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The Legal Validity of Nominee Agreements in Share Ownership: a Comparative Insights from Indonesia and Thailand

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Abstract
With the majority of industrial and business sectors experiencing rapid development in recent times, Indonesia is transforming into a key and significant player in the global economy. The ongoing challenge is finding a balance between making the country an attractive place for investors to grow their businesses and providing a large-scale flow of foreign investment. Although in principle, Law No. 25 of 2007 concerning Investment ("UUPM") guarantees equal treatment for every investor in Indonesia, foreign investors are required to comply with all applicable laws and regulations in Indonesia. As a way to accommodate these restrictions, foreign parties usually enter into what is known as a nominee arrangement with Indonesian parties. In practice, the validity and binding power of nominee arrangements are often challenged in relation to their use in circumventing prohibitions under applicable laws and regulations relating to investments, especially when the agreement results in disputes between the parties involved. Normatively, the practice of nominee arrangements is prohibited under the Indonesian Capital Market Law. The purpose of the restriction is to avoid an agreement where a company is formally owned by one party while the benefits are owned by another party. Through this article, the author tries to discuss issues related to the legitimacy of the nominee arrangement practice in relation to investment activities in Indonesia also to do a a comparative analysis of Indonesia's Law on Foreign Investment (UUPM), Law on Limited Liability Companies (UUPT), and the Indonesian Investment Coordinating Board (BKPM) Regulation No. 1 of 2020 with Thailand's Foreign Business Act of 1999 reveals that Thailand imposes more stringent criminal sanctions and regulatory oversight compared to Indonesia. The Indonesian legal framework still presents vulnerabilities for nominee practices.

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I. INTRODUCTION

As a developing country, Indonesia needs foreign investment to stimulate national economic growth. On the one hand, foreign investment activities face challenges manifested in regulations ranging from those issued by host-state, home-state, to international provisions. With the regulation related to investment both nationally and internationally by regulators, it is expected to provide legal certainty for foreign investors who want to invest in Indonesia (Vann, 2012, hlm. 10).

Normatively, Article 5 paragraph (1) of UUPM regulates that every investor who wants to invest in Indonesia is required to do so in the form of a Limited Liability Company in the territory of the Republic of Indonesia. More specifically, the requirements for establishing a Limited Liability

Company are regulated in Article 7 paragraph (1) of UUPT, one of which is with a notarial deed in Indonesian made by two or more persons (Putrayasa & Sukranatha, 2019, hlm. 5).

In practice, investment activities must be carried out by considering several regulations related to business fields that can be invested in, such as UUPM to Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation No. 10 of 2021 concerning Investment Business Fields, and others. Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation No. 10 of 2021 concerning Investment Business Fields states that all business fields are open to investment activities except for those declared closed. Open business fields are priority business fields. The allocation of business fields or partnerships with cooperatives and SMEs is as business fields with certain conditions. All these business fields are explained in detail in the Negative Investment List attachment (Abdulsamad & Yusoff, 2016, hlm. 14).

With the restrictions imposed by the government as stipulated in the regulations, it causes investors to find solutions by creating new concepts. Ironically, these restrictions are what foreign investors try to bypass by establishing a Limited Liability Company in business fields regulated in the Negative Investment List by making a nominee agreement. This agreement is made between foreign investors and Indonesian citizens ("WNI") where the purpose is to borrow the name of the WNI as a shareholder in the PT established by foreign investors, but control and management remain under the control of the foreign investor. Essentially, this agreement aims for the share ownership and company to be entirely in the hands of the foreign investor. However, in UUPM, the practice of nominee agreements is specifically prohibited in Article 33 paragraph (1) of UUPM.

There are several reasons why this study selects Thailand as a comparative case for legal regulations concerning nominee shareholding. The comparative analysis focuses on Indonesia's Investment Law No. 25 of 2007, Company Law No. 40 of 2007, and BKPM Regulation No. 1 of 2020 vis-à-vis Thailand's Foreign Business Act 1999. Fundamentally, three main factors underpin the choice of Thailand as the research object.

