


# Artikel 10

## Problems Associated with Granting Land Rights Owned by Local Government for Community Business Utilization

 Muhammad Luthfi

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## Conference Paper

# Problems Associated with Granting Land Rights Owned by Local Government for Community Business Utilization

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### Abstract.

With the granting of land lease rights owned by local governments for the use of community businesses, there are several problems that often occur. From the existence of these problems, it can become an obstacle in the implementation of the use of BMD in the form of a lease, which can be an obstacle to the source of Regional Original Income (PAD) which has the role and function of local governments in improving public services to the community. As well as these problems, often create new conflicts for parties who violate both the contents of the agreement and the laws and regulations. It is necessary to do further research, in order to minimize the problems and conflicts that often occur in society. Therefore, by using the empirical juridical research method, the author examines what are the problems that arise in the implementation of the Regional Property Rental Agreement in the form of agricultural land and how to resolve the problems that arise during the implementation of the Regional Property Rental Agreement in the form of agricultural land between the Government and the Second Party. This research method is accompanied by data collection consisting of observations, interviews, and data analysis. The results of this study indicate that the resolution of these problems is carried out with different settlement procedures. For the resolution of these problems, the legal aspect is something that needs to be considered because the consequences of this legal aspect have risks for those who perform an agreement.

**Keywords:** lease agreement, regional property, agricultural land

## 1. INTRODUCTION

Regional assets or goods which are regional economic resources that have roles and functions for local governments to improve public services to the community.[1] Good asset arrangement and management can be a potential source of financing for the implementation of local government functions and can also increase Regional Original Revenue (PAD) in a significant amount, but if not managed properly, these assets

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will become a cost burden because there are assets that require maintenance or maintenance costs and may experience a decline in asset value.[2]

In Article 1 Number 11 of Law No. 1 of 2004 concerning the State Treasury explains that, "Regional-owned goods are all goods purchased or obtained at the expense of the APBD or derived from other legitimate acquisitions". Further regulated in Article 5 Government Regulation no. 27 of 2014 concerning the Management of State/Regional Property, that it is the official who manages the Regional Property, and the Governor/Regent/Mayor is the holder of the power to manage the Regional Property, then the regional secretary is the manager of the goods, and the head of the unit is the Property User.[3]

Furthermore, the utilization of Regional Property is carried out, utilization is the utilization of state or regional property that is not used to carry out the duties and functions of the government or institutions to work units in the regions including the utilization and optimization of state/regional property without changing the status of ownership.[4] In the implementation of the use of regional property, it must be based on technical considerations by taking into account regional and public interests and can be carried out as long as it does not interfere with the implementation of the duties and functions of regional government administration without requiring the approval of the Regional People's Representative Council (DPRD).[5] Forms of Utilization of State/Regional Property in the form of:

1. Rent;
2. Lease;
3. Utilization Cooperation;
4. Build to Handover or Build Handover;
5. Infrastructure Provision Cooperation;[6]
6. Limited Cooperation in Infrastructure Financing. [7]

The activities for the utilization of regional property that have been mentioned can be carried out based on the decision or approval of the Governor/Regent/Mayor or property manager. Then it is stated in the agreement in accordance with the provisions of the rules for the different types of utilization activities accompanied by the objectives of each of these utilization activities. The difference lies in the form of activity, determination of utilization partners, period of time, object of utilization and terms of agreement formation.[9]

13 In carrying out the utilization of regional property, an agreement is needed in accordance with the form of utilization. One of them is in the form of rent, lease is the use of regional property by other parties for a certain period of time by receiving cash rewards (Article 1 Number 29 of Malang City Regional Regulation No. 1 of 2020).

10 In general, a lease agreement is a consensual agreement, namely an agreement that has been made by the party who rents out with the lessee that is binding at the moment an agreement is reached regarding the main elements, namely goods and prices. In addition, it also includes the nature of demanding demands from each party bound in it, from the party who rents it will demand the fulfillment of the conditions and obligations proposed.[8] So that the clauses in the agreement that have been agreed upon by the parties will later apply as law for them.

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However, in reality, in the implementation of the lease agreement, there are many problems, such as:

1. The lessee does not perform at all
2. The tenant is late for achievement
3. The tenant's achievements are not as good as it should be[9]

3 So related to this, the author will focus on discussing the Regional Property Rental Agreement (BMD) in the form of agricultural land between the Malang City Government and the Second Party. The implementation of the rental of regional property is carried out by the Malang City Financial and Regional Assets Agency (BKAD) as the manager of regional assets or regional property which carries out its duties and functions under and responsible to the Mayor through the Regional Secretary.

