

Political Law of Nominee Agreements in Foreign Land Ownership in the Province of Bali

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Article history:

Submission: 08 September 2025

Received in revised form: 27 October 2025

Acceptance date: 11 November 2025

Available online: 19 November 2025

Keywords:

Agrarian Legal Politics; Legal Protection;
Nominee Agreement; Foreign Nationals.

How to Cite:

Razaqa Dhafin Zumirrqof. (2025). Political Law of Nominee Agreements in Foreign Land Ownership in the Province of Bali. *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*. <https://doi.org/10.24252/al-risalah.vi.61313>

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Abstract

The practice of nominee agreements, or name borrowing by foreign citizens to obtain land ownership rights in Indonesia, constitutes a form of legal circumvention that contradicts the nationality principle embedded in the Basic Agrarian Law (UUPA). This phenomenon is particularly prevalent in the Province of Bali, a region that attracts significant foreign investment and long-term residency, thereby raising critical issues in agrarian legal politics. This study employs a normative juridical method with a descriptive-analytical approach, using literature reviews of statutory regulations and court decisions. The research aims to analyze how agrarian legal politics perceives the existence of nominee agreements and the extent to which foreign citizens are afforded legal protection. The findings reveal that nominee agreements are invalid, as they contravene Article 1320 of the Indonesian Civil Code and the nationality principle, rendering them non-binding and depriving foreign citizens of legal ownership protection. However, limited legal safeguards exist through hak pakai (right of use) and hak sewa (leasehold) mechanisms under the UUPA. Comparative analysis with Vietnam and Thailand shows that both countries adopt similar restrictions but allow lawful investment access through long-term leases or condominium ownership, with Thailand imposing stricter criminal penalties for nominee arrangements. Legally, these findings underscore the need to harmonize agrarian and investment policies to close regulatory loopholes enabling nominee agreements. Practically, they highlight the urgency of strengthening BPN oversight and creating explicit prohibitions. Academically, this research contributes to the development of Indonesia's agrarian legal politics by clarifying the normative tension between state sovereignty and economic liberalization.

INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the state holds control over land, water, and all natural resources contained therein, with the purpose of utilizing them to achieve the greatest possible prosperity of the people.¹ Based on these provisions, the earth, water, and natural resources include land as the foundation of human existence.² In the context of land management, the state, through the Constitution, recognizes and regulates that land, which contains abundant natural resources, must be utilized and administered to realize the welfare of the Indonesian people.³

The Province of Bali is one of Indonesia's leading international tourist destinations that has long attracted the attention of foreign nationals. Its appeal lies in its enchanting natural beauty, profound cultural richness, and a conducive environment for comfortable living.⁴ For these reasons, the Province of Bali serves not only as a tourist destination but also as a place of residence for foreign nationals who intend to settle, either for work or to enjoy its natural beauty.⁵ The increasing interest of foreign nationals in residing in the Province of Bali has given rise to various legal issues, particularly concerning land ownership and control by foreign nationals.⁶

The legal issue arising from this context concerns nominee agreements in relation to the nationality principle, which serves as a fundamental basis for land ownership within the framework of Indonesia's agrarian legal politics. In this regard, several problems and questions emerge, how the nationality principle within Agrarian Legal Politics restricts land ownership by foreign nationals, how nominee agreements are utilized as a legal response to such restrictions, and how judicial institutions address the tension between normative rules and practical realities. These questions are analyzed within the broader theoretical framework of legal politics, which examines how lawmaking and law enforcement reflect political choices in balancing sovereignty and economic policy. This

¹ Pasal 33 ayat (3) Undang-Undang Dasar Negara Republik Indonesia 1945

² Samuel Frans Boris Situmorang. "Teori Keadilan Sebagai Fairness Karya John Rawls Dikaitkan Dengan Bank Tanah Di Indonesia". *Innovative: Journal Of Social Science Research*, Vol. 3 No. 2 (2023). <https://doi.org/10.47007/lj.v18i3>

³ Subandi, Paulus. 2018. "Kedudukan Hak Pengelolaan Atas Tanah Menurut Pasal 33 Ayat (3) Undang-Undang Dasar 1945." *Fakultas Hukum Universitas MPU Tantular 2* (2).

⁴ Rizki, Ananda. "6 Alasan Mengapa Bali Masih Menjadi Destinasi Wisata Paling Populer di Dunia (Travelers Choice - Best of the Best)." *Bali Management Villas*, 20 Maret 2024. <https://balimanagement.villas>

⁵ Farida Indriastuti. "Bali yang Makin Terhimpit". *DW*, 27 Oktober 2025, <https://www.dw.com/>

⁶ I Kadek Juni Antara. "Kakanwil BPN Provinsi Bali tanggap isu terkait adanya dugaan penguasaan oleh WNA terhadap pulau di Bali". *Kantor Wilayah Provinsi Bali*, 27 Oktober 2025, <https://bali.atrbpn.go.id/>

study also refers to the doctrinal view that law functions as a means of social control, interpreting nominee practices as adaptive legal behavior that arises from the gap between normative regulations and economic realities.⁷

The legal framework for land affairs in Indonesia is regulated under the Basic Agrarian Law Number 5 of 1960 (UUPA). With regard to the provisions on land ownership rights for foreign nationals, this can be found in Article 21 paragraph (3) of the UUPA, which stipulates that:⁸

“Foreign nationals who, after the enactment of this law, acquire ownership rights through inheritance without a will or through joint property as a result of marriage, as well as Indonesian citizens who hold ownership rights but subsequently lose their citizenship after the enactment of this law, are required to release such rights within one year from the time the rights were acquired or the citizenship was lost. If, after the expiration of that period, the ownership rights have not been released, such rights shall be null and void by law, and the land shall revert to the state, provided that the rights of other parties encumbering the land shall remain in effect”.