Firstly, Thailand shares similar societal culture, traditions, and economic levels with Indonesia, primarily due to their mutual membership in the Association of Southeast Asian Nations (ASEAN). Secondly, both Indonesia and Thailand base their legal systems on civil law, and both have regulations and legal provisions in their statutes prohibiting nominee practices. Indonesia and Thailand share the perception that nominee practices constitute illegal activities contravening the law. While the prohibition of nominee shareholding is regulated through various laws and regulations, the most explicit and foundational provision in Indonesia is Article 33 of the 2007 Investment Law.

However, a significant shortcoming is the absence of explicit sanctions for nominee practice perpetrators within this law.

Consequently, judges must interpret various laws and regulations to adjudicate nominee cases. When foreign and Indonesian nationals are found guilty of legal circumvention through nominee practices, court decisions in some instances impose administrative sanctions, such as business license revocation and fines for foreign nationals to compensate for state losses. The fine amount is typically adjusted based on the complexity of the case. Generally, only the foreign beneficiary is subject to these financial penalties.

Thailand's approach diverges significantly. The country specifically regulates and imposes severe sanctions on those violating the Foreign Business Act 1999, particularly Articles 36, 37, 38, and 41. Perpetrators of nominee agreements face stringent penalties, including imprisonment for up to three years, fines ranging from 100,000 to 1,000,000 Baht, or both imprisonment and fines. The court may also issue orders to cease business operations, dissolve the business, or terminate share ownership or partnerships. Violators of these court orders face additional daily fines of 10,000 to 50,000 Baht until compliance is achieved. Through this article, the author attempts to briefly analyze the validity of the practice of nominee agreements from the perspective of investment law both in Indonesia and Thailand (Perwitasari & Fairina, 2021, hlm. 8).

II. RESEARCH METHOD

The type of research used in writing this journal is normative juridical, which is focused on studying the rules or norms in the prevailing positive law. The definition of normative juridical research is research aimed at providing a systematic exposition of the legal rules governing a particular legal field, analyzing the relationship between one legal rule and another, explaining difficult-to-understand parts of a legal rule, and possibly predicting the development of a particular legal rule in the future (McConville & Chui, 2007).

The approach used in this research is the statutory approach and the conceptual approach. The statutory approach is carried out by examining all laws and regulations related to the legal issue being handled. Research for practical activities using the statutory approach will open up opportunities for researchers to study the consistency and suitability between laws and other laws or between regulations and laws (Mahmud, t.t.)

The results of this review are an argument to solve the issues at hand. The conceptual approach is an approach that originates from the views and doctrines that develop in legal science, so by studying

the views and doctrines that develop in legal science, the author can find ideas that give birth to legal concepts, legal concepts, and legal principles relevant to the issues at hand. Understanding and views and doctrines are the basis for the author in building legal arguments in solving the issues at hand.

III. RESULTS AND DISCUSSION

3.1. The Implementation of Nominee Agreement in Share Ownership

With the presence of the need for shareholders to keep their share ownership undisclosed to the public or the government for certain commercial interests, the practice of nominee agreements is considered one of the best options that can be used. In this case, the commercial interests in question include several business fields that are normatively closed to being run by foreign parties. Therefore, foreign parties wishing to invest in business fields that fall into the closed category practically need WNI to act as shareholders in the company that will run the closed business fields (Jened & Indahsari, 2018, hlm. 12)

Definitively, a nominee shareholder can be defined as "a company member who holds the shares registered in his name for the benefit of another. The identity of the person with the true interest may be subject to disclosure and to investigation under the Companies Act." From this definition, it can be understood that every shareholder in a nominee agreement will represent the interests of the original owner of the shares, where the shareholder will act for and on behalf of the original owner of the shares with the same rights and obligations as ordinary shareholders. However, the nominee shareholder does not necessarily have the freedom to determine actions and votes in the GMS according to his wishes but must act according to the directions of the original owner of the shares (beneficial owner) (Kairupan, 2013, hlm. 5)

