Jurnal Pak Habib

by Habib Adjie

Submission date: 22-Sep-2022 10:41AM (UTC+0800)
Submission ID: 1905883851
File name: 2022_09_20_13_08_54.docx (6.39M)
Word count: 5978
Character count: 30975

International Journal Publishing
INFLUENCE: International Journal of Science Review
Volume 3, No. 2, 2021
https://internationaljournal.net/index.php/influence/index

Use of Nominee in Ownership of Rights to Land in Indonesia by Foreign Citizens: Case of Mataram State Court Decision Number 67/Pdt.G/2008/Pn.Mtr. 30 July 2009

Habib Adjie
Universitas Narotama (Unnar) Surabaya, Indonesia
Email: adjicku61@gmail.com

Academic Editor: Nguyen Ngoc Anh
Copyright © 2021 Habib Adjie. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Abstract. Article 9 paragraph (1), Article 21 paragraph (2), and Article 26 paragraph (2) of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Law have confirmed that only Indonesian Citizens and Indonesian Law, which was established based on Indonesian laws and regulations may have land rights in Indonesia, while for foreign citizens based on Article 42 letter b of the BAL, it states that foreigners who are domiciled in Indonesia may only have a Right of Use. The practice of this provision is often circumvented by making a Nominee Agreement. The foreigner borrows the name of the Indonesian Citizen. The land is legally written with the name of the Indonesian Citizen, but in fact, it is controlled by a foreigner who acts as if the real owner. It is proven in the analysis of the Court's Decision Mataram State Number 67/Pdt.G/2008 /Pn. Mtr. 30 July 2009.

Keywords: *Property Rights, Use Rights, Nominees, Legal Smuggling.*

A. INTRODUCTION

In the National Land Law framework, the legal relationship between people, Indonesian citizens (Indonesian citizens) and foreign citizens (Foreign Citizens), and their legal actions related to land have been regulated in the LoGA. One of the principles adopted by the LoGA is the Nationality Principle. Only Indonesian citizens can have a full relationship with the land as part of the earth in the phrase contained in Article 33 paragraph (3) of the 1945 Constitution. The relationship in question is in the form of Right of Ownership.

Right to Ownership is reserved exclusively for Indonesian citizens with single citizenship, both for cultivated land or to build something on it. One of the Rights to Ownership characteristics is that it can become the parent of other land rights, such as Building Rights and usufructuary rights (Sudini & Utama, 2018).

Article 9 paragraph (1) of the LoGA emphasizes that only Indonesian citizens can have a full relationship with the earth, water, and space, within the limits of the provisions of Article 1 and Article 2 of the LoGA. Furthermore, Article 21 paragraph (1) confirms that only Indonesian citizens can have the Right to Ownership. Foreigners domiciled in Indonesia can only have the Right to Use, as confirmed in Article 42 letter b of the Basic Agrarian Law. It is stated in Article 39 of Government Regulation Number 40 of 1996, which states that those who can have a Right of Use are: 1) Indonesian Citizen; 2) Legal Entity established under Indonesian Law; 3) Departments, Non-Departmental Government Agencies and Local Governments; 4) Religious and social bodies; 5) Foreigner domiciled in Indonesia; 6) Foreign Legal Entities are having representatives in Indonesia, and 7) Representatives of foreign countries and representatives of international bodies. Based on the above provisions, it can be seen that the Right of Use can be owned by foreigners (foreigners), both personally

and as legal entities (Wiryani & Utama, 2018). This right of use can be obtained from land controlled by the state or Indonesian citizens.

From the perspective of legal relations that contain foreign elements, the practice of land tenure by foreigners does not identify legal smuggling (fraudulent creation of points of contracts) (Pradana, 2019). Transparency and validity of transactions eliminate the element of smuggling. New legal smuggling can occur if fake transactions are made to deceive or defraud other parties (Nahak & Budhiartha, 2021). in general, land tenure by foreigners and foreign legal entities with representatives in Indonesia is regulated in Article 41 and Article 42 of the Basic Agrarian Law, further regulated in Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Land Use Rights. Article 41 of the LoGA defines the Right to Use, namely:

The right to use or collect proceeds from land directly controlled by the state or land owned by another person gives the authority or obligation specified in the decision on granting it by the official authorized to give it or in an agreement with the landowner, which is not a lease agreement or land management agreement, everything as long as it does not conflict with the spirit and provisions of this Law (Suparji, 2020).

