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# Juridical Analysis of Sale and Purchase Lawsuits Conducted by Foreigners Using the Name of Indonesian Citizens
## (Study of Decision Number 157/PDT/2021/PT DPS)

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## ABSTRACT

This problem was studied from a legal point of view. The plaintiff felt materially and immaterially disadvantaged because the selling price of the disputed object was not by the market price, and the defendant sold the disputed object to Defendant II without the knowledge of the plaintiff as the funder. To obtain justice and legal certainty the plaintiff filed a lawsuit at the Denpasar District Court to get justice. Based on the exposure. The basis for the judge's legal considerations in decision Number: 157/PDT/2021/PT DPS Because in canceling the nominee agreement between the plaintiff and the defendant, the panel was only of the opinion that it did not have legal certainty, while legally the nominee agreement has been regulated by the prohibition in Law Number 25 of 2007 concerning Capital Investment and it is reaffirmed regarding the sale and purchase of land rights in Law Number 05 of 1960 in article 21, namely that Indonesian citizens are prohibited from having land ownership rights, then the nominee agreement between the Plaintiff and Defendant I is declared void because it conflicts with the provisions of article 1337 of the Civil Code and the sale and purchase agreement between defendant I and Defendant II is valid. Therefore, the author disagrees with what the Denpasar district court judge decided.

## KEYWORDS

Verdict;
Lawsuit;
Nominee Sale and Purchase

## INTRODUCTION

Along with the high number of foreign tourists visiting Indonesia, which according to data from the Central Statistics Agency reached 12.68 million people in January-November 2017, it is not uncommon to raise legal issues related to land rights in Indonesia.[1] The attractiveness of Indonesia often leads to the desire for foreigners to be able to own property in Indonesia for both personal and business residential purposes. One of the efforts used by foreigners to obtain control of land rights that is often carried out by foreigners is to use the name of Indonesian citizens to buy several land and property assets in Indonesia. The foreigner enters into a name-borrowing agreement, which essentially states that the name of an Indonesian citizen is borrowed to be included in the certificate of ownership of the land that was purchased using money from the foreigner, then it is also stated that the foreigner is the actual owner of the land listed in the certificate, and the Indonesian citizen gives full authority to the foreigner to take legal actions on the land. The Indonesian citizen whose name is used in the nominee agreement usually receives a fee from the nominee agreement.

A nominee agreement grants ownership of land indirectly to a foreigner. In general, a nominee agreement consists of a master agreement in the form of a land ownership agreement and power of attorney, a lease agreement, an option agreement, a bequest, a power of attorney to sell, and a statement of heirs. By selling and buying land using the name of an Indonesian citizen, the legal action does not violate the formal juridical rules.[2] However, the effort to make a power of attorney agreement (often in the form of the absolute power of attorney) between the Indonesian citizen and the foreigner, which in the presence of the power of attorney authorizes the recipient of the power of attorney (foreigner) so that he can carry out all legal actions related to land rights which according to statutory provisions can only be carried out by Indonesian citizens so that in essence the nominee agreement is a transfer of land rights.[3]

The making of nominee agreements as stated above is included in legal smuggling because the substance of the agreement is contrary to the Basic Agrarian Law (*UUPA*). By not regulating nominee agreements and utilizing foreigners' ignorance of the Indonesian legal system, nominee agreements have the potential to cause harm to both Indonesian citizens and foreigners as well as public officials such as notaries.[4] Although the government has granted land tenure to foreigners in the form of usage rights, and lease rights, with various considerations foreigners who want to invest in Indonesia, especially in Bali, still want to own with the status of property rights, because property rights are the strongest and fullest hereditary

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1 Biro Komunikasi Kementerian Pariwisata RI, "Kunjungan Wisman Sepanjang Januari-November 2024 Meningkat 20 Persen", (2025), online: *Kementeri Pariwisata dan Ekon Kreat* <https://kemenparekraf.go.id/event-pariwisata-dan-ekonomi-kreatif/kunjungan-wisman-sepanjang-januari-november-2024-meningkat-20-persen>.

