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# Binding Force Of Land Ownership Certificates In Name-Borne Agreements By Foreign Citizens To Realize Justice

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## ABSTRACT

Indonesian land law based on the Basic Agrarian Law (UUPA) adheres to the principle of nationality which prohibits foreign citizens (WNA) from owning freehold land.However, the high interest of foreign nationals in property investment has triggered legal smuggling (fraus legis) through nominee agreements, where the name of an Indonesian citizen (WNI) is used on the Certificate of Ownership (SHM) even though the land is controlled by a foreign national. This phenomenon creates a lack of synchronization between das sollen (legal norms) and das sein (societal practice), creating a legal vacuum because nominee agreements are not regulated in the Indonesian civil law system. The main legal issue is the binding force of SHMs from these illegal transactions and how justice is achieved when disputes arise between formal ownership and actual control. This research is a normative legal research with a statute approach and a case approach.. Secondary data consisting of primary, secondary, and tertiary legal materials were collected through library research. The data were analyzed qualitatively by focusing the study on three court decisions, namely Gianyar District Court Decision No. 259/Pdt.G/2020/PN. Gin, Denpasar District Court Decision No. 274/Pdt.G/2020/PN. Dps, and Gianyar District Court Decision No. 137/Pdt.G/2021/PN. Gin, to understand the judge's considerations in name-borrowing disputes. The results of the research show that the agreement to borrow a name by a foreign national is legally void because it does not fulfill the requirements of a lawful cause (Article 1320 of the Civil Code) and violates Article 26 paragraph (2) of the UUPA.The binding power of a SHM is absolute, with the court upholding the certificate as the sole valid evidence, demonstrating formal justice and legal certainty. This situation conflicts with substantive justice, as foreign nationals lose their investments without recourse. The judicial system ultimately prioritizes the integrity of national agrarian law by adhering to the principle of ex turpi causa non oritur actio, which states that no rights can arise from reprehensible acts.

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**Keywords:** Name Loan Agreement, Ownership Certificate, Justice.

## INTRODUCTION

Indonesia, as an archipelagic nation with internationally recognized natural resources, attracts many foreign tourists. Foreign nationals (hereinafter referred to as WNA) who come to Indonesia have diverse goals, whether for long-term or short-term visits. These diverse goals for their activities in Indonesia drive their desire to reside in Indonesia. Foreigners who choose to reside in Indonesia can have a positive impact on the country's economic development, one of which is through investment.

Land is an asset that holds a very important position in the social, economic, and legal life of Indonesian society. Therefore, Indonesian land law provides strong protection for land ownership rights through a land registration system, which is evidenced by a land title certificate. This certificate provides legal certainty to rights holders and serves as a strong means of proof in the event of a dispute. This is emphasized in Article 19 paragraph (2) letter c of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which states that land registration aims to provide legal certainty and legal protection to land title holders. This raises questions about how strongly these ownership certificates bind name-borrowing agreements involving foreign nationals, and how justice can be achieved when there is a disparity between formal ownership and factual control.

Based on the understanding of land and its importance in human life, Indonesia, as a state governed by law, clearly and concretely regulates land affairs in Indonesia. In accordance with Article 33 of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) was issued, aiming to establish state sovereignty over land. The UUPA itself was formulated with the aim of replacing colonial agrarian laws.

As the population grows, so does public interest in land, both as a place to live and as a place to conduct business. Consequently, the need for legal certainty in the land sector will also increase. Therefore, Indonesians are required to register their land rights to collect and provide comprehensive information regarding their land plots. Land Rights in Indonesia are outlined in Article 16 of the UUPA, namely ownership rights, business use rights, building use rights, use rights, lease rights, land clearing rights, rights to collect forest

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products, other rights that are not included in the rights mentioned above which will be determined by law and temporary rights as mentioned in Article 53. Specifically for Ownership Rights, only Indonesian Citizens (WNI) can own them according to the provisions of Article 21 of the UUPA.

