



The Role and Position of a Property Trading Brokerage Companies in Marketing Agency Activity

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Abstract. A property trading intermediary company has a position only as an intermediary so that full responsibility remains with the property owner. In marketing activities, this type of company must make a written standard agreement with the assignor that leads to justice for the parties to the agreement as a form of responsibility for the work of property agents. The discussion of the problem that interests the author is about the role and position of a property trading intermediary company in a shophouse lease agreement and the responsibility of a property trading intermediary company to the owner and the tenant when there is a default in leasing activities. The type of writing in this thesis uses normative legal research. The property agent here is the subject of discussion in writing, which acts as a legal entity company that carries out business activities as an intermediary for sellers and buyers, which is currently called a marketing agency. The lease agreement intended by this company is a traffic exchange of interests to reflect a form of justice, a standard lease agreement under the hand. Because the position of this company is only as a form of trade traffic, the responsibility lies with the property owner to make the building he is renting out feasible to be rented out again. In the event of default between the parties due to non-fulfillment of obligations as it should be due to the negligence of one of the parties to the agreement, then a property trading intermediary company as a facilitator can become a mediator so that both parties succeed in finding a solution to the problem.

Keywords: Estate Agent, Agreement, Lease.

1 Introduction

Today's society has a fairly high level of busyness. It often happens that someone does not have the opportunity to resolve their interests, so there is an increasing need for services from other people or intermediaries to solve these problems. The party that provides these services is authorized to be able to resolve these interests. One of the activities that need intermediary services is investment activities in the property sector. In our country, marketing agents in the property sector are often called brokers or marketing agencies. Intermediary institutions in the property sector bring many benefits to the community, especially regarding the

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negotiation process, marketing, and the ease of obtaining precise information about the property.

Property brokerage companies usually handle several projects in various areas, both tourism and communal, in addition to shophouses and residential construction projects. Property brokerage companies usually also consult hotels, villas and property-related finance. In addition, the most profitable service for companies today is the Marketing Agency. Some examples of agreements today are Sole Exclusive Agreements, Exclusive Agreements, and General Marketing Agreements.

However, it cannot be denied that when a property trading intermediary company has bridged the lease between the owner and potential investors, there is a dispute or a default committed by one of the parties to the agreement. Based on the background described above, the researcher is interested in conducting research for writing titled "The Role and Position of a Property Trading Brokerage Companies in Marketing Agency Activity."

Based on the background of the problem above, the main problems that need to be researched are:

1. What is the role and position of a property trading intermediary company in a shophouse lease agreement?
2. What is the responsibility of the property trading intermediary company to the owner and the tenant when there is a default in the shophouse leasing activities?

2 Methodology

Normative legal research is a type of research that the author used. Research that uses legislative analysis as its main source of legal information is known as normative legal research. It is legal research (juridical research), which has a method different from another research. The data used in the research were obtained from 2 (two) types of sources, namely Primary Legal Materials, where this type is realized by literature study. These legal materials consist of laws and regulations, which are primary legal materials and books, while legal scientific works are included in secondary legal materials and legal dictionaries, which are tertiary legal materials.

3 Result and Discussion

3.1 The Role and Position of a Property Trading Intermediary Company in a Shophouse Lease Agreement in Bali

In a type of business, there are several important factors, one of which is the potential and opportunities of the business. By understanding this, a person can also understand how to run a business properly, what kind of flexible consumer desires and how to respond to business competition wisely. It is important because the opportunity and potential of a business are a good combination in terms of starting a business that attracts interest. Business is the realization of a job that carries out

activities permanently / continuously to obtain a profit, whether carried out by an individual or a group in the form of a legal entity established and domiciled somewhere [3].

