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Legal Status of Nominee Agreements by Foreign Nationals from the Perspective of International Civil Law and the Omnibus Law on Job Creation

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Abstract: This study aims to analyze the legal status of nominee agreements (name-borrowing agreements) entered into by Foreign Nationals in land ownership in Indonesia, reviewed from the perspective of International Civil Law (IPL) and Law Number 6 of 2023 concerning Job Creation. Nominee agreements are often used as legal smuggling instruments to circumvent restrictions on land ownership for foreigners in Indonesia. The research method used is normative juridical with a statutory approach and a conceptual approach. The results of the study indicate that based on the IPL perspective, specifically the principle of *lex loci rei sitae* (the law of the place where the object is located), land ownership must be subject to Indonesian law. Therefore, nominee agreements aimed at transferring land ownership permanently to foreign nationals are void ab initio because they violate public order (public policy) and Article 26 paragraph (2) of the UUPA. On the other hand, the Job Creation Law does provide relaxation for foreign nationals to own Ownership Rights over Apartment Units, but still limits ownership of Ownership Rights over land. The Job Creation Law emphasizes the legal boundaries of foreign investment, so nominee agreements remain categorized as a form of legal smuggling that does not receive legal protection, either for the nominee or the foreign national.

Keyword: Nominee Agreement, Foreign Citizens, Private International Law, Job Creation Law, Legal Smuggling.

INTRODUCTION

Globalization and international economic integration have triggered massive cross-border human and capital mobility. As one of Southeast Asia's most strategically growing economies, Indonesia has become a prime destination for foreign investment, particularly in

the tourism and property sectors.¹ The strong interest of foreign nationals (WNA) in controlling and owning property assets in Indonesia often runs up against strict domestic regulations. Based on Article 21 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Indonesia adheres to the principle of absolute nationality, whereby only a single Indonesian citizen (WNI) is permitted to own land with the status of Hak Milik (Freehold). This restriction aims to protect national agrarian sovereignty and prevent excessive land acquisition by foreign parties.

The concept of a nominee originates from common law practices in countries such as the United Kingdom. In that legal system, nominees are often used in the context of asset, share, or property ownership, to separate formal ownership (legal ownership) from substantial ownership (beneficial ownership).² In Indonesia, nominee agreements have become widely used since the era of globalization and the influx of foreign investment in the 1990s and early 2000s, particularly as a solution for foreign investors to overcome ownership restrictions in certain sectors such as land, plantations, and other strategic sectors.³ However, these agreements are often legally controversial in Indonesia, particularly in the land sector, as they are deemed to conflict with the Basic Agrarian Law (UUPA).⁴

The high interest in ownership of landed houses of high economic value, which clashes with the express prohibition in the UUPA, has given rise to a legal maneuvering practice in society called nominee agreements (name-borrowing agreements). In this private legal construct, a foreign national uses the identity of an Indonesian citizen to be listed as the formal owner on a land title (Hak Milik) certificate. Behind the scenes, the parties enter into a derivative agreement stating that the actual material owner, fund holder, and full controller of the land is the foreign national. Dogmatically, this nominee agreement practice constitutes a clear form of legal smuggling (*wetsontduiking*).⁵ Based on Article 1320 in conjunction with Article 1337 of the Civil Code (KUHPerdata), this type of agreement is objectively flawed because it has a prohibited cause, so it is threatened with the sanction of being null and void by law (*nietig van rechtswege*).⁶

The dynamics of investment law in Indonesia have undergone a significant paradigm shift since the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (the Job Creation Law). This regulation promotes the spirit of economic liberalization and ease of doing business to attract foreign capital. One fundamental breakthrough in the Job Creation Law is the relaxation of the rules for foreign nationals to own apartment units (Sarusun) with Freehold Title (Hak Milik) on land with Right of Use (Hak Pakai) or Right of Building (HGB) titles. This new policy creates a dual reality: on the one hand, the government has opened the legal door to foreign residential ownership; on the other, strict restrictions on landed land with Freehold Title (Hak Milik) remain in place. This loophole has the potential to encourage

¹ Almando, B. (2023). Implementasi Kepemilikan Properti Orang Asing di Indonesia. *Jurnal Paradigma Hukum Pembangunan*, 8(2), 197–212.