Article 9 of the Basic Agrarian Law (UUPA) also stipulates that only Indonesian citizens may have a complete legal relationship with the earth, water, and outer space. This provision is based on the Nationality Principle, under which only Indonesian citizens are entitled to ownership rights over land.⁹ Thus, it can be concluded that the Principle of Nationality precludes foreign nationals from acquiring ownership rights over land in Indonesia.

However, in reality, there are still Foreign Citizens who continue to seek ownership rights over land in Indonesia. Consequently, Foreign Citizens frequently enter into what is commonly referred to as a nominee agreement or a borrowed name agreement, which functions as one of the means or strategies to pursue land ownership. Through this arrangement, they are able to obtain control and possession over land situated in the territory of Indonesia under the legal status of ownership rights (*Hak Milik*). As in the case contained in the District Court of Gianyar Decision No. 137/Pdt.G/2021/PN Gin and the Supreme Court Decision No. 2959 K/Pdt/2022. In these cases, it illustrates that an Indonesian citizen had their name borrowed in a nominee agreement with a foreign

⁷ Rossita Trijaya Novia (et al). “Law as a Social Controlling Agent in Society from a Sociological View of Law”. *Jurnal Sosial, Politik dan Budaya (SOSPOLBUD)*, Vol. 2, No. 1, (2023). <https://doi.org/10.55927/sospolbud.v2i1.2695>

⁸ Pasal 21 ayat (3) Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria

⁹ Pasal 9 Undang-Undang Nomor 5 Tahun 1960 Peraturan Dasar Pokok-Pokok Agraria

citizen in order to purchase land based on a Certificate of Ownership (Sertipikat Hak Milik), where all the costs were borne entirely by the foreign citizen.

Based on the explanations that have been elaborated previously, the author is interested in examining the Nominee Agreement between foreign citizens and Indonesian citizens, particularly from the perspective of agrarian legal politics and legal protection for foreign citizens. The title of the study conducted by the author is, "Political Law of Nominee Agreements in Foreign Land Ownership in The Province of Bali".

This study highlights two aspects that have received limited attention in previous research. First, it analyzes nominee agreements from the perspective of agrarian legal politics, examining how the processes of law making and law enforcement shape land ownership regulations in Indonesia, particularly in relation to nominee agreements. Second, it explores legal protection for foreign citizens involved in nominee agreements, a topic that has rarely been discussed. By focusing on these aspects, the study aims to provide new insights into agrarian legal politics, legal implications, legal protection, and the practical dimensions of nominee agreements in land ownership in the Province of Bali.

Several previous studies have examined the issue of nominee agreements in land ownership by foreign nationals. Reni Sri Okti Wulan Dari Ningsih (2022), in her study titled "The Validity of Nominee Agreements between Indonesian and Foreign Citizens in Land Ownership in Indonesia," highlighted the contractual legality and the notary's responsibility but did not explore in depth the aspect of legal protection for foreign nationals and the application of the nationality principle.¹⁰ Meanwhile, Erly Aristo et al. (2021), through their research entitled "The Revocation of Land Rights Object of Nominee Agreement," focused on the cancellation of land certificates resulting from nominee agreements by examining the administrative dimension and the authority of the National Land Agency, yet did not analyze how such practices relate to the direction of Indonesia's agrarian legal politics.¹¹ Furthermore, Alya Nadia Saraswati et al. (2023), in their article titled "Legal Protection for Indonesian Citizens Regarding the Acquisition of Ownership Rights over Condominium Units by Foreign Nationals," discussed the ownership of

¹⁰ Reni Sri Okti Wulan Dari Ningsih. "Keabsahan Akta Perjanjian Nominedalam Perjanjian Peralihan Hak Milik Atas Tanah Yang Dibuat Oleh Atau Dihadapan Notaris /Pejabat Pembuat Akta". *International Significance of Notary Vol 1, No 1* (2020). <http://dx.doi.org/10.2020/ison.v1i1.7210>

¹¹ Erly Aristo (et al). "Pembatalan Hak Atas Tanah Objek Nominee Agreement". *Lex Jurnalica, Vol 18, No 3.* (2021). <https://doi.org/10.47007/lj.v18i3.4855>

condominium units by foreign nationals in relation to foreign investment regulations.¹² However, although this study provides valuable insights into the regulatory dimension of foreign control over property, it does not address the political law considerations underlying Indonesia's agrarian system.

Previous studies on nominee agreements in Indonesia have therefore primarily concentrated on their validity from the standpoint of private and administrative law, without delving into the broader dimension of agrarian legal politics particularly how legal politics influence the formulation and enforcement of regulations on land ownership by foreign nationals. This study seeks to fill that gap by linking the concept of legal politics in the agrarian sector with the practical issues of nominee arrangements in Bali, while also assessing the extent of legal protection afforded to foreign nationals involved in such agreements. By doing so, this research contributes to the broader discourse on the interaction between sovereignty, investment, and legal policy within Indonesia's land law system.

METHODS

This study employs a normative juridical approach, which emphasizes the analysis of secondary data through an examination of written legal materials. The approach applies grammatical, systematic, and teleological interpretation techniques in interpreting legal norms contained in statutory regulations, court decisions, and scholarly doctrines. The grammatical interpretation is used to understand the literal meaning of legal provisions, the systematic interpretation is applied to connect each norm within the broader framework of Indonesia's agrarian legal system, while the teleological interpretation aims to identify the purpose of agrarian law, particularly in relation to the principle of nationality.

This research specifically analyzes two landmark court decisions, namely Gianyar District Court Decision No. 137/Pdt.G/2021/PN Gin and Supreme Court Decision No. 2959 K/Pdt/2022. These cases were selected because they reflect judicial consistency in addressing nominee agreements concerning foreign land ownership in Bali, thereby serving as strong examples of how the nationality principle is implemented in the practice of agrarian law under the Basic Agrarian Law.

