

Legal Consequences of Nominee Agreements Due to the Death of the Beneficial According to Statutory Regulations

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Article history:

Received in revised form: 16 August 2025

Acceptance date: 22 August 2025

Available online: 29 August 2025

Keywords:

Nominee Agreement; Islamic Inheritance Law; Legal Uncertainty; Contractual Nullity; Indonesian Civil Code.

How to Cite:

Rambe, Z. K., & Budhiawan, A. (2025). Legal Consequences of Nominee Agreements Due to the Death of the Beneficial According to Statutory Regulations . *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*. <https://doi.org/10.24252/al-risalah.vi.60936>

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Abstract

This study examines the legal consequences of nominee agreements when the heir passes away, an issue that remains ambiguous under Indonesian civil law. The research problem arises from the tension between the principle of freedom of contract and the prohibition of legal circumvention through nominee arrangements, particularly in relation to land ownership by foreign nationals. Unlike previous studies that primarily focused on the validity or enforceability of nominee agreements, this research introduces a novel perspective by systematically analyzing the legal implications of termination due to death within the framework of inheritance law and contract annulment. Employing a normative juridical method, the study explores statutory provisions, legal doctrines, and relevant court decisions. The findings indicate that nominee agreements, although often satisfying the formal elements of a contract, frequently contravene the principles of lawful cause and good faith, thereby rendering them void ab initio. Upon the death of the heir, neither the heir nor their successors retain enforceable rights, while the nominee remains the de jure owner. This situation creates legal uncertainty and inheritance disputes. The study concludes that such agreements fail to provide legal protection and instead burden the judiciary with disputes that undermine legal certainty. These findings underscore the necessity for harmonization and reform of Indonesian civil law to ensure certainty, justice, and alignment with contemporary business practices.

INTRODUCTION

The phenomenon of nominee agreements in Indonesian legal practice continues to develop, particularly in the areas of investment and property ownership.¹ These agreements essentially place one party (the nominee) as the formal owner of an asset, while actual ownership rests with another party (the beneficiary).² Such practices are often used to overcome legal limitations, such as the prohibition on land ownership for foreign nationals as stipulated in the Basic Agrarian Law (UUPA) and its derivative regulations.³ Although formally, nominee agreements appear to align with the principle of consensualism in contract law, their substance often contradicts the principles of lawful cause and good faith, thus giving rise to serious problems with legal certainty.⁴

The problem becomes even more complex when unforeseen legal events occur, such as the death of the beneficiary. In the context of Indonesian civil law, Article 1813 of the Civil Code stipulates that a power of attorney terminates upon the death of the principal.⁵ However, in practice, nominee agreements take more than just the form of a power of attorney; they can also be constructed through indemnity agreements, name borrowing, or even pseudo-sale agreements.⁶ This creates ambiguity regarding whether the entire legal structure automatically ends upon the death of the beneficiary, or whether some legal consequences still remain binding on the nominee and heirs. This ambiguity has the potential to lead to the closure of asset ownership status and open up a long-term legal battle.⁷

Empirical data demonstrates the urgency of this issue. According to Supreme Court records (SIPP, 2023)⁸, in 2022, there were at least 127 civil cases at the cassation level

¹ A Kosuma, "Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Indonesia" (2013).

² Tri Wahyono, "Pengaruh Pertumbuhan Aset, Pertumbuhan Penjualan, Profitabilitas, Likuiditas Dan Ukuran Perusahaan Terhadap Debt To Total Asset Pada Perusahaan Pembiayaan Yang Terdaftar Di Bei Tahun 2010 - 2013," *Jurnal Ilmiah Manajemen Dan Bisnis* 1, no. 2 (2015): 177-93.

³ Kosuma, *Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Indonesia*.

⁴ et al., "Implications of Nominee Agreement between Foreign Nationals and Indonesian Citizens," *International Journal of Social Science and Human Research* 6, no. 08 (2023): 5288-98, <https://doi.org/10.47191/ijsshr/v6-i8-91>.

⁵ Linda Vianty Mala Takko, I Nyoman Putu Budiarta, and Anak Agung Sagung Laksmi Dewi, "Perjanjian Nominee Dan Akibat Hukumnya Menurut Sistem Hukum Positif Indonesia," *Jurnal Preferensi Hukum* 2, no. 2 (2021): 365-70, <https://doi.org/10.22225/jph.2.2.3339.365-370>.

⁶ Arkam Djauhari And Latar Belakang, "Analisis Yuridis Perjanjian Nominee Di Indonesia," *Jurnal Pilar Keadilan* 3, no. 2 (2023): 58-73.