A business is a business that generates a certain profit and is also run with the capital that is used to build a business. In a business, there are several important factors, one of which is the potential and business opportunities. Any business that is built should use competent marketing in order to achieve the goal of profit. The types of businesses based on their activities are:

1. Service Business: Business activities not in the form of goods but a business that is done for. For example, such as consultants, health, technicians, etc
2. Agricultural Business: Business activities in the plantation, livestock, agriculture and fisheries sectors
3. Industrial Business: This type of business is engaged in manufacturing sales, such as the aircraft industry, mabel, food, cigarettes, etc

One of the businesses that require the services of a property trading brokerage company, also occurs in the culinary, industrial, banking, hospitality, and health business. Many other businesses need to hire a property trading brokerage because property companies are directly related to investment. The concept of the marketing agency when bridging requests from clients is to advise the parties to have a written lease agreement containing various things that will be used as objects in an agreement. Lease agreements are made to create a sense of security and protection so that No more problems come up between the two sides. Articles 1548 to 1600 of the Civil Code regulate the rights and obligations mentioned in the lease agreement that have been approved by both parties. These are also provided for or listed in the lease agreement. The property trading intermediary company also produced the underhand leasing agreement, which is an agreement for the temporary use of an object, either a movable or an immovable object, with a certain payment [2].

If both sides decide to participate based on a covert agreement, it is carried out. There are two (two) sorts of changes in the standard underhand agreement made by the property trading intermediary company. The standard underhand agreement is typically made during the sale and purchase transaction between the tenant and the owner. These two (two) kinds of agreements are created when the parties have a legal relationship in which the tenant will rent a shop house or in which the tenant will rent his residence. Tenants are legally required to pay a security deposit specified in the lease agreement itself, according to a standard form underhand agreement pertaining to the leasing of a dwelling. The next difference is in the furniture, where, as much as possible, a tenant is asked to be able to care for, maintain and use properly the equipment / goods in the house he rented. Furthermore, if there is damage in this case, the owner can deduct the security deposit for repairing the goods in the rented house. The security deposit will be deducted if the owner knows how much it will cost to repair the items in the house.

The next difference is the payment of electricity and taxes. The owner and tenant of a building should consider some ambiguities. PBB, or Land and Building Tax, should be paid once a year in August, but a tenant must pay the electricity bill monthly. Furthermore, in terms of maintenance and repairs that must be carried out by

a tenant while occupying a rented house through a property trading brokerage company. Furthermore, the article lists an obligation on a tenant to the owner in the event of an extension of the lease of the unit or termination in the sense of not extending the lease. End of Lease Agreement. Furthermore, this lease agreement has also been included in Insurance for goods owned by the tenant during this lease. The next article lists the legal certainty given to the tenant / Nuisance.

In addition to standardized underhand lease agreements for houses, there is another type of underhand lease agreement for shophouses. The terms of the shophouse lease differ slightly from those of the house lease handled by this trading intermediary company. The property trading middleman company took into consideration all relevant legal factors before having both parties sign the confidential agreement. However, the principle of freedom of contract—which states that freedom of contract itself is not freedom without constraints but rather freedom that also has value and dignity and does not violate the law—is what is employed as a guide in this lease agreement. [1].

The availability of a standard contract in Law Number 8 of 1999 concerning Consumer Protection is one example of how agreement law gives the parties flexibility in forming and deciding what will be done by the parties carrying out the agreement. Conflict is a constant risk in a variety of partnerships. A lack of conformance or comprehension of the agreement's guiding principles typically results in a variety of issues stemming from it. A Property Trading Intermediary Company is regulated in (Permendag Number 51/2017), regulating several matters, including the scope of activities of the company or company agents, company licensing, determining the contents of the minimum agreement between users and service providers, the structure of the business entity, the amount of commissions, etc [7]. A property brokerage company can carry out the company's or its agents' activities. A property brokerage company may conduct business activities that include:

1. Property leasing services
2. Property Research and Assessment Services
3. Property Marketing Services and
4. Property buying and selling services
5. Consultation services and dissemination of property information.

An agreement is a legal event in which a person is bound by a promise to another person, or two people promise each other to carry out / do something they agree on [5]. The typical lease agreement that a property trading intermediary company imposes has evolved quickly and is a part of everyday existence. There is no transaction between the parties when a consumer is presented with a standard agreement because he has only two options: accept it or reject it. The parties to standard agreements formed by property trading intermediary organizations typically receive justice. In order to comply with Article 18 of the Consumer Protection Law (UUPK), a company that deals in property trading intermediaries is required by law to provide a detailed explanation of the basic lease agreement. Efficiency aspects include time, economy, and the regular usage of standard agreements enforced by property trading intermediary companies, which are also reasons for using standard agreements.

