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# The Legal Standing of Land Nominee Agreements from the Perspective of Lawful Cause

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Original Article

## **Abstract**

The practice of borrowed-name agreements in land transactions in Indonesia raises significant concerns regarding contractual validity and legal certainty, particularly when such arrangements are employed to circumvent statutory prohibitions on land ownership. The core issue lies in the discrepancy between the formal structure of the agreement and its substantive purpose, which contravenes agrarian law. This study examines the legal implications of failing to satisfy the requirement of a lawful cause in borrowed-name agreements, formulates a juridical-conceptual framework for assessing their validity through an integration of the doctrine of lawful cause and mandatory principles of agrarian law, and delineates the limits of contractual freedom in land ownership. Employing normative legal research methods, including conceptual analysis, statutory interpretation, and case law review, the study finds that borrowed-name agreements are legally invalid when their purpose is to evade agrarian restrictions, notwithstanding their formal compliance with contractual requirements. The study concludes that the doctrine of lawful cause remains a crucial evaluative instrument for safeguarding the balance between freedom of contract, legal certainty, justice, and public order within the national legal system.

**Keywords:** *Borrowed-Name Agreement, Freedom of Contract, Agrarian Law; Lawful Cause*

## **Abstrak**

Perjanjian pinjam nama dalam jual beli tanah di Indonesia menimbulkan persoalan serius terkait keabsahan perjanjian dan kepastian hukum, terutama ketika digunakan untuk menyiasati larangan hukum penguasaan hak atas tanah. Permasalahan utama muncul akibat ketidaksesuaian antara bentuk perjanjian formal dengan tujuan substantif yang bertentangan dengan hukum agraria. Penelitian ini bertujuan untuk menganalisis implikasi hukum tidak terpenuhinya unsur kausa yang sah dalam perjanjian pinjam nama, merumuskan pendekatan yuridis-konseptual untuk menilai keabsahannya melalui integrasi teori kausa yang halal dan prinsip wajib hukum agraria, serta mengidentifikasi batas kebebasan berkontrak dalam penguasaan hak atas tanah. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, perundang-undangan, dan analisis putusan pengadilan. Hasil penelitian menunjukkan bahwa perjanjian pinjam nama tidak sah apabila bertujuan menyelundupi larangan agraria, meskipun secara formal memenuhi syarat perjanjian. Kesimpulannya, doktrin kausa yang sah tetap relevan sebagai instrumen evaluatif untuk menjaga keseimbangan antara kebebasan berkontrak, kepastian hukum, keadilan, dan ketertiban umum dalam sistem hukum nasional.

**Kata kunci:** *Perjanjian Pinjam Nama, Kebebasan Berkontrak, Agraria, Kausa Yang Halal*

## 1. INTRODUCTION

The evolution of legal practices in land transactions in Indonesia illustrates the increasing complexity of contractual arrangements designed to accommodate the economic interests of the parties, particularly in the context of heightened capital mobility and the growing presence of foreign nationals. One phenomenon that has generated sustained legal debate is the use of nominee agreements as a mechanism for the indirect transfer or control of land by parties who are normatively restricted under statutory regulations. This practice reflects not only the dynamics of economic and investment demands but also tests the fundamental boundaries between contractual freedom and mandatory legal norms within the national agrarian law framework.

Law Number 5 of 1960 on Basic Agrarian Regulations (UUPA) expressly limits land ownership rights to Indonesian citizens. This limitation embodies the principles of agrarian nationalism and the social function of land, positioning land not merely as an economic asset but as a strategic resource closely linked to sovereignty and the public interest. In practice, however, these statutory restrictions are frequently confronted by privately constructed agreements that, while formally governed by civil law, substantively risk undermining the regulatory objectives of agrarian law.

Nominee agreements are particularly problematic because they often appear to satisfy the formal requirements of a valid contract under Article 1320 of the Civil Code, including mutual consent, legal capacity, a definite object, and a permissible form. Beneath this formal compliance, however, lies the concealed objective of beneficial ownership by a legally unauthorized party, raising fundamental questions regarding the fulfillment of the lawful cause requirement as provided in Articles 1320 and 1337 of the Civil Code. This condition places nominee agreements in a normative gray area, situated between formal validity and substantive illegality.

