



The Legal Validity and Evidentiary Challenges of Unwritten Rental Agreements in Boarding Houses

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ABSTRACT

The widespread use of unwritten boarding house rental agreements among students generates a distinct form of legal vulnerability, not due to the absence of contractual validity, but as a result of weakened legal certainty and evidentiary fragility. This study employs a normative juridical method with statutory and analytical approaches to examine the legal validity and evidentiary implications of oral rental agreements under Indonesian civil law. The analysis demonstrates that unwritten rental agreements remain legally binding insofar as they satisfy the requirements of Article 1320 of the Indonesian Civil Code. However, the lack of written documentation significantly undermines effective legal protection when disputes arise. Consequently, non-litigation dispute resolution mechanisms, as regulated under Law No. 30 of 1999, emerge as a more functional avenue for resolving disputes, albeit without fully addressing underlying structural imbalances in contractual relations. This study reconceptualizes unwritten boarding house rental agreements as normatively valid yet structurally vulnerable contracts, underscoring the need to strengthen legal certainty in informal contracting practices.

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1. Introduction

Boarding house rental arrangements represent one of the most prevalent forms of contractual practice among students in Indonesia. Although the Indonesian Civil Code (KUHPerdara) classifies lease agreements as consensual contracts that become binding

once the essential elements are fulfilled, the widespread reliance on unwritten rental arrangements has generated significant legal uncertainty for both tenants and landlords. The absence of written documentation weakens the evidentiary position of the parties, especially when disputes arise regarding non-payment, property damage, or failure to vacate the premises at the end of the rental period. These concerns are exacerbated in highly transient student housing environments, where informal transactions and flexible payment practices are the norm.

Under Indonesian law, the validity of a contract does not depend on whether it is written or oral. Article 1320 of the Civil Code stipulates that consent, legal capacity, a specific object, and a lawful cause are sufficient to render an agreement binding,¹ while Article 1338 reinforces that all legally formed agreements must be executed in good faith.² However, when applied to oral rental arrangements, these general principles generate complex challenges regarding enforceability and proof.³ For instance, disputes often hinge on differing recollections of the agreed rent, payment schedules, responsibilities for maintenance, or termination timelines matters that are difficult to substantiate without documentary evidence. Article 1571, which allows oral leases to be terminated based on notification in accordance with custom,⁴ further complicates attempts to maintain consistency, legal certainty, and fairness in informal tenancy relationships.

Globally, scholarship on informal rental housing has expanded in recent years, particularly in densely populated urban centers and student-dominated localities. Studies such as Zhou and Yau's (2023) analysis of informal rental housing in Shenzhen and Goodall et al.'s (2024) scoping review of shared housing dynamics in private rental markets demonstrate how informal tenancy arrangements contribute to insecurity, unequal bargaining power, and unstable occupancy conditions.⁵ Although this body of research provides valuable socio-economic insights, it does not directly address the doctrinal and evidentiary implications of unwritten rental agreements. Parallel studies in contract and evidence law particularly those examining the enforceability of oral contracts tend to focus on commercial or civil transactions, offering limited discussion of how evidentiary burdens

¹ Rahmia Rachman, "THE VALIDITY OF BOARDING HOUSE RENTAL AGREEMENTS," *Alauddin Law Development Journal (ALDEV)* 6, no. 3 (2024): 433–44.

² Meydora Cahya Nugraheni dan Ari Hernawan, "Good faith principle in Indonesian contract law : How to set the definition and its benchmarks," *Journal of Infrastructure, Policy and Development* 8, no. 10 (2024): 1–16, <https://doi.org/10.24294/jipd.v8i10.7358>.

³ I Wayan Agus Vijayantera, "KAJIAN HUKUM PERDATA TERHADAP PENGGUNAAN PERJANJIAN TIDAK TERTULIS DALAM KEGIATAN BISNIS" 6, no. 1 (2020): 115–25, <https://doi.org/https://doi.org/10.23887/jkh.v6i1.23445>.

⁴ I Gede Yudi Arsawan, "AKIBAT HUKUM WANPRESTASI DALAM PERJANJIAN SEWA MENYEWAWA LISAN (STUDI KASUS PUTUSAN MAHKAMAH AGUNG NOMOR 1093 K / PDT / 2016)," *JUSTITIA : Jurnal Ilmu Hukum dan Humaniora* 9, no. 3 (2022): 1501–12.