In accordance with Law Number 8 of 1999 concerning Consumer Behavior, Article 18, this indicates that the typical unscrupulous contract executed by a real estate intermediary company by the request of the owner and tenant in leasing activities both carried out for shop rental, and house rental, researchers can say that this agreement does not violate the rules of law in our country. This standard underhand agreement is still explained in detail so that it is clear that the agreement is easier to understand. The standard underhand agreement follows applicable law until the final part is signed by the parties who will carry out an agreement. GCPL strictly prohibits including standard clauses in every document and agreement that aims to harm one of the consumers.

Legal certainty is necessary since the goal of the law is to provide order in social life. When the rental fee and the shop unit are agreed upon, the underhand lease agreement is a consensual contract that is enforceable. The purpose of the lease agreement is to grant the tenant property rights as well, but it only grants the renter personal rights to be enjoyed, not property rights for the shophouse unit he inhabits. Since Law No. 8/1999 on Consumer Behavior has been in effect, the unscrupulous standard agreement created by the property trading intermediary company with the permission of the parties involved, it can be seen that there is no violation committed by the service provider in designing a standard agreement.

Following Article 18 of Law No. 8/1999 on Consumer Behavior, in paragraph 1 of this article, there are no clauses that are contrary to the law, starting from letter A to letter G in the standard agreement made by the brokerage company in terms of leasing shophouses and houses that violate the substance in this article. Moreover, the standard agreement produced and enforced by the property trading intermediary company complies with the expectations of both parties who carry out an agreement, as mentioned in paragraph 2 of this article. The researcher observes that no agreement does not comply with the current legal rules, as stated in paragraph 3 of this article on the terms in the unscrupulous standard agreement prepared by the property trading middleman company. As a property brokerage business, you should draft agreements in accordance with the relevant legislation, which is Article 1313 combined with Article 1320 of the Civil Code. Additionally, paragraph 4 states that the trade intermediary business must act fairly and refrain from doing anything that is against the law.

After the absence of clauses contradicting Article 18 of Law No. 8/1999 on Consumer Behavior, the parties can sign and agree upon a new agreement if it meets the legal requirements of an agreement listed in Article 1320 of the Civil Code.

3.2 The Responsibility of the Property Trading Intermediary Company to the Owner and the Tenant when There is a Default in the Shophouse Leasing Activity

A legal relationship is likely between legal subjects and legal subjects and objects. Both individuals and legal entities may have legal relations with one another. When two people meet and come to an agreement, wherein one will bind himself to the other in good faith in order to obtain anything, that encounter is likely to result in

the formation of a legal relationship. In terms of how an agreement and an obligation relate to each other, it may be said that an agreement is a legally recognized occurrence in which two parties jointly commit to one another or in which one party makes a commitment to another. An obligation is a legal connection that results from this occurrence. The agreement can create an obligation between two people or two parties who create it. With that, the relationship between those who agree and the obligation is that the agreement creates a legal obligation. The agreement is the source of the obligation or other sources [5].

An agency is a concept in the form of a business intermediary where the regulation is outside the Civil and Commercial Code [4]. As befits a technical implementing regulation, the ministerial regulation on property trading intermediary companies is more administrative and does not approach the legal substance that has a relationship with the principles of agency. It causes the basic concept of the legal relationship between the principal and the agent to never be regulated in the ministerial regulation. Therefore, it must be returned to the legal theories of agency [6].

The existence of a legal relationship between a principal and an agent is based on the principal and an intermediary. In an agency agreement, the principal authorizes the agent to perform a legal act such as making a lease agreement between the two, including making an underhand lease agreement with a third party or intermediary for the principal's benefit. However, it can be underlined that a property agent is not a related party in an agreement between the principal and the third party. The consequence of the agent is that the agent cannot be held legally responsible in the event of a third-party loss as long as the agent has carried out his authority and duties as given by the principal [5].

