JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i6
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Received: 07 Oktober 2026 | **Revised:** 15 Oktober 2026 | **Accepted:** 21 Oktober 2026

The Legal Status of Shares as the Object of a Domestic Nominee Agreement in the Distribution of Inheritance and the Notary's Responsibility in Issuing a Deed of Inheritance Rights

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Abstract: Domestic nominee (borrowed-name) share arrangements between Indonesian citizens are commonly used to conceal the real owner, protect assets, and simplify administration, yet they create legal uncertainty when the registered nominee dies. Article 33 of the Investment Law prohibits borrowed-name share arrangements by both domestic and foreign investors making a direct investment through a limited liability company, so the decisive question is one of statutory scope and the characteristics of the transaction rather than nationality; validity is tested under the Civil Code only for arrangements that fall outside that scope. The research gap is that existing studies focus on the validity of nominee agreements and beneficial ownership transparency, but rarely connect them with succession and the notary's responsibility. This study analyses two problems: the legal status of domestic nominee shares upon the nominee's death, and the extent of a notary's responsibility in issuing a deed of inheritance whose estate includes such shares. Using a normative juridical method with statutory, conceptual, and comparative (Indonesia-Singapore) approaches, the study finds that under Article 48 of the Company Law the registered nominee is the lawful owner, so the shares form part of the nominee's estate and pass to the nominee's heirs, while the beneficial owner holds no proprietary right but, at most, a personal claim that is void where the arrangement falls within Article 33 of the Investment Law or amounts to evasion of law, and that, where a valid out-of-scope arrangement exists, ranks as a debt of the estate settled before the heirs' indefeasible share. The notary, bound to formal truth, records the shares from the shareholder register and is liable only where procedural fault or complicity is proven. Unlike Indonesia, Singapore recognizes trusts and regulates nominee arrangements through disclosure, thereby protecting beneficial owners.

Keywords: Domestic Nominee Agreement, Shares, Inheritance, Notary Liability, Beneficial Owner

Abstrak: *Perjanjian nominee saham domestik (pinjam nama) antar-warga negara Indonesia lazim digunakan untuk menyembunyikan pemilik yang sebenarnya, melindungi aset, dan*

menyederhanakan administrasi, tetapi menimbulkan ketidakpastian hukum ketika pemegang saham tercatat selaku nominee meninggal dunia. Pasal 33 Undang-Undang Penanaman Modal melarang perjanjian pinjam nama atas saham baik oleh penanam modal dalam negeri maupun asing yang melakukan penanaman modal langsung melalui perseroan terbatas, sehingga persoalan pokoknya adalah ruang lingkup undang-undang dan karakteristik transaksi, bukan kewarganegaraan; keabsahan diuji berdasarkan Kitab Undang-Undang Hukum Perdata hanya untuk perjanjian yang berada di luar ruang lingkup tersebut. Kesenjangan riset terletak pada kajian terdahulu yang menitikberatkan keabsahan perjanjian nominee dan transparansi pemilik manfaat, namun jarang menghubungkannya dengan pewarisan dan tanggung jawab notaris. Penelitian ini menganalisis dua persoalan, yaitu status hukum saham nominee domestik ketika nominee meninggal dunia dan sejauh mana tanggung jawab notaris dalam menerbitkan akta keterangan waris yang hartanya memuat saham tersebut. Dengan metode yuridis normatif melalui pendekatan perundang-undangan, konseptual, dan perbandingan (Indonesia-Singapura), penelitian menemukan bahwa berdasarkan Pasal 48 Undang-Undang Perseroan Terbatas nominee tercatat merupakan pemilik yang sah, sehingga saham menjadi bagian harta warisan nominee dan beralih kepada ahli warisnya, sedangkan pemilik manfaat hanya memegang hak perorangan yang menjadi batal ketika perjanjian nominee tergolong penyelundupan hukum berdasarkan Pasal 1320, 1335, dan 1337 KUHPerdata. Notaris yang terikat pada kebenaran formil mencatat saham berdasarkan daftar pemegang saham dan hanya bertanggung jawab apabila terbukti terdapat kesalahan prosedur atau keterlibatan. Berbeda dengan Indonesia, Singapura mengakui lembaga trust dan mengatur perjanjian nominee melalui kewajiban keterbukaan sehingga pemilik manfaat lebih terlindungi.

Kata Kunci: *Perjanjian Nominee Domestik, Saham, Pewarisan, Tanggung Jawab Notaris, Pemilik Manfaat*

INTRODUCTION

A nominee, or borrowed-name, agreement is a common practice found in share ownership in Indonesian limited liability companies. This agreement separates the party whose name is registered as the company's shareholder (the legal owner) from the party who actually provides the capital and enjoys the benefit of the shares (the beneficial owner). The registered party merely lends its name, while all economic benefit and control remain with the beneficial owner (Baharudin et al., 2024). This borrowed-name practice is used in two different contexts: foreign investment, and purely domestic arrangements between Indonesian citizens.

