

Analysis of the Validity of Notarial Deeds in Land Ownership Transactions by Foreign Nationals through Nominees based on Law No. 5 of 1960 concerning Basic Agrarian Principles

Giesma Dwi Prakoso¹⁾, Shafa Kintan Nabila²⁾ & Tetti Samosir³⁾

¹⁾Master of Notary Law, Universitas Pancasila, Indonesia, E-mail: giesma29@gmail.com

²⁾ Master of Notary Law, Universitas Pancasila, Indonesia, E-mail: nabilakintan97@gmail.com

³⁾Faculty of Law, Universitas Pancasila, Indonesia, E-mail: tettisamosir@univpancasila.ac.id

Abstract. *Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) explicitly limits land ownership in Indonesia to Indonesian citizens (WNI). However, in practice, many foreign citizens (WNA) use the nominee scheme to acquire land by listing the name of the WNI as the formal owner in the land title certificate. This scheme is generally facilitated through a notarial deed containing a nominee agreement, absolute power of attorney, or a sale and purchase agreement. This study aims to analyze the validity of notarial deeds made in land ownership transactions by WNA through a nominee scheme based on applicable laws and regulations. The research method used is normative legal research with a statute approach and a case approach. The results of the study indicate that notarial deeds made in nominee transactions can be considered null and void because they conflict with the UUPA and the principle of legal certainty in the Indonesian agrarian system. Based on Article 21 paragraph (1) and (3) of the UUPA, land ownership rights cannot be owned by foreign nationals, and if transferred to foreign nationals, the land must be released within one year or fall to the state. In addition, nominee agreements made before a notary also conflict with Article 1320 of the Civil Code because they have an "unlawful cause" (causa illicita). Therefore, stricter supervision of nominee practices and more assertive legal reform are needed to prevent misuse of this scheme and maintain agrarian sovereignty in Indonesia.*

Keywords: *Citizens; Foreign; Land; Nominee; Ownership; Validity.*

1. Introduction

Land plays a fundamental role in human life, especially in social, economic, and legal aspects. Therefore, land ownership regulation in Indonesia is a major concern of the government to ensure that land is used in accordance with national interests. Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) explicitly stipulates that land rights can only be owned by Indonesian citizens (WNI) and legal entities determined by the government (Permatadani & Irawan, 2021). This regulation aims to maintain national sovereignty in land ownership and utilization. However, in practice, there is a phenomenon where foreign citizens (WNA) continue to try to own land in Indonesia through various means, one of which is the use of a nominee scheme.

A nominee scheme is a practice in which an Indonesian citizen acts as the legal owner of the land, while the actual ownership is in the hands of the foreign citizen. In this case, the Indonesian citizen concerned only acts as an intermediary or party whose name is listed on the land rights certificate. This practice is generally carried out through certain agreements, such as a nominee agreement, a sale and purchase agreement, an absolute power of attorney, or other deeds made by a notary. Although the nominee practice is often considered a solution for foreign nationals to acquire land in Indonesia, this scheme raises various legal issues, especially in terms of the validity of the notarial deed used to validate the transaction (Trayama & Adhari, 2025).

As a public official authorized to make authentic deeds, a notary has an important role in every transaction related to land ownership. The notary is responsible for ensuring that the deed made is in accordance with applicable legal provisions, including the principles in the UUPA which prohibit land ownership by foreign nationals. However, in practice, there are several cases where notaries still make deeds that validate transactions with a nominee scheme (Anggriani & Zandra, 2021). This raises questions about the validity of the notarial deed, considering the potential for legal smuggling (*fraus legis*) which is contrary to the principle of legal certainty in the Indonesian agrarian system.

The validity of a notarial deed can be seen from several aspects, such as the notary's authority, the conformity of the deed with laws and regulations, and the truth of the substance stated in the deed. If a notarial deed is made to validate a transaction that is substantially contrary to the law, then the deed can be considered null and void or at least can be canceled by the court. In the context of the nominee scheme, a notarial deed used to transfer land rights to a foreigner through an Indonesian citizen intermediary has the potential to conflict with Article 26 of the UUPA, which states that the transfer of land rights to a foreigner causes the land to be released within a certain period of time or returned to the state (Fathoni, 2018).

