BILANCIA
Jurnal Studi Ilmu Syariah dan Hukum
Volume 20 Issue 1, 2026
P-ISSN: 1978-5747, E-ISSN: 2579-9762
DOI: 10.24239/blc.v20i1.5217

Legal Consequences of Over Contract in Commercial Property Lease Agreements and Third-Party Protection

Umairah Godal[1], Sitti Fatimah Maddusilla[2], Aifan[3]

[1] Faculty of Law, Tadulako University, Indonesia.
E-mail: umairah.godal2004@gmail.com
[2] Faculty of Law, Tadulako University, Indonesia.
E-mail: s.fatimahmaddusila@gmail.com
[3] Faculty of Law, Tadulako University, Indonesia.
E-mail: aifansukses789@gmail.com

Corresponding Author:
umairah.godal2004@gmail.com

Received:	Accepted:	Published:
04 March 2026	29 June 2026	19 July 2026

Abstract: Over contract practices in commercial property lease agreements create legal uncertainty when a tenant transfers control of a leased shophouse to a third party without the owner's consent. This study analyzes the legal consequences for the tenant and the legal protection available to the third party. Its contribution lies in integrating lease breach, unauthorized lease transfer, and third-party protection, which are often treated separately in commercial property disputes. This study applies an empirical juridical method with statutory, conceptual, and case approaches. Primary data were obtained through interviews with the owner, tenant, and notary, while secondary data were collected from legislation, legal doctrines, and relevant literature. The findings show that over contract constitutes a breach of contract because the tenant was unable to pay rent independently and later used funds obtained from a third-party transaction and transferred lease rights without permission. Financial difficulty cannot be classified as force majeure because it is a business risk. The owner may terminate the agreement and claim damages. Although the third party has no direct legal relationship with the owner under the original lease, legal protection may be pursued through non-litigation settlement, direct negotiation, and a new notarized lease agreement. Thus, over contract requires clearer clauses, due diligence, and formal legal documentation.

Keywords: breach of contract, contract, shophouse lease agreement, third-party protection.

Abstrak: Praktik over contract dalam perjanjian sewa-menyewa rumah toko menimbulkan ketidakpastian hukum ketika penyewa mengalihkan objek sewa kepada pihak ketiga tanpa persetujuan pemilik. Penelitian ini bertujuan menganalisis akibat hukum bagi penyewa serta bentuk perlindungan hukum bagi pihak ketiga yang beritikad baik. Kontribusi penelitian terletak pada pengintegrasian isu wanprestasi sewa-menyewa, keabsahan pengalihan sewa tanpa izin, dan perlindungan pihak ketiga dalam sengketa properti komersial. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan perundang-undangan, konseptual, dan kasus. Data primer diperoleh melalui wawancara dengan pemilik, penyewa, dan notaris, sedangkan data sekunder diperoleh dari peraturan perundang-undangan, doktrin, dan literatur relevan. Data dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa over contract merupakan wanprestasi karena penyewa tidak membayar sewa dan mengalihkan hak sewa tanpa izin. Kesulitan finansial tidak dapat dikategorikan sebagai force majeure karena merupakan risiko usaha. Pemilik berhak mengakhiri perjanjian dan menuntut ganti rugi. Pihak ketiga tidak otomatis memiliki hak terhadap pemilik karena tidak ada hubungan hukum langsung dalam perjanjian awal, tetapi tetap dapat dilindungi secara represif melalui penyelesaian non-litigasi berupa mediasi dan pembuatan perjanjian sewa baru di hadapan notaris. Dengan demikian, over contract merupakan persoalan kontraktual berlapis yang menuntut klausul tegas, kehati-hatian, dan dokumentasi formal.

Keywords: Wanprestasi, Perjanjian, Perjanjian Sewa-Menyewa Ruko, Perlindungan Pihak Ketiga.

A. Introduction

Lease agreements constitute an important instrument in civil legal relationships[1] and in commercial property practice, particularly

---

[1] Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 6; Solihan Makruf, Sumiati, and Tatang Astarudin, "Perikatan Dalam Hukum Perdata Indonesia : Analisis Terhadap," *JIMU: Jurnal Ilmiah Multi Disiplin* 04, no. 01 (2025): h. 1760.

in the context of shophouses as economically valuable assets. This type of legal relationship has become increasingly relevant because it offers business flexibility, capital efficiency, and acceleration of commercial activity.[2] However, in commercial practice, such relationships frequently give rise to disputes[3] when a tenant no longer fulfills his or her contractual obligations as stipulated in the agreement.[4]

Under civil law, a lease agreement does not transfer ownership rights; it merely grants the right to enjoy the benefits of the leased object. Accordingly, the use and transfer of lease rights must comply with the terms of the agreement, the principle of good faith,[5] and the relevant provisions of the Civil Code in particular, Articles 1559 and 1561 which restrict any transfer of lease rights without the consent of the lessor.[6] In this context, over contract essentially

---

2 Grisella Avelyn and Michelle Clementina Bianca, "Analisis Aspek Hukum Perjanjian Sewa Menyewa Dalam Konteks Hukum Perdata Indonesia," *Journal Of Social Science Research* 4, no. 6 (2024): 2447–60.

3 "Sengketa Terkait Sewa Menyewa Rumah, Gedung, Atau Kendaraan," pengacarasumatera.com, 2025, https://www.pengacarasumatera.com/2025/05/08/sengketa-terkait-sewa-menyewa-rumah-gedung-atau-kendaraan/.

4 Samaratul Ismi, Hayatul Ismi, and Hengki Firmanda S, "Penyelesaian Wanprestasi Perjanjian Sewa Menyewa," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 7 (2024): 972–80, https://doi.org/10.5281/zenodo.11282963.

5 Rafael Jeremia Woi, Anna S. Wahongan, and Maya S. Karundeng, "Tinjauan Hukum Terhadap Perjanjian Sewa-Menyewa Properti Dalam Pemanfaatan Kegiatan Ilegal," *Lex_Crimen: Jurnal Fakultas Hukum Unsrat* 14, no. 2 (2025).

