

LEGAL PROTECTION IN RENTING VILLAS BY FOREIGN NATIONALS

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Abstract:

The urgency of this research is to find certainty regarding the duration of the lease and the position of foreign citizens in the transfer of lease rights. Therefore, the relevant issues discussed are the civil responsibilities of the party transferring the lease rights concerning objects that are still under lease and the legal protection that should be provided to good-faith tenants. The research method used is a normative legal method with legislative, analytical, and case study approaches, and the analysis of the legal materials used is an analysis based on content. The research results show that foreign nationals who transfer lease rights without a valid legal basis are civilly liable for the losses incurred, whether through compensation mechanisms, lawsuits for breach of contract, unlawful acts, or annulment of documents. Meanwhile, a good-faith tenant who obtains rights legally and is unaware of any legal defects is entitled to legal protection based on the principles of justice and legal certainty. Therefore, it is recommended that notaries design the lease period and residence permits for foreign nationals, and in case of disputes, judges are expected to provide legal certainty and protection for good faith tenants.

INTRODUCTION

Houses and apartments are examples of luxury items that are not owned by everyone, which gives rise to the concept of renting, where goods are handed over temporarily without transferring ownership. Generally, what is rented is land and buildings, as regulated in Article 1548 of the Civil Code. Renting is an agreement that obliges the lessor to hand over the goods and the lessee to pay the rental price. The existence of Bali's breathtaking land, supported by the hospitality of its people, has attracted foreigners not only to enjoy the natural beauty of Bali but also to invest (SUJANA et al., 2022). In Bali, foreign nationals often use lease agreements to control property, as stipulated in Article 45 of Law No. 5 of 1960 on the Basic Regulations of Agrarian Principles (hereinafter referred to as the Agrarian Basic Law). In practice, lease rights can be transferred with the owner's permission, but without a clear agreement, the potential for disputes can easily arise.

Legal certainty ensures that every decision is executed correctly and in accordance with the law (Astuti & Daud, 2023). Without certainty, the law loses its meaning and function as a guide for behavior (Palsari, 2022). For this reason, an instrument to strengthen legal relations in agreements is needed, namely the Notary Institution. According to Liliana Tedjosaputro, this institution exists due to the community's need for evidence in legal relations, especially when disputes arise, which is manifested in the form of Authentic Deeds (Gusmarani & Ilham, 2021). This deed has perfect legal force in civil matters, with the Notary acting as its maker as stipulated in Article 1 number 1 of Law Number 2 of 2014 concerning Notary Positions (hereinafter referred to as the Notary Position Law).

Article 15, paragraph (1) of the Notary Position Law explains the authority of notaries to create authentic deeds at the request of interested parties or by law. Authentic deeds consist of



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agreements and determinations. The authority of notaries contained in these authentic deeds includes the certainty of the date of creation, the storage of deeds, and the provision of originals, copies, and excerpts of the deed (Maria, 2020; Muhjad, 2018). The position of a notary is very important in helping to create certainty and legal protection for the community (Sahdan & Ufran, 2023). Notaries have a very strategic position in the realm of civil law because this profession concerns the most fundamental and essential matters in every legal act, especially in the field of civil law (Zaim et al., 2021).

Notarial deeds as authentic deeds have extrinsic evidential value (*uitwendige bewijskracht*), formal evidential value (*formele bewijskracht*), and material evidential value (*materiele bewijskracht*) (Khasanah et al., 2023; Wibisono, 2024). In the practice of drafting notarial deeds, the three aspects cannot be separated from one another (Aulina, 2022). However, these aspects must be viewed as a whole as a form of assessment for the authenticity of a notarial deed (Habib, 2013).

A notarial deed has perfect evidentiary power if all the procedures for its creation are fulfilled (Nurmadany, 2021). If there is a violation of procedure that can be proven, the deed will only have the power of a private deed, and the evidential value will be submitted to the judge (Huduri, 2020). Therefore, meeting the formal requirements in the creation of authentic deeds is very important. An authentic deed has perfect evidential power, meaning that the authentic deed can prove itself as an authentic deed until it can be proven that the deed is not authentic (Tobing, 1980).

