


Legality of Share Ownership Based on Nominee Agreements in Indonesian Law

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Article Info	ABSTRACT
<p>Keywords: Nominee Agreement, Foreign Investment, Legal Certainty</p>	<p>This study aims to examine the legal implications and validity of nominee arrangements in the ownership structure of limited liability companies in Indonesia, particularly in the context of restrictions on foreign investment. The research seeks to analyze the alignment between the practice of nominee shareholding and the principles of legality, justice, and legal certainty as upheld in Indonesian corporate and investment law. Employing a normative juridical approach, the study focuses on written legal norms, statutory regulations, and doctrinal analysis within the national legal system. The research data were obtained from secondary legal materials, including legislation, judicial decisions, scholarly writings, and relevant literature collected through systematic document review and library research. Data were analyzed using deductive reasoning and a descriptive-analytical technique to assess the coherence and consistency among the applicable legal norms. The findings reveal that nominee practices, although often justified under the principle of contractual freedom, in substance contradict the legal prohibition on indirect foreign ownership as stipulated in investment law. Such arrangements undermine the doctrine of good faith, distort the principle of limited liability, and create ambiguity in shareholder accountability. Consequently, nominee agreements are deemed legally flawed and contrary to public order because their intent conceals actual ownership and circumvents statutory limitations. The study concludes that reformulating corporate and investment regulations is essential to ensure transparency, uphold justice, and reinforce the rule of law in Indonesia's investment environment.</p>
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INTRODUCTION

Based on legal practice and the business world, this has ultimately given rise to numerous theories about legal entities over time. In Dutch literature, the term "legal entity" is known as "rechtsperson," and in Common Law literature, it is often referred to as "legal entity," "juristic person," or "artificial person." (Sigit Teteki Triwis, I Ketut Rai Setiabudhi, & I Gusti Ketut Ariawan, 2016)

According to Augustinus Simanjuntak, a Limited Liability Company (PT) is a legal entity whose capital is stated in the articles of association. This indicates that a PT is formed based on an officially registered pooling of capital, thus separating the company's assets from the

personal assets of its founders. This separation of assets is the main characteristic of a legal entity and distinguishes it from non-legal entities such as civil partnerships, firms, and commanditaire vennootschap (CV). Theoretically, a legal entity is considered a legal subject with its own assets, consisting of a group of individuals with a common goal, and its existence is recognized after being registered and approved by the Ministry of Law and Human Rights of the Republic of Indonesia. In Indonesia, legal entities include Limited Liability Companies, Cooperatives, and Foundations. Although they have different characteristics, they are fundamentally based on the principle of separation of assets and collective goals (Prasetyo, 2022).

A Limited Liability Company is a legal entity established based on an agreement to conduct activities with authorized capital entirely divided into shares (Riani Baharudin, Abubakar, & Handayani, 2024). A Legal Entity, in this case a Limited Liability Company, relies not only on financial capabilities and business strategy but also on its contribution to supporting the realization of economic prosperity for the wider community. Equitable economic development can only be achieved if business activities are conducted based on the principles of economic democracy, which emphasizes togetherness, efficiency, sustainability, and social justice, while maintaining a balance between progress and equity. Within this framework, ideally, a business entity should not solely pursue profit, but also play a role in preserving the environment, strengthening economic independence, and supporting sustainable national development. Business entities that are able to survive amidst changing times are crucial pillars for national economic growth. Their existence not only creates jobs in Indonesia and adds value to society, but also strengthens the country's economic resilience in facing global challenges, such as the industrial revolution, market liberalization, and the rapid advancement of information technology.

In the context of national economic development, the Limited Liability Company (PT) holds a highly strategic position as a capital-based business entity based on the principle of family. PTs are a crucial instrument in driving the economy because their system allows for the division of responsibilities, capital accumulation, and more professional management. As a form of legal entity, the establishment of a PT cannot be done haphazardly; it must follow established legal procedures to obtain legal entity status. This procedure provides legal certainty for founders and shareholders, while strengthening the legitimacy of PTs in conducting business activities legally in the eyes of the state (Rita Nurnaningsih & Dadin Solihin, 2020). With a clear legal basis and an orderly establishment mechanism, PTs are expected to become a major force in spurring national economic growth, expanding business opportunities, and creating a healthy and competitive investment climate amidst increasingly competitive economic globalization.

