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Legal Implications of Mixed Marriage Annulment on Nominee Agreement Land Ownership Schemes

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Abstract

This study examines the normative tension between marriage law and agrarian law in determining the legal status of land acquired in mixed marriages that are subsequently annulled. The urgency of this research arises from the normative gap regarding the status of joint property after annulment and the use of nominee agreements to circumvent restrictions on foreign land ownership under Indonesian agrarian law. Previous studies have generally discussed marriage annulment, joint property, or nominee arrangements separately, without integrating marriage law, agrarian law, and contract law into a single analytical framework. This research employs normative juridical methods using statutory and case approaches through the analysis of legislation, legal doctrines, and court decisions. The novelty of this study lies in the integrated doctrinal framework that positions marriage annulment as an entry point for courts to identify legal circumvention and reassess contractual structures related to land control by foreign nationals. The findings reveal that land acquired through nominee arrangements cannot be classified as joint marital property because agrarian law restrictions prevail over private contractual arrangements. Nominee agreements are null and void due to unlawful causa, while financial contributions by foreign nationals do not create proprietary rights over land. This study concludes that marriage annulment functions not only to invalidate marital status but also to restore compliance with agrarian law and prevent disguised foreign land control.
Keywords: *Land Rights; Legal Circumvention; Marriage Annulment; Nominee Agreement*

1. INTRODUCTION

Marriage annulment occupies a significant position within family law because it functions as a legal mechanism to retrospectively evaluate the validity of a marriage and to determine whether the marital relationship was legally defective from its inception.[1] In Indonesian legal doctrine, annulment is different from divorce because it cancels the legal basis of the marriage retroactively and, in principle, removes its legal effects from the start. However, in practice, the effects of annulment often go beyond marriage law and interact with other areas of law, especially civil law and agrarian law, particularly in cases involving joint property and land ownership.

Table 1. Number of Marriage Annulment Cases in Indonesian Courts in 2022-2024

Year	Cassation in the Religious Chamber	Request Civil in the Religious Chamber	Religious High Court	Application to the District Court	Lawsuit in the Religious District Court
2022	20	4	34	8	255
2023	24	5	26	7	287

[1] Dorothy Grace Agliam et al., "A Comprehensive Literature Review of Marital Dissolution in the Philippines: Legal, Socio-Cultural, and Feasibility Perspectives," *International Journal of Current Science Research and Review* 07, no. 05 (2024): 2596–2603, https://doi.org/10.47191/ijcsrr/v7-i5-19.

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Year	Cassation in the Religious Chamber	Request Civil in the Religious Chamber	Religious High Court	Application to the District Court	Lawsuit in the Religious District Court
2024	16	5	26	5	307

Source: Annual report of the Supreme Court of the Republic of Indonesia (Edited).

Table 1 shows that, in recent years, the number of marriage annulment cases in Indonesian courts has exhibited a consistent trend. The number of annulment cases filed in Religious District Courts increased from 255 cases in 2022 to 307 cases in 2024. This upward trend indicates that disputes concerning the validity of marriage are becoming more frequent and legally significant. More importantly, the increase reflects not only procedural disputes over marital validity but also the growing complexity of legal issues attached to such relationships, including disputes over assets acquired during the marriage. This condition underscores the urgency of examining how annulment affects legal relationships beyond the marital bond itself, particularly when the object in dispute is land, which is subject to a distinct and mandatory legal regime.

In judicial practice, annulment cases frequently involve mixed marriages between Indonesian citizens and foreign nationals. These mixed marriages often create opportunities for legal issues, such as attempts to circumvent the law, particularly when a foreign national uses the marital relationship to gain control over land in Indonesia, an ownership right reserved exclusively for Indonesian citizens.[2] Various contractual arrangements are crafted to disguise this form of control, including long-term lease agreements, debt acknowledgement deeds, powers of attorney, and the creation of security interests over land. Substantively, such arrangements often amount to a nominee scheme, in which the Indonesian spouse's name is used only as the formal rights holder, while the foreign party exercises effective control over and economic benefits from the land.

The situation becomes even more complex when the parties' marriage is subsequently annulled by the court. Annulment removes the status of husband and wife and extinguishes all civil consequences that ordinarily arise from marriage, including the existence of joint marital property.[3] However, land acquired during the couple's life together cannot automatically be treated as joint property, particularly when the manner of acquisition was from the outset contrary to Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as the Basic Agrarian Law/UUPA).[4] In such circumstances, annulment serves as an important entry point for reassessing the legal

[2] Norayanti Simaremare, Pristika Handayani, and Dwi Afni Maileni, "Tantangan Perkawinan Beda Negara:Suatu Kajian Komparatif Hukum Indonesia Dan Hukum Perdata Internasional," *Jurnal USM Law Review Law Review* 8, no. 3 (2025): 1485–1505, https://doi.org/10.26623/julr.v8i3.12565.

[3] Pricillia Putri, "Analisis Akibat Pembatalan Perkawinan Sedarah Terhadap Harta Bersama Dan Kedudukan Anak (Studi Kasus Putusan Pengadilan Agama Lubuklinggau Nomor 80/PDT.G/2017/PA.LLG)," *Indonesian Notary* 4 (2022), https://scholarhub.ui.ac.id/notary/vol4/iss1/41.

[4] Gilang Fitri Hermawan, "Akibat Hukum Pembatalan Perkawinan Terhadap Pembagian Harta Bersama" (Universitas Lambung Mangkurat, 2023).

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relationship between the parties, including distinguishing which assets genuinely reflect joint contributions and which merely constitute a disguised scheme to circumvent the law through the marital relationship.

The intersection of annulment, joint marital property, and restrictions on who may hold rights over land demonstrates that dispute resolution cannot rely solely on a single legal domain.[5] When the object of the dispute is land, agrarian law becomes the primary normative framework for determining who is legally permitted to control land and how such control may be exercised. In several cases, courts have expressly refused to recognize nominee agreements, even when such agreements were executed within the context of a marriage. Judicial decisions consistently show that marital status, including a marriage that is later annulled, cannot be used to justify land control by a person who is legally prohibited from holding such rights in Indonesia. Accordingly, annulment is not merely about the validity of a family relationship; it also has direct implications for various legal arrangements created during the marriage. This is what makes annulment a critical issue that requires comprehensive analysis, especially when linked to disputes over joint property, nominee arrangements, and restrictions on land ownership under Indonesia's agrarian law.

Over the past five years, several studies have examined the annulment of agreements involving nominee schemes and the legal uncertainty surrounding joint property after the annulment of marriage. These studies can be classified into three major categories. First, studies that focus on marriage annulment and invalidity. Foza (2025) analyzes factors leading to marriage annulment in the Indonesian legal system based on Law No. 1 of 1974 and the Compilation of Islamic Law, identifying main causes including improper guardianship, procedural violations, and polygamous marriages without the first wife's consent. The problem with this study is that it only examined laws and a few cases and didn't collect enough empirical data to show how often each problem actually occurs.[6] Molnár (2024) conducts a comparative analysis of the criteria for marriage invalidity in the English and Hungarian legal frameworks. However, this research has methodological limitations, as it compares only two jurisdictions and lacks a broader analytical framework to generalize its findings beyond these jurisdictions and across European legal systems.[7]

Second, studies that focus on what happens to property when marriages are cancelled. Recent research by Wijaya (2026) examined the fate of shared property when a marriage is annulled in Indonesia. They found a big problem: the law says cancelled marriages should be treated "as if they never happened," but couples still have real property they bought together. The problem with this study is that it only examined legal rules without assessing

[5] Siti Nur Intihani, "Pembatalan Perkawinan Dan Pelaksanaannya Di Indonesia," *Jurnal Hukum Jurisdictie*, 2024, 84–98, https://doi.org/10.34005/jhj.v6i1.168.