² Rendywiranto. (2024). Penguasaan Hak Atas Tanah Oleh Warga Negara Asing Melalui Perjanjian Nominee. *Jurnal Hukum Staatsrechts*, 3(1).

³ Saputri, A. D. (2015). Perjanjian Nominee dalam Kepemilikan Tanah Bagi Warga Negara Asing yang Berkedudukan di Indonesia (Studi Putusan Pengadilan Tinggi Nomor: 12/Pdt/2014/PT.Dps). *Jurnal Repertorium*, 2(2), 99–102.

⁴ Fitria. (2020). Kajian Yuridis Perjanjian Nominee dalam Kepemilikan Tanah oleh Warga Negara Asing di Kabupaten Badung Bali. *Lex Jurnalica*, 17(2).

⁵ Entah, A. R. (1996). Penyelundupan Hukum (Fraus Legis). *Jurnal Ilmu Hukum Pandecta*, 1(1).

⁶ Ada, R., & Safik, A. (2023). Analisis Yuridis Kepemilikan Hak Atas Tanah Melalui Perjanjian Nominee Oleh Warga Negara Asing di Indonesia (Studi Putusan Perkara Nomor: 2959 K/Pdt/2022). *Unes Law Review*, 6(2), 7624–7636.

foreign nationals to continue using nominee agreements to control property types not yet covered by the Job Creation Law.

From the perspective of Private International Law (IPL), the existence of nominee agreements by foreign nationals creates legal complexity due to the foreign element.⁷ The Indonesian Constitution universally recognizes the principle of *Lex Loci Rei Sitae* (or *Lex Situs*), which affirms that the legal status and ownership rights of immovable property are absolutely subject to the law of the country where the property is located, namely Indonesian positive law.⁸ Furthermore, restrictions on land ownership for foreigners in Indonesia are classified as part of a compelling public policy (*dwingend recht*). Therefore, any form of autonomous will of the parties in a private international contract must not deviate from this pillar of public order. When a dispute or breach of contract arises between a foreign national and their Indonesian counterpart, determining the validity of the contract, the applicable law, and the competent judicial forum becomes a heated debate that remains unresolved in court.

In general, a nominee agreement is a type of agreement that lacks clear positive legal provisions because the concept is not regulated by specific legislation.⁹ However, a nominee agreement implicitly involves the following components: 1. A representative relationship means one party grants authority to another. The authorized party, or nominee, has full authority to act on behalf of the granting party. 2. If explicitly approved and permitted by the Principal, the nominee cannot do anything. 3. The nominee will act as the legal representative of the Principal.

In the context of contract formation, limitations are also imposed on the nominee agreement. These limitations refer to ownership rights over land/immovable property, which are already limited to Indonesian citizens. In practice, not all individuals or organizations are permitted to acquire ownership rights over immovable property, particularly land, as stipulated in the section on restrictions on the sale of immovable property. Although the UUPA prohibits foreign nationals from owning land in Indonesia, the regulation still allows them to obtain limited land rights, such as HGU (right of ownership), HGB (right of use), and right of use.

Furthermore, the notary must verify the legal status of the buyer.¹⁰ The notary has the right to reject the agreement if the buyer is a foreign national. A nominee agreement is essentially a mechanism used to circumvent legal provisions prohibiting foreign nationals from owning land in Indonesia.¹¹ Through Article 9 paragraph (1) in conjunction with Article 21 paragraph (1) of the UUPA, full authority over land, water, and airspace is only given to Indonesian citizens, so that exclusive land ownership is also only intended for Indonesian citizens. This regulation is further strengthened through Article 26 paragraph (2) of the UUPA which confirms that every legal act, whether through sale and purchase, exchange, gift, will, or other form which has the aim of transferring ownership rights, either directly or indirectly,

⁷ Udiani, M. C. S., Mangku, D. G. S., & Yulianti, N. P. R. (2022). Hukum Internasional Sebagai Sumber Hukum di dalam Menyelesaikan Sengketa Internasional. *Ganesha Law Review*, 4(2), 73–83. <https://doi.org/10.23887/blr.v4i2.1429>

