



Nominee Arrangement as a Legal Smuggling Practice in the Control of Land Ownership Rights by Foreigners

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Abstract: The practice of lawful smuggling has attracted foreigners to the real estate market. A nominee agreement system is used to accomplish this. Legal protection is the main area of concern for both foreigners and Indonesian citizens. The legitimacy of nominee agreements is questioned, particularly in light of the existence of the Basic Agrarian Law and Article 1320 of the Civil Code. The aim of this study is to evaluate the validity of nominee agreements about foreigners ownership rights to land and property. In addition, this study analyzes the legal ramifications of nominee agreements obtained through legal smuggling. This is a qualitative study conducted using a normative legal method and data acquired from a literature review. The study's findings imply that lawful smuggling in nominee agreements has an illegitimate cause. The nominee agreement is therefore void. Court decisions frequently conflict with one another. Judges must therefore implement the *Fraus Omnia Corruptit* theory consistently and according to SEMA No. 10 of 2020's guidelines. Furthermore, oversight of the notary profession and land deed officials is required to guarantee that no more public servants assist in the preparation of nominee agreement for monetary compensation.

1. Introduction

As a high-value asset, a living area, and a means of economic activity, land is an agrarian resource with strategic importance for national development. As a result, land rules are quite important in Indonesian law. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which attempts to guarantee legal certainty,

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order, and fairness in the control and usage of agrarian resources, contains basic land regulations.¹ The UUPA emphasizes that only Indonesian citizens have the right to own land. Article 21 paragraph (1) of the UUPA expressly declares that "Only Indonesian citizens can have ownership rights." This affirmation demonstrates the state's dedication to preserving sovereignty over land as a resource that is connected to national integrity and interests in addition to having economic worth.²

In actuality, the phenomena of legal smuggling through nominee arrangements has emerged as a result of the growth of the real estate industry and the growing interest in foreign investment.³ In this method, a foreigners formally owns the land under the name of an Indonesian citizens, but the foreign party retains ownership, control, and financial advantages.⁴ This technique typically lacks substantial evidentiary force because it is described in an unregistered private agreement. The practice of nominee agreements is common in land transactions in Indonesia and raises a number of legal concerns, although not being specifically controlled by legislation.⁵

¹ Antonius Ade Yunus Sihalo, "Sertifikasi Tanah Sebagai Instrumen Perlindungan Hukum Dan Jaminan Investasi Untuk Mendukung Kegiatan Ekonomi Penggunaan Aset Tanah," *Jurnal Ekonomi, Bisnis, Manajemen Dan Akuntansi* 3, no. 5 (2025), <https://sociohum.net/index.php/JEBIMAN/article/view/276>.

² Muhammad Fakhurrozi, Yuniar Rahmatiar, and Muhamad Abas, "Kajian Hukum Tata Negara Terhadap Perlindungan Hak Atas Tanah Dalam Konteks UU No. 5 Tahun 1960," *MORALITY: Jurnal Ilmu Hukum* 11, no. 1 (June 30, 2025): 148, doi:10.52947/morality.v11i1.957.

³ Fransiscus Xaverius Sumarja et al., "Transfer of Land Ownership and Marginalization as Impact of Tourism Industry," *Hasanuddin Law Review* 9, no. 2 (September 11, 2023): 197, doi:10.20956/halrev.v9i2.4593. See also Viola Audy and Amad Sudiro, "Legal Implications of Nominee Schemes in Foreign Ownership of Limited Liability Companies in Indonesia," *DE LEGA LATA: Jurnal Ilmu Hukum* 11, no. 1 (2026), <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/26894>.

⁴ IGN. Supartha Djelantik, I Nyoman Putu Budiarta, and Hartini Saripan, "The Right on Land for Foreigner and Foreign Legal Entity Tourism Investasion Perspective, Participation and Nominee Practice Prevention," *Journal Equity of Law and Governance* 2, no. 1 (2022), <https://ejurnal.warmadewa.ac.id/index.php/elg/article/view/4693>. See also Eka Wulandari, "The Validity of Ownership Rights to Land by Foreign Citizen Through a Nominee Agreement," *Journal Commuale* 2, no. 2 (2024): 77–85, <https://online-journal.unja.ac.id/commuale/article/view/37862>. See also Salsa Mita Kirani, Muryanto Lanontji, and Wahyudi Umar, "Legal Certainty of Land Ownership Rights By Foreign Nationals Through Nominee Agreements," *Law and Justice* 9, no. 1 (May 24, 2025): 218–29, doi:10.23917/laj.v9i1.8693.

