



## Nominee Arrangement Practices Performed by The Government of The Republic of Indonesia

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### ARTICLE HISTORY

Received: 09.04.2022

Accepted: 23.06.2022

Published: 30.06.2022

### ARTICLE LICENCE

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### ABSTRACT

*This study aims to analyze the synchronization of the Law on the Prohibition of Nominee Practices and Nominee Arrangements carried out by the Government of the Republic of Indonesia. This type of research is a normative juridical research by examining and synchronizing data sourced from legal principles and regulations as well as court decisions. The method of data collection is done by studying literature such as regulations, books, documents or other writings that support this research. The collected data was then analyzed qualitatively and comprehensively using data analysis methods. Based on the results of this study, it can be concluded that the application of the law to the parties who practice nominee has not been implemented optimally and thoroughly. As a form of Government attention to investment activities, the Government of the Republic of Indonesia has been explicitly regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) and Law Number 25 of 2007 concerning Investment (UUPM) regarding the prohibition of nominee practices in any form. And the legal consequences of the nominee's practice are null and void. However, in its implementation*

**Keywords:** *Nominee Arrangement, Investment, Practices Performed.*

### 1. Introduction

Indonesia is a developing country. The 1945 Constitution does contain the idea of political democracy and at the same time economic democracy (Salam, Mustika Suhartono, et al., 2021). That is, in the highest power holder in our country is the people, both in the political and economic fields. To build, required a large capital or investment (Salim & Sutrisno, 2008). To accelerate national economic development and realize Indonesia's political and economic sovereignty, it is necessary to increase investment to process economic potential into real economic strength by using capital originating from within the country as well as from abroad (Undang-Undang, 2007a). Economic development which is always pursued by the Government of Indonesia must be based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution does contain the idea of political democracy and at the same time economic democracy (Salam, Suhartono, et al., 2021). One of the efforts of the Government of the Republic of Indonesia to improve the quality of development and encourage the rate of economic growth in Indonesia, since the New Order era until now.

Investment is an activity to invest money or capital which is carried out with a motive to increase or at least maintain the value of capital. Indonesia's natural resource wealth has become the world's attention and is the biggest reason for foreign investors to invest their capital (Rachmadi Supancana, 2006). The term investment in economic or business literature can be interpreted as "investment made directly by local investors (*domestic investors*) which is called domestic investment, while foreign investors (*foreign direct investment*) or abbreviated FDI is called investment made indirectly (*Foreign Indirect Investment*) or abbreviated as FII (Budi Untung, 2010). Investment or investment is an activity or process carried out in order to increase the value of capital owned by a person or corporation, which can be in the form of cash, equipment, immovable assets, intellectual property, or in other words, as a process to "spend" or "using a certain amount of capital today to be able to generate greater profits in the future (Wiranata, 2007).

There have been many studies that have examined the practice of nominees, but each has its own characteristics in its research, including regarding collaboration and the parties involved in it, especially regarding the practice of nominees in company share ownership, which in this case concerns the share ownership of the Government of the Republic of Indonesia in the company. Previous research that discussed the practice of

nominees entitled "Legal Review of Nominee Agreements Against the Granting of Power of Attorney to Foreign Investors in Limited Liability Company Share Ownership", in 2015 by Mochamad Fahrurroji which discussed the Practice of Nominee Agreements in Indonesia and Legal Review of Nominee Agreements on the granting of power of attorney to foreign investors in the shareholding of a limited liability company. Meanwhile, in this research, the author discusses the recognition of the company's share ownership by the Government of the Republic of Indonesia which is carried out through the practice of Nominee Arrangement. Pricing agreements can easily be done in certain markets compared to other practices (Sukma, 2020).

Furthermore, in the interaction between individuals and within a group to achieve an investment activity, the Government provides and sets boundaries which often include prohibitions on certain actions. Violation of the limits set by the Government will of course result in sanctions for individuals who violate *them*. With the restrictions set by the government as stated in a provision in the legislation, of course, causing certain individuals to seek various ways to be able to carry out investments easily, including the *nominee concept*. The existence of regulations governing the prohibition of *nominee practices* is not only a dilemma for foreign investors, but also a strict prohibition for domestic investors to act "naughty" by taking steps for the *nominee concept* to facilitate their investment activities in Indonesia. In a nominee agreement, the presence of a certain person or party (*nominee*) is used as a shareholder or more precisely the registered owner of a certain number of shares, while the *beneficiary* benefits from the shares (Rustam, 2020). The purpose of this *nominee agreement* is to hide the share ownership of the recipient to the general public and eliminate the affiliation relationship between one company and another company that already exists or has been established previously.

