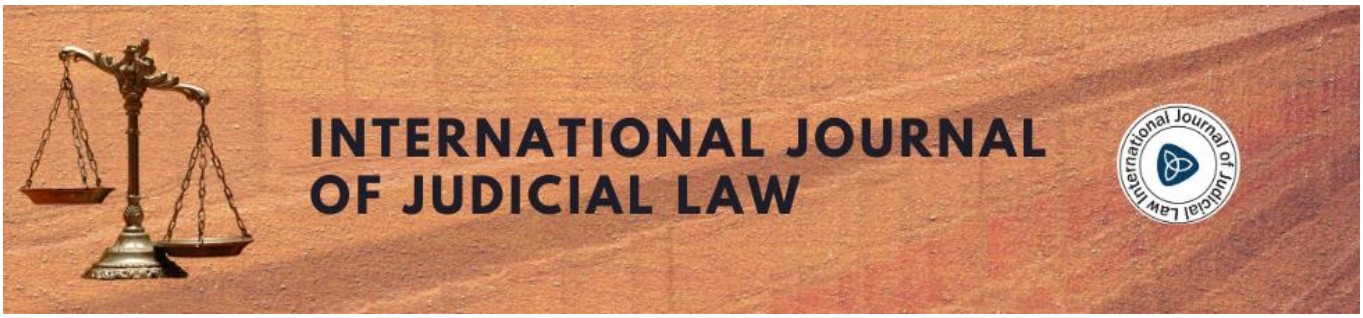




The Legality of Nominee Deeds in Mixed-Nationality Marriages

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Article Info

ISSN (online): 2583-6536

Volume: 05

Issue: 05

Received: 26-06-2026

Accepted: 28-07-2026

Published: 30-08-2026

Page No: 25-32

Abstract

The purchase of land by Indonesian citizens and foreign nationals in mixed-nationality marriages often gives rise to legal issues due to restrictions on foreign nationals' ownership of land under Article 21 paragraph (1) of the Basic Agrarian Law (UUPA). This situation has contributed to the development of nominee deeds as an arrangement through which foreign nationals obtain beneficial control over land by using the name of an Indonesian citizen as the formal holder of the land title. This study aims to analyze the use of nominee deeds in land purchases involving mixed-nationality marriages and to examine how justice can be achieved for the parties involved in such legal relationships. The legal materials are analyzed qualitatively with reference to the Indonesian Civil Code, the Basic Agrarian Law (UUPA), the Marriage Law, the Amendment to the Law on the Office of Notary (UUJN), Constitutional Court Decision Number 69/PUU-XIII/2015, as well as relevant legal doctrines and court decisions. The findings show that the emergence of nominee deeds results from the interaction between the principle of freedom of contract and the nationality principle under Indonesian agrarian law. In practice, such arrangements have developed as a means of circumventing the legal prohibition on foreign nationals owning land under the Right of Ownership (*Hak Milik*). Justice for the parties should be achieved proportionately by protecting the rights of Indonesian citizens as lawful holders of land ownership rights while also safeguarding the economic interests of foreign nationals through mechanisms recognized under civil law, without disregarding the provisions of the Basic Agrarian Law. A prenuptial or postnuptial agreement may serve as a preventive legal instrument that provides greater legal certainty and reduces the use of nominee deeds in mixed-nationality marriages.

DOI: <https://doi.org/10.54660/IJL.2026.5.5.25-32>

Keywords: Nominee deeds, mixed-nationality marriage, land ownership rights, justice, prenuptial agreement

Introduction

Land is one of the strategic resources that plays significant economic, social, cultural, and political roles in the lives of Indonesian people. ^[1] Therefore, the control, ownership, use, and utilization of land are expressly regulated by the State through Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA). One of the fundamental principles adopted under the UUPA is the nationality principle, as provided in Article 9 paragraph (1), which states that only Indonesian citizens may have a full legal relationship with the land, water, and airspace of Indonesia, subject to the provisions of Articles 1 and 2. This provision essentially means that only Indonesian citizens are entitled to hold the Right of Ownership (*Hak Milik*) over land located within the territory of Indonesia. For this reason, the UUPA is regarded as adopting the nationality principle in relation to land ownership. This principle is further reinforced by Article 21 paragraph (1) of the UUPA, which expressly provides that only

¹ Urip Santoso, 2017, *Hukum Agraria Kajian Komprehensif*, Jakarta: Prenada Media, h. 31.

