

# The Rationality Of The Judge's Decision States That Good Faith Is The Basis For Canceling The Lease Agreement For Land And Buildings Under His Control

Fajar Desy Nur Aini<sup>1\*</sup>, Lego Karjoko<sup>2</sup>, Tuhana<sup>3</sup>

<sup>1</sup> Master Of Notary, Faculty of law, Sebelas maret university, Indonesia

<sup>2,3</sup> Law Faculty Lecturer, Sebelas Maret University, Indonesia

\* Corresponding Author:

Email: [fajardesi\\_6789@student.uns.co.id](mailto:fajardesi_6789@student.uns.co.id)

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## Abstract.

*In general, when people make written agreements regarding the rental of land and house buildings, they are usually made privately, some of which are notarized (Notarial Deeds), some parties choose to make written agreements regarding the rental of land and house buildings. made by hand with sufficient stamp duty. One example of the Supreme Court Decision Number 1078 K/Pdt/2021, the basis of the lawsuit filed by the Plaintiff is Bad Faith committed by the owner of the rental object in the lease extension agreement for the land and building under his control, then the actions or actions of the owner of the leased object can be categorized as an act of breach of contract or breach of contract. This research aims to find out whether there is a rational basis for the judge's decision which states good faith as a basis for canceling land and building lease agreements based on Supreme Court Decision Number 1078 K/Pdt/2021. This research method uses normative juridical research using a case approach. The analysis technique used is the syllogism method and interpretation using deductive thinking patterns. The results of the research and discussion can be concluded that legal rationality is needed by judges in carrying out their considerations in order to determine decisions that contain the values of justice and the law that applies in Indonesia. This does not only apply to one type of legal rationality but also applies to other types. The use of this type of legal rationality requires looking at the relationship between facts, norms, morals and doctrine in considering the judge's decision. The issue of default used in the main issue in the decision becomes a boomerang for the tenant, in this case the tenant, because there is no legal force in the rental agreement signed by the tenant with the renting party. Different conditions will occur if the rental agreement is made before a notary and explains that they have entered into an agreement and asks the Notary to make a deed, then this deed is a deed made before a Notary (Notarial Deed). So in this case, the parties to the agreement have legal certainty and are therefore legally protected, so that if a dispute occurs in the implementation of the agreement, the judge with his decision can force the violating party to carry out its rights and obligations according to the agreement.*

**Keywords:** Legal protection, Underhand agreement, Renting land and buildings and Renter.

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## I. INTRODUCTION

Rental agreements are regulated in Chapter VII Book III of the Civil Code entitled "Concerning Leases" which includes Articles 1548 to Article 1600 of the Civil Code.<sup>1</sup> Based on Article 1548 of the Civil Code, it is stated that a rental agreement is an agreement in which one party binds himself so that the other party can enjoy the use of an item for a certain period of time and pay a certain price which can be paid later by that party. The lease agreement for land and house buildings made under the hands of the parties is only simple, does not require any rental procedures or procedures or complicated agreements, for example the home owner as the renting party believes that the lessee can carry out its obligations well. so that the procedures or procedures carried out are very simple, such as the tenant simply submitting a photocopy of the Republic of Indonesia's identity card and making an agreement in which the clauses on the contents of the agreement are incomplete because the owner and tenant agree based on local customs in renting land and house buildings. Whereas in land and house building rental agreements, the role of a notary is really needed to create and express the parties' intentions in a valid agreement or in other words in a notarial deed, in this case the purpose is to protect the owner of the land and house building as well as the tenant of the land and house building, understands and knows the conditions for the validity of an agreement so that the agreement implemented and agreed upon does not become void or can be canceled and at the same time has perfect evidentiary power.

