

Legal Certainty of Under-Hand Property Rental Agreements (Leasing) between Indonesian Citizens and Foreign Citizens

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DOI: <https://dx.doi.org/10.47772/IJRISS.2025.908000045>

Received: 21 July 2025; Accepted: 28 July 2025; Published: 27 August 2025

ABSTRACT

This study aims to analyze the implementation of the rights and obligations of the parties in a private property lease agreement (leasing) between Indonesian citizens (WNI) and foreign citizens (WNA) at PT. MIMPI FAMILY LOMBOK, and to examine the legal certainty of the agreement under Indonesian positive law. This research adopts a normative-empirical approach, using statutory, conceptual, and sociological methods. The findings are: 1) The private property lease agreement between Mr. H. Odit Rachman Hakim (WNI) and Mrs. Elodie Chloe Severini (WNA) at PT. MimpI Family Lombok was not formalized before a notary, but the agreement is still valid and legally binding. This validity is based on meeting the four conditions for a valid agreement as outlined in Article 1320 of the Civil Code: clear mutual consent, the parties' legal capacity, a specific object, and a lawful cause. Although a private agreement is recognized as valid, its evidentiary strength is weaker compared to an authentic deed made before a notary, especially in disputes involving third parties. Restrictions on property ownership by foreign nationals through the Operating Lease scheme without option rights align with agrarian law, but the lack of notary involvement heightens the risk of disputes.

Say key: Legal Certainty, Leasing Agreements, Underhand, Foreigners and Indonesian Citizens

INTRODUCTION

Indonesia, as one of the largest economies in Southeast Asia, continues to experience rapid growth across various sectors, including investment. With the enactment of Law Number 6 of 2023 regarding the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law through the Omnibus Law, this has significantly contributed to creating a more business-friendly and streamlined environment for business actors, including foreign investors. The abundant business opportunities, combined with the country's natural beauty, have sparked increased interest from foreign nationals to invest and conduct business in the Republic of Indonesia, particularly on Lombok Island.

The Mandalika Special Economic Zone (KEK) offers various business opportunities for both local and foreign investors to make investments. This creates a significant need for legal mechanisms, especially regarding agreements that regulate legal relations between foreign citizens as tenants (Lessees) and Indonesian citizens as property owners (Lessors).

If seen from the growth of interest of capital holders in the investment sector, then *leasing* is a service that has the prospect to develop in the future, because this service is an agreement and even a form of cooperation between the two parties, namely *the lessor* and *lessee*. A *leasing agreement* is an agreement that has not been regulated in the Law, either the Civil Code or other laws, so that if referring to the type of agreement classification as regulated in Article 1319 of the Civil Code, then the *leasing agreement* is an unnamed agreement (innominate) because it is not yet known in the Civil Code but this form of agreement grows and develops in society.

The leasing business in Indonesia began to emerge in 1974, with the Joint Decree of the Minister of Finance, the Minister of Industry, and the Minister of Trade and Cooperatives Number: Kep-122/MK/IV/2/1974, No. 32/M/SK/2/1974, and No. 30/Kpb/I/74, dated February 7, 1974, concerning Leasing Business Licensing. Then,

based on the Decree of the Minister of Finance of the Republic of Indonesia No. 4/KMK/013/1991, This institution was later given the official name "Leasing". A ¹*leasing* agreement is an agreement (contract) between a *lessor* and a *lessee* to rent a specific type of capital goods selected or determined by *the lessee*. The right to ownership of the capital goods rests with *the lessor*, while *the lessee* only uses the capital goods based on predetermined rental payments for a certain period of time.²

Private property/building *leasing* agreement is an agreement between the property owner (*lessor*) and the tenant (*lessee*). The main purpose of this agreement is to facilitate the property rental process without the need for notary fees because it is done without involving a notary or official registration, private agreements are often chosen because of their flexibility and simplicity in making contracts. The *leasing agreement* is made in writing as a contract. The leasing contract is valid and binding since it was signed by the parties in accordance with the freedom of contract based on Article 1338 of the Civil Code. A *leasing contract* is declared valid according to law if it meets the requirements stipulated in Article 1320 of the Civil Code regarding the conditions for a valid Agreement, namely the agreement of those who bind themselves, the capacity to make a contract, a certain thing and a lawful cause.

This research was conducted at PT MIMPI FAMILY LOMBOK which is located at Jalan Pariwisata Pantai Kuta (Mandalika Beach Area) Number: 46 Pujut District, Central Lombok Regency, West Nusa Tenggara. *The lessee* (tenant) named Elodie Chloe Severini is a foreign citizen who is an investor of the French Republic and a commissioner in her company, she made a *leasing agreement* using the *Operating Lease system*, the *Leasing agreement* was carried out underhand without involving the role of a notary. *The lessor* named Odit Rachman Hakim who is an Indonesian citizen who is the owner and lessor (*leasing*) of the building. The building being leased is a place of business according to the agreement between the two parties as long as *the lessee* does business in Kuta. Based on the Decree of the Minister of Finance Number 1169 / KMK.01 / 1991, this *leasing agreement* is in the form of a lease without option rights (*Operating Lease*) which allows the use of capital goods without giving the lessee the option to purchase the asset after the lease period ends. This creates a clear legal relationship between *the lessor* and *lessee*, focusing on the use of the asset over a specified period of time.

