

**MALAYSIA THE POSITION OF FOREIGN CITIZENS IN LAND LEASE AGREEMENTS****I Gusti Ngurah Agung Krisna Dwipayana PRADYAN<sup>1</sup>, I Made SUWITRA<sup>2</sup>, Ketut Kasta Arya WIJAYA<sup>3</sup>**<sup>1,2,3</sup>Master of Notary Study Program, Postgraduate Faculty, Warmadewa University, Indonesia

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The purpose of this research is to analyze the validity of lease transfer agreements from Foreign Nationals to Indonesian Citizens and to examine the legal consequences of land lease agreements by Foreign Nationals. The type of legal research used is normative legal research, with statutory and analytical approaches. This legal research utilizes two types of legal materials, namely primary legal materials and secondary legal materials. The research results indicate that the validity of the lease transfer agreement by a foreign national with a Visa on Arrival (VoA) in Supreme Court Decision No. 2099 K/Pdt/2017 is deemed invalid because foreign nationals do not meet the legal capacity requirements as per Article 1320 of the Civil Code in conjunction with Article 45 of the UUPA. The temporary nature of the Visa on Arrival (VoA) does not satisfy the requirement of being domiciled in Indonesia, which necessitates a valid and ongoing residence permit. The legal consequences of this agreement are that it can be annulled due to the failure to meet the subjective requirements in Article 1320 of the Civil Code. This means that the agreement remains formally valid but can be annulled by the aggrieved party through a court ruling.

**INTRODUCTION**

Indonesia has long been a magnet for other countries interested in making it a primary destination for various activities, especially in the tourism sector. Natural beauty such as beaches and a rich cultural heritage makes Indonesia a favorite destination for tourists from around the world. The importance of land to humans has resulted in it having a high economic value, especially for investment interests in the tourism sector (Wesna et al., 2023). Land within the territory of the Republic of Indonesia is one of the main natural resources that not only has intrinsic value but also has a strategic function in meeting the increasingly diverse and growing needs of the state and the people, both at the national and international levels (Ayu Indirakirana et al., 2022; Boedi, 2007). Land is one of the sources of livelihood for the community, as it is used for agriculture, housing, and other things of economic value (Kumara et al., 2021).

Considering the fact that land is a non-renewable natural resource and the importance of land for human life (Sheebakayla, 2024), Indonesia as an agrarian country views the regulation of land ownership as important (Karna et al., 2023), because based on the 1945 Constitution of the Republic of Indonesia, land is controlled by the State and is used as much as possible for the interests and prosperity of the people, this is mentioned in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. By taking into account the values in the 1945 Constitution, this becomes the main reference in the formation of the Basic Agrarian Law (Suwitra et al., 2025).

In Law Number 5 of 1960 on the Basic Regulations of Agrarian Principles (hereinafter referred to as UUPA), several fundamental principles are recognized, one of which is the principle of nationality and the principle of nationalism (Saraswati & Yogantara S., 2021). The principle of

nationalism in the UUPA is affirmed through the provision stating that all areas of Indonesia are a unity owned by all the people of Indonesia as part of a united nation (Rubiati, 2021). This indicates that the wealth of the Indonesian nation includes the entire surface of its territory along with the natural resources within it. Meanwhile, the principle of nationalism is reflected in the provisions that affirm that only Indonesian citizens have the right to own land with ownership status. This explanation reflects that there are restrictions on the control and use of land to legal subjects that are not Indonesian citizens.

The types of land rights that can be used by foreign citizens in Indonesia are use rights and lease rights (Arba, 2021), where both rights are secondary land rights sourced from other parties and their use is temporary. The right to rent is the right of a person to use, cultivate, and enjoy the results of someone else's ownership by paying rent (Mahendra et al., 2020).

The right of lease is a right over land based on a lease agreement. The lease agreement is a contract granting rights from one party to another to enjoy a certain item for a specified period at an agreed price (Nyoman Surya Bramantya et al., 2024). According to Yahya Harahap, renting is an agreement between the renting party and the tenant. The renting party hands over the item to be rented to the tenant to be fully enjoyed (Harahap, 1982; Yustini & Pricilia, 2023). The lease agreement is regulated in Chapter VII of Book III covering Articles 1548 to 1600 of the Civil Code.