⁸ Handayani, S. A., Parameswari, D. A., & Nugroho, L. D. (2025). Konflik Hukum Perdata Internasional dalam Kepemilikan Tanah oleh WNA di Indonesia: Studi atas *Lex Rei Sitae* dan Public Order. *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, 4(2), 842–857. <https://doi.org/10.55606/jurish.v4i2.5311>

⁹ Winardi, M. (2017). Penguasaan Tanah Oleh Warga Negara Asing Dengan Perjanjian Pinjam Nama (Nominee) di Wilayah Indonesia Menurut Undang-Undang Nomor 5 Tahun 1960. *Jurnal Repertorium*, 4(1), 61–72.

¹⁰ Julian Noor, H. (2016). Pasal 66 Ayat (1) Undang-Undang Jabatan Notaris dan Tindak Pidana Korupsi. *Jurnal Komunikasi Hukum (JKH)*, 2(1). <https://doi.org/10.23887/jkh.v2i1.7278>

¹¹ Dzurwatul, & Priyono, E. A. (2024). Tanggung Jawab Notaris Akan Perjanjian (Akta) Pinjam Nama (Nominee) Warga Negara Asing Dalam Kepemilikan Tanah dan Bangunan. *Unes Law Review*, 6(4), 12665–12673.

to foreign nationals or Indonesian citizens who have dual citizenship, is declared null and void by law and invalid.

To date, there remains a lack of harmony between the traditional principles of the Indonesian Property Rights Act (HPI), the strict nationality doctrine of the UUPA, and the spirit of property market deregulation brought about by the Job Creation Law. There is no firm legal certainty regarding how Indonesian law positions the civil rights of foreign nationals already bound by nominee contracts following the implementation of the Job Creation Regulation.

METHOD

Research is a process or activity of gathering data to answer a research problem. A simple definition of a research method is the procedure for conducting research. Research methods discuss the procedures for conducting research. The term "research method" consists of two words: "method" and "research." The word "method" comes from the Greek word "methodos," meaning "way" or "path." A method is a scientific activity related to a systematic way of understanding a research subject or object, as an effort to find answers that can be scientifically justified and validated. The type of legal research used in this study is normative legal research, which examines various document studies.¹² It utilizes secondary data such as legislation, court decisions, books, legal theories, and journals focusing on positive and international legal norms.

RESULTS AND DISCUSSION

Legal Status of Nominee Agreements from the Perspective of International Private Law (IPL)

Article 1313 of the Civil Code states that "An agreement is an act in which one or more persons bind themselves to one or more persons." Fulfilling the requirements for a valid agreement as stipulated in the Civil Code is key to ensuring that an agreement or contract is legally binding.¹³ The requirements for a valid agreement, according to Article 1320 of the Civil Code, are as follows: 1. The agreement of those who bind themselves; 2. The capacity to enter into an agreement; 3. A specific thing; and 4. A lawful cause. The agreement of the binding parties and the capacity to enter into an agreement are subjective requirements because they relate to the legal subject.

Meanwhile, a specific thing and a lawful cause are called objective requirements because they relate to the legal object of the agreement. There are several different legal implications if these requirements are not met. If the subjective requirements are not met, the agreement is voidable. Therefore, as long as the agreement is not canceled by a judge despite a request for cancellation from the party submitting it, the agreement remains binding. Meanwhile, if the objective requirements are not met, the agreement is null and void. This means the agreement never existed in the first place. Therefore, there is no basis for suing either party before a judge.

A Nominee Agreement (Nominee or Legal Owner) is a form of anonymous agreement in which one party (the Nominee or Legal Owner) agrees to allow their name to be used in the administrative/legal records of ownership of an asset (such as shares or land rights), while ownership of the economic benefits, control, and funds are actually held by the other party (the Beneficial Owner). A nominee agreement creates a legal relationship with a foreign element because it involves a foreign national. Based on the principles of the Indonesian National Law (HPI), determining the validity of property ownership must refer to the principle of *Lex Rei*

¹² Fitria. (2020). Kajian Yuridis Perjanjian Nominee dalam Kepemilikan Tanah oleh Warga Negara Asing di Kabupaten Badung Bali. *Lex Jurnalica*, 17(2).

