um dos princípios que se aplicam em contratos de arrendamento, ou seja, que o contrato que foi acordado então se torna válido como lei reguladora. No entanto, na realidade, os contratos de arrendamento não se baseiam nos princípios do acordo, podendo, por conseguinte, conduzir ao incumprimento, causando, assim, prejuízos a outras partes. Este estudo tem como objetivo determinar a implementação do regulamento legal de pacta sunt servanda em contratos de arrendamento para instalações comerciais.

Método: O método de pesquisa utilizado é a pesquisa normativa, inventariando, estudando, analisando e entendendo a lei como um conjunto de regulamentos ou normas positivas no sistema legal que regula a vida humana. Esta pesquisa coletou dados através de um estudo de literatura, ou seja, uma revisão de materiais de biblioteca relacionados ao problema estudado.

Resultado: Em um acordo como um contrato de aluguel, princípios ou princípios estão intimamente relacionados à regulamentação e direção das partes em um contrato de aluguel; ou seja, o proprietário do espaço de negócios deve aderir a regulamentos ou princípios estreitamente associados ao conteúdo do contrato de aluguel.

Conclusão: esta pesquisa é a implementação do princípio legal de pacta sunt servanda no contrato de aluguel para instalações comerciais que, no contrato de aluguel para instalações comerciais que foram entregues para aluguel, as partes concordaram com o contrato de aluguel para as instalações comerciais, como forma de respeitar o contrato de aluguel. De acordo com o n.º 1 do artigo 1338.º, o espaço de negócios deve assemelhar-se à promulgação de regulamentos que possam regular as partes com base num princípio do direito dos contratos, a saber, o princípio pacta sunt servanda.

Palavras-chave: princípios de Pacta Sunt Servanda, acordo, local de negócio.

1 INTRODUCTION

The needs of every person running a business are not seldom different between Which One and Which other. Many individuals resort to executing contracts of different shapes and sizes to satisfy their demands and accomplish their goals behind the arrangement.²For example, in per-appointment rent, the tenant And party renting out have different interests; namely, the tenant needsThe place, and the owner needs money. So that the interests of the parties can be accommodated, an agreement is made, which is called an agreement rent place a business. As an agreement, which nature leads to come back, agreement rent gives rise to right and obligation for the para partywho made it. In a rental agreement, the tenant's rights are to receive and enjoy the rental object and pay rental feesat an appropriate time, which is mainly an

² Alnumani, N. J. N. (2023). The Legal Nature of Pre-Contract Negotiations. Journal of Law and Sustainable Development, 11(6), e1227. <https://doi.org/10.55908/sdgs.v11i6.1227>

obligation. Meanwhile, the renting party has the right to receive rental payments and is obliged to hand over the rental object to the lessee and other commitments agreed upon by the parties. Thus, two or more people always promise each other to do something either as an obligation or as a rightrenting and renting.

Article 1548 of the Code Law Civil states that the party ties himself to give to the party who receives enjoyment from an item, which in this case is a place of business, during something time specific And with payment something price, Which the renter undertakes to pay. The rental agreement only gives the tenant a right to use it to obtain a particular enjoyment of a rental object. With this, ownership rights are still at one owner.

If you look at the Civil Code in the Civil Code, several articles regulate agreements, namely Article 1313, which states, "An act by which one or more people bind themselves to one or more others." This article explains the meaning of an agreement. Furthermore, Article 1320 of the Civil Code states matters related to the legality of an agreement, namely the presence of an agreement, the skills of the person making it, the content of certain things, and the lawful reasons for the agreement. Then, Article 1338 of the Civil Code, which states that in an agreement that has been made and agreed upon, there must be no reason for not being able to fulfil the contents of the agreement or provisions, is an application of the principle of pacta sunt servanda.³

In an agreement, there are usually many principles of agreement. One of them is the principle of *pacta sunt servanda* in Article 1338 paragraph (1) of the Civil Code, namely, "All agreements which are made legally apply as law for those who make them." A *pacta sunt servanda* is a fundamental principle in legal agreements. The parties are free to deal with anyone, determine the content or material, mechanism, model agreement, set mechanism solution dispute And, etc. _ No There is coercion in the agreement. However, This freedom is not absolute. Although given freedom When agreeing, of course, there are limitations that must be complied with; that is, it must not conflict with legal provisions. With say others, the para party gave freedom in do agreement during No contradictory with principle and applicable

³ Fitrotul, Isdiyana, and Benny, (2021), Consequences of Cancellation of Collaboration Agreements Between Clients and Vendors During the 2019 Corona Virus Disease Pandemic (Case Study at Shofi Wedding Organizer Vendor), Dinamika, Vol 27, Number 11, July, p 1651.

conditions. Besides being granted independence in a set agreement, the para party also must obey the agreement to which he agreed, and the one party cannot deny it.

