JCH (Jurnal Cendekia Hukum)
Volume 12 Number 1, Year 2026
e-ISSN: 2580-1678 And ISSN: 2355-4657
Open Access: http://e-jurnal.stih-pm.ac.id/index.php/cendekeahukum/index

LEGAL CERTAINTY AND SCHEMES: EMPIRICAL STUDY OF FOREIGN LAND OWNERSHIP IN BALI

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Abstract

Foreign nationals (WNA) are barred from holding freehold title (Hak Milik) under Indonesia's Basic Agrarian Law (UUPA), yet demand for land in Bali keeps pushing them toward indirect routes. Existing studies of these routes are largely normative and case-based, and they say little about how the schemes are built, why they persist, or how the responsible institutions actually respond. This article presents a juridical-empirical study that combines semi-structured interviews with a notary/land deed official (PPAT), an official of the Bali Regional Office of the National Land Agency (BPN), and a foreign national with land transactions in Bali, together with an analysis of legislation, two District Court decisions, and one reported case. Using fraus legis (legal evasion) as an analytical test, the study finds that nominee agreements are typically reinforced by stacked leases, fictitious debts secured by land, powers of attorney, wills, and marriage arrangements; that the registered Indonesian nominee carries the tax exposure while the foreign party holds no enforceable legal position; and that formal reliance on the name on the land certificate coexists with substantive harm, namely land price speculation, pressure on protected agricultural land, and social tension. Read through Progressive Law and Responsive Law, these findings support a shift from form-based to substance-based scrutiny by judges, PPATs, and land authorities, supported by cross-agency data sharing and zoning-based safeguards.

Keywords: *Agrarian; Empirical; Foreigner; Fraus Legis; Nominee Agreement; Bali.*

INTRODUCTION

Land in Bali is at once an agricultural base, a cultural anchor, and a scarce investment asset. Land is a strategic resource with high economic, social, and cultural value (Togarotop et al., 2022) and, in Indonesia, also a symbol of state sovereignty (Farhani, 2022). Bali's standing as a leading international tourist destination, together with its cultural charm, natural beauty, and economic potential, has pushed the interest of foreign nationals (WNA) in owning property there far beyond what the law allows. Under the nationality principle, only Indonesian citizens (WNI) may hold Hak Milik (freehold title) (Articles 9(1) and 21(1) of Law No. 5 of 1960 on Basic Agrarian Principles, hereafter UUPA), and Article 26(2) UUPA prohibits any act intended, directly or indirectly, to transfer Hak Milik to a foreign national. WNA are left with lesser rights such as Hak Pakai (right of use).

The gap between strong demand and narrow lawful routes has produced indirect arrangements, above all nominee agreements, in which a WNI is registered as the owner while a WNA funds, controls, and enjoys the land (Amalia & Ma'ruf, 2021). Concern about foreign control of Indonesian land has also been framed as a question of territorial sovereignty (Afriansyah, 2015). The arrangements create legal uncertainty, weaken state control over land

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.
* Received: 20 February 2026, Received in revised form: 20 September 2026, Accepted: 11 November 2026
Doi: 10.3376/jch.v12i1.1335

management, and add to land price increases that local residents can hardly afford.

Nominee agreements in Bali have attracted considerable scholarly attention, and this article builds on that work. Afriansyah (2015) approaches foreign land holdings through international law and territorial sovereignty, taking the sale of islands, rather than everyday nominee arrangements, as the entry point. Sudini and Utama (2018) show that nominee agreements made in notarial deeds are null and void because they fail the objective requirements of Article 1320 of the Civil Code, while Wiryani and Utama (2018) argue that such deeds in tourism investment in Bali are formally valid but materially violate Article 26(2) UUPA. More recent studies examine individual court decisions: Manuaba et al. (2024) analyze a Gianyar District Court decision, and Ridhogusti and Kurniati (2024) analyze Denpasar District Court Decision No. 274/Pdt.G/2020/PN Dps, tracing its legal and social implications. Amalia and Ma'ruf (2021) are among the few to use an empirical juridical approach, but their fieldwork concerns underhand nominee agreements attested by notaries (waarmerking) in Jepara Regency, Central Java, not Bali.

Read together, these studies leave four gaps. First, most are normative or single-case analyses: they establish that nominee agreements are void, but say little about how the arrangements are assembled in practice or why they persist despite that consequence. Second, the accounts of those who handle land transactions and registrations (notaries, land deed officials or PPATs, and land officials) and of the foreign nationals concerned rarely enter the analysis, and the one empirical study among them is not about Bali. Third, the focus on the nominee agreement itself obscures the layered structure that practitioners describe (leases, secured loans, powers of attorney, wills, and marital property) as well as its tax and spatial-planning consequences. Fourth, recommendations, typically stricter enforcement and better public education, are seldom tied to an explanation of why positive law has failed to block these schemes.