The government has regulated the prohibition on the practice of *nominee arrangement* in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as "UUPT") and Law Number 25 of 2007 concerning Investment (hereinafter referred to as "UUPM"). In particular, Article 33 of the Capital Market Law explicitly prohibits the practice of *nominee arrangements* where it is emphasized that domestic investment and foreign investment investing in the form of a limited liability company are prohibited from entering into agreements and/or statements confirming that share ownership in a limited liability company is for and on behalf of a person. other. And furthermore, as regulated in Article 33 paragraph 1 of the Capital Market Law, the legal consequences of *nominee practice* are null and void. In the *nominee practice* that occurs in Indonesia, the parties to the *nominee agreement* do not sign an agreement or statement confirming that their share ownership is for and on behalf of another person as stipulated in the investment law, this practice uses a set of documents known as a *nominee arrangement*. The *nominee arrangement* itself is a way or effort by investors to waive restrictions on share ownership and avoid prohibitions from entering into name/ *nominee borrowing agreements* (Kairupan, 2013).

In the nominee practice that occurs in Indonesia, not all of the nominee practice actors clearly sign an agreement or statement confirming their share ownership is for and on behalf of another person as regulated in the investment law, some others use the nominee arrangement practice by packaging the practice the nominee in a document that is legal and does not violate the law, such as a credit agreement, share pledge, cessie, and granting absolute power of attorney. Letter Employment contracts are also needed for many purposes. (Salam, 2017) The nominee arrangement itself is a way or effort of investors to waive restrictions on share ownership and avoid prohibitions on entering into name/nominee borrowing agreements. The government and society are legal subjects, and law is a means that regulates the rights and obligations of legal subjects to be able to carry out their obligations and obtain their rights. On the other hand, the government is the maker of laws and regulations that have the obligation to determine legal rules that can be applied to the community as a means of protecting the interests of the community and must be implemented by all legal subjects themselves including the Government. In the realization of the laws and regulations, of course, the people have high trust in the Government as the designer of the laws and regulations, that the Government will be an example in obeying the applicable legal rules for the sake of creating legal certainty and order in society. However, instead of enforcing the law against nominee practices, the Government also participates in the nominee practice, one of the known nominee practices by the Government is in the case of PT ALDEVCO, where the Government expressly acknowledges that all shares in PT ALDEVCO belong to the Government even though the shares are legally registered in the name of another person. PT ALDEVCO is a private company founded by Abdoel Raoef Soehoed, et al on February 29, 1988 where the Government did not make any capital participation in the establishment of the company.

As part of the legislators and as a legal subject, the Government has a major role to play in maintaining the authority and providing a good example to the world that Indonesia is a safe country and can guarantee legal certainty and legal protection for the national community and the international community in particular for investors to invest in Indonesia. One of the guarantees of legal certainty that is expected to be applied by the Government and the entire community is the application of Law Number 25 of 2007 concerning Investment and Law Number 40 of 2007 concerning Limited Liability Companies, including regulations that explicitly regulate prohibition of nominee practice which is the main focus for foreign and domestic investors who wish to invest in Indonesia.