As an effort to ensure the interests of the beneficial owner can be facilitated by using the nominee agreement scheme, generally, an agreement is made between the nominee shareholder and the beneficial owner in the form of a nominee agreement, which aims to ensure that the name and identity of the original owner of the shares are not known to the public. In the agreement, it will be stipulated, among others, the rights and obligations of the nominee shareholder, the provisions that limit the authority of the nominee shareholder. The agreement also stipulates that all profits obtained from the share ownership will be the right of the original owner of the shares (Silviana dkk., 2018, hlm. 8).

Furthermore, although there is a nominee agreement between the nominee and the beneficial owner, in essence, only the nominee shareholder is recognized by law regarding the share ownership because the identity listed in the company's articles of association is the nominee shareholder. In this

case, the company and the law do not recognize the original owner of the shares in share ownership on the basis that the nominee agreement made only binds the nominee shareholder and the owner of the shares and does not bind other third parties (Claessens dkk., 2000, hlm. 24)

If in practice there is a dispute between the nominee shareholder and the beneficial owner in the future related to the company's operations due to inconsistency between realization and the directions given, the beneficial owner does not have a strong legal standing to then sue the company or the nominee shareholder. Moreover, other potential issues arising from the use of nominee agreements include the tax risks on the nominee shares, where the party acting as the nominee shareholder generally refuses to report the annual tax on the dividends received from the shares with the excuse that the shares are not actually his (Wicaksono, 2016, hlm. 5).

3.2. The Validity of Nominee Agreement according to the Burgelijk Wetboek (BW)

According to Black's Law Dictionary, a nominee is defined as "a person designated to act for another as his representative in a rather limited sense. It may be used to denote an agent or trustee. However, it has no connotation other than acting for another, representing another, or as a recipient of another's grant." Based on the above definition, in the context of Indonesia, the foreign party acts as the beneficiary, and the local party acts as the nominee in the nominee agreement scheme. Specifically, the beneficiary/trustee structure is a product of English common law and a concept not directly recognized in civil law countries, including under the Indonesian legal system (Vann, 2012, hlm. 12)

However, although it may be a matter of substance, similar arrangements can be applied in Indonesia based on the Third Book of the Burgerlijk Wetboek (BW), which regulates the provisions on contract law adhering to an open system. This system allows parties to make agreements based on their needs apart from those recognized in the BW. In this regard, there are two main types of agreements under the BW subject to the general provisions regulated in the BW as follows:

1. Nominaat agreements refer to agreements recognized (named) and clearly regulated under the BW, such as loan agreements or sale and purchase agreements; and
2. Innominaat agreements refer to agreements developed from common practice after the BW was issued.

Nominee agreements are classified as innominaat agreements, which in principle can be legally made. Unfortunately, the validity and binding power of nominee agreements are often challenged in relation to their use in circumventing prohibitions under applicable laws and regulations related to

investments, especially when the agreement results in disputes between the parties involved (Perwitasari & Fairina, 2021, hlm. 10)

As innominaat agreements, nominee agreements must comply with the general provisions on agreements regulated in the Third Book of the BW. In this regard, a nominee agreement is considered valid if it meets the requirements according to Article 1320 BW:

a) Agreement between parties
b) Legal competency to make an engagement
c) Specific subject matter
d) Permissible cause

In addition to the above requirements, the parties involved in a nominee agreement must consider the provisions under Article 1335 BW, which state that "An agreement without a cause or made with a false or forbidden cause cannot have any effect". This article is closely related to the interpretation of the phrase "forbidden cause" referred to in Article 1337 BW, which states that "A cause is forbidden if it is contrary to law, morality, or public order." Although there are no specific legal provisions on nominee agreements in Indonesian law, foreign investors should be cautious if they wish to use nominee arrangements for share ownership in Indonesia. This is because the cause or purpose of such arrangements, which aim to circumvent the Negative Investment List regulations, can be considered forbidden based on the BW. As the cause of the nominee agreement is unlawful (prohibited), the nominee agreement is subject to invalidity in accordance with Article 1335 BW (Sancaya, 2019)