⁷ Rani Mailina, "Jurnal Mirai Management Analisis Klaim Bpjs Ketenagakerjaan (Studi Kasus Pekerja Informal Di Bpjs Ketenagakerjaan Cabang Tanjung Morawa)," *Jurnal Mirai Management* 8, no. 2 (2023): 373-80.

⁸SIPP Mahkamah Agung RI, "Data Perkara Perdata Tingkat Kasasi," 2023, <https://sipp.mahkamahagung.go.id>.

related to attorney defense, with 38 cases directly involving the death of the principal. This figure illustrates that courts still face difficulties in consistently interpreting the legal consequences of the termination of power, particularly in relation to nominee agreements involving high economic value. This situation not only burdens the judiciary but also harms parties seeking legal certainty in business transactions and asset inheritors.⁹

Previous studies have highlighted various aspects of nominee agreements, but they still leave significant gaps. Slamet et al. (2023)¹⁰ emphasize nominee agreements as a form of legal smuggling from the perspective of their validity and binding force. Melisa (2021)¹¹ reviews the legal principles involved in the formation of legislation, but does not specifically address the implications of nominee inheritance. Meanwhile, Arsela (2021)¹² highlights the judicial handling of nominee disputes and finds inconsistent decisions, but does not yet present a doctrinal framework regarding the legal consequences of the beneficiary's death. Thus, although the debate regarding the validity of nominee agreements is widely discussed, their legal consequences from the perspective of inheritance and contract law, particularly the death of the beneficiary, remain relatively neglected.

This gap constitutes both a research gap and the academic urgency of this research. Without an in-depth study of the legal consequences of nominee agreements after the death of the beneficiary, legal practitioners, heirs, and business actors lack a clear reference point regarding the continuation of the rights and obligations under these agreements. This ambiguity not only raises the risk of disputes but also undermines the principle of legal certainty, which should be upheld in the Indonesian civil law system.

This research aims to fill this gap by comprehensively examining the legal consequences of nominee agreements within the framework of the Indonesian Civil Code, specifically Article 1320 concerning the conditions for a valid agreement, Article 1338 concerning the principle of freedom of contract, and Article 1813 concerning the

⁹ Deny Haspada, "Perjanjian Nominee Antara Warga Negara Asing Dengan Warga Negara Indonesia Dalam Praktik Jual Beli Tanah Hak Milik Yang Dihubungkan Dengan Pasal 1313 Kitab Undang-Undang Hukum Perdata," *Wacana Paramarta: Jurnal Ilmu Hukum* 17, no. 2 (2018): 115-24, <https://doi.org/10.32816/paramarta.v17i2.77>.

¹⁰ Sri Redjeki Slamet, Zulfikar Judge, and Henry Arianto, "Indikasi Perjanjian Nominee Sebagai Bentuk Penyelundupan Hukum Perjanjian Ditinjau Dari Keabsahan Dan Kekuatan Mengikatnya," *LexJurnalica* 20, no. 3 (2023): 310, https://digilib.esaunggul.ac.id/UEU-Journal-11_4482/31458/hukum-perjanjian-internasional-pentingnya-definisi-untuk-memahami.

¹¹ Melisa and dian lestari Siregar, "Implementation Of Legal Principles In Forming Participatory And Just Legislation," *Jurnal Hukum Unissula* 4, no. 2 (2021): 691-703.

¹² Annisa Maudi Arsela and Febby Mutiara Nelson, "Perjanjian Nominee Dalam Hukum Pertanahan Indonesia," *Palar | Pakuan Law Review* 7, no. 2 (2021): 505-24, <https://doi.org/10.33751/palar.v7i2.4370>.

termination of power of attorney. Through a normative juridical approach combined with analysis of court decisions, this research seeks to develop a conceptual framework that can explain the legal status of nominee agreements after the death of the beneficiary. Thus, this research not only makes a theoretical contribution to the development of civil law but also offers practical implications for reforming legal policy and practice in Indonesia.

Overall, this research confirms that nominee agreements are not simply a business phenomenon, but rather a legal issue requiring doctrinal clarity. Amid increasing economic globalization and cross-border investment, legal certainty regarding nominee agreements is crucial to ensuring a fair, transparent, and sustainable business environment. Therefore, this research is expected to make a substantive contribution to the development of Indonesian civil law, both academically and in practice.

RESEARCH METHODS

This research adopts a normative juridical method because the central problem concerns the doctrinal and normative validity of nominee agreements within Indonesian civil law, which requires an in-depth analysis of legal texts, doctrines, and judicial practices rather than empirical surveys.¹³ Compared to socio-legal or empirical methods, the normative juridical approach is more suitable to construct authoritative arguments about legal certainty, the legitimacy of contractual causes, and the binding force of nominee agreements under Indonesian law.