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11 In accordance with the *preresearch* that the author did at the Regional Finance and Assets Agency (BKAD) Malang City. There are problems that often arise in the implementation of rental agreements for regional property in the form of agricultural land, such as often the lessee leases the object back to another party and the tenant is late in paying the rent.

This shows that the lessee does not carry out its obligations in accordance with the contents of the mutually agreed agreement. The agreement means that there is a conformity of free will between the parties to make a legal engagement so that in the end the parties obtain a number of benefits for reciprocity in the points of the agreement.[10] So that the mutual benefit of the mutual agreement is not achieved and causes problems that result in the party who rents it, namely the Malang City Government which has the object of the lease being harmed. From the existence of these problems, it often creates new conflicts for parties who violate both the contents of the agreement and the laws and regulations. Also, this is one of the obstacles in the implementation of the use of BMD in the form of a lease, because the existence of these obstacles can hinder the source of Regional Original Income (PAD) which has the role and function of local governments in improving public services to the community.

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17 Basically, the agreement must be *mutually* for the parties who have agreed.[11] So it is necessary to have an appropriate solution to the problems that arise in the implementation of the agreement, so that no party is harmed. So that with regard to the problems in the implementation of the rental agreement of regional property carried out by the Malang City Government with the Second Party, the authors propose two problem formulations as a reference for discussion. *First*, on the problems that arise at the level of application in the lease agreement of renting propterti with the object of agricultural land in the city of Malang; *Second*, how to solve the problems that arise in the implementation of the regional property lease agreement with the object in the form of agricultural land by the city government with the second party.

## 2. METHODOLOGY/ MATERIALS

The method in this paper research uses the method empirical juridical, namely legal research commonly referred to as field research which examines the applicable provisions contained in social facts in society.[12] This approach aims to find out how the implementation of regional property rental agreements conducted by the Malang City Government and the Second Party. The author uses primary data sources and secondary data sources. Primary data sources are direct interviews. The secondary data sources are obtained from the rental agreement of regional property between the Malang City Government and the Second Party, Malang Mayor Regulation Number 91 of 2015 concerning Procedures for Implementation of Regional Property Lease in the Form of Land and/or Buildings, and Malang Mayor's Decree Number: 188.45/ 217/35-73-112/Th.2014 concerning Determination of the Amount of Rent for Regional Property in the Form of Agricultural Land in Malang City. In addition, secondary data is also obtained from literature studies through literature materials such as legislation, journals/legal writings, as well as browsing related internet sites.

## 3. RESULTS AND DISCUSSIONS

### 3.1. Problems Granting of Government-Owned Land Rental Rights

In order to carry out the utilization of regional property which has been carried out by the Malang City Government through the BKAD regional apparatus, there are problems that arise in the implementation of the agreement on the lease of renting property objecting to agricultural land carried out by the city government with the parties. Second. So, the authors identify the existing problems along with the estimated percentage of the implementation of the BMD lease agreement in the form of agricultural land experiencing problems in the use of regional assets, as follows:[13]

The lessee transfers the object of the lease to another party;

The tenant is late in paying the rent;

The lessee uses the object of the lease that is not accordance with its designation.

The Lease Transfers the Object of the Lease to Another Party

In order to carry out the utilization of regional property which has been carried out by the Malang City Government through the BKAD regional apparatus, there are problems that arise in the implementation of the agreement on the lease of renting property objecting to agricultural land carried out by the city government with the

1 parties. Second. So, the authors identify the existing problems along with the estimated percentage of the implementation of the BMD lease agreement in the form of agricultural land experiencing problems in the use of regional assets, as follows:[13]

Expiration of the lease term:

- 3 1. The validity of the terms of cancellation according to the agreement which is followed up with the revocation of the lease agreement by the Governor/Regent/Mayor or Property Manager;
- 3 2. Governor/Regent/Mayor or Property Manager revokes the lease agreement in the context of supervision and control; and
- 24 3. Other provisions in accordance with statutory regulations.

