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## Implementation of the Pekanbaru Sukaramai Plaza Management Agreement between PT. Makmur Papan Permata With Traders After a Fire Occurs

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### Abstract

The method used in this research is an empirical approach, where this method is a legal research method that functions to see the law in a real sense and examine how the law works in the community. Researchers found that there are no specific rules from the local government that oblige the parties to insure their respective obligations in accordance with the agreed contents, and if they are violated there will be strict sanctions. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (force majeure) occurs, the parties can lighten the burden. where this method is a legal research method that functions to see the law in a real sense and examine how the law works in the community. Researchers found that there are no specific rules from the local government that oblige the parties to insure their respective obligations in accordance with the agreed contents, and if they are violated there will be strict sanctions. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (force majeure) occurs, the parties can lighten the burden. where this method is a legal research method that functions to see the law in a real sense and examine how the law works in the community. Researchers found that there are no specific rules from the local government that oblige the parties to insure their respective obligations in accordance with the agreed contents, and if they are violated there will be strict sanctions. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (force majeure) occurs, the parties can lighten the burden. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (force majeure) occurs, the parties can lighten the burden. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (force majeure) occurs, the parties can lighten the Burden.

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## PRELIMINARY

In the State of Indonesia to guarantee legal certainty in cooperation, an agreement that refers to legal norms is needed in the form of a set of legal principles and rules which are generally understood as contract law or contract law.<sup>1</sup>

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<sup>1</sup> J. Satrio, *Agreement Law* (Bandung: Citra Aditya Bakti, 1992), 7.

The term Agreement (*Overeenkomst*) according to Article 1313 of the Civil Code is "An agreement is an act whereby one or more people bind themselves to one or more other people". According to Prof. Subject, agreement is "an event where someone promises to another person or where two other people promise each other to carry out something."<sup>2</sup>

In the author's study, the research area was Plaza Sukaramai, Pekanbaru City, where Plaza Sukaramai was founded in 1996. At first, Plaza Sukaramai was a traditional market, but over time, the government rethought to make the central market a more modern shopping center. The owner of the Plaza Sukaramai land is the Pekanbaru City Government.<sup>3</sup>

To advance the regional economic sector, the government has collaborated with a developer, namely PT. Makmur Papan Permata to build Plaza Sukaramai, of course. The cooperation is outlined in the agreement Number: 270-WK / 1996, this agreement was made on Saturday, November Thirty, One Thousand Nine Hundred and Ninety Six (30-11-1996) signed by the First Party H. Oesman Effendi apan, SH, namely the Mayor Head of Pekanbaru City Level II Region, and Second Party Ir. H. Fadjraa Oemar, the President Director of PT. Makmur Jewel Board.<sup>4</sup>

After the cooperation between the Mayor of Pekanbaru and PT. Makmur Papan Permata in terms of advancing the economy of the Plaza Sukaramai market, PT. Makmur Papan Permata opens opportunities for anyone who wants to do business at Plaza Sukaramai by providing Kiosk Rentals at Plaza Sukaramai based on an agreement with the terms of a contract / agreement.

With the opportunities provided by PT. Makmur Papan Permata many parties entered into an agreement with PT. Makmur Papan Permata to occupy the stalls that have been provided for anyone who will rent / occupy these stalls. After the passage of time, a fire disaster that cannot be predicted and avoided because it is natural without an element of intent, in law is called *force majeure*.<sup>5</sup>

From several definitions, what is meant by *force majeure* is a situation that occurs outside of human power which can cause the debtor's achievement to be unable to fulfill and

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<sup>2</sup>Agus Yudha Hernoko, *Proportionality Principle Agreement Law in Commercial Contracts* (Yogyakarta: Laksbang Mediatama, 2008), 1.

<sup>3</sup> Anggun Pratiwi, "Consumer Interest in Shopping at Sukaramai Plaza, Pekanbaru District, Post-Fire City 2015 in terms of Sharia Economics" (Thesis, State Islamic University Sultan Syarif Kasim, 2018), 16.

<sup>4</sup>Manuscript of Cooperation Agreement between Municipal Government of Pekanbaru Level II and PT. Makmur Papan Permata about the Rejuvenation Development of the Central Market of Sukaramai

<sup>5</sup> H. Amran Suadi, *Sharia Economic Dispute Resolution: Inventions and Legal Rule* (Jakarta: Prenamedia Group, 2018), 115

the debtor is not obliged to bear the risk. According to the provisions of Article 1244 and Article 1245, it can be seen that the elements of force majeure are as follows:<sup>6</sup>

- a. the unexpected
- b. cannot be blamed on him (cannot be held responsible for him)
- c. no bad faith from him

The agreement to obtain rental rights for kiosk units in the Plaza Sukaramai area is contained in the Notary Deed of Syafri Muchtar, SH with Number 548 / L / VIII / 2001, dated August 14, 2001. However, the agreement does not state the responsibilities that must be accepted by each. parties in the event of an unexpected accident in the kiosk rental agreement at Plaza Sukaramai Pekanbaru City.

Given that the contents of the agreement do not state who is responsible for the occurrence of the disaster, then of course it is something new outside of the contents of the agreement that must be completed by the developer of PT. Makmur Papan Permata with those who rent the Plaza Sukaramai stalls.

As for the disaster that occurred, namely a fire, the developer of PT. Makmur Papan Permata renovated. Prior to the implementation of renovations and construction, the developer PT. Makmur Papan Permata has socialized with kiosk owners which was held on May 3 2017 at Hotel Jatra Jl. Sudirman Kota Pekanbaru to discuss the costs to be determined.