This underhand *leasing* agreement was chosen by agreement of both parties because this agreement is considered easier, simpler and less costly, however in the implementation of this *leasing agreement* which is carried out between Indonesian citizens and foreign citizens, it raises several questions regarding how the legal force of this underhand *leasing agreement according to Indonesian positive law and the implementation of the rights and obligations of the parties in the underhand leasing agreement. Although there are several regulations related to leasing*, such as the Decree of the Minister of Finance, there is no law that comprehensively regulates all aspects of *leasing*, this causes a vacuum in legal norms which makes protection for *the lessee* very minimal, therefore it is necessary for the public to have sufficient knowledge about this underhand *leasing agreement so that problems do not arise in the future.*

Based on the background of the problems that have been presented and to provide direction in the implementation of this research, the formulation of the problems raised are: 1) how are the rights and obligations of the parties fulfilled in the private leasing agreement at PT. MimpI Family Lombok? and 2) how is the legal certainty of the private property rental agreement between Indonesian citizens and foreign citizens according to Indonesian positive law?

RESEARCH METHOD

Legal research is an analytical process that includes specific methods, systematics, and thinking aimed at studying certain legal phenomena and then seeking solutions to the problems that arise. Therefore, an appropriate research method is needed. ³Based on the title of the research, the author uses the normative-empirical legal research method. Normative-empirical law is an understanding of law in terms of norms (rules) and the implementation of legal rules in real behavior as a result of the validity of legal norms. This behavior can be

¹Dhanisiwara K Harjono . *Understanding Business Law* . PT Rajagrafindo Persada, Jakarta, 2006 p. 3

²Amin Widjaja Tunggal and Arif Djohan Tunggal. *Legal Aspects of Leasing* . Rineka Cipta, Jakarta, 1994, p. 8.

³ Ani Purwati, *Legal Research Methods: Theory and Practice* , CV. Jakad Media Publishing, Surabaya, 2022, p. 4.

observed clearly and is evidence of whether citizens have behaved in accordance with or not in accordance with normative legal provisions (statutory regulations and other written documents).⁴

The approach method used in study This is a) Statute Approach; The statute approach is an approach carried out by examining all laws and regulations related to the problem being discussed, in the statute approach method it is necessary to understand the hierarchy and principles in the laws and regulations. b) Conceptual Approach; The conceptual approach is an approach carried out by examining the views/concepts of experts regarding the problem being discussed⁵. This approach *is* carried out when legal regulations do not or do not yet exist so that the views of experts become one of the bases in analyzing the research results.⁶ c) Sociological Approach; this approach examines and directly observes how the rights and obligations of the parties in a private *leasing agreement are implemented*. at PT. MIMPI FAMILY LOMBOK.

Collection techniques data used namely: a) field data that is data sources obtained directly in the field and related information direct with object research. In this case this, the data obtained respondents or related parties direct with research being studied and respondents who are the party providing response to statements put forward by researchers . b) study data document that is collect and review primary legal data and legal data secondary like related legislation as well as related books with the problem being researched .

The data obtained from the research, both primary and secondary, were then collected and organized for analysis. In writing this thesis, the author used qualitative data analysis, a research method that produces descriptive data. In qualitative research, all *investigators* or researchers focus on the problem being studied, guided by a conceptual or theoretical framework.⁷ The conclusion or drawing of conclusions on this research uses a deductive method of drawing conclusions, namely drawing conclusions from a general problem to a concrete problem faced, as in this research drawing a problem of implementing the rights and obligations of the parties in the private *leasing agreement* at PT. MIMPI FAMILY LOMBOK.

DISCUSSION

C.1. Fulfillment of the Rights and Obligations of the Parties in the Private Leasing Agreement at PT. Mimpil Family Lombok

Legal basis for leasing agreements in Indonesia

According to Salim HS, that: "an agreement has several basic elements, including: the existence of a legal relationship, the existence of a legal subject, the existence of rights and obligations, the existence of achievements (objects of the agreement), and in the field of property law. ⁸Similarly to the *leasing agreement* , *Leasing* is a new "word or terminology" from a foreign language that entered Indonesia, which until now the explanation in good and correct Indonesian is not or has not been felt to be suitable. The term *leasing* is very interesting therefore, *Leasing* remains in that name without being translated into the local language, both in America which is the origin of this *leasing institution*, and in countries that have recognized this *leasing institution*.⁹

Leasing is classified as an unnamed agreement (*innominate contracten*), because leasing agreements are not regulated in the Civil Code and have not been specifically regulated in law, *leasing* arises based on the principle of freedom of contract based on the provisions of Article 1338 paragraph (1) of the Civil Code which states that "All agreements that are legally made are valid as law for those who make them".

⁴ Muhaimin, *Legal Research Methods* , Mataram University Press, Mataram, 2020, p. 115.

⁵Peter Mahmud Marzuki, *Legal Research* , Kencana Prenada Media Group, Jakarta, 2017, p. 33.

⁶ *Ibid* , p. 137.

