



Prohibition of Nominee Arrangement in Indonesian Law

A. What is Nominee Arrangement?

Nominee arrangement, also known as "borrowing name (*pinjam nama*)" arrangement, is an agreement entered between an Indonesian party as nominee and a foreign party as beneficiary, where it is commonly used to refer to the usage of an Indonesian party's name to hold shares on behalf of a foreign party in a limited liability company, whether a Local Company or Foreign Direct Investment Company.

Nominee arrangement is commonly entered by foreign parties with Indonesian party to circumvent restrictions and limitations of Investment List. By using a nominee arrangement, foreign investors were able to hide the identity of the beneficial owner or owners so that any form of business entity is classified as a domestic company, which is not required to comply with such laws and regulations. The purpose of a nominee arrangement is mainly to circumvent prohibitions under applicable laws and regulation in regard to investment/land ownerships.

B. Parties

- Beneficiary: Foreign Party
- Nominee: Indonesian Party

C. Is Nominee Arrangement Allowed in Indonesia?

Nominee arrangement is not allowed in Indonesia. These are prohibitions by law which arises the creation of nominee arrangement:

1) Article 33 paragraph (1) & paragraph (2) of Law No. 25/2007 on Investment Law

Both domestic and foreign investors in the form of PT are prohibited from entering into any agreement/making statement confirming share ownership in the Company on behalf of another party (Article 33 paragraph (1) of Investment Law) and in the event that they entered into such agreement, it shall be declared null and void (Article 33 paragraph (2) of Investment Law).

2) Article 48 paragraph (1) of Law No. 40/2007 on Limited Liability Company

The provision states that a share of a company shall be issued in the name of the owner.



D. Risk of Making Nominee Arrangement

Any agreement or statement that claims share ownership in a limited liability company is for and on behalf of another person is legally void, according to Article 33 paragraph (2) of Investment Law. Consequently, the risks of creating a nominee arrangement are:

- 1) It cannot be enforced in court

Any agreement and/or statement made to claim that a limited liability company share ownership is for and on behalf of another person will not be recognized by Indonesian courts. Therefore, the nominee arrangement contracts cannot be enforced in the case of a disagreement over who is the legitimate owner of the shares and the rights and benefits that come with that ownership.

- 2) The Indonesian party will be the lawful holder of the share and the right attached to the share

The recognition of the Indonesian party as the legitimate owner of the shares and the rights associated with the shares implies that they will take ownership of the shares and all rights and benefits associated with them, including dividends.

- 3) Can be claimed as fraud or falsifying documents

The shareholders may encounter circumstances where they must certify that they are the legitimate owners of the shares. Such assertions may be deemed false if the nominee arrangement is revealed or discovered, and the shareholders or linked parties may be held liable for fraud and/or falsifying documents.

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