Freedom of contract and the principle of *sunt servanda* can give rise to injustice. Freedom of contract is based on the assumption that the parties to an agreement have an equal ⁴*Bargaining position, but in reality, the parties do not always have an equal bargaining position.*

Form from rent There is several type of renting business premises. There is a lot of renting out of business premises on place shopping or places which Lots visited publically. However, Because of the COVID-19 pandemic, first discovered in Wuhan, the rent-a-place business impact. On March 11, 2020, World Health or WHO (*World Health Organization*) declared the Covid-19 disease outbreak a global pandemic. WHO states that The spread of Covid-19 is proliferating. This has been proven with the spread of the virus almost throughout the world, including in Indonesia. In Indonesia, precisely in Makassar, the COVID-19 pandemic feels so attached. There will be Covid-19 cases in Makassar, bringing a lot of impact on people's lives, health, and economy consequences.-implementation of Large-Scale Social Restrictions (PSBB) based on regulations government regulation Number 21 of 2020. One of the economic sectors The impact of the Covid-19 pandemic in Makassar City is a place of business.

Rental agreements for business premises during this Covid-19 period were more challenging than expected. Suppose we refer to the principle of accord *pacta sunt servanda*, where the promise is binding on the party who has agreed to it. The COVID-19 pandemic is something unexpected, so the agreement at the beginning about the circumstances of the emergency and the form of relief provided is only explained in detail once it becomes a problem. That needs to be resolved with consideration of developing all existing aspects. Meanwhile, both parties are at a loss. As with rent payments to all tenants if they do not occupy the business premises and do not enjoy the facilities provided by the contents of the agreement until the end bag of indefinite time and the renter who can no longer extend the contract period due to economic factors so make party Which rent Also is at in a state of cause a loss.

In a rental place of business which has many objects rental what we can be

⁴ Raden Juli Moertiono, (2019), Legal Provisions for Implementing Good Faith in Cooperation, Proceedings of National Seminar & Expo II Results of Research and Community Service, p. 1427.

certain of is period agreement rent rent his No started simultaneously, some have been going on for several months even There is Also Which a number of year. The regulation advanced about PSBB only allows shops That sell groceryesto operate while still implementing health regulations related to COVID-19, whereas place shopping is crowded and visited by societyThere are not only grocery stores in the area, but there are also several shops That sell equipment besides groceries. So from That party tenant requests relief And policy to the party ownerbuilding to be given an approach in paying rent because they also have dependents, namely the employees who run it. It's their business. So, the building owner also has to think about the agreements that have been made previously. The rental deal happened before the COVID-19 pandemic. This makes the para party prepare a choice because it is at the circumstances. That agreement, Already held before the COVID-19 pandemic, requires a solution that does not harm the tenant or the renter as a consumer whose rights must be protected according to article 4 of the Consumer Protection Law number 8 of 1999 and neither harm party who rent.

With regard to rental agreements that do not comply with the principles of the deal, this can result in default.⁵ So a review must be carried out regarding implementing the legal principle of pacta sunt servanda in rental agreements by the theory based on the principles of contract.

2 THEORETICAL FRAMEWORK

Pancasila, as the philosophical foundation of Indonesia, has noble ideals and guidelines for nation and state that contain rules and norms for carrying out social life. As the rule of law, the 1945 Constitution of the Republic of Indonesia expressly states that "the State of Indonesia is a State of Law". This means that the state, as a complete component of its power, can regulate and administer a society by the rules structured in a system so that it can determine what citizens can and cannot do as part of social life.

Man in fulfill various interests do various types of method; Wrong One agrees. The Civil Code regulates agreements concerning engagement in book III (Articles 1233-1864). BW uses the term contract And agreement to understandthe

⁵ Rita Tri Wahyuni, Andreas Andrie Djamiko, (2023), Juridical Study of the Implementation of Tunggangri Market Kiosk Rental Agreements According to Agreement Principles, Sultan Adam: Legal and Social Journal, Vol. 1 No. July 2, p. 238.

same one. This can be seen clearly from the title of chapter 2 of the book, namely, regarding obligations arising from contracts or agreements. Contract and agreement are interpreted with understanding the same one.⁶

In business, agreements are very important as guidelines, guidelines, and evidence for the parties. In general, an agreement is An agreement between the parties regarding something that gives rise to a legal agreement/relationship, giving rise to rights and obligations; if it is not carried out as agreed, there will be sanctions. An agreement is a legal relationship between two people or two parties based on which one party has the right to demand something from another party and the other party is obliged to fulfill that demand. Thus, an agreement in the form of a contract is binding.⁷ An agreement is a means of legal communication regarding property between the parties where one party is seen as promising to do something while the other party has the right to demand the implementation of the promise⁸.

