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Legal Consequences of the Invalidity and Non-Enforceability of Nominee Agreements in Indonesia

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ABSTRACT: *Nominee Agreements are often used in Indonesia by foreign nationals to bypass restrictions on land and share ownership by using Indonesian citizens as formal owners. This practice violates the Basic Agrarian Law, the Investment Law, and other regulations, making such agreements null and void. It creates legal uncertainty, risks of ownership misuse, and potential crimes such as embezzlement and money laundering. Unlike some Common Law countries that allow nominees under strict regulation, Indonesia prohibits them to maintain legal certainty and economic stability. Using a juridical-normative approach, this study highlights the persistence of nominee practices and stresses the need for stricter regulation and law enforcement to build a more transparent and fair legal system.*

KEYWORDS - *Nominee Agreement; Land Ownership; Share Ownership; Foreign Investment.*

I. INTRODUCTION

In Indonesian business and land practices, nominee agreements are often used as a means to formally transfer ownership of assets to another party, while substantive control remains with the actual owner. These agreements are typically drawn up as either private documents or notarized deeds, containing a power of attorney or a declaration of name lending. Although they appear valid from an administrative standpoint, nominee practices are in fact contrary to applicable Indonesian laws, such as the Basic Agrarian Law (UUPA) No. 5 of 1960, the Investment Law No. 25 of 2007 (UUPM), and the Limited Liability Companies Law No. 40 of 2007 (UUPT). Consequently, nominee agreements are deemed null and void as a matter of law because they violate the principles of legality, legal certainty, and nationality. Nevertheless, this practice is still frequently encountered in business and real estate transactions, thereby creating the potential for disputes and the risk of criminal offenses, such as embezzlement, fraud, and money laundering.

The study of nominee agreements is analyzed through the theoretical framework of contract law, specifically the provisions of Article 1320 of the Civil Code regarding the validity requirements of a contract, as well as Article 1337 of the Civil Code, which prohibits contract provisions that conflict with the law, public morality, and public order. Furthermore, the principle of pacta sunt servanda in Article 1338 of the Civil Code legitimizes any contract that is legally valid; however, this principle is limited by the applicability of objective requirements and prohibitions under positive law. The theory of the principle of freedom of contract put forward by Subekti also serves as a reference, wherein such freedom is not absolute but is subject to applicable legal norms. From an agrarian perspective, the theory of nationality enshrined in the Basic Agrarian Law (UUPA) affirms that land ownership rights can only be held by Indonesian citizens; thus, the use of an Indonesian citizen's name by a foreign national through a nominee agreement constitutes a form of "legal smuggling."

This study is novel because it not only examines the civil law aspects of the nullity of a contract but also highlights the criminal and professional ethical consequences, particularly the role of notaries involved in the drafting of nominee deeds. Until now, most studies have tended to stop at analyzing the nullity of a contract, whereas this study emphasizes that even if a contract is deemed to have never existed, criminal acts committed through that contract can still be subject to legal liability. Furthermore, this study incorporates a comparative perspective by examining practices in common law countries that still recognize nominees under strict regulations, thereby enriching the analysis within the context of Indonesian law.

Based on this background, the issues that form the focus of this study are: first, what is the legal status of nominee agreements regarding share and land ownership under Indonesian positive law; second, what forms of legal violations and potential criminal offenses may arise from the practice of nominee agreements; and third, what are the legal consequences for notaries who draft nominee agreement deeds that violate laws and regulations. This study aims to comprehensively analyze the legal status of nominee agreements, identify the legal risks they pose, and evaluate the notary's responsibility in maintaining legal certainty.

II. Research Method

This study employs a normative legal research method, which focuses on the study of written legal norms and relevant legal principles. The primary objective of this study is to analyze the legality of nominee agreements in Indonesia by referring to national laws and regulations and applicable legal principles. The approaches used in this study are the statutory approach and the conceptual approach. The statutory approach involves examining provisions in the Land Law (UUPA), the Post and Telecommunications Law (UU PM), and the Limited Liability Companies Law (UU PT), as well as various articles in the Civil Code and the Criminal Code relating to nullity and criminal offenses. Meanwhile, the conceptual approach was used to examine theories of contract law, the principle of freedom of contract, the principle of legality, and the concepts of nullity and invalidity in Indonesian civil and criminal law.

The types of data used consist of primary legal sources (laws and regulations), secondary legal sources (books, legal journals, and scholarly articles), and tertiary legal sources (legal dictionaries and legal encyclopedias). Data collection was conducted through a literature review. The analysis method used is qualitative normative analysis, which systematically examines legal materials and doctrines using a deductive approach, moving from general provisions to an assessment of nominee contract practices in Indonesia.

