

Nominee Agreements and Abuse of Law in Indonesian Agrarian Regulation

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Abstract

Land ownership by foreign nationals (WNA) is explicitly prohibited under Article 21(1) of the Basic Agrarian Law (UUPA No. 5/1960), which reserves the right of ownership (*hak milik*) exclusively for Indonesian citizens (WNI). Despite this prohibition, nominee agreements arrangements in which a WNI formally holds title as a legal owner (nominee) on behalf of a WNA beneficial owner have proliferated as instruments of legal circumvention, particularly in Bali and other high-value property markets. This study examines the legal standing of nominee agreements under Indonesian civil and agrarian law, and critically analyzes their characterization as instances of abuse of law (*rechtsmisbruik*). Employing a normative juridical method with statute, conceptual, and case approaches including analysis of Supreme Court Decision No. 3020 K/Pdt/2014 this study constructs a multi-doctrinal analytical framework integrating the abuse of law doctrine, *fraus legis*, the simulation doctrine (*schijnhandeling*), and the sham transaction doctrine. The novelty of this research lies in applying this integrated framework to demonstrate that nominee arrangements constitute not merely administrative violations, but fundamental circumventions of the UUPA's legislative intent that strike at the *causa* of the agreement itself. The findings establish that nominee agreements are void *ab initio* under Articles 1320 and 1337 of the Civil Code due to an unlawful *causa*, and that they violate Articles 9, 21(1), and 26(2) of the UUPA. Theoretically, this study enriches Indonesian contract doctrine and agrarian theory. Practically, its findings serve as normative guidance for notaries, PPAT, law enforcement, and legislators in combating the systemic abuse of legal instruments in land ownership.

INTRODUCTION

Indonesia is a country with extraordinary agrarian wealth, covering nearly two million square kilometers of land spread among thousands of islands. Land as the main component of agrarian resources plays a strategic role in national development, becoming the basis for economic, social activities, and meeting people's living needs. In a broader dimension, land is also a manifestation of national sovereignty that must be managed based on the principles of justice, utility, and legal certainty.

Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) is the foundation of Indonesian land law which was drafted to realize social justice in the control, utilization, and use of land. One of the fundamental principles of the UUPA is the principle of nationality contained in Article 9 paragraph (1), which emphasizes that only Indonesian citizens can have a complete relationship with the earth, water, and space. This principle is concretized through Article 21 paragraph (1) which explicitly states that only Indonesian citizens can have ownership rights to land.

The restriction of land ownership for Indonesian citizens is not just a policy choice, but a reflection of the philosophy that land is a gift from God that must be managed for the greatest prosperity of the Indonesian people as mandated by Article 33 paragraph (3) of the 1945 Constitution. Thus, the prohibition of ownership of land titles by Foreign Citizens (WNA) is not only in the dimension of land law, but also in the dimension of state sovereignty, distributive justice, and protection of national interests from potential foreign domination over agrarian resources.

In practice, the ban is often outsmarted by foreigners who are interested in owning land in Indonesia through various schemes of legal evasion. One of the most common and legally controversial schemes is the nominee agreement, which is an agreement in which foreigners use the name of Indonesian citizens as the formal owner (legal owner) in land documents, while substantively the control and use of the land remains in the hands of foreigners as beneficial owners. This practice is especially prevalent in the provinces of Bali, West Nusa Tenggara, the Special Region of Yogyakarta, and other premium tourist areas in Indonesia.

The nominee agreement is generally accompanied by various supporting legal instruments, including a general power of attorney, a long-term lease agreement, a sale and purchase option agreement, and a debt recognition deed which is overall designed to ensure that foreigners have full and complete control over the land formally registered in the name of Indonesian citizens. Although this agreement is made before a notary and formally appears to meet the conditions for the validity of the agreement regulated by

Article 1320 of the Civil Code, its substance and purpose are clearly contrary to the norms of agrarian law which are imperative.

Conceptually, the practice of nominee agreements in land ownership is a clear example of what in civil law is known as abuse of law or *rechtsmisbruik*) and legal smuggling (*fraus legis*). The available legal instruments of freedom of contract as guaranteed by Article 1338 of the Civil Code are manipulated to achieve goals that are contrary to the imperative norms that the UUPA seeks to protect. This phenomenon places the nominee agreement at the crossroads between treaty law, agrarian law, and the theory of abuse of law that requires an in-depth and comprehensive juridical analysis.

Furthermore, the practice of nominee agreements raises a series of serious legal issues. First, it creates legal uncertainty as to who is the real holder of the right to the land. Second, it puts Indonesian citizens who act as nominees in a vulnerable position, because their names are attached to formal ownership of land controlled by other parties. Third, it threatens the integrity of the land registration system and national agrarian sovereignty because it allows foreigners to control land secretly through legal loopholes that are not formally prohibited. Notaries and PPATs involved in making deeds supporting nominee arrangements also face the risk of legal and professional ethical liability.