In civil law, an agreement between two or more people contains reciprocal promises recognized by law or whose implementation is recognized as a legal obligation and has a foreign element, the foreign element in question being the subject of the agreement or the legal system.⁹ Contract law is a part of private law closely related to achieving an achievement whose obligations will later be carried out. Contract law is part of civil law, because in the case of unlawful acts regarding the agreements made in the contract, it is a matter for each of the parties to the agreement.¹⁰

Article 1313 of the Civil Code states: "An agreement is an act by which one or more persons bind themselves to one person other or more."¹¹ From fill provision chapter 1313 Book Constitution From the Civil Law mentioned above, elements from the agreement can be drawn that is:¹²

1. element deed
2. the element of one or more people binding themselves to one person

⁶Niru Anita Sinaga, (2018). The Role of the Principles of Contract Law in Realizing the Agreement's Goals, Binamulia Law Journal, 7(2), p. 9.

⁷Ibid, p. 1.

⁸ Khalid Z. (2109), "Juridical Analysis of the Position of Partnership Agreements Between Online Transport Service Drivers and Provider Companies Viewed from the Civil Law Aspect", Journal of Law Rules: Communication Media and Legal Information and Society, Vol. 18 No. 3.

⁹ Umar Said Sugianto, (2014). Introduction to Indonesian Law, Jakarta: Sinar Graphics, p. 303.

¹⁰ Muhamaad Farhan Gayo and Heru Sugiyono. (2021). Application of the Pacta Sunt Servanda Principle in Business Space Rental Agreements, Journal of Legal Sciences and Humanities, 8 (3), p. 248.

¹¹Book Constitution law civil

¹² Zakiyah, (2015). Contract Law Theory and Its Development. Yogyakarta: Lantern Kreasindo.h Im. 2.

or more.

According to R. Subekti, an agreement is an event where someone makes a promise to another person or two people promise each other to carry out something. The relationship between the two people concerned results in the emergence of a bond in the form of rights and obligations of both parties regarding an achievement. In this case, the agreement can be a guarantee of legal certainty for those involved in the rental agreement, in which the parties accept rights and obligations. The agreements made by the parties should serve as a beacon so that undesirable actions, such as unlawful acts or defaults, do not occur.¹³

Agreement on an arrangement is one of a series in making a contract. This refers to the process of offering and acceptance whose different forms must be accommodated by law¹⁴

Leasing is based on an agreement between the party who wants to rent (lessee) and the party who rents (lessor). The rental agreement contains the object being agreed upon, the price, and how long the rental period is. The following five principles in the agreement are:

1. The principle of freedom of contract, vide Article 1338 of the Civil Code;
2. The focus of agreement (consensus), vide Article 1320 paragraph (1) of the Civil Code;
3. The principle of legal certainty (pacta sunt servanda);
4. The focus of good faith, vide Article 1338 of the Civil Code;
5. The principle of personality vide Articles 1315 and 1340 of the Civil Code;

Apart from the principles in the agreement, we also need to pay attention to the legal conditions of a contract which consist of:

1. Agreement of the parties

This means there must be an agreement or contract between the contracting parties without any coercion or pressure, vide Article 1321 of the Civil Code;

2. Skills of the parties

¹³ Marchelo Ivan Darmawan, (2023). Juridical Analysis of Unlimited Rental Agreements , Journal of Law, Development & Justice Review, 6 (2), pp. 182.