III. Legal Analysis of Nominee Agreement under Indonesian Law

1. Concept and Legal Foundation of Nominee Agreement

1.1 Definition and Characteristics of a Nominee Agreement

A nominee agreement is a contractual arrangement in which one party (the nominee) agrees to hold legal title to an asset or exercise certain legal rights on behalf of another party (the beneficial owner). Under this arrangement, the nominee is recognized as the formal or legal owner (de jure), while the beneficial owner retains the actual economic interest, control, and benefits arising from the asset (de facto). Accordingly, the nominee acts merely as the registered holder of the property or rights, whereas the beneficiary remains the person who ultimately enjoys ownership and exercises effective control over the asset.

The use of nominee agreements has become increasingly common in commercial and investment practices, particularly where legal, regulatory, or commercial considerations prevent the beneficial owner from holding assets directly. In many jurisdictions, nominee arrangements are employed for legitimate purposes, such as facilitating investment transactions, maintaining confidentiality, or simplifying the administration of assets. Depending on the applicable legal framework, nominee agreements may involve various forms of property, including company shares, land, intellectual property rights, and other commercial assets. Their legal validity, however, depends upon the laws governing the jurisdiction in which the arrangement is established.

A nominee agreement generally possesses several distinguishing characteristics. First, it establishes a separation between legal ownership and beneficial ownership, whereby the nominee formally holds title while the beneficial owner retains the economic benefits and decision-making authority. Second, the relationship between the parties is founded upon mutual trust, as the nominee is expected to act solely in accordance with the instructions and interests of the beneficial owner. Third, the agreement typically grants the beneficial owner effective control over the asset through contractual mechanisms, including powers of attorney, declarations, or other supporting legal instruments. These characteristics distinguish nominee agreements from ordinary ownership arrangements and make them a unique contractual mechanism within contemporary commercial practice.

1.2 Nominee Agreements in Indonesia

Nominee agreements are commonly recognized in Indonesia as name-lending agreements, whereby an Indonesian citizen (Warga Negara Indonesia or WNI) formally lends his or her name to a foreign individual or entity (Warga Negara Asing or WNA) for the purpose of acquiring ownership of assets, particularly shares or land, that are otherwise subject to statutory restrictions. Under this arrangement, the nominee is registered as the legal owner (de jure), while the beneficiary remains the actual economic owner (de facto) who exercises control over and enjoys the economic benefits arising from the asset. Consequently, the nominee merely acts as the formal holder of legal title, whereas the beneficial owner retains the substantive interest in the property. This legal structure has frequently been employed to circumvent restrictions imposed by Indonesian law on foreign ownership of land and corporate shareholdings.

From the perspective of Indonesian contract law, nominee agreements originate from the principle of freedom of contract embodied in Article 1338 paragraph (1) of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata). Under this principle, contracting parties are generally free to determine the contents of their agreements, provided that such agreements do not conflict with mandatory statutory provisions, morality, or public order. Consequently, although nominee agreements are not expressly regulated as a specific type of contract under Indonesian legislation, they have developed through contractual practice based on the autonomy of the parties. However, the principle of contractual freedom is not absolute. The validity of every agreement remains subject to the legal requirements stipulated in Article 1320 of the Indonesian Civil Code, including the requirement that the agreement must have a lawful cause. This requirement is further reinforced by Article 1337 of the Indonesian Civil Code, which provides that an agreement is unlawful if its object or purpose is contrary to legislation, morality, or public order.

Indonesian law expressly prohibits the use of nominee arrangements in the field of investment. Article 33 paragraph (1) of the Investment Law prohibits both domestic and foreign investors from entering into agreements or making declarations confirming that shares in a limited liability company are held for and on behalf of another person. Furthermore, Article 33 paragraph (2) stipulates that any agreement or declaration made in violation of this provision shall be deemed null and void by operation of law. This prohibition is further strengthened by Article 48 paragraph (1) of the Company Law, which requires that company shares be issued in the name of their lawful owners, thereby excluding the recognition of nominee shareholding structures. Accordingly, nominee agreements intended to circumvent statutory restrictions on the ownership of shares or land do not satisfy the legal requirements for a valid contract under Indonesian law and therefore cannot be afforded legal protection.

In practice, nominee arrangements in Indonesia generally take two principal forms. The first is the direct nominee agreement, under which the nominee explicitly agrees to hold legal ownership and act solely upon the instructions of the beneficiary, usually in exchange for remuneration. The second is the indirect nominee agreement, which is not embodied in a single nominee contract but is established through a combination of legal instruments, such as irrevocable powers of attorney, share pledge agreements, declarations, or other contractual arrangements that enable the beneficiary to retain effective control over the asset despite not being formally registered as its legal owner.