⁷Mukti Fajar ND, Yulianto Achmad, *Dualism in Legal Research* , Pustaka Pelajar Yogyakarta, 2015, p. 17.

⁸Salim HS, *Introduction to written Civil Law (BW)* , Sinar Grafika, 2008, p. 174.

⁹Amin Widjaja Tunggal, and Arif Djohan Tunggal, *Legal Aspects of Leasing* . Rineka Cipta, Jakarta, 1994, p. 7

leasing agreement is part of a lease agreement regulated in the Civil Code (KUHPerdata), specifically through the principle of freedom of contract as stated in Article 1338 of the Civil Code. The conditions for a valid agreement as stated in Article 1320 of the Civil Code, namely the existence of an agreement, capacity, a certain object, and a lawful cause, are the benchmarks for the validity of a *leasing agreement*. In practice, a property *leasing agreement* made underhand has valid legal force if it meets these conditions.

Although a *lease agreement* made underhand may meet the formal requirements of an agreement according to the Civil Code, the absence of administrative recording in accordance with PP 18/2021 has the potential to give rise to problems with the legality of execution and recognition of the rights of the parties.

b. Implementation of the rights and obligations of the parties in the *leasing agreement*

The parties involved in this agreement have been clearly identified. The OWNER or *Lessor* is Mr. H. Odit Rachman Hakim, a self-employed person residing at Jalan Basuki Rahmat No. 46, Praya. Meanwhile, the TENANT or *Lessee* is Mrs. Elodie Chloe Severini, a private citizen of French nationality, who holds a Temporary Stay Permit (ITAS) in Indonesia valid until June 5, 2026. The object of the lease in this agreement is a house located at Jalan Pariwisata Pantai Kuta (Mandalika Beach Area) No. 46, Pujut District, Central Lombok Regency, West Nusa Tenggara. This property is leased for a period of one year, starting from August 1, 2024 to August 1, 2025.

While the parties' general obligations under the lease agreement were reportedly satisfactory, a significant dispute arose regarding Income Tax (PPh) obligations. This dispute arose after the lessee established and operated a cafe and surf rental business called "Mimpi Sup Lombok" on the leased property, operated under the legal entity PT MIMPI FAMILY LOMBOK. This case vividly illustrates how a dispute can arise after the contract is signed and operations begin. The existing lease agreement explicitly defines the rights and obligations related to the lease, but does not address the tax aspects. The dispute centered on tax obligations, specifically PPh, which are within the domain of public law (tax law), not solely private contract law. The lessee's use of the property for commercial activities under a legal entity (PT MIMPI FAMILY LOMBOK) introduced a new layer of legal obligations, namely corporate taxes, that fall outside the scope of the basic landlord-tenant relationship. This demonstrates how even seemingly comprehensive agreements can be inadequate when external legal frameworks, such as tax laws, impose obligations based on activities undertaken, rather than solely on contractual provisions. This condition emphasizes the importance for an agreement to anticipate and address the impact of these external regulations.

In this agreement, the main rights and obligations of the TENANT (*Lessee*) are described in detail, especially in Article VI. From a financial perspective, the Tenant has an obligation to pay net rent per year in accordance with Article II. In addition, the Tenant is also responsible for paying the monthly electricity, cable TV, and internet usage fees as stipulated in Article III paragraph 1, and fully covers the cost of water bills during the rental period in accordance with Article III paragraph 2. Regarding the maintenance and use of the property, the Tenant is obliged to maintain the residence and its furnishings and cover the costs of repairs or replacement for damage caused by the Tenant's negligence, as stated in Article VI paragraphs 1 and 2. The Tenant is also prohibited from storing prohibited items or carrying out activities that violate the laws of the Republic of Indonesia in the rented property (Article VI paragraph 4). At the end of the rental period, the Tenant is obliged to return the unit and keys to the Owner in their original condition, except for normal damage due to normal wear and tear (Article VI paragraphs 5 and 6). This agreement also contains restrictions on the use of the property, where the Tenant is not permitted to rent the housing unit to another party during the rental period (Article VI paragraph 7).

On the other hand, the main rights and obligations of the OWNER (*Lessor*) are also regulated in the agreement. The main financial right of the Owner is to receive rental payments from the Tenant in accordance with Article II. The Owner also has obligations regarding the extension of the lease, where the Owner agrees that the Tenant has the option to extend the lease agreement with a new agreement regarding conditions and rates, provided that the Tenant provides written notice at least two months before the end of the lease period (Article V paragraph 2). If the Owner wishes to sell the unit to another party during the lease period, the Tenant still has the right to occupy the unit until the end of the lease period without changing the price and other articles in the agreement

(Article VII). In addition, the Owner is also obliged to make an inventory list of items provided in the house (Article IX paragraph 2).

However, a significant gap identified in these lease agreements is the absence of clauses specifically addressing tax obligations. The agreements explicitly lack any provisions relating to Income Tax (PPH) or other taxes such as Land and Building Tax (PBB) or Value Added Tax (VAT). This omission has serious implications, particularly when the property is used for commercial purposes. While the agreements detail various obligations such as rent, utilities, maintenance, and prohibitions, the absence of tax clauses creates ambiguity regarding who is responsible for which taxes, particularly when the property's use extends beyond simple residential purposes. The absence of clear tax clauses in lease agreements, particularly for properties that will or could potentially be used for commercial purposes, is a crucial omission. This shifts the burden of understanding and complying with complex tax regulations entirely onto the parties without adequate contractual guidance. This situation can lead to disputes, the need for legal consultation, and potential penalties if not addressed proactively.