The transfer of lease rights carried out by the previous tenant to the new tenant will later result in a Deed of Transfer and Handover of Lease Rights. The Deed of Transfer and Handover of Lease Rights is a party deed, which is a deed made in the presence of a Notary and falls into the category of an authentic deed because it is made in front of a Notary in their capacity as a public official. The Notary, as a public official, is authorized to create authentic deeds, where these deeds are agreements whose contents are drafted by the parties or applicants, and the provisions of the agreement are formalized by the Notary into a deed, in accordance with the provisions of Article 1338 of the Civil Code (Prahandini et al., 2021).

In addition to Indonesian citizens, foreign citizens are granted the right to lease buildings as stipulated by the Basic Agrarian Law. Listyowati Sumanto argues that "by-laws, foreigners can have certain land and building rights, such as land use rights for a certain period, lease rights for buildings (leasehold title), ownership rights over apartment units, and residential dwellings" (Sumanto, 2021). If translated generally, based on existing regulations, Foreign Nationals may have several rights over land and buildings, including the Right to Use land for a certain period, the Right to Lease Buildings, ownership of apartment units, and ownership of landed houses.

Foreign citizens residing in Bali, due to business decisions, often rent buildings in the form of villas to be managed and turned into business ventures. However, whether a transfer of leasing rights can be executed still lacks rigid regulations that clearly govern it. Only in the ownership of apartment units established on land with usage rights does a prohibition exist for foreign citizens to lease it to other parties. The provisions for the transfer of leasing rights for villa buildings then practically still rely on the provisions of Article 1547 of the Civil Code up to Article 1600 of the Civil Code. It is permissible as long as the first tenant grants permission. As a result, there are instances of abuse of leasing rights conducted by foreign citizens.

The case of leasehold rights abuse involving foreign nationals occurs in the matter between AHD (as the Plaintiff) and RARL (as the Defendant). Both claim to be the legitimate tenants of the building based on a Lease Transfer Deed. AHD (as the Plaintiff) has Notary Deed Number 3 dated February 1, 2016, while RARL (as the Defendant) has Notary Deed Number 2 dated April 2, 2014. The lease transferors are both named YY and SY, who are foreign nationals. The case was then settled

by the Denpasar District Court, which oddly did not involve YY and SY as parties in the proceedings. However, the parties most actively involved in transferring the lease rights are those foreign nationals.

Abuse can occur due to the absence of good faith by the original tenant towards third parties who will receive the continued lease. Good faith in contract law itself still does not have a single definition. Meydora Cahya Nugraheni and Ari Hernawan argue, "In Indonesia, good faith in contract implementations has become an essential principle and is regulated in Article 1338 of ICC. However, the definition and benchmarks are not yet clear." (Nugraheni & Hernawan, 2024).

The case serves as a mirror of the abuse of Building Leasing Rights by Foreign Nationals and the carelessness of Notaries. Notaries, besides being a profession that creates deeds, are actually law enforcers in the field of civil law. In carrying out their duties, notaries strive to ensure that the services provided can protect the parties from legal (civil) problems. However, the presence of authentic deeds, which are supposed to provide legal certainty for the parties, does not automatically provide legal protection and can lead to new problems and disputes.

The law exists to protect humanity. When the law is closely related to business interests, deviations often occur solely to gain economic profits. Not a few notaries are actively involved in such deviations, such as the preparation of duplicate lease transfer deeds or those based on false statements, which ultimately lead to losses for third parties. The Notary Position Law regulates the formal aspects of preparing Authentic Deeds, and if violated, it can result in the deed being classified as a private deed or rendered null and void. Violations of this provision will certainly result in losses for the parties bound by the deed.