It is undeniable that with the development of the times, more and more foreigners are coming to Indonesia for various purposes, whether to develop their businesses, or their personal interest in working in Indonesia, or their desire to settle in Indonesia. This certainly gives rise to the need for Foreign Citizens (WNA) for land, however, WNA ownership of land in Indonesia is not permitted by reference to the UUPA. However, WNA are permitted to have the right to use state land or the right to use that is on land or land rights, for the residence or residence they occupy in Indonesia.

Land ownership rights under a name-borrowing agreement can lead to legal issues later on because the actual title holder differs from the name listed on the land certificate. This discrepancy can lead to problems where both the actual title holder and the title holder share the same title.

As regulated in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it states that:

"A certificate is a document that serves as proof of rights which is valid as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data contained in the measurement letter and the land title book in question."

The practice of borrowing land by name has become quite common in several regions, particularly strategic areas like Bali and other tourist destinations, where land has high economic value. In this case, foreign nationals exploit Indonesian citizens to become the formal parties on land title certificates, even though the actual ownership and management rights are held by the foreign nationals. This practice creates a dualism between the formal owner on the certificate and the material owner based on the agreement, creating legal uncertainty and potentially leading to disputes.

Even though there is the principle of freedom of contract which gives parties the right to make agreements, there are limitations that must be taken into account, namely that the

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agreement must not violate the law and must not conflict with applicable norms. If the agreement made does not contain specific provisions, it will be supplemented by provisions regulated in Book III of the Civil Code (hereinafter referred to as the Civil Code).

The concept of a nominee agreement is not recognized in the Continental European legal system applicable in Indonesia, where the concepts contained in one legal system are not the same as other legal systems. The concept of a nominee agreement was originally only found in the Common Law legal system. Indonesia only recently recognized the concept of a nominee agreement and frequently used it in several legal transactions since the strong flow of foreign investment in the 1990s. A name loan is an agreement made between the owner of a name and the party borrowing it, in which both parties commit to do something. For this name loan agreement to be binding on both parties, it must meet the requirements stipulated in Article 1320 of the Civil Code. Thus, this agreement will have the same legal force as a law, and its implementation must be carried out in good faith, in accordance with the provisions of Article 1338 of the Civil Code.

Currently, we frequently encounter practices that allow foreign nationals to own residences or land with title to the land. One method used is through a nominee agreement. This agreement is often considered a form of legal smuggling. This is because Indonesian contract law lacks clear regulations regarding such agreements, creating a legal vacuum.

The issue regarding the validity of name-loan agreements in land ownership in Indonesia is clearly reflected in the Gianyar District Court Decision Number 259/Pdt.G/2020/PN. Gin. In this case, the Plaintiffs are an Australian couple, namely Mr. David John Lock, aged 80, and Mrs. Ann Lilian Lock, aged 79, who have long lived in Bali and are well-known in the local community. They sued the Defendant, an Indonesian citizen named Anak Agung Gede Oka Yuliartha, aged 36, whose name is officially registered as the owner of two plots of land based on Land Ownership Certificates Number 2659 and Number 2725 located in Banjar Kalah, Mas Village, Ubud District, Gianyar Regency. In their lawsuit, the Plaintiffs stated that they had transferred funds directly to the Defendant's account since 2005 to purchase land and build a villa on it, but because their citizenship status did not allow them to own land with freehold rights in Indonesia, the Defendant's name was used in the certificate based on a trust relationship and in the deeds of agreement and power of attorney

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made before a notary. The Plaintiffs stated that the Defendant only lent his name and did not have any ownership rights to the land and building.

However, in 2019, the Defendant took physical control of the land and building without the Plaintiff's consent and refused to recognize the agreement. In addition to suing the Defendant, the Plaintiffs also included two Co-Defendants, namely Notary/Land Deed Official (hereinafter referred to as PPAT) Anak Agung Bagus Putrajaya and Notary/PPAT Ni Made Arini, who made the deeds related to the agreement and management of the disputed object. The material of the Plaintiffs' lawsuit is essentially a request for the Court to declare that the land and building are materially theirs, to declare the deeds of agreement and power of attorney to remain valid and binding, and to require the Defendant to return control of the land and building to them.