1.3 Theory Of Contract

1.4.1 Susheng Wang's Theory

The formation of an agreement involves a process in which one party promises another party, or both parties mutually agree to undertake certain obligations, thereby creating legal responsibilities between them. A contract, however, is a legally binding agreement that imposes enforceable obligations upon the parties. Unlike non-binding agreements, which do not require mandatory performance and therefore provide greater flexibility for the parties to renegotiate after obtaining relevant information, contracts are designed to coordinate the parties' actions from the outset, even when complete information is not yet available.

The relative efficiency of a non-binding agreement compared with a binding contract depends on several factors, including the type of information available to the parties, uncertainty regarding product quality, and differences in the parties' expectations. Where information is symmetrically distributed, product quality remains uncertain, or one party possesses superior information and stronger bargaining power, non-binding agreements may prove more efficient than binding contracts. Furthermore, non-binding agreements may create stronger incentives for improving product quality because they allow the parties to adapt their arrangements in response to new information that emerges during the course of their cooperation (Oktavira, 2024)

In commercial practice and international business transactions, several forms of non-binding agreements are commonly used, including Memoranda of Understanding (MoUs), Letters of Intent (LoIs), and Heads of Agreement. These instruments are widely employed during negotiation processes because they provide flexibility for the parties to adjust their strategies in response to changing circumstances and newly acquired information. Although such agreements do not create legally enforceable obligations, they remain effective instruments for facilitating cooperation by enabling parties to formulate adaptive business strategies and enhance the quality of future products and services (Wang et al., 2019).

1.4.2 Lawrence Solan

In legal theory, a contract is understood as an agreement recognized and enforceable under the law. Traditional contract theory maintains that a valid contract must be founded upon the mutual assent of the parties. In practice, however, this principle has frequently been interpreted through an objective approach, whereby the primary consideration is not the parties' undisclosed intentions but rather how their words and conduct would reasonably be understood by third parties or an objective observer (Solan, 2007). Consequently, courts often assess contractual validity based on whether the parties' statements or conduct objectively demonstrate a commitment, regardless of their actual subjective intentions. This objective theory has become one of the dominant principles underlying modern contract law and judicial practice.

Despite its widespread application, the objective theory has been criticized for being overly restrictive and for failing to reflect the realities of contractual relationships. In many cases, contract law places greater emphasis on whether the parties genuinely shared a mutual understanding regarding the existence of a contractual commitment. Where both parties acknowledge that a commitment has been made, courts may enforce the agreement even in the absence of a clear objective manifestation of assent. Conversely, where both parties agree that no contractual commitment was intended, courts may decline to enforce the agreement despite the existence of objective evidence suggesting otherwise.

One of the principal criticisms of the objective theory is that it overlooks the factual context and the parties' actual understanding of their agreement. By relying predominantly on how an external observer would interpret the parties' promises or conduct, the theory may disregard the genuine consensus reached between the contracting parties. Accordingly, Solan advocates an approach that places greater emphasis on the parties' actual mutual understanding. Where the parties genuinely intended to create a contractual commitment, courts should enforce that commitment even if there is a divergence between the parties' actual intentions and the interpretation that might reasonably be adopted by third parties.

Contract law also recognizes the doctrine of estoppel, which prevents a party from withdrawing or denying a commitment after making representations or statements upon which another party has reasonably relied. Under this doctrine, courts may preclude a party from repudiating its obligations where its words or conduct have reasonably induced reliance by the other party, even if its undisclosed intention differed from its outward manifestations. Furthermore, a more subjective approach may promote fairness in determining remedies for breach of contract, as compensation can be assessed more equitably by considering the parties' actual intentions and expectations.

Solan's analysis further demonstrates several judicial decisions in which the objective theory failed to provide an adequate explanation for the courts' reasoning in contractual disputes. In a number of cases, courts have enforced contractual obligations based primarily on the parties' shared understanding, notwithstanding the absence of a clear objective manifestation of assent by one of the parties. These decisions suggest that the fundamental purpose of contract law is to uphold agreements that genuinely reflect the parties' mutual consensus, even where ambiguity or uncertainty exists regarding their outward expressions of intent (Solan, 2007).

1.4 Issues with Nominee Agreements According to Roger Bernhardt and Jon H. Sylvester

The use of nominee agreements in property and commercial transactions has become a common practice in various jurisdictions, including Indonesia, particularly as a means of circumventing certain legal restrictions. Within the context of Indonesian land law, nominee arrangements are frequently employed by foreign nationals who are prohibited from holding land under Hak Milik (Freehold Title) pursuant to Article 21 paragraph (1) and Article 26 paragraph (2) of the Basic Agrarian Law. Under such arrangements, an Indonesian citizen is registered as the formal owner of the land, while the foreign beneficiary retains effective control and enjoys the economic benefits associated with the property. Although this structure enables foreign parties to exercise de facto ownership, it conflicts with the nationality principle underlying Indonesian agrarian law and is therefore regarded as legally invalid.

