

# Implementation of Personality Principle in the Termination of Village Ground Treasure Utilization No. 143/1728 Between PB. Rancah Karya and Catur Tunggal Village Government

Umar Haris Sanjaya<sup>1,\*</sup> and Tedy Kuswara<sup>2</sup>

<sup>1</sup>Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

<sup>2</sup> Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

**Abstract.** This research focused on the implementation of personality principle, it is one of the basic principles in making agreement. The object of study happened in lease agreement between lessee of shop building (ruko) and operator (PB. Rancah Karya) where it is absolutely breach because of negligence by operator. The case rises when operator did not fulfill the annually payment of village ground treasure toward village government. The annually payment is part of obligation also belong to operator as the compensation toward village ground utilization, it is based on village agreement between both of are. The violation of annual payment make the consequences that operator should leave the utilization against village ground. The utilization of it turns in back to village government. Afterward village government modified several clauses that are stated in lease agreement. Moreover, those modifications of clauses disserve the lessee. Lessee argued that they made lease agreement with operator (PB. Rancah karya) but not the village government. This research is using context of problems how the implementation of personality principle in the context of lessee, operator (PB. rancah karya), and village government in village ground utilization, research result that operator and village government both are did not apply personality principle. Whereas the utilization of village ground deliver back from operator to village government, both of are not recognizing the existence of lessee.

## 1 Introduction and Literary Review

Personality principle recognizing at Indonesia Civil Code (ICC) in article 1315, those article give a point in making an agreement a parties will responsible on behalf of his capacity and personality [1]. It meant that, parties who bounded (rise rights and obligation) only who stated in agreement. Specifically, article 1315 ICC refer to parties competence even if individual or in behalf of his name. In implementation, this principle has link to each

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\* Corresponding author: [umarharis@uii.ac.id](mailto:umarharis@uii.ac.id) and [tejo.kuswara@gmail.com](mailto:tejo.kuswara@gmail.com)

other with *pacta sunt servanda* principle [2]. It link to the two things, both are in substance and parties [3].

The Obligation rises in agreement will bind parties only, if parties on that agreement want to bind the other party (third party), it requires an approval from parties bound before [4]. Those approve should writing down in clause of agreement or that the other party receive attorney. Example implementation personality happen and sentenced by Hoge Raad in case "*het dubelle villa arrest*" 3th April year 1914. Hoge Raad give an argument that agreement bound by parties who recognizing in those agreement include obligation [5]. Personality principle intend to harmonize, stabilize parties in agreement [6], more specifically to prevent in involving of third party.

In their personality principle enable become exception or extension, it possible in two: exception/constriction in personality and extension in personality. For the exception in personality stated in article 1317 ICC that any chance to third party get a concern as long as their requirement fulfilled. This article clarified that third party will get any benefit from agreement should be base on the parties on agreement itself. It is because of third party categorize as strangers [7], basically this implementation adopted from roman law tradition and, it is known in the theory of law third party beneficiaries [8]. Extension meaning recognize in article 1318 ICC that parties probably replace by his heir, it probably happen if parties need to be replaced. As an example is one of parties passed away, even though the agreement keep in running as well as concern. Then the heir of party will substitute his position.

### **1.1. Agreement between Catur Tunggal Village Government (CT) and PB. Rancah Karya year 2002**

Catur Tunggal Village Government and PB. Rancah Karya agreed to make ground lease agreement for a long twenty years (20 years). The ground known as village treasure (kas desa), it purposed to build a complex of shops. PB. Rancah karya has two (2) legitimating in managing the ground, first (1) it has permission from Sleman regency government based on letter no. 143/1728 on June 11th 2002 to manage village ground [9], second (2) lease agreement of village ground No. 07/KPTS/VIII/2001 on august 30th 2001 between village government and PB Rancah Karya [10]. Those agreements began around year 2000 up to 2020, PB. Rancah Karya authorized to village ground in managing, enjoying of ground facilitation in area 12.400 M2 Pc.54/Kld. DII. From the two above, conclude that PB. Rancah Karya has specific rights to : manage village ground, around 20 years, business purposes to build complex of shops, pay the ground lease, turn over the building on the ground in the end of lease agreement, turn over the ground if PB. Rancah Karya neglect to pay lease payment. Clarified, the lease payment which agreed between CT village government and PB. Rancah Karya 65 million rupiah per year during twenty years. Thus, PB. Rancah Karya began the construction complex of shops in 2002 and finished it in 2005.

