



Legal Analysis of the Freedom of Contract Principle in Lease Contracts between the Director General of Civil Aviation and Private Flight Schools

Intan Pandini Febrianti Islami Putri¹, Endang Sutrisno², Ayih Sutarih³

¹Universitas Swadaya Gunung Jati, Jawa Barat, Indonesia, email: fakultashukum.ugj@gmail.com

² Universitas Swadaya Gunung Jati, Jawa Barat, Indonesia, email: endang.sutrisno@ugj.ac.id

³ Universitas Swadaya Gunung Jati, Jawa Barat, Indonesia, email: ayih.sutarih@ugj.ac.id

Abstract. In accordance with an open system, everyone is permitted to enter into an agreement so long as it is founded on good faith, according to Indonesian treaty law. This approach is not entirely relevant in the practice of lease agreements held by the government (Director General of Civil Aviation) with private parties (Private Flight Schools), as the lease agreement was made in a way that the terms were made by default. In order to collect secondary data in the form of primary and secondary legal materials, this research employs a normative juridical approach, law-based research as norms and rules that are both written and unwritten through literary studies, and document studies. The findings revealed that the format of common lease agreements negotiated between the government (Director General of Civil Aviation) and private parties (Private Flight Schools) was subject to constraints. This demonstrates how the idea of complete contract freedom is not being applied. The posture or bargaining position between the parties to the agreement is not balanced, which gives the airport with a stronger position options. As a result, the airport's rules and regulations have an impact on the tenant's rights.

Keywords: *Principle of Freedom of Contract, Lease, Default, Force Majeure*

INTRODUCTION

Everyone is free to enter into agreements, both regulated and unregulated by law, because Indonesia's civil law regulatory structure is an open system. The freedom of contract principle is another name for this open system. Everyone has the freedom to join into agreements under the principle of freedom of contract, including the freedom to choose the parties to an agreement, its terms, and whether to enter into one at all. As long as it doesn't contravene the laws, norms of decency, or oppressive regulations. Additionally, Article 1320 of the Civil Code contains provisions regarding the conditions for an agreement's validity, including: (1) the existence of an agreement for those who bind themselves, (2) the capacity to enter into an agreement, (3) a particular thing, and (4) a legal reason. These provisions can be seen as limitations on the principle of contract freedom.

An agreement must be made in accordance with the law and in good faith in order for it to be considered legitimate and enforceable by the parties who make it. The Private Flight School and the Director General of Civil Aviation have a leasing agreement, however the lease agreement's execution is governed by the guidelines established by the Director General of Civil Aviation. As a result, the renter is not free to complete the form that contains the agreement that must be carried out. Additionally, in carrying out the agreement, the Private Flight School did not do so in a good faith manner, specifically by failing to follow its terms. Consequently, there is a mismatch between how the principle of contract freedom and the principle of good faith are applied in the lease agreement between the Director General of Civil Aviation and the Private Flight School.

LITERATURE

The reason why this study chose the topic "Lease Agreement between the Director General of Civil Aviation and the School of Aviation" is that it aims to understand and analyze the degree to which the principle of freedom of contract is applied in the execution of lease agreements between the Director General of Civil Aviation and Private Flight Schools. Because it is based on the principle of freedom of contract, which gives parties the freedom to negotiate their own conditions, treaty law has an open structure that allows it to circulate agreements, including *nominaat* and *innominaat* agreements. It is permitted to include its own interests in agreements when making them. The parties will be governed by the Law if it does not regulate it itself.

The Civil Code's Article 1338, subparagraph (1), declares that "all agreements made validly apply as law to those who make them," which is known as the "freedom of contract" principle. However, there are situations when the parties' freedom to reach an agreement cannot be realized because they hold different positions or have different negotiating power. This arrangement gives those parties a chance to influence key agreement clauses more directly. Standard agreements are those that feature terms and conditions that have been arbitrarily chosen. A standard agreement is one whose terms have been predetermined and are presented in the form of a form.

Although the parties to the agreement are given freedom in a typical agreement, they are still subdued by techniques of coercion, decency, and public order. A legitimate covenant has legal weight in the eyes of the parties who make it. According to the definition of "valid," an agreement must be made in good faith and in compliance with the law. Article 1338, paragraph 3, of the Civil Code explains the concept of good faith by stating, "The agreement must be

executed in good faith." As a result, the parties are required to implement the agreement's terms in accordance with their good faith, solid belief, or trust. There is anything that is both an object and an object of law in the leasing agreement.