6 Avelyn and Bianca, "Analisis Aspek Hukum Perjanjian Sewa Menyewa Dalam Konteks Hukum Perdata Indonesia"; I. N Puspadanti, N. L. Y., & Suantra, "Peralihan Hak Dan Kewajiban Dalam Perjanjian Sewa Menyewa Rumah Apabila Penyewa Mengulang Sewakan Rumah Sebelum Berakhirnya Jangka Waktu," *Jurnal Kertha Semaya* 4, no. 3 (2018).

occurs when a tenant who remains bound by an existing lease agreement transfers the use of the leased object to another party without the owner's consent.[7] In practice, such transfers are often effected through informal, under-the-table agreements, thereby raising questions regarding the validity of the transfer, the scope of the tenant's authority, and the legal protection available to affected parties.[8]

In the over contract case involving a shophouse on Jl. Basuki Rahmat, Palu City, the problem did not end with the tenant's failure to pay rent; it escalated when the rent was paid using funds from a third party, followed by a transfer of lease rights without the owner's knowledge. This situation demonstrates that over contract not only affects the relationship between the owner and the tenant, but also creates legal uncertainty for the third party who has already expended funds and whose economic interests are tied to the leased property. In this context, the unilateral transfer of the lease also gives rise to a privity of contract dilemma, because the original tenant continues to bear contractual responsibility for the breach of contract even though the third party has already made payment for the over contract to the second party in order to gain use of the

---

[7] Luthfiani Bintang Sulistyo and Sulastri, "Juridical Analysis Of The Practice Of Renting Back Shophouses To Other Parties Without Permission From The Shophouse Owner (Case Study Of Decision Number 6 / Pdt . G . S / 2024 / Pn Sit)," *Palar (Pakuan Law Review)* 11, no. 02 (2025): 63–76, https://doi.org/10.33751/palar.v11i2.

[8] Rossi and DeMarco, "The Legal Risks of Subleasing Commercial Property Without Consent," Rossi & Demarco, PLLC Attorneys at Law, 2025, https://rossidemarco.com/blog/the-legal-risks-of-subleasing-commercial-property-without-consent/.

leased property. [9] Accordingly, over contract cannot be understood merely as an ordinary breach of contract; it constitutes a layered legal problem involving multiple configurations of interests and multiple legal relationships.

Prior research indicates that lease-related disputes in Indonesia are generally discussed under three main themes: legal certainty in contracts, breach of contract, and dispute resolution. Sunarsi et al.[10] emphasize the importance of legal certainty in shophouse lease contracts, while Sukayasa et al.,[11] Ridwan and Permana,[12] and Suhra[13] show that contractual violations are typically characterized as breaches of contract resolved through rescission, damages, or litigation and non-litigation mechanisms. Fadhilah and Yunus,[14]

---

[9] Obadina Ibrahim, "A Comparative Overview of the Application of Privity of Contract and the Continuing Liability of the Original Lessee," *The Journal of Private and Property Law* 2, no. 1 (2019).

[10] Dedy Wahyudi Dessy Sunarsi, Liza Marina, "Kepastian Perlindungan Hukum Bagi Pelaku Bisnis Dalam Perjanjian Sewa Menyewa Rumah Toko," *Supremasi Jurnal Hukum* 4, no. 2 (2022): 200, https://doi.org/10.36441/supremasi.v4i2.715.

[11] I Made Sukayasa, I Nyoman Putu Budiartha, and Luh Putu Suryani, "Tanggung Jawab Hukum Terhadap Adanya Wanprestasi Dalam Perjanjian Sewa Menyewa Rumah Toko (Ruko)," *Jurnal Konstruksi Hukum* 2, no. 1 (2021): 97–101, https://doi.org/10.22225/jkh.2.1.2976.97-101.

[12] Muhammad Riandi Nur Ridwan and Yana Sukma Permana, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," *Jurnal Ilmu Hukum The Juris* 6, no. 2 (2022): 441–51.

[13] Suhra, "Analisis Hukum Bentuk-Bentuk Wanprestasi Dan Mekanisme Penyelesaian Sengketa Dalam Perjanjian Sewa Menyewa Di Indonesia," *Jurnal Tana Mana* 6, no. 2 (2025).

[14] Syarifah Fadhilah and Ilyas Yunus, "Pengalihan Hak Sewa Rumah Tanpa Persetujuan Pemiliknya," *Jurnal Ilmiah Mahasiswa: Bidang Hukum Keperdataan* 2, no. 2 (2018): 428–39.

Novitri and Alfin,[15] and Sulistyo and Sulastri[16] demonstrate that the transfer of lease rights or the subleasing of shophouses without the owner's consent remains common and creates legal vulnerabilities for the parties involved. Adinda Levania et al.[17] affirm the importance of notarial authentication in strengthening evidentiary value, while Latif and Wibawa[18] broaden the discussion through the lens of Islamic economic law in relation to over contract of shophouses. Nevertheless, these studies remain largely fragmented in that they have not comprehensively explained the legal consequences of shophouse over contract and the legal protection available to good-faith third parties after a dispute has arisen.

Against this background, this article addresses a gap in the literature by providing an integrated analysis of over contract as a form of lease right transfer without the owner's consent, its legal consequences for the original tenant, and the legal protection available to third parties. The novelty of this article lies in combining three issues that have previously tended to be addressed separately: breach of contract in lease agreements, the validity of lease right

---

15 Elsa Novitri and Mohd Alfin, "Analisis Hukum Mengenai Terjadinya Hak Sewa Tanah Dan Bangunan Tanpa Diketahui Oleh Pemilik Tanah," *Nusantara: Jurnal Pendidikan, Seni, Sains, Dan Sosial Humaniora* 1, no. 1 (2022).

16 Sulistyo and Sulastri, "Juridical Analysis Of The Practice Of Renting Back Shophouses To Other Parties Without Permission From The Shophouse Owner (Case Study Of Decision Number 6 / Pdt . G . S / 2024 / Pn Sit)."

17 Adinda Levania, Zahra Aolia, and Gusti Yosi Andri, "Efektivitas Legalisasi Notaris Dalam Melindungi Kekuatan Perjanjian Sewa Menyewa Rumah," *Pediaqu : Jurnal Pendidikan Sosial Dan Humaniora* 4, no. 2 (2025): 3443–59.