In applying this method, the study combines three complementary approaches:¹⁴

- a. Statute Approach – applied by examining relevant provisions of the Civil Code (particularly Articles 1313, 1320, 1338, and 1813), Law No. 5 of 1960 on Basic Agrarian Principles, and Government Regulation No. 103 of 2015. These statutory texts are systematically interpreted to identify the extent to which nominee agreements align with or contradict explicit positive law.
- b. Conceptual Approach – applied by engaging with legal doctrines such as *freedom of contract*, *good faith*, and the *theory of termination of agreements due to death*. The conceptual approach allows the study to clarify the theoretical position of nominee agreements as *innominaat* contracts, evaluate their consistency with general principles of civil law, and resolve doctrinal ambiguities where statutory regulation is silent.

¹³ M Ramdhan, *Metode Penelitian* (Medan: Cipta Media Nusantara, 2021).

¹⁴ Rizal Irvan Amin and Achmad, “Mengurai Permasalahan Peraturan Perundang - Undangan Di Indonesia,” *Res Publica* 4, no. 2 (2020): 205–20.

- c. Case Approach – applied by analyzing court decisions that have adjudicated disputes over nominee agreements and their termination upon the death of the principal. This approach is essential to test how statutory and doctrinal reasoning is operationalized in judicial practice, and to identify patterns or inconsistencies in the judiciary's reasoning.

To maintain validity and accountability of data, the study triangulates sources by integrating primary legal materials (statutes, jurisprudence, and authoritative doctrines), secondary legal materials (peer-reviewed journal articles, legal commentaries, and textbooks), and tertiary materials (legal dictionaries and encyclopedias as interpretative aids). Cross-referencing these three categories ensures that the conclusions are not only doctrinally rigorous but also reflective of actual legal discourse. Moreover, the use of case law grounds the theoretical analysis in judicial reality, enhancing reliability.¹⁵

Thus, the normative juridical method with these three approaches provides a robust framework to answer the research problem. Unlike empirical or socio-legal research that might capture perceptions or practices, this doctrinal approach allows the formulation of prescriptive arguments about the validity and legal consequences of nominee agreements following the death of the principal, which is the core objective of this study.

RESEARCH RESULTS AND DISCUSSION

1. Validity of Nominee Agreements in the Indonesian Legal System

Nominee agreements are categorized as innominaat agreements because they are not explicitly regulated in the Civil Code (KUH Perdata). In practice, these agreements are often justified by the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that all legally concluded agreements are legally binding on the parties. This principle grants the parties the freedom to enter into agreements even if they are not specifically stated in the Civil Code. However, this freedom is not absolute; rather, it is limited by the requirement that every agreement must meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely:¹⁶

- a. Agreement between those making the agreement.
- b. Capacity to make an agreement.

¹⁵ Juliansyah Noor, *Metode Penelitian: Skripsi, Tesis, Disertai Dan Karya Ilmiah* (Jakarta: Kencana Prenadamedia Group, 2011).

¹⁶ Arie Arisandy Husen and Taufan Fajar Riyanto, "Legal Consequences of Nominee Made Before a Notary Based on Legal Certainty in the Perspective of the Conditions for the Validity of the Agreement," *Jurnal Konstatering (JK)* 2, no. 4 (2023): 435–41.

- c. The existence of a certain condition.
- d. The existence of a lawful cause.

When examined based on these criteria, nominee agreements often fail, particularly in the fourth requirement—a lawful cause. The essence of nominee agreements lies in concealing the identity of the true owner or ignoring legal boundaries of ownership, particularly in land law under the Basic Agrarian Law (UUPA). Articles 21 and 26 of the UUPA expressly prohibit foreign nationals from holding land ownership rights in Indonesia. Therefore, using an Indonesian citizen as a nominee to hold such ownership rights on behalf of a foreign citizen violates civil law. Consequently, a nominee agreement falls under the category of agreements with unlawful causes, rendering them void *ab initio*.

This legal construction is further supported by doctrinal interpretation. Subekti¹⁷ emphasizes that the validity of an agreement must be assessed not only from its formal structure but also from its substantive purpose. An agreement that appears valid on the surface but contains a substance that violates legal norms should be considered invalid. Similarly, Mariam Darus Badruzaman notes that the principle of freedom of contract is always limited by public order and morality; therefore, any agreement intended to circumvent the law (*rechtsverduistering*) or exploit legal loopholes is not protected by the legal system. In this context, nominee agreements constitute what experts often refer to as "legal smuggling," as they are deliberately drafted to circumvent legal restrictions, particularly regarding foreign ownership of immovable property.