The legal consequences of nominee arrangements in Indonesia are significant. Supreme Court Circular Letter (SEMA) No. 10 of 2020 affirms that the lawful owner of land is the individual whose name is registered on the Certificate of Ownership (Sertifikat Hak Milik/SHM), regardless of whether the acquisition was financed by a foreign party. Consequently, where a dispute arises, the foreign beneficiary lacks a legal basis to assert ownership over the property. This position is further supported by Articles 1335 and 1337 of the Indonesian Civil Code, which provide that agreements established for unlawful purposes or those contrary to morality or public order are unenforceable. As a result, nominee arrangements create substantial legal uncertainty, particularly where the Indonesian nominee subsequently claims full ownership and refuses to recognize the interests of the foreign beneficiary who financed the acquisition of the property (Daniel et al., 2022).

Similar concerns arise in the field of business and foreign investment. Nominee arrangements are frequently utilized to conceal the identity of foreign shareholders or to circumvent statutory restrictions on foreign ownership. Indonesian investment law expressly prohibits such arrangements in order to preserve transparency, legal certainty, and regulatory compliance in foreign investment activities. Nevertheless, nominee structures continue to be employed by certain companies to disguise beneficial ownership, thereby creating legal risks associated with corporate governance, taxation, and money laundering (Bernhardt et al., 2005).

The legal issues arising from nominee agreements are not unique to Indonesia. In common law jurisdictions such as the United States and the United Kingdom, nominee arrangements are generally recognized in commercial and property transactions but remain subject to strict legal supervision. Courts have, in certain cases, declined to enforce nominee arrangements where uncertainty exists regarding the identity of the true beneficial owner, thereby giving rise to ownership disputes. By contrast, jurisdictions such as Singapore and Hong Kong continue to permit the use of nominee structures in corporate and investment activities, although these arrangements are accompanied by stringent transparency requirements, including disclosure obligations intended to prevent tax evasion, money laundering, and other unlawful activities.

According to Roger Bernhardt and Jon H. Sylvester, one of the principal concerns associated with nominee arrangements is the lack of legal certainty and the significant potential for abuse. Nominee clauses may enable parties to evade legal responsibilities by concealing the identity of the true owner or by structuring transactions in a manner that circumvents mandatory legal requirements. Such practices not only complicate the enforcement of contractual and property rights but also increase the risk of fraudulent conduct, money laundering, tax evasion, and the concealment of assets from creditors (Bernhardt et al., 2005).

In the context of land ownership, nominee arrangements frequently give rise to ownership disputes where the registered owner refuses to transfer or acknowledge the rights of the beneficial owner. In many jurisdictions, courts recognize only the individual whose name appears in the official land register as the lawful owner, irrespective of any separate contractual arrangement establishing beneficial ownership. Consequently, parties relying on nominee structures face substantial financial and legal risks because they may lack an effective legal remedy when disputes arise.

Similarly, within corporate and investment structures, nominee arrangements may reduce transparency by concealing the actual ownership and control of business entities. To address these concerns, numerous jurisdictions have introduced stricter regulatory frameworks requiring the disclosure of beneficial ownership information in order to ensure that corporate ownership structures remain transparent, accountable, and compliant with anti-money laundering and corporate governance standards.

From a preventive perspective, nominee clauses in commercial and property transactions should be drafted with greater precision in order to minimize legal ambiguity and reduce the likelihood of disputes. At the same time, legal systems should adopt clearer regulatory frameworks and stronger enforcement mechanisms to address nominee arrangements that are used to circumvent mandatory legal provisions. Enhanced transparency requirements and more effective regulatory oversight would contribute to greater legal certainty while reducing the risks associated with the misuse of nominee structures in both property and commercial transactions.

2. Validity of Nominee Agreement under Indonesian Law

2.1 The Concept of Void Ab Initio (*Batal Demi Hukum*)

The concept of void ab initio is recognized in various Indonesian legal provisions. For example, Article 197 paragraph (2) of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP) provides that: “Failure to comply with the provisions stipulated in paragraph (1) letters a, b, c, d, e, f, h, i, j, k, and l of this Article shall render the judgment null and void by operation of law.” Likewise, Article 9 of the Regulation of the Minister of Law and Human Rights No. 24 of 2011 stipulates that where the criminal sentence imposed by the court is equal to the period of detention already served, the Head of the Detention Center (Rumah Tahanan Negara) or the Head of the Correctional Institution (Lembaga Pemasyarakatan) shall release the detainee by operation of law on the date the court's judgment is rendered.