The scope of the Investment Law must be clarified at the outset, because it shapes the whole analysis. Article 33 paragraph (1) of Law Number 25 of 2007 on Investment (hereinafter the "Investment Law") prohibits both domestic investors and foreign investors who invest in the form of a limited liability company from entering into any agreement or statement affirming that the ownership of shares in the company is for and on behalf of another person, and Article 33 paragraph (2) declares such an agreement or statement null and void by operation of law. The prohibition is therefore not confined to foreign investment; by its express terms it also binds domestic investors (penanam modal dalam negeri), so that the Indonesian citizenship of both parties does not, by itself, place a borrowed-name arrangement outside the prohibition, and an otherwise acceptable motive does not make an arrangement that falls within Article 33 valid. What determines the reach of Article 33 is not nationality but the statutory scope of investment and the characteristics of the transaction. This study focuses on domestic nominee share arrangements between Indonesian citizens, using the foreign-investment case only as a comparator in relation to the restrictions on foreign ownership of certain business

sectors outside the positive investment list under Presidential Regulation Number 10 of 2021 as amended (Yanuar, 2021; Saras, 2023; Kaligis et al., 2024).

Under Article 1 number 1 of the Investment Law, investment covers every form of investing activity, whether by a domestic or a foreign investor, to conduct business within the territory of Indonesia, and Article 2 extends the Law to investment in all sectors. The Elucidation of Article 2 limits this to direct investment and expressly excludes indirect or portfolio investment. Accordingly, a domestic borrowed-name arrangement over shares in a limited liability company that constitutes a direct investment in a business falls within the scope of Article 33, so that the prohibited nominee declaration is null and void under Article 33 paragraph (2) regardless of the nationality of the parties.

It is only where a particular arrangement falls outside the statutory scope of the Investment Law - for example, a holding that amounts to indirect or portfolio investment rather than direct investment in a business - that Article 33 does not apply, and the validity of the arrangement must then be assessed under the general requirements for a valid agreement in the Civil Code. Even in that situation, the prohibited nominee declaration must be distinguished from transactions that are lawful in their own right, such as a loan, a pledge, or a power of attorney; the nullity of the nominee declaration does not automatically void an independent loan or pledge that satisfies its own legal requirements. This study therefore does not treat the entire package of documents as presumptively valid, but assesses each element according to its own lawful cause.

The main problem with domestic nominee agreements lies in the purpose of their use, which is often improper. Domestic borrowed-name arrangements are frequently used to conceal the identity of the real owner so that assets cannot be traced, to avoid legal obligations such as tax liabilities and shareholder responsibilities, to obscure the beneficial owner within a corporate structure, and to circumvent provisions that restrict ownership or to create conflicts of interest (Slamet et al., 2023). Yet the State is, in fact, strengthening the principle of beneficial ownership transparency through Presidential Regulation Number 13 of 2018 on the Application of the Beneficial Ownership Principle for Corporations, which requires corporations to disclose the individual who is their beneficial owner in order to prevent money laundering and terrorism financing (Fitria, 2022; Jatmiko & Prananingtyas, 2023). There is thus a tension between borrowed-name practices that conceal the owner and legal policy that demands transparency (Nivia, 2023).

From the standpoint of company law, Indonesia adheres to the principle of registered shares. Article 48 paragraph (1) of Law Number 40 of 2007 on Limited Liability Companies (hereinafter the "Company Law") provides that shares are issued in the name of their owner, and Article 52 paragraph (2) of the Company Law affirms that rights over shares take effect only once the shares are recorded in the register of shareholders. Accordingly, the party recognised as the shareholder is the party whose name is registered, namely the nominee, not the beneficial owner (Harahap, 2016). Unlike legal systems that recognise the trust, Indonesian law does not recognise a division of ownership into legal and beneficial title, so that the beneficial owner holds no proprietary right over the shares.

The matter becomes more complicated once the nominee, as the registered shareholder, dies. Death opens the succession at that very moment, so that all the rights and obligations of the deceased pass to the heirs under Article 833 in conjunction with Article 830 of the Civil Code. At this point three fields of law operate at once: company law, which places the nominee as the registered owner; the law of contract, which determines the validity of the nominee agreement; and the law of succession, which determines who is entitled to the estate. The question that arises is whether the shares become part of the nominee's estate and pass to the nominee's heirs, or remain the right of the beneficial owner who has enjoyed them all along.

This issue has a direct impact on notarial practice. For Indonesian citizens of Chinese descent, proof of heirship is made in the form of a deed of inheritance rights issued by a notary, as regulated under Article 111 paragraph (1) point c of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 (Christiantirta & Priyono, 2022; Juliantika, 2023). When the estate includes shares that turn out to be the object of a nominee agreement, the notary is confronted with the question of what must be recorded as part of the estate and the extent of the notary's responsibility should a claim later arise from the beneficial owner.