METHODS

The type of research used in this study is normative research (Girinatha & Renaya, 2023) because there is ambiguity in the norm in Article 45 letter b of Law No. 5 of 1960 concerning Foreign Citizens residing in Indonesia; the provision of 'residing' in this norm is not specifically regulated, whether the foreign citizens in question must have a residence visa or make an investment in order to enter into a lease agreement for a sufficiently long period. This is where the ambiguity of the norm that will be discussed in this research lies. The approaches used in legal research are the legislative approach, the conceptual approach (Sriasih Wesna & Susila Putra, 2023), and the case approach. To address these issues, legal materials are needed, consisting of regulations and Decision Number 1359/Pdt.G/2023/PN Dps, as well as secondary materials in the form of books and scientific articles. The collection of these legal materials utilizes the literature study technique and is analyzed through description, interpretation, evaluation, and systematization.

RESULT AND DISCUSSION

The Civil Liability of Foreign Citizens in the Transfer of Lease Rights for Objects That Are Still Under Lease. The enactment of the UUPA is philosophically aimed at realizing what is mandated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In this article, the welfare referred to is both physical and spiritual welfare, which is fair and equitable for all Indonesian people (Suwitra et al., 2025). In order to achieve that welfare, the legal relationships between individuals and legal entities in various fields of life, including the management of natural resources and agrarian affairs, need to be regulated clearly and fairly. One important aspect of these legal relationships is the obligations arising from agreements or laws, where the performance of the rights and obligations of the parties must be fulfilled in accordance with the applicable provisions.

Breach of contract (or default) is closely related to the existence of a connection or agreement between the parties. This obligation is based on an agreement according to Article 1338 of the Civil Code up to Article 1431 of the Civil Code, as well as agreements that originate from the law as regulated in Article 1352 of the Civil Code up to Article 1380 of the Civil Code (Subekti & Tjitrosudibio, 2005).

Foreign citizens as legal subjects of individuals (natural persons) in their capacity as tenants of buildings have an obligation to:

- Using the rented item as a good renter in accordance with the purpose given to that item according to the agreement;
- Paying the rent at the specified time;
- Returning the rented item in good condition because if the renter receives the rented item in good condition, the return must also be in good condition and
- Not subletting or transferring the rented item to another party due to a prohibition in the agreement with the threat of cancellation and compensation for damages (Rondonuwu, 2018).

Point (d) explains the prohibition of transferring the lease of rental items to others during the agreement unless it is allowed in the agreement itself. If the lessor grants approval for the transfer of lease rights, then this will not be a problem. However, the event of transferring lease rights results in a shift in the legal positions of the parties in the agreement. The initial lessor, as the owner, does not change their position; the transferor of the lease rights then changes their position to that of the leasing party, and the recipient of the lease from the transferor changes their position to that of the tenant of the property belonging to the initial lessor as the owner.

The civil liability of the transferor of lease rights, in this case, a foreign national or foreigner, should refer to the provisions of Article 1550 of the Civil Code. The lease rights transferor must fulfill the entire responsibility because they gain economic benefits from the results of the lease rights transfer. Thus, the role and obligations of the initial lease owner are transferred to the lease transferor, in this case, the initial tenant. The issue then arises when the lease rights transferor shares the rented items with more than one party without the knowledge of the other parties, which will lead to legal problems.

In 2017, 2 (two) Japanese citizens named SY and YY filed a lawsuit against an Indonesian citizen named RARL and a notary named LPD, S.H., M.Kn to cancel the Deed of Cancellation of Transfer and Handover of Lease Rights dated April 2, 2014, for a plot of land and 11 (eleven) buildings of Villa Maya Sayang. The lawsuit has concluded with a binding legal decision (Eintracht) starting with the Denpasar District Court Decision Number 466/Pdt.G/2017/PN Dps, the Denpasar High Court Decision Number 139/PDT/2018/PT Dps, and the Supreme Court Decision Number 2541/K/PDT/2019.

The Supreme Court decided that RARL is the legitimate tenant by acknowledging the payment of the remaining rental fee of US\$ 2,400,000.00 (two million four hundred thousand United States dollars) based on the receipt dated April 4, 2014, to SY and YY. On one side, it turns out that in 2016, before this lawsuit, SY and YY had also transferred the lease of a plot of land and 11 (eleven) buildings of Maya Sayang Villa to a third party under the name AHD based on a Notary Deed of Transfer of Lease Rights No. 3 dated February 1, 2016.