18 Ilman Abdul Latif and Ginan Wibawa, "Over Kontrak Ruko Tinjauan Hukum Ekonomi Syariah Di Majalaya Kabupaten Bandung" 1, no. 1 (2025).

transfers, and third-party protection in commercial shophouse disputes.

This study aims to analyze the legal consequences for the second party in over contract practices within shophouse lease agreements and to explain the forms of legal protection available to third parties in such legal relationships. This study contributes to the discussion of lease contract disputes by clarifying how over contract practices may create layered legal consequences for tenants, owners, and third parties.

B. Method

This study employs an empirical juridical method of a descriptive-analytical nature. This method was selected because the study not only examines the legal norms governing lease agreements, breach of contract, lease right transfers, and legal protection, but also investigates their application in the practice of shophouse over contract in the case located on Jl. Basuki Rahmat, Kelurahan Tatura Utara, Kecamatan Palu Selatan, Palu City. The case under examination involves a lease agreement that was in effect from November 1, 2011 to October 31, 2014, while field data collection was conducted in December 2025.

The time gap reflects the retrospective nature of this empirical juridical study. The case was selected because it represents a completed over contract dispute involving unpaid rent, unauthorized lease transfer, third-party payment, and subsequent notarial settlement. In empirical legal research, evaluating a completed legal dispute through a retrospective lens is an established approach to examine how law operates post-facto and to trace the long-term effectiveness of dispute resolutions over an earlier time period of action.[19] To reduce the limitation of retrospective data collection, the interview data were triangulated with the lease agreement and relevant provisions of the Civil Code.

The approaches employed include the statutory approach, the conceptual approach, and the case approach. Research data consist of primary data obtained through interviews with the parties directly involved namely the shophouse owner as the first party, the tenant as the second party, and a notary as well as secondary data obtained through a literature review of legislation, books, journals, and legal doctrines. Data collection was conducted through interviews, document review, and library research. The data were then analyzed qualitatively by connecting field findings with applicable legal norms, and conclusions were drawn deductively to address the legal consequences of over contract and the legal protection available to third parties.

C. Over Contract Practices in Shophouse Lease Agreements

Research data were obtained through interviews with the two primary parties directly bound by the lease agreement. The first party is Mr. Ibrahim, aged 60, a retired civil servant, serving as the shophouse owner. The second party is Ms. Ella, aged 49, a self-employed individual, serving as the tenant. The data were further supported by statements from the notary who executed the lease deed. This study deliberately limited its scope to the first and second parties, without involving the third party as a respondent, because the original agreement was binding only upon those two parties. Nonetheless, the presence of the third party emerged in the research findings as part of the factual record demonstrating that a unilateral

---

[19] Arindam Mishra, "Analysing Application of Law-Retrospective Effects and Creation of Law for Specific Areas," *International Journal for Legal Research & Analysis* 1, no. 9 (2020): 1–10.

transfer of shophouse lease rights had occurred outside the original agreement.

1. Chronology of the over contract

Based on interviews with the first party, the lease agreement was executed before a notary for a term of three years.[20] The agreement stipulated a phased payment arrangement for rent. According to the first party, the agreement provided that if the second party was unable to fulfill the payment obligation in the second year, the lease relationship could be terminated after only one year. Although a prohibition clause against over contract was not explicitly included, the first party understood the agreement as a personal legal relationship, since the right to enjoy the shophouse was granted to a specific second party whose identity and type of business had been known from the outset.

Furthermore, Article 3(1) of the agreement stipulated that "the second party is obligated to maintain the leased property in the best possible condition and may only use it as a residence or for another business that does not contravene applicable regulations." Article 3(3) further stated that "the second party is responsible for any negligence or fault caused by the second party, whether intentional or unintentional."

For the first party, this agreement was understood from the outset not merely as an economic transaction involving rent payment for a specified period, but also as a relationship grounded in trust. Accordingly, the identity of the tenant and the type of business operated within the shophouse were material considerations from the beginning. The first party made clear that the right to enjoy the shophouse was not understood as an unconditional right, but rather as a right granted to a specific second

[20] Interview with Mr. Ibrahim as Lessor, December 14, 2025

party with the assumption that the shophouse would be used in accordance with the purpose of the agreement and would not be transferred to any other party without the owner's knowledge.

During the first six months of the lease, the relationship between the first and second parties proceeded as expected. Problems began to arise when the second party was required to pay a sum of money as part of the rent obligation for the second year. At this stage, the second party was unable to make the payment and requested an extension from the first party. Acting in good faith, the first party granted additional time. However, by the extended deadline, the second party remained unable to settle the outstanding rent obligation.

Under these circumstances, the second party began seeking a way to keep the shophouse productive and to ensure that rent payments could continue. One of the measures subsequently taken was transferring control of the shophouse to another party. The interviews revealed that this transfer was not preceded by any notification or request for permission from the first party. In practice, the transfer was effected through a payment transaction from the third party to the second party. However, the third party had not yet physically occupied the shophouse, as the third party first took the initiative to approach the first party directly to verify the legality of the lease; meanwhile, formally, the original lease relationship between the first and second parties remained in force. This fact came to the first party's attention only when the third party personally visited to inquire about the ownership status of the shophouse and the validity of the ongoing lease.[21]

According to the first party, that event marked the moment the over contract was discovered. For the first party, the second party's actions constituted a violation of the agreement because control of

[21] Interview with Mr. Ibrahim as Lessor, December 14, 2025

the shophouse had been altered without the owner's consent. Upon learning of the situation, the first party decided to terminate the lease agreement in accordance with the applicable provisions, to pursue direct settlement with the second party, and to execute a new agreement with the third party.

2. The Second Party's Perspective on the Shophouse Over Contract

Interviews with the second party[22] revealed that from the outset, the salon business operated within the shophouse had not shown significant development. According to the second party, a salon business caters to a limited market because not all members of the community have the need or financial capacity to use such services on a regular basis. The fact that the business was newly established also meant that the salon required time to gain public recognition. As a result, business income was unstable and insufficient to sustain the rent payment obligations as agreed upon.