The Income Tax (PPH) debate arose when tax authorities visited the "Mimpi Sup Lombok" cafe and surf rental business and inquired about the PPh that should be paid. The tenant, a foreign citizen (WNA), initially argued that the obligation to pay PPh was the lessor's. This perception may be based on the common understanding that taxes related to property or rental income are the responsibility of the owner or lessee.

However, a tax consultant provided a precise and crucial understanding of this situation. The consultant explained that PT MIMPI FAMILY LOMBOK, as the legal entity operating the business, is obligated to pay income tax. This explanation is based on the principle that PT MIMPI FAMILY LOMBOK is a separate legal entity from Ms. Elodie Chloe Severini. Therefore, the income earned from the cafe and surf rental operations is the company's income, not Ms. Elodie Chloe Severini's personal income as the property tenant.

In accordance with the provisions of the Income Tax Law (Law No. 7 of 1983 in conjunction with Law No. 7 of 2021 concerning the Harmonization of Tax Regulations), every business entity earning income in Indonesia is required to pay Corporate Income Tax on its net profit. The tax consultant correctly directed this obligation to PT MIMPI FAMILY LOMBOK because they are the ones actively generating income from their commercial business activities.

It is important to distinguish between Income Tax on rental income, which is imposed on *the Lessor* as the recipient of rental income, and Corporate Income Tax on business income, which is imposed on PT MIMPI FAMILY LOMBOK. The initial debate is likely to center on Corporate Income Tax arising from the PT's commercial activities, not Income Tax on rental income received by *the Lessor*. However, as a business entity, PT MIMPI FAMILY LOMBOK also has potential obligations as a withholding agent for rental payments to *the Lessor*, if it meets the criteria as a withholding agent. The explanation of the tax consultant based on the tax principles stipulated in the Income Tax Law, which distinguishes tax subjects (individuals versus entities) and types of income (rental versus business), is very helpful for the lessee *to* understand the fiscal obligations inherent in the business entity they have established.

This incident highlights the crucial role of tax consultants in risk mitigation and taxpayer education. The user's claim that "the tax consultant explained to me that the PT entity, PT MIMPI FAMILY LOMBOK, was the one who should pay" suggests an initial misunderstanding or lack of awareness on the part of the foreign national tenant regarding their tax obligations. The consultant's intervention provided the correct legal interpretation, thus preventing potential non-compliance and penalties. This underscores the crucial role of tax professionals in bridging the knowledge gap between complex tax regulations and taxpayers, especially for foreign nationals conducting business in a new jurisdiction. This case highlights the value of professional tax consultation, not only for compliance but also for taxpayer education and dispute prevention. For foreign nationals establishing a business in Indonesia, the nuances of local tax law (e.g., distinguishing between personal income tax, corporate income tax, and specific final taxes) can be challenging. Proactive consultation can actually prevent initial "debates," emphasizing the importance of investing in expert advice as a form of risk mitigation.

The leased property is a "house," which implicitly indicates residential use. However, the tenant later uses the property to establish a "café and surf rental." The lease agreement does not explicitly prohibit or allow

commercial use with certain conditions. This "multi-purpose" use, meaning a residential property used for commercial activities, significantly affects the tax implications. The lack of a tax clause and the unexpected change in use create ideal conditions for tax disputes. Therefore, when drafting a lease, especially for a property that could be used commercially even if originally intended for residence, it is important to include a clause that addresses the tax consequences of such commercial use. This should clarify who pays income tax on rental income and specify that any business activity by the tenant will incur additional tax obligations (e.g., corporate income tax, VAT), which the tenant, as a business, is solely responsible for. Forward-thinking contractual provisions are essential to prevent disputes and maintain clear legal and tax responsibilities.

c. Legal implications of *leasing* agreements made privately

Although agreements made underhand are declared valid based on Articles 1320 and 1338 of the Civil Code, there are several legal implications that need to be considered, namely the absence of official recording and the principle of publicity.

A lease agreement, even if "underhand," is considered valid and binding between the parties based on the principles of contract law outlined in Article 1320 (conditions for the validity of an agreement) and Article 1338 (principle of *pacta sunt servanda*) of the Civil Code (KUHPerdata). However, affirming the validity of the contract under Articles 1320 and 1338 of the Civil Code is important, but it is crucial to understand that this "validity" is primarily *inter partes* (between the parties). This case illustrates that such internal validity is insufficient when the contract's subject matter or the activities conducted under it extend into the realm of public law (such as taxation or land registration) or impact the rights of third parties. Contract validity does not automatically guarantee public certainty or protection from external regulatory oversight. This highlights that legal validity is not a single, uniform concept but exists on a spectrum, with different levels of enforceability and recognition depending on the context.