In Indonesia, the legal framework for Limited Liability Companies (PTs) is expressly regulated in Law Number 40 of 2007 concerning Limited Liability Companies, which emphasizes that a company's activities should not only focus on profit but also have social responsibility while remaining grounded in sound economic principles. According to Article 1, point (1) of the law, the establishment of a PT must be based on an agreement, so it is legally

mandatory to involve at least two individuals as shareholders, as a person cannot enter into an agreement with themselves.

However, this provision has given rise to an interesting phenomenon in practice: the emergence of nominee agreements among the public. In this practice, *de jure* shares are registered in the name of a nominee party, but *de facto* ownership actually rests with the beneficiary, the actual capital owner. This situation often raises legal issues, particularly regarding the legitimacy and legal protection of the actual investors, as their names are not administratively registered as legitimate shareholders in the company's documents (Pahlevi, Prananingtyas, & Lestari, 2017).

In an effort to maintain control over company management, many foreign investors employ various strategies to protect their interests, one of which is the use of irrevocable powers of attorney. This practice creates an imbalance between formal ownership and actual control of shares. Legally, the majority of a company's shares are registered in the name of domestic investors, but substantial control rests with foreign investors. This pattern is widely known as an "Ali Baba Company," which in the past was a common strategy to circumvent foreign ownership restrictions in Indonesia. This policy emerged as a government response to maintain national economic stability while protecting domestic interests from excessive foreign capital domination.

Recognizing this phenomenon, the government then established strict provisions in Law Number 25 of 2007 concerning Investment (UUPM), which, in Article 33 paragraph (1), prohibits agreements or statements of share ownership in the name of another party. This provision aims to prevent the practice of disguising share ownership by foreign parties and maintain order in the company ownership structure in Indonesia. The strong encouragement of foreign investors to invest in Indonesia, in part due to its natural resource potential and competitive labor costs, is often hampered by restrictions on business sectors included in the negative investment list issued by the Investment Coordinating Board (BKPM) (Mutiarah Ramadina & Pieter E. Latumeten, 2023). These restrictions prevent foreign investors from fully controlling the running of the company, so in practice, some parties still use nominee ownership mechanisms as an alternative way to maintain managerial control within the company.

METHOD

This research uses a normative juridical approach, which focuses on the study of legal norms written in laws and regulations as well as the legal principles applicable in society. This approach aims to analyze the validity, implementation, and influence of legal norms within the national legal system. According to Mertokusumo (2017), the normative juridical approach is the primary approach in legal studies because it explores the sources of law contained in laws and regulations and the various norms contained therein. Therefore, the object of study in this research is the written rules and normative systems applicable in the relevant legal domain.

The scope of this research focuses more on analyzing the consistency, synchronization, and potential disharmony among the legal norms within the research topic. This aligns with

Hart's (1997) opinion, which states that one of the primary objectives of normative studies is to examine how these norms are harmoniously applied within the existing legal system. This analysis also aims to identify potential inconsistencies or conflicts between various laws and regulations that could hinder the achievement of justice. The data used in this study is secondary data, in the form of library materials including regulations, court decisions, legal literature, and scientific journals. These materials were collected through document studies and literature reviews obtained from digital libraries and official legal portals. Sudikno Mertokusumo (2014) explains that in normative legal research, secondary data is crucial because it contains legal texts that can be analyzed in depth to understand various existing norms. This study, due to its normative nature, did not involve a population or sample of human informants; instead, it focused on legal materials as the object of study.

The primary tools used in this research were library research and literature analysis. According to Kornelius Benuf & Muhamad Azhar (2019), in a normative approach, data collection techniques involve systematically searching legal documents and literature to ensure the quality and completeness of the sources used. This process also focuses on identifying and collecting legal norms relevant to the research topic.

Data analysis was conducted using deductive reasoning and a descriptive-analytical approach. According to Patton (2002), a deductive approach allows researchers to draw general conclusions from existing principles or rules, while a descriptive-analytical analysis aims to describe and explain the relationships between various existing norms. In this case, the analysis is conducted to assess the consistency between norms within a legal system, using the criterion of coherent truth. Kornelius Benuf & Muhamad Azhar (2019) suggest that coherent truth is used to evaluate how one norm supports and does not contradict other norms within the existing legal system. Thus, this research will provide a clear picture of how existing legal norms are applied in practice and whether there are any inconsistencies or conflicts that must be resolved to create a more harmonious legal system.

RESULTS AND DISCUSSION

The practice of nominees in Indonesia is a violation of applicable law. The term has two primary meanings. First, a nominee can refer to a person nominated to hold a certain position or receive an award. Second, in the context of business law, a nominee refers to an individual or party acting on behalf of another party to represent their interests in a legal relationship. Common characteristics of nominee practices include two forms of ownership: one legal and one indirect; the registration of the nominee as a shareholder in the company's official register; an agreement between the nominee and the beneficiary as the basis for the legal relationship; and the receipt of compensation by the nominee for the use of their identity or name in the activity.

In Indonesia, nominee practices can arise in various forms of agreements, essentially aimed at transferring ownership or providing certain benefits to the party who actually owns the capital. In this relationship, the nominee is merely the party whose name is used for administrative purposes, while the beneficiary is the actual owner of the shares or assets in question. In the context of share ownership, a nominee is officially registered as a shareholder,

while the actual owner's name is not listed in the company's shareholder register. (Agung & Saras, 2023) This pattern is often used by foreign investors to circumvent share ownership restrictions stipulated in Indonesian law, where investment regulations strictly limit the percentage of shares that can be owned by foreign parties in certain sectors.

The practice of nominee share ownership is fundamentally rooted in a legal relationship formed through a trust agreement between two parties: the nominee as the formal name holder and the beneficiary as the actual beneficial owner or party who actually controls the share ownership. From a civil law perspective, this legal relationship essentially fulfills the elements of an obligation as stipulated in Articles 1313 and 1233 of the Civil Code, which state that every obligation can arise from an agreement or by law. Thus, the relationship between the two parties appears legitimate as an agreement that gives rise to legal rights and obligations. However, in practice, these relationships are often built on personal trust without strong legal force, making them prone to ownership disputes when one party reneges on the initial agreement.

However, beneath their formal form, the substance of nominee agreements often conflicts with positive legal provisions prohibiting the use of another party's name to disguise true ownership. In this context, nominee agreements can be considered formally valid, but substantively void, because the purpose and cause of the agreement contradict the principle of lawful cause as stipulated in Articles 1335 and 1337 of the Civil Code. In other words, while seemingly legal on paper, these types of agreements lack moral and legal legitimacy due to their potential to mislead the legal system, which upholds transparency and legal certainty in share ownership (Richard C. Adam, 2020).

Furthermore, the practice of nominee share ownership in Limited Liability Companies demonstrates a shift in meaning from the principle of freedom of contract (*partijautonomie*), which should be the basis for parties to freely enter into agreements, to a means of circumventing restrictions on share ownership by foreign parties. However, the principle of freedom of contract is not absolute freedom, but rather a freedom limited by the obligation to act in good faith, propriety, and morality, as stipulated in Article 1338 paragraph (3) and Article 1339 of the Civil Code.

If an agreement is made with the aim of disguising actual share ownership or evading legal prohibitions as stipulated in Law Number 25 of 2007 concerning Investment, then the agreement no longer reflects the spirit of freedom of contract but instead constitutes a deviation or misuse of contractual freedom. Although the nominee agreement appears valid on the surface because it fulfills the elements of an obligation, its substance contradicts the principle of lawful cause as stipulated in Articles 1335 and 1337 of the Civil Code. Thus, the nominee practice appears formally valid but is materially void. This situation demonstrates the need to strengthen understanding of the principle of freedom of contract so that it remains implemented honestly, fairly, and in line with national legal interests in maintaining fairness and transparency in investment in Indonesia (Darmawan, Enggarekso Diar, & Panjaitan, 2024).

From a corporate law perspective, the position of nominee shareholders is essentially merely administrative and does not represent the reality of actual capital ownership. While

the name of the nominee is officially listed in the shareholder register and the company's deed of incorporation, substantive control, including the right to make strategic decisions and direct company policy, remains with the beneficiary as the actual owner of the capital. This imbalance raises serious issues in the application of the principles of legal certainty and corporate accountability, as those legally registered as shareholders do not necessarily have actual control and responsibility for the company's activities.