So the author wants to discuss the problem of renting land and house buildings which can be encountered during the transaction or after the start of the land and house building rental agreement made

with a private agreement between the owner and the tenant. If in the future a lawsuit arises or a party denies the contents of the agreement that has been made, it is hoped that it can be resolved in an amicable manner, but if an agreement cannot be reached for the sake of justice, legal action can be taken. The legal remedy referred to is filing a case or lawsuit with the local District Court. The function of the judiciary is to supervise and implement legal rules or State Laws or in other words to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In practice, making a private rental agreement can experience several obstacles. The author examines cases regarding private rental agreements that are disputed in court, such as the case that occurred in Supreme Court Decision Number 1078K/Pdt/2021, the chronology of the case is There is a rental agreement between the Plaintiff on behalf of Saiun, the Tenant, and Defendant I, on behalf of Tanto Harsono, the party who leases the rental object to the Plaintiff, and Defendant II, on behalf of Willy Tanton, who is the owner of the Land and Building, which stands above. Freehold land covering an area of 1,980 M2 as recorded in Certificate of Ownership Number 01097/Martopuro,

Martopuro Village, Purwosari District, Pasuruan Regency, East Java Province in the name of WILLY TANTONO. During the signing of the Deed of Lease Extension, the Second Defendant did not have any problems but suddenly sent a letter to the Plaintiff as the Renting party so that the Plaintiff felt disturbed, so that on July 16 2019 the Plaintiff sent a Response Letter from the Second Defendant which contained "That Mr. Saiun has rented from Defendant I according to the Lease Extension Agreement dated 03 July 2018 which was previously rented by Brother Min Liong and Defendant I has received verbal permission from Defendant II." The Plaintiff as the Tenant and occupant of the Object should receive treatment from Defendant I and Defendant II to provide the Plaintiff with peaceful enjoyment without any disturbance from the Object being rented during the duration of the Lease. The plaintiff then sued the court on 17 July 2019 with Register Number: 35/Pdt.G/2019/PN.Bil in which the plaintiff demanded that the Lease Deed be canceled and the action taken by Defendant I and Defendant II was to ask the Plaintiff to vacate The rental object can be categorized as an act of "default/default". Based on the description above, the author is interested in conducting this research to discuss and study in more depth regarding legal protection for land tenants in related rental agreements. Is there a rational basis for the judge's decision stating good faith as a basis for canceling the land and building rental agreement below? hand based on Supreme Court Decision Number 1078 K/Pdt/2021.

## **II. METHODS**

This research is classified as a normative legal study, strengthened by a case study approach. The legal materials used come from primary and secondary legal materials, which are collected by means of document and library studies. The analysis technique used is the syllogism method and interpretation using deductive thinking patterns.

## **III. RESULT AND DISCUSSION**

Supreme Court Decision Number 1078 K/Pdt/2021 is based on considerations of the judge's rationality stating good faith as a basis for canceling land and building lease agreements under his control. A judge's decision is a statement by a judge who is a state official who is given the authority to do so, pronounced in a trial and has the aim of ending or resolving a case or dispute between the parties. Not only what is said can be called a decision, but also statements that are put in written form and then pronounced by the judge in court. A draft decision (written) has no force as a decision until it is pronounced at trial by the judge. The verdict pronounced in court must not be different from the written verdict (verdict).<sup>2</sup> There is an explanation of the relationship between the judge's decision (verdict) and facts, norms, morals and doctrine from the perspective of legal rationality. One of the concepts that researchers can present regarding this relationship comes from Gunther Teubner. Gunther Teubner classifies three (3) types of legal rationality,

namely formal rationality, substantive rationality and reflexive rationality.<sup>3</sup> In simple terms, the concept of the three types of legal rationality according to Gunther Teubner is as follows:

- - The formal legal type of rationality is oriented towards compliance with formal law;
- - The type of substantive legal rationality is oriented towards results and goals;
- - The reflexive type of legal rationality is oriented towards the processes and motives behind these processes.