This is reflected in Gianyar District Court Decision Number 259/Pdt.G/2020/PN. Gin., in which a foreign national sued an Indonesian citizen for ownership of two plots of land he had purchased and controlled, but which were registered in the Indonesian citizen's name. The foreign national claimed to be the true owner based on several pieces of evidence, including payment receipts and notarial agreements. However, the Panel of Judges stated that the agreements were intended to circumvent the law and therefore violated statutory provisions. In their legal considerations, the Panel stated:

"That it is clear and proven that the plaintiff as a foreign national has used the defendant as an Indonesian citizen to obtain land rights in the territory of the Republic of Indonesia, which is contrary to Article 21 of the UUPA, therefore this act is legal smuggling and the agreement is null and void."

In addition to the Gianyar District Court Decision Number 259/Pdt.G/2020/PN. Gin., a concrete example of the practice of nominee agreements or borrowing names by Foreign Citizens (WNA) in ownership of land rights in Indonesia can be found in the Denpasar District Court Decision Number 274/Pdt.G/2020/PN Dps, the dispute involves three main parties: the Plaintiff, Defendants I and II, and Defendant III. The Plaintiff is Bella Isa Widyalaksita, an Indonesian citizen who works as a self-employed person. On the other hand, Defendant I is Andrew Michael Lech Krzywniak, an Australian citizen, and Defendant II is Matthew Charles John Tablot, also an Australian citizen. Defendant III in

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this case is Njoman Sutjining, SH, a Notary and Land Deed Making Officer (PPAT) in Badung Regency, Bali.

The chronology of this dispute began in 2011, when the Plaintiff purchased a plot of land with Freehold Certificate Number: 6196/Canggu measuring 790 m2 in Canggu Village, North Kuta District, Badung Regency, Bali, using his own hard work. The Plaintiff had a friendly relationship and was a work colleague with Defendant I and Defendant II in Bali. Then, with persuasion and promises to build and rent out a villa on the land with a profit sharing, Defendant I and Defendant II asked the Plaintiff to make a series of Notarial Deeds at Defendant III's office. This was confirmed in the decision which stated that:

"That the Plaintiff, Defendant I and Defendant II have known each other well as friends and colleagues in Bali, so that the Plaintiff, Defendant I and Defendant II, with persuasion and promises that the land that had been purchased by the Plaintiff would soon be built into a villa and would be rented to another party, and then the proceeds obtained from the management of the villa would be shared together, Defendant I and Defendant II then asked the Plaintiff to make deeds for the land belonging to the Plaintiff at the office of Defendant III (Notary and PPAT of Badung Regency NJOMAN SUTJINING, SH, whose address is Jalan Dewi Sri No. 18 Block A1, Kuta, Badung Regency, Bali Province)"

The series of deeds issued on October 14, 2011 include Notarial Deeds Number 84 and 85 concerning the statement from the Plaintiff, Notarial Deed Number 86 concerning the lease, Notarial Deed Number 87 concerning the extension of the lease, and Notarial Deed Number 88 concerning the Sale and Purchase Agreement/Commitment between the Plaintiff as the seller and Defendants I and II as the buyers. The Plaintiff feels that he is positioned as a nominee through these deeds, which is considered a form of legal smuggling by Defendants I and II as foreign citizens to indirectly control land assets in Bali. This is confirmed in the decision which states that:

"That the actions of DEFENDANT I and DEFENDANT II in asking DEFENDANT III to make Notarial Deeds / notarial agreements for the land where the material in the Notarial Deeds / notarial agreements do not correspond to the facts only as a "cover" for DEFENDANT I and DEFENDANT II as foreign citizens for the purpose of transferring

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ownership rights indirectly to DEFENDANT I and DEFENDANT II, with the aim of having land assets / special property on the island of Bali."