The research specification is descriptive-analytical, aiming to provide a systematic and in-depth description of the legal phenomena under study, which are then analyzed

¹² Alya Nadia Saraswati (et al). "Perlindungan Hukum Bagi Warga Negara Indonesia Terhadap Perolehan Hak Milik Atas Satuan Rumah Susun Oleh Warga Negara Asing". *Jurnal Education and development*, Vol.11 No.2 (2023). <https://doi.org/10.37081/ed.v11i2.4905>

based on positive law provisions and relevant legal theories. Data were collected through library research, consisting of primary legal materials (statutory regulations and court decisions), secondary legal materials (legal literature, research findings, and scientific journals), and tertiary legal materials (legal dictionaries and encyclopedias). The data obtained were analyzed qualitatively, emphasizing legal reasoning and interpretation of legal texts to achieve a comprehensive understanding of the issues examined. As a limitation of the normative juridical approach, this study does not include empirical data or field observations, meaning that the conclusions are confined to doctrinal and normative-legal analysis, rather than behavioral or sociological perspectives.

RESULTS AND DISCUSSION

1. The Legal Politics of the Validity of Nominee Agreements for Foreign Ownership of Land in Relation to the Nationality Principle

Land rights in Indonesia are regulated under the Basic Agrarian Law (UUPA) No. 5 of 1960. Article 16 paragraph (1) of the UUPA classifies the types of land rights, which include, among others, the right to build (*hak guna bangunan*), the right of lease (*hak sewa*), ownership rights (*hak milik*), the right to collect forest products (*hak memungut hasil hutan*), the right to cultivate (*hak guna usaha*), the right of use (*hak pakai*), the right to clear land (*hak membuka tanah*), as well as other rights to be further regulated by law.¹³ Ownership rights (*hak milik*) constitute the highest and most comprehensive form of land rights, which are granted exclusively to Indonesian citizens. This is reflected in Article 20 paragraph (1) of the Basic Agrarian Law (UUPA), which stipulates that 'Ownership rights are hereditary, strongest, and fullest rights that a person may have over land, subject to the provisions of Article 6.' Furthermore, Article 21 paragraph (1) of the UUPA reinforces that ownership rights are reserved for Indonesian citizens, stating that 'Only Indonesian citizens may have ownership rights.' Based on these provisions, the UUPA is founded upon the principle of nationality, which affirms that full legal rights over land, water, outer space, and the natural resources contained therein are vested solely in Indonesian citizens. This means that only Indonesian citizens are entitled to hold ownership rights to land or establish legal relations with these elements, regardless of gender or descent, whether native-born or of foreign ancestry.¹⁴

¹³ Pasal 16 Undang-Undang Dasar Pokok Agraria Nomor 5 Tahun 1960

¹⁴ Muskur, La Ode Muhammad, dan La Ode Hendro Susilo. "Tinjauan Hukum terhadap Prinsip Nasionalitas dalam Jual Beli Hak Atas Tanah." *Jurnal Ilmu Hukum Kanturuna Wolio*, advance online publication (2023). <https://doi.org/10.55340/jkw.v4i1.1012>

In the broader context of Indonesian legal politics, law serves not only as a means of maintaining order but also as a tool for shaping social behavior, functioning simultaneously as social control and social engineering. As a form of social control, law operates to regulate human conduct, ensuring that individual actions align with societal values and legal norms.¹⁵ It establishes preventive and repressive mechanisms to deter and correct deviations through sanctions and enforcement.¹⁶ According to Achmad Ali and Rodolf von Relhing, law exists to balance individual interests with collective social needs, preventing conflicts that might threaten social harmony.¹⁷ Meanwhile, as social engineering, law acts as an instrument for directing and transforming society toward justice, order, and legal certainty.¹⁸ In this sense, legal norms are designed not only to stabilize but also to adapt to societal change, guiding the evolution of public behavior in accordance with national values.¹⁹

Within this framework, the principle of nationality embodied in Indonesia's agrarian law exemplifies the function of law as both a controlling and transformative force. By restricting land ownership exclusively to Indonesian citizens, the Basic Agrarian Law (UUPA) enforces social control to protect national sovereignty and prevent the domination of national resources by foreign interests. At the same time, it reflects the State's broader legal policy as a form of social engineering, ensuring that agrarian resources serve the collective welfare of the Indonesian people. Hence, the prohibition of nominee agreements that enable foreigners to hold ownership rights represents not only the enforcement of legal norms but also the realization of law's role in shaping and preserving Indonesia's socio-legal order.

The restriction on land ownership for foreign citizens is based on the principle of nationality as a means of safeguarding national assets and state sovereignty. Foreign citizens may be granted rights such as the right to cultivate (*hak guna usaha*), right of use (*hak pakai*), and the right to build (*hak guna bangunan*), but ownership rights (*hak milik*) remain exclusively reserved for Indonesian citizens. This principle of nationality

¹⁵ Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional". *Jurnal Pengabdian Masyarakat Waradin*, Vol.2, No.3, (2022). <https://doi.org/10.56910/wrd.v2i3.372>

¹⁶ Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional".

¹⁷ Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional".

¹⁸ Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional".

¹⁹ Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional".

has significant implications for Indonesia's agrarian legal framework, particularly in regulating land ownership to protect national assets and to limit foreign land ownership that could potentially affect the economy and national resilience.²⁰ In addition, this principle is also applied in land registration and in ensuring legal certainty of land ownership.