The Director General of Civil Aviation's assets are the subject of the lease agreement in this study. The requirement for a location for the Flight School's operational activities led to the creation of this lease agreement. As a result, a legal connection develops between the Airport, which rents the asset, and the Flight School, who occupies it.

METHOD

The research approach used is a normative juridical approach by analyzing laws and principles related to lease agreements carried out by other Directors General of Civil Aviation and literature studies by reviewing books, journals and previous research as secondary data. However, also conducted interviews with related resource persons, namely TR as the Treasurer of Revenue as supporting data and complementary data. So, even though it uses a normative juridical approach that conducts literature studies, interviews are also used as primary data which is the supporting data of this research.

1. Types of Research

The type of research used is qualitative research by providing a comprehensive picture based on regulations and legal principles regarding lease agreements carried out by the Director General of Civil Aviation and primary data obtained from the field through interviews.

2. Object of Research

The object of research studied is a lease agreement carried out by the Director General of Civil Aviation with the Flight School. Thus, the lease agreement further analyzes the form of the agreement, the parties involved, the content of the agreement, the rules that apply to the agreement and the resolution of disputes due to default in the lease agreement.

3. Research Instruments

The research instruments used in this study used interview techniques obtained from interviews with resource persons in accordance with their fields or parties related to research. In this study, an interview was conducted with TR as the Treasurer of Revenue which produced data in the form of information about lease agreements at the Director General of Civil Aviation.

4. Data Collection Techniques

Data collection techniques are carried out by literature studies, namely reading, studying and collecting related agreements, research documents, and library materials related to problems

in order to collect all secondary data needed related to lease agreements at the Director General of Civil Aviation. In addition, data collection by conducting interviews with resource persons who are experts in their fields, namely TR as the Treasurer of Admissions.

5. Legal Materials

Legal materials are obtained from conducting literature reviews that examine various literature and laws and regulations as the main data. However, also conduct interviews with resource persons who are used as supporting data. The research data used are primary data and secondary data.

1) Primary Legal Materials

Legal materials consisting of applicable laws and regulations. Legal materials used in this study include:

- Civil Code
- Government Regulation 11 of 2015 concerning Types and Rates of Non-Tax Types of State Revenue applicable to the Ministry of Transportation
- Government Regulation Year 2016 concerning Types and Rates of Non-Tax Types of State Revenue applicable to the Ministry of Transportation.
- Regulation of the Minister of Transportation of the Republic of Indonesia Number 81 of 2016 concerning Guidelines for the Implementation of Types and Tariffs of Non-Tax Types of State Revenue Applicable to the Directorate General of Civil Aviation.
- Lease Agreement Letter between the Director General of Civil Aviation and Private Flight Schools.

2) Secondary Legal Material

Secondary data are indirect data obtained from all publications on law in books, literature, and research results related to the subject matter. Secondary legal data used in this study are books, e-books, Law Journals, and so on.

DISCUSSION

Implementation of the Principle of Freedom of Contract in Lease Agreements between the Government of the Director General of Civil Aviation and Private Flight Schools

Any specific form is not required in order for the agreement to be valid. Only in the event of a disagreement is a written agreement's format admissible as proof. According to the findings of the research, the airport asset lease agreement between the Director General of Civil Aviation

and the Private Flight School has a standard clause, which is a fixed condition that cannot be negotiated. the provision in the lease agreement between the Private Flight School and the Director General of Civil Aviation. According to the findings of the analysis of the agreement's main provisions made above, the lease agreement between the Director General of Civil Aviation and the Private Flight School contains typical provisions because the leasing party, the Director General of Civil Aviation, determined the agreement's main provisions.

The agreement between the Director General of Civil Aviation and the Flight School does not give either party the freedom to choose how the agreement will be carried out because it is based on coercively enforced regulations within the Director General of Civil Aviation. This is specified in the agreement's main body's Article 2 paragraph (3), which reads, "The SECOND PARTY is ready to adjust the PNBP tariff changes on the lease agreement that has been signed by the parties as of the effective date of the replacement regulation." The statement stressed that the agreement featured a standard clause since the clause was created based on applicable legislation within the Director General of Civil Aviation, preventing the flight school, the lessee, from negotiating the rental rate that must be reached.

