

LEGAL CERTAINTY IN RESIDENTIAL LEASE AGREEMENTS: A COMPARATIVE STUDY BETWEEN INDONESIA AND AUSTRALIA

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Abstract: Differences in legal systems between Australia and Indonesia have the potential to impact the fulfillment of the legal requirements of an agreement, including in the context of rental contracts. Australia is a leading destination for higher education for Indonesian students, and in 2021, the number of Indonesian students in Australia was recorded as the highest among study destination countries. This situation makes a comparative study of the contract law of the two countries relevant, particularly to understand potential differences in the formation, implementation, and resolution of contractual disputes. This analysis is essential so that parties, especially Indonesian students in Australia, can anticipate the legal consequences of their legal actions in rental practices. The research method used in this study is normative juridical with analytical descriptive research specifications. The results show that the differences in the legal requirements of agreements between Indonesia and Australia are based, in part, on the existence of the Tellinty Form, which emphasizes the need for written contracts. The practice of renting residential properties in Australia uses a special form, as regulated by the Tendential Renancies Act, for its completeness and content. If the landlord does not execute a written contract, there will be special consequences. Meanwhile, in Indonesia, contract-making practices are still based on verbal agreements. Likewise, even when written, many do not comply with the standard rental contract format stipulated in Government Regulations. This research contributes to the analysis of student housing rental agreements as a basis for reforming rental law in Indonesia.

Perbedaan sistem hukum antara Australia dan Indonesia berpotensi mempengaruhi pemenuhan syarat sah suatu perjanjian, termasuk dalam konteks kontrak sewa-menyewa. Australia merupakan salah satu tujuan utama pendidikan tinggi bagi mahasiswa Indonesia, dan pada tahun 2021 jumlah mahasiswa Indonesia di Australia tercatat sebagai yang tertinggi di antara negara tujuan studi. Kondisi ini menjadikan kajian komparatif mengenai hukum kontrak kedua negara relevan, terutama untuk memahami potensi perbedaan dalam pembentukan,

pelaksanaan, dan penyelesaian sengketa kontraktual. Analisis ini penting agar para pihak khususnya mahasiswa Indonesia di Australia dapat mengantisipasi akibat hukum dari tindakan hukum yang mereka lakukan dalam praktik sewa-menyewa. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif dengan spesifikasi penelitian deskriptif analitis. Hasil menunjukkan bahwa perbedaan syarat sah perjanjian antara negara Indonesia dengan Australia salah satunya didasari oleh adanya Certainty Form yang menekankan perlunya hukum kontrak yang harus dilakukan secara tertulis. Praktik sewa menyewa tempat tinggal di Australia menggunakan form khusus sebagaimana yang telah diatur kelengkapan dan isinya antara penyewa dan pemilik tempat tinggal sebagaimana dalam Tendency of Tenancies Act. Apabila pemilik tempat tinggal tidak melaksanakan kontrak secara tertulis, maka akan ada konsekuensi-konsekuensi khusus yang akan didapat. Sedangkan di Indonesia, praktik pembuatan kontrak masih didasarkan pada perjanjian secara lisan. Begitupun jika dilakukan secara tertulis, masih banyak yang tidak sesuai dengan standar format pengisian kontrak sewa sebagaimana yang telah diatur dalam Peraturan Pemerintah. Penelitian ini berkontribusi dengan menganalisis perjanjian sewa tempat tinggal mahasiswa sebagai landasan untuk mereformasi hukum sewa menyewa di Indonesia.

Keywords: Agreement; Contract; Legal Certainty; Residential Tenancy.

INTRODUCTION

Contracts are fundamental instruments in civil law that serve as the basis for legal relationships between parties. They are used in all social activities, including economic cooperation and even education. Contracts are not only a means of realizing agreements, but also a means of protecting the legal interests of each party. (Imelda Martineli et al. 2023) Education is a conscious and planned effort to create a learning environment and learning process so that people can actively develop their potential, thereby acquiring spiritual strength, self-control, personality, intelligence, noble character, and the skills needed by themselves, society, the nation, and the state. Education is an important integral part of national development to create better human resources (HR) from year to year. (Maspa Makkawaru 2019) The development of increasingly modern communication technology has led many countries around the world to implement fair and efficient legal systems.

Cooperation is one of the efforts undertaken by countries to ensure the success of work programs with a mutually beneficial orientation (Devie 2020). One of the effects of economic development in a country is how that country conducts business cooperation. All business considerations, decisions, and implementations can have an impact, which of course requires efforts to achieve positive effects on material gains. Indonesia is the ASEAN country that sends the most international students abroad. In 2021, data shows that more than 350,000 students from Southeast Asia are studying abroad. Of that number, 16% or around

56,000 students abroad are from Indonesia. In this regard, Australia is one of the most popular destinations for Indonesian students seeking higher education. According to UNESCO data, there were 12,852 Indonesian students studying in Australia in 2021 (Eky Ilmastuti, 2024).

The increasing number of Indonesian students choosing to study abroad each year will result in more cooperation and business transactions between the Indonesian government and Australia. This educational cooperation is not limited to university admissions in Australia or the payment of tuition fees. Another aspect that can be examined and presents a beneficial opportunity for the Australian community is the presence of businesses in the field of renting accommodation for students pursuing higher education, including Bachelor's Degrees (Strata-1), Master's Degrees (Strata-2), and even Doctorate Degrees (Strata-3). Thus, a written contract becomes an important legal instrument in ensuring legal certainty for the parties involved in the rental agreement.