While the Basic Agrarian Law (UUPA) restricts land ownership to Indonesian citizens, the framework of investment law provides a different orientation. According to Article 1 point (1) of Law No. 25 of 2007 on Investment, "Investment shall mean all forms of investment activities, both by domestic investors and foreign investors, to conduct business within the territory of the Republic of Indonesia".²¹ Furthermore, Article 21 of Law No. 25 of 2007 on Investment stipulates that: "In addition to the facilities as referred to in Article 18, the Government shall provide ease of service and/or licensing to investment companies to obtain: (a) land rights; (b) immigration services facilities; and (c) import licensing facilities".²² These provisions indicate that the government grants investors, including foreign investors, a degree of flexibility and assistance in obtaining land rights as part of investment facilitation. The underlying intention is to encourage capital inflow and stimulate economic growth by simplifying administrative procedures for investment-related land acquisition.²³

The political orientation of Indonesia's foreign investment law, particularly in the law-making domain, is directed toward facilitating investors in establishing and expanding their business activities within the country. However, this orientation generates a tension between the political direction of investment policy and the nationality principle enshrined in the Basic Agrarian Law (UUPA). While the UUPA is designed to preserve national sovereignty over land, the investment regime promotes economic openness, resulting in policy inconsistencies that indirectly enable the persistence of nominee agreements as a pragmatic means of reconciling these conflicting legal objectives.

In practice, attempts to circumvent these restrictions have emerged through nominee agreement schemes. According to Article 1313 of the Indonesian Civil Code, a contract is defined as a legal deed whereby certain parties undertake an obligation to be bound with

²⁰ Prithresia, Bianca. "Kajian Perbandingan Asas Nasionalitas Hukum Agraria dalam Konteks Internasional." *Unesrev* 6, no. 2 (2023). <https://doi.org/10.31933/unesrev.v6i2>

²¹ Pasal 1 angka 1 Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal

²² Pasal 21 Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal

²³ Desy Nurkristia Tejawati. "Penguasaan Hak Atas Tanah Bagi Badan Hukum Asing Di Indonesia". *PERSPEKTIF*, Volume 26, Nomor 1, (2021). <https://doi.org/10.30742/perspektif.v26i1.762>

other parties.²⁴ Sudikno Mertokusumo characterizes a contract as a normative bond emerging from the consensus of two or more parties, the purpose of which is to establish enforceable legal outcomes.²⁵

A Nominee Agreement, or nominee arrangement, is a practice in which an individual's identity is used as a shareholder or registered as the owner of land with freehold title (*hak milik*) or building use rights (*hak guna bangunan*) in Indonesia.²⁶ In general, this practice involves the use of the name of an Indonesian citizen to register land ownership in Indonesia, whereas the land in fact belongs to a foreign citizen.²⁷

The validity of a Nominee Agreement for land ownership by foreign citizens (foreign nationals) lies in the use of an Indonesian citizen's identity to be listed on the land certificate, whereby the foreign party considers such an arrangement more practical and mutually beneficial. Although the nominee agreement is not explicitly and specifically regulated, in practice it is still frequently used as an agreement under a borrowed name or in the name of another party.²⁸ A nominee agreement for land ownership involves an arrangement in which a legally qualified individual becomes the formal owner of the asset (land), while another party acts as the beneficial owner. As a result, nominee arrangements can be regarded as a form of legal circumvention. This kind of legal smuggling frequently gives rise to various issues affecting both the nominees and the beneficiaries.²⁹

The validity of nominee agreements aimed at enabling foreigners to own land in Indonesia must be examined in light of the principle of nationality. The nationality principle underlying Indonesia's agrarian law affirms that only Indonesian citizens are entitled to hold ownership rights over land. This principle is intended to safeguard state sovereignty and protect Indonesia's land resources from foreign control. In relation to

²⁴ Pasal 1313 Kitab Undang-Undang Hukum Perdata

²⁵ Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*, Cetakan ke-4. Liberty, 2008

²⁶ Hetharie, Yosia. "Kepemilikan Tanah oleh Warga Negara Asing Melalui Perjanjian Pinjam Nama Sebagai Bentuk Penyelundupan Hukum dalam Hukum Perdata Internasional." *Balobe Law Journal* 2, no. 1 (2022). <https://doi.org/10.47268/balobe.v2i1.822>

²⁷ Kadir Putra, Lex Suprema, Dinda Eva Aprilia, dkk. "Tinjauan Hukum Terhadap Perjanjian Nominee yang Diberikan Secara Lisan: Legal Review of Orally Awarded Nominee Agreements." *Lex Suprema Jurnal* (2021). <https://libera.id/blogs/kontrak-lisan-tetap-legal/>

²⁸ Hetharie, Yosia. "Kepemilikan Tanah oleh Warga Negara Asing Melalui Perjanjian Pinjam Nama Sebagai Bentuk Penyelundupan Hukum dalam Hukum Perdata Internasional." *Balobe Law Journal* 2, no. 1 (2022). <https://doi.org/10.47268/balobe.v2i1.822>

²⁹ Dewi Nadya Maharani dan Faisal Santiago. "Legal Smuggling of Share Ownership Using Nominee Arrangements Associated with a Violation of the Negative Investment Lists". *2nd International Conference on Business Law and Local Wisdom in Tourism*, volume 605, (2021). <https://doi.org/10.2991/assehr.k.211203.016>

land ownership by foreigners, this prohibition seeks to prevent the transfer of land ownership to foreign parties, which could potentially diminish the nation's assets.

In simple terms, legal policy can be viewed from the perspective of lawmaking and law enforcement, in order to achieve the function of law as a means of social control.³⁰ In the context of legal policy or law making in agrarian law, nominee agreements are not explicitly regulated under the Basic Agrarian Law (UUPA). Implicitly, Article 9 of the UUPA emphasizes the restriction of land ownership rights for foreign nationals as an implementation of the nationality principle.³¹ Article 9 of the Basic Agrarian Law (UUPA) represents the manifestation of one of the State's rights to control, namely in determining policies and regulations, as stipulated in Article 33 paragraph (3) of the 1945 Constitution. Both provisions constitute a permanent legal policy, given their unchanging nature, and serve as an overarching legal framework for other land-related regulations. The nationality principle contained therein was formulated in the law-making process as part of efforts to safeguard state sovereignty over agrarian resources. The article explicitly prohibits foreign nationals from owning land with freehold (*hak milik*) status. The absence of explicit regulation regarding nominee agreements, however, creates a legal loophole that is often exploited to circumvent such restrictions.

The enforcement of law against violations involving nominee agreements poses a distinct challenge, particularly because such practices continue to occur despite the restrictions set forth in the Basic Agrarian Law (UUPA). A nominee agreement is an arrangement in which a foreign national uses the name of an Indonesian citizen to be listed as the freehold (*hak milik*) titleholder in the land certificate, while the foreign national remains the beneficial owner of the land. The implementation of nominee agreements concerning freehold rights over land is closely linked to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) and Land Deed Officials (PPAT), as these institutions and officials are legally authorized in matters of land administration in Indonesia. These two law enforcement authorities, in particular, must exercise due diligence to ensure that nominee agreements related to freehold rights over land cannot be carried out.

An example of the practice of nominee agreements can be found in the case of the Gianyar District Court Decision No. 137/Pdt.G/2021/PN Gin.³² The case of Decision No. 137/Pdt.G/2021/PN Gin in Gianyar, Bali, raised legal issues concerning a 'nominee

³⁰ Galih, Orlando. "Hukum Sebagai Kontrol Sosial dan Social Engineering." *Tarbiyah bil Qalam: Jurnal Pendidikan Agama dan Sains* 7, no. 1 (2023). <https://doi.org/10.58822/tbq.v7i1.111>

³¹ Pasal 9 Undang-Undang Dasar Pokok Agraria Nomor 5 Tahun 1960

³² Putusan Pengadilan Negeri Gianyar Nomor 137/Pdt.G/2021/PN Gin. Pengadilan Negeri Gianyar, 2021

agreement' (commonly referred to as pinjam nama) in relation to land ownership by a foreign national. In this case, Ingrid J. Driehuisen, a Dutch citizen, used the name of Ninik Handayani, an Indonesian citizen, as the formal owner of two parcels of land in Bedulu Village, purchased in 2014 through Deed of Sale and Purchase (AJB) No. 491/2014 for land with Freehold Certificate (SHM) No. 02494 and AJB No. 497/2014 for land with SHM No. 832. The entire transaction was financed by Ingrid, while Ninik was listed as the registered owner. In 2019, their relationship deteriorated, and Ninik filed a lawsuit against Ingrid for unlawful conduct (*perbuatan melawan hukum*), accusing her of illegally holding the freehold certificates and seeking IDR 2 billion in damages. In addition to Ingrid as Defendant I, Ninik also sued Ketut Alit Nariasih Dadu, the Land Deed Official (PPAT) involved (Defendant II), alleging negligence in failing to provide copies of the AJBs. During trial, the PPAT denied withholding documents and testified that the purchase was entirely funded by Ingrid, supported by evidence in the form of a 'Statement of the Actual Situation' and 'Agreements No. 46 and 48,' which confirmed that Ninik's name was used merely as a nominee. The court ruled that, since the land certificates were registered under Ninik's name, she was the legitimate owner, and Ingrid was found to have committed unlawful conduct, thereby being ordered to return the land and the certificates to Ninik. The nominee agreement was declared invalid as it contravened Article 1320 of the Indonesian Civil Code (KUHPerdata) regarding the legal requirements of a contract, and was therefore null and void, leading to the court's decision to grant Ninik's claim.

Another example illustrating the legal risks associated with the practice of nominee agreements can be found in Decision No. 2959 K/Pdt/2022, which exposed the legal circumvention involved in land ownership by foreign citizens in Indonesia.³³ In this case, Louise Marie France, a foreign citizen and the plaintiff, purchased land with Land Ownership Certificate No. 5030 located in Jimbaran, Bali Province, through a series of deeds indicating a nominee scheme. These deeds consisted of Power of Attorney to Sell Deed No. 2, Power of Attorney to Lease Deed No. 3, Agreement Deed No. 4, Sale and Purchase Agreement Deed No. 5, and Lease Agreement Deed No. 6. All deeds were executed simultaneously on 18 October 2005 before Notary Ayu Trisna Winarti Kusuma, S.H., based in Denpasar. The name used on the certificate was Desak Nyoman Karmini, an Indonesian citizen, who in 2012 unilaterally sold the land to another party without Louise's knowledge, using Sale and Purchase Agreement Deed No. 17 and Power of

³³ Ada, Rosyani, dan Akhmad Safik. "Analisis Yuridis Kepemilikan Hak Atas Tanah Melalui Perjanjian Nominee Oleh Warga Negara Asing di Indonesia (Studi Putusan Perkara Nomor: 2959 K/Pdt/2022)." *Unesrev* 6, no. 2 (2023). <https://doi.org/10.31933/unesrev.v6i2>

Attorney Deed No. 18, both dated 18 November 2012, resulting in the transfer of the disputed land rights to a third party acting as an intervenor in this case.

The validity of an agreement requires four conditions as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdota), namely: the existence of consent between the parties, the legal capacity to enter into an agreement, a specific object, and a lawful cause.³⁴ In the context of nominee agreements for land, although the elements of consent and legal capacity are fulfilled, Article 1320 also emphasizes that an agreement must have a “lawful cause” or a purpose not contrary to the law. In this case, because the purpose of the nominee agreement is to circumvent the restrictions on land ownership for foreign citizens as regulated in the Basic Agrarian Law (UUPA), the cause of the agreement is considered unlawful, and the agreement is null and void by law.