Nominee *agreements* are a form of nominate agreement, which is a type of agreement that is not explicitly regulated in the Civil Code, but its existence appears and develops in community practice. Generally, foreign nationals take advantage of this scheme to acquire land with ownership status, using the name of an Indonesian Citizen (WNI) as a formal party listed in the certificate. In practice, the Indonesian citizen only acts as a *nominee*, while the control and utilization of the land is still carried out by foreign parties. This agreement is used as a strategy to circumvent the prohibition on property ownership by Foreign Citizens, by registering land ownership in the name of Indonesian citizens who have been agreed as *nominees* by the foreigners concerned.¹

Foreign Citizens (WNA) who come to Indonesian territory not only have the purpose of traveling, but also show a tendency to carry out investment activities, including in the form of land tenure. This phenomenon is reflected in the increasing number of foreigners involved in land ownership in various regions, both directly and through legal intermediaries. One of the most prominent areas related to this practice is the province of Bali, where many foreigners are known to control land plots, both for the sake of long-term residence and as a means of supporting business activities. In addition to Bali,

¹ I Dewa Agung Dharma Jastrawan and I Nyoman Suyatna, (2019), "The Validity of Nominee Loan Agreements by Foreign Citizens in the Control of Land Ownership in Indonesia." *Kertha Semaya: Journal of Legal Science*, Vol. 7, No. 7, p. 7

similar practices have also begun to be seen in other regions such as West Nusa Tenggara Province (especially Lombok), the Special Region of Yogyakarta, as well as several strategic areas in West Java and the Riau Islands that have high investment value.

Basically, the practice of *nominee* agreements is an action that is contrary to the spirit carried out by Article 21 of the Basic Agrarian Law (UUPA), because it not only raises legal issues regarding the validity of land control by foreign parties, but also threatens agrarian sovereignty as a manifestation of the principle of "land for the people of Indonesia" which is the main foothold in the national land system. The use of *nominee* agreements by foreigners in property transactions has developed into a controversial legal issue, because it places this issue at the crossroads between freedom of contract and the interest of maintaining public order in the Indonesian civil law system.²

Nominee agreements are generally drafted secretly based on the principle of freedom of contract as stipulated in Article 1320 and Article 1338 of the Civil Code. Formally, the agreement may meet the conditions of the validity of the contract, such as the existence of an agreement, the legal competence of the parties, a clear object, and a cause that does not conflict with the law. However, materially, the substance of the nominee agreement often contains a hidden intention that is contrary to the applicable law, namely providing an opportunity for Foreign Citizens (WNA) to illegally control the land. This is where the main problem lies, where legal norms are used formally to achieve goals that are actually contrary to the principles of justice and positive law, so that the practice can be categorized as a form of *abuse of law*.

The concept of *abuse of law* refers to the formal use of rights according to the law, but with a purpose that is contrary to the spirit, purpose, or values that the law itself wants to realize. In the practice of nominee agreements, such deviations appear when the agreement is made not to fulfill the legitimate will of the parties, but to circumvent legal provisions that prohibit the ownership of land by foreign nationals. Although such a form of agreement is not expressly prohibited by the Civil Code, its content and purpose can be considered contrary to public order (*ordre public*) and the basic principles of the national agrarian legal system.

Furthermore, the practice of nominee agreements triggers uncertainty in terms of legal protection of land rights, foreigners who are not officially registered as owners do not have legal standing to file claims in the event of a dispute. On the other hand, Indonesian citizens whose names are listed as formal owners can actually face the risk of

² I Made Angga Legawa, and Anak Agung I. E. Krisna Yanti, (2025), "The Legal Position of the *Nominee* Agreement in the Indonesian Civil Law System", *Innovative Law: Journal of Social Law and Humanities*, Vol. 2, No. 2, p. 304.

legal liability for agreements that substantially do not reflect their own will. On a broader level, this practice also threatens national agrarian sovereignty, as it allows for covert control of land by foreigners by taking advantage of loopholes in the applicable civil law.

A number of previous studies have examined certain aspects of nominee agreements in the context of land ownership in Indonesia. Hetharie (2019) examined the nominee agreement as a means of controlling land ownership by foreigners based on the Civil Code and concluded that the agreement is contrary to the principle of public interest. Jastrawan and Suyatna (2019) emphasized that the agreement to borrow names by foreigners is null and void because it is contrary to the UUPA. Maudi and Nelson (2021) and Simanjuntak et al. (2021) analyze the position of nominee agreements as the basis for land ownership rights for foreigners from a civil law perspective. Khairunnisa and Putra (2022) examine the legal consequences of nominee agreements related to foreign ownership, while Devita (2022) analyzes the legal status of nominee agreements based on Supreme Court Decision Number 3020 K/Pdt/2014. Legawa and Yanti (2025) examine the legal position of nominee agreements in the Indonesian civil law system, while Wirajagat (2025) analyze the law of nominee agreements for the control of land owned by foreigners.

Although these studies make important contributions, there are significant research gaps. First, most studies evaluate the validity of nominee agreements solely from the perspective of the formal requirements of Article 1320 of the Civil Code, without establishing a comprehensive doctrinal framework on how the agreement meets the elements of abuse of law substantively. Second, the application of the concept of *fraus legis*, the doctrine of simulation (*schijnhandeling*), and the doctrine of sham transaction to nominee agreements in Indonesian law has not been systematically explored. Third, the analysis of jurisprudence, especially the Supreme Court Decision Number 3020 K/Pdt/2014, has not been deeply integrated into the theoretical framework of abuse of the law. These gaps are the academic justification for this research.