Furthermore, the lease agreement (Notarial Deeds No. 86 and 87) stipulates a lease term of 25 years, which can be automatically extended for another 25 years, making a total of 50 years, with a rent of only Rp. 500,000,000. The Plaintiff considers this agreement unfair and burdensome, because it exploits his citizenship status to allow Defendants I and II to control the land for a very long period of time, as if they had ownership rights, even though this is not in accordance with the legal practice of leasing in Indonesia. Regarding this matter, it is explained that:

"That nominee agreements are completely unknown in the Indonesian legal system, especially in Indonesian contract law, and there are no specific and explicit regulations, so it can be said to contain an empty meaning / empty norm, because nominee agreements can be categorized as Legal Smuggling"

The Plaintiff accuses Defendant III (Notary) of deliberately facilitating this "legal smuggling" by issuing the deeds, which are known to be aimed at enabling foreign nationals to control land in Indonesia indirectly, thereby violating statutory provisions, in particular Article 1320 of the Civil Code concerning the conditions for a valid agreement (lawful cause) and the principle of nationality in the Basic Agrarian Law (UUPA). Since 2011, Defendant I and Defendant II have physically controlled and occupied the land and buildings thereon, including paying Land and Building Tax (PBB). As a result, the Plaintiff demands that Notarial Deeds Numbers 84, 85, 86, 87, and 88 be declared null and void because they are considered legally flawed and constitute unlawful acts.

Thus, the legal relationship between the parties in this case is actually a fictitious legal construction to avoid the provisions of Article 26 paragraph (2) of the UUPA. This shows that this action is a form of legal smuggling which can create legal uncertainty for the parties, including the risk of permanent loss of land rights because they are not protected by a legitimate legal system.

As stated by Maria SW. Sumardjono regarding the practice of legal smuggling as follows:

"The main agreement followed by other agreements related to control of land by foreign citizens shows that indirectly, through notaries, legal smuggling has occurred."

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A similar practice was also found in Decision Number 137/Pdt.G/2021/PN Gin. The legal issue that formed the basis of the dispute in this case began with a friendship between Ninik Handayani, an Indonesian citizen, and Ingrid J. Driehuizen, a Dutch citizen. The good relationship between the two began in 2013 when Ninik worked at a spa called Dewi Secret in Ubud, Gianyar, where Ingrid frequently visited and enjoyed the services provided by Ninik. In the atmosphere of this close friendship, Ingrid expressed her desire to give Ninik a gift in the form of two plots of land and a villa building built on it, located in Bedulu Village, Blahbatuh District, Gianyar Regency, Bali.

The follow-up to this intention was realized in an official sale and purchase process before a Land Deed Making Official (PPAT) named Ketut Alit Nariasih Dadu, SH, who later became Defendant II in this case. There were two deeds of sale and purchase issued for the two plots of land, namely Deed of Sale and Purchase No. 491/2014 for a plot of land measuring 1,000 m² previously in the name of I Ketut Sadia, and Deed of Sale and Purchase No. 497/2014 for a plot of land measuring 490 m² previously in the name of Ni Ketut Sutari. Both plots of land officially became the property of the Plaintiff, Ninik Handayani, and Certificates of Ownership have been issued in her name, Number 02494 and Number 832 respectively.

However, after the relationship between Ingrid and Ninik deteriorated around early 2019, a dispute arose, leading to Ingrid's attempt to reclaim the land she had been given to Ninik. What began as a trivial dispute over swimming pool repairs escalated into a serious conflict. This was confirmed in the ruling, which stated:

"That the initial cause of the dispute between the Plaintiff and Defendant I was when the Plaintiff was told by Defendant I to find a craftsman to repair the leaking swimming pool, and after the swimming pool was repaired by the craftsman sought by the Plaintiff, the swimming pool was still leaking which resulted in Defendant I being angry with the Plaintiff."

Ingrid even took over Ninik's land title without her knowledge or consent. As a result, Ninik was barred from accessing the villa located on the land and subjected to what she considered unlawful treatment.