The principle of nationality, which is also violated in this agreement, results in the “lawful cause” requirement being disregarded in nominee agreements, closely relating to the protection of national sovereignty over land. By prohibiting foreign citizens from owning land with the status of hak milik (ownership right), Indonesian agrarian law prevents the direct or indirect transfer of land ownership to foreign parties.

Overall, the validity of nominee agreements contradicts the principle of nationality, which forms the foundation of Indonesian agrarian law. This restriction is intended not only to protect the legal interests of Indonesian citizens but also to ensure that land ownership remains within the scope of state sovereignty. Therefore, nominee agreements for land ownership by foreign citizens in Indonesia lack a legitimate legal basis, as they violate both the requirements for valid agreements and the fundamental principle of nationality.

2. Legal Protection for Foreign Citizens in Nominee Agreements

Land Legal protection is a form of safeguarding provided to legal subjects through legal instruments, whether preventive or repressive in nature, as well as written or unwritten. This protection reflects the function of law in creating justice, order, certainty, utility, and peace for society.³⁵

In the decisions of District Court of Gianyar No. 137/Pdt.G/2021/PN Gin and Supreme Court No. 2959 K/Pdt/2022, the courts ruled that the nominee agreements were null and void, recognizing that the Indonesian citizens whose names were listed on the land certificates are the legitimate owners of the land. These decisions reinforce national

³⁴ Pasal 1320 Kitab Undang-Undang Hukum Perdata

³⁵ Ukus, Deanne Carmel. “Akibat Hukum atas Penyalahgunaan Desain Pakaian untuk Kepentingan Komersial Tanpa Izin Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.” Kemenkumham NTT, t.t. <https://ntt.kemenkumham.go.id/berita-kanwil/berita->

legal protection upholding the principle of nationality and confirm that foreign citizens cannot claim lawful ownership of land through illegal agreements.

An invalid nominee agreement is not legally binding, meaning that the parties involved cannot demand accountability from one another. In these cases, foreign citizens suffered significant economic losses because all funding for the land ownership rights came from Ingrid, a foreign citizen. Under an invalid nominee agreement, foreign citizens have no legal protection regarding land ownership, and Indonesian citizens cannot be held responsible. This arises as a consequence of the agreement being void under Article 1320 of the Indonesian Civil Code.

Regarding legal protection, although Indonesian law prohibits foreign citizens from owning land with the status of full ownership, there are forms of protection that can be provided to foreign citizens within the general framework of legal safeguards. Legal protection includes preventive and repressive aspects implemented through various legal instruments to ensure justice, order, and legal certainty. While the nominee agreement itself is not recognized, in case of a dispute, foreign citizens may receive protection in the form of financial compensation based on breach of contract or unlawful acts, depending on the specific circumstances. For example, a foreign citizen may demonstrate that the nominee agreement was made under coercion or fraud, thereby obtaining legal protection on the basis of unlawful acts. Article 1323 states that, "Coercion exerted on a person entering into an agreement results in the nullification of that agreement, including when the coercion is carried out by a third party not interested in the agreement." This article also clarifies that the threat does not need to come from the opposing party in the agreement, but may come from anyone.³⁶ Article 1328 states that:

"Fraud constitutes a reason to annul an agreement if the deceit employed by one of the parties is of such a nature that it is evident the other party would not have entered into the agreement without the trickery. Fraud cannot be merely assumed; it must be proven."

As an alternative to protect the interests of foreign citizens who wish to invest in land in Indonesia, the Basic Agrarian Law (UUPA) allows for limited forms of land rights, such as the right of use (*hak pakai*) or long-term lease rights (*hak sewa*). Article 42 of the UUPA stipulates that one of the parties eligible to hold a right of use is a foreign citizen domiciled in Indonesia. Article 45 further explains that lease rights may be granted to

³⁶ Hermansyah, Nanang. "Paksaan (Dwang/Duress) Menurut Civil Law System (KUH Perdata Indonesia) dan Common Law System (Yurisprudensi Inggris) dalam Perjanjian." *Wasaka Hukum* 9, no. 1 (2021)

foreign citizens who are domiciled in Indonesia.³⁷ This allows foreign citizens to utilize land in Indonesia without violating the principle of nationality, which is strongly upheld in Indonesian land law.

Regarding the political law of foreign investment in ASEAN countries, Vietnam demonstrates a similar pattern to Indonesia. Both Vietnam and Indonesia do not grant full land ownership rights to foreign investors, however, Vietnam operationalizes investor access through a land-use rights scheme directly linked to state-approved investment projects.³⁸ Vietnam's practice also faces several technical shortcomings, such as ambiguity in determining bona fide criteria, inconsistencies in transaction regulations, and limitations in land registration, which collectively reduce legal certainty for investors.³⁹

In other ASEAN countries, Thailand's agrarian legal politics demonstrate a relatively similar pattern regarding land ownership by foreign nationals. Under the Thai Land Code, foreigners are generally prohibited from owning land directly but are granted limited access through certain legal schemes, such as long-term leaseholds of 30 to 50 years, building rights (superficies), and condominium ownership up to a maximum of 49% of the total project units. Through these mechanisms, Thailand provides a legal alternative for foreign investors to obtain legal certainty without violating the principle of nationality.⁴⁰ In addition, investment regulations such as the Investment Promotion Act allow limited land ownership in special economic zones for foreign investors approved by the government.⁴¹ However, the use of nominee arrangements by foreign investors remains explicitly prohibited and subject to criminal sanctions, indicating that Thailand imposes stricter penalties compared to Indonesia, where such practices are primarily addressed within the scope of civil law.⁴²

Legal protection regarding land ownership in Indonesia also ensures that every ownership right can only be held by parties who are legally entitled under applicable

³⁷ Sappe, Suryani, Adonia Ivone Latturete, dan Novyta Uktolseja. "Hak Pakai Atas Tanah Hak Milik dan Penyelesaian Sengketa." *Batulis Civil Law Review* 2, no. 1 (2021). <https://doi.org/10.47268/ballrev.v2i1.560>

³⁸ Chau Thi Khanh. "Land-Use Rights of Foreign-Invested Enterprises According to Vietnamese Law". *Journal of Advanced Research in Social Sciences and Humanities* Volume 5, Issue 5, (2020). <https://ssrn.com/abstract=3790312>

³⁹ Chau Thi Khanh. "Land-Use Rights of Foreign-Invested Enterprises According to Vietnamese Law".