Meanwhile. Article 42. letter b of the Basic Agrarian Law. states that those who can have the Right of Use include, among others, foreigners who are domiciled in Indonesia. The legal basis for Article 42 of the LoGA is Article 2 of the LoGA, which implements the mandate of Article 33 paragraph (3) of the 1945 Constitution. One manifestation of the state's authority in determining and regulating the legal relationship between people and the earth (including land), water, space, and wealth. Nature in it. Article 33 paragraph (3) of the 1945 Constitution means that only Indonesian citizens can have a full relationship with the land as part of the earth. Article 9 Paragraph (1) of the Basic Agrarian Law states that only Indonesian citizens can fully relate to the earth, water, and space. In other words, only Indonesian citizens can have the Right to Ownership. Meanwhile, foreigners who are domiciled in Indonesia can be granted the Right to Use.

The existence of regulations that limit Indonesian citizens who are domiciled in Indonesia may only own land with a Right of Use status, making foreigners request or cooperate with Indonesian citizens or borrow Indonesian citizens' names, namely foreigners who will buy land with Right to Ownership status, so legally the land is legally written as Indonesian rights holders, but controlled by foreigners (Yanto & Nasarudin, 2021). Between Indonesian citizens and foreigners by making agreements such as 1) Land Ownership Agreement and Authorization. In the Land Ownership Agreement, the Indonesian Citizen acknowledges that the Right to Ownership land registered in his name does not belong to him but belongs to the foreigner who has provided funds to purchase Right to Ownership land and buildings. Furthermore, the Indonesian Citizen gives irrevocable power to the foreigner to take all legal actions against the Right to Ownership land and buildings; 2) Option Agreement, in which the Indonesian Citizen gives the option or choice to purchase Right to Ownership land and buildings to the foreigner because the foreigner provides the funds to purchase the Right to Ownership land and buildings; 3) Lease Agreement, namely in principle this agreement stipulates the term of the lease along with options for its extension along with the rights and obligations of the lessor and the lessee (Kariawan et al. 2018).

Power of attorney to sell, which is the power to sell, contains the granting of a power of attorney with substitution rights from the Indonesian Citizen to the foreigner to carry out legal actions to sell or move Right to Ownership land and buildings; 4) Will Grant, namely in this testamentary grant, the Indonesian citizen grants Right to Ownership land and buildings in his name to a foreigner; and 5) a statement of heirs, namely, in this case, the wife of the Indonesian Citizen and her child, state that although the Right to Ownership land and the

building are registered in her husband's name, her husband is not the actual owner of the Right to Ownership land and the building (Cahyani et al. 2018).

Other agreements also such as 1) Deed of Debt Recognition; 2) A statement that an Indonesian citizen has obtained a loan facility from a foreign citizen to build a business; 3) A statement by an Indonesian citizen that the land with Hak Milik is the property of a foreign citizen; 4) Power to sell. In this case, the Indonesian Citizen gives power of attorney with substitution rights to the foreign Citizen to sell, release or transfer the land of property rights registered in the name of an Indonesian citizen; 5) Royal power. In this power of attorney, the Indonesian Citizen gives power of attorney with substitution rights to the foreign Citizen to specifically represent and act on behalf of the Indonesian Citizen to rob and settle all debt obligations of the Indonesian Citizen; 6) Lease rent land. In this land lease, an Indonesian citizen as the paty who lases the land grants a lcasc right to a foreign citizen as a tenant for a certain period, for example, 25 years which can be extended and cannot be canceled before the end of the lease term; 7) Lease extension. At the same time as the land lease agreement is made, an extension of the lease is made for 25 years; and 8) Power.