¹³ Nabila, A. P., & Djayaputra, G. (2023). Urgensi Pelaksanaan Kebebasan Berkontrak Dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak. *Unes Law Review*, 6(2).

Sitae / Lex Situs (the law of the place where the object is located), as affirmed in Article 17 of the General Bepalingen van Wetgeving (AB).¹⁴ Because the object of the agreement is land within Indonesian territory, all legal implications are absolutely subject to Indonesian national law (UUPA), not the personal law of the foreign national.

Nominee agreements in the Indonesian civil law system have a problematic and controversial position. The concept of a nominee, or sometimes called a trust, is not recognized in the civil law system applicable in Indonesia. Trusts, which were originally said to be typical of the common law tradition, absolute ownership is divided into ownership registered in law, known as the legal owner, and ownership in the form of benefit or enjoyment of the object, known as the beneficial owner. Fundamentally, the validity of a nominee agreement needs to be examined through the perspective of the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, which requires four elements: agreement of the parties, capacity to enter into an agreement, a certain thing, and a lawful cause.

From a civil law doctrine perspective, nominee agreements with the aim of circumventing the provisions of the UUPA fall into the category of absolute nullity (*nietigheid van rechtswege*), meaning they are null and void and deemed to have never existed from the beginning (*ab initio*). This is reinforced by the provisions of Article 26 paragraph (2) of the UUPA which states that every sale, exchange, gift, gift by will, and other acts intended to directly or indirectly transfer ownership rights to foreigners are null and void by law. Although it does not explicitly include nominee agreements, the phrase "other acts intended to directly or indirectly transfer ownership rights" can be interpreted to include nominee constructions intended to grant control of land to foreigners. It should be noted that in practice, nominee agreements are often packaged within a series of agreements that formally appear legal, such as a name loan agreement followed by a deed of debt acknowledgement, a power of attorney to sell, and a declaration of trust. While these agreements may appear to meet legal requirements individually, when viewed as a unified whole, designed to circumvent the provisions of the Basic Agrarian Law (UUPA), the entire agreement constitutes an act contrary to law and public order. Therefore, based on the doctrine of simulation (a sham agreement), such agreements can be voided if proven to be intended to circumvent the prohibition on land ownership by foreign nationals.¹⁵

Under the Indonesian Criminal Code (HPI), nominee agreements are considered flawed because they constitute bad faith and legal smuggling (*fraus legis*). The foreign national uses the legal persona of an Indonesian citizen as a nominee on paper (on the certificate), yet all control, investment funds, and economic benefits are vested in the foreign national. This manipulative act directly violates Indonesian public policy, requiring Indonesian courts to declare the contract legally void.

Legal Implications Based on the Job Creation Law and the Basic Agrarian Regulations (UUPA)

Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) represents a significant milestone in the history of national agrarian law. This law was enacted with the spirit of liberating the people, particularly farmers, from the legacy of the unequal and exploitative colonial agrarian system. Through the UUPA, the state asserted its control over land, water, and the natural resources within them, not for monopolization, but as a means of

¹⁴ Yulianti, NPR, Hartana, Mangku, DGS, Hadi, IGAA, & Arta, KS (2021). Legal Protection for Women and Children as Victims of Human Trafficking in Indonesia. *Journal of Legal Ethical and Regulatory Issues*, 24 (1).

¹⁵ Yulianti, N. P. R., Mangku, D. G. S., & Kbarek, L. N. (2024). Customary law and justice: Protecting the rights of women victims of sexual violence in Bali. *Jurnal Hukum Novelty*, 15(2), Article 2. <https://doi.org/10.26555/jhn.v15i2.28542>.

realizing the greatest possible prosperity for the people. This affirmed the state's position as the protector of people's land rights, especially farmers, from the threat of injustice in land ownership and use. One of the most fundamental forms of legal protection in the UUPA is the principle of the social function of land, as stipulated in Article 6.¹⁶

This provision affirms that all land rights, regardless of their form, may not be exercised solely for personal gain, especially if they are detrimental to the community. In this context, farmers who directly manage agricultural land are actually fulfilling this social function. This principle provides the ethical and legal basis for land to be used for collective welfare, not merely for commercial exploitation or economic speculation. Reinforcing this principle, Article 7 of the UUPA prohibits excessive land ownership by a single party to prevent agrarian inequality. This protects smallholder farmers, who have often been marginalized in the land ownership structure.