The action of transferring the lease to 2 (two) different individuals by SY and YY constitutes an act of dishonest lease transfer and is liable and must be held civilly accountable. The actions of SY and YY can be prosecuted in 2 (two) forms, namely:



Breach of contract. SY and YY have clearly breached their promise by failing to deliver the rented items to RARL despite having made the payment. Therefore, the civil obligations of SY and YY have not been properly fulfilled. This form of breach of contract can ultimately lead to claims for damages in the form of costs, losses, and interest in accordance with the agreement (Article 1246 of the Civil Code).

Illegal Act. The actions of SY and YY in transferring the lease of the same items back to AHD are illegal acts because they no longer have the right to perform such actions as they have relinquished their civil rights as the original leaseholder to RARL. SY and YY have been consciously scheming to deceive AHD by leasing items that they no longer possess or have control over.

The decision made by the Panel of Judges in the Verdict of the Denpasar District Court Number 466/Pdt.G/2017/PN Dps, the Denpasar High Court Decision Number 139/PDT/2018/PT Dps, and the Supreme Court Decision Number 2541/K/PDT/2019 is deemed appropriate and has resulted in justice for the parties involved.

The Notary's Responsibility in the Transfer of Lease Rights. The authority held by a Notary is an Atributive authority, which is the authority inherent to a position; in other words, the authority possessed by a Notary is a result of the position they hold. A Notary is a position, and every position in this country has its authority. Every authority must have a clear legal basis; if an official acts beyond their authority, it is referred to as an unlawful act. An authority does not just appear but must be explicitly stated in legislation.

The importance of the role of a Notary in helping to create certainty and protection for the public is more preventive or aimed at preventing legal issues from arising by regulating the authentic deeds created in their presence related to the legal status, rights, and obligations of a person in law, and so on, which serve as the perfect evidence in court in the event of a dispute over related rights and obligations. Notarial deeds are authentic and constitute the strongest and most fulfilled evidence in any case related to those notarial deeds.

The civil process regarding the defects of an act that lead to its annulment by a judge often brings the Notary to court as a 'Defendant or Co-Defendant.' This is often a coercive effort because, in a notarial deed, especially a party deed that later becomes evidence for civil cases, the Notary is not involved and is even prohibited by Law from participating in a legal act as described in the notarial deed they formalized (Tedjosaputro, 1995). The involvement of the Notary is limited to formulating the legal actions of the parties into the deed and then formalizing that deed. Forcing the Notary to be positioned as the "Defendant or Co-Defendant" is an attempt to compel the Notary to speak about the deed, which has now become evidence in the judicial process (Sukisno, 2008).

Notaries are vulnerable to legal entanglements. This is not only due to internal factors stemming from within themselves, such as negligence, failure to follow procedures, and not adhering to professional ethics, but also due to external factors, such as societal morals where notaries are confronted with false documents, even though these documents carry legal consequences for their owners (Indonesia, 2008).

Notary errors that stem from internal factors are failures that originate from within the notary themselves. This can take the form of negligence in carrying out tasks, such as writing errors, carelessness in reviewing documents, or lack of diligence in the authentication process. This negligence can be caused by various factors, ranging from lack of concentration and fatigue to inadequate training or experience. In addition to negligence, non-compliance with established procedures is also a crucial internal factor. Notaries are required to follow the applicable procedures in every deed creation, starting from identifying the parties involved and verifying the validity of supporting documents to storing the deed. Failure to comply with these procedures can result in

legally defective deeds and potentially harm the parties involved. Lastly, another important internal factor is the violation of professional ethics.

Notaries are obligated to maintain integrity and professionalism in carrying out their duties. Ethical violations, such as accepting bribes, taking actions that harm clients, or engaging in conflicts of interest, can have very serious consequences, potentially leading to legal sanctions and revocation of practice licenses. These three internal factors – negligence, procedural noncompliance, and ethical violations – are interconnected and can exacerbate the impact of mistakes made by notaries.