However, there were fluctuations in problems between the kiosk tenants and the developers because the renovation prices were considered very high according to the kiosk tenants, as well as changes in kiosk sizes and changes in the position of the kiosks that were not in their original places. On the other hand, the merchant claims that the developer should be responsible for compensation for insurance costs for the burned kiosk because the merchant assumes that the monthly service charge fee paid to the developer includes insurance costs. The developer argues that the service charge fee received every month from the merchant does not include insurance costs for business space as stated in the proof of service charge payment. This problem has rolled up to the courts.

In the case of insurance, it should be a third party responsible for the occurrence of a fire accident, but regarding insurance it can be proven in the proof of payment of the service charge that the kiosk tenants only make principal payments, this is the guideline for PT.

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<sup>6</sup> Adrita, "A Legal Review of the Force Majeure Clause in the Energy Sales Contract between Pln, Pertamina and Pt XYZ" (Thesis, University of Indonesia, 2011), 41.

Makmur Papan Permata raises costs and other things of course in accordance with the ever-increasing economic value. Based on article 13 concerning Building Insurance, the first party is obliged to insure the building against fire, where the premium will be billed into the service charge.

From the ongoing problems, until now the problem solving is still in the judicial process. Based on the above problems, the authors are interested in conducting a study with the title "Implementation of the Management Agreement of Plaza Sukaramai Pekanbaru between PT. Makmur Papan Permata With Traders After the Fire. "

### **IMPLEMENTATION OF THE PARTIES 'RIGHTS AND OBLIGATIONS**

There are 20 (two puluh) articles throughout the articles of the Sukaramai Plaza Management agreement, Article 1 Definition, Article 2 Object of Agreement, Article 3 Duration, Article 4 Date of Building Opening, Article 5 Physical Settlement, Article 6 Public Facilities, Article 7 Use of Business Space, Article 8 Trading Hours, Article 9 Rights and Obligations of the FIRST PARTY , Article 10 Rights and Obligations of the SECOND PARTY, Article 11 Service Fees, Article 12 Electricity Costs, Article 13 Insurance, Article 14 Taxes and Levies, Article 15 Fines for Late Payments, Article 16 Details of Pay Service Fees, Article 17 Building Regulations, Article 18 Notice, Article 19 Various Provisions, Article 20 Arbitration, and Article 21 Closing Provisions.

For almost 14 (fourteen) years starting from 2001, the implementation of the Pekanbaru Sukaramai Plaza Management agreement did not have any significant problems between PT. Makmur Permata Board with the merchants. Of the 21 (twenty one) articles that become the legal basis for the parties, so far they can work together to carry out and implement the contents of the management agreement properly. The problem arose after the fire accident on December 8, 2015, which resulted in the entire building of the shop / kiosk unit burning, so that traders and developers alike suffered significant material losses. Where because of the fire accident the traders are no longer able to make a living through trading as usual because the kiosk / shop needs to be repaired / refurbished.

### **RIGHTS AND OBLIGATIONS OF THE FIRST PARTY (PT. MAKMUR PAPAN PERMATA)**

In the sound of article 9 (nine) the FIRST PARTY has the right to:

- a. Providing suggestions to the Second Party for the Common good of fellow Merchants in the Building
- b. Reconciling disputes between fellow Traders (if it occurs and is deemed necessary by the Building Management) to conduct an examination of the situation in the Business Room on every working day, if the situation is deemed necessary due to security and common practice
- c. Have the right to carry out work in or above the Business Room to make changes, adjustments and connections to electricity, electrical equipment, plumbing and telephone lines, etc., both for the SECOND PARTY's own interests and for the interests of Traders other
- d. The right to change, add or delete other public facilities available in the building, whether in number, shape, type or designation and use.
- e. Collect fees in connection with this Agreement to the SECOND PARTY and give a warning if they fail to make payments.

The FIRST PARTY is obliged to:

- a. Hold a building opening on November 11, 2001 or another date announced by the FIRST PARTY in the local Newspaper Media
- b. Coordinating, assisting and providing appropriate supporting facilities for the SECOND PARTY at the expense of the SECOND PARTY (if any) in order to complete the interior decoration work of the Business Place
- c. Coordinate and carry out cleaning tasks for buildings, corridors for shops, walls, toilets, parking lots, and other public facilities.
- d. Carrying out garbage disposal work, picking up garbage from the Business Room, Collecting garbage to a temporary shelter and disposing of garbage to the outside of the building
- e. Coordinating and implementing building security for 24 hours every day but security in the room for rent is the responsibility of the SECOND PARTY itself
- f. Coordinating and preparing parking attendants to regulate the traffic of vehicles in and out of the parking lot and maintain safety
- g. Operate all Public Facilities inside and outside the Building during Trading hours

- h. Manage and operate the building according to proper standards including the maintenance and repair of all systems therein
- i. Maintain and care for public facilities inside and outside the building
- j. Repair and replace spare parts for public facilities inside or outside the building
- k. Conduct early detection through routine inspection and monitoring as preventive measures to determine the condition of various public facilities that require immediate maintenance
- l. Manage and insure the building collectively, including the business space against damage by fire***
- m. Organizing an Information Center for shop visitors.

#### **RIGHTS AND OBLIGATIONS OF THE SECOND PARTY (TRADERS)**

As stated in article 10 (ten) the SECOND PARTY has the right to:

- a. Adding parts deemed necessary in the Business Space, but not permanently and not causing damage to the building construction and disturbing the aesthetics of the Building Interior
- b. Submit a request for additional electrical power and others through the FIRST PARTY at the expense of the SECOND PARTY
- c. Perform repairs or work on interior decoration work in the Business Room outside of Trading Hours with prior notification and obtaining written permission from the Manager.

The SECOND PARTY is obliged to:

- a. Obey the Rules of Order for Decoration stipulated by the Management in the framework of carrying out work to prepare the Business Space, and create order and security in the building.
- b. Maintain tolerance between fellow traders in the building so that everything runs naturally and calmly.
- c. Continue to pay all costs that have become the obligation of the SECOND PARTY to the FIRST PARTY as agreed in this Agreement.
- d. Maintain cleanliness of business space and collect garbage according to building regulations.