This issue is not merely theoretical. Closely held companies whose shares are controlled through borrowed-name arrangements are widely found in practice, including in family companies, and it is not uncommon for the existence of a nominee agreement to come to light only when the registered shareholder dies and the estate begins to be administered. It is at that point that legal certainty is tested, namely when the nominee's heirs regard the shares as part of the estate while the beneficial owner regards the shares as their own. Clarity regarding the legal status of the shares and the limits of the notary's responsibility is important to prevent protracted disputes and to protect the interests of the parties, as well as the legal certainty of the deed drawn up by the notary.

A number of earlier studies have discussed the validity of nominee agreements and concluded that they constitute an evasion of law that is null and void by operation of law (Slamet et al., 2023; Kana & Nandari, 2024; Agustinus & Zukriadi, 2025; Dewi Lestari & Puspadewi, 2025), and have discussed the position of the beneficial owner within the framework of corporate transparency (Fitria, 2022; Nivia, 2023). However, these studies have not connected the validity of nominee agreements with the event of succession and have not discussed the notary's responsibility for nominee shares. The *research gap* of this study lies in the absence of research linking the legal status of domestic nominee shares in succession with the limits of a notary's responsibility in issuing a deed of inheritance rights. The *state of the art* of this research lies in combining the analysis of company law, succession law, and notarial law within a single study, and in using the regulatory framework in Singapore as a comparator to assess the weaknesses in beneficial-owner protection in Indonesia. The objective of this study is to analyse the legal status of domestic nominee shares in the distribution of an estate and to determine the limits of a notary's responsibility in issuing a deed of inheritance rights over such shares.

METHODS

This study is a normative legal study examining the norms of positive law, legal principles, and doctrine relating to the object of the research. This type of research was chosen because the issue under study is normative in nature, namely the legal rules governing the position of nominee shares in succession and the notary's responsibility, rather than an empirical study of legal behaviour.

This study employs three approaches. First, the *statute approach*, by examining the Civil Code, Law Number 40 of 2007 on Limited Liability Companies, Law Number 25 of 2007 on Investment as amended by Law Number 6 of 2023, Law Number 2 of 2014 on the Position of Notary, Presidential Regulation Number 13 of 2018, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021. Second, the *conceptual approach*, applied to the concepts of the nominee agreement, the beneficial owner, evasion of law, and the principles of succession. Third, the *comparative approach*, by relating the regulatory frameworks of Indonesia and Singapore, in particular the Companies Act 1967 of Singapore, to assess differences in the protection of beneficial owners.

Primary legal materials in the form of statutory regulations and secondary legal materials in the form of books and national and international scholarly journal articles were

collected through a literature study. These legal materials were then analysed qualitatively through prescriptive reasoning to provide a view on the legal rules that should be applied in resolving the issues under study.

RESULTS AND DISCUSSION

The Legal Status of Shares as the Object of a Domestic Nominee Agreement upon the Nominee's Death

1. The Structure of Domestic Nominee Share Agreements

A nominee share agreement is rarely embodied in a single document. In practice, it is structured through a series of mutually reinforcing documents, including a statement letter declaring that the shares are held for and on behalf of another party, a loan agreement explaining the source of the funds used to pay up the shares, an irrevocable power of attorney to attend and vote at the General Meeting of Shareholders, a share pledge agreement, and a right to repurchase the shares at any time. Economically, this series of documents places all the benefit and control with the beneficial owner, while the nominee serves merely as the formal shareholder (Baharudin et al., 2024; Saras, 2023).

In the domestic context, the reasons for using a nominee vary. Some are used for generally acceptable purposes, such as preserving the confidentiality of the owner's identity or simplifying decision-making within a family company. However, a considerable number are used for improper purposes, so that an assessment of validity cannot be made in general terms but must instead have regard to the true purpose of the agreement.

Each document in this series carries its own legal weakness. A statement letter declaring that the shares are held for and on behalf of another party does not alter the fact that the shares are registered in the nominee's name, and therefore confers no proprietary right on the beneficial owner. An irrevocable power of attorney is liable to terminate upon the death of either the grantor or the holder of the power under Article 1813 of the Civil Code, and so cannot be relied upon once the nominee dies. A share pledge agreement requires certain conditions to be fulfilled before it can be enforced, and does not automatically make the pledgee the owner of the shares. These weaknesses show that the protection afforded to the beneficial owner through this series of documents is fragile, particularly when succession occurs.

2. The Validity of Domestic Nominee Agreements and Their Qualification as Evasion of Law

Where a domestic nominee arrangement does not fall within the scope of the Investment Law - that is, where it does not amount to direct investment in a limited liability company and is therefore not caught by Article 33 - its validity is tested against Article 1320 of the Civil Code, which requires the fulfilment of four elements: the consent of the parties, the capacity of the parties, a specific subject matter, and a lawful cause. The first two are subjective requirements, the absence of which renders the agreement voidable, while the last two are objective requirements, the absence of which renders the agreement null and void by operation of law (Subekti, 2005). Where, by contrast, the arrangement does constitute direct investment, it is void under Article 33 paragraph (2) of the Investment Law without any need to examine the element of lawful cause.