## 2. Methodology

The research method used in this study is a normative juridical research method. This method is carried out to analyze the synchronization of legislation and court decisions as well as legal norms that exist in society as well as synchronization of a rule with other rules hierarchically. This research is a prescriptive research that is studying the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms (Marzuki, 2010). The approach used in this study is a statutory *approach* by examining the laws and regulations governing the prohibition of the practice of *nominee arrangements*, especially the *nominee practices* carried out by the Government of the Republic of Indonesia on the majority of PT Aldevco shares so that they can examine legal issues and analyze synchronization of legal issues and legal rules to find solutions for the proper application of law on legal issues against the prohibition of *nominee arrangement practices* carried out by the Government of the Republic of Indonesia. The types of legal materials used by the author are divided into three, namely Primary, Secondary, and Tertiary legal materials. Primary legal materials include the Civil Code, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 25 of 2007 concerning Investment, Supreme Court Decision Number: 1763/K/PDT/2020 in conjunction with the Decision of the DKI High Court Jakarta Number: 44/PDT/2019 South Jakarta District Court Decision Number: 341/Pdt.G/2017/PN.Jkt.Sel, Supreme Court Cassation Decision Number 210/K/AG/2017 jo. Decision of the High Religious Court Number 04/Pdt.G/2016/PTA.JK jo. South Jakarta Religious Court Decision No. 0653/Pdt.G/2015/PA.JS, Supreme Court Decision Number: 113 PK/AG/2020 jo. Jakarta Religious High Court Decision Number: 137/Pdt.G/2019/PTA.Jkt jo. the decision of the South Jakarta Religious Court Number 4060/Pdt.G/2017/PA.JS, and the South Jakarta District Court Decision Number 304/Pdt.P/2016/PN.Jkt.Sel dated March 8, 2016. Secondary legal materials used to support primary legal materials in this study include books, journals, articles or other scientific writings, and internet media that have relevance to this writing. Tertiary legal materials used to provide instructions and explanations for primary and secondary legal materials, such as general dictionaries, encyclopedia law dictionaries and so on (Sinamo, 2010).

## 3. Result and Discussion

### 3.1. *Nominee Arrangement* for the Transfer of All Shares and Assets of PT Aldevco to the Government of the Republic of Indonesia

On March 7 2017, the Management of PT Aldevco, namely the President Director of PT Aldevco (Middyningsih) and other Company Management have handed over all shares and assets of PT Aldevco to the Government of the Republic of Indonesia. PT. Aldevco is a company established and engaged in the marketing of aluminum and developing the aluminum industry in Indonesia, which was established based on the Deed of Establishment No. 180 dated February 29, 1988 by Notary Joenoes E. Maogimon, SH which has been approved by the Decree of the Minister of Justice of the Republic of Indonesia Number: C2-11478.HT.01.01.Th.'88. The transfer of all shares and assets of PT Aldevco was carried out by the Management of PT Aldevco based on the Statement Letter dated February 29, 1988 and the Deed of Will Number 14 of 2011 made by the late. AR Soehoed before the Notary Mintarsih Natamihardjah who basically stated that the shares belonged to the Government of the Republic of Indonesia where Abdoel Raoef Soehoed, Leon Harun Iskandar Sumantri, and Paul Samadiono Samadikun only borrowed their names ( *Nominee Arrangement* ) and later the shares would be handed over to the Government of Indonesia For the actions of the management of PT Aldevco, the heirs of the late. AR Soehoed (hereinafter referred to as the Plaintiffs) then filed a Lawsuit against the Defendants (the Management of PT Aldevco and the Government of the Republic of Indonesia) on the basis that the Defendants did not respect the ongoing legal process and the surrender of all shares and assets of PT Aldevco to the Government of the Republic of Indonesia. is invalid because of the Declaration Letter dated February 29, 1988 and the Deed of Will No. 4 dated October 20, 2011 which became the basis for the delivery of all shares and

assets, is an invalid document because it contains elements of a *nominee arrangement*. The legal process in question is the Lawsuit for the Distribution of Inheritance and Cancellation of Wills at the South Jakarta Religious Court Number 0653/Pdt.G/2015/PAJS by withdrawing the President Director of PT Aldevco (Middyningsih) as a party to the lawsuit, one of the petitions of which is asking to cancel Deed of Will No. 4 dated October 20 2011 where the lawsuit was filed and at that time the case was still in the ongoing legal process, namely at the Cassation level examination at the Supreme Court of the Republic of Indonesia.