The term void ab initio refers to a legal condition in which a legal act, agreement, or obligation is deemed never to have existed from its inception. In other words, the invalidity arises automatically by operation of law without requiring a prior declaration by the parties, with the consequence that the legal act is regarded as though it had never been performed (Suharsono, 2010). Accordingly, the phrase by operation of law signifies that the nullity occurs automatically as a direct consequence of statutory provisions.

Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) establishes four essential requirements for the validity of an agreement, namely: (1) mutual consent of the parties; (2) legal capacity to conclude an agreement; (3) a definite subject matter; and (4) a lawful cause. Failure to satisfy the subjective requirements, namely consent and legal capacity, renders the agreement voidable. By contrast, failure to satisfy the objective requirements, namely a definite subject matter and a lawful cause, results in the agreement being void ab initio.

The doctrine of void ab initio is further reflected in Article 1335 of the Indonesian Civil Code, which provides that an agreement made without a lawful cause, or one based upon a false or unlawful cause, shall have no legal force. An agreement that has no legal force is deemed never to have existed and therefore gives rise to no enforceable legal rights or obligations. Although a declaration that an agreement is void ab initio may ultimately be confirmed by a competent judicial authority, the issue may also be raised by the defendant, legal counsel, or the public prosecutor during legal proceedings (Munawaroh, 2025).

Furthermore, Article 197 paragraph (2) of the Indonesian Criminal Procedure Code provides that failure to comply with the mandatory requirements set forth in paragraph (1) letters a, b, c, d, e, f, h, and j results in a judgment being void ab initio. Where such nullity occurs, the judgment is regarded as having never existed and therefore has no binding legal effect upon the defendant (Oktavira, 2024). Nevertheless, the nullity applies solely to the court's judgment itself, whereas the investigation reports and the judicial examination process remain legally valid and continue to produce legal effects.

2.2 The Theory of Void Ab Initio

The concept of void ab initio in Indonesian law refers to a legal condition in which an agreement or legal decision is deemed to have no legal effect from its inception because it fails to satisfy the statutory requirements prescribed by law. Under this doctrine, the agreement or decision is considered legally invalid, as though it had never existed, and therefore cannot produce any legal consequences. Such invalidity generally arises where the objective requirements of a valid agreement are not fulfilled, including the absence of a definite subject matter or the existence of an unlawful or immoral cause.

Within the judicial context, a legal decision may also be declared void ab initio when it fails to comply with mandatory procedural requirements. For example, Article 197 paragraph (2) of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP) provides that a court judgment that omits certain mandatory elements prescribed by law shall be deemed null and void by operation of law. Similarly, in the field of administrative law and public governance, an administrative decision may be declared invalid where it contravenes statutory provisions or violates the General Principles of Good Governance (Asas-Asas Umum Pemerintahan yang Baik), thereby rendering the decision legally defective (Maftukhan, 2014).

According to Yahya Harahap, an agreement or legal decision that is void ab initio produces no legal consequences from the outset and is therefore incapable of being enforced. He argues that nullity arises automatically by operation of law without requiring a subsequent judicial decision to invalidate the legal act. Consequently, a void agreement is regarded as never having existed and cannot give rise to enforceable rights or obligations. Nevertheless, Hans Kelsen offers a different perspective by arguing that, although a legal act may be considered void under substantive law, its formal invalidation may still require an official declaration or action by a competent authority (Harahap, 2015). This view suggests that, in certain circumstances, the formal confirmation of nullity remains necessary to ensure legal certainty and maintain the orderly administration of justice (Harahap, 2015).

2.3 The Difference Between Void Ab Initio and Voidable Agreement

A voidable agreement is an agreement that fails to satisfy the subjective requirements for contractual validity under Indonesian law. Although the agreement suffers from a legal defect, it remains valid and binding upon the parties unless and until one of the parties entitled to challenge its validity seeks its annulment before a court. Accordingly, the agreement is not automatically invalid but may be rescinded at the request of the aggrieved party. The principal distinctions between voidable agreements and void ab initio agreements are as follows (BP Lawyers, 2022):

1. Voidable Agreements

a. Subjective Requirements. A contract becomes voidable when it fails to satisfy the subjective requirements for a valid agreement, such as the existence of genuine consent or the legal capacity of the contracting parties.

b. Legal Effect. A voidable agreement remains legally valid and binding until one of the parties successfully petitions the court for its annulment. This situation commonly arises where consent has been obtained through coercion, fraud, mistake, or where one of the parties lacks legal capacity.

Legal Consequences. The agreement continues to produce legal rights and obligations until a court declares it void upon the application of the injured party.

