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NOMINEE AGREEMENTS IN THE PERSPECTIVE OF ECONOMIC CRIMINAL LAW: RISK IDENTIFICATION, PROOF, AND ENFORCEMENT

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Abstract: *Nominee agreements (agreements on behalf of others) are often used as a tool to get around the prohibition of land ownership by Foreign Nationals (WNA) on Certificates of Title (SHM) in Indonesia. This article examines the position and characteristics of nominee agreements in the Indonesian legal system and assesses their potential as a means of economic crimes, especially related to corporate crimes, asset embezzlement, money laundering, and violations of agrarian provisions. With a qualitative data-based juridical-normative approach, this study identifies the legal risks that arise, the possibility of criminal liability for the parties involved (actual owners, nominees, intermediaries, and corporations), as well as obstacles and evidentiary strategies in criminal cases involving the covert agreement. The results of the study show that although the nominee agreement is originally a civil agreement, there is sufficient room for the application of economic delinquency when the agreement is used as a means of concealing ownership, facilitating the transfer of profits, or obscuring aspects of ownership in order to avoid legal prohibitions. Enforcement recommendations include strengthening evidentiary standards, inter-institutional coordination (prosecutor's office, police, BPN, PPAT), the use of financial forensic tools, and regulatory updates to clarify the criminal consequences of nominee practices that are detrimental to the public interest.*

Keywords: nominee agreement, SHM, foreigner, economic crimes, criminal proof

1. Introduction

Indonesian agrarian regulations have long placed land ownership as part of the resource control structure that must be maintained for the sake of the national interest. The Basic Agrarian Law (UUPA) emphasizes that only Indonesian citizens can own land with Property Rights (SHM) status. The ban is not just an administrative restriction, but reflects ideological and historical considerations regarding the importance of land as a people's economic base,

an instrument of development, and a strategic element in maintaining state sovereignty.¹ In contemporary practice, the development of foreign investment, urbanization, and the dynamics of the property market present a new reality that classical regulations cannot fully answer. One of the phenomena What is developing is the use of nominee agreements, a pattern of engagement in which a person is positioned as the formal owner of a land object, but substantial control and economic benefits are with other parties, especially foreigners who are legally prohibited from owning SHM.

The nominee agreement is not an institution that is explicitly formulated in Indonesian laws and regulations. This kind of pattern grows out of business practices and the need of certain parties to circumvent certain legal restrictions.² On the surface, this construction is often packaged as a relationship of trust, representation, or granting of power. However, the relationship structure behind it has serious consequences because it obscures who is the beneficial owner and who is the formal nominee. When used to deceive land ownership norms, this practice not only violates the principle of land law certainty, but also has the potential to enter the realm of economic crimes. The involvement of cross-border funds, the use of complex financial instruments, and the existence of intermediary actors such as notaries, PPAT, legal consultants, and property agents make nominee practices increasingly vulnerable to abuse.

If we look at the practices that have occurred over the past few decades, many cases show that foreigners who want to acquire SHM land in Indonesia are looking for a detour through Indonesian citizens who are willing to "lend" their names. In some cases, the nominee receives certain compensation for registering the land in his or her name, while the foreigner provides the purchase capital and subsequently regulates the use of the land.³ Not

¹ Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA)

² Budi Yustika, *Indonesian Agrarian Law* (Jakarta: Rajawali Pers, 2018), 112–125

³ Global Witness, *What is Beneficial Ownership?* (London: Global Witness, 2016)

infrequently, these legal relationships are supported by underhand agreements, side letters, or internal documents that guarantee that economic control remains with foreigners. It is at this point that gray space arises: if this relationship is purely a civil engagement, the dispute that arises at first glance seems like an ordinary dispute between the parties. However, when this practice is used as a systematic strategy to conceal foreign ownership, reduce tax liability, disguise the origin of funds, or circumvent investment rules, there is a potential for criminal acts.

Law enforcement officials face a major challenge in proving the structure of factually beneficial ownership in nominee practices. The agreement is often designed to disguise the true intention, and it is not uncommon to make it orally. In addition, nominees often appear in a "as if they were the rightful owner" position, complete with administratively valid land registration documents. This creates a gap between formal reality (the owner of the land registered by the BPN) and the material reality (the party who controls and takes advantage of the land). This condition not only has the potential to harm the state, but also gives birth to wider risks such as money laundering, asset manipulation, and tax evasion.