Practically, the first and second requirements are often categorized as subjective requirements because they relate to the subject of the agreement. Meanwhile, the last two requirements are called objective requirements because they relate to the object of the agreement. A violation of the subjective requirements can cause an agreement to be voidable. In such cases, one party can request the court to annul the agreement. On the other hand, a violation of the objective requirements causes the agreement to be null and void. Thus, the agreement is considered never to have existed, and all legal actions will be returned to their original state before the agreement (Silviana dkk., 2018).

Additionally, an agreement must also be made in accordance with the general principles underlying the BW, including:

a) Freedom of contract, based on the open system of Book Three of the BW, ensures that each party can make agreements with other parties in any matter and form, provided that the agreement does not violate applicable laws, public order, and morality;

b) Consensus, which requires that an agreement is concluded when the parties have reached a meeting of minds or consensus on the contents of the agreement;
c) Pacta Sunt Servanda, which means a valid agreement legally binds the parties; and
d) Privity of Contract (principle of personality), which stipulates that an agreement binds only the parties and should not harm or benefit third parties, except for reasons stipulated in Article 1317 BW regarding third-party agreements.

According to the consensual principle, an agreement is made when there is an agreement between the parties making the agreement. However, the BW stipulates that consent must not be given under the following circumstances:

a) Error, due to unclear descriptions of the subject and/or object (substance) of the agreement;
b) Coercion by one party in the agreement or by a third party, causing fear in the coerced party and leading them to agree to the agreement; or
c) Fraud, if without such fraud the consent would not have been given.

The element of consent in an agreement relates to the principle of freedom of contract, whereby the parties can decide the agreement between them based on their needs. At this stage, a nominee agreement is principally permissible. However, it must be noted that the freedom of contract is limited to the provisions of applicable laws, public order, and morality (Putrayasa & Sukranatha, 2019).

Furthermore, the element of legal capacity relates to the subject of the agreement as the holder of rights and obligations under the agreement. According to Article 1329 BW, everyone is competent to make an agreement unless declared incompetent by law. In this case, incompetence refers to minors or individuals under guardianship. If an agreement is made by a company, the unauthorized party is anyone other than the board members, as determined in the company's articles of association. Generally, Article 330 BW defines minors as individuals who have not reached the legal age of majority (21 years) and are not married (Wiryani, 2018).

Meanwhile, Article 433 BW mentions people under guardianship as any adult who is persistently simple-minded, insane, furious, or extravagant. For the purposes of discussion in this article, the parties in a nominee agreement are foreigners as the beneficiary and Indonesians as the nominee. According to Law No. 12 of 2006 on Indonesian Citizenship ("Indonesian Citizenship Law"), anyone who is not an Indonesian citizen will be considered a foreigner. For that purpose, Article 4 of the Indonesian Citizenship Law sets forth the criteria for people who are considered Indonesian citizens, including: a. Any individual who becomes an Indonesian citizen based on applicable laws and/or agreements between the Indonesian government and another country before this Law applies; and b.

A child born from a marriage between Indonesian citizens, or between an Indonesian citizen and a foreign citizen (Perwitasari & Fairina, 2021)

According to the BW, an agreement cannot be executed if it lacks a cause or is made based on a false or prohibited cause. A cause is prohibited if it is restricted according to applicable laws and regulations or contrary to public order or morality. In this sense, a nominee agreement can still be executed unless the cause is proven to be prohibited or violates applicable laws, public order, or general morality (Yanuar, 2021).