[6] Yerry Andro Foza et al., "Pembatalan Perkawinan Dalam Sistem Hukum Indonesia: Analisis Regulasi, Faktor Penyebab, Dan Dampaknya," *An-Nisa: Journal of Islamic Family Law* 2, no. 2 (2025): 127–37, https://doi.org/10.63142/an-nisa.v2i2.207.

[7] Sarolta Molnár, "Marriage Invalidity – A Comparison of English and Hungarian Rules," *Review of European and Comparative Law* 59, no. 4 (2024): 7–26, https://doi.org/10.31743/recl.17458.

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how cancellation actually affects people's lives, and we don't know when it was published, so the information might be outdated.[8]

Third, studies that focus on foreign land ownership and nominee agreements. Recent research by Agustina (2025) examines the legal implications of foreign land ownership and the consequences of agreements with Indonesian citizens, focusing on nominee agreements and their validity.[9] Similarly, Kosasih (2024) found that a land lease agreement combined with a series of other deeds, used to give a foreign national effective control over land, constitutes a form of legal circumvention (a nominee arrangement). Consequently, all such agreements must be declared null and void.[10] Dharma (2022) also examined how foreigners illegally control Indonesian land by making nominee agreements with local people, which breaks Indonesia's land ownership laws. The study claims to use real-world data but doesn't explain how it collected the information or how many cases it examined.[11]

Previous studies have made important contributions, yet they still leave several gaps that warrant further research. First, existing works generally focus on the relationship between marriage annulment, the status of children, and the division of property, but they have not comprehensively examined situations in which the property in question is land and may involve a nominee scheme. Second, earlier studies have not explained how annulment affects the parties' legal capacity when agrarian disputes are brought before the courts. Third, no research has yet integrated analyses of agrarian, contract, and marriage law in a single study to examine how annulment can serve as an entry point for uncovering legal circumvention structures in land control by foreign nationals.

This issue is increasingly significant because land disputes involving nominee arrangements are becoming more common in the context of mixed marriages. The unclear legal standing of the parties after annulment can create uncertainty for rights holders, third parties, and law-enforcement authorities. Moreover, sharper analysis is needed to understand how courts evaluate the series of agreements created during the marriage, specifically whether they constitute ordinary civil transactions or instead represent contractual engineering that violates the Basic Agrarian Law (UUPA).

Based on this background, this research aims to answer several key questions, as follows: (1) How does marriage annulment affect property acquired during the couple's life together when the object in question is land? (2) What is the legal status of nominee

[8] Dody Wijaya and Wahyudi, "Implikasi Pembatalan Perkawinan Terhadap Status Dan Pembagian Harta Bersama Menurut Hukum Perdata Indonesia," *Dialog Legal* 2, no. 1 (2026): 1–12, https://doi.org/10.64367/dialoglegal.v2i1.97.

[9] Ajeng Ana Agustina and Farida Nurun Nazah, "Status Hukum Hak Kepemilikan Atas Tanah Oleh WNA Akibat Perjanjian Nominee Dengan WNI (Studi Putusan Nomor 144/Pdt/2021/Pt.Dps)," *Jurnal Media Hukum* 10, no. 1 (2025): 1–13, https://doi.org/10.59414/jmh.v13i2.1023.

[10] Johannes Ibrahim Kosasih, "Alih Sewa Kepada Pihak Ketiga Sebagai Klausula Pembatalan Land Lease Agreement (Studi Kasus Putusan Mahkamah Agung Nomor: 1616/K/PDT/2018)," in Liber Amicorum Bayu Seto Hardjowahono: Antologi Pemikiran Tentang Pengintegrasian Hukum Perdata Internasional Ke Dalam Sistem Hukum Indonesia, ed. Ida Susanti and Elly Erawaty (Bandung: Unpar Press, 2024), 247–66.

[11] Kadek Ramdhana Wija Dharma, I Nyoman Putu Budiartha, and Ni Made Puspasutari Ujianti, "Larangan Penguasaan Tanah Oleh WNA Melalui Perjanjian Nominee," *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 246–51, https://doi.org/10.55637/jkh.3.2.4806.246-251.

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agreements involving foreign nationals in the annulment of mixed marriages where the property at issue is land? And (3) How can courts establish the existence of legal circumvention related to land control by foreign nationals?

This research is significant because it offers an integrated analysis combining marriage law, agrarian law, and contract law to enrich our understanding of how annulment can, in fact, clarify the structure of the parties' legal relationships and open the way for an objective assessment of alleged legal circumvention through nominee schemes. Accordingly, this study aims to: (1) analyze the impact of marriage annulment on the status of property acquired during the parties' life together, particularly when the object is land; (2) analyze the legal position of nominee agreements involving foreign nationals in the annulment of mixed marriages concerning land assets; and (3) analyze the courts' perspective in determining the presence of legal circumvention in cases of land control by foreign nationals.

2. METHOD

This study employs a qualitative normative legal research method with a prescriptive analytical approach, aiming not only to describe legal norms but also to formulate normative arguments regarding the legal status of land and nominee contractual arrangements in the context of marriage annulment. Within this framework, law is understood as a set of normative rules embodied in legislation (law in the books) and judicial decisions.[12] The research applies both statute and case approaches. The statutory approach involves examining relevant legal provisions, particularly those governing marriage, agrarian law, and contract law, while the case approach focuses on selected court decisions that have attained permanent legal force *(inkracht)*.[13] The selection of cases is based on specific criteria, namely: (i) cases involving mixed marriages and land ownership disputes; (ii) cases indicating the use of nominee arrangements or similar contractual structures; and (iii) cases that explicitly reflect judicial reasoning on legal circumvention (*fraus legis*). The legal materials used in this study are classified into three categories: primary legal materials, consisting of statutory regulations and binding court decisions; secondary legal materials, including books, academic journals, and scholarly writings relevant to the issues discussed; and tertiary legal materials, such as legal dictionaries and supporting references that assist in clarifying legal concepts. Data analysis is carried out deductively by linking general legal norms to specific cases, supported by legal principles and doctrines, to produce prescriptive conclusions and recommendations regarding the proper legal treatment of nominee agreements and land ownership in annulled mixed marriages.

[12] Kosasih, "Alih Sewa Kepada Pihak Ketiga Sebagai Klausula Pembatalan Land Lease Agreement (Studi Kasus Putusan Mahkamah Agung Nomor: 1616/K/PDT/2018)."

[13] Dedy Simanungkalit and Vanny Vanny, "Misreading the Court Decision: Reflecting on Constitutional Interpretation In Nusantara Capital Law Formation," *Jurnal Ius Constituendum* 10, no. 3 (2025): 432–52, https://doi.org/10.26623/jic.v10i3.12531.

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3. RESULTS AND DISCUSSION

3.1 Legal Position of Marriage Annulment from the Perspective of Marriage Law

In Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019 (hereinafter the Marriage Law), no provision explicitly defines the term marriage annulment.[14] However, in essence, marriage annulment is a legal mechanism used to reassess whether a marriage fulfilled the legal requirements for validity at the time it was conducted. The legal basis for annulment is set out in Article 22 of the Marriage Law, which states: "A marriage may be annulled if the parties do not fulfil the requirements for entering into a marriage."