In the midst of the process of examining the Unlawful Acts of Law filed by the Heirs at the South Jakarta District Court at that time, the Supreme Court Cassation Decision Number 210/K/AG/2017 in conjunction with the High Religious Court Decision Number 04/Pdt.G/2016/PTA.JK jo . South Jakarta Religious Court Decision No. 0653/Pdt.G/2015/PA.JS related to the Lawsuit for Cancellation of Will Deed Number 14 dated 20 October 2011 was decided. *Judex Juris* decided on case Number 210/K/AG/2017 by confirming the Decision Number 0653/Pdt.G/2015/PA.JS which at that time the lawsuit was not *acceptable (Niet Onvankelijke Verklaard)*. Therefore, the heirs have again filed a Will Cancellation Lawsuit against the Willing Deed Number 14 dated October 20, 2011 and has been examined and decided in the Supreme Court Decision Number: 113 PK/AG/2020 jo. Jakarta Religious High Court Decision Number: 137/Pdt.G/2019/PTA.Jkt jo. the decision of the South Jakarta Religious Court Number 4060/Pdt.G/2017/PA.JS. The basis of the lawsuits by the plaintiffs (the heirs) is to cancel the Will Deed Number 14 dated October 21, 2011 because the will contains a *nominee statement*. In case No. 4060/Pdt.G/2017/PA.JS, the Panel of Judges at the First Level granted part of the Plaintiff's claim (Ahli Waris) regarding the appointment of a replacement heir from the Heirs of DR. AR Soehoed, however, rejected the claims of the other heirs, namely the cancellation of the Will of Deed No. 14 dated October 20, 2011. Then, the heirs filed an appeal, and in the examination at the Appellate Level, *Judex Factie* decided to cancel the decision Number 4060/Pdt.G/2017/PA.JS with the consideration that based on the Statement Letter dated February 29, 1988 and the Deed of Will dated October 20, 2011, Alm. Ir. AR Soehoed explicitly stated, "PT Aldevco shares are in my name and one share is in the name of Drs. Trenggana actually all of these shares belong to the Government of the Republic of Indonesia. In addition to the shares in PT Aldevco, there are also movable goods in the form of cars in the name of PT Aldevco and funds deposited in foreign banks and in banks in Indonesia", thereby demonstrating that the assets do not belong conclusively. Personal of the late DR.AR. Soehoed which can be used as an inheritance for his family. *Judex Factie* also considered the Asahan Authority's letters to the President of the Republic of Indonesia (at that time) and to the Ministry of Finance and other letters (Evidences Appeal I/Government of Indonesia in the decision) and stated that PT Aldevco was not the personal property of the late. Ir. AR Soehoed so that the asset cannot be designated as inheritance that can be distributed to the heirs. At the Review Level (PK), *Judex Juris* decided to reject the PK Petitioner 's Petition (Heirs).

At the Supreme Court Number: 1763/K/PDT/2020 in conjunction with the Decision of the DKI Jakarta High Court Number: 44/PDT/2019 Decision of the South Jakarta District Court Number: 341/Pdt.G/2017/PN.Jkt.Sel, the Plaintiffs stated in its lawsuit that:

*Although the Plaintiffs have made various legal remedies which are still running as mentioned above, the Defendants still insist on carrying out the process of handing over PT. Aldevco to Defendant I without respecting any ongoing legal process on the basis that the late Alm. AR Soehoed has made a Declaration Letter dated February 29, 1988 and Deed of Will No. 4 dated October 20, 2011 as we have mentioned above, even though it is very clear that the Statement Letter and will is not a valid proof of share ownership as regulated in the Law of the Republic of Indonesia no. 40 of 2007 concerning Limited Liability Companies (**Company Law**) in addition to the Deed of Will No. 4 dated October 20, 2011 which became the basis for Defendant II to submit PT. The Aldevco is also the object of a dispute at the Religious Courts, which is currently still under examination at the cassation level of the Supreme Court of the Republic of Indonesia.*

The Plaintiffs (heirs) further explained that in the articles of association of PT. Aldevco and in the list of shareholders of PT. Aldevco listed as a shareholder is the late. AR Soehoed with 624 (six hundred and twenty four) shares and Drs. Trenggana Kusuma Utama with 1 (one) share of the total shares of PT. Aldevco totaling 625 (six hundred and twenty five) shares so that it is clear that based on Article 48 paragraph (1) of the Company Law, the late. AR Soehoed and Drs. Trenggana Kusuma Utama is the legal shareholder of PT. Aldevco. The Plaintiffs also emphasized that in the deed of establishment it was recorded that the Founder, the share capital depositor and the shareholders of PT. Aldevco are Abdoel Raoef Soehoed, Leon Harun Iskandar Sumantri, and

Paul Samadiono Samadikun, and there is no name of any other person or any agency or government agency of the Republic of Indonesia that is recorded in the Deed of Establishment either as founder, share capital depositor or shareholder of PT. Aldevco.