With this restriction, the state can prevent unproductive land accumulation by corporations or wealthy individuals, while also guaranteeing farmers' access to suitable agricultural land as a source of livelihood. This prohibition also serves as a constitutional basis for the implementation of agrarian reform as an effort to redistribute justice. Another provision that guarantees the position of farmers is Article 10 of the UUPA, which stipulates the obligation of agricultural landowners to actively cultivate their land. This aims to ensure that agricultural land is not a passive object but is managed directly by its owner to support national food production. In practice, this provision also serves as a barrier against speculation and leasing of agricultural land, which actually weakens the position of farmers as agricultural entrepreneurs. The state, through this article, encourages farmers to remain active agrarian subjects, not simply farm laborers on investor-owned land.

As a legal framework for the management of agrarian resources, the state enacted Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The UUPA serves as the primary foundation of the national agrarian legal system, upholding the principles of social justice, recognizing people's rights to land, and regulating the social function of land. The UUPA is a progressive legal product born out of the spirit of social change and asset redistribution to strengthen the position of communities, particularly small farmers, within the national agrarian structure. One key concept in the UUPA is that land control and ownership must take into account the public interest and must not be exploitative or detrimental to the community.

The principle of the social function of land, as stipulated in Article 6 of the UUPA, states that no land right may be used solely for private gain if it causes harm to the wider community. This concept requires that land be used productively, fairly, and in accordance with community needs. Furthermore, the UUPA, through Article 7, also prohibits excessive land control to avoid inequality in agrarian control. The balance between individual and community interests is a key principle that distinguishes the UUPA from the colonial agrarian legal system, which favored investors. Furthermore, the UUPA stipulates that only Indonesian citizens can own land rights (Article 9) and requires agricultural landowners to actively cultivate their own land (Article 10).

This demonstrates the national agrarian legislation's bias toward farmers as the primary actors in smallholder agriculture. This provision aims to prevent land speculation and encourage land productivity as a source of sustainable livelihoods for farmers and their families. Thus, the UUPA provides a relatively robust legal framework for protecting farmers' land rights. However, over the past two decades, there has been a shift in the orientation of national agrarian policy, increasingly favoring investment liberalization. This culminated in

¹⁶ Rangkuti, A. I. E., Dantes, K. F., & Yulianti, N. P. R. (2023). Kepastian Hukum Peralihan Hak Milik Melalui Jual Beli Terhadap Tanah yang Berstatus Lahan Pertanian Pangan Berkelanjutan di Kabupaten Buleleng. *Jurnal Ilmu Hukum Sui Generis*, 3(2).

the enactment of Law Number 11 of 2020 concerning Job Creation (the Job Creation Law), which aims to improve the ease of doing business and accelerate infrastructure development. One important implication of the Job Creation Law is a change in the regulation of land acquisition for public purposes, which now includes industrial estates, tourism areas, and special economic zones. This expansion of the definition of public interest has the potential to shift the orientation of land use from social interests to corporate and investment interests.

The Job Creation Law clarifies the limits on asset ownership for foreigners without revoking the pillars of agrarian nationalism established in the Basic Agrarian Law (UUPA): Land and Property Sector: Through Article 144 of the Job Creation Law in conjunction with Government Regulation No. 18/2021, foreign nationals are now given the legal right to own apartment units (Sarusun) on land with a Right of Use or Building Use Rights (HGB)¹⁷, as well as Right of Use on land owned by Indonesian citizens through an official agreement before a Land Deed Official (PPAT).¹⁸ The existence of this official route invalidates the economic urgency of using nominee agreements. If foreign nationals persist in using nominee agreements to control property rights, then based on Article 26 paragraph (2) of the UUPA, such actions are legally null and void, and the land must be confiscated/fall to the state.

