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Juridical Analysis of Supreme Court Decision No. 321 K/Pdt/2017: Implications of Name Borrowing Agreement for Land Ownership by Foreigners

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A B S T R A C T

This research examines Supreme Court Decision No. 321 K/Pdt/2017 which deals with name borrowing agreements for land ownership by foreigners in Indonesia. In the context of increasing foreign investment, the practice of name borrowing is often a solution for foreigners to circumvent the prohibition on land ownership, but it also poses various legal challenges. Through a normative analytical descriptive juridical approach, this study analyzes the substance of the decision, the legal risks for the parties involved, and the social and economic implications of this practice. The results of the analysis show that name loan agreements are not legally recognized and are potentially null and void, resulting in legal uncertainty and conflicts that harm both foreigners and Indonesian citizens. The research also highlights that the absence of legal protection for the parties can result in financial and reputational losses. Overall, the findings indicate the need for policy reformulation and stricter regulations to govern land ownership by foreigners in Indonesia, in order to maintain social and economic balance and encourage sustainable investment development.

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INTRODUCTION

Increased human mobility and foreign investment, especially in the property and land sectors, are becoming increasingly evident. In Indonesia, regulations regarding land ownership by foreigners often pose legal challenges. Supreme Court Decision No. 321 K/Pdt/2017 is one of the landmark decisions in the Indonesian legal landscape that focuses on land ownership and tenure disputes. The case attracted attention not only for its legal substance, but also for its impact on the understanding of land rights, as well as legal protection for land owners and users. In a context where land ownership is often a source of conflict, this decision provides insight into how the Indonesian judicial system deals with complex and multi-layered issues.

The Supreme Court as the highest institution in the judicial system has a strategic role in setting legal precedents that can influence the practice of lower courts. This decision is an important reference in understanding how legal aspects such as ownership, control and rights to land are interpreted in the context of the prevailing positive law. It also demonstrates the challenges faced by parties in proving their rights, and how the law can provide equitable solutions.

A nominee agreement is an agreement in which a person borrows his or her name from a foreigner so that they can control or own land rights in Indonesia, even though foreigners are legally prohibited from owning land rights. This research uses a normative analytical descriptive juridical approach to assess the legal certainty of nominee agreements in the context of the legitimacy of transferring property rights according to national law. The activities of foreigners in Indonesia, especially in tourist areas, make many of them choose to settle down, which has the potential to cause legal violations.

Legal protection for parties to a nominee agreement also relates to international law enforcement mechanisms. In case of disputes, international courts or arbitration institutions may be used to enforce the agreement, depending on the agreed forum for settlement. The practice of name loan agreements by foreigners to own land in Indonesia carries legal risks, such as being considered an attempt to circumvent existing regulations and null and void. The land that is the object of the agreement can fall to the state, the payment for the land cannot be reclaimed, and the ownership right to the land is nullified.

LITERATURE REVIEW

Based on the theory of legal certainty, the theory of agreement, and the theory of share leadership, name loan agreements often violate the applicable provisions in the Civil Code (BW). Although this practice is done to circumvent the prohibition of land ownership by foreigners, it raises various legal issues, especially regarding legal protection for the parties involved, as well as significant legal impacts in both Indonesian national law and international civil law. The juridical consequences of this agreement lead to doubts in terms of legality, potentially leading to legal uncertainty and disputes in the future.

The legal aspects of the loan-name agreement are very important to understand, given that the legal provisions in Indonesia regarding land

ownership are very strict, including for foreigners. On the other hand, the social and economic impacts of this practice cannot be ignored, both for the Indonesian citizens involved and the surrounding communities. This research will delve deeper into the legal aspects governing name loan agreements and their impacts on landowners, investors and the wider community.

Through an analysis of this decision, this research aims to explore the points raised, assess the arguments used by the Supreme Court, and understand the implications of the decision for legal practice and public policy regarding land tenure. In doing so, it is hoped that readers will be able to gain a clear picture of the legal issues contained in this decision and its relevance in the context of land law in Indonesia.

METHODOLOGY

This research applies the normative analytical descriptive juridical analysis method to assess Supreme Court Decision No. 321 K/Pdt/2017. The purpose of this approach is to review and analyze the legal content contained in the decision, including the arguments put forward by the Supreme Court as well as the legal context surrounding it. In this analysis, the author will refer to relevant legal regulations, legal doctrine, and existing jurisprudence, with the aim of understanding how the verdict affects the interpretation of name loan agreements and their implications for land ownership by foreign nationals. In addition, the research will also look at the social and economic impacts of the practice, so as to provide a thorough understanding of the legal issues raised and their relevance in the context of land law in Indonesia.

RESEARCH RESULT

Supreme Court Decision No. 321 K/Pdt/2017 relates to a civil dispute between Mathias Hubert Marie Euchene and Charles Joory and V Nee Yeh, which is one of the cases of a name loan agreement in Bali. In this case, Mathias, a foreigner, purchased land in Tabanan, Bali, using the name of Terry Ananta Kusuma (Indonesian citizen) through a name loan agreement. After the payment process was completed, Mathias did not submit the land ownership documents to Charles and V, who acted as investors.

The court ruled in favor of Charles and V's lawsuit, arguing that the name loan agreement between Mathias and Terry contradicted the Basic Agrarian Law (UUPA) and was invalid. Therefore, Charles and V were found to have been deceived and were entitled to receive material damages for the money they had paid to Mathias.

This decision shows that loan-name agreements for land ownership by foreigners do not provide adequate legal protection. The agreement was legally void as it violated the provisions of the LoGA. The foreigners involved were also not recognized as legitimate landowners. In this case, the court adhered to the material provisions of the UUPA in determining the status of land ownership.

DISCUSSION

Legal Protection for Foreigners and Indonesian Citizens Involved in Name Lending Agreements According to International Civil Law

Pinjam nama, or nominee agreement, in international civil law, refers to the practice where a person or entity (generally an Indonesian citizen) lends his or her name to another party (a foreigner) to obtain rights to land or other assets that the foreigner cannot legally own. In many jurisdictions, including Indonesia, this practice potentially violates existing regulations, such as the Basic Agrarian Law which emphasizes that only Indonesian citizens have the right to own land. While name borrowing is often used as a way to get around legal restrictions, the practice presents various risks, such as legal uncertainty and possible future disputes. In the context of international civil law, this kind of agreement can be analyzed based on applicable contract principles, but must still take into account the relevant national laws. As such, while name borrowing may be viewed as legitimate in a contractual context, its implementation still faces significant challenges in relation to the validity and protection of the rights of the parties involved.

The legal protection for the parties (foreigners and Indonesian citizens) involved in name borrowing agreements under international civil law is as follows:

1. Name loan agreements are not recognized by the Indonesian civil law system. This is because the agreement is substantially contrary to the UUPA, which states that only Indonesian citizens may own land rights in Indonesia.
2. Foreigners involved in the agreement do not receive legal protection for the land owned through the agreement. In the event of a dispute, the land will become the property of the state.
3. Indonesian citizens whose land in their name is lent to foreigners also do not receive legal protection as legitimate landowners. On the other hand, the Indonesian citizen can be sued civilly by the foreigner if there is a loss due to a violation of the agreement.
4. The parties in the name loan agreement only receive legal protection based on the principles generally applicable in civil agreements, such as the principles of consensuality, good faith, and the binding force of the agreement. However, materially the agreement is invalid and has no legal force.
5. Disputes arising from a name loan agreement can only be resolved civilly, but the results will not affect the real status of land ownership because it is contrary to the provisions of the UUPA.

Likewise, the judicial response to cases relating to name lending agreements tends to ignore the substance of the agreement and stick to the provisions of the UUPA.

In the context of name lending agreements between Indonesian citizens and foreigners, there are several important aspects that need to be considered, including relevant legal regulations, legal doctrine, and jurisprudence under international civil law. Firstly, Indonesia's Basic Agrarian Law (UUPA) is the

main legal basis governing land ownership and tenure, stating that only Indonesian citizens can have property rights over land.

The practice of borrowing names by foreigners can be considered contrary to this provision. In addition, the Civil Code (KUHPer) also regulates agreements, including the requirements for the validity of agreements, which must be considered in the context of name lending agreements. There are also various international regulations and conventions governing the protection of foreign investment and landowner rights, although implementation may vary from country to country.

In terms of legal doctrine, contract theory discusses the validity of contracts and the conditions that must be met for an agreement to be considered valid, which is crucial in assessing the validity of a loan agreement. In addition, legal protection theory focuses on the protection of the rights of the weaker party in the agreement, relevant in the relationship between Indonesian citizens and foreigners.

In terms of jurisprudence, the Supreme Court decision No. 321 K/Pdt/2017 is an important reference to understand the application of the law, where agreements that contradict the UUPA can be considered invalid. In addition, decisions from international courts or arbitration regarding land ownership by foreign investors can also be referenced, although the applicable legal context may differ. By taking into account national legal provisions, underlying legal doctrines, and relevant jurisprudence, an analysis of loan agreements between Indonesian citizens and foreigners can provide a better understanding of the legal implications and potential risks faced by both parties.

Legal Risks Arising for the Parties Involved in the Loan Agreement Related to Land Ownership by Foreigners

Borrow-to-let agreements related to land ownership by foreigners present a number of legal risks for the parties involved. One of the main risks is legal uncertainty, whereby the agreement may be deemed null and void as it contradicts the provisions governing land ownership in Indonesia, such as those contained in the Basic Agrarian Law. Furthermore, in the event of a dispute, foreigners may not be able to prove legal ownership of the land in question, potentially costing them financially. On the other hand, the Indonesian citizen lending his name also risks legal sanctions or losing the rights to the land he controls, especially if the authorities deem the agreement illegal. These risks can lead to conflict between the parties, which in turn has a negative impact on legal certainty and investment stability in the property sector. Therefore, parties need to be aware of the legal implications of these agreements and consider measures to protect their rights.

Based on the Supreme Court Decision No. 321 K/Pdt/2017, there are several legal risks for the parties involved in a loan-name agreement related to land ownership by foreigners, namely:

1. Foreigners who are the actual owners of the land (in this case Mathias Hubert Marie Euchene) risk having their ownership rights to the land revoked in accordance with Article 21 of the UUPA. In addition, there is

a risk of being subject to criminal sanctions for committing legal smuggling.

2. For the Indonesian citizen whose name is borrowed (in this case Terry Ananta Kusuma), there is a risk of being deprived of ownership rights to land that should belong to the state in accordance with Article 21 of the UUPA. There is a potential for filing a lawsuit to cancel the name borrowing agreement because it is contrary to the law.
3. For foreign investors/funders (in this case Charles Joory and V Nee Yeh), there is a risk that their investment will not be collected because the object of the agreement in the form of land has invalid ownership. There is a potential for filing a lawsuit for compensation for default and losses suffered.
4. For all parties involved in the loan agreement, there is a risk of administrative sanctions in the form of cancellation of the agreement by the PPAT because it is not in accordance with the provisions of the land law.

Therefore, name lending agreements are a form of legal smuggling that carries various legal risks for the parties involved. Name lending agreements relating to land ownership by foreign nationals also hold a variety of complicated legal risks for all parties involved, which can be analyzed through relevant legal regulations, legal doctrine and jurisprudence. In Indonesian law, the Basic Agrarian Law (UUPA) clearly states that only Indonesian citizens have the right to own land. The practice of borrowing names is often seen as a way to circumvent this regulation, which can result in the agreement being deemed null and void. In the event of a dispute, foreigners who rely on name borrowing will not be recognized as legal owners, leaving them with no legal basis to claim their rights in court.

Legal doctrines relating to the validity of contracts also play an important role in evaluating this legal risk. In the context of civil law, the necessary conditions for the validity of an agreement must be met for the agreement to be considered valid. Name borrowing intended to circumvent restrictions on land ownership by foreigners may violate the principles of fairness and propriety, which are fundamental to contract doctrine. Non-compliance with these legal provisions may not only lead to the invalidation of the agreement, but may also trigger a claim for damages from the aggrieved party.

Jurisprudence, specifically Supreme Court decision No. 321 K/Pdt/2017, provides a concrete illustration of how courts handle cases involving name lending agreements. In the judgment, the Supreme Court affirmed that agreements that contravene the UUPA are invalid and non-binding. This decision creates a precedent that shows that the courts will protect legal interests regulated by the law, as well as provide protection to parties harmed by name lending practices. As such, this decision serves as a reference for other courts to not recognize agreements that contravene applicable legal provisions.

In addition, the legal risks faced by Indonesian citizens involved in name lending agreements are also quite significant. Indonesians who lend their names could potentially face legal sanctions, including criminal charges if they

are deemed to be involved in illegal practices. In these situations, name lending agreements can not only cause financial loss, but can also damage the reputation and relationship between the parties involved. Therefore, it is important for all parties to consider all the legal implications that may arise from these agreements and seek safer alternatives that comply with existing legal requirements.

Overall, the legal risks arising from loan-name agreements related to land ownership by foreigners emphasize the need for a deep understanding of legal regulations, doctrine and jurisprudence. The parties involved must realize that this practice not only has the potential to cause disputes and losses, but can also undermine the legal integrity and legal certainty that should be maintained in property transactions.

The practice of loan-name agreements for land ownership by foreigners in Indonesia has significant social and economic impacts on local communities and the economy as a whole. From a social standpoint, this practice often triggers discontent and tension among communities, especially in areas that are destinations for foreign investment. Local communities may feel threatened by perceived unfair land tenure, as land that should rightfully belong to Indonesian citizens (WNI) is transferred to foreigners through unauthorized agreements. This has the potential to trigger social conflict, especially if the land controlled has cultural or historical value to the community.

From an economic aspect, while borrowing a name can attract foreign investment, the impact is not always positive. Reliance on this practice creates legal uncertainty that can discourage long-term investment. Investors who feel insecure about the ownership status of their land may be reluctant to make further investments, which could hamper local economic growth. In addition, funds that would otherwise be allocated to infrastructure development and public services could flow to non-transparent practices, reducing economic benefits to the community.

This practice can lead to economic exclusion for Indonesian citizens who do not have access to land investments. They may lose opportunities to contribute to economic development stemming from land use, potentially widening social and economic gaps. In the long run, legal uncertainties and potential conflicts arising from name-lending practices can create an environment that is not conducive to sustainable development, disrupt social balance, and hinder the achievement of inclusive economic development goals. Therefore, it is crucial to evaluate and formulate policies that can more effectively regulate these practices, ensuring that the interests of local communities and national economic progress are preserved.

This research discusses various perspectives on the legal implications of name borrowing agreements entered into by foreign nationals for land ownership in Indonesia. Referring to the Supreme Court decision No. 321 K/Pdt/2017, which highlights the legal risks and challenges faced by the parties involved in such agreements. This study also utilizes various references from national and international journals to illustrate the legal basis governing land ownership by foreigners in Indonesia, including the Basic Agrarian Law

(UUPA) which emphasizes that only Indonesian citizens (WNI) may own land. This literature review also explains how the concept of name lending agreements in international civil law as well as jurisprudence from relevant decisions can provide an overview of the implications of such agreements in the Indonesian legal context.

CONCLUSIONS AND RECOMMENDATIONS

The Supreme Court Decision No. 321 K/Pdt/2017 firmly states that the practice of name-lending agreements for land ownership by Foreign Nationals (WNA) is not legally recognized in Indonesia and may be rendered void. This research reveals that although name-lending agreements are often used by WNA to circumvent land ownership prohibitions, this practice presents significant legal risks for all parties involved. The legal uncertainties arising from these agreements can lead to detrimental disputes for both WNA and Indonesian citizens (WNI), resulting in substantial financial losses. Furthermore, the social and economic impacts of name-lending practices also warrant attention.

Local communities often experience dissatisfaction and tension due to land control perceived as unjust, as land that should belong to WNI is transferred to WNA through illegitimate agreements. This can trigger social conflicts, especially in areas of high cultural or historical value. From an economic perspective, reliance on this practice creates uncertainty that can diminish long-term investment interest. Investors who feel insecure about land ownership status may be reluctant to invest further, thus hindering local economic growth.

Therefore, this research emphasizes the need for a more stringent reformulation of policies regarding land ownership by WNA. Clear regulations and adequate legal protections must be pursued to create a balance between foreign investment interests and the rights of WNI. These measures are expected to not only prevent risky name-lending practices but also support sustainable and inclusive economic development in Indonesia. In doing so, the interests of local communities can be safeguarded while fostering a secure and stable investment climate.

Overall, this research provides deep insights into the legal challenges faced in name-lending agreements and their implications for the agrarian legal system in Indonesia. With a better understanding of these issues, it is hoped that further discussions and the development of more effective policies can be encouraged to regulate land ownership by WNA, in pursuit of sustainable social and economic welfare.

Based on the findings and analysis obtained in this research, there are several recommendations that should be considered to address issues related to name-lending practices in land ownership by Foreign Nationals (WNA) in Indonesia.

First, the government needs to reformulate clearer and more definitive policies and regulations regarding land ownership by WNA. Strong and comprehensive regulations are necessary to ensure legal certainty and protect

the rights of all parties involved. Consistent law enforcement is also important to prevent illegal practices and protect the rights of legitimate landowners.

Second, it is crucial to raise legal awareness among the public, especially for WNI involved in name-lending agreements. Education on the risks and legal consequences of this practice can help individuals understand the potential impacts they may face, encouraging them to seek safer alternatives that comply with legal provisions. Legal outreach programs could be organized to provide information about rights and obligations in land ownership.

Third, foreign investors are advised to comply with applicable laws and avoid name-lending practices. They should establish partnerships with WNI within a legal and transparent framework, thereby creating healthier and more sustainable investment relationships. This step will not only protect their interests but also positively impact local economic development.

Finally, there needs to be constructive dialogue between the government, the community, and other stakeholders to develop more inclusive policies that prioritize the interests of local communities. This collaborative approach is expected to yield effective and sustainable solutions in addressing the challenges of land ownership by WNA, while creating a balance between attracting foreign investment and protecting the rights of WNI.

ADVANCED RESEARCH

It is recommended that the Indonesian government reformulate policies and regulations related to land ownership by foreigners by emphasizing the importance of legal certainty and protection for all parties involved. Given that the practice of borrowing names carries significant legal risks and can lead to uncertainty and conflict, it is necessary to develop regulations that are more assertive and transparent. Such regulations should include clear mechanisms for land tenure by foreigners, as well as adequate legal protection for the Indonesian citizens involved. In addition, education on the legal aspects and the risks that come with a loan-name agreement must be improved so that the people, both citizens and foreigners, understand the consequences of this practice. These measures are expected to create a safer and more stable investment environment, while maintaining a balance between the interests of foreign investment and the rights of local communities.

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