### **1.2. Lease Agreement between PB. Rancah Karya and lessee**

PB. Rancah Karya finished the construction complex of shops in 2005, this building located at Babarsari roadway, Kledokan, Depok, Sleman and he start to offer the building to someone. Some people interested to lease the shop, one of them agreed to lease two of building (shop). In negotiation between PB. Rancah Karya and prospective lessee formulated that the amount of price 135 million rupiah for seventeen years (17 years) [11]. By details of them are : (1) lease for two building, (2) for 17 years (begin 2005 until 2022),

(3) beyond regular payment, lessee has responsibility to pay the lease payment (village ground treasure) between PB. Rancah Karya and Catur Tunggal Village Government as stated above (amount of each lessee 750 hundred rupiah per year). Lessee perform his obligation to pay the lease by installment method, totally in five (5) installment, those installment paid from august 7th 2003 until March 6th 2004. From those installment can be specified that first installment in August 7th 2003, second installment in November 4th 2003, third installment in December 24th 2003, fourth installment in February 20th 2004, and fifth installment in march 6th 2004 [12]. Beside on those installment, lessee also pay the lease of village ground treasure for two building (2) during 5 years with the amount of payment 7,5 million rupiah (per building 750 hundred rupiah x 5 years) in February 2010 [13]. Thus, lessee completely finished total payment of lease agreement toward PB. Rancah Karya, he has rights to enjoying the building until the end of agreement around 2022, except the village ground payment, it is still paid for 5 years. Those facts above recognized by PB. Rancah karya proven by letter No. 011/K/RK/VI/2012 on June 25th 2012 which stated lessee has rights until 2022 [14].

### **1.3.The termination of village ground treasure utilization No. 143/1728 between PB. Rancah Karya and Catur Tunggal Village Government**

The lease of village ground agreement terminated by Catur Tunggal Village Government, it is because of PB. Rancah Karya do negligence in payment. PB. Rancah karya do not paid the lease of village ground payment during thirteen (13) years as determined in agreement between both of them [15]. According to the fact above, Catur Tunggal Village Government request to PB. Rancah Karya turns over the ground along with the building thereon. That request is accepted by PB. Rancah Karya, thereafter ground and buildings are turn over back to Catur Tunggal Village Government [16]. It means that both of them agreed to terminate the lease agreement of village ground utilization earlier than determined in agreement. In fact, ground and building are turn over by PB. Rancah Karya in 2015. It is possible to perform, because of the termination of the agreement No. 143/1728 above is facilitated in that agreement No. 143/1728 in article 2 poin (d) number 3.

February 13th 2017 Catur Tunggal Village Government send the invitation letter to all lessee in complex of shop (total 82 buildings), those letter announce that village government will arrange the meeting between him and all the lessee. Those meeting arranged in February 16th 2017 at meeting hall Catur Tunggal Village by agenda announcement the new management of Kledokan Raya Complex of shop [17]. Those meeting inform that PB. Rancah Karya has turned over the ground and buildings to Catur Tunggal Village Government, it also clarified that PB. Rancah Karya has no authority in managing ground and buildings on that ground, it is belong to village government authority. Village government has intention to continuing the lease agreement between lessee and PB. Rancah Karya which agreed previously, it was confirm in that meeting also. However, it is different in the content of clause, especially in the amount of lease price. Village government gives the price more expensive than before per year such 11, 5 million rupiah for each building. This determination becoming potential problem toward all the lessee, all of them having objection with the new price of the lease [18].

The potential problem rise toward lessee who has finish his lease payment or paid off until 2022. Lessee argued that them has agreement only with PB. Rancah Karya not Catur Tunggal Village Government. Basically, village government did not offer a renewal agreement, they just continue the previously. They need to intent toward lessee who paid off the lease payment until 2022, it is because of lessee has rights to enjoy the buildings till the end of agreement such proven in letter No. 011/K/RK/VI/2012 on June 25th 2012 which

released by PB.Rancah Karya. Thus, village government needs to consider the consequences of lessee who paid off before the end of 2022.

## 2 Objective of the study

This research using context of problem how the implementation of personality principle in the context of lease, operator (PB. Rancah Karya), and Catur Tunggal village government in village ground utilization. This research using the law implementation based on Indonesian Civil Code as the legal analysis.

## 3 Methodology

This research is using methodology juridical and normative of research, the methodology that using the law, principles of law, and doctrine of law to answer the objective of study [19]. Purposes in using law is to know how the law applied in the facts. Data used such as agreements which related with the objective the study and Indonesia Civil Code. The author interviewed with related parties such as Catur Tunggal Village Government, PB. Rancah Karya, and some lessee of the building, those interview needed to integrated the facts as need, and implemented it before the law. This research using law approach, it mean author analyze the regulation related with objective of study such agreements, village ground [20]. This research analyze by qualitative analysis, any data, law, will explained compatible with objective of study [21].

