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Nominee Agreements Regarding the Control and Ownership of Land Rights in Indonesia (Case Study: Judgment Number 137/Pdt.G/2021/PN Gianyar)

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Abstract

The practice of nominee agreements in controlling and owning land rights in Indonesia has emerged as a legal mechanism to circumvent the prohibition on foreign ownership of freehold land under Law Number 5 of 1960 concerning the Basic Agrarian Principles. Under such arrangements, Indonesian citizens are formally registered as legal owners, while foreign nationals exercise actual control and receive the economic benefits of the land. This practice raises legal issues concerning the validity of nominee agreements, legal certainty, and legal protection for the parties involved.This research aims to examine the legal existence of nominee agreements under Indonesian positive law and to analyze their implications for legal certainty and legal protection based on Decision Number 137/Pdt.G/2021/PN Gianyar. The research employs normative legal research using statutory, conceptual, and case approaches. Legal materials consist of primary, secondary, and tertiary sources analyzed descriptively and qualitatively.The research concludes that nominee agreements violate the nationality principle under the Basic Agrarian Law and fail to satisfy the objective requirements for a valid agreement under Articles 1320 and 1337 of the Indonesian Civil Code because they contain an unlawful cause. The Gianyar District Court declared such agreements to constitute legal evasion and therefore null and void. Consequently, nominee agreements fail to provide legal certainty and protection for either party and may also expose notaries and Land Deed Officials (PPAT) to legal liability. Stronger regulations, stricter supervision by the National Land Agency, and greater adherence to the precautionary principle are therefore essential to strengthen legal certainty in Indonesian land law.
Keywords: Nominee Agreement, Land Rights, Legal Certainty, Legal Protection.

INTRODUCTION

Land is a natural resource of strategic value in the lives of the Indonesian people. Beyond serving as a place of residence, land functions as a factor of production, an investment asset, and a crucial instrument for national development. Its steadily rising economic value makes land highly attractive to the public and investors alike, including foreign investors. This situation has driven an increased demand for land rights, particularly in areas with high investment potential, such as the province of Bali.

Under Indonesia's land law system, the control and ownership of land rights are comprehensively regulated by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). The UUPA is founded on the principle of nationality, which asserts that only Indonesian citizens may hold the Right of Ownership over land. This provision implements Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the land,

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water, and natural resources contained therein are controlled by the state and utilized for the greatest possible prosperity of the people.

This principle of nationality is a legal policy aimed at safeguarding state sovereignty over land control and preventing foreign domination of national agrarian resources. Consequently, Article 21 paragraph (1) of the Basic Agrarian Law (UUPA) explicitly stipulates that only Indonesian citizens may hold the Right of Ownership over land. For foreign nationals, Indonesian land law only permits the acquisition of the Right of Use, subject to specific conditions in accordance with statutory regulations.

In practice, these restrictions have actually given rise to various forms of legal circumvention. One of the most common methods is the use of nominee agreements. Under this legal arrangement, an Indonesian citizen serves as the formal titleholder, while a foreign national retains full control over the financing, possession, and management of the land, as well as the enjoyment of its economic benefits. Consequently, while the land rights remain legally registered in the name of the Indonesian citizen, the land is factually controlled by the foreign party.

Nominee agreements are not explicitly recognized within the Indonesian legal system. Such legal relationships arise from contractual practices that leverage the principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code. However, the principle of freedom of contract is not absolute; it remains subject to the limitations set forth in Articles 1320 and 1337 of the Indonesian Civil Code regarding the validity of agreements—specifically the requirement for a lawful cause. Agreements intended to circumvent statutory provisions essentially fail to meet objective validity requirements and are, therefore, null and void by operation of law.

This phenomenon is increasingly prevalent in investment destinations such as Bali. The high level of interest among foreign nationals in owning villas, hotels, or tourism properties has led to the "nominee" arrangement becoming a common instrument in land transactions. Such practices are typically structured using a combination of legal instruments—such as loan agreements, irrevocable powers of attorney, acknowledgments of debt, conditional sale and purchase agreements, and declarations of ownership. Although each document may appear legally valid on its own, the entire series of agreements is actually designed to grant foreign nationals full control over freehold land (Hak Milik)-a form of ownership that is legally prohibited for them.

This situation creates serious issues regarding legal certainty. On one hand, Indonesian positive law prohibits foreign nationals from holding freehold title, while on the other, nominee arrangements continue to proliferate, driven by investment interests and weak oversight. Consequently, disputes frequently arise when conflicts occur between the foreign and Indonesian parties—particularly

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concerning physical possession of the land or the distribution of economic benefits derived from it.

One case illustrating this complexity is the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar. In that case, the panel of judges found a series of agreements that, in substance, constituted a nominee arrangement. Although the land was registered in the name of an Indonesian citizen, the entire financing and control were provided by a foreign national. The judges subsequently declared that this legal relationship constituted a form of circumvention of the law that contravened the Basic Agrarian Law (UUPA), and thus it did not merit legal protection.

The ruling holds significant importance for the development of Indonesian agrarian law, as it reaffirms that the principle of freedom of contract cannot serve as a basis for overriding mandatory legal norms. Consequently, the parties' freedom to enter into contracts must remain within the framework of national law and cannot be used as a means to circumvent regulations concerning the subjects of land rights.Based on the foregoing, this study is significant for examining the existence of nominee agreements within the Indonesian positive legal system and analyzing their legal implications regarding legal certainty and the protection of the parties involved, specifically in light of Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar. This analysis is expected to contribute to the development of national agrarian law and serve as a basis for evaluating land policy formulation in Indonesia.

METHODS

This study is a normative legal research project that treats law as the norms or rules applicable within the positive legal system. Normative legal research aims to examine the synchronization of legal norms, legal principles, legal doctrines, and court rulings relevant to the legal issue under investigation. This approach was selected because the study focuses on the existence of nominee agreements within the perspective of Indonesian positive law, as well as their legal implications for legal certainty and the legal protection of the parties involved, based on the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar.

The research employs a combination of the statute approach, the conceptual approach, and the case approach. The statute approach is used to analyze various legal provisions governing land ownership rights, the validity requirements of agreements, and restrictions on land ownership by foreign nationals. The conceptual approach is utilized to examine theories regarding the rule of law, legal certainty, legal protection, and contracts, serving as the analytical framework. Meanwhile, the case approach is applied to analyze the judge's legal reasoning in Judgment Number 137/Pdt.G/2021/PN Gianyar.

The legal materials utilized consist of primary sources—namely the 1945 Constitution of the

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Republic of Indonesia, the Civil Code, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar, and various other land-related laws and regulations. Secondary legal materials comprise books, scholarly journals, research findings, and the opinions of legal experts, while tertiary materials include legal dictionaries, legal encyclopedias, and other supporting sources. All legal materials were analyzed qualitatively using a descriptive-analytical method involving legal interpretation and legal reasoning to derive conclusions aligned with the research problem.

RESULTS AND DISCUSSION

The Status of Nominee Agreements under Indonesian Positive Law

A nominee agreement is a legal arrangement that has evolved within business and investment practices-particularly in the land sector-whereby one person acts as the formal titleholder (legal owner) while another party serves as the actual owner (beneficial owner). In Indonesian land practice, this legal relationship is commonly utilized by foreign nationals who are legally prohibited from holding freehold title to land but nevertheless wish to control the land and enjoy its economic benefits.

From a normative standpoint, the term "nominee agreement" is not recognized within the Indonesian legal and regulatory framework. Neither the Civil Code nor the Basic Agrarian Law contains any provision acknowledging the existence of such agreements. Instead, the practice has developed through the application of the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code.

The principle of freedom of contract indeed grants parties the liberty to enter into agreements that serve their respective interests; however, this freedom is not absolute. Indonesian law imposes limitations through Article 1320 of the Civil Code, which outlines the requirements for a valid agreement, and Article 1337 of the Civil Code, which prohibits any cause that contravenes the law, public order, or public morality. In the context of nominee agreements, the primary objective of the contract is not merely to regulate the legal relationship between the parties, but to circumvent the prohibition against foreign nationals holding freehold title, as stipulated in Article 21 paragraph (1) of the Basic Agrarian Law. Consequently, although the formal elements of the agreement may appear to be satisfied, the agreement's underlying purpose is contrary to the law; thus, it fails to meet the objective requirements for a valid agreement.