2 Legalitasorg, "Pandangan Hukum Terkait Praktik Perjanjian Nominee", (2025), online: <https://legalitas.org/tulisan/pandangan-hukum-terkait-praktik-perjanjian-nominee>.

3 Maria SW Sumardjono, *Tanah dalam Prespektif Hak Ekonomi, Sosial dan Budaya* (Jakarta: PT Kompas Media Nusantara, 2008).

4 Andina Damayanti Saputri, "Perjanjian Nominee dalam Kepemilikan Tanah Bagi Warga Negara Asing yang Berkedudukan di Indonesia (Studi Putusan Pengadilan Tinggi Nomor: 12/PDT/2014/PT.DPS)" (2015) 2:2 J Repert 96–104.

rights (these rights are not easily erased, easy to maintain, and provide the broadest authority) that people can have over land. Regarding ownership rights to land by foreign nationals, it is prohibited by the State based on Article 21 paragraph (1) of the UUPA.[5]

The nominee agreement is an attempt to provide the possibility for foreign nationals to own property rights to land, which is prohibited by the Basic Agrarian Law (Law No. 5 of 1960) UUPA. Regarding the term nominee in land tenure practice, what is meant by nominee or trustee is an agreement using a power of attorney. The agreement referred to in the power of attorney is an agreement that uses the name of the Indonesian citizen and the Indonesian party submits a power of attorney to the foreigner to be free to carry out any legal action against the land he owns.[6]

The main agreement followed by other agreements related to the control of land ownership rights by foreign nationals shows that indirectly through notarial agreements, it has become legal smuggling. At first glance, the nominee agreement does not violate the applicable laws and regulations because it is not in the form of transfer of rights in the form of sale and purchase.[7] If the contents of the agreement are examined, it is indirectly intended to transfer or transfer land rights (in the form of property rights) to foreign nationals. In response to the above, Maria SW Sumardjono. Argues that: By using the "guise" of buying and selling on behalf of an Indonesian citizen, the formal juridical does not violate the regulations. In addition, efforts are made to agree with the Indonesian citizen and the foreigner by way of granting power of attorney (often referred to as absolute power of attorney), which gives irrevocable rights to the absolute power of attorney grantor (Indonesian citizen) and authorizes the recipient of the power of attorney (foreigner) to carry out all legal actions regarding the land rights, which according to the law can only be done by the right holder (Indonesian citizen) so that in essence it is a transfer of land rights.[8]

Based on the explanation above, the author will examine and discuss the legal facts of a decision of the Denpasar District Court Number 157/PDT/2021/PT DPS regarding the sitting of the case, namely that Melanie, a British citizen, is the wife of Donal, an Australian citizen, whose marriage was registered on February 19, 1999. Melanie Lisbeth Hall or Melanie is a British citizen and Steward Donal Hall or called Donal is an Australian citizen. In June 2011 Donal bought two parcels of disputed land SHM No. 4384 and SHM No. 4385 a/n Tri Dwi Hartono on which stood a house whose IMB dated 2003 a/n Gunawan Djojo Martono, located in Kerobokan Kelod Village. The purchase was made by the nominee, i.e. borrowing the name of an Indonesian citizen as the buyer in the buying and selling activity. So that the land purchased was named Nadya Saskianti (Indonesian citizen), as a result of the sale and purchase, the two lands then switched to the name of Nadya Saskianti, and the provisions of all rights and authority for legal actions regarding the land are in

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5 Maria SW Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi* (Jakarta: Kompas, 2000).

6 *Ibid*.

7 Mohammad Dwi Febriyanto & Wahyu Prawesthi, "Sengketa Hak Milik Tanah Sawah Akibat Kegiatan Jual Beli yang Tidak Sah" (2024) 10:4 J Ilm Wahana Pendidik 461–473.