In "underhand" property leasing or rental schemes, which are agreements made privately without involving a notary or official registration, the principle of publicity is rarely fulfilled. The principle of publicity, aimed at making a right or agreement known to the public for legal certainty, depends heavily on formal recording or registration with authorized institutions. Since underhand leasing agreements are not registered with the National Land Agency (BPN) or other agencies and are not drafted as authentic deeds by a notary, no information about the existence of the rental rights or use of the property is publicly recorded. This means third parties cannot know that the property is leased, creating high risks such as double sales by the owner, ownership disputes, and difficulties in law enforcement if default occurs. The lack of the principle of publicity weakens the legal strength of underhand leasing agreements, making them vulnerable to disputes and lacking legal protection for all involved parties. In the case of the leasing agreement at PT. MIMPI FAMILY LOMBOK, the absence of such records leads to legal uncertainty, especially if a dispute arises between the Lessor and Lessee. Without records, interested parties, including law enforcement officials, will struggle to trace the agreement's history and verify legitimate rights. This can lead to conflicts in dispute resolution and open the door for third-party intervention.

Risk of Default and Clause Ambiguity

Leasing agreements that do not undergo notary or PPAT verification often contain ambiguous clauses, especially regarding:

1. Termination of contract and sanctions for default,
2. Rent value adjustment,
3. Property maintenance and repair procedures, as well as
4. Dispute resolution mechanism.

Legal Protection for Parties Involved

Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration also stipulates restrictions on foreign nationals' ability to acquire full land rights, thus allowing *leasing schemes* to be used as an alternative solution. However, *leasing contracts* executed under

contract must provide adequate legal protection for both parties. This legal protection includes:

1. Guarantee that the agreement does not conflict with the provisions regarding the prohibition on land ownership by foreign nationals,
2. *force majeure* clause that regulates risks beyond the control of the parties, and
3. The existence of a mediation or arbitration mechanism as an effective alternative for dispute resolution.
4. The linkage with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration is crucial, as any violation of the administrative provisions or ownership restrictions stipulated in the PP may result in the cancellation of the agreement or a reduction in the legal force of the contract.

d. The rights and obligations of the parties in a property rental or *leasing agreement* between *the lessee* and *the lessor*

Article 1338 of the Civil Code is the main legal basis for this *leasing agreement*, because this article regulates agreements. Every agreement made by parties applies as law to the parties who make it. This article is a reflection of freedom of contract. This principle means that parties are free to make contracts and regulate their contents as long as they do not conflict with legal norms and social norms, as long as they fulfill the conditions for the validity of an agreement contained in Article 1320 of the Civil Code by applicable customs, and are carried out in good faith.

Article 1338, Paragraph 1 of the Civil Code regarding agreements applies as law for the parties, meaning that the agreement has binding and coercive power and provides legal certainty for the parties who make it. So that the parties must comply with the agreement, the same as obeying the law, or in other words, the parties must carry out the rights and obligations contained in the agreement properly.

In a property rental agreement (*leasing*), whether made authentically or underhanded, the parties involved have mutually binding rights and obligations. In the context of the legal relationship between *the lessor* (the party renting the property) and *the lessee* (the party renting the property), the regulations regarding these rights and obligations are sourced from the Civil Code (KUHPperdata), specifically Articles 1548 to 1600, as well as other relevant provisions, including regulations regarding ownership and control of property by foreign citizens in Indonesia. Analysis of the Implementation of Rights and Obligations Based on the Articles of the Agreement is described as follows:

Lease Term (Article I)

Article I of the agreement stipulates the lease commencement date on August 1, 2024, and the lease termination date on August 1, 2025. The parties do not directly state the implementation status of Article I, but it is implied that the lease period is ongoing because Article V (Lease Period) is stated not to have been implemented. After all, the lease period has not yet ended.

Based on the researcher's analysis, Article I is the clause that stipulates the contract duration. Its implementation is passive, meaning the lease period runs according to the agreed-upon date. Because the lease period had not yet expired at the time of this research (before August 1, 2025), the contract duration was still in its active period. There was no indication of any violation of the provisions of this Article.

b. Rent Payment (Article II)

Article II of the agreement stipulates the net rental value, with payment methods that can be made via transfer or cash. The *Lessee* has made payment via transfer.

c. Responsibility for Utility Costs (Article III)

Article III stipulates that utility costs, including electricity, cable TV, and internet, are not included in the rental price and must be paid monthly by the Tenant. Meanwhile, water bills are fully covered by the Landlord during

the rental period. This article has been implemented effectively.

d. Lease Extension Option (Article V)

Article V states that the lease term is valid by Article I. In addition, the Landlord agrees that the Tenant has the option to extend the lease agreement with a new agreement regarding conditions and rates, provided that the Tenant provides written notice at least two months before the lease term ends. The Lessor and Lessee have agreed to extend the contract for the following year with certain terms and conditions, so this article has been implemented properly.

e. Responsibilities and Rights of the Tenant (Article VI)

Article VI outlines the Tenant's various obligations and rights, including the obligation to maintain the property and its furnishings, cover the costs of repairing damage caused by negligence, pay electricity bills, not store prohibited items or engage in illegal activities, return the unit and keys in their original condition (except for normal wear and tear) at the end of the lease, and not rent the unit to another party. Therefore, Article VI has been implemented properly.