The Indonesian Citizen gives power of attorney with substitution rights to the foreign national (receiver of power of attorney) to represent and act on behalf of the Indonesian Citizen to take care of all affairs, pay attention to his interests, and represent the rights of a power of attorney to rent out and obtain permits to establish building permit, signing tax returns and other necessary documents, appearing before the competent authorities and signing all required documents (Loft et al. 2015)

When viewed at a glance, the agreements mentioned above do not violate the applicable laws and regulations because these agreements have fulfilled the conditions for the agreement's validity. However, suppose the contents of the agreement are examined carefully (Idris et al., 2021). In that case, all these agreements are indirectly intended to transfer the Right to Ownership land from Indonesian citizens to foreigners so that the agreement is legal smuggling because its substance contradicts the existence of the Basic Agrarian Law.

In connection with the provisions on the limitation of Right to Use by foreigners in Indonesia, Indonesian citizens and foreigners have made a Name Borrowing agreement (Nominee), namely, the foreigner buys land with Right to Ownership status, then the land certificates are written by the foreign rights holder, but in fact and control foreigners, between foreigners and Indonesian citizens, make certain agreements as mentioned above (Arini et al. 2018). Nominees in such a way constitute Legal Smuggling. The relationship between foreigners and Indonesian citizens by making various agreements as mentioned above, in the case discussed in this article has made the Indonesian Citizen aware that the agreement he made with the foreigner has violated the Law, then the Indonesian Citizen has filed a lawsuit to the district court (Hutapea, 2018).

In this article, the discussion is the decision of the Mataram District Court Number 67/Pdt.G/2008/Pn.Mtr. On 30 July 2009, an appeal was submitted to the Mataram High Court, decided by number 165/Pdt/2009/PT.MTR dated 22 February 2010, and an appeal was submitted to the Supreme Court of the Republic of Indonesia with decision number 2345/K/Pdt/2010, dated 22 Fcbruary 2011. The decision of the Mataram District Court has granted the claim of the Indonesian Citizen, but the decision of the Mataram High Court has stated that the legal action committed between the Indonesian Citizen and the Indonesian Citizen by making an agreement related to land is null and void and the Supreme Court has rejected the appeal from the foreigner.

The Mataram District Court's decision is very reasonable to study because it has correctly provided the Ratio Decidendi, namely by referring to the normative provisions of various laws and regulations, while the High Court and Supreme Court decisions provide

considerations that do not refer to the existing laws and regulations. But only for the sake of foreign investment, which still requires proof

C. RESULT AND DISCUSSION

Mataram District Court with Decision Number 67/Pdt.G/2008/PN.MTR. Dated 30 July 2009, has decided on a lawsuit filed by an Indonesian citizen (Indonesian Citizen) whose name is borrowed (nominee) by a foreign citizen. The foreigner has purchased the land with the Right to Ownership by borrowing the name of the Indonesian Citizen, and between them, a written loan agreement is made (with a notary deed) before a notary.

The position of the case in the lawsuit is 1). Idha Pumawati And 2). Putu Wijaya (Plaintiff) as an Indonesian citizen against 1). Dean Daniel Adrian Dasilva and 2). Jhon Robert Findlay, (Defendants I and II) Both British Citizens (foreigners), residing at The Iy House Franklin Field Corby United Kingdom of Great Britain and Northern Irland, in Indonesia residing at Tropicana Restaurant and Discotheque or New Tropicana Jalan Raya Senggigi Square Block A Number 9 Senggigi Village, Batulayar District, Lombok Regency and 3) Munawir Asari, is residing at Jalan Palapa II Number 17 Karang Tapen Cakra Barat Cakranegara Mataram City NTB (Defendant III).

Defendant I and Defendant II want to buy 4 (four) plots of land on which a house is built, which is located on Senggigi Square Block A Number 9 Batu Layar District, West Lombok Regency with Right to Ownership certificates Number 874, 875, 876 and 877 Lombok West along with the restaurant business known as Senggigi Latin Club/Club Tropicana/Tropicana International/New Tropicana because Defendant I and Defendant II are foreigners who cannot own land rights with Right to Ownership, then at the request of the Defendant I and Defendant IT and based on the advice of Defendant III, the name of Plaintiff I was used as the buyer of the land and building as well as the restaurant business.

Then the Plaintiffs realized that the loan agreement (nominee) was an attempt to smuggle Law, as good citizens did not want to continue to be involved in violating state law, so they filed for cancellation of the loan agreement and filed a lawsuit with the Mataram District Court.

Against the lawsuit, the Mataram District Court has issued a decision, namely: 1) Accept the Plaintiffs claim in its entirety; 2) Stating the Law that the actions of Defendant I and Defendant II bought land and buildings as well as a restaurant business as stated in the case posita number 2 without going through the Foreign investment mechanism as regulated in Law Number 1 of 1967 in conjunction with Law Number 11 of 1970 concerning Foreign Investment is an act against the Law and illegal so that it must be canceled or null and void by Law; 3) To declare that Deed No. 26 dated 23 March 2005 regarding the loan agreement made by Defendant III is invalid and null and void, and 4) Declaring the Law cancels and or declares the name loan agreement invalid between the Plaintiffs and Defendant I and Defendant II as stated in the deed of Defendant III Number 26 dated 23 March 2005.

Against this decision, Defendant I and Defendant II filed an appeal to the Mataram High Court with a decision number 165/Pdt/2009/PT.MTR dated 22 February 2010, with a decision that "Declare the claim of the Plaintiff/Appeal to be unacceptable." with the following considerations:

1. Whereas the background of the Deed of Borrowing Names Agreement stems from the desire of Defendants I and II (foreigners) to have land rights in Indonesia, but according to Article 21 (1) of the BASIC AGRARIAN LAW, foreigners cannot have RIGHT TO OWNERSHIP on land, therefore the wishes of Defendants I and II If the agreement is reached, then the Borrowing Name Agreement is made, in which

Defendants I and II/Comparants buy the land and Plaintiff I (WNI) is only on behalf of so that Plaintiff I does not have any rights to take legal actions against the land and buildings.

2. Whereas the capacity of a Notary Defendant III/Comparant II) in making a Deed of Agreement is to cite and formulate the wishes of the parties, it is stated in the deed for evidence at a later date of what was agreed so that the agreement applies as Law for those who made it (Articie 1320 of the Civii Code).
3. Whereas based on the facts in the land sale and purchase transaction, the Plaintiffs/Appellants have benefited Rp. 1.000.000,- per acre of 26 acres, so that from an ethical point of view, the Appealed Plaintiff should not make it difficult for the Comparative Defendant in investment matters (Investment) because it is the Appealed Plaintiff who committed the violation so that the clement of the fault lies with the Appealed Plaintiff.
4. Whereas Defendants I, II/ Appellants through the Memorandum of Appeal dated 28 October 2009 stated that they currently have a legal company and a license to invest in Indonesia and a Limited Liability Company "PT. Tropicana Internasional," it is impossible for the disputed land to be belonging to the Comparators to become State land.
5. That by the considerations of Law Number 25 of 2007 concerning investment in letter c, to accelerate national economic development and realize Indonesia's political and economic sovereignty, it is necessary to increase investment to process economic potential into real economic strength by using capital originating both from within the country as well as from abroad.
6. That by utilizing foreign capital and its business, it will bring more benefits than harm, such as the creation of employment opportunities in the country, can also be a source of state revenue by way of levies and other taxes so that it can move the wheels of the national economy (Article 18 UUPM).
7. 7. While due to the closure of the appealed Defendant to obtain Ownership with Right to Ownership status, and because the Appellate Defendant has the status of a Legal Entity domiciled in Indonesia (Tropicana lntemasional Lombok Ltd.), the possibility of acquiring rights with Right to Use, Building Rights or Use Rights status is still open. The object of the dispute does not automatically become State land. In addition to the reasons for the above considerations, the High Court also considers the legal status of the Plaintiffs/Appeals in this case.
8. Whereas in principle, in the provisions of the Civil Procedure Code applicable in Indonesia, "everyone who feels that another person/party has harmed his or her civil rights can file a lawsuit to the District Court." The logical ratio is that people who feel **aggrieved can file a claim for their rights to the District Court, which is expected** to protect their rights. Thus, not everyone behaves and acts independently (Eigen Richting). The implied ratio of Article 142 paragraph 1 of the RBg as the legal basis for filing a civil lawsuit/suit is the existence of sufficient, reasonable, and legal interest so that it can be accepted as the basis for a lawsuit.
9. From the description of the previous considerations on the evidence of PI/TI. I/T III. there was no direct (civil) loss suffered by the Plaintiffs/Appeals. Therefore, there is no interest that is sufficiently appropriate under the Law so that the claim of the Plaintiffs rights/claim is declared inadmissible.

The decision of the Mataram High Court has been submitted to the Supreme Court, and with a decision number 2345K/Pdt2010, had decided that the cassation request from the Cassation Petitioners has been rejected because the main reasons include: justified and Judex

Facti (High Court) did not misapply the Law, because the agreement made before a Notary did not directly cause harm to the Plaintiff;

Ratio Decidendi Decision of the Mataram District Court Number 67/Pdt.G/2008/Pn.Mtr. 30 July 2009

Article 9 paragraph (1), Article 21 paragraph (2), and Article 26 paragraph (2) of the Law of the Republic of indonesia Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles have determined and affirmed that only Indonesian citizens can become subjects Right to Ownership. In the case or lawsuit that occurred, the foreigner bought land in Indonesia with Right to Ownership status, who then borrowed the name of the Indonesian Citizen as if the Indonesian Citizen was buying it, then between the foreigner and the Indonesian Citizen, a Name Borrowing Agreement (Nominee) was made before a Notary.

Foreigners or foreigners are allowed to own a house built on the Right of Use. Although the Government has provided facilities and concessions for foreigners to be able to own land and housing rights in Indonesia by being allowed to own a residential house built on land rights to use, the increasing need for housing for foreigners and as an investment has made Foreigners take various ways to be able to own land and buildings on Right to Ownership land. The reason foreigners want to own land and buildings on Right to Ownership land is that Right to Ownership is the right that becomes the parent of other land rights, namely Rental Rights for Buildings and Use Rights, the period of use Rights is limited so that it cannot accommodate the interests of foreigners in land and house ownership which is limited to only one residence. Some of these reasons make foreigners take various ways to own land and buildings on Right to Ownership land.

The Panel of Judges in examining the prison has considered and returned to conditions that are by the correct laws and regulations, namely if foreigners want to invest in Indonesia, use a clear legal instrument, namely the Foreign Investment Law, so there is no need to carry out legal smuggling by borrowing. The name of the Indonesian Citizen by the nominee. To obtain land rights in Indonesia, the foreigner can establish a business entity that is a legal entity in Indonesia because a business entity that is a legal entity and is domiciled and subject to Indonesian Law will obtain land status with a Building Use Right or Business Utilization Right or Right of Use.

Based on the position above's case description, the method used by foreigners to control the Right to Ownersitip over land in indonesia is an act that is contrary to applicable Law in Indonesia, namely by making a Nominee or a Pretend Agreement (Simulation) used to obtain Right to Ownership. The act violates state law because the Nominee or the Pretend Agreement is a prohibited agreement or is not substantially permitted, so it can be constructed that, in that case, the existence of a Nominee has been recognized. So that **normatively, the Decidendi Ratio of the Mataram Court's decision is correct.**

The Legal Consequences of the Transfer of Land Rights Using Legal Smuggling by the Nominee

In the Borrowing Name Agreement *(Nominee)* in the lawsuit above, it appears that the interested parties feel mutually beneficial and do not question the material truth of the agreement. For these interested parties, practical considerations are more important tban juridical considerations. Even though the agreement made by the parties is legal smuggling because its substance is contrary to Article 9 paragraph (1), Article 21 paragraph (2), and Article 26 paragraph (2) of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Basic Regulations. Agrarian Law shows that the mandate of the LoGA has been distorted in the practice of Ownership of land rights. The provisions regarding the

requirements for the subject of rights, especially for foreigners, are accompanied by sanctions for violations which are specifically contained in Article 26 paragraph (2) of the Basic Agrarian Law, namely that violations of these provisions result in the transfer of Right to Ownership to foreigners being null and void and the land rights fall to the state.