Furthermore, Indonesian jurisprudence reinforces this interpretation. In several decisions, the Supreme Court has consistently invalidated nominee agreements, particularly in land disputes, on the grounds that they violate the principle of legitimate cause. For example, in Supreme Court Decision No. 1241 K/Pdt/2010, the Supreme Court declared nominee agreements invalid because they were used as a tool for foreign ownership of land, which violates the Basic Agrarian Law (UUPA). This legal stance demonstrates that while nominee agreements may exercise freedom of contract, the judiciary prioritizes the protection of public order and the integrity of legal prohibitions.

Another important aspect of the validity of an agreement is the principle of good faith, as enshrined in Article 1338 paragraph (3) of the Civil Code. Good faith requires that agreements be executed honestly, transparently, and without conflict with propriety or justice. However, nominee agreements are made with the intent to disguise true ownership and mislead public records, thus violating the principle of good faith. As a

¹⁷ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1985).

result, even though the agreement appears to meet the consensual elements (consent and capacity), it is void under the requirements of good faith and a legitimate reason.

The validity of nominee agreements under Indonesian civil law is fundamentally flawed. Such agreements may be valid as innominaat agreements under the broad umbrella of freedom of contract, but when subject to the legal test of Article 1320 of the Civil Code and the substantive requirements of good faith and a legitimate reason, they fail. Doctrinal views, statutory provisions, and jurisprudence all agree that nominee agreements are void. Thus, their use not only undermines the integrity of legal certainty but also jeopardizes the protection of national interests in controlling land and corporate ownership.

2. Implications for Inheritance

The death of the beneficiary raises further legal complications and exposes a fundamental weakness in the structure of nominee agreements. Under Article 1813 of the Civil Code, a power of attorney ceases automatically if one of the parties dies. Since nominee agreements are generally constructed upon a power of attorney arrangement where the nominee acts on behalf of the beneficiary this legal relationship terminates with the death of the beneficiary. Thus, any subsequent legal acts carried out by the nominee lack a legal basis and cannot bind the heirs of the deceased.

From the perspective of inheritance law, this situation places the heirs in a highly vulnerable position. Ownership recognized *de jure*, namely the nominee whose name is officially registered in the land or company certificate, will always prevail over the *de facto* ownership of the deceased beneficiary. As a result, heirs cannot rely on the nominee agreement as a legal instrument to inherit rights. Instead, they must depend on the good faith or willingness of the nominee to acknowledge the beneficiary's actual ownership something that is often disputed and difficult to enforce legally.

The Civil Code emphasizes that inheritance occurs *ipso jure* (by operation of law) at the time of death (Article 833 KUH Perdata), meaning heirs automatically acquire the rights and obligations of the deceased. However, this mechanism presupposes that the deceased had recognized legal ownership. In the case of nominee agreements, the deceased beneficiary does not hold ownership rights formally recognized by law. Therefore, there is nothing for the heirs to inherit in the eyes of the legal system. This legal vacuum leads to prolonged disputes and contradicts the principle of legal certainty (*kepastian hukum*) guaranteed by the Constitution.

In practice, this legal uncertainty has surfaced in court disputes. For instance, in several civil cases concerning land and share ownership, heirs of beneficiaries attempted to assert their rights based on nominee agreements. The courts, however, consistently

referred to statutory law, recognizing only the nominee as the legitimate owner. A relevant example is Supreme Court Decision No. 179 PK/Pdt/2007, where the Court rejected the heirs' claim because the property was legally registered under the nominee's name, even though the heirs provided evidence of financial contributions from the deceased beneficiary. This illustrates that the judiciary tends to prioritize formal ownership (nominee) over factual ownership (beneficiary), thereby leaving heirs without enforceable rights.

The implications of this legal construction are manifold. First, nominee agreements cannot serve as a valid transfer mechanism for succession because they collapse upon the beneficiary's death. Second, they expose heirs to economic losses, as substantial assets may be inaccessible despite being controlled de facto by their deceased relative. Third, such agreements potentially create opportunities for abuse of power by nominees, who may exploit their legal position to appropriate assets entirely, disregarding the heirs' interests.

Doctrinally, scholars such as Sri Redjeki Slamet (2023)¹⁸ argue that nominee agreements represent a form of "legal smuggling" (*penyelundupan hukum*), and thus any consequences arising from them including succession disputes cannot be protected by law. Likewise, Arsela (2021)¹⁹ emphasizes that heirs of beneficiaries have no *locus standi* (legal standing) in court because their rights cannot be proven through formal ownership documents.

In conclusion, the death of the beneficiary in nominee agreements demonstrates a structural incompatibility between private contractual arrangements and the mandatory provisions of inheritance law. This incompatibility undermines not only the principle of legal certainty but also the principle of justice for heirs. Unless legislative reform provides a clear framework for handling such cases, heirs will continue to face legal obstacles and risk losing access to assets that, in reality, belonged to their deceased benefactor.