This view aligns with the theory of lawful cause in Indonesian contract law. According to Yahya Harahap, an agreement is assessed not only by its formal structure but also by the legal objective the parties intend to achieve. If that objective contravenes the law, the agreement becomes null and void. In practice, nominee agreements rarely stand alone. Generally, such legal relationships are

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established through a series of interrelated deeds, including:

1 Name loan agreement (nominee agreement);
2 Debt acknowledgment letter;
3 Debt and receivable agreement;
4 Absolute power;
5 Deed of sale and purchase agreement;
6 Statement of ownership;
7 Power to sell.

The entire series of deeds essentially aims to grant foreign nationals full control over the land in question, even though the title remains registered in the name of an Indonesian national. Consequently, this legal arrangement merely serves to disguise the true nature of the legal relationship. Under civil law doctrine, such a practice is known as a legal simulation or an evasion of the law specifically, the use of a particular legal form to circumvent mandatory legal provisions. Therefore, it is insufficient for a court to assess only the formal structure of an agreement; it is also obliged to evaluate the actual substance of the parties' legal relationship.

From the perspective of national agrarian law, the existence of nominee agreements directly conflicts with the principle of nationality that underpins the Basic Agrarian Law (UUPA). This principle regards land as a strategic resource, the control of which must remain in the hands of the Indonesian nation. The prohibition against foreign nationals holding (Right of Ownership) is not merely an administrative restriction but a national legal policy designed to safeguard state sovereignty over land. Boedi Harsono explains that the principle of nationality is the very essence of the Basic Agrarian Law; consequently, any form of transferring control over to foreign nationals by any means whatsoever runs counter to the law's underlying purpose.

The rise of nominee agreements highlights a gap between investment needs and the national land law system. High levels of foreign investment in tourist areas like Bali have driven the emergence of various legal workarounds enabling foreign nationals to effectively control land held under (Right of Ownership) titles. However, economic interests cannot justify disregarding mandatory legal norms. In fact, nominee agreements give rise to various legal risks, including a lack of ownership certainty, potential disputes between the parties, the risk of losing land rights, and legal liability for the notaries or Land Deed Officials (PPAT) involved in drafting the relevant deeds. From the perspective of legal protection, this practice fails to provide certainty for either party, as the legal relationship established from the outset conflicts with prevailing Indonesian law.

Thus, it can be asserted that nominee agreements lack a valid legal basis within the Indonesian

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legal system. Although prevalent in business and investment practices, such legal arrangements cannot obtain legal recognition or protection because they contravene the provisions of Article 21 of the Basic Agrarian Law, as well as Articles 1320, 1335, and 1337 of the Indonesian Civil Code. Consequently, any dispute arising from the implementation of a nominee agreement must, in principle, be assessed based on its legal substance rather than merely the formal structure of the contract executed by the parties.

Legal Implications of Nominee Agreements for Legal Certainty and the Legal Protection of the Parties (An Analysis of Judgment Number 137/Pdt.G/2021/PN Gianyar)

The existence of nominee agreements raises issues not only regarding contract validity but also has direct implications for legal certainty and the legal protection of the parties involved. In practice, such legal relationships are established through various authentic deeds that formally comply with civil law provisions, yet substantively aim to circumvent the prohibition against foreign nationals holding freehold title to land—a restriction stipulated in the Basic Agrarian Law. This situation creates a conflict between the legal form and the legal purpose the parties intend to achieve. The Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar stands as a significant ruling that reinforces the judiciary's stance on nominee practices in Indonesia. In this case, the panel of judges did not merely assess the validity of each deed in isolation but conducted a comprehensive evaluation of the entire series of legal relationships established by the parties. Such an approach demonstrates that the judges prioritize legal substance over contractual formalities.