This situation contradicts the fundamental principle of Limited Liability Company law, which stipulates that each shareholder is only liable to the extent of their shares. In nominee practice, this principle is blurred due to the separation between formal ownership and substantial control. As a result, legal risks arise when disputes, company losses, or unlawful acts occur, as it is difficult to determine who should bear actual responsibility. Therefore, the existence of nominees not only undermines the legitimate ownership structure but also has the potential to undermine the integrity of the corporate legal system and undermine trust in accountability mechanisms in the Indonesian business world. (Abdul, Alkatiri, Hakim, & Fitriani, 2024)

Furthermore, the existence of nominee agreements also has the potential to create conflicts between civil law and public law. From a civil perspective, the nominee-beneficiary relationship can be considered a valid form of contract because it is based on an agreement. However, from a public perspective, such agreements conflict with the provisions of *lex specialis* in the investment sector, which prohibits indirect ownership of shares by foreign parties. In this context, the principle of *lex specialis derogat legi generali* becomes relevant, as special law (the Investment Law) overrides general provisions (the Civil Code). Therefore, the legality of nominee agreements must be tested based on their purpose and legal consequences, not simply on the formal form of the parties' agreement.

Furthermore, from a legal doctrine perspective, nominee agreements do not fulfill the principle of objective good faith, because their primary purpose is to conceal the true facts of ownership. According to civil law principles, every agreement must be made with honesty and moral responsibility towards the other party. In nominee practices, beneficiaries often use the identity of another party solely to manipulate the ownership structure, which ultimately creates an imbalance in legal relations and has the potential to harm third parties, including the state (Wicaksono, 2016). In other words, this type of relationship can be categorized as a hidden unlawful act (fraud of law), because although it appears formally legitimate, its ultimate goal violates public order and the principle of justice.

In the long term, the practice of nominee share ownership has the potential to weaken the foundation of Indonesia's investment law system, creating legal uncertainty regarding the true ownership of a company. This ambiguity not only obscures legal responsibility and managerial accountability, but also has implications for oversight of foreign capital and threatens legal protection for domestic investors. In such a situation, public trust in the integrity of the corporate system can be eroded, as the pseudo-ownership structure opens up room for manipulation and legal abuse.

Therefore, in the context of developing equitable national law, there is a need for firm and comprehensive regulatory enforcement—not only prohibiting nominee share ownership

but also providing effective legal mechanisms to identify, verify, and prosecute any form of disguised share ownership. Such legal reform should be directed at strengthening the principles of legal certainty, justice, and expediency, so that Indonesia's corporate legal system can thrive with transparency, integrity, and competitiveness aligned with the principles of good corporate governance (Hendrik Tanjung, 2015).

CONCLUSION

Based on the research and discussion, it can be concluded that the practice of nominee agreements in the ownership of shares in Limited Liability Companies in Indonesia violates the basic principles of investment law, which uphold transparency and legal certainty. This practice arises as a result of foreign parties' attempts to circumvent share ownership restrictions established by law, thus creating a dualism between formal and actual ownership. Under civil law, the relationship between nominees and beneficiaries appears to fulfill the elements of an agreement, but materially violates the principle of lawful cause and good faith as stipulated in the Civil Code. Furthermore, this practice also violates Law Number 25 of 2007 concerning Investment, which expressly prohibits the ownership of shares in the name of another party, as it is deemed to violate provisions regarding restrictions on foreign ownership. From a corporate law perspective, the existence of nominee agreements raises serious issues regarding legal certainty and shareholder accountability, as the officially registered party may not necessarily be the actual owner. This ambiguity can pose legal risks to the state, domestic investors, and third parties transacting with the company. Therefore, the practice of nominees should be declared null and void because its purpose contradicts the principles of honesty and public order. To strengthen the integrity of the national investment legal system, regulatory reform and more effective oversight mechanisms are needed to ensure that all forms of capital ownership in Indonesia operate according to the principles of fairness, transparency, and legal certainty, while supporting sustainable national economic development.

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