The novelty of this research lies in the construction of a multi-doctrinal analytical framework that integrates the doctrine of abuse of law (abuse of law/*rechtsmisbruik*), the concept of *fraus legis* (legal smuggling), the simulation doctrine (*schijnhandeling*/simulation doctrine), and the sham transaction doctrine to analyze the nominee agreement in the context of Indonesian agrarian law. Different from previous research which is generally limited to formal validity analysis, this study shows that the nullity of nominee agreements is not merely an administrative consequence of a violation of written norms, but rather a substantive implication of the fundamental principles of

treaty law that reject the use of legal instruments for purposes contrary to the will of the lawmakers.

Theoretically, this research contributes to the development of the legal doctrine of Indonesian treaties, especially in emphasizing the limits of freedom of contract regulated by Article 1338 of the Civil Code when dealing with agrarian law norms that are imperative and have a dimension of public interest. Practically, the findings of this study can be a normative reference for notaries and Land Deed Making Officials (PPAT) in carrying out their obligation to reject the making of deeds that indicate nominees, for law enforcement in cracking down on the practice of legal smuggling in the agrarian sector, and for lawmakers in formulating stricter and more comprehensive regulations on the prohibition of nominee arrangements.

Based on this background, there are three main issues that are the focus of this study, namely: (1) What is the form of *nominee* agreements in the practice of land ownership by Foreign Citizens (WNA) in Indonesia? (2) What is the legal position of *the nominee* agreement if analyzed from the point of view of civil law and national agrarian law? (3) How can the *practice of nominee* agreements qualify as a form of abuse of law in the Indonesian civil law system?

Through the study of these three aspects, this research is expected to be able to provide an in-depth understanding of the complexity of legal aspects in the implementation of *nominee* agreements. Moreover, this study also aims to make an academic contribution to the development of civil law doctrine in Indonesia, especially in emphasizing the limits of freedom of contract so that it is not used for purposes contrary to the interests of public law. From a long-term perspective, the findings of this study are expected to be the basis for the formation of a national land policy that is more adaptive to the practice of abuse of the law by foreign parties, as well as support the strengthening of the principle of state sovereignty over land tenure.

METHODS

This research uses normative legal research methods, which is research that focuses on the study of legal norms and the systematization of written legal sources. Data collection is carried out through library research on legal literature, laws and regulations, and relevant legal documents. This study applies three complementary legal approaches, namely: (1) Statute Approach; (2) Conceptual Approach; and (3) Case Approach.

The statute approach is carried out by studying and analyzing laws and regulations that are directly related to the problems being studied. The main regulations that are used as material for analysis include: the Civil Code (KUHPercivil), especially the provisions

of Article 1320 concerning the validity of agreements, Article 1337 concerning prohibited causes, and Article 1338 concerning the principle of freedom of contract; Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA), especially Article 9 paragraph (1) concerning the principle of nationality, Article 21 paragraph (1) concerning the prohibition of property rights by foreigners, and Article 26 paragraph (2) concerning the prohibition of transferring property rights to non-entitled parties; as well as implementing regulations in the relevant land sector. This approach aims to identify positive legal norms that are the basis for assessing the validity and legal consequences of nominee agreements.

A conceptual approach is used to build an analytical framework based on relevant legal concepts and doctrines. The main concepts that were constructed and applied include: (a) Abuse of Law Doctrine (*Rechtsmisbruik*), which is the use of formal legal instruments that are legitimate but aimed at being contrary to the intent and spirit of legal norms; (b) *Fraus Legis* (Legal Smuggling), which is an action that is formally in accordance with the sound of a norm but aims to circumvent other norms that are imperative; (c) Simulation Doctrine, which is an apparent act of law that is different from what the parties actually want (hidden act), where the appearance of the existing law hides the real reality; and (d) the Sham Transaction Doctrine, which refers to a transaction that formally appears legitimate but is not in substance a transaction that is actually intended, but is designed to create the impression of law that is not in accordance with reality. These four concepts are applied in an integrated manner to evaluate whether and why the nominee agreement is a form of abuse of the law.

The case approach is carried out by analyzing court decisions related to nominee agreements in land ownership in Indonesia. The main reference decision is the Supreme Court Decision Number 3020 K/Pdt/2014, which is a significant jurisprudence in assessing the validity of nominee agreements in the land sector. In the ruling, the Supreme Court expressly stated that the nominee agreement made to circumvent the ban on land ownership by foreigners is contrary to the law and null and void. This ruling emphasizes that no legal protection can be provided to the parties involved in the nominee agreement aimed at circumventing the normative prohibitions in the UUPA. The analysis of this ruling is directed to strengthen the normative and doctrinal argumentation foundations built in the research.

1. Primary legal material is the primary source of applicable and binding law for all parties involved.³ The primary legal materials used are the Civil Code, the Basic Agrarian Law, and various regulations that regulate land ownership in Indonesia. All of these provisions are used as the main reference in analyzing the legal issues raised in this study.
2. Secondary legal materials are sources of law that do not have direct binding power, but act as a supporting means in providing interpretation and understanding of primary legal materials. This resource includes, among others, academic manuscripts, draft laws and regulations, and relevant research results.⁴
3. Tertiary legal materials act as supporting references that help explain or complement the understanding of primary and secondary legal materials. This type of source includes legal dictionaries, encyclopedias, and other informative literature that is supportive.⁵

All legal materials are analyzed using a prescriptive analysis method, which is to provide normative assessments and arguments based on legal doctrines and applicable laws and regulations, in order to answer three main problems: (1) the form and mechanism of nominee agreements in the practice of land ownership by foreigners in Indonesia; (2) the legal position of the nominee agreement in the perspective of civil law and national agrarian law; and (3) the qualification of the nominee agreement as a form of abuse of law in the Indonesian civil law system. This method of analysis aims to produce systematic, critical, and in-depth legal arguments that meet the publication standards of accredited legal journals.

