

Legal Protection in Unauthorized Commercial Restaurant Lease Transfers

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ABSTRACT

Unauthorized transfers of commercial restaurant lease rights frequently create legal disputes concerning legal certainty, contractual obligations, and the protection of property owners' rights. This study examines the legal protection available in unauthorized commercial restaurant lease transfers and analyzes the legal consequences arising from lease transfers conducted without the owner's consent under Indonesian contract law. The research employs an empirical legal method using statutory, conceptual, case study, and socio-legal approaches. Legal materials and empirical findings were analyzed descriptively and qualitatively based on the Indonesian Civil Code, particularly Articles 1338, 1548, and 1559. The findings reveal that unauthorized lease transfers constitute a breach of contract and create legal uncertainty due to the absence of direct contractual relationships between property owners and third parties. Such practices may result in financial losses, loss of control over commercial assets, and prolonged legal disputes affecting business stability and investment security. The novelty of this study lies in its focus on commercial restaurant lease transfers within the hospitality sector, emphasizing the intersection between contractual legality, property protection, and commercial business continuity. The study concludes that stronger legal protection is necessary through explicit contractual clauses, mandatory written consent, and clearer regulatory frameworks to ensure balanced rights and obligations between parties. Future research is recommended to explore comparative regulations on commercial lease transfers and alternative dispute resolution mechanisms in international business practices.

Keywords: Commercial Lease Transfers; Contract Law; Legal Certainty; Legal Protection; Restaurant Lease Disputes

INTRODUCTION

Commercial lease agreements constitute an essential legal instrument governing the Commercial lease agreements constitute one of the primary legal instruments regulating business relationships between property owners and tenants, particularly within the hospitality and restaurant industries. Through lease agreements, property owners provide tenants with the right to utilize commercial premises for a specified period in exchange for rental payments. However, legal disputes frequently emerge when tenants transfer lease rights to third parties without obtaining prior approval from property owners. Such unauthorized transfers often create legal uncertainty, weaken contractual obligations, and threaten the protection of ownership rights over commercial assets. These issues become increasingly significant in tourism-based commercial environments, where restaurants operate within hotels or resort areas, involving complex legal and business relationships between landlords, tenants, and third-party operators.

The legal relationship established through lease agreements is fundamentally grounded in the principles of contractual freedom, legal certainty and good faith. Under Indonesian contract law, lease agreements are principally regulated under Articles 1548–1600 of the Indonesian Civil Code, and Article 1559 expressly prohibits tenants from transferring lease rights without the owner's consent. Therefore, unauthorized lease transfers may constitute a breach of contract and provide legal grounds for contract cancellation and compensation claims. Mahendrawati et al. (2022) argue that the implementation of good faith

principles and balanced contractual arrangements is essential to ensuring legal protection and maintaining proportional rights and obligations between the parties involved in commercial property agreements. Nevertheless, the implementation of these legal provisions remains problematic in commercial practice, particularly in hospitality-based restaurant businesses, where property management and operational continuity are closely interconnected.

International legal scholarship has increasingly recognized that commercial lease disputes involve broader concerns related to investment security, property governance, and business sustainability. Dixon & Marston (2021) argue that commercial lease conflicts are no longer confined to issues of contractual non-performance but also encompass investor protection and commercial asset control in modern property markets. Bright & Hopkins (2020) further explains that unauthorized lease assignments may undermine legal certainty and weaken the enforceability of contractual obligations in commercial property law. Likewise, Akkermans & Ramaekers (2022) emphasize that contemporary commercial tenancy disputes frequently arise due to imbalances between contractual autonomy and proprietary protection rights.

Within the hospitality sector, unauthorized lease transfers possess unique legal characteristics because restaurant businesses are directly associated with hotel reputation, operational standards and tourism investment stability. Ioannides & Petersen (2021) observe that unauthorized business transfers within hospitality properties frequently produce financial and reputational risks that extend beyond ordinary tenancy disputes. Similarly, Bouchlaghem (2023) notes that restaurant leasing arrangements require stronger contractual safeguards because hospitality businesses involve integrated operational ecosystems rather than simple property occupancy arrangements. These perspectives indicate that restaurant lease disputes must be analyzed not only through conventional contract law approaches but also through the broader dimensions of commercial sustainability and property investment protection.