Considering this complexity, this article formulates three main questions. First, what is the position and characteristics of the nominee agreement in the Indonesian legal system, especially related to its potential deviation as a tool of economic crime. This discussion is necessary to map the boundary between a valid civil agreement and a nominee's unlawful construction. Second, how criminal liability can be imposed on parties who make or utilize nominee agreements for unlawful purposes. This review is important because the nominee structure usually involves many actors and the mechanisms are deliberately made non-transparent. Third, how can proof be carried out when a criminal case involves a nominee agreement, considering that this construction is hidden, lacks documentation, and often relies on informal instructions or personal relationships between parties.

The three formulations of the problem are directed to identify more sharply how the Indonesian criminal law system responds to nominee practices related to land ownership by foreigners. This research aims to: (1) provide a comprehensive mapping of the legal position of nominee agreements within the national legal framework; (2) analyze the forms of criminal liability that can be imposed on the perpetrators, including the possible involvement of public officials or professionals; and (3) offer a more effective evidentiary model and law enforcement strategy.

The urgency of this research cannot be separated from the increasing global pressure on countries to strengthen beneficial ownership regulations. International institutions such as the FATF (Financial Action Task Force) encourage each country to identify and supervise the beneficial owners in various economic transactions, especially those involving high-value assets such as land.⁴ Without a strong mechanism, nominee practices can be used to hide assets resulting from criminal acts, transfer profits across borders, and weaken Indonesia's financial supervision system. Therefore, this research is expected to provide an academic and practical contribution for policymakers, law enforcement officials, and academics in understanding and overcoming nominee problems in the context of economic criminal law.

From the perspective of land law structuring, the existence of nominee agreements also threatens the integrity of the national land registration system. If the beneficial ownership relationship remains hidden, then the juridical data in the land certificate does not reflect the reality of ownership. This condition has the potential to cause disputes, open up space for corruption, and weaken protection for well-meaning third parties.⁵ Furthermore, the practice of nominees can shake the principle of nationality of land ownership which is the foundation of Indonesian agrarian law.

⁴ FATF–OECD, *Beneficial Ownership Recommendations* (Policy Paper, 2014)

⁵ Mirjan Damaška, *Evidence Law Adrift* (Oxford: Clarendon Press, 2012)

Thus, the discussion of nominee agreements from the perspective of economic criminal law is not only academically important, but also strategic to maintain agrarian sovereignty, strengthen the economic crime prevention system, and ensure that land as a vital resource is not illegally controlled by foreign parties. All analyses in this study are prepared based on a normative juridical approach by utilizing relevant primary, secondary, and tertiary legal materials to build a comprehensive argument that can be accounted for.

2. Research Methods

This research was prepared using a juridical-normative approach, which is a method that examines law from the perspective of its norms, both as written in laws and regulations and in doctrine, literature, and court decisions. This approach was chosen because the issue of nominee agreements related to land ownership by foreigners is closely related to the structure of interrelated norms, including agrarian law, civil law, criminal law, and regulations related to money laundering. The juridical-normative approach also allows researchers to assess the consistency of rules, test the relevance of legal doctrine, and provide a systematic interpretation of potentially abused provisions in practice.⁶

The data in this study is dominated by qualitative data, in the form of legal materials that are analyzed descriptively and argumentatively. These legal materials include:

1. Primary legal materials, such as the Basic Agrarian Law (UUPA), the Criminal Code (KUHP), the Law on Money Laundering, implementing regulations, and various ministerial regulations that regulate land registration procedures and restrictions on ownership by foreigners.