Based on the above explanation, this study will examine two main issues. First, it will analyze the comparison of the provisions governing the validity of agreements or contracts between Australia and Indonesia. This comparison is important in order to identify the legal provisions governing lease agreements/contracts in Australia, which certainly differ from those in Indonesia, starting with the legal system, which will influence the examination of the differences in the provisions. Second, based on the comparative analysis of the validity requirements of agreements, the study will proceed to compare the regulations governing residential lease contracts between Australia and Indonesia. Roscoe Pound defined law as a tool of social engineering, meaning that law plays a dynamic role in shaping society. Pound did not view law merely as a set of rules governing behavior, but rather as a tool used to design and modify social structures (Nata Sundari, Fasya Zahra Lutfiyah, eta Windi Rahmawati 2023).

The uniqueness of this research lies in the selection of Australia as a form of comparative contract law with a normative-empirical approach in analyzing practices that occur in the rental system in Australia. Australia is a developed country with an Common Law legal system, where the Common Law legal system in Australia is rooted in the history of the British monarchy, which establishes court rulings as the primary source of law. When a legal issue is decided by a judge, that ruling becomes binding on other judges and applies generally to similar cases (Joseph Dainow 1967). The implications of the legal system adopted by Australia will certainly have implications for the implementation and enforcement of law in Australia in various legal aspects, including public law, administrative law, constitutional law, and civil law, such as in the case of contract law, which will have conceptual differences. The findings of this research are expected to contribute to the development of more progressive and responsive legal policies regarding contract law in Indonesia and serve as a reference in considering what legal certainty schemes for contracts the government can implement to adapt to current technological developments.

RESEARCH METHOD

The research method used in this study is normative legal research with legal principles, legal systematics, legal synchronization, and legal comparison (Muhammad Siddiq Armia 2021). legal research will focus on normative issues related to rules, norms pertaining to contract law in Australia and contract law in Indonesia, including the Civil Code, through legal principles related to legal norms as guidelines for appropriate behavior (Amiruddin et al. Zainal Asikin 2018). In accordance with the research method used, the study examined the norms and principles contained in secondary data with primary materials such as the Civil Code, Residential Tenancies Regulations Act 1997 Sect 26, Residential Tenancies Regulations Act 1997 Reg-10, Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlements. Then, secondary data with secondary legal materials such as journal articles related to the research object concerning the Law on Residential Lease Agreements between Indonesia and Australia, as well as primary data with primary materials will include data from interviews with students studying in Australia.

RESULT AND DISCUSSION

Comparison of the Requirements for the Validity of Agreements or Contracts

An agreement is a legal act that is often carried out in everyday life. An agreement is a legal relationship between one party and another to do something or not to do something. Basically, a contract is a single meaning in an agreement. However, in this context, a contract can be referred to as a written agreement, such as an agreement made by hand or an authentic agreement. This is because agreements can be made without writing, but the parties' awareness of creating a legal relationship is still closely tied to the existence of a contract rather than an agreement.

Indonesia is a country that implements the European Continental legal system (*civil law*), where codification is one of the references in the formulation of written laws that are binding on the Indonesian people and/or citizens. The *civil law* system has three characteristics. First, the law is based on codification, so that legislation is the main source of law and a reference in resolving and controlling people's behavior (Fajar Nurhadiano 2015). Second, because the primary legal system is based on legislation, there is a separation between the legislative power and the judicial power, where the two cannot interfere with each other's affairs. Civil Law gives judges considerable discretion to decide cases without following the decisions of previous judges. Third, *Lawrence Friedman*, judges play a major role in discovering facts and carefully assessing evidence. In the Civil Law system, judges can seek to obtain a complete picture that can be used as a reference for the events they face from the outset, so that the Civil Law system in Indonesia will certainly rely on the professionalism and honesty of judges in deciding a case (Jeremias Lemek 2007).

Sri Soedewi Masjehoen Sofwan argues that an agreement is a legal act whereby one or more persons bind themselves to one or more other persons. Subekti defines an agreement as a legal relationship between two or more persons, whereby one party is entitled to demand something from the other party and the other party has an obligation to fulfill the agreed demand (Subekti eta Tjitrosudibio 2003). An agreement is the root word of “sepakat” which is one of the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. The word of “sepakat” will have legal consequences for the process of making an agreement. Every agreement made by the parties can be enforced if the performance is not fulfilled. Legal consequences in this case are interpreted as the emergence of rights and obligations. Rights are interpreted as benefits, and obligations are burdens that must be fulfilled (Retna Gumanti 2012).

Article 1320 of the Indonesian Civil Code regulates the validity of agreements in Indonesia, which includes four elements, namely agreement, capacity, a specific subject matter, and a lawful cause (a cause that is lawful and not contrary to the law). As previously explained, agreement as the first requirement is the manifestation of the alignment of the parties' intentions *de toestemming van degenendie zich verbide* (Devy Kumalasari eta Dwi Wachdiyah Ningsih 2018). In the formation of a contract, the parties must go through a negotiation process that culminates in the parties reaching an agreement. The second requirement for the validity of a contract in Indonesia is the capacity of the parties to perform the contract or agreement. This is based on the provisions of the Civil Code (Article 1330), which states that the parties entering into a contract/agreement are considered capable if they are of legal age and not under guardianship. Guardianship in this context can be interpreted as mental incapacity (Cakra Manggala Nanda eta Miftakhul Huda 2024), mental illness, or impaired mental health, or a wife under the guardianship of her husband, all of which are considered “legally incompetent” under Indonesian contract law. A specific requirement as the third condition for the validity of an agreement under Indonesian law is that every agreement must contain what is agreed upon or “contracted” as the subject matter or object of the agreement by both parties. If the agreement involves the transfer of goods, the agreement must specify the type of goods being traded and the quantity of goods that can be determined or counted. If there is no subject matter agreed upon, the agreement becomes void.