RESULT AND DISCUSSION

1. Practice of Nominee Agreement on Land Ownership by Foreign Nationals in Indonesia

Name loan agreement or nominee agreement is one of the mechanisms used by Foreign Citizens (WNA) to obtain substantive control over land in Indonesia indirectly. This scheme is carried out using the name of an Indonesian Citizen (WNI) as a party formally listed in the ownership certificate, even though all land purchase costs are actually borne by foreigners. Through this agreement, foreigners can still enjoy full

³ Ahmad, et al., *Textbook of Legal Research and Writing Methods*, 1st Edition, (Jambi: PT. Sonpedia Publishing Indonesia, 2024), p. Sec. 79.

⁴ Kornelius Benuf and Muhammad Azhar, (2020), "Legal Research Methodology as an Instrument for Unraveling Contemporary Legal Problems", *Gema Keadilan Journal*, Vol. 7, No. 1, p. Sec. 26.

⁵ *Ibid.*

control of the land both in terms of use, management, and profit-taking without having to be officially registered as the owner. In many cases, the agreement is also accompanied by additional documents such as a general power of attorney, a sale-purchase option agreement, a long-term lease agreement, and a debt acknowledgment deed, which substantively reinforces the position of foreigners as de facto owners of the land.

The nominee agreement has several identifiable characteristics. First, there is a separation between two types of ownership: legal ownership held by Indonesian citizens and beneficial ownership that is actually enjoyed by foreigners. Second, the name and identity listed in the certificate and land book formally belong to the nominee (WNI). Third, the main basis for the use of this scheme is the existence of an agreement between the nominee and the beneficiary that gives substantive control to foreigners. Fourth, nominee agreements are almost always accompanied by supporting instruments that strengthen the position of foreigners as beneficial owners. Fifth, all of this construction is designed to get around the prohibition on ownership of land rights by foreigners as stipulated in the UUPA.

In the practice of nominee agreements, there are two parties who have different roles. The first party is the nominee, namely an Indonesian Citizen (WNI) whose name is officially recorded as the owner in the title certificate and land book managed by the National Land Agency (ATR/BPN). The second party is the beneficiary, namely Foreign Citizens (WNA) who actually obtain benefits, control, and profits from assets formally owned by the nominee. In the context of land ownership, this scheme allows foreigners to control land with ownership status indirectly, by placing Indonesian citizens as legal owners administratively while foreigners maintain substantive control through various supporting legal instruments.

Indonesian citizens (WNI) who act as nominees generally receive financial rewards from foreigners as compensation for their willingness to be listed as official owners. The reward can be in the form of direct cash payments, periodic (annual) payments, or a percentage of the profits generated from assets. Although legally Indonesian citizens are recorded as legal owners, their position is actually vulnerable because the agreement that underlies the relationship as will be further described is null and void, so that in a dispute situation, Indonesian citizens can actually reclaim full ownership of the land, which has the potential to harm foreigners who have actually invested all their funds.

The practice of implementing nominee agreements often occurs through mixed marriage relationships or personal closeness between foreigners and Indonesian citizens. In Bali, as the most prominent area in this practice, many foreigners marry local Indonesian citizens, then use the names of their Indonesian spouses to register land

ownership. After the purchase of the land, a series of authentic deeds are made before a notary that gives substantive control to foreigners over the land registered in the name of the Indonesian citizen. Data from the National Land Agency shows that there are indications of nominee arrangements in various premium tourist areas in Bali, which include land transactions worth hundreds of billions of rupiah that are formally registered in the name of Indonesian citizens but are substantively controlled by foreigners. In addition to Bali, similar practices are increasingly prevalent in Lombok (NTB), Labuan Bajo (NTT), Riau Islands, and other strategic areas.

In the implementation of the nominee agreement between foreigners and Indonesian citizens, the role of the Notary or Land Deed Making Officer (PPAT) is often an important element. Both parties generally involve a Notary or PPAT to formalize the agreement through the creation of various legal documents, including the nominee agreement itself, an absolute power of attorney, a long-term lease agreement, and other supporting deeds. The preparation of these deeds is carried out based on the agreement of the parties with technical input from the Notary or PPAT, which generally aims to provide an administrative basis that appears to be valid for the legal relationship between foreigners and Indonesian citizens.

The involvement of the Notary or PPAT in this practice does not necessarily give legitimacy to the validity of the substance of the nominee agreement. A notarial deed guarantees formal validity and evidentiary force in terms of its drafting procedure, but does not alter the substantive assessment of the legality of the content and purpose of the agreement. Based on Article 1868 of the Civil Code, an authentic deed only proves that what is stated to have actually happened in the presence of the deed-making official, not that the substance of the agreement is legally valid. Moreover, Notaries and PPAT who know or should know that the deed made contains the content of the nominee arrangement can be held accountable based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position.