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Ninik has tried to resolve this dispute amicably, but to no avail, so she filed a lawsuit with the Gianyar District Court. This is not the first time a lawsuit has been filed; previously, Ninik had filed a lawsuit in case No. 173/Pdt.G/2020/PN. Gin, but the lawsuit was rejected (niet ontvankelijke verklaard). In the re-suit filed under Case No. 137/Pdt.G/2021/PN. Gin, Ninik not only sued Ingrid as Defendant I, but also sued Ketut Alit Nariasih Dadu as Defendant II for allegedly drafting a unilateral statement without Ninik's knowledge or consent.

The two letters of statement that are the subject of the Plaintiff's objection, numbered 46 and 48 respectively, dated November 18, 2014, were made by Defendant II without the signature or agreement of Ninik. These letters were used by Defendant I to support the argument that the land and building purchased in Ninik's name actually belonged to Ingrid in substance, or in other words, that Ninik was merely "borrowing the name." This is confirmed in the decision which explains that:

"That Letter No. 46 and Letter No. 48 dated 18 November 2014, both of which were made by Notary KETUT ALIT NARIASIH DADU, SERJANA HUKUM (Defendant II) are Statements signed by Notary KETUT ALIT NARIASIH DADU, SERJANA HUKUM (Defendant II) and do not constitute a Letter of Engagement/Letter of Agreement between the Plaintiff and the Defendant."

These decisions reinforce the position that Indonesian land law does not accommodate ownership schemes through the intermediary of Indonesian citizens' names by foreign nationals, and that such schemes will not be legally protected if disputed. Thus, in both this case and previous cases, the practice of borrowing names by foreign nationals has been proven to have serious implications for legal certainty, land tenure stability, and the integrity of the national land system.

This clearly illustrates that the practice of borrowing names by foreign nationals not only contradicts agrarian laws and regulations, but also results in uncertainty regarding the legal status of land ownership.

When foreigners borrow names, legal protection is still granted to the party formally registered as the owner on the land certificate. In this context, the land title certificate is fully binding, even if there is an agreement intended to violate the law. This demonstrates

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that legal protection in the Indonesian land system favors the formal legality of the certificate over the substance of private agreements that violate the law.

Therefore, legal issues arise regarding the legal status of ownership certificates obtained through name-borrowing agreements, as well as their implications for legal certainty for the parties, particularly when disputes arise between foreigners and Indonesian citizens. When formal law speaks with one voice, but social and economic practices operate in different directions, a legal gap emerges that requires in-depth and critical examination.

## RESEARCH METHODS

The normative legal research method (Normative Legal Research) is a scientific research procedure to find the truth based on the logic of legal science from its normative side. This qualitative research analyzes a problem-solving issue by collecting data as research material. The legal sources used in the research can be data obtained through literature and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation is called secondary data.

## RESULTS AND DISCUSSION

### ArrangementLand Ownership Rights in a Nominee Agreement According to Land Law Provisions in Indonesia

The Indonesian agrarian legal system is built on the principle of state sovereignty as mandated in Article 33 paragraph (3) of the 1945 Constitution. In its development, the practice of nominee agreements by foreign citizens (WNA) has become a form of legal smuggling (fraus legis) which undermines the philosophical foundation of the Basic Agrarian Law Number 5 of 1960 (UUPA).

Nominee agreements fall into the category of innominate agreements, which are not explicitly regulated in the Civil Code (KUHPerdata), but have developed in social practice based on the principle of freedom of contract. However, freedom of contract is not absolute and must be limited by the principle of good faith to prevent abuse to circumvent imperative legal provisions.

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The practice of borrowing names, disguised as a relationship of trust or cooperation, is actually a legal ploy to circumvent the prohibition on land ownership rights, which are reserved for Indonesian citizens (WNI). As such, this practice violates the principle of nationality in agrarian law and the principle of good faith in contract law.