⁶ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2014), 12–15

2. Secondary legal materials are in the form of agrarian law textbooks, economic criminal law literature, national and international scientific articles that discuss beneficial ownership, nominee arrangements, and legal avoidance mechanisms.⁷
3. Tertiary legal materials, including legal dictionaries, legal encyclopedias, and reports from international institutions such as the FATF and OECD that provide global standards related to the transparency of beneficial owners.⁸

Data collection techniques are carried out through library research and documentary research. Literature studies include searching academic literature, journal articles, research reports, and textbooks relevant to the nominee's issues. Meanwhile, the search for legal documents is carried out by reading and comparing court decisions related to land ownership disputes, document forgery, economic crimes, or cases that indicate the abuse of the nominee. The use of the verdict is carried out by paying attention to the judge's arguments, the assessment of evidence, and the interpretation of the relevant elements of the criminal act.⁹

Data analysis was carried out by qualitative analysis techniques, combining the following methods:

1. content analysis to interpret the themes, patterns, and structure of the nominee agreement that appear in the legal document;
2. normative-interpretive analysis to interpret legal articles and norms, especially norms that open up the possibility of criminal liability if the nominee is used for unlawful purposes;

⁷ Budi Yustika, *Indonesian Agrarian Law* (Jakarta: Rajawali Press, 2018), 45–67

⁸ Financial Action Task Force (FATF), *Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014)

⁹ M. Yahya Harahap, *Discussion of Problems and Implementation of the Criminal Procedure Code* (Jakarta: Sinar Grafika, 2019), 205–210

3. comparative analysis, which is to compare international standards related to beneficial ownership with Indonesian regulatory conditions to see loopholes that can be exploited by actors.¹⁰

The validity of the data was tested through source triangulation and method triangulation. Source triangulation is done by combining primary, secondary, and tertiary legal materials to ensure that each source complements each other. Meanwhile, the triangulation method is carried out by combining legal document analysis, theoretical studies, and case comparisons, so that the research results do not only rely on one analysis technique. In addition, this study also pays attention to the principles of academic ethics by clearly including all references, not mentioning names in cases that are not officially published, and avoiding interpretations that are not based on legal documents or scientific literature. The limitations of the study also need to be emphasized. Not all nominee practices are accessible as most are drafted through an under-hand agreement or even verbally. Therefore, research relies on publicly available sources. In addition, the dynamics of regulatory changes in the field of land and foreign investment can affect the results of the analysis, so that the interpretation in this study is made according to the regulatory framework that applies at the time of data collection.¹¹

Thus, this juridical-normative research method with qualitative analysis provides a strong foundation to examine the legal position of the nominee agreement, the form of criminal liability for the parties involved, and the evidentiary mechanism in the context of economic crimes that utilize the nominee structure.

¹⁰ OECD, *Beneficial Ownership and Control: A Comparative Study* (Paris: OECD Publishing, 2016)

¹¹ Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Surabaya: Universitas Airlangga Press, 2015), 33–34

3. Analysis or Discussion

3.1. The Position and Characteristics of the Nominee Agreement in the Indonesian Legal System and the Potential for Abuse as an Economic Crime

The nominee agreement is basically a form of legal construction that grows out of practical needs and has no explicit regulation in the Indonesian legal system. In simple terms, a nominee agreement refers to an arrangement in which a person (nominee) is listed as the formal owner of an asset, while substantial control or economic benefits are vested in the other party (beneficial owner).¹² In the context of land, this practice is generally used by Foreign Citizens (WNA) to utilize the name of Indonesian Citizens (WNI) as the holder of formal ownership rights over land that is legally not allowed to be owned by foreigners. The use of this kind of scheme shows that there is a legal gap in land regulations that opens up opportunities for abuse.

1. The Position of the Nominee Agreement in Indonesian Law

In civil law, an agreement is basically valid as long as it fulfills the provisions of Article 1320 of the Civil Code: the existence of an agreement, competence, certain objects, and halal causes. However, the last condition of "*causa yang halal*" is often the reason why the nominee agreement is considered legally flawed when used to circumvent the prohibition of land ownership by foreigners.¹³ If an agreement is made with the aim of disguising the party who actually owns the land, then the agreement can be considered as an agreement that is contrary to the law and therefore null and void.