This article responds to these gaps in two ways. Analytically, it treats fraus legis (legal evasion, or wetsontduiking) as a test rather than a label: a scheme is evasive when instruments that are lawful on their face are combined to reach a result that a mandatory rule forbids (Hetharie, 2022). Normatively, it uses Progressive Law (Rahardjo, 2010) and Responsive Law (Nonet & Selznick, 2018) as lenses to explain why formal rules have not stopped the schemes and what kind of legal breakthrough could.

Drawing on interviews with three informants, court decisions, and legislation, the article asks four questions. First, through which lawful routes may WNA hold land in Bali, and where does practice depart from them? Second, what forms do the evasive schemes take, according to the actors who encounter them? Third, does the fraus legis test explain these schemes and the three cases examined (two District Court decisions and the Parq Ubud case), and what legal, tax, and socio-economic harms follow? Fourth, how can progressive and responsive legal approaches inform solutions? The article contributes an empirical, Bali-specific, multi-actor

account of the schemes; a map of the chained contracts involved; and a theory-driven diagnosis that connects formal legal certainty with substantive justice, with the aim of informing policymakers and law enforcers who must decide where scrutiny should fall.

RESEARCH METHOD

This study employs a juridical-empirical (socio-legal) design, examining law as written and law as practiced (Irwansyah, 2022). The empirical component is the primary source for findings on modus operandi, incentives, and institutional responses, while the normative component supplies the standards against which they are assessed. Three informants were selected purposively for their distinct vantage points in a land transaction (Table 2). Semi-structured interviews were conducted in Denpasar and online between June and October 2025, covering lawful routes, schemes encountered, legal and tax consequences, oversight, and policy views. Informants are identified by role only. Because unlawful arrangements are rarely documented, the interviews are treated as evidence of mechanisms, not of prevalence. Secondary data comprise the 1945 Constitution, UUPA, the Civil Code, Law No. 11 of 2020 on Job Creation, Government Regulation No. 18 of 2021, SEMA No. 10 of 2020, Denpasar District Court Decision No. 274/Pdt.G/2020/PN Dps, Gianyar District Court Decision No. 137/Pdt.G/2021/PN.Gin, the Parq Ubud case, and the scholarly literature.

Table 2. Profile of informants

Code	Informant	Position in a land transaction
I-1	Notary and land deed official (PPAT) in Bali	Drafts and executes deeds; sees how schemes are structured and advised
I-2	Official of the Bali Regional Office of the National Land Agency (BPN) for the determination and registration of land rights	Registers rights; sees disputes and the enforcement response
I-3	Foreign national (Filipino citizen) with land transactions in Bali	Acquirer’s view of process, cost, and motives

Transcripts were coded under five themes (lawful routes, modus operandi, legal and tax consequences, oversight and enforcement, and policy views). The findings were triangulated across informants and against the court decisions and literature, and views held by only one informant are identified as such. Fraus legis is operationalized by asking three questions. First, is each instrument, taken alone, lawful on its face? Second, does the combination target Articles 21(1) and 26(2) UUPA? Third, does it deliver the prohibited result of foreign control over Hak Milik land? Progressive Law and Responsive Law are applied at the end of the discussion to explain why formal rules have fallen short and to derive solutions.

RESULTS AND DISCUSSION

The discussion follows the four research questions. It begins with the lawful routes and how the informants describe them, then maps the schemes and tests them for fraus legis against the three cases. It then examines the legal, tax, and socio-economic consequences and,

finally, uses Progressive Law and Responsive Law to explain why formal law has fallen short and what could change.

1. Lawful Routes for Foreign Land Tenure and Where Practice Departs from Them

The starting point is the nationality principle: only WNI may hold Hak Milik, the strongest, most complete, and hereditary land right (Ridhogusti & Kurniati, 2024). The UUPA replaced a discriminatory colonial agrarian order (Hastarini & Luthfan, 2022), and Article 26(2) closes the indirect route by voiding acts that aim to transfer Hak Milik to foreign nationals. The UUPA rests on four conceptual elements, namely the right of the nation, the state's right of control, customary rights, and individual rights, which stand at the top of the agrarian legal order (Ramadhani, 2024). The lawful options for WNA are correspondingly narrow.