3. Legal Standing of Beneficiaries and Heirs

Beneficiaries in nominee agreements occupy a precarious legal position because their control over assets is only factual (*de facto*) and lacks formal recognition (*de jure*). Legally, the nominee whose name appears on official certificates or company documents is regarded as the lawful owner. This creates a dualism of ownership: while beneficiaries may exercise actual control or enjoy economic benefits, they lack enforceable legal rights under Indonesian law.

¹⁸ Slamet, Judge, and Arianto, "Indikasi Perjanjian Nominee Sebagai Bentuk Penyelundupan Hukum Perjanjian Ditinjau Dari Keabsahan Dan Kekuatan Mengikatnya."

¹⁹ Arsela and Nelson, "Perjanjian Nominee Dalam Hukum Pertanahan Indonesia."

In the field of contract law, this disparity arises because nominee agreements typically fail to meet the lawful cause requirement under Article 1320 of the Civil Code. Since the underlying purpose is often to circumvent prohibitions in agrarian or investment law, beneficiaries cannot rely on such agreements as a legitimate legal basis. Consequently, beneficiaries have no standing to bring claims in court when disputes arise, as Indonesian law only acknowledges rights derived from agreements with valid legal causes.

From the perspective of inheritance law, the situation becomes more problematic upon the death of the beneficiary. Assets registered in the nominee's name do not automatically transfer to the heirs of the beneficiary, as inheritance law recognizes only formally recorded ownership. The heirs thus lack the legal authority to claim the asset because their deceased relative never possessed recognized ownership. As a result, heirs face the risk of losing economic control and benefits of the assets, which may instead remain with the nominee, who has stronger legal recognition. This condition reflects a fundamental weakness of nominee agreements as a mechanism for intergenerational transfer of wealth.

In corporate law, similar limitations apply. Article 48 paragraph (1) of the Limited Liability Company Law (UUPT) requires that shares be registered in the name of the actual owner, while Article 33 of the Investment Law explicitly prohibits nominee arrangements. Accordingly, a beneficiary whose name is not listed in the shareholder register cannot exercise shareholder rights such as voting in general meetings, receiving dividends, or filing derivative suits. Even if the beneficiary contributed capital or purchased shares, the law views only the nominee as the rightful shareholder. This principle was reinforced by jurisprudence, such as Supreme Court Decision No. 601 K/Sip/1975, which emphasized that legal rights in corporate matters adhere strictly to formal registration.

Moreover, the lack of legal standing exposes beneficiaries and their heirs to practical risks. For instance, a nominee may unilaterally transfer or encumber the asset without the beneficiary's consent. If disputes occur, the beneficiary has no direct avenue for legal recourse, as the courts are bound to recognize only the registered owner. Similarly, heirs of the beneficiary are in an even weaker position: they inherit only *de facto* control or expectations, which are unenforceable in legal proceedings.

In judicial practice, this legal vacuum has led to inconsistencies. Some courts strictly uphold formal ownership, while others attempt to balance substantive justice by acknowledging the beneficiary's financial contribution. For example, in Supreme Court Decision No. 1241 K/Pdt/2010, the Court nullified a nominee arrangement and affirmed that legal ownership rests with the registered party. In contrast, in Supreme Court

Decision No. 321 K/Pdt/2012, the Court considered the equitable interest of the beneficiary, reflecting a tendency to prevent unjust enrichment of nominees. These divergent approaches underscore the lack of harmonization in jurisprudence, leaving beneficiaries and heirs vulnerable to unpredictable outcomes.

Therefore, the legal standing of beneficiaries and their heirs in nominee agreements is inherently fragile. They remain outside the formal legal framework, deprived of enforceable rights, and exposed to the goodwill or integrity of the nominee. This not only weakens their legal protection but also demonstrates the urgent need for statutory clarification or reform to address the legal consequences of nominee agreements, particularly in cases involving succession and corporate transactions.

4. The Role of Jurisprudence

Judicial practice in Indonesia plays a central role in shaping the interpretation and enforceability of nominee agreements. Although statutory law such as the Basic Agrarian Law (UUPA), the Company Law (UUPT), and the Investment Law prohibit nominee arrangements, their practical application often depends on judicial interpretation when disputes are brought before the courts.

The Supreme Court Circular Letter (SEMA) No. 10 of 2020 provides explicit guidance: the legal owner of land is the party whose name appears on the land certificate, regardless of whose funds were used in the acquisition. This provision is intended to prevent the use of nominee arrangements by foreign nationals and to ensure legal certainty in land ownership. The issuance of this SEMA demonstrates the judiciary's institutional commitment to closing loopholes that had long been exploited to bypass legal restrictions.