2. Void Ab Initio Agreements

a. Objective Requirements. A contract is void ab initio where it fails to satisfy the objective requirements of a valid agreement, namely the existence of a definite subject matter and a lawful cause.

b. Legal Effect. A void agreement is regarded as having never existed from the outset and is therefore legally ineffective without requiring judicial annulment. For example, where the object or purpose of an agreement violates statutory law, morality, or public order, the agreement is automatically invalid and incapable of producing legal consequences.

c. Legal Consequences. A void agreement is deemed never to have created any legal relationship, rights, or obligations between the parties from its inception.

3. Legal Implications of the Use of Nominee Agreement

3.1 Nominee Agreements in Land Ownership

Nominee agreements are commonly employed as a legal arrangement through which foreign nationals, who are prohibited from owning land under Hak Milik (freehold title) in Indonesia, utilize the name of an Indonesian citizen as the registered owner while retaining the actual economic ownership and control of the property. Under this arrangement, the Indonesian citizen serves as the legal owner (de jure), whereas the foreign national remains the beneficial owner (de facto). The primary purpose of this mechanism is to circumvent the statutory restrictions imposed by Indonesian land law. Such arrangements directly conflict with Article 21 paragraph (1) and Article 26 paragraph (2) of the Basic Agrarian Law, which expressly reserve ownership rights (Hak Milik) exclusively for Indonesian citizens and declare any transfer of such rights to foreign nationals null and void by operation of law. Furthermore, Articles 1335 and 1337 of the Indonesian Civil Code provide that agreements made for unlawful purposes or purposes contrary to morality or public order are legally unenforceable.

In practice, nominee agreements are particularly prevalent within Indonesia's property sector, especially in regions with high real estate values such as Jakarta, Bali, and other major urban centers. As land and property prices continue to increase, many foreign investors seek to acquire real estate in Indonesia despite statutory ownership restrictions. To achieve this objective, foreign nationals frequently register property under the name of an Indonesian citizen, who may be a family member, a spouse in a mixed-nationality marriage, or another trusted individual. Although such ownership appears legally valid from an administrative perspective, effective control of the property generally remains with the foreign beneficiary through a nominee arrangement supported by ancillary legal instruments, including irrevocable powers of attorney, transfer agreements, or separate name-lending agreements. This arrangement creates substantial legal uncertainty because the Indonesian citizen whose name appears on the land certificate possesses full legal ownership under Indonesian law. Consequently, should a dispute arise, the registered owner may assert exclusive ownership and refuse to transfer the property to the foreign beneficiary. In such circumstances, the foreign party who financed the acquisition may suffer significant financial losses without possessing a legally enforceable ownership claim.

From both criminal and administrative law perspectives, nominee arrangements involving land ownership may also expose the parties to legal sanctions. Where the arrangement involves document falsification or constitutes an attempt to circumvent mandatory legal provisions, the parties may incur criminal liability under Article 263 of the Indonesian Criminal Code concerning document forgery. Moreover, where nominee structures are employed to conceal the origin or ownership of illicit assets, such arrangements may also constitute an element of money laundering under Indonesian anti-money laundering legislation.

Detecting nominee arrangements remains a significant challenge for government authorities because no official document ordinarily identifies the foreign beneficiary as the actual owner of the property. Instead, ownership is formally recorded solely in the name of the Indonesian nominee. Nevertheless, in legal disputes or criminal investigations, evidence such as financial transaction records, private agreements, correspondence between the parties, and other documentary evidence may demonstrate that the property is, in substance, controlled by the foreign beneficiary despite the formal registration.

According to Aslan Noor in Case Settlement of Nominee Agreement as a Mode of Land Tenure for Foreign Nationals in Indonesia, the continued prevalence of nominee agreements in Indonesia reflects weaknesses in the existing regulatory framework, which remains largely normative without sufficiently effective implementing regulations or enforcement mechanisms. Noor argues that although Articles 9 and 21 of the Basic Agrarian Law expressly prohibit foreign ownership of land, inadequate supervision and ineffective sanctions have allowed nominee practices to persist, sometimes with the involvement of notaries who should instead ensure compliance with Indonesian law. Noor further observes that nominee arrangements generate substantial economic losses for the Indonesian state. In Bali Province alone, the estimated annual loss resulting from the de facto transfer of land ownership to foreign nationals through nominee agreements reaches approximately IDR 145.6 billion. Such practices not only violate Indonesian land law but also threaten national sovereignty and undermine the integrity of the legal system, particularly in strategic regions such as Bali, West Nusa Tenggara, and Yogyakarta (Noor, 2021). Accordingly, strengthening regulatory supervision over property transactions involving foreign nationals and enhancing law enforcement mechanisms are essential to prevent nominee arrangements that may weaken Indonesia's land law regime.