Previous studies on lease disputes have generally focused on residential tenancies, land leasing, and general commercial property transfers. Existing scholarship rarely examines unauthorized restaurant lease transfers within hospitality environments, particularly in tourism-oriented developing economies such as Indonesia. Several Indonesian legal studies have discussed lease disputes from a normative perspective; however, most remain limited to formal legality issues without comprehensively analyzing the empirical legal protection mechanisms experienced by restaurant owners in commercial practice. Consequently, scholarly discussions concerning the relationship between unauthorized lease transfers, property control, investment certainty, and operational business continuity in hospitality-based restaurant leasing remain significantly underdeveloped.

This research identifies a substantial gap in existing legal scholarship regarding the practical implications of unauthorized restaurant lease transfers within commercial hospitality environments. Unlike previous studies primarily centered on doctrinal legality or general property leasing disputes, this study specifically investigates the empirical legal consequences experienced by restaurant owners when tenants transfer lease rights without authorization. The novelty of this research lies in its focus on commercial restaurant lease transfers operating within the resort and hospitality sectors, emphasizing the intersection between contractual legality, commercial asset protection, and business sustainability. Furthermore, this study offers a deeper analysis of how unauthorized lease transfers generate legal uncertainty not only for property owners but also for broader commercial investment ecosystems in the tourism industry.

Accordingly, this study aims to analyze the legal protection available for property owners against unauthorized commercial restaurant lease transfers and examine the legal consequences arising from such transfers under Indonesian contract law. This study also seeks to formulate legal recommendations to strengthen contractual safeguards, enhance legal certainty, and minimize future disputes in commercial restaurant leasing practices. Through an empirical legal analysis based on commercial hospitality practices, this study is expected to contribute both theoretically and practically to the development of commercial contract law, hospitality business governance, and commercial property dispute resolution mechanisms.

RESEARCH METHOD

This study employed an empirical legal research method to examine the legal protection against unauthorized commercial restaurant lease transfers within the hospitality sector. This study focused on the legal relationship between property owners, tenants, and third parties in restaurant lease agreements,

particularly concerning unauthorized lease transfers conducted without the owner's consent. This study combined statutory, conceptual, case study, and socio-legal approaches to obtain a comprehensive understanding of both normative legal principles and their practical implementation in commercial leasing practices.

The statutory approach was used to analyze the legal framework governing lease agreements under the Indonesian Civil Code, particularly Articles 1338, 1548, and 1559, concerning contractual obligations, lease arrangements, and restrictions on lease transfers. The conceptual approach examined the theories of legal certainty, legal protection, breach of contract, and good faith principles in commercial contractual relationships. In addition, the case study approach focused on unauthorized restaurant lease transfer practices occurring within hospitality business environments, while the socio-legal approach explored the interaction between legal norms and business realities in commercial property management.

This study utilized both primary and secondary legal materials. The primary legal materials consisted of statutory regulations, contractual documents, and legal provisions related to lease agreements and property rights. Secondary legal materials included international journal articles, legal textbooks, previous studies, and scholarly publications discussing commercial lease disputes, property protection, and hospitality business governance. Supporting materials were obtained from legal dictionaries, regulatory documents and relevant legal databases.

Data were collected through document analysis, legal literature reviews, and field-based legal observations of restaurant leasing practices within hospitality properties. Purposive sampling was used to select legal cases and contractual practices relevant to unauthorized lease transfers in restaurant businesses. The study examined variables related to contractual legality, owner consent, legal certainty, breach of contract, and legal protection mechanisms available to property owners affected by the unauthorized transfers.

The collected legal materials and empirical findings were analyzed using a descriptive qualitative analysis. This method was employed to interpret legal provisions, identify practical legal problems, and evaluate the effectiveness of existing legal protection mechanisms in commercial restaurant lease agreements. The analytical process emphasized legal interpretation, comparative assessment of contractual practices, and evaluation of dispute resolution mechanisms to formulate recommendations capable of strengthening legal certainty and contractual protection in commercial hospitality leasing practices.

RESULT & DISCUSSION

The findings indicate that unauthorized commercial restaurant lease transfers generate substantial legal uncertainty in the contractual relationships between property owners, tenants, and third-party business operators. In commercial restaurant practices within hospitality environments, tenants frequently transfer operational control to third parties without obtaining prior approval from property owners. Such transfers are generally motivated by business restructuring, financial instability, operational partnerships or managerial changes. However, these practices create legal ambiguity because third-party operators do not have direct contractual relationships with property owners, despite exercising operational control over leased restaurant premises.