The "well-executed" status indicates that the Lessee has generally fulfilled the operational and maintenance obligations outlined in this Article. However, it is important to note that even if this Article is literally well-executed, the use of the property for commercial purposes (cafe and surf rental) by PT. MIMPI FAMILY LOMBOK, while not explicitly prohibited in Article VI, represents a fundamental departure from the assumed "home" use and is a major trigger for tax disputes.

This highlights the difference between the literal fulfillment of a contractual clause and the implications arising from an unanticipated use of the property. While commercial use may not be an explicit violation of a specific subclause in Article VI (since it does not explicitly prohibit commercial activity), it fundamentally changes the context and implications of the lease. A "house" generally implies residential use. This "multi-purpose" use, as described in the narrative, triggers new legal and fiscal obligations (e.g., corporate income tax, potential VAT, business licenses) that were not anticipated when the contract was drafted. This points to a significant weakness in the contract's formulation. Even if specific clauses are "properly fulfilled," a significant change in the purpose of the leased asset can lead to unforeseen legal and financial consequences beyond the contract's explicit scope.

f. Transfer of Property Ownership Rights (Article VII)

Article VII stipulates that if the Owner wishes to sell the unit to another party during the lease term, the Tenant retains the right to occupy the unit until the end of the lease term without any changes to the price or other provisions of the agreement. Users report that "Article VII has been implemented properly." The status "well executed" indicates that no transfer of ownership occurred during the lease term, or if there was, the Tenant's right to occupy the property until the end of the lease term has been fully respected by the provisions of this article.

g. Force Majeure Clause (Article VIII)

Article VIII regulates the handling of events beyond the reasonable control of either party (e.g., earthquakes, floods) that prevent the fulfillment of obligations. In such circumstances, the Tenant will leave the unit for repairs, and the rental period will be extended according to the duration of the repairs until the unit can be reoccupied by the Tenant. Users report that Article VIII has been implemented properly. The status "executed properly" indicates that no force majeure event has occurred that requires the activation of this clause.

h. Arbitration Mechanism and Inventory of Goods (Article IX)

Article IX establishes the legal domicile of both parties at the Clerk's Office of the Praya District Court, Central Lombok. Furthermore, this Article states that the Owner will create an inventory of all items provided in the house and that must be returned (except for normal damage due to wear and tear). Users report that Article IX

has been properly implemented.

Notification Provisions (Article XI)

Article XI stipulates that any notice given under this agreement must be addressed to the parties' addresses listed at the beginning of the agreement and delivered in person. The user reports that the notification or communication procedures between the parties have been followed by the agreed provisions.

For international comparison, the International Accounting Standards Board (IASB) has issued a new standard, International Financial Reporting Standards (IFRS 16) on leases. These new standard places most leases on the balance sheet for the lessee under a single model, eliminating the distinction between operating and finance leases. However, lessor accounting remains largely unchanged, and the distinction between operating and finance leases is maintained. IFRS 16 supersedes International Accounting Standards 17 (IAS 17 Leases) and its related interpretations and is effective for periods beginning on or after 1 January 2019, with earlier adoption permitted if IFRS 15 'Revenue from Contracts with Customers' has also been adopted. In July 2006, a project to revise lease accounting was added to the IASB's agenda. This project was carried out as a joint project with the US Financial Accounting Standards Board (FASB), with both standard setters working to develop an approach that requires lessees to recognize assets and liabilities for the rights and obligations arising under leases. In subsequent years, a discussion paper and two exposure drafts were issued, with both boards undertaking significant outreach activities. The IASB has now issued a final standard with a single lessee accounting model, while the FASB has decided to use a dual lessee accounting model in its upcoming standard, but both require the recognition of both assets and liabilities (with limited exceptions).

A contract is, or contains, a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Control is granted if the customer has the right to direct the use of the identified asset and obtains substantially all the economic benefits from that use.

Under IFRS 16, the lessee recognizes a right-of-use asset and a lease liability. The right-of-use asset is treated similarly to other non-financial assets and is depreciated accordingly, and the liability bears interest. This will typically result in a pre-charge expense profile (whereas operating leases under International Accounting Standards 17 (IAS 17) typically have a straight-line expense) because linear depreciation of the leasehold asset is assumed and a decrease in interest on the liability will result in an overall decrease in the expense over the reporting period. The lease liability is initially measured at the present value of the lease payments payable over the lease term, discounted at the interest rate implicit in the lease if readily determinable. If that rate is not readily determinable, lessees should use their incremental borrowing rate. IAS 17 prescribes the accounting policies and disclosures applicable to leases for both lessees and lessors. Leases should be classified as finance leases (which transfer substantially all the risks and rewards of ownership, and result in the recognition of assets and liabilities by the lessee and a receivable by the lessor) and operating leases (which result in the recognition of an expense by the lessee, with the fixed asset being recognized by the lessor). IAS 17 was reissued in December 2003 and is effective for annual periods beginning on or after 1 January 2005. IAS 17 will be replaced by IFRS 16 'Leases' from 1 January 2019.