Nevertheless, case law shows that judicial interpretation is not always consistent. For example, in Supreme Court Decision No. 1241 K/Pdt/2010, the Court declared a nominee agreement null and void, emphasizing that such an arrangement constituted a violation of public order and the principle of a lawful cause as stipulated in Article 1320 of the Civil Code. The Court firmly applied formalistic reasoning, prioritizing statutory compliance over the factual relationship between the parties.

Conversely, in Supreme Court Decision No. 321 K/Pdt/2012, the Court adopted a more pragmatic approach by recognizing the financial contribution of the beneficiary, despite the absence of their name on the certificate. In this case, the Court sought to prevent unjust enrichment of the nominee who held the certificate but had not contributed financially to the purchase of the land. This reflects the judiciary's occasional inclination to prioritize *equity* and substantive justice, even if it contradicts the letter of the law.

Further, in Supreme Court Decision No. 391 K/Pdt/2014, the Court once again reaffirmed the invalidity of nominee arrangements, rejecting the claims of the beneficiary's heirs after the beneficiary's death. The Court underscored that recognition of such agreements would undermine the principle of nationality under the Agrarian Law, and therefore, any claim based on nominee status could not be granted. This decision demonstrates the judiciary's awareness of the long-term risks that nominee practices pose to the national legal order.

However, inconsistency remains evident in decisions at lower court levels. District and appellate courts occasionally diverge in their reasoning—some following a strict formalistic approach in line with SEMA No. 10/2020, while others still consider factual ownership or equitable arguments advanced by beneficiaries or their heirs. This divergence highlights a lack of uniformity that risks undermining legal certainty, one of the core principles of civil law.

From a critical perspective, this judicial inconsistency underscores the broader challenge faced by the Indonesian legal system: balancing legal certainty (*kepastian hukum*) with justice and equity. While the prevailing trend after SEMA No. 10/2020 shows stronger judicial resistance to nominee agreements, courts occasionally deviate to protect parties from inequitable outcomes, especially in cases involving heirs or significant financial contributions.

Therefore, jurisprudence on nominee agreements illustrates the dynamic interaction between statutory law and judicial discretion. On one hand, the Supreme Court's policy direction seeks to close opportunities for legal smuggling, particularly in land ownership by foreigners. On the other hand, the case-by-case approach sometimes leads courts to adopt a more flexible stance, generating a jurisprudential tension between formal legality and substantive fairness. This duality calls for clearer legislative intervention to eliminate ambiguity and guide judicial practice more consistently.

5. Critical Analysis

The inconsistencies in judicial interpretation highlight the tension between legal certainty and fairness. On one hand, strict adherence to statutory law renders nominee agreements void and unenforceable. On the other hand, courts occasionally adopt an equitable approach to prevent unjust enrichment of nominees. This divergence creates uncertainty for legal practitioners and investors.

This prohibition is also supported by the Investment Law (Article 33 of Law No. 25 of 2007), which prohibits nominee agreements for share ownership in limited liability companies and declares such agreements null and void, as explained in Article 33 paragraph (1) concerning Investment. It also explains that foreign investment in

Indonesia can only be carried out by legal entities established in accordance with Indonesian law and may not use the name of another party (nominee) to circumvent applicable legal provisions. Article 33 paragraph (2) states that if a domestic or foreign investor makes such an agreement and/or statement, the agreement or statement is declared null and void. This means that a nominee agreement has no legal force and is not recognized by Indonesian law. The primary purpose of this provision is to ensure transparency of share ownership and avoid practices that could obscure the identity of the true owner of the capital, which is essential for law enforcement and sound investment regulation in Indonesia.

Nominee agreements are generally used to conceal the identity of the true beneficial owner of an asset or legal transaction. In practice, this agreement is often used when a foreign citizen wishes to control and own land *de facto*, or according to actual reality, but *de jure*, or under conditions recognized by law, the land is registered in the name of an Indonesian citizen as the nominee. In other words, the purpose of using a nominee agreement in ownership of land is so that the foreign citizen can control and own the land *de facto*, but *de jure*, the land is registered in the name of an Indonesian citizen. In other words, the name of the Indonesian citizen was borrowed by a foreign citizen to act as the owner of the land title on the land ownership document, even though in reality the person who controls the land is the foreign citizen.

This is included in legal smuggling because legal smuggling is an act carried out to avoid certain regulations in order to achieve the desired goal.²⁰ This legal smuggling occurs because a person or certain party wants to avoid the application of national law, either with the intention of avoiding the consequences of the actions carried out or certain conditions that must be met in accordance with certain regulations.