The first option is Hak Pakai for residential purposes (Articles 41 and 42 UUPA). The BPN official (I-2) set out the current conditions: the applicant must hold complete immigration documents (both a travel document and a stay permit); may hold only one parcel, for a residence; the parcel may not exceed 2,000 m²; and its price must exceed IDR 5 billion in Bali. The term is 30 years, extendable by 20 years and renewable for another 30. The notary/PPAT (I-1) gave the same price threshold and confirmed the requirement of a limited or permanent stay permit. The second option is Hak Sewa untuk Bangunan (leasehold for buildings; Articles 44 and 45 UUPA), which concerns the building and not the land itself (Putri N, 2024). The third is Hak Milik atas Satuan Rumah Susun (condominium ownership), opened to WNA by Article 144(1) UUCK and Government Regulation No. 18 of 2021 but restricted by price, area, and location. Prithresia (2024) points out that strata ownership implies a share in the common land, which sits uneasily with the nationality principle.

The immigration status behind Hak Pakai deserves attention, because it shows how far the lawful route depends on documents outside the land administration. I-1 explained that a foreigner may qualify through several kinds of limited stay permit: a retirement permit for those who have retired, a work permit for those sponsored by an Indonesian company, or an investor permit for those who have established a company and met its capital requirements. Once a permit is held, the foreigner may apply for Hak Pakai, but only for one parcel and subject to the price threshold. I-1 was unsure of the exact source of some of these requirements, which are set at the ministerial level and applied by BPN at registration, and said that notaries mostly follow what BPN requires. This matters for legal certainty: a route whose conditions practitioners cannot always trace to a source is easy to misunderstand and easy to bypass.

The fourth route is corporate. Business use must go through a foreign-investment company (PT PMA), which can hold Hak Guna Bangunan but not Hak Milik. I-1 put it plainly: no company, however large, holds Hak Milik. I-2 explained that BPN treats the company as a legal subject and does not look at whether its owners are WNA or WNI, so a company established under Indonesian

law is entitled to the rights its legal form allows.

The lawful routes are narrow by design, and the informants described them as costly. I-1 observed that foreigners who want to comply fully find complete licensing extremely difficult and expensive, and the interviews more broadly showed that complicated administration, high cost, and limited tenure keep WNA interested in freehold, which they regard as better for long-term investment and as collateral for credit (Permatadani & Irawan, 2021). I-2, for his part, supported the restrictions: given Bali's pressure of demand, he argued, the state needs filters, and the price and area thresholds are such filters. The outcome is a lawful frame that is deliberately restrictive and a demand for full title that persists. The remainder of this section examines how that demand is met unlawfully.

2. Typology and Modus Operandi of Nominee Arrangements: A Fraus Legis Analysis

In a nominee arrangement the WNI nominee is listed as owner on the certificate (de jure), while the WNA supplies the funds and controls, manages, and enjoys the land (de facto); the nominee cannot use or transfer the land without the foreigner's consent (Hetharie, 2022; Amalia & Ma'ruf, 2021). The informants confirmed that the nominee agreement is rarely used alone. I-1 described the sequence he had seen. Once the land is registered in the nominee's name, a lease in favor of the foreigner is added, running 25 years, then another 25, then another, or 100 years at a stroke, so that it becomes "unlimited, like a lifetime." A loan agreement then makes it appear that the nominee owes money to the foreigner, with the land pledged as security. Finally, a will is drawn up so that the land passes to the foreigner on the nominee's death. Adding the absolute power of attorney identified in the literature (Isra & Supriyo, 2017; Ulyannuha & Priyono, 2024) gives the chain summarized in Table 1.

Table 1. Chained contracts used to reinforce nominee arrangements

No.	Additional Scheme	Security Mechanism	Legal Basis Involved
1	Long-Term Lease Agreement	WNA (through WNI) enter into very long-term lease agreements, such as 25, 50, 99, or even 100 years, which effectively give WNA full control as if they had ownership rights.	Lease Agreement (UUPA Articles 44 & 45). If the term is too long, it may be considered legal evasion.
2	Power of Attorney to Sell (Absolute Power of Attorney /	WNI (nominees) grant irrevocable power of attorney to WNA to take legal action regarding land, including selling, donating, or	Power of Attorney.

	Irrevocable Power of Attorney)	leasing it.	
3	Debt Agreement with Collateral Rights	WNA provide loans (debt) to WNI, with the freehold land used as collateral or encumbrance (HT). This scheme is often used to release collateral if WNI default on their payments. The encumbrance placed on the freehold is recorded in the land registry.	Mortgage Law. If the debt is fictitious, the agreement may be considered legally invalid.
4	Will Agreement	The WNI (nominee) made a will stating that the ownership rights to the land would be inherited by the WNA.	Inheritance of Property Rights by WNA: WNA must relinquish such rights within one year of acquiring them, otherwise the rights will be revoked and transferred to the State.
5	Mixed Marriage Method	WNA marry WNI to purchase land in their spouse's name, especially in Bali. If there is no prenuptial agreement, the land is considered joint property (commingling) which will legally revert to Usage rights or be forfeited after one year.	Marriage Law, UUPA Article 21 paragraph (3). If there is a separation of property agreement, WNI (wives) can be treated like ordinary WNI during transactions.