It can be concluded that from the various agreements made by foreigners to be able to obtain land with Right to Ownership status, it is an agreement that intends to transfer Right to Ownership indirectly, and it violates the provisions of the LoGA, especially Article 26 Paragraph 2 of the BAL and constitutes legal smuggling because the substance is illegal. The agreement violates the objective conditions of the agreement, namely lawful cause or a cause that is prohibited by Law and results in null and void by referring to Article 1320 of the Civil Code or a cause that is not allowed or prohibited (contrary to the Law), meaning that any agreement made it must not conflict with the applicable legislation so that if these conditions are violated or not fulfilled then the contract/agreement is null and void *(Nietig Van Rechtswege)*.

Indonesian Law expressly prohibits Ownership of the Right to Ownership on land for foreigners. Therefore foreigners who borrow the name of an Indonesian citizen to obtain the Right to Ownership on land, whicb foreigners finance, are a form of legal smuggling so that all forms of agreements regarding borrowing names are null and void by Law because it was forbidden from the start. Legal smuggling is an act that aims to avoid the enactment of regulation to obtain certain benefits by his wishes. The purpose of legal smuggling is to avoid unwanted legal consequences. So in every legal smuggling act, there is always a subjective element, namely in the form of a will or intention to smuggle something.

An act is said to be against the Law without any direct loss. So even though there is no direct loss caused by an act that is contrary to the Law, as long as the act is declared prohibited by Law, then the act is an act that is against the Law, so in this case, an act that can be categorized as legal smuggling (making an agreement whose cause is prohibited) act) is an act that is against the Law. Therefore the agreement is invalid and null and void. An act prohibited by law (Article 26 paragraph 2 of the LoGA) cannot simply be ruled out (or, in other words, an illegal act becomes legal).

The use of nominees, which incidentally is a form of embodiment of the existence of an engagement. Article 1233 of the Civil Code states: "*Every engagement is born either by agreement or* law." While Article 1234 of the Civil Code states: '*Every engagement is to give something, to do something, or not to do something*." So that the engagement as a form[1] of agreement is a law for the parties involved. Therefore, the agreement is an agreement that must be fulfilled by the parties involved in it.

The making of agreement deeds as a form of legal action is carried out by legal subjects in the field of civil Law based on applicable legal norms, having the ability to carry out legal actions, and causing legal consequences. Regarding the form of agreement chosen as the legal instrument of land tenure by foreigners to bind Indonesian citizens empirically, it is carried out through a written agreement made in the form of a private deed and an authentic deed made before a notary. The qualification of the deed made before a Notary includes the deed of the parties, not the official deed. The spirit of the deed made before a Notary is the access to freedom of contract as regulated in Book III of the Civil Code.

A Nominee is a person who is appointed or appointed. Foreigners use nominees to own land rights as we know that foreigners are not entitled to own land in Indonesia. Therefore foreigners use the Nominee method so that they can fully enjoy the land object. In practice, within the Notary and Land Titles Registrar, the use of nominees is no longer a taboo subject. Some Notaries use Nominees to provide convenience and suggestions for legal protection for their clients.

In practice, legal smuggling occurs by foreigners to control Right to Ownership through various means, generally by making a package of agreements between foreigners as recipients of power and Indonesian citizens as power-ups that give foreigners the authority to control land rights and carry out all legal actions against the land, which is legally prohibited by Law, in this case, the Basic Agrarian Law. The parties involved have rights and obligations that have been stated in the agreement. Indonesian citizens only borrow their names to buy land from the landowner. Of course, all financing comes from the foreigner. Default in buying and selling a piece of land has legal consequences for both parties involved.

Agreements governing legal relations between foreigners and Indonesians as regulated in Book III of the Civil Code. In a legal relationship, each party has reciprocal rights and obligations. One party has the right to demand something from the other party, and the other party is obliged to fulfill that demand, and vice versa. The party who has the right to sue is called the creditor, while the party obliged to fulfill the claim is the debtor. Something that is required is called achievement. Achievement is the object of the agreement, namely, something demanded by the creditor against the debtor or something that the debtor must fulfill against the creditor. Achievements are assets that are measured or can be valued in money.

Based on the description of the case, the agreement made by the Plaintiffs and the Defendants has violated the provisions of Article 1320 of the Civil Code, namely making an agreement that is prohibited by Law, namely a name-borrowing agreement which is contrary to the Basic Agrarian Law. Therefore the name-borrowing agreement should be due to the Law is null and void *(Nietig Van Rechtswege)*.