The lease agreement cannot be done with anyone, there are several criteria that must be met to carry out a lease agreement, namely the agreement made within the Directorate General of Civil Aviation can only be done by a legal entity. In addition, in the lease agreement, the Director General of Civil Aviation Assets gives the impression that the content of the agreement is more in favor of the leasing party. This impartial situation can be seen in paragraph (7) of Article 2 of the Main Content of the Agreement which states that; "If prior to the termination of the agreement, the First Party requires the land for the purposes of development, compliance with urgent regulations, the Second Party shall hand over to the First Party and the provisions apply;

- The Second Party shall not demolish the building without the consent of the First Party unless the contents belong to the Second Party
- The building that has been built above as referred to in point 1 by the Second Party is granted to the First Party and becomes the property of the state
- The First Party shall have no obligation to the Second Party to refund the remaining money of the contract paid by the Second Party
- Can be transferred to another location as long as there is a place and must be in accordance with Article 1 (paragraph 1, paragraph 2) with the transfer fee being the burden of the Second Party.

This clause is viewed as being harmful to the tenant because it grants the Director General of Civil Aviation the right to terminate the lease agreement at any moment. The Director General of Civil Aviation may decide that it is useful for development-related objectives during the lease. In the main body of paragraph (1), it is stated that the flight school rents land on which to erect a building, with no intervention on the part of the leasing party. However, it is stipulated in the aforementioned requirements that the building must be given to the party leasing it without being required to reimburse the tenant for any rent payments made without taking into account any losses incurred by the flying school.

Standardized clauses in agreements frequently include provisions that place restrictions on one party's rights and obligations. Exoneration clauses are the name given to these terms. This condition is thought to be extremely harmful to the tenant, but the tenant is unable to reject it because there are only two options for such an agreement: accepting or rejecting while keeping in mind that the tenant requires this agreement. If the tenant's need for this agreement is related to the agreement's subjective terms of validity regarding the agreement for those who bind themselves, it can be determined that the tenant was forced to enter into the agreement because of the need, which led the tenant to accept the terms of the agreement.

An exoneration clause is a provision in an agreement that allows one party to avoid completing its duties by paying all or a portion of the damages that result from a promise breach or illegal behavior. In the exoneration clause, which states that the Director General of Civil Aviation may be exempt from the refund of the lease tariff if the lease agreement is terminated before the term of the agreement, it is stated in paragraph (8) of Article 2 of the main content of the lease agreement that the Director of Civil Aviation is not required to return the remaining money paid by the Private Flight School.

On the other hand, the judge can ask for the exoneration provision to be included. The tenant who feels wronged by the exoneration clause must be notified of your request for cancellation. Exoneration clauses are thought to be highly harmful to tenants since they put them in a poor position because they prevent them from pursuing damages for losses they have already incurred should the Director General of Civil Aviation retake possession of the lease object at any moment. The standard lease agreement at the Director General of Civil Aviation occurs due to the needs of the flight school, so Article 1320 point (1) regarding agreements for those who bind themselves is required to be followed in order to satisfy those needs and implement the freedom principle outlined in Article 1338 of the Civil Code.

With almost no chance for negotiation, the tenant is only given two options for the existing conditions, namely take it or leave it. The airport has provided a standard condition in the agreement that has been prepared in advance and written in the form of a form and then submitted to the tenant to be agreed. Due to the lessee's lack of ability to customize or fill out the agreement's provisions, the fundamental principle of contract freedom stated in Article 1338 paragraph (1) of the Civil Code has been violated in the lease agreement between the Director General of Civil Aviation and the flight school. However, the leasing party, specifically the Director General of Civil Aviation, determined it in the standard agreement.

The articles in the lease agreement made by the Director General of Civil Aviation with Private Flight Schools included in the Standard Clause, namely:

- Article 2 paragraph (3) which states that; "The Second Party is ready to adjust the PNBP tariff changes on the lease agreement that has been signed by the parties as of the effective date of the replacement regulation."
- Article 2 paragraph (7) which states that; If prior to the termination of the agreement, the First Party requires the land for the purposes of development, compliance with urgent regulations, the Second Party shall hand over to the First Party and the following conditions apply:
 - 1) The Second Party shall not demolish the building without the consent of the First Party unless the contents belong to the Second Party
 - 2) The building that has been built above as referred to in point 1 by the Second Party is granted to the First Party and becomes the property of the state
 - 3) The First Party shall have no obligation to the Second Party to refund the remaining money of the contract paid by the Second Party
 - 4) Can be moved to another location as long as there is a place and must be in accordance with Article 1 (paragraph 1, paragraph 2) with the transfer fee being borne by the Second Party.