⁵ Deyosi Faza Shulkhantika, Luthfiyah Trini Hastuti, and Isharyanto Isharyanto, "The Legal Standing of Land Nominee Agreements from the Perspective of Lawful Cause," *JlHK* 7, no. 2 (January 6, 2026): 1530–44, doi:10.46924/jlhk.v7i2.423.

The legitimacy of nominee agreements is the first issue. According to Article 1320 of the Civil Code, an agreement is deemed legitimate if it satisfies the following subjective and objective criteria: agreement, capacity, a specific object, and a legitimate cause. However, a cause is deemed unlawful if it violates the law, public order, or morals, according to Article 1337 of the Civil Code. The explicit restriction of Article 21 paragraph (1) of the UUPA is in conflict with nominee agreements intended to give foreigners control of properties with freehold status. This has sparked scholarly and practical discussion on whether nominee agreements should be deemed void due to their violation of national agrarian standards or whether they can still be deemed lawful based on the principle of freedom of contract.⁶

The second concern is the legal ramifications of foreigners acquiring land through legal smuggling. Nominee agreements have the potential to cause harm to Indonesian citizens who are appointed as nominees in addition to creating uncertainty over land ownership status. Land possessed by foreigners through this illicit technique may be deemed legally defective from the standpoint of land law, increasing the possibility of rights revocation, civil disputes, and state administrative action.⁷ Additionally, conflicting court rulings in nomination cases increase legal ambiguity and complexity, which raises the possibility of foreign parties abusing land.⁸

Given the growing complexity of nominee agreement practices in land ownership, a thorough legal analysis is required to determine their validity based on the agreement's legitimate terms as stated in Article 1320 of the Civil Code and the

⁶ Audy and Sudiro, "Legal Implications of Nominee Schemes in Foreign Ownership of Limited Liability Companies in Indonesia."

⁷ Puput Ariyanti, Amalia Syauket, and Lukman Hakim, "Perlindungan Hukum Terhadap Warga Negara Indonesia Atas Penguasaan Hak Milik Tanah Berdasarkan Perjanjian Nominee," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 4975-4984, <http://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/2114>. See also I Kadek Agus Aristya Jaya and I Gusti Ngurah Nyoman Krisnadi Yudiantara, "Keabsahan Perjanjian Nominee Dalam Kepemilikan Tanah Antara Warga Negara Asing Dengan Warga Negara Indonesia," *Jurnal Media Akademik* 4, no. 1 (2026), <https://jurnal.mediaakademik.com/index.php/jma/article/view/5060>.

⁸ Widodo Budidarmo and Lily Kalyana, "Problematisasi Sistem Pendaftaran Tanah Sebagai Akibat Ketidakpastian Hukum Pada Perjanjian Nominee," *Jurnal Retentum* 6, no. 2 (2024): 315-24, <https://jurnal.universitasdarmaagung.ac.id/retentum/article/view/5484>.

UUPA's Article 21 prohibition on foreigners owning land rights. This study is crucial for determining the legality of nominee agreements as well as for examining the legal ramifications for land ownership status acquired through legal smuggling. Therefore, it is anticipated that this study will offer a more thorough legal understanding of the boundaries of contract freedom in land law as well as recommendations focused on bolstering legal certainty, safeguarding land rights, and maintaining the nationality principle that forms the basis of Indonesian agrarian law.

Puput Ariyanti et al.'s⁹ research, titled *"Perlindungan Hukum Terhadap Warga Negara Indonesia Atas Penguasaan Hak Milik Tanah Berdasarkan Perjanjian Nominee"*, highlights judicial legitimacy. The study relied on Denpasar District Court Decision No. 274/Pdt.G/2020/PN Dps. The court stressed the nominee agreement as a type of legal smuggling, thereby canceling the agreement between the Indonesian citizens and foreigners. The agreement was declared null and void, making the Indonesian citizen the rightful owner of the contested land.

Ega Permatadani and Anang Dony Irawan's¹⁰ study titled *"Perlindungan Hukum Terhadap Warga Negara Indonesia Atas Penguasaan Hak Milik Tanah Berdasarkan Perjanjian Nominee"* highlighted the issue of persons who lack legal understanding easily passing land ownership certificates to foreigners. As a result, an increasing number of foreign people now reside in Indonesia and own a variety of properties and businesses. The granting of visa exemptions to foreigners has increased the frequency of their arrival in Indonesia. The issue with foreigners who own land certificates is that they can transfer them to others, making them difficult to detect.