Investment Sector (Shares): The prohibition on borrowing names also applies to the corporate sector (nominee shareholders). The Job Creation Law maintains the strict prohibition in Article 33 of the Investment Law, which prohibits investors from entering into share transfer agreements in another person's name. Such agreements are automatically void. Coupled with the integration of the Beneficial Ownership reporting system, the government has further restricted the freedom of foreign nationals to operate under local names.¹⁹

Notary's Responsibilities as Gatekeeper of Legal Status

The role of various legal professions, including notaries, has changed due to the increasing complexity of economic and financial crimes. In the past, notaries were seen as having the authority to issue official deeds. However, in contemporary regulatory systems, this role has evolved. Notaries no longer simply draft and approve legal documents; they also perform preventive duties to prevent legal instruments from being misused as tools for illegal activities, particularly money laundering.²⁰ Therefore, notaries function as gatekeepers, preventing the entry of illegal activities into the legal and financial systems through the legal instruments they draft.²¹

A gatekeeper can be defined as a person or profession with access to the legalization process of a legal act, allowing them to act as an early check on potential legal irregularities.²² Notaries play a crucial role in various important transactions, such as establishing limited liability companies, amending company articles of association, transferring shares, investment agreements, property transactions, gifts, inheritances, and various other types of transactions. Notaries have a responsibility to understand the identity and legal purpose of a transaction because this position allows them to interact directly with service users. One of the primary

¹⁷ Setyo, D. P. W. (2022). Kepemilikan Hak Milik Atas Satuan Rumah Susun Warga Negara Asing dalam Undang-Undang Cipta Kerja. *Jurnal Hukum Ius Quia Iustum*, 30(1).

¹⁸ Lijaya. (2021). Karakteristik Hak Milik atas Satuan Rumah Susun bagi Warga Negara Asing yang Berkedudukan di Indonesia. *Literasi Hukum*, 5(1).

¹⁹ Dantes, K. F., Mangku, D. G. S., & Yulianti, N. P. R. (2022). The Future Impact of Electronic Signature (E-Signature) in the E-GMS of Limited Liability Companies. *Jurnal Komunikasi Hukum (JKH)*, 8(1), 527–536.

²⁰ Samiya, A. I., & Susetyo, H. (2021). Notaris Sebagai Pelapor Dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. *Jurnal Hukum Kenotariatan*.

²¹ Amanda, B. O. (2022). Prinsip Kehati-Hatian Notaris di Dalam Pembuatan Akta yang Sempurna. *Recital Review*, 4(1), 218–243.

²² Marzuki, M. A. (2018). Tanggung Jawab Notaris Atas Kesalahan Ketik pada Minuta Akta yang Sudah Keluar Salinan Akta. *Jurnal Komunikasi Hukum (JKH)*, 4(2), 128–138. <https://doi.org/10.23887/jkh.v4i2.15463>

purposes of a notary is to ensure legal security. Official documents prepared by public officials guarantee the date of the deed, the identity of the parties, the contents of the agreement, and the parties' intentions. Therefore, notaries are considered a state instrument for providing legal certainty in civil law. However, the rise of financial crime has shown that original deeds can also be used to disguise the source of funds obtained through criminal activity. This situation has prompted a shift in the perspective that legal certainty is not only achieved through formally valid laws but must also consider the legality and integrity of the transactions underlying those laws.

The principle of prudence (gatekeeping) is related to the concept of fence-sitting. The principle of prudence in notarial law requires notaries to refuse any request to prepare a deed without verifying the identity and legal intentions of the parties.²³ The purpose of this principle is to prevent notaries from becoming a tool for legitimizing transactions originating from criminal acts. In other words, notaries are not only responsible for preparing official documents; they must also have a sense of professional responsibility to ensure that the services they provide are not used as instruments of crime. Notaries and Land Deed Officials (PPAT) act as a preventive measure against legal malpractice. Under the Notary Law (UUN), notaries are required to apply the Prudential Principle. Before formalizing a deed, they must conduct a thorough investigation into the identity, citizenship, and legal intentions of the parties.