4 In addition, regarding the lessee transferring/releasing the BMD rental object to another party, it is not regulated in PP No. 27 of 2014 concerning the Management of State/Regional Property and PP. No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 concerning the Management of State/Regional Property. There is a clause in the BMD lease agreement in the form of agricultural land which states:

9 *"The Second Party does not transfer or transfer responsibility for the object of the agreement as referred to in Article 1 (regarding the object of the lease agreement) at the location as referred to in Article 2 (regarding the location of the object of the agreement), to other party without the written consent of the First Party".*

24 Thus, based on the Regulation of the Mayor of Malang No. 91 of 2015, Malang City Regulation No. 1 of 2020, as well as the contents of the BMD lease agreement in the form of agricultural land regarding transferring or repeating the lease of the object to another party is an act that is not allowed. So that if the tenant violates the provisions in the article, it can be declared negligent in carrying out the agreement.

7 The Tenant is Late in Paying the Rent

In the case that the tenant is often late in paying the rent, this happens a lot and often happens. For example, in the agreement, the maturity date for payment of rent is determined no later than December 31 (thirty one) of each year during the term of the agreement, but often the lessee pays the rent at a time that has exceeded the deadline in the agreement. By including various reasons such as damaged rice being attacked by pests, eaten by rats and others so that the tenants (farmers) are late in paying because their income has decreased. There are even tenants who are in arrears in paying the rent for three years and have not paid the rent.[14]

3 Regarding the rental period in the BMD lease agreement in the form of agricultural land, there is a clause in Article 10 which provides a tolerance for payment, which is no later than 1 month from the maturity date of the lease payment specified in the agreement.

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Meanwhile, regarding the payment of rent in Article 10 paragraph (1) of Malang Mayor Regulation No. 91 of 2015 concerning Procedures for the Implementation of Lease of Regional Property in the Form of Land and/or Buildings, it is stated that, "rent payments are made at once no later than 2 (two) working days prior to signing the agreement." This is also regulated in Article 48 paragraph (2) of Malang City Regulation No. 1 of 2020 concerning Management of Regional Property, Article 130 paragraph (2) of Permendagri No. 19 of 2016 concerning Guidelines for the Management of Regional Property and Article 29 paragraph (9) of PP No. 27 of 2014 concerning the Management of State/Regional Property. While in PP No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 concerning the Management of State/Regional Property, there is an amendment to article 29 paragraph (9) namely "Depositing the rent must be made at once in cash before the signing of the State/Regional Property Lease agreement". So based on the above regulations, the provisions of Article 29 paragraph (9) PP No. 28 of 2020 This is in accordance with the principle of *lex superiori derogat legi inferiori*, i.e. higher laws and regulations override/lower laws and regulations.[15]

In the laws and regulations governing BMD rental, it is not clearly regulated regarding the provisions of the tenant being late in paying the rent. Likewise, the provisions regarding the tolerance of the rental payment deadline are also not regulated. However, in the BMD lease agreement in the form of agricultural land, it has been stated implicitly that the payment of the rent is made no later than one month from the maturity specified in the BMD lease agreement in the form of agricultural land.

The Lessee Uses the Object of the Lease that is not

There are 2 (two) cases related to the tenant using the object of the lease that is not in accordance with its designation in the agreement that occurred at the Malang City BKAD in the near future. Problems that occur in the BMD lease agreement in the form of agricultural land, namely:

1. The tenant makes the object of land lease which should be used as agricultural land, but in practice the land is actually leveled by the tenant and will be used as a semi-permanent building which will later be used as a warehouse.
2. The lessee makes the object of land lease which should be used as agricultural land, but will be designated as a pond.[16]

Regarding this, in Article 57 paragraph (3) of Malang Mayor Regulation No. 91 of 2015 concerning Procedures for the Implementation of Regional Property in the Form of Land and/or Buildings stipulates that Tenants are prohibited from using Regional Property that is leased for designations other than those that have been determined by the Property Manager/Property User in accordance with the lease agreement.

This is also prohibited in the agreement, because there is a clause in this agreement which reads, "The Second Party does not use the object of the agreement as referred to in Article 1 (regarding the object of the agreement) at the location as referred to in Article 2 (regarding the location of the object of the agreement), for purposes other than those specified in the agreement. specified in the agreement". So that the lessee does not fulfill or carry out one of the two main obligations under Article 1560 number 1 of the Civil Code, namely to use the goods in a careful manner and use it according to its purpose or designation in the agreement or in accordance with the intent and purpose of the lease agreement.