The decisive point lies in the requirement of a lawful cause. Article 1335 of the Civil Code provides that an agreement made on a false or prohibited cause has no legal force, and Article 1337 of the Civil Code affirms that a cause is prohibited if it is contrary to statute, morality, or public order. In this respect, although the form of a nominee agreement may appear valid, the purpose the parties seek to achieve may render it prohibited. An agreement that is formally valid but is used to achieve a purpose prohibited by statute falls

within the category of evasion of law, namely an act that uses lawful legal means to avoid a legal provision that ought to apply (Slamet et al., 2023; Kana & Nandari, 2024).

A domestic nominee share agreement is classified as an evasion of law where its purpose is to conceal the real owner so that assets cannot be traced by the State or by an interested third party, to avoid tax obligations on the ownership and proceeds of the shares, to avoid legal responsibility attached to a shareholder, or to circumvent provisions restricting ownership in a particular sector or circumstance. These purposes are contrary to statute and public order, all the more so now that the State has imposed a beneficial-ownership disclosure obligation through Presidential Regulation Number 13 of 2018. Accordingly, a nominee agreement of this kind contains a prohibited cause and is null and void by operation of law for failing to satisfy the objective requirement under Article 1320 of the Civil Code (Agustinus & Zukriadi, 2025; Dewi Lestari & Puspadewi, 2025; Baharudin et al., 2024).

In taxation, a borrowed name is used to obscure the real recipient of income so that tax obligations on dividends and gains from shares are not imposed on the party who should properly bear them. In bankruptcy, placing assets in another party's name may be used to avoid seizure or creditors' claims, which may become the object of annulment through an *actio pauliana* under Article 1341 of the Civil Code. In relation to the company, a borrowed name may be used to conceal a conflict of interest or to circumvent a prohibition on dual ownership in a particular business sector. In addition, concealment of the beneficial owner is contrary to the spirit of Article 1338 paragraph (3) of the Civil Code, which requires an agreement to be performed in good faith, and is contrary to beneficial-ownership disclosure policy. This combination of purposes reinforces the classification of a nominee agreement as an act contrary to statute and public order (Slamet et al., 2023; Kana & Nandari, 2024).

Conversely, where a domestic nominee arrangement falls outside the scope of the Investment Law and truly contains no element of evasion of law, the arrangement may, in theory, be upheld as valid as between the parties. Even then, that validity operates only in the internal relationship of the parties; as against the company and third parties, the principle of registered shares under Articles 48 and 52 of the Company Law continues to apply, so that the party recognised as the shareholder remains the registered nominee, not the beneficial owner. The decisive distinction is therefore not between domestic and foreign parties, but between arrangements that fall within the scope of the Investment Law - which are void under Article 33 paragraph (2) directly - and those outside it, whose validity depends on the lawful cause required by Article 1320 of the Civil Code (Kaligis et al., 2024).

3. The Separation of Legal Ownership and Beneficial Ownership

The next key issue is the separation between legal ownership and beneficial ownership. The Indonesian legal system, which derives from the civil-law tradition, does not recognise the trust as found in the Anglo-Saxon legal tradition, and therefore does not recognise a division of ownership into legal title and equitable title. What is recognised is only a single, undivided right of ownership attached to one legal subject. Since Articles 48 and 52 of the Company Law establish the registered shareholder as the owner, there is no legal basis for recognising the beneficial owner as the owner of the shares in a civil-law sense (Kaligis et al., 2024; Harahap, 2016).

Presidential Regulation Number 13 of 2018 does define the beneficial owner as the individual who holds ultimate control over a corporation. However, the function of that regulation is for the purposes of transparency and law enforcement in the prevention of money laundering and terrorism financing, not to confer a proprietary right over the shares (Fitria, 2022; Jatmiko & Prananingtyas, 2023; Nivia, 2023). The beneficial owner's

position vis-à-vis the nominee is therefore personal in nature, that is, a relationship arising from agreement, and not a proprietary relationship over the shares. The consequence of this personal character becomes decisive at the moment the nominee dies.

4. Legal Consequences for the Estate

When the nominee dies, Article 833 paragraph (1) of the Civil Code provides that the heirs automatically acquire ownership of all the goods, rights, and claims of the deceased from the moment of death. Because the shares are legally registered in the nominee's name, they form part of the nominee's estate and pass to the nominee's heirs. This transfer is a transfer of right by operation of law recognised under Article 57 paragraph (2) of the Company Law, which exempts the transfer of shares by inheritance from the requirements applicable to an ordinary transfer of shares, save for the obligation to obtain the approval of the competent authority for certain business sectors (Anggreni & Dananjaya, 2022). Accordingly, from the standpoint of both company law and succession law, nominee shares fall to the nominee's heirs, not to the beneficial owner.

The beneficial owner's position becomes weak in these circumstances. If the nominee agreement is null and void by operation of law for constituting an evasion of law, the beneficial owner loses any basis to demand performance of the agreement, because a void agreement is deemed never to have existed. What remains available is, at most, the possibility of claiming the return of the capital contributed, through a tort claim under Article 1365 of the Civil Code or a claim for restitution of an undue payment under Article 1359 of the Civil Code. Even that claim is limited to the value of the capital that can be proved, not to the shares themselves, and faces the obstacle that a court may regard such a claim as arising from an improper act (Anggreni & Dananjaya, 2022).

Where a domestic nominee arrangement falls outside the Investment Law and is valid, the position of the beneficial owner must be analysed as that of an estate creditor, and three stages must be kept separate: the initial inclusion of the registered shares in the estate, the settlement of the deceased's proven debts and obligations, and the distribution of the remaining estate among the heirs. Because the shares are registered in the nominee's name, they are initially included in the estate; but under Article 1100 of the Civil Code the heirs who accept the estate are bound to meet the deceased's debts in proportion to their shares, and under Article 1318 of the Civil Code a person who contracts is deemed to contract for himself and for his heirs, so that the obligations arising from a valid nominee arrangement pass to and bind the heirs. The beneficial owner is therefore an obligee of the estate whose claim must be settled before the estate is distributed, and not merely a claimant who must first extract the shares from the estate.

Nor is the beneficial owner's right necessarily limited to a monetary reimbursement of the capital contributed. A personal right may, depending on the content of the lawful obligation, require performance in the form of a transfer of the shares themselves, subject to the requirements of company law for the transfer of shares under Articles 56 and 57 of the Company Law. Whether the heirs owe the beneficial owner the delivery of the shares or only a sum of money is therefore a question of the terms of the valid obligation and of compliance with company law, and is not to be resolved in advance by confining the claim to the return of capital.

The heirs' indefeasible share (legitieme portie) under Article 913 of the Civil Code does not defeat a valid claim of the beneficial owner. The indefeasible share is calculated on the net estate: Article 921 of the Civil Code provides that it is determined after the deduction of the estate's debts, and Article 920 protects the deceased's creditors by providing that the reduction of gifts and bequests in favour of the legitimaris may not operate to the prejudice of those to whom the deceased was indebted. A valid obligation owed to the beneficial

owner is thus treated as a debt of the estate, to be settled before the indefeasible share is computed, rather than as an entitlement that competes with, and is defeated by, the legitime. What remains for distribution among the heirs, including the reserved portion, is the estate after such obligations have been met.

The position may be more complex where the beneficial owner is also one of the nominee's heirs, as frequently occurs in family companies. In that situation the beneficial owner holds two distinct capacities: as a creditor of the estate under the valid arrangement, and as an heir. These capacities do not merge, and being an heir does not extinguish or reduce the independent claim: the beneficial owner is first entitled, as creditor, to settlement of the valid obligation out of the estate, and only thereafter shares, as heir, in the remaining estate together with the other heirs. It is therefore inaccurate to say that such a beneficial owner obtains no more than an inheritance fraction; rather, the claim is satisfied as a debt before the remaining estate, including the indefeasible share, is distributed.

The burden of proof is a problem in its own right. To maintain its rights, the beneficial owner must prove the existence of the nominee agreement, the origin of the funds used to pay up the shares, and the intention of the parties. This proof depends on documents that are often made privately and are not always complete. If a court finds that the nominee agreement was made for a purpose contrary to statute, the beneficial owner's claim may be dismissed because it is based on an unlawful legal relationship. Thus, in addition to being weak in position, the beneficial owner also faces a heavy evidentiary risk, so that the legal certainty expected from a nominee agreement is often not achieved at the very moment it matters most, namely when succession occurs.

From the foregoing, the situations can be distinguished according to the statutory scope. Where the arrangement constitutes direct investment and is void under Article 33 of the Investment Law, or where an out-of-scope arrangement is null for evasion of law, the shares nevertheless fall into the nominee's estate and the beneficial owner loses any basis for a claim founded on the arrangement, retaining at most a limited and difficult claim for the return of its capital. Where, however, an out-of-scope arrangement is valid, the shares still fall initially into the estate, but the beneficial owner holds the position of an estate creditor whose claim - whether to a sum of money or, where the obligation and company law so permit, to a transfer of the shares - is settled before the estate is distributed. In none of these situations is the beneficial owner automatically the owner of the shares; a proprietary position would arise only in a legal system that recognises a separation of ownership through the trust, as elaborated in the following comparison.

5. Comparison with the Legal Framework in Singapore

Singapore takes a different approach because its legal system recognises the trust. As a country with an Anglo-Saxon legal tradition, Singapore recognises a division of ownership into legal title, held by the trustee, and equitable title, held by the beneficiary. This recognition derives from the principles of equity developed through court decisions and reinforced by statutory regulation in the field of trusts. Within this framework, shares may be held by one person for the benefit of another through a trust relationship, so that the beneficial owner holds an enforceable right over the shares, rather than a mere right to claim. A nominee agreement in Singapore is not, in principle, prohibited, but is subject to strict disclosure obligations (Kaligis et al., 2024).