Two important points can be drawn from the wording of Article 22. First, marriage annulment does not occur automatically *(ipso jure),* even when a defect existed from the outset; rather, it must be petitioned before a court and decided through a judicial ruling, as regulated in Article 37 of Government Regulation Number 9 of 1975 (hereinafter PP 9/1975). Second, in annulment proceedings, what is evaluated is not the subsequent conduct of the spouses during the marriage, but the validity of the marital consent at the moment the marriage was solemnised. Annulment is corrective in nature: it is designed to address administrative errors, defects in the essential requirements of marriage, or conditions that rendered the marriage invalid from the beginning. However, while these provisions clarify the procedural and substantive grounds for annulment, they do not address the broader legal consequences arising from the factual existence of the marital relationship, particularly with respect to property relations formed during the parties' life together. This omission constitutes a significant normative gap, as the law focuses on the validity of marriage without guiding how to treat the economic realities that emerged before annulment.

Having clarified the foregoing, the next question arises: *Is marriage annulment the same as divorce?* The answer is no. Marriage annulment is fundamentally different from divorce. Although both terminate the marital relationship, they rest on different legal foundations. Divorce ends a valid marriage due to disharmony or other reasons that arise after the parties have married; it does not question the validity of the marriage itself. Annulment, on the other hand, focuses on declaring that the marriage was invalid from the very beginning and therefore should not have produced ordinary legal consequences, even though certain effects may still be recognized by law.[15] Put simply, annulment states that the marital consent was defective, while divorce states that the marital relationship can no longer continue. This conceptual distinction becomes crucial when disputes arise over assets acquired during the marriage, as annulment undermines the legal basis for joint marital property, whereas divorce presupposes its existence.

[14] Boedi Harsono, *Hukum Agraria Indonesia: Himpunan Peraturan-Peraturan Hukum Tanah*, 17th ed. (Jakarta: CV Teruna Grafica, 2006).

[15] Wijaya and Wahyudi, "Implikasi Pembatalan Perkawinan Terhadap Status Dan Pembagian Harta Bersama Menurut Hukum Perdata Indonesia."

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In practice, the grounds for annulment under the Marriage Law may arise from various situations. In principle, the failure to meet the legal requirements for a valid marriage, as stipulated by legislation, may constitute grounds for annulment. These include: the marriage not being conducted in accordance with the religion of each party;[16] failure to satisfy the minimum age requirement for marriage; [17] or the absence of free and voluntary consent from the prospective spouses as required by Article 6 of the Marriage Law.

In addition, a marriage may be annulled if there are administrative or procedural violations of legal significance, such as when it is conducted before an unauthorized registrar or without the two witnesses required by Article 26 of the Marriage Law. A marriage may also be annulled if there is a defect of will, such as threats, coercion, or mistakes concerning a spouse's identity, as regulated in Article 27. Furthermore, annulment may occur if the marriage was conducted while one party was still bound by another valid marriage, as emphasized in Article 24. However, despite these grounds, annulment does not occur automatically; it must be sought and decided by a court.[18] From a regulatory perspective, these provisions demonstrate a strong focus on formal legality, yet they remain silent on post-annulment consequences, leaving judges with limited statutory guidance when disputes extend beyond the validity of the marriage itself.

The Compilation of Islamic Law (hereinafter KHI) expands the grounds for annulment by emphasizing the religious elements that constitute the essential pillars (*rukun*) of marriage. Articles 72 through 76 of the KHI contain detailed provisions on marriage annulment specifically applicable to Muslims. In principle, a marriage may be annulled when there is a defect in the essential pillars, the legal requirements, or the parties' consent. Under Article 72 of the KHI, annulment may occur when a marriage is entered into under coercive circumstances or threats, or when fraud or errors concerning a spouse's identity arise. In addition, Article 73 provides that annulment may also occur if the marriage is performed without a guardian (*wali*), by a guardian who lacks legal authority, without valid witnesses, or in violation of the minimum marriage-age requirements established by statutory regulations. Similar to the Marriage Law, the KHI also affirms that annulment does not occur automatically. Article 74, paragraph (2) of the KHI makes clear that an annulment only obtains legal force once the religious court decides it.

Regarding the legal subjects who are entitled to petition for marriage annulment, both the Marriage Law (Article 23) and the Compilation of Islamic Law (Article 73) generally regulate the same categories of applicants. These include: the husband or wife; direct ascendants and descendants of either party; officials authorized to supervise the conduct of marriages; and other interested parties who have a legal interest and become aware of defects in the essential pillars or requirements of the marriage. Despite differences in normative

[16] Article 2 paragraph (1) of the Marriage Law: Marriage is valid if it is carried out according to the laws of each religion and belief.

[17] Previously, Article 7 of the Marriage Law stated that the minimum age for marriage was 19 for men and 16 for women. However, this rule was amended in Law No. 16 of 2019 to 19 for both men and women.

[18] Article 37 of PP 9/1975: The annulment of a marriage can only be decided by the Court.

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orientation, administrative-legal in the Marriage Law and religious-normative in the KHI, both regimes converge in one critical respect: neither provides rules on the classification and division of property following annulment. This convergence has important juridical implications, as it leaves unresolved whether assets acquired during the parties' life together should be treated as joint property, excluded entirely, or assessed based on factual contributions, thereby becoming a potential source of legal conflict in annulment cases.[19]

The differences between the Marriage Law and the KHI may be summarized as follows:

Table 2. Comparison of Annulment Requirements According to the Marriage Law and the KHI

Aspects	Marriage Law (Article 22–28)	KHI (Article 70–76)
Focus	Assessing the general and administrative requirements of a marriage, determining its legal validity at the time of registration.	Assessing the essential pillars (*rukun*) and the legal requirements for a valid marriage contract, including the presence and authority of the guardian (*wali*), the validity of witnesses, and compliance with religious prohibitions (*larangan syar'i*).
Types of legal defects that constitute grounds for annulment	a. Failure to meet the legal requirements for marriage (Article 22). b. Procedural violations: marriage conducted before an unauthorized official or without valid witnesses (Article 26). c. Defects of will: coercion, threats, or mistake (Article 27). d. One party is still bound by another valid marriage (Article 28).	a. Absence of a valid guardian (*wali*) or a guardian who does not meet the legal requirements (Article 72). b. Absence of two valid witnesses (Article 70 letter d & Article 72). c. Fraud regarding identity or a marriage conducted under coercion (Article 72). d. Marriage conducted in violation of prohibitions based on *mahram*, lineage, or milk-kinship (Articles 70–71).
Normative Orientation	Legal-formal, administrative, and procedural.	Religious-normative orientation, focused on the essential pillars *(rukun)* of marriage.
Scope of reasons for annulment	Narrower, primarily procedural and administrative.	Broader, covering the structural and essential pillars (*rukun*) of the marriage contract.

[19] Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (2023): 1–23, https://doi.org/10.18592/sjhp.v23i1.8611.

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Aspects	Marriage Law (Article 22–28)	KHI (Article 70–76)
Specific emphasis	Validity of registration and the voluntary consent of the parties.	Validity of the marriage contract (*akad*) as a religious act and a faith-based contractual obligation.
Parties eligible to petition for annulment	Generally, the husband/wife or the party who suffers legal harm.	The husband/wife, direct-line family members, the Office of Religious Affairs (KUA) official, and other legally interested parties.
Nature of the legal effect	Annuls the marriage from the perspective of state law.	Annuls the *akad nikah* from the perspective of Islamic law (*syariah*).
Relationship to prohibited forms of marriage	Regulates prohibitions on bigamy without permission and fraud regarding marital status.	Regulates prohibitions based on *mahram*, lineage (*nasab*), and other religious grounds not covered in the Marriage Law.
Strength of the norms	General and universal, applicable to all religious groups.	Specific to Muslims, with more technical and detailed provisions.
Consequences for property/assets	No regulation on the division of property after annulment: a normative gap.	No regulation on the division of property after annulment: a normative gap.

Source: Primary data, 2026 (Edited).

Table 2 illustrates the fundamental distinctions between the Marriage Law and the Compilation of Islamic Law (KHI) concerning the grounds, orientation, and legal consequences of marriage annulment. While the Marriage Law focuses on administrative and procedural legality, the KHI emphasizes the validity of the religious elements and pillars of marriage. Nevertheless, both frameworks reveal a similar normative limitation, namely the absence of explicit regulation concerning the status and distribution of property after annulment, thereby creating legal uncertainty in disputes involving joint assets and land ownership.

The Marriage Law explicitly provides that the legal consequences of marriage annulment cannot be applied retroactively to several important aspects. First, the fact that children were born from the marital relationship means that they continue to be recognized as legitimate children even if the marriage is annulled.[20] Second, any legal acts performed in good faith by either spouse before the annulment remain valid. Third, the rights of third parties acting in good faith may not be harmed as a result of the annulment. In this way, the law seeks to preserve the stability of legal relationships that arose before the court issued the annulment decision. These principles are also reflected in Articles 75–76 of the

[20] Intihani, "Pembatalan Perkawinan Dan Pelaksanaannya Di Indonesia."

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Compilation of Islamic Law (KHI), which state that annulment does not sever the legal relationship between parents and children or extinguish the lawful rights of third parties.

This framework reflects that marriage annulment under Indonesian law does not operate with absolute retroactivity, but rather with a quasi-retroactive effect. Although the marriage is declared invalid, the law deliberately preserves certain social and legal consequences that arose before the annulment to maintain legal certainty and fairness. The state continues to protect children, parties acting in good faith, and legal acts performed prior to the annulment.[21] Therefore, marriage annulment cannot be understood simply as a legal fiction that treats the marital relationship as if it never existed. Rather, it is an annulment that selectively negates the marital bond while continuing to recognize specific legal effects. This quasi-retroactive character becomes particularly relevant in disputes over property, as it allows courts to acknowledge factual economic relationships without automatically legitimizing claims that conflict with other mandatory legal regimes.

3.2 Legal Status of Joint Property After Marriage Annulment

Both the Marriage Law and the Compilation of Islamic Law (KHI) provide that all assets acquired during the marital relationship are, in principle, considered joint marital property, regardless of their source or under whose name the assets are registered.[22] The KHI even offers more detailed regulation on separate property and personal property in Articles 86-87, as well as the mechanism for dividing joint property in cases of divorce in Articles 96-97.

Accordingly, Indonesian marriage law recognizes an economic partnership within marriage, arising from the realities of domestic life in which spouses cooperate, whether through direct financial contributions or through domestic contributions to managing the household. This principle reflects that marriage is not only a personal relationship but also an economic union. However, all provisions on joint marital property are fundamentally constructed on the assumption that the marriage in question is valid. Therefore, when the court later annuls a marriage, the legal status of assets acquired during the period of marital cohabitation becomes more complex and requires a separate legal assessment based not merely on formal legality, but also on considerations of fairness and factual cooperation.

Neither the Marriage Law nor the KHI explicitly regulates how joint marital property should be divided when the court annuls a marriage. The Marriage Law contains no specific provision governing the status of assets acquired during the period of cohabitation in a marriage that is later declared void. The same gap exists in the KHI. This absence of regulation creates a normative vacuum, requiring judges in practice to interpret whether assets acquired during the couple's shared life should still be treated as joint marital property, even though the marriage is annulled, or whether such assets should not be

[21] Ica Karina and Jupri Wandy Banjarnahor, "Cancellation of Marriage and Its Legal Consequences in the Legal System in Indonesia," *Anayasa: Journal of Legal Studies* 1, no. 1 (2023): 41–57, https://doi.org/10.61397/ays.v1i1.99.

[22] Article 35 paragraph (1) of the Marriage Law: Property acquired during marriage becomes joint property. Article 85 KHI: The existence of joint property in a marriage does not rule out the possibility of property belonging to each husband or wife.

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regarded as joint property at all because the marriage was legally invalid from the outset. As a consequence, the resolution of such disputes depends heavily on judicial interpretation, leading to varied and sometimes inconsistent outcomes across similar cases.

To fill this normative gap, the Supreme Court, in several decisions, has relied on the concept of *maatschap* (civil partnership) as a substitute legal construction for joint marital property in annulled marriages. A *maatschap* is a civil partnership agreement between two or more persons who agree to contribute something (*inbreng*) to the partnership with the intention of generating and sharing benefits arising from their consensual agreement.[23] In the context of a marriage annulment, this concept reflects that although the marriage is legally invalid, the parties have nonetheless lived together and formed an economic partnership in practice.

From a legal-theory perspective, the application of maatschap implicitly combines elements of distributive and corrective justice. Distributive justice is reflected in the proportional allocation of assets based on each party's actual contribution, rather than an automatic equal division that presumes a valid marriage. At the same time, corrective justice operates by preventing unjust enrichment and correcting economic imbalances that would arise if one party were allowed to retain all assets solely as a result of the annulment of the marriage. In this sense, *maatschap* functions as a fairness-oriented mechanism that mediates between formal invalidity and factual cooperation.

Through this approach, the Supreme Court essentially holds that the parties' actual contributions during their life together must still receive legal protection. Therefore, the division of assets does not always have to follow the equal-share model applied in divorce cases, but may instead be carried out proportionally based on each party's contribution. This reasoning seeks to bridge two legal realities at once: on the one hand, the marriage is deemed invalid from the outset; on the other hand, the parties' shared economic life undeniably existed and cannot be ignored without creating substantive injustice.[24]

Nevertheless, judicial practice in this area remains far from uniform. Some courts consistently apply a contribution-based approach grounded in *maatschap*, while others adhere strictly to the doctrine that annulment eliminates any basis for joint property. This lack of consistency highlights the absence of clear statutory guidance and poses challenges for legal certainty. Parties in similar factual situations may receive different outcomes depending on judicial interpretation, underscoring the limitations of case-by-case adjudication in addressing structural normative gaps.

Accordingly, the use of *maatschap* in annulment-related property disputes must be understood as a form of judicial innovation (*rechtvinding*), whereby judges actively develop the law to resolve disputes that are not squarely addressed by existing legislation.

[23] Zaenal Arifin et al., "Keabsahan Dan Perlindungan Hukum Perjanjian Kemitraan Jasa Konstruksi," *Jurnal USM Law Review* 6, no. 1 (2023): 65–78, https://doi.org/10.26623/julr.v6i1.6095.

[24] Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal USM Law Review* 6, no. 1 (2023): 433–47, https://doi.org/10.26623/julr.v6i1.6899.

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While this approach is necessary to prevent a denial of justice, it also underscores the need for clearer legislative regulation to ensure consistency and predictability in the treatment of joint property following an annulment of marriage.

The legal issues become more complex when the assets acquired during the marriage or during cohabitation consist of land. This is because land is subject not only to marriage law but also to agrarian law, which is more rigid and imperative in nature. Agrarian law operates under a different logic and structure than marriage law or general civil law, as land regulation is directly tied to the interests of the state and the wider public. Consequently, in property disputes arising from the annulment of a marriage, particularly when the object in dispute is land, agrarian law often takes precedence. Provisions in agrarian law cannot be overridden by private contracts, family relations, or claims of joint marital property, because land ownership and control are regarded as matters of public policy that the state must safeguard.