¹² Yohannes Sogar Simamora, *The Law of Engagement: Coverage and Fundamentalia* (Yogyakarta: Genta Publishing, 2017), 190–192

¹³ R. Subekti, *The Law of Covenants* (Jakarta: Intermedia, 2002), 16–18

The Basic Agrarian Law (UUPA) expressly sets a limit that only Indonesian citizens can own land with Property Rights status.¹⁴ Thus, any construction that attempts to transfer the substance of ownership to foreigners even though it is formally on behalf of Indonesian citizens is contrary to this basic principle. The construction of nominees, whether through an agreement under hand, a power of attorney, or a capital deposit scheme, cannot reduce the imperative provisions of the UUPA. Therefore, its position in Indonesian law is seen as an agreement that is essentially invalid when used to circumvent the nationality rules of land ownership.

The situation becomes more complex when the nominee agreement is not made in formal form, but only in the form of an internal statement or side letter, which is deliberately designed to cover up the involvement of foreigners in the purchase of land. This tendency reinforces the nominee's character as an agreement that "operates below the surface," making it not easy to detect by land registration agencies.¹⁵ This secrecy not only creates legal uncertainty, but also opens up potential criminal problems when used as a method of circumvention of regulations.

2. Characteristics of Nominee Agreements as a Covert Construction

Nominee agreements have several characteristics that distinguish them from civil agreements in general:

a. Duality of ownership

There are formal owners (nominees) and substantial owners (beneficial owners). The relationship between the two is usually not recorded in public documents.¹⁶

¹⁴ Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA)

¹⁵ Budi Harsono, *Indonesian Agrarian Law* (Jakarta: Djambatan, 2013), 245–248

¹⁶ OECD, *Beneficial Ownership and Control: A Comparative Study* (Paris: OECD Publishing, 2016)

b. Presence of additional or confidential agreements

The main agreement submitted to PPAT usually appears legal, but there are additional documents (agreement, guarantee letter, power of attorney) that show who the actual controller is.

c. Similar patterns to asset concealment mechanisms

The nominee structure often resembles techniques used in money laundering or tax evasion because it disguises the identity of the party controlling the assets.¹⁷

d. Professional involvement

Notaries, PPATs, legal consultants, property agents, or intermediaries are sometimes involved, although they do not always know the final intent of the agreement. In some cases, professionals can also enjoy the economic benefits of the nominee scheme.¹⁸

These characters make the nominee agreement a civil agreement that has criminal consequences if used as a means of violating the law. Criminalization is not caused by the form of the agreement, but by the purpose for which the agreement is used.

3. Nominee Agreement as a Potential Economic Crime

In the context of economic criminal law, the nominee agreement can meet the elements of a criminal act when it is deliberately used to obscure the identity of the real owner with the aim of obtaining unlawful economic benefits. Some of the relevant potential crimes include:

¹⁷ FATF, *Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014)

¹⁸ Mirjan Damaška, *Evidence Law Adrift* (Oxford: Clarendon Press, 2012), 140–142

a. Money laundering

Nominee agreements can be used to conceal the source or owner of illegally acquired assets.¹⁹ Money laundering does not require that the perpetrator must forge documents; it is enough if the assets are placed in the name of the other party to cover up who the real owner is.

b. Asset manipulation and concealment

The nominee structure can be used to avoid confiscating assets, escaping assets from legal proceedings, or hiding assets in criminal cases of corruption and fraud.

c. Tax liability avoidance

Foreigners or foreign corporations may use nominees to avoid property tax, income tax, or other reporting obligations.

d. Violation of land rules

When nominees are used to circumvent the UUPA, there is an element of unlawful actions that can be associated with the offense of forgery or fraud if there is a submission of incorrect information to public officials.

e. Abuse of civil structures as a tool for criminal acts

The nominee scheme can be part of a corporate crime, especially when a foreign corporation uses a nominee to secrecy control land and carry out investment activities without proper permits.

From this point of view, the nominee's agreement is in gray territory: civilly it can be considered invalid, but when it is used to conceal the identity of the

¹⁹ Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes

possession, it enters the criminal realm.²⁰ The unlawful element can be seen from the findings of judges in a number of cases that stated that the substance of land ownership is in the hands of foreigners even though the name recorded in the certificate is an Indonesian citizen.

4. Impact on the Legal System and Law Enforcement

The widespread use of nominee agreements can undermine the integrity of Indonesia's land law system. The recorded land data will not reflect the reality on the ground, thus reducing the reliability of the public system that is supposed to protect the legal certainty of the community. On the other hand, the practice of nominees causes agencies such as BPN, PPAT, and law enforcement officials to face obstacles in identifying parties who should really be held accountable.²¹

From the perspective of criminal law enforcement, the existence of a nominee scheme is both a challenge and an opportunity. The challenge is that the proof of beneficial ownership is hidden; Opportunities due to nominee practices can be a gateway to tackling larger crimes such as money laundering, corruption, or smuggling funds across borders. International institutions such as the FATF encourage countries to strengthen oversight of nominee structures, as these structures are often strategic nodes of global economic crimes.²²

Thus, the position of the nominee agreement in Indonesian law is not just a civil issue, but intertwined with issues of legal certainty, protection of national resources, and prevention of economic crimes. When used illegally, the nominee

²⁰ Harkristuti Harkrisnowo, "Legal Construction in the Case of Nominee and Beneficial Ownership," *Journal of Law and Development* 48, no. 3 (2018): 381–389

²¹ BPN RI Report, *National Land Administration Evaluation 2019* (Jakarta: Ministry of ATR/BPN, 2019)

²² FATF, *Guidance on Transparency of Legal Persons* (Paris: FATF/OECD, 2014)

agreement is not only null and void, but can also be a criminal instrument that needs to be dealt with strictly.

3.2 Forms of Criminal Liability for Parties Who Make or Use Nominee Agreements as a Means of Economic Crimes

Criminal liability to the parties involved in the nominee agreement is becoming an increasingly relevant issue as the practice of legal smuggling (evasion of law) in the purchase of land by Foreign Citizens (WNA) increases. When a nominee agreement is used as an instrument to conceal the identity of the true owner, or to facilitate activities that are contrary to the law, then the civil relationship shifts into part of a series of economic crimes.²³ In this context, the criminal liability mechanism is not only directed to the beneficial owner, but can also reach the nominee, the professional parties who participate in facilitating the transaction, and even the corporation that benefits from the practice.

1. Beneficial Owner Responsibility as the Main Actor

Beneficial owner, in this context, foreigners are usually the most dominant subjects in the nominee scheme because they are the ones who control the assets and enjoy the economic benefits. Their involvement generally includes providing funds, drafting additional agreements, and providing instructions to nominees related to land management.²⁴ When these actions are taken to get around the provisions of the UUPA, there is an element of intentionality (*mens rea*) to avoid mandatory legal rules. In the context of economic crimes, beneficial owners can be held accountable based on several provisions, including:

²³ Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies*, (Jakarta: Kencana, 2018), 77

²⁴ *Ibid.*, 81

- a. Article 263 of the Criminal Code if there are false documents or incorrect information given to public officials, for example at the time of name change or the making of PPAT deeds.²⁵
- b. Article 55 of the Criminal Code concerns participation (deelneming), because beneficial owners play the role of parties who order or participate in committing criminal acts.²⁶
- c. Money Laundering Crime Law, especially when land is used to disguise assets or funds of unauthorized origin.²⁷

Thus, beneficial owners are not just passive controllers, but are parties who consciously create legal structures that are contrary to the law, so that they can be held accountable as direct perpetrators of criminal acts.

2. Nominee Accountability as a Assisting or Participating Party

Nominees (WNI) who are willing to lend their names in the purchase of land cannot be excluded from criminal liability. Although they may not have as much economic interest as beneficial owners, their actions make a real contribution to the occurrence of unlawful acts.²⁸ Nominee liability can appear in several forms as follows:

- a. As an Assistant (Medeplichtige) in Article 56 of the Criminal Code Nominees who know the purpose of using their names can be considered aiding the criminal act, especially if they provide identity or important documents to cover up the real owner.²⁹

²⁵ Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2015), 112

²⁶ R. Soesilo, *Criminal Code (KUHP) and Its Commentaries*, (Bogor: Politeia, 2016), 187

²⁷ Leden Marpaung, *The Crime of Money Laundering*, (Jakarta: Sinar Grafika, 2017), 93

²⁸ Andi Hamzah, *Economic Criminal Law*, (Jakarta: Sinar Grafika, 2015), 124

²⁹ *Ibid.*, 129

- b. As a participant (medepleger) If the nominee is actively involved in making false documents, providing false information, or signing deeds that he or she is aware of is used to circumvent the law, then he or she can be considered to have participated in a criminal act.³⁰
- c. Potential liability in land crimes When the nominee declares himself to be the owner of the Property Rights even though he is only a substantively intermediary, then he can be considered as providing misleading information to public officials.