The existence of nominee agreements often triggers legal disputes, especially in determining who actually has the rights and authority over the land. This problem arises because the land registration system in Indonesia adheres to the principle of publicity, where the name listed in the certificate is considered as the rightful owner. This condition creates a conflict between the formal rights holder (Indonesian nominee) and the substantive controlling party (foreign beneficiary). In jurisprudence, Supreme Court Decision No. 3020 K/Pdt/2014 shows how conflicts between nominal owners and beneficial owners in nominee arrangements lead to the cancellation of all agreement

instruments by the court, without providing protection to any party involved in the illegal scheme.

The nominee agreement as a means of land tenure by foreigners has the potential to have a multidimensional impact. In the legal dimension, this practice creates fundamental legal uncertainty about the status of land ownership and opens up opportunities for ongoing disputes. In the economic dimension, nominee arrangements allow foreign capital to control land that should be a productive asset for Indonesian citizens. In the dimension of sovereignty, this practice systematically destroys the principle of nationality which is one of the main joints of the UUPA. These impacts confirm that the nominee arrangement is not just a civil law issue between the parties, but a public interest issue that requires a firm and comprehensive legal response from the state.

2. Legal Position of the Nominee Agreement in the Perspective of Civil Law and National Agrarian Law

a. Validity of Nominee Agreements in Civil Law

Juridically, the normative framework of the agreement is regulated in Book III of the Civil Code concerning Engagement. Referring to Article 1313 of the Civil Code, an agreement is understood as a legal act that creates a reciprocal relationship between the parties. The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code which specifies four cumulative conditions: (1) agreement (consensus) of the binding parties; (2) the competence of the parties to make an agreement; (3) a particular subject (a certain subject); and (4) a permissible cause. The first two conditions are subjective conditions, which if violated result in the agreement being canceled (*vernietigbaar*). The last two conditions are objective conditions, which if violated result in an agreement being null and void (*nietig van rechtswege*).

According to Subekti, an agreement is a legal event that arises when one party gives a promise to the other party or when both parties agree to bind themselves. In a more critical perspective, R. Setiawan emphasized that the agreement must meet not only formal conditions but also substantive conditions, namely that the purpose and content of the agreement must be in harmony with the law, good decency, and public order. An agreement that formally meets the four requirements of Article 1320 but whose substance is intended to circumvent imperative norms cannot be declared legally valid.

Nominee agreements or naming agreements are not specifically regulated in the Civil Code, including the category of nominate agreements born from practice. Even though there is no explicit regulation, this agreement must still meet all the requirements for the validity of Article 1320 of the Civil Code. In civil law legal doctrines, including the

Indonesian legal system, the concept of trust separating legal ownership from beneficial ownership is not recognized as a recognized legal institution. The absence of normative recognition of the construction of beneficial ownership in Indonesian law reinforces the conclusion that nominee arrangements have no legitimate legal basis in the Indonesian civil law system.

From the perspective of fulfilling the formal requirements of Article 1320 of the Civil Code, the nominee agreement between foreigners and Indonesian citizens visibly appears to meet all four conditions. The parties usually agree in writing, demonstrate legal prowess, the object of the agreement is clearly stated (specific land), and a causa is mentioned in the contract. However, this analysis that stops at the formal level is superficial and does not reflect the substantive reality of the agreement.

The most crucial aspect and determining the validity of the nominee agreement is the fourth condition, namely the existence of a 'halal cause' (geoorloofde oorzaak). Article 1337 of the Civil Code explicitly states that a cause is prohibited (ongeorloofde oorzaak) if it is prohibited by law, contrary to good decency, or contrary to public order. In the nominee agreement that is intended for foreigners to control land in Indonesia, the actual causa regardless of the formal formulation used in the deed is the possession of land with title status by foreigners, something that is expressly prohibited by Article 21 paragraph (1) of the UUPA. Thus, the nominee agreement contains causa that is prohibited both because it is prohibited by law (Article 21 of the UUPA) and because it is contrary to public order (the principle of nationality as the philosophical foundation of the UUPA).

In addition to the question of prohibited causa, the nominee agreement is also a fundamental deviation from the principle of freedom of contract (partijautonomie). Article 1338 of the Civil Code does provide the freedom to make agreements, but this freedom is limited by law, decency, and public order. The Supreme Court in its various decisions has consistently emphasized that freedom of contract cannot be used as a pretext to circumvent coercive legal norms (dwingend recht). The use of the nominee agreement as an instrument to circumvent the prohibition of the UUPA is fundamentally contrary to the principle of good faith (goede trouw) which is a universal principle in treaty law.

b. Nominee Agreement in the Perspective of Agrarian Law

Understanding the position of the nominee agreement in agrarian law must begin with an in-depth analysis of the principle of nationality which is a fundamental principle in the Indonesian agrarian law system. Article 9 paragraph (1) of the UUPA emphasizes that only Indonesian citizens can have a complete relationship with the earth, water, and space within the limits of the provisions of Articles 1 and 2 of the UUPA. This principle

of nationality is not just an administrative norm, but a constitutional principle that originates from Article 33 paragraph (3) of the 1945 Constitution and reflects the state's commitment to ensure that agrarian resources are fully allocated for the prosperity of the Indonesian people.