### 3.2. Resolution of Problems on Granting of Government Land Lease Rights

Resolution of the Problem with the Lessee Transferring the Object of the Lease to Another Party

Regarding this problem, the Malang City BKAD always checks the location every time there is a tenant who will extend the BMD lease agreement in the form of agricultural land. This is done in the context of monitoring the utilization of regional assets. From the location check, the Malang City BKAD can find out whether it is true that the tenant is working on the agricultural land himself or has re-lease/transferred the object of the

lease to another party. If the lessee transfers/transfers the object of the lease to another party, the settlement carried out by the Malang City BKAD is as follows:

Calling the tenant through a summons;

Then confirm whether it is true that the lessee has transferred the object of the lease to another party;

If this is true, the BMD Lease Agreement in the form of Agricultural Land by the lessee cannot be extended if the agreement has expired.[17]

So the legal consequence is not a cancellation of the agreement. Because, if the cancellation of the agreement is carried out during the term of the agreement. However, in the BMD lease agreement in the form of agricultural land, the BKAD of Malang City is waiting for the term of the agreement to expire, then the lessee cannot extend the BMD lease agreement in the form of agricultural land.[18]

As a result of the tenant who violates the contents of the agreement by transferring the object of the BMD lease in the form of agricultural land, it is clear that he cannot rent the BMD anymore. And usually the tenant suffers a loss caused by the tenant not being able to extend the BMD lease agreement in the form of agricultural land while the object of the lease has been leased again to another party.[19] For his actions, the tenant loses, because the object of the lease should be re-controlled by the Malang City Government.

In the event that the lessee transfers the object of the BMD lease in the form of agricultural land as stated in the clause of the agreement in Article 7 paragraph (1) letter d and the legal consequence is that the First Party has the right to revoke or terminate the Cooperation Agreement (BMD lease agreement) unilaterally because there is a clause in the agreement in Article 11 (letter b) which states, By setting aside the provisions of Article 1266 and Article 1267 of the Civil Code, the Parties agree to stipulate the following matters:

This Agreement can be terminated unilaterally by the First Party if the Second Party within the specified time is clearly unable to carry out its obligations to carry out the activities agreed upon in this Agreement due to non-Force Majeure.

In Article 12 Malang Mayor Regulation No. 91 of 2015 concerning Procedures for the Implementation of Lease of Regional Property in the Form of Land and/or Buildings regulates the termination of the lease which states that, the lease ends in the event that:

Expiration of the lease term;

The property manager revokes the lease agreement in the context of controlling control;

Violation of existing agreements

That the action of the tenant in terms of transferring the object of the lease to another party is a violation of the agreed agreement. Furthermore, in Article 62 it is explained related to the supervision of the implementation of the BMD lease agreement which in this case is carried out by the goods manager, namely the Malang City BKAD. It is also explained regarding the follow-up to the supervision carried out by the goods manager, as follows:

1. Property managers/goods users/proxy of goods users supervise the implementation of rental agreements for regional property which are under their respective control in accordance with the signed agreement.
2. As a follow-up to the supervision as referred to in paragraph (1), the property manager/goods user/property user issues a warning letter/reprimand to the tenant for violating the lease agreement and the provisions of the legislation.
3. The property manager/goods user/proxy of goods user can stop the rental activity if the warning/reprimand letter as referred to in paragraph (2) is not heeded by the lessee.
4. Property manager/goods user/goods user proxies may request assistance from functional supervisory apparatus in conducting supervision as referred to in paragraph (1).

When referring to Article 62 of Malang Mayor Regulation No. 91 of 2015, the settlement of the problem of the lessee transferring the object of the lease to another party carried out by the Malang City BKAD according to the author is not appropriate because in its implementation the Malang City BKAD waits for the expiration of the lease term in the agreement, then the result is that the tenant cannot extend the agreement rent the BMD. Meanwhile, both in Article 11 (letter b) of the BMD lease agreement in the form of agricultural land and Article 62 paragraph (3) of Malang Mayor Regulation No. 91 of 2015, that if the lessee does not carry out its obligations in the agreement or has violated the contents of the agreement, then the BMD lease agreement can be unilaterally terminated by the first party or the lease activity is terminated. Thus, in the author's opinion, the diction of the word "termination of the agreement" is the same as the cancellation of the agreement, namely the agreement is terminated when the term of the agreement runs. Meanwhile, in its implementation, the Malang City BKAD waits

for the expiration of the lease term in the agreement, then the result is that the lessee cannot extend the BMD rental agreement.