The panel of judges essentially held that the series of agreements entered into by the parties constituted a form of circumvention of the law aimed at avoiding the application of Article 21 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. Consequently, even though the agreements were executed via an authentic deed before a notary, the resulting legal relationship was declared devoid of binding legal force because it contravened mandatory legal provisions. This reasoning demonstrates that the judges did not merely apply the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, but also took into account the limitations placed on that principle by Article 1337 of the Civil Code regarding prohibited causes. Thus, the parties' freedom to enter into contracts cannot serve as a justification for agreements that clearly conflict with statutory regulations.

According to the theory of legal certainty proposed by Hans Kelsen, the law must provide clarity regarding the rights, obligations, and legal consequences associated with any legal act. Legal certainty can only be achieved if legal norms are applied consistently by law enforcement officials. In the context of "nominee" cases, the ruling by the Gianyar District Court provides certainty that any

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form of control over (Right of Ownership) by foreign nationals through the use of a nominee arrangement receives no legal recognition in Indonesia. This ruling simultaneously reinforces the application of the nationality principle as a fundamental tenet of Indonesian agrarian law. The nationality principle not only governs who may hold but also prohibits any form of legal circumvention that results in the indirect transfer of control over to foreign parties. Consequently, the protection of national interests takes precedence over the individual interests of parties who knowingly engage in acts contrary to the law.

1 Implications for Legal Certainty

From the perspective of legal certainty, nominee arrangements actually create ambiguity regarding the legal status of the land and the standing of the parties involved. While a Freehold Title Certificate is issued in the name of an Indonesian citizen acting as the nominee, the physical possession and economic benefits rest with a foreign national acting as the beneficial owner. This situation gives rise to a dichotomy between legal ownership and economic ownership. Such a dichotomy carries a significant risk of disputes should conflicts arise in the relationship between the parties. In such circumstances, the foreign national lacks a strong legal basis to assert their rights, as Indonesian law does not recognize the validity of nominee arrangements. Conversely, the Indonesian citizen named on the certificate remains legally recognized as the rightful titleholder under the national land registration system.

This situation indicates that the legal relationship established by the parties was inherently fraught with legal uncertainty from the very beginning. Although the parties believed they were protected through various notarial deeds, in reality, the entire series of agreements lacked legal force if their substance conflicted with the Basic Agrarian Law. According to Gustav Radbruch, legal certainty is one of the primary objectives of law, alongside justice and utility. Legal certainty can only be achieved when legal norms are applied consistently, free from the influence of economic interests or the interests of the parties involved. Therefore, the decision of the Gianyar District Court reflects the application of the principle of legal certainty, as it establishes the Basic Agrarian Law (UUPA) as a norm that must be adhered to by every legal subject.

2 Implications for Legal Protection

In addition to creating legal uncertainty, nominee arrangements also deprive the parties involved of legal protection. From the perspective of the legal protection theory proposed by Philipus M. Hadjon, legal protection is granted only to legal subjects who act in accordance with applicable legal provisions. In a nominee arrangement, a foreign national cannot obtain legal protection for their investment because the legal relationship was established from the outset to circumvent the provisions

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of Article 21 of the Basic Agrarian Law (UUPA). In the event of a dispute, the courts cannot provide protection for interests arising from a legal relationship that contravenes the law.

On the other hand, Indonesian citizens acting as nominees also face various legal risks. Although formally recorded as the holders of the Right of Ownership, their status can be challenged if they are proven to be involved in circumventing the law. Furthermore, the fiduciary relationship between the nominee and the beneficial owner lacks legal protection should one party default or unilaterally take control of the land. Consequently, nominee arrangements are ultimately detrimental to both parties: foreign nationals lose certainty regarding their investments, while Indonesian citizens face the risk of lawsuits and protracted civil disputes.

3 Responsibilities of Notaries and Land Deed Officials (PPAT)

Another legal implication concerns the responsibilities of notaries and Land Deed Officials (PPAT). In nominee arrangements, notaries are often asked to draft various deeds that formally appear to represent distinct legal relationships but, in reality, constitute a unified whole aimed at transferring land control to foreign nationals. As public officials, notaries are required to perform their duties based on principles of prudence, independence, professionalism, and compliance with statutory regulations. Therefore, if a notary is aware that a series of deeds is intended to circumvent agrarian laws, the notary should refuse to execute those deeds.