Indonesia's agrarian law system, as stated in the UUPA, affirms the principle of nationality in the control of land rights. Article 21 paragraph (1) of the UUPA explicitly states that 'only Indonesian citizens can have property rights.' This provision is absolute: foreigners, foreign legal entities, and Indonesian legal entities that have elements of foreign ownership cannot have ownership rights to land in any form. Article 21 paragraph (3) further emphasizes that foreigners who after the enactment of the UUPA acquire property rights due to inheritance without a will or because of the mixing of property in marriage are obliged to relinquish these rights within a period of one year or the right is abolished by law.

The principle of nationality in agrarian law not only serves to limit the subject of property rights, but also creates a firm normative distinction between the rights that can be enjoyed by Indonesian citizens and those that can be enjoyed by foreigners. The UUPA gives foreigners more limited rights such as the Right to Use and Rental Rights which have a certain period of time and do not provide full ownership. This normative construction is the implementation of a conscious and planned land policy by the framers of the UUPA, which cannot be avoided through the construction of any agreement, including nominee arrangements.

Property rights are land rights that have the highest position in the hierarchy of land rights in Indonesia. As the strongest and most complete right, property rights are not limited in time, are transferable, inherited, and collateral. This characteristic makes property rights the main target of nominee arrangement schemes by foreigners, because it provides the strongest economic and legal position in the Indonesian land system. Ownership of property rights through nominee arrangements, thus is not just a technical violation, it is an effort to obtain the most valuable type of rights that are fundamentally only intended for Indonesian citizens.

Different from Building Use Rights or Use Rights that can be granted to foreigners within certain limits, property rights are exclusive rights for Indonesian citizens. This exclusivity is not a discriminatory restriction, but a legitimate land policy based on the principle of state sovereignty over agrarian resources. In this context, the nominee agreement that aims to give foreigners access to substantive property rights is a direct attack on the fundamental policy of the UUPA that has been built for more than six decades.

The supporting instruments that accompany the nominee arrangement of absolute power of attorney, lease agreement, and option agreement also violate various provisions of land law. Absolute power of attorney in the context of the transfer of land rights is implicitly prohibited through the Instruction of the Minister of Home Affairs Number 14 of 1982 which was later emphasized by the implementing provisions of the UUPA. An option agreement that gives foreigners the right to transfer property rights to their hands or their chosen party at any time is contrary to the prohibition in Article 26 paragraph (2) of the UUPA. Thus, each component of the nominee arrangement contains its own violation of the law, reinforcing the conclusion that the entire scheme is an illegal construction that cannot be saved by any formality.

Referring to Herlien Budiono's view, the practice of nominee agreements in the land sector in Indonesia generally involves arrangements where land ownership rights are recorded in the name of Indonesian citizens as formal owners, while funds for purchase come from foreigners who are beneficial owners. To strengthen the position of foreigners, an absolute power of attorney is usually made that gives full control to foreign parties. Budiono emphasized that all of these constructions are contrary to the principle of nationality and cannot obtain legal recognition in the Indonesian land law system which is based on the UUPA.

From the perspective of agrarian law, the nominee agreement raises fundamental problems that go beyond mere administrative violations. Article 21 paragraph (1) of the UUPA which states 'only Indonesian citizens can have property rights' is an absolute norm and cannot be compromised through any treaty mechanism. This absolute nature reflects the will of the lawmakers that the principle of nationality in agrarian is a principle that must not be shifted through legal engineering by any party.

Since the beginning of the nominee agreement between foreigners and Indonesian citizens, it has been apparent that there is an intention that is contrary to the law on the part of foreigners who consciously try to get around the prohibitions in the UUPA. There is no doubt that sophisticated foreigners who are able to make a series of notarial deeds for nominee arrangements understand very well that the ownership of land titles by foreigners is prohibited by Indonesian law. This awareness is an important element in the assessment of bad faith (*mala fide*) which is one of the elements of abuse of the law.

Indonesian citizens who participate as nominees by providing their names for the benefit of foreigners either because of personal, financial, or material rewards are also not free from legal responsibility. The participation of Indonesian citizens in nominee arrangements places them as parties that actively facilitate the smuggling of agrarian law, an act that is contrary to the legal obligation as citizens to respect norms aimed at

protecting national interests. Notaries and PPATs who participate in the making of nominee deeds have greater professional and legal responsibilities, considering that they are public officials who have the obligation to refuse to make deeds that are contrary to the law.

Based on the above analysis, it can be affirmed that the nominee agreement in the context of the possession of land ownership by foreigners is legally invalid because it simultaneously violates: (a) the principle of nationality as regulated in Article 9 and Article 21 paragraph (1) of the UUPA; (b) prohibition of indirect transfer as regulated by Article 26 paragraph (2) of the UUPA; (c) *halal causa* conditions as determined by Article 1320 number 4 juncto Article 1337 of the Civil Code; and (d) the principle of good faith which is a fundamental principle in all agreements (Article 1338 paragraph (3) of the Civil Code). This cumulative violation reinforces the conclusion that the nominee agreement is absolutely null and void.

c. *Nominee Agreement* as a Form of Legal Abuse in the Indonesian Civil Law System

From a civil law perspective, the nominee agreement in the context of land ownership by foreigners is a real representation of abuse of law (*abuse of law/rechtsmisbruik*). This concept developed in the civil law tradition from the premise that legal freedom, including freedom of contract, guaranteed by Article 1338 of the Civil Code, is not absolute and cannot be used as an instrument to destroy fundamental legal objectives. L.J. van Apeldoorn emphasized that the law aims to bring about justice and order; Therefore, the use of legal instruments that are formally legal but aim to destroy the fundamental purpose of the law is qualified as an abuse of the law and does not receive protection from the legal system. In the doctrine of international contract law, this principle is also known as 'abuse of rights' which is an essential limitation on the autonomy of the parties.