If a notary detects that a proposed contract (such as an absolute power of attorney, an unreasonable 99-year lease, or a simulated debt statement) is intended to circumvent the prohibition on land ownership by foreign nationals, they have the right and obligation to refuse to provide their services. Falsifying or passing off nominee documents can subject notaries to administrative sanctions, license revocation, and even criminal sanctions for involvement in the falsification of authentic documents.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Nominee Agreements made by Foreign Nationals (WNA) to control Ownership Rights to land in Indonesia are null and void.²⁴ This agreement is categorized as a form of legal smuggling (*fraus legis*) because it manipulates the principle of freedom of contract to violate the imperative provisions (*dwingend recht*) in Article 9 paragraph (1) in conjunction with Article 21 paragraph (1) of the UUPA which grants exclusive land ownership rights only to Indonesian citizens. Foreign nationals are absolutely prohibited from owning property with the status of Ownership Rights, Cultivation Rights (HGU), or Building Rights (HGB) in their own name. However, the Job Creation Law has provided a safe legal solution through the ease of ownership of Use Rights and Apartment Units for foreign nationals. With this official route, the practice of nominee agreements no longer has legal or economic urgency. Notaries play a crucial role as gatekeepers who are obliged to apply the prudential principle to check the citizenship status of the parties²⁵. Based on the Notary Law, a notary is required to refuse to formalize an agreement if he or she finds that the foreigner is acting in bad faith to circumvent agrarian law. In accordance with the provisions of Article 26 paragraph (2) of the UUPA, all legal acts aimed at transferring ownership rights to a foreigner, whether directly or indirectly, are declared invalid. The worst impact of this cancellation is the loss of capital protection for

²³ Adryani, N. P. (2023). Tanggung Jawab Notaris Untuk Melaporkan Dugaan Terjadinya Tindak Pidana Pencucian Uang. *JISIP: Jurnal Ilmu Sosial dan Pendidikan*, 7(1), 89–102. <https://doi.org/10.58258/jisip.v7i1.4024>

²⁴ Rendywiranto. (2024). Penguasaan Hak Atas Tanah Oleh Warga Negara Asing Melalui Perjanjian Nominee. *Jurnal Hukum Staatrechts*, 3(1).

²⁵ Adryani, N. P. (2023). Tanggung Jawab Notaris Untuk Melaporkan Dugaan Terjadinya Tindak Pidana Pencucian Uang. *JISIP: Jurnal Ilmu Sosial dan Pendidikan*, 7(1), 89–102. <https://doi.org/10.58258/jisip.v7i1.4024>

the foreigner, where the rights to the land are automatically forfeited and confiscated by the state.

Recommendations

1. The government needs to intensify public awareness campaigns regarding the ease of property ownership for foreign nationals through the Right to Use and Ownership Rights for Apartment Units (HMSRS) scheme, as stipulated in the Job Creation Law and Government Regulation No. 18/2021. This is crucial to encourage foreign investors to shift from the illegal nominee scheme to the official one.
2. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) must integrate land data with the system of the Directorate General of General Legal Administration (AHU) of the Ministry of Law and Human Rights. The goal is to early detect corporations or individuals suspected of using Indonesian citizen names to conceal their true foreign beneficial owners.
3. The government must consistently implement the mandate of Article 26 paragraph (2) of the UUPA, which requires confiscating and handing over nominee land to the state, to provide a deterrent effect for perpetrators of legal fraud.
4. Notaries/PPATs are required to strictly implement the prudential principle. Before signing a deed, conduct a thorough review of identity documents, marital status (whether a mixed marriage without a separation of property agreement), and the sources of funds of the parties involved.
5. Notaries/PPATs must be firm and exercise their legal authority to reject any deed—whether a sale and purchase deed, absolute power of attorney, or an unreasonable long-term lease agreement—if there are strong indications that it is part of a nominee agreement.
6. Foreign nationals are advised to discontinue using nominee schemes due to the very high financial and legal risks (assets being confiscated by the state or unilaterally claimed by Indonesian citizens). Foreign nationals should use legal channels by establishing a PT PMA (to hold the HGB) or purchasing a dwelling with a Right of Use in their own name.
7. Foreign nationals currently using nominee schemes are advised to immediately undergo legal cleansing or restructuring. Change the ownership status of the Right of Ownership (in the name of the Indonesian citizen) to a Right of Use in the name of the foreign national directly, or upgrade it to a HGB in the name of the foreign national's PT PMA.

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