Article 45 of the UUPA means that Foreign Citizens can have lease rights on land and buildings in Indonesia, but it should be noted that the Foreign Citizens granted these rights are those who are located in Indonesia. As mentioned in Article 45 letter b of the UUPA, the term foreign nationals residing in Indonesia is not explicitly defined.

Foreign nationals entering the territory of Indonesia are required to have a residence permit as a form of compliance with the applicable immigration regulations. This residence permit is granted based on the visa obtained before or upon entering Indonesia, in accordance with the provisions of Law No. 6 of 2011 on Immigration (hereinafter referred to as the Immigration Law) as amended in Article 1 number 18 of Law No. 6 of 2023 regarding the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (hereinafter referred to as Law 6/2022). The residence permit serves as a legal basis that allows foreign nationals to reside temporarily or for a certain period according to the type of permit granted, such as Visit Stay Permit (ITK), Limited Stay Permit (ITAS), or Permanent Stay Permit (ITAP).

The existence of a residence permit also serves as an indicator that Foreign Nationals have a legitimate legal status while in Indonesia, allowing them to carry out activities according to the purpose of their arrival, whether for tourism, work, investment, or other needs. Furthermore, holding a residence permit is also one of the requirements for Foreign Nationals to obtain certain rights, including the right to lease land and buildings as regulated in Article 45 of the Basic Agrarian Law. Therefore, every Foreign National who wants to undertake legal actions in Indonesia must ensure that they have the appropriate residence permit in accordance with the applicable regulations, in order to avoid immigration law violations that could result in administrative sanctions or even deportation.

Authority to act only applies to certain individuals for specific legal actions. As legal subjects, individuals are entitled to exercise their rights and obligations, including making agreements such as leases. However, not all individuals can fully exercise their rights, such as Foreign Nationals who are restricted by regulations. Since Foreign Nationals can also be parties in leasing agreements, which means that these Foreign Nationals are legal subjects, it is deemed important to clarify that the Foreign Nationals referred to here are foreigners who can be categorized as legal subjects meeting the subjective criteria in an agreement, primarily their legal capacity.



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There is a case example of Decision Number 2099 K/Pdt/2017, which started when Shaheen Hafeez Bilwani, an Australian citizen, rented the land with Property Right No. 6943 in Kuta, Badung, Bali, through the Deed of Lease Transfer Agreement No. 05 dated May 13, 2015, in front of Notary I Nyoman Gde Mahadi Putra, S.H., M.Kn. The lease agreement is valid from May 13, 2015, until September 19, 2043, with a value of IDR 5,467,000,000.00 to be paid in five stages. However, the Defendant, Peter Sardelis, who occupied the land and built a villa on it, did not pay the third installment of IDR 2,186,800,000.00 on October 13, 2015, which resulted in a penalty of USD 15,000. The Plaintiff has sent three warning letters, but the Defendant still failed to fulfill his obligations, so this case was brought to the Denpasar District Court.

In addition to defaulting, another issue arises regarding the residence permit of Foreign Nationals. The Defendant stated that the Plaintiff only has a short visit visa (visa on arrival), which is the basis for the Defendant's objection in the exception by highlighting the potential immigration violations committed by the Plaintiff. On the other hand, there is a conflict with the landowner, Ni Made Sari, who feels she was not informed about the transfer of lease rights. She demands compensation of 50% of the contract value due to disappointment over the promises made by the Defendant that were not fulfilled. The Defendant continues the construction and manages the permits through a service bureau. Legally, lease agreements must meet the requirements of Article 1320 of the Civil Code and Articles 44 and 45 of the Basic Agrarian Law. The transfer of lease rights without the owner's consent can be seen as a breach of contract. If the element of agreement is not fulfilled, the contract can be annulled or void by law.

The Denpasar District Court Decision No. 39/Pdt.G/2016/PN.DPS dated August 29, 2016 states that the Defendant is in default, the lease agreement is canceled since November 13, 2015, and all payments remain the right of the Plaintiff. The Defendant is also ordered to dismantle the building and vacate the land. However, this decision was overturned by the Bali High Court through Decision No. 175/PDT/2016/PT.DPS dated February 21, 2017, which granted the Defendant's appeal. In cassation, the Supreme Court rejected the Plaintiff's request for cassation and ordered them to pay court costs of Rp 500,000.00.