The first and most significant manifestation of the abuse of the law in the nominee agreement is the concept of *fraus legis* or legal smuggling (*wetsontduiking*). *Fraus legis* refers to a situation in which a person formally complies with the sound of a legal norm (the letter of the law), but actually eliminates the purpose and purpose of other more fundamental norms (the spirit of the law). This act differs from frontal lawlessness because it is hidden behind its formal-legal appearance, which is precisely what makes it more dangerous and requires more careful analysis. In Dutch civil law terminology, which is a reference in the Indonesian legal system, *fraus legis* is formulated as 'het verijdelen van een dwingend wettelijk voorschrift met behulp van een rechtshandeling die formeel geoorloofd is' (the circumvention of a coercive legal provision by using a legally permissible act). The elements of *fraus legis* include: (1) the existence of imperative

norms to be avoided; (2) actions that are formally in accordance with other norms; and (3) a real intention to avoid the enactment of imperative norms. These three elements are clearly fulfilled in the nominee agreement: the imperative norm that is avoided is Article 21 of the UUPA; actions that appear formal-legal are agreements based on Article 1320 of the Civil Code; and the real intention of foreigners is to control land substantively even though it is formally prohibited.

The second dimension of abuse of law in nominee agreements is the simulation doctrine (*schijnhandeling* or simulation doctrine). In civil law, simulation occurs when the parties make an apparent act (*acte apparent*) to hide the actual legal act (*hidden act* or *acte dissimulé*). This doctrine is rooted in the principles of honesty and good faith that require the parties in a legal relationship to be transparent and not to hide their true intentions. In the nominee arrangement, the act that appears to be an agreement between foreigners and Indonesian citizens in which the Indonesian citizen acts as the formal owner on the basis of his own rights. However, the real act hidden behind this appearance is full control by foreigners as beneficial owners including the right to use, rent, manage, and ultimately 'sell' the land through the accompanying instrument of absolute power. The character of this simulation becomes even more evident when we notice that the nominee agreement is almost always accompanied by instruments that create absolute control for foreigners. In the civil law system, legal acts that contain simulations do not receive legal protection because they are contrary to the principle of good faith (*goede trouw*) which is the basis of all engagements according to Article 1338 paragraph (3) of the Civil Code.

The third dimension of abuse of the law in nominee arrangements is the doctrine of sham transaction or pseudo-transaction. In contrast to the simulation doctrine which emphasizes the duality between visible and hidden acts, the sham transaction doctrine highlights fundamental dishonesty in the drafting of transactions designed to create the impression of law that does not correspond to reality. The entire series of documents in the nominee arrangement of the nominee agreement, absolute power of attorney, lease agreement, and option agreement are part of an artificial construction designed to convince state officials (including BPN/ATR and tax agencies) that Indonesian citizens are the true owners of the land, when in reality it is foreigners who control and enjoy all the economic benefits of the land. The fundamental inauthenticity of this construction makes the entire nominee arrangement a sham transaction that does not receive legal protection. Supreme Court Decision No. 3020 K/Pdt/2014 reflects this principle: courts consistently refuse to give legal force to instruments that are essentially part of a pseudo-construction aimed at circumventing imperative norms.

By considering these three doctrinal dimensions, it can be formulated that the nominee agreement in the context of land ownership by foreigners comprehensively meets the elements of abuse of the law. From the perspective of *fraus legis*: the nominee agreement is clearly aimed at avoiding the imperative prohibition in Article 21 paragraph (1) and Article 26 paragraph (2) of the UUPA. From the perspective of the simulation doctrine: the nominee agreement creates a false dichotomy between legal ownership by Indonesian citizens and substantive ownership (beneficial ownership by foreigners), a separation that is not recognized in the Indonesian civil law system. From the perspective of the sham transaction: the entire set of instruments accompanying the nominee arrangement is an artificial construction that does not reflect the reality of the actual tenure of the land. A holistic assessment of these three dimensions emphasizes that the nominee agreement is not just a technically and formally flawed agreement, but a systematic and structured legal smuggling scheme, which simultaneously contradicts the principle of good faith (Article 1338 paragraph (3) of the Civil Code), the principle of public order (Article 1337 of the Civil Code), and the principle of nationality (Articles 9 and 21 of the Civil Code).