Unlike the other two studies, this one will focus on the requirements for *halal causa*. These requirements will subsequently be expanded upon in compliance with Indonesian laws and regulations. This is because *halal causa* is one of the prerequisites for a binding agreement. As a result, this study will focus on whether

⁹ Ariyanti, Syauket, and Hakim, "Perlindungan Hukum Terhadap Warga Negara Indonesia Atas Penguasaan Hak Milik Tanah Berdasarkan Perjanjian Nominee."

¹⁰ Ega Permatadani and Anang Dony Irawan, "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia," *Khatulistiwa Law Review* 2, no. 2 (2021): 348–59.

nominee agreements between Indonesian citizens and foreigners can be terminated or declared void by law.

The aim of this study is to evaluate and examine the legitimacy of nomination agreements for the acquisition of land ownership rights by foreigners, as defined by Article 1320 of the Civil Code and Article 21 of the Basic Agrarian Law. This study also seeks to explore the legal ramifications of land ownership obtained through nominee schemes or legal smuggling. Furthermore, this study examines the various forms of legal protection available to Indonesian citizens whose names appear in nominee agreements.

2. Method

This study is a qualitative study that employs a normative legal method, utilising a statute approach.¹¹ This study utilises secondary data obtained from various relevant sources to provide a coherent framework for discussing the issues at hand. The data used were obtained through a literature review. These data consist of primary legal sources (laws and regulations), secondary legal sources (books and journals), and tertiary legal sources (the internet).¹² The data collected was then analysed using qualitative data analysis with the aim of understanding and describing the issues.¹³ This study encompasses several stages. First, formulating the problem to be discussed in the study. Second, identifying legislation relevant to the discussed issue. Third, collecting reference books and journals related to the study as well as other sources from the internet. Fourth, analyzing each piece of legislation, legal theory, and other data obtained, as well as processing and presenting them qualitatively through narrative explanations.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011), 105.

¹² Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normative: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013), 33-37.

¹³ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2016), 167.

3. Result and Discussion

3.1. Review of Article 1320 of the Civil Code and the Limitations in Article 21 of the UUPA

The spirit of nationalism and decolonization that guided the creation of the UUPA is inextricably linked to Indonesia's land legislation. The fundamental tenet of the UUPA is an expression of Article 33 paragraph (3) of the Republic of Indonesia's 1945 Constitution, which declares that *"The land, water, and natural resources contained therein are controlled by the state for the greatest prosperity of the people"*. The Principle of Nationality, a legal foundation that states that only Indonesian nationals have a lasting and comprehensive link with their motherland, was born out of this idea.¹⁴ A significant obstacle to this idea in the context of globalization is the legal smuggling of land through nominee agreements or name borrowing, where foreigners try to control land with the status of Ownership Rights a right that is legally and constitutionally reserved for Indonesian citizens.¹⁵

In the past, the UUPA was established to establish legal unification based on refined customary law and to do away with the dualism of colonial agricultural law.¹⁶ Salah satu pilar utama unifikasi ini adalah pembatasan subjek hukum yang dapat memiliki Hak Milik atas tanah. The prohibition on foreign ownership of property rights is not just an administrative policy; rather, it is a tool for safeguarding national economic sovereignty and preventing foreign control of strategically important and

¹⁴ La Ode Muhammad Muskur and La Ode Hendro Susilo, "Tinjauan Hukum Terhadap Prinsip Nasionalitas Dalam Jual Beli Hak Atas Tanah," *Jurnal Ilmu Hukum Kanturuna Wolio* 4, no. 1 (January 29, 2023): 50–58, doi:10.55340/jkw.v4i1.1012.

¹⁵ Jasnawadi Wirajagat, Arba, and Zunnuraeni, "Penyelundupan Hukum Melalui Perjanjian Nomine Antara Warga Negara Asing Dengan Dengan Warga Negara Indonesia Untuk Penguasaan Hak Atas Tanah," *JATISWARA* 40, no. 3 (November 30, 2025): 382–96, doi:10.29303/jtsw.v40i3.1257.

¹⁶ Pandapotan Damanik, "Dualism of Land Rights Recognition in National and Customary Legal Systems in the Perspective of Dignified Justice," *Academia Open* 10, no. 1 (June 30, 2025), doi:10.21070/acopen.10.2025.11363. See also Tandori Tandori and V. Hari Supriyanto, "Kontradiksi Hak Komunal Dan Hak Ulayat Dalam Hukum Pertanahan Indonesia: Tinjauan Yurisprudensi Dan Regulasi Indonesia," *Tunas Agraria* 8, no. 3 (September 2, 2025): 380–400, doi:10.31292/jta.v8i3.483. See also Venti Arista Lakuteru, "Kedudukan Hukum Tanah Ulayat Dalam Sistem Hukum Agraria Dan Hukum Adat Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 13, no. 11 (December 9, 2025): 2590–2606, doi:10.24843/KS.2025.v13.i11.p13.

scarce land assets.¹⁷ The need for property and investment in tourist destinations like Bali, Lombok, and Yogyakarta has led to the development of contractual schemes that try to get around this ban; in legal theory, this is referred to as *fraus legis*, or legal smuggling.