3.2 Nominee Agreements in Foreign Stock Ownership (*Pemegang Saham Asing/PMA*)

In addition to creating legal risks related to fraud and unlawful conduct, nominee agreements also have significant implications for Indonesia's legal system and investment climate, particularly in relation to foreign share ownership. One of the principal legal challenges associated with nominee shareholding is the difficulty of establishing the legal relationship between the nominee shareholder and the beneficial owner. Since the beneficial owner is not formally registered as the shareholder, proving the existence and terms of the nominee arrangement often becomes problematic in legal proceedings. Furthermore, nominee structures may be exploited to evade tax obligations and other statutory responsibilities. Through such arrangements, parties may conceal assets or investment income that should otherwise be disclosed to the tax authorities, thereby causing financial losses to the state.

Foreign investors employ nominee agreements for various purposes. One common objective is to obtain effective control over shares in sectors where foreign ownership is subject to statutory limitations or maximum ownership thresholds. Nominee arrangements are also used to circumvent restrictions imposed on foreign investment in certain business sectors and, in some cases, to conceal the proceeds of unlawful activities or facilitate money laundering by disguising the identity of the actual investor.

To address these challenges, the Indonesian government has introduced several legal measures aimed at strengthening corporate transparency and preventing the misuse of nominee arrangements. The Company Law promotes greater transparency in corporate share ownership, while Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations requires corporations to disclose their beneficial owners as part of Indonesia's efforts to improve corporate governance, prevent financial crimes, and enhance transparency in business ownership structures (Yanuar, 2021). These regulatory measures are intended to reduce opportunities for the misuse of nominee agreements while ensuring greater legal certainty and accountability in foreign investment activities.

3.3 Embezzlement and Fraud in Nominee Agreements

Embezzlement and fraud are among the criminal offenses most frequently associated with nominee agreements, particularly in relation to shareholding and land ownership arrangements. Article 372 of the Indonesian Criminal Code defines embezzlement as the intentional and unlawful appropriation of another person's property that is lawfully in the offender's possession, punishable by imprisonment of up to four years or a monetary fine. This provision is reaffirmed under Law No. 1 of 2023 concerning the Indonesian Criminal Code (the New Criminal Code), which increases the maximum penalty to a Category IV fine, equivalent to IDR 200 million. Within the context of nominee agreements, embezzlement may occur when the nominee, who is legally registered as the shareholder or landowner, abuses that legal status by unlawfully appropriating assets that are beneficially owned by the beneficiary.

Fraud is regulated under Article 378 of the former Indonesian Criminal Code and reaffirmed in Article 492 of the New Criminal Code. The offense arises when a person employs deception, false pretenses, or a series of fraudulent representations to obtain unlawful benefits by inducing another person to transfer property, extend credit, or waive a debt. In nominee arrangements, fraud may occur where the nominee intentionally conceals the beneficiary's ownership interest or manipulates legal documents for personal gain (Bank Syariah Indonesia, 2024).

The rapid development of digital technology has also expanded the methods through which fraudulent conduct may be committed. Common techniques include phishing, cell phone pharming, sniffing, and social engineering. Phishing involves deceiving victims through electronic communications to obtain confidential information, while pharming redirects users to fraudulent websites designed to steal personal data. Sniffing exploits unsecured networks to intercept sensitive information, whereas social engineering relies on psychological manipulation to persuade victims to disclose confidential information or transfer funds by impersonating trusted individuals or institutions. Within nominee arrangements, these methods may be employed to alter, forge, or unlawfully obtain documents relating to the ownership of shares or land.

The consequences of embezzlement and fraud arising from nominee agreements extend beyond losses suffered by the beneficial owner. Companies, financial institutions, and other parties involved in nominee transactions may also experience significant legal and financial harm. Where a nominee abuses the trust placed in them by the beneficiary, assets intended to remain under the beneficiary's effective control may be permanently lost. Furthermore, corporations affected by fraudulent nominee arrangements may suffer substantial financial losses that, in serious cases, result in insolvency, business failure, and job losses. Accordingly, effective supervision of nominee arrangements and stronger regulatory oversight are essential to prevent abuse and to safeguard the legal interests of all parties involved (Chen et al., 2021).

3.4 Legal Consequences for Notaries

Nominee agreements, commonly referred to as name-lending agreements, are frequently used by foreign nationals or other parties to circumvent statutory restrictions governing the ownership of land, shares, or other assets in Indonesia. Through such arrangements, foreign beneficiaries retain effective control over an asset while its legal ownership is formally registered in the name of an Indonesian citizen or another nominee. Although nominee agreements may be executed in the form of an authentic deed before a notary, they remain legally invalid because they conflict with mandatory provisions of Indonesian law. Under Article 1320 of the Indonesian Civil Code, every agreement must have a lawful cause in order to be valid. Nominee agreements fail to satisfy this requirement because they are designed to circumvent Article 21 and Article 26 of the Basic Agrarian Law, which prohibit foreign nationals from holding Hak Milik (freehold land rights), as well as Article 33 of the Investment Law, which expressly prohibits nominee arrangements in corporate share ownership (Perwitasari, 2021).