Indonesian citizens may hold the Right of Ownership over land. In contrast, foreign nationals are not permitted to hold such ownership rights over land in Indonesia, except for certain land rights that are specifically and restrictively granted under the applicable laws and regulations. Such restrictions reflect Indonesia's national land law policy, which is intended to safeguard state sovereignty over land and protect the interests of the Indonesian people.^[2] However, globalization, as reflected in increasing population mobility, foreign investment, and mixed-nationality marriages between Indonesian citizens and foreign nationals, has created various legal complexities in the practice of land ownership and control. One of the practices that has developed is the use of nominee deeds as a legal arrangement in which an Indonesian citizen is formally registered as the holder of the land right, while the actual control and economic benefits of the land are intended for a foreign national.

From a normative perspective, neither the term nominee agreement nor nominee deed is formally recognized or expressly regulated under Indonesia's positive law. In practice, however, such arrangements have developed on the basis of the principle of freedom of contract as provided under Article 1338 of the Indonesian Civil Code. Through this principle, parties may enter into various contractual arrangements that essentially place a nominee in a position to act on behalf of another party who is regarded as the beneficial owner.^[3]

In notarial practice, such legal relationships are generally structured through several interrelated deeds, including nominee agreements, irrevocable powers of attorney, acknowledgments of debt, sale and purchase binding agreements, and declarations concerning control over certain objects. Although each deed may formally satisfy the requirements of an authentic deed, the substance of these interconnected agreements is often intended to circumvent the prohibition on foreign nationals holding the Right of Ownership over land, as stipulated in Article 21 paragraph (1) of the UUPA.

The legal issues become increasingly complex when nominee deeds are used in the context of mixed-nationality marriages between Indonesian citizens and foreign nationals. Such marriages are governed by Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law).

A mixed-nationality marriage creates a legal relationship that may give rise to various consequences for the property status of the spouses. Where the parties do not enter into a marital agreement providing for the separation of assets, the joint property regime applies, under which assets acquired during the marriage become jointly owned by both spouses. In the context of land ownership, this joint property regime may create legal consequences because it may indirectly give the

foreign spouse a civil interest in land that, under the UUPA, may only be held under the Right of Ownership by Indonesian citizens.

Constitutional Court Decision Number 69/PUU-XIII/2015 marked an important development by allowing marital agreements to be made not only before marriage but also during the course of the marriage. The decision is intended to protect the constitutional rights of Indonesian citizens married to foreign nationals, particularly by enabling them to retain the right to hold the Right of Ownership over land through a separation of assets arrangement.^[4] Nevertheless, in practice, some couples in mixed-nationality marriages still do not enter into marital agreements, either due to a lack of legal awareness or because their marriages took place before the issuance of the decision. This situation has led some parties to use nominee deeds as an alternative means of maintaining or obtaining control over land.

The use of nominee deeds in mixed-nationality marriages raises fundamental questions concerning the validity and purpose of such agreements. On the one hand, the parties may rely on the principle of freedom of contract as the legal basis for entering into the arrangement. On the other hand, the substance of the agreement may conflict with Article 21 paragraph (1) and Article 26 paragraph (2) of the UUPA, which expressly prohibit the transfer of the Right of Ownership to foreign nationals, whether directly or through legal acts that result in such rights being transferred to persons who are not legally qualified to hold them. This gives rise to the question of whether a nominee deed constitutes a valid agreement under Article 1320 Indonesian Civil Code, UUPA, which sets out the legal requirements for a valid contract, or whether it should instead be regarded as an agreement based on an unlawful cause and is therefore null and void by operation of law.^[5]

In addition, the use of nominee deeds also raises issues concerning legal certainty and legal protection for all parties involved, including notaries in their capacity as public officials authorized to draw up authentic deeds. Pursuant to Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary (hereinafter referred to as the Amended Notary Law or UUJNP), a notary is generally authorized to record the intentions of the parties in an authentic deed, provided that such intentions do not conflict with applicable laws and regulations. However, where it is known that the substance of the agreement is intended to circumvent the legal restrictions on foreign nationals holding the Right of Ownership over land, questions arise concerning the limits of the notary's authority, the notary's legal liability, and the evidentiary value of the deed produced. From the perspective of the parties, the use of nominee deeds may also give rise to disputes concerning land ownership, the annulment of deeds, or the loss of legal protection where the agreement is declared contrary to law.^[6]

Based on the foregoing discussion, there appears to be a gap

² Ibid., h. 14.

³ I Gede Yusa, I Dewa Gede Atmadja, I Made Arya Utama, I Made Dedy Prianto, Gede Prapta Wiguna, I Gede Tresna Pratama Wijaya, Akibat Hukum Akta Perjanjian Nominee Terhadap Pihak Ketiga, *Acta Comitas*, 1 (1), (2016): 141-152.