This study demonstrates that unauthorized lease transfers weaken the implementation of contractual obligations established under the original lease agreement. Property owners experience reduced control over commercial assets because the operational authority shifts to parties outside the contractual framework. This condition increases uncertainty regarding liability for rental payments, property maintenance, operational damages, taxation responsibilities, and business obligations arising during the lease period. The findings confirm that legal uncertainty emerges not solely because lease rights are transferred but because the transfer process disregards contractual approval mechanisms originally agreed upon by the parties. Subekti (2015) explains that lease agreements fundamentally establish reciprocal legal obligations requiring tenants to utilize the leased property consistently with the agreed contractual purpose and limitations. This principle is particularly relevant in commercial restaurant leasing because operational transfers conducted without owner approval effectively alter the contractual balance originally established between the parties. Harahap (1986) further emphasizes that contractual implementation must preserve legal certainty and fairness to prevent the abuse of contractual rights capable of harming legitimate proprietary interests. The findings demonstrate that unauthorized lease transfers frequently weaken the owner's ability to supervise commercial property

utilization and increase uncertainty regarding operational accountability within hospitality business environments.

Under Indonesian contract law, the transfer of lease rights without owner consent violates Article 1559 of the Indonesian Civil Code, which expressly prohibits unauthorized lease transfers. The findings also reveal that such practices contradict the principle of good faith regulated under Article 1338 of the Indonesian Civil Code. Good faith requires contractual parties to perform agreements honestly, fairly, and consistently with the legitimate interests of other parties. In the present study, tenants transferring lease rights without authorization effectively altered the contractual structure unilaterally, thereby weakening the legal position of property owners and increasing the risk of contractual disputes.

Mahendrawati et al. (2022) Commercial agreements require balanced contractual arrangements and the consistent application of good faith principles to ensure effective legal protection and prevent contractual disputes between parties involved in property-related business activities. This argument corresponds with the findings of this study, which show that several restaurant lease agreements lack explicit provisions regulating operational transfer mechanisms, written owner approval procedures, sanctions for unauthorized transfers, and liability allocation between original tenants and third-party operators. Consequently, contractual ambiguity enabled tenants to justify unauthorized transfers as operational cooperation, rather than contractual violations. Prodjodikoro (2011) argues that contractual relationships in lease agreements are inseparable from the principle of proportionality, where each party's rights and obligations must remain balanced throughout the contractual period. In unauthorized restaurant lease transfers, this balance is distorted because third-party operators obtain economic benefits from leased commercial assets without assuming proportional contractual responsibilities toward property owners. Similar concerns are highlighted by Soekanto & Mamudji (2013), who explain that legal protection in contractual relationships requires not only normative regulation but also effective implementation capable of preventing recurring commercial disputes.

The research further identifies substantial material and immaterial losses experienced by property owners due to unauthorized restaurant lease transfers. Material losses include delayed rental payments, declining property values, additional maintenance costs, and the commercial exploitation of restaurant facilities beyond the agreed contractual purposes. Immaterial losses involve reputational damage, operational instability, disruption of hospitality business standards, and declining investor confidence in commercial property governance. Within hospitality environments, restaurant businesses function not only as leased commercial spaces but also as integral components of tourism service systems and hotel reputation management. Therefore, operational instability caused by unauthorized transfers may affect broader commercial ecosystems beyond immediate contractual relationships. The findings also correspond with Ijlil (2021) the analysis that unauthorized lease transfers create prolonged legal uncertainty because property owners lose the effective authority to supervise the use and management of leased commercial assets. This condition becomes increasingly problematic in the hospitality sector, where restaurant operations directly influence tourism service quality, hotel reputation, and commercial investment sustainability. The empirical findings therefore indicate that unauthorized lease transfers should not be interpreted merely as ordinary contractual breaches but as practices capable of disrupting broader commercial governance systems.

The findings support international studies emphasizing that commercial lease disputes increasingly involve concerns relating to property governance and investment protection. Dixon & Marston (2021) argue that uncertainty regarding commercial property control weakens investor confidence because unstable leasing arrangements reduce commercial asset security and business sustainability. Similarly, Bright & Hopkins (2020) observe that unauthorized lease assignments undermine contractual enforceability because operational control becomes separated from the legal framework governing property ownership. The present findings reinforce these perspectives by demonstrating that unauthorized restaurant lease transfers generate overlapping legal responsibilities and fragmented contractual accountability within hospitality business operations.

The study also reveals that restaurant lease disputes within hospitality environments possess distinct characteristics compared with ordinary commercial tenancy disputes. Restaurant operations within hotels or resort involve integrated commercial systems related to tourism branding, service quality, operational licensing, and business reputation. Ioannides & Petersen (2021) explain that hospitality property disputes frequently generate broader commercial impacts because operational disruptions directly affect tourism

service quality and investment confidence. Likewise, Bouchlaghem (2023) emphasizes that hospitality leasing arrangements require stronger contractual governance because business continuity and reputational management are essential aspects of hospitality property value. These arguments correspond with the present findings, showing that unauthorized restaurant lease transfers affect not only property rights but also operational continuity and hospitality investment stability.