8 Maria SW Sumardjono, "Hak Pengelolaan Perkembangan, Regulasi, dan Implementasinya" (2007) Khusus Mimb Huk 29.

Nadya, the land certificate has also been changed to Nadya Saskianti, namely; Certificate of Ownership Number 43848 / Kerobokan Kelod Village covering 363m2 and; Certificate of Ownership Number 43857 / Kerobokan Kelod Village covering 225m2.

Nadya is willing to have her name used as the name of the landowner because she will be entitled to a 2% fee from every transaction, whether it is a sale; purchase; lease; or other transaction that generates a sum of money. This statement was made in the Nominee agreement. On January 15, 2015, Donald, Melanie's husband, sold the two lands to Mathew Joseph Darby or Josep, a New Zealand citizen, Josep is the husband of Eva Akuina, an Indonesian citizen. The sale and purchase was agreed for 7.5 M. At the same time or on January 15, 2015, a sale and purchase agreement was made with a deed under the hand between Nadya (the name of the right holder written on the SHM) as the seller and the Buyer on behalf of Eva (wife of Joseph), a New Zealand citizen.

This is done because according to Indonesian land law, foreigners are not allowed to own land rights except for use rights and rental rights. Therefore, the practice of buying and selling land in Indonesia, where the buyer is a foreigner, is by borrowing the name of an Indonesian citizen or nominee, as well as what Melanie and Donal did in this case, nominee or borrowing the name of Nadya when buying the land object. Then the land object was sold by Donald (Melanie's husband) to Joseph based on an underhand sale and purchase deed, where on the same day an underhand sale and purchase agreement was also made on the disputed object from Nadya who borrowed her name by Melanie and Donal, as sellers, selling to Eva, wife of Joseph as Buyer.

The plaintiff felt materially and immaterially disadvantaged because the sale price of the disputed object was not by the market price, and the defendant sold the disputed object to Defendant II without the knowledge of the plaintiff as the funder. To obtain justice and legal certainty the plaintiff filed a lawsuit at the Denpasar District Court to get justice.

## METHOD

The type of research used in the preparation of this article is normative juridical, meaning that the problems raised, discussed, and described in this study are focused on applying the rules or norms in positive law. Normative juridical research is carried out by examining various kinds of formal legal rules such as laws, and literature-like theoretical concepts which are then related to the problems that are the subject of discussion in terms of juridical reviews of Nominee Agreements in the Sale and Purchase of Freehold Land by Foreigners in Indonesia Study of Denpasar District Court Decision Number: 157/PDT/2021/PT DPS. As for the preparation of this article, an approach is used which includes 3 (three) kinds of approaches, namely, legislation, conceptual, and case.

The statutory approach (statute approach) is carried out by examining all laws and regulations related to the legal issues raised. The statutory approach is carried out in the context of legal research for practical purposes as well as legal research for academic purposes.[9] The statutory approach (Statue Approach) is used to

[9] Muh Aspar, *Metode Penelitian Hukum* (Kolaka: Universitas Sembilan Belas November, 2015).

determine the juridical analysis of the sale and purchase lawsuit filed by foreigners using the name of Indonesian citizens in decision Number: 157/PDT/2021/PT DPS. Conceptual Approach, which is an approach used to obtain scientific clarity and justification based on legal concepts derived from legal principles.[10] These principles can be found in the views of scholars or legal doctrines. Although not explicitly, legal concepts can also be found in the law. However, in identifying the principle, researchers first understand the concept through existing views and doctrines. The two approaches mentioned above are used to examine the legal consequences of nominee agreements in the sale and purchase of freehold land by foreigners in Indonesia, a study of the decision of the Denpasar District Court number: 157/PDT/2021/PT DPS. The case approach is an approach that examines several cases for reference to a legal issue. The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of the cases that are the focus of the research.[11] This research uses a case approach because the main study in the case approach is the *ratio recidendi* of the Denpasar District Court decision number: 157/PDT/2021/PT DPS.