Table 1. Property Rights Between Indonesian Citizens and Foreigners Based on UUPA

Subject Categories	Property Rights Capacity	Philosophical Basis	Legal Implications
Indonesian citizens	Absolutely permitted	The eternal connection between nation and land	The strongest, most complete, and hereditary rights ¹⁸
Foreign Citizens	Absolutely prohibited	The principle of nationality and territorial sovereignty	You can only control the Use Rights or Rental Rights ¹⁹
Indonesian Legal Entity	Limited to certain legal entities	Directed social and economic functions	Must meet the requirements set by the government ²⁰

¹⁷ Evy Indriasari, "The Role of Agrarian Law in Maintaining Stability of Strategic Areas Prone to Land Disputes and Foreign Exploitation," *International Journal for Science Review* 2, no. 10 (October 2, 2025), doi:10.71364/ijfsr.v2i10.62.

¹⁸ Sumarlin Suardi et al., "Implementasi Hak Milik Atas Tanah Dalam Tinjauan Hukum Islam Dan Hukum Agraria," *Comparativa: Jurnal Ilmiah Perbandingan Mazhab Dan Hukum* 4, no. 2 (January 18, 2024): 139–67, doi:10.24239/comparativa.v4i2.143.

¹⁹ Permatadani and Irawan, "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia."

²⁰ Muchammad Agung Laksono, Ronny Winarno, and Istijab Istijab, "Tinjauan Yuridis Proses Peralihan Hak Guna Bangunan Menjadi Hak Milik Menurut Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun Dan Pendaftaran Tanah," *Yurijaya: Jurnal Ilmiah Hukum* 5, no. 2 (August 21, 2023): 39–54, doi:10.51213/yurijaya.v5i2.104.

Foreign Entity	Legal	Absolutely prohibited	Prevention of foreign corporate domination	Through the PMA scheme with Building Use Rights (HGB) ²¹
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Source: processed from various references

A nominee agreement, also known as a name borrowing agreement, is a legal arrangement whereby a foreigners is identified as the legitimate owner on a land ownership certificate by using the identity of an Indonesian person.²² Operationally, there are two levels of ownership involved in this practice: material or beneficial ownership (*de facto*), which is held by the foreigner (beneficiary owner), and official ownership (*de jure*), which is registered in the name of the Indonesian citizen (nominee). Although these constructions appear to be lawful under Indonesian land law on the surface, they seriously contradict the fundamental principles of agricultural sovereignty.

The parties typically create a number of supporting agreements in front of a notary or in secret to protect the position of foreigners who have invested significant sums of money to buy land.²³ A debt acknowledgment agreement, in which the nominee declares that he owes the foreigner the sum of the land price, is typically included in this set of documents. Additionally, there is a agreement of power of attorney to sell and an absolute power of attorney that grants the foreigner complete authority to transfer the land without the nominee's approval. In addition, a agreement of declaration was created attesting to the foreigner's ownership of the land. Absolute power is a critical and illegal device that surreptitiously transfers the essence of ownership rights without going through normal land registration procedures.

²¹ Gunawan Widjaja and Khalimi, "Peran Perpanjangan Hak Guna Usaha (HGU) Dan Hak Guna Bangunan (HGB) Dalam Menjamin Kepastian Hukum Bagi Investor: Tinjauan Ekonomi Dan Regulasi," *BORJUIS: Journal of Economy* 2, no. 4 (2025), <https://sociohum.net/index.php/BORJUIS/article/view/234>.

²² Wulandari, "The Validity of Ownership Rights to Land by Foreign Citizen Through a Nominee Agreement." See also Kirani, Lanontji, and Wahyudi Umar, "Legal Certainty of Land Ownership Rights By Foreign Nationals Through Nominee Agreements."

²³ Simon Nahak and I Nyoman Putu Budiarta, "Legal Protection of Land Tenure by Foreign Investors through Nominee Agreement in Bali, Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 589–94.