From a civil law perspective, the main basis for the cancellation of a name loan agreement lies in the failure to fulfill the conditions for a lawful cause as stipulated in Article 1337 of the Civil Code in conjunction with Article 1320 of the Civil Code. This practice clearly violates Article 21 paragraph (1) and Article 26 paragraph (2) of the UUPA, which prohibits any legal act aimed at transferring ownership rights to land to foreigners, either directly or indirectly.

Given that the purpose of this agreement is inherently illegal, its cause is prohibited and contrary to law. This is confirmed in jurisprudence, including Gianyar District Court Decision No. 259/Pdt.G/2020/PN.Gin and Denpasar District Court Decision No. 274/Pdt.G/2020/PN.Dps, which stated that the series of deeds made were a guise (simulatie) to indirectly transfer ownership rights to foreign nationals.

The legal consequences of this violation are clear: the agreement is null and void ab initio, meaning the agreement is deemed never to have existed in the first place and gives rise to no legal rights or obligations for the parties. As a further implication, the land subject to the agreement falls to the state as a consequence of the nullity of the acquisition of rights.

In Decision Number 259/Pdt.G/2020/PN.Gin, the Panel of Judges rejected all claims filed by the foreign national. Meanwhile, in Decision Number 274/Pdt.G/2020/PN.Dps, the Panel of Judges explicitly declared the five notarial deeds null and void and not legally binding.

From a national agrarian law perspective, the practice of borrowed-name agreements constitutes a frontal attack on the Nationality Principle, rooted in Article 33 of the 1945 Constitution and further elaborated in the Basic Agrarian Law. This practice creates a legal fiction in which formal (de jure) ownership is held by Indonesian citizens, while material (de facto) ownership rests with foreign nationals. This situation reduces the Nationality Principle from a solid legal principle to a mere administrative formality subject to manipulation.

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Article 26 paragraph (2) of the UUPA has anticipated various attempts to smuggle this law through a comprehensive formulation (catch-all provision), which is able to ensnare various creative modus operandi developed to avoid the prohibition on land ownership by foreign nationals.

The most progressive legal sanction consistent with the spirit of the Basic Agrarian Law was implemented in Gianyar District Court Decision Number 137/Pdt.G/2021/PN.Gin. This decision not only annulled the agreement but also expressly declared that the disputed land would revert to the state. Unlike the two previous decisions, which allowed ownership rights to remain with Indonesian citizens, this decision imposes sanctions on both parties: the foreign national loses their investment, and the Indonesian citizen loses their ownership status.

This approach reflects the Panel of Judges' courage in upholding the supremacy of national agrarian law and has a significant deterrent effect. Furthermore, the decision places the public interest above the private interests of the parties, in keeping with the public nature of agrarian law.

Another important dimension is the professional responsibility of notaries in making deed of agreement for borrowing names. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) emphasizes that notaries who make deed of agreement for borrowing names that are contrary to the UUPA have violated their professional obligations as regulated in Article 16 paragraph (1) letter d of the UUJN.

This violation can be subject to tiered administrative sanctions ranging from written warnings, temporary suspension, to dishonorable discharge as stipulated in Article 85 of the UUJN. Furthermore, the notary involved can also be held civilly liable under Article 84 of the UUJN, administratively liable through the Notary Supervisory Board, and even criminally liable if proven to have facilitated unlawful acts detrimental to the interests of the state.

The practice of name-borrowing agreements is a legal anomaly that threatens national agrarian sovereignty. Consistent, firm, and comprehensive law enforcement against this

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practice is essential to maintain the integrity of Indonesia's agrarian legal system and protect the nation's interests, as mandated by the constitution.

**KThe Power of Land Ownership Certificates in Nominee Agreements by Foreign Citizens to Achieve Justice.**

In Indonesia's land law system, certificates are a central instrument designed to establish order and ensure legal certainty for rights holders. However, when disputes arise that pit the formal validity of certificates against the material reality of the underlying agreements, courts face a dilemma between enforcing formal rules for legal certainty and seeking substantive truth for justice.