¹⁴ Suwadi, P., Manthovani, R., & Assyifa, A. K. (2023). Legal Comparison of Electronic Contract in Electronic Commerce Between Indonesia and the United States Based on the United Nations Commission on International Trade Law. Journal of Law and Sustainable Development, 11(3), e714. <https://doi.org/10.55908/sdgs.v11i3.714>

This means that anyone who does not have legal skills cannot enter into an agreement vide Article 1330 of the Civil Code;

3. A certain thing

This means that there is an object being agreed upon, vide Article 1234 of the Civil Code;

4. For a halal reason

This means something that does not conflict with the law and public order, vide Article 1337 of the Civil Code;

Based on Article 1320 of the Civil Code which states that the terms of an agreement are agreement, legal competence, a sure thing and a lawful cause. What agreement means is that if an agreement has been reached, this agreement must not contain defects in the form of mistakes, coercion and fraud. This agreement is then expressed in the form of an unwritten agreement or unwritten agreement.¹⁵

Suppose the agreement needs to fulfill the elements and conditions that have been regulated. In that case, the deal will not be recognized by law even though the parties who made it provide recognition, but it will not be binding, meaning its implementation cannot be forced. Even though it is implemented, if one day it happens, if the problem is submitted to court, then the court will cancel or declare the agreement to be void.¹⁶

Article 1338 of the Civil Code stipulates that "all agreements that are legally made are valid as law for those who make them" and cannot be withdrawn later by both parties for specific reasons which the law states are sufficient for approval and must be implemented. In good faith, legally competent, and legally valid as a law¹⁷. The principle of *pacta sunt servanda* is a legal principle which means that agreements are made either verbally or in writing, as long as the agreement does not conflict with three legal clauses consisting of statutory provisions, morality and public interest.¹⁸

¹⁵ Abdul Kadir Muhammad, (1982) , Engagement Law, Bandung: Alumni.

¹⁶ Gloria Pepah, (2020), " Legal Review of the Rights and Obligations of the Parties in Rental Agreements According to the Civil Code ", Lex Privatum , Vol. 8, no. 24.

¹⁷ Yunanto, (2019), "The Essence of the Pacta Sunt Servanda Principle in Disputes Based on Agreements," Law, Development and Justice Review , Vol. 2 No. 1 .

¹⁸ Abu Khairi and Muzakir Abubakar (2021), Implementation of Rental Agreements for Food Sales Business Places in Coffee Shops (Research in Banda Aceh City), Journal of Civil Law , 5 (4), p. 868.

3 METHODOLOGY

Scientific research begins with the existence of a phenomenon in the field controlled by the researcher. What phenomenon means here is the presence of exceptional circumstances that attract researchers' interest in researching it.

This research uses a normative research method: inventorying, studying and analyzing, and understanding the law as a set of regulations or positive norms in the legal system that regulates human life .¹⁹With a legal approach, normative juridical is related to legal materials as data in qualitative research. The type of data used is secondary data, which includes library materials related to research; secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. Data collection in this research was carried out through a literature study, namely a review of library materials related to the problem.²⁰

4 RESULTS AND DISCUSSION

An agreement is a legal relationship between two or more people in the field of property law, where one party has the right to performance. The other party is obliged to fulfill it, and in an agreement, there is a legal relationship between two people (2 parties), based on the interests of the rights they can claim. Something from another party, and the other party is obliged to fulfill that obligation. Formally, an agreement contains several elements, namely, the existence of parties, the presence of the accords, the existence of goals, achievements, certain conditions, and the existence of certain forms.²¹

Leasing is included in reciprocity for several parties, thereby causing obligations to other parties. Agreements that give rise to rights and responsibilities, often also called agreements between the two parties or reciprocity, must be fulfilled by the parties to the contract, and their rights and obligations are related. Article 1548 of the Civil Code provides regulations about leasing in general, namely as follows, "rental is an agreement in which the first party binds himself to give to the second party goods to be enjoyed within a certain time, with the price paid by the latter party being agreed payment."

¹⁹ Soerjono Soekanto and Sri Mamudji., (2003) Normative Legal Research. A Short Review, Jakarta: RajaGrafindo Persada, p. 13.

²⁰ Ibid.,

²¹ Raden Juli Moertiono, loc.cit.

From the definition of leasing explained, to be an excellent rental agreement, the rental agreement must be a reciprocal agreement between the renting party and the lessee so that the renting party then gives delivery to the lessee. Is obliged to pay a specific rental price, then the renting party has the right to hand over an item to the lessee to be thoroughly enjoyed, not to be owned by the renter. Enjoying this item only lasts for a certain period with payment of a price determined together.²²

According to Article 1550 of the Civil Code, The renting party has an obligation to:

- a. It provides objects to be handed over to tenants. Regarding the first obligation, namely, when an agreement has been made in the agreement, renting an item must also be handed over to the lessee to enjoy it. There is what is meant by actual delivery, although it is often called delivery. The renting party must determine the items that will be rented later and vacate them if it is a room. Therefore, in the form of a rental agreement it means that the owner of the business space must carry out the handover so that legal action cannot be taken to hand over the goods.
- b. It is maintaining the leased object so that it can be used. In this second case, the renting party must carry out repairs while the lease is running. Then, the thing is made the object of rental with the purpose agreed to by the lessee, except in the case of minor repairs as specified in Article 1551, paragraph 2 of the Civil Code.