I-1 explained why the instruments are stacked: because the legal basis for the foreigner's position is unclear, the drafter makes "all kinds of backups." He was blunt about what this reveals: "There are too many legal acts, piled on top of one object. And it is very obvious that one thing is never mentioned, namely that the real owner is the foreigner. That is the thing not stated in any of the agreements." Each instrument may pass a formal check; taken together they conceal the one fact that matters.

The mixed marriage route shows that evasion can arise from ignorance as much as from design (Ghazaly, 2019). I-1 recounted a typical case. An Indonesian woman marries a foreigner in 2010, buys land in 2012 without a marital property agreement, and tries to sell in 2020. Because marital property is joint, part of the land is in law held by a foreigner, who under Article 21(3) UUPA should have relinquished it within one year. In practice, I-1 said, the state does not simply seize such land but offers options such as releasing or downgrading the

right, although the land can no longer be sold in the ordinary way. I-2 confirmed that BPN now declines to process such transactions unless a property separation agreement exists; with one, the WNI spouse is treated as an ordinary WNI and no spousal consent is needed.

Both officials indicated that the classic nominee agreement is receding. I-1 said that since he began as a notary many practitioners had abandoned it, and his seniors no longer agree to draw up nominee agreements: "If you call it legal smuggling, perhaps. But legally speaking nothing is wrong; fundamentally, however, it is a violation." I-2 described formal disputes as rare and noted that systematic data are lacking. I-1 also stressed that many arrangements rest on trust alone, with no written agreement. That leaves no documentary trace, which suggests that court records and notarial practice understate the phenomenon.

Applying the three questions set out in the Method section, the nominee arrangement meets each element. First, individual instruments such as a lease, a power of attorney, or a loan are lawful on their face. Second, the combination targets the mandatory rules in Articles 21(1) and 26(2) UUPA. Third, it delivers what those rules forbid, control of Hak Milik land by a foreigner. The legal consequences follow from the Civil Code. The cause of the nominee agreement is to circumvent the UUPA, so it fails the requirement of a lawful cause in Article 1320; an agreement founded on a prohibited cause has no effect under Article 1335; and the scheme offends the good faith required by Article 1338(3). Freedom of contract is limited by law and public order (Amalia & Ma'ruf, 2021; Sudini & Utama, 2018). The derivative instruments cannot cure this defect, since an agreement built on a void agreement carries the same cause. I-2 reached the same conclusion from the standpoint of BPN: an arrangement made to depart from Article 21 UUPA has no lawful cause and is void by law.

The concept has a parallel in taxation, where fraus legis describes avoidance that exploits gaps or ambiguities in a rule contrary to its intent. The parallel is useful here because the two meet in practice: a scheme built to defeat the nationality rule also tends to defeat the tax rules attached to ownership, as the informants' accounts of nominee taxation below show (Febriyanti & Hidayat, 2024). In both fields the test is the same. What matters is whether the arrangement is designed to achieve a result that the rule was meant to prevent, not whether each step is formally permitted.

The three cases show how this analysis plays out. In Denpasar District Court Decision No. 274/Pdt.G/2020/PN Dps (Ridhogusti & Kurniati, 2024), Bella Isa Widyalaksita (WNI) bought freehold land in Canggu, Badung, in 2011. The land was registered in her name but controlled by two Australian citizens through a series of disguised agreements, including long-term leases and sale-and-purchase agreements favorable to them, drawn up by a notary who was joined as a defendant. The court annulled the nominee agreements. All three elements are present, and the joinder of the notary shows that the gatekeeper's own liability is at stake.

The Gianyar District Court Decision No. 137/Pdt.G/2021/PN.Gin (Febriyanti & Hidayat, 2024) concerned a Dutch

citizen (IJD) who bought two plots and a villa and registered them in the name of an Indonesian (NH) as a gift, while paying all purchase and tax costs. When the relationship deteriorated, IJD tried to reclaim the property, and NH sued. The panel rejected NH's claim in its entirety. The facts fit the test, in particular the split between registered and actual owner and the foreigner's payment of all costs, yet the outcome differs from Denpasar: the registered owner lost. The dismissal of the registered owner's claim shows that courts do not treat every nominee dispute alike, which is itself a source of legal uncertainty. SEMA No. 10/2020, which treats the party named on the certificate as the legal owner, adds to the tension, because that name was placed on the certificate by the very act the law forbids.

The Parq Ubud case (Putri N, 2024) adds a spatial dimension. The developer is reported to have taken control of 34 freehold certificates (SHM) belonging to local residents in Tegallalang, Ubud, covering 1.8 hectares to be used for tourist accommodation, land that overlaps with Protected Rice Fields (LSD), Sustainable Food Agriculture Land (LP2B), and plantation zones. Here the scheme targets not only the nationality rule but also land-use controls, and its scale goes well beyond a single transaction.

