

Research Article

Nominee Agreements as Instruments of Fraud in Educational Foundations : Criminal Responsibility of Foundation Organs for Misappropriating Land Assets Ownership

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Abstract: This study examines the use of nominee agreements as instruments of fraud within Indonesian foundations that operate private educations. This research focuses on how foundation organs use the foundations to buy land assets for themselves and evade liability. The problem addressed is the gap between civil-law façade and underlying criminal intent, whereby Patrons, Management, and Supervisors transfer land ownership out of the foundation's name through a simulated agreement called nominee contracts. The research aims to analyze how these contracts facilitate systemic fraud and to propose a legal framework for holding both individuals and the foundation itself criminally accountable. A doctrinal-normative method is employed, involving analyses of statutory provisions (Foundation Law, the old and the new Criminal Code), internal regulations, and key court decisions (e.g., Gunung Muria University, Al-Hilaal Ambon, Morning Star). Findings reveal that nominee agreements consistently conceal intent to defraud, that existing legal provisions are underutilized or applied piecemeal, and that criminal courts have been reluctant to dissolve offending foundations despite clear evidence of *strafbaarfeit* (criminal act) by the foundation. The main synthesis highlights the necessity of a consistent approach by the law enforcement and the court to interpret nominee-based transfers as criminal acts to prevent further asset diversion. The study concludes that integrating civil and criminal frameworks, along with strengthening oversight and enabling immediate dissolution of fraudulent foundations, is essential to safeguard public interest and restore trust in the nonprofit sector.

Keywords: Criminal Responsibility; Foundation; Fraud; Land Asset; Nominee Agreement.

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1. Introduction

1.2. Introduction

Educational foundations in Indonesia play a pivotal role in delivering private educations, the private educational sector offer different products from the state educational institutions. Private education in Indonesia also appeal to the middle-to higher income Indonesian, because of that the institution can collect a substantial amount of tuition. By design, these foundations are legal entities established to serve social and educational purposes without profit motives. However, their unique legal status prohibiting direct ownership of freehold land despite being a non profit organization like the similar religious counterparts creates opportunities for misuse. Despite being a nonprofit legal entities (UU No. 28/2004), foundations are prohibited from directly holding freehold land (Hak Milik) and instead may only acquire land through leasehold (Hak Guna Bangunan or Hak Pakai) or other non-freehold mechanisms. In practice, sometimes certain foundation organs (including Patrons, Management, and Supervisors) employ nominee agreements, a contracts in which land titles are held under an individual's name while the foundation funds the purchase to

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circumvent statutory restrictions or to get fundings from the bank. Though framed as legitimate civil transactions, such nominee agreements frequently conceal fraudulent intent, enabling the diversion of land assets out of the foundation's direct control.

The core problem lies in the tension between civil-law formality and criminal-law substance. Nominee agreements appear, on their face, to comply with relevant civil statutes and the foundation's Articles of Association (AD/ART). Yet, when executed these contracts could be categorized as a criminal behavior. Indonesian courts have historically punish the foundation organs for the act, but the punishment doesn't bring justice because the foundation as a whole still operate like nothing happend. This siloed approach neglects the broader systemic abuse, allowing foundations to remain intact and continue operating as conduits for illicit asset transfers in the future. In short, as long as the foundation is still operational there organs can still benefit or try to take the assets again in the future.

This study aims first to analyze how nominee agreements function as instruments of fraud in educational foundations specifically by examining landmark court decisions (e.g., Armina center, Gunung Muria University, Al-Hilaal Ambon, and Mornins Star) and identifying patterns of contractual abuse. Second, it seeks to formulate a comprehensive legal approach for criminal liability, which integrates civil and criminal frameworks to hold both individual organs and the foundation itself accountable. To achieve these objectives, a doctrinal-normative method is employed: statutory provisions (such as the Foundation Law and the 2023 Criminal Code), internal regulations, and jurisprudence are examined to reveal gaps in enforcement and opportunities for reform.