4 In Article 52 letter c of Malang City Regulation No. 1 of 2020 concerning the Management of Regional Property stipulates that the lease of regional property is declared invalid when the lessee transfers the lease rights to another party. Furthermore, 1 Article 112 regulates related to compensation and sanctions, that:

- 5 1. Every regional loss due to negligence, misuse or violation of the law on the management of Regional Property is resolved through a claim for compensation in accordance with the provisions of the legislation.
2. Any party that causes regional losses as referred to in paragraph (1) may be subject to administrative sanctions and/or criminal sanctions in accordance with the provisions of laws and regulations.

12 Meanwhile, the legal consequences for violating the agreement by the lessee are regulated in Article 133 of the Minister of Home Affairs Regulation No. 19 of 2016 concerning Guidelines for the Management of Regional Property, that the lease ends if the validity of the conditions are canceled according to the agreement which is followed up with the revocation of the lease agreement by the Governor/Regent/Mayor or Property Manager and the Governor/Regent/Mayor or Property Manager revokes the lease agreement in the context of supervision and control.

30 In PP No. 27 of 2014 concerning the Management of State/Regional Property and 6 Government Regulation No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 concerning the Management of State/Regional Property, also does not regulate the legal consequences or risks of problems with the lessee transferring the object of BMD lease in the form of agricultural land.

34 When referring to the Regulation of the Mayor of Malang No. 91 of 2015 only regulates the follow-up to the implementation of the supervision of the BMD agreement if there is a violation of the BMD lease agreement, which is contained in the Guidance, Supervision and Control Chapter, namely in Article 62. So there is no clear resolution procedure related to the problems that are explicitly mentioned in article 3 paragraph (3) Malang Mayor Regulation no. 91 of 2015, namely the object of the lease cannot be transferred.

#### Resolution of the Problem of the Tenant Being Late Paying the Rent

There are two kinds of solutions to the problem of the tenant being late paying the rent carried out by the Malang City BKAD, as follows:

Regarding the problem of the tenant being late in paying the rent, by giving various reasons such as the plants being damaged, being attacked by pests or being eaten by rats, and so on. Then the solution, namely:

The Malang City BKAD provides a tolerance provision for the extension of the payment period for three months from the deadline specified in the agreement.

If the rental fee is late for more than 3 (three) months, the Cooperation Agreement will not be issued or in this case a new Lease Agreement.

The Malang City BKAD has given proof of payment and on the agricultural land (object of lease) it has been noted that the tenant is working on it or renting it and is not renting it out to someone else, but if the late paying tenant has reached the harvest, the agreement can be concluded. decided by the Malang City BKAD. This is a form of tolerance from the Malang City BKAD to the tenant or farmer so that within the term of the lease agreement, the farmer can enjoy his harvest.

This Cooperation Agreement is very useful for the tenants as a legal basis, because often there is a conflict between the farmers fighting over the arable land. So, this Cooperation Agreement is proof that the arable land is the right of the cultivator/tenant who has rented it to the Malang City Government as the first party through its SKPD, namely the Malang City BKAD. So, when there is a conflict, the Cooperation Agreement determines who has the right to work on the agricultural land, because the Cooperation Agreement contains the names and identities of the parties entitled to the agricultural land.[20]

The consequences given to the tenant by not issuing the new Cooperation Agreement put the tenant in a weak position, because there is no legal certainty that can be physically proven through the Agreement Letter that the tenant is entitled to work on the agricultural land. However, if you look at the contents/clauses of the BMD lease agreement in the form of agricultural land, Article 10 which states that if within 1 month the second party has not paid the payment and or does not fulfill or neglect all or part of the obligations of the Second Party, then the First Party has the right to terminate the agreement. unilaterally preceded by a warning letter.

The consideration of the Malang City Government through the Malang City BKAD in providing an extension of rent payment is that the tenant is close to agricultural land/regional assets, so it is the tenant who maintains the regional assets by working on the land. So the results from agricultural land/regional assets also return to the Malang City Government for PAD. Thus, because of this mutually beneficial reciprocity, the Malang City BKAD tolerates an extension of the rental payment period.[21]

Regarding the due date for payment of rent and the lessee does not pay the debt, the settlement is as follows :

BKAD Malang City provides invoices to tenants with a period of 7 (seven) days and is given up to 3 (three) times.

The Malang City BKAD gave a warning letter or subpoena. If after being given a bill for payment by the tenant, but the rent is still not paid or until there is arrears in BMD rental payments.

If a warning letter has been given three times and the tenant still does not pay the debt, the Malang City BKAD has the authority to report this to the KPKNL (Office of State Assets and Auction Services).