The second party explained that during the lease period, there were no major technical obstacles to running the business. The primary pressure came from the rent payment obligation, which had to be met within a specified timeframe. In addition to the rent, the second party also had to bear other expenses, such as employee wages. These circumstances prompted the second party to seek alternatives to supplement business income. One option considered was adding another line of business within the shophouse specifically, massage services as a complement to the salon. According to the second party, this idea arose from the positive experience of customers who had enjoyed light massage services provided by salon employees, leading the second party to see an

[22] Interview with Mrs. Ella as Tenant, December 17, 2025

opportunity to expand the business without abandoning the core operation.

However, the second party's intention to expand the business in this manner did not receive the first party's approval. According to the interviews, the first party rejected the plan on principled grounds, including concerns about the potential misuse of massage services and the shophouse's proximity to a mosque. This refusal made the second party feel that the scope for business development was limited, while the rent payment obligation continued to run. Under these circumstances, the second party acknowledged that the inability to fulfill the rent payment obligation was the primary reason the over contract was carried out with another party. According to the second party's account, the transfer was executed to prevent the shophouse from remaining vacant and to ensure that payments could continue until the end of the contract period.

The second party also disclosed that prior to carrying out the over contract, she lacked adequate understanding of the legal consequences of transferring lease rights without the owner's consent. She acknowledged that the action was taken without prior notification or a request for permission from the first party. Psychological factors such as disappointment over the denial of permission to expand the business and encouragement from others who suggested that the lease be transferred to someone capable of continuing the payments also influenced the decision. In the second party's view at the time, what mattered most was ensuring that the rent payment obligation could continue, without giving serious consideration to the legal consequences of transferring control of the shophouse.

3. The First Party's Perspective on the Shophouse Over Contract

Interviews with the first party.[23] revealed that the owner regarded the lease relationship not merely as a transactional arrangement, but also as a relationship grounded in trust. Accordingly, when the second party unilaterally transferred the shophouse lease rights to the third party, the first party felt aggrieved not only in economic terms, but also in terms of losing control over the leased property. The first party emphasized that the right to enjoy the shophouse had been granted to a specific second party, not to another individual who had never been agreed upon at the time the contract was formed.

The first party's dissatisfaction came to a head upon discovering that the shophouse had been transferred without authorization and that the third party intended to use it as a restaurant. According to the first party, the planned change in the use of the leased property to a food establishment had the potential to alter the structure of the building or give rise to a risk of physical damage in the future. For this reason, the first party considered himself to be the aggrieved party and chose to pursue direct compensation as a compromise. This compromise included an increase in the rental price and a stipulation that all improvements made to the leased property would become the property of the first party.

4. Dispute Resolution Undertaken by the Parties

The dispute was not resolved through litigation; instead, it was settled through direct termination of the contract by the first party following acknowledgment and acceptance of the situation by all parties. In this context, the owner chose to terminate the contractual relationship with the second party and, at the same time, determined

[23] Interview with Mr. Ibrahim as Lessor, December 20, 2025

a form of compensation deemed commensurate with the losses arising from the breach of contract and the potential damage to the leased property. The second party ultimately accepted this outcome as a consequence of the over contract carried out without the owner's authorization.

In addition to terminating the contract with the second party, the research findings also revealed follow up actions involving the third party directly. The over contract itself came to light by chance as a result of the third party's initiative, acting in good faith: prior to occupying the shophouse, the third party approached the first party directly to verify the legality of the lease.[24] It was through this exchange that the first party first became aware of the unilateral transfer. Based on information obtained from the first party, it was also established that the second-year rent payment had in fact been made by the second party, but using funds derived from the third party's transaction. Because of the third party's financial stake having already paid but not yet having had the opportunity to enjoy the leased property the first party subsequently took steps to formalize the legal relationship by executing a new lease agreement directly binding the first party and the third party before a notary.

Accordingly, the dispute resolution in this case did not consist solely of terminating the contractual relationship between the first and second parties but was also accompanied by the formalization of a new legal relationship between the first and third parties through a notarial deed. Nevertheless, this study did not obtain further data regarding the clauses, duration, or subsequent performance of this new contract; therefore, the analysis is confined to the available facts.

[24] Interview with Mr. Ibrahim as Lessor, December 20, 2025

Table 1.
Summary of Empirical Finding, Legal Issue and Legal Implications

Party	Empirical Finding	Issue	Implication
Owner/ First Party	The lease was granted to a specific tenant based on trust, and the owner discovered that the leased property had been transferred without prior consent.	Loss of control over the leased property due to unauthorized lease transfer.	The owner may terminate the lease agreement and claim compensation.
Tenant/ Second Party	The tenant was unable to pay the rent independently; the rent was later fulfilled using funds transferred by the third party to the tenant as part of the over-contract transaction..	Breach of contract arising from improper rent fulfillment and unauthorized transfer of lease rights without the owner's consent.	The tenant remains liable to the owner under the original lease agreement.
Third party	The third party paid the tenant and later verified the legality of the lease directly with the owner.	No direct legal relationship with the owner under the original lease agreement.	No automatic legal rights against the owner, but entitled to seek protection via non-litigation schemes or new notarial lease agreements..

The table shows that the dispute involved not only a rent payment problem, but also unauthorized lease transfer, third-party legal uncertainty, and the need for formal legal documentation.

D. Over Contract as a Form of Breach of Contract

Under the doctrine of contract law, a breach of contract may occur in four forms: (1) complete non-performance of an obligation; (2) defective performance of an obligation; (3) delayed performance of an obligation; and (4) performance of an act that the agreement expressly prohibited.[25] The conduct of the second party in the case at hand encompasses the first and fourth forms simultaneously: the second party failed to fulfill the rent payment obligation in the manner and timeframe agreed upon and carried out an unauthorized transfer of lease rights that is prohibited by Article 1559 of the Civil Code, unless otherwise agreed upon.[26]

The notarized agreement contained Article 3(1), which restricted the use of the shophouse to purposes agreed upon in the contract, and Article 3(3), which affirmed the second party's liability for any negligence or fault. Although these clauses did not explicitly prohibit over contract, they substantively foreclosed any transfer of control to a party unknown to the agreement, because such an act unilaterally changed the subject exercising control over the leased property. A critical issue in this analysis is whether the second party's financial incapacity can be classified as *overmacht* (force majeure),

[25] Ridwan and Permana, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian."