The existence of an agreement, legal capacity, and a specific cause are the three essential requirements for an agreement to be valid. However, it should be noted that in the process, everything agreed upon must comply with the norms and legal principles applicable in Indonesia. A lawful cause is one of the final requirements for the validity of an agreement/contract, where the validity of the agreement is not based solely on mutual consent but must be based on the existence of a *cause* (Desi Syamsiah 2021). *Causa* serves as the motivating factor or the basis for the debtor's willingness to accept the obligation to fulfill the terms of the agreement, thereby enabling the parties to understand the underlying reasons for entering into the agreement. The validity of the *causa* or the cause of the agreement is

determined at the time the agreement is made. An agreement without a valid *causa* or made with an improper purpose or contrary to the law will automatically lack legal binding force (Dwi Ratna Kartikawati 2019).

The terms “agreement” and “contract” are often used interchangeably in the Australian legal system. However technically, not all agreements are legally enforceable as contracts. For an agreement to be recognized as a valid and legally binding contract, several important elements must be present (Julie Clarke 2019), such as agreement, consideration, intention to create a legal relationship, and capacity. *Agreement* arises from a clear process of offer and acceptance between the parties, culminating in a “meeting of minds” (*consensus*) between the parties. In this concept of consensus, the parties are already considered objective. Objective in this case essentially means a person who is of sound mind and appears to be healthy. Thus, the concept of “agreement” in Australian contracts already includes the understanding that the parties are rational individuals. No specific form is required to form an offer. This is because an agreement or ‘agree’ will go through a process of offer as communication between individuals who are considered “competent” with the result of a promise to do something or not to do something.

Consideration is reciprocal performance, where consideration is defined as something of “value” or a “price” exchanged between the parties, such as money, goods, or services. However, there is an exception where the “price” can be anything determined by the promisor (for example, in this case, the price can be interpreted as the “loss” on the part of the promisee in the form of relinquishing a freedom that should be enjoyed (such as promising to stop smoking or study every Saturday night) - the promisor does not need to receive any actual benefit. This can be done as long as it does not violate the law. The consideration must have ‘value’ in the eyes of the law - that is, it must exist (Legita Tandanu eta Ariawan Gundi 2020).

Intention to Create Legal Relations it means the parties must have the intention that the agreement will have legal consequences. Usually, the existence of a reward will provide evidence of this. If the promisor has designated something as the “price” or “value” of the promise, then in most cases this is accompanied by a clause or intention that the parties will be bound (Jennifer Gracia Priskila 2023). If an agreement is commercial or a contract, the parties usually intend for it to be legally binding. If the parties to a commercial agreement do not intend for it to be binding, they can indicate this by including an “Honor Clause,” which indicates that the agreement is binding only in terms of honor—not legally.

In Australian contract law, contract to be valid if parties have the capacity to enter into a contract. This is similar to the second principle of the validity of agreements in Indonesia, namely “legal capacity,” so that if certain individuals or groups do not have the capacity to enter into contracts, the contracts they enter into are (usually) unenforceable against them (Sumriyah 2019). This can be illustrated in several cases, such as individuals with mental disabilities and or intoxication, bankrupt individuals, the Crown (as the representative of the British monarch in Australia as the head of state), or minors. In the case of individuals with mental disorders and/or intoxication, a contract may be void at the discretion of the

party suffering from the mental disorder (Ruri Rifana, Ananda Sabina Zahira, eta Manisha Ramadanni 2025), where such mental disorders and intoxication are understood under Australian contract law as those who “cannot understand the nature of the contract being made.” If one party wishes to withdraw from a contract that has been made, they must prove 1) that they have such a defect (e.g., by providing a doctor's statement, etc.); and 2) that there is a third party who knew or should have known about it.

Bankruptcy or a bankrupt person as the second exception can basically enter into a contract, but unfavorable contracts entered into prior to bankruptcy may be rescinded by the trustee. The law may also restrict the nature of contracts that can be entered into by bankrupt persons (e.g., the level of credit they can obtain). Australian law also states that if a contract is entered into without disclosure of bankruptcy, it constitutes a breach of law. The requirement to disclose bankruptcy (for individuals) is regulated, for example, in the Bankruptcy Act of 1966.

As previously explained, because Australia is a British Commonwealth country, its system of government is a constitutional monarchy, in which the monarch serves as head of state. As such, the Crown cannot enter into contracts. However, Australian law currently allows the Crown to enter into contracts with specific restrictions set out in the Corporations Act (Corporation Act 2001) and the Bankruptcy Act (Bankruptcy Act 1966). In jurisprudence, these restrictions are enforced by judges, for example in the concept of *ultravires*, which states that actions taken outside the authority granted by law or the constitution can be considered invalid. This means that if the Crown or its representatives enter into a contract outside the limits of the applicable constitutional authority, the contract is considered invalid and unenforceable. Similarly, in this case, if there is a contractual loss, the budget of the House of Representatives will bear the responsibility.

Australian law limits the capacity of children to enter into contracts, so that contracts entered into by persons under the age of 18 (who are classified as minors) are void. However, there are exceptions if the contract is entered into to meet the needs of the child. The age limit for children is regulated in *the Age of Majority* (Che Hasim & Dusuki F., 2023)(Che Hasim eta Dusuki F. 2023). The consistency of Australian legislation regarding the age limit of 18 years is also regulated in other legislation, such as the Family Law Act 1975 (Cth), the Australian Citizenship Act 2007, which regulates the citizenship process and sets the age requirement for applicants at 18 years, Crimes Act (in each state) which establishes full criminal responsibility, Voting Rights in the Commonwealth Act 1918, where Australian citizens can grant voting rights to citizens who are 18 years of age.