The same applies to a Land Deed Official (PPAT) authorized to draft deeds regarding the transfer of land rights. A PPAT is responsible not only for administrative aspects but is also obligated to ensure that the legal acts performed by the parties do not conflict with national land law provisions. Should a notary or PPAT draft a deed that is demonstrably used as an instrument to circumvent the law, they may face administrative, civil, or even criminal liability—provided that elements of intent or abuse of authority are proven—in accordance with applicable laws and regulations.

4 Author’s Analysis

In the author's view, the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar consistently reflects the application of the rule-of-law principle, the nationality principle, and the theory of legal certainty. The decision demonstrates that investment protection must not override the fundamental principles of Indonesian agrarian law. Although foreign investment contributes to national development, its implementation must remain within legal boundaries. Foreign nationals are provided with legal instruments—such as the Right of Use and other forms of land tenure—as stipulated in statutory regulations. Consequently, the use of nominee agreements cannot be justified, as they aim to circumvent mandatory legal provisions.

Moving forward, the government needs to strengthen oversight of nominee arrangements by

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enhancing the Ministry of ATR/BPN's monitoring of land transactions, reinforcing verification systems for transactions involving foreign nationals, increasing supervision of notaries and Land Deed Officials (PPAT), and formulating regulations that explicitly prohibit the use of nominee agreements to hold land ownership rights. These measures are essential to uphold the principle of

CONCLUSION

Based on the research findings and discussion regarding Nominee Agreements in the control and ownership of land rights in Indonesia (Case Study: Judgment Number 137/Pdt.G/2021/PN Gianyar), several conclusions can be drawn as follows.

1 First, nominee agreements lack a legal basis within Indonesia's positive legal system. Although such practices have evolved based on the principle of freedom of contract—as stipulated in Article 1338 of the Indonesian Civil Code—their application remains constrained by Articles 1320, 1335, and 1337 of the Civil Code regarding the validity requirements of agreements and prohibitions against causes that contravene the law. Furthermore, Article 21 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) expressly restricts (Right of Ownership) solely to Indonesian citizens. Consequently, any agreement aiming to transfer control of to a foreign national via a nominee mechanism constitutes a form of circumvention of the law that violates the nationality principle inherent in Indonesian agrarian law. Thus, nominee agreements fail to meet the objective requirements for a valid contract, rendering them null and void.

2 Second, the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gianyar affirms that nominee agreement arrangements do not receive legal protection because their substance conflicts with the Basic Agrarian Law (UUPA). This ruling reinforces the principle of legal certainty by establishing agrarian law norms as mandatory provisions that cannot be overridden by private contracts. The legal implications include a lack of legal certainty for foreign nationals acting as beneficial owners, heightened legal risk for Indonesian citizens acting as nominees, and potential legal liability for notaries or Land Deed Officials (PPAT) who draft the series of deeds used to circumvent the law. Therefore, nominee practices not only disadvantage the parties involved but also potentially undermine the national land law system and the objective of protecting national interests—which served as the foundation for the enactment of the UUPA.

Suggestion

Based on these conclusions, the author offers the following suggestions.

1 The government, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), needs to strengthen regulations prohibiting the use of nominee

agreements to hold land ownership rights. This strengthening can be achieved by drafting provisions that explicitly define the nature, characteristics, and legal consequences of nominee agreements, thereby preventing varied interpretations in practice. Furthermore, the government needs to enhance its oversight system for land transactions—particularly those involving foreign nationals—by integrating land data and transaction funding verification systems, as well as improving coordination among the ATR/BPN, the Ministry of Law, the Directorate General of Immigration, Land Deed Officials (PPAT), notaries, and law enforcement agencies.

2 Foreign nationals wishing to invest in Indonesia should utilize the legal instruments provided under prevailing laws and regulations, such as the Right of Use, the Right to Build, or other forms of investment cooperation recognized as lawful under Indonesian law. Relying on nominee agreements actually creates a risk of investment loss, as such legal arrangements do not receive legal protection in the event of a dispute.

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