Then KPKNL will follow up by calling the lessee, to collect the debt by providing a bill issued by KPKNL.

If the tenant still does not pay off, the KPKNL will confiscate the debtor's assets to pay off the debt.[22]

In the BMD Agricultural Land Lease Agreement, it is stated that the period of payment of the rent in the BMD Lease Agreement in the form of Agricultural Land has a clause that provides a tolerance for payment, which is no later than 1 month from the due date of the lease payment specified in the agreement. This is contained in the Sanctions Chapter of Article 10, namely:

if within 1 month the Second Party has not paid the payment as referred to in Article 5 (nominal rental price) and/or does not fulfill or neglect all or part of the obligations of the Second Party, then the Second Party The first has the right to unilaterally terminate this Agreement, preceded by 3 (three) warning letters with a period of 7 (seven) calendar days from the end of the agreement.

It is known that the implementation of the problem solving for the tenants being late in paying the rent, the Malang City BKAD so far has never applied fines to the tenants who are late in paying the rent, this is based on the results of interviews with the staff in the area of utilization of regional assets.

In Malang Mayor Regulation No. 91 of 2015 concerning Procedures for the Implementation of Lease of Regional Property in the Form of Land and/or Buildings does not regulate the settlement or legal consequences/risks for the problem of the tenant being late in paying the rent. However, in Article 69 paragraphs 1 and 2 it is stated that,

Property Manager/Property User imposes a fine on the tenant for violations committed other than the provisions as referred to in article 67 (related to the delivery and repair of

23 Regional Property), within the limits of their respective authority based on the agreement in accordance with the provisions of the legislation.

The payment and settlement of fines as referred to in paragraph (1) applies mutatis mutandis to the provisions in Article 68 (regarding fines for not submitting and repairing BMD, are not paid off by the tenant, the settlement is submitted to the State Receivable Affairs Committee)

17 In Article 112 of Malang City Regulation No. 1 of 2020 concerning the Management of Regional Property, regulates follow-up actions for negligence, abuse or violation of the law on the implementation of BMD rental which is a form of BMD utilization and BMD management. This can be resolved through a claim for compensation in accordance with statutory provisions. Thus, if any party that causes regional losses may be subject to administrative sanctions and/or criminal sanctions in accordance with the provisions of laws and regulations.

16  
28 Likewise in Article 510 of Permendagri No. 19 of 2016 concerning Guidelines for the Management of Regional Property and Article 99 of PP No. 27 of 2014 concerning the Management of State/Regional Property, whose substance is related to the Compensation and Sanctions Chapter which is the same as the contents of Article 112 of Malang City Regulation No. 1 of 2020 which has been described previously. While in PP No. 27 of 2014, as well as PP. No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 also does not regulate the settlement of problems with tenants who are late in paying rent.

29  
35 In connection with the settlement of the problem of the tenant being late in paying the rent carried out by the Malang City BKAD, there is no Standard Operating Procedure. The problem solving procedure that has been carried out so far is an initiative from the Malang City BKAD to minimize conflicts/problems in the agreement. The settlement procedure carried out by the Malang City BKAD in this case, has been running effectively. Because with the bill and a warning letter the tenant has the intention to immediately pay the rent.[23]

Settlement of the Tenant's Problems Using the Object of the Lease is not in Accordance with Designation in the Agreement

4 If there is a tenant who uses the object of the lease that is not in accordance with the designation in the agreement. The purpose of the lease agreement in the form of agricultural land cannot be extended in this case is to wait until the end of the lease term in the agreement, then the lessee cannot extend the lease agreement for BMD in the form of agricultural land. However, in the future, regulations will be made if the

tenant violates the contents of the agreement, the agreement will be canceled at that time.[24]

Regarding the settlement of tenant problems using the object of the lease that is not in accordance with its designation, in Malang Mayor Regulation No. 91 of 2015 is not explicitly regulated regarding the prohibition in Article 57 paragraph (3) regarding Tenants being prohibited from using Regional Property that is leased for other purposes than those that have been determined by the Property Manager/Property User in accordance with the lease agreement. However, it is stated in the Guidance, Supervision and Control Chapter of Article 62 explaining the follow-up related to the Property Manager carrying out supervision, as follows:

1. Property managers/goods users/proxy of goods users supervise the implementation of rental agreements for regional property which are under their respective control in accordance with the signed agreement.
2. As a follow-up to the supervision as referred to in paragraph (1), the property manager/goods user/property user issues a warning letter/reprimand to the tenant for violating the lease agreement and the provisions of the legislation.
3. The property manager/goods user/proxy of goods user can stop the rental activity if the warning/reprimand letter as referred to in paragraph (2) is not heeded by the lessee.
4. Property manager/goods user/goods user proxies may request assistance from functional supervisory apparatus in conducting supervision as referred to in paragraph (1).