Certainty Form (Julie Clarke 2019) as the second condition for the validity of an agreement is based on the principle of agreement (contract) in Australia, which does not have to comply with formal requirements such as being made in writing and/or signed. However, there are some exceptions in the provisions of English law that are still largely applicable in Australia, such as the Statute of Frauds 1677 (from England, still applicable in Western Australia). Statute of Frauds 1677 regulates in such a way as to reduce fraudulent contractual

claims, such as in contract provisions for the release of land rights in Australia and in the sale of goods. In the case of the sale of land rights in Australia, this must be proven in writing and signed by the person who is the subject of the lawsuit. This is regulated in the *Instrument Act 1958 (Vic) Section 126*, which states that “certain” agreements must be made in writing:

“(1) An action must not be brought to charge a person upon a special promise to answer for the debt, default or miscarriage of another person or upon a contract for the sale or other disposition of an interest in land unless the agreement on which the action is brought, or a memorandum or note of the agreement, is in writing signed by the person to be charged or by a person lawfully authorised in writing by that person to sign such an agreement, memorandum or note”

In terms of the sale of goods, sales contracts in Australia do not usually require any formalities. However, in Tasmania and Western Australia, there are requirements for sales contracts for goods exceeding a certain value to be evidenced by a written note or memorandum signed by the bound parties. This is regulated in the *Sale of Goods Act 1896* Section 9(1), whereby goods valued at more than \$20 must be covered by a written contract,

“(1)A contract for the sale of any goods of the value of \$20 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.”

Rule *Sale of Goods Act 1895 Section 5* Western Australia

“(1) A contract for the sale of any goods of the value of \$20 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.”

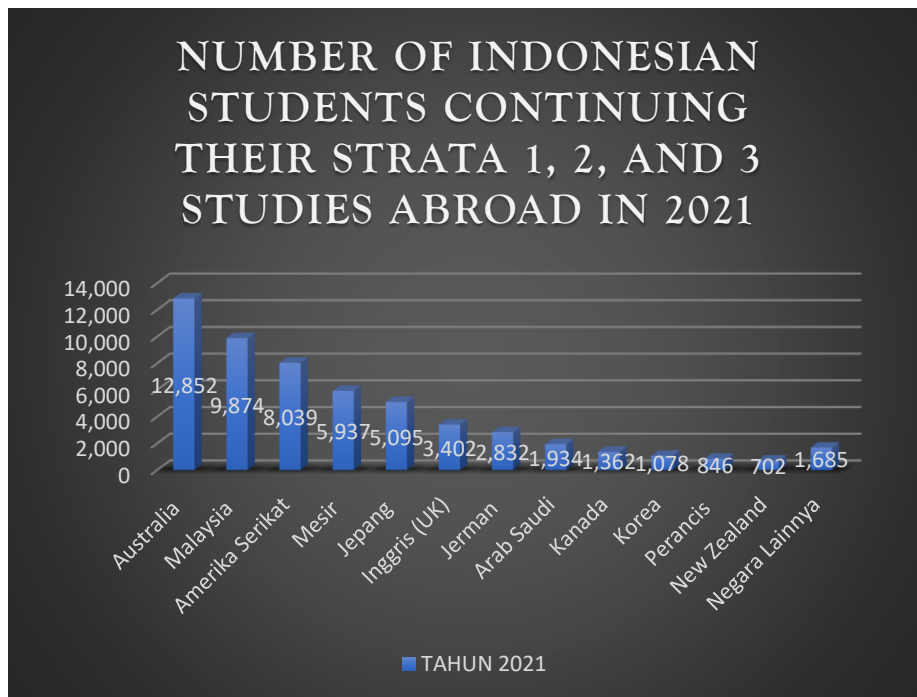
The Principle of Written Legal Certainty in Australia

Understanding the existence of a legal system in a country is a set of legal rules consisting of parts that are interconnected and interrelated, structured in such a way according to concepts and principles to achieve a goal. When looking at the legal systems in different parts of the world, the differences between legal systems over time have become increasingly varied (Praise Juinita W.S. Siregar 2022). Achmad Ali distinguishes several types of legal systems in various countries around the world such as (Achmad Ali 2012) Civil Law, which applies in Europe and its former colonies. Common Law applies in the United Kingdom, the United States, and countries of the Commonwealth. Customary Law applies in some parts of countries, such as Africa, China, and India, and Mixed Systems, such as Indonesia, where a legal system of legislation (Civil Law), customary law, and Islamic law applies.

Australian system of agreement or contract formation, agreements must now be based on a written contract. The requirements for a valid agreement or contract in Australia are based on five elements. First, there must be an agreement. Second, there must be consideration, which must include reciprocal performance. Third, the intention to create

legal relations Fourth, legal capacity to enter into an agreement and Fifth, certainty form (Julie Clarke 2019). When looking at the number of Indonesian students studying abroad, Australia is the number one destination for education the following is comparative data on the number of Indonesian students studying abroad in 2021 (Eky Ilmastuti 2024).