The legal relationship that exists between the Brokerage Company and the owner in its operations is one of reciprocity or mutual benefit. When the building owner chooses to work with the property brokerage firm chosen for marketing, a reciprocal legal connection is established and the building is sold on the market. When a property trading intermediary company signs the Marketing Agency Agreement, it also gets paid a fee as per the terms of the agreement. It is clarified in property marketing activities that a property brokerage firm may consent to open listing if the owner of the property to be promoted has worked with another property brokerage company.

A property brokerage company can cooperate with other property brokers in marketing a product in the agreement. In addition, the property brokerage company that has also signed the exclusive agency listing agreement is still entitled to be required to achieve the agreed commission even though another property brokerage company meets the tenant or buyer. The property brokerage company has the right to a commission even if it is not the property brokerage company that finally succeeds in carrying out the transaction.

Furthermore, some examples of agreements commonly used today include the Exclusive Agreement, Sole Exclusive Agreement, and General Marketing Agreement. Of the three marketing agency agreements usually made by a property brokerage company and approved by the owner, the Sole Exclusive Agreement is preferred to be

offered to the owner. In the Sole Exclusive Agreement, a property brokerage company is appointed to be the only one that can open the market of the owner's product, whether the product is a vacant land, shop house, house, hotel, etc. As a trusted and selected property brokerage company, and have more freedom in marketing products from the owner.

A legal relationship is known as *rechtsverhouding*. Legal relations are a relationship that can occur between one legal subject and another subject in a community relationship as regulated by Indonesian law. As for some differences in the legal relationship between a property trading brokerage company and a tenant who has a relationship with how to carry out product marketing activities, a property regulation brokerage company will meet with prospective tenants. The property brokerage company should explain the shophouses and other properties that prospective tenants will rent. After the prospective tenant sees the real field, it continues to the negotiation process of the parties first.

When a property trading intermediary company offers a promise and details about the intended goods and services, the parties' rights and obligations—from the service provider to the prospective tenants or buyers—arise. This is when the legal relationship between the property trading intermediary company and the potential tenants or buyers and prospective tenants begins. The legal basis for this relationship is found in Article 1320 and Article 1338 of the Civil Code (KUHPer), wherein business actors consent to fulfill their promises made in marketing materials or brochures in order for those promises to be enforceable as laws for the parties making them. The legal events against property trading intermediary companies with prospective tenants or buyers are trading services for a good, which is a property from the owner.

Clauses: The use of Indonesian in an agreement is mandated by Article 31 paragraph (1) and 2 of Law Number 24 of 2009 concerning Flags, Languages, as well as State Emblems and National Songs. Owners and tenants are also required to comply with these clauses, and they must be provided with facilities by a property trading intermediary company. This article states that - every government agency, state and private institution and citizen who wants to be bound in an agreement must use Indonesian. Subject to the use of language also means subject to the rules regarding the use of Indonesian. If the parties involved are foreign, then the agreement is made using Indonesian and the national language of the foreign party.

In the Sole Exclusive Agreement, there are several important clauses that the owner, namely must observe:

- a. The owner appoints a property brokerage company as the only property trading brokerage company that can carry out marketing activities. In addition to marketing the product, the owner also agrees that the company can be a consultant in calculating the parts that are certainly related to the property to be marketed, such as the costs incurred in renovating a property or the value of a property in the future.
- b. A property brokerage company is entitled to a success fee when the company can bring together the asset's owner with the tenant until the lease is executed

between the two parties. The amount and procedure of success fee payment can be made with different clauses so that it can be made more detailed.

- c. The appointed company receives a 5% fee and the commission for leasing the property from the owner. This 5% fee is a payment for consulting because, in addition to being a property agent, the property brokerage company has become a consultant in marketing the owner's property.
- d. This part of the clause provides an advantage for the appointed company to get the consultation fee even though the term of this agreement has ended and the leasing activity occurs after the expiration of this agreement.

In addition to discussing fees, this clause also discusses the period given. In this case, the marketing agency agreement entered into by a property trading intermediary company with the owner certainly also has a drawback. Late payment is one form of default that occurs by the property owner, so the legal consequences must be fulfilled. According to the author, default is the non-fulfillment of a promise or negligence in carrying out an obligation, as has also been determined in the agreement between the owner and the property trading intermediary company or between the owner and the tenant or buyer. When an agreement is formed, various abilities are used based on good and honest intentions to anticipate any bad possibilities that will occur at the time of performance, with the full expectation of trusting that everything that has been stated in the agreement can be carried out following what has been stated in the agreement.