Law Number 40 of 2007 concerning Limited Liability Companies , in Article 48 paragraph (1) and its explanations have regulated provisions regarding share ownership stating that (Undang-Undang, 2007b) :

*The Company's shares are issued in the name of the owner.*

Explanation :

*What is meant by this provision is that the Company is only allowed to issue shares on behalf of the owner and the Company CANNOT issue shares on an appointment basis.*

Taking into account the explanation of Article 48 paragraph (1), it can be understood that a company is only allowed to issue shares on behalf of its owner, so that whoever's name is recorded in the articles of association and in the register of shareholders means that the name is the legal owner/shareholder of a company. If it is related to the issue of PT Aldevco's share ownership by the Government of Indonesia, then as recorded in the articles of association of the articles of association of PT. Aldevco that the shareholder is the late. AR Soehoed with 624 (six hundred and twenty four) shares and Drs. Trenggana Kusuma Utama with 1 (one) share of the total shares of PT. Aldevco a total of 625 (six hundred and twenty five) shares so that the late. AR Soehoed and Drs. Trenggana Kusuma Utama is a shareholder of PT. Legally legitimate Aldevco.

In the Reply of Jinawab among the Heirs of the late. AR Soehoed and the Government of the Republic of Indonesia as stated in the Supreme Court Decision Number: 1763/K/PDT/2020 in conjunction with the DKI Jakarta High Court Decision Number: 44/PDT/2019 South Jakarta District Court Decision Number: 341/Pdt.G/2017 /PN.Jkt.Sel, The Government of the Republic of Indonesia gave the answer that the establishment of PT Aldevco to conduct the marketing of aluminum products of PT Inalum which is an allocation for the Government of Indonesia. With PT Aldevco, Indonesia has the opportunity to advance the aluminum industry. From the activities of PT Aldevco, it can be seen that the Japanese government is not complete in developing the downstream industry of PT Inalum, namely the *Industry Cast and Alloy Section* so that the products produced by PT Inalum must be sent to be processed in Japan and can only be marketed.

Furthermore, there is Supreme Court Decision Number: 1763/K/PDT/2020 in conjunction with DKI Jakarta High Court Decision Number: 44/PDT/2019 South Jakarta District Court Decision Number: 341/Pdt.G/2017/PN.Jkt.Sel, the Government of the Republic of Indonesia openly accepts the surrender of all shares and assets of PT Aldevco by the President Director of PT Aldevco (Middyningsih) as the Executor of the Will as stated in the Deed of Will No. 14 of 2011 made by the late. AR Soehoed. The Government of the Republic of Indonesia has also explicitly given the Minister of Finance of the Republic of Indonesia an order to the sharpening authority to carry out the task of marketing aluminum which is the Indonesian government's allotment. Due to the position of the sharpening authority at that time as a supervisory agency, it was not entitled to carry out trading activities, the late. AR Soehoed as chairman of the Asahan Authority proposed to the Minister of Finance of the Republic of Indonesia to form a BUMN (Persero) to carry out the trade. However, the Minister of Finance has not responded to this proposal, then the President of the Republic of Indonesia at that time, Alm. Suharto gave verbally to Alm. AR Soehoed to establish a company to market PT Inalum's aluminum product which is an allocation for the Government of Indonesia. That company , PT Aldevco, was established on February 29, 1988 based on Notarial Deed No. 180.

The Government of the Republic of Indonesia also acknowledged the existence of the Statement Letter of the late. AR Soehoed dated February 29, 1988 which contains a *nominee statement* which in the answer states:

*According to the Deed of Establishment of PT Aldevco Number 180 dated February 29, 1988 drawn up before a Notary and Land Deed Officer Joenoes E. Maogimon, SH and the Deed of Statement from the late. AR Soehoed dated February 29, 1988, clearly stated that: "All capital, shares, profits and losses as well as assets belonging to the limited liability company, even though they are written and registered in our name, are actually the full rights and property of the Republic of Indonesia, which in this case is only borrowing/using our name, and our heirs, cannot sue or sue regarding the ownership.", so it is clear that all shares and assets of PT Aldevco are derived and belong to the Government of Indonesia.*