[26] Pasal 1559 KUHPerdata. "Si penyewa, jika kepadanya tidak telah diizinkan, tidak diperbolehkan mengulangsewakan barang, yang disewanya, maupun melepas sewanya kepada orang lain, atas ancaman pembatalan perjanjian sewa dan penggantian biaya, rugi dan bunga, sedangkan pihak yang menyewakan setelah pembatalan itu, tidak diwajibkan mentaati perjanjiannya ulang sewa".

which would relieve the second party of liability for the breach of contract.

Based on the research findings, the second party's inability to pay rent for the second year cannot automatically be classified as *overmacht*. Under contract law doctrine, force majeure requires the occurrence of an unforeseeable event beyond the control or fault of the parties, which cannot be avoided or overcome and objectively prevents the performance of contractual obligations.[27] By contrast, economic hardship, declining revenue, changing market conditions, or business uncertainty are, as a general matter, commercial risks inherent in any business enterprise. Such circumstances are therefore more appropriately characterized as hardship or difficulty in performance of the contract rather than force majeure,[28] provided that performance remains possible even if it has become more burdensome or economically disadvantageous.

Accordingly, business uncertainty or financial hardship on the part of the tenant cannot automatically constitute grounds for *overmacht*. Such circumstances are, at their core, business risks inherent in any commercial enterprise. *Overmacht* may only be accepted where the tenant is able to demonstrate the existence of an extraordinary event beyond the tenant's control that objectively renders fulfillment of the rent payment obligation impossible. Where performance remains feasible, even if economically more burdensome, the situation is more appropriately categorized as

---

[27] Yuanyuan Guo, "Comparative Research on Force Majeure System in Contract Law," *International Journal of Criminal Justice Science* 19, no. 1 (2024): 99–116, https://doi.org/10.5281/zenodo.19106.

[28] Ingeborg Schwenzer, "Force Majeure and Hardship in International Sales Contracts," *Victoria U. Wellington L. Rev.* 39 (2008): 709.

hardship difficulty in contractual performance[29] rather than force majeure. The tenant's failure to pay rent and the unilateral transfer of the shophouse to a third party without the owner's consent therefore remain properly characterized as a breach of contract.

The first party's refusal to approve the second party's plan to add massage services to the shophouse cannot constitute grounds for force majeure, because that refusal represents the owner's legitimate right to determine how the leased property is to be used in accordance with the terms of the agreement. The owner's disagreement with the proposed business expansion does not give rise to any legal obligation on the owner's part to absorb the tenant's financial losses.

E. Legal Consequences for the Second Party in Cases of Over Contract in Shophouse Lease Agreements

As a matter of law, lease agreements are governed by Article 1548 of the Civil Code as agreements whereby one party binds itself to grant another party the enjoyment of a thing for a specified period of time in exchange for rent payment. Within this framework, the right transferred to the tenant is persoonlijk (personal) in nature, rather than zakelijk,[30] and therefore cannot be transferred to another party without the owner's consent.

---

[29] International Institute for the Unification of Private Law, "UNIDROIT Principles of International Commercial Contracts" (2016), sec. 6.2.2.

[30] S. Gautama, "Pengakuan Fidusia Dalam Perundang-Undangan Di Indonesia," *Jurnal Hukum & Pembangunan* 18, no. 1 (2026), https://scholarhub.ui.ac.id/jhp/vol18/iss1/2/; Dewa Gede Swamitra Mahottama, "Perlindungan Hukum Pemegang Hak Sewa Dalam Kepemilikan Atas Objek Sewa Tanah Yang Berada Dalam Eksekusi Hak Tanggungan Menurut Hukum Positif Di Indonesia," *Jurnal Pacta Sunt Servanda* 6, no. 1 (2025): 1–12.

Characterizing the second party's conduct as a breach of contract gives rise to a range of legal consequences that the first party may pursue pursuant to Article 1243 of the Civil Code.[31] Under Article 1267 of the Civil Code,[32] the first party has the right to elect to unilaterally terminate the lease agreement upon proof of the breach. In the present case, the first party did in fact take this course of action by terminating the contractual relationship upon discovering the over contract. As a matter of law, this termination is valid and is supported by a strong normative basis in the Civil Code.[33]

Pursuant to Article 1246 of the Civil Code, the first party may claim compensation comprising: (a) costs (onkosten), encompassing actual expenditures incurred as a result of the breach; (b) damages (schade), representing losses arising from damage to or diminution in value of the leased property; and (c) interest (interessen), representing profits that the owner would have received had the agreement been performed as stipulated.[34] In this case, the first party's losses include: uncertainty regarding receipt of the second-year rent from the legitimate tenant; legal risk arising from the plan to convert the shophouse into a restaurant without written consent; and loss of control as owner over determining which party is entitled to use the leased property

---

[31] Pemerintahan Hindia Belanda, "Kitab Undang-Undang Hukum Perdata (KUHPerdata) (Burgerlijk Wetboek Voor Indonesie)," *Staatsblad Republik Indonesia*, 1847, sec. 1243.

[32] Pemerintahan Hindia Belanda, sec. 1267.

[33] Sukayasa, Putu Budiartha, and Putu Suryani, "Tanggung Jawab Hukum Terhadap Adanya Wanprestasi Dalam Perjanjian Sewa Menyewa Rumah Toko (Ruko)."

[34] Nurainy Usman, Merry Tjoanda, and Saartje Sarah Alfons, "Akibat Hukum Dari Pemutusan Kontrak Secara Sepihak," *Batulis Civil Law Review* 2, no. 1 (2021): 93–101, https://doi.org/10.47268/ballrev.v2i1.561.