Based on the case example above, it is known that a Foreign National with a temporary residence permit (30 days) makes a rental agreement with a rental period of 28 years. The regulation in Article 45 letter b of the Basic Agrarian Law (UUPA) states "Foreigners who are domiciled in Indonesia" does not specifically explain the position of Foreign Nationals regarding the legal certainty of making rental agreements. The phrase "domiciled in Indonesia" in Article 45 letter b falls under vague norms because it does not clearly define who is meant. This raises multiple interpretations, whether it includes all Foreign Nationals in Indonesia or only those with a valid residence permit. Without clarity, this provision has the potential to create legal uncertainty. In immigration law, the position of Foreign Nationals in Indonesia is closely related to the residence permit granted based on immigration procedures.

## METHODS

The type of legal research used is normative legal research by examining the laws and regulations related to the ambiguity of norms contained in Article 45 letter b of the UUPA, which regulates Foreign Citizens residing in Indonesia. This article does not specifically and explicitly explain the legal status of Foreign Citizens in terms of legal certainty when entering into lease agreements for land, particularly regarding the valid requirements of the agreements made between Foreign Citizens and Indonesian Citizens. This ambiguity generates legal issues, including various interpretations regarding the legal standing of Foreign Citizens and Indonesian Citizens in lease





agreements for the leased land. This relates to the validity of the lease agreement and results in legal consequences if the Foreign Citizen does not extend their residence permit during the validity period of the lease agreement. The type of approach used is the legislative approach (the statute approach) and the analytical approach. The sources of legal materials consist of primary legal materials in the form of regulations and court decisions, as well as secondary legal materials in the form of legal journals. The technique for collecting legal materials is through library research, which is then analyzed using interpretation techniques.

## RESULT AND DISCUSSION

One of the directions of the UUPA publication policy is to create legal unification and to realize administrative order in the field of land through the implementation of land rights according to state law. (Suwitra, 2024), where every agreement related to land must comply with the provisions set out in the UUPA. Based on Article 45 of the UUPA, Foreign Citizens can be granted lease rights over land in Indonesia, but this right is limited to Foreign Citizens who are domiciled in Indonesia. The validity of lease agreements for land by Foreign Citizens must refer to the valid requirements of an agreement according to Article 1320 of the Civil Code which includes the agreement of the parties, capacity to act, a specific object, and a lawful cause. In this case, the main issue lies in the legal capacity of the Foreign Citizen.

Based on the provisions of Article 45 of UUPA, Foreign Nationals can only lease land if they have residence in Indonesia, which in practice is understood as having a valid residence permit such as Limited Stay Permit (ITAS) or Permanent Stay Permit (ITAP). However, in the case of the lease agreement set forth in Deed of Transfer of Lease Rights Number 05 dated May 13, 2015, the foreign national only held a Visa on Arrival (VoA) that was not extended, which cannot be used as a legal basis for the concept of 'having residency in Indonesia' in the control or transfer of lease rights over land. That visa is a temporary visit permit and does not confer legal rights to enter into long-term land lease agreements. Therefore, even though the elements of agreement and object of the contract have been met, the absence of the element of legal capacity renders the agreement null and void.

According to the doctrine presented by Sudikno Mertokusumo, a contract is a legal relationship that arises from the agreement of the parties to produce legal effects recognized by law (Nanda et al., 2022). However, if one party does not meet the legal competency requirements, the agreement cannot produce valid legal consequences. In this case, the actions of a Foreign National who does not have a valid residence permit but still binds themselves in a land lease agreement constitute a violation of Article 1320 of the Civil Code and Article 45 of the Agrarian Law. The legal consequence is that the agreement can be annulled because the subjective requirements are not met.

This cancellation falls into the category of relative nullity (relative cancellation), which means that the agreement is not automatically void by law, but can be revoked through a request from the aggrieved party and a ruling by the court. Thus, the agreement is still considered valid until a decision states otherwise. This mechanism indicates that the cancellation of the agreement is a form of legal protection for the interested party, and is also an effort to avoid legal uncertainty, especially if the agreement involves a third party acting in good faith.