Beyond violating the principles of contract and land law, nominee agreements are generally regarded as a form of legal circumvention intended to evade mandatory statutory restrictions. This position is reinforced by Supreme Court Circular Letter (SEMA) No. 10 of 2020, which affirms that the lawful owner of land is the individual whose name appears on the Certificate of Ownership (Sertifikat Hak Milik/SHM), regardless of whether the acquisition was financed by a foreign national or another party. Likewise, Eka Wulandari, in The Validity of Ownership Rights to Land by Foreign Citizens through a Nominee Agreement, argues that although nominee agreements may formally satisfy procedural requirements because they are executed by legally competent parties in the form of an authentic deed, their substantive purpose is to circumvent the prohibition on foreign ownership of land under Article 26 of the Basic Agrarian Law (Wulandari, 2024). Consequently, where disputes arise, Indonesian courts recognize only the individual whose name is registered on the land certificate as the lawful owner, while the foreign beneficiary who financed the acquisition possesses no legally enforceable ownership rights.

From the perspective of notarial law, a notary's involvement in preparing nominee agreements may give rise to civil, administrative, ethical, and even criminal liability. In the civil law context, nominee deeds may be declared invalid through judicial proceedings, and a notary who negligently prepares such an instrument may be held liable for losses suffered by the parties. From an administrative perspective, Article 15 paragraph (3) of Law No. 2 of 2014 concerning the Office of Notary requires notaries to prepare only deeds that comply with applicable law. Failure to observe this obligation may result in disciplinary sanctions imposed by the Notary Supervisory Council, ranging from written warnings and temporary suspension to dismissal from office. From an ethical standpoint, the Notarial Code of Ethics prohibits notaries from preparing legal instruments that contravene statutory provisions, and violations may result in sanctions imposed by the Notary Honorary Council, including suspension or termination of membership in the Indonesian Notary Association (Ikatan Notaris Indonesia/INI). Furthermore, where a nominee agreement is used to facilitate unlawful conduct or causes harm to another party, the notary may also incur criminal liability under Article 263 of the Indonesian Criminal Code concerning document forgery or Article 266 concerning the inclusion of false statements in an authentic deed (Lingga, 2023).

In addition to land and share ownership, nominee arrangements are also employed to avoid tax obligations, conceal assets from creditors, or circumvent banking regulations. For example, individuals who are ineligible to obtain credit may use another person's identity to secure financing, while certain business entities may rely on nominee structures to bypass investment restrictions imposed under Indonesian law. Although these arrangements may appear commercially advantageous, they expose all parties involved to significant legal risks because they frequently involve elements of fraud, legal circumvention, and regulatory non-compliance.

Accordingly, notaries, as public officials entrusted with safeguarding legal certainty, have a professional responsibility to advise clients of the legal risks associated with nominee agreements. Rather than facilitating name-lending arrangements, notaries should encourage parties to adopt lawful ownership structures that comply with Indonesian investment, corporate, and property laws. Such an approach not only protects the interests of the parties but also preserves the integrity of the notarial profession and supports the effective enforcement of Indonesian law.

IV. Conclusion

Based on the foregoing discussion, it can be concluded that although nominee agreements may appear formally valid from an administrative perspective, they are substantively invalid and void ab initio under Indonesian law because they fail to satisfy the objective requirements of a valid agreement as stipulated in Article 1320 of the Indonesian Civil Code. Such arrangements are designed to circumvent mandatory statutory provisions governing foreign ownership and therefore conflict with the principles of legality, legal certainty, and public order embodied in the Basic Agrarian Law, the Investment Law, and other relevant legislation.

The use of nominee agreements also gives rise to significant legal risks. These arrangements create opportunities for fraud, embezzlement, money laundering, and the abuse of ownership rights, all of which may cause financial losses to the state, undermine economic stability, and weaken the integrity of Indonesia's investment regime. Furthermore, the involvement of notaries in preparing nominee deeds further complicates the legal issues. Although such deeds may satisfy the formal requirements of an authentic instrument, their underlying purpose remains contrary to Indonesian law, thereby exposing notaries to potential civil, administrative, ethical, and even criminal liability.

Accordingly, stronger legal enforcement, supported by a coherent regulatory framework and effective supervisory mechanisms, is essential to prevent the misuse of nominee agreements as instruments for circumventing Indonesian law. Enhancing transparency, particularly through the effective implementation of beneficial ownership disclosure requirements, and strengthening oversight of property and investment transactions involving foreign parties will contribute to greater legal certainty, fairness, and accountability within Indonesia's legal and investment systems.

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