The lessee's rights, apart from the rights and obligations that can be accepted and implemented by the business space owner, also have rights and obligations in carrying out its matters, namely a lease. Things that are the rights of the parties the lessee, that is, the lessee has the right to an item in good condition to be maintained so that the item can be used for several necessary things, then both renting parties receive a guarantee to be able to enjoy it in peace, peace, and prosperity without the item containing defects. Which prevents the rental from being carried out, then the three renting parties have the right to terminate the lease if the object that has been leased is not used by the lessee; in this case, it is regulated in Article 1555 paragraph 3 of the Civil Code, then finally the renter allows the rented item to be emptied, to be dismantled and carried and then owned at your own expense and then the goods

²² Muhammad Farham Gayo, Heru Sugiyono, op.cit, p. 246.

are brought from the rental premises, provided that such dismantling and carrying does not deviate from the Indonesian Civil Code.²³

A tenant suspected of making a mistake and given legal sanctions for his carelessness can defend his rights by providing several statements that can be considered so that he is free from legal sanctions. There are three ways to protect the tenant's rights in this case, namely:

- 1) Providing submission of a claim due to circumstances that arise unforeseen by the parties;
- 2) Providing recommendations to the renting party itself has also made a mistake ;
- 3) States that the renting party also waives its right to sue for any losses it has experienced.²⁴

In an agreement such as a rental agreement, principles or principles are closely related to regulating and directing the parties in a rental agreement; namely, the owner of the business space must adhere to regulations or principles closely associated with the contents of the rental agreement. Renting has been mutually agreed upon by the lessee. The similarity between buying, selling, and renting agreements is that they both have binding forces and lead to an understanding that results in agreement regarding goods and prices. From here, the first party who rents out should be able to hand over the room so that the tenant can pay the rent.

In a business space rental agreement that has been handed over for rent, the parties have agreed in the business space rental agreement as a form of respect for the business space rental agreement, which, according to the provisions of Article 1338 paragraph (1), must comply with the applicable regulations. Can regulate the parties in this case based on one principle of contract law, namely the principle of pacta sunt servanda, so it can be explained that the focus of pacta sunt servanda comes from a foreign language (Latin) which means that an agreement must be carried out until both parties fulfill it. This means that every agreement or agreement has the legal force to compel and bind each party and also provides legal certainty to that party so that it is deemed to violate a statutory regulation which can be interpreted as giving legal consequences, namely legal sanctions can be imposed on

²³Ibid, p. 250-251.

²⁴ Ibid.

the party who defaults. . So, a person/legal entity who violates an agreement can be prosecuted legally, as stipulated in a regulation. This principle is the principle of obedience to carry out the contract according to the contents agreed upon by the parties. Even in classical contract law theory, *pacta sunt servanda* is sacred, and the agreement must be carried out seriously. If the agreement between the parties defaults, the person who defaults is considered to have committed a major sin. The expression *pacta sunt servanda* recognizes that a rule that all the agreements that make it are humans themselves is essentially intended to fulfill and can be necessary to enforce legally. Legal for binding, so this agreement applies as regulations for the parties tying it and is included in Article 1338, paragraph 1 and paragraph 2 of the Civil Code. This means that the parties must comply with what they have agreed upon.²⁵

5 CONCLUSION

Implementation of the legal principle of *pacta sunt servanda* in the business premises rental agreement that has been handed over for rent, the parties have agreed in the business premises rental agreement, as a form of respect for the business premises rental agreement according to the provisions Article 1338 paragraph (1) must be like the enactment of regulations that can regulate parties in this case based on one principle of contract law, namely the principle of *pacta sunt servanda* . To be an excellent rental agreement, the rental agreement must be reciprocal between the renting party and the lessee. Then the renting party gives delivery to the lessee, who is obliged to pay a specific rental price then the renting party This person has the right to hand over an item to the lessee to fully enjoy it, not to be owned by the lessee, then the enjoyment of this item only lasts for a certain period with payment of a price that has been determined together.

²⁵ Ibid. p. 249-250.

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