Negligence or failure is a situation that occurs because one party does not perform its obligations following the agreement or allows a situation to continue without control (nonperformance) so that other parties feel unfairly disadvantaged because they cannot enjoy their rights based on the contract they have agreed to. Based on the legal system in Indonesia and generally in civil law countries, if one party does not perform, the other party to the contract should first submit a warning known as "somasi" (Article 1238 of the Civil Code).

Either the owner or the tenant may default on their obligations when marketing a property through a real estate brokerage business. Furthermore, in actuality, the renting party is usually the one who makes defaults. Sometimes, despite it being included in the previously signed lease agreement, parties fail to follow through on their end of the bargain when it comes to paying payments. It does not, however, eliminate the chance that the owner will fail to pay the commission due to the property being exchanged.

The property owner is also not spared by the occurrence of default. When signing the marketing agency agreement, the owner has to know the procedures for paying the commission stated in the agreement if he has succeeded in transacting the property owned by the owner. However, there are still owners who are late to pay what should have been their obligations. Sometimes, the owner has to complete some administrative matters first, so it is too late to pay the commission agreed upon by the parties. When this happens, the property trading brokerage company will communicate to make payments more quickly. In addition to communication, it will also resend the invoice that was sent previously to remind the owner of his obligation

to pay the fee that should have been paid earlier. After sending the invoice, the owner tends to pay the commission immediately.

Suppose the owner defaults and fails to pay his obligations to the property trading brokerage company. In that case, this will not make the marketing agency agreement canceled because so many things must be considered if canceling the agreement. So when other shophouses have not been rented, the marketing agency agreement can continue. Furthermore, the service provider will still be responsible for renting out the remaining units in the shophouse complex. It is not only the owner who is included in the default but also the tenant. The tenant should pay close attention to the contents of the lease agreement that has been agreed upon and signed by both parties because it is not uncommon for violations to deviate from the agreement. The following is a description that the researcher managed to quote from the standard underhand agreement in terms of leasing between the tenant and the owner of the shop unit.

Article 4

- The Renter shall not make any major changes to the exterior of the building, and any changes made must have the written consent of the First Party
- The Renter may change the inside of the building according to his needs, and the Second Party will bear the costs incurred
- At the end of the lease period, the Tenant is obliged to return the building to its original condition

However, some tenants still violate the agreement and return the building not according to its original condition. Because they think the building is not their right to rent anymore, they do not feel responsible for it after renting it. So, according to researchers, this attitude is one of default because the tenant is wrong in fulfilling the achievement. Even though the tenant has returned the building empty following the agreement, the tenant did not return it to its original condition before being rented.

In essence, if a person makes a mistake that can harm others, he must be responsible for the mistake he made. Basic civil law has two kinds of liability: fault and risk. Commonly known as liability without based on fault or liability based on fault, liability without fault or liability without fault, strict liability or risk / absolute responsibility.

The principle of legal responsibility is also related to the principle of legal obligation. If a person assumes legal responsibility for a certain act, then he or she is also responsible for the risk of sanctions if he or she commits a contrary act. If a person is responsible for having committed an offense himself, it is called individual liability. Whereas if a person is liable because someone else committed the offense, it is called collective liability. Although the principles of legal responsibility and legal liability are related, they are not identical. However, coercive measures do not have to be directed at the "offender" and can be directed at other individuals who are related to the first individual in a prescribed manner.

According to the definition of civil law, liability is the responsibility of a person for his actions that violate the law. Violating the law here is not only doing things that

contradict the criminal law; actions that violate other laws or even violate unwritten provisions are also included as law violations. Because legal actions are not only contrary to the principles of the law but can also interfere with the rights of others when related to decency, caution, and propriety in society. If a person violates the law, it means that the person violates the principles of the law in which the purpose of this legal regulation is to regulate the harmful actions of legal subjects and provide sanctions or accountability for losses incurred due to violating the law.