This disclosure obligation is regulated under the Companies Act 1967 of Singapore. A company is required to maintain a *register of registrable controllers* under sections 386AB to 386AF, a *register of nominee directors* under section 386AKA, and a *register of nominee shareholders* under section 386AL and the following sections. Under these provisions, a nominee shareholder must disclose the party who is its *nominator*, or beneficial owner, and

the company must submit that data to the authority, namely the Accounting and Corporate Regulatory Authority, with sanctions threatened for non-compliance. At the same time, the Companies Act 1967 also adopts the principle that a company is not bound to recognise a trust on its register of shareholders, so that, formally, the company continues to deal with the registered shareholder, while the trust relationship between the parties remains recognised and enforceable at law.

This difference has a direct effect once the nominee dies. Because Singapore recognises the trust, shares held by a nominee for the benefit of a beneficial owner are, in substance, trust property that does not form part of the nominee's personal estate. The beneficial owner, as beneficiary of the trust, can demand delivery of the shares and is not merely in the position of a creditor. In Indonesia, by contrast, the absence of the trust means that nominee shares fall entirely into the nominee's estate and the beneficial owner is left in a weak position. This comparison shows that the root of the weakness in beneficial-owner protection in Indonesia is the absence of the trust and the greater priority given to certainty through formal registration. The comparison is not intended to advocate legitimising the nominee practice, but rather to affirm that, for as long as this practice continues, Indonesian law needs to consider clearer regulation of the beneficial owner's position (Kaligis et al., 2024).

The Notary's Responsibility in Issuing a Deed of Inheritance Rights over Nominee Shares

1. The Notary's Authority and the Plurality of Inheritance Evidence

A notary's authority to draw up an authentic deed derives from Article 15 paragraph (1) of Law Number 2 of 2014 on the Position of Notary (hereinafter the "Notary Law"), which covers all acts, agreements, and determinations that the parties wish to have recorded in an authentic deed, so long as this is not reserved to another official. In the context of land registration, proof of heirship is governed by Article 111 paragraph (1) point c of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021. In its current form, that provision no longer allocates the forms of proof by population group; it provides that proof of heirship may take the form of, among others, a will of the deceased, a court judgment or a judge's determination, a privately made statement of heirship by the heirs witnessed and endorsed by the village or sub-district head and the sub-district head, a deed of inheritance rights (akta keterangan hak mewaris) drawn up by a notary whose seat is at the deceased's place of residence, or a certificate of inheritance from the Estate and Orphan Chamber (Balai Harta Peninggalan) (Christiantirta & Priyono, 2022; Juliantika, 2023).

The association of particular forms of proof with particular population groups originates in the population classification of the colonial era under Articles 131 and 163 of the Indische Staatsregeling, and survives only as administrative practice rather than as the operative text of the current regulation. What matters for the present analysis is that, for heirs whose estate is governed by the succession rules of the Civil Code, a deed of inheritance rights drawn up by a notary is an accepted form of proof of heirship. Its legal basis is not the land-registration regulation as such, but the notary's general authority under Article 15 of the Notary Law to record, in an authentic deed, the determination of who the heirs are and their respective entitlements under the applicable law of succession; the land-registration regulation merely recognises that deed as admissible proof when registering inherited land.

In this study, the nominee is an individual whose estate is governed by the succession rules of the Civil Code, so that proof of heirship takes the form of a deed of inheritance rights drawn up by a notary. It must be stressed that this deed establishes who the heirs are and their respective inheritance fractions; it is not, by its nature, an instrument that

adjudicates or determines the ownership of particular assets. The identification of the assets comprised in the estate rests on the documents and statements of the parties, and any accompanying inventory, not on an ownership determination made by the notary. The question whether, and to what extent, shares are to be listed in connection with the deed is therefore a matter of the parties' statements and of any estate inventory, rather than a determination of title by the notary (Gulianti, 2025; Puteri, 2026).

2. Formal Truth as the Limit of the Notary's Authority

In drawing up a deed, a notary works on the basis of formal truth, that is, on the basis of the documents and statements submitted by the appearing parties. For a deed of inheritance rights, these documents include birth certificates, marriage certificates, family cards, death certificates, and data on the estate. The notary is obliged to ensure the completeness and formal consistency of the documents, but is not obliged, and in principle has no authority, to investigate the material truth behind those documents. Where the parties provide untrue information, responsibility for that falsity rests with the parties, not with the notary (Dewi et al., 2021).

This limitation to formal truth derives from the very nature of an authentic deed and the principle of the presumption of validity. A deed drawn up by a notary is deemed valid and formally correct until a party proves otherwise before a court. The notary guarantees formal truth, namely that the appearing parties genuinely appeared, gave their statements, and signed the deed at the recorded time, but does not guarantee the material truth of the content of those statements, which lies beyond the notary's observation. The material truth as to who is actually the owner of the shares is the responsibility of the parties who provide the information. The notary cannot therefore be equated with an investigator or an appraiser of asset ownership, and cannot be burdened with an obligation to ensure that shares registered in the deceased's name truly, and in substance, belong to the deceased (Dewi et al., 2021).

Where the parties present shares as part of the estate, the notary relies on formal proof such as the register of shareholders, the deed of establishment or amendment, and the special register referred to in Article 50 of the Company Law. Reasonable reliance on apparently regular documents is, however, distinct from the duty to act carefully under Article 16 paragraph (1) point a of the Notary Law, which requires the notary to act in a trustworthy, honest, careful, independent, and impartial manner. That duty requires the notary to respond to documents that are inconsistent on their face, or to a known adverse claim - for instance, where the notary is aware of a competing assertion by a beneficial owner - by seeking clarification and, where appropriate, declining to characterise the shares as the deceased's own without qualification. A notation that the deed is based on formal evidence does not, by itself, discharge this duty of care; it records the basis of the notary's action but does not cure a failure to act carefully where the circumstances called for further inquiry (Dewi et al., 2021; Puspita & Priyono, 2023).

3. The Limits of the Notary's Responsibility

A notary's responsibility for a deed of inheritance rights is, in principle, fault-based. This means that a notary may be held responsible only where it is proved that a fault occurred in the exercise of the notary's office, and cannot be held responsible for untrue information that the parties have secretly given. So long as the notary has properly followed procedure, checked the completeness of the documents, and fulfilled the obligations of office under Article 16 of the Notary Law, the deed drawn up remains valid and binding as an authentic deed, and the presumption of validity applies until proved otherwise by a court decision.

In theory, legal liability arises where there is an act that causes loss and that act can be attributed as the fault of its author. In the context of a notary's office, liability does not arise merely because a deed produces a consequence detrimental to one of the parties, but because of a fault on the part of the notary in the exercise of office, whether by intent or by negligence. This principle is important in order to place the notary's responsibility on a proportionate footing that is, not burdening the notary with matters beyond the notary's authority and knowledge, while still requiring the notary to meet the obligations and standard of care of the office.

A notary's responsibility may be examined from three aspects, each of which must be stated by reference to the provisions currently in force. First, administrative and related liability. Chapter XI of the original Notary Law, which contained the former Articles 84 and 85, was deleted by Law Number 2 of 2014; the graduated administrative sanctions - a written warning, temporary suspension, honourable discharge, or dishonourable discharge - are now set out in Article 16 paragraph (11) of the Notary Law for breaches of the duties in Article 16 paragraph (1) points a to l, while Article 16 paragraph (12) allows a party who suffers loss to claim reimbursement, damages, and interest for a breach of Article 16 paragraph (1) point j. Loss of a deed's status as an authentic deed, so that it has only the evidentiary force of a private deed, is confined by Article 16 paragraph (9) to specified formal failures - namely the reading and signing requirements of Article 16 paragraph (1) point m and paragraph (7) - and does not follow from every defect in a deed. Second, general civil responsibility under Article 1365 of the Civil Code, under which a notary whose fault or negligence causes loss to another may be sued for damages. Third, criminal responsibility: under the Criminal Code enacted by Law Number 1 of 2023, which has been in force since 2 January 2026 and therefore governs this analysis, a notary who knowingly participates in producing a false authentic deed may fall within Article 392 on forgery of an authentic deed, and a party who procures the insertion of false information into an authentic deed may fall within Article 394 - the successors to the former Articles 264 and 266 of the old Criminal Code. Criminal liability, however, requires the specific intent and the other elements of those offences, and must be distinguished from mere civil negligence, which founds only civil liability (Rahmadani Sabrina & Musyafah, 2024).

On the basis of this division, the limits of a notary's responsibility in drawing up a deed of inheritance rights over nominee shares can be clearly determined. A notary is not responsible for the fact that shares registered in the deceased's name turn out to be the object of a nominee agreement, so long as the existence of that agreement was concealed by the parties and the notary was unaware of it. In such circumstances, the notary merely performs the task of recording the estate on the basis of valid formal evidence. Conversely, a notary may be held responsible where it is proved that the notary knew of the existence of a nominee agreement but nonetheless declared the shares to be the deceased's own without any form of notation, or where the notary was negligent in examining the documents of share ownership, or participated in producing untrue information. In other words, a notary's responsibility is determined by the presence or absence of knowledge and fault, not by the material truth of share ownership, which lies beyond the notary's authority.

The difference between these two situations can be clarified through an illustration. Where the heirs appear before the notary bringing complete and valid documents of share ownership in the deceased's name, without mentioning the existence of a nominee agreement, and the notary then draws up a deed of inheritance rights listing the shares as part of the estate, the notary cannot be blamed when the beneficial owner later brings a claim, because the notary neither knew nor should have known of the existence of the nominee agreement. Conversely, where the notary has been informed of, or has found evidence of, a nominee agreement, but nonetheless declares the shares to be the deceased's

own absolutely, without providing legal counselling or any notation whatsoever, the notary has been negligent in performing the obligations of office and may be held responsible for the resulting loss. The dividing line of responsibility therefore lies in the notary's knowledge and diligence, not in the ultimate outcome of share ownership.

