

# Lease Agreement Characteristics of Virtual Office

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## ABSTRACT

This article is entitled Characteristics of Virtual Office Lease Agreements. This is a normative juridical legal research. The approach used are statute approach and conceptual approach. The problem discussed in this article is Virtual Office lease agreement that uses office addresses as business addresses and make the business address the object of the agreement. In fact, there is no physical address, meaning the object of the agreement is an intangible object that is associated with the validity of the agreement. There are 2 (two) main issues in this research, namely: (1) The concept of objects in a Virtual Office lease agreement rents (2) The application of leasing agreement principle in BW to Virtual Office.

**Keywords:** Concept of Objects, Lease Agreements, Virtual Offices.

## 1. INTRODUCTION

In the past decade, information technology has developed rapidly and has played a major role in driving economic growth globally. Many business sectors switch from conventional to digital technology or commonly known as E-commerce. Electronic Commerce or abbreviated as e-commerce is a business activity involving consumers, manufacturers, service providers, and intermediaries by using computer networks<sup>1</sup>. Economic development must be accompanied by good legal developments. The function of the law is not only to regulate but also to guarantee legal certainty about relationships that arise as a result of business relationships. To ensure legal certainty between parties, an agreement or contract is required. The legal certainty of an agreement is revealed from the power of binding the agreement, i.e as an Act for those who make it<sup>2</sup>. Article 1313 *Burgelijk Wetboek* explains that an Agreement is an act in which one party or more binding in Article 1313 BW is considered incomplete.

While there is no standard definition of Virtual Office term in theory, in practice there is definition based on several concepts from experts and practitioners (Roesli, Heri, & Rahayu, 2017). One definition explains that Virtual Office is a business that offers office address rentals equipped with services such as receptionists, meeting rooms or conference rooms without having to physically own or rent an office<sup>3</sup>.

<sup>1</sup> Niniiek Suparni, *Cyberspace, Problematika dan Antisipasi pengaturannya*, Sinar Grafika, Jakarta, 2009, p. 30

<sup>2</sup> Salim, *Suatu Pengantar Hukum Perdata Tertulis (BW)*, Cet. III, Sinar Grafika, Yogyakarta, 2005, p. 37

<sup>3</sup> Aurelio Locsin, "Define a Virtual Office", <http://smallbusiness.chron.com/define-virtual-office>



Problems arise from the Positive Law that applies in Indonesia, because the definition of a lease agreement according to BW is to give to others "the enjoyment of an item". Goods are narrow meanings of objects, namely something tangible or concrete. Based on article 1320 BW, in order to a law is deemed valid in binding both parties, four conditions are needed. The legal terms of the agreement are stipulated in Article 1320 BW. There are 4 legal terms of agreement, they are:

1. Subject
2. Capability
3. A certain object
4. Allowed cause

Virtual Office leasing agreements are constrained by the third condition "certain object". In a leasing agreement, the object promised must be an "enjoyment of an item" while the object in Virtual office agreement is an office address or an intangible object. This is interesting to study because this is a manifestation of the development of the world of information technology that has changed the pattern of the business world. At present, a lease agreement does not always include tangible objects. Objects of intangible objects can also become objects of agreement. Therefore the analysis of this research is more emphasized on objects in Virtual Offices related to the validity of the lease agreement.

Based on the background described above, the problems in this study can be formulated as follows:

1. Objects in a Virtual Office lease agreement
2. The application of lease agreement principle in BW to a Virtual Office lease agreement leases

## **2. METHOD**

This is normative legal research that begins with gathering legal norms from the source, analyzing relationships between legal norms, explaining difficult fields, and predicting futuristic developments. The conceptual approach is used by studying views and doctrines in law. The researchers find ideas that emerged legal notions, legal concepts, and legal principles relevant to the issues at hand. This conceptual approach is used to lay legal concepts about agreements within the scope of a lease agreement for a Virtual Office. The conceptual approach is carried out when researchers do not move from the existing legal rules. This is conducted because there is no or no

legal rule for the problem at hand<sup>4</sup>. The Legislative Approach is carried out by examining all laws and regulations relating to legal issues being addressed. Legal analysis resulting from normative legal research that uses a legislative approach is more accurate if aided by one or more other suitable approaches to enrich legal judgments to deal with the legal problems at hand<sup>5</sup>.

### 3. RESULTS AND DISCUSSION

#### 3.1 The object in the lease agreement rents a virtual office

The regulation of objects in Indonesia is summarized in BW, and is more detailed in Book II BW to ensure the existence of excellent legal certainty. The position of objects in human life is very important and is dominated by legal provisions which are positioned as *dwingend recht*. Therefore, the relevant legal provisions must apply, and it is not possible for the parties to override or deviate them<sup>6</sup>. With such normalization patterns, Book II BW is closed in nature.