When referring to Article 62 of Malang Mayor Regulation No. 91 of 2015, the solution to these problems according to the author is not appropriate. Because, in the implementation of the settlement of this problem, the Malang City BKAD is still waiting until the end of the lease term in the agreement, then the lessee cannot extend the BMD lease agreement in the form of agricultural land. While the provisions in Article 62 above, it is stated that if the tenant does not heed the warning letter, then the rental activity can be stopped.

In Malang City Regulation No. 1 of 2020 concerning the Management of Regional Property does not explicitly regulate the resolution of this problem. It's just that it is stated in the Chapter on Compensation and Sanctions Article 112, that:

- 5 1. Every regional loss due to negligence, misuse or violation of the law on the management of Regional Property is resolved through a claim for compensation in accordance with the provisions of the legislation.
2. Any party that causes regional losses as referred to in paragraph (1) may be subject to administrative sanctions and/or criminal sanctions in accordance with the provisions of laws and regulations.

40 While in Permendagri No. 19 of 2016 concerning Guidelines for the Management of Regional Property, PP No. 27 of 2014 concerning Management of State/Regional Property, as well as Government Regulation No. 28 of 2020 concerning Amendments to PP No. 27 of 2014 does not regulate the settlement of tenant problems using the object of the lease that is not in accordance with its designation. Furthermore, the clause in the BMD Lease Agreement in the Form of Agricultural Land as referred to in (Article 7 letter c) also regulates the prohibition of tenants from using leased objects that are not in accordance with their designation. For the actions of the tenant, the First Party (Malang City Government) has the right to carry out the termination of the agreement. Regarding the revocation or termination of the agreement, it is contained in the Letter of Agreement article 11 (letter a) which states, *By setting aside the provisions of Article 1266 and Article 1267 of the Civil Code, the Parties agree to stipulate the following matters:*

8 18 *This agreement can be terminated unilaterally, if one of the parties does not fulfill or neglect all or part of the contents of this Agreement by not fulfilling these obligations, even though they have been warned with warning letters 3 (three) times, for a period of 7 (seven) calendar days. from the end of the agreement period.*

22 9 Based on the clauses in the agreement that have been agreed by the parties, the lessee does not fulfill the performance or has violated the agreement. So as the agreement applies as a law for the parties, the party who rents out, namely the Malang City Government has the right to unilaterally terminate the agreement.

22 Basically the problem solving on the implementation of the BMD lease agreement also implements the principle of *pacta sunt servanda*, where the agreement is binding as law for the makers.[25] So that the settlement is based on the points of agreement contained in the agreement. However, if the agreement does not regulate the settlement of problems in the implementation of the BMD lease agreement, the basis used as a settlement is the applicable laws and regulations governing this matter.

## 4. CONCLUSION AND RECOMMENDATION

3 The problem that occurs in the implementation of the Regional Property Lease Agreement (BMD) in the form of agricultural land between the Malang City Government and the Second Party (tenant) is that the tenant transfers the object of the lease to another party, the tenant is often late in paying the rent and the tenant uses the object of the lease is not in accordance with its designation. The matter has been regulated in Malang Mayor Regulation No. 91 of 2015, Malang City Regulation No. 1 of 2020 and the BMD Lease Agreement in the Form of Agricultural Land that this action is not allowed.

The procedure for solving the three problems is different. If it is adjusted to the contents of the agreement, it can be seen that the implementation of problem solving carried out by the Malang City BKAD so far has not been in accordance with the contents of the agreement. Because, so far what has been done by the Malang City BKAD in solving these problems is not by severing the agreement but by waiting for the lease period to expire, then the agreement cannot be extended.