## 4 Discussion

Personality principle implements in line with *pacta sunt servanda* principle, it has meaning parties who bound himself in agreement should be responsible before rights and obligation which is consent or agreement must be kept [22]. Those consent only bound the parties who determine on it, except the parties agreed to amendment [23]. Personality principle becoming a cause to parties to perform his rights and obligation of each, and it is becoming basic principle as well. The meaning above stated in article 1315 ICC, that consent which determining in agreement only for parties interest. That article has correlation with article 1340 ICC which stated 'an agreement be enforce to the party only', it mean that personality principle has close characteristic only for parties [24]. It would be open to third party if approved by parties before, this possibility refer to article 1317 ICC.

Article 1317 ICC stated that an agreement allowed to involving third party in getting benefit as long approved, this practice known as *beding ten bohoeve van derden* (promises to the third party). In giving the 'promises' is depend on parties as need in the agreement purpose. If line with the agreement purpose, it would be clarify also the rights and obligation of third party on that agreement, so the correlation between them is clear [25]. Those involvement should be put in agreement contain, therefore the involving of the third party considered in as agreement performance.

In agreement recognize a validity of contract, those requirements regulated in article 1320 ICC, those are: consent, capacity, certain things, permissible cause. Parties who violated the term of consent and capacity it similar with violated the subjective requirements, whereas who violated certain things and permissible cause it can be violated objective requirements. Violation of requirement 'subjective' in agreement give a rights to any party request the annulment toward agreement, difference with above, 'objective'

violation will make the agreement null and void. It means that the agreement considered never was, it because of the purposes, rights and obligation is failed to determine [26].

Subekti said 'in making an agreement, many parties determine the principal contains only, somehow both of them did not determine a specific or make it detail'. Those conditions will raise potential problems if there is misinterpretation in the future, especially if there any third party relationship that is coming. According to article 1339 ICC any agreement not bound the determined clause only, but also bound the characteristic of each agreement made toward equity, customary, and law [27].

In facts, Catur Tunggal village government has lease ground utilization agreement with PB. Rancah Karya, both of them become a party for twenty years, it based on agreement No. 07/KPTS/VIII/2001 on august 30th 2001 [10]. On that agreement determined the clause of termination if PB. Rancah Karya doing violation in performance. This agreement give the clear meaning about the termination clause. Based on that agreement, PB. Rancah Karya managed and build the complex of shop, it also offer the buildings to people (potential lessee) to lease. Some people who interested to lease accept the offering and made lease agreement between PB. Rancah Karya and lessee. in fact it is proved not in agreement only, but also lessee prove it by receipt of payment. Totally lessee paid for 5 installment of building ( 135 million rupiah for 20 years) and 1 for the ground (7,5 million rupiah for 5 years) by nominal 142,5 million rupiah [12].

The termination of the agreement No. 07/KPTS/VIII/2001 between Catur Tunggal and PB. Rancah Karya happen in 2015, this termination happen because of negligence of ground payment by PB. Rancah Karya. Based on that agreement, those terminations is legitimate to perform. The consequences are PB. Rancah Karya turn over the ground and building back to Catur Tunggal Village Government as determined in agreement. Afterward, Catur Tunggal Village Government would continue the lease agreement as has been done by PB. Rancah Karya. In continuing the agreement, Catur Tunggal change the clause of price, he marking up the price per year or in other word he out of was agreed before. In this context Catur Tunggal Village government do not becoming party in lease agreement, it supposed only to PB. Rancah Karya and lease, it because of there are no intention which determine about third party involving. If it is determine, Catur Tunggal village government has rights to enter into agreement to continuing or amendment it.

## 5 Conclusion

Based on fact and theory above, this research answer 2 conclusion based on the objective of study, first, personality principle does not implemented as regulated in Indonesian Civil Code by Catur Tunggal Village Government. Based on article 1315 and 1317 ICC involvement of third party is possible, but it is need to be determined first. Second, continuing the lease agreement by Catur Tunggal village government is violation in personality principle, it because of Catur Tunggal do not becoming a party according to 1317 ICC. It is better if PB. Rancah Karya terminate the lease agreement toward lease before turn over back the buildings toward Catur Tunggal village government. Afterward, Catur Tunggal village government may arrange the new agreement with difference contain before lessee.

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