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Legality of Land Ownership by Non-native Indonesian Citizens in Yogyakarta Through Nominee Agreement (Case of Decision Number 443 PK/PDT/2023)

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Abstract

Special Region of Yogyakarta is one of the regions in Indonesia that possesses special authority in administering its local governance, including matters related to land regulation. Based on the Instruction of the Deputy Governor No. K.898/I/A/1975 concerning the Provision of Handling Rights of Land and Buildings, Indonesian citizens who are not categorized as natives of the region are prohibited from holding land under ownership rights. In practice, this regulation has created opportunities for the use of nominee agreements between Non-native Indonesian citizens and native citizens to circumvent restrictions on land ownership. Therefore, this research aims to examine the legality of land ownership through nominee agreement used by Non-native Indonesian citizens based on Supreme Court Decision Number: 443 PK/Pdt/2023 and to analyze the legal implications arising from the application of such agreements in acquiring ownership rights over land. This research employs a normative juridical method with both case and statute approaches. The data used consist of secondary sources, including primary legal materials such as court decisions and legislation, as well as secondary legal materials in the form of books, journals, and legal articles. The results indicate that the use of nominee agreements by Non-native Indonesian citizens to obtain ownership rights over land in the region lacks a valid legal basis within the Indonesian land law system and is regarded as a form of legal circumvention that is juridically invalid.

Keywords

Nominee agreement, Non-native Indonesian Citizens, Yogyakarta

I. Introduction

Land represents vital natural resource that holds an essential position in various dimensions of human life. In Indonesia, where a significant portion of the population continues to rely on agriculture for their livelihood, land functions not merely as a place for residence but also plays an important role in supporting economic activities as well as influencing social, political, and cultural aspects of society.¹ Interactions between humans and land frequently give rise to complex issues because land, which is a limited amount of natural resources, has to deal with rapid population growth and massive development programs.² This shows that land must be managed and used appropriately so that the abundance of its benefits is maximally useful as a support for prosperity and welfare of community.³ Such a principle is in line with the mandate of the Constitution of the Republic of Indonesia 1945, particularly Article 33 paragraph (3), which affirms that the state holds authority over the earth, water, and all natural resources, which must be managed to maximize the welfare of the people.

In the juridical aspect, land tenure is based on the existence of rights protected by law which grant to an authority and obligation to the

¹ Fahrul Fauzi, "SOCIAL JUSTICE: THE BASIS FOR IMPLEMENTING COMPENSATION IN LAND ACQUISITION FOR THE NATIONAL STRATEGIC PROJECTS IN INDONESIA," *Bhumi: Jurnal Agraria Dan Pertanahan* 7, no. 1 (2021): 14–27, <https://doi.org/10.31292/bhumi.v7i1.452>.

² Fauzia Nabila, Mohamad Shohibuddin, and Endriatmo Soetarto, "PERUBAHAN PERAN PEREMPUAN SETELAH PENGADAAN TANAH UNTUK PEMBANGUNAN YOGYAKARTA INTERNATIONAL AIRPORT: KASUS KALURAHAN KEBONREJO DI KABUPATEN KULONPROGO," Departemen Sains Komunikasi Dan Pengembangan Masyarakat, Fakultas Ekologi Manusia, *Bhumi* 7, no. 2 (2021): 226–45, <https://doi.org/10.31292/bhumi.v7i2.494>.

³ Relinawati Simanjuntak, Maarthen Y Tampanguma, and Rudy M K Mamangkey, "Tinjauan Yuridis Terhadap Tanah Negara (Lahan Kosong) Yang dikuasai Oleh Masyarakat 1," *Lex Administratum* 11, no. 04 (2023).

right holder to be able to do something about the land object in question.⁴ The Law Number 5 of 1960 (UUPA) as the fundamental regulation of national agrarian law arrangement recognizes the existence of types of land rights that establish different authorities for each holder of rights to land that is held. These categories of land rights are regulated in Articles 20 to 45 of UUPA, which recognize several types of rights over land, including property rights (Hak Milik), cultivation rights (Hak Guna Usaha), building use rights (Hak Guna Bangunan), utilization rights (Hak Pakai), and the right to lease land for building purposes. From the various existing land rights, the one right that is the most powerful and full compared to other rights is property rights as regulated in Article 20 paragraph (1) of the UUPA.⁵