Government Regulation Number 24 of 1997, Article 32, paragraph (1), positions certificates as "a strong means of proof," providing legal certainty and protection to rights holders whose names are listed. The system of negative publication with a positive tendency adopted reflects the character of land law which is based on a spirit of togetherness. Within this framework, land—although it can be owned individually—must be used according to its intended purpose and provide benefits to the wider community.

The jurisprudence in Gianyar District Court Decisions No. 259/Pdt.G/2020/PN.Gin and Denpasar District Court Decisions No. 274/Pdt.G/2020/PN.Dps consistently demonstrates the supremacy of formal evidence over illegal agreements. The courts expressly refused to grant legal recognition to name-loan agreements and affirmed the binding force of certificates as the sole proof of legal ownership. Despite evidence that all purchase funds came from foreign nationals, the courts declared the land legally owned by the Indonesian citizen named on the certificate. This confirms that the flow of funds and private agreements cannot annul legal status that has complied with formal procedures.

From a legal philosophy perspective, this ruling represents the enforcement of formal justice, prioritizing the consistent and objective application of legal rules to ensure legal certainty. If the courts ignore formal evidence and validate illegal agreements, the entire land registration system will lose its meaning and function. However, a substantive justice dilemma arises when foreign nationals lose their entire investment without compensation,

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while Indonesian citizens who merely "lent their name" gain full ownership of assets worth billions of rupiah.

From an Aristotelian perspective, the prohibition on property rights for foreign citizens is a manifestation of distributive justice, where the state distributes land ownership rights only to its citizens as part of national sovereignty. However, from the perspective of commutative justice, which regulates transactional relationships between individuals, an extreme imbalance occurs. The judge's decision can be read as a dilemma that sacrifices commutative justice in order to restore violated distributive justice.

The legal implications of this ruling are severe for all parties involved. Foreign nationals face the absolute risk of having their agreements declared null and void. Based on the principle of nemo auditur propriam turpitudinem allegans and Article 26 paragraph (2) of the UUPA, they cannot demand the return of forfeited funds. On the other hand, Indonesian citizens also risk losing their rights because the land could fall to the state, as evidenced by Gianyar District Court Decision Number 137/Pdt.G/2021/PN.Gin, which stated that the disputed land must fall to the state due to involvement in legal smuggling.

The notary/PPAT profession is also in a vulnerable position. Denpasar District Court Decision No. 274/Pdt.G/2020/PN.Dps declared that notaries had committed an unlawful act by facilitating legal construction that circumvented regulations. This statement opens the door to civil liability and administrative sanctions from the Notary Supervisory Board, ranging from reprimands to dishonorable dismissal. This confirms that failure to fulfill the role of legal gatekeeper can destroy a well-established professional career.

## CONCLUSION

A. Nominee agreements for land ownership by foreign nationals (WNA) in Indonesia are prohibited and legally invalid practices. From a civil law perspective, these agreements are null and void because they violate Article 1320 of the Civil Code concerning the requirement of a "lawful cause," considering that their purpose is to circumvent the prohibition on land ownership by foreign nationals. Meanwhile, from an agrarian law perspective, this practice constitutes legal smuggling that violates the principle of nationality in the UUPA. Article 26

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paragraph (2) of the UUPA expressly states that any act that transfers land ownership rights to foreigners is null and void, with the sanction of the land falling to the State. Thus, both civil law and agrarian law agree that nominee agreements for the control of Freehold land by foreign nationals are illegal legal constructions and are considered never to have existed from the start.

B. The effectiveness of the Indonesian justice system in cases of land use by foreign nationals prioritizes the supremacy of national agrarian law and state sovereignty over individual justice. Although this decision may seem unfair to the foreign nationals who suffered losses, it is a legal consequence of the unlawful act committed (the principle of ex turpi causa non oritur actio - no rights arise from wrongful acts). This enforcement emphasizes that legal certainty and the integrity of the national agrarian system are prioritized over protection for parties who knowingly violate Indonesian land law, even if the consequences appear to be individually detrimental.

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