So long as the lease agreement had not been validly terminated, the second party remained bound by all of its contractual obligations to the first party. The fact that the third party had made payment did not transfer contractual responsibility to the third party. Under the principle of privity of contract, a third party who enters without a contractual basis with the owner cannot assume the legal position of the second party as the lawful tenant.[35]

As a consequence of the termination of the agreement, the second party was obligated to ensure that the leased property was returned to the owner in its original condition or, at a minimum, in a condition consistent with normal use. Liability for any risks or potential future damage arising from the planned change in use remained with the second party prior to any amendment of the contract, as affirmed by Article 3(3) of the agreement regarding the tenant's negligence. In the event of rent arrears, the first party is entitled to claim interest on the delayed payment, whether under the terms of the agreement or pursuant to Article 1243 of the Civil Code, which requires a formal demand (somasi) as a prerequisite for the obligation to pay compensation to arise.

In the case at hand, the dispute was ultimately resolved through a non-litigation mechanism. The settlement consisted of an increase in the rental price and an agreement that all improvements made to the leased property would become the property of the owner. Substantively, this mechanism may be understood as a form of agreed compensation settled outside the court. Such an arrangement is legally valid as long as it is based on the free consent of the parties and is consistent with the principle that a valid agreement binds the parties as law under Article 1338 of the Civil Code.

[35] Ibrahim, "A Comparative Overview of the Application of Privity of Contract and the Continuing Liability of the Original Lessee."

Although the original lease agreement did not contain an explicit clause prohibiting the transfer or sublease of the leased property, such absence does not automatically justify the conduct of the second party. Article 1559 paragraph (1) of the Civil Code provides that a lessee is not permitted to sublease the leased property or transfer the lease to another person unless such action has been authorized by the lessor. Therefore, when the lease agreement is silent and does not expressly allow such transfer, the lessee cannot unilaterally assign or sublease the property to a third party without the owner's consent.[36]

Furthermore, the agreement's restriction on the use of the shophouse to "a residence or another business that does not contravene applicable regulations" implicitly encompasses a prohibition on transfer to any other party not approved by the owner, because the identity of the tenant and the type of business were material considerations underlying the owner's consent from the outset.

This interpretation is consistent with the principle of good faith in the performance of contracts as stipulated in Article 1338(3) of the Civil Code, which requires each party to perform the agreement in accordance with the mutual intentions of the parties at the time of formation, rather than adhering merely to the written text. The second party, who was aware that the agreement was grounded in personal trust, cannot argue that the transfer was permissible simply because no written prohibition clause existed.

[36] Claudia Suryaningsih Bogar, Dientje Rumimpunu, and Karel Yossi Umboh, "Tinjauan Hukum Perbandingan Perjanjian Sewa-Menyewa Menurut Kuhperdata Dan Menurut Undang- Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Lex Administratum* 10, no. 5 (2022), https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/download/42915/37818/94120.

F. Legal Protection for Third Parties in Shophouse Lease Agreements

The position of third parties in over contract shophouse lease agreements is frequently disadvantageous. This is because third parties do not participate in the formation of the agreement and therefore have no authority to determine its content or clauses. The presence of a third party in this case situates the analysis in a more complex domain, because the third party factually expended funds based on an agreement with the second party, without knowing that the second party lacked the authority to transfer the lease. This issue directly engages the principle of privity of contract as reflected in Article 1315 of the Civil Code,[37] which affirms that an agreement generally only has effect and is binding upon the parties who made it.

The legal consequence of this principle is that the over contract agreement between the second party and the third party, executed without the owner's consent, does not give rise to any right that the third party may assert against the owner. The third party does not acquire the status of a lawful tenant in the eyes of the law because there is no direct legal relationship between the third party and the owner as the first party the holder of rights over the leased property.[38]

This situation creates genuine legal uncertainty: the third party has already expended funds and has economic interests tied to the leased property, yet legally possesses no enforceable legal basis. This is a manifestation of information asymmetry in transactions, wherein the third party was unaware that the second party lacked

[37] Pemerintahan Hindia Belanda, "Kitab Undang-Undang Hukum Perdata (KUHPerdata) (Burgerlijk Wetboek Voor Indonesie)," sec. 1315.

[38] Ibrahim, "A Comparative Overview of the Application of Privity of Contract and the Continuing Liability of the Original Lessee."

the authority to transfer the lease. Legal protection is classified into two forms: preventive protection and repressive protection.[39]

1. Preventive Protection

Preventive legal protection refers to legal instruments that function to prevent harm before a dispute arises. In the context of shophouse lease over contracts, preventive protection for third parties may be pursued through several precautionary steps prior to entering into a lease transfer agreement.

First, the third party should conduct legality verification prior to entering into an agreement by directly confirming with the original owner the ownership status of the shophouse and the validity of the second party's authority to transfer the lease rights. This constitutes an application of the due diligence principle in contract law, which requires each party to act carefully and reasonably before binding itself to an agreement.

Second, the third party should strengthen the lease transfer agreement through notarial authentication. Although notarial authentication does not, in and of itself, cure a defect in authority where the second party was not in fact entitled to transfer the lease, the existence of a notarial deed or authentication may provide stronger evidentiary value should a dispute arise at a later stage.[40] Furthermore, a notary may play a role in reviewing the completeness of documents, including examining whether the original lease agreement contains a clause permitting the transfer of lease rights to another party.

[39] Agustinus Sihombing et al., *Hukum Perlindungan Konsumen* (Sumatera: CV. Azka Pustaka, 2023), 3.

[40] Levania, Aolia, and Andri, "Efektivitas Legalisasi Notaris Dalam Melindungi Kekuatan Perjanjian Sewa Menyewa Rumah."

Third, the third party must review the clauses in the principal agreement between the shophouse owner and the original tenant. This review is essential to ascertain whether the transfer of the lease is permitted or, conversely, prohibited under the original agreement. Accordingly, legality verification, notarial authentication, and review of the principal agreement collectively constitute a form of preventive protection that reflects the principles of prudence and good faith in contractual relationships.

2. Repressive Protection

Repressive legal protection refers to legal remedies available after harm has occurred. In the case at hand, the third party who suffered harm as a result of the shophouse lease over contract has several forms of legal protection available to restore the third party's rights.

