

## Legal Analysis of Legal Certainty of Land Ownership Rights for Foreign Citizens (WNA) in Indonesia

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**Abstract.** *This study aims to analyze: 1) Legal certainty of land ownership rights for foreign nationals (WNA) in Indonesia. 2) Legal consequences of the transfer of land ownership rights covertly by foreign nationals (WNA). This type of research is included in the scope of normative legal research. The approach method in this study is the statute approach. The types and sources of data in this study are secondary data obtained through literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1) Legal certainty of land ownership rights for foreign nationals (WNA) in Indonesia is strictly regulated by the Basic Agrarian Law (UUPA) and its implementing regulations. According to Article 42 of the Basic Agrarian Law (UUPA), WNA can only be given use rights and lease rights to land, not ownership rights. In addition, Article 52 paragraph (1) of Law No. 1 of 2011 concerning Housing and Residential Areas (as amended by Law No. 6 of 2023) emphasizes that foreign nationals can occupy houses with rental rights or usage rights. The main criteria for foreign nationals to own a house with rental rights or usage rights is the ownership of valid immigration documents in accordance with the regulations. The usage rights and rental rights system limits foreign nationals from having full control over a house or land, in accordance with Article 21 and Article 26 of the UUPA. 2) The legal consequences of the transfer of land ownership rights in a disguised manner by foreign nationals (WNA) have serious legal implications, considering that this violates the basic principles of the Basic Agrarian Law (UUPA) which limits land ownership rights only to Indonesian Citizens (WNI). Hidden agreements, such as nominee agreements, which aim to circumvent the provisions of agrarian law, are therefore considered null and void according to Article 26 paragraph (2) of the UUPA. As a result, the promised land will fall to the state, and the parties involved cannot demand a refund. This kind of agreement is contrary to the valid conditions of an agreement according to Article 1320 of the Civil Code, especially regarding the object of the agreement and the purpose that does not conflict with the law.*

**Keywords:** Citizens; Certainty; Foreign; Land.

## 1. Introduction

Humans depend on land for most of their lives, because land is a source of life and livelihood for humans. The rapid increase in the need for land accompanied by the increasingly limited supply of land today, has a major impact on the increase in the value and price of land. This will increase the potential for conflicts or problems related to or caused by land. The increasingly complex problems of human life caused by land today require a rule that regulates the guarantee of legal certainty in the relationship between humans and land.<sup>1</sup>Regarding land rights, the law also requires rights holders to register their respective lands. Land registration is a very important issue in the UUPA, because land registration is the beginning of the process of creating proof of land ownership.<sup>2</sup>

The land registration system has been regulated in government regulation Number 24 of 1997 to ensure legal certainty of land ownership, although the system is good, it turns out that there are still many land problems, especially regarding overlapping ownership. Overlapping ownership occurs mainly on unregistered lands, especially customary lands whose transfer is based on trust and there is no authentic evidence.<sup>3</sup> Land ownership as an inseparable part of human rights has a very important role in fulfilling basic needs, development, self and social needs.<sup>4</sup>

The need for land is increasing along with the opening of opportunities for foreigners to live in Indonesia, related to their duties and jobs, and to support economic growth through investment. Therefore, the need for land is very important. It is undeniable that there are many cases of land ownership by foreigners as illegal rights owners spread across various regions in Indonesia.<sup>5</sup>In Indonesia itself, those who inhabit this country are not only Indonesian citizens (WNI), but also foreign citizens (WNA).

Ownership of land rights by foreign parties is often unlawful through the use of nominee agreements or what is often referred to as name borrowing. Nominee agreements are included in the category of anonymous agreements because they are not expressly regulated in Indonesian law, including the Civil Code (KUHP).