The theory of cause in contract law has gained renewed relevance. Contemporary developments in civil law conceptualize cause not merely as the formal reason for an agreement, but as a legal objective that must conform to statutory norms, public order, and the public interest.<sup>1</sup> The distinction between objective and subjective cause enables a more nuanced assessment of whether a contract that is structurally valid nevertheless conflicts with the regulatory purposes protected by agrarian law. Despite its significance, the systematic integration of modern cause theory with the agrarian legal regime remains underexplored in Indonesian legal scholarship.

The legal positioning of nominee arrangements also varies across different fields of law. In certain sectors, such as capital markets and investment, nominee structures are regulated and conditionally recognized within a defined legal framework. In

<sup>1</sup> Fini Annisa Sudhuri, "Praktik Penguasaan Tanah Oleh WNA Melalui Perjanjian Pinjam Nama (Nominee) Dalam Sistem Hukum Di Indonesia," *Jurnal Hukum Lex Generalis* 5, no. 9 (2025): 1–9, <https://doi.org/10.56370/jhlg.v5i9.826>.

contrast, in the context of land law, the absence of clear conceptual boundaries between permissible and prohibited nominee arrangements has generated normative ambiguity and legal uncertainty.<sup>2</sup> This uncertainty affects not only contracting parties but also notaries, law enforcement authorities, and policymakers, all of whom must balance economic considerations against the protection of agrarian sovereignty.<sup>3</sup>

Nominee agreements in land transactions have long attracted scholarly attention in Indonesian civil and agrarian law, particularly because they are frequently used to conceal beneficial ownership by legally restricted parties, especially foreign nationals. Previous studies consistently demonstrate that although nominee agreements often satisfy the formal contractual requirements set forth in Article 1320 of the Civil Code, they raise substantial substantive concerns relating to the element of lawful cause and compliance with mandatory agrarian norms.

Daniah R. A. and Noer identify cause as a central determinant in assessing the validity of nominee agreements. Employing a normative juridical approach combined with case analysis, their study concludes that name-borrowing arrangements intended to conceal land ownership by foreign nationals constitute an unlawful cause that contravenes statutory law, public order, and morality. This conclusion is consistent with classical contract doctrine, which conceptualizes cause not as a mere formal requirement but as a substantive legal objective that must conform to applicable legal norms. Nevertheless, the analysis remains confined to a normative determination of nullity by operation of law, without further engagement with the conceptual distinction between objective and subjective cause in the context of complex contractual structures.<sup>4</sup>

A comparable perspective is advanced by Clara et al., who emphasize legal certainty in relation to nominee agreements under Article 21 of the Basic Agrarian Law. Their study characterizes nominee arrangements as a form of legal evasion that fails to satisfy the objective requirements of a valid contract under the Civil Code, thereby generating legal defects and a heightened risk of future disputes. Despite its contribution to clarifying the implications of nominee agreements for legal certainty, the role of *causa* is treated implicitly and is not situated within the broader development of modern cause theory or evolving judicial interpretation.<sup>5</sup>

<sup>2</sup> Indah Esti Cahyani, Aryani Witasari, and Muhammad Farid Amirullah, "Juridical Review of Nominee Agreement in Land of Tenure Property Rights Under The Book of Civil Law And Agraria," *Jurnal Akta* 5, no. 2 (2018): 441–46, <https://dx.doi.org/10.30659/akta.v5i2.3100>.

<sup>3</sup> Andasmara Rizky Pranata, "Akibat Hukum Akta Penegasan Notaris Yang Memuat Perjanjian Pinjam Nama Benda Bergerak: Studi Putusan Nomor 5/Pdt.G/2022/PN Stb Jo. Putusan 612/PDT/2022/PT MDN," *Indonesian Notary* 17, no. 3 (2025): 384–404, <https://doi.org/10.21143/notary.vol7.no3.384>.

<sup>4</sup> Novie Daniah R. A and Zakiah Noer, "Causa Halal Dalam Perjanjian Pinjam Nama (Nominee) Tentang Kepemilikan Hak Atas Tanah Oleh Warga Negara Asing," *Duta Hukum* 2, no. 2 (2025): 192–200, <https://journal.univgresik.ac.id/index.php/dutahukum/article/view/616>.

<sup>5</sup> Anggi Dwita Clara et al., "Akibat Hukum Perjanjian Pinjam Nama Atas Kepemilikan Tanah WNA Dalam Perspektif Hukum Perdata Internasional," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 6 (2024): 222–30, <https://ojs.daarulhuda.or.id/index.php/Socius/article/view/168>.