However, in reality, the practice of nominee agreements is largely used by foreigners to circumvent restrictions and limitations according to Indonesian laws and regulations. Regarding investment, the practice of nominee agreements is explicitly prohibited. The Investment Law expressly prohibits domestic and/or foreign investors from making agreements on the grounds of establishing share ownership for and on behalf of another party. Furthermore, the Investment Law also stipulates that such agreements and statements will be considered null and void (Maharani & Santiago, 2021).

3.3. Comparison of regulations related to nominee agreement practices between Indonesia and Thailand

This research selects Thailand as a comparative case study for examining nominee shareholder practices in relation to Indonesia due to several compelling factors. These two ASEAN nations exhibit fundamental similarities as well as notable distinctions in their regulatory frameworks, policy formulations, and law enforcement mechanisms pertaining to nominee practices. This section will analyze three salient points:

1. Shared Civil Law Foundation

The comparison between Indonesia and Thailand is particularly apt given their common legal foundation, which facilitates a more nuanced discussion. Key similarities include:

a) Their shared ASEAN regional context, resulting in comparable societal cultures that emphasize traditional Eastern values, customs, and lifestyles.
b) While Indonesia's total Gross Domestic Product (GDP) significantly exceeds that of Thailand, both nations demonstrate comparable average economic levels and are categorized as economies with favorable prospects.
c) Both legal and judicial systems are grounded in Civil Law rather than Common Law traditions.

Expanding on point (c), the shared Civil Law basis is crucial for this comparative analysis. Selecting a Common Law jurisdiction as a comparator would yield less relevant and balanced insights, particularly given that many Common Law countries, such as the United States and various

Western nations, permit nominee practices under specific conditions. Thus, to ensure an equitable comparison, this thesis opts for Thailand as a comparative case study vis-à-vis Indonesia.

2. Comparison of Legal Sanctions for Nominee Practice Perpetrators

Indonesia and Thailand share the perception that nominee practices constitute illegal activities contravening the law. While the prohibition of nominee shareholding is regulated through various laws and regulations, the most explicit and foundational provision is Article 33 of the 2007 Investment Law. Judicial rulings on nominee shareholder cases typically result in the normative nullification of nominee agreements. However, a significant shortcoming is the absence of explicit sanctions for nominee practice perpetrators within this law.

Consequently, judges must interpret various laws and regulations to adjudicate nominee cases. When foreign and Indonesian nationals are found guilty of legal circumvention through nominee practices, court decisions in some instances impose administrative sanctions, such as business license revocation and fines for foreign nationals to compensate for state losses. The fine amount is typically adjusted based on the complexity of the case. Generally, only the foreign beneficiary is subject to these financial penalties.

Thailand's approach diverges significantly. As previously discussed, Thai law specifically regulates and imposes severe sanctions on those violating the Foreign Business Act 1999, particularly Articles 36, 37, 38, and 41. Perpetrators of nominee shareholder practices face stringent penalties, including imprisonment for up to three years, fines ranging from 100,000 to 1,000,000 Baht, or both imprisonment and fines. The court may also issue orders to cease business operations, dissolve the business, or terminate share ownership or partnerships. Violators of these court orders face additional daily fines of 10,000 to 50,000 Baht until compliance is achieved.

The Thai government's serious stance on nominee shareholding is evident in the application of legal sanctions to both foreign nationals and Thai citizens. This contrasts with Indonesia's approach, which appears to exempt Indonesian nationals from financial penalties. In Thailand, all perpetrators, if found guilty, face equivalent legal consequences. This creates a deterrent effect not only for foreign nationals attempting to circumvent the law but also for Thai citizens facilitating or participating in such legal violations.

Furthermore, the Thai law extends liability beyond the direct participants in nominee arrangements. If an individual commits a legal violation as stipulated in Articles 36, 37, 38, and 41 of the Foreign Business Act 1999, not only those directly involved or named in the nominee shareholder agreement (such as the Indonesian nominee and foreign beneficiary) are subject to punishment.

