



## Legal Analysis of Land Sale and Purchase Agreements Utilizing Nominee or "Name-Lending" Arrangements Viewed from the Perspective of Positive Law

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### Article Info

ISSN (online): 2583-6536

Volume: 05

Issue: 02

March-April 2026

Received: 11-01-2026

Accepted: 09-02-2026

Published: 07-03-2026

Page No: 18-26

### Abstract

This study aims to analyze the validity of land sale and purchase agreements in Indonesia that employ nominees or borrowed names, examined from the perspective of positive law. Such agreements are often used to circumvent legal restrictions prohibiting foreign nationals from owning land under freehold title in Indonesia. The research adopts a normative juridical approach by analyzing relevant legislation, court decisions, and legal literature. The findings indicate that land sale and purchase agreements involving nominees are contrary to the Basic Agrarian Law (UUPA), which stipulates that freehold rights may only be held by Indonesian citizens, as stated in Article 21 of the UUPA, which prohibits foreign nationals from owning land in Indonesia. Furthermore, these agreements violate Article 1320 of the Indonesian Civil Code (KUHP<sub>erdata</sub>) concerning the essential requirements for a valid contract, particularly the requirement of a "lawful cause" consistent with prevailing legal provisions. Even when entered into in good faith, such agreements are deemed invalid as they conflict with legal restrictions on foreign land ownership. Based on judicial decisions, nominee arrangements are considered unlawful and subject to annulment. The study concludes that land sale and purchase agreements using nominees cannot be justified under Indonesian law and that stricter oversight is necessary to prevent legal abuse. It recommends enhancing legal awareness among the public and stakeholders, as well as strengthening policy measures to ensure legal certainty in land sale and purchase transactions.

DOI: <https://doi.org/10.54660/IJL.2026.5.2.18-26>

**Keywords:** Legal Analysis, Land Sale and Purchase, Nominee Agreement, Name-Lending Arrangement, Positive Law, Foreign Land Ownership

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### 1. Introduction

The term *agreement* is often referred to as a *contract* in English. In practice, society uses the terms *agreement* and *contract* interchangeably, depending on context. According to Henry Campbell Black, an agreement between parties that creates, modifies, or extinguishes a legal relationship is defined as a contract. <sup>[1]</sup> Contract law, therefore, is understood as a set of rules governing the legal relationships between parties. Parties with mutual interests bind themselves in such agreements, thereby giving rise to rights and obligations, namely, to deliver, to perform, or to refrain from certain acts.

Contract law in Indonesia is regulated under Book III of the Indonesian Civil Code (*KUHP<sub>erdata</sub>*) on Obligations, which adopts an open system. <sup>[2]</sup> This open system grants broad freedom to the public to enter into agreements, provided they comply with

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<sup>1</sup> Munir Fuadi, *Contract Law (From the Perspective of Business Law)*, Citra Aditya Bakti, Bandung, 2011, p. 2.

<sup>2</sup> Anggraeni, R.R. Dewi, and Rizal, Acep Heri. (2019). "The Implementation of Sale and Purchase Agreements via the Internet (E-Commerce) Viewed from Civil Law Aspects." *Jurnal Sosial dan Budaya Syar-i* Vol. 6, No. 3, p. 2.

applicable legal provisions. The principle of freedom of contract serves as guidance when drafting agreements. However, once an agreement is signed, the parties are bound and no longer free to disregard the terms stipulated therein (Article 1338(1) KUHP<sub>erdata</sub>). This principle is a direct consequence of the open system: anyone may enter into an agreement as long as it meets the validity requirements under Article 1320 KUHP<sub>erdata</sub>, is not prohibited by law, does not contravene prevailing customs, and is made in good faith.<sup>[3]</sup>

A sale and purchase agreement is a contract between two parties the seller and the buyer whereby the seller agrees to deliver a specified object, and the buyer agrees to pay a sum of money as consideration. Under Indonesian law, sale and purchase agreements are regulated in Book III of the Civil Code on Obligations. Several essential elements must be present: (1) mutual consent between seller and buyer; (2) a clearly defined object of sale, whether movable or immovable; (3) a definite price agreed upon by the parties; and (4) a lawful purpose, namely the transfer of ownership rights to the buyer.

One significant form of sale and purchase agreement is the sale of land. Pursuant to Article 1457 KUHP<sub>erdata</sub>, a land sale agreement is an arrangement whereby one party undertakes to transfer a parcel of land, and the other undertakes to pay the agreed price. Land sale is a common method of transferring land rights, binding both seller and buyer to the transfer of ownership upon payment of the agreed consideration.<sup>[4]</sup> With the enactment of the Basic Agrarian Law (UUPA), provisions in Book II of the Civil Code concerning land, water, and natural resources were repealed. Land sale and transfer are now governed by the UUPA, which emphasizes that such transactions must be conducted openly and in cash before a Land Deed Official (PPAT). The UUPA also requires registration of land rights following a sale to ensure legal certainty, as stipulated in Articles 19 and 23(1).

Indonesia, as an archipelagic nation renowned internationally for its natural beauty, has attracted significant interest from foreign nationals. Many foreigners visit Indonesia for tourism and also seek to invest by acquiring land. Although the government grants foreigners land-use rights (*hak pakai*) and lease rights (*hak sewa*), many investors particularly in Bali remain eager to obtain land under freehold title (*hak milik*). Freehold title is the strongest and most comprehensive land right, inheritable and perpetual. However, ownership of land under freehold title by foreign nationals is expressly prohibited under Article 21(1) of the UUPA. Given the extensive authority inherent in freehold rights, foreign nationals are legally barred from holding such rights in Indonesia.

Right of Ownership (Hak Milik) can only be held by Indonesian citizens and certain legal entities in Indonesia; consequently, various methods are employed by parties who are ineligible to hold land rights. One such method is through a Nominee Agreement or a "name-lending" agreement (*pinjam nama*). A Nominee arrangement is an act where an Indonesian citizen, as a party entitled to hold land ownership rights, lends their name to an ineligible party or a foreign national so that the foreigner may effectively "own" the land under the status of *Hak Milik*. In executing this agreement, the Indonesian citizen acts as a representative for the foreign

party in the land ownership.

To give the appearance of legality, these Nominee Agreements are structured as a package of contracts between the foreign national as the proxy (attorney-in-fact) and the Indonesian citizen as the principal (grantor), granting authority to the foreigner to control the land rights and perform all legal actions regarding the property. Generally, foreign nationals purchase *Hak Milik* land by borrowing the name of an Indonesian citizen; here, the Indonesian citizen's name is merely listed on the land certificate, while the actual control and utilization remain with the foreigner. This Nominee Agreement serves as a mechanism for foreigners to possess land with *Hak Milik* status in Indonesia by registering the land in the name of an Indonesian citizen designated as the Nominee. The Nominee Agreement is classified as an Innominate Agreement—an agreement not explicitly regulated in the Indonesian Civil Code (KUHP<sub>erdata</sub>) but one that has emerged and developed within society.

The aforementioned Nominee Agreement constitutes legal circumvention because its substance contradicts the Basic Agrarian Law (UUPA). The agreement aims to bypass the prohibition against foreign nationals holding *Hak Milik* as regulated in Article 21, paragraph (1) of the UUPA. Furthermore, Nominee Agreements contain elements inconsistent with Article 1320 of the Indonesian Civil Code regarding the objective requirements of a valid contract, thereby violating the substance of the UUPA, specifically Article 26, paragraph (2). It is alleged that Nominee Agreements are inconsistent with the principles of good faith, the principle of personality (*personalia*), and other fundamental contractual principles.

Nominee Agreements are prevalent between foreign nationals and Indonesian citizens in several regions, such as Bali, Lombok, and other areas. Therefore, in this research plan, the researcher will conduct a study and analysis of several court decisions related to Nominee Agreements. Based on this background, the research problems are formulated as follows:

How is the legal validity of land sale and purchase agreements using a Nominee arrangement viewed from the perspective of positive law?

What are the legal certainty and protection for the parties involved in land sale and purchase agreements using a Nominee arrangement viewed from the perspective of positive law and court precedents?

## 2. Research Method

This research employs a normative juridical research method, which focuses on examining the application of various rules or norms within court decisions. Normative juridical research is conducted to resolve legal issues normatively, guided by a critical and in-depth study of existing norms and legal documents related to the issues under study. This normative legal research examines articles, principles, and doctrines associated with the research problem, specifically regarding land sale and purchase agreements using a Nominee or "name-lending" arrangement from the perspective of positive law. In this study, the author will analyze the validity of nominee protection for the parties involved in such practices. The author utilizes a normative juridical approach, which is a method of legal research conducted by examining library

<sup>3</sup> Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* [Registration and Transfer of Land Rights], Kencana, Jakarta, 2011, p. 18.

<sup>4</sup> *Ibid*, p.19

materials or secondary data as the fundamental basis for research, specifically by tracing regulations and literature relevant to the issues being investigated.<sup>[5]</sup>

- **Conceptual Approach:** The conceptual approach is a type of legal research approach that provides an analytical perspective for resolving legal issues based on the underlying legal concepts, or even the values contained within the norms of a regulation related to the concepts used.
- **Statute Approach:** The statute approach is used to analyze all laws and regulations directly related to the legal issues being researched.
- **Case Approach:** The case approach is used to examine specific legal cases to analyze problems based on judicial considerations or court decisions.

Legal materials are collected by listing and identifying relevant laws and regulations, which are then organized systematically according to the research problems. To ensure valid research results, the author employs a library research procedure for data collection. This involves reading, studying, examining, and providing systematic perspectives and reviews of library materials related to the research issues. Consequently, the library research conducted by the author encompasses legal materials, informational data, books, and references about the Principle of Legal Certainty in Sale and Purchase Deeds using a Nominee or "name-lending" arrangement.

The analysis provides an explanation of all materials and data previously collected and described in a systematic manner. These explanations are presented logically based on the author's reasoning. In normative legal research, data processing is carried out by systematizing written legal materials. Systematization involves classifying these legal materials to facilitate the process of analysis and construction.<sup>[6]</sup>

In research using the normative legal method, data can be analyzed qualitatively. Qualitative analysis involves describing or illustrating, and subsequently comparing the data with statutory provisions or the opinions of legal experts. This study uses a qualitative analysis method, specifically an in-depth interpretation of legal materials, as is customary in normative legal research. Furthermore, the author will correlate the results of this analysis with the research problems to produce an objective assessment or conclusion to answer the research questions.

The Descriptive Legal Material Analysis Technique illustrates and identifies legal facts between prevailing regulations, legal theory, and their practical implementation. The descriptive method involves providing an overview of the object being studied so that the presented data are generally acceptable. First, the prevailing laws and regulations will be described, followed by an analysis based

### 3. Discussion

#### 3.1. The Validity of Land Sale and Purchase Agreements Using Nominee or "Name-Lending" Arrangements from the Perspective of Positive Law

Land sale and purchase agreements involving nominees or "name-lending" frequently raise questions regarding their validity, both under civil law and agrarian law. In many cases, the party recorded as the land owner on the Land Ownership Certificate (SHM) is an individual who does not actually possess the land physically, but merely acts as a nominee for a foreign party who truly controls and utilizes the land.

##### 3.1.1. The Validity of Land Sale and Purchase Agreements Using Nominee or "Name-Lending" Arrangements from the Perspective of the Indonesian Civil Code (KUHPerdata)

The validity of land sale and purchase agreements is a critical matter in Indonesian civil law. In practice, sale and purchase agreements using nominees or name-lending are often encountered, where the party recorded as the legal owner in the agreement is not the party actually entitled to the land. Such agreements are frequently used to circumvent legal restrictions or provisions regarding land ownership, for instance, by foreign parties who are prohibited from owning land in Indonesia.

In civil law, the formation of an agreement is governed by several principles, including: The Principle of Freedom of Contract, the Principle of Consensualism, the Principle of Legal Certainty (*Pacta Sunt Servanda*), the Principle of Personality, and the Principle of Good Faith (*Itikad Baik*). One of the fundamental principles in land sale and purchase agreements using a nominee is the principle of good faith. The principle of good faith requires the parties in an agreement to act with honest intentions and not to abuse their rights or positions.

In practice, this principle ensures that no party acts fraudulently or commits deception during the contract formation process. The principle of good faith also includes the obligation to respect duties arising from the agreement and to refrain from unfairly prejudice the other party.<sup>[7]</sup>

The principle of good faith is a vital tenet of Indonesian civil law as stipulated in Article 1338, paragraph (3) of the Indonesian Civil Code (KUHPerdata). The article states that every agreement must be executed in good faith.<sup>[8]</sup> Good faith does not only require the parties to act honestly but also to refrain from harming others or violating applicable laws.<sup>[9]</sup>

In relation to land sale and purchase agreements involving nominees or name-lending, the application of the good faith principle is paramount. This is because nominee or name-lending practices are often intended to conceal the true identity of the landowner, which may conflict with existing legal provisions, such as restrictions on land ownership by foreign nationals or ineligible persons.<sup>[10]</sup>

<sup>5</sup> Soerjono Soekanto & Sri Mamudji, *Normative Legal Research*, Jakarta, Rajawali Press, 2015, p. 14.

<sup>6</sup> Soerjono Soekanto & Sri Mamudji, 2019, *Normative Legal Research: A Brief Overview*, PT Raja Grafindo Persada Depok, p. 13.

<sup>7</sup> *Ibid*, 99

<sup>8</sup> Civil Code (*KUHPerdata*). (1947). *Indonesian Civil Code*. Indonesia: Government of the Republic of Indonesia.

<sup>9</sup> Gultom, E. (2015). *The Principle of Good Faith in Indonesian Civil Law*. Jakarta: Rajawali Pers.

<sup>10</sup> Mulyadi, H. (2020). *Agreements Contrary to the Law in Land Sale and Purchase Practices*. Surabaya: Airlangga University Press.

Agreements made in bad faith or for the purpose of evading the law can be classified as invalid agreements.

A land sale and purchase agreement using a nominee or name-lending can be declared invalid if its purpose is to circumvent existing legal provisions, such as avoiding restrictions on foreign land ownership. Article 1335 of the Civil Code states that an agreement made with a cause (*causa*) that is inconsistent with the law or contrary to public order is null and void (*batal demi hukum*).<sup>[11]</sup> If a land sale and purchase agreement is conducted with the intent to deceive the law or to commit acts that prejudice other parties (for example, parties unaware of the nominee arrangement), the agreement can be deemed invalid.<sup>[12]</sup> In this regard, the principle of good faith must be applied to ensure that the agreement is conducted honestly, transparently, and in accordance with the prevailing legal provisions.

In Indonesian civil law, the validity of an agreement is clearly regulated under Article 1320 of the Indonesian Civil Code (KUHPerdata). This article stipulates that an agreement is considered legally valid only if it fulfills four cumulative requirements, meaning all conditions must be met; if even one is not satisfied, the agreement may be considered to have no legal force or can be annulled by a court. These four requirements are: the consent of the parties, the capacity of the parties, a specific/certain object, and a lawful/permissible cause.<sup>[13]</sup>

1. Consent of the parties (*Kesepakatan para pihak*)
2. Capacity to contract (*Kecakapan membuat perikatan*)
3. A specific subject matter (*Mengenai suatu hal tertentu*)
4. A lawful cause (*Sebab yang halal*)

The significance of Article 1320 lies in the principle that an agreement fulfilling these four requirements shall have binding force as law for the parties involved, in accordance with the principle of *pacta sunt servanda* as set forth in Article 1338 of the Civil Code. This provides legal certainty and protection for the contracting parties, while simultaneously imposing limits on the freedom of contract, which could otherwise be abused if any of these requirements are disregarded.

According to the relevant legal provisions, an agreement is required to meet these four criteria of validity. As explained in Article 1320 of the Civil Code, an agreement must encompass the elements of consensus, capacity to enter into an agreement, a certain subject matter, and a cause that is lawful in nature. Upon fulfillment of these four criteria, an agreement becomes legally binding for the parties who drafted it. However, this does not always prevent specific events that may lead to legal disputes in the future, due to potential issues arising from inconsistencies with broader legal provisions.<sup>[14]</sup>

In nominee practices, the requirement of a "lawful cause" (*sebab yang halal*) is frequently the core of the issue. A lawful cause means that the purpose and reason behind the agreement must comply with the law, morality, and public order. A nominee agreement aimed at circumventing the

prohibition of land ownership by foreign nationals clearly contradicts positive agrarian law, and thus fails to meet this requirement. In this context, an agreement made with the intent to evade prevailing laws risks being annulled or declared null and void (*batal demi hukum*) because it violates the fundamental principles of the applicable law.<sup>[15]</sup>

### 3.1.2. The Validity of Land Sale and Purchase Agreements Using Nominee or "Name-Lending" Arrangements from the Perspective of Customary Law (*Hukum Adat*)

In the Indonesian legal system, in addition to positive law as regulated by the Civil Code (KUHPerdata) and the Basic Agrarian Law (UUPA), customary law (*hukum adat*) also plays a pivotal role in various aspects of social and legal life, including land transactions. Customary law encompasses living norms within society that are recognized as prevailing rules, particularly concerning land rights which are often governed by local customs and traditions. Land sale and purchase agreements involving nominees or "name-lending" carry significant implications in this regard, especially concerning the recognition or rejection of such transactions from a customary law perspective.<sup>[16]</sup>

Generally, customary law in Indonesia governs the rights and obligations related to land ownership, particularly in the context of land utilization by indigenous communities, which is not always based on formal certificates or legal documents. In many instances, land rights within customary societies are characterized as customary land rights, which are recognized based on tradition and heritage, and may differ from the conception of ownership rights under state law.<sup>[17]</sup>

The fundamental principle underlying the use of nominee agreements is the restriction of land ownership by foreign nationals in Indonesia. Under the Basic Agrarian Law (UUPA), Article 21(1) explicitly restricts foreign nationals from holding *Hak Milik* (Right of Ownership) over land in Indonesia, a right reserved exclusively for Indonesian citizens. However, through nominee arrangements, a foreign national can circumvent this restriction by appointing a local individual as a nominee, who is then legally registered as the landowner in official documents. This practice, however, raises serious legal concerns as it can be viewed as an attempt to evade a legal framework designed to protect national interests.

Customary law often provides a different perspective regarding land ownership. In many Indonesian communities, land is not merely regarded as a tradable commodity but is deeply intertwined with cultural and social identity. Traditional legal systems frequently prioritize actual and socially legitimate possession and utilization of land over the formal ownership displayed in nominee agreements.

In customary law, the principle of customary practice (*praktek adat*) emphasizes actual control (*penguasaan nyata*) and the utilization of land. Land is typically considered to belong to those who use and manage it within the local customary framework, rather than those who merely hold a

<sup>11</sup> Civil Code (KUHPerdata). (1947). *Indonesian Civil Code*. Indonesia: Government of the Republic of Indonesia.

<sup>12</sup> HukumOnline. (2020). *The Use of Nominees in Land Sale and Purchase: Addressing Illegal Practices*.

<sup>13</sup> Civil Code (KUHPerdata). (1947). *Indonesian Civil Code*.

<sup>14</sup> Suteki, S. (2018). *Indonesian Contract Law: Theory and Practice*. Bandung: Refika Aditama.

<sup>15</sup> Sudikno, M. (2017). *Contract Law in the Perspective of the Civil Code*. Yogyakarta: Pustaka Pelajar.

<sup>16</sup> Wibowo, B. *Customary Law and its Protection of Land in Indonesia*. *Jurnal Perundang-Undangan Indonesia*. Vol 22 No. 1 (January 2021) pp. 95-110.

<sup>17</sup> Sutomo, D. *Principles of Customary Law in Land and Inheritance Regulation in Indonesia*. *Jurnal Kebijakan Agraria*, Vol 11 No. 4 (August 2017) pp. 200-215.

formal certificate. This poses a significant challenge to the legal validity of nominee agreements, as the practice of nominal ownership may be deemed inconsistent with the customary understanding of legitimate land tenure.

Furthermore, the use of nominee agreements can lead to long-term legal disputes, particularly in communities that strictly adhere to customary law. The Indonesian judicial system, notably in cases such as Decision No. 872/Pdt.G/2020/PN Dps, has highlighted the potential conflicts arising from ambiguous ownership and the use of proxy arrangements. Customary law demands transparency and certainty regarding land ownership; when such certainty is eroded by nominee agreements, it frequently results in disputes between the parties involved, as well as between local communities and outside parties.

### 3.1.3. The Validity of Land Sale and Purchase Agreements Using Nominee or "Name-Lending" Arrangements from the Perspective of the Basic Agrarian Law (UUPA)

The validity of land sale and purchase agreements that utilize nominees or "name-lending" for the purpose of concealing the true identity of the owner is a critical issue in Indonesian agrarian law. This practice is frequently employed by foreign parties seeking to evade existing legal restrictions, specifically the provisions of the Basic Agrarian Law (UUPA) No. 5 of 1960, which restricts land ownership (*Hak Milik*) exclusively to Indonesian Citizens (WNI).

Land sale and purchase agreements using nominees are, in essence, a form of legal circumvention (*penyelundupan hukum*) aimed at bypassing established legal regulations. In this context, the practice can be viewed as an unlawful act because it directly aims to conceal the identity of the actual owner (the foreign party). The misuse of a nominee also has the potential to deceive authorities and the public by creating the appearance that the land is owned by an Indonesian citizen, while in reality, ownership remains in the hands of a foreign party who is ineligible under prevailing laws. Consequently, agreements founded upon such legal circumvention are highly susceptible to being annulled, as they contradict the legal principles governing the validity of contracts, particularly regarding the requirement of a lawful cause (*sebab yang halal*) as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata).

According to the theory of legal circumvention developed by Cuperus, legal circumvention is an attempt to avoid or manipulate existing regulations by concealing the true facts within an agreement.<sup>[18]</sup> In this case, the nominee agreement aims to hide the actual land ownership by a foreign national through the name of an Indonesian citizen, which violates Article 21 of the UUPA that limits land ownership to Indonesian citizens only. Despite being carried out with what the involved parties may consider "good intentions," this practice is fundamentally an unlawful act designed to evade clear and firm regulations. The use of a nominee is a form of legal manipulation that cannot be justified because it is intended to circumvent rules meant to prevent foreign the theory of legal circumvention explains that even if an agreement is made in good faith in many instances, the court

will still annul the transaction if it violates prevailing legal provisions. This is reflected in the two analyzed court decisions, which affirm that even if the foreign nationals or Indonesian citizens involved in a nominee agreement act in good faith, the agreement remains invalid because it contradicts the Principle of Nationality (*Asas Nasionalitas*) enshrined in the UUPA. Fundamentally, this nominee practice is an effort to avoid the explicit and strict provisions in Indonesian agrarian law regarding the restriction of land ownership by foreigners. Therefore, even if both parties act with good faith in the sale and purchase transaction, the court cannot accept such a reason as a basis to justify a violation of the applicable agrarian law.

Even if transactions involving nominees are conducted with good faith, they remain contrary to the law because the true objective is to evade the restrictions on land ownership by foreign nationals.<sup>[19]</sup> Although the parties' objective in the transaction might be to comply with existing rules on the surface, legal circumvention still occurs due to the attempt to bypass agrarian legal provisions.<sup>[20]</sup> Consequently, nominee agreements not only violate agrarian law but also undermine the principle of legal certainty which should serve as the foundation for every land transaction.

Thus, nominee agreements used in land sale and purchase transactions in Indonesia are clearly a form of legal circumvention that contradicts existing agrarian law, as explained in the two aforementioned court decisions. This legal circumvention not only prejudices the parties directly involved but also damages the broader legal system, particularly regarding legal certainty and the integrity of Indonesian agrarian law. In this regard, legal circumvention results not only in the invalidity of the agreement but can also lead to prolonged legal conflicts.

### 3.1.4. The Validity of Land Sale and Purchase Agreements Using Nominee or "Name-Lending" Arrangements from the Perspective of Islamic Law

In Islamic law, land sale and purchase transactions are subject to strict provisions regarding the validity of an agreement. This primarily refers to the principles of a valid contract (*aqd*), which must satisfy the requirements established by Islamic jurisprudence, namely the presence of mutual consent (*ridhā*), a clear agreement (*aqd*), and a lawful subject matter (*ma'qud 'alayh*). One aspect that can give rise to issues in Islamic law is the practice of nominee or "name-lending," where an individual lends their name to hold land title while another party maintains actual control over the property. This practice raises questions regarding its validity under Islamic law, particularly concerning the underlying purpose and the object of the transaction.

Furthermore, Islam posits that the evasion of state law carried out through nominee or name-lending mechanisms risks creating injustice, both toward the state and society. In this context, Islamic law functions to protect the rights of through both Sharia norms and compliance with public law.<sup>[21]</sup>

Transactions that attempt to evade or alter state legal provisions for specific purposes such as circumventing the prohibition of foreign land ownership contradict the principles of justice taught in Islam. Therefore, even if a

<sup>18</sup> Cuperus, E. (2011). *Legal Smuggling: A Study of Legal Manipulation in Indonesian Land Transactions*. Jakarta: Penerbit Hukum Indonesia, p. 54.

<sup>19</sup> Ibid.

<sup>20</sup> Cuperus, E. (2011). *Op. Cit.*, p. 54.

<sup>21</sup> Setiawan, R. A. (2022). *Issues in Islamic Derivatives and Proposals for Reforms*. MDPI. Vol 2 No. 1 (March 2025). pp. 78-99.

nominee agreement appears formally valid under state law, it would be considered void (*bātil*) from the perspective of Islamic law if its purpose is to circumvent prevailing legal provisions.

### 3.2. Legal Certainty and Protection for Parties in Land Sale and Purchase Agreements Utilizing Nominee or "Name-Lending" Arrangements Viewed from the Perspective of Court Decisions

Land sale and purchase agreements utilizing nominee or "name-lending" mechanisms in Indonesia reflect an attempt to circumvent the restrictive provisions of agrarian law, which stipulate that only Indonesian citizens may hold the Right of Ownership (*Hak Milik*) over land according to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Nominee practices flourish particularly in regions that attract investment interest, such as Bali, where foreign nationals (WNA) borrow the names of Indonesian citizens (WNI) to register land ownership rights that essentially exceed the permitted ownership limits. Empirical studies demonstrate that nominee agreements contradict the principle of *lex specialis* and the principle of agrarian nationalism, as they aim to transfer or place land ownership in the hands of parties who are ineligible under the UUPA, thereby giving rise to legal uncertainty and the potential for serious agrarian conflicts.<sup>[22]</sup> In the context of contract law theory, nominee agreements also fail to fulfill the requirement of a lawful cause (*causa yang halal*) as mandated by Article 1320 of the Indonesian Civil Code (KUHPerdata), because the object of the agreement (the transfer of ownership rights to a foreigner through another party's name) substantially contradicts the explicit prohibitions in the UUPA.<sup>[23]</sup>

The case of the Gianyar District Court Decision Number 137/Pdt.G/2021/PN Gin concretely illustrates these legal problems. The decision involves a lawsuit for an unlawful act (*perbuatan melawan hukum*) regarding a nominee agreement between a plaintiff (WNI) and a defendant (involving a WNA), where the land was purchased with a nominal declaration that the WNI acted as the titleholder merely as a formality, while actual control over the land placed the WNA as the beneficiary. The Court ruled to dismiss the entire lawsuit, considering that the agreement was unacceptable because its substance contradicted prevailing agrarian law, even though the submitted deed appeared formally valid. Academic studies of this decision reinforce that name-lending agreements produce unrecognized legal effects; thus, the registered ownership remains in the name of the certificate holder without considering subsequent ownership claims by the party behind the nominee.<sup>[24]</sup>

The legal consequences of nominee practices lie in the overlap between the principle of freedom of contract in the Civil Code and the nationality principle in national agrarian law. Although in contract theory parties may enter into various agreements, the nationality principle—which states that only Indonesian citizens can hold *Hak Milik* over land—is a *lex specialis* rule that nullifies the applicability of nominee agreements in the agrarian sector. This is emphasized by numerous legal studies stating that nominee agreements are a form of legal smuggling because they attempt to create seemingly valid rights that are actually prohibited by Articles 21 and 26 of the UUPA.<sup>[25]</sup>

Consequently, in much normative juridical research, nominee agreements are deemed to lack the essential elements of a valid contract because the intended cause (*causa*) must be a purpose permitted by positive law; however, in this practice, the intent is to evade clear legal restrictions, thereby creating uncertainty and legal risks for all parties involved, including the Indonesian citizen acting as the "nominee."<sup>[26]</sup> In many land dispute cases, courts refuse legal recognition of nominee agreements not merely because deed formalities are unmet, but because the concealed purpose which contradicts the provisions of the UUPA renders the contract's cause illicit, resulting in the agreement being considered non-existent in the eyes of the law from its inception (*void ab initio*).

Furthermore, several legal articles indicate that the ambiguity of nominee agreement status increases the risk of legal uncertainty, impacting the potential for prolonged agrarian disputes, financial losses for foreign parties acting in good faith, and issues regarding the status of certificate ownership that appears valid but lacks a true guarantee of rights. Academics also criticize the lack of specific regulations regarding nominees in the Indonesian legal system, forcing courts to rely on general norms that are sometimes difficult to apply consistently in various practical cases.

From a legal theory perspective, nominee agreements are an example of the discrepancy between the contractual aspirations of the parties and explicit agrarian legal limits. This necessitates that law enforcement officials uphold the principle of substance over form, where the substance of an agreement that contradicts the law must be disregarded even if its form appears formally valid. Decisions such as the Gianyar District Court ruling serve as a signal that the courts tend to reject claims based on agreements whose substance directly violates agrarian provisions.

Court decisions serve as a primary source of legal certainty regarding nominee practices in Indonesian land agreements, as national agrarian law prohibits land ownership (*Hak Milik*) by foreign nationals (WNA).

<sup>22</sup> Ridhugusti, R. (2024). *Implications of nominee agreements in land ownership by foreign nationals in Indonesia*. Journal of Rural Law.

<sup>23</sup> Pertiwi, M. D. et al. *Legal Certainty Of Nominee Agreements In The Transfer Of Ownership Rights To Land Based On An Absolute Letter Of Power*. International Journal of Educational Research & Social Sciences.

<sup>24</sup> Neonardi, N & Gunanegara. (2022). *Kepemilikan Hak Atas Tanah Terdaftar Yang Bersumber Dari Akta Nominee*. Journal of Comprehensive Science. 1(4) 822-823.

<sup>25</sup> Hartadi, D. (2025). *Implementation of the Principle of Nationality in Sales and Purchases Through Nominee Agreements Regarding Land Rights in Indonesia*. JIHAD: Jurnal Ilmu Hukum dan Administrasi. 7(3) pp. 721-722.

<sup>26</sup> Nandita, L & Fahrozi, M. H. *Land Ownership by Foreign Nationals Through Nominee Agreements: A Comparative Study of Thailand and the Philippines*. JDH: Jurnal Daulat Hukum. 8(4) pp. 825-826.

Court rulings are utilized to interpret agrarian norms, particularly the UUPA No. 5 of 1960 and the requirements for the validity of contracts under the Civil Code (KUHPerdara). In practice, nominee agreements established to grant land rights to foreigners through the name of an Indonesian citizen (WNI) are frequently deemed unlawful (*melawan hukum*) because their substance contradicts said prohibitions.<sup>[27]</sup>

An analysis of the Denpasar District Court Decision Number 274/Pdt.G/2020/PN Dps reveals that the court views nominee agreements as a form of legal abuse. In that ruling, the disputed land was declared the valid property of the Indonesian party and not the foreigner, despite the existence of a nominee deed. The deed and its accompanying agreements were declared invalid as they failed to meet the legal requirements prevailing in Indonesia.<sup>[28]</sup>

This decision affirms that even if formal documents are executed before a Notary, the substance of the agreement must still comply with agrarian legal norms. When such substance contradicts the principle of nationality and the provisions of Articles 21 and 26 of the UUPA, the agreement is declared null and void without diminishing the strength of the land certificate as authentic evidence of the Indonesian citizen's valid ownership.

The judicial practice regarding nominees in other disputes, such as the Gianyar District Court Decision Number 259/Pdt.G/2020/PN Gin, demonstrates a consistent pattern where the court examines the substance of the agreement rather than merely the form of the deed. In this case as well, although the land was registered in the name of an Indonesian citizen, the foreigner's claim was rejected because the nominee contract was deemed invalid under Indonesian agrarian law.

The legal consequence of a ruling declaring a nominee agreement null and void is that the contract is considered never to have existed from the outset (void ab initio). This legal effect automatically annuls all consequences of the transfer of rights forced through said agreement. This provides long-term legal certainty for the national agrarian system, as there is no room to legitimize agreements whose substance violates statutory prohibitions.

Beyond being null and void, such rulings also affect the liability of Land Deed Officials (PPAT). This provision is evident in juridical studies suggesting that a Notary who drafts a deed related to a nominee arrangement may be held accountable, as the deed renders land ownership invalid under agrarian law.

Court decisions, particularly at the court of first instance, are often used as references in subsequent disputes because they provide an interpretation of nominee practices within the context of the prohibition of foreign land ownership. This pattern of rulings indicates a judicial tendency to view the substance of the contract as the primary element in assessing its legality.

The role of the Supreme Court (Mahkamah Agung) becomes vital when decisions from the lower courts are brought to the level of Cassation. The Supreme Court may strengthen or amend the legal precedents set by the lower courts. Consistency in cassation and appeal rulings is necessary to prevent divergent interpretations that could weaken legal certainty.

In several studies, judicial rulings are also seen as a control mechanism over economic practices in the agrarian sector. When a nominee agreement is regarded as legal smuggling, the court plays a role in enforcing rules that protect national land sovereignty and ensures that agreements intended to deceive agrarian prohibitions are not granted legitimacy.

To complete the discussion regarding court decisions in nominee agreements, reference can be made to two rulings that have attained permanent legal force (*inkracht van gewijsde*):

**Decision Number 872/Pdt.G/2020/PN Dps (Denpasar District Court):** This ruling shows that in a nominee agreement, even if the formal deed is valid, the substance of the agreement contradicts the prevailing principles of agrarian law in Indonesia. The court ruled that the agreement was null and void and could not serve as a basis for land rights. Parties involved in land transactions cannot obtain recognition of ownership based on a nominee agreement that conflicts with the UUPA, which asserts that only Indonesian citizens are entitled to own land in Indonesia.

**Decision Number 137/Pdt.G/2021/PN Gin (Gianyar District Court):** This case also demonstrates consistency in the rejection of nominee practices. In this matter, a lawsuit involving a nominee agreement was deemed contrary to Indonesian positive law, specifically regarding land purchases by foreign nationals. The agreement involving a foreigner using an Indonesian citizen's name to control land in Indonesia was viewed as legal smuggling and declared void.

These decisions reinforce the argument that nominee practices, although they may be administratively recorded through a notarial deed, are invalid under Indonesian law. The courts are consistent in upholding the principle of nationalism in land tenure, which is reserved exclusively for Indonesian citizens based on Article 21, paragraph (1) of the UUPA. As a result, any action taken with the intent to conceal the true owner of the land, in violation of applicable provisions, must be annulled through a clear legal ruling.

Both decisions provide a clear illustration of how the courts establish legal precedents in handling nominee agreements. These rulings also illustrate the importance of consistency in the application of laws related to land ownership, particularly in preventing the abuse of law carried out through agreements intentionally designed to circumvent the law.

<sup>27</sup> Devita, S. M. (2022). *Legal status of nominee agreements in land tenure (study of nominee agreements in cases with Supreme Court Decision Number 3020 K/Pdt/2014)*. Widyia Yuridika, 5(1)

<sup>28</sup> Ridhogusti, R., & Kurniati, G. (2024). *Implications of nominee agreements in land ownership by foreign nationals in Bali (case study of Decision No. 274/Pdt.G/2020/PN Dps)*. Reformasi Hukum, 28(2) pp. 99-102.

As an impact of these rulings, they serve as references for similar future cases. The courts demonstrate that formal documents, such as sale and purchase deeds or agreement deeds, are insufficient to change the legal status of land illegally controlled by a foreigner. Only by prioritizing the substance of the agreement, in accordance with Indonesian agrarian law, can valid ownership status be recognized.

Furthermore, these rulings function as a legal basis for parties who feel aggrieved in land transactions involving a nominee. Victims of this practice have a basis to file a lawsuit to annul the transaction and request the restitution of land rights that were traded unlawfully. This provides legal certainty that even if there is an agreement between the parties involved, if it contradicts the prevailing law, the agreement shall not be enforceable.

The Supreme Court plays a crucial role in ensuring the consistency of these rulings. As the highest judicial body in the Indonesian legal system, the Supreme Court ensures that every issued decision provides a clear legal precedent, especially in cases involving nominee agreements. In this regard, the Supreme Court must ensure there are no legal loopholes that can be exploited to avoid the provisions of the UUPA and ensure that the principle of national land sovereignty remains protected.

Through its rulings, the Supreme Court can strengthen or review lower court decisions, especially when there are attempts to hide land ownership by foreigners using a nominee. With consistent and clear rulings, the Supreme Court can provide long-term legal certainty, not only for the parties involved in disputes but also for the broader public seeking to understand and conduct valid land transactions in accordance with Indonesian law.

Thus, consistent court decisions regarding nominee agreements, including those from the Denpasar District Court and the Gianyar District Court, play a crucial role in enforcing Indonesian agrarian law. They ensure not only that land agreements are formally valid but also that the substance of those agreements aligns with national legal principles prioritizing land ownership by Indonesian citizens.

#### 4. Conclusion

Based on the legal analysis of nominee or "name-lending" agreements in land sale and purchase transactions in Indonesia, the following key points can be concluded:

**Juridical Validity Status:** The nominee agreement constitutes a form of legal smuggling (*penyelundupan hukum*) as it aims to circumvent the provisions of Article 21, paragraph (1) of the Basic Agrarian Law (UUPA), which prohibits foreign nationals (WNA) from holding Right of Ownership (*Hak Milik*) over land in Indonesia. Although the deed is formally executed before a notary, the agreement is substantially null and void (*void ab initio*) as it violates the objective requirement of a "lawful cause" stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata).

**Legal Certainty and Court Precedents:** Court decisions (such as Denpasar District Court Decision No. 274/Pdt.G/2020/PN Dps and Gianyar District Court Decision No. 137/Pdt.G/2021/PN Gin) consistently uphold the principle of substance over form. The courts tend to reject ownership claims by foreign nationals based on nominee agreements; consequently, the land title remains legally recognized in the name of the registered Indonesian citizen, free from any obligations toward the foreign party.

**Legal Protection for the Parties:** There is no robust legal

protection for foreign nationals in this practice since the underlying agreement is deemed non-existent in the eyes of the law. For Indonesian citizens, this practice entails significant legal and administrative risks. Legal protection can only be attained by complying with ownership schemes recognized by law, such as the Right to Use (*Hak Pakai*) for foreigners, rather than through manipulative name-lending mechanisms.

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#### **How to Cite This Article**

Ansiska S, Sood M, Munandar A. Legal analysis of land sale and purchase agreements utilizing nominee or “name-lending” arrangements viewed from the perspective of positive law. *International Journal of Judicial Law*. 2026;5(2):18–26. doi:10.54660/IJL.2026.5.2.18-26.

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