Based on this explanation, the following is a form of depiction through a table of the relationship between facts, norms, morals and doctrine in considering the judge's decision :

Dimensions	Types of Legal Rationality		
	Formal	Substantive	Reflexive
Fact	<ul style="list-style-type: none"> <li>- Compliance with formal laws.</li> <li>- Proof emphasizes more formal aspects.</li> <li>- Formal truth.</li> <li>- Judges as trumpets of the Law.</li> </ul>	<ul style="list-style-type: none"> <li>- Compliance with the substance of the law.</li> <li>- Proof emphasizes the substantive aspect.</li> <li>- Material truth.</li> </ul>	<ul style="list-style-type: none"> <li>- Compliance with the substance of the law.</li> <li>- Proof emphasizes the coherence of formal, material aspects and the processes that accompany it.</li> <li>- Reflexive truth.</li> </ul>
Norm	<ul style="list-style-type: none"> <li>-Instrument of obedience to formal dogmatic laws.</li> <li>-Consistency in formal legal provisions.</li> <li>-Judges as trumpets of the Law.</li> </ul>	<ul style="list-style-type: none"> <li>-Instrument of compliance with legal substance.</li> <li>-Discretion according to legal substance.</li> <li>-Judges do not just trumpet the law.</li> </ul>	<ul style="list-style-type: none"> <li>-Instrument of adherence to goals and processes.</li> <li>-Substantive and philosophical discretion.</li> <li>-Maintain substantive coherence.</li> <li>-Judges as trumpets of law and justice.</li> </ul>
Moral	<ul style="list-style-type: none"> <li>-Instrument of justification for compliance with formal law.</li> <li>- Avoid deviations and consistency with formal legal provisions.</li> <li>-Judges as trumpets of the Law.</li> </ul>	<ul style="list-style-type: none"> <li>-Instrument of moral justification for compliance with the substance of the law.</li> <li>-Give birth to substantive morals.</li> <li>-Avoid deviations and consistency of legal substance.</li> <li>-Discretion according to legal substance.</li> <li>-Judges do not just trumpet the law.</li> </ul>	<ul style="list-style-type: none"> <li>-Reflexive moral instrument for adherence to goals and processes.</li> <li>-Reflect moral values.</li> <li>-Avoid deviations and be coherent on goals and processes.</li> <li>-Discretion is more substantive and philosophical according to goals and results.</li> <li>-Judges as trumpets of law and justice.</li> </ul>
Doctrine	<ul style="list-style-type: none"> <li>-Instrument of justification for compliance with formal law.</li> <li>-Give birth to pragmatic obedience.</li> <li>-Avoid deviations and consistency with formal legal provisions.</li> <li>-Judges as trumpets of the Law.</li> </ul>	<ul style="list-style-type: none"> <li>- Instrument of justification for compliance with legal substance.</li> <li>- Give birth to authentic obedience.</li> <li>- Avoid deviations and consistency in legal substance.</li> <li>- Discretion in accordance with legal substance.</li> <li>- Judges do not just trumpet the law.</li> </ul>	<ul style="list-style-type: none"> <li>-Reflexive instrument for adherence to goals and processes.</li> <li>-Reflects guarantees of justice and prescriptive certainty.</li> <li>-Avoid deviations and be coherent on goals and processes.</li> <li>-Discretion according to goals and results.</li> <li>-Judges as trumpets of law and justice.</li> </ul>

**Tabel 4.1.** Relationships Based on Types of Legal Rationality<sup>4</sup>

In accordance with the judge's considerations in the Supreme Court Decision Number 1078 K/Pdt/2021, which in one of the points explains that after careful research, the Supreme Court Judge interpreted that there was a misapplication of the law in the Surabaya High Court Decision Number 217/PDT/2020/PT. SBY. The Supreme Court judge in his consideration considered that the arguments of the

lawsuit used as the basis for Bangil District Court Decision Number 35/Pdt.G/2019/PN Bil. This was further strengthened by the Surabaya High Court Decision Number 217/PDT/2020/PT.SBY regarding the absence of good faith from Tanto Harsono (Defendant I) and Willy Tanton (Defendant II) towards Saiun (Plaintiff) in order to extend the rights. The lease on the disputed building was wrong. The consideration of the Supreme Court Judge was based on the good faith of brother Willy Tanton (Defendant II) regarding the rental rights to the disputed building from 11 May 2019 to 11 May 2022 to brother Tanto Harsono (Defendant I) and brother Saiun (Plaintiff). However, this is hampered by the legal position of ownership of the house.