Article 9 of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), states:²¹

- a. "Only Indonesian citizens may have a full relationship with the earth, water, and airspace, within the limits of the provisions of Articles 1 and 2."
- b. "Every Indonesian citizen, both men and women, has an equal opportunity to obtain land rights and to obtain the benefits and yields thereof, both for themselves and their families."

²⁰ A.A. Ratih & I Ketut Westra Saraswati, "Perjanjian Nominee Berdasarkan Hukum Positif Indonesia," *Kertha Semaya: Jurnal Ilmu Hukum*, no. 4(2) (2018): 1-15.

²¹ Undang-Undang, "Agraria, Pasal 9 Undang-Undang Nomor 5 Tahun 1960 Tentang Pengaturan Dasar Pokok-Pokok" (1960).

Referring to the provisions of the article, it contains the principle of nationality where this principle regulates the granting of ownership rights to land in Indonesia only to Indonesian citizens (WNI), so that foreign citizens (WNA) have been prevented from having the possibility of owning land by means of transfer, assignment, sale, inheritance or grant of land in Indonesia.²²

Article 21, paragraphs 3 and 4 of the UUPA also explain that foreign citizens (WNA) or foreign legal entities cannot be granted ownership rights to land. This article reads as follows:

(3) Foreigners who, after the enactment of this Law, acquire ownership rights through inheritance without a will or through a combination of assets through marriage, and Indonesian citizens who hold ownership rights and lose their citizenship after the enactment of this Law, must relinquish those rights within one year of the acquisition of those rights or the loss of citizenship. If, after this period, the ownership rights are not relinquished, they are legally extinguished, and the land reverts to the state, provided that the rights of other parties encumbering it remain in force.

(4) As long as a person holds foreign citizenship in addition to Indonesian citizenship, they cannot own land with ownership rights, and the provisions in paragraph 3 of this article apply to them.

The above situation clearly constitutes a violation of the law. This is because Article 26 paragraph (2) of the UUPA has stated that ownership of land with a freehold title cannot be held by foreigners or citizens other than Indonesian citizens. Violation of this provision can cause ownership to be null and void, and the land will fall to the state. Therefore, if a nominee agreement is made by a foreign citizen as beneficiary and an Indonesian citizen as nominee with the intention of controlling the rights to land with a freehold title, the nominee agreement violates the valid conditions of the agreement as stated in Article 1320 of the Civil Code, namely a lawful cause, and therefore the nominee agreement is null and void.

Supreme Court Circular Letter (SEMA) Number 10 of 2020 is a guideline for implementing duties for the courts, enforced based on the formulation of the results of the 2020 Supreme Court Chamber Plenary Meeting. One of the important points in this SEMA is related to the prohibition and legal affirmation regarding nominees or borrowing names in land ownership. Specifically, SEMA No. Law No. 10 of 2020 states that the legal owner of a plot of land is the party whose name is listed on the land

²² Khairunnisa Khairunnisa and Mohamad Fajri Mekka Putra, "Akibat Hukum Perjanjian Nominee Hak Atas Tanah Berkaitan Dengan Kepemilikan Warga Negara Asing," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 2 (2022): 151-72, <https://doi.org/10.35673/ajmpi.v7i2.2655>.

ownership certificate (SHM), even if the land was purchased using money, property, or assets belonging to another party, including foreign nationals (WNA). With this statement, the practice of nominee arrangements (name borrowing agreements), which are often used by foreign nationals to own land in the name of an Indonesian citizen, is considered legally invalid. If a settlement arises related to land with a nominee agreement, the court will recognize the Indonesian citizen whose name is listed on the certificate as the legal owner, not the party who financed the land purchase. Thus, this Circular Letter clarifies and strengthens the legal position to reject and cancel nominee agreements in matters of land ownership, which means closing the loophole for legal smuggling practices related to land ownership by foreign nationals. Then, the Supreme Court of the Republic of Indonesia through Circular Letter No. 10 of 2020 stated "The owner of a plot of land is the party whose name is listed on the certificate, even if the land was purchased using money/property/assets belonging to an Indonesian citizen/another party".²³

In line with the validity of nominee agreements in Indonesian land law, other legal issues arise related to the death of the beneficiary. In the context of inheritance and contract law, the death of the beneficiary can result in the termination of the legal relationship underlying the nominee agreement, especially if the relationship relies on a special power of attorney as stipulated in Article 1813 of the Civil Code, which states that a power of attorney will terminate due to revocation, death of one of the parties, or bankruptcy.