- e. Immediately open a business space for trading no later than 7 days from the date of building opening. If within 3 months after the date of building opening, the SECOND PARTY still does not immediately open a business space for trading, then the FIRST PARTY is granted irrevocable power to rent out the business space to another party.
- f. Permit the FIRST PARTY to conduct a Business Room inspection during trading hours.
- g. Pay bills of 1% o per day for each day of delay.
- h. Promise and be responsible to comply with all provisions of the Building regulations and provisions issued by the FIRST PARTY both now and in the future.
- i. Comply with all laws and regulations and fulfill obligations imposed on the SECOND PARTY by the competent Party in connection with the SECOND PARTY's business that is carried out in the Business Room and is responsible for the consequences of violations of the prevailing laws and regulations by the party for whom the PARTY is BOTH are responsible.
- j. Make all changes to plans and specifications in the Business Space which are properly requested by the FIRST PARTY.
- k. Paying the FIRST PARTY the cost of repair, replacement of damaged equipment in the Commercial Space because the damage was caused by the SECOND PARTY.
- l. Pay costs incurred due to repairs caused by the SECOND PARTY's actions, which should have been corrected by the SECOND PARTY but neglected either intentionally or unintentionally, so that it was corrected by the FIRST PARTY.
- m. Pay compensation to the FIRST PARTY for all claims, invoices, actions and cases before the court filed by the third party against the FIRST PARTY in connection with losses suffered by the third party caused by the negligence of the SECOND PARTY.<sup>7</sup>

## **RIGHTS AND OBLIGATIONS NOT IMPLEMENTED BY THE FIRST PARTY**

As a result of the fire disaster (Force Majeure) that occurred, there was a fluctuation of problems between the two parties regarding compensation for the burnt kiosk / shop unit.

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<sup>7</sup>The Sukaramai Plaza Building Management Agreement between PT. Makmur Gem Board with Traders

The plaintiffs are the Plaza Sukaramai Market Traders Union (SP3S) which for the first time was established based on Deed No. 01 dated January 03 2017 drawn up before Fery Bakti, SH Notary in Pekanbaru, which consists of traders in the difficult plaza market environment as recorded in the membership list book and proven with a Membership Card (KTA), amendments from the Articles of Association as deed No. 44 dated 18 December 2017 drawn up before Nusyirwan Koto, SH, M. Kn., Notary in Pekanbaru. The number of traders who filed a lawsuit against PT. Makmur Papan Permata as many as 104 people.

The traders demanded that PT. Makmur Papan Permata is responsible for compensation for losses to its kiosk / shop unit that was hit by a fire. As for the reasons for the traders to hold PT. Makmur Papan Permata, refers to the contents of the Agreement regarding the Rights and Obligations of the First Party as follows:

Article 9 Concerning the obligations of the FIRST PARTY in paragraph (12) to manage and insure the building collectively, including business space, against damage caused by fire.

*Article 13 Concerning Insurance, paragraph (1) The FIRST PARTY is obliged to collectively insure the building, the number of which includes the building and its general facilities and business space (but does not include the belongings of the SECOND PARTY inside) against damage by fire, (2 ) Insurance premiums for Business Space must be borne separately by the SECOND PARTY, while the insurance premiums for buildings and facilities are generally borne by the FIRST PARTY, (3) Insurance premiums for business spaces are calculated based on the Proportional Share times the total insurance premiums, (4) Payment of premiums on Business Order must be paid by the SECOND PARTY no later than 7 (seven) days after the invoice is submitted,(5) The SECOND PARTY with the approval of the FIRST PARTY can insure his own goods and / or property contained in the Business Room against damage by fire.*<sup>8</sup>

Apart from the contents of the article mentioned above, on the other hand the traders also did not approve of the renovation. According to tradersThe price for renovation is considered very high, as well as a change in kiosk size and a change in the position of the kiosk that is not in its original place. The trader claims that the developer should be

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<sup>8</sup>Plaza Sukaramai Pekanbaru Management Agreement between PT. Makmur Gem Board with Traders



responsible for compensation for insurance costs for the burned kiosk because the merchant assumes that the monthly service charge fee paid to the developer includes insurance costs.<sup>9</sup>

According to traders' information that after the addendum between PT. Makmur Papan Permata with the Government of Pekanbaru City, PT. Makmur Papan Permata began to check the site of kiosks, stalls and / or shops owned by merchants that have been bought by hangga in 2026, by messing up the site of the kiosks of KTBH owners that have been purchased since 2001

PT. Makmur Papan Permata is not just randomizing the placement of traders on the map issued by PT. Makmur Papan Permata, however, also increased the number of stalls which was very significant at Plaza Sukaramai, so that the traders sued PT. Makmur Gem Board for Actions Against the Law

#### **RIGHTS AND OBLIGATIONS NOT IMPLEMENTED BY THE SECOND PARTY**

Regarding the liability for compensation that the merchants asked for to the FIRST PARTY, the FIRST PARTY argued that reimbursement of insurance costs was not their responsibility because the traders had never paid the insurance fees that were collected collectively. The developer argues that the service charge fee received every month from the merchant does not include insurance costs for business space as stated in the proof of service charge payment.