Figure 1. Countries most popular among Indonesian students for undergraduate, graduate and doctoral studies 2021



Source: author

Residential lease agreements in Australia emphasize the importance of written forms. The author has explained that the transfer of land rights or ownership must be done in writing, so that it will be subject to the Property Act, which must be made in writing, for example in Australian New South Wales, which is regulated in the Conveyancing Act 1919-Section 54 A regarding the requirement for contracts, land sales, and other related matters to be made in writing and signed by the parties concerned. When considering rental agreements entered into by Indonesian students in Australia while pursuing undergraduate studies, the specified period is certainly less than five years of study. In practice, students will usually enter into a house rental contract for a period of 2-4 years (Idp Hotcourses 2021), so the provisions regarding the preparation of a residential tenancy agreement can refer to the *Victoria Current Acts* regarding the Residential Tenancies Act 1997 Sec 26, which stipulates that if a residential tenancy agreement is for a fixed term (not exceeding 5 years), it must be made in writing in the standard form specified in the rules governing residential tenancy agreements for a fixed term not exceeding 5 years. Similarly, the requirement for written agreements is stipulated in the *Victoria Current Acts* regarding Residential Tenancies Act 1997 Sec 26 (1A) & (1B), which states that:

“1(A) A Residential Rental agreement for a fixed term of more than years- (a) must be in writing; and 1(B) Must be in prescribed standard form for a fixed term residential rental agreement of more than 5 years unless it is in the form referred to in subsection”

The provisions of the Residential Tenancies Act 1997, Section 26 (1A) and (1B), state that although Australian contract law does not require a written agreement/contract for all matters, certain specific contracts/agreements must be made in writing to avoid potential disputes and to clarify the rights and obligations of each party (in this case, the student as the consumer and the property owner). This is as stated by Firsta Ratu Arsy, a Master of Law student at Melbourne University in 2024(Firsta Rahadatul 2025):

“Property rental in Australia, regardless of the type of property, requires a written agreement between the owner and the tenant. This has become a standard practice, especially in today's tech-savvy world, where property owners (such as student housing providers) can directly send forms via a special link or PDF for tenants to read, fill out, and sign electronically. Therefore, during the agreement process, the tenant must first complete the information in the PDF form and provide proof of their student status.”

As required by the standard use of written forms, implementation in student housing leases in Australia, for example, can be seen in the following image:

Figure 2. Standard Format Submitted in Student Housing Lease Contracts in Australia

The figure displays two pages of a Residential Tenancy Agreement form. The left page is the cover sheet, featuring the Student Housing Australia logo and a photograph of a student working at a desk. The right page is the main agreement form, titled 'Residential Tenancies Act 1997 – Section 26(1) Residential Tenancies Regulations 2021 – Regulation 10(1)'. It contains several sections: Part A – Basic terms, 1. Date of agreement (25-Oct-23), 2. Premises let by the rental provider (Unit 203 / 131 Pelham St, Carlton VIC 3053), 3. Rental provider details (Student Housing Australia Pty Ltd), 4. Renter details (Firsta Rahadatul Arsy), 5. Length of the agreement – fixed term agreement (Start date: 15/02/2024, End date: 14/01/2025), 6. Rent (Rent amount: \$1477.00, Utilities included: Gas, Day rent: 15 day of each month), and 7. Bond (Bond amount: \$1477.00, Date bond payment due: on or before 15/02/2024).

Source: author

Student housing in Australia is one of the accommodation options for Indonesian students studying abroad. Student housing in Australia can basically be categorized as

boarding houses in Indonesia, but in Australia, the term has been changed to “student housing” to refer to rental accommodation specifically for students in Melbourne. In a legally valid Australian lease agreement (leasepeak), before entering into the terms and conditions contract, there will be a statement of agreement based on the provisions of the Residential Tenancy Act Agreement 1997 along with specific sections/articles as the basis for the written agreement. The first page will include information about the parties to the property lease agreement, including the property unit number (whether it is an apartment, a room for rent, etc.), which will be displayed on each page of the agreement. The agreed form will include the completion of the “Basic Terms” section, which covers the tenant's personal information, rent amount, lease duration, and tenant profile. The basis for the content of the agreed form refers to the standards of the Residential Tenancy Act Agreement 1997 Section 10(1), with the agreement/contract document requiring the tenant (student) to sign it. Similarly, the agreement must also include notification of any proposed future rent increases.

Figure 3. Terms and Conditions regarding the rights and obligations of student housing tenants in Australia
 As a standard form that must be included in lease agreements with a term of less than 5 years and a Disclosure Statement (special provisions that must be understood by tenants)