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<sup>1</sup>Dyara Radhite Oryza Fea, 2018, Guide to Managing Home Land and Permits, Legality, Yogyakarta, p.2

<sup>2</sup>Syarifah Lia, Lathifah Hanim, 2017, Legal Certainty in Settling Disputes Emerging from Overlapping Certificates of Ownership Rights (SHM) on Land (Case Study at the Land/Agrarian and Spatial Planning Office of Pontianak City), Jurnal Akta, Vol. 4. No. 1, Unissula, Semarang, p. 34

<sup>3</sup>Angelia Ingrid Lumenta, Responsibility of the National Land Agency According to Government Regulation Number 24 of 1997 Regarding Overlapping Land Ownership, Journal Lex Et Societatis, Vol. VI/No. 7/Sept/2018, p.31

<sup>4</sup>Tresnoputri et al., 2023, The Role of Customary Law in the Indonesian Constitutional Law System, Archipelago: Journal of Social Sciences, Volume 10, no. 5, p. 41

<sup>5</sup>Sakar, 2021, Legal Consequences Arising if Candidates Violate Agreements Made with Foreign Citizens, Jurnal Dinamika, Volume 27, number 17, p. 69.

Foreign parties often use nominee agreements to avoid certain restrictions, such as land ownership rules stipulated in Law No. 5/1960.<sup>6</sup>

Based on the concept of nominee agreement, the legally recognized land owner is an Indonesian citizen. However, the funds or financing used to purchase the land come from abroad. This ownership is indirect, because of the legal relationship contained in the nominee agreement between the Indonesian citizen and the foreigner concerned.<sup>7</sup>The agreement explains that land ownership rights are basically owned by Indonesian citizens, while foreign funding parties can provide instructions or order various legal transactions related to the land. However, although land ownership is officially owned by Indonesian citizens, financial intervention from foreign parties creates an indirect ownership dimension that needs to be considered in terms of legality and ethics. Land ownership by foreign nationals can create conflicts of interest with local communities, especially in terms of land use and utilization of natural resources. Considerations of national security and state sovereignty are also factors that need to be considered in regulating land ownership by foreign nationals.

## **2. Research Methods**

This type of research is included in the scope of normative legal research. The approach method in this research is the statute approach. The type and source of data in this research are secondary data obtained through literature studies. The analysis in this research is prescriptive

## **3. Results and Discussion**

### **3.1. Legal Certainty of Land Ownership Rights for Foreign Citizens (WNA) in Indonesia**

Legal certainty over land rights can only be realized if supported by a strong legal foundation. The legal foundation related to agrarian issues in Indonesia is generally regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles, better known as the Basic Agrarian Law (UUPA). The term agrarian according to UUPA has a meaning not only limited to land, but also includes the earth, water and natural resources contained therein. Even according to BoediHarsono, outer space is also included in it, where the earth and water contain energy and elements that can be used for efforts to maintain and develop the fertility of the earth, water and natural resources and other things related to these.<sup>8</sup> Providing guarantees of legal certainty in the land sector requires:

1. The availability of complete and clear written legal instruments that are implemented consistently.

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<sup>6</sup>Srilaksmi, 2023, Nomination Agreement of Land Ownership Agreement in the Perspective of State Administration, Pariksa: Journal of Hindu Religious Law, Volume 6, number 2, p. 91

<sup>7</sup>Hetharie, 2019, Nominee Agreement as a Means of Controlling Land Ownership Rights by Foreign Citizens (WNA) According to the Civil Code, Sasi Journal, volume 25, number 1, p.27

<sup>8</sup>Rahmat Ramadhani, 2017, Guarantee of Legal Certainty Contained in Land Rights Certificates, Journal De Lega Lata, Volume 2, Number 1, p.139

## 2. Implementation of effective land registration.

With the availability of written legal instruments, anyone who is interested will easily know what possibilities are available to him to control and use the land he needs, how to obtain it, what rights, obligations and prohibitions there are in controlling land with certain rights, what sanctions he will face if he ignores the relevant provisions, and other matters related to the control and use of the land he owns.<sup>9</sup>

The implementation of the land registration system is essentially the basis of the procedure for obtaining a guarantee of certainty of land rights which has differences in terms of the system in various countries. In countries that adopt the common law legal system, especially those in the jurisdiction of the Commonwealth of Nations or the British Commonwealth of Nations, in terms of the land registration system, there are two basic classifications, namely the Torrens title system and the British system which is a modified version of the Torrens system.<sup>10</sup>The Torrens system is the most complete evidence of land rights and cannot be disputed, unless the land certificate was obtained through forgery.<sup>11</sup>In addition, there is a positive publication system and a negative publication system, the positive publication system is applied in countries such as Germany and Switzerland, where the Land Certificate serves as proof of absolute land rights and is the only proof of land rights. While the negative publication system is applied in Continental European countries such as the Netherlands which is then also applied in Indonesia, Malaysia and Singapore.<sup>12</sup>