⁴ Hadi, I. Gusti Ayu Apsari, Komang Febrinayanti Dantes, Ratna Artha Windari, Ni Putu Ega Parwati, and Nastiti Lestari. "Akta Autentik Perjanjian Kawin Berdasarkan Putusan MK No. 69/PUU-XIII/2015: Proses dan Pertanggungjawaban Notaris di Kabupaten Tabanan." *Acta Comitas: Jurnal Hukum Kenotariatan* 10, (2), (2025): 244-261.

⁵ Cokorda Istri Ratih Dwiyantri Pemayun, dan I Made Sarjana. "Tanggung Jawab Notaris Terkait Penyelundupan Hukum dalam Hal Perjanjian Nominee." *Acta Comitas*, 6 (1), (2021): 142-151.

⁶ Ibid.

between practical needs in society, particularly in mixed-nationality marriages, and Indonesia's national land law system, which continues to uphold the nationality principle as a fundamental basis for the ownership of land under the Right of Ownership. This situation has generated debate regarding the legality of nominee deeds as a legal instrument in land purchases involving couples in mixed-nationality marriages, particularly with respect to the validity of such agreements, their legal consequences for the status of land rights, and their juridical implications for notaries and the parties involved. Therefore, research on the legality of nominee deeds in mixed-nationality marriages is important in order to clarify the legal circumstances surrounding the creation and use of such deeds and to identify a form of justice that is consistent with the principles of Indonesian agrarian law and contract law.

Problem Formulation

1. How do nominee deeds arise in land purchases involving mixed-nationality marriages?
2. How can justice be ensured for the parties involved in nominee deed arrangements for land purchases in mixed-nationality marriages?

Purpose

This study aims to understand and analyze the emergence of nominee deeds in land purchases involving mixed-nationality marriages, as well as to examine how justice can be achieved for the parties involved in nominee deed arrangements concerning the acquisition of the Right of over land in mixed-nationality marriages.

Method

This study employs normative legal research. This method was selected because the research focuses on analyzing the legal regulation of nominee deeds in land purchases involving mixed-nationality marriages. According to Peter Mahmud Marzuki, normative legal research is a process of identifying legal rules, legal doctrines, and legal principles in order to address the legal issues under examination.^[7] In this study, legal principles and legal rules are used to analyze issues concerning the emergence of nominee deeds in land purchases involving mixed-nationality marriages and the realization of justice for the parties involved in such arrangements.

The approaches used in this study are the statutory approach and the conceptual approach. The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as the Indonesian Civil Code, UUPA, regulations issued by the Minister of Law and Human Rights, and Constitutional Court Decision Number 69/PUU-XIII/2015. Secondary legal materials include legal literature, academic journals, and relevant online sources, while tertiary legal materials include the *Kamus Besar Bahasa Indonesia*. The legal materials were collected through library research by gathering references relevant to the legal issues examined in this study. The collected materials were then analyzed using a qualitative

descriptive method.

Discussion

The Use of Nominee Deeds in Mixed-Nationality Marriages for Land Purchases

Basically, Indonesian positive law does not expressly recognize or regulate nominee agreements or nominee deeds. The term nominee originates from the common law system and refers to a legal relationship in which one person (the nominee) acts on behalf of another party (the beneficial owner) based on an agreement. As a result, the person whose name is legally registered as the holder of a right may be different from the person who actually enjoys the economic benefits of the relevant object.^[8] In the Indonesian legal system, which follows the civil law tradition, this type of arrangement is not specifically regulated by legislation. Therefore, its existence has developed through contractual practice based on the principle of freedom of contract.^[9]

The normative basis commonly relied upon in establishing a nominee relationship is Article 1313 of the Indonesian Civil Code concerning the definition of an agreement, which provides that an agreement is an act by which one or more persons bind themselves to one or more other persons. Furthermore, Article 1320 of the Civil Code regulates the requirements for a valid agreement, while Article 1338 paragraph (1) provides that all agreements lawfully entered into shall be binding upon the parties as law. Based on these provisions, the parties are, in principle, granted the freedom to determine the form, contents, and substance of the agreement they intend to enter into.

The principle of freedom of contract is not absolute. Such freedom is limited by the objective requirement of a lawful cause as stipulated in Article 1320 of the Indonesian Civil Code, as well as Articles 1335 and 1337, which provide that an agreement made without a lawful cause, based on a false cause, or for a cause contrary to law, morality, or public order has no legal force. Therefore, even if an agreement formally satisfies the requirements of an authentic deed, its substance must still be examined to determine whether the purpose of the agreement is consistent with the national legal system.

In notarial practice, a nominee deed is rarely embodied in a single deed. Instead, a nominee relationship is usually established through a series of interconnected legal acts (nominee arrangement), including:

1. a nominee agreement;
2. an irrevocable power of attorney;
3. an acknowledgment of debt;
4. a loan agreement;
5. a declaration of control over the object;
6. a power of attorney to sell; and/or
7. a deed of sale and purchase binding agreement.^[10]

In substance, this series of deeds is intended to ensure that the land right remains formally registered in the name of an Indonesian citizen, while the economic benefits, control, and financing are in fact derived from a foreign national. This arrangement reflects a separation between legal ownership

⁷ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, h.181.

⁸ Muh. Afdal Yanuar, "Tinjauan Hukum Terhadap Nominee Agreement Kepemilikan Saham Pada Penanaman Modal Asing Berbentuk Perusahaan Joint Venture," *Jurnal Majalah Hukum Nasional*, 51 (1), (2021): 109

⁹ Winda Ayu Setyowati, "Ownership of land through nominee agreement by foreign citizens." *Legal Spirit* 9 (3), (2025): 587-596.

¹⁰ Supramono, G. 2014, *Hukum Orang Asing di Indonesia*, Jakarta: Sinar Grafika, h. 26.

and beneficial ownership, a concept that is not recognized within the Indonesian land law system.^[11]

The emergence of nominee practices cannot be separated from Indonesia's agrarian law policy, which adopts the principle of nationality. This principle is rooted in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which provides that the land, waters, and natural resources contained therein are controlled by the State and utilized for the greatest prosperity of the people. The implementation of this principle is reflected in Article 9 paragraph (1) of the Basic Agrarian Law, which emphasizes that only Indonesian citizens may have a full legal relationship with land, water, and airspace. Furthermore, Article 21 paragraph (1) of the Basic Agrarian Law expressly provides that only Indonesian citizens may hold Right of Ownership over land.

In contrast, foreign nationals are only granted certain limited rights, namely the Right of Use (*Hak Pakai*) as regulated under Articles 41 and 42 of the UUPA. In addition, they may also be granted lease rights for buildings as provided for in Article 44 of the UUPA. These provisions were further reinforced by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (hereinafter referred to as Government Regulation on Land Registration). In addition, this matter is also regulated under Government Regulation Number 103 of 2015 concerning Residential Home Ownership by Foreigners, insofar as its provisions remain relevant and do not conflict with Government Regulation Number 18 of 2021. Through these regulations, the State continues to provide foreign nationals with the opportunity to use land in Indonesia, but not in the form of Right of Ownership.

This prohibition is further reinforced by Article 26 paragraph (2) of the Basic Agrarian Law, which provides that any legal act directly or indirectly intended to transfer the Right of Ownership to a foreign national is null and void by law, and the land shall revert to the State. This provision is particularly important because the law does not merely prohibit the direct transfer of ownership rights to foreign nationals, but also prohibits any legal arrangement that, in substance, results in a foreign national exercising control over land held under the Right of Ownership. Therefore, this prohibition is also intended to prevent forms of legal circumvention, including the use of nominee agreements.^[12]

The issue becomes more complex when land is purchased by spouses in a mixed-nationality marriage. Article 57 of the Marriage Law defines a mixed marriage as a marriage between two persons who, in Indonesia, are subject to different laws due to differences in nationality. Furthermore, Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (hereinafter referred to as the Citizenship Law) provides that a mixed marriage does not automatically change the nationality of either spouse. Accordingly, an Indonesian citizen who marries a foreign national remains an Indonesian citizen and, in principle,

continues to qualify as a legal subject entitled to hold the Right of Ownership over land. The legal issue does not arise from any change in the Indonesian spouse's nationality, but rather from the regime of joint marital property.

Article 35 paragraph (1) of the Marriage Law provides that property acquired during marriage becomes joint marital property. This provision is reinforced by Article 119 of the Indonesian Civil Code, which in principle recognizes a community of property arising from the commencement of marriage, unless the parties provide otherwise through a marital agreement. As a consequence of the joint property regime, any asset acquired during the marriage may legally also form part of the foreign spouse's economic interest. However, the Basic Agrarian Law expressly prohibits foreign nationals from having an ownership interest in land held under the Right of Ownership. This legal ambiguity has created a dilemma for couples in mixed-nationality marriages, particularly when they intend to purchase land with the status of Right of Ownership.^[13]

A significant development occurred following Constitutional Court Decision Number 69/PUU-XIII/2015, which allows a marital agreement to be made not only before the marriage takes place, but also during the course of the marriage.^[14]

This decision provides protection for the constitutional rights of Indonesian citizens married to foreign nationals, enabling them to retain the right to hold land under Right of Ownership through a separation of property arrangement.^[15]

Nevertheless, many mixed-nationality couples remain unaware of the Constitutional Court Decision, were married before the decision was issued, did not enter into a marital agreement, or consider the property separation procedure to be too complicated. These circumstances have contributed to the continued use of nominee deeds as a practical solution, even though such arrangements are inconsistent with the objectives of the UUPA.

In practice, the formation of a nominee arrangement in mixed-nationality marriages generally follows a relatively similar pattern.

1. The arrangement begins when an Indonesian citizen and a foreign national spouse intend to purchase land held under Right of Ownership. Since they are aware that the joint marital property regime may give rise to legal issues, the parties then seek an alternative arrangement that allows control over the land to be maintained.
2. A notary or another party prepares a series of agreements that, in formal terms, do not indicate any ownership interest of the foreign national. The Right of Ownership certificate is registered in the name of the Indonesian citizen, while the interests of the foreign national are protected through various civil law deeds.
3. The funds used for the purchase of the land, payment of taxes, construction of buildings, and maintenance costs generally come from the foreign national. However, for land administration purposes, all documents continue to indicate that the Indonesian citizen is the holder of the Right of Ownership.

¹¹ I Gede Yusa, I Dewa Gede Atmadja, I Made Arya Utama, I Made Dedy Prianto, Gede Prapta Wiguna, I Gede Tresna Pratama Wijaya, Op. cit., h. 141-152.

¹² Cokorda Istri Ratih Dwiyantri Pemayun, and I Made Sarjana, Op. cit., h. 142-151.

¹³ Ady Tantera Arsana, Kedudukan Akta Nominee Dengan Objek Hak Milik Atas Tanah Dalam Perceraian Perkawinan Beda Kewarganegaraan Di Indonesia, Tesis, Program Studi Magister Kenotariatan Fakultas Hukum Universitas Udayana Denpasar 2026, h. 8.

¹⁴ Adi, K.P.P. and Putrawan, S., 2013. Akibat Hukum Terhadap Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Berlangsung, *Kertha Semaya*, 1(11), h.1-5.

¹⁵ Rohman, M.F., 2017. Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan. *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, 7(1), h.1-27

4. Various legal instruments are prepared to ensure that the Indonesian citizen is required, at any time upon request, to transfer or sell the land, or to hand over the proceeds of the sale to the foreign national.^[16]

Accordingly, from an economic perspective, the foreign national remains the party who effectively controls the object, even though he or she is not legally registered as the holder of the right. Such an arrangement demonstrates that a nominee deed essentially constitutes a legal construction that separates formal ownership from beneficial ownership. However, the Indonesian land law system requires the holder of the land right to also be the party who actually enjoys the benefits of that right. Therefore, nominee practices are often regarded as a form of legal circumvention (*fraus legis*), namely the use of legal instruments that appear formally valid but are substantively intended to avoid the application of statutory provisions.^[17]

From a legal perspective, the emergence of nominee practices is not solely driven by the intention of foreign nationals to control land, but also results from the interaction of several factors, namely:

1. Juridical factor, namely the restriction under the Basic Agrarian Law that the Right of Ownership over land may only be held by Indonesian citizens.
2. Marital factor, namely the existence of the joint marital property regime as regulated under the Marriage Law, whereby assets acquired during the marriage become joint property of the spouses.
3. Economic factor, namely the high investment value of land, particularly in tourist areas such as Bali, which encourages foreign nationals to seek various forms of control that provide greater certainty for their investments.
4. Notarial practice factor, namely the use of various contractual instruments that formally satisfy the requirements of authentic deeds but are substantively intended to protect the interests of foreign parties.
5. Factor of weak legal certainty in practice, namely the continuing differences in interpretation regarding the limits of notarial authority, the validity of nominee agreements, and their legal consequences for the Right of Ownership over land.

Accordingly, the use of nominee deeds in mixed-nationality marriages cannot be understood merely as a matter of private contractual law, but rather as a consequence of the interaction between contract law, marriage law, agrarian law, and notarial law. On the one hand, the principle of freedom of contract provides the parties with the opportunity to structure their legal relationship according to their intentions. On the other hand, such freedom is limited by the principle of nationality under the Basic Agrarian Law, which expressly prohibits any direct or indirect arrangement that results in the Right of Ownership over land being controlled by a foreign national. The conflict between these two legal regimes forms the basis for the emergence of nominee deed practices in mixed-nationality marriages.

The Realization of Justice for the Parties in a Nominee Deed for the Purchase of Land in a Mixed-Nationality Marriage.

The issue of nominee deeds in land purchases involving mixed-nationality marriages raises not only questions concerning the validity of the agreement, but also issues of legal justice for the parties involved. In practice, this legal relationship involves at least two interests that equally require legal protection: the interest of the Indonesian citizen as the legally recognized holder of the land right, and the interest of the foreign national as the party who provides the funds for the purchase of the land. These two interests often conflict with one another because the Indonesian land law system only recognizes the Right of Ownership as being held by Indonesian citizens, while in factual terms the entire financing for the land purchase may come from the foreign national.

From the perspective of the theory of justice, as proposed by John Rawls, the law should provide balanced protection for the rights of every person, as long as such protection does not diminish the rights of others and remains within the framework of the Constitution and applicable laws and regulations. Justice should not merely be understood as the formal recognition of rights, but also as the protection of legal interests arising from legal relationships entered into voluntarily and in good faith.^[18] However, such protection cannot be extended to legal acts that clearly conflict with mandatory legal norms (*dwingend recht*). Therefore, in legal relationships arising from nominee deeds, the concept of justice must be understood proportionally while continuing to observe the principle of nationality under Indonesian agrarian law.^[19]

The discussion of justice in nominee deeds is not intended to legitimize practices of legal circumvention, but rather to examine how the law may provide protection for the rights and legal interests of each party who has entered into such a legal relationship, particularly when disputes or divorce arise in a mixed-nationality marriage. Based on Article 21 paragraph (1) of the UUPA, only Indonesian citizens may hold the Right of Ownership over land. Consequently, where a nominee arrangement results in a Right of Ownership certificate being issued in the name of an Indonesian citizen, the law recognizes only that Indonesian citizen as the legal holder of the land right. Through the land registration system, the State does not recognize a separation between the formal owner and the beneficial owner. Therefore, the rights attached to the Right of Ownership as regulated under the UUPA legally belong to the Indonesian citizen whose name is stated on the land certificate.

These rights include the right to use the land, enjoy the benefits derived from it, transfer the right, encumber the land with a mortgage right, and carry out other legal acts as long as they comply with the applicable laws and regulations. In this context, the position of the Indonesian citizen as the registered certificate holder is protected by the principle of publicity in the land registration system as regulated under

¹⁶ Ady Tantera Arsana, *Op.cit.*, h. 155-158

¹⁷ Rumahorbo, R.G.V., Zazili, A., Oktaviana, S., Febrianto, D. and Ramadhan, H.W., 2026. Kedudukan Hukum dan Tanggung Gugat Notaris atas Akta Nominee yang Mengandung *Fraus Legis*. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(3), h.10160-10170.

¹⁸ Rawls, John., 1999, *A Theory of Justice*, Harvard University Press, h. 54

¹⁹ Karen Lebacqz, 2015, *Teori-Teori Keadilan: Six Theories of Justice*, Jakarta: Nusa Media, h. 56

the Government Regulation on Land Registration. However, in nominee arrangements, the Indonesian citizen often functions merely as the party who lends his or her identity as the nominee without contributing to the purchase price of the land. Even so, from a legal perspective, the Indonesian citizen remains the lawful owner because the right arises under the UUPA, rather than from the source of the funds used to purchase the land. This situation often gives rise to conflict when the relationship between the parties ends, because the Indonesian citizen has a strong legal basis for maintaining ownership of the land based on the certificate issued in his or her name.

With regard to legal rights, the Indonesian citizen is also entitled to legal protection where the use of his or her name is based on mutual agreement and does not involve fraud or coercion. However, if it is proven that the use of the Indonesian citizen's name was intended to circumvent the provisions of Article 21 and Article 26 paragraph (2) of the UUPA, the legal relationship may be deemed contrary to law. Consequently, legal protection for the nominee agreement may be limited.

Unlike Indonesian citizens, foreign nationals cannot acquire the status of holders of the Right of Ownership over land, even where the entire purchase price is paid by them. This is a direct consequence of the principle of nationality adopted under the UUPA. Accordingly, payment of the purchase price does not automatically create a proprietary right where the person making the payment does not legally qualify as a holder of the Right of Ownership. Nevertheless, from the perspective of civil law, a foreign national may still have legal interests arising from contractual relationships entered into by the parties. Where the series of deeds includes an acknowledgment of debt, a loan agreement, or other contractual arrangements that do not conflict with the law, the foreign national may still claim the fulfillment of rights arising from those obligations. In other words, legal protection for the foreign national should be directed toward contractual rights to performance or compensation, rather than toward recognition of ownership rights over the land. If a dispute subsequently arises and the court finds that the series of nominee agreements is contrary to Article 1337 of the Indonesian Civil Code because it was intended to circumvent the prohibitions under the UUPA, legal protection for the foreign national cannot take the form of recognition of the Right of Ownership over the land. In such circumstances, a form of justice that may still be considered is the restitution of performance, insofar as it is permitted under civil law and does not conflict with agrarian law. This approach is consistent with the principle that no person may benefit from his or her own unlawful conduct (*nemo auditur propriam turpitudinem allegans*).

The issue becomes increasingly complex when spouses in a mixed-nationality marriage who use a nominee arrangement subsequently divorce. In such circumstances, the legal issues concern not only the validity of the nominee deed, but also the status of the land as part of the joint marital property. Article 35 paragraph (1) of the Marriage Law provides that property acquired during the marriage becomes joint marital property. This provision is consistent with Article 119 of the

Indonesian Civil Code, which in principle recognizes a community of property unless otherwise agreed by the spouses.^[20] Therefore, if land is purchased during the marriage without a marital agreement providing for the separation of property, the land is legally considered part of the joint marital property. However, in a mixed-nationality marriage, the existence of joint marital property cannot be separated from the restriction on foreign nationals holding the Right of Ownership over land, as stipulated in Article 21 of the UUPA. Accordingly, the division of joint marital property cannot be interpreted as granting a portion of the Right of Ownership to the foreign spouse, as this would be contrary to the principle of nationality.

A form of justice that is more consistent with the Indonesian legal system is to provide compensation based on the economic value of the joint marital property, rather than transferring the Right of Ownership to the foreign national. In this way, the foreign national may receive a share of the economic value, while the Right of Ownership remains with a legal subject who is qualified to hold such right under the UUPA. This approach maintains a balance between protecting the civil rights of the foreign spouse and ensuring compliance with the provisions of national agrarian law.

The existence of a marital agreement plays a very important role in determining the rights of the parties over land acquired during the marriage. Prior to Constitutional Court Decision Number 69/PUU-XIII/2015, a marital agreement could only be made before or at the time the marriage was entered into, as provided under Article 29 of the Marriage Law. Following the issuance of that decision, married couples were given the opportunity to enter into a marital agreement during the course of the marriage.^[21] Where the parties enter into a marital agreement providing for the separation of property, land purchased by the Indonesian citizen using his or her own funds does not become part of the joint marital property. Consequently, the foreign spouse does not acquire any civil interest in the Right of Ownership, and the Indonesian citizen may retain his or her status as the holder of the Right of Ownership without violating the provisions of the Basic Agrarian Law. Accordingly, a marital agreement is essentially a legal instrument provided by the legal system to avoid the use of nominee deeds. Conversely, where no marital agreement exists, any property acquired during the marriage is, in principle, considered joint marital property. In such circumstances, a nominee agreement is often chosen as a practical means of maintaining control over the land, even though it may give rise to substantive legal problems. Therefore, from the perspectives of legal certainty and justice, the use of a marital agreement is a more appropriate mechanism than the use of a nominee deed.

The realization of justice in legal relationships arising from nominee deeds must be understood as a balance between the protection of individual rights and the protection of public legal interests. On the one hand, the Indonesian citizen whose name appears on the land certificate has rights recognized under agrarian law as the holder of the Right of Ownership and is therefore entitled to legal protection of that status. On the other hand, the foreign national who has provided the funds for the purchase of the land also has civil law interests

²⁰ Partyani, P.D.M., Sarjana, I.M. and Putrawan, S., Penerapan Putusan Mahkamah Konstitusi Nomor: 69/PUU-XIII/2015 jo. Pasal 29 ayat (1) UU Perkawinan Mengenai Pengesahan Akta Perjanjian Perkawinan Oleh Notaris di Kota Denpasar, *Kertha Semaya: Jurnal Ilmu Hukum*, 7(1), (2018), h.1-15.

²¹ Prebianan, P.R. and Sarjana, I.M., Fungsi Perjanjian Perkawinan terhadap Status Kepemilikan Harta pada Perkawinan Campuran, *Kertha Semaya: Jurnal Ilmu Hukum*, 6, h. 1-13

that cannot be disregarded, particularly with regard to the restitution of performance or the settlement of economic rights. However, such justice cannot be achieved by setting aside the principle of nationality under the Basic Agrarian Law. Legal protection for the foreign national must not result in recognition of the Right of Ownership, which is expressly prohibited by law. Instead, legal protection should be directed toward the settlement of valid civil law relationships, while protection for the Indonesian citizen must also remain limited so that it does not become a means of legal circumvention. The most appropriate concept of justice in land purchases through nominee deeds in mixed-nationality marriages is proportional justice, which means granting each party rights in accordance with their respective legal position. The Indonesian citizen is protected as the lawful holder of the Right of Ownership under the UUPA, while the foreign national is protected with respect to his or her economic interests through civil law mechanisms that do not conflict with national agrarian law. At the same time, a marital agreement serves as a preventive legal instrument that can provide legal certainty and reduce the need to use nominee deeds. In this way, legal protection and justice for both parties may be achieved without disregarding the fundamental principles of Indonesian land law.

Closing Conclusion

Based on the discussion above, it can be concluded that the use of nominee deeds in land purchases involving mixed-nationality marriages arises from the restriction under Article 21 of the UUPA, which provides that the Right of Ownership over land may only be held by Indonesian citizens. On the other hand, the joint marital property regime under Article 35 of the Marriage Law provides that property acquired during marriage generally becomes joint property, which creates legal consequences when one of the spouses is a foreign national. This situation encourages the parties to use a nominee arrangement through agreements that formally place the Indonesian citizen as the holder of the Right of Ownership over the land, while the foreign national provides the funds and enjoys the economic benefits of the property. Therefore, the emergence of nominee deeds may be understood as a consequence of the interaction between the principle of freedom of contract under civil law and the principle of nationality under agrarian law. In practice, such arrangements have developed as a form of legal circumvention intended to avoid the prohibition on foreign nationals holding the Right of Ownership over land. Furthermore, justice for the parties involved in a nominee deed used for the purchase of land in a mixed-nationality marriage should be realized through proportional legal protection according to the legal position of each party. The Indonesian citizen, as the lawful holder of the Right of Ownership, remains entitled to protection of his or her proprietary rights under the UUPA. Meanwhile, the foreign national who finances the purchase of the land may obtain protection for his or her economic interests through civil law mechanisms, insofar as such protection does not conflict with the provisions of national agrarian law. In the event of divorce, the division of joint marital property cannot take the form of granting the Right of Ownership to the foreign national, but may instead be carried out through the distribution of the economic value of the property or other forms of compensation permitted under applicable law. Therefore, a marital agreement providing for the separation

of property serves as a preventive legal instrument that offers legal certainty for couples in mixed-nationality marriages, as it enables the Indonesian spouse to retain the Right of Ownership over land without resorting to a nominee deed that may conflict with the principle of nationality and the provisions of the UUPA.

Suggestion

1. The Government, particularly the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Law, should establish more comprehensive regulations concerning the practice of nominee agreements in land ownership. Such regulations are necessary to provide legal certainty regarding the limitations, legal consequences, and protection mechanisms for parties in mixed-nationality marriages. In addition, continuous public education should be carried out regarding the importance of marital agreements as legal instruments for ensuring certainty over property rights in mixed-nationality marriages.
2. Notaries, in exercising their authority, should apply the principle of due care by refusing to draw up deeds that are substantively intended to circumvent the provisions of Article 21 and Article 26 paragraph (2) of the UUPA. Notaries should also provide legal counseling to the parties regarding the legal consequences of using nominee deeds and encourage the use of marital agreements as a solution that complies with the applicable laws and regulations.
3. Law enforcement authorities, including judges and institutions authorized in the field of land affairs, are expected to apply a consistent legal interpretation to the practice of nominee deeds while maintaining a balance between the principle of nationality under agrarian law and the protection of the parties' civil rights. Such consistency is necessary to achieve legal certainty, justice, and legal utility in resolving disputes related to mixed-nationality marriages.
4. The public, particularly couples who intend to enter into or have already entered into mixed-nationality marriages, should understand the legal consequences relating to land ownership in Indonesia and make use of marital agreements as a legal mechanism for regulating marital property. In this way, the use of nominee deeds, which may create legal uncertainty and give rise to future disputes, can be avoided.

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How to Cite This Article

Arcana MC, Purwanto IWN. The legality of nominee deeds in mixed-nationality marriages. *Int J Judicial Law*. 2026;5(5):25-32. doi:10.54660/IJLL.2026.5.5.25-32.

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