The two officials also identified which modes they meet most often. I-2 listed three: the nominee agreement itself, with or without a loan; a debt arrangement in which the land is pledged and a security right is registered; and the marriage route. He noted that a foreigner may lawfully be a creditor holding a security right under the Mortgage Law, though this is rare and subject to stricter requirements, and that an unusually long or unclear term should raise suspicion of a nominee arrangement. In his experience, however, suspicion arises only after a problem has surfaced, so oversight is largely reactive.

3. Legal Vulnerability, Tax Exposure, and Socio-Economic Impacts

The nominee holds the certificate, so the foreign national holds nothing enforceable. The arrangement is therefore risky for both parties. I-1 noted that people first imagine the foreigner to be the endangered party, yet in his experience the greater risk often lands on the Indonesian nominee. The foreigner's exposure is nonetheless real. Land controlled by a WNA may be sold by the registered nominee without the foreigner's knowledge, and the foreigner then has few options to reclaim it. I-2 illustrated how the formal rule works with a hypothetical: a nominee who occupies the land reports the certificate lost, BPN issues a replacement because the certificate is in her name, and she sells. "BPN is simple," he said, "whoever is named in the certificate is the owner. What happens outside of it is a matter outside." SEMA No. 10/2020 states that the party named on the certificate is the legal owner, but because issuance of the certificate was preceded by an unlawful act, its legal status remains problematic.

Legally, the consequences of a nominee arrangement are severe for everyone involved. Because the arrangement rests on a prohibited cause, it is null and void, the land can fall to the state under Article 26(2) UUPA, and payments made to the nominee cannot be reclaimed by the foreigner (Amalia & Ma'ruf, 2021). The foreigner thus risks

losing both the land and the money, while the nominee risks losing the land, facing tax claims, and, where a notary drew up the deeds, exposing the notary to liability. I-1 described a milder outcome in the mixed marriage cases, where the authorities offer options such as releasing or downgrading a right, but the exposure remains, and it depends on official discretion rather than on a clear rule.

The nominee's losses are typically fiscal. According to I-1, a nominee usually receives a fee of about 5 to 10 percent of the sale price. After the sale is completed and the foreigner has been paid, the foreigner leaves the country. Later, the tax authorities may ask the nominee, as the registered seller, about the source of the assets or the unreported land, and the resulting assessment and penalties can exceed the fee received. Tax evasion is a recognized feature of nominee schemes, since the real owner hides assets (Febriyanti & Hidayat, 2024). I-1 added that, in his view, the regional acquisition tax (BPHTB) and the national income tax run on separate systems that are not synchronized, so an arrangement that is invisible at registration may surface only years later.

The picture is not uniformly negative. I-1 also described many cooperative relationships in which foreign owners support local ceremonies and respect Balinese custom, and suggested that many foreigners are interested in business rather than possession. The nuance matters for policy: enforcement aimed at foreign presence as such would be misdirected, and what needs attention is the structure of concealment.

Beyond the parties, the schemes feed land price speculation (Isra & Supriyo, 2017; Ridhogusti & Kurniati, 2024). As demand from WNA rises, prices move beyond what local residents can pay, and residents move to more affordable areas, a displacement often described as gentrification that damages local social structure (Kurniawan & Raditya, 2025). Communities feel marginalized and describe the trend as "economic colonization" (Ridhogusti & Kurniati, 2024), and when customary or historic land is taken over, local identity and cultural heritage erode (Manuaba et al., 2024). The issue became a hot topic in the 2024 Bali gubernatorial election debate (Kurniawan & Raditya, 2025).

The concern extends to the national interest. The nationality principle protects sovereignty over land resources (Prithresia, 2024), and nominee arrangements allow foreigners to control strategic assets that the law reserves for WNI; there is concern that excessive foreign control could affect economic, social, and political stability (Ridhogusti & Kurniati, 2024). The literature also points to tension within the regulatory framework itself: the UUCK has been criticized for widening foreign access to apartment units in a way that sits uneasily with national agrarian principles (Prithresia, 2024), which may blur the message about how firmly the nationality principle is meant to be enforced.

I-1's illustration of the incentives is telling. A landowner with about 20 are (2,000 m²) of paddy field can earn roughly IDR 300 million a year by leasing it, without effort or the risk of crop failure, and few owners can refuse such an offer. The pressure on farmland thus comes not from sale alone: leased paddy is turned into villas, often in green zones.