The Basic Agrarian Law (UUPA) regulates land registration with the aim of providing legal certainty. Because UUPA only regulates land matters in basic matters, implementing regulations are needed that have the function of perfecting the substance of this UUPA. The function of land registration is to obtain strong evidence Article 19 Paragraph (2) Letter c UUPA concerning the validity of legal acts regarding land. For this reason, a Certificate is given as proof of land ownership rights containing a copy of the Land Book & Measurement Letter.<sup>13</sup>

The issuance of Government Regulation Number 24 of 1997 concerning Land Registration was motivated by the awareness of the increasingly important role of

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<sup>9</sup>Budi Harsono, 2007, Indonesian Agrarian Law. History of the Formation of the Basic Agrarian Law, Contents and Implementation, National Land Law Volume I, Djambatan, Jakarta, p.69.

<sup>10</sup>Nur Hidayani, 2021, Implementation of Electronic Certificates as a Guarantee of Legal Certainty of Land Ownership Rights in Indonesia, SASI: International Accredited Journal, Volume 27 Number 3, p.338

<sup>11</sup>Putra, PS, & SH, M, 2019, Agrarian Reform: Obstacles and Challenges in Karawang Regency, Scientific Journal of Law, Scientific Legal Studies, Vol 4 Number 1, p. 110.

<sup>12</sup>Yubaidi, RS, 2020, The Future of Land Ownership Regulation in Indonesia., International Journal of Multicultural and Multireligious Understanding, Vol 6 Number 6, p. 712

<sup>13</sup>Novita Riska, 2021, Legal Analysis of Electronic Land Ownership Certificates (E-Certificates) to Achieve Legal Certainty, Jurnal Signifikan Humaniora, Vol. 2, No. 4., page 8

land in development which increasingly requires the support of legal certainty in the field of land. Normatively, legal certainty requires the availability of legal regulations that are operationally capable of supporting its implementation. Empirically, the existence of legal regulations needs to be implemented consistently and consequently by the supporting human resources.<sup>14</sup> The product (output) of a land registration process is a certificate of proof of rights given to the rights holder.<sup>15</sup>

Land ownership as an inseparable part of human rights has a very important role in fulfilling basic needs for self-development and social needs.<sup>16</sup> The need for land is increasing along with the opening of opportunities for foreigners to live in Indonesia, related to their duties and jobs, and to support economic growth through investment. Therefore, the need for land is very important. It is undeniable that there are many cases of land ownership by foreigners or foreign citizens as illegal rights owners spread across various regions in Indonesia.<sup>17</sup>

The definition of a Foreign Citizen (WNA) based on Article 1 paragraph (9) of Law No. 6 of 2011 concerning Immigration as amended by Law No. 63 of 2024 concerning the Third Amendment to Law No. 6 of 2011 concerning Immigration, is that a Foreign Citizen (WNA) is a person who is not an Indonesian Citizen.<sup>18</sup> Foreign citizens who are in Indonesia can be divided into two types:

1. Foreign citizens who are permanently residing in the territory of Indonesia (foreign citizens who wish to have a permanent residence permit).
2. Foreign citizens who do not permanently reside in Indonesia but only temporarily reside in Indonesia (who have a visit permit/other immigration permit in the form of a passport, visa or other documents).

Foreign nationals who visit and wish to settle in Indonesia can be divided into two groups, namely foreigners who stay for a certain period of time and foreigners who wish to settle in Indonesia.<sup>19</sup> Foreign nationals residing in the territory of Indonesia must have a residence permit, as stipulated in Article 77 of the Minister of Law and Human Rights Regulation Number 11 of 2024 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 22 of 2023 concerning Visas and Residence Permits, namely:

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<sup>14</sup>Nopika Sari, Effectiveness of Online-Based Land Administration in Assisting PPAT Performance in Carrying Out Their Job Duties (Study on Notary/PPAT Offices in Medan City), Law Thesis, University of North Sumatra, Medan, 2018, p. 42

<sup>15</sup>Rahmat Ramadhani, *op.cit.*, p.140

<sup>16</sup>C Tresnoputri et al., 2023, The Role of Customary Law in the Indonesian Constitutional Law System," Archipelago: Journal of Social Sciences, Volume 10, number 5, p.41.