One significant external factor in causing notary errors is the morality of society. Notaries are often faced with difficult situations where they have to manage documents that are suspected to be fake or invalid. This is a major challenge because notaries have a legal obligation to ensure the validity of the documents they notarize. However, in practice, notaries may struggle to detect document forgery, especially if the forgery is done in a sophisticated and professional manner. As a result, notaries may inadvertently authenticate counterfeit documents, which can then have serious legal implications for clients or related parties.

This situation is exacerbated by the lack of legal awareness in society, where some individuals may not understand the legal consequences of their actions or even intentionally attempt to deceive. Social and cultural pressures can also play a role in notarial errors. In some social contexts, notaries may feel pressured to approve documents, even if they have doubts about their validity, due to fear of social consequences or pressure from certain parties. This highlights the importance of integrity and courage for notaries in facing such external pressures. In addition, limited access to information and technology can also hinder notaries in verifying the validity of documents. Notaries may not have adequate access to databases or verification systems that can help them identify fraudulent documents. Therefore, improving access to technology and information, as well as increasing legal awareness in the community, is crucial to reducing notarial errors caused by these external factors.

Lastly, the complexity of the legal system and the evolving regulations also add to the complexity of a notary's tasks. Rapid changes in regulations and diverse legal interpretations can lead to confusion and errors in the application of the law. In this regard, ongoing training and professional development for notaries is crucial to ensure they remain up-to-date with the latest legal developments and are capable of facing complex external challenges.

As a result of negligence or mistakes made by the Notary in drafting the deed, if it can be proven, the Notary in question can be held accountable both criminally under Article 66 and civilly under Article 84 of the Notary Position Law. Therefore, in order to protect themselves, a Notary is required to exercise caution and prudence (Alam, 2001). The following is the legal accountability of the Notary if the deed they prepared is annulled by the Court, which can be described as follows:

Civil Responsibility. Civilly, the notary's civil liability arises when, in the performance of his duties, he causes harm to another party due to negligence or carelessness in drafting the deed. In the context of the case of the transfer of lease rights from SY and YY to AHD, which was subsequently declared null and void by law, the notary should have conducted a thorough verification of the legal status of the leased object, including whether there had been a prior transfer. The negligence in conducting that verification, both regarding the previous deed and the validity of the leased object, renders the deed that was drawn up legally defective. Suppose the notary is proven to have fulfilled the elements of unlawful acts under Article 1365 of the Civil Code in creating a deed and causing harm to one party. In that case, the harmed party may file a claim for damages against the Notary/Official Making Land Deeds.

Criminal Responsibility. In criminal terms, a notary can be held accountable if the notary deliberately includes false information in a deed or continues to draft a deed based on information



that he or she knows is incorrect. In cases of transfer of lease rights, if it is proven that the notary knew that the object had been transferred previously but still created a new deed without clarification or requests for evidence from the presenting party, then the notary has the potential to violate the provisions of Article 263 and Article 266 of the Penal Code regarding forgery of documents and abuse of information in authentic deeds. The act is categorized as a criminal offense because it fulfills the elements of intent and the use of information that is not in accordance with the actual situation, which can cause harm to third parties. Therefore, a notary who is proven to have drafted a deed with false information may face criminal charges with a minimum prison sentence of 6 (6) years and a maximum of 8 (eight) years.

Administrative Responsibility. Administratively, if a Notary violates the articles in the Notary Position Law, the Land Deed Official Regulation, and the code of ethics of their profession while creating a notarial deed, then the Notary will face sanctions as stated in Article 85 of the Notary Position Law, which include: verbal reprimand; written reprimand; temporary dismissal; honorable dismissal; dishonorable dismissal.

The administrative responsibility of the notary in the case of the transfer of lease rights by SY and YY to two different parties, namely RARL and AHD, demonstrates negligence in applying the principle of prudence as stipulated in Article 16 paragraph (1) of the Notary Position Law. As a public official, the notary is obliged to act honestly, independently, and impartially and to safeguard the interests of the parties. In notarial practice, this administrative responsibility requires the notary not only to record the statements of the parties but also to conduct thorough legal and administrative verification of the subject of the agreement that will be formalized in the deed.

In terms of transferring lease rights, the notary is required to actively inquire of the parties whether the leased object that is the subject of the agreement has been previously transferred. If there has indeed been a transfer or an initial lease agreement, the notary must request and examine the previous lease or transfer deed as supporting documents. This is important to avoid the occurrence of multiple transfer deeds that could lead to legal disputes. Additionally, the notary is also obliged to verify the physical existence and legality of the object as well as the legality of documents such as proof of ownership and residence permits of the foreign national parties, considering that lease rights can only be owned by foreign nationals who are truly resident in Indonesia as stipulated in Article 45 of the Basic Agrarian Law.

In this case, the deed prepared by the notary for AHD (Deed Number 3 of 2016) has been declared null and void by the Denpasar District Court because the subject of the agreement had previously been legally transferred to RARL through Deed Number 2 of 2014. The failure to clarify and thoroughly examine the legal history of the rental object by the notary indicates a serious administrative violation. This negligence not only undermines the value of the deed as an authentic means of evidence but also harms third parties acting in good faith and diminishes the dignity of the notary's position as a party, providing legal certainty through the deed they create. As a result of this negligence, the notary may be subjected to administrative sanctions by the Honorary Board of Notaries in the form of reprimands, warnings, suspension, or even dismissal without honor if found to violate professionalism principles and cause harm to the public systematically.

Legal Protection for Parties Receiving the Transfer of Lease Rights. The law regulates the relationship between the state or society and its citizens, as well as the relationships among the citizens themselves, so that life in society runs orderly and smoothly. This results in the legal task of achieving legal certainty (for the sake of order) and justice in society. The law protects parties who

receive the transfer of rental rights in good faith. This protection is one of the ways to provide legal certainty that arises from the creation of general regulations or general norms that are applicable universally and enforced firmly.

The Civil Code regulates legal protection for parties receiving the transfer of lease rights, among others:

Obtaining the rented goods (Article 1548 of the Civil Code). The party receiving the lease transfer in good faith is entitled to receive the leased item in the condition as agreed upon. This means that the owner or lessor is obligated to deliver the item on time and in a usable condition according to its intended purpose. This right is guaranteed by the Civil Code, which stipulates that the lessor cannot obstruct or delay the delivery of the item without a valid reason. Suppose the leased item is not delivered or is delivered in a condition that does not comply with the agreement. In that case, the tenant can demand the fulfillment of the agreement or compensation for any losses incurred. With this legal protection, the tenant gains assurance that they can use the leased item in accordance with the purposes and duration that have been agreed upon.

Not evicted during the lease period (Article 1576 of the Civil Code). During the rental period, the party receiving the transfer of rental rights in good faith has the legal right to continue occupying or using the rented goods without fear of unlawful eviction. According to the Civil Code, the lessor cannot unilaterally evict the tenant before the lease term ends unless there is a breach of contract committed by the tenant. This right provides legal certainty for the party receiving the transfer of rental rights to utilize the rented goods in accordance with the agreement without any pressure or threats of unilateral termination of the rental relationship. Suppose the lessor conducts an eviction that is contrary to the law. In that case, the party receiving the transfer of rental rights may take legal action to defend their rights and seek compensation for the detrimental actions. With this protection, the balance of rights and obligations between the party receiving the transfer of rental rights and the owner of the goods remains maintained during the term of the lease.

Free from unilateral termination of the lease as long as it does not violate the agreement (Article 1579 of the Civil Code). The party receiving the transfer of lease rights in good faith is entitled to legal protection against unilateral termination of the lease as long as they do not violate the agreed-upon terms. In lease agreements, both the lessee and the lessor have rights and obligations that must be fulfilled. Therefore, the lessor cannot unilaterally terminate the agreement before the rental period ends unless there is a valid reason, such as a violation of the provisions committed by the lessee. This provision is regulated in the Civil Code to provide legal certainty for the lessee so that they can utilize the rented goods without the threat of unilateral termination that could be detrimental. If the lessor unilaterally cancels the agreement without a valid reason, the lessee is entitled to demand the fulfillment of the agreement or compensation for the losses suffered. This protection aims to maintain a balance between both parties and ensure that the rental relationship operates fairly and in accordance with the law.