The agreement that the Traders violated is Regarding the Rights and Obligations of the Second Party as contained in paragraph (3). Keep paying all fees that have become the obligations of the SECOND PARTY to the FIRST PARTY as agreed in this Agreement, (8) Promise and be responsible for complying with all provisions of building regulations and provisions issued by the FIRST PARTY both now and in the future

Whereas the Plaintiff's arguments are completely untrue, in accordance with Article 13 of the Agreement to obtain rental rights for booths, kiosks, shops, shop offices and other market facilities, regarding First Party Building Insurance (PT.Makmur Papan Permata Pekanbaru Branch) is obliged to insure the building against fire, where the premium will be billed into the service charge;

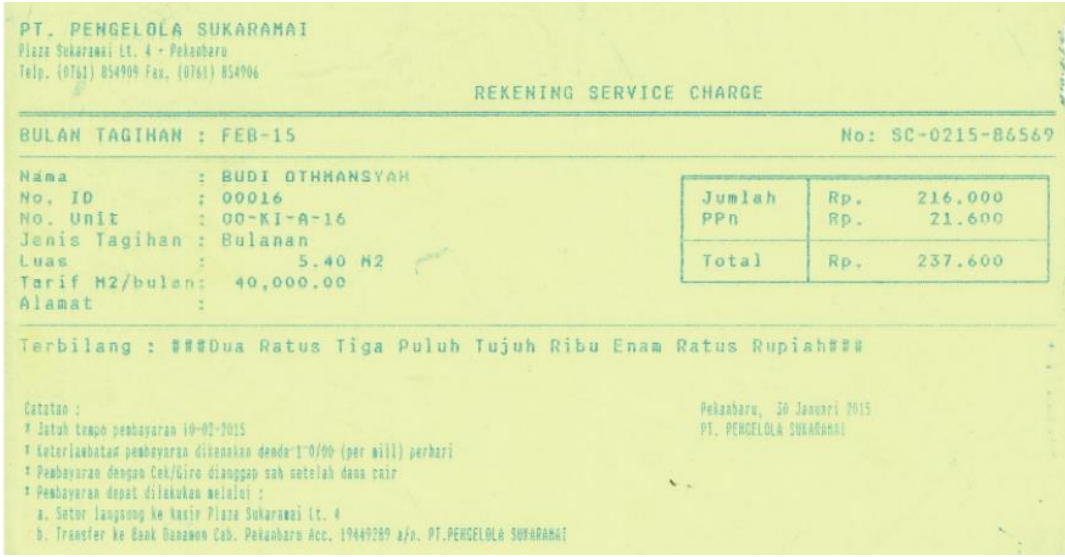
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<sup>9</sup> Interview with Mr. Al Ari, as Chairman of the Sukaramai Market Traders Union, Thursday, February 25, 2021, at the Sukaramai Trade Center Pekanbaru.

Whereas for the payment of insurance premiums for booths, kiosks, shops, shop offices and other market facilities located in the vicinity of the Plaza Sukarami Building, PT. Makmur Papan Perata has previously notified all traders who own booths, kiosks, shops, offices at Plaza Sukaramai to be able to pay insurance premiums to PT. Makmur Papan Permata is a proportionate individual (trader) whose premiums will be collected collectively with separate receipts separate from the service charge receipts, however no merchants pay for it at all, but some traders do it by insuring booths, kiosks, shops, offices their respective shops.

PT. Makmur Papan Permata only insures the building which is a public facility in accordance with the agreement with the Pekanbaru city government, this insurance is a guarantee for the agreement period until the agreement period expires, and does not insure against the booths, kiosks, shops, shop offices that are owned by each. -Each merchant, and insurance for booths, kiosks, shops, shop offices owned by these traders is the obligation of each merchant to insure it through a service charge that the merchant is not willing to pay.

The following is proof of the installment payment receipt for the Plaza Sukaramai kiosk rental in Pekanbaru:<sup>10</sup>



PT. Makmur Papan Permata repaired and arranged the booths, kiosks, and shops and counters at the Sukaramai Plaza Building where the fire was extinguished to maintain the safety of the public interest and / or the public at large, both for traders and consumers who

<sup>10</sup>Interview with Mr. Defri Rosya, Legal Manager of PT. Makmur Papan Permata, Friday, February 19, 2021, at the PT. Makmur Papan Permata, Komp. Sukaramai Trade Center Jl. General Sudirman Pekanbaru.

must receive protection and the comfort of visiting Plaza Sukaramai, besides that, based on the study of the Pekanbaru City Government Team, where the location of the initial source of the fire concluded that it was necessary to rearrange the layout of the stalls and air conditioning, change the layout and public facilities such as prayer rooms, toilets, rooms for breastfeeding mothers etc. at Plaza Sukaramai, so that provide comfort and security for traders and visitors by equipped with a safety protection system that is in accordance with the standards and is equivalent to modern malls in Pekanbaru today, With the arrangement of layout changes where the location is mostly used for public facilities as well as the addition of escalators and life in the Plaza Sukaramai building which takes up a lot of space, so that the kiosks and shops have also changed in size and location, and to cope with the traders so that they can be accommodated entirely, PT. Makmur Papan Permata increases the number of stalls and shops in other locations, to make arrangements, by making layout changes and adding stalls and shops in other locations through correct procedures and is not an act against the law. and to overcome the traders in order to be fully accommodated, PT. Makmur Papan Permata increases the number of stalls and shops in other locations, to make arrangements, by making layout changes and adding stalls and shops in other locations through correct procedures and is not an act against the law. and to overcome the traders in order to be fully accommodated, PT. Makmur Papan Permata increases the number of stalls and shops in other locations, to make arrangements, by making layout changes and adding stalls and shops in other locations through correct procedures and is not an act against the law.

## **SETTLEMENT OF PARTY DISPUTES**

In the Pekanbaru Sukaramai Plaza Building Management Agreement, that the dispute settlement of the parties agrees to resolve it through Arbitration, as written in article 20 paragraph (1) which reads: All problems included in this agreement that may arise in carrying out this agreement, will be regulated and resolved later in the good faith of each party in deliberation, (2) If the problem is not resolved by either party, then both parties agree that all disputes arising from this agreement will be resolved in the first and last level according to the rules of procedure BANI (Indonesian National Arbitration Board) Arbitration by 3 (three) Arbitrators appointed according to the regulation.

## **NON-LITIGATION LAW SETTLEMENT FOR THE PARTIES FOR A FIRE DISASTER THAT DIDN'T BE CONSIDERED IN THE SUKARAMAI PEKANBARU PLAZA MANAGEMENT AGREEMENT**

In resolving legal problems that occurred after the fire disaster occurred on the Plaza Sukaramai Building on December 8, 2015, there were 2 (two) groups of traders, namely one who agreed to the building renovation plan and some who did not agree with the building renovation. For those who do not agree to carry out the renovation of the building they consider the value of the expensive renovation prices and other factors.

### **1. Addendum to Cooperation Agreement between Pekanbaru City Government and PT. Makmur Jewel Board**

The volunteer plaza building was built based on the Cooperation Agreement between the Municipal Government of Pekanbaru Level II and PT. Makmur Papan Permata concerning the Development of Sukaramai Central Market Rejuvenation Number: 270-WK / 1996, Number: 018 / MPP / XI / 1996, which was made on Saturday, the thirtieth month of November, one thousand nine hundred and ninety-six (30-11- 1996). In order to renovate the Plaza Sukaramai Building after the fire that occurred on December 8, 2015, an Addendum was made to the Cooperation Agreement between the Municipal Government of Pekanbaru Level II and PT. Makmur Papan Permata regarding the Development of the Central Market Rejuvenation of Sukaramai Central Market Number: 270-WK / 1996, Number: 018 / MPP / XI / 1996, with a new Addendum, namely the Addendum to the Cooperation Agreement between the Pekanbaru City Government and PT. Makmur Papan Permata Number: 100 / PKS / X / 2016/15, Number: 06 / MPP / X / 2016 concerning the Construction of the Sukaramai Central Market Rejuvenation. The purpose of this Addendum is to do so that the developer can make a renovation of the burning Plaza Sukaramai Building, as stated Addendum to Cooperation Agreement between Pekanbaru City Government and PT. Makmur Papan Permata Number: 100 / PKS / X / 2016/15, Number: 06 / MPP / X / 2016, Concerning the Rejuvenation Development of the Sukaramai Central Market, in article 9A regarding Rights and Obligations:

#### **a. The FIRST PARTY has the following obligations:**

- 1) Providing recommendations for the issuance of Building Use Rights (HGB) permits on land in cooperation with the SECOND PARTY;**

- 2) Assisting the licensing process requested by the SECOND PARTY in accordance with statutory regulations;
  - 3) Outreach to official traders of all stages of the rebuilding of Plaza Sukaramai after the signing of the Cooperation Agreement Addendum;
  - 4) Every transfer of the holder of the right to business space to another party is subject to a fee of 2% (two percent) of the total value of the transaction deposited into the Account of the Regional General Head.
- b. The SECOND PARTY has the following rights and obligations:
- 1) Prepare a temporary shelter (relocation) of traders who are entitled due to the impact of the fire at the expense of the SECOND PARTY;
  - 2) ***Dismantle the remaining fire building based on the assessment result of the appointed Expert Team and rebuild the building and its supporting facilities, facilities and infrastructure at the expense of the SECOND PARTY;***
  - 3) The cost of building construction, facilities, supporting facilities and infrastructure as referred to in letter (b) in accordance with the DED from the Planning Consultant is Rp. 395,244,194,000.00 and insurance replacement costs of Rp. 7,500,000.00 (seven billion five hundred million rupiah), so that the SECOND PARTY's total cost is Rp. 387,744,194,000.00 (three hundred and eighty-seven billion seven hundred forty-four million one hundred and ninety-four rupiah);
  - 4) The development plan document which includes the Budget Plan (RAB) and the Detailed Engineering Design (DED) is an attachment that is an integral part of the addendum to this cooperation agreement;
  - 5) Complete the construction of buildings, facilities, supporting facilities and infrastructure, no later than 30 (thirty) months since the Addendum to this Cooperation Agreement is signed;
  - 6) Buildings, facilities and infrastructure as referred to in hruf (d), are built on a part of the land under an area of 13,330 M2 of cooperation;
  - 7) To reinstate authorized and registered traders who have rights to burned units until the expiration of the rights according to the Certificate of Rights (KTBH) on February 9, 2026 in accordance with the terms and conditions of the SECOND PARTY;

- 8) Maintain and maintain the object of cooperation and the building of facilities and infrastructure as well as other supporting facilities during the term of the agreement;
- 9) Insure the building during the period of cooperation with private insurance or government insurance that is officially registered with the Financial Services Authority (OJK), a copy of the insurance policy is submitted to the FIRST PARTY;
- 10) At the end of the cooperation period, the SECOND PARTY is obliged to return the object of cooperation, buildings, facilities and infrastructure as well as supporting facilities to the FIRST PARTY in good condition as referred to in letter (d)
- 11) Outreach to official traders on all stages of rebuilding the Sukaramai Plaza after the signing of the Cooperation Agreement Addendum;
- 12) Receiving additional income in accordance with the economic value determined by the SECOND PARTY, the amount of which may not exceed the income obtained by the FIRST PARTY, in the event that the right holder of business space transfers to another party as referred to in Article 9A paragraph (1) letter d;

During the period of cooperation, allocate CSR costs in accordance with statutory provisions.<sup>11</sup>

## 2. TPS Construction (Temporary Construction Site)

After the addendum of the Cooperation Agreement between Pekanbaru City Government and PT. Makmur Papan Permata, the PT. Makmur Papan Permata, has received approval to renovate the unit / kiosk of the Plaza Sukaramai Building in Pekanbaru after the fire occurred, where there were no sounds related to the previous building renovation in the agreement between PT. Makmur Permata Board with the merchants. Prior to the renovation of the building, PT. Makmur Papan Permata, first provides a Temporary Shelter (TPS) which will be used by traders affected by the fire to sell temporarily until the building is finished renovating. The number of Temporary Shelters (TPS) built in the Plaza Sukaramai area is 1128 TPS Units.

That the construction of TPS (Temporary Shelters) is not legally the responsibility of PT. Makmur Papan Permata, however, is a moral responsibility so that traders can sell until the construction of the Sukaramai Trade Center is complete;

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<sup>11</sup>Addendum to Cooperation Agreement between Pekanbaru City Government and PT. Makmur Papan Permata Number: 100 / PKS / X / 2016/15, Number: 06 / MPP / X / 2016, Regarding the Rejuvenation Development of the Sukaramai Central Market, in article 9A regarding Rights and Obligations

The cost of building a TPS (Temporary Shelter) unit is Rp. 2,500,000, - excluding electrical installations and handed over to traffickers who are victims of fire free of charge provided that they cannot be transferred or transferred as well as traded so that the cost of building a TPS is Rp. 2,500,000, -

The details are as follows:

- 1) As much as Rp. 250,000, - is for the cost of installing electrical installations for each TPS;
- 2) The remaining Rp. 500,000, - is a bailout fund for the construction of the TPS where this money will be compensated for the service charge bill during the management period after the building is completed.
3. Traders Agree on Kiosk / Store Unit Prices Based on Studies from the Public Appraisal Services Consultant Office (KJPP)

On Monday, the twenty-second of May, two thousand and seventeen (22-05-2017) at the Ballroom of Hotel Jatra Pekanbaru, an agreement was made between PT. Makmur Papan Permata with the Traders related to the renovation of the voluntary plaza building where the contents of the agreement the traders fully support the implementation of the rebuilding of the Sukaramai Plaza and also agree on the price based on the results of the study by the Independent Consultant of Toto Suharto & Partners Public Appraisal Services Consultant Office (KJPP).<sup>12</sup>

Whereas the price submitted by PT. Makmur Papan Permata has been agreed based on the Minutes of Agreement between the Plaza Sukaramai Market Traders Union Association (SP3S) and the Sukaramai Plaza Shop Owner Merchants Association and Shop Owner Traders in the Surrounding Pekanbaru (P3TPS) known by the Pekanbaru City Government (Head of the Trade and Industry Service) dated 22 May 2017;

That on the price agreement, PT. Makmur Papan Permata without exception by inviting and disseminating information to all traders, owners and tenants of booths, counters, kiosks, shops and shop houses which are socialized with the knowledge of PT. Makmur Papan Permata based on Notification Letter Number: 01.21 / CAB / MPP-PKU / IV / 2017 To all Sukaramai Plaza Traders (KTBH Owners) for the socialization of the resettlement of the new building, April 21 2017 and sending a Letter of Invitation to the Management of SP3S

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<sup>12</sup>Results of the Mutual Agreement between PT. Makmur Papan Permata with Traders witnessed by Representatives of the Pekanbaru City Government at the Ballroom Hotel Jatra Pekanbaru, Date: May 22, 2017

Up. Bp. Drs. H. ISMET BAKRI, dated 27 Exposure / Socialization of Development and Resettlement of Traders of Plaza Sukaramai Owner of KTBH at Hotel Jatra Pekanbaru on Wednesday, May 03 2017, Notification Letter Number: 01.02 / LGL / MPP-PKU / V / 2017, to all Traders to be present at Hotel Jatra Pekanbaru on May 03 2017;

And the Invitation Letter for the Socialization of the Sukaramai Trade Center Development Progress from PT. Makmur Papan Permata dated January 3, 2018 To All Sukaramai Plaza Traders Ordering Stalls and Stores at Sukaramai Trade Center to attend on Friday, January 12, 2018 at Hotel Jatra Pekanbaru;

- a. Whereas from the results of the socialization conducted by PT. Makmur Papan Permata is proven by as many as 1,400 traders who are at Plaza Sukaramai have re-registered as many as: 1,296 traders, for the process of re-placement of the Sukaramai Plaza Traders of KTBH Owners in the new building of Sukaramai Trade Center - Pekanbaru;
- b. Whereas, among the 1,400 merchants at the Sukaramai Plaza, some have registered but have not completed the requirements and some have not registered, including the plaintiffs, totaling 104 people.<sup>13</sup>

The implementation of the insurance agreement is marked by the fulfillment of the insurer's obligation to provide compensation to the insured / insurance taker. Fulfillment of these obligations is not immediately given automatically, but must fulfill certain principles and conditions.

In accordance with the characteristics possessed by an insurance agreement, even though the agreement is legally held and has been running, it does not always end in perfect achievement, it is not certain that he will get compensation, if he does not actually suffer a loss. Even though the insurer does not provide compensation in real terms, this does not mean that the insurer is not responsible. In the agreed insurance agreement, if the insured suffers a real loss, the insurer will pay a sum of money as compensation. The protection promised to the insured will be fulfilled by the insurer of the insurance agreement, if the conditions below are met.

The conditions for the insurer to be willing to fulfill their responsibilities by carrying out their achievements are as follows:

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<sup>13</sup>Interview with Mr. Defri Rosya, Legal Manager of PT. Makmur Papan Permata, Friday, February 19, 2021, at the PT. Makmur Papan Permata, Komp. Sukaramai Trade Center Jl. General Sudirman Pekanbaru.



- a. The existence of events that are not certain.
- b. Causality.
- c. Is there an aggravating risk.
- d. Is there any defect or spoilage or nature of the goods.
- e. The insured's fault;
- f. The insured value.

At the beginning of the agreement, since the agreement is made, the insurer actually has obligations at the initial level, among others as regulated by Article 257 paragraph 2, namely to sign the policy and hand it over to the insured.

Article 257 paragraph 2:

The closing of the agreement creates an obligation for the insurer to sign the policy within the stipulated time and hand it over to the insured. But the main obligation of the insurer in the insurance agreement is actually to provide compensation. Nevertheless, the obligation to provide compensation is a conditional obligation for the occurrence or failure of an agreed event which results in a loss. This means that the implementation of the guarantor's obligations still depends on whether or not the events that have been agreed upon by the parties have occurred beforehand, as requested by Article 246 of the Commercial Code.

Thus, to arrive at a situation where the insurer / company must actually provide compensation, the following 3 conditions must be met:

- a. There must be an unspecified event that is insured.
- b. The insured party must suffer a loss.
- c. There is a causal relationship between events and losses.

An indefinite event is an event which according to normalitarian human experience cannot be expected to occur.<sup>14</sup> In addition, subjectively, these events cannot be ascertained at all whether they occurred or not. Therefore, a clear agreement must be made in the policy as referred to in Article 256 paragraph 5. In particular, fire is regulated in articles 290 and 291 of the Indonesian Commercial Code:

Article 290:

"On the responsibility of the insurer is all loss and damage to the insured object due to a fire caused by lightning".

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<sup>14</sup> Emmy Pangaribuan Simanjuntak, *Coverage Law, General Insurance, Fire and Jia* (Yogyakarta: Commercial Law Section, Faculty of Law UGM, 1975), 67.

Article 291:

"With the loss caused by a fire equalizing all the losses that are considered as a result of a fire"

Unlike marine insurance, the law clearly states in detail, which one is an event that results in loss or not. Even though it is regulated in more detail, these details still have a limited nature as regulated in Article 637 of the Commercial Code.

Article 637:

"It is what the insurer must bear, namely all the loss and damage to the insured due to hurricanes, heavy rain"

Even though it is explicitly stated, the law always excludes two things as the final responsibility of the insurer to pay compensation, namely in the event that there are:

- a. Defects and shortcomings of the item itself.
- b. Due to the insured's own fault.

If a loss occurs as a result of an event that is not certain (evenement) which is not agreed upon, then of course the insurer must fulfill his obligation to provide compensation. However, not every loss and every event always ends in fulfilling the obligations of the insurer to the insured, but it must be in a series of events that have a causal relationship.

The insurance company as an insurer clearly provides the criteria and limits on the extent of the protection or guarantee it provides to the insured. These criteria and limitations are stated in the policy, according to the type of insurance concerned. Thus, each policy contains the types of events that are the responsibility of the insurer. So if there is a loss due to agreed events, the insurer will pay compensation.

Fire accident is an unforeseen event that occurs beyond the debtor's fault after contract closure which prevents the debtor from fulfilling his performance, before he is declared negligent and therefore cannot be blamed and does not assume any risk for the incident. For this reason, as a means for debtors to escape from the creditors' lawsuit, the argument for an overmacht must meet the following requirements:

- a. Fulfillment of achievement is hindered or prevented;
- b. Obstruction of the fulfillment of these achievements is beyond the debtor's mistakes;  
and
- c. The event that causes the achievement to be impeded does not constitute a risk to the debtor.

An event categorized as an *overmacht* brings consequences (legal consequences), as follows:

- a. Creditors cannot demand fulfillment.
- b. The debtor can no longer be declared negligent.
- c. The debtor is not obliged to pay compensation.
- d. The risk does not pass to the debtor.
- e. Creditors cannot demand cancellation in a reciprocal agreement.
- f. The engagement is considered null and void.

As it is understood that the existence of an *overmacht* will be associated with risks<sup>15</sup> accountability for the parties. The law provides a settlement mechanism related to the risk of an *overmacht* in reciprocal agreements (for example in Articles 1545, 1553, and 1563 BW).

## **LAW SETTLEMENT BY LITIGATION FOR THE PARTIES FOR THE FIRE DISASTER THAT DIDN'T BE CONSIDERED IN THE SUKARAMAI PEKANBARU PLAZA MANAGEMENT AGREEMENT**

That PLAINTIFF is the Plaza Sukaramai Market Traders Union (SP3S) which for the first time was established based on Deed No. 01 dated January 03 2017 drawn up before Fery Bakti, SH Notary in Pekanbaru, which consists of traders in the difficult plaza market environment as recorded in the membership list book and proven with a Membership Card (KTA), amendments from the Articles of Association as deed No. 44 dated 18 December 2017 drawn up before Nusyirwan Koto, SH, M. Kn., Notary in Pekanbaru.

A total of 104 Plaza Sukaramai merchants who are members of the SUKARAMAI MARKET TRADERS UNION (SP3S) filed a lawsuit for their Unlawful Acts in the lawsuit case Number: 103 / Pdt.G / 2018 / PN.Pbr between H. AL ASRI TANJUNG, SE., Ak, Dk, as the plaintiffs against PT. Makmur Papan Permata as the defendant.<sup>16</sup>

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<sup>15</sup>According to Subekti, what is meant by 'risk' is the obligation to bear the burden of loss in the event of an incident other than the fault of one of the parties that befalls the object referred to in the agreement or hinders the performance of the achievement. Check out Subekti-II, Op. cit., p. 144. Meanwhile, according to Mariam Darus Badruzaman, risk is a teaching about who should bear compensation if the debtor does not fulfill his performance in a force majeure (*overmacht*) situation. Check out Mariam Darus Badruzaman-1, Op. cit., p. 39. Thus, from the two opinions, it can be concluded that risk is correlated with *overmacht*.