<sup>17</sup>Sakar, 2021, Legal Consequences that Arise if Candidates Violate Agreements Made with Foreign Citizens, *Dinamika*, volume 27, number 17, p.69

<sup>18</sup>Isharyanto, 2016, Dynamics of Regulation of Legal Status of Citizenship in Legislation Perspective, *Absolute Media*, Yogyakarta, p.353

<sup>19</sup>Maria SW Sumardjono, 2009, Land Policy, *Kompas*, Jakarta, p. 157.

1. Every foreigner who is in the territory of Indonesia is required to have a residence permit.
2. Every foreigner residing in the territory of Indonesia may not have more than 1 (one) residence permit.
3. Under certain circumstances, Foreigners as referred to in paragraph (1) may be exempted from the obligation to have a Residence Permit.

The residence permit is based on a Visa, as regulated in Article 2 of the Minister of Law and Human Rights Regulation Number 11 of 2024 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 22 of 2023 concerning Visas and Residence Permits, namely:

1. Every foreigner who enters the territory of Indonesia must have a valid and current visa, unless otherwise specified based on provisions of laws and regulations or international agreements.
2. Each foreigner can only have 1 (one) visa.
3. The visa as referred to in paragraph (2) is the basis for granting a Residence Permit.

Residence permits are related to land and house ownership by Foreign Nationals (WNA) in Indonesia. Residence permits are the legal basis that allows WNA to obtain certain rights. Legally, the status of land and building ownership that can be obtained by WNA or foreign legal entities in Indonesia is limited to the right to use land for a certain period of time, rental rights for buildings, ownership rights for apartment units (hereinafter referred to as sarusun) and residential houses or dwellings. Therefore, in addition to these rights, land rights obtained by WNI must be relinquished if they decide to become WNA, this is regulated in Article 21 paragraph (3) of the UUPA which states that:

“Foreigners who after the enactment of this Law obtain property rights due to inheritance without a will or a mixture of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this Law lose their citizenship are required to relinquish those rights within a period of one year since the acquisition of those rights or the loss of that citizenship. If after the said period has passed the property rights are not relinquished, then those rights are void by law and the land falls to the State, with the provision that the rights of other parties burdening it continue.”

Based on the provisions above, foreign nationals are not permitted to control land with ownership rights, where if foreign nationals obtain ownership rights, the land is controlled by the state, as regulated in Article 26 paragraph (2) of the UUPA which states that:

"Every sale, exchange, gift, gift by will and other acts intended to directly or indirectly transfer ownership rights to a foreigner, to a citizen who in addition to his Indonesian citizenship has foreign citizenship or to a legal entity, except as determined by the Government as referred to in Article 21 paragraph (2), is void by law and the land falls to the State, with the provision

that the rights of other parties burdening it remain in force and all payments that have been received by the owner cannot be claimed back."

Article 9 of the UUPA regulates:

"(1) Only Indonesian citizens may have full relations with the earth, water and space, within the limits of

provisions of articles 1 and 2.

(2) Every Indonesian citizen, both male and female, has the same opportunity to obtain rights to land and to obtain benefits and results, both for themselves and their families."

This is an effort to reduce the ownership of land by foreign nationals who want to live or open a business in Indonesia, namely by ensuring that land owned by Indonesian nationals does not become land owned by foreign nationals. In addition, ownership of property rights also helps Indonesian nationals to be able to utilize their land rights to support their lives.<sup>20</sup>

Legal regulations in Indonesia basically accommodate restrictions on the rights of foreigners to own land in Indonesia. In general, land ownership by Foreign Citizens domiciled in Indonesia is regulated in Articles 42 and 45 of the UUPA which are further regulated in Government Regulation Number 40 of 1996 concerning Land Use Rights, Building Use Rights, and Land Use Rights. For foreign nationals domiciled in Indonesia, only Land Use Rights can be granted.<sup>21</sup> Article 42 of the UUPA explains that foreigners domiciled in Indonesia have the right to use and lease land in Indonesia.