I-1 said the notary cannot prevent this, since the notary's authority ends with the civil agreement of lease, and whether the land may be built on is a matter of zoning. I-2 pointed out that Hak Pakai cannot lawfully be granted to a foreigner in a green belt, so when villas stand there the certificate should be checked: it may again be a nominee. Together with the Parq Ubud case, these accounts link nominee schemes to the conversion of protected farmland, which the literature on price effects rarely does.

4. Why Formal Law Falls Short: Progressive and Responsive Readings

Nonet and Selznick distinguish repressive, autonomous, and responsive law. Autonomous law prizes procedural regularity, institutional integrity, and fidelity to rules; responsive law keeps these virtues but reads rules in light of their purposes and social consequences (Nonet & Selznick, 2018; Santiago, 2023). The findings show that land administration in Bali behaves autonomously in three respects, and these explain why positive law failed to block nominee schemes.

The first is registration formalism. For BPN, the register answers one question, who is named on the certificate, and side arrangements are "outside." I-2 defended this on legal-certainty grounds: a certificate must give certainty of subject, object, and legal relationship, and recognizing undisclosed arrangements would blur it. The logic is coherent, yet it means the register's certainty attaches to the name and not to the legitimacy of the right, so the certificate produced by an unlawful arrangement is protected as if it were sound. The second is fragmentation of gatekeepers. The notary drafts within a civil-law mandate and cannot police later land use; BPN registers and typically learns of a nominee only when a dispute arises; regional and national tax systems are not synchronized; and zoning is enforced separately. Each acts correctly within its remit, and nobody sees the whole chain. The third is the cost of compliance. When lawful routes are seen as slow and expensive, and advisers offer a simple alternative, the shortcut prevails. I-2 put part of the blame on advisers: if a foreigner is told the rules, he will follow them, so notaries and lawyers should "teach them the right way." I-1's own remark, that nothing is legally wrong but fundamentally it is a violation, shows that practitioners recognize the split between form and substance.

Progressive Law supplies the remedy at the level of adjudication. Rahardjo (2010) argues that law exists for people, to deliver substantive justice, and that judges must break through formalities when the letter of a rule defeats its purpose. The purpose of Article 26(2) UUPA and the nationality principle is to keep land under national control for the welfare of the community. Layered schemes are designed to satisfy each formal check while defeating that purpose. The Denpasar decision, which annulled the set of agreements rather than assessing each on its own terms, reflects this approach. Courts could go further by treating stacked instruments over a single parcel as one transaction and testing their common cause. The Supreme Court could also supplement SEMA No. 10/2020 with guidance that courts should examine the cause of the arrangements that produced the registration, not only the name on the

certificate, so that the protective effect of registration does not extend to schemes the law forbids.

For notaries and PPATs, the same logic implies a duty of substantive scrutiny. Red flags emerge from the interviews: several legal acts stacked over one object (I-1); unusually long or unclear terms (I-2); irrevocable powers of attorney (Isra & Supriyo, 2017); and a foreign creditor holding land as security from a small landowner. Notaries and PPATs who draw up agreements that circumvent the law risk administrative, civil, or criminal sanctions under the Notary Office Law (UUJN) and the professional code of ethics (Febriyanti & Hidayat, 2024; Ulyannuha & Priyono, 2024), and should refuse to do so (Noor et al., 2024). The advisory role matters as well: I-1 described steering clients toward lawful alternatives, and I-2 urged notaries and lawyers, who are usually the first to whom a foreigner turns, to explain the lawful route.

Responsive Law supplies the remedy at the level of institutional design and policy. For BPN and the Bali Regional Government, five measures follow from the findings. First, screening at registration for combinations such as a long-term lease, an irrevocable power of attorney, and a security right over the same parcel. Second, data sharing among BPN, regional tax authorities (BPHTB), and the national tax office, so that concealed ownership does not surface only years later. Third, verification of zoning before leases over agricultural land are registered, to protect LSD and LP2B. Fourth, sustained legal education for foreigners, nominees, and landowners, since weak enforcement and low legal literacy leave room for the practice even after SEMA No. 10/2020 (Vandini, 2025). Fifth, consideration of I-2's proposal to concentrate foreign tenure in designated zones, which would make oversight easier because foreign interest in a home would be met in a limited area; this idea has trade-offs, including the risk of enclaves, and needs further study. A responsive approach also requires public participation in revising land regulations, social evaluation standards for foreign investment in land, and recovery mechanisms such as compensation or redistribution for communities harmed by the schemes (Santiago, 2023). These measures are more likely to work if they make the lawful routes easier to use, because the informants' accounts show that cost and complexity drive the shortcut.