D. CONCLUSION

Right to Ownership can only be owned by Indonesian Citizens, while Foreign Citizens can be granted Use of Use Rights. Foreigners who are domiciled in Indonesia are allowed to own one house to live in, either in the form of a stand-alone house or a condominium unit, as long as the house is built on land with Right of Use on state land or land with Right of Use granted by the holder of Right to Ownership. In the Ownership of residential houses for foreigners, an agreement underlies foreigners' Ownership of residential houses. The agreement must be in written form and must be registered because the object of the agreement is the granting of new land rights.

Whereas in the case that the Mataram District Court has granted the Plaintiffs claim with a Ratio Decidendi, namely normatively, the act or act of Borrowing Names (Nominees) between Indonesian citizens and foreigners to control Right to Ownership in Indonesia is not by the foreign investment laws in force in Indonesia, or if there are foreigners who want to do business in Indonesia to acquire land in Indonesia using foreign investment instmments by forming a legal entity that is subject to Indonesian Law because legal entities arc allowed to acquire land in Indonesia with Building Right status.

Based on the decision of the district court above, it turned out that there was and found legal smuggling with the nominee, namely the foreigner asked or made an agreement with the Indonesian Citizen to buy a plot of Right to Ownership land, with the money coming from the foreigner, then the foreigner and the Indonesian Citizen made an agreement that the land used the name Only Indonesian citizens are juridical, but are fatally or controlled by foreigners. The covert efforts made by foreigners to own land in a way that deviates from the provisions of the legislation are essentially legal smuggling. As a result, the agreement concerned is invalid and null and void *(Nietig Van Rechtswege)*.

REFERENCES

1. Budiono, H., & Moeliono, T. P. (2006). *Asas keseimbangan bagi hukum perjanjian Indonesia: hukum perjanjian berlandaskan asas-asas wigati Indonesia*. Citra Aditya Bakti.
2. Hamzah, A., Suandra, I. W., & Manalu, B. A. (1992). *Dasar-dasar hukum perumahan*. Jakarta: Rineka Cipta.
3. Harsono, B. (2003). *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria. Isi dan Pelaksanaannya, jilid, I*.
4. Harsono, B. (2003). Hukum Agraria Indonesia, Sejarah Pembentukan Hukum Pokok Agraria, Isi dan Pelaksanaannya. *Jilid I Hukum Tanah Nasional, Cetakan Kesembilan (Edisi revisi). Jakarta: Djambatan*.
5. Agus, Y. H. (2011). Hukum Perjanjian. *Asas Proporsionalitas dalam Kontrak Komersial, Jakarta*. Bandung: Kencana.
6. Muljadi, K. (2005). Seri Hukum Harta Kekayaan: Hak-Hak Atas Tanah.
7. Patrik, P. (1994). *Dasar-Dasar Hukum Perikatan: (perikatan yang lahir dari perjanjian dan dari undang-undang)*. Mandar Maju.
8. Prodjodikoro, W. (1973). *Azas-azas hukum perjanjian*. Bandung: Sumur Bandung.
9. Sudini, L. P., & Utama, I. W. K. J. (2018). Nominee Agreement Made for the Purposes of Land Ownership by Foreign Citizens based on A Notarial Deed. *NOTARIIL Jurnal Kenotariatan*, 3(2), 109-115.
10. Wiryani, M., & Utama, I. W. K. J. (2018, November). Land Rights Ownership by Foreign Citizens through Nominee Agreement in Tourism Investment in Bali. In *Proceedings of the International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)* (Vol. 282, pp. 41-44).
11. Pradana, A. N. (2019). Beneficial Owner Rights in Nominee Agreement. *International Journal of Business and Social Science*, 10(8).
12. Nahak, S., & Budiartha, 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.
13. Suparji. (2020). Politics of Legal in Nominee Agreement and Its Practice in Indonesia. *J Advanced Res. L. & Econ., 11*, 196.
14. Yanto, N. H. H., & Nasarudin, M. (2021). Regulation of Land Ownership for Foreign Citizens in Indonesia from Agrarian Law Perspective. *Progressive Law Review*, 3(01), 69-81.
15. Kariawan, I. K. D. A., Nahak, S., & Supadma, I. N. A. (2018). Legal Efforts to Interest in Land for Indonesian Citizens the Nominee as Taxpayers. *Jurnal Hukum Prasada*, 5(1), 54-62.
16. Cahyani, I. E., Witasari, A., & Amirullah, M. F. (2018). Juridical Review of Nominee Agreement in Land Of Tenure Property Rights under the Book of Civil Law and Agraria. *Jurnal Akta*, 5(2), 441-446.
17. Loft, L., Ravikumar, A., Gebara, M. F., Pham, T. T., Resosudarmo, I. A. P., Assembe, S., ... & Andersson, K. (2015). Taking stock of carbon rights in REDD+ candidate countries: concept meets reality. *Forests*, 6(4), 1031-1060.
18. Idris, S. H., Djelantik, I. S., & Budiartha, I. N. P. (2021). The Right on Land for Foreigner and Foreign Legal Entity Tourism Investasion Perspective, Participation, and Nominee Practice Prevention. *Journal Equity of Law and Governance*, 1(), 1-9.