The prohibition on ownership of freehold land by foreigners is reflected in the provisions of Article 21 paragraph (1) and (3), Article 26, and Article 27 letter a number 4 of the UUPA. All of these provisions, especially Article 26 paragraph (2), must still be supported by a set of implementing regulations and regulations and the institutions needed to achieve the objectives. These regulations can be interpreted as efforts to also enforce the provisions of Articles 42 and 45 of the UUPA, namely efforts to limit access to land by foreigners. Foreigners domiciled in Indonesia are only allowed to own land with use rights and building lease rights. There are two important things related to land rights for foreigners in Indonesia, when viewed from the objectives of the establishment of an Indonesian State Government, which are contained in paragraph 4 of the Preamble to the 1945 UUDNRI, namely to protect all Indonesian people and protect all Indonesian territory. In line with the objectives of its establishment, the Indonesian State Government has duties and responsibilities that must be carried out to protect all

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<sup>20</sup>Kadek Rita Listyanti, 2014, Ni Made Ari Yuliantini Griadhi, Land Rights for Foreigners in Indonesia Related to Law No. 5 of 1960, Kertha Negara, Volume 2-Number 4, page 2.

<sup>21</sup>Maria Sumardjono I, 2007, Regulation of Land Rights and Buildings, Kompas Book, Jakarta, p. 7

Indonesian people and all Indonesian territory. Not an inch of freehold land in Indonesia may be owned by foreigners. Based on these two things, UUPA realizes this in Article 9 paragraph (1), Article 21, Article 26, and Article 27 letter a number 4, and has provided for the land needs of foreigners with usage rights and rental rights for buildings as stated in Article 42 and Article 44 of UUPA.<sup>22</sup>

From a formal legal perspective, it is not possible for foreigners to own land with freehold status.<sup>23</sup> For foreigners, there is a prohibition on ownership of freehold land in accordance with Article 21 of the UUPA, and for legal entities wishing to be domiciled in Indonesia, they must fulfill the requirements determined by the Government. Where foreigners cannot have land rights. However, if a foreigner obtains ownership rights due to inheritance or a mixture of assets when marrying an Indonesian citizen after the UUPA comes into effect, he must relinquish his ownership rights within a period of one year when the rights are obtained or when the person loses his citizenship as regulated in Article 21 paragraph (3) of the UUPA. And if within that period a person does not relinquish his ownership rights, then those rights are revoked by law and the land that is the foreigner's property rights is controlled by the state.<sup>24</sup>

Residential houses or dwellings for foreigners are regulated in Article 69 Paragraph (1) of Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, namely that Foreigners who can own residential houses or dwellings are Foreigners who have immigration documents in accordance with the provisions of laws and regulations. Furthermore, in Article 71 Paragraph (1) of Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, namely that residential houses or dwellings that can be owned by Foreigners are:

1. A landed house on land with a right of use or a right of use over a right of ownership, which is controlled based on an agreement granting a right of use over a right of ownership with a deed from the Land Deed Making Officer or Management Rights, based on a land utilization agreement with the holder of the Management Rights.
2. Apartments built on land:
  - a. Use rights or building use rights on State Land;
  - b. Rights of use or building use rights on Land Management Rights.
  - c. The right to use or the right to build on freehold land.

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<sup>22</sup>FX Sumarja, 2015, Land Rights for Foreigners (Review of Legal Politics and Protection of Indonesian Citizens), STPN Press, Sleman, p. 7

<sup>23</sup>Vina Jayanti, Nyoman Wita, Rights of Foreign Citizens to Land Control in Indonesia, Journal of Business Law, Faculty of Law, Udayana University, p. 2

<sup>24</sup>Kadek Rita Listyanti, Ni Made Ari Yuliantini Griadhi, Land Rights for Foreigners in Indonesia Related to Law No. 5 of 1960, Journal of Law, Faculty of Law, Udayana University, p. 4



Regarding the limitations on the area of ownership of residential houses or dwellings for Foreigners as referred to in Article 185 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, the following limitations are given:

1. For landed houses:
  - a. houses in the luxury house category in accordance with the provisions of statutory regulations;
  - b. 1 (one) plot of land per person/family; and/or
  - c. the land area is a maximum of 2,000 m<sup>2</sup> (two thousand square meters);
2. For flats with commercial flat category.