A number of court rulings show that a person who lends a name for unlawful purposes can qualify as a criminal liability.³¹ This confirms that the nominee's involvement cannot be considered a passive act or simply an administrative one.

3. Liability of Professional Parties (Notary, PPAT, Consultant, or Property Agent)

Professionals who assist in the preparation or implementation of the nominee scheme may be held criminally liable if they know that the agreement has an unlawful purpose.³² In some cases, notaries or PPAT are even the first parties to notice the nominee's indication when they find that foreigners provide funds, provide instructions, or request a side agreement that transfers control of the land. The liability of the professional can be in the form of:

- a. The crime of forgery (Article 264 of the Criminal Code) if the professional deliberately inserts false information in the deed.³³

³⁰ Moeljatno, *Principles of Criminal Law*, 117

³¹ Denpasar District Court Decision Number 123/Pid.B/2017/PN.Dps

³² Habib Adjie, *Indonesian Notary Law*, (Bandung: Refika Aditama, 2018), 54.

³³ R. Soesilo, *Criminal Code and Its Commentaries*, 204

- b. Violation of the Notary Position Law if the notary acts not independently or knows that the deed made is intended to violate the law.³⁴
- c. Corporate liability if the professional party is in a business entity that benefits from the nominee scheme.

The intentionality aspect (*dolus*) is very important in assessing whether professionals can be held criminally liable. If it is proven that the professional knows the purpose of using the nominee but still facilitates the agreement, then the criminal subjective element is considered fulfilled.

4. Corporate Liability

Corporations can also be subject to criminal liability if the nominee scheme is used as part of the company's strategy to control land covertly.³⁵ For example, a foreign company that does not have an investment license but buys land through a nominee for business activities. Based on the doctrine of corporate liability, acts committed by management or employees can be considered as corporate acts if: 1) they are carried out within the scope of corporate activities; 2) benefit the corporation; 3) or based on the company's internal policies.³⁶ In the context of nominees, corporations can be held accountable under the TPPU Law, the Corruption Law, and even the Investment Law if it is proven that the scheme is used to avoid permits, investment requirements, or restrictions on foreign ownership.

5. Accountability for Acts Done Through Civil Agreements

³⁴ Habib Adjie, *Indonesian Notary Law*, (Bandung: Refika Aditama, 2018), 73

³⁵ Eddy O.S. Hiariej, *Principles of Criminal Law*, (Yogyakarta: Cahaya Atma Pustaka, 2016), 264

³⁶ *Ibid.*, 269

The classic formulation in criminal law states that *a civil agreement cannot remove the unlawful nature of a criminal act*.³⁷ Thus, the fact that the nominee agreement is made on the basis of the agreement of the parties does not eliminate criminal liability when the agreement is used to obscure land ownership by foreigners. Judges in several cases emphasized that the nominee agreement cannot be used as a justification reason, because the purpose of its formation is to avoid mandatory legal provisions.³⁸ Therefore, when the nominee agreement becomes an instrument of a criminal act, all parties involved can be held accountable proportionately according to the level of their role.

3.2 Evidentiary Process in Criminal Cases Involving Nominee Agreements as Civil Agreements Made in Concealment

Proof in criminal cases involving nominee agreements has no small challenges, especially because of the nature of the agreement itself which is generally not made overtly. Nominee arrangements are usually constructed through an under-hand agreement, a side letter, or through a series of supporting documents that are deliberately not registered with a public institution.³⁹ This condition makes law enforcement officials have to work more carefully in dismantling the asset control structure hidden behind ownership formalities. In contrast to conventional criminal cases, proving violations through nominees often requires the ability to identify *beneficial ownership* that is not administratively recorded.⁴⁰

1. Challenges of Proving Beneficial Ownership

Most cases involving nominees are rooted in attempts to disguise the relationship between the formal owner and the actual owner. This causes *beneficial ownership* to be proven not only from written documents, but also through the

³⁷ Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies*, (Jakarta: Kencana, 2018), 85.

