



## Prohibition of Ownership of Foreign Citizens' Land Through A Nominee Agreement Based on The Principle of Legal Certainty

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### ABSTRACT

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These issues highlight a significant gap in the regulatory framework concerning foreign residential ownership in Indonesia. The absence of clear guidelines against nominee practices and the lack of enforcement mechanisms for violations pose challenges to the legal certainty and integrity of land rights transactions. Additionally, the minimal role of community participation in these processes raises questions about the inclusivity and transparency of foreign land ownership provisions. Overall, the situation underscores the need for further regulatory improvements to address these shortcomings and ensure a more robust, fair, and transparent framework for foreign residential ownership in Indonesia. The research method used is a legal analysis, using a qualitative approach with secondary data. The research found that transferring ownership rights to land to foreigners violated the principle of nationality and the Indonesian Agrarian Law, resulting in the land being returned to the state without reimbursing foreigners and Indonesian citizens for the losses. Furthermore, the legal status of a nominee agreement regarding the ownership of land rights by foreigners must meet the requirements for the agreement's validity and principles to obtain legal status.



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### INTRODUCTION

The development of social life influences the increasingly important role of land in life. Realizing the human desire to control land creates land disputes and maintains orderly ownership of land rights. Land rights are regulated in the UUPA. Land use rights and types must have a legal basis, which can be achieved in various ways and with the required land legal status. Harsono (1989 in the writings of Kadek Ramdhana Wija Dharma, I Nyoan Putu Budiarta, Ni Made Puspasutari Ujiti) The principle of nationality adhered to by Indonesia in the land system is regulated in paragraph 21, paragraph 1 of the UUPA Article 26 paragraph 2 confirms : Only Indonesian citizens have ownership rights to land in Indonesia, considering that ownership rights are hereditary rights, in fact, the most substantial and most complete rights that people can have over land rights. Therefore, it is prohibited to allow foreigners to have ownership rights. Land has the threat of being null and void.

The prohibition on ownership of property rights to land by foreigners is not an obstacle for foreigners to invest in ways outside the applicable provisions. This opportunity to invest in the tourism sector is widely exploited by foreign investors in controlling the ownership of property rights to land, both for residential houses and in other cases. Businesses, especially foreigners, find an easy way to control land ownership rights. Even though national land law regulations prohibit this, nominee agreements created in authentic deeds become a bridge for foreign citizens to own assets in the form of land in Indonesia. It certainly requires exclusive attention from the government so that land ownership rights do not fall on foreign citizens.

The principle of nationality provides restrictions on land traffic because it is the primary basis for creating regulations. This principle is contained in Article 1, Paragraph (1), Paragraph (2), and Paragraph (3) of the UUPA, which confirms that earth, water and space within the territory of the Republic of Indonesia are the rights of the entire nation; thus land located in remote areas is not solely the right of the people of that area, but rather is the right of all Indonesian people, based on this principle

it is clear that only Indonesian citizens have ownership rights to land, foreigners are not allowed, the transfer of ownership rights to foreigners is prohibited (Article 26 Paragraph 2).

The principle of nationality has been recognized by UUPA, following Article 1 so that according to Article 9 Juncto Article 21 Paragraph (1) UUPA: only Indonesian citizens have full relationships with the land, including ownership rights, business use rights, building use rights, use rights and lease rights, the basic principles of nationality contained in this article reflect the unifying function of the Indonesian nation with the earth, water, and space. In accordance with the legal conception of national development as a source of life that has social values and cultural identity of the community concerned.<sup>5</sup>

Based on this description, the author is interested in studying the problem in more depth in the form of a journal titled Prohibition of Ownership of Land by Foreign Citizens through Nominee Agreements Based on the Principle of Legal Certainty.

#### Research Identification

Based on the research background above, researchers identified the following problems:

1. What is the prohibition on ownership of land rights by foreign nationals through nominee agreements based on the principle of legal certainty?
2. What is the legal certainty regarding foreign citizens' prohibition on land ownership, which has been implemented through a nominee agreement?

#### RESEARCH METHODS

This article results from descriptive normative legal research. The author uses secondary data consisting of primary legal materials such as statutory regulations and secondary legal materials such as literature books, journals, articles, and other materials.

#### RESULTS AND DISCUSSION

##### **A. Prohibition of ownership of land rights by foreign citizens through nominee agreements based on the principle of legal certainty**

The Nominee Agreement is the basis for transferring ownership rights to land to foreign citizens following the principles of the rule of law. Indonesia adheres to the rule of law (Rechstaat) concept as mandated in the Constitution of the Republic of Indonesia Article 1 paragraph (3) of the III Amendment to the 1945 Constitution. ) whose task is to ensure the realization of people's welfare.

In essence, the agreement intends to fulfill achievements. Achievement consists of rights and obligations; other parties must fulfill obligations by imposing sanctions if they are negligent or intentionally neglected. Obligations arise by law and by agreement. Obligations born out of an agreement are considered vital if the parties specify otherwise in the agreement. So, obligations arising from the law can be set aside. On the other hand, if the parties do not stipulate in the agreement, then the law applies.

The concept of a welfare state gives a more significant role to the state in planned, institutionalized, and sustainable welfare development. The welfare state believes that it should provide its citizens with different standards directly related to the limits of the state's capabilities. As a welfare state, Indonesia must develop, which is the only platform for achieving prosperity.

The UUPA emphasizes that only Indonesian citizens can be subject to property rights (Article 9 in conjunction with Article 21) and stipulates that foreign citizens cannot be subject to property rights (Article 26 verse 2). With the increasing opportunities for foreign citizens to live in Indonesia in connection with their duties/work, foreign citizens still have the opportunity to become subjects of land ownership rights.

Based on the description above, the ownership of land by foreign citizens through nominee agreements is prohibited, even though the method used by foreign citizens through buying and selling legally does not violate formal legal regulations. However, in addition, efforts to make nominee agreements between citizens a foreigner and Indonesian citizens by granting absolute power of attorney, which grants the right to be irrevocable by a power of attorney and gives authority to the recipient of a power of attorney to carry out all legal actions regarding land rights, which is essentially a transfer of land rights. The agreement is invalid because it substantially violates UUPA Article 26 paragraph (2), which states that the agreement is null and void and the land falls to the state.

## **B. Legal Certainty of Ownership of Land Rights by Foreign Citizens Through Nominee Agreements**

The legal fact is that proof of ownership of land, which is the object of a nominee agreement, is in the name of an Indonesian citizen, who legally is an Indonesian citizen who is the owner. This position is incorrect because the nominee agreement contains unlawful causes; apart from that, the UUPA confirms in Article 26 paragraph (2) that for land that arises from legal actions by way of nomination, the right to the land becomes extinguished. Land rights are falling to the state, and all forms of payment cannot be reclaimed.

The principle of nationality explains that only Indonesian citizens, both men and women, can have full ownership rights to land, as stipulated in Article 9 of the UUPA, which reflects the unifying function of the Indonesian nation with the earth, water, and space. An eternal relationship means that Indonesian citizens are not permitted to transfer ownership rights to land to foreign citizens, either directly or indirectly.

Prohibiting ownership of land rights through nominee agreements has created a lack of legal certainty. It is contrary to positive law and the national land law system, as stipulated in Article 21 Paragraph 1 of the UUPA so that nominee agreements regarding land rights are null and void, the transfer of ownership rights over land to foreigners is a violation of the principle of nationality which results in the land being returned to the state without having to reimburse the losses to both foreigners and Indonesian citizens.

The UUPA determines regulations regarding the registration of land rights (Article 19, paragraphs 1 and 2); this is proof of ownership of land rights for the owner. Land registration efforts are an obligation for the right owner to guarantee legal certainty from the relevant institutions; this is also a form of the existence of the state in providing legal certainty for the ownership and implementation of land registration for the community so that that land can be used for the welfare of the community.

Legal protection according to the National Land Law comes from the concept of State Control Rights in Article 33 paragraph (3) of the 1945 Constitution, which states: "Earth, Water and the natural wealth contained therein are controlled by state and used as much as possible for the prosperity of the people." Based on this description, the transfer of rights in the UUPA to property rights is born when registration is carried out. Article 23, Paragraph (2) of the UUPA is interpreted as solid evidence and an absolute condition for the birth of rights. Concerning the ownership of land rights by foreign nationals through nominee agreements, it can be concluded that foreign nationals need legal certainty and legal protection.

## **CONCLUSION**

A nominee agreement is a legal action carried out by mistake so that it has no legal force. If there is a defect in the will of the party carrying out the legal action, the result is that it is null and void if the principle of freedom of contract remains limited if it conflicts with a higher level. To achieve legal certainty, the provisions in the UUPA regarding the prohibition on Nominees must be enforced. Suppose some parties carry out nominations. In that case, the government must prevent ownership of land by foreign nationals through a Special Agency that manages the transfer of ownership rights to land through nominee agreements, a special agency that, based on research results and legal needs, can produce effective legal products.

## **REFERENCES**

### Books

- Noor Aslan, *Peranan Strategi Negara Dalam Mewujudkan Pola Hubungan Hukum Antara Tanah Dan Masyarakat Yang Berkeadilan Ditinjau Dari Ajaran Negara Hukum Kesejahteraan*, Aria Mandiri Grup, Cet. 1, Bandung, Tahun 2023, Hlm 10.
- Noor Aslan, *Konsep Hak Milik Atas Tanah Bagi Bangsa Indonesia, Ditinjau dari Ajaran Hak Asasi Manusia*, CV. Mandar Maju, Cet.1, 2006
- Noor Aslan, lanny armand, Ratnaningsih Lilis, *Konsep Pemilikan Atas Tanah dan Ruang Atas Bangsa Indonesia Ditinjau dari Ajaran Hak Asasi Manusia*, 2018, Diunduh 20-05-2023, Pukul 14.01.

Journal Articles

Dharma Wija Ramdhana, I Nyoan Putu Budiarta, Ni Made Puspasutari Ujianti, “*Larangan Penguasaan Tanah Oleh Wna Melalui Perjanjian Nominee*”, *Jurnal Kontruksi Hukum*, Universitas Warmadewa-Bali-Indonesia, 2022

Yulia Qomariyanti Paulinah, Faisal Achmad, Penguasaan Tanah oleh Warga Negara Asing melalui Perjanjian Nominee di Indonesia, *Jurnal*, *Banua Law Review*, Tahun 2022. Hlm 61.