Protection against losses incurred not caused by the tenant (Article 1552 of the Civil Code). A party receiving the transfer of lease rights in good faith is entitled to legal protection against losses that arise not due to its actions. In tenancy relations, if the tenant suffers losses caused by factors beyond their control, such as damage to goods due to natural disasters, interference from third parties, or negligence from the lessor, they cannot be held accountable for such matters. The Civil Code stipulates that in such circumstances, the tenant may request compensation or a reduction in rental payment obligations, depending on the extent of the losses incurred. This protection aims to ensure that tenants do not bear burdens that should be the responsibility of other parties and that

their rights remain protected during the lease period. Thus, the balance in the lease agreement is maintained, and tenants can fulfill their obligations with a sense of security and legal certainty.

In the context of transferring lease rights, the original tenant and subsequent tenants have the same legal protection against the actions of the owner. If it turns out that the one causing harm is the original tenant and the victim is the subsequent tenant, then in that obligation, there is fraud (deception) in the obligation that causes a defect in consent. Such action violates two laws simultaneously, namely criminal law and civil law.

Conceptually, the understanding of fraud in criminal law and civil law is indeed different; however, factually, in society, the concepts of fraud in criminal law and civil law are often intertwined. This can lead to complex legal issues in the enforcement of the law, as society often resorts to criminal channels to resolve civil legal issues, such as in debt agreements or in business cooperation agreements where one party defaults or breaches the contract. There is a pressure between the concept of fraud in the realm of criminal law and fraud in the realm of civil law (Amiruddin et al., 2022). To clarify further, it will be explained as follows:

Civil Law. The concept of fraud in the realm of civil law can be traced to the provisions of Article 1321 of the Civil Code and Article 1328 of the Civil Code. Article 1321 of the Civil Code clearly states that No agreement shall have binding force if it is made due to a mistake or obtained through coercion or fraud. Furthermore, Article 1328 of the Civil Code states that:

"Fraud is a reason for the cancellation of an agreement if the deceit employed by one party is such that it is evident that the other party would not have entered into that obligation had it not been for that deceit. Fraud is not just alleged but must be proven."

A defect of will in an agreement constitutes a violation of the subjective requirements of the contract as stipulated in Article 1320 of the Civil Code. The failure to meet these subjective requirements results in the possibility for one party to request the cancellation of the agreement from the judge.

Criminal Law. It can be noted that the essential elements (best-ended delict) in the crime of fraud are: 'using a false name, or false dignity, or deception, or a series of lies, inducing others to surrender something to him.' The term 'using a false name' means using a name that is not one's own. The term 'false dignity' refers to using a status or position that one does not actually hold. The term 'deception' refers to a trick that is so clever that people can be deceived. The term 'a series of lies' means that it is not enough to utter just one lie; there must be a series (many) of lies that ultimately form a story that seems to be true. The way: it is done 'with intent,' meaning there is a desire to benefit oneself or others, and is unlawful, meaning it contradicts the rights of others, often referred to as mens rea, the form of the act is 'using a false name, or false dignity, or deception, or a series of lies, thus provoking others to hand over something.'

Lies in criminal law come first because there is an intention before the targeted activity is carried out; a lie is a means to obtain something from someone who is the target, making the target's heart move to hand over something. Meanwhile, lies in civil law, which then becomes synonymous with breach of promise, occur later, where the activity is conducted first before the lie occurs. Fraud in civil law has sanctions, but they are not criminal penalties like the body penalties regulated in criminal law that are associated with imprisonment. Therefore, a lie that is synonymous with a breach of promise cannot automatically be categorized as a fraud in the criminal realm (Hatimah & Wagian, 2025).