Legawa and Yanti extend the discussion by situating nominee agreements within the tension between global investment interests and the principle of agrarian nationalism. They explicitly classify nominee agreements as void *ab initio* on the grounds that they constitute *fraus legis*. A key contribution of this study lies in its articulation of the legal consequences for the parties, including exposure to criminal liability and the absence of legal protection for foreign beneficial owners. However, the analysis adopts a categorical approach that treats all nominee agreements as inherently invalid, without differentiating among contractual variations or the specific intentions of the parties.<sup>6</sup>

Other studies, including Ansa et al., conceptualize nominee agreements as anonymous contractual arrangements formed under the principle of freedom of contract but rendered unenforceable due to the presence of a false or illegitimate cause. These works underscore the normative tension between Articles 1320 and 1338 of the Civil Code and the widespread practice of nominee agreements. Nonetheless, the analytical framework remains largely dichotomous—valid versus invalid—without probing the conceptual boundary between deliberate legal circumvention and atypical, yet potentially legitimate, contractual structures.<sup>7</sup>

Pertiwi et al. further enrich the literature by examining the use of absolute powers of attorney in nominee arrangements as instruments for disguising land ownership. Referring to the Minister of Home Affairs Instruction No. 14 of 1982, the study asserts that such practices constitute clear violations of the law. However, the analysis remains predominantly normative and prescriptive, and does not integrate its findings into the broader theoretical debate on *causa* as an evaluative mechanism for assessing the legitimacy of layered contractual arrangements.<sup>8</sup>

An empirical dimension is introduced by Saleh, who identifies social, economic, and institutional factors—including the involvement of unethical notaries and weak law enforcement—as drivers of the persistence of nominee agreements. The study is notable for its integration of positive law and Islamic legal perspectives, both of which reject nominee arrangements due to their illegitimate objectives. Nevertheless, the focus is directed more toward causal factors and practical implications than toward the conceptual assessment of contractual validity.<sup>9</sup>

<sup>6</sup> I Made Angga Legawa and Anak Agung Istri Eka Krisna Yanti, “Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Perdata Indonesia,” *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 2 (2025): 304–314, <https://doi.org/10.62383/humif.v2i2.1579>.

<sup>7</sup> Ferdi Ansa et al., “Keabsahan Perjanjian Nominee Sebagai Bukti Kepemilikan Atas Tanah Berdasarkan Prinsip Privity of Contract,” *Unes Law Review* 6, no. 4 (2024): 11024–33, <https://doi.org/10.31933/unesrev.v6i4.1878>.

<sup>8</sup> Meliana Dyah Pertiwi, Adriana Grahani Firdausy, and Dona Budi Kharisma, “Legal Certainty of Nominee Agreements In The Transfer of Ownership Rights To Land Based on An Absolute Letter of Power,” *International Journal of Educational Research & Social Sciences* 6, no. 1 (2025): 12–18, <https://doi.org/10.51601/ijersc.v6i1.938>.

<sup>9</sup> Hendri Saleh, “Praktik Perjanjian Pinjam Nama (Nominee) Di Kota Denpasar Bali Perspektif Hukum Positif Dan Hukum Islam,” *Asy-Syir’ab: Jurnal Ilmu Syari’ah Dan Hukum* 54, no. 1 (2020): 59–82, <https://doi.org/10.14421/ajish.v54i1.587>.

More recent studies by Pranata and Kurniawan and Raditya have begun to examine the role of notaries and the significance of a legal certainty framework in evaluating nominee agreements. Despite these advances, the literature continues to exhibit a tendency to generalize nominee agreements as inherently unlawful, without developing sufficiently refined analytical tools to explain why, and under what conditions, a nominee agreement becomes invalid when assessed through the lens of modern cause theory.<sup>10</sup>

Although prior studies consistently conclude that nominee agreements contravene agrarian law and the requirement of a lawful cause, none has comprehensively integrated modern cause theory with the regulatory objectives of agrarian law to delineate the boundary between valid and void agreements. This study contributes novel insights by developing a juridical–conceptual framework that does not categorically reject all nominee arrangements, but instead evaluates their validity through an examination of the parties' intentions, underlying motives, and compliance with mandatory agrarian norms. By doing so, the study offers a more precise and coherent analytical approach to assessing nominee agreements in land transactions. Accordingly, this study aims to:

- 1) analyze the legal implications of the failure to satisfy the requirement of a lawful cause in nominee agreements involving land transactions;
- 2) formulate a juridical–conceptual framework for assessing the validity of nominee agreements through the integration of contract law cause theory and mandatory principles of agrarian law; and
- 3) delineate the boundaries between freedom of contract and normative prohibitions on the control of land rights in order to promote coherence among civil law doctrine, legal certainty, justice, and public order within the national legal system.

## 2. RESEARCH METHODOLOGY

This study adopts a normative juridical approach with an analytical–conceptual orientation to examine the validity of nominee agreements in land transactions through the integration of contract law doctrine and mandatory norms of Indonesian agrarian law. This approach is appropriate given the study's focus on normative interpretation, legal concept construction, and the coherence between legal regimes within the positive legal system, rather than on empirical measurement of the parties' conduct.

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<sup>10</sup> Pranata, "Akibat Hukum Akta Penegasan Notaris Yang Memuat Perjanjian Pinjam Nama Benda Bergerak: Studi Putusan Nomor 5/Pdt.G/2022/PN Stb Jo. Putusan 612/PDT/2022/PT MDN"; Farrell Rafif Habibi Kurniawan and Ida Bagus Yoga Raditya, "Konsekuensi Hukum Perjanjian Nominee Antara WNA Dan WNI Dilaitkan Dengan Undang-Undang Pokok Agraria," *Kertha Wicara: Jurnal Ilmu Hukum* 15, no. 7 (2025): 396–407, <https://ejournal4.unud.ac.id/index.php/wicara/en/article/view/142>.

As a normative legal study, the research employs three complementary approaches. First, a statutory approach is used to analyze legal provisions governing contractual validity and restrictions on land rights, particularly Articles 1320 and 1337 of the Civil Code and Law Number 5 of 1960 on the Basic Agrarian Law, along with its implementing regulations. Second, a conceptual approach is applied to examine the doctrine of cause, including the distinction between objective and subjective cause and its relevance to agreements involving concealed purposes, such as layered agreements, simulated contracts, and *fraus legis*. Third, a case law approach is utilized to analyze judicial reasoning in court decisions addressing nominee agreements and indirect land acquisition.

The study relies on primary, secondary, and tertiary legal materials collected through a comprehensive literature review. Data analysis is conducted qualitatively and normatively, using deductive reasoning as well as systematic and teleological interpretation to assess whether the objectives of nominee agreements are consistent with public order and national agrarian policy.

### **3. RESEARCH RESULT AND DISCUSSION**

#### **3.1. Legal Implications of the Failure to Satisfy the Requirement of a Lawful Cause in Nominee Agreements**

This section examines the legal implications arising from the failure to satisfy the requirement of a lawful cause in nominee agreements involving land transactions and evaluates the role of the doctrine of cause as an analytical tool for testing the legitimacy of contractual objectives concealed within formally valid agreement structures. By situating cause theory within the framework of mandatory agrarian norms, this study seeks to clarify the conceptual boundary between freedom of contract and statutory prohibitions on the control of land rights.

The absence of a lawful cause in nominee agreements does not stem from their contractual form *per se*, but from the inconsistency between their substantive objectives and agrarian norms that restrict land ownership and control. In practice, nominee arrangements are typically structured to transfer economic benefits and factual control over land to foreign parties through mechanisms such as benefit-sharing schemes, absolute and irrevocable powers of attorney, and land management arrangements that place effective control in the hands of foreign investors, while Indonesian citizens function merely as nominal titleholders. This contractual configuration gives rise to a fundamental tension between the principle of freedom of contract under Article 1338 of the Civil Code and the restrictions imposed by Article 21 of the Basic Agrarian Law on land ownership rights.

The requirement of a lawful cause is not satisfied where the underlying purpose of an agreement is to evade or circumvent legal prohibitions, even in the absence of an

explicit statutory violation. In this context, cause cannot be construed narrowly as the formal reason for entering into a contract, but must be understood as the normative orientation of the contractual objective, which must conform to law, public order, and the public interest. This finding reinforces the theoretical position that the doctrine of cause retains its relevance in Indonesian contract law, particularly as a mechanism for uncovering simulated agreements or arrangements that disguise the reality of legal control.

The findings of this study are consistent with prior scholarship concluding that nominee agreements facilitating land control by foreign nationals are generally invalid and void.<sup>11</sup> However, this study departs from earlier research by rejecting a categorical presumption that all nominee agreements necessarily involve an unlawful cause. Existing literature often terminates its analysis at the normative conclusion that nominee arrangements constitute *fraus legis*, without sufficiently examining the doctrinal processes through which a cause becomes unlawful. By contrast, this study demonstrates that validity assessments must be conducted through a contextual analysis of the parties' intentions, the structural configuration of the agreement, and the causal nexus between the nominee arrangement and the violation of agrarian norms.

Restrictions on contractual freedom in the land sector function as a normative corrective against the potential abuse of autonomy of will.<sup>12</sup> Nominee agreements represent a deviation from the social function of contract law insofar as they deploy private legal instruments to negate public law constraints designed to protect collective interests in land.<sup>13</sup> Accordingly, contractual validity cannot be determined solely by reference to formal requirements, but must also be assessed in light of substantive compliance with agrarian norms and the principle of the social function of land.

Finally, this study confirms that not every violation of agrarian norms automatically constitutes a breach of public order. Nevertheless, nominee agreements that systematically conceal beneficial ownership have direct implications for the rule of law, as evidenced by their adverse effects on the integrity of the land registration system, the heightened risk of ownership disputes, and legal uncertainty for bona fide third parties. Consequently, the unlawful cause of nominee agreements is not merely a private concern between contracting parties, but also generates structural consequences for land governance.

<sup>11</sup> Ansa et al., "Keabsahan Perjanjian Nominee Sebagai Bukti Kepemilikan Atas Tanah Berdasarkan Prinsip Privity of Contract"; Daniah R. A and Noer, "Causa Halal Dalam Perjanjian Pinjam Nama (Nominee) Tentang Kepemilikan Hak Atas Tanah Oleh Warga Negara Asing"; Legawa and Yanti, "Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Perdata Indonesia."

<sup>12</sup> Fatma Devi, Busyra Azheri, and Yulfasni Yulfasni, "Pembatasan Kebebasan Berkontrak Pada Perjanjian Tidak Bernama Dalam Bentuk Akta Notaris," *Unes Law Review* 6, no. 1 (2023): 404–15, <https://doi.org/10.31933/unesrev.v6i1.861>.

<sup>13</sup> Suhadi Rizki Herdianto and Faisal Santiago, "Legal Principles of Agreements: A Foundation in Contract Establishment," in *Proceedings of the 2nd International Conference on Law, Social Science, Economics, and Education* (Bratislava: European Alliance for Innovation, 2022), 1–6, <http://dx.doi.org/10.4108/eai.16-4-2022.2320081>.

The principal legal consequence of failing to satisfy the requirement of a lawful cause is the nullity (void ab initio) of the nominee agreement and all legal effects arising therefrom. This study emphasizes, however, that such nullity is not invariably automatic; it typically requires judicial establishment of an intent to circumvent the law and a demonstrable causal link between the contractual structure and the violation of mandatory legal norms. In this regard, the doctrines of simulation and sham agreements serve as important analytical tools for exposing the divergence between the formal legal arrangement and the substantive reality of control.

The use of nominee agreements also produces a structural imbalance in legal positions between foreign investors and Indonesian citizens who formally hold land rights. This imbalance creates opportunities for opportunistic conduct, including unilateral transfers of land without the investor's consent, as evidenced in judicial practice. Such outcomes reinforce the conclusion that nominee agreements are not only normatively defective but also functionally incapable of ensuring legal certainty and effective legal protection for the parties involved.

This study further demonstrates that the absence of a lawful cause in nominee agreements results from a substantive misalignment between contractual objectives and agrarian prohibitions, rather than from mere administrative or procedural noncompliance. This finding contributes to the legal discourse by underscoring that the doctrine of causa should be understood as a substantive mechanism for preserving coherence between civil law and agrarian law. Accordingly, nominee agreements exemplify the manner in which freedom of contract in contemporary legal systems operates within the constraints imposed by public interest and social justice, particularly in the governance of strategically significant land resources.

### **3.2. Validity of Name-Borrowing Agreements in Light of the Doctrine of Lawful Cause and Mandatory Agrarian Norms**

This section develops a juridical-conceptual framework for assessing the validity of nominee (name-borrowing) agreements through the integration of the doctrine of lawful (halal) cause in contract law and the mandatory norms of agrarian law. The analysis seeks to bridge the tension between freedom of contract under civil law and statutory restrictions on land ownership under agrarian law, particularly in cases where nominee arrangements are used by foreign parties to obtain indirect control over land. Accordingly, the assessment extends beyond formal contractual validity to evaluate the legitimacy of the substantive objectives pursued through such legal constructions.