Directors, partners, and others who are aware of illegal activities, fail to prevent legal circumvention, or neglect to report such actions to authorities are also subject to criminal sanctions.

3. Comparison of Law Enforcement Policies and Supervisory Efforts in Indonesia and Thailand

The weak enforcement of nominee practices in Indonesia stems from the difficulty in detecting these illegal activities by law enforcement agencies. Several factors contribute to this challenge:

a. Agreements between foreign beneficiaries and Indonesian nominees often take the form of indirect nominee arrangements, utilizing multi-layered contracts to obfuscate their true legal intent.
b. The absence of clear legal regulations governing nominee practices and the lack of a dedicated regulatory body or task force with robust authority to conduct control and supervision.
c. Heavy reliance on formal complaints for detection. The majority of cases that reach the courts involve disputes between beneficiaries and nominees, resulting in reports to law enforcement that are subsequently investigated and prosecuted.

Elaborating on point c, disputes between the two parties often arise from the following issues: Firstly, actions or decisions by the beneficiary that the nominee must comply with may conflict with the nominee's desires, leading the nominee to terminate the agreement. Secondly, the nominee may perceive an opportunity to gain control over shares or the company actually owned by the beneficiary. Consequently, the nominee reports the beneficiary to law enforcement, aiming to gain full ownership of the shares registered under their name, particularly given the likelihood of the court imposing penalties or sanctions on the foreign national.

In contrast to Indonesia, the Thai government adopts a more aggressive approach to tracking and investigating nominee practice abuses. The Thai government has implemented several initiatives:

a. Periodic investigations of domestic companies operating in restricted sectors. Thai authorities, including local police and the Foreign Business Committee, conduct random investigations of companies labeled as domestic but operating in sectors restricted to foreigners by the Thai government. These regular investigations verify the absence of foreign involvement in such companies.

b. Periodic investigations of companies with accountants or lawyers in board positions. Based on previous nominee practice cases, the Thai government has identified a pattern of accountant and lawyer involvement. Consequently, the Thailand Foreign Business Committee, as the official government body responsible for issuing and regulating foreign business permits, conducts regular and random inspections of Thai companies. Companies prioritized for investigation include those with accountants or lawyers on their board of directors. This practice often serves

to conceal foreign beneficial ownership of shares or companies, as these professionals' services are required to obscure the fact that a foreign national is the true beneficial owner.

The above point b elucidates why Article 41 of the Foreign Business Act 1999 stipulates that even if not directly involved in signing nominee agreements, board members, directors, and partners in the company are subject to legal sanctions and penalties as per applicable laws. This is because, in many cases in Thailand, these parties not only allow but also knowingly facilitate nominee practices within the company. This comprehensive regulation implemented by Thailand ensures that existing laws can be used to prosecute all components and parties involved, leaving no loopholes for individuals intentionally seeking to circumvent the law.

c. Granting strong authority to the Foreign Business Committee and incorporating it into statutory regulations. The Thai government's commitment to preventing nominee shareholding practices is evident in the inclusion of clear, formal written rules regarding the Foreign Business Committee (FBC) in the law. These regulations specify committee membership eligibility, required characteristics, and the committee's duties and powers. Several articles in the Foreign Business Act 1999 provide detailed provisions concerning the FBC.

Article 23 stipulates that the membership of the FBC must comprise representatives from a broad spectrum of ministries, including the Ministries of Commerce, Defense, Finance, Foreign Affairs, Agriculture and Cooperatives, Transport and Communication, Interior, Labor, and Social Welfare, Science, Technology, and Environment, and Industry.

The article further mandates that FBC members possess specialized expertise to ensure a high level of professionalism in their work, thereby maximizing the committee's effectiveness in fulfilling its objectives. To meet these criteria, members must demonstrate knowledge and skills in economics, law, commerce, science, technology, environment, trade, investment, business administration, and industry. To safeguard professionalism, work ethic, and integrity, FBC members are prohibited from serving as advisors to political parties or holding political positions concurrently with their FBC membership for a period of two years.

Additionally, representatives from all the aforementioned ministries must hold high-ranking positions, enabling them to make authoritative decisions on legal matters. This arrangement is designed to streamline decision-making processes, enhance efficiency, and expedite the resolution of cases.

Article 26 of the FBA 1999 outlines the specific duties of the FBC, which include providing advice, recommendations, and opinions to the Thai Minister of Commerce regarding the implementation of Royal Thai Government decisions under this Act pertaining to business licenses for foreign nationals. The FBC is also authorized to study, compile, and prepare reports on foreign business operations in Thailand, including their impact and compliance with applicable regulations. These reports are to be presented to the Minister on a regular basis, at least once a year.

Articles 29 and 46 designate the Ministry of Commerce as the responsible authority for overseeing and implementing this Act. Moreover, a representative from the Ministry of Commerce must serve as the Secretariat of the FBC and has the authority to: (1) carry out tasks assigned by the FBC committee; (2) provide advice, recommendations, and opinions to the FBC on foreign business operations in Thailand for the purposes of study, analysis, information compilation, and report preparation to be presented to the Thai Minister of Commerce; and (3) perform general administrative duties for the FBC.

As the ultimate authority responsible for the implementation of the FBA 1999, the Minister of Commerce is empowered to appoint registrars and competent officials to conduct field investigations. Articles 30 to 33 of the Foreign Business Act 1999 (FBA) provide detailed provisions concerning the duties of registrars and competent officials in executing their tasks in accordance with the directives of the Foreign Business Committee (FBC) and applicable laws. These officials are mandated to conduct periodic on-site inspections and investigations of businesses.

The authorities vested in registrars and competent officials include: (1) the power to issue written inquiries or summons to any person to obtain factual explanations, documents, or evidence necessary to verify information provided by a business entity under investigation; (2) the authority to enter the premises where a foreign person conducts business during business hours to inspect and ensure compliance with the operational requirements stipulated in the FBA; and (3) the power to question individuals present at the premises and request documents or evidence necessary for factual verification.

Furthermore, Articles 32 and 33 of the FBA elaborate on the procedures and rules of conduct for registrars and competent officials in carrying out their field duties. Competent officials are required to possess identification cards conforming to the format specified in ministerial regulations and must present these cards to the parties being investigated. In accordance with the FBA, all members of the FBC, the Director-General, registrars, competent officials, and other individuals tasked with

enforcing the FBA are bound to comply with the criminal code to uphold principles of integrity and professionalism.

IV. CONCLUSION

The legitimacy of the use of nominee agreements in investment activities in Indonesia is still a controversial topic. The practice of nominee agreements is seen as a solution for foreign investors to bypass restrictions imposed by Indonesian investment regulations, particularly those stipulated in the Negative Investment List. However, from a legal perspective, such arrangements are explicitly prohibited by UUPM and can be deemed invalid under BW due to their unlawful cause. While the BW allows for innominaat agreements like nominee agreements, they must comply with the general provisions of agreements, including having a lawful cause. Consequently, foreign investors should be wary of using nominee agreements, as they risk facing legal challenges and potential disputes due to their questionable validity under Indonesian law.

The comparison of legal regulations regarding nominee shareholders between Indonesia and Thailand focuses on the provisions of Law No. 25 of 2007 concerning Limited Liability Companies (UUPM), Law No. 40 of 2007 concerning Joint Stock Companies (UUPT), and Regulation No. 1 of 2020 of the BKPM in Indonesia, compared to the Thailand Foreign Business Act of 1999. There are several key differences in the legislation implemented by the two countries, which can be summarized as follows: a) Legal sanctions in Thailand are more severe than those in Indonesia. b) Criminal sanctions are imposed on all parties involved in nominee shareholdings. c) Enforcement of nominee shareholder regulations is more aggressive in Thailand than in Indonesia.

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