Unit 203 / 131 Pelham St, Carlton VIC 3053	
Part D – Rights and obligations This is a summary of selected rights and obligations of renters and rental providers under the <i>Residential Tenancies Act 1997</i> (the Act). Any reference to VCAT refers to the Victorian Civil and Administrative Tribunal. For more information, visit www.consumer.vic.gov.au/renting .	
Use of the premise The renter: - is entitled to quiet enjoyment of the premises. The rental provider may only enter the premises in accordance with the Act. - must not use the premises for illegal purposes. - must not cause a nuisance or interfere with the reasonable peace, comfort or privacy of neighbours. - must avoid damaging the premises and common areas. Common areas include hallways, driveways, gardens and stairwells. Where damage occurs, the renter must notify the rental provider in writing. - must keep the premises reasonably clean.	Locks - The rental provider must ensure the premises: - has locks to secure all windows capable of having a lock, and - has deadlocks (a deadlock is a deadlatch with at least one cylinder) for external doors that are able to be secured with a functioning deadlock, and - meets the rental minimum standards for locks and window locks. - External doors which are not able to be secured with a functioning deadlock must at least be fitted with a locking device that: - is operated by a key from the outside; and - may be unlocked from the inside with or without a key. - The renter must obtain consent from the rental provider to change a lock in the master key system. - The rental provider must not unreasonably refuse consent for a renter seeking to change a lock in the master key system. - The rental provider must not give a key to a person excluded from the premises under a: - family violence intervention order; or - family violence safety notice; or - recognised non-local DVO; or - personal safety intervention order.
Condition of the premises The rental provider: - must ensure that the premises comply with the rental minimum standards, and is vacant and reasonably clean when the renter moves in. - must maintain the premises in good repair and in a fit condition for occupation. - agrees to do all the safety-related maintenance and repair activities set out in Part C of the agreement.	Repairs - Only a suitably qualified person must do repairs – both urgent and non-urgent. Urgent repairs Section 3(1) of the Act defines urgent repairs. Refer to the Consumer Affairs Victoria website for the full list of urgent repairs and for more information, visit www.consumer.vic.gov.au/urgentrepairs . Urgent repairs include failure or breakdown of any essential service or appliance provided for hot water, cooking, heating or laundering supplied by the rental provider. The rental provider must carry out urgent repairs after being notified. A renter may arrange for urgent repairs to be done if they have taken reasonable steps to arrange for the rental provider to immediately do the repairs and the rental provider has not carried out the repairs. If the renter has arranged for urgent repairs, the renter may be reimbursed directly by the rental provider for the reasonable cost of repairs up to \$2,500. The renter may apply to VCAT for an order requiring the rental provider to carry out urgent repairs if: - the renter cannot meet the cost of the repairs; or - the cost of repairs is more than \$2,500; or - the rental provider refuses to pay the cost of repairs if it is carried out by the renter.
Modifications The renter: - may make some modifications without seeking consent. These modifications are listed on the Consumer Affairs website. - must seek the rental provider's consent before installing any other fixtures or additions. - may apply to VCAT if they believe that the rental provider has unreasonably refused consent for a modification mentioned in the Act.	 Disclosure Statement Pre-Occupancy Disclosure Statement to Renters As required by section 30D of the <i>Residential Tenancies Act 1997</i> and regulation 16 of the <i>Residential Tenancies Regulations 2021</i> , I/we make the following disclosures to prospective renters who apply to rent the premises known as:
	Property Address 203/131 Pelham Street, Carlton, Vic 3053
	1. There is a proposal to sell the rented premises AND I/we have engaged an agent to sell the rented premises OR have prepared a contract of sale. No
	2. A mortgagee is taking action for possession of the rented premises and has commenced a proceeding to enforce a mortgage over the rented premises. No
	3. I/we are the owner/s of the rented premises. Yes
	4. The rented premises are supplied with electricity from an embedded electricity network* (*"Embedded electricity network means a privately owned electricity network that serves more than one customer and that connects to a distribution or transmission system in the national electronic grid through a parent connection point.) Yes
	4a. ABN of the Operator 16105743717
	4b. Trading Name of the Operator SHA Services Pty Ltd
	4c. Phone Number of the Operator 0383736800

Source: authors

If the property owner does not comply with the terms and conditions in the standard form provided in writing to the tenant, the consequences will be as follows(NFSW

Government 2025) an increase in rent during the first 6 months, termination of the lease as a periodic agreement without legal grounds during the first 6 months, no cooling-off period, and no fees can be charged. Similarly, the requirement for a sheet of rights and obligations for tenants is regulated in the Residential Tenancies Act 2021 Section 10(1), which states: “(1) The rooming house operator must use this form to notify the resident of a proposed rent increase”

Each state within the territory of Australia has its own *Residential Tenancies Act* (RTA) that regulates the rights and obligations of tenants and landlords. However, it should be noted that the basis for the use of the Residential Tenancies Act in each region of Australia provides legal certainty in at least the following four areas as standard operating procedures (mandatory) that must be provided to consumers namely: the right to a written lease agreement, the right to occupy a safe and habitable dwelling, protection of the security deposit (*bond*) held in a secure government account, and the right to be notified that the premises to be rented are suitable before an inspection or termination of the lease.

These standards are provided because in Australia, international students have the same rights as local residents in terms of renting accommodation. Both local residents and international students are protected by the Australian Consumer Law and the Education Services for Overseas Students (ESOS) Act. Furthermore, in practice, before moving into their accommodation, every student is required to pay a deposit as a form of security. The Residential Tenancies Bond Authority (RTBA) is a special agency established and appointed by the state of Victoria to manage all bond payments from residential rentals. The RTBA is responsible for holding all bonds on behalf of landlords/agents and tenants, and must return them upon the termination of the lease agreement(Ina Tanaya 2025).

Written Legal Certainty as the Fifth Condition for a Valid Lease Agreement Lease agreements in Australia can be exemplified in various ways, one of which is the rental of property for Indonesian students who are pursuing undergraduate education in Australia. The obligations imposed by the Australian government in its regulations certainly have good legal orientation and objectives, especially in the event of problems or default by one of the parties/students.

The Principle of Written Legal Certainty in Indonesia

The definition of lease has been regulated in Article 1548 of the Civil Code which states that leasing an item is an agreement whereby one party promises to give the other party the right to use the item for a certain period of time and to pay a certain amount of money to the lessor. Furthermore, the Civil Code provides that a lease agreement for a house may be made in writing (Muhammad Iqbal eta A. Malik 2024). This is regulated in Article 1338 of the Civil Code, which states: “All contracts that are properly executed are legally valid for the people who made them”

The rules governing lease agreements in the Civil Code do not yet require a written agreement/contract. However, in addition to the Civil Code, specific rules on house leases

in Indonesia can be found in Article 28(4) and (5) of Government Regulation No. 14 of 2016 on Housing and Settlement, which states that: “(4) Occupancy of a house by way of lease or by other means not involving lease as referred to in paragraph (1)(b) and (c) shall be based on a written agreement between the owner and the tenant; (5) The written agreement referred to in paragraph (4) must at least include provisions regarding rights and obligations, the duration of the lease, the amount of rent, and force majeure conditions.”

Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement does indeed stipulate the requirement for a written agreement in the case of a house rental contract. However, regarding the rental of dormitories/student housing in Indonesia, there are still no regulations regarding the necessity of a written agreement or contract. Rental agreements for dormitory rooms are still often made verbally (Muhammad Iqbal eta A. Malik 2024). This is because if the landlord makes an agreement verbally, it is considered easier in terms of the process, does not require a long time to make an agreement or offer a rate. Similarly, in Indonesia, the principle is that if there is a problem with a boarding house rental contract, the owner will generally resort to deliberation, as this is cost-effective and does not take much time (Muhammad Iqbal eta A. Malik 2024). Similarly, in the case of house rental agreements/contracts in Indonesia, although the Government has regulated the requirements in Article 28 Paragraph (4) and (5) of Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement, not all agreements/contracts entered into by tenants or the parties involved adhere to the guidelines set forth in the aforementioned Government Regulation. For example, in the image of a house rental contract agreement in Bandung between Mrs. Dian (as the owner) and Rizki Amalia (as the tenant) for the year 2024 below:

Figure 4. A simple rental agreement/contract for a house, with no cover page, and the tenant's email address.

SURAT PERJANJIAN SEWA RUMAH

Kami yang bertanda tangan di bawah ini :

Nama : Dian Marini
 Alamat : ~~Widagda No.10/34 A, Kelurahan Pisang, Kecamatan Bandung Kota Bandung~~
 Yang disebut Pemilik

Nama : Rizki Amalia
 Alamat : ~~Widagda No.10/34 A, Kelurahan Pisang, Kecamatan Bandung Kota Bandung~~
 Yang disebut Penyewa

Kedua belah pihak telah sepakat mengadakan perjanjian sewa rumah yang beralamat di :
~~Komp. Banjarsari Indah B-3 RT 003/015, Kel.Sukamiskin, Kecamatan Arcamanik, Kota Bandung~~
 Kotamadya Bandung.

Dengan kesepakatan persyaratan sewa menyewa sebagai berikut :

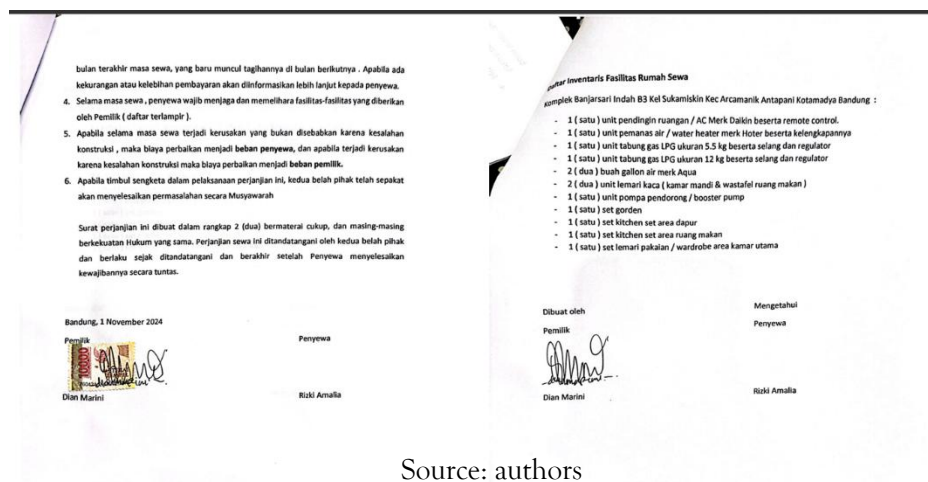
1. Penyewa bersedia menyewa rumah pemilik yang terletak di Komp. Banjarsari Indah B-3 RT 003/015, Kel.Sukamiskin – Kec.Arcamanik, Kotamadya Bandung selama 1 (satu) tahun. Harga sewa rumah sebesar Rp.35.000.000,- (Tiga Puluh Lima Juta Rupiah) lunas sekaligus untuk sewa selama 1 (Satu) Tahun.
 Terhitung mulai tanggal 01 November 2024 sampai dengan tanggal 1 November 2025
2. Selama masa sewa berlangsung Penyewa tidak dibenarkan untuk mengalihkan atau memindahkan sewa tersebut kepada pihak ketiga tanpa ada izin tertulis dari Pemilik Sah. Penyewa juga tidak diperkenankan mengalihfungsikan rumah tinggal tersebut untuk tempat usaha / kantor tanpa ada persetujuan dari Pemilik
3. Penyewa berkewajiban membayar tagihan listrik, iuran sampah, dan iuran keamanan selama sewa berlangsung, serta membayar deposit sebesar Rp. 1.000.000,- (satu juta rupiah) di muka , untuk pembayaran tagihan pemakaian listrik, iuran sampah, dan iuran keamanan

9

Source: authors

The image above is an example of a house rental agreement signed at the end of 2024 with a term of one year. This means that the agreement/contract is still valid today. The rules provided by the landlord to the tenant are very simple and not detailed. In contrast, rental agreements in Australia, even at the student housing level, are more complex. The term “student housing” itself can refer to both apartments and houses rented by students. Furthermore, in Australia, during the rental agreement process, the parties entering into the agreement (especially the landlord) are highly selective and adhere to the provisions of Australian laws and regulations regarding property rental.

Figure 5. A simple rental agreement/contract for a house, including the terms and conditions and details of the facilities provided



Source: authors

The lease agreement/contract for a house in the example above demonstrates that the practice of drafting lease agreements for houses is still not in compliance with the standards set by the Government in Article 28(5) of Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement. Article (5) requires that the agreement include, at a minimum, provisions regarding rights and obligations, the lease term, the amount of rent, and the conditions for Force Majeure. One of the shortcomings in the example of the residential lease agreement above is the absence of provisions regarding Force Majeure. However, the agreement will remain valid and binding on the parties because, in its implementation, the parties have fulfilled the elements of a valid agreement as stipulated in the Civil Code. The comparison of contract law regarding the rental of residential properties (including apartments, boarding houses, and houses) between Australia and Indonesia is significantly different. Australia regulates property ownership in accordance with its own zoning regulations, which are codified in the form of the Tenancy Act. In practice, a security deposit (bond) is required as a measure to ensure that tenants do not damage the property and leave the premises in a clean and orderly condition.