19. Arini, S. N. K., Nyoman, S. I., & Minggu, W. I. M. (2018). Agreement of Land Control by Foreign Citizens with Indonesian Citizens that are Potential for Disposal. In *Proceedings of the 1st Warmadewa Research and Development Seminar (WARDS)*. European Alliance for Innovation (EAI).
20. Hutapea, A. S. (2018). The Inconsistence of Laws in the Registration of Land Rights Transfer in Order of Tax Amnesty. *Unrau Law Review*, 2(2), 166-179.

Jurnal Pak Habib

ORIGINALITY REPORT

13%	10%	5%	7%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

No.	Source	%
1	ejournal.warmadewa.ac.id Internet Source	1%
2	eudl.eu Internet Source	1%
3	www.iiste.org Internet Source	1%
4	ijmmu.com Internet Source	1%
5	Submitted to iGroup Student Paper	1%
6	ejournal.umm.ac.id Internet Source	1%
7	Putri Ayi WINARSASI. "LAW REVIEW OF ELECTRONIC LIABILITY REGISTRATION AS A FULFILLMENT OF PUBLICITEIT BASIS IN INDONESIA", Journal of Public Administration, Finance and Law, 2021 Publication	1%

#	Source	Type	%
8	Submitted to London School of Economics and Political Science	Student Paper	1%
9	www.scribd.com	Internet Source	1%
10	hts.org.za	Internet Source	1%
11	Submitted to Universitas Negeri Jakarta	Student Paper	1%
12	Submitted to Universitas Airlangga	Student Paper	<1%
13	lifescienceglobal.com	Internet Source	<1%
14	Submitted to Universitas Warmadewa	Student Paper	<1%
15	progresiflawreview.ubl.ac.id	Internet Source	<1%
16	Famahato Lase, Adrianus Zega. "Sikap Kepribadian Guru PAUD yang Menarik dan Disukai Peserta Didik", Jurnal Obsesi : Jurnal Pendidikan Anak Usia Dini, 2021	Publication	<1%
17	ejournal.unisba.ac.id	Internet Source	<1%

Submitted to Padjadjaran University

	Source	Similarity
18	Student Paper	<1%
19	jurnal.untagsmg.ac.id Internet Source	<1%
20	Submitted to Zovio Inc Student Paper	<1%
21	unramlawreview.unram.ac.id Internet Source	<1%
22	sfconsulting.co.id Internet Source	<1%
23	silo.pub Internet Source	<1%
24	"State Practice Regarding State Immunities/La Pratique des Etats concernant les Immunités des Etats", Brill, 2006 Publication	<1%
25	ojs.ukb.ac.id Internet Source	<1%
26	repository.uph.edu Internet Source	<1%
27	e-journal.uajy.ac.id Internet Source	<1%
28	"The Legal Environment and Risks for Foreign Investment in China", Springer Science and Business Media LLC, 2007	<1%

Publication

29	repository.warmadewa.ac.id Internet Source	<1%
30	www.iosrjournals.org Internet Source	<1%
31	journal.uwks.ac.id Internet Source	<1%

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	Off		