3.3 Agrarian Legal Framework: Restrictions on Land Ownership in Mixed Marriages

Article 2, paragraph (1) of Law Number 5 of 1960 on UUPA affirms that land, water, and the natural resources contained therein are under state control.[25] This authority empowers the state to determine who may hold rights over land, what types of legal relations may be established with respect to land, and which actions are prohibited in the possession and use of land.[26] The provisions of the UUPA are mandatory (dwingend), reflecting the character of agrarian law as part of public law aimed at safeguarding national interests over land as a strategic resource. Consequently, the rules governing land ownership and control cannot be altered or circumvented by private agreements between parties. In this context, the principle of freedom of contract under the Civil Code operates subject to public law limitations and cannot override agrarian norms established by the state. Even where parties are bound by private contractual arrangements or a marital relationship, agrarian law retains a superior position in determining the validity of land ownership and land control, illustrating the doctrine of public law supremacy over private law.

The Agrarian Law (UUPA) explicitly restricts who may hold land rights, particularly ownership rights. This restriction is set out clearly in Article 21 paragraph (1) of the UUPA, which provides that ownership rights (*hak milik*) are reserved exclusively for Indonesian citizens.[27] This provision demonstrates that ownership rights are entirely closed to foreign nationals (WNA) and reflects the principle of nationality in Indonesia's agrarian law, positioning land control as a matter closely linked to state sovereignty and national

[25] Nabbilah Amir et al., "Regulating the Space Above Land in Indonesia: Toward a Business Law-Based Framework for Legal Certainty and Vertical Development," *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 63–82, https://doi.org/10.30996/jhbbc.v9i1.132400.

[26] Arif Firmansyah, Lina Jamilah, and Irawati, "The Concept of Protection of Land Rights Certificate Holders in Realizing Legal Certainty," *Jurnal Pembaharuan Hukum* 12, no. 1 (2025): 58–71.

[27] Agustina and Nazah, "Status Hukum Hak Kepemilikan Atas Tanah Oleh WNA Akibat Perjanjian Nominee Dengan WNI (Studi Putusan Nomor 144/Pdt/2021/Pt.Dps)."

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security.[28] Accordingly, land with ownership status cannot be owned or controlled by foreign nationals, whether directly or through legal structures that, in substance, place the foreign party in the position of the true owner. Accordingly, land with ownership status cannot be owned or controlled by foreign nationals, whether directly or through legal constructions that, in substance, place the foreign party in the position of the true owner.

For foreign nationals, agrarian law permits only limited forms of land use, specifically *hak pakai* (right of use) and *hak sewa* (lease rights).[29] The rules on *hak pakai* are set out in Articles 41–43 of the UUPA and further elaborated in Articles 49–63 of Government Regulation Number 18 of 2021 (PP 18/2021), which allow foreign nationals to use state land, land under a management right (*hak pengelolaan*), or land owned by an Indonesian citizen for specific purposes and within a certain period. In addition, foreign nationals may hold lease rights under Articles 44–45 of the UUPA, which are contractual in nature and do not confer the status of land-rights holder. Under this regulatory structure, agrarian law deliberately positions foreign nationals not as landowners but merely as land users.

Within this framework, any legal construction that seeks to place a foreign national in the position of the substantive owner of land anywhere within the territory of the Republic of Indonesia is fundamentally incompatible with the core principles established by the UUPA. The most fundamental prohibition concerning foreign involvement in land ownership is contained in Article 26, paragraph (2) of the UUPA, which states that any agreement or other legal act intended to transfer ownership rights (*hak milik*) over land to a foreign national, whether directly or indirectly, is null and void. This provision has an exceptionally broad scope. It not only prohibits direct transfers, such as purchases or gifts, but also indirect forms of control, including nominee arrangements, irrevocable powers of attorney, fictitious debt agreements, or layered contractual structures that, in substance, grant a foreign national effective control over land formally registered under the name of an Indonesian citizen. This prohibition also extends to schemes that exploit marital relationships to gain control over land.

If this prohibition is violated, the legal consequence is that the arrangement is considered null and void (*batal demi hukum*), meaning the legal act is deemed never to have existed and therefore produces no lawful consequences.[30] In such cases, the land involved may revert to the state, and any payments or costs made by the parties generally cannot be reclaimed. These sanctions underscore the state's firm normative stance against all forms of land control by foreign nationals. At the same time, they reveal the uncompromising nature of Indonesia's agrarian policy.

[28] I Made Herman Susanto et al., "Zona Khusus Kepemilikan Asing Dan Restrukturisasi Kebijakan Pertanahan Untuk Pertumbuhan Investasi Dan Family Office Di Indonesia : Tinjauan Integratif Dan Analisis Isi," *Tunas Agraria* 9 (2026): 17–33, https://doi.org/10.31292/jta.v9i1.514.

[29] Susanto et al.

[30] Agustina and Nazah, "Status Hukum Hak Kepemilikan Atas Tanah Oleh WNA Akibat Perjanjian Nominee Dengan WNI (Studi Putusan Nomor 144/Pdt/2021/Pt.Dps)."

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In practice, it is common to find situations in which a foreign national marries an Indonesian citizen and subsequently acquires land in the name of the Indonesian spouse, even though the funds originate from the foreign national. To safeguard the foreign national's economic interests, the parties often enter into private agreements, such as repayment arrangements, broad powers of attorney, or secured debt instruments, to ensure effective control over the land. These practices demonstrate how the rigidity of agrarian prohibitions can incentivize legal engineering to preserve economic interests while formally conforming to the law.

From a critical policy perspective, this raises an important question: whether the current regulatory framework, while normatively strict, unintentionally creates incentives for nominee arrangements as a form of legal circumvention. The absolute exclusion of foreign nationals from ownership rights, without a broader range of legitimate tenure options, may perpetuate concealed control mechanisms. Thus, while agrarian law correctly asserts the supremacy of public law, its rigidity may also generate social and economic practices that operate in tension with formal legality.

In principle, the Marriage Law and the KHI provide that assets acquired during the course of a marriage constitute joint marital property.[31] However, this principle cannot be applied automatically when the asset in question is land, because land is subject to agrarian law, which contains its own mandatory regulatory framework. This situation reflects a normative hierarchy conflict between private law (marriage law) and public law (agrarian law). Within this hierarchy, public law norms necessarily prevail.[32]

As a consequence, a foreign national cannot claim land as part of joint marital property, even if the land was acquired during the marriage, financed by the foreign national, or even when the marriage itself was valid. Agrarian law does not recognize joint marital property as a legal basis for allowing foreign nationals to control or own land in Indonesia. In the context of marriage annulment, the position of the foreign national becomes even weaker, as annulment eliminates any remaining private-law foundation for such claims, leaving mandatory agrarian restrictions as the decisive normative framework governing land control from the outset.

3.4 The Legal Standing of Nominee Agreements for Land Control from a Contract Law Perspective

A nominee agreement in the context of land ownership is a mechanism that uses private-law instruments to place an Indonesian citizen (WNI) as the registered owner of a parcel of land, while a foreign national (WNA) acts as the beneficial owner who, in fact,

[31] Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law"; Utami and Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian."

[32] M. Yazid Fathoni, Adi Sulistiyono, and Lego Karjok, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 55–67, https://doi.org/10.29303/ius.v12i1.1351.

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enjoys the benefits of and exercises control over the land.[33] In this arrangement, the Indonesian citizen's name appears as the formal rights holder in land documents, whereas the foreign national obtains economic and factual control over the property, an outcome that is expressly prohibited under Indonesian agrarian law.