BW distinguishes objects in several groups, namely tangible objects and intangible objects, movable and immovable objects, objects that can be used up and which cannot be used up, objects that are now available and which will later be available, objects that can be divided and cannot be divided, and objects which are in trade and outside of trade. There is a need to distinguish objects as registered and unregistered ones. There are two terms used in BW, objects (*zaak*) and goods (*goed*). In general, objects (tangible, parts of wealth, rights) are things that can be controlled by humans and can be used as objects of law (Article 499 BW). This definition is abstract, which is called the legal subject (supporting rights and obligations). The word "can" here has an important meaning, because it opens up a variety of possibilities, namely at certain times something is not yet a legal object, but at other times it is an object of law. To be an object of law there are conditions that must be fulfilled, namely authority of human and has economic value and therefore can be used as an object (deed) law<sup>7</sup>.

Definition of Objects Under Article 499 BW,

"Material is every item and every right, which can be controlled by property rights."

<sup>4</sup> Peter Mahmud Marzuki, *Penelitian hukum*, Kencana Prenada Media Group, Jakarta, April, 2013, p. 225

<sup>5</sup> Jonaedi Efendi dan Johny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, Prenadamedia Group, Jakarta, 2016, p. 134.

<sup>6</sup> Moh. Isnaeni, *Hukum Benda dalam Burgelijk Wetboek*, PT. Revka Citra Media, Surabaya, 2016, p. 4

<sup>7</sup> Mariam Darus Badruzaman, *Mencari Sistem Hukum Benda Nasional*, Cet. 2, Alumni, Bandung, 1997, p. 35

From the definition, objects in the meaning of law are all things that can be objects of law and goods that can be owned and the rights of every person who is protected by law, where the object can be in the form of goods and intangible items<sup>8</sup>.

Virtual Offices are a manifestation of fast-moving technological developments that alters the current pattern of human thinking. Economic development followed by technological development leads people to advance and think effectively and efficiently. With the existence of a Virtual Office, a start-up entrepreneur does not need to need large fees and a large number of employees. Therefore, the presence of a Virtual Office is welcomed positively by entrepreneurs, because this concept is a new concept in business. This concept is able to bridge the problems in society.

The object in a Virtual Office lease agreement is a business address. An object can be made a legal object if it fulfills certain conditions, i.e human authority, economic value and can therefore be used as an object (legal action).

Concept of Objects in a Virtual Office lease Agreement is an intangible object. The address is used as an object that can be used as an object in a lease agreement. To prove that this concept can be used as a legal object, it must fulfill the requirements, i.e human authority and economic value. Business addresses as object of agreement can be categorized as intangible object, hence, comparison is needed to analyze. Current domain name is object.

In essence, address is closely related to the term position, residence and domicile. Definition of address is found in the legal context of the Limited Liability Company regulated in Law No. 40 of 2007 on Limited Liability Companies. While not explicitly explained, this definition can be used as a limitation. In Law No. 40 of 2007 contains Article 5 Paragraph (2) and (3), Article 8 Paragraph (2) letter a, Article 9 Paragraph (1) letter e and Article 29 Paragraph (2) letter b. In the explanation of Article 5 of Law No. 40 of 2007, a Company must have an address in accordance with the place of domicile that must be stated, including in correspondence. Thus, the definition of address is the identity of a location that shows the place of residence/residence/domicile.

Domain names can also be found in Law Number 19 of 2016 concerning Amendments to Information and Technology Law Number 11 of 2008, namely Article 1 Number 20, that domain names are internet addresses of state organizers, people, business entities, and/or communities, which can be used in communicating via the internet, which is in the form of a code or

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<sup>8</sup> See the opinion, Sri Soedewi Maschoen Sofyan, *Civil Law: The Law of Objects*, 4<sup>th</sup> edition, Yogyakarta, Liberty, 1981, p. 2 compared with the opinion of Subekti in in the *Principles of Civil Law*, 26<sup>th</sup> edition, Intermedia, Jakarta, 1994, p. 13

arrangement of characters that are unique to indicate the location. Judging from its meaning and function there are characteristics that are similar between domain names and addresses, both of which are an identity that indicates existence. The domain name shows a location that is on a computer connected to the internet while the address shows a location or place of residence in the form of buildings, offices and houses.

Furthermore, domain name and address to be regarded as legal objects must fulfill the requirements, i.e human authority and economic value.