The doctrine of lawful cause retains strong doctrinal relevance in evaluating nominee agreements, especially where contracts are structured in layered or dual forms that conceal their true legal purpose. Although, textually, nominee agreements frequently satisfy the formal requirements for contractual validity under Articles 1320

and 1338 of the Civil Code, this study finds that the central issue lies not in form or drafting, but in the normative orientation of the contractual objective. Where the substantive purpose of an agreement is to circumvent restrictions on land rights imposed by the Basic Agrarian Law (UUPA), the cause of the agreement loses its lawful character.

Cause functions as an evaluative mechanism rather than a purely formal requirement. This approach is consistent with the view that cause serves to reveal the congruence between the parties' intentions and the legal consequences recognized by the legal system. In nominee arrangements, the parties' true intentions often extend beyond the stated legal relationship and are directed toward the transfer of economic benefits and effective control of land to a party legally prohibited from holding such rights. Contractual structures such as absolute and irrevocable powers of attorney, the assignment of economic proceeds, and exclusive control over land management constitute strong indicators of an ulterior purpose to evade mandatory legal norms.

In contrast to much of the existing literature, this study adopts a differentiated analytical approach. Prior studies largely conclude that nominee agreements in land transactions invariably involve impermissible causes and are therefore void *ipso jure*.<sup>14</sup> This study challenges such generalization by arguing that the validity of nominee agreements must be assessed contextually and analytically, based on evidence of a causal nexus between the contractual structure and the circumvention of mandatory agrarian norms. Absent such proof, conclusions regarding invalidity risk remaining purely normative and insufficiently reflective of the complexity of legal practice.

Freedom of contract cannot be detached from the legality of contractual objectives. The autonomy of the parties' will is inherently limited by considerations of public order, morality, and the public interest, as reflected in Article 1337 of the Civil Code.<sup>15</sup> In the land sector, these limitations are further reinforced by the principle of the social function of land, which recognizes land as a strategic resource subject to state regulation. Consequently, the use of nominee agreements to obscure the identity of the true beneficial owner not only violates agrarian norms but also disrupts the integrity of the land law system as a whole.

Finally, the absence of a lawful cause does not always operate automatically, but often depends on judicial proof. The application of contractual nullity to a name-borrowing agreement requires a careful examination of the parties' intentions, their

<sup>14</sup> Cahyani, Witasari, and Amirullah, "Juridical Review of Nominee Agreement in Land of Tenure Property Rights Under The Book of Civil Law And Agraria"; Daniah R. A and Noer, "Causa Halal Dalam Perjanjian Pinjam Nama (Nominee) Tentang Kepemilikan Hak Atas Tanah Oleh Warga Negara Asing"; Pertiwi, Firdausy, and Kharisma, "Legal Certainty of Nominee Agreements In The Transfer of Ownership Rights To Land Based on An Absolute Letter of Power"; Pranata, "Akibat Hukum Akta Penegasan Notaris Yang Memuat Perjanjian Pinjam Nama Benda Bergerak: Studi Putusan Nomor 5/Pdt.G/2022/PN Stb Jo. Putusan 612/PDT/2022/PT MDN."

<sup>15</sup> Benjamin E. Hermalin, Avery W. Katz, and Richard Craswell, "Contract Law," in *Handbook of Law and Economics* (Amsterdam: Elsevier B.V., 2007), 103–38, [https://doi.org/10.1016/S1574-0730\(07\)01001-8](https://doi.org/10.1016/S1574-0730(07)01001-8).

actual conduct, and the agreement's implications for legal certainty and the interests of third parties.<sup>16</sup> Judicial practice, as illustrated by Supreme Court Decision No. 753/K/Pdt/2023, further demonstrates that procedural obstacles—such as the absence of complete parties—may prevent courts from substantively assessing the lawfulness of the contractual cause. This underscores that the validity of nominee agreements presents not only doctrinal challenges, but also structural and procedural ones within the adjudicatory system.