In relation to subject entitled to hold land ownership rights, foreign nationals aren't allowed to possess land under property rights status in Indonesia. This limitation is expressly regulated in Articles 9 and 21 of the UUPA, which stipulate that property rights over land may only be held by Indonesian citizens and certain legal entities recognized under Indonesian law. However, a different regulatory practice can be found in Yogyakarta, where not all Indonesian people are permitted to own land with property rights status.⁶ As a region granted special autonomy within Indonesia, Yogyakarta holds particular authority in administering their regional governance, including matters related to land administration.⁷ Through the Instruction of the Deputy Governor of the

⁴ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*, Jakarta: Uninversitas Trisakti, 2013, hlm. 23.

⁵ Lilik Warsito, "Penguasaan Dan Pemilikan Hak Atas Tanah Dalam Sistem Hukum Di Indonesia," *Jurnal Hukum Sebasen* 10, no. 1 (2024): 217–26.

⁶ Febri Dwi Kurniawan, "TINJAUAN YURIDIS LARANGAN PEMILIKAN HAK ATAS TANAH DENGAN STATUS HAK MILIK BAGI WARGA NEGARA INDONESIA (Studi Kasus Kepemilikan Hak Milik Bagi Keturunan Tionghoa Di Daerah Istimewa Yogyakarta)" (2024).

⁷ Muhammad Bayu Rizhaldi and Indri Fogar Susilowati, "ANALISIS YURIDIS TUMPANG TINDIH KEWENANGAN BPN YOGYAKARTA DAN KERATON

Special Region of Yogyakarta No. K.898/I/A/1975 concerning the uniform policy on granting land rights to Non-native Indonesian citizens, the regional government determined that only native Indonesian citizens may hold land under property rights status.⁸ While Non-native Indonesian citizens or descendants of foreign nations such as Europeans, Arabs, Chinese, Indians and others may solely possess land under building use rights (HGB) even though they are also Indonesian citizens residing in Yogyakarta.⁹ This instruction was directed to all regents and mayors within the region to standardize the implementation of land ownership policies.¹⁰

The policy that standardizes restrictions on the granting of land rights to Non-native Indonesian citizens in Yogyakarta is essentially designed to protect the interests and rights of indigenous communities. This policy aims to prevent land ownership from being predominantly controlled by Non-native Indonesian citizens or external investors, especially the Chinese who are perceived to have a stronger or higher socio-economic structure.¹¹ But behind that, this provision actually

DALAM DUA PRINSIP SISTEM PENGELOLAAN TANAH SETELAH BERLAKUNYA UU NO . 13 TAHUN 2012 DARI PERSPEKTIF HUKUM NASIONAL,” *Novum: Jurnal Hukum* 10, no. 02 (2023): 148–62, <https://doi.org/https://doi.org/10.2674/novum.v0i0.50695>.

⁸ Josef Christofer Benedict, “Pembatasan Hak Masyarakat Tionghoa Di Daerah Istimewa Yogyakarta: Bias Kelas Demokrasi Agraria?,” *Jurnal Pemikiran Sosiologi* 8, no. 2 (2022): 185–208.

⁹ Nadia Isad Farah, “Tinjauan Hukum Hak Asasi Manusia Terhadap Larangan Kepemilikan Tanah Bagi Warga Negara Indonesia Nonpribumi Untuk Keturunan Arab Di Daerah Istimewa Yogyakarta,” *Jurnal Hukum Lex Generalis* 3, no. 12 (2022): 1011–19.

¹⁰ Piong Khoy Fung, Rosalina Indah Sari, and Anyelir Pupsa Kumala, “ANALYSIS OF GOVERNOR’S INSTRUCTION DIY NO : K.898/I/A/75 ON LAND OWNERSHIP IN YOGYAKARTA BY INDONESIAN CITIZENS OF CHINESE DESCENT FROM THE PERSPECTIVE OF JUSTICE,” *INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW (IJOSPL)* 4, no. 3 (2023): 8–18.

¹¹ Fachriza C Limuris, “AFFIRMATIVE POLICY SEBAGAI BENTUK DISKRIMINASI POSITIF,” *Dharmasiswa* 1, no. 4 (2021): 1773–86.

raises space for the practice of land transaction that's not in accordance with national legislation, so it can be called legal smuggling. Non-native Indonesian citizens who are affected by the presence of the uniform policy will get around the restrictions on land ownership by borrowing the name of a native citizens to be included in the certificate of property rights, but the use of land and control of the certificate remains in the hands of Non-native Indonesian citizens.¹² In practice, this is agreed upon by both parties. The agreement is known as a nominee agreement. According to Black's Law Dictionary, nominee is defined as someone who is appointed and acts on behalf of another party as a representative in a limited sense. This understanding when applied to the context of a nominee agreement in land ownership will mean an agreement made by the parties where one party acts as a representative of the other party to include his name as the owner of a piece of land in the certificate. Generally, this nominee agreement occurs between foreigners and Indonesian citizens as a violation of the law so that foreigners can have freehold land in Indonesia.¹³

Upon the creation of a nominee agreement, there are things that cannot be underestimated, namely the fact that the nominee agreement has many legal loopholes that will cause serious problems related to legality and legal certainty.¹⁴ Transactions involving land purchases through nominee agreements carry the potential to trigger disputes

¹² Lily Kalyana and Widodo Budidarmo, "Dynamics of Land Ownership Rights in the Perspective of Indonesian Agrarian Law in the Perspective of Legal Certainty and Social Justice," *JOSH: Journal of Sharia* 04, no. 02 (2025): 234–43, <https://doi.org/https://doi.org/10.55352/josh.v3i02> Dynamics.

¹³ Rahaldy Briwijaya, "PERLINDUNGAN HUKUM BAGI PENGHADAP (WNA) ATAS AKTA PERJANJIAN PINJAM NAMA YANG," *JINU: Jurnal Ilmiah Nusantara* 1, no. 5 (2024): 85–96.

¹⁴ Wendy Irawan, Jelly Nasser, and Felicitas Sri Marniati, "KEPASTIAN HUKUM AKTA PERJANJIAN TERKAIT PINJAM NAMA (NOMINEE) OLEH WARGA NEGARA ASING (WNA) DALAM JUAL BELI TANAH MENURUT UNDANGUNDANG POKOK AGRARIA," *SENTRI* 3, no. 6 (2024): 2629–37.

among the parties in the future.¹⁵ As in the case of the Supreme Court Decision No. 443 PK/Pdt/2023 with the plaintiff on behalf of Niniek Widjadjanti, a citizen of Chinese descent who borrowed the name of the defendant on behalf of Trisnawati Rahayu as a native or native citizen in a land purchase agreement with the status of property rights in 2001. Then in 2019 the plaintiff intends to transfer the rights of the property rights land certificate from the defendant's name to the plaintiff's name even though later the plaintiff controls no longer in the form of property rights but in building use rights (HGB). However, the defendant refused to reverse the certificate on the land to the plaintiff as the actual owner. The plaintiff feels aggrieved by what the defendant did and considers that the defendant was not in good faith. The plaintiff subsequently submitted a legal claim before the Yogyakarta District Court with a lawsuit against the defendant that is against the law. This case even went to the review stage and still decided that the plaintiff was the losing party. The case demonstrates the tension between factual control and juridical control over land, especially when nominee agreements serve as the basis for ownership claims. On the other hand, the land policy implemented in Yogyakarta, which limits eligibility for property rights ownership for citizens of foreign descent, further intensifies the complexity of the issue.

Several previous studies have examined the restrictions on land ownership in Yogyakarta as well as the practice of nominee agreements in land ownership. The first study, conducted by Afan Husni Maulana in 2021, analyzed the prohibition of land ownership for Indonesian citizens of Chinese descent in Yogyakarta from a positive legal perspective. The findings indicate that the prohibition on land ownership based on the Governor's Instruction No. K.898/I/A/1975 has the character of *lex*

¹⁵ Rosyani Ada and Akhmad Safik, "Analisis Yuridis Kepemilikan Hak Atas Tanah Melalui Perjanjian Nominee Oleh Warga Negara Asing Di Indonesia (Studi Putusan Perkara Nomor : 2959 K / Pdt / 2022)," *UNES Law Review* 6, no. 2 (2024): 7624–36, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

specialis derogat legi generali, considering that the Special Region of Yogyakarta possesses special authority to regulate its own land affairs. Furthermore, a 2023 study from Fung et al. concluded that the existence of this instruction contradicts national land law, particularly the provisions of the Basic Agrarian Law 1960 concerning land ownership rights. In addition, research conducted in 2021 by Elvita Puspa Aldyna, Albertus Sentot Sudarwanto, and Muhammad Rustamaji highlighted the emergence of nominee agreements as a consequence of the Governor's Instruction No. K.898/I/A/1975. The study also emphasized the importance of developing a synergistic legal framework consisting legal structure, legal substance, and legal culture to effectively prevent the use of nominee agreements.

Another related research was also carried out by I Putu Wiswambhara Hari Kana and Ni Putu Sawitri Nandari in 2024 to review the consequences of nominee agreements land ownership rights in paradigma the freedom of contract paradigm. The results of the study stated that the nominee agreement made between foreigners and Indonesian citizens violates the applicable legal order so that it can declared null and void. Furthermore, research conducted by Ade Putra Prima, Busyra Azheri, and Yussy Adelina Mannas in 2023 highlighted the discussion of notary responsibility for the nominee deed of buying and selling land with a case study approach to decision No. 1290 K/Pdt/2022, which reveals that the nominee agreement between foreigners and Indonesian citizens is a legal smuggling and notary officer (PPAT) can be held accountable for the ratification of the nominee deed.

Based on the previous research mentioned, it can be observed that most of the research that discusses the nominee agreement must be the nominee agreement practice that involves foreigners with Indonesian citizens. Previous studies have examined the special land ownership policies in Yogyakarta. However, study that specifically analyzes the legality of land ownership through nominee agreements

between native and Non-native Indonesian citizens, particularly through case studies of court decisions, remains limited. Accordingly, in light of the issues outlined above, this research seeks to examine the judicial reasoning concerning the legality of nominee agreements as reflected in the Supreme Court Decision No. 443 PK/Pdt/2023 also to determine legal implications arising from the use of such agreements in land ownership involving Non-native Indonesian citizens in Yogyakarta.

II. Method

A study can be categorized as legal research if the research is based on methods, systematics, and a thought that aims to study certain legal phenomena.¹⁶ Research methodology refers to the procedures used to obtain accurate and reliable answers to the problems formulated in a study.¹⁷ As for this study, the author uses the normative juridical method which is a study conducted by reviewing existing legislation and other literature sources. While the method approaches that author used to conducting this research is by a study of cases approach and statute approach. The case approach involves the analysis legal issues that have been resolved through court decisions with permanent legal force, particularly the Supreme Court Decision No. 443 PK/Pdt/2023. Meanwhile, the statutory approach is conducted by reviewing a number of laws and regulations associated with the legal issues being examined in order to evaluate the consistency and applicability of the relevant legal norms. The data used in this research are derived from secondary sources

¹⁶ Soetandyo Wignjosuebrototo. *Hukum Konsep dan Metode*, Malang: Setara Press, 2020, hlm. 62

¹⁷ Soerjono Soekanto. *Pengantar penelitian Hukum*, Jakarta: Universitas Indonesia Publishing, 2020, hlm. 42.

consisting of two types of legal materials, namely primary and secondary legal materials. Primary legal materials include relevant legislation and court decisions or jurisprudence. Whereas secondary legal materials consist of books, academic journals, scholarly articles, electronic references, and other legal literature related to the research topic. All collected data are then examined using a descriptive qualitative analysis.

III. Result and Discussions

Legality of Nominee Agreement by Non-native Indonesian citizens based on Supreme Court Decision No. 443 PP /Pdt/2023

A dispute concerning the ownership of a parcel of land and the building situated on it, involving a nominee arrangement between Niniek Widjadjanti and Trisnawati Rahayu, has been adjudicated by the Supreme Court in Decision No. 443 PK/Pdt/2023, which constitutes a final level judicial ruling. The dispute was triggered by land transaction in 2001 involving a plot of land with a certificate of ownership located in Yogyakarta City, specifically at Cik Di Tiro Street Number 2, Terban Village, Gondokusuman District. Because Niniek Widjadjanti, who is of Chinese descent, was not permitted to hold land under property rights status based on the Instruction of the Deputy Head of the Special Region of Yogyakarta No. K.898/I/A/1975, she chose to use the name of Trisnawati Rahayu, a native Indonesian citizen, as the registered buyer in the deed of sale and purchase and consequently as the holder of the land ownership certificate.

That previously, Niniek Widjadjanti, represented by her attorney, had filed a lawsuit with the Yogyakarta District Court in 2020 because her intention to convey ownership to the disputed land was opposed by Trisnawati Rahayu (defendant) who intended to maintain her status as

the official owner of the disputed land as stated on the certificate. The plaintiff also dragged the head of the Yogyakarta city Land Office as the defendant in this case. The plaintiff filed a lawsuit which in essence appealed to the panel of judges to establish legally valid and correct that the plaintiff is the lawful buyer as well as the legitimate owner and holder of the right to land and building title certificate no. 169/Terban with an area of 958 m². Then, petitioned the court to declare that the defendant had committed an unlawful act. Against the lawsuit, the defendant also filed a reconvention or counterclaim. The panel of judges of the court of First Instance and the appellate level decided that the convention lawsuit and the reconvention lawsuit were unacceptable.

The application for reconsideration was filed after the Supreme Court panel of judges through Decision number 2617 K/Pdt/2022 granted several reconvention suits which legally stipulated that Niniek Widjadjanti (defendant of the reconvention/plaintiff of the convention) had committed unlawful acts by mastering the property rights certificate number 169/Terban, measurement letter dated November 24, 1988 Number 7244 covering an area of 958 m² on behalf of Trisnawati Rahayu without the permission and knowledge of Trisnawati Rahayu (plaintiff reconvention/defendant Convention). As well as punishing and ordering the defendant reconvening/plaintiff Convention to submit a Certificate of property rights number 169/Terban, measuring letter dated November 24, 1988 Number 7244 covering an area of 958 m² on behalf of Trisnawati Rahayu to the plaintiff reconvening/defendant convention without conditions.

That the applicant for reconsideration (defendant reconvention/plaintiff Convention) feels that there is a mistake by the judge or a real mistake so that he asks to cancel the Cassation decision number 2617 K/Pdt/2022. However, the panel of judges considered that there was no error of the judge or a real mistake by considering that the plaintiff reconvention / defendant Convention listed in the deed of

transaction No. 8 of 2001, dated March 19, 2001 as the buyer, so the plaintiff reconvention or defendant Convention is the legitimate party as the owner of the land and buildings registered in Title certificate number 169 /Terban on behalf of Trisnawati Rahayu. Based on these considerations, the panel of judges decided to reject the application for judicial review submitted by the applicant for judicial review, namely Niniek Widjadjanti and also sentenced the applicant for judicial review to pay a case fee of Rp 2,500,000.

It can be seen from decision number 443 PK/Pdt/2023 or from the previous level decision, namely Cassation, that the only legal fact held by the Supreme Court judges to consider and decide this case is evidence that explains that Trisnawati Rahayu is a party who legally owns land and buildings as stated in the deed of sale and purchase No. 8 of 2001, dated March 19, 2001 and also listed in the Certificate of Title No. 169/Terban measuring letter dated November 24, 1988 No. 7244 covering an area of 958 m2 on behalf of Trisnawati Rahayu. This principle is consistent with the Supreme Court Circular Letter (SEMA) No. 10 of 2020, which affirms that the legal owner of a parcel of land is the individual whose name is recorded in the land certificate, even if the purchase was financed using funds or assets belonging to foreign nationals or other parties.

The arguments in the petitum submitted by Niniek Widjadjanti in her effort to obtain recognition of legal ownership of the disputed land are in a very weak position because the nominee agreement in the sale and purchase transaction of a piece of land conducted by Niniek Widjadjanti and Trisnawati Rahayu is an agreement that is not written or oral. Basically, an agreement does not have to be made in writing and will remain binding on the parties making the agreement.¹⁸ But the proof will be complicated if one of the parties does not recognize the existence of

¹⁸ Ferbiano Geraldi Putra, "PENERAPAN PRINSIP KEHATI-HATIAN DALAM MEMBUAT AKTA JUAL BELI BERDASARKAN PERJANJIAN PINJAM NAMA Ferbiano," *Jurnal Sains Student Research* 2, no. 4 (2024): 740–54.

such an oral agreement as happened in this case. Moreover, nominee agreements can be classified as an unnamed agreement (*innominat*) that does not fully comply with the contractual principles stipulated in Article 1320 of the Indonesian Civil Code with regard to the legal requirements for a valid agreement. Consequently, the legal validity of such agreements often becomes uncertain.¹⁹ In principle, an agreement can only be regarded as legally valid when it fulfills the essential requirements established in Article 1320 of the Indonesian Civil Code, which include:

1. The existence of mutual consent between the parties entering into the agreement;
2. The legal competence or capacity of the parties to engage in a contractual relationship;
3. The presence of a clearly defined object or subject matter of the agreement;
4. A lawful purpose.

In this case, the lawful purpose element is said to be contradictory because the agreement is carried out with the aim of smuggling or circumventing the applicable legal rules. This state also confirmed in Article 1337 of the Civil Code which states that a cause becomes invalid when it is contrary to law, morality, or public order. The nominee agreement conducted by Niniek Widjadjanti is intended to outsmart the presence of the Instruction No. K.898/I/A/1975 which does not allow Non-native Indonesian citizens in land ownership with Hak Milik status. Therefore, the nominee agreement is considered null and void or is considered never existed because inconsistent with the prevailing law. The nominee agreement that occurs in this case does not have binding

¹⁹ Imelda Martinelli, Lavienda William, and Yessa Milianty, "Analisis Konsistensi Putusan Hakim Terhadap Perjanjian Nominee Atas Hak Milik Tanah Di Wilayah Indonesia Antara Warga Negara Asing (WNA) Dan Warga Negara Indonesia (WNI)," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 2028–43, <https://doi.org/10.47476/assyari.v6i2.6846>.

legal force so that the proof of ownership remains attached to the party formally recorded in the deed of sale and certificate. This is the reason why the Supreme Court held in its decision that the plaintiff of the convention as the beneficial owner of the disputed land is the party who commits unlawful acts and forces the plaintiff of the convention to hand over the disputed object land to the defendant of the convention unconditionally.

The Supreme Court's decision in this case also confirms that the practice of a nominee agreement in land ownership does not get legal recognition and protection if the agreement is made with the aim of avoiding or smuggling applicable legal provisions. In the context of treaty law, an agreement made with non-lawful causes cannot be considered valid and binding on the parties. Therefore, although factually Niniek Widjadjanti acts as a party that provides funds in the purchase of disputed land, it does not necessarily rule out the juridical fact that Trisnawati Rahayu is officially recorded as the owner of the land in land documents. Therefore, the Supreme Court's decision number 443 PK/Pdt/2023 shows that the land law system in Indonesia focuses more on formal administrative ownership compared to beneficial ownership. This approach is intended to maintain legal certainty of the land ownership and transfer of land rights, also prevent practices that have the potential to abuse the provisions of land law through the use of intermediaries or borrowing names in land ownership.

Legal consequences of the use of Nominee Agreement in land ownership by Non-native Indonesian citizens in Yogyakarta

The practice of using nominee agreements in land sale and purchase transactions by Non-native Indonesian citizens in Yogyakarta in order to obtain land with property rights status gives rise to several legal

consequences, which in essence tend to disadvantage the non-native party acting as the beneficial owner of the land. These consequences may relate both to legal validity of agreement itself and to legal status of ownership over the land in question. As previously explained, the government of the Special Region of Yogyakarta implements a specific land policy that differs from the national land policy regulated under the Basic Agrarian Law 1960. This policy reflects the region's special authority derived from its status as a special autonomous region as provided in Law No. 3 of 1950 on the Establishment of the Special Region of Yogyakarta and reinforced through Law No. 13 of 2012 on the Privileges of the Special Region of Yogyakarta. The policy is referred to is the Instruction No. K.898/I/A/1975 that came from the Deputy Head of the Special Region of Yogyakarta that concerning the uniform policy on granting land rights to Non-native Indonesian citizens.

In relation to the uniform policy of the Deputy Head of the Special Region of Yogyakarta in 1975, the procedure to be followed by Non-native citizens in order to own land in Yogyakarta is written in that instructions which states that if Non-native citizens buy land with the status of the land again became state land directly controlled by the Government of the Special Region of Yogyakarta and subsequently the Non-native citizens concerned submitted an application to obtain a right to the land to the head of the Special Region of Yogyakarta.²⁰ Non-native Indonesian citizens are permitted to control several forms of land rights other than property rights. However, through the use of nominee agreements, Non-native Indonesian citizens are able to exercise control over land with property rights status without formally complying with the applicable policy. Consequently, the use of nominee agreements in

²⁰ Antonius Nata and Aprilia Niravita, "Nominee Land Sale and Purchase Practices Between Indonesian Citizens and Indonesian Descendants in Yogyakarta (Study of Yogyakarta High Court Decision Number 67/ Pdt.G / 2021 / Pt. Yy)," *Semarang State University Undegraduate Law and Society Review* 5, no. 2 (2025): 1756–72.

Yogyakarta can be interpreted as a contractual arrangement aimed at avoiding the land ownership restrictions imposed by local authorities.

The nominee agreement essentially constitutes a form of legal circumvention.²¹ A lawful cause is one of the essential requirements for a valid agreement under Article 1320 of the Indonesian Civil Code. A cause is considered unlawful when it is contrary to the law, morality, or public order in accordance with Article 1337 of the Indonesian Civil Code. Since this objective requirement is not fulfilled, a nominee agreement used in the transfer or control of land ownership rights by Non-native Indonesian citizens in Yogyakarta must be regarded as null and void. Consequently, from a legal standpoint, such an agreement is deemed never to have existed and therefore does not produce any legal consequences from the outset.²² The non-native Indonesian citizen who actually provided the funds to purchase the land is also not entitled to receive compensation for the losses incurred as a result of the invalid agreement. All legal relationships arising from the agreement do not obtain strong legal protection so it is very risky to get entangled in land ownership disputes because of various things. In addition, if the dispute gets into the realm of the court, the Non-native Indonesian citizens will find it difficult to defend their rights. This is like what happened to the nominee agreement made by Non-native Indonesian citizens in decision number 443 PK/Pdt/2023.

The nominee agreement presents a dual ownership structure of land, that is, the beneficial owner and the formal owner.²³ However, the

²¹ Sri Redjeki Slamet, Zulfikar Judge, and Henry Arianto, "INDIKASI PERJANJIAN NOMINEE SEBAGAI BENTUK PENYELUNDUPAN HUKUM PERJANJIAN DITINJAU DARI KEABSAHAN DAN KEKUATAN MENGIKATNYA," *Lex Jurnalica* 20, no. 3 (2023): 310–3017.

²² Johan's Kadir Putra et al., "TINJAUAN HUKUM TERHADAP PERJANJIAN NOMINEE YANG DIBERIKAN SECARA LISAN," *Jurnal Lex Suprema* III, no. 2 (2021): 783–802, <https://doi.org/https://doi.org/10.12345/lexsuprema.v3i2.514>.

²³ Eki Mardiani Eki, Afandi, and Benny Krestian Heriawanto, "ANALISIS YURIDIS KEPEMILIKAN HAK ATAS TANAH YANG BERSUMBER DARI NOMINEE

concept of separation between beneficial owners and formal owners in land ownership is not known in the Constitution. The land registration system under the UUPA adopts a negative publication system with a positive orientation.²⁴ Within this framework, the physical and juridical details recorded in a land certificate are presumed to be accurate and valid data unless proven otherwise through legal evidence. Therefore, the information shown in the certificate is assumed to be correct until a court determines the contrary.²⁵ In this regard, Article 19 paragraph (2) letter c of UUPA explicitly recognizes the land certificate as a strong instrument of proof regarding land rights. This means that the provisions of Indonesian land law only recognize the formal owner recorded in the certificate as authoritative proof unless opposing evidence is shown can weaken it. In other words, the presence of the nominee concept has never had a legal basis in national legal regulations (UUPA) or in regional legal regulations. The Supreme Court Circular Letter No. 10 of 2020, which provides guidance on implementing the outcomes of the 2020 plenary session of the Supreme Court chambers, also confirms that the legal owner of a land parcel is the individual whose name appears on the land certificate. This principle holds true even when the land was acquired using funds or assets owned by foreign nationals or other parties.

This is also reflected in 443 PK/Pdt/2023 that the panel of judges does not recognize Non-native Indonesian citizens as beneficial owners of land based on the nominee agreement even though they have owned the land for 19 years. The panel of judges focused solely on the party whose name appeared on the property rights certificate and in the deed of sale and purchase. This case serves as a concrete example demonstrating that the use of a nominee agreement failed to transfer

AKTA (Studi Putusan Pengadilan Tinggi Nomor 82/Pdt/2019/PT. Yyk Pada Tanggal 19 Juli 2019),” *DINAMIKA* 31, no. 1 (2025): 11205–19.

²⁴ Arba. *Hukum Agraria Indonesia*. Jakarta: Sinar Grafika, 2025, hlm. 258.

²⁵ Rahmat Ramadhani. *Hukum Tanah Indonesia dan Perkembangannya*. Medan: UMSU Press, 2022.

ownership rights to Non-native Indonesian citizens. The right of land tenure that has been enjoyed by Non-native Indonesian citizens cannot be maintained because the claim has no legal basis and precisely the land tenure based on this nominee agreement is considered as an unlawful act. Thus, the non-recognition of nominee agreement in land ownership by Non-native Indonesian citizens in Yogyakarta raises legal uncertainty about the status of land ownership.

In addition, because Non-native Indonesian citizens occupy a legally weak position when asserting their rights, the use of nominee agreements may also expose them to substantial losses as the supposed beneficial owners of the land. This is because in the event of a dispute, the Non-native Indonesian citizens are likely to lose the land they acquired. In decision number 443 PK/Pdt/2023, the Non-native Indonesian citizen must finally hand over the ownership of the disputed land back to the formal owner recorded in the certificate as a whole. In practice, the formal owner does have full legal control over the land, including the right to sell, transfer, or pledge the land without the consent of the party actually providing the land purchase funds. Thus, the position of Non-native Indonesian citizens in the legal relationship becomes very vulnerable because all rights to land are in the hands of parties that are formally recognized by law as owners.

Nominee agreement practices can also cause uncertainty in the land administration system.²⁶ This situation arises because the juridical information recorded in the land certificate does not necessarily reflect the actual circumstances concerning the parties who control and utilize the land. As a result, such conditions may create the potential for more complicated land disputes in the future, particularly when the dispute involves parties who are not directly part of the nominee arrangement.

²⁶ Khairunnisa and Mohamad Fajri Mekka Putra, "Akibat Hukum Perjanjian Nominee Hak Atas Tanah Berkaitan Dengan Kepemilikan Warga Negara Asing," *Jurnal Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 2 (2022): 151–72.

Therefore, practice of nominee agreement in land ownership by Non-native Indonesian citizens in Yogyakarta is ultimately not only contrary to applicable legal provisions, but also poses various legal risks that can harm the parties involved.

IV. Conclusion

Based on the discussion presented above, it can be concluded that the practice of using nominee agreements by Non-native Indonesian citizens in the Special Region of Yogyakarta to obtain property rights over land does not possess a valid legal basis within the Indonesian land law system and constitutes a form of legal circumvention that is juridically null and invalid. Furthermore, the Supreme Court Decision No. 443 PK/Pdt/2023 demonstrates that the court places emphasis on formal evidence of ownership, namely the party whose name appears in the deed of sale and purchase and in the certificate of ownership as the legitimate holder of the land rights. The land law system in Indonesia mandated in the UUPA only recognizes formal administrative ownership based on the name legally listed in the certificate and does not recognize the concept of beneficial ownership at all. The firmness of this formal proof system is corroborated by SEMA number 10 of 2020. The orally established nominee agreement between the plaintiff and defendant, which was intended to circumvent regional land regulations (specifically the Instruction of the Deputy Governor No. K.898/I/A/1975 limiting property ownership for non-native citizens) fails to fulfill the legal requirements of a valid contract. In particular, it violates the lawful cause element under Articles 1320 and 1337 of the Indonesian Civil Code, rendering the agreement null and void from its inception.

Because nominee agreements are legally invalid, Non-native Indonesian citizens involved in such arrangements face multiple

negative legal repercussions. This is because the party is in a very weak and adverse legal position. As a result of the nominee agreement, which was considered non-existent from the beginning, they lost all legal basis to defend or claim rights to the land. In contrast, the formal owner has full legal control to control, transfer, or sell land without the consent of Non-native Indonesian citizens. In fact, the actions of Non-native Indonesian citizens who insist on maintaining physical control over land can be qualified as unlawful acts by the courts. In the end, in addition to causing material losses for Non-native Indonesian citizens, the practice of borrowing this name also threatens the legal certainty of the land administration system because it creates a discrepancy between the juridical data and the reality of physical control in the field. Thus, it can be affirmed that the use of nominee agreement in land ownership by Non-native Indonesian citizens in Yogyakarta is not only contrary to applicable legal provisions, but also poses significant legal risks and does not provide legal protection guarantees for parties who use it.

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