Furthermore, the existence of land lease agreements by Foreign Nationals who do not meet the competency criteria not only creates formal legal defects but also has the potential to cause legal and economic losses to other parties. For example, the Indonesian Citizens who are the owners or holders of rights over the land, or third parties who obtain lease rights through transfers from Foreign Nationals, may lose legal protection if the agreement is annulled. Therefore, meeting the requirements of legal competency in agreements involving foreign legal subjects must be a primary

concern to ensure the validity of the agreements, legal certainty, and legal protection for all parties involved.

In the case between the Plaintiff and the Defendant, the validity of the lease transfer agreement as stated in Deed Number: 05 dated May 13, 2015 can be analyzed based on the four elements regulated in Article 1320 of the Civil Code, namely:

- 1) Their agreement that binds them. In this case, the parties have voluntarily agreed to transfer the lease rights without any coercion, mistake, or fraud. This fulfills the elements of an agreement as required by Article 1320 of the Civil Code.
- 2) Ability to perform an obligation. Foreign Citizens in this case use a Visa on Arrival (VoA) which is temporary and cannot be extended into a long-term residence permit. According to Article 45 of the UUPA, only Foreign Citizens who are based in Indonesia can be granted leasing rights. Since the Visa on Arrival (VoA) does not meet those requirements, the Foreign Citizens in this case are not legally capable of transferring leasing rights.
- 3) Specific issue. The agreement contains a clear object, namely land Ownership Right No. 6943/Kuta with an area of 1,540 m<sup>2</sup>, along with details of the location, lease duration, and payment obligations. Certain elements have been fulfilled in accordance with Articles 1333-1334 of the Civil Code.
- 4) Cause that is not prohibited. The transfer of lease rights is carried out without the consent of the landowner, violating Article 1559 paragraph (1) of the Civil Code which requires written permission from the owner. This makes the contents of the agreement contrary to the law, thereby rendering the agreement legally defective.

The Deed of Transfer of Lease Rights Number 05 dated May 13, 2015 needs to be assessed in terms of the legal competency of the party transferring the rights, namely the position of a Foreign National. Based on the case, the Foreign National was in Indonesia using a Visa on Arrival (VoA) at the time of signing the deed, and then during the duration of the lease agreement, the Foreign National did not extend their visa and was not in Indonesia.

Systematically, the term 'located in Indonesia' should be understood as having a valid and ongoing residence status, for example through ITAS (Limited Stay Permit) or ITAP (Permanent Stay Permit). Thus, the use of Visa on Arrival (VoA) as a basis for the transfer of rental rights has violated the requirements for legal capacity. Moreover, it is known that the visa is not renewed and the Foreign National in question has left Indonesian territory, meaning that legally the status of 'located' is not fulfilled. This impacts the validity of the transfer of rental rights, as the Foreign National does not meet the requirements to be a holder of rental rights that are valid under Indonesian agrarian law.

Furthermore, Article 39 paragraph (1) letter b of Law Number 2 of 2014 on the Position of Notary states that the parties in the deed must be capable of performing legal acts. In this case, although the formal presence of a Foreign National in front of the notary can be proven, materially they do not meet the competence requirement because they do not have a valid legal basis to lease and transfer land lease rights. Consequently, the agreement can be declared invalid and may be annulled as it does not meet the subjective requirements in Article 1320 of the Civil Code.

In the principle of freedom of contract, the principle of *pacta sunt servanda* as stated in Article 1338 of the Civil Code declares that agreements made legally bind the parties as law. However, this principle only applies if all four elements in Article 1320 of the Civil Code are fulfilled, including the competence of the parties. The failure to meet the requirement of competence nullifies the validity



of the agreement, even if there is an agreement and a clear object. Therefore, the principle of freedom of contract cannot be used to justify agreements that contain legal defects from the outset.

Good faith is also a fundamental principle in agreements, which requires the parties to act honestly, not to deceive, and to respect each other's rights. However, in practice, the lessee (Indonesian Citizen) is in a weaker position, especially if they hastily agree to clauses that are unilaterally determined by the owner. In the case of transfer of lease rights without the owner's consent, such actions constitute a violation of the main agreement, unless the transfer clause has been clearly stipulated. Therefore, unilateral actions to transfer lease rights without permission are unlawful acts that can lead to the annulment of the agreement.

In this case, the transfer of lease rights by a Foreign National to another party, namely an Indonesian citizen, without meeting the validity requirements causes the transfer agreement to be invalid, both due to violations of the substance of agrarian law and against the principles of agreements.

The legal consequences of the transfer of lease rights by Foreign Nationals using Visa on Arrival (VoA) are as follows:

- 1) The transfer agreement can be canceled due to not meeting subjective requirements, namely competence.
- 2) The leased rights that are transferred become invalid because they were initially obtained under a residency status that does not comply with the provisions of Article 45 of the UUPA.
- 3) Third party (the recipient of the lease rights) risks losing their lease rights because the object of the transfer comes from an unlawful legal subject.
- 4) Potential legal disputes arise, both in civil and administrative law, regarding the legality of the deed and the potential for compensation claims.

Therefore, it is important for the parties, especially the notary and the land rights owners, to ensure that the legal subjects involved in the lease transfer agreement truly meet the valid legal competency requirements. This aims to protect the legal interests of the parties, prevent disputes, and guarantee legal certainty in any obligations related to the land.

Legal protection for Indonesian citizens who receive lease rights from foreign nationals is an important aspect of contract law and land rights in Indonesia. Legal protection serves as a guarantee that individual rights can be fulfilled as mandated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees legal certainty and equal treatment before the law. In lease agreements for land between Indonesian citizens and foreign nationals, it is regulated in Article 44 and Article 45 of the Basic Agrarian Law (UUPA). Based on the freedom to contract as regulated in Article 1338 paragraph (1) of the Civil Code, agreements made lawfully bind the parties as if they were law. However, in practice, the concept of leasing can develop into forms of hire purchase, leasing, or sub-letting (re-letting), which carry their own legal consequences. Article 1559 paragraph (1) of the Civil Code stipulates that tenants are not permitted to sub-let or transfer their lease rights to another party without the permission of the landowner. If the tenant proceeds to do so without approval, the owner has the right to terminate the agreement and claim damages. In the transfer of lease rights from a Foreign Citizen to an Indonesian Citizen, the landowner's consent becomes an absolute requirement for the agreement to remain legally valid. If the landowner does not grant permission, the transfer agreement may be deemed invalid, resulting in the Indonesian Citizen receiving the lease rights losing their entitlement to the land.

The principle of good faith in agreements also plays an important role in assessing the validity of a legal action. Good faith can be subjective (an individual's honesty in an agreement) or objective



(a general assessment of an action). In the case of the transfer of lease rights from a foreign national to an Indonesian citizen, a lessee acting in bad faith, such as re-leasing land without permission or receiving an invalid lease right, may be considered to violate the principle of good faith. If the lease rights of a foreign national have become void due to the expiration of their residence permit, then the transfer of lease rights to an Indonesian citizen is invalid and contradicts the principle of objective good faith. In the case of the transfer of lease rights from a foreign national to an Indonesian citizen, legal protection for the Indonesian citizen can be provided by ensuring that the agreement meets the legal competency requirements in Article 1320 of the Civil Code, and does not violate the provisions in Article 1559 paragraph (1) of the Civil Code.

In the legal protection theory proposed by Philipus M. Hadjon, legal protection for Indonesian citizens involved in agreements with foreign nationals regarding the transfer of lease rights can be viewed through two approaches, namely preventive and repressive.

Preventive legal protection from the government in safeguarding land lease rights involving Foreign Nationals with temporary residence permits includes clear regulatory arrangements, especially in clarifying Article 45 of the UUPA regarding the position requirements of Foreign Nationals so that lease agreements have strong legal certainty and eliminate legal ambiguities. The government takes precautionary measures in accordance with the UUPA by requiring Foreign Nationals to have a valid residence permit, such as ITAS (Limited Stay Permit) or ITAP (Permanent Stay Permit), before leasing land.