There is a definition of violation of law in the two articles in the Civil Code that regulate compensation for violation of law. There are several forms of responsibility in law, namely:

1. Absolute responsibility is the responsibility fully imposed by the perpetrator of a violation of the law without specifying whether the perpetrator has an element of guilt. The perpetrator must be held legally responsible even though the perpetrator was not intentional or careless in violating the law.
2. Legal responsibility without guilt. The guilt here refers to a fault in the legal sense. However, the act may be morally wrong.
3. Unlimited liability is the concept of unlimited liability. For example, suppose the landowner can prove that the fault lies with the intermediary or that the loss occurred due to the intermediary's fault. In that case, the intermediary is obliged to compensate the landowner.

In this case, the property brokerage company is a legal subject that cannot be sued even if there is a difference when the building is handed over to the tenant. When the property brokerage company markets the owner's property and complies with the abovementioned elements, the wrongdoing is a no-fault violation of the law. When the owner is found to have committed an act of negligence following the fulfillment of 4 (four) main elements in an act against the law by the owner following Article 1365 of the Civil Code, if the owner commits liability based on fault, the owner is obliged to pay a penalty, namely the loss obtained by the buyer or tenant, where the loss here is a material loss caused by the owner.

The property trading intermediary company remains responsible for supervising and mediating when the owner wants to pay material losses due to his mistake. In addition, if the tenant commits an error or negligence that fulfills the 4 (four) main elements in an act contrary to law following Article 1365 of the Civil Code, then the tenant is obliged to pay compensation for material losses made in the form of additional rent because the tenant does not agree to vacate the contents of the building according to the specified time to the detriment of the property marketing intermediary company because the company cannot immediately rent the property back to other prospective buyers.

4 Conclusion

1. The property trading brokerage company can make an underhand agreement related to property leasing activities agreed by the parties involved. The agreement should be detailed so that unwanted things do not happen. The

agreement must also contain the benefits obtained by the parties involved. Moreover, it must contain achievements that will be mutually agreed upon. So that all parties involved have good faith in carrying out the agreement, the substance of the contract must be made in such a way. If one party does not perform his obligations, then the other party will get compensation per the specific requirements contained in the contract. It is done so that the parties feel protected. Another thing that has value in heeding the rules and contracts is the good faith that makes all parties involved obey the rules in the contract. The position and role of the property trading intermediary company towards the client in the form of a lease agreement, where this property trading intermediary company facilitates its various activities, namely:

- a) Making a shop rental agreement between the property owner and the tenant
- b) Making a house lease agreement between the property owner and the tenant.

Property trading intermediary companies make standard agreements that lead to elements of justice for both parties involved in the agreement. According to researchers, making a standardized underhand agreement, which the property trading intermediary company accommodates, is also associated with the principle of legal certainty in an agreement following Article 1313 in conjunction with Article 1320 of the Civil Code that this agreement has provided legal certainty for the parties involved in agreeing.

2. When an obligation is not fulfilled as it should be, it causes a default caused by negligence by one of the parties involved, where the property trading intermediary company, as a facilitator, can mediate between the two parties and produce a settlement that satisfies all parties. Related to the principle of legal responsibility. Property brokerage companies, in carrying out their duties, namely marketing property following the marketing agency agreement stated, are responsible for providing information to prospective property tenants. The property brokerage company is a legal subject that cannot be sued here if there is a difference in the condition of the building when the property is handed over to the tenant. The concept of tenant liability imposes liability based on fault to the owner, which means that the owner can be compensated if proven to have committed negligence following the fulfillment of 4 (four) main elements in violation of the law by the owner following Article 1365 of the Civil Code. The tenant should carry out these obligations and relate to the obligations stated in the agreement. The tenant is also legally responsible if proven to have committed unlawful negligence. So, the tenant is also responsible for sanctions for his actions contrary to the lease agreement's contents.

5 Recommendation

Things that researchers can suggest to the parties involved, namely:

1. To academics, this research can be a reference and can be developed for other research to increase knowledge in the field of property law.
2. To the public, this research can be a reference or learning reference when they want to collaborate with property trading intermediary companies in making marketing agency agreements.
3. To the government to formulate regulations in the property sector so that all parties involved in this activity get a sense of justice.

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