Furthermore, the Government of Indonesia emphasized that: *before his death, Mr. Ir. AR Soehoed has made a Deed of Will Number 4 dated October 20, 2011 which was made before the Notary Mintarsih Natamihardja, SH, where the late. Ir. AR Soehoed has appointed Mrs. Middyningsih as the executor of the will. In the will, the testator, Mr. Ir. AR Soehoed, stated: "At the time this will was signed, the shares in PT Aldevco were in my name and 1 (one) share was in the name of Dr. Doktorandus Trenggana, in fact all of these shares belonged to the Government of the Republic of Indonesia.*

From this response, the Government confirmed the existence of the Declaration Letter dated February 29, 1988 and the Deed of Will Number 14 dated October 20, 2011 and made both documents valid *documents* to carry out the delivery of all shares and assets of PT Aldevco to the Government of Indonesia. Although share recognition. In the Statement Letter and Deed of Will stated unilaterally by the late. AR Soehoed, but the Government confirmed the *existence* of the two documents. in other words, with the Government's acknowledgment of the Declaration Letter dated February 29, 1988 and the Deed of Will Number 14 dated October 20, 2011 and with the delivery of all shares and assets of PT Aldevco to the Government of the Republic of Indonesia, the Government acknowledges the existence of a *Nominee Arrangement*.

### **3.2. Regulation of Nominee Arrangement**

The Panel of Judges Examining the *a quo* case did not give consideration to the element of the *nominee arrangement* which became the basis for the delivery of all shares and assets of PT Aldevco to the Government of Indonesia. The consideration of the Panel of Judges emphasizes that to assess whether or not the submission of 624 (six hundred twenty four) shares from the name of the late. late. Dr. Ir. AR Soehoed being on behalf of Defendant I (Government of the Republic of Indonesia), absolutely still depends on the decision of the South Jakarta Religious Court with case register No. 0653/Pdt.G/2015/PAJS has permanent legal force. Due to the validity or not of the Will No. 4 dated October 20, 2011 is still dependent on the decision of the South Jakarta Religious Court Number: 0653/ Pdt.G/2015/PA.JS with permanent legal force, even though regarding the validity of the Will or not . 4 dated October 20, 2011 it will absolutely determine whether or not the submission of 624 (six hundred and twenty four) shares of PT. Aldevco, on behalf of the late Alm. Dr. Ir. AR Soehoed is on behalf of Defendant I (Government of the Republic of Indonesia), so this case cannot be decided (*premature*) because it is still waiting/hanging on another case (*litis pendentif*).

Laws of the Republic of Indonesia No. 25 of 2007 concerning Investment, in Article 33 paragraphs (1) and (2) also expressly stipulates that:

*(1) Domestic investors and foreign investors investing in the form of a limited liability company are prohibited from entering into agreements and/or statements confirming that share ownership in a limited liability company is for and on behalf of another person;*

*(2) In the event that domestic investors and foreign investors make an agreement and/or statement as referred to in paragraph (1), the agreement and/or statement is declared null and void."*

Based on the provisions of Article 33 paragraphs (1) and (2) of the PM Law above, confirms that all forms of agreements and/or *Nominee statements* include and are not limited to : Statement Letter dated February 29, 1988 and Deed of Will No. 4 dated October 20, 2011 which basically states that the share ownership of PT. Aldevco which is currently listed under the name of the late. AR Soehoed actually belongs to another person/institution, namely Defendant I (Government of the Republic of Indonesia) is a statement that is prohibited by Article 33 paragraph (1) UUPM and based on Article 33 paragraph ( 2 ) UUPM, declared null and void.

Article 1320 of the Civil Code states that for an agreement to be valid it must meet 4 conditions including the conditions for a lawful cause, a lawful cause which is further elaborated in Articles 1335 and 1337 of the Civil Code. Article 1335 of the Civil Code, states: *"An agreement without cause or which has been made for a false or forbidden cause, has no power."* Article 1337 of the Civil Code, states:

*A cause is prohibited, if it is prohibited by law or if it is contrary to or public order.*

The *halal cause* as meant in Articles 1335 and 1337 of the Civil Code is in principle the same, *namely* prohibiting an agreement from being made if it is prohibited by law or if it is contrary to or public order. If analyzed, there is a harmonization of laws and regulations between the Capital Market Law with the provisions of Articles 1335 and 1337 of the Civil Code, where *lex specialis* the Capital Market Law prohibits the use of *nominee*

*agreements* on shares which will result in null and void if the agreement is made, in other words the agreement is considered never existed. the rights and obligations arising from the agreement are also considered non-existent.

In addition, other legal remedies are that the Heirs (Plaintiffs) have also submitted an application to the South Jakarta District Court to request permission to hold the EGMS of PT. Aldevco as in the case of an application that was registered at the South Jakarta District Court with number 304/Pdt.P/2016/PN.Jkt.Sel dated June 8, 2016 by withdrawing the Management of PT Aldevco (President Director namely Middyningsih and other Management) as a party and Mintarsih Natamihardjah, SH as the notary who made the Deed of Will No. 4 dated October 20, 2011 has also been presented at trial to testify in under oath. In Stipulation number 304/Pdt.P/2016/PN.Jkt.Sel dated March 8, 2016 pages 50 to 51, Expert M. Yahya Harahap, SH also gave the following testimony in court under oath:

*That in Law Number 25 of 2007 concerning Investment and even since the Dutch era, from the principles of company law since the Commercial Law came into effect, it was later replaced by Law Number 1 of 1995, which is now being replaced by Law No. - Law Number 40 of 2007, but Indonesian company law does not recognize nominees or is not called nominees, so the nominee agreement violates the law and is null and void.*

*That when someone deposits capital into the company with his personal money, but then that person makes a statement that the shares belong to someone else, then this can be said to be misleading, which is also not justified in law. Therefore, if later the statement is disputed before the law, then in this case there is a bedrog or a fraud, so that the statement from the beginning is null and void by law.*

*That when someone makes a statement that the shares in his name belong to someone else, then the other person has an obligation to prove it, because the provisions of Article 1865 of the Civil Code, who is upset, must prove.*

From the description in Under oath delivered by Expert M. Yahya Harahap, SH above, Expert M. Yahya Harahap, SH is of the opinion that company law in Indonesia never recognizes *nominees* or "borrow names" so that if there is an agreement or statement "borrow name" then the matter it violates the law and is null and void. Expert opinion M. Yahya Harahap, SH mentioned above is also supported by Expert Prof. Dr. Nindyo Pramono, SH, MS in Stipulation number 304/Pdt.P/2016/PN.Jkt.Sel dated March 8, 2016 pages 62 to 63, who gave the following statements in court under oath:

*That the legal consequences when there is a nominee arrangement are null and void according to the Investment Law.*

*That the provisions regarding grants also apply from the private sector to the government.*

*That if there is a nominee agreement, it must still be materially proven if a share is owned by the government, not private, so that in this case the Law on Limited Liability Companies and the Law on Investment shall apply.*

Related to the laws and regulations above, in particular Article 48 paragraph (1) of the Company Law and Article 33 paragraphs (1) and (2) of the Capital Market Law which are supported by the statements of expert M. Yahya Harahap, SH and expert expert Prof. Dr. Nindyo Pramono, SH, MS under oath in the trial of case number 304/Pdt.P/2016/PN.Jkt.Sel dated March 8, 2016 then all statements, wills, or any other documents if the letter contains a misdirection ( *misleading* ) or is a *nominee arrangement* (borrowing a name), then the letters and deeds are declared null and void by law so that they cannot be used to take any legal action, especially to transfer all shares and assets of PT. Aldevco. In these Decisions, the government (authority) should be able to act according to the law by not carrying out a *Nominee Arrangement* in any form

#### **4. Conclusion**

The prohibition on *Nominee Arrangements* has been expressly regulated in the Limited Liability Company Law and the Investment Law. With the delivery of all shares and assets of PT Aldevco to the Government of the Republic of Indonesia in which the transfer of all shares and assets is carried out based on the Declaration Letter dated February 29, 1988 and the Deed of Will Number 14 dated October 20, 2011 which contains a *nominee statement*, the Government of the Republic of Indonesia with aware of having carried out a *nominne arrangement* and violating Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 25 of 2007

concerning Investment, namely that domestic capital and foreign investment investing in the form of a limited liability company are prohibited from entering into agreements and/or or a statement confirming that the share ownership in the limited liability company is for and on behalf of another person.

As the maker of legal regulations that require the Indonesian people to comply with the rules prohibiting the practice of *nominees* in any form, the Government of the Republic of Indonesia should be able to show firm action and enforce the applicable legal rules so that this can foster public trust in the Government. as a legislator who can apply the law strictly for the sake of creating legal certainty in the investment world.

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