These proposals carry risks that should be stated. A court that looks past form to substance exercises wider discretion, and the register's certainty, which BPN rightly values, could suffer if every certificate were open to challenge on the ground that it hides a nominee. The remedy is to make substantive scrutiny evidence-based and targeted: it should be triggered by identifiable indicators, such as the stacked instruments and unusual terms described above, and exercised by courts after hearing the parties, not by administrative suspicion. Responsive measures likewise need safeguards. Screening at registration should flag and refer cases, not block transactions by default, and zoning-based tenure should be tested for unintended effects, such as concentrating land price pressure in the designated areas. In this way substance-

based scrutiny complements formal certainty and does not replace it.

The two approaches reinforce each other. Progressive Law works on how courts and notaries interpret and apply rules already in force; Responsive Law works on how the institutions around them are designed and how they answer to social consequences. Together they address a fraus legis not only as a formal violation to be punished but as a symptom of a gap between the letter of agrarian law and its purposes.

CONCLUSION

This study asked how foreign control of land in Bali is achieved despite the nationality principle, and what a better legal response would look like. Three findings stand out. First, the practice is layered. Nominee agreements are reinforced by leases, secured loans, powers of attorney, wills, and marriage arrangements, and the fraus legis test shows that these are one evasion and not several lawful acts. Practitioners see the classic nominee agreement receding, but they also describe unwritten trust arrangements that leave no trace. Second, harm is unevenly distributed. The foreign party holds no enforceable position, the nominee carries the tax exposure, and the wider public bears the price pressure and the pressure on protected farmland. Third, formal legal certainty, the rule that the name on the certificate decides ownership, protects the register but not the purposes of the UUPA, and the gap between legal form and legal purpose is what lets the schemes work.

The remedy therefore lies less in new prohibitions than in scrutiny of substance. Courts and notaries should test the cause of stacked instruments and not only their form; land, tax, and spatial-planning authorities should share information so that no single gatekeeper is left with a partial view; and lawful routes, including zoning-based options, should be made easier to use than the shortcut.

For scholarship, the study shows the value of combining doctrinal analysis with the accounts of those who apply the law: the doctrine confirms that nominee agreements are void, while the interviews show why that answer has not settled the matter. For practice, it identifies where a single gatekeeper cannot see the whole scheme and where cooperation among gatekeepers would help most. Neither contribution depends on the prevalence of nominee arrangements, which remains unknown; both depend on the mechanism, which the interviews and the cases describe consistently.

The study has limitations. It rests on three informants selected purposively in one province, so it shows patterns and mechanisms and not prevalence. Only one foreign national was interviewed, so the perspective of WNA is thinly represented, and the officials' accounts reflect their institutional positions. The court decisions and the Parq Ubud case are analyzed as reported in the literature and not through a systematic review of court records or land registry data. The interviews were held in 2025, so the effects of later policy changes could not be assessed.

Future research could build a dataset of court decisions and land registry entries on nominee arrangements across Bali's regencies to estimate prevalence and outcomes; interview more foreign nationals, nominees, and district-level land officials; compare Bali with other tourism-driven land markets in Indonesia,

such as Lombok; examine the practicalities of data sharing between land and tax authorities; and evaluate zoning-based models of foreign tenure.

ACKNOWLEDGEMENTS

The author would like to thank the Research and Community Service Institute, Universitas Terbuka (LPPM UT) for its support and facilitation in conducting this research. This support greatly contributed to the smooth running of the research process and the writing of this article. The author also expresses his appreciation for LPPM UT's commitment to encouraging the development of high-quality research and scientific publications.

REFERENCE

Afriansyah, A. (2015). Foreigners Land Rights Regulations: Indonesia's Practice. *Mimbar Hukum*, *27*(1), 98–116.

Amalia, A., & Ma'ruf, U. (2021). The Tenure of Land by Foreigners through Nominee Agreements & Waarmerking by Notaries. *Sultan Agung Notary Law Review (SANLaR)*, *3*(2), 706–716.

Farhani, A. (2022). Rekonstruksi Konstitusi Terkait Konsep Wilayah Yang Utuh Dalam Negara Kesatuan Republik Indonesia. *ADALAH: Jurnal Ilmu Hukum*, *6*(3), 11–31. https://doi.org/10.15408/adalah.v6i3.26767

Febriyanti, M., & Hidayat, A. S. (2024). *Akibat Hukum Kepemilikan Sertifikat Hak Milik Atas Tanah Bagi Para Pihak Berdasarkan Perjanjian Nominee*. https://ejournalhub.org/index.php/mavisha

Ghazaly, J. H. (2019). *Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran*. https://doi.org/10.3376/jch.v5i1.183

Hastarini, A., & Luthfan, G. F. F. (2022). *Kedudukan Hukum Masyarakat Adat Dalam Memperoleh Hak Atas Tanah di Indonesia*. *8*(2), 243–264. https://doi.org/10.59999/v8i2.1326

Hetharie, Y. (2022). Kepemilikan Tanah Oleh Warga Negara Asing Melalui Perjanjian Pinjam Nama Sebagai Bentuk Penyelundupan Hukum Dalam Hukum Perdata Internasional. *Balobe Law Journal*, *2*(1), 12. https://doi.org/10.47268/balobe.v2i1.822

Irwansyah. (2022). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (H. Yunus, Ed.; Revisi). Mitra Buana Media.