³⁸ Supreme Court Decision Number 601 K/Pid.Sus/2014

³⁹ Andi Hamzah, *Economic Criminal Law*, (Jakarta: Sinar Grafika, 2015), 142

⁴⁰ *Ibid.*, 148

pattern of relationships, fund flows, and behavior of the parties.⁴¹ Some common obstacles to proof include:

- a. There is no official document that explicitly mentions beneficial owners.
- b. Secret agreements that only circulate internally.
- c. Evidence is in the form of personal communications, such as electronic messages, which are often difficult to obtain.⁴²

Because the nominee's relationship is not registered with a public institution such as BPN, law enforcement officials must build arguments through indirect evidence or *circumstantial evidence*. This requires a broader evidentiary approach than the proof of ordinary civil agreements.

2. The Role of Documentary and Digital Evidence

Documentary evidence remains a key element in dismantling the nominee agreement. Documents such as payment receipts, instructions for remittances, side letters, email correspondence between foreigners and nominees, and communication recordings, can be strong indicators of who actually controls the land.⁴³ In many cases, beneficial owners often leave digital footprints that are not easy to erase, such as:

- a. Bank transfer order from a foreigner's account
- b. Proof of tax payment by the beneficial owner
- c. Evidence of the conversation showing the giving of instructions to the nominee.⁴⁴

⁴¹ Leden Marpaung, *The Crime of Money Laundering*, (Jakarta: Sinar Grafika, 2017), 101

⁴² *Ibid.*, 103

⁴³ Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies*, (Jakarta: Kencana, 2018), 89

⁴⁴ *Ibid.*, 93

The ITE Law provides a strong legal basis for investigators to use electronic evidence as legitimate evidence in criminal cases, thus allowing the reconstruction of the covert relationship between the parties involved.

3. Proof of Flow of Funds and Behavioral Economics

In addition to digital evidence, proof of the flow of funds (*money trail*) is very important. In many cases, land purchased on behalf of the nominee is fully funded by the beneficial owner, so such transactional structures can be a strong clue in proof.⁴⁵ Proof through financial analysis can show:

- a. Who actually bears the transaction fees
- b. Who organizes renovations or construction on the ground
- c. Which party enjoys the proceeds of the lease or other economic benefits.⁴⁶

This approach is commonly used in money laundering investigations, where the flow of funds is used to uncover the actors behind the formal structure. This model of proof can also be applied to nominee cases because the two share a similar pattern of disguising ownership.

4. The Power of Witness and Expert Testimony

Witness statements, especially witnesses who were previously involved or knew the process of forming a nominee agreement, can be important evidence. For example: PPAT witnesses who are aware of the involvement of foreigners; a property agent who knows the true identity of the buyer; personal secretary or legal staff of the company who prepares additional documents.⁴⁷

⁴⁵ Mardjono Reksodiputro, *Criminalization and Law Enforcement*, (Jakarta: Center for Criminology Studies UI, 2016), 57

⁴⁶ *Ibid.*, 61

⁴⁷ Habib Adjie, *Indonesian Notary Law*, (Bandung: Refika Aditama, 2018), 79

In addition, expert testimony in the fields of land, economic criminal law, and forensic accounting is often needed to explain the structure of the relationship between the nominee and the beneficial owner. Expert testimony can assist judges in understanding the broader context, including how nominee practices are used to circumvent the law.⁴⁸

5. Analysis of the Unlawful Elements (Wederrechtelijkheid)

In criminal cases involving nominee agreements, the most crucial element is proof that there is *mens rea* to hide the true owner with the aim of circumventing legal provisions.⁴⁹ Investigators must be able to show that the parties are aware of the prohibition on land ownership by foreigners, but still choose to use the nominee structure to deceive public officials. Proof of unlawful elements can be found through:

- a. Side letters that say that the land "substantially belongs to foreigners", even though it is recorded in the name of Indonesian citizens
- b. Confession of suspects or witnesses about the intention of drafting nominees
- c. Repeated actions that indicate the intention to control the land permanently.⁵⁰

The unearthing of illegal elements is very important because the success of proving these elements will open up the possibility of ensnaring the parties with various delicacies, including forgery, fraud, or money laundering.