#### 1. Human authority

Domain name and address can be authorized. Domain name can be mastered by registering the domain name to the registrar in Indonesia and registered to Indonesian domain name (PANDI) to be used as a web address<sup>9</sup>.

#### 1. Economic value

Domain name not only can source of goods, services, business or information but also identify virtual location of the source. Economic value of domain names increases every week as more people feel the economic value of domain names. Its existence is now recognized as an intangible asset as it is an Intellectual Property<sup>10</sup>. An address located in the strategic area now has economic value because the strategic area is an attractive offer for entrepreneurs who want to have a prestige office address.

Currently the address and domain name has become the object of many agreements both in the use of the website address and the use of renting a virtual office. The address and domain name has fulfilled this element so that it can become an object of law. Address is an object such as a domain name.

### **3.2 BW principle to virtual office lease agreement**

Article 1548 BW outlines that a lease agreement is an agreement by which one party binds itself to provide the other party with the pleasure of an item for a certain period of time and with the payment of a price; the payment of which the party has agreed. The essential clause of the lease contract is goods, price and time period. In a lease contract, the lever leases the item to the lessee, but in this case the item is handed over resulting in the transfer of ownership rights in the sale and purchase contract because the delivery of the goods in the lease contract causes the right to enjoy

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<sup>9</sup> Robinson, Sinaga, *Pengaturan Nama Domain Internet di Indonesia: Studi Tentang Sengketa Antara Pemilik Nama Domain Internet dan Pihak Lain di Indonesia*, Dissertation of the University of Indonesia Faculty of Law, 2010, p. 33

<sup>10</sup> Edmon Makarim, *Kompilasi Hukum Telematika*, Raja Grafindo, Bandung, 2003 p.287



the goods within a specified period of time remain at the lessor<sup>11</sup>. To determine the validity of an agreement, it needs to be understood that an agreement must fulfill the 4 legal requirements of an agreement, as outlined in BW article 1320 which consists of:

1. Agreement of will
2. Authority in acting or skill
3. A certain object
4. Causa allowed

Basically, a lease agreement for a Virtual Office is not much different from an ordinary office rental agreement. The difference is the media transaction used. In leasing agreements leasing virtual offices, the parties are not face-to-face but transact through internet or online media. There is no clear legal umbrella in the agreement through internet media. Therefore, businessman still use the agreement concept set in BW. The concept of the agreement adheres to the concept of an agreement that occurred in the real world. However, along with the development of technology, a pattern of online- based business has also developed. In order for business processes to work properly, businessmen continue to use the concept of lease agreements in modified BW based on the needs in practice.

Regarding the relevance of the concept of a leasing agreement in BW with a virtual office leasing agreement, a comparison regarding the validity of the agreement of the two concepts described above is needed. The explanation above becomes a benchmark for the validity of agreements through online media in the second condition, namely the authority to act and certain things (Lestari, 2019). The second condition "authority to act" includes skills. The parties that make transactions in the agreement can be considered incompetent because the parties do not meet physically, but in practice if the tenant is able to run an application and his actions can be accounted for then the agreement is valid. In the practice of leasing virtual office agreements, this is anticipated by providing administrative conditions that must be met by the tenant. The tenant must submit a copy of the Director's ID card, copy of the Director's Tax ID number and Director's Family Card. The administrative requirements aim to find out whether the party binds to the agreement are competent or authorized to enter into a lease agreement.

#### **4. CONCLUSION**

Based on the description of the previous chapters, a virtual office is an office concept that is run by a company in which the leased object is an office address that can be used by tenants of virtual offices as business addresses in the interest of business correspondence without occupying

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<sup>11</sup> Y. Sogar Simamora, *Buku Ajar Hukum Kontrak*, Fakultas Hukum Unair, 2009, p. 61.

the office listed physical. The concept of objects as objects in virtual office leasing agreements is included in intangible objects, because the physical address of the physical form is not available but correspondence can be carried out by correspondence. Business addresses can be categorized as domain names because they have the same characteristics, i.e intangibles and indicate an identity for the existence of a location.

The development of massive information technology has makes positive laws that left behind and can no longer reach business development. For this reason, the relevance of a lease agreement in BW with a lease agreement to rent a virtual office is reviewed. The results of the study indicate that the provisions contained in Book III BW are still relevant to be used and still apply to leasing agreements for virtual offices. However, there are differences because of the difference in media used. Thus, the principles in virtual office leasing agreements still adopt the principle of leasing agreements in BW. Similarly, the object of a virtual office agreement is an intangible object. This is a manifestation of the development of treaty law which adheres to the principle of freedom of contract as stated in Article 1338 paragraph (1) BW.

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