This limitation on responsibility is consistent with the nature of the notary's office as a public official who records the will of the parties in an authentic deed. A notary is not an institution authorised to investigate the material truth of asset ownership, and burdening the notary with such an obligation would be contrary to the very nature of the office. This limitation, however, does not remove the duty of care, because negligence in formal examination may still give rise to legal liability (Rahmadani Sabrina & Musyafah, 2024; Puspita & Priyono, 2023).

4. Precautionary Measures for Notaries

Although a notary's responsibility is limited, the principle of prudence requires adequate preventive measures to reduce the risk of disputes and legal liability. The first step is to verify the status of share ownership through data in the Legal Entity Administration System of the Ministry of Law, together with the company's register of shareholders and special register, so that the recording of the estate is genuinely based on valid documents. The second step is to provide legal counselling, as mandated by Article 15 paragraph (2) point e of the Notary Law, to the heirs regarding the possibility of a third-party claim over the shares. The third step is to include a notation that the recording of the shares is based on the formal evidence submitted by the appearing parties, without any assessment of the material truth of ownership.

Fourth, where a notary obtains an indication of the existence of a nominee agreement, the notary should advise the parties to resolve the question of ownership first, whether through agreement among the heirs or through the courts, before the estate is distributed (Takarub et al., 2023). Through these steps, a notary preserves the legal certainty of the deed drawn up while minimising the risk of legal liability and potential disputes.

It should be emphasised that a deed of inheritance rights does not of itself alter the composition of shareholders within a company. A transfer of shares by inheritance must still be followed by recording by the board of directors in the register of shareholders and notification to the Minister, as regulated under Article 56 of the Company Law. It is at this stage that the existence of a nominee agreement, if any, may once again give rise to difficulty, for instance where the beneficial owner seeks to prevent the recording of the transfer to the nominee's heirs. For this reason, resolution of the question of share ownership should ideally take place before, or at the same time as, the succession process, and the notary plays an important role in directing the parties toward the correct avenue of resolution, without exceeding the notary's authority as the drafter of the deed.

The *novelty* of this research is that the event of a nominee's death reveals an inconsistency between formally registered ownership and actual ownership, and that this inconsistency affects notarial practice without adding to the notary's responsibility beyond the limits of the notary's authority. This study affirms that a notary's responsibility for nominee shares is limited and fault-based, and formulates precautionary measures that have not previously been specifically addressed in studies on the succession of nominee shares.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on the above analysis, the following conclusions can be drawn:

1. The legal status of limited liability company shares that are the object of a domestic nominee agreement, once the nominee dies, is that they become part of the nominee's estate

and pass by operation of law to the nominee's heirs. This is a consequence of the principle of registered shares under Articles 48 and 52 of the Company Law, which recognise the registered shareholder as the owner, combined with the principle of succession under Article 833 of the Civil Code and the transfer of rights by operation of law under Article 57 paragraph (2) of the Company Law. The beneficial owner does not hold the position of owner of the shares, but holds at most a personal right that becomes void where the arrangement falls within Article 33 of the Investment Law or is classified as an evasion of law under Article 1320 in conjunction with Article 1337 of the Civil Code, and that, where a valid out-of-scope arrangement exists, ranks as a debt of the estate settled before the heirs' indefeasible share under Articles 920, 921, 1100, and 1318 of the Civil Code. Unlike Singapore, which recognises the trust so that nominee shares do not form part of the nominee's personal estate, Indonesian law has not yet provided adequate protection for the beneficial owner.

2. A notary's responsibility in drawing up a deed of inheritance rights over nominee shares is limited and fault-based. The notary records the estate only on the basis of formal truth, namely proof of share ownership registered in the deceased's name, and has no authority to assess the material truth of ownership. The notary is not responsible for untrue information concealed by the parties, so long as the notary has properly followed procedure, but may be held responsible administratively, civilly, or criminally where it is proved that the notary knew of the existence of a nominee agreement, was negligent in examining the documents, or participated in producing false information.

Limitations

This study is normative in nature and does not include an empirical study of notarial practice or a systematic analysis of court decisions, and it limits its assumption as to the heir's population group to Indonesian citizens of Chinese descent. The findings should be understood within that scope.

Recommendations

Legislators are advised to consider clearer regulation of the beneficial owner's position in the civil-law sphere, not solely for the sake of transparency, having regard to Singapore's experience in regulating the disclosure of nominee shareholders. Notaries are advised to apply precautionary measures in the form of verifying company data, providing legal counselling, and including a notation on the basis for recording the estate.

Author Contributions

All authors made significant contributions to this study, including conceptualisation, development of the theoretical framework, collection of legal materials, analysis, interpretation, manuscript preparation, and final approval of the manuscript for publication. All authors have read and approved the final version of this article.

AI Disclosure Statement

In preparing this manuscript, the authors used artificial intelligence assistance to help with the search for legal materials. The authors have thoroughly reviewed, verified, and re-edited the entire content, and take full responsibility for the entire content of this publication.

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