6. Forms of Indirect Evidence and Behavior Patterns

In many cases, the nominee's proof cannot rely on a single direct piece of evidence, but instead requires a construction constructed from a combination of

⁴⁸ Eddy O.S. Hiariej, *Theory and Principles of Criminal Law*, (Yogyakarta: Cahaya Atma Pustaka, 2016), 274

⁴⁹ Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2015), 123

⁵⁰ Supreme Court Decision Number 601 K/Pid.Sus/2014

several indirect evidence.⁵¹ Consistent behavior patterns can be a strong indicator that the civil agreement was actually made for unlawful purposes, for example:

- a. The nominee has never visited the land or managed the land
- b. Beneficial owner who makes decisions related to land
- c. Use of funds that are entirely derived from foreigners
- d. The nominee receives an "annual compensation" in exchange for the use of his/her Name.⁵²

This approach is in line with the principle of criminal proof which recognizes that an integrated set of indirect evidence can result in conviction *beyond reasonable doubt*.

7. Judge's Assessment of the Nominee Agreement

Judges often judge nominee agreements as agreements that are contrary to public order and the law, so the agreement is declared to have no binding force.⁵³ In the criminal context, the judge then uses the invalidity of the agreement as a basis for assessing whether there is malicious intent accompanying the actions of the parties. Jurisprudence shows that although the nominee agreement is a civil relationship, that fact of its formation can be used as a tool to prove the existence of an unlawful will.⁵⁴ Thus, the civil relationship is actually proof that the parties consciously created a scheme that violates Indonesian land provisions.

⁵¹ R. Soesilo, *Criminal Code and Its Commentaries*, (Bogor: Politeia, 2016), 211

⁵² *Ibid.*, 213

⁵³ Denpasar District Court Decision Number 123/Pid.B/2017/PN.Dps

⁵⁴ Supreme Court Decision Number 175 K/Pid/2012

4. Conclusion

1. Based on the results of the analysis of the practice of nominee agreements in the ownership of Property Rights land by Foreign Nationals (WNA), it can be concluded that nominee agreements have very significant implications in the perspective of economic criminal law. First, in terms of its position and characteristics, the nominee agreement is essentially a legal engineering that grows outside Indonesia's formal regulatory system. Although constructed using a civil mechanism, this type of agreement often contains substances that are contrary to the mandatory rules, especially the prohibition of land ownership for foreigners as stipulated in the UUPA. The nominee structure that features the duality of owners—formal owners and substantive owners—suggests that the agreement is not just a civil relationship, but a potential means of smuggling the law and disguising the control of assets by prohibited parties.
2. Second, regarding criminal liability, all parties involved in the nominee scheme can be held accountable according to their respective roles. The beneficial owner as the main controller usually occupies the position of the main actor, while the nominee can be held accountable as an assistant or participant based on Article 55 and Article 56 of the Criminal Code. Professional parties such as notaries, PPATs, or consultants are also not exempt from legal obligations if they know or should suspect that the agreement was made for unlawful purposes. Even under certain conditions, corporations that benefit from the nominee structure may be subject to corporate criminal liability.
3. Third, in the aspect of proof, criminal cases involving nominee agreements require a more complex evidentiary approach. This is due to the nature of the agreement which is not designed to be published so that beneficial ownership must be proven through transaction traces, fund flows, supporting documents, digital evidence, behavior patterns, as well as witness and expert statements. Judges generally consider nominee

agreements to be contrary to public order and therefore do not have the legitimacy to negate criminal liability. Overall, the nominee agreement not only raises problems in the field of civil law, but also opens up space for violations in the criminal economic realm. When this scheme is used to circumvent the law, the agreement turns into an instrument of criminal acts, so that all parties who play a role in its formation can be held accountable. Thus, nominee agreements are essentially a legal phenomenon that must be seriously confronted through regulatory reforms, increased supervision, and strengthening of law enforcement mechanisms.

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