In legal discourse, the terms nominee, beneficial owner, and nominee agreement are often used interchangeably. A nominee functions merely as a formal or "on-paper" owner, while the beneficial owner enjoys the substance of ownership, including control, use, and economic benefit.[34] A nominee agreement itself constitutes an innominate contract, developed under the principle of freedom of contract, and is frequently used to circumvent statutory restrictions, most notably the prohibition against foreign ownership of land in Indonesia.

It is important to distinguish nominee arrangements from ordinary powers of attorney regulated under Article 1792 of the Indonesian Civil Code. A genuine power of attorney confers limited and revocable authority to perform specific legal acts on behalf of the principal and is not intended to transfer substantive ownership. In nominee schemes, however, powers of attorney are often drafted as irrevocable or excessively broad and combined with other agreements, enabling a foreign national to exercise de facto control over land. At this stage, otherwise lawful instruments are transformed into tools of legal circumvention *(fraus legis)*.

From a contract law perspective, nominee agreements fall under the category of innominate contracts, which are generally permissible under the principle of freedom of contract as embodied in Article 1338, paragraph (1), of the Civil Code, which states that all legally formed agreements shall operate as law for the parties who make them.[35] This provision also embodies the principles of consensualism and *pacta sunt servanda*, affirming that every agreement reached by the parties must be complied with.[36] Nevertheless, this freedom is not absolute. Articles 1337 and 1338, paragraph (3) of the Civil Code explicitly limit contractual autonomy by prohibiting agreements that contravene statutory law, morality, or public order. Where freedom of contract is exercised to defeat mandatory norms of public law, it constitutes an abuse of freedom of contract, rather than its legitimate use.

Regardless of whether a contract is nominate or innominate, Article 1320 of the Civil Code requires the fulfillment of four essential elements: (1) the consent of the parties; (2) the legal capacity to agree; (3) a specific subject matter; and (4) a lawful cause. Requirements (1) and (2) are subjective: if they are not met, the agreement becomes voidable. Requirements (3) and (4) are objective: failure to meet these results in the

[33] Dharma, Budiartha, and Ujianti, "Larangan Penguasaan Tanah Oleh WNA Melalui Perjanjian Nominee."
[34] Henry Campbell Black, *Black's Law Dictionary, West Publishing Co.*, 4th ed. (St. Paul, Minnesota, 1968).
[35] Achmad Hariyadi and Rusdianto Sesung, "Keabsahan Kepemilikan Tanah Yang Diperoleh Berdasarkan Perjanjian Nominee Antar Sesama Warga Negara Indonesia," *Jurnal Selat* 9, no. 1 (2021), https://doi.org/10.31629/selat.v9i1.4348.
[36] Fajar Sugianto, *Teori Dan Praktik Perancangan Kontrak*, ed. Robertus Ari, 1st ed. (Yogyakarta: Penerbit ANDI, 2023).

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agreement being null and void. By this provision, agreements formed for an unlawful cause, such as intentionally enabling foreign control over land, are null and void by operation of law (*batal demi hukum, ipso jure*), as affirmed by Articles 1335 and 1337. Thus, the link between an unlawful *causa* and nullity is direct: once the underlying purpose violates statutory prohibitions, no legally binding obligation can arise.

In the agrarian context, the limits on contractual freedom are even more pronounced because the Basic Agrarian Law (UUPA) constitutes mandatory public law. This means that the rules governing who may hold land rights, what types of land rights may be owned, and the prohibitions surrounding land control cannot be overridden by private agreements. Therefore, even if a contract is formed based on freedom of contract, it may not conflict with the principles established under agrarian law.

The central legal issue in nominee agreements related to land ownership lies in the requirement of a lawful cause (*causa*). The primary purpose of such agreements is typically to provide a foreign national with control or beneficial ownership over land by using the name of an Indonesian citizen as the formal rights holder. In practice, nominee schemes are usually not expressed in a single agreement but rather constructed through a bundle of interrelated contracts. Common patterns include very long-term lease agreements that economically resemble ownership and often contain automatic extension clauses or preferential rights for the foreign national. In addition, parties often create interest-free debt acknowledgment agreements with disproportionate values, effectively positioning the foreign national as a dominant creditor, with the land used as collateral through a Deed of Mortgage (*Akta Pemberian Hak Tanggungan*, APHT). This structure is typically reinforced by an irrevocable power of attorney (*kuasa mutlak*) that enables the foreign national to act de facto as the owner, for example, by selling, transferring, or managing the land title without the formal owner's consent. In some cases, layered mortgages are created, or a civil partnership (maatschap) is formed, which formally appears to be a business collaboration but substantively grants the foreign national economic control over the land.

The granting of a mortgage is indeed common in credit arrangements to provide repressive protection for the creditor in case the debtor defaults. It also reflects that land is viewed as a valuable, economically significant asset whose value tends to appreciate over time.[37]

Although each agreement within the arrangement may appear formally valid when viewed in isolation, for example, because it is executed as a notarial deed and satisfies formal requirements, taken together, they share the same substantive purpose: to grant a foreign national direct or indirect control over land.[38] This clearly violates Article 26, paragraph (2) of the Basic Agrarian Law (UUPA). Therefore, even if an agreement appears

[37] Shinta Pangesti and Prilly Priscilia Sahetapy, "Pendaftaran Hak Tanggungan Sebelum Dan Setelah Berlakunya Peraturan Menteri Agraria / Kepala BPN Nomor 5 Tahun 2020," *Tunas Agraria* 6, no. 2 (2023): 71–92, https://doi.org/10.31292/jta.v6i2.216.

[38] Saskia Fazrin Khoirunnisa and Elan Jaelani, "Tanggung Jawab Notaris Atas Kepemilikan Tanah WNA Berdasarkan Perjanjian Dengan Subjek Hukum WNI," *Court Review: Jurnal Penelitian Hukum* 3, no. 1 (2023): 1–11.

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administratively valid, its material validity remains the decisive factor in determining its enforceability.

From the perspective of civil law, such a purpose constitutes an unlawful *causa*, and a nominee agreement must therefore be considered null and void from the outset (*ipso jure*). As a consequence, the agreement produces no legally enforceable effects, the land involved may revert to the state, and any payments made by the parties are generally not recoverable.

In judicial practice, judges typically evaluate the substance of an agreement rather than its formal structure (*substance over form*).[39] If it is proven that the bundle of contracts was intended to confer land control to a party who is legally prohibited from holding such rights, the contracts may be declared invalid for violating agrarian law. Even when a nominee scheme is presented as an "investment" within the context of a mixed marriage, the spousal relationship cannot override the restrictions and prohibitions established by the UUPA.

In practical terms, nominee schemes create significant legal consequences for various parties. For the parties involved, the contracts they enter into cannot be enforced because they conflict with the UUPA. For notaries or Land Deed Officials (*Pejabat Pembuat Akta Tanah*, PPAT), there is a potential risk of civil liability if they proceed with drafting deeds that substantively violate agrarian prohibitions without providing adequate legal advice; therefore, the best professional practice is to refuse from the outset to execute any deed that clearly indicates a nominee arrangement. Meanwhile, for law-enforcement authorities and the courts, disputes of this kind must be assessed by examining the overall substance of the contractual bundle used to grant a foreign national control over land.

Thus, even though nominee agreements may theoretically be viewed as a manifestation of the freedom of contract, such constructions ultimately cannot be upheld because they fail to satisfy the requirement of a lawful *causa* for contract validity.[40] Given that their purpose contradicts agrarian law, particularly Article 21 paragraph (1) and Article 26 paragraph (2) of the UUPA, nominee schemes are, in principle, null and void. Consequently, land control remains subject to the mandatory agrarian legal regime and cannot be circumvented through the parties' contractual intentions.