## RESULT & DISCUSSION

Efforts to own property rights to land made by foreigners by borrowing the name of Indonesian citizens at first glance look legitimate and are based on the principle of freedom of contract. However, if examined further, efforts to own land rights carried out by borrowing this name and contrary to the law of the agreement. Article 1335 of the Civil Code states that an agreement made with a false or forbidden causa has no force so the agreement is considered null and void.[12] Generally, the name borrowing agreement in the sale and purchase of land by foreigners has a clause stating that the Indonesian is only borrowed by name, while the foreigner has the right to control and own the land.

The principle of freedom of contract is not absolute, the operation of this principle is limited so that the agreement made does not harm one of the parties to the agreement.[13] Article 1339 of the Civil Code states that the existence of the principle of freedom of contract does not mean that people can agree freely without observing certain restrictions. Article 1339 of the Civil Code reads: "An agreement binds not only what is expressly stipulated in it, but also everything that by its nature the agreement requires based on justice, custom, or law." What this means is that the principle of freedom of contract is limited by still paying attention to justice for the parties, paying attention to public customs, and not violating the law.

The principle of freedom of contract is closely related to the substance of "agreement" for the parties to the agreement. Article 1320 number 1 of the Civil Code states that the condition for the validity of an agreement is "the agreement of those who bind themselves." From this statement, it is expected that there is

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[10] Sulistyowati Irianto & Sidharta, *Metode Penelitian Hukum: Konstelasi dan Refleksi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2011).
[11] Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed (Jakarta: Kencana, 2017).
[12] J Satrio, *Hukum Perjanjian* (Bandung: Citra Aditya Bakti, 1992).
[13] Dora Kusumastuti, "Kebebasan Berkontrak dalam Kontrak Baku Kredit Perumahan" (2014) 9:1 J Ilm Widya Wacana 34–39.

freedom in determining the contents of the agreement based on the agreement of the parties to fulfill their respective needs and such an agreement is valid in the eyes of the law.[14]

For an agreement based on freedom of contract to be legally valid, it must fulfill the provisions of the law. From Article 1321 to Article 1328 of the Civil Code, it can be concluded that the agreement will be valid in the eyes of the law if the agreement is conveyed without coercion, mistake, or fraud. The meaning of coercion as stated in Article 1324 of the Civil Code is an act that is such that it is frightening for a person who is of sound mind, that the act can cause fear in that person that he or his wealth is threatened with clear and tangible losses. Fraud can be inferred from Article 1328 of the Civil Code, namely that fraud is an act in such a way that it is clear and obvious that the other party would not have agreed if the deception had not been carried out.[15]

Regulations relating to land ownership in Indonesia stem from agrarian law and agrarian customary law which have long historical roots in the country's legal system. The legal basis for regulating land rights in Indonesia is found in Law No. 5/1960. This law is the main legal basis in the agrarian sector that details the basic principles of land law in Indonesia. Law No. 5/1960 regulates various forms of land rights, including property rights, business use rights, building use rights, and lease rights. In addition, Law No. 5/1960 regulates the acquisition and transfer of land rights. Government Regulation No. 24/1997, which has been amended through Government Regulation No. 18/2021, and Minister of Agrarian Affairs Regulation No. 18/2021 all regulate land rights that are not included in the provisions of Law No. 5/1960.

In Law No.5/1960, land ownership rights can be owned by individual Indonesian citizens or legal entities that have been mandated by the government. The provisions regarding land ownership by Indonesian citizens are regulated in Article 21 paragraph (1) of Law No.5/1960, which explicitly states that: “land ownership rights can only be owned by individuals who are Indonesian citizens.” Meanwhile, Article 21 paragraph (2) of Law No. 5/1960 implies that “legal entities can have land ownership rights if there is a government decree”. Furthermore, Article 52 paragraph (1) of Minister of Agrarian Affairs Regulation No.18/2021 states that: "Legal entities that can own freehold land are legal entities stipulated by the Government by the provisions of laws and regulations, including state banks, religious bodies, and social bodies appointed by the Government, and agricultural cooperatives”.