Table 2. Documentation Structure in the Nominee Arrangement Scheme

Document Type	Formal Function (Outer Appearance)	Material Objectives (Hidden Objectives)
Sale and Purchase Agreement (AJB)	Transactions between sellers and Indonesian citizens ²⁴	Legalize the recording of nominee names at the National Land Agency ²⁵
Name Borrowing Agreement	Identity cooperation agreement ²⁶	Affirms the position of foreigners as owners of funds and controls ²⁷
Debt Acknowledgment Agreement	Money lending and borrowing relationships ²⁸	Guarantee of funds for foreigners if the nominee defaults ²⁹
Absolute Power of Attorney	Management administrative authority ³⁰	Permanent transfer of full control of assets to foreigners ³¹

²⁴ Deny Haspada, "Perjanjian Nominee Antara Warga Negara Asing Dengan Warga Negara Indonesia Dalam Praktik Jual Beli Tanah Hak Milik Yang Dihubungkan Dengan Pasal 1313 Kitab Undang-Undang Hukum Perdata," *Wacana Paramarta: Jurnal Ilmu Hukum* 17, no. 2 (October 26, 2018): 115–24, doi:10.32816/paramarta.v17i2.77.

²⁵ Adi Wahyono et al., "Kepemilikan Tanah Oleh WNA Dalam Perjanjian Nominee Untuk Memiliki Tanah Di Indonesia," *Synergy: Jurnal Ilmiah Multidisiplin* 1, no. 3 (2023): 119–126, <https://ejournal.naureendigiton.com/index.php/sjim/article/view/890>.

²⁶ Ibid. See also Jaya and Yudiantara, "Keabsahan Perjanjian Nominee Dalam Kepemilikan Tanah Antara Warga Negara Asing Dengan Warga Negara Indonesia."

²⁷ Dian Dewi Khasanah, "Kepemilikan Properti Bagi Warga Negara Asing Yang Berkedudukan Di Indonesia," *PROGRESIF: Jurnal Hukum* 16, no. 1 (June 22, 2022): 13–37, doi:10.33019/progresif.v16i1.2999.

²⁸ Anggi Dwita Clara et al., "Akibat Hukum Perjanjian Pinjam Nama Atas Kepemilikan Tanah WNA Dalam Perspektif Hukum Perdata Internasional," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 6 (2024), <https://ojs.daarulhuda.or.id/index.php/Socius/article/view/168>.

²⁹ Ibid.

³⁰ Alby Trisnayuny and Mira Ardani, "Tinjauan Yuridis Terhadap Kepemilikan Hak Milik Atas Tanah Oleh Warga Negara Asing Dalam Sistem Hukum Agraria Indonesia," *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 663–72, <https://journal.hasbaedukasi.co.id/index.php/at-taklim/article/view/477>.

³¹ Jaya and Yudiantara, "Keabsahan Perjanjian Nominee Dalam Kepemilikan Tanah Antara Warga Negara Asing Dengan Warga Negara Indonesia."

Lease Agreement	Foreigners right to occupy the land ³²	Disguising land ownership as a formal tenant ³³
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Source: processed from various references

Every agreement in Indonesia must be examined in light of Article 1320 of the Civil Code. The consent of individuals who bind themselves, the capacity to establish an agreement, a specific item, and a legitimate purpose are the four cumulative requirements outlined in this article. Breaches of the first and second conditions (subjective conditions) render the agreement voidable; breaches of the third and fourth conditions (objective conditions) render the agreement null and void.

The fourth condition "lawful causes" is the primary emphasis for determining whether a nominee agreement is invalid. According to Article 1335 of the Civil Code, an agreement established for no purpose at all, or for reasons that are illegal or fraudulent, is void. Additionally, the Civil Code's Article 1337 affirms that a cause is forbidden if it is against the law, morality, or public order. The purpose of the nominee agreement is to circumvent Article 21 of the UUPA's ban on foreigners holding freehold land.

The agreement is classified as having "unhalal causes" because its goal is to carry out acts that are forbidden by coercive laws and regulations (*dwingend recht*). Absolute cancellation or null and void from the time the agreement is made (*ab initio*) is the legal consequence. The agreement does not give rise to any rights and responsibilities for the parties that may be enforced in court because it is deemed to have never existed legally. Article 1338 of the Civil Code's defense of contract freedom is refuted by the fact that this freedom cannot be exploited to break the law.

³² Reffa Rafelya and Lina Jamilah, "Perjanjian Sewa Menyewa Tanah Hak Milik Tanpa Batas Waktu Antara WNI Dengan WNA Menurut Hukum Positif Indonesia," *Bandung Conference Series: Law Studies* 2, no. 2 (August 3, 2022), doi:10.29313/bcsls.v2i2.3208.

³³ I Wayan Dira and Putu Eka Trisna Dewi, "Akibat Hukum Dari Hak Sewa Tanah Untuk Bangunan Oleh WNA Sebagai Alternatif Penguasaan Hak Atas Tanah Di Indonesia," *Jurnal Preferensi Hukum* 6, no. 1 (2025): 122–131, <https://ejurnal.warmadewa.ac.id/index.php/juprehum/article/view/11117>.

3.2. Affirmation of Land Ownership of Indonesian Citizens

The criteria "a certain thing" is also frequently not met substantively since the agreement's goal foreigners owning property rights is legally impossible (*juridisch onmogelijk*). The process is an example of legal smuggling, in which parties utilize legitimate legal documents (such a lease or power of attorney) to accomplish illegal objectives..³⁴ In a number of decisions, the Supreme Court has stressed that lawful smuggling that attempts to evade national laws would not be protected by the law. As a special legislation (*lex specialis*) pertaining to the agricultural sector, UUPA imposes extremely stringent limitations on the ownership of land in Indonesia. "Only Indonesian citizens can have property rights" is stated explicitly in UUPA Article 21 paragraph (1). There is no way to get around this requirement through a private agreement..

UUPA serves as a "strike" tool against candidate practices under Article 26 paragraph (2). According to this clause, any legal action meant to transfer property rights to foreigners, either directly or indirectly, is illegal. The term "indirect" is specifically used to refer to legal arrangements like name loan agreements. Violating Article 26 paragraph (2) has severe repercussions: the state acquires the land. This implies that the land's ownership rights are terminated and the state assumes control of it without having to reimburse the Indonesian nominee or the foreigner who supplied the funds..³⁵ Returning land assets to state control in the benefit of the country is the goal of this administrative and civil sanction.

Additionally, the UUPA predicts that foreign parties may get land through legitimate but inadvertent means, such as inheritance without a will or asset mixing in mixed marriages. According to Article 21 paragraph (3) of the UUPA, a foreigner who acquires ownership rights in this manner must give up those rights within a year. The land and the law belong to the state, thus if this duty is not fulfilled, the

³⁴ Wirajagat, Arba, and Zunnuraeni, "Penyelundupan Hukum Melalui Perjanjian Nomine Antara Warga Negara Asing Dengan Dengan Warga Negara Indonesia Untuk Penguasaan Hak Atas Tanah."

³⁵ Irijanto Irijanto, Muhammad Mashuri, and Yudhia Ismail, "Perlindungan Hukum Atas Jatuh Dan Hapusnya Hak Milik Atas Tanah Kepada Negara Akibat Pengalihan Hak Milik Secara Tidak Langsung Kepada Warga Negara Asing," *Yurijaya : Jurnal Ilmiah Hukum* 7, no. 2 (December 16, 2025): 271–83, doi:10.51213/yurijaya.v7i2.220.

right is eliminated.³⁶ This clause demonstrates the strictness of the land law system's "only Indonesian citizens" premise, which permits foreign control for a brief transition period before transferring it to the legitimate subject. The following table provides more details on this.

Table 3. Documentation Structure in the Nominee Arrangement Scheme

Prohibition Parameters	Prohibition Subject	Form of Violation	Main Sanctions	Asset Consequences
Provisions of Article 21 UUPA	Foreigners and dual nationals	Formal direct ownership	Rights cannot be registered with the National Land Agency	Must be released within 1 year if obtained through inheritance
Provisions of Article 26 UUPA	Anyone who facilitates the transfer of rights to a foreigners	Transfer of rights directly or indirectly	The agreement is null and void.	The land fell into the hands of the state without compensation

Source: Basic Agrarian Law

The Legal Formulation of the Civil Chamber, point 4 of SEMA Number 10 of 2020, emphasizes that the owner of a plot of property is the party whose name appears on the certificate, even if the land was purchased with money/assets belonging to a foreigners or another party. The court will no longer accept lawsuits from foreigners asking for the land to be proclaimed their property based on proof of cash flow or a nominee arrangement, which has extremely wide ramifications. To put it another way, the protective plan designed by foreigners to "bind" nominees

³⁶ Ibid. See also Yosia Hetharie, "Perjanjian Nominee Sebagai Sarana Penguasaan Hak Milik Atas Tanah Oleh Warga Negara Asing (WNA) Menurut Kitab Undang-Undang Hukum Perdata," *SASI* 25, no. 1 (August 24, 2019): 27–36, doi:10.47268/sasi.v25i1.147.

is ineffective in front of the judge.

In addition to offering legal clarity in property registration, this judicial strategy seeks to preserve the UUPA's dignity. In order to preserve the public norm that only Indonesian people may possess land rights, the Supreme Court deliberately decided to disregard the internal relationship between foreigners and nominees. Additionally, this acts as a methodical disincentive for legal professionals (such notaries) to suggest or assist in the preparation of nominee agreements.