Another important finding concerns the limited effectiveness of dispute resolution mechanisms related to unauthorized lease transfers. Property owners frequently encounter difficulties in proving contractual violations because third-party operators often claim occupancy rights based on informal operational agreements with tenants. Litigation procedures also require significant financial resources, extensive evidentiary documentation, and prolonged judicial processes, reducing the practical effectiveness of the legal remedies available to property owners. Consequently, several disputes are resolved through negotiation or mediation, despite the absence of comprehensive legal certainty regarding future operational responsibilities and compensation obligations.

The study also identified the structural weaknesses in existing restaurant lease agreements. Many agreements examined contained only general clauses concerning rental obligations and occupancy rights without regulating operational transfer procedures, owner approval mechanisms, third-party liabilities, compensation systems or contractual sanctions. This contractual weakness creates interpretative gaps, enabling tenants to conduct unauthorized transfers under the justification of business cooperation or operational management restructuring. Consequently, disputes become increasingly complex because contractual obligations remain attached to the original tenant, while operational control has shifted to unrelated parties.

Akkermans & Ramaekers (2022) explain that modern commercial leasing systems increasingly experience tension between contractual autonomy and proprietary protection because commercial markets continuously evolve through flexible operational arrangements and partnership structures. Similarly, Gray & Gray (2020) argue that commercial property law must balance contractual flexibility with ownership security because property utilization possesses broader economic and social consequences beyond private contractual interests. The present study confirms these arguments by demonstrating that unauthorized restaurant lease transfers threaten not only contractual certainty but also commercial governance, hospitality investment protection, and sustainable tourism business operations.

Based on these findings, stronger legal protection mechanisms are necessary to prevent future disputes regarding unauthorized commercial restaurant lease transfers. Lease agreements should explicitly regulate transfer prohibitions, mandatory written owner approval, the operational responsibilities of third-party operators, compensation mechanisms, and dispute resolution procedures. In addition, commercial leasing regulations within the hospitality sector require clearer legal frameworks capable of addressing contemporary business practices involving operational partnerships, franchise systems, and integrated tourism management structures. Therefore, strengthening contractual governance is essential not only for protecting property owners but also for maintaining investment certainty and operational sustainability within the hospitality industry.

The novelty of this study lies in its empirical analysis of unauthorized restaurant lease transfers in hospitality and resort-based commercial environments. Unlike previous studies that have focused primarily on residential tenancy disputes or doctrinal contract interpretation, this study demonstrates that restaurant lease transfers involve broader implications related to tourism investment protection, hospitality governance, commercial operational continuity, and property management stability. Therefore, this study contributes to contemporary commercial contract law discourse by integrating legal protection principles with practical hospitality business realities while emphasizing the importance of balancing contractual freedom with proprietary security in modern commercial leasing systems.

CONCLUSION

Unauthorized commercial restaurant lease transfers create significant legal uncertainty within contractual relationships between property owners, tenants, and third-party business operators, particularly in hospitality-based commercial environments where

operational continuity and investment stability are closely interconnected. This study concludes that the transfer of restaurant lease rights without the owner's consent constitutes a violation of contractual obligations and contradicts the principle of good faith under Indonesian contract law, thereby weakening the legal protection available to property owners. The absence of direct legal relationships between owners and unauthorized third-party operators generates overlapping liabilities concerning operational control, rental obligations, property maintenance, and commercial accountability. In addition to producing material losses such as declining property value and financial instability, unauthorized transfers also create immaterial consequences including reputational damage, weakened investor confidence, and disruption of hospitality business governance. The findings further demonstrate that existing lease agreements frequently fail to provide comprehensive mechanisms regulating transfer procedures, owner approval requirements, third-party responsibilities, and dispute resolution processes, resulting in interpretative ambiguity and ineffective contractual enforcement. Therefore, stronger legal protection is necessary through explicit contractual clauses, mandatory written approval mechanisms, clearer regulatory frameworks, and more adaptive dispute resolution systems capable of addressing the practical realities of hospitality-based commercial leasing. This study also confirms that legal certainty in commercial restaurant lease relationships cannot rely solely on formal contractual arrangements but must also integrate principles of proprietary protection, business sustainability, and balanced commercial governance in order to maintain stable and fair legal relationships within the hospitality industry.

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