Repressive protection through litigation may be pursued by the third party by filing a claim for damages against the second party, on grounds of either breach of contract or tort. A breach of contract claim is available because the legal relationship between the second party and the third party arose from the lease transfer agreement, which itself created an independent obligation; if the second party warranted that it had the authority to transfer the lease rights but that warranty proved to be false, the second party may be held liable for damages under Article 1243 of the Civil Code.[41] In addition, a tort claim under Article 1365 of the Civil Code may be filed if the second party knowingly, or with reasonable grounds to know, lacked the authority to effect the transfer, thereby causing harm to the third party.[42] Furthermore, the third party may demand restitution of funds already paid if the lease transfer agreement is declared void or

[41] Pemerintahan Hindia Belanda, "Kitab Undang-Undang Hukum Perdata (KUHPerdata) (Burgerlijk Wetboek Voor Indonesie)," sec. 1243.

[42] Pemerintahan Hindia Belanda, sec. 1365.

invalid, based on the principle of restitutio in integrum consistent with Articles 1266 and 1267 of the Civil Code namely the restoration of the parties to their original positions prior to the formation of the agreement.[43]

In the context of repressive legal protection, remedies available to an aggrieved third party need not necessarily culminate in litigation. Empirical findings indicate that far more effective and functional manifestations of repressive protection may be achieved through non-litigation mechanisms.[44]

Based on information obtained from the first party, it was established that the second-year rent payment had in fact been made by the second party, but using funds derived from the third party's transaction. Given the third party's financial stake in the fulfillment of that payment obligation, the first party subsequently took steps to provide legal certainty by executing a new lease agreement directly binding the first and third parties before a notary. The dispute was resolved through a direct compromise, consisting of a new agreement between the first party as owner and the third party, formalized through an adjustment in the rental price and a transfer of rights over physical improvements to the building to the owner.

The execution of this new notarial lease agreement was taken as a repressive measure to clarify the third party's legal standing with respect to the funds already expended, and at the same time to provide a valid legal basis for the third party to subsequently occupy and use the shophouse. The existence of the notarial deed means that the new agreement carries full evidentiary force as provided under civil law, thereby affording the third party stronger formal legal protection.

---

[43] Pemerintahan Hindia Belanda, secs. 1266–1267.

[44] Ismi, Ismi, and S, "Penyelesaian Wanprestasi Perjanjian Sewa Menyewa."

It should be noted that this step is more appropriately categorized as repressive legal protection rather than preventive. The third party's action of approaching the first party to verify the lease status did constitute a form of due diligence a preventive instrument. Unfortunately, however, this verification was only undertaken after payment had already been made to the second party; ideally, verification should be carried out before any agreement and financial transaction take place. The new agreement was therefore executed after the over contract problem had already arisen and come to light, rather than as a preventive instrument before any dispute emerged.

This resolution is valid under the law on the basis of the freedom of contract principle guaranteed by Article 1338 of the Civil Code,[45] and is consistent with alternative dispute resolution through negotiation as contemplated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.[46] In this regard, the formalization of the legal relationship through a notary constitutes one effective recovery mechanism for the third party, as it provides legal certainty with respect to the third party's rights and interests over the leased property interests that previously lacked an enforceable legal basis. Through this non-litigation scheme, the third party's economic interests were given a clearer legal basis, although the subsequent implementation of the new agreement remains beyond the scope of this study. Nonetheless, this study did not obtain further data regarding the clauses, duration, or subsequent performance of the new contract; accordingly, the analysis is confined to the available facts.

---

[45] Pemerintahan Hindia Belanda, "Kitab Undang-Undang Hukum Perdata (KUHPerdata) (Burgerlijk Wetboek Voor Indonesie)," sec. 1338.

[46] Presiden Republik Indonesia, "Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (1999).

G. Conclusion

Over contract practices in shophouse lease agreements constitute a form of breach of contract when the tenant transfers control of the leased property to a third party without the owner's consent. In the case examined, the second party's conduct satisfied two forms of breach of contract simultaneously: failure to fulfill the rent payment obligation and unauthorized transfer of lease rights. The second party's financial hardship cannot be classified as force majeure or overmacht, as that condition represents an inherent business risk in the tenant's commercial enterprise. Accordingly, the first party as the property owner is entitled to terminate the lease agreement, claim compensation for resulting losses, and demand the return of the leased property in a suitable condition.

This study further concludes that the third party does not automatically acquire rights that are enforceable against the owner, because there is no direct legal relationship between the third party and the owner under the original lease agreement. Nonetheless, the third party may still obtain legal protection through preventive and repressive mechanisms. Preventive protection is achieved through legality verification with the owner, review of the principal agreement's clauses, and notarial authentication of the agreement prior to the transfer of the lease. Repressive protection, on the other hand, may be pursued through litigation or non-litigation as was the case in the dispute examined specifically through direct negotiation and the execution of a new lease agreement between the owner and the third party before a notary. These findings affirm that over contract disputes cannot be adequately understood as ordinary breaches of contract, but must be recognized as layered contractual legal problems requiring more precise agreement clauses, the application of due diligence principles, and formal legal documentation to protect the interests of all parties.

References

Avelyn, Grisella, and Michelle Clementina Bianca. "Analisis Aspek Hukum Perjanjian Sewa Menyewa Dalam Konteks Hukum Perdata Indonesia." *Journal Of Social Science Research* 4, no. 6 (2024): 2447–60.

Bogar, Claudia Suryaningsih, Dientje Rumimpunu, and Karel Yossi Umboh. "Tinjauan Hukum Perbandingan Perjanjian Sewa-Menyewa Menurut Kuhperdata Dan Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Lex Administratum* 10, no. 5 (2022). https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/download/42915/37818/94120.

Dessy Sunarsi, Liza Marina, Dedy Wahyudi. "Kepastian Perlindungan Hukum Bagi Pelaku Bisnis Dalam Perjanjian Sewa Menyewa Rumah Toko." *Supremasi Jurnal Hukum* 4, no. 2 (2022): 200. https://doi.org/10.36441/supremasi.v4i2.715.

Fadhilah, Syarifah, and Ilyas Yunus. "Pengalihan Hak Sewa Rumah Tanpa Persetujuan Pemiliknya." *Jurnal Ilmiah Mahasiswa: Bidang Hukum Keperdataan* 2, no. 2 (2018): 428–39.

Gautama, S. "Pengakuan Fidusia Dalam Perundang-Undangan Di Indonesia." *Jurnal Hukum & Pembangunan* 18, no. 1 (2026). https://scholarhub.ui.ac.id/jhp/vol18/iss1/2/.