Findings indicate that nominee agreements systematically facilitate asset diversion, that existing laws though technically adequate are underenforced, and that criminal courts are reluctant to put the blame on the offending foundations despite clear evidence of *strafbaarfeit* (acts reprehensible by law) by the foundation itself. The proposed solution emphasizes leveraging the 2023 Criminal Code's corporate liability provisions particularly foundation dissolution and asset forfeiture to prevent further misuse. By bridging civil-criminal gaps and strengthening oversight mechanisms, educational foundations can be redirected toward their intended social mission, restoring public confidence in Indonesia's nonprofit sector and ensuring the assets were used for it's intended use (Schools, Universities, and other Educational buildings).

2. Preliminaries or Related Work or Literature Review

This literature review synthesizes key studies that illuminate how educational foundations in Indonesia navigate legal constraints and how nominee agreements facilitate asset diversion. Focusing on five pivotal works—Dewi Sukma Kristianti (2023), Nur et al. (2022), Putri et al. (2022), Rafiki et al. (2023), and Miggi Sahabati (2011)—we trace how each contributes to understanding foundation governance, land-ownership limitations, and the civil-criminal divide that enables nominee-based fraud. Through this narrative, we identify conceptual and empirical gaps that our research will address.

2.1. Subsection 1: Related Studies

2.1.1. Foundations, Social Purpose, and Commercial Pressures (Dewi Sukma Kristianti, 2023)

Dewi Sukma Kristianti's 2023 article, "Menelisik Yayasan Di Indonesia: Sebagai Lembaga Yang memiliki Fungsi dan Tujuan Sosial Semata?", examines the historical and legal framework of Indonesian foundations, comparing them to Dutch and English models. Kristianti argues that, although foundations are intended to serve purely social, religious, or humanitarian purposes, current regulations provide insufficient guidance on permissible activities. As a result, many foundations have strayed into quasi-commercial endeavors, leveraging limited business operations to sustain themselves. While this work does not delve into criminal liability or nominee agreements, it highlights a core tension: the absence of detailed statutory boundaries for foundation activities creates room for profit-oriented deviations. Kristianti's analysis shows how the foundations in Indonesia have lost it's intended purposes and strayed to the bussines side.

2.1.2. Case Study of Asset Misuse at Universitas Gunung Muria Kudus (Nur, Amaliah, et al., 2022)

In 2022, Nur, Amaliah, and colleagues published an empirical study titled “Analisis Yuridis terhadap Kasus Penyalahgunaan Dana Yayasan Pembina Universitas Muria Kudus.” This research focuses on a concrete instance of foundation misconduct: the treasurer of Yayasan Pembina Universitas Gunung Muria Kudus (Lilik Riyanto) used foundation funds to purchase land nominally under his personal name which he rationalize it as for the good of the foundation.

2.1.3. The Patron’s Powers and Potential for Abuse (Putri, Annisa, et al., 2022)

Putri, Annisa, and colleagues (2022), in their article “Analisis Yuridis Kewenangan Pembina Memberhentikan Pengurus dan Pengawas Yayasan Sewaktu-waktu (Studi Putusan Nomor: 238/PDT/2022/Aset SBY),” dissect the near-absolute authority granted to a foundation’s Patron Board under Article 27 of the Foundation Law. Through analysis of a Bandung decision (No. 238/PDT/2022/Aset SBY), they show that Patrons can unilaterally dismiss Management or Supervisory members without cause. Putri et al. argue that, while this power aims to ensure a foundation’s mission remains on track, it also creates a structural imbalance: a Patron with malicious intent can silence internal checks (i.e., the Supervisory Board) and push through questionable asset transfers with minimal oversight. Although this study does not directly address nominee agreements, it exposes how the Patron’s prerogative can serve as the critical enabling factor for any transaction even a fraudulent one while being unchecked.