Foreign nationals' residence on land with right of use can be granted for a period of 30 years. If the period ends, foreign nationals can extend the period of their residence for 20 years. When the extension period has also ended, the right of use can be renewed for a period of 30 years. Criteria for Foreign Nationals Who Can Own a Residence Foreign nationals can indeed own a residence. However, there are certain criteria that must be met.

The provisions for home ownership are also regulated in Article 52 Paragraph 1 of Law No. 1 of 2011 concerning Housing and Residential Areas as amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law, Article 52 Paragraph 1 states that Foreigners can occupy or occupy a house by means of lease rights or use rights. Foreign citizens can have rights to land in Indonesia, but in terms of ownership, they can only be owned temporarily. The land rights that Foreign Citizens can own and use are land use rights.<sup>25</sup> Article 113 of the Regulation of the Minister of Agrarian Affairs/Head of the BPN No. 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights states that the Right to Use is granted for a period of 30 (thirty) years, and can be extended for a period of 20 (twenty) years, and can be renewed for a period of 30 (thirty) years. Furthermore, Article 118 explains that after the term of the Right to Use and/or its extension ends, the Government will provide a Renewal of the Right to Use with a term on the same land area to the holder of the Right to Use. An application for Renewal of the Right to Use with a term can be submitted no later than 2 (two) years after the end of the Right to Use or its extension.

### **3.2. Legal Consequences of the Secret Transfer of Land Ownership Rights by Foreign Nationals (WNA)**

The legal system in Indonesia does not recognize the term nominee agreement. This agreement is not regulated in the legal system in Indonesia. nominee often used by Foreigners to own assets in Indonesia. This can arise because our laws

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<sup>25</sup>The Story of Princess Sa'idah, Nadya Farras Indriati, Op.Cit, p. 155

have regulated in such a way that Foreigners cannot own and acquire land in the territory of the Republic of Indonesia. However, with the existence of this nominee agreement, a loophole has emerged for Foreigners to own land in the territory of Indonesia.

A nominee agreement in the land sector is an agreement made between a person who according to the law cannot be the subject of a certain land right (ownership rights), in this case a Foreign Citizen with an Indonesian Citizen, with the intention that the Foreign Citizen can control (own) the land ownership rights *de facto*, but legally formal (*de jure*) the land ownership rights are in the name of an Indonesian Citizen. This occurs because of the principle of prohibition of land alienation adopted by the land system in Indonesia, which prohibits land ownership with rights other than usage rights to be owned by Foreign Citizens. Thus it can be clearly interpreted that a nominee agreement is a form of legal smuggling used to avoid the regulations in force in Indonesia, namely the regulations that regulate the prohibition of Foreign Citizens from owning land in the territory of Indonesia. This is in accordance with Article 9 paragraph (1), namely; "only Indonesian Citizens can have a full relationship with the earth, water and space, within the limits of the provisions of Articles 1 and 2."

Article 21 of the UUPA confirms that land ownership rights in Indonesia can only be held by Indonesian citizens. This is reinforced by Article 26 paragraph (2) of the UUPA which states that legal acts that intentionally transfer land ownership rights to foreigners, whether through sale, exchange, gift, gift due to a will, gift according to custom, or any other means with such an aim, will be considered null and void by law. Therefore, it is very clear that people who are not Indonesian citizens cannot have land ownership rights in Indonesia. To overcome these restrictions, foreign parties use nominee agreements or borrow names to obtain land ownership rights in Indonesia.<sup>26</sup>

Nominee agreement in concept, the legally recognized land owner is an Indonesian citizen. However, the funds or financing used to purchase the land come from abroad. This ownership is indirect, because of the legal relationship contained in the nominee agreement between the Indonesian citizen and the foreigner concerned.<sup>27</sup>The agreement explains that the land ownership rights are basically owned by Indonesian citizens, while foreign funding parties can provide instructions or order various legal transactions related to the land. However, although land ownership is officially owned by Indonesian citizens, financial intervention from foreign parties creates an indirect ownership dimension that needs to be considered in terms of legality and ethics.

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<sup>26</sup>Rosyani Ada, 2023, Legal Analysis of Land Ownership Rights Through Nominee Agreements by Foreign Citizens in Indonesia (Study of Case Decision Number: 2959 K/Pdt/2022), Unnes Law Review, Volume 6, Number 2, p.7626

<sup>27</sup>Y Hetharie, 2019, Nominee Agreement as a Means of Controlling Land Ownership Rights by Foreign Citizens (WNA) According to the Civil Code, Sasi, volume 25, no. 1, p. 36.