In addition, from a civil law perspective, a nominee agreement can be considered an agreement that is made invalidly because it contains elements of legal engineering. Article 1320 of the Civil Code (KUH Perdata) stipulates that an agreement must meet four requirements for a valid agreement, namely agreement of the parties, capacity to act, the object of the agreement, and a lawful cause. If a nominee agreement is made with the aim of avoiding agrarian law provisions that prohibit land ownership by foreign nationals, then the agreement can be considered to have an unlawful cause, so that it has the potential to be null and void by law.

This study aims to analyze the validity of notarial deeds used in the nominee scheme and its legal implications for legal certainty in the Indonesian agrarian system. Using a normative legal approach, this study will examine related laws and court decisions related to nominee practices. Through this analysis, it is hoped that a deeper understanding can be obtained regarding the legal status of notarial deeds in land ownership transactions by foreign nationals through nominees and solutions that can be taken to prevent practices that conflict with agrarian law in Indonesia.

2. Research Methods

This study uses a normative legal research method, namely an approach that relies on literature studies and analysis of applicable legal norms. This method was chosen because this study aims to examine the validity of notarial deeds in land ownership

transactions by foreign citizens (WNA) through a nominee scheme based on Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). In this approach, the legal sources used include laws and regulations, legal doctrines, and relevant court decisions to understand how the law regulates and responds to nominee practices in land ownership in Indonesia.

The approaches used in this study are the statute approach and the case approach. The legal approach is carried out by examining various regulations related to land rights, notary authority, and the validity of notarial deeds in land transactions, such as the UUPA, the Civil Code (KUH Perdata), the Notary Position Law (UUJN), and related implementing regulations. Meanwhile, the case approach is used to analyze court decisions that discuss the validity of notarial deeds in nominee transactions, so that it can provide an overview of how the law is applied in practice.

The data collection technique in this study was carried out through document studies, where various legal literature, scientific journals, and court decisions were systematically reviewed. After the data was collected, the analysis was carried out using a descriptive-analytical method, namely describing and analyzing the contents of relevant laws and legal cases, then drawing conclusions regarding the validity of notarial deeds in the nominee scheme. Thus, this study is expected to contribute to academic understanding and legal practice regarding the legal status of notarial deeds in land ownership transactions by foreign nationals in Indonesia.

3. Results and Discussion

3.1. The Role of Agrarian Law Regulations in Indonesia Regulates Land Ownership by Foreign Nationals based on Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA)

Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) is the main foundation of the agrarian system in Indonesia. UUPA stipulates that land has a social function and must be managed for the benefit of the nation and the welfare of the people. One of the main principles in UUPA is the limitation of land ownership by foreign parties, including foreign nationals (WNA). This limitation aims to prevent land control by foreign parties that could threaten national sovereignty and the economic and social interests of the Indonesian people.

Restrictions on Land Rights for Foreign Nationals in UUPA

UUPA expressly limits land ownership for foreign nationals. Article 9 paragraph (1) of UUPA states that only Indonesian citizens (WNI) can have land rights. Furthermore, Article 16 paragraph (1) of the UUPA regulates the types of land rights recognized in Indonesia, including:

- Ownership Rights
- Cultivate Use Rights (HGU)
- Building Use Rights (HGB)
- Use Rights
- Lease Rights

- Land Clearing Rights
- Lease Rights
- Rights to Collect Forest Products

Of the various types of rights, ownership rights are the highest rights in Indonesian agrarian law. Based on Article 21 paragraph (1) of the UUPA, ownership rights can only be owned by Indonesian citizens and legal entities determined by the government. Foreign nationals are not permitted to own land with ownership rights status. If there is a transfer of ownership rights to a foreign national, then Article 21 paragraph (3) of the UUPA states that foreign nationals who obtain ownership rights are required to relinquish their rights within a period of one year. If not relinquished within the time limit, the land will fall to the state.

Rights That Can Be Owned by Foreign Nationals

Although it is prohibited to own land with ownership rights status, the UUPA still provides the possibility for foreign nationals to control land in Indonesia through certain rights, namely use rights and lease rights.

- The Right to Use (Article 42 UUPA) is granted to foreign nationals to use and utilize land for a certain period of time. This right can be granted for state land or freehold land with a certain agreement (Sumiati, 2024).
- The Right to Rent allows foreign nationals to rent land from landowners (Indonesian citizens or Indonesian legal entities) for building or business purposes.

Implications of Land Ownership Restrictions for Foreign Nationals

The restrictions on land ownership for foreign nationals in the UUPA aim to ensure that the land remains under the control of Indonesian citizens and does not fall into the hands of foreign parties. However, in practice, many foreign nationals use a nominee scheme, namely by listing the name of an Indonesian citizen as the formal owner of the land, while the actual ownership remains in the hands of the foreign national. This scheme often exploits weaknesses in the legal system and agrarian supervision in Indonesia.

To address the potential misuse of the nominee scheme, the government has tightened regulations, including the prohibition on the use of absolute power of attorney in land transactions as stipulated in Presidential Instruction Number 1 of 1991. In addition, various derivative regulations of the UUPA, such as Government Regulation Number 103 of 2015 concerning Ownership of Residential Homes or Dwellings by Foreigners, provide clearer rules regarding the rights of foreign nationals to control property in Indonesia, especially for ownership of flats (Nahak & Budiarta, 2021).

Regulations in the UUPA expressly prohibit foreign nationals from owning land with ownership rights status, but still allow land control through use rights and lease rights. These restrictions aim to maintain Indonesia's agrarian sovereignty and protect the interests of the community. However, in practice, there are still legal loopholes that allow foreign nationals to control land indirectly through the nominee scheme, which has the potential to cause legal problems in the future. Therefore, strengthening regulations and

supervision of legal smuggling practices is important in maintaining the national agrarian system.

3.2. The Validity of Notarial Deeds in Land Ownership Transactions by Foreign Nationals through the Nominee Scheme Based on Statutory Regulations

In the Indonesian legal system, notaries have an important role as public officials who are authorized to make authentic deeds. Notarial deeds are written evidence that has strong legal force and is binding on the parties concerned. However, in the context of land ownership transactions by foreign nationals (WNA) through the nominee scheme, the validity of notarial deeds is a legal debate. This is because the nominee scheme contradicts the basic principles of Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) which prohibits land ownership by foreign nationals.

In the nominee scheme, foreign nationals use the name of Indonesian citizens (WNI) as the formal owner of the land as evidenced by a land title certificate. Although administratively the land is in the name of the WNI, in essence the land is still controlled by the WNA based on certain agreements made before a notary, such as a name loan agreement (nominee agreement), a sale and purchase agreement, or an absolute power of attorney. The validity of a notarial deed in such a transaction can be examined from two main aspects, namely the formal aspect and the material aspect (Wahyono et al, 2023).

From the formal aspect, a notarial deed made in a nominee transaction can be considered valid as long as it meets the requirements stipulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN) (Darmayanthi & Wiryawan, 2024). Notaries are required to ensure that the deed made meets formal requirements such as the identity of the parties, agreement, and valid signatures. However, this formal aspect does not necessarily guarantee the validity of the deed if its contents or substance are contrary to applicable law.

From the material aspect, the validity of a notarial deed in a nominee transaction becomes problematic because it conflicts with applicable laws and regulations, especially the UUPA. Article 21 paragraph (1) of the UUPA expressly states that only Indonesian citizens have the right to own land with ownership rights status. If land with ownership rights is transferred to a foreigner, then based on Article 21 paragraph (3) of the UUPA, the land must be released within one year or fall to the state. Thus, a nominee agreement that aims to avoid this provision can be categorized as a form of legal smuggling (*fraus legis*) (Suartining & Djaja, 2023).

In addition, from a civil law perspective, a nominee agreement made before a notary has the potential to be invalid because it violates the requirements for a valid agreement as regulated in Article 1320 of the Civil Code (KUH Perdata). One of the main requirements for a valid agreement is "a lawful cause" (*causa licita*). If an agreement is made with the aim of avoiding a legal prohibition, then the agreement can be considered null and void. This is in line with the Supreme Court's decision in several cases that annulled nominee agreements because they conflict with the principle of legal certainty in the Indonesian agrarian system (Sulistiyani, 2024).

In addition, based on Presidential Instruction Number 1 of 1991, the use of absolute power of attorney in land transactions is prohibited to prevent misuse of land ownership by unauthorized parties. Notaries who continue to make deeds related to nominees can

be considered to have violated this provision and can be subject to sanctions based on the UUJN, including administrative, civil, or even criminal sanctions if proven to be involved in legal smuggling practices.

Thus, although notarial deeds in nominee transactions can meet the formal aspects, their substance still conflicts with applicable agrarian law. Therefore, the deed can be considered null and void or at least can be canceled through a court decision. To maintain legal certainty and prevent nominee practices, stricter supervision is needed on the role of notaries in land transactions and the application of sanctions for notaries involved in making deeds that conflict with the law.

4. Conclusion

Based on the analysis of the validity of notarial deeds in land ownership transactions by foreign citizens (WNA) through the nominee scheme, it can be concluded that this practice is contrary to the Indonesian agrarian law system. Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) expressly limits land ownership only to Indonesian citizens (WNI) and certain legal entities. If land with freehold status falls into the hands of a foreign citizen, then within a certain period of time the land must be released or returned to the state. The nominee scheme that is often used by foreign citizens to indirectly own land is a form of legal smuggling (*fraus legis*) which is contrary to the principle of legal certainty in the UUPA. The deeds made by the notary in this transaction, such as nominee agreements, sale and purchase agreements, and absolute powers of attorney, have the potential to be invalid because they violate agrarian law regulations and provisions in the Civil Code (KUH Perdata) regarding the requirements for the validity of the agreement. Therefore, deeds made in nominee transactions can be declared null and void or can be canceled by the court. Thus, stricter supervision is needed on nominee practices and the role of notaries in making deeds related to land ownership transactions by foreign nationals. In addition, there needs to be stricter legal and policy reforms to prevent misuse of the nominee scheme in order to maintain Indonesia's agrarian sovereignty and ensure legal certainty for all parties involved in land transactions.

5. References

Journals:

- Anggriani, R., & Zandra, A. M. (2021). Nominee Contract Practice on Ownership of Foreign National Land in Indonesia. *Jurnal Hukum Novelty* (1412-6834), 12(1).
- Dharmayanthi, N. N. D., & Wiryawan, I. W. G. (2024). Juridical Review of the Position of Substitute Notaries According to Law No. 2 of 2014 Amending Law No. 30 of 2004 on Notary Positions. *Asian Journal of Social and Humanities*, 3(2), 375-381.
- Nahak, S., & Budiarta, I. N. P. (2021). Legal Protection of Land Tenure by Foreign Investors through Nominee Agreement in Bali, Indonesia. *International Journal of Criminology and Sociology*, 10, 589-594.
- Permatadani, E., & Irawan, A. D. (2021). Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia. *Khatulistiwa Law Review*, 2(2), 348-358.
- Suartining, N. K., & Djaja, B. (2023). Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law No. 5 of 1960. *Journal of Social Research*, 2(6), 1775-1785.

Sulistiyani, N. (2024). Prohibition of Ownership of Foreign Citizens' Land Through A Nominee Agreement Based on The Principle of Legal Certainty. *International Journal of Latin Notary*, 4(2), 31-34.

Sumiati, N. K., Suwitra, I. M., & Renaya, N. (2024). Granting the Right of Use on Freehold Land to Foreign Citizens in Badung Regency. *YURIS: Journal of Court and Justice*, 54-69.

Trayama, Y., & Adhari, A. (2025). Evidence of Authentic Deeds in Civil Disputes Related to Nominee Agreements on Ownership of Land Title Certificates. *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam*, 17(1), 1-14.

Wahyono, A., Zakaria, U., Bachri, H. I. F., Ahmad, B., & Rahmatullah, P. S. (2023). Kepemilikan Tanah Oleh WNA Dalam Perjanjian Nominee Untuk Memiliki Tanah Di Indonesia. *Synergy: Jurnal Ilmiah Multidisiplin*, 1(03), 119-126.

Books:

Fathoni, M. Y. (2018). Lingkup dan Implikasi Yuridis Pengertian Agraria Dalam Undang-undang Nomor 5 Tahun 1960. *Justitia Jurnal Hukum*, 2(2).

Indonesia. (1960). *Undang-undang no. 5 tahun 1960 tentang peraturan dasar pokok-pokok agraria* (Vol. 144). Ganung Lawu.

Regulation:

Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA)

Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN).