



The validity of nominee agreements on the ownership of shares from a business law and human rights perspective

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ARTICLE INFO

Article history:

Received Dec 15, 2025

Revised Dec 20, 2025

Accepted Dec 30, 2025

Keywords:

Accountability;
Company Shares;
Human Rights;
Investment Law;
Nominee Agreements.

ABSTRACT

This study analyzes the validity of nominee agreements in share ownership under Indonesian investment law through the perspective of human rights theory. Using a normative juridical method, the research examines how such agreements, often used to conceal foreign ownership, relate to national legal norms and human rights principles, including economic rights, equality before the law, and the right to national self-determination. The study draws on primary legal sources such as the Investment Law (Law No. 25 of 2007), the Company Law (Law No. 40 of 2007), and constitutional provisions under the 1945 Constitution, along with relevant international human rights instruments. The findings demonstrate that nominee agreements violate Article 33 of the Investment Law and contradict Indonesia's constitutional and human rights commitments. These agreements not only obscure ownership transparency but also undermine economic justice and the collective rights of Indonesian citizens to control national resources. The research concludes that maintaining the prohibition of nominee arrangements is essential to preserving legal certainty, national sovereignty, and the ethical integrity of foreign investment practices. The alignment of investment law with human rights principles strengthens Indonesia's commitment to fair, transparent, and sustainable economic governance.

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1. INTRODUCTION

As a developing nation, Indonesia requires foreign investment to stimulate national economic growth. Nevertheless, the dynamics of foreign investment activities often encounter complex regulatory challenges, arising from the interaction between host-state, home-state, and international legal frameworks. The existence of both national and international investment regulations is intended to ensure legal certainty for foreign investors seeking to establish their capital in Indonesia. Normatively, Article 5 paragraph (1) of the Investment Law (UUPM) stipulates that any investor wishing to invest in Indonesian territory must do so through a legal entity in the form of a Limited Liability Company (*Perseoran Terbatas*) incorporated within the jurisdiction of the Republic of Indonesia. Furthermore, Article 7 paragraph (1) of the Company Law (UUPT) requires that the establishment of a Limited Liability Company be formalized by a notarial deed written in the Indonesian language and executed by at least two or more individuals (Ricky et al., 2024).

In practice, investment activities in Indonesia must comply with various sectoral regulations governing the permissible business fields for foreign capital participation. These include, among

others, the Investment Law (UUPM) and Presidential Regulation No. 49 of 2021, which amends Presidential Regulation No. 10 of 2021 concerning Investment Business Fields. This regulation declares that, in principle, all business sectors are open to investment, except for those expressly categorized as closed. Open sectors are classified as priority business fields, while specific sectors are designated for partnership schemes with cooperatives and micro, small, and medium enterprises (MSMEs) under particular conditions. These designations are detailed comprehensively within the Negative Investment List (*Daftar Negatif Investasi*) (Gamaitarak et al., 2024).

However, the imposition of such regulatory restrictions by the government often leads investors to devise alternative mechanisms to circumvent limitations. Ironically, it is these very restrictions that have encouraged the emergence of the nominee agreement concept. A nominee agreement typically involves an arrangement between a foreign investor and an Indonesian citizen (WNI), wherein the latter lends their name as the nominal shareholder of a Limited Liability Company ostensibly established under Indonesian law (Daniel & Ariawan, 2022). Despite this formal ownership, control and management of the company effectively remain under the authority of the foreign investor. The primary objective of such an arrangement is to enable full de facto ownership and control of the enterprise by the foreign investor, notwithstanding the legal constraints on foreign participation in certain sectors (Faradhina, 2025).

From a legal standpoint, the practice of nominee arrangements has been explicitly prohibited under Article 33 paragraph (1) of the Investment Law (UUPM). This prohibition reflects the Indonesian government's commitment to preserving transparency, sovereignty, and fairness in investment practices, while ensuring that the rights and responsibilities of domestic stakeholders are not undermined by disguised foreign ownership structures. The issue becomes more complex when examined through the lens of human rights, particularly regarding the right to equality before the law, fair business competition, and the protection of economic sovereignty as a collective right of the Indonesian people (Alkatiri et al., 2024).

Viewed from a human rights perspective, the phenomenon of nominee agreements raises significant ethical and legal questions concerning the exploitation of national citizens' identities and potential violations of their economic rights (Alfaris, 2022). Such practices may also threaten the integrity of national economic self-determination, a principle closely tied to the collective human right to development. Therefore, beyond its technical-legal implications, the discourse surrounding nominee agreements in Indonesia must also be situated within a broader framework of economic justice and human rights protection. This analytical approach not only reaffirms Indonesia's commitment to legal certainty in investment law but also situates the debate within a moral and constitutional imperative to safeguard human dignity, equality, and sovereignty in the nation's economic governance.

This research contributes scientifically to strengthening the discourse on the intersection between investment law and human rights in developing countries by offering a critical analysis of how legal restrictions on foreign ownership interact with fundamental human rights principles. Specifically, it bridges the gap between normative legal approaches in investment regulation and the human rights framework emphasizing equality, transparency, and collective economic sovereignty. By contextualizing Indonesia's investment regime within broader international human rights obligations, this study highlights the tension between economic liberalization and the protection of citizens' economic rights. The research provides an analytical model that can be adopted comparatively by other developing nations facing similar dilemmas in balancing foreign investment attraction with the protection of national economic self-determination. Thus, the study not only contributes to Indonesian legal scholarship but also advances a broader understanding of how human rights can inform the design of equitable and sustainable investment laws in emerging economies.

2. RESEARCH METHOD

This study employs a normative juridical research method supported by a human rights analytical framework to examine the validity of nominee agreements in share ownership under Indonesian law (Marune, 2022). The research primarily relies on secondary legal materials, including legislation, international conventions, scholarly articles, and judicial interpretations relevant to

investment and human rights law. The normative juridical approach enables the analysis of legal norms within the Investment Law (Law No. 25 of 2007), the Company Law (Law No. 40 of 2007), and constitutional provisions under the 1945 Constitution of the Republic of Indonesia, interpreted through the lens of international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The analysis applies a qualitative descriptive technique, focusing on the coherence between national legal norms and human rights principles, particularly those related to equality before the law, economic rights, and national self-determination. Through doctrinal interpretation and theoretical elaboration, this research seeks to determine whether nominee arrangements are consistent with Indonesia's human rights obligations and constitutional mandate to ensure justice, transparency, and economic sovereignty (Marune, 2023).

3. RESULTS AND DISCUSSIONS

The Validity of Nominee Agreements on the Ownership of Shares

The use of nominee agreements in share ownership has developed as a mechanism driven by the desire of certain shareholders to conceal their ownership identity from both the public and government authorities for specific commercial purposes (Nadia, 2024). This practice is often perceived as an alternative strategy to navigate restrictions imposed on foreign investors in sectors legally closed to foreign participation. In such cases, foreign investors who wish to invest in restricted sectors are compelled to engage Indonesian citizens (Warga Negara Indonesia, WNI) to act as nominal shareholders in companies operating within those sectors. The nominee shareholder concept is defined as a company member who holds shares registered in their name on behalf of another person, whose true beneficial ownership may be subject to disclosure and investigation under corporate law. From this definition, it can be inferred that the designated nominee shareholder represents the interests of the true owner, acting in their name with the same rights and obligations as any shareholder, yet bound to exercise their authority according to the beneficial owner's instructions rather than their own discretion (Yanuar, 2021).

To ensure that the beneficial owner's interests are protected under this arrangement, a nominee agreement is typically established between the nominee shareholder and the beneficial owner. This agreement serves to maintain the anonymity of the true shareholder while regulating the rights, duties, and limitations of the nominee shareholder's authority. It further stipulates that all benefits derived from the share ownership shall belong exclusively to the beneficial owner. However, despite the contractual relationship between the parties, the law recognizes only the nominee shareholder as the legitimate owner of the shares, as it is their identity that is recorded in the company's Articles of Association. Consequently, the nominee agreement binds only the parties involved and has no legal effect upon third parties (Masum et al., 2023).

Should disputes arise between the nominee shareholder and the beneficial owner, such as disagreements over corporate decisions or deviations from agreed instructions, the beneficial owner would lack the necessary legal standing to assert claims against either the company or the nominee shareholder (Sulaiman & Dewi, 2025). Moreover, nominee arrangements may also generate tax-related issues, particularly concerning the obligation to report dividends and capital gains. Nominee shareholders often hesitate to declare such income, arguing that the shares do not truly belong to them. These practical complications further underscore the legal and ethical ambiguities surrounding the use of nominee agreements in Indonesia's investment landscape.

The validity of nominee agreements under the Burgerlijk Wetboek (BW) or Indonesian Civil Code can be assessed through general principles of contract law. According to Black's Law Dictionary, a nominee is "a person designated to act for another in a limited capacity, as an agent or trustee, without independent interest in the subject matter." In the Indonesian context, the foreign investor functions as the beneficiary, while the local party serves as the nominee (Rambe & Budhiawan, 2025). The structure of beneficiary and trustee is a concept originating in English common law and is not directly recognized in civil law jurisdictions, including Indonesia. Nevertheless, under Book III of the BW, which governs the law of contracts and adheres to an

open system, parties are permitted to formulate agreements to meet their specific needs, provided they do not contravene statutory provisions, public order, or morality.

In this framework, contracts under the BW are categorized into *nominaat* (nominated) contracts, explicitly recognized and regulated by law, such as sales or loan agreements, and *innominaat* (unnominated) contracts, developed through customary practice and not expressly regulated (Sumarsih, 2025). The nominee agreement falls under the latter category and is, in principle, legally permissible as long as it satisfies the general conditions for contract validity stipulated in Article 1320 of the BW. These conditions include the existence of mutual consent between the parties, the legal capacity of the parties, a specific and lawful object of agreement, and a legitimate cause. The first two conditions are classified as subjective, relating to the contracting parties themselves, while the latter two are objective, relating to the substance of the agreement. Breach of a subjective condition renders a contract voidable, allowing a party to seek judicial annulment, whereas breach of an objective condition renders the contract null and void *ipso jure*.

The nominee agreement must also conform to the fundamental principles of contract law under the BW: freedom of contract, consensualism, *pacta sunt servanda*, and privity of contract. The principle of freedom of contract allows parties to establish agreements freely, subject only to statutory, public order, and moral limitations. Consensualism dictates that a contract is concluded once the parties reach mutual assent, while *pacta sunt servanda* establishes that all valid agreements are legally binding on the parties. The doctrine of privity of contract further stipulates that contracts only bind the contracting parties and cannot impose obligations or confer rights upon third parties, except where explicitly permitted under Article 1317 BW (Kusuma, 2022).

Consent in a contract must be given freely, without error, coercion, or fraud. Consent obtained under mistake regarding the subject matter, under duress, or through deception invalidates the agreement. These limitations directly connect with the freedom of contract principle, which, while broad, is not absolute. Capacity, another key element of contract formation, is defined under Articles 1329 and 1330 BW, which establish that only those deemed legally competent, excluding minors and individuals under guardianship, may enter into contracts. Corporate capacity is likewise restricted to authorized representatives such as members of the board of directors, as prescribed in the company's Articles of Association (Audy & Sudiro, 2025).

The element of a lawful cause under Article 1320 BW requires that contracts not be based on unlawful or immoral purposes. A contract with a prohibited or illicit cause is void. Although in theory a nominee agreement could be deemed lawful under the open system of contract law, in practice it is frequently used by foreign investors to circumvent statutory prohibitions on foreign ownership in restricted sectors. In this regard, the Investment Law (UUPM) explicitly forbids both domestic and foreign investors from entering into any agreement intended to disguise the actual ownership of shares on behalf of another party. Such agreements and declarations are deemed null and void under the law, reaffirming the Indonesian legal system's commitment to maintaining transparency, fairness, and compliance in the domain of foreign investment.

The declaration of nullity (*batal demi hukum*) of nominee agreements carries profound legal implications for the parties involved, particularly in relation to the principle of legal certainty. When such agreements are deemed void *ab initio*, they are considered never to have existed in the eyes of the law, resulting in the restoration of all parties to their original positions before the agreement was made. Consequently, the beneficial owner loses any legal standing or enforceable rights over the shares held under the nominee's name, while the nominee shareholder assumes full legal ownership, notwithstanding the moral or contractual understanding between them. This situation generates significant uncertainty, as the beneficial owner cannot claim restitution or protection under civil law due to the contract's invalidity. From a broader perspective, the nullity also undermines predictability in investment relations, as parties engaging in informal arrangements are left without legal recourse in the event of disputes. Nevertheless, the strict enforcement of nullity serves an important deterrent function by upholding the rule of law and reinforcing the prohibition against disguised ownership structures. Thus, although the immediate impact may appear harsh for the parties, the doctrine of nullity ultimately strengthens legal certainty at the systemic level by affirming the supremacy of statutory investment restrictions and safeguarding the integrity of Indonesia's economic order.

The Validity of Nominee Agreements on the Ownership of Shares from a Human Rights Perspective

The discussion of the validity of nominee agreements in the ownership of shares can be critically examined through the framework of human rights theory, particularly the theories of economic rights, equality before the law, and the right to national self-determination. Human rights theories in this context emphasize the inseparable relationship between individual rights and state obligations in regulating economic activities that affect public welfare. The first theoretical foundation relevant to this discussion is the theory of economic rights as an integral part of human rights, recognizing every individual's right to participate in economic activities on equal footing without discrimination. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Indonesia is a party, guarantees these rights under Articles 2 and 6, which affirm that states must ensure fair and equal access to economic participation. This theory positions economic rights not merely as privileges but as legally enforceable entitlements that require state protection. Therefore, the use of nominee agreements to circumvent foreign ownership restrictions raises questions about whether such practices uphold or violate the principles of fairness and economic justice embedded in human rights norms. From this perspective, nominee agreements could undermine the collective right of Indonesian citizens to control national resources, as foreign investors may exercise economic power without legal accountability (Aisyah & Nefi, 2023).

The second theoretical foundation relevant to this issue is the theory of equality before the law, derived from the classical human rights principle of non-discrimination. This theory posits that all individuals and entities are subject to the same legal standards and enjoy equal protection under the law. The concept is reflected in Article 7 of the Universal Declaration of Human Rights (UDHR), which declares that all are equal before the law and entitled to equal protection without discrimination. In the Indonesian context, this principle is codified in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that every citizen shall be equal before the law and government. The practice of nominee agreements, in which foreign investors conceal their ownership through local intermediaries, may create inequality before the law by allowing certain individuals to evade legal restrictions applicable to others. Such practices potentially distort the balance of justice, as domestic investors are compelled to comply with ownership limits while foreign actors bypass them through artificial arrangements. This inequality challenges the principle of rule of law, as it erodes the integrity of legal institutions tasked with ensuring fairness and accountability. Consequently, equality before the law as a human rights principle demands transparency and honesty in investment practices. The state, therefore, bears the responsibility to ensure that all investment activities are conducted within the legal framework that treats both domestic and foreign investors fairly and without favoritism (Ayesha A. M. Rengganis & Cahyono, 2025).

The third theoretical perspective is the theory of national self-determination, which emphasizes a nation's collective right to control its political, economic, and social destiny. This theory is central to human rights discourse and is recognized in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR, which affirm that all peoples have the right to self-determination and may freely pursue their economic development (Narumugai, 2021). From this standpoint, Indonesia's restrictions on foreign ownership are not a form of protectionism but an exercise of sovereign rights to safeguard national economic independence. The use of nominee agreements to disguise foreign ownership effectively undermines this sovereignty, allowing external entities to exert control over strategic sectors. Such control can erode national autonomy, particularly in industries critical to Indonesia's development and public welfare. The theory of self-determination thus supports the argument that state regulation of foreign investment is consistent with human rights, insofar as it protects collective rights over natural and economic resources. In this sense, nominee arrangements, when used to bypass such regulation, may constitute an infringement upon the collective human right of Indonesians to determine their economic future. Therefore, maintaining the validity of national investment laws is essential not only for legal coherence but also for protecting the broader human rights framework of self-determination (Pandin et al., 2024).

In the Indonesian legal system, the regulation of nominee arrangements is governed primarily by Law Number 25 of 2007 on Investment (Undang-Undang Penanaman Modal, or UUPM). Article 33 paragraph (1) of the UUPM expressly prohibits investors, whether domestic or foreign, from entering into agreements that designate ownership of shares in the name of another party. Furthermore, Article 33 paragraph (2) declares that any such agreement shall be deemed null and void by law (*batal demi hukum*). This provision represents a clear attempt by the Indonesian legislature to prevent the concealment of foreign ownership, which could threaten national interests and contravene public policy. Additionally, Law Number 40 of 2007 on Limited Liability Companies (UUPT) reinforces this prohibition by mandating transparency in the ownership structure of corporations registered in Indonesia. From a human rights perspective, these legal provisions reflect the state's obligation to regulate economic behavior in a manner that protects the collective rights of its citizens. They ensure that investment activities contribute to sustainable development and the equitable distribution of economic opportunities. The prohibition against nominee agreements, therefore, aligns with the broader human rights mandate to uphold justice, equality, and accountability within the national economy (Anggraeni & Santoso, 2024).

Parallel to these investment regulations, Indonesia's human rights framework provides a constitutional basis for interpreting the legality of nominee agreements. The 1945 Constitution (UUD 1945) in Article 28D paragraph (1) guarantees every person's right to fair legal recognition, protection, and certainty. This article forms the foundation for a human rights-based approach to economic regulation, requiring the state to ensure that all economic transactions operate under transparent and fair legal norms. Moreover, Article 33 of the Constitution enshrines the principle that the national economy must be organized as a common endeavor based on family spirit, and that natural resources shall be controlled by the state and used for the greatest prosperity of the people. Nominee arrangements, when employed to conceal foreign interests in restricted sectors, contradict these constitutional values by transferring *de facto* control to parties who lack legitimate ownership under the law (Victoria Tabita, 2023). From a human rights perspective, such practices may also undermine the principle of social justice, which seeks to balance private profit with public welfare. Thus, the constitutional and human rights framework collectively mandates that ownership and control of economic assets remain transparent, equitable, and consistent with the public interest (Baharudin et al., 2024).

From the human rights perspective, the state's responsibility in regulating nominee agreements is twofold: to protect individual investors from discrimination and exploitation, and to safeguard collective economic rights against undue foreign influence. The principle of due diligence in human rights law requires that states prevent private actors from engaging in activities that might harm public welfare or violate collective rights (Lin, 2025). This includes the obligation to establish legal mechanisms that ensure corporate transparency and accountability in ownership structures. When foreign investors use nominee agreements to evade legal limitations, the state must respond by enforcing sanctions that restore the integrity of its economic governance. Moreover, human rights obligations extend beyond merely prohibiting illegal contracts, they also encompass the promotion of fair investment practices that contribute to inclusive development. The state must thus strike a balance between encouraging foreign investment and preventing exploitative arrangements that could jeopardize national sovereignty or social justice. Upholding these obligations reaffirms Indonesia's commitment to aligning economic policy with human rights principles (Khotimah, 2022).

In assessing the validity of nominee agreements, it is essential to recognize the interdependence between human rights and business ethics. Transparency, accountability, and equality are not only legal requirements but also moral imperatives that form the foundation of a rights-based economy. When nominee arrangements are used to conceal true ownership, they undermine the ethical fabric of commerce by introducing deception into corporate governance. This deception erodes public trust and weakens the social legitimacy of the investment sector. A human rights-oriented economic system, by contrast, demands that corporate practices respect both legal norms and ethical standards. Therefore, validating nominee agreements that obscure ownership would contradict the moral obligations of investors to act in good faith. From this perspective, economic freedom cannot be separated from social responsibility, as both are essential components of a just and equitable economy. Consequently, the rejection of nominee agreements

is not merely a legal necessity but an ethical imperative grounded in respect for human dignity (Gunadi et al., 2023).

The author contends that the continued existence of nominee agreements poses a latent threat to the realization of economic human rights in Indonesia. These arrangements privilege foreign investors at the expense of national sovereignty and equality before the law. They enable the concentration of economic control in the hands of entities that are not legally accountable under domestic regulations. This situation risks undermining Indonesia's constitutional commitment to ensuring that the economy serves the collective welfare of its people. From a human rights standpoint, the proliferation of nominee agreements reflects structural inequality in global investment relations, where developing countries often face asymmetrical bargaining power against transnational capital. The state, therefore, must reinforce its regulatory framework to prevent the manipulation of legal loopholes by powerful investors. Strengthening enforcement mechanisms and promoting transparency will protect both individual and collective economic rights. Ultimately, safeguarding human rights in investment law requires not only prohibiting nominee agreements but also fostering a culture of integrity and equality in economic governance.

In light of these considerations, the validity of nominee agreements in Indonesia should be assessed not only through the lens of contract law but also through the broader perspective of human rights and constitutional values. The principle of equality before the law requires that no individual or entity, domestic or foreign, should be allowed to circumvent legal restrictions designed to protect public interests. The prohibition of nominee agreements under Article 33 of the Investment Law is thus consistent with Indonesia's obligations under international human rights instruments such as the ICESCR and ICCPR. These instruments obligate states to regulate economic activities in a manner that promotes justice, transparency, and equitable development. By aligning its investment laws with human rights principles, Indonesia reaffirms its sovereignty while fostering a fair and sustainable investment environment. The state's role as both regulator and protector of human rights in the economic sphere remains vital to ensuring that growth does not come at the cost of justice. Therefore, maintaining the legal invalidity of nominee agreements represents not only a legal necessity but a moral commitment to uphold human dignity and national self-determination.

The integration of human rights principles into investment regulation enhances the legitimacy of Indonesia's economic policies in the global arena. It demonstrates that national sovereignty and human rights protection are not mutually exclusive but mutually reinforcing. By ensuring that ownership structures are transparent and consistent with legal norms, the state upholds the rights of its citizens to benefit equitably from economic development. This approach also strengthens investor confidence, as it creates a stable and predictable legal environment grounded in fairness and accountability. Furthermore, it aligns Indonesia with global trends in responsible business conduct, as articulated in the UN Guiding Principles on Business and Human Rights (2011). Upholding the prohibition of nominee agreements, therefore, serves both national and international interests by promoting ethical investment practices. From this standpoint, the regulation of nominee arrangements is not a restriction of economic freedom but a safeguard of human rights, public trust, and democratic integrity. The invalidity of nominee agreements is a necessary condition for harmonizing Indonesia's investment law with its constitutional and human rights commitments.

4. CONCLUSION

The validity of nominee agreements in share ownership under Indonesian law must be viewed as legally void and incompatible with both constitutional and human rights principles. Such agreements contradict Article 33 of the Investment Law and the spirit of Article 33 of the 1945 Constitution, which mandates that national economic resources be controlled by the state for the people's prosperity. From a human rights perspective, nominee arrangements undermine the principles of equality before the law, transparency, and national self-determination, allowing foreign investors to evade legal restrictions and potentially exploit domestic economic structures. Therefore, upholding the prohibition against nominee agreements reinforces Indonesia's sovereignty and ensures that investment practices align with the broader human rights mandate to

protect collective welfare. Strengthening law enforcement and enhancing regulatory transparency remain essential to preventing the misuse of legal loopholes and ensuring that foreign investment contributes to fair and sustainable national development in accordance with human rights values. Future research should adopt empirical approaches to examine how nominee agreements operate in practice and how legal prohibitions are enforced within Indonesia's investment system. Field-based studies and quantitative analyses could reveal the real impacts of these arrangements on legal certainty, investor behavior, and human rights protection. Integrating empirical evidence would bridge the gap between legal theory and socio-economic realities, offering a more grounded understanding of how investment law interacts with human rights. Such research would also support evidence-based policymaking to ensure that future reforms align with both national sovereignty and equitable development goals.

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