The legal consequences of the nominee agreement which is a form of abuse of the law are null and void for the sake of law (*nietig van rechtswege*/null and void *ab initio*). This nullity is fundamentally different from 'irrevocable' (*vernietigbaar*): an agreement that is null and void is considered non-existent from the beginning, does not require a lawsuit for annulment by either party, and does not give rise to any legally enforceable rights or obligations. All supporting instruments that accompany the nominee arrangement of absolute power of attorney, lease agreement, option agreement, and similar documents are also legally void because they follow the nullity of the principal agreement based on the principle of *accessorium sequitur principale*. The implication is that foreigners do not get any legal protection for the land they control through the nominee arrangement, and all financial investments that have been invested cannot be reclaimed under the nominee agreement.

From a legal protection standpoint, a nominee arrangement puts all parties in a legally vulnerable position. Foreigners as beneficial owners do not have the legal standing to claim their rights because their names are not recognized in the title certificate and their presence in the nominee arrangement cannot be recognized by Indonesian law. Indonesian citizens as nominees, even though they are registered as the legal owners, can at any time take over the land in full because the agreement underlying their relationship is null and void and cannot prevent such unilateral actions. Notaries or PPATs involved in making deeds supporting nominee arrangements face the risk of legal liability and

administrative sanctions based on Law Number 2 of 2014 concerning Amendments to the Law on the Notary Position and Government Regulation Number 37 of 1998 concerning PPAT. This fundamental legal uncertainty shows that nominee arrangements not only harm the parties directly involved, but also undermine the certainty and order of the national land system as a whole.

Based on the multi-doctrinal analysis above, it can be concluded that the nominee agreement in land ownership by foreigners in Indonesia is a comprehensive form of abuse of the law: it fulfills the elements of *fraus legis* because it aims to circumvent the normative imperative of the UUPA; it fulfills elements of the simulation doctrine because it creates a false dichotomy between formal and substantive possession; And it is a sham transaction because the entire construction is designed to deceive state apparatus and third parties. As a result, the nominee agreement and all its supporting instruments are null and void absolutely, as affirmed by the Supreme Court in Decision Number 3020 K/Pdt/2014. These findings underscore the need for a more comprehensive legal response not only through enforcement of existing norms, but also through legislative reforms that explicitly prohibit and impose strict sanctions on nominee arrangements in the national land sector.

CONCLUSION

Based on the results of the research and discussion, the following conclusions can be drawn. First, the nominee agreement in the practice of land ownership by foreigners in Indonesia is a mechanism that is systematically designed to circumvent the prohibition in Article 21 paragraph (1) of the UUPA, by creating an artificial separation between legal ownership held by Indonesian citizens and substantive ownership (beneficial ownership) actually enjoyed by foreigners, accompanied by various supporting instruments that give full control to foreigners. Second, from a civil law perspective, the nominee's agreement does not meet the requirements for *halal cause* as stipulated in Article 1320 number 4 juncto Article 1337 of the Civil Code, because its substantive purpose is contrary to the prohibition of the law and contrary to public order (*ordre public*). From the perspective of agrarian law, this agreement violates the principle of nationality enshrined in Article 9 and Article 21 paragraph (1) of the UUPA, and violates the prohibition on the indirect transfer of property rights to foreigners regulated by Article 26 paragraph (2) of the UUPA, with the consequence of land falling to the State. Third, through a multi-doctrinal framework that integrates the doctrine of abuse of law (*rechtsmisbruik*), *fraus legis*, the doctrine of simulation (*schijnhandeling*), and the doctrine of sham transaction, this study confirms that the nominee agreement is null and void in absolute law, cannot be saved

by any notarial formality, and does not provide any legal protection for the parties involved, as confirmed by the Supreme Court Decision Number 3020 K/Pdt/2014.

In terms of theoretical contributions, this study enriches the legal doctrine of Indonesian agreements by showing that the qualification of nominee arrangements as an abuse of law requires a multi-doctrinal approach that goes beyond the formal validity analysis based on Article 1320 of the Civil Code alone. The integration of *fraus legis*, the simulation doctrine, and the sham transaction doctrine provides a more solid and comprehensive theoretical foundation for declaring the nominee arrangement void. This research also strengthens the theory of national agrarian law by demonstrating that the principle of nationality in the UUPA is a fundamental principle that must be strengthened in the midst of increasingly massive foreign investment pressure. These findings contribute to academic discourse regarding the limits of freedom of contract and the protection of imperative norms in the context of civil relations involving foreign elements.

In terms of practical contributions and policy recommendations, this study provides four main recommendations. First, legislative reform is needed that formulates explicit provisions that prohibit and impose strict sanctions on nominee arrangements in the land sector, considering that the current UUPA does not explicitly mention the term 'nominee' even though the substantive prohibition already exists. The new provisions need to define the nominee arrangement comprehensively and establish criminal sanctions for the perpetrators. Second, it is necessary to strengthen the supervision mechanism by the Ministry of ATR/BPN on land transactions involving foreign elements, including the obligation to report transactions that exceed certain values and periodic checks on land certificates in areas with a high concentration of foreigners. Third, notarial standards need to be strengthened through the regulation of the Minister of Law and Human Rights which explicitly requires notaries and PPAT to conduct due diligence on possible nominee arrangements before making deeds, accompanied by the threat of significant sanctions for notaries who knowingly facilitate nominee arrangements. Fourth, it is necessary to strengthen inter-agency coordination between ATR/BPN, the Directorate General of Taxes, PPATK, and law enforcement officials to systematically detect and take action against nominee arrangement practices, considering that this practice is often also related to tax violations and money laundering.

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