Reviewed in contract law, the requirements for a particular matter and a lawful cause are categorized as objective requirements because they relate to the object/thing. An agreement that does not meet these subjective requirements is null and void by law or automatically void (*nietig van rechtswege*). The consequence for the agreement is that the agreement entered into is deemed never to have existed. The connection with nominee agreements is that because nominee agreements also conflict with Article 26 paragraph (2) of the UUPA, the consequence is that the agreement is null and void and deemed never to have existed.

Another consequence of a nominee agreement is that the beneficial owner, or actual shareholder, lacks legal authority over the nominee agreement. This is because they do not meet the criteria for shareholders as stipulated in Article 4 of Presidential Regulation Number 13 of 2018, which requires the shareholder's name to be registered in the

²³ SH Parwoto Wignjosumarto, *Kiat Memahami Materi Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) Nomor 2 Tahun 2022*, n.d.

company's articles of association. This contradicts Article 33 paragraphs (1) and (2) of the Capital Markets Law.

Therefore, if a legal case arises regarding this agreement, the beneficial owner lacks legal authority to sue or claim ownership of their shares based on the nominee agreement. In other words, they are not considered a party to the case.

Thus, while the binding force of a nominee agreement may appear to be binding on the parties who entered into it, legally, if the nominee agreement is ultimately void, it should be void, especially if it gives rise to a dispute between the parties upon the death of the beneficiary.

The beneficiary in a nominee agreement does not have permanent or permanent legal authority over the assets formally controlled by the nominee. This is because, legally, the nominee is registered as the legal owner of the asset, while the beneficiary only holds beneficial rights or actual ownership without formal recognition by the legal system. Therefore, when a significant legal event occurs, such as the death of the beneficiary, the beneficiary or their heirs do not have a strong legal basis to claim or assert rights to the asset directly.

In the context of inheritance rights, the position of the beneficiary is severely limited because the officially recorded ownership rights remain with the nominee. As a result, the beneficiary and those entitled to inherit cannot automatically obtain rights to the assets controlled by the nominee. This situation creates legal exposure and risks of rescue, as actual ownership of the asset is outside of official registration, making it difficult to legally enforce in inheritance cases or other legal claims.

Thus, the beneficiary only has a *de facto* legal position and is not formally recognized as the *de jure* owner of the asset. This confirms that the nominee agreement does not provide strong legal protection to the beneficiary, particularly in legal situations involving changes in the status of asset rights, such as inheritance.

CONCLUSION

Based on research into the legal consequences of nominee agreements resulting from the death of the beneficiary under the Civil Code (KUH Perdata), it can be concluded that nominee agreements, as a form of *innominaat* contract not explicitly regulated in the Civil Code, remain subject to the validity requirements in Article 1320 KUH Perdata. In practice, these agreements are widely used as a legal smuggling instrument, particularly to circumvent land ownership restrictions for foreign nationals as prohibited under Articles 21 and 26 of the Basic Agrarian Law (UUPA). Consequently, such agreements constitute contracts with an unlawful cause (*causa illicita*) and are legally void.

The death of the beneficiary, who acts as the principal in the agreement structure, results in the termination of the power of attorney under Article 1813 KUH Perdata. This termination has substantial implications for the validity of the nominee agreement and the legal status of the nominee and the heirs. Any legal action taken by the nominee after the death of the principal lacks legal basis and is invalid, which creates significant legal risks regarding ownership, inheritance rights, and the possibility of disputes.

Theoretically, this research contributes to the renewal of contract law by reinforcing the doctrine that every agreement must not only satisfy formal requirements but also be grounded in a lawful cause (*rechtsgeldige oorzaak*). It highlights the doctrinal development that nominee agreements, although formally consensual, lack substantive legitimacy when conflicting with positive law, thereby strengthening the discourse on the boundaries of freedom of contract in Indonesia.

From a legislative policy perspective, the findings emphasize the urgent need for harmonization and reform of Indonesian civil law. Clear legislative measures are necessary to explicitly prohibit or regulate nominee arrangements, particularly in the context of land and corporate ownership, so as to close loopholes for legal smuggling and to ensure legal certainty, justice, and transparency in economic transactions.

Practically, this study provides guidance for legal practitioners, notaries, and judges to treat nominee agreements as void *ab initio* when they contravene statutory law, and to immediately transfer all rights of the deceased beneficiary into the inheritance estate rather than allowing continuation through the nominee. For policymakers and regulators, the recommendation is to establish more stringent monitoring and sanctions to prevent the use of nominee agreements in asset ownership, especially concerning land and corporate shares.

In conclusion, nominee agreements cannot serve as a valid legal foundation to guarantee asset ownership after the death of the beneficiary. The results of this study not only reaffirm fundamental principles of legality, lawful cause, and legal certainty but also call for theoretical refinement, legislative reform, and professional practice improvements to build a more robust, transparent, and just legal system in Indonesia.

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