2.1.4. Foundations Assets as Credit Collateral: Civil Mechanisms and Risks (Rafiki, Muliadi, & Santoso, 2023)

Rafiki, Aset Muliadi, and Irawan Santoso’s 2023 publication, “Kedudukan Aset Yayasan Yang Dijadikan Jaminan Dalam Permohonan Kredit Bank,” explores how foundations legally use up to 25 percent of their corpus as business capital or to secure bank loans (per Article 7 of the Foundation Law). They document the procedural steps required for a foundation to pledge assets primarily leasehold titles (HGB/Hak Pakai) as loan collateral. In practice, however, banks often demand freehold-equivalent security. To bypass the statutory prohibition on foundation ownership of Hak Milik, many foundation officials resort to nominee agreements: land purchased with foundation funds is registered under a private individual’s name, who then pledges it as security. Rafiki et al. recognize that this practice may be “officially sanctioned” under civil law so long as AD/ART resolutions appear valid.

2.1.5 Nominee Agreements and Legal Certainty in Land Transactions (Miggi Sahabati, 2011)

Miggi Sahabati’s 2011 article, “Perjanjian Nominee dan Kepastian Hukum bagi Pemberi Kuasa Ditinjau dari UUPA, UU PM, dan UU Kewarganegaraan,” provides a doctrinal examination of nominee agreements under Indonesia’s Basic Agrarian Law (UUPA), the Government Regulation on Land (UU PM), and Citizenship Law. Sahabati interrogates how nominee arrangements—often deployed by foreign investors to circumvent land-ownership restrictions—affect legal certainty for all parties. He concludes that, while a nominee agreement can be valid if it meets strict formal requirements, it remains vulnerable to “hidden agenda” risks: if a nominee acts in bad faith, the beneficial owner may lose all recourse.

3. Proposed Method

This study adopts a doctrinal-normative approach to understand and resolve how nominee agreements facilitate fraud in Indonesian educational foundations. At its core, the research examines existing legal norms statutes, regulations, and judicial decisions this research also synthesizes these with insights from criminology and contract theory. By blending doctrinal analysis with comparative case studies, the goal is to propose a coherent framework that explain the dangerous and fraudulent nature of the nominee agreement use for the non-profit owned educational land asset.

First, the research focuses on doctrinal analysis of primary legal materials. Key statutes include the Foundation Law (Law No. 28/2004) and its internal implementing regulations (AD/ART), the old and newly enacted Criminal Code (Law No. 1/2023), the Basic Agrarian Law (UUPA), and land-use regulations such as Permendikbud No. 36/2014. For the juridical or jurisprudence point of view, this research uses several cases that’s already have a legal bind.

Those cases includes the Armina Center matter (The Mandailing Natal District Court decision number **167/Pid.B/2012/PN Mdl.**) Gunung Muria University matter (Semarang High Court No. 107/PID.SUS/2024/PT SMG), Al-Hilaal Ambon (Ambon District Court No. 196/Pid.B/2017/PN Ambon), SMK PGRI Maospati (Magetan District Court No. 25/Pid.B/2023/PN Mgt). For each decision, the research traces how the court described the nominee agreement, identified any defective AD/ART authorizations, and applied either Foundation Law provisions or general Criminal Code articles. Particular attention is paid to whether the court treated the nominee deed as a civil-law defect or recognized it as an element of criminal wrongdoing. Judicial reasoning is compared across different courts to identify inconsistent patterns.

The research then incorporates theoretical insights to explain why these patterns recur. Using Donald R. Cressey's Fraud Triangle that's adopted in Petter Gottschalk Fraud theory, each case is mapped onto the three components of fraud: financial or reputational pressure on foundation organs, systemic opportunities created by weak internal controls, and rationalizations that nominee agreements are "temporary" or "necessary" for the foundation's survival. Petter Gottschalk's Convenience Theory further elucidates how banks' collateral requirements and notarial practices create "convenient" pathways for nominee-based fraud. Together, these criminology frameworks illuminate the psychological and structural forces that lead foundation insiders to misuse nominee deeds.

At the same time, Peter Benson's Justice in Transaction theory highlights how nominee agreements violate substantive fairness. Through a contractual lens, the research shows that nominee contracts although formally compliant with land-registration procedures, substantively disenfranchise the foundation and its stakeholders, as the "equal bargaining" requirement is absent. This contract-law critique bolsters the argument that nominee deeds conceal criminal intent under the guise of civil conformity.

Throughout the research, validity is maintained by relying solely on official, up-to-date legal sources and authentic AD/ART documents confirmed by the Ministry of Law & Human Rights. Reliability is ensured by consistent coding of cases, and preliminary findings are vetted through peer review by scholars in foundation law.

4. Results and Discussion

This research was conducted using a doctrinal-normative approach supported by comparative jurisprudential analysis, allowing the author to explore how nominee agreements have been used as instruments of fraud in Indonesian educational foundations. The goal of this research is to analyze legal structures, judicial trends, and theoretical frameworks to reveal a pattern of systemic failure in regulating and sanctioning foundations that abuse their nonprofit status. These failures led to the abuse of educational foundations in the hand of white-collar criminal. The white-collar criminals present themselves as a morally astute character with a lot of kindness to offer. The ideal analogy is the wolf in a sheep's clothing, but in this case it's much more similar as a wolf in the pastor's clothing.

Across of the cases analyzed, several troubling patterns emerged. In every instance, the foundation was used directly or indirectly by the white-collar criminals as a vehicle to acquire land through third parties, using foundation funds but registering assets in the names of individuals associated with foundation organs. These acts can be attributed to a criminal act with the legal ground of chapter 5 jo 70 from the foundation law book. These nominee arrangements were often justified as temporary or practical necessities. However, the outcomes suggest otherwise. In most or some cases, the "nominees" refused to return the land, used it as collateral for personal loans, or transferred ownership altogether. Yet despite clear evidence of asset misappropriation and, in some cases, forged internal authorizations, none of the foundations were ever dissolved thus stopping the cycle. With only the "criminals" being jailed, the foundations keep their operations. This could give the criminals another chance to take over the foundation again once they served their sentences. This indicates a failure from the criminal system to protect the public thus shows that the justice system in Indonesia failed in keeping it's constitutional goals of public protection.

The Gunung Muria case is emblematic of this pattern. Foundation funds were used to purchase land, but the title was registered in the name of the foundation's treasurer. The transaction was framed as a personal loan or temporary placeholder, but later revealed to be a clear misuse of the foundation's financial resources. The court did not apply Articles 5 or 70 of the Foundation Law and instead relied on general provisions of the Criminal Code concerning embezzlement and document forgery. Despite the District Court decided to seize

the assets for the country, this decision was overruled by the Semarang high court decision noting the Foundation is the victim.

In the Armina Center case, courts went slightly further by recognizing the involvement of foundation organs in a nominee scheme and applying the Foundation Law. However, even here, no dissolution or corporate sanction followed. The person charged was found guilty of misusing foundation funds and forging internal resolutions, but the foundation itself was again treated as a passive victim, rather than as an actor complicit in facilitating fraud.

Other cases follow similar trajectories. In the Al-Hilaal Ambon case, land belonging to the foundation was quietly registered in a private name, and the court found clear evidence of forgery. Even in the Morning Star/Bintang Pagi cases, where the foundation's own internal organs were found to have repeatedly engaged in unauthorized land deals and nominee contracts, the foundation was never subjected to institutional sanctions. At most, licenses were suspended, but no court moved to dissolve the legal entity or order comprehensive asset restitution. These outcomes reveal what may be described as a structural reluctance within Indonesia's judicial system to treat foundations as possible corporate perpetrators. The result is a form of legal evasion: the very structure that enabled the crime remains standing, often under new leadership, and is free to repeat the same abuses.

This finding is further illuminated by applying criminological theories. Through the Fraud Triangle framework, it becomes apparent that foundation fraud typically arises through a convergence of pressure (such as the need to acquire land in a legally restricted environment), opportunity (the absence of effective internal supervision or clear AD/ART procedures), and rationalization (the belief that using a nominee is temporary, harmless, or necessary). Every case examined in this study exhibited all three elements. The individuals involved often justified their actions by claiming they were acting in the foundation's interest, even as they stood to benefit personally and illegally.

Further analysis using Gottschalk's Convenience Theory explains how weak regulatory enforcement, lax oversight by foundation boards, and the complexity of land law create convenient openings for fraud. Foundations often operate without independent supervisory boards, this environment makes it easy for insiders to forge internal documents or bypass collective approval altogether. Banks, notaries, and even government registration offices frequently accept these flawed documents at face value, facilitating the execution of fraudulent nominee agreements.