Isra, M. I., & Supriyo, A. (2017). Penguasaan Hak Atas Tanah Oleh Warga Negara Asing Berlandaskan Perjanjian Pinjam Nama. In *Jurnal Sains Sosio Humaniora ISSN* (Vol. 7, Number 1).

Kurniawan, F. R. H., & Raditya, I. B. Y. (2025). Konsekuensi Hukum Perjanjian Nominee Antara WNA dan WNI Dikaitkan dengan Undang-Undang Pokok Agraria. *Jurnal Kertha Wicara*, *15*(7).

Manuaba, I. A. S. N., Setyawati, N. K. A., & Puspadma, I. N. A. (2024). Ownership Of Land Rights By Foreigners Using The Name Of Indonesian Citizens. *Journal of Law Theory and Law Enforcement*, 38–52. https://doi.org/10.56943/jlte.v3i3.611

Nonet, P., & Selznick, P. (2018). *Hukum Responsif*. Nusamedia.

Noor, A., Rafli Rusaedi, A., Hasbi Rizqan Izzani, M., & Wildan. (2024). *The Notary's Role In Agrarian Law Navigating Land Transaction Complexities*. *9*, 2355–4657. https://doi.org/10.3376/jch.v9i2.841

Permatadani, E., & Irawan, A. D. (2021). Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia. In *Anang Dony Irawan* (Vol. 2, Number 2).

Prithresia, B. (2024). *Kajian Perbandingan Asas Nasionalitas Hukum Agraria dalam Konteks Internasional*. *6*(2). https://doi.org/10.31933/unesrev.v6i2

Putri N, A. A. (2024). Perjanjian Pinjam Nama Warga Negara Asing Dengan Objek Hak Atas Tanah Melalui Pranata Hukum Nasional (Analisis Simulasi Kasus Dalam Putusan Pengadilan Negeri Denpasar Nomor 1138/PDT.G/2020/PN DPS). *Indonesian Notary*, *6*(3). https://doi.org/10.21143/notary.vol6.no3.1

Rahardjo, S. (2010). *Penegakan Hukum Progresif* (A. S. BL de Rosari, Ed.). Buku Kompas.

Ramadhani, R. (2024). *Buku Ajar Hukum Pertanahan* (Cetakan Pertama). UMSU Press.

Ridhogusti, R., & Kurniati, G. (2024). Implications of Nominee Agreements in Land Ownership by Foreign Nationals in Bali. *Reformasi Hukum*, *28*(2), 153–167. https://doi.org/10.46257/jrh.v28i2.1024

Santiago, F. (2023). *Monograf pembaruan hukum: Narasi epistemik perwujudan tatanan hukum nasional yang responsif* (N. Asnawi, Ed.; Edisi Pertama). Prenada.

Sudini, L. P., & Utama, I. W. K. J. (2018). Nominee Agreement Made For The Purposes Of Land Ownership By Foreign Citizens On The Basis Of A Notarial Deed. *Jurnal Notariil*, *3*(2), 109–115. https://doi.org/10.22225/jn.3.2.849.109-115

Togarotop, T. T., Wijayanti, P. U., & Anggreini, I. G. A. A. L. (2022). Aspek Sosial, Ekonomi, dan Lingkungan Ekowisata Subak Sembung, Kelurahan Peguyangan, Kecamatan Denpasar Utara, Kota Denpasar, Provinsi Bali. *Jurnal Agribisnis Dan Agrowisata (Journal of Agribusiness and Agritourism)*, 864. https://doi.org/10.24843/JAA.2022.v11.i02.p36

Ulyannuha, D., & Priyono, E. A. (2024). *Tanggung Jawab Notaris Akan Perjanjian (Akta) Pinjam Nama (Nominee) Warga Negara Asing Dalam Kepemilikan Tanah Dan Bangunan*. *6*(4). https://doi.org/10.31933/unesrev.v6i4

Vandini, T. (2025). Implementasi Nominee Agreement Dalam Perspektif Hukum Di Indonesia. *Jurnal Pendidikan Indonesia*, *6*(4).

Wiryani, M., & Utama, I. W. K. J. (2018). Land Rights Ownership by Foreign Citizens through Nominee Agreement in Tourism Investment in Bali. *Advances in Social Science, Education and Humanities Research*, *282* (ICBLT 2018). Atlantis Press. https://www.atlantis-press.com/proceedings/icblt-18/25905501