3.5 Judicial Views on Nominee Agreements and Marriage Annulment

After understanding that nominee agreements lack legitimacy under Indonesia's legal system, the next question is how courts conclude that a series of agreements constitutes a nominee arrangement and must therefore be declared null and void. This question is essential because it reveals the method of judicial reasoning *(rechtsvinding),* in which judges do not confine themselves to the formal validity of individual contracts but instead examine their

[39] Ihat Istirahat, "Rekonstruksi Peran Hakim Dalam Mewujudkan Keadilan Substantif Di Pengadilan Indonesia," *Yudhistira: Jurnal Yurisprudensi, Hukum Dan Peradilan* 1, no. 2 (2023): 44–51, https://doi.org/10.59966/yudhistira.v1i2.1704; Erica Indah Maulia and Irwan Triadi, "Dinamika Pemikiran Hukum Dalam Praktik Peradilan Indonesia," *Jurnal Cendekia Hukum Indonesia* 1, no. 2 (2025): 799–808, https://doi.org/10.71417/jchi.v1i2.76.

[40] Dharma, Budiartha, and Ujianti, "Larangan Penguasaan Tanah Oleh WNA Melalui Perjanjian Nominee."

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underlying purpose, structure, and legal consequences through a substance over form approach.

One of the most frequently cited cases is Decision No. 787/Pdt.G/2014/PN.DPS of the Denpasar District Court, as it presents a comprehensive illustration of how courts structure their reasoning in cases involving nominee arrangements and alleged marital relationships. The core legal issues in this case were threefold. First, whether the Plaintiff had legal standing to file a tort claim, given the Defendant's assertion that the parties were husband and wife and that the land therefore constituted joint marital property. Second, whether the series of agreements executed between the parties constituted ordinary civil transactions or a prohibited nominee arrangement aimed at circumventing the Basic Agrarian Law (UUPA). Third, whether a purported marital relationship, particularly one whose validity was disputed, could legitimize indirect land control by a foreign national.

Case Background: This case originated from a tort lawsuit, Case No. 787/Pdt.G/2014/PN.Dps, in which the Plaintiff (an Indonesian Citizen) accused Defendant I (a foreign national, hereinafter referred to as "the Defendant") and Defendant II (a Notary) of engaging in legal circumvention through a set of deeds that, in substance, positioned the Plaintiff as a nominee for the Defendant over land registered under Freehold Title Number 1022/Pererenan. At the preliminary stage, the Defendant objected, arguing that the Plaintiff lacked standing because the parties were husband and wife and, consequently, the land should be treated as joint marital property rather than as the subject of a tort claim. This objection sought to defeat the case on procedural grounds by invoking private family law relations.

In response, the Plaintiff denied the existence of a valid marital relationship, pointing out that the Defendant himself had previously filed a petition for annulment of marriage and referring to the findings in the case before the Mataram High Religious Court (PTA) No. 108/Pdt.G/2012/PTA.MTR, which indicated that the marriage status was unclear and had not been proven valid. The Plaintiff thus argued that there was no legal basis for treating the land as joint marital property.

The Panel of Judges rejected the Defendant's objections, holding that the alleged marital relationship was unproven and legally irrelevant to the Plaintiff's standing. More importantly, the judges emphasized that even assuming a marital relationship existed, such status could not override the mandatory prohibitions of agrarian law.

On the merits, the Court examined a series of deeds executed almost simultaneously: the long-term lease agreement extending up to 100 years, the substantial interest-free debt acknowledgment, the power of attorney, and the mortgage deed (*APHT*). Applying a substance over form approach, the judges assessed these instruments collectively rather than in isolation, identifying an unusual and interconnected contractual pattern.

First, regarding the duration, the land lease was executed for an exceptionally long term, with the possibility of extension approaching nearly a century. Under ordinary civil law practice, long-term leases are permissible. However, when the term is so prolonged as

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to substantially amount to permanent control, the judges concluded that the agreement was no longer merely a lease. Here, the Court found indications that the lease form was being used to confer actual control over land on a party legally prohibited from freehold ownership *(hak milik)*.

Second, there was a substantial debt acknowledgment without interest, which is atypical in normal financial practice. In theory, parties are free to determine the content of their agreements. Yet such freedom cannot be separated from an assessment of reasonableness. When a debt lacks a clear repayment schedule and repayment is instead tied to the sale of the disputed land, the Court determined that the debt relationship was not a genuine financial arrangement. Rather, it resembled a binding mechanism designed to ensure that the land remained under the control of a particular party.

Third, the judges assessed all the agreements collectively rather than in isolation. The lease, debt acknowledgment, power of attorney, and mortgage right, executed over the same object and involving the same parties, were viewed as an interconnected set of arrangements reinforcing one another. In ordinary civil law practice, a landlord–tenant relationship and a creditor–debtor relationship are distinct legal constructs. When both are simultaneously imposed on the same object in a mutually reinforcing structure, the Court perceived this as contractual engineering.

Based on this analysis, the Court concluded that the arrangement constituted a nominee scheme rather than ordinary civil transactions. The *ratio decidendi* of the Denpasar District Court's judgment lies in the determination that the bundle of agreements, when assessed substantively, had an unlawful causa, namely, granting a foreign national indirect control over land with ownership rights, in violation of Articles 21 and 26 of the UUPA. Consequently, the agreements were declared null and void *(batal demi hukum)* for failing to satisfy the objective validity requirements under Article 1320 of the Civil Code. Statements concerning the potential existence of a marital relationship, while discussed by the Court, function primarily as *obiter dicta*. The decisive factor was not marital status but the incompatibility of the contractual scheme with mandatory agrarian law.

The Court further ordered the cancellation (*roya*) of the Mortgage Right No. 209/2008, confirmed that SHM No. 1022 belonged to the Plaintiff, imposed a security seizure over Villa Emmanuelle, and declared that the Defendant's possession of the land certificate had no legal basis. *Roya* refers to the cancellation of a mortgage inscription on the land certificate and the withdrawal of the mortgage deed by the land administration office, at the titleholder's request.[41]

At the appellate level, the Denpasar High Court (Decision No. 193/PDT/2015/PT.DPS) affirmed the entire District Court judgment, including its determination that the Defendant's claim of a marital relationship had no bearing on the legality of his claim to the land, since the prohibition on foreign ownership right land

[41] Pangesti and Sahetapy, "Pendaftaran Hak Tanggungan Sebelum Dan Setelah Berlakunya Peraturan Menteri Agraria / Kepala BPN Nomor 5 Tahun 2020."

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(Articles 21 and 26 of the UUPA) remains applicable even in the presence of a marital relationship. The High Court concluded that the series of deeds constituted a clear legal circumvention and could not create any rights for the Defendant. The land, therefore, remained with the Plaintiff, and the Defendant's control over it was declared unlawful.

In parallel, the Mataram High Religious Court (Decision No. 108/Pdt.G/2012/PTA.MTR) declared the petition for annulment of marriage inadmissible (N.O.) because the Plaintiff failed to prove the dissolution of a prior marriage, leaving the marriage status legally uncertain and further weakening any claim of joint marital property.

Ultimately, the case reached the cassation stage (Supreme Court Decision No. 3403 K/Pdt/2016), which affirmed that nominee schemes violate agrarian law and that no private relationship, including marriage, can override these prohibitions.