This study demonstrates that nominee agreements generate a structural disparity in legal standing between fund providers and formal rights holders, thereby increasing the risk of legal uncertainty, ownership disputes, and opportunistic behavior. Such disparity undermines a core objective of contract law, namely the promotion of certainty and justice in legal relationships. From this perspective, the absence of a lawful cause is not merely a matter of normative noncompliance, but rather reflects the functional failure of the agreement as a legal instrument for regulating interests in a fair and transparent manner.

The use of nominee agreements in land transactions in Indonesia often raises legal issues. These agreements involve someone holding land ownership rights on behalf of another person, often to conceal the true ownership. The problem is, this can breach land ownership restrictions and tax laws, questioning the agreement's lawful cause. In Indonesian law, an agreement must have a lawful cause to be valid (Article 1320 of the Civil Code). Nominee agreements often lack this, as they're used to hide true ownership.

Notaries, as public officials, play a crucial role here. They must ensure agreements comply with the law and don't facilitate unlawful acts (Article 16 of the Notary Position Act). This includes verifying the true intent and identity of parties involved. If a notary fails to do so, they can face administrative sanctions, lose their notary position, and potentially face civil liability. The Indonesian Supreme Court has emphasized the importance of notaries' role in preventing nominee agreements (Decision No. 2940 K/Pdt/1983). Notaries who facilitate such agreements may be seen as complicit. Making or facilitating false documents, including nominee agreements, can lead to criminal charges under Articles 263 (forgery) and 56 (participation in a crime) of the Penal Code.

The Supreme Court has declared such agreements null and void for lacking lawful cause (Decision No. 2940 K/Pdt/1983). This can lead to the nominee being considered the true owner, the beneficiary losing their rights, and potential tax implications. Nominee agreements in Indonesia are risky and can lead to serious legal issues for all parties involved, including notaries. Notaries must ensure agreements comply with the law to avoid problems.

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<sup>16</sup> Michael J. Trebilcock, *The Limits of Freedom of Contract* (Cambridge: Harvard University Press, 1997).

The findings further confirm that a juridical-conceptual approach grounded in cause theory and integrated with the principles of agrarian law offers a more precise analytical framework for evaluating the validity of nominee agreements. Contractual validity cannot be determined solely by formal compliance with civil law requirements, but must be assessed in light of the coherence between the contractual purpose, the structural configuration of the agreement, and mandatory agrarian prohibitions. This contribution advances the discourse on Indonesian contract law by illustrating that the contemporary development of freedom of contract is increasingly oriented toward social considerations, contextual analysis, and the protection of the public interest, particularly in the governance and control of land resources.

### **3.3. Delineating the Boundary Between Freedom of Contract and Normative Prohibitions in the Acquisition of Land Rights**

This section seeks to identify and define the conceptual boundary between freedom of contract and normative prohibitions in the acquisition of land rights, with the aim of ensuring coherence among civil law doctrine, legal certainty, justice, and public order within the national legal system. The analysis focuses on the role of the doctrine of lawful cause as an evaluative mechanism for assessing the legitimacy of contractual objectives, particularly where contractual arrangements are employed to circumvent mandatory restrictions on land ownership under agrarian law.

The tension between freedom of contract and legal prohibitions does not arise at the level of principle, but rather from the orientation of the contractual objectives pursued by the parties. As reflected in Article 1337 of the Civil Code, the doctrine of lawful cause retains contemporary relevance as a tool for determining whether the exercise of contractual autonomy produces legal consequences acceptable to the legal system. This study affirms that cause cannot be construed narrowly as a formal requirement, but must be understood as a substantive instrument for assessing the alignment between contractual intentions and legal norms designed to safeguard the public interest.

Contracts with multiple or layered structures—such as those commonly found in land ownership arrangements—constitute a primary context in which distortions of contractual freedom emerge. Formally, such agreements often satisfy the requirements for validity and are grounded in the principle of *pacta sunt servanda* under Article 1338 of the Civil Code. Substantively, however, their underlying objective may be to facilitate indirect control over land by a party legally prohibited from holding land rights. In such circumstances, freedom of contract is placed in a problematic position, as the autonomy of will is employed to negate the normative boundaries established by agrarian law.

The boundary between freedom of contract and normative prohibitions is therefore determined by the legitimacy of the contractual purpose, rather than by the

form or technique of the agreement. Where the cause of an agreement is oriented toward legal evasion (*fraus legis*), freedom of contract loses its normative justification and warrants legal intervention. In this respect, civil law cannot be applied in isolation, but must be interpreted in conjunction with agrarian law, which imposes restrictions on land control based on the social function of land as an element of public order.