⁴⁰ Ayman Falak Medina. "Thailand's Land Ownership Rules for Foreigners: A Comprehensive Guide". ASEAN Briefing. <https://www.aseanbriefing.com/news/thailands-land-ownership-rules-for-foreigners-a-comprehensive-guide/>

⁴¹ Ayman Falak Medina. "Thailand's Land Ownership Rules for Foreigners: A Comprehensive Guide". ASEAN Briefing.

⁴² PILO. "VI. Real Property Ownership in Thailand". Ployprathip International Law Office (PILO). <https://www.ployprathip.com/articles/vi-real-property-ownership-in-thailand/>

law. Consequently, legal certainty can be achieved, and the parties involved in land transactions obtain justice. Thus, the theory of legal protection applied in this case not only safeguards the interests of Indonesian citizens as the formal owners of the land but also provides limits and protection for foreign citizens in the context of lawful agreements, without undermining the prevailing statutory regulations or the principle of nationality in Indonesia.

CONCLUSION

From the perspective of agrarian legal politics, the validity of nominee agreements in land ownership by foreign nationals clearly contravenes the nationality principle that underpins the Basic Agrarian Law (UUPA). This principle serves as a fundamental instrument of Indonesia's agrarian political policy, intended to safeguard state sovereignty over land resources and to prevent foreign domination in the control of national assets. However, the political direction of foreign investment law, as reflected in Law No. 25 of 2007 on Investment, demonstrates a tendency toward economic liberalization and the facilitation of land access for foreign investors. The tension between the protective nature of the UUPA and the liberal orientation of the investment regime creates policy inconsistencies that ultimately give rise to nominee agreements as a form of legal smuggling, intended to accommodate foreign investment interests without explicitly violating national agrarian regulations. Accordingly, this finding contributes to the development of agrarian legal politics by highlighting the normative conflict between the protection of state sovereignty and the imperatives of economic development.

In terms of legal protection, foreign nationals involved in nominee agreements are not legally recognized as landowners in Indonesia. The Gianyar District Court Decision No. 137/Pdt.G/2021/PN Gin and the Supreme Court Decision No. 2959 K/Pdt/2022 reaffirmed that such agreements are null and void for violating the nationality principle and failing to meet the "lawful cause" requirement under Article 1320 of the Indonesian Civil Code. Nevertheless, Indonesia's legal system still provides limited legal protection for foreign nationals through hak pakai (right of use) and hak sewa (leasehold), as stipulated in Articles 42 and 45 of the UUPA. A comparative analysis with Vietnam and Thailand reveals a similar political pattern, where both countries deny full land ownership to foreigners but provide lawful investment access through land-use rights, long-term leaseholds, or limited condominium ownership. Thailand even imposes criminal sanctions for nominee arrangements, indicating a stricter legal stance than Indonesia, where such practices remain largely governed within the realm of civil law.

Thus, this study expands the understanding of cross-border legal protection and positions Indonesia within the broader ASEAN context of agrarian legal politics.

Based on these findings, it is necessary to harmonize agrarian legal politics with investment policy to close the legal gaps that allow nominee agreements to persist. The government should strengthen the oversight role of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), particularly in regions with high levels of foreign investment, and establish explicit regulations that clearly prohibit and penalize the use of nominee arrangements in land transactions. At the academic level, further research is recommended to evaluate the effectiveness of agrarian policy implementation in practice and to conduct deeper comparative studies on agrarian legal systems across ASEAN countries, with the aim of formulating a balanced policy model between state sovereignty and investment legal certainty.

REFERENCES

- Ada, Rosyani, dan Akhmad Safik. "Analisis Yuridis Kepemilikan Hak Atas Tanah Melalui Perjanjian Nominee Oleh Warga Negara Asing di Indonesia (Studi Putusan Perkara Nomor: 2959 K/Pdt/2022)." *Unesrev* 6, no. 2 (2023). <https://doi.org/10.31933/unesrev.v6i2>
- Alya Nadia Saraswati (et al). "Perlindungan Hukum Bagi Warga Negara Indonesia Terhadap Perolehan Hak Milik Atas Satuan Rumah Susun Oleh Warga Negara Asing". *Jurnal Education and development*, Vol.11 No.2 (2023). <https://doi.org/10.37081/ed.v11i2.4905>
- Arief Fahmi Lubis. "Fungsi Hukum sebagai Sarana Pengendalian Sosial Masyarakat dalam Rangka Mewujudkan Ketahanan Nasional". *Jurnal Pengabdian Masyarakat Waradin*, Vol.2, No.3, (2022). <https://doi.org/10.56910/wrd.v2i3.372>
- Ayman Falak Medina. "Thailand's Land Ownership Rules for Foreigners: A Comprehensive Guide". *ASEAN Briefing*. <https://www.aseanbriefing.com/news/thailands-land-ownership-rules-for-foreigners-a-comprehensive-guide/>
- Chau Thi Khanh. "Land-Use Rights of Foreign-Invested Enterprises According to Vietnamese Law". *Journal of Advanced Research in Social Sciences and Humanities* Volume 5, Issue 5, (2020). <https://ssrn.com/abstract=3790312>
- Desy Nurkristia Tejawati. "Penguasaan Hak Atas Tanah Bagi Badan Hukum Asing Di Indonesia". *PERSPEKTIF*, Volume 26, Nomor 1, (2021). <https://doi.org/10.30742/perspektif.v26i1.762>
- Dewi Nadya Maharani dan Faisal Santiago. "Legal Smuggling of Share Ownership Using Nominee Arrangements Associated with a Violation of the Negative Investment