Like IFRS 16's predecessor, IAS 17, lessors classify leases as either operating or financing leases. A lease is classified as a financing lease if it transfers substantially all the risks and rewards incidental to ownership of the underlying asset. Otherwise, it is classified as an operating lease. For finance leases, the lessor recognizes financing income over the lease term, based on a pattern that reflects a constant periodic rate of return on the net investment. The lessor recognizes operating lease payments as income on a straight-line basis or, if more representative of a pattern in which the benefits from the use of the underlying asset diminish, on another systematic basis.

e. Analysis of Legal Certainty in Private Leasing Agreements at PT. MIMPI FAMILY LOMBOK

Jan Michiel Otto's theory of legal certainty emphasizes the importance of clear, consistent, and easily accessible legal regulations, implemented fairly by the government, and adhered to by the public and the judiciary. In the context of the underhanded *leasing agreement* between Indonesian citizens and foreign nationals at PT. MIMPI

FAMILY LOMBOK, Several inconsistencies exist with these principles. First, although Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration does not explicitly require registration of lease agreements related to land rights with the National Land Agency (BPN) to ensure legal certainty, underhanded *leasing practices* bypass this process. This creates the risk of unclear legal status of the property, especially in the event of a future dispute.

Furthermore, inconsistent implementation of regulations by government officials is also a problem. Although Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration is in effect, there is no enforcement of unregistered *leasing agreements*. This situation creates a dualism between formal law and everyday business practices, ultimately eroding public trust in the legal system. On the other hand, the parties to this *leasing agreement* do comply with the legal requirements of a valid agreement under Article 1320 of the Civil Code, such as a clear agreement and object. However, their compliance with administrative aspects remains low, indicating suboptimal legal awareness.

The role of the judiciary in resolving disputes also presents a challenge. While a dispute resolution clause exists in the Praya District Court, without proof of contract registration, judges will have difficulty verifying the validity of the agreement. This has the potential to prolong the legal process and reduce the certainty of the execution of court decisions. The legal philosophy behind this case demonstrates the tension between freedom of contract (Article 1338 of the Civil Code) and the need for regulations that protect the public interest (Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration).

To strengthen legal certainty, it is recommended that parties register *leasing agreements* with the National Land Agency (BPN), even if it is voluntary. Improvements to contract clauses to align with regulations and legal education for business actors are also needed. Thus, although private agreements are legally valid, integration with administrative regulations will provide better legal protection for all parties while upholding the principle of national legal sovereignty.

C.2. Legal Certainty of Private Property Lease Agreements Between Indonesian Citizens and Foreign Citizens According to Indonesian Positive Law

Lawrence M. Friedman's legal contract theory emphasizes that contract law functions as a regulatory instrument for market interactions through specific rules that guarantee certainty and fairness. In the context of private property lease agreements between Indonesian and foreign citizens, this theory is relevant for analyzing the extent to which Indonesian positive law can accommodate market needs while protecting the rights of the parties. According to Friedman, contract law not only binds the parties privately but must also align with broader public policy and regulations. In Indonesia, legal certainty in private property lease agreements is tested through the consistent application of Article 1320 of the Civil Code concerning the requirements for valid agreements and Government Regulation No. 18 of 2021 concerning land rights registration. Although private agreements are valid under civil law, the lack of registration with the National Land Agency (BPN) creates a legal loophole that contradicts Friedman's principle of legal certainty, which stipulates that rules must be clear and predictable to foster trust in economic transactions.

The philosophy of utilitarianism is evident in the parties' choice to use private agreements: convenience, low cost, and flexibility. However, the philosophy of *legal formalism* emphasizes that compliance with legal procedures (such as registration) is necessary to avoid the risk of disputes. The inconsistency between freedom of contract (Article 1338 of the Civil Code) and regulatory requirements (PP 18/2021) reflects the dialectic between individual autonomy and collective interests within the legal system.

Government Regulation No. 18 of 2021 regulates land rights registration as a form of state intervention in the property market, in line with Friedman's view that contract law should address market imperfections. This regulation requires the registration of use or lease rights for foreign nationals at the National Land Agency (BPN), aiming to create transparency and prevent abuse of rights. However, in the practice of underhanded agreements at PT. MIMPI FAMILY LOMBOK, the lack of registration results in legal uncertainty, particularly regarding the rights status of *the lessee* (foreign national). Friedman states that contract law should ensure "economic

efficiency" through rules that reduce transaction risk. Without registration, the risk of default and ownership disputes increases, which contradicts this efficiency goal.

Philosophically, PP 18/2021 reflects *Rousseau's social contract principle*, in which the state exists to protect the public interest through regulation. However, public non-compliance with registration demonstrates a gap between legal norms (*law on the books*) and practice (*law in action*), as criticized by legal realism.

According to Article 1313 of the Civil Code, private agreements are valid as long as they meet the requirements of Article 1320. However, Friedman criticized the definition of an agreement in Article 1313 as too general and not reflecting the complexity of modern transactions. In the case of PT. MIMPI FAMILY LOMBOK, although the leasing agreement met the requirements for validity, the absence of a clause regulating the use of the property by foreign nationals (as per PP 103/2015) demonstrates the weakness of Indonesian contract law in anticipating legal smuggling practices.