⁵ Zoë Goodall, Wendy Stone, dan Kay Cook, "Housing policy and non-commercial shared housing in the private rental sector: a scoping review," *Housing Studies* 39, no. 11 (2024): 2919–37, <https://doi.org/10.1080/02673037.2023.2238633>; Ziqi Zhou dan Yung Yau, "Revisiting institutional credibility of informal rental housing in Shenzhen : For dwelling function or exclusion function ?," *Journal of Urban Management* 12, no. 2 (2023): 112–28, <https://doi.org/10.1016/j.jum.2022.12.002>.

and proof standards operate specifically in informal residential tenancies. As a result, there remains a global scholarly gap in integrating socio-legal analyses of informal housing with doctrinal legal research on unwritten agreements.

Within the Indonesian context, academic literature has primarily examined general contract law, tenancy regulations, landlord–tenant disputes, or the socio-economic conditions of informal boarding houses. However, research seldom addresses the normative and evidentiary implications of unwritten agreements in boarding house rentals, particularly regarding the burden of proof, the application of good faith, and the operation of non-litigation dispute resolution mechanisms. Studies that do examine housing informality typically emphasize issues of affordability, urban planning, or tenant vulnerability, leaving unresolved questions about how unwritten contracts interact with Civil Code provisions and how legal certainty can be achieved in the absence of written evidence.

Given these gaps both globally and domestically there is a need for doctrinal research that examines the legal validity, enforceability, and evidentiary challenges associated with unwritten boarding house rental agreements. This study addresses that need by analyzing statutory provisions, doctrinal principles, and the evidentiary framework governing oral contracts under Indonesian civil law. By situating the Indonesian experience within broader international discussions on informal housing arrangements, this research contributes to a more comprehensive understanding of how unwritten rental agreements should be interpreted and how dispute-resolution mechanisms can be optimized to ensure legal certainty and balanced protection for both tenants and landlords.

2. Legal Material and Methods

This study employs a normative juridical research method, which focuses on examining legal norms, doctrines, and statutory provisions relevant to unwritten boarding house rental agreements. The normative approach is appropriate because the objective of this research is to analyze the legal validity, enforceability, and evidentiary implications of oral agreements within the framework of Indonesian civil law, rather than to investigate empirical behavior or social practices. The research relies on three categories of legal materials. Primary legal materials include the Indonesian Civil Code, particularly Articles 1320, 1338, and 1548–1600 governing general contract principles and lease arrangements. Secondary legal materials consist of scholarly writings, journal articles, legal commentaries, and doctrinal interpretations concerning contract law, oral agreements, and tenancy regulation. Tertiary legal materials comprise dictionaries, encyclopedias, and supporting reference sources that clarify terminology and legal concepts.

Two approaches are used in this study: the statutory approach, which analyzes the normative content and systemic relationship of relevant legal provisions, and the analytical approach, which examines legal concepts, principles, and logical reasoning to determine their implications for unwritten contracts. Legal materials were collected, classified, interpreted, and analyzed through qualitative legal reasoning to assess the normative position of unwritten agreements and their compatibility with principles of legal certainty and good faith. This methodological design enables the study to provide a comprehensive

doctrinal analysis of the legal issues surrounding unwritten boarding house rental agreements and to identify conceptual inconsistencies and normative implications within the existing regulatory framework.

3. Results and Discussion

3.1. Legal Strength and Structural Vulnerability of Unwritten Boarding House Rental Agreements

In Indonesian civil law, an agreement constitutes a legal relationship that gives rise to reciprocal rights and obligations between the contracting parties. Article 1313 of the Civil Code defines an agreement as a legal act by which one or more persons bind themselves to one or more other persons. This formulation reflects the principle of consensualism, under which the validity of a contract depends primarily on the meeting of wills rather than on formal requirements.⁶ Accordingly, the law does not mandate that agreements be made in writing to be legally binding.⁷ From this doctrinal standpoint, unwritten boarding house rental agreements are not inherently invalid under positive law.

The substantive validity of unwritten agreements is further affirmed by Article 1320 of the Civil Code, which sets forth four cumulative requirements for a valid contract: consent, legal capacity, a certain object, and a lawful cause.⁸ In practice, boarding house rental agreements whether concluded orally or in writing generally satisfy these elements. Article 1338 paragraph (1) reinforces this position by providing that all legally concluded agreements bind the parties as law. Doctrinally, therefore, unwritten rental agreements possess equal normative force to written contracts. However, this formal equivalence conceals significant disparities in legal certainty and enforceability.

The distinction between written and unwritten lease agreements becomes particularly critical when examined through Article 1571 of the Civil Code. This provision stipulates that oral lease agreements do not terminate automatically upon the expiry of a specified period, but instead require prior notice in accordance with local custom. Unlike written agreements, which provide temporal certainty through predetermined contractual terms, unwritten agreements generate ambiguity regarding the duration and termination of

⁶ Wahyu Adiva Nurfauzi et al., "Analisis Yuridis Putusan Hakim Mengenai Perbuatan Melawan Hukum Dalam Perjanjian Sewa-Menyewa Pada Putusan Mahkamah Agung Nomor 12 / Pdt . G / 2020 / PN Pin," *Diponegoro Private Law Review* 9, no. 2 (2022): 159–80.

⁷ Angel Heraria Dantjie dan Surahmad, "Legal Analysis of Default in Oral Lease Agreement (Case Study of Supreme Court Decision No . 2368 K / Pdt / 2019)," *Jurnal Daulat Hukum* 8, no. 2 (2025): 160–70, <https://doi.org/https://dx.doi.org/10.30659/jdh.v8i2.45526>.

⁸ Oki Yunice, Andreas Andrie Djatmiko, dan Ajar Dirgantoro, "Kekuatan Hukum Perjanjian Sewa Menyewa Bangunan Tanpa Dasar Perjanjian Tertulis Ditinjau Pasal 1320 Jo Pasal 1548 Kitab Undang-Undang Hukum Perdata," *YUSTITIABELEN* 9, no. 2 (2023): 120–32.

the lease.⁹ This indeterminacy undermines predictability in contractual relations and increases the likelihood of disputes between boarding house owners and student tenants.

The legal uncertainty inherent in unwritten boarding house rental agreements is further intensified by structural power asymmetries between the contracting parties. Boarding house owners generally occupy a dominant bargaining position, controlling access to housing and the conditions under which tenancy is maintained or terminated. Conversely, student tenants often possess limited bargaining power, constrained economic resources, and insufficient legal awareness. In the absence of written contractual safeguards, these asymmetries become more pronounced, enabling the stronger party to exercise discretionary authority over contractual interpretation and enforcement.

From a legal-theoretical perspective, this condition exposes a fundamental tension between legal certainty and legal vulnerability within informal contractual arrangements. While Indonesian civil law recognizes the substantive validity of unwritten agreements, it provides limited protection against the practical risks arising from evidentiary weakness and enforcement difficulties.¹⁰ The law acknowledges the existence of the contractual relationship but does not adequately address the procedural challenges faced by weaker parties when disputes arise. This gap between normative recognition and effective legal protection constitutes a central structural problem in unwritten boarding house rental agreements.

Moreover, the absence of a written instrument transforms contractual freedom into a potentially asymmetric legal space. Although the principle of freedom of contract permits parties to determine the form and content of their agreements, this freedom may operate unequally when one party lacks the capacity to negotiate or document contractual terms.¹¹ In the context of boarding house rentals, unwritten agreements often rely on trust and informal social norms, which may fail to provide sufficient protection when conflicts emerge. As a result, contractual autonomy risks functioning as a mechanism that legitimizes imbalance rather than ensuring fairness.

Accordingly, unwritten boarding house rental agreements should be conceptualized as legally valid yet structurally fragile contractual arrangements. Their vulnerability does not stem from a deficiency in doctrinal legitimacy, but from the absence of formal mechanisms that ensure clarity, predictability, and balanced enforcement. This fragility

⁹ Anak Agung Dalem Jagat Krisno, I Nyoman Sirtha, dan Dewa Gde Rudy, "Pencantuman Hak Opsi Perpanjangan Jangka Waktu Sewa Dalam Perjanjian Sewa Menyewa Rumah (Studi Kasus Putusan Pengadilan Negeri Denpasar," *Acta Comitatus* 3, no. 2 (2018): 233–46, <https://doi.org/10.24843/AC.2018.v03.i02.p01>.

¹⁰ Aaron Pietter, "Lex Patrimonium Efektivitas Alat Bukti Dalam Pembuktian Suatu Perjanjian Lisan," *Lex Patrimonium Volume* 1, no. 1 (2022).

¹¹ Emmanisty Atas Asih, "PERBEDAAN PENAFSIRAN ISI PERJANJIAN SEWA MENYEWAKAN OLEH PARA PIHAK YANG MENGAKIBATKAN WANPRESTASI (STUDI PUTUSAN NOMOR 51/PDT/2017/PT.PLK)," *Indonesian Notary* 2, no. 2 (2020).

becomes most visible when contractual obligations are breached, raising critical questions regarding the effectiveness of available dispute resolution mechanisms. It is within this framework that the analysis of dispute settlement in unwritten boarding house rental agreements becomes both necessary and normatively significant.

3.2. Dispute Resolution in Unwritten Boarding House Rental Agreements: Between Evidentiary Constraints and the Effectiveness of Legal Protection

Unwritten boarding house rental agreements inherently carry a higher potential for dispute compared to written contracts, particularly when instances of default arise. Within the framework of civil law, default refers to a party's failure to perform contractual obligations as agreed,¹² including delayed payment of rent, misuse of the leased premises, or continued occupation beyond the agreed rental period. Article 1238 of the Indonesian Civil Code stipulates that a debtor is deemed in default after being formally notified or warned.¹³ However, in unwritten agreements, the scope of obligations and the temporal parameters of performance are often ambiguously defined. This ambiguity renders the legal qualification of default problematic from the outset.

The absence of a written contract not only complicates the identification of contractual breaches but also significantly weakens the evidentiary position of the parties in dispute resolution processes. In civil procedural law, written evidence occupies a central role as the primary means of proof.¹⁴ Although oral agreements are legally valid under substantive law, their enforcement relies heavily on indirect forms of evidence, such as witness testimony, legal presumptions, confessions, or oaths. These forms of proof are often difficult to secure in the context of informal boarding house rental arrangements. Consequently, the core legal issue in disputes arising from unwritten boarding house leases lies not in the lack of legal recognition, but in the structural fragility of the available evidentiary mechanisms.

From a doctrinal perspective, disputes arising from boarding house rental agreements may be resolved through litigation or non-litigation mechanisms. Litigation offers formal legal certainty through binding judicial decisions, as regulated under Law

¹² Sahlan Roy Matua Hasibuan dan Ramdhita, "Nilai Keadilan Sebagai Landasan Putusan Sengketa Wanprestasi : Studi Putusan Nomor 5 / Ptd . Sus-BPSK / 2017 / PN . Lmj," *Jurnal Suara Hukum* 4, no. 2 (2022), <https://doi.org/https://doi.org/10.26740/jsh.v4n2.p243-264>.

¹³ Mhd Yadi Harahap, "Pengikatan Jaminan Kebendaan dalam Kontrak Pembiayaan Mudā'abah Sebagai Upaya Penyelesaian Sengketa Debitur Wanprestasi (Analisis Putusan MA Nomor 272 / K / AG / 2015 Tentang Pembiayaan Mudā'abah)," *Al-Manāhij: Jurnal Kajian Hukum Islam* 14, no. 1 (2020): 51–68, <https://doi.org/https://doi.org/10.24090/mnh.v13i2.2999>.

¹⁴ Aam Suryamah et al., "Regulation and Application of the Doctrine of Res Ipsa Loquitur in the Settlement of Consumer Disputes in Indonesia," *Journal of Law and Legal Reform* 5, no. 1 (2024): 237–66, <https://doi.org/https://doi.org/10.15294/jllr.vol5i1.2103>.

No. 48 of 2009 on Judicial Power.¹⁵ Nevertheless, in cases involving unwritten agreements, litigation frequently proves ineffective. Courts require strict evidentiary standards, while litigation entails substantial costs, procedural complexity, and prolonged timelines.¹⁶ These factors disproportionately disadvantage students as tenants, who often occupy a structurally weaker position in the contractual relationship with boarding house owners.

Conversely, non-litigation dispute resolution mechanisms, as regulated under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, provide a more flexible and context-sensitive approach to disputes involving unwritten agreements. Mediation, negotiation, and conciliation enable the parties to prioritize good faith and practical interests over formal evidentiary rigidity.¹⁷ In boarding house rental disputes, these mechanisms facilitate the reconstruction of factual agreements as reflected in the parties' actual conduct. As such, dispute resolution is grounded not solely in documentary proof, but also in established patterns of contractual performance.

This study argues that the preference for non-litigation mechanisms in unwritten boarding house rental disputes should not be viewed merely as a pragmatic choice, but rather as a reflection of the pursuit of substantive justice. Many boarding house disputes involve relatively low economic value but have significant implications for students' housing security and social stability. Resorting to formal court proceedings in such cases often lacks proportionality. Therefore, alternative dispute resolution mechanisms are better aligned with the principles of efficiency, simplicity, and affordability that underpin civil justice systems.

Nonetheless, the effectiveness of non-litigation dispute resolution is contingent upon the balance of bargaining power between the parties.¹⁸ Where significant power asymmetry exists between boarding house owners and student tenants, mediation or negotiation may risk perpetuating concealed forms of inequality. Without clear normative benchmarks, consensual settlements may inadvertently legitimize unilateral dominance. Accordingly, this study emphasizes the necessity of a clear legal framework to guide non-litigation processes. Civil law norms must function as protective reference points to ensure

¹⁵ Rosita, "ALTERNATIF DALAM PENYELESAIAN SENGKETA (LITIGASI DAN NON LITIGASI)," *Al-Bayyinah: Journal of Islamic Law* 1, no. 2 (2017): 99–113, <https://doi.org/https://doi.org/10.35673/al-bayyinah.v1i2.20>.

¹⁶ Pahrudin Aziz, Muhamad Kholid, dan Nasrudin, "PERBANDINGAN LEMBAGA PENYELESAIAN SENGKETA: LITIGASI DAN NON-LITIGASI," *Qanuniya : Jurnal Ilmu Hukum* 1, no. 2 (2024), <https://doi.org/10.15575/qanuniya.v1i2.896>.

¹⁷ Nurhani Fithriah, Dimas Dwi Arso, dan Arini Azka Muthia, "Implementing Accessibility Principles in Alternative Dispute Resolution for Sharia Economic Disputes in Indonesia," *JURNAL ILMIAH MIZANI: WACANA HUKUM, EKONOMI DAN KEAGAMAAN* 10, no. 02 (2023): 292–301, <https://doi.org/10.29300/mzn.v10i2.3010>.

¹⁸ Sri Lestari, "The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023): 554–68.

that informal dispute resolution mechanisms do not undermine fundamental principles of fairness.¹⁹

Based on the foregoing analysis, this study concludes that dispute resolution in unwritten boarding house rental agreements operates at the intersection of formal legal limitations and practical demands for justice. Litigation provides normative certainty but suffers from functional inefficiency, whereas non-litigation mechanisms offer flexibility yet remain vulnerable to power imbalances. The principal contribution of this study lies in its critical mapping of these dispute resolution pathways, positioning unwritten boarding house rental agreements as legally valid yet insufficiently protected contractual arrangements. In doing so, this research advances contemporary civil law discourse on the effectiveness of legal protection in informal contractual relations.

4. Conclusion

This study demonstrates that unwritten boarding house rental agreements are normatively valid under Indonesian civil law, grounded in the principle of consensualism and the provisions of Articles 1313, 1320, and 1338 of the Civil Code. However, such formal validity does not automatically translate into legal certainty or effective protection for the contracting parties. The absence of written form generates a condition of legal vulnerability, particularly when read in conjunction with Article 1571 of the Civil Code, which permits indeterminate lease duration and flexible termination. This vulnerability is further intensified in student boarding arrangements, where structural power asymmetries between landlords and tenants often undermine substantive contractual justice despite the agreement's formal legality.

As a practical implication, this research recommends strengthening contractual legal awareness among students and promoting normative and institutional measures to encourage the use of simple written rental agreements in boarding house practices. Although the law does not mandate written form, contractual documentation functions as a crucial instrument of preventive legal protection and enhanced legal certainty. Accordingly, this study contributes not only to the development of contract law theory by reframing informal agreements through the lens of legal vulnerability, but also offers practical relevance for policymakers, housing providers, and the academic community in addressing the realities of informal contracting in everyday social contexts.

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¹⁹ Yu-cheng Lin dan Yiling Liu, "Beyond the courtroom : Exploring consumers ' trust and usage of ADR in financial dispute resolution," *Finance Research Letters* 85, no. PA (2025): 107872, <https://doi.org/10.1016/j.frl.2025.107872>.

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