<sup>16</sup> Lawsuit against the Law, Number: 103 / Pdt.G / 2018 / PN.Pbr, By: H. AL ASRI TANJUNG, SE., Ak, Dk, April 12, 2018

In the contents of the agreement regarding the resolution of problems that arise, PT. Makmur Papan Permata with the traders agree to resolve it through Arbitration which reads as follows: If the problem is not resolved by each party, then both parties agree that all disputes arising from this agreement will be resolved in the first and last stage according to the Arbitration procedure. BANI (Indonesian National Arbitration Board) by 3 (three) appointed Arbitrators.

Meanwhile the traders' lawsuit submitted it to the Negari court so that the verdict was rejected and won by PT. Makmur Jewel Board.

### **Sentence**

On 16 August 2018, the Pekanbaru State Court at the first level issued a decision on case Number: 103 / Pdt.G / 2018 / PN.Pbr, in which the decision was won by PT. Makmur Papan Permata, with a summary of the contents of the verdict as follows:

### **Judge**

In Exception

1. Received an exception from PT. Makmur Papan Permata in a special convention regarding absolute competence;
2. Stating that the Pekanbaru District Court is not authorized to examine and adjudicate the case Number: 103 / Pdt.G / 2018 / PN.Pbr
3. Sentenced the Plaintiffs to pay court fees incurred in the amount of Rp. 1,211,000, - (one million two hundred and eleven thousand rupiah).<sup>17</sup>

## **NEW AGREEMENT OF THE PARTIES**

After going through a long period of time since the fire disaster on December 8, 2015, in March 2020, the Sukarami Trade Center Building can be used by traders even though the renovation work has not been completely completed. So that PT. Makmur Permata has conveyed to all traders to immediately move from the Temporary Shelter (TPS) to a new building, of course in accordance with the rules and regulations of PT. Makmur Jewel Board.

The process of moving traders from the TPS to the Sukaramai Trade Center Building did not go smoothly, because many traders had not agreed to move to the new building for various reasons. There was resistance from several groups of traders who did not want to move from the TPS. Negotiations were also carried out by PT. Makmur Papan Permata with a

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<sup>17</sup> Pekanbaru District Court Decision Case Number: 103 / Pdt.G / 2018 / PN.Pbr, dated 16 August 2018

group of traders who do not want to move from the TPS mediated by the Pekanbaru City Government and the Pekanbaru Police Chief. Until the time limit for dismantling the TPS had been determined, it was forced to carry out the demolition simultaneously which was escorted by the Civil Service Police, the Police and the TNI by using an excavator.

After dismantling the TPS (Temporary Shelters), the traders who from the beginning rejected the policies / provisions of the Management of PT. Makmur Papan Permata, finally agreed to all the policies of PT. Makmur Papan Permata. The traders agreed with the contents of the new agreement, namely BUSINESS SPACE MANAGEMENT RIGHTS AGREEMENT AND SUKARAMAI TRADE CENTER BUILDING MANAGEMENT AGREEMENT.

In this new agreement, there are 30 (thirty) articles from the previous agreement totaling 21 (twenty one) articles. One of the emphasis on adding articles to this new agreement is related to the regulation of insurance articles which became a problem in the old agreement.<sup>18</sup>

The new Insurance article reads: (1) The First Party insures the building which includes infrastructure and business space collectively every year with fees billed proportionally to the SECOND PARTY, (2) As referred to in number 1 above, the SECOND PARTY is obliged to pay a premium. Insurance, with an annual advance payment with a proportionally determined amount and collected by the FIRST PARTY, (3) The insurance payment bill will be billed separately in the form of a separate receipt, (4) If the SECOND PARTY does not pay the insurance premium according to the proportional share, the SECOND PARTY does not are entitled to claim insurance and all consequences that arise are entirely the responsibility of the SECOND PARTY,(5) Payment of Insurance Premium for Business Space must be paid by SECOND PARTY not later than 7 (seven) days after the bill is submitted, (6) SECOND PARTY is recommended to insure their own goods and / or property in the Business Room against damage. by Fire.<sup>19</sup>

Regarding price changes that may occur in relation to the real value of the interest and the insured value, the law does not regulate it at all. Even though this can happen, especially for insurance agreements that run for a long time. However, according to the

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<sup>18</sup>Interview with Mr. Defri Rosya, Legal Manager of PT. Makmur Papan Permata, Friday, February 19, 2021, at the PT. Makmur Papan Permata, Komp. Sukaramai Trade Center Jl. General Sudirman Pekanbaru.

<sup>19</sup> Agreement on Business Space Management Rights and Management of the Sukaramai Trade Center Building

author, this can be resolved with a special clause, which the parties can agree on. This possibility is always open, with the parties having the freedom to regulate it.

In the Commercial Code it is also explained that as a matter of aggravating risk, but apart from the insured's fault, the insurer cannot burden himself with his obligations, except based on provisions such as fire insurance, which relates to an aggravating risk situation, is the possibility of change from the purpose of using a building, which is insured against fire hazards as referred to in Article 293 of the Indonesian Commercial Code.

The insurer can be exempted from the obligation to pay compensation, if it turns out that the fire risk has been insured and paid for by the insurer. However, if the insurance is not paid, how is it possible to claim insurance while the obligations have not been fulfilled, of course, the rights will not be accepted.

## **CONCLUSION**

To protect the parties who will make a rental agreement within the Shopping Center area, there should be a special regulation from the local government which obliges the parties to insure their respective obligations in accordance with the agreed content, and if they are violated there will be strict sanctions. This can prevent conflicts that can harm many parties. So that if in the future an unexpected event (*force majeure*) occurs, the parties can lighten the burden.

Particularly in legal settlement related to lease agreement disputes in the Shopping Center Area, if the non-litigation settlement by the parties is not achieved, and if it has to take legal settlement by means of litigation, then the choice of legal settlement should be sufficient through the local *Negari* court. This is to make it easier for the parties to resolve the dispute. For example: if the parties choose settlement through Arbitration, even though Arbitration Courts only exist in three provinces in Indonesia.

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