Guo, Yuanyuan. "Comparative Research on Force Majeure System in Contract Law." *International Journal of Criminal Justice Science* 19, no. 1 (2024): 99–116. https://doi.org/10.5281/zenodo.19106.

Ibrahim, Obadina. "A Comparative Overview of the Application of Privity of Contract and the Continuing Liability of the Original Lessee." *The Journal of Private and Property Law* 2, no. 1 (2019).

International Institute for the Unification of Private Law. UNIDROIT Principles of International Commercial Contracts (2016).

Ismi, Samaratul, Hayatul Ismi, and Hengki Firmanda S. "Penyelesaian Wanprestasi Perjanjian Sewa Menyewa." *Jurnal Ilmiah Wahana Pendidikan* 10, no. 7 (2024): 972–80. https://doi.org/10.5281/zenodo.11282963.

Latif, Ilman Abdul, and Ginan Wibawa. "Over Kontrak Ruko Tinjauan Hukum Ekonomi Syariah Di Majalaya Kabupaten Bandung" 1, no. 1 (2025).

Levania, Adinda, Zahra Aolia, and Gusti Yosi Andri. "Efektivitas Legalisasi Notaris Dalam Melindungi Kekuatan Perjanjian Sewa Menyewa Rumah." *Pediaqu : Jurnal Pendidikan Sosial Dan Humaniora* 4, no. 2 (2025): 3443–59.

Mahottama, Dewa Gede Swamitra. "Perlindungan Hukum Pemegang Hak Sewa Dalam Kepemilikan Atas Objek Sewa Tanah Yang Berada Dalam Eksekusi Hak Tanggungan Menurut Hukum Positif Di Indonesia." *Jurnal Pacta Sunt Servanda* 6, no. 1 (2025): 1–12.

Makruf, Solihan, Sumiati, and Tatang Astarudin. "Perikatan Dalam Hukum Perdata Indonesia : Analisis Terhadap." *JIMU: Jurnal Ilmiah Multi Disiplin* 04, no. 01 (2025): h. 1760.

Mishra, Arindam. "Analysing Application of Law-Retrospective Effects and Creation of Law for Specific Areas." *International Journal for Legal Research & Analysis* 1, no. 9 (2020): 1–10.

Niru Anita Sinaga. "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 6.

Novitri, Elsa, and Mohd Alfin. "Analisis Hukum Mengenai Terjadinya Hak Sewa Tanah Dan Bangunan Tanpa Diketahui Oleh Pemilik Tanah." *Nusantara: Jurnal Pendidikan, Seni, Sains, Dan Sosial Humaniora* 1, no. 1 (2022).

Pemerintahan Hindia Belanda. "Kitab Undang-Undang Hukum Perdata (KUHPerdata) (Burgerlijk Wetboek Voor Indonesie)." *Staatsblad Republik Indonesia*, 1847.

Presiden Republik Indonesia. Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa (1999).

Puspadanti, N. L. Y., & Suantra, I. N. "Peralihan Hak Dan Kewajiban Dalam Perjanjian Sewa Menyewa Rumah Apabila Penyewa Mengulang Sewakan Rumah Sebelum Berakhirnya Jangka Waktu." *Jurnal Kertha Semaya* 4, no. 3 (2018).

Ridwan, Muhammad Riandi Nur, and Yana Sukma Permana. "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian." *Jurnal Ilmu Hukum The Juris* 6, no. 2 (2022): 441–51.

Rossi, and DeMarco. "The Legal Risks of Subleasing Commercial Property Without Consent." Rossi & Demarco, PLLC Attorneys at Law, 2025. https://rossidemarco.com/blog/the-legal-risks-of-subleasing-commercial-property-without-consent/.

Schwenzer, Ingeborg. "Force Majeure and Hardship in International Sales Contracts." *Victoria U. Wellington L. Rev.* 39 (2008): 709.

pengacarasumatera.com. "Sengketa Terkait Sewa Menyewa Rumah, Gedung, Atau Kendaraan," 2025. https://www.pengacarasumatera.com/2025/05/08/sengketa-terkait-sewa-menyewa-rumah-gedung-atau-kendaraan/.

Sihombing, Agustinus, Ranat Mulia Pardede, Fahmi Amrico, Herman, Eko Murti Saputra, Armansyah, and Heru Iskhan. *Hukum Perlindungan Konsumen*. Sumatera: CV. Azka Pustaka, 2023.

Suhra. "Analisis Hukum Bentuk-Bentuk Wanprestasi Dan Mekanisme Penyelesaian Sengketa Dalam Perjanjian Sewa Menyewa Di Indonesia." *Jurnal Tana Mana* 6, no. 2 (2025).

Sukayasa, I Made, I Nyoman Putu Budiartha, and Luh Putu Suryani. "Tanggung Jawab Hukum Terhadap Adanya Wanprestasi Dalam Perjanjian Sewa Menyewa Rumah Toko (Ruko)." *Jurnal*

Konstruksi Hukum 2, no. 1 (2021): 97–101. https://doi.org/10.22225/jkh.2.1.2976.97-101.

Sulistyo, Luthfiani Bintang, and Sulastri. "Juridical Analysis Of The Practice Of Renting Back Shophouses To Other Parties Without Permission From The Shophouse Owner (Case Study Of Decision Number 6 / Pdt . G . S / 2024 / Pn Sit)." *Palar (Pakuan Law Review)* 11, no. 02 (2025): 63–76. https://doi.org/10.33751/palar.v11i2.

Usman, Nurainy, Merry Tjoanda, and Saartje Sarah Alfons. "Akibat Hukum Dari Pemutusan Kontrak Secara Sepihak." *Batulis Civil Law Review* 2, no. 1 (2021): 93–101. https://doi.org/10.47268/ballrev.v2i1.561.

Woi, Rafael Jeremia, Anna S. Wahongan, and Maya S. Karundeng. "Tinjauan Hukum Terhadap Perjanjian Sewa-Menyewa Properti Dalam Pemanfaatan Kegiatan Ilegal." *Lex_Crimen: Jurnal Fakultas Hukum Unsrat* 14, no. 2 (2025).