The judgments consistently emphasized that the use of an Indonesian citizen's name in the land certificate (*Sertifikat Hak Milik,* SHM) for the benefit of a foreign national constitutes an unlawful act (*perbuatan melawan hukum*), aligning with Maria S.W. Sumardjono's doctrine that nominee arrangements are a form of legal circumvention aimed at evading agrarian restrictions.[42] Funding the acquisition does not confer ownership rights, nor does it justify reimbursement claims. The fact that a foreign national financed the acquisition does not alter the land's legal status, as the UUPA prohibits any form of land control by foreign nationals, whether direct or indirect.

Accordingly, the judicial approach in this case demonstrates a coherent application of substance over form, a clear identification of *ratio decidendi* grounded in unlawful *causa*, and a firm rejection of nominee arrangements within the Indonesian agrarian legal framework.

3.6 Implications of the Absence of Marriage Annulment for the Status of Joint Property and Land Ownership by Foreign Nationals

What if the marriage annulment had never occurred?

This question is raised to frame a hypothetical legal analysis. The aim is not to speculate, but to test the consistency of Indonesian marriage law and agrarian law under an alternative set of facts. By examining the legal consequences in the absence of annulment, this subsection seeks to clarify the limits of the joint property concept and to provide practical guidance for courts and legal practitioners in resolving disputes involving mixed marriages and land ownership.

From an analytical standpoint, this question leads to two possible legal scenarios.

First, if the petition for marriage annulment between the Plaintiff and the Defendant had never been filed, their relationship could legally be regarded as a valid marriage. As a consequence, by referring to Article 35 of the Marriage Law or Article 85 of the KHI, the land and buildings acquired during the marriage, including Villa Emmanuelle, could be

[42] Maria S. W. Sumardjono, *Kebijakan Pertanahan: Antara Regulasi Dan Implementasi* (Jakarta: Kompas, 2009).

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classified as joint marital property. Under such a construction, division of joint property would occur through divorce proceedings.

Judicial practice reflects two principles commonly applied by the courts in dividing joint property: (1) *the contribution-based justice principle*, which allocates assets according to each party's actual contribution;[43] and (2) the *equality principle*, which divides property equally (50:50) on the basis that such a distribution better reflects proportional fairness and protects the rights of both spouses.[44]

Nevertheless, even under this scenario, the division of joint marital property cannot disregard the explicit prohibition under the Basic Agrarian Law (UUPA) against land ownership by foreign nationals. While the economic value associated with joint property may be divided between the parties, the foreign nationals' entitlement cannot take the form of proprietary rights over land. The permissible outcome is limited to economic compensation, such as cash reflecting a share in the proceeds of sale. If the resolution were to involve a physical division of the land, any portion that would otherwise accrue to the foreign national must be transferred to an Indonesian citizen within one year through lawful mechanisms, such as sale, gift, or relinquishment of rights, to prevent nullification by operation of law.[45]

From the standpoint of legal certainty, this scenario confirms that agrarian rules are predictable: foreign nationals are not allowed to own land, regardless of whether the marriage is valid. At the same time, from the perspective of protecting foreign investment, it reveals a structural limitation: financial contributions by foreign nationals to land cannot be secured as ownership rights, even within a valid marriage.

Second, even if the marriage had not been annulled, the court would still likely treat the nominee scheme as a form of legal circumvention because it is based on an unlawful purpose. As a result, the entire set of agreements would remain null and void. The concept of joint marital property cannot be used as a shortcut to confer effective ownership of freehold land on a foreign national. In this situation, what may change is not the legal status of the land, but how the court resolves the private-law consequences between the parties. Possible remedies may include limited restitution based on actual contributions, the use of a *maatschap* or factual partnership framework, or civil compensation. However, these approaches do not and cannot lead to the recognition or transfer of land ownership rights to a foreign national. The District Court and High Court decisions discussed earlier clearly reflect this consistent judicial approach.

[43] Utami and Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian."

[44] Barry Aliyyu Nissa Ismanto, "Division of Joint Property Based on Contributions Coherent With the Principles of Marriage Law," *TALREV* 10, no. 2 (2025): 173–80.

[45] Article 21 paragraph (3) of the Agrarian Law (UUPA): A foreign national who, after the enactment of this Law, acquires ownership rights *(hak milik)* over land through intestate inheritance or through the commingling of assets due to marriage, … is required to relinquish those rights within one year from the date the rights were acquired or from the loss of Indonesian citizenship.

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From another perspective, one might raise the question:

"Can marriage annulment be used as a strategy by an Indonesian citizen (WNI) to gain an unfair advantage by 'reclaiming' land that was actually financed by a foreign national (WNA)?"

Normatively, the answer remains no.

As previously explained, the Agrarian Law strictly prohibits the ownership, control, or transfer of ownership rights over land to foreign nationals, whether directly or indirectly. Therefore, every nominee agreement is, by its nature, null and void from the outset and does not create any rights for the foreign national that could later be "taken back" by the Indonesian citizen. From a causal relationship perspective, marriage annulment does not cause harm to the foreign national. The loss of the possibility to control the land is not a consequence of the annulment; it is a consequence of agrarian law, which, from the beginning, prohibits foreign nationals from owning or controlling freehold land.

Any funds provided by a foreign national to an Indonesian spouse may be characterized as a gift, financial assistance, an investment, or another civil-law arrangement. However, such contributions cannot generate proprietary rights over land for a foreign national in Indonesia.

The Supreme Court has consistently rejected land-ownership claims by foreign nationals arising from nominee schemes. One example is Supreme Court Decision No. 3403 K/Pdt/2016, in which the Court categorically held that a series of deeds intended to give control over land to a foreign national constituted legal circumvention. As a result, the entire arrangement was declared null and void. Thus, the ruling does not represent a "victory" for any party; rather, it reflects the logical consequence of enforcing mandatory agrarian norms.

Indonesia's legal system also does not recognize the concept of equitable interest over land, as known in common-law jurisdictions, namely, a right allowing someone to benefit from or hold a beneficial interest in an asset (such as land) even when another party holds the legal title. Because such a concept does not exist under Indonesian law, financial contributions made by a foreign national cannot serve as a basis to claim ownership, a lease that grants full control, or any other proprietary interest in land. If a foreign national believes they have suffered financial loss, the only possible legal remedy is a civil lawsuit based on an unlawful act (*perbuatan melawan hukum*), such as a claim for the return of unjust enrichment. However, such a claim cannot be converted into a right over land. Accordingly, the notion that marriage annulment could be exploited by an Indonesian citizen to "seize" land financed by a foreign national has no legal basis within Indonesia's agrarian law framework.

4. CONCLUSION

This study concludes that the annulment of mixed marriages involving nominee arrangements has significant implications for the legal status of land ownership in Indonesia. Marriage annulment not only invalidates the marital relationship but also serves as a juridical entry point for courts to uncover legal circumvention in land control by foreign nationals.

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The findings demonstrate that land acquired through nominee schemes cannot be classified as joint marital property because agrarian law, particularly Articles 21 and 26 of the Basic Agrarian Law (UUPA), prevails over private contractual arrangements and marital claims. Consequently, nominee agreements are null and void due to unlawful causa, while financial contributions by foreign nationals do not create proprietary rights over land. The novelty of this research lies in its integrated analysis of marriage law, agrarian law, and contract law in assessing the legal consequences of annulled mixed marriages involving land disputes. This study further emphasizes that courts consistently apply a substance over form approach in identifying nominee schemes and prioritizing the mandatory nature of agrarian law over contractual freedom. Therefore, clearer statutory regulation is needed regarding the status and division of property following marriage annulment to ensure legal certainty, consistency in judicial decisions, and stronger protection against disguised foreign.

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