Foreigners participating in nominee agreements are in a highly precarious legal situation as a result of this SEMA. The foreigners has no legal foundation to reclaim the land in the event of a disagreement, such as when the nominee sells the land to a third party or when the nominee passes away and their heirs claim the land. Because the foreigners is considered to have engaged in the criminal act (*in pari delicto*), lawsuits based on unlawful acts (Article 1365 of the Civil Code) against nominees frequently fail.³⁷ The invalidity of nominee agreements creates a series of complex risks for Foreigners, Indonesian nominees and public officials involved in making them.³⁸ There is no safety net for people who willfully break the UUPA's rules because the country's legal system forbids lawful smuggling.

3.3. Legal Implications of Nominee Agreement Practices on Legal Smuggling of Land Rights

According to Indonesian law, land is both a symbol of national sovereignty and an economic commodity.³⁹ The UUPA's Principle of Nationality was developed based on the Indonesian people's timeless and religiously mystical bond with the land. This

³⁷ Bella Giska Ayu Mayangsari and Tamsil Tamsil, "Analisis Putusan Mahkamah Agung RI Nomor 3403K/PDT/2016 Tentang Perbuatan Melawan Hukum Berkaitan Dengan Kepemilikan Tanah Oleh Warga Negara Asing Di Bali," *Novum: Jurnal Hukum* 6, no. 1 (2019), <https://ejournal.unesa.ac.id/index.php/novum/article/view/45688>. See also I Made Angga Legawa, Anak Agung Istri Eka Krisna, and Yanti, "Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Perdata Indonesia," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 2 (April 30, 2025): 304–14, doi:10.62383/humif.v2i2.1579.

³⁸ Kirani, Lanontji, and Wahyudi Umar, "Legal Certainty of Land Ownership Rights By Foreign Nationals Through Nominee Agreements."

³⁹ Damanik, "Dualism of Land Rights Recognition in National and Customary Legal Systems in the Perspective of Dignified Justice."

principle, which legally restricts property ownership rights to only Indonesian people, states that only Indonesian citizens have a complete relationship with the earth, sea, and space..⁴⁰ In reality, nominee agreements which are recognized by academics as a type of legal smuggling have emerged as a result of pressure from international economic interests and the desire of foreign legal subjects to have complete control over territory.

The foundation of national agrarian law is sovereignty, which views the state as an entity with the authority to control the distribution, use, and ownership of land for the benefit of all citizens.⁴¹ Article 33 paragraph (3) of the 1945 Constitution is a fundamental principle that requires the state to govern natural resources, including land, so that they are not owned by a small number of parties, particularly foreign entities with no ties to Indonesian citizenry. This clause is a historical reaction to colonial agricultural practices that exploited and discriminated against indigenous people.

Articles 1, 2, and 9 of the UUPA, which stress that the entirety of Indonesia is the unified homeland of all Indonesians, detail how this constitutional duty is to be carried out. Only Indonesian citizens may have property rights, according to the UUPA's Article 9 paragraph (1) and Article 21 paragraph (1). This restriction is total in that it is theoretically forbidden for foreign legal subjects individuals as well as foreign legal entities to possess property rights that offer the greatest and most comprehensive authority.

A nominee agreement that meets the criteria for legal smuggling is essentially void.⁴² Due to the agreement's null and void status, Indonesian land law considers

⁴⁰ Wirajagat, Arba, and Zunnuraeni, "Penyelundupan Hukum Melalui Perjanjian Nomine Antara Warga Negara Asing Dengan Dengan Warga Negara Indonesia Untuk Penguasaan Hak Atas Tanah."

⁴¹ Bonifacius Raya Napitupulu, "Politik Hukum Dalam Pembentukan Undang-Undang Pokok Agraria Untuk Mewujudkan Kemakmuran Rakyat," *Journal Central Publisher* 1, no. 7 (December 11, 2023): 715–26, doi:10.60145/jcp.v1i7.162.

⁴² Andi Saputra and Amad Sudiro, "Implikasi Hukum Perjanjian Nominee Antara Warga Negara Asing Dan Warga Negara Indonesia Dalam Kepemilikan Tanah," *UNES Law Review* 6, no. 2 (2023): 6139–47, <https://www.review-unes.com/law/article/view/1454>. See also Kadek Oktavianiasih, Komang Febrinayanti Dantes, and Ni Ketut Sari Adnyani, "Analisis Perjanjian Sewa-Menyewa Tanah Seumur Hidup Sebagai Upaya Penyelundupan Hukum Terhadap Penguasaan Hak Atas Tanah Oleh Warga Negara Asing (Studi Putusan Nomor 112/Pdt.G/2016/PN Gin)," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4,

the legal relationship between the Foreigners and the Indonesian citizen to have never been. The agreement cannot be enforced by a court system and is not legally binding. According to the UUPA, the practice of nomination agreements for Foreigners to hold property is a basic breach of Indonesia's agrarian sovereignty. Since these agreements are against public order and the objective criterion of "lawful cause," their legal status is worthless from the start.⁴³ According to Article 26 paragraph (2) of the UUPA, the removal of ownership rights and transfer of the land to land directly under governmental control are the most significant legal ramifications for the land's status.

The "land falls to the state" provision is a harsh punishment under Indonesian agrarian law. This illustrates the idea that the state will not put up with any kind of manipulation that jeopardizes the integrity of the country's territory. Administratively, the National Land Agency has the power to revoke the title and register it as state land even if the certificate still shows the name of an Indonesian citizen and a court decision stating nominee ownership represents a practice.⁴⁴ Regulatory transformation through the Job Creation Law and Government Regulation 18/2021 has actually provided a moderate solution that bridges the interests of foreign investment with national sovereignty through the Right of Use and Ownership Rights for Apartment Units. There is no longer a compelling motivation for foreigners to engage in legal smuggling through nominees given the availability of legal routes that offer legal certainty for up to 80 years.

There are numerous measures in place to prevent legitimate smuggling by Foreigners. First, uniform enforcement of the law. In order to deny protection to nominees, courts must adhere to SEMA No. 10 of 2020 and maintain their unwavering application of the *Fraus Omnia Corruptit* theory. Second, Land

no. 2 (2026): 7428–7440, <http://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/5538>.

⁴³ Susi Sopiani, Vika Nur Senda, and Mochamad Fajar Muzzamil, "Implikasi Hukum Ketidakterpenuhan Syarat Subjektif Dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata Terhadap Keabsahan Perjanjian," *Letterlijk* 1, no. 2 (December 27, 2024): 104–15, doi:10.25134/letterlijk.v1i2.109.

⁴⁴ Ajeng Ana Agustina and Farida Nurun Nazah, "Status Hukum Hak Kepemilikan Atas Tanah Oleh WNA Akibat Perjanjian Nominee Dengan WNI (Studi Putusan Nomor 144/Pdt/2021/Pt.Dps)," *Jurnal Media Hukum* 13, no. 2 (September 20, 2025): 189–206, doi:10.59414/jmh.v13i2.1023.

Digitalization and Transparency.⁴⁵ In order to identify ownership anomalies by Indonesian residents whose financial profiles do not match the land assets they control, the National Land Agency must expedite the electronic land registration system that is integrated with immigration and tax data. Ketiga, Pengawasan Profesi Notaris/PPAT. To make sure that no more public personnel assist in the production of nominee agreements for financial benefits, professional associations and the Ministry of Law and Human Rights must enhance the integrity of supervision. Fourth, Public Education. To make sure that no more public personnel assist in the production of nominee agreements for financial benefits, professional associations and the Ministry of Law and Human Rights must enhance the integrity of supervision.

4. Conclusion

The nominee scheme is a type of legal smuggling that violates national agricultural laws in significant ways. Agreements that seek to transfer or give control of property rights to foreign citizens, whether directly or indirectly through name lending agreements, absolute powers of attorney, or agreements of statement, fall under the category of legal acts that are void by law because Article 21 paragraph (1) of the UUPA expressly forbids foreign citizens from having property rights. Nominee agreements do not satisfy the objective conditions for a legitimate reason when reviewed from Article 1320 of the Civil Code because they are intended to govern or hold land substantively for foreign citizens, which is expressly forbidden by the UUPA. Nominee agreements are therefore void from the outset (*ab initio*) since they do not satisfy the requirements of a valid cause.

Through increased administrative verification, regulatory synchronization, and improved collaboration between notaries, Land Deed Officials (PPAT), and land agencies, the government must improve oversight of property ownership practices

⁴⁵ Sunari Sunari, "Urgensi Digitalisasi Data Pertanahan Untuk Pencegahan Mafia Tanah: Perspektif Hukum Administrasi Negara," *Jurnal Yustitia* 26, no. 1 (July 24, 2025), doi:10.53712/yustitia.v26i1.2673.

employing nominee schemes. In order to prevent the transfer of land ownership rights to foreign nationals, parties who purposefully exploit nominee agreements as a method of legal smuggling must face harsher law enforcement. In order to prevent name borrowing from being easily used as a tool to conceal land ownership, the public must also be given sufficient legal knowledge about the dangers and legal ramifications of this practice.

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