Implementation of Performance in Lease Agreement between the Director General of Civil Aviation and Private Flight School

The Director General of Civil Aviation and the Private Flight School are parties to the lease. Although there are still conflicts when walking neatly. The disagreement arises as a result of irregularities, the parties to the agreement fail to adhere to the terms contained in the letter of agreement, or involvement of third parties. The rights and obligations of each party to the leasing

agreement are described in the letter of lease agreement between the Director General of Civil Aviation and the Private Flight School. However, it is normal for parties to an agreement to breach one another's terms and conditions.

The lease agreement carried out by the Director General of Civil Aviation with the Private Flight School has provisions regarding the rights and obligations that must be carried out by both parties. These provisions are contained in Article 3 of the Rights and Obligations of the Lease Agreement which states that;

1) Rights and Obligations of the First Party

- Hand over assets as referred to in article 2 (two) paragraph (1) at the UPBU Cakrabhuwana Cirebon Office in such circumstances
- Receive payment as referred to in article 2 paragraph (1) and paragraph (2) from the Second Party
- Guarantee that assets as referred to in article 2 paragraph (1) that are leased are not in dispute or used by other parties
- Supervise, regulate the movement of people, goods, vehicles in the airport environment
- Receive assets as referred to in article 2 paragraph (1) leased and building grants from the Second Party in accordance with article 2 paragraph (8)

2) Rights and Obligations of the Second Party

- Using assets as referred to in article 2 paragraph (1) as facilities to support the activities of the Second Party
- Pay asset rent as referred to in article 2 paragraph (1) and paragraph (2) to the First Party
- Bear all operational and maintenance costs
- Responsible for the security and cleanliness of goods / objects in the area established assets as referred to in article 2 paragraph (1) and in the surrounding environment.
- Return assets as referred to in article 2 paragraph (1) leased to the First Party in accordance with article 2 paragraph (8).
- Operational officers are required to have a person and vehicle pass as a sign of entry to the restricted area by submitting an application to the airport

- Comply with all applicable laws and regulations at UPBU Cakrabhuwana Cirebon Office.

Achievement is an obligation born of an engagement due to a law or agreement. The basis of the law of merit is Article 1234 which states that: "Engagement is intended to give something, to do something, or not to do something". In the lease agreement made by the Director General of Transportation and the Private Flight School of Performance to give something, to do something, or not to do something is as follows:

- To give something away

The performance that must be given by the leasing party is contained in Article 3 paragraph (1) a which states that;

Rights and Obligations of the First Party

- Hand over assets as referred to in article 2 (two) paragraph (1) at the UPBU Cakrabhuwana Cirebon Office in such a condition.

The thing left in the lease agreement is only the control of the object, not the property right. The delivery aims to provide enjoyment to the tenant. This is regulated in Article 1551 of the Civil Code which states that; "The leasing party is required to hand over the leased goods in a state of preservation of everything. He shall, during the time of the lease, make corrections to the leased property, which should be done, except for those corrections which are obligatory to the lessee".

In the provisions of the rights and obligations of the parties in the lease agreement between the Director General of Civil Aviation and the Private Flight School, there are provisions in Article 3 paragraph (1) point b which states that; "1) Rights and obligations of the first party: b. receiving payment from the second party". As well as the provisions in paragraph (2) point b which states that; "2) Rights and obligations of the Second Party: b. pay the lease of assets to the first party".

In the implementation of these rights and obligations there is an imbalance in the implementation of rights and obligations, the Director General of Civil Aviation does not receive his right to get rental payments, the flight school does not carry out its obligation to pay rental rates as predetermined.

Table 1. Receivables Quality Report and Receivables Allowance

No	Debitur	Types of Receivables	Receivables Balance 31 Des 2021	Putang Balance 30 Juni 2022
1	Flight School	Functional PNB	67.174.447	58.586.975

According to the information given, the flying school will not be able to meet its obligations to pay the rental rate until the agreement's expiration. The lease agreement's Article 2 paragraphs (1) and (2) are not being followed by the lessee, either by tardiness or negligence. Data submitted by the Airport Admissions Treasurer shows that from January 1, 2022, until June 2022, the Flight School was late in completing achievements. In Article 1243 of the Civil Code, which governs default, it is stated that "reimbursement of costs, losses and interest due to non-fulfillment of an agreement, only begins to be mandatory, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it or, if something must be given or made, can only be given or made within the grace period he has exceeded."