Contract law is often biased toward powerful economic interests. In this context, foreign nationals as foreign parties may have greater bargaining power, so the lack of notary or PPAT supervision could potentially disadvantage Indonesian citizens as *lessors*.

The main risk of underhand agreements is the weak evidentiary power (Article 1875 of the Civil Code). Friedman emphasized that contract law must provide an effective dispute resolution mechanism. Without an authentic deed, the evidentiary process in court becomes complicated, especially in the event of ownership disputes or breach of contract. A concrete example is the case in Lombok, where foreign nationals struggled to prove their lease rights because the agreement was not legalized.

The legal system should provide equal protection for all parties. However, the lack of registration and notarial legalization creates inequality for foreign nationals who lack familiarity with Indonesian law. On the other hand, the philosophy of legal pluralism recognizes that underhand practices may reflect societal adaptation to complex bureaucracy. This suggests that underhand property rental agreements between Indonesian citizens and foreign nationals in Indonesia are formally valid but materially vulnerable due to the lack of integration with administrative regulations. This reveals the tension between freedom of contract and the need for legal certainty, which can only be addressed through harmonization of regulatory practices and policies. Without reform of the registration and enforcement system, underhanded agreements will remain a source of uncertainty in cross-border property transactions.

In general, a private property lease agreement between an Indonesian citizen (WNI) and a foreign citizen (WNA) is valid and binding. This validity is based on the principles of consensualism and freedom of contract adopted in Indonesian contract law, provided that the agreement meets the four requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. In fact, even a verbal lease agreement can be considered valid and binding, as affirmed in Supreme Court Decision Number 2368 K/Pdt/2019. This decision overturned a lower court decision that declared an oral agreement invalid due to a lack of documentation, affirming that an oral agreement remains binding if it meets the requirements of Article 1320 of the Civil Code.

However, the legal certainty of a private agreement depends heavily on the confessions of the parties involved. The evidentiary force of this agreement is strong as long as neither party denies their signature. If a denial occurs, the process of proving the agreement in court can be extremely complicated and difficult.

CONCLUSION

Based on the research results presented above, the conclusions are as follows:

First, the private property lease agreement between Mr. H. Odit Rachman Hakim (an Indonesian citizen) and Mrs. Elodie Chloe Severini (a foreign national) at PT. Mimpri Family Lombok, although not drafted before a notary, is valid and legally binding. This validity is based on the fulfillment of the four conditions for a valid agreement as stipulated in Article 1320 of the Civil Code: the existence of a clear consensus, the capacity of the parties, a specific object of the agreement, and a lawful cause. Classifying the agreement as an Operating Lease

(without option rights) significantly reduces the most serious legal risk for foreigners in property transactions in Indonesia, namely the risk of being deemed a nominee agreement that is void by law due to prohibited causes. Second, the legal certainty of private property lease agreements between Indonesian citizens and foreign nationals under Indonesian positive law varies according to compliance with the legal terms of the agreement and relevant sectoral regulations such as Government Regulation Number 18 of 2021 and Government Regulation Number 103 of 2015. While private agreements are recognized as valid, their evidentiary power is weaker than that of authentic deeds, especially in disputes involving third parties. The restrictions on property ownership by foreign nationals through the Operating Lease scheme without option rights are consistent with agrarian law. However, the lack of a notary's involvement increases the risk of disputes. Furthermore, public understanding, particularly among foreign nationals, of the legal force of private deeds is still low, which may lead to the misuse of leasing schemes for legal smuggling, such as the practice of nominee arrangements.

BIBLIOGRAPHY

1. Amin Widjaja Tunggal and Arif Djohan Tunggal, *Legal Aspects of Leasing* . Rineka Cipta, Jakarta, 1994.
2. Ani Purwati, *Legal Research Methods: Theory and Practice*, CV . Jakad Media Publishing, Surabaya, 2022.
3. Dhanisiwara K Harjono. *Understanding Business Law* . PT Rajagrafindo Persada, Jakarta, 2006.
4. Muhaimin, *Legal Research Methods* , Mataram University Press, Mataram, 2020 .
5. Mukti Fajar ND, Yulianto Achmad, *Dualism in Legal Research* , Pustaka Pelajar Yogyakarta, 2015.
6. Peter Mahmud Marzuki, *Legal Research* , Kencana Prenada Media Group, Jakarta, 2017.
7. Salim HS, *Contract Law: Theory and Techniques of Contract Drafting*, Sinar Grafika, East Jakarta, 2019.

Civil Code

1. Law Number 6 of 2023 concerning Determination Regulation Government Replacement Constitution Number 2 of 2022 concerning Job Creation become law.
2. Law No. 7 of 1983 in conjunction with Law No. 7 of 2021 concerning the Harmonization of Tax Regulations
3. Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration
4. Regulation of the Minister of Finance Number 84/PMK.012/2006 concerning Financing Companies, State Gazette of the Republic of Indonesia 2006 Number 86, Decree of the Minister of Finance.
5. Decree of the Minister of Finance Number 1169/KMK.01/1991 concerning Leasing Activities, State Gazette of the Republic of Indonesia 1991 Number 1169, Decree of the Minister of Finance. Leasing Agreement (Lease Agreement)