Comparison of contract law between Australia and Indonesia fundamentally results in significant differences in legal uncertainty regarding lease agreements for boarding houses,

apartments, and houses. This is because, fundamentally, contract law in Australia applies the Principle of Legal Certainty, which is realized through the requirement that all agreements must be in writing (*Certainty Form*) as a condition for the validity of an agreement in Australia. In Australian law, the requirement for a certainty form exists because tenants are categorized as the vulnerable party. The certainty form serves as a consumer protection instrument, because, as explained in the Residential Tenancies Acts 2021, the standardization and minimum rights and obligations of contracts in Australia have implications for contractual obligations to provide the right to decent and safe housing, the right to privacy, and the guarantee of fair return of bonds. These clauses must be included as a form of consumer protection in the event of future disputes or problems.

Based on practices in Australia, it is clear that there is a weakness in the current Indonesian system that allows for verbal contracts to be legally binding. In practice, verbal contracts often lead to disputes because they are difficult to prove. This risk also means that the subjective validity requirements are not met, so that if a case arises, the agreement may be declared null and void (Nia Puspita Hapsari et al. 2024). In addition, consumer protection also needs to be taken into account. In Indonesia, tenants are currently still often in a weak position, such as losing their security deposits or facing unilateral increases in rent. The Indonesian government should consider formulating rules for residential leases, such as through a special law or by revising the Civil Code, which is nearly 183 years old (Gerhard Mangara eta Tazqia Aulia Al-Djufri 2022). Additionally, although the government has established regulations in the form of Government Regulation No. 14 of 2016 on Housing and Settlement Management, considering the various tenancy regulations designed by the Australian government, this could serve as an incentive for local governments to develop local regulations related to rental agreements, including the format of the agreement, additional terms, and guarantees for rental facilities for students pursuing higher education.

Erlyn Indrati views legal certainty as *law as what is written in the books*, namely positive rules that apply generally *in abstracto* in a particular place. The law must be recorded within the jurisdiction of the government and announced to the people (Mario Julyanto eta Aditya Sulistyawan 2019). Legal certainty requires legal regulation in legislation made by the competent authorities (Zulfahmi Nur 2023), so that the rules will have a legal aspect that can guarantee the legal certainty of contracts related to the rental of residential premises in Indonesia. The existence of certainty form in Australia will provide three levels of legal certainty as stated by Gustav Radburch, namely clarity of norms, consistency of application, and legal protection of the legal interests of citizens. When linked to the certainty form in Australia, this means that the clarity of the contract's content on all clauses that explicitly regulate the rights and obligations of the parties will provide strong legal evidence as authentic proof in legal proceedings. This will certainly speed up the resolution of any disputes that may arise. In addition, the consistency of law enforcement carried out in the certainty form that has been regulated in Australia within its jurisdiction has ensured that every contract is

subject to the same legal provisions, thereby preventing disparities in law enforcement between similar cases.

The comparison between the validity requirements for rental contracts in Australia and Indonesia represents a paradigm shift in the legal concept of rental agreements, which should be made in writing. Indonesia can consider the principle of written agreements, which does not mean eliminating the principle of freedom of contract, but rather a way to adjust to international standards that emphasize fairness and certainty in fulfilling the rights of tenants and landlords (Hendra eta Arry Halbadika Fahlevi 2024). The application of certainty forms can be done through the strengthening of derivative regulations from the Civil Code, as well as existing Government Regulations. This can be done by establishing Ministerial Regulations or Regional Regulations regarding residential lease agreement standards similar to the Residential Tenancies Regulation in Australia. In this case, the local government can also provide a legally recognized standard rental agreement form that can be used by the general public. The modernization of contract law in Indonesia also needs to be carried out, such as the digitization of contracts, where the application of electronic contracts in leasing can be pursued in such a way as to make it easier for both parties to execute agreements remotely in the property sector, thereby making it more efficient and secure (Ditya Salsabila & Budo Ispiyarso, 2023).

CONCLUSION

The requirements for a valid agreement in Indonesia emphasize four things, namely agreement, competence, a specific subject matter, and a lawful cause. Meanwhile, Australia applies the principle that the validity of a contract is based on five elements, namely Agreement, Consideration with reciprocal performance, Intention to Create Legal Relations, Legal Capacity for the parties entering into the contract with exceptions such as persons with mental disorders/intoxication, bankruptcy, crown, minors (under 18 years of age), and finally certainty which emphasizes that the contract between the parties must be based on written law. In the case of lease agreements, Australia places greater emphasis on written contract law, which is regulated in the Sale of Goods Act, stipulating that contracts exceeding \$20 must be accompanied by certain written terms. In comparing contract law practices related to residential leases, significant differences are observed. Australia requires a detailed written contract as an agreement between the tenant and the property owner, while in Indonesia, residential lease agreements are still often made through oral agreements. Even if written agreements are made, many of the forms used do not follow the format prescribed by the Government in Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement.

The comparison between the validity requirements for lease agreements in Australia and Indonesia represents a paradigm shift in the legal concept of lease agreements, which should be made in writing. The application of certainty forms can be done through the

strengthening of derivative regulations from the Civil Code, as well as existing Government Regulations. This can be done by establishing Ministerial Regulations or Regional Regulations regarding residential lease agreement standards similar to the Residential Tenancies Regulation in Australia. In this case, the local government can also provide a legally recognized standard rental agreement form that can be used by the general public. [W]

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