When a lease is broken, it is seen to have broken its agreement to pay past-due rent, which resulted in either late payment or outright non-payment. The Private Flight School and the Director General of Civil Aviation entered into a lease agreement in accordance with the terms of Article 4 paragraph 4 of that letter, which states that "payment is made at once in advance until the end of the period or 12 (twelve) months and deposited into the State General Cash account through the Simponi Application as Non-Tax State Revenue." The Private Flight School participating in the lease agreement did not fulfill its obligations as stated in Article 4 paragraph (4), according to the treasurer of income statement of the Director General of Civil Aviation.

Until the agreement's expiration date, which is December 31, 2021, the Private Flight School has not complied with its responsibility to pay the charter rate in full to the Airport. This obligation extends through June 2022. Implementation of Achievements in the Lease Agreement between the Director General of Civil Aviation and Private Flight Schools Defaults with Late Performance One of the Reasons for Default is the Absence of Tariff Adjustments Due to Force Majeure Issuance of PP No. 15 of 2016 Concerning Types and Rates of Non-Tax Types of State Revenue Applicable to the Ministry of Transportation, which was not previously.

To Do Something

In the lease agreement made by the Director General of Civil Aviation with the Private Flight School, the achievement to do something first party is contained in Article 3 paragraph (1) letter c and d which states that; Guarantee assets as referred to in Article 2 paragraph (1) that are leased not in dispute or used by other parties, and supervise, regulate the movement of people,

goods, vehicles in the airport environment. The obligation that must be done by the leasing party is to maintain the rented object. This is regulated in Article 1550 of the Civil Code point 2. While the achievement of the tenant to do something is contained in Article 3 paragraph (2) which states that;

- Bear all operational and maintenance costs
- Responsible for the security and cleanliness of goods / objects in the area established assets as referred to in article 2 paragraph (1) and in the surrounding environment.
- Return assets as referred to in article 2 paragraph (1) leased to the First Party in accordance with article 2 paragraph (8).
- Operational officers are required to have a person and vehicle pass as a sign of entry to the restricted area by submitting an application to the airport
- Comply with all applicable laws and regulations at UPBU Cakrabhuwana Cirebon Office.

If the tenant uses the rented object for a purpose to cause losses to the leasing party. Then the leasing party can request the cancellation of the lease agreement.¹ This is regulated in Article 1561 of the Civil Code.

CONCLUSION

Based on the description that has been submitted, several conclusions can be drawn on the lease agreement between the Director General of Civil Aviation and the Private Flight School as follows:

- Unequal bargaining position between the parties to the agreement, provides opportunities for airports that have a stronger position. This causes the tenant's rights to be limited by the airport and the regulations that apply to it. So the freedom of contract stipulated in Article 1338 of the Civil Code does not have its application to the lessee.
- Achievements in the lease agreement between the Director General of Civil Aviation and Private Flight Schools are defaults because Private Flight Schools do not fulfill the achievements in the agreed agreement, namely being late to carry out achievements in the provisions of Article 3 paragraph (1) letter b.

BIBLIOGRAPHY

Muhammad, Abdulkadir, 2000, Hukum Perdata Indonesia, Citra Aditya Bakti, Bandung

Subekti, 1995, Aneka Perjanjian., PT. Citra Aditya Bakti, Bandung

Subekti, 2002, Hukum Perjanjian, Intermedia, Jakarta

Subekti, 2008, Pokok-Pokok Hukum Perdata, Cetakan 33, PT. Intermedia, Jakarta

Journal:

Anand, Ghansam, Prinsip Kebebasan Berkontrak dalam Penyusunan Kontrak, Yuridika, Vol. 26 No. 2

Andri, Gusti Yosi, Djuariah, 2022, Kekuatan Akta Perdamaian dan Masalahnya, Hukum Responsif, Vol. 13

Laws and Regulations

- Kitab Undang-Undang Hukum Perdata
- PP Nomor 32 Tahun 2021 tentang Penyelenggaraan Bidang Penerbangan
- Peraturan Pemerintah No. 15 Tahun 2016 tentang Jenis dan Tarif atas Jenis Penerimaan Negara Bukan Pajak yang berlaku pada Kementerian Perhubungan
- Peraturan Menteri Perhubungan Republik Indonesia Nomor 81 Tahun 2016 tentang Petunjuk Pelaksanaan Jenis dan Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Direktorat Jenderal Perhubungan Udara.