Both Civil Law and Criminal Law protect subsequent tenants against the actions of the initial tenant who commits fraud by providing rental items not only to that tenant but also to third parties. In civil terms, the agreement is deemed void by law due to the presence of a defect of will

(wilsgebreke). The obligation then becomes null and returns everything to its original state as if there was no agreement, a concept known as default (Article 1451 and Article 1452 of the Civil Code) (Yudha, 2010).

The consequence of a cancellable agreement is that one party can request the cancellation of the agreement. The agreement will still bind the parties if it is not canceled by a judge at the request of the party entitled to request cancellation. The right to request the cancellation of an agreement, to demand restoration, and even the right to claim compensation are rights for the parties who feel aggrieved, while the other party that has already received the performance from the other party is required to return it.

Legal protection for parties receiving a transfer of lease rights in good faith can be concluded to be clearly regulated in both civil and criminal law aspects. If we look at the concept of legal protection proposed by Philips M. Hadjon, it can be simply outlined as follows:

Preventive Legal Protection. Preventive protection is obtained through the verification of the legality of lease objects, the legal documents held by foreign nationals who are based and domiciled in Indonesia, and this preventive protection is carried out through education provided by Notaries to ensure the rights and obligations of the parties and the risks that may arise. This is to ensure that there are sufficient preventive measures in place to mitigate any potential losses that may occur in the future.

Repressive Legal Protection. Repressive protection is carried out through dispute resolution in court to obtain compensation for the party receiving the transfer of lease rights in good faith, legal recognition, and guarantees for the fulfillment of civil rights in accordance with Articles 1548-1600 of the Civil Code.

In this case, repressive legal protection also applies to party AHD as the party receiving the transfer of lease rights, which, in its position, has acted in good faith and was not aware that the object of the lease agreement had previously been transferred to another party. Although the court later annulled the deed made by AHD due to the existence of a prior transfer deed, AHD still retains the right to legal protection. This is in line with the principles of propriety and justice in agreements, where a party that has acted in good faith should not be allowed to suffer losses due to the mistakes of another party. Legal protection in this context can be provided in the form of compensation as well as access to dispute resolution mechanisms, either through litigation in court or through non-litigation avenues. The legal position of AHD as an aggrieved party needs to be clarified and emphasized to prevent neglect of its rights as a legal subject, acting legitimately and without bad intentions.

Thus, the application of repressive legal protection is not only aimed at resolving disputes juridically but also serves as a means to uphold a sense of justice, especially in lease cases involving more than one party and containing elements of information defects. The Theory of Legal Protection according to Philipus M. Hadjon forms the conceptual basis that the state must be present to provide guarantees of protection for citizens acting in good faith in every form of legal commitment, including in the transfer of rental rights.

CONCLUSION

The responsibility of the party transferring the lease rights on an object still within the lease period, especially by foreign nationals, includes civil, criminal, and administrative aspects. From a civil law perspective, the transfer of lease rights conducted without the written consent of the owner or a legitimate legal basis can be classified as default and/or unlawful acts. Consequently, the perpetrator may be sued for damages or the annulment of the lease rights transfer deed in court. In

terms of criminal law, if there is an element of intent in providing false information to the notary or drafting the deed unlawfully for personal gain, the perpetrator may be charged under Articles 263 and 266 of the Criminal Code regarding the forgery of authentic documents. Meanwhile, from an administrative perspective, violations of formal procedures or the drafting of deeds that are contrary to the provisions of the Notary Position Law may be subject to administrative sanctions, including the revocation of notary position licenses if it is proven that there has been negligence or involvement in the violation.

Preventive protection is obtained through the verification of the legality of the lease object and the legal documents held by foreign citizens who are established and domiciled in Indonesia. This preventive protection is carried out through education provided by a Notary to ensure the rights and obligations of the parties and the risks that may arise. Meanwhile, repressive protection is carried out through dispute resolution in Court to obtain compensation for the party receiving the transfer of lease rights in good faith, legal recognition, and assurance of fulfillment of civil rights in accordance with Articles 1548-1600 of the Civil Code.

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