The validity of the nominee agreement based on the Civil Code must be subject to the provisions of the agreement law contained in Book III of the Civil Code, as the nominee agreement must be by the validity of the agreement as contained in Article 1320 of the Civil Code. The article stipulates four conditions for the validity of an agreement, namely:

a. Agreement of those who bind themselves;

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[14] Yulkarnaini Siregar & Zetria Erma, “Akibat Hukum terhadap Wanprestasi yang Dilakukan oleh Penerima Waralaba dalam Perjanjian Waralaba” (2024) 4:1 Innov J Soc Sci Res 10509–10516.

[15] Marianna Sutadi, “Perjanjian Tidak Berbahasa Indonesia Tetap Sah”, (2023), online: *Huk Online* <https://www.hukumonline.com/berita/a/perjanjian-tidak-berbahasa-indonesia-tetap-sah-lt656d71c60424c?page=all>.

b. Capable of agreeing;
c. Concerning a certain matter; and
d. A lawful cause.

The validity of a nominee agreement can be interpreted as follows:

a. The agreement of those who bind themselves; The parties must have agreed before agreeing.
b. Capacity to agree The parties must be legally capable, mature, and of sound mind.
c. A certain thing means that what is promised is the rights and obligations of both parties, which at least the goods intended in the agreement are determined in type and are tradable goods.
d. A lawful cause The fourth requirement for a valid agreement is the existence of a lawful cause. What is meant by the cause or cause of an agreement is the content of the agreement itself, it must not be about something forbidden. In this regard, the nominee agreement does not fulfill the element of a lawful cause because it involves the transfer of land rights from Indonesian citizens to foreigners indirectly, which is prohibited in Article 26 paragraph (2) of the UUPA. This causes the nominee agreement to be invalid and has no binding legal force for the parties.

Article 1335 of the Civil Code states that an agreement made with a false or forbidden causa has no force. In this case, the agreement is considered void from the beginning because not all agreements made have binding force as law. Only valid agreements are binding on both parties. Thus, pretend agreements do not have binding force because they are made illegally. This is in line with the theory of the agreement used in this study, namely that in agreeing, in addition to fulfilling the conditions as stated in Article 1320 of the Civil Code as mentioned above, the underlying principles are also needed, so, in this case, the principle of freedom of contract is used which can be related to this research. The principle of freedom of contract itself provides an opportunity for the parties to freely consider and include the results of the thoughts opinions or desires of the parties, which are then outlined in an agreement while still heeding the applicable law.

Article 1320 of the Civil Code states that permissible causation as one of the conditions of an agreement, emphasizes the word (permissible) and not the word (causa). Therefore, the article means that for the validity of an agreement, the cause must be permissible. Thus, Article 1337 of the Civil Code states that a cause is impermissible if it is prohibited by law or if it is contrary to decency or public order.

The theory of legal certainty is that certainty is a matter (state) that is certain, a provision or determination. The law must essentially be certain and fair. It must be certain as a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function. In line with the name loan agreement, Maria S.W. Sumardjono states that the legal position of foreigners in such agreements is weak for two reasons. First, although both parties are capable of acting and binding themselves voluntarily, the “causa” is false or prohibited because the agreement results in a violation of the provisions of Article 26 paragraph (2) of the UUPA.

Therefore, the results of research on the validity of a name loan agreement (nominee) entered into by a foreign citizen based on decision number 157/PDT/2021/PT DPS are: First, the reason for the practice of name loan agreements (nominee) carried out by foreign nationals in Indonesia is because Indonesia is a country rich in nature and many foreign tourists visit Indonesia, this is what attracts foreign nationals to invest in tourism, especially on the island of Bali. In practice, many foreign nationals try to trick the law to control land in the form of property rights in Indonesia by entering into a nominee agreement with Indonesian citizens.