## References

- [1] Putri S, Meilani I. Role of Regional Financial & Assets Management Agency (BPKAD) in the Mediation Process of BPHTB & PPH. *Sultan Agung Notary Law Rev.* 2021 Aug;3(3):1127–34.
- [2] Sofiandi A. Urgensi Akta Notaris Dalam Pelaksanaan Kegiatan Pemanfaatan Barang Milik Daerah Pasca Peraturan Menteri Dalam Negeri Nomor 19 Tahun 2016 Tentang Pedoman Pengelolaan Barang Milik Daerah. Universitas Islam Indonesia Yogyakarta; 2017.
- [3] Sondakh BY. “Analisis Pengelolaan Barang Milik Daerah (Studi Kasus Pada Badan Pengelola Keuangan dan Aset Daerah Kabupaten Minahasa Selatan,” vol. 2, pp. 225–245, 2021.
- [4] Peraturan Pemerintah Republik Indonesia Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara/Daerah. 2014, pp. 1–113.
- [5] Permendagri, “Nomor 19 Tahun 2016 tentang Pedoman Pengelolaan Barang Milik Daerah,” no. July, pp. 1–23, 2016.
- [6] Indonesia R. Peraturan Pemerintah Nomor 28 Tahun 2020 Tentang Perubahan Atas Peraturan Pemerintah Nomor 27 Tahun 2014 Tentang Pengelolaan Barang Milik Negara/Daerah. *Lembaran Negara Republik Indones.* Nomor. 2020;142(040501):1–66.

- [7] SANI A. Tanggung Jawab Para Pihak Dalam Pelaksanaan Perjanjian Sewa Menyewa Mobil Pada C.V. Mutiara Transportation Di Kota Tegal. 2005. pp. 1–71.
- [8] Isdian Anggraeny SA. Kata Sepakat Dalam Perjanjian Dan Relevansinya Sebagai Upaya Pencegahan Wanprestasi. *Hukum*. 2020;5(1):1–9.
- [9] Sukananda S, Mudiparwanto WA. Akibat Hukum terhadap Perjanjian Yang Mengandung Cacat Kehendak Berupa Kesesatan Atau Kekhilafan (Dwaling) Di Dalam Sistem Hukum Indonesia. *Justitia J. Huk*. 2020;4(1):166–83.
- [10] Soekanto S. Pengantar Penelitian Hukum / Soerjono SOekanto. UI-Press; 1986.
- [11] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 18 Januari 2021.”
- [12] Purwadi A. Harmonisasi Pengaturan Perencanaan Pembangunan Antara Pusat Dan Daerah Era Otonomi Daerah. *Perspektif*. 2013;18(2):86.
- [13] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 05 Maret 2021,,” Malang.
- [14] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 1 Februari 2021,,” Malang.
- [15] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 05 Maret 2021,,” Malang.
- [16] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 1 Februari 2021,,” Malang, 2013.
- [17] Wawancara T. “Wawancara dengan Staff Subid Penggunausahaan Bidang Pemanfaatan Aset Daerah BKAD Kota Malang. 05 Maret 2021,,” Malang, 2021.
- [18] W. D. R. Isdian Anggraeny, Tongat, “Urgensi Pelaksanaan Tahapan Persiapan Penyusunan Kontrak Oleh Pelaku Bisnis Dalam Mengkontruksi Hubungan Bisnis” *Yurispruden*, vol. Volume 3, no. 1, pp. 1–11.



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**Problems Associated with Granting Land Rights Owned by Local Government for Community Business Utilization**

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**Abstract.**  
With the granting of land lease rights owned by local governments for the use of community businesses, there are several problems that often occur. From the existence of these problems, it can become an obstacle in the implementation of the use of BMD in the form of a lease, which can be an obstacle to the source of Regional Original Income (PAD) which has the role and function of local governments in improving public services to the community. As well as these problems, often create new conflicts for parties who violate both the contents of the agreement and the laws and regulations. It is necessary to do further research, in order to minimize the problems and conflicts that often occur in society. Therefore, by using the empirical juridical research method, the author examines what are the problems that arise in the implementation of the Regional Property Rental Agreement in the form of agricultural land and how to resolve the problems that arise during the implementation of the Regional Property Rental Agreement in the form of agricultural land between the Government and the Second Party. This research method is accompanied by data collection consisting of observations, interviews, and data analysis. The results of this study indicate that the resolution of these problems is carried out with different settlement procedures. For the resolution of these problems, the legal aspect is something that needs to be considered because the consequences of this legal aspect have risks for those who perform an agreement.

**Keywords:** lease agreement, regional property, agricultural land

**1. INTRODUCTION**

Regional assets or goods which are regional economic resources that have roles and functions for local governments to improve public services to the community.[1] Good asset arrangement and management can be a potential source of financing for the implementation of local government functions and can also increase Regional Original Revenue (PAD) in a significant amount, but if not managed properly, these assets

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