- Lists". 2nd International Conference on Business Law and Local Wisdom in Tourism, volume 605, (2021). <https://doi.org/10.2991/assehr.k.211203.016>
- Erly Aristo (et al). "Pembatalan Hak Atas Tanah Objek Nominee Agreement". Lex Jurnalica, Vol 18, No 3. (2021). <https://doi.org/10.47007/lj.v18i3.4855>
- Farida Indriastuti. "Bali yang Makin Terhimpit". DW, 27 Oktober 2025, <https://www.dw.com/>
- Galih, Orlando. "Hukum Sebagai Kontrol Sosial dan Social Engineering." Tarbiyah bil Qalam: Jurnal Pendidikan Agama dan Sains 7, no. 1 (2023). <https://doi.org/10.58822/tbq.v7i1.111>
- Hermansyah, Nanang. "Paksaan (Dwang/Duress) Menurut Civil Law System (KUH Perdata Indonesia) dan Common Law System (Yurisprudensi Inggris) dalam Perjanjian." Wasaka Hukum 9, no. 1 (2021).
- Hetharie, Yosia. "Kepemilikan Tanah oleh Warga Negara Asing Melalui Perjanjian Pinjam Nama Sebagai Bentuk Penyelundupan Hukum dalam Hukum Perdata Internasional." Balobe Law Journal 2, no. 1 (2022). <https://doi.org/10.47268/balobe.v2i1.822>
- I Kadek Juni Antara. "Kakanwil BPN Provinsi Bali tanggap isu terkait adanya dugaan penguasaan oleh WNA terhadap pulau di Bali". Kantor Wilayah Provinsi Bali, 27 Oktober 2025, <https://bali.atrbpn.go.id/>
- Kadir Putra, Lex Suprema, Dinda Eva Aprilia, dkk. "Tinjauan Hukum Terhadap Perjanjian Nominee yang Diberikan Secara Lisan: Legal Review of Orally Awarded Nominee Agreements." Lex Suprema Jurnal (2021). <https://libera.id/blogs/kontrak-lisan-tetap-legal/>
- Kitab Undang-Undang Hukum Perdata
- Mertokusumo, Sudikno. Mengenal Hukum: Suatu Pengantar, Cetakan ke-4. Liberty, 2008.
- Muskur, La Ode Muhammad, dan La Ode Hendro Susilo. "Tinjauan Hukum terhadap Prinsip Nasionalitas dalam Jual Beli Hak Atas Tanah." Jurnal Ilmu Hukum Kanturuna Wolio, advance online publication (2023). <https://doi.org/10.55340/jkw.v4i1.1012>
- PILO. "VI. Real Property Ownership in Thailand". Ployprathip International Law Office (PILO). <https://www.ployprathip.com/articles/vi-real-property-ownership-in-thailand/>
- Prithresia, Bianca. "Kajian Perbandingan Asas Nasionalitas Hukum Agraria dalam Konteks Internasional." Unesrev 6, no. 2 (2023). <https://doi.org/10.31933/unesrev.v6i2>
- Putusan Pengadilan Negeri Gianyar Nomor 137/Pdt.G/2021/PN Gin. Pengadilan Negeri Gianyar, 2021.

- Reni Sri Okti Wulan Dari Ningsih. "Keabsahan Akta Perjanjian Nominedalam Perjanjian Peralihan Hak Milik Atas Tanah Yang Dibuat Oleh Atau Dihadapan Notaris /Pejabat Pembuat Akta". *International Significance of Notary* Vol 1, No 1 (2020). <https://dx.doi.org/10.2020/ison.v1i1.7210>
- Rizki, Ananda. "6 Alasan Mengapa Bali Masih Menjadi Destinasi Wisata Paling Populer di Dunia (Travelers Choice - Best of the Best)." *Bali Management Villas*. <https://balimanagement.villas>
- Rossita Trijaya Novia (et al). "Law as a Social Controlling Agent in Society from a Sociological View of Law". *Jurnal Sosial, Politik dan Budaya (SOSPOLBUD)*, Vol. 2, No. 1, (2023). <https://doi.org/10.55927/sospolbud.v2i1.2695>
- Samuel Frans Boris Situmorang. "Teori Keadilan Sebagai Fairness Karya John Rawls Dikaitkan Dengan Bank Tanah Di Indonesia". *Innovative: Journal Of Social Science Research*, Vol. 3 No. 2 (2023). <https://doi.org/10.47007/lj.v18i3>
- Sappe, Suryani, Adonia Ivone Latturete, dan Novyta Uktolseja. "Hak Pakai Atas Tanah Hak Milik dan Penyelesaian Sengketa." *Batulis Civil Law Review* 2, no. 1 (2021). <https://doi.org/10.47268/ballrev.v2i1.560>
- Subandi, Paulus. "Kedudukan Hak Pengelolaan Atas Tanah Menurut Pasal 33 Ayat (3) Undang-Undang Dasar 1945." *Fakultas Hukum Universitas MPU Tantular* 2, no. 2 (2018).
- Ukus, Deanne Carmel. "Akibat Hukum atas Penyalahgunaan Desain Pakaian untuk Kepentingan Komersial Tanpa Izin Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta." *Kemenkumham NTT*, t.t. <https://ntt.kemenkumham.go.id/berita-kanwil/berita->
- Undang-Undang Dasar Negara Republik Indonesia 1945
- Undang-Undang Nomor 5 Tahun 1960 Peraturan Dasar Pokok-Pokok Agraria
- Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal