



Ownership of Land by Foreign Citizens in the Implementation of Foreign Investments with Nominee Deed Before a Notary

Ulfah Ainul Fitri Alamudi; Zainal Asikin; Lalu Husni; Aris Munandar

Doctoral of Law, University of Mataram, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i6.3723>

Abstract

In the control of land by Foreign Citizens who are investors in the operation of a company. In addition to being directly owned by the land holder, land ownership is also often carried out in the form of a nominee. The nominee is a person or individual who is appointed to specifically act on behalf of the person who appointed him (beneficiary) to carry out a certain legal action, one of which is as a shareholder. The nominee agreement has been prohibited in Article 33 Paragraph (1) of Law Number 25 of 2007 concerning Investment, but grows and develops in the community. This study aims to analyze Land Ownership by Foreign Citizens in the Implementation of Foreign Investments with Nominee Deeds before a Notary. This research is normative juridical research with analytical prescriptive nature. Data collection techniques were obtained by means of library research in the form of document studies. The data analysis was carried out qualitatively, namely the analysis was described in the form of sentences by drawing conclusions using deductive thinking methods. From the results of the study it was concluded that the nominee agreement was formed mainly by foreign parties to obtain benefits by investing in business fields that were closed to foreign investors in Indonesia, the reason for the prohibition of the nominee agreement was to protect the interests of the State in business fields closed to investment, so as not to be controlled by a nominee foreign party, to anticipate legal smuggling, and to anticipate money laundering through beneficial ownership. The freedom of contract in the nominee agreement is limited by a law that strictly prohibits the nominee agreement in the provisions of Article 33 Paragraph (1) of Law Number 25 of 2007 concerning Investment, automatically the nominee agreement has violated the element of good faith. The legal consequences of the nominee agreement are null and void. As a result of the nominee agreement being null and void, the legal owner who is legally recognized has full rights to the shares owned, while the beneficiary has no rights, this is a consequence of the cancellation of the nominee agreement between the two parties. The legal consequences of the nominee agreement are null and void. As a result of the nominee agreement being null and void, the legal owner who is legally recognized has full rights to the shares owned, while the beneficiary has no rights, this is a consequence of the cancellation of the nominee agreement between the two parties. The legal consequences of the nominee agreement are null and void. As a result of the nominee agreement being null and void, the legal owner who is legally recognized has full rights to the shares owned, while the beneficiary has no rights, this is a consequence of the cancellation of the nominee agreement between the two parties.

Keywords: *Control; Nominee Agreement; Shareholders*

Introduction

The Basic Agrarian Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which is also known as the LoGA, covers a broad legal meaning and scope. Includes various laws governing rights to control over natural resources, in the form of legal institutions and concrete legal relationships related to natural resources such as land law, water law, mining law and the law governing control (elements of certain elements of space). The regulation prohibiting foreign nationals from owning land rights in accordance with the provisions of Article 21 paragraph (1) of the Basic Agrarian Law is part of the government's efforts to maintain the welfare of the Indonesian people.

If you pay attention to the importance of land for the Indonesian people, land is an important and strategic resource because it involves the very basic needs of all people (Rosalina, 2010). In addition, land also has characteristics that are multi-dimensional, multi-sectoral, multi-disciplinary and have high complexity. (Rongiyati, 2012). As it is known that the land problem is a problem that is loaded with various interests, both economic, social, political, even for Indonesia, land also has a religious value that cannot be measured economically, so the existence of land for the benefit of foreign investment is added to the interests of foreign investors. to control and own land, see the opportunity for high economic value and various other interests will collide with the nature of the land that should be used for the welfare of the Indonesian people. (Fauzan, 2014).

According to Jeffrey Winterts, in (Ginting, 2011), the economic value of land can be observed from the meaning of land as the most basic capital of various types of capital known in the economy. The existence of problems related to the use of land for the benefit of the people's welfare and the interests of investment is one of the forerunners to the formation of Law Number 25 of 2007 concerning Investment which was born on 26 April 2007 where the law seeks to accommodate the times and tries to adapt to the regulations. previously such as Law No. 1/1967 jo. Law Number 11 of 1970 concerning Foreign Investment and Law Number 6 of 1968 jo. Law Number 12 of 1970 concerning Domestic Investment which is deemed no longer in accordance with the times.

The limitation on ownership of land rights as stipulated above prohibits foreign nationals from having land rights with ownership rights either by individuals or companies or building use rights by individual foreign citizens, making the state not provide guarantees for foreign investors to accept the offer, considering There is a ban on foreign nationals owning land in Indonesia (Sumanto, 2017) (Ardani, 2017)

Prohibition of control of land with property rights and building rights as well as other rights in order to realize that the earth, water and natural resources contained therein are controlled by the state and for the greatest prosperity of the people. (Prayogi & Sesung, 2018). The existence of restrictions on control of land parcels based on statutory regulations, of course, causes certain individuals to seek solutions by giving birth to new concepts, including through the concept of nominee (borrowing names). (Sari et al., 2018). This is one of the reasons underlying the use of the nominee agreement concept in the legal system in Indonesia, where several legal transactions using the nominee agreement concept can be found, including land ownership by foreign nationals.

The provisions on the prohibition of land ownership by foreign nationals as regulated in Law Number 5 of 1960 and as well as the procedures for foreign investment for foreign citizens regulated in Law Number 25 of 2007 concerning Investments certainly make foreign citizens try to avoid the rules. - the rules in various ways (Winarta et al., 2017). Basically, investment is a necessity for every country, because no country is able to meet its own needs continuously and in the long term. (Suryana et al., 2020). Every country always has its own limitations, so it requires cooperation with foreign parties (Dwilaksmi, 2020).

Foreign investment as a form of capital flow has an important role for Indonesia's economic growth as a developing country. This is because foreign investors not only transfer capital but also transfer knowledge and human capital. For various reasons, Indonesia is basically a good investment place for investors who want to invest, this is emphasized by Fuadi, (2002) which states that theoretically, Indonesia should be a good investment country. This is due to the fact that Indonesia has the following comparative advantages: (1) abundant natural resources (such as oil, natural gas, mining, forest products and marine products); (2) A large domestic market with a population of approximately 243,000. 000 (two hundred and forty-three million) people; (3) Relatively cheap labor wages; (4) conducive export policy; (5) The policy of the free foreign exchange regime; (6) Strategic location between 2 (two) continents and 2 (two) oceans.

One thing that is considered mandatory and most crucial in the implementation of Foreign Investment is the allocation of capital in carrying out business activities, one of which is the allocation of capital for asset ownership in the form of land. In view of Article 5 paragraph (2) which stipulates that every foreign investment in Indonesia must be in the form of a Limited Liability Company (company), then the company as an investment facility must own a large amount of land as company assets.

If you pay attention to the importance of land for the Indonesian people, land is an important and strategic resource because it involves the very basic needs of all people. In addition, land also has characteristics that are multi-dimensional, multi-sectoral, multi-disciplinary and have high complexity. As it is known that the land problem is a problem that is full of various interests, both economic, social, political, even for Indonesia, land also has a religious value that cannot be measured economically. then the existence of land for the benefit of foreign investment coupled with the interests of foreign investors to control and own the land in view of the opportunity for high economic value and various other interests will collide with the nature of the land that should be used for the welfare of the Indonesian people. The economic value of land can be observed from the meaning of land as the most basic capital of various types of capital known in the economy (Winterts, 1999).

The existence of problems related to the use of land for the benefit of the people's welfare and the interests of investment is one of the forerunners to the formation of Law Number 25 of 2007 concerning Investment which was born on 26 April 2007 where the law seeks to accommodate the times and tries to adapt to the regulations. previously such as Law No. 1/1967 jo. Law Number 11 of 1970 concerning Foreign Investment and Law Number 6 of 1968 jo. Law Number 12 of 1970 concerning Domestic Investment which is deemed no longer in accordance with the times.

The rules in Law Number 25 of 2007 concerning Investment apply to investment in all sectors of the territory of Indonesia, with the provision that it is only limited to direct investment, and does not include indirect or portfolio investment as stated in Article 2 of Law Number 25 2007 concerning Investment and its explanation. Investment policy aims to create a conducive, promotive investment climate, provide legal certainty, justice, and efficiency while still paying attention to the interests of the national economy by encouraging the creation of a conducive national business climate for investment to strengthen the competitiveness of the national economy and accelerate the increase in investment.

Capital here is an asset in the form of money or other forms that are not money owned by investors that have economic value. As for the business climate here, one of them is in the form of ease of service and/or licensing for investment companies to obtain land rights. According to Article 3 paragraph (1) an of Law Number 25 of 2007 concerning Investment, it is stated that investment is carried out by the government on the principle of legal certainty. Furthermore, in Article 4 paragraph (2) b it is stated that in setting basic policies, the government guarantees legal certainty, business certainty, and business security for investors from the licensing process until the end of investment activities in accordance with the provisions of the legislation. Therefore,

In terms of using land for investment purposes, the government in the context of foreign investment does provide facilities and conveniences, one of which is the ease of service and/or licensing for investment companies to obtain land rights as referred to in Article 21 letter an of the Investment Law.

It is undeniable that in reality there are still many foreigners who want property rights on land in Indonesia. It is natural considering that the right of ownership is the strongest right of all rights. In the sense that the period of time is not valid, which when compared to the Lease Rights, it is certain that it has a certain period of time, the same as the Right of Use is also limited and must be extended. In addition to unlimited time, the owner of the Property Rights can also control it freely.

Seeing conditions like this, ideas arose to get around so that a foreign citizen could obtain land tenure with Hak Milik, one of which was by appointing a nominee to represent him in a name borrowing agreement (hereinafter referred to as a nominee agreement). The nominee agreement is an anonymous type of agreement (*innominaat*), meaning that this agreement has not been specifically and firmly regulated in Indonesia. The existence of a nominee agreement is nothing new in business practice in Indonesia, because this method is used for every ownership that is impossible for foreigners to implement in Indonesia. Today, there is not a small amount of land control by foreigners, which is carried out by controlling by following the rules in Indonesia that apply or by stealth,

In short, the nominee agreement gives a tendency to give all powers which may appear in a legal relationship between the party giving the authority over the object of the agreement which according to Indonesian law cannot be possessed by the Indonesian citizen who acts as the recipient of the authority. In Indonesia itself there is no specifically regulated regarding nominee agreement, but in fact, this agreement arises and develops because of the needs of the people who want it. The nominee agreement is an attempt by foreign nationals to give them the opportunity to have legal rights to land by using or borrowing the name of an Indonesian citizen to represent it. (Son & Alfathania, 2020). Especially if the relationship between the parties is done on the basis of trust.

The object of this research is the validity of the Nominee agreement made by Foreign Citizens as Beneficial Owners and Indonesian Citizen Nominees in which the agreement is made before a notary. Beneficial Owner is a certain person or party who has the power to control Indonesian Citizen nominees (Jastrawan & Suyatna, 2019), where a nominee is an Indonesian citizen only as the registered owner of an object, and the actual owner is the Beneficial Owner. Beneficial Owner controls and manages and benefits from these objects. In the nominee shareholder, the presence of an Indonesian citizen Nominee is only used as the registered owner of a certain number of evidence of rights, while the beneficial owner manages and benefits from the object.

The hope of foreign nationals is to guarantee legal certainty for them, so the concept of a nominee agreement is made in the form of a deed before a notary or in the form of an authentic deed. The Nominee Agreement is made by the parties before a Notary, this is done because the Notary is a public official who is given the authority to make a deed that has authentic legal force both materially and formally as stipulated in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of a Notary, as lastly amended by the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary (UUJN). The deed may consist of an official (authentic) deed and a private deed (Subekti, 1995).

The increasing needs of society and the increasingly rapid development of the times have greatly influenced the position of a notary. The notary as the official authorized to make the authentic deed must be able to consider and analyze carefully in the process of making the authentic deed since the parties come before him and present information in the form of formal requirements as well as administrative requirements which are the basis for making the deed until the notary's responsibility for the form of the authentic deed. This is also regulated in Article 15 paragraph 2 letter e of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of a Notary, where it is stated that: "Notaries

are authorized to provide legal counseling in connection with making a deed. However, in practice there are some notaries who no longer pay attention to the provisions contained in the Notary Position Act and the Notary Code of Ethics itself, but pay more attention to the material side in carrying out their positions, so that the notary is willing to make a Nominee Agreement deed which is prohibited. This is clearly a violation of Law No. 30 of 2004 as amended by Law No. 2 of 2014 and the Code of Ethics for the position of a notary that can have legal consequences for himself and the parties bound in the agreement made.

Method

Types of research

This type of research is normative research (legal research. This research focuses more on the study of legal principles in various laws and regulations related to land control by foreign citizens in the implementation of foreign investment with a nominee deed before a notary).

Problem Approach

This study uses various approaches with the aim of obtaining information from various aspects regarding the issue under study. To solve the problem that is the subject of this research, the following approaches are used: (1) the statutory approach; (2) the conceptual approach (Conceptual Approach); (3) historical approach (History Approach); (4) the philosophical approach (Philosophical Approach); (5) Comparative Approach.

Source of Legal Material

- a. Primary legal materials are binding legal materials obtained from statutory regulations. In this dissertation, the primary legal materials used are:
 - 1) Law Number 5 of 1960 concerning Basic Agrarian Regulations;
 - 2) Law Number 25 of 2007 concerning Investment;
 - 3) Civil Code (Burgerlijke Wetboek);
 - 4) Law number 30 in conjunction with Law number 2 of 2014 concerning Notary Positions;
 - 5) Notary Code of Ethics made by the Indonesian Notary Association.
 - 6) BKPM Regulation No. 4 of 2021 concerning Guidelines and Procedures for Risk-Based Licensing Services and Capital Facilities.
- b. Secondary legal materials are legal materials that are used to explain primary legal materials. These secondary legal materials are in the form of legal science books, and other legal writings such as legal science books, and other legal writings such as opinions or comments from legal experts discussing nominees.
- c. Tertiary legal materials are legal materials intended to clarify primary and secondary legal materials, such as court decisions, dictionaries, articles, newspapers and magazines related to the title raised.

Legal Materials Collection Techniques

The technique of collecting materials in this study was obtained through library research, both through searching laws and regulations, documents and scientific literature and research by experts in accordance with the objects and problems to be studied.

Legal Material Analysis

The analysis of legal materials in this study was carried out through interpretation methods, and arguments based on deductive logic. Through this method, researchers will describe and link all legal materials obtained for later analysis in order to obtain answers to the problems studied, because with the development of a very dynamic society, it is undeniable that legal problems arise.

Results and Discussion

Regulation on investment in Indonesia.

Investment in Indonesia has developed for quite a long time in a period of more than 50 (fifty years), during which time investment activities in Indonesia, both foreign investment and domestic investment have developed and contributed to supporting the achievement of targets. National development.

The legal basis for investment in Indonesia begins with the enactment of Law no. 78 of 1958 concerning Foreign Investment which in its implementation has stagnated. Then in 1967, Law no. 1 of 1967 concerning Foreign Investment which was later amended by Law no. 11 of 1970 concerning Amendments and Supplements to Law No. 1 of 1967 concerning Foreign Investment and Law no. 6 of 1968 concerning Domestic Investment as later amended by Law no. 12 of 1970 concerning Amendments and Supplements to Law No. 6 of 1968.

Even with the legal basis of the two laws, investment in Indonesia is quite well developed. However, to support the achievement of national economic development targets, where investment must be part of the administration of the economy and placed as an effort to increase national economic growth, create jobs, encourage people's economic development and realize community welfare in a competitive economic system, the existence of a Law Law No. 1 of 1967 in conjunction with Law no. 12 of 1970 and Law no. 6 of 1968 in conjunction with Law no. 12 of 1968 which has been in effect for approximately 40 years, it is felt that it is necessary to make changes and replacements.

This replacement is based on the fact that the two Investment Laws are no longer in line with the challenges and needs to accelerate the development of the national economy through the construction of national laws in the field of Investment that are competitive and in favor of the national interest. For this reason, the Government has ratified and promulgated Law no. 25 of 2007 concerning Investment which according to the provisions of Article 40, Law No. Investment. 25 of 2007 is effective from the date of promulgation. With the enactment of Law no. 25 of 2007, then Law no. 1 of 1967 in conjunction with Law no. 11 of 1970 concerning Foreign Investment and Law no. 6 of 1968 in conjunction with Law no. 12 of 1970 concerning Domestic Investment, declared revoked and invalid. Provisions on the Transition of Law No. 25 of 2007 stipulates that several provisions of the legislation which are the implementers of the Law on Foreign Investment and Domestic Investment will continue to apply, as follows:

- 1) Article 35: International agreements, whether bilateral, regional, or multilateral in the field of Investment that have been approved by the Government before the Investment Law comes into force until the end of the agreement.
- 2) Article 36: Drafts of International Agreements, whether bilateral, regional, or multilateral in the field of Investment that have not been approved by the Government of Indonesia at the time this Investment Law comes into force, must be adjusted to this Law.
- 3) Article 37:
 - a) At the time this Law on Investment comes into effect, all provisions of the laws and regulations which constitute the implementing regulations of Law no. 1 of 1967 in

conjunction with Law no. 11 of 1970 concerning Foreign Investment and Law no. 6 of 1968 in conjunction with Law no. 12 of 1970 concerning Domestic Investment is declared to remain valid as long as it does not conflict and has not been regulated by new implementing regulations based on this Law.

- b) Investment approval and implementation permit granted by the Government based on Law no. 1 of 1967 in conjunction with Law no. 11 of 1970 concerning Foreign Investment and Law no. 6 of 1968 in conjunction with Law no. 12 of 1970 concerning Domestic Investment, is declared to remain in effect until the expiration of the Investment approval and the permit for its implementation.
- c) Applications for Investment and other applications related to Investment that have been submitted to the competent authority and as of the date of ratification of this Law have not obtained Government approval, must be adjusted to the provisions of this Law.
- d) Investment companies that have been granted a business license by the Government based on Law no. 1 of 1967 in conjunction with Law no. 11 of 1970 concerning Foreign Investment and Law no. 6 of 1968 in conjunction with Law no. 12 of 1970 concerning Domestic Investment, if the Permanent Business License has expired, it can be extended based on this Law.

Based on the transitional provisions (vide article 37 paragraph 1 of Law No. 25 of 2007 concerning Investment), before the issuance of implementing regulations of the Investment Law no. 25 of 2007, the old implementing regulations are declared to remain in effect. Within a period of 5 (five) years since the enactment of Law no. 25 of 2007 concerning Investment, several new implementing regulations have been issued from Law no. 25 of 2007 concerning Investment, however, there are some regulations that still use the old regulations. So that currently the applicable laws and regulations governing investment in Indonesia are as follows:

1. UU no. 25 of 2007 concerning Investment;
2. Government Regulation No. 1 of 2007 concerning Income Tax Facilities for Investment in Certain Business Fields and/or in Certain Regions.
3. Presidential Regulation No. 90 of 2007 concerning the Investment Coordinating Board.
4. Presidential Regulation No. 76 of 2007 concerning Criteria and Requirements for Formulation of Closed Business Fields and Business Fields Open with Requirements in the Capital Market Sector.
5. Presidential Regulation No. 77 of 2007 concerning List of Business Fields Closed and Business Fields Open with Conditions in the Investment Sector.
6. Presidential Regulation No. 111 of 2007 concerning Amendments to Presidential Regulation no. 77 of 2007 concerning List of Business Fields Closed and Business Fields Open with Conditions in the Investment Sector.
7. Presidential Instruction No. 6 of 2007 concerning Policies for Accelerating Real Sector Development and Empowerment of Micro, Small and Medium Enterprises.
8. Presidential Instruction No. 6 of 2007, related to Access to Financing for MSMEs and Cooperatives.
9. Minister of Trade Regulation No. 36/M-DAG/PER/9/2007 concerning Issuance of Trading Business Permits.
10. UU no. 20 of 2008 concerning Micro, Small and Medium Enterprises;
11. Government Regulation No. 62 of 2008 concerning Amendments to Law No. 1 of 2007 concerning Income Tax Facilities for Investment in Certain Business Fields and/or in Certain Regions;
12. Government Regulation No. 45 of 2008 concerning Guidelines for Providing Incentives and Providing Ease of Investment in the Regions.
13. Regulation of the Minister of Manpower and Transmigration Number Per.02/MEN/III/2008 Year 2008 Procedures for Using Foreign Workers

14. Trade Regulation No. 46/M-DAG/PER/9/2009 concerning Amendment to Regulation of the Minister of Trade of the Republic of Indonesia No. 36/MDag/Per/9/2007 concerning the Issuance of Trading Business Permits.
15. Presidential Regulation No. 27 of 2009 concerning One Stop Services in the Investment Sector.
16. Regulation of the Head of the Investment Coordinating Board No. 12 of 2009 concerning Guidelines and Procedures for Application for Investment.
17. Regulation of the Head of the Investment Coordinating Board No. 14 of 2009 concerning Information Services System and Investment Licensing Electronically.
18. Minister of Industry Regulation No. 147/M-IND/PER/10/2009 concerning Delegation of Authority for Granting Industrial Business Permits, Expansion Permits, Industrial Estate Business Permits and Industrial Estate Expansion Permits in the Context of One-Stop Integrated Services (PTSP) to the Investment Coordinating Board.
19. Minister of Trade Regulation No. 46/M-DAG/PER/9/2009 concerning Amendments to the Regulation of the Minister of Trade No. 36 of 2007 concerning Issuance of Trading Business Permits.
20. Minister of Trade Regulation No. 45/M-DAG/PER/9/2009 concerning Importer Identification Number (API).
21. Presidential Regulation No. 36 of 2010 concerning List of Business Fields Closed and Business Fields Open with Requirements in the Investment Sector.
22. Presidential Regulation No. 36 of 2010 concerning List of Closed Business Fields and Open Business Fields with Requirements in the Investment Sector.
23. Minister of Industry Regulation No. 16/M-IND/PER/1/2010 concerning Amendment to Regulation of the Minister of Industry No. 147/M-IND/PER/10/2009 concerning Delegation of Authority for Granting Industrial Business Permits, Expansion Permits, Industrial Estate Business Permits and Industrial Estate Expansion Permits in the Context of One-Stop Integrated Services (PTSP) to the Investment Coordinating Board.
24. Minister of Trade Regulation No. 27/M.DAG/PER/5/2012 concerning Importer Identification Numbers.
25. Minister of Trade Regulation No. 59/M.DAG/PER/9/2012 concerning Amendment to the Regulation of the Minister of Trade No. 27/M.DAG/PER/5/2012 concerning Importer Identification Numbers.
26. Regulation of the Minister of Manpower and Transmigration Number Per15/MEN/IV/2006 of 2006 concerning Amendments to Regulation of the Minister of Manpower and Transmigration Number Per-07/MEN/III/2006 concerning Simplification of Procedures for Obtaining Permits to Employ Foreign Workers (IMTA).
27. Regulation of the Minister of Manpower and Transmigration Number Per-07/MEN/III/2006/2006 concerning Simplification of Procedures for Obtaining Permits to Employ Foreign Workers (IMTA).
28. Regulation of the Minister of Manpower and Transmigration Number Per-34/MEN/XI/2006/2006 Provisions on Granting Permits to Employ Foreign Workers (IMTA) to Entrepreneurs Who Employ Foreign Workers in the Position of Directors or Commissioners.
29. Minister of Finance Regulation No. 12/PMK.06/2005 concerning Micro and Small Business Credit Funding.
30. UU no. 13 of 2003 concerning Manpower;
31. Government Regulation No. 83 of 2001 concerning Amendments to Government Regulation no. 20 of 1994 concerning Share Ownership in Companies Established for Foreign Investment.
32. Presidential Decree No. 150 of 2000 concerning Integrated Economic Development Zones.
33. Government Regulation No. 44 of 1997 concerning Partnerships.
34. Presidential Instruction No. 10 of 1999 concerning Empowerment of Medium Enterprises.
35. Presidential Decree No. 75 of 1995 concerning the Employment of Migrant Foreign Workers.

36. Government Regulation No. 20 of 1994 concerning Share Ownership in Companies Established for Foreign Investment.

Models of Nominee Agreements in Land Tenure in Indonesia

The nominee concept recognizes that there are two types of ownership, namely the nominee who is registered and legally recognized (legal owner/*juridische eigendom*) and the foreign investor as the actual owner, who enjoys the benefits and losses arising from the objects owned by the nominee (*economische eigendom*). The *de jure* nominee is the holder of the legal right to the object, which of course has the right to transfer, sell, encumber, guarantee and take any action on the object in question, while the foreign investor is not legally recognized as the owner of the object. The formation of a nominee can be done in 2 (two) ways, namely (Jastrawan & Suyatna, 2019):

1. *nominee* Langsung (Direct Nominee)

Nominee formation is directly formed by making and signing a nominee agreement between foreign investors and nominees in one agreement. The agreement stipulates expressly and clearly the granting trust and authority from foreign investors to nominees to carry out certain activities or business at the behest and interest of foreign investors. Share ownership using the nominee concept, in general, only records the name and identity of the nominee party as the legal owner in the company's shareholder register. The name and identity of the foreign investor does not appear in any form in the register of shareholders of the company. Due to the use of the name and identity of the nominee as a legally registered party, foreign investors provide compensation in the form of a nominee fee. The amount of the nominee fee is based on a mutual agreement between the nominee and the foreign investor, which is then stated in the form of a written agreement signed by the nominee and the foreign investor as a form of agreement.

2. *nominee* Indirect (Indirect Nominee)

nominee This is not formed from the nominee agreement yang expressly and clearly gives the trust and authority of foreign investors to the nominees. There are several agreements and powers of attorney, in addition to the nominee agreement, which are usually signed by the nominee and foreign investors as a supporting component. The agreement and the powers of attorney are needed to provide certainty or protection to foreign investors as the actual owners of the shares owned by the nominee legally. It is these agreements which, when linked to one another, will produce nominees for shares, which are then referred to as Nominee Share Arrangements. Foreign investors can control the nominees to carry out certain actions or business activities at the behest and interests of foreign investors by using deed made either notarial or underhand,

- 1) Deed of Credit Agreement (Loan Agreement) between the principal investor as the creditor and the nominee shareholder, in which the loan will be used by the debtor to pay the share capital deposit in the company in question;
- 2) PePledge of Share Agreement between the principal investor as the recipient of the pledge (pledgee) and the nominee shareholder (pledgor), in which the shares issued for the deposit made using the borrowed money are pledged by the nominee shareholder to the principal investor;
- 3) Pethe Cessi agreement on dividends between the principal investor and the nominee shareholder, in which the rights to dividends distributed by the company to the nominee shareholder as the shareholder are transferred to the principal investor;
- 4) SAbsolute Power of Attorney for the GMS, in which the nominee shareholder as the shareholder in the company gives absolute power to the principal investor to be able to request the holding of the GMS, attend, and cast a vote (Power of Attorney to Vote) in the GMS of the company concerned;

- 5) SAbsolute Power of Attorney to Sell Shares (Sale and Purchase of and Attorney to Sell Shares) granted by the nominee shareholder to the principal investor, where in the event of certain events the principal investor can sell the shares owned by the nominee shareholder (Kairupan, 2013)

The practice of share ownership and borrowing of names between principal investors and nominee shareholders in Indonesia is usually not carried out by signing a nominee agreement or nominee statement, but by entering into a nominee arrangement. The nominee share arrangement is carried out using a set of documents and agreements that are generally known in Indonesian legal institutions, as regulated in the BW. The Nominee Share Arrangement was born from the principle of freedom of contract in contract law, and therefore includes an agreement that does not regulated in law because there are no special arrangements regarding the nominee concept. The nominee share arrangement implicitly has the following elements:

- a. The existence of a power of attorney agreement between two parties, namely a foreign investor as the power of attorney and the Nominee as the recipient of the power of attorney based on the trust of foreign investors to the Nominee.
- b. The power givenanspecial nature with limited types of legal action.
*nominee*act as if (as if) as a representative of a foreign investor before the law.

3. Investors Foreigners in Foreign Investment

Peinvestment based on Article 1 number (1) of Law no. 25 of 2007 concerning Investment, hereinafter referred to as UUPM, is defined as all forms of investment activities, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia. Based on the provisions in Article 1-point (4) UUPM, investment in terms of capital is divided into foreign investment (PMA) and domestic investment (PMDN). Domestic capital investment in accordance with Article 1-point (2) UUPM is an investment activity to conduct business in the territory of the Republic of Indonesia carried out by domestic investors using domestic capital. Foreign investment based on the provisions of Article 1-point (3) UUPM are:

"Investment activities to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use fully foreign capital, and those who jointly with domestic investors."

The provisions of Article 1 point (5) and (6) of the Capital Market Law, respectively, state that domestic investors are Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or regions that make investments in the territory of the Republic of Indonesia, while foreign investors are foreign nationals, foreign business entities, and/or foreign governments investing in the territory of the Republic of Indonesia. Foreign investment (foreign investment) can be done by establishing a direct PT (PMA) whose shares are 100% controlled by foreigners, as well as a joint venture PT (PMA) with a minimum national share of 5% at the time of establishment, where there is a merger between the capital whose sources come from abroad (foreign capital) and capital whose sources come from within the country (domestic capital).

Conclusion

From the description of the research results, it can be concluded that:

1. The profession of a Notary Public or Notary Public which is known in the community is a profession that is considered an honorable profession because this profession is in charge of serving the general public. It is the service task that elevates the authority and honor of a notary as a profession. The nominee concept recognizes that there are two types of ownership, namely the nominee who is registered and legally recognized (legal owner/juridische eigendom) and the

foreign investor as the actual owner, who enjoys the benefits and losses arising from the objects owned by the nominee (*economische eigendom*). The *de jure* nominee is the holder of the legal right to the object, which of course has the right to transfer, sell, encumber, guarantee and take any action on the object in question, while the foreign investor is not legally recognized as the owner of the object.