The transfer of lease rights without the owner's permission is not allowed and can be legally canceled to prevent abuse. In addition, the government provides socialization on permits and enforces rules strictly to protect land as a national resource. Notaries also play an important role by creating valid authentic deeds and providing legal explanations to the parties regarding their rights and obligations. Notaries are required to check the residence permits of Foreign Nationals such as ITAS (Limited Stay Permit) or ITAP (Permanent Stay Permit) before drafting agreements so that those agreements are valid and comply with legal provisions. These preventive measures aim to provide legal certainty and protect the interests of landowners and tenants while also preventing disputes.

Repressive legal protection aims to resolve disputes that have already occurred. In the lease transfer agreement between the Plaintiff (Foreign National) and the Defendant (Indonesian Citizen), repressive protection can be provided through a judicial mechanism by filing a lawsuit or a request to annul a legally defective agreement. For example, if the lease transfer agreement made between the Plaintiff and the Defendant does not comply with the applicable legal provisions, such as the absence of written consent from the landowner, the Defendant has the right to request the annulment of the agreement through litigation (dispute resolution through the court system). In addition, the Defendant is also entitled to claim compensation for material losses arising from the invalidity of the agreement and to obtain a court ruling that restores their rights. The existence of a valid notarial deed also provides a perfect evidentiary force in resolving disputes.

According to John Rawls' theory of justice, justice is not merely formal equality before the law, but rather when a principle is agreed upon fairly in the original position, a situation where all individuals are unaware of their social position, wealth, or legal status. This principle guarantees basic rights and equal opportunities for everyone. In lease agreements involving Foreign Nationals without valid residence permits or with expired permits, the imbalance of legal status creates injustice. When a Foreign National does not have legitimate legal standing, they are not in an equal position with the other party in the agreement. As a result, such agreements are prone to harm the other party, especially Indonesian citizens acting in good faith.

On the other hand, the principle of legal certainty as emphasized by Gustav Radbruch and developed by Satjipto Rahardjo demands that the law be clear, stable, and predictable. In practice, the ambiguity of the phrase 'domiciled in Indonesia' as stated in Article 45 of the UUPA creates a space for interpretation that undermines legal certainty. Therefore, a requirement for a valid and sustainable residence permit is needed to determine the legal capacity of Foreign Nationals in entering into land lease agreements. This prevents the applicability of the law from depending on subjective interpretation and ensures fair legal protection for all parties.

Satjipto Rahardjo emphasizes that legal certainty does not only lie in the text of regulations, but also in the practice and consistency of law enforcement. If lease agreements for land by foreign nationals without valid residence permits are still considered valid by law enforcement agencies or the courts, then the principle of legal certainty becomes weak. Not only does the law become inconsistent, but it also undermines the certainty of the legal system in ensuring justice and protection for citizens.

In Radbruch's perspective, the three fundamental elements of law –justice, utility, and legal certainty –must support each other. Therefore, it emphasizes that only Foreign Citizens with valid residence permits can be legal subjects in land lease agreements, not merely as a legal formality, but also as an implementation of the principles of justice and utility. In this way, the law does not just function as an instrument of power, but as a moral and social tool that guarantees equality, protection, and certainty.

Therefore, in order to maintain the integrity of the national legal system, every agreement involving land rights, especially with foreign parties, must comply with the provisions of valid residence permits as a basis for legal competence. Furthermore, legal protection for Indonesian citizens involved in such agreements must be a primary concern, so that they are not harmed by transactions that have the potential to be unlawful from the outset.

## CONCLUSION

The legal consequence of the lease transfer agreement by a foreign national who only holds a Visa on Arrival (VOA) in the example case of Supreme Court Decision Number 2099 K/Pdt/2017 is that the agreement can be canceled because it does not meet the subjective requirements for the validity of an agreement as regulated in Article 1320 of the Civil Code in conjunction with Article 45 of the UUPA. Therefore, the lease transfer agreement becomes cancelable, meaning that the agreement is valid and enforceable, but one party can file for cancellation through the court.

Suggestions to the Government: There needs to be a revision or further explanation in Article 45 of the UUPA related to the definition of "residing in Indonesia", specifically to clearly regulate the types of residence permits or visas that qualify for foreigners to be able to become holders or transferors of lease rights. This is important to eliminate legal uncertainty and prevent multiple interpretations that could potentially harm the parties in land lease agreements.

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