Several prior studies conclude that any violation of agrarian norms automatically constitutes a breach of public order and renders the agreement null and void.<sup>17</sup> This study challenges such categorical reasoning on the grounds that it overlooks variations in contractual motives, structural configurations, and the types of land rights involved. Instead, the findings emphasize that the assessment of contractual validity must rest on demonstrating a causal nexus between the agreement's structure and the circumvention of mandatory norms, thereby avoiding overgeneralization that may compromise analytical precision.

Finally, the doctrine of lawful cause operates as a conceptual bridge between civil law and agrarian law.<sup>18</sup> The principle of the social function of land under the Basic Agrarian Law does not automatically invalidate private agreements; rather, it becomes decisive when the contractual purpose conflicts with the public interest protected by agrarian regulation. Normative prohibitions on land control do not negate freedom of contract, but instead structure and constrain it to ensure consistency with the values of social justice, legal certainty, and public order.

The absence of a clearly defined boundary frequently generates legal uncertainty, affecting both the contracting parties and third parties. Agreements that obscure the identity of the true beneficial owner are prone to disputes, undermine the integrity of the land registration system, and create structural disparities between formal rights holders and parties exercising actual control. From this standpoint, violations of agrarian norms cannot be regarded as merely administrative irregularities, but rather as conduct with direct implications for legal order and public confidence in the land tenure system.

Normative restrictions on the control of land rights function as corrective safeguards against the potential abuse of contractual autonomy, rather than as repressive limitations. Although freedom of contract remains a foundational principle of civil law, its exercise is inherently constrained by the requirement that contractual objectives conform to law, morality, and public order. In this context, the doctrine of lawful cause operates as the conceptual intersection between autonomy of will and the social responsibility embedded in contractual relations.

<sup>17</sup> Ansa et al., "Keabsahan Perjanjian Nominee Sebagai Bukti Kepemilikan Atas Tanah Berdasarkan Prinsip Priority of Contract"; Cahyani, Witasari, and Amirullah, "Juridical Review of Nominee Agreement in Land of Tenure Property Rights Under The Book of Civil Law And Agraria"; Clara et al., "Akibat Hukum Perjanjian Pinjam Nama Atas Kepemilikan Tanah WNA Dalam Perspektif Hukum Perdata Internasional"; Legawa and Yanti, "Kedudukan Hukum Perjanjian Nominee Dalam Sistem Hukum Perdata Indonesia."

<sup>18</sup> Nigel Balmer and Alexy Buck, *Causes of Action: Civil Law and Social Justice*, 2nd ed. (Norwich: The Stationery Office, 2006).

This study further confirms that coherence between civil law and agrarian law can be achieved only through a substantive evaluation of contractual objectives, rather than through purely formalistic assessments. Delineating the boundary between freedom of contract and normative prohibitions requires an analysis of the consistency among the parties' intentions, the contractual structure, and the mandatory norms governing land ownership. This conclusion offers a significant conceptual contribution by positioning the doctrine of causa as a central instrument for maintaining the equilibrium between legal certainty, justice, and public order within the national legal system.

#### 4. CONCLUSION

This study examines the legal implications of failing to satisfy the requirement of a lawful cause in nominee agreements involving land transactions, develops a juridical–conceptual framework for assessing their validity through the integration of cause theory and mandatory principles of agrarian law, and delineates the boundary between freedom of contract and normative prohibitions on land ownership. The findings indicate that nominee agreements lose legal validity when their substantive objectives conflict with agrarian restrictions, even where they formally comply with the requirements for contractual validity. The absence of a lawful cause not only renders such agreements null and void, but also generates legal uncertainty, asymmetrical positions between the parties, and broader disturbances to public order within the land tenure system.

The study further confirms that the doctrine of cause remains a relevant evaluative instrument for testing the legitimacy of contractual purposes and serves as a conceptual bridge between civil law and agrarian law. Its contribution lies in strengthening the analytical framework for assessing the validity of land-related agreements through a more substantive and contextual approach. Nevertheless, the study is limited to a normative–conceptual analysis and does not empirically examine diverse practices in the field. Accordingly, clearer policy guidance in agrarian law is required to address indirect land acquisition. Future research should incorporate empirical methods and comparative perspectives to support the refinement of legal norms and the improvement of enforcement mechanisms.

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