The existence of a nominee agreement allows foreigners to obtain ownership rights to land in Indonesia, this is contrary to Article 21 paragraph (1) and Article 26 of the UUPA.<sup>28</sup>The establishment of the UUPA was based on the aim of protecting the interests of the Indonesian people, with a focus on protecting and improving the welfare of local communities. The principles of land reform are stated in the UUPA, one of which is the strengthening and expansion of land ownership rights for all Indonesian citizens, which is also explained in the law. With the existence of nominee agreements for land ownership by foreigners, there is a violation of the basis for the establishment of the UUPA and the principles of land reform mandated by this law. This creates a discrepancy with the main objective of the UUPA which should prioritize the interests of the Indonesian people and guarantee the strengthening and expansion of land ownership rights for Indonesian citizens.

The legal consequences of the covert transfer of land ownership rights by Foreign Citizens (WNA) in Indonesia can cause various adverse legal impacts for the parties involved, as well as the country itself. Legally, WNA are not permitted to own land with freehold rights in Indonesia, as explained in the Basic Agrarian Law (UUPA). The agreement is not legally formal and does not violate the rules, but the agreement made between the Indonesian citizen and the WNA is invalid because if viewed substantially. The legal position of the WNA in the agreement is very weak, because both parties are capable of acting and binding themselves voluntarily, but the cause is false or prohibited because the agreement results in a violation of the provisions of Article 26 Paragraph 2 of the UUPA and does not fulfill the elements of an agreement in Article 1320 of the Civil Code. In a nominee agreement, the third and fourth conditions, namely a certain subject matter or object of the agreement and also a cause that is not prohibited, are two conditions for the validity of an agreement that has been violated. Therefore, the nominee agreement made by the parties is null and void and then the land or building on it that is agreed in the agreement will fall to the state. and other consequences that will arise in the nominee agreement are if one of the parties defaults, it cannot be brought to court because from the beginning the agreement was considered never to have existed, even though it is considered to have existed, it still cannot be tried because it has violated the legal requirements of an agreement and is contrary to applicable laws and regulations.

#### **4. Conclusion**

Legal certainty of land ownership rights for foreign citizens (WNA) in Indonesia is strictly regulated by the Basic Agrarian Law (UUPA) and its implementing regulations. According to Article 42 of the Basic Agrarian Law (UUPA), WNA can only be given use rights and lease rights to land, not ownership rights. This is part of an effort to maintain the sovereignty of Indonesian land which can only be fully

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<sup>28</sup>K Aswadi and S Sarajudin, 2020, Strength of Proof of 'Borrow Name' Agreements Between Foreigners and Indonesian Citizens for Land Purchase Purposes, Unizar Law Review (ULR) volume 3, no. 1., p.241

owned by Indonesian Citizens (WNI). In addition, Article 52 paragraph (1) of Law No. 1 of 2011 concerning Housing and Residential Areas (as amended by Law No. 6 of 2023) emphasizes that WNA can occupy a house with lease rights or use rights. The main criteria for WNA to own a house with lease rights or use rights is ownership of valid immigration documents in accordance with the regulations. Government Regulation Number 18 of 2021 also emphasizes that WNA who can own a house on land with use rights are those who provide economic benefits, work, or invest in Indonesia. The right to use and leasehold systems restrict foreign nationals from having full control over a house or land, in accordance with Article 21 and Article 26 of the UUPA. The legal consequences of the covert transfer of land ownership rights by foreign nationals (WNA) have serious legal implications, considering that this violates the basic principles of the Basic Agrarian Law (UUPA) which limits land ownership rights only to Indonesian citizens (WNI). Covert agreements, such as nominee agreements, which aim to circumvent the provisions of agrarian law, are therefore considered null and void according to Article 26 paragraph (2) of the UUPA. As a result, the promised land will fall to the state, and the parties involved cannot demand a refund. In addition, this type of agreement is contrary to the requirements for the validity of an agreement according to Article 1320 of the Civil Code, especially regarding the object of the agreement and the purpose that does not conflict with the law.

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