Reviewing the three types of Legal Rationality used by Supreme Court Judges in carrying out their considerations is included in the type of reflective legal rationality. This is based on four (4) dimensional aspects that exist in the type of reflective legal rationality, each of which can be explained as follows :

- a. Factual Aspect, where Supreme Court Judges carry out evidence with greater emphasis on coherence in formal, material aspects and the processes that accompany it. This is shown by the existence of new evidence which is not contained in the Bangil District Court Decision Number 35/Pdt.G/2019/PN Bil. which was further strengthened by the Surabaya High Court Decision Number 217/PDT/2020/PT.SBY where there was good faith from Willy Tanton (Defendant II) in explaining the position of the Rental Rights for the disputed building from 11 May 2019 to 11 May 2022 to brother Tanto Harsono (Defendant I) and brother Saiun (Plaintiff) but was prevented by the legal position of ownership of the building.
- b. Norm aspect, where Supreme Court Judges make decisions based on freedom by looking at it from a substantive and philosophical perspective as a higher judicial institution.
- c. Moral Aspect, where the Supreme Court Judge in his consideration looked at the reflection of the moral values shown by the good faith of Willy Tanton (Defendant II) in explaining the position of the Rental Rights to the building to Tanto Harsono (Defendant I) and Saiun (Plaintiff).
- d. Doctrinal aspect, where the Supreme Court Judges apply it based on reflection on the guarantee of justice and prescriptive certainty for the litigants in the Supreme Court Decision Number 1078 K/Pdt/2021 without looking at the position of the litigants.

Based on this explanation, it can be underlined that legal rationality is very necessary for judges in carrying out their considerations in order to determine decisions that contain the values of justice and the law that applies in Indonesia. This does not only apply to one type of legal rationality but also applies to other types. The use of this type of legal rationality requires looking at the relationship between facts, norms, morals and doctrine in considering the judge's decision. For researchers, legal rationality is very important for judges in Indonesia in carrying out their considerations in order to produce the right decision. For researchers, the type that suits the form of justice in Indonesia is reflective rationality because this is based on the variety of legal problems that exist in Indonesia and judges must be flexible in making their considerations. So it is important for researchers to provide input into the considerations that judges in Indonesia should use a type of reflective legal rationality in order to improve the quality of law enforcement and the world of justice in the country.

This view is in line with the view of Oliver Wendell Holmes in (L.B. Curzon, 1979) who is famous as "the great dissenter justice" which gave birth to a concept known as "the concept of clear and present danger". Holmes reminded judges not to be fixated and committed to a rigid, deterministic and legalistic "precedent" system, but judges must look at the legal reality that lives in society, and not rely on legislation which is the creation of ordinary humans, which is also never perfect, is incomplete and always requires interpretation from law enforcers. Therefore, for Holmes, what he considers law is a prediction of what the courts will do in fact, and nothing more pretentious, are what I mean by the law). In fact, according to Holmes, in making decisions, judges always include personal considerations that are extra-legal in nature so that the decisions they make are more functional for people's lives, so the experiences they hear in life will be more accurate in predicting the direction of the judge's decisions than just legal logic. "The life of the law has not been logic but experience".<sup>5</sup>

#### IV. CONCLUSION

Based on this explanation, it can be underlined that legal rationality is very necessary for judges in carrying out their considerations in order to determine decisions that contain the values of justice and the law that applies in Indonesia. This does not only apply to one type of legal rationality but also applies to other types. The use of this type of legal rationality requires looking at the relationship between facts, norms, morals and doctrine in considering the judge's decision. For researchers, legal rationality is very important for judges in Indonesia in carrying out their considerations in order to produce the right decision. For researchers, the type that suits the form of justice in Indonesia is reflective rationality because this is based on the variety of legal problems that exist in Indonesia and judges must be flexible in making their considerations. So it is important for researchers to provide input into the considerations that judges in Indonesia should use a type of reflective legal rationality in order to improve the quality of law enforcement and the world of justice in the country.

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