Second, the validity of a nominee agreement made by a foreign citizen based on decision number 157/PDT/2021/PT DPS is that a nominee agreement is an act of legal smuggling that violates the laws and regulations as contained in Article 26 Paragraph (2) of the UUPA. The validity of a nominee agreement based on the Civil Code must be subject to the provisions of the law of agreements as contained in Book III of the Civil Code and must be by the terms of validity of the agreement as contained in Article 1320 of the Civil Code, namely: The agreement of those who bind themselves, capable of agreeing, a certain thing and a halal cause. In this regard, the nominee agreement does not fulfill the element of a lawful cause because it involves the transfer of land rights from Indonesian citizens to foreigners indirectly, which is prohibited in Article 26 paragraph (2) of the UUPA. This causes the nominee agreement to be invalid and has no binding legal force for the parties.

Connecting factors are elements in a case that link the case to a particular legal system. In this case, the relevant linking points are as follows:

1. Legal Subject:
   a. Melanie Lisbeth Hall and Mattew Joseph Darby: If one or both of them are foreign nationals, then this becomes an international link point.
   b. Their citizenship status affects their legal capacity to enter into agreements regarding land ownership in Indonesia.
2. Object of Dispute:

   The land and building are located in Indonesia confirms the jurisdiction of Indonesian law over this case based on the principle of lex rei sitae (the law of the place where the object is located).
3. Sale and Purchase Agreement:

   The agreement dated January 15, 2015, is at the heart of the dispute because it involves foreign ownership of land, which is prohibited under Indonesian law.

The validity of this agreement is determined under Indonesian law:

1. Applicable Law:
   a. Basic Agrarian Law (UUPA No. 5 of 1960): Prohibits land ownership by foreigners and makes the agreement null and void.
   b. Indonesian Civil Code (KUH Perdata): Used to assess the validity of civil agreements.
2. Place of Dispute Resolution: Denpasar District Court has jurisdiction to decide the case because the object of the dispute is located in the jurisdiction of Indonesia.
3. Lack of Parties (Plurium Litis Consortium): The CA decision states that there is a lack of parties in the lawsuit, so the lawsuit cannot be accepted.

In addition to Lex Rei Sitae (Law of the Place where Things Are), since the object of the dispute island in Indonesia, Indonesian law has jurisdiction over this case. And Nationality of the Parties: The status as foreigners lends an international element to the case, making international civil law relevant. Nominee Prohibition: If the land in question involves a nominee agreement between an Indonesian citizen and a foreigner, this represents a conflict between domestic law and cross-border practice.

So it can be concluded that this case has some important linking points:

1. The location of land in Indonesia (*lex rei sitae*) makes Indonesian Agrarian Law applicable.
2. The nationality status of the parties creates a relevant international element in international civil law.
3. The sale and purchase agreement at the core of the dispute demonstrates a potential violation of Indonesian law regarding the prohibition of foreigners owning land. This link emphasizes the importance of understanding the boundaries of national and international law, especially in cross-border civil disputes such as this one.

## CONCLUSION

A nominee agreement is an agreement between two or more people, where one party acts as a legally registered nominee party and the other party is a beneficiary party who enjoys any benefits and/or benefits that have been carried out by the nominee party. The agreement between Nadya Saskianti and Donald does not contain elements of error because in the *posita* submitted by Nadya Saskianti as the First Party, she and Donald as the Second Party are indeed good friends and already know each other and she states that Donald gave the land of the object of the dispute to her so that there is no confusion about the subject of the agreement or its object. In this agreement, there is no form of fraud committed by either party because all clauses made in the agreement clearly state that Nadya Saskianti as the second party only borrowed by name and there are no witnesses, evidence, or clauses that prove that the land is a gift given by Donald to Nadya Saskianti. From this, it can be seen that the name loan agreement made between Donald as a foreigner and Nadya Saskianti as an Indonesian citizen is invalid and violates the legal requirements of the agreement, namely regarding the halal causa in Article 1320 of the Civil Code because the name loan agreement contains a prohibited causa, namely providing opportunities and rights for foreigners to own and control land in Indonesia and also violates the Basic Agrarian Law, especially Article 9 Paragraph 1, Article 21 Paragraph 1, and Article 26 Paragraph 2.

## DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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