2. SeIn relation to this authority, the Notary is obliged to be responsible for his actions/work in making the deed because the community entrusts the Notary as an expert in the field of Notary. The legal responsibilities of a notary as a profession and as a position are born from the obligations and authorities given to him, these obligations and authorities are legally and bound to take effect since the notary takes his oath of office as a notary. carry out his position.
3. Since there is a proof law, notary institutions not only write, but also act as proof institutions that require an authentic deed. The Civil Code in certain articles requires an authentic deed for certain actions. Article 1870 of the Civil Code states that what can be perfect evidence is an authentic deed so that a notarial institution is born to regulate the social life of fellow individuals who need evidence regarding the legal relationship between them. The duties of a notary in addition to making authentic deeds are also assigned to register and ratify (*waarmerken* and *legaliseren*) letters or deeds made privately. In addition, the notary also provides legal advice and explanations regarding the law to the parties concerned.

References

- Ardani, MN (2017). Ownership of Land Rights for Foreigners in Indonesia. *Journal of Law Reform, Master of Law Study Program*, 13(2), 204.
- Dwilaksmi, N. (2020). Legal Consequences of Violating the Obligation to Use Indonesian Language in Agreements with Foreign Parties. *Acta Comitatus*, 5, 89. <https://doi.org/10.24843/AC.2020.v05.i01.p08>
- Fauzan, F. (2014). The Relationship between Religiosity and Entrepreneurship: An Empirical Study in an Islamic Perspective. *Journal of Modernization Economics*, 10. <https://doi.org/10.21067/jem.v10i2.779>
- Ginting, D. (2011). Land Law Reform in the Context of Protecting Individual Land Rights and Investors in the Agribusiness Sector. *Journal of Law*, 18(1), 63–82.
- Jastrawan, I., & Suyatna, I. (2019). The validity of the Nominee Agreement by Foreign Citizens in the Control of Land Ownership in Indonesia. *Kertha Semaya : Journal of Legal Studies*, 7, 1. <https://doi.org/10.24843/KM.2019.v07.i02.p13>
- Kairupan, D. (2013). *Legal Aspects of Foreign Investment in Indonesia*. PT Kharisma Putra Utama
- Prayogi, M., & Sesung, R. (2018). Decrease in the Status of Land Ownership Rights from Ownership Rights to Building Use Rights Due to Equity Participation in Limited Liability Companies. *Straits Journal*, 5, 191–203. <https://doi.org/10.31629/selat.v5i2.555>
- Putra, J., & Alfathania. H, R. (2020). The principle of nationality in the nominee agreement to acquire land ownership rights. *IUS Journal of Law and Justice Studies*, 8, 326. <https://doi.org/10.29303/ius.v8i2.723>
- Ronyati. (2012). The legal politics of the formation of a law on land acquisition for the public interest. *Fair: Journal of Law*, 3(1).
- Rosalina, R. (2010). The Existence of Customary Rights in Indonesia. *Sasi Journal*, 16(3).

- Sari, I., Wairocana, I., & Suyatna, I. (2018). Transfer of Land Rights Based on Will Grants by Will Executors. *Acta Comitas*, 3, 157. <https://doi.org/10.24843/AC.2018.v03.i01.p12>
- Subect. (1995). *Principles of Civil Law*, cet. 27. Jakarta: Intermasa
- Sumanto, L. (2017). Ownership of residential or residential houses by foreigners domiciled in Indonesia. *Indonesian Legislation Journal*, 14(4), 455–462.
- Suryana, I., Budiarta, I., & Ujiti, N. (2020). Cooperation Agreement (Joint Venture) Foreign Investment in the Hospitality Business. *Journal of Legal Construction*, 1, 346–351. <https://doi.org/10.22225/jkh.2.1.2551.346-351>
- Winarta, E., Wairocana, I., & Bachelor, I. (2017). Right of Use for Residential Houses of Foreign Citizens in Mixed Marriages without a Marriage Agreement. *Acta Comitas*, 43. <https://doi.org/10.24843/AC.2017.v02.i01.p04>
- Winterts, J. (1999). *Moving Capital, Powerful Capital, Investment Mobility and Politics in Indonesia. Dawn of Hope*

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).