From a contract law perspective, Peter Benson's theory of justice in transactions underscores how such nominee contracts are not merely procedurally defective, but substantively unjust. These agreements are almost always based on unequal bargaining power, where one party controls both the transaction and the organizational decision-making process. The foundation itself, ostensibly a neutral party representing public interest, is often sidelined in favor of private motives.

Compounding this issue is the underuse of the Foundation Law's specific criminal provisions. Articles 5 and 70 clearly prohibit the use of foundation assets for the benefit of any individual. Yet judges and prosecutors often prefer to rely on the general Criminal Code, particularly Articles 372 and 374 on embezzlement, and Articles 263 and 266 on forgery. While these articles are certainly relevant, their use to the exclusion of the Foundation Law minimizes the unique nature of the offense.

In light of these findings, several conclusions may be drawn. First, nominee agreements—while often framed as civil contracts, which are in practice instruments of fraud that systematically divert foundation assets into private hands. Second, Nominee agreements in educational foundations are indeed treated more as civil defects than as criminal schemes, even when all the elements of fraud are present. At the same time, the expansion of corporate criminal liability offers a promising avenue for institutional accountability.

5. Conclusions

This study has illuminated how nominee agreements, though superficially valid as civil contracts, function as deliberate instruments of fraud in Indonesian educational foundations. By examining Foundation Law provisions, the old and newly enacted 2023 Criminal Code, and a series of landmark court decisions ranging from the Gunung Muria University case to

the Armina Center case we found that foundation organs routinely exploit legislative and procedural gaps to transfer land ownership into their own names. Despite ample evidence of forgery, misappropriation, and abuse of internal governance mechanisms, courts have predominantly treated these transactions as civil defects or as individual embezzlement and forgery cases. As a result, none of the offending foundations were ever dissolved in criminal proceedings, allowing them to remain legal entities capable of further misuse. Our empirical analysis, reinforced by the Fraud Triangle and Justice in Transaction frameworks, demonstrates that criminal intent (*mens rea*), systemic opportunity, and rationalizations all converge to facilitate nominee-based asset diversion, yet enforcement remains patchwork and limited.

In synthesizing these findings with the research objectives, it becomes clear that the primary goal—to analyze nominee agreements as mechanisms of systemic fraud and to propose a legal framework for corporate criminal liability—has been achieved. We showed that existing statutes under the Foundation Law (Articles 5 and 70) are underutilized; while the general Criminal Code provisions (such as Articles 372, 374, 263, and 266) address individual wrongdoing, they do not dismantle the institutional structure that underpins the fraud. The forthcoming 2023 Criminal Code's expanded scope of "every person" and its provisions for corporate dissolution offer a doctrinal basis for holding foundations themselves accountable. By comparing multiple cases, our research confirms that courts have systematically favored individual sanctions over institutional remedies, thereby validating our hypothesis that nominee agreements are treated as civil matters rather than criminal conspiracies. In doing so, we highlight the urgent need to bridge this civil–criminal divide by highlighting foundation functions as an "instrumentalia delicti."

The implications of these findings extend beyond academic discourse into the practical realm of legal reform and nonprofit governance. First, prosecutors and judges must be trained to apply Foundation Law, ensuring that foundation law were used as the *lex Speciali* rather than the criminal code. Second, regular, independent external audits of foundation assets especially should become compulsory, reducing the "opportunity" component of the Fraud Triangle that allows nominee schemes to flourish. Third, Foundations should have an external watchdog that actively monitors them. The current available external watchdogs only operate when there is an anomaly or a report. Collectively, these measures will not only protect public trust in nonprofit education but also reinforce the principle that nonprofit entities cannot operate above the law.

Likewise, the new 2023 Criminal Code had not yet come into force during data collection, leaving our recommendations partially speculative regarding its real-world impact. Future research should track how courts interpret and apply corporate dissolution provisions once the code becomes effective, including whether legal guidelines are established to clarify evidentiary standards for "control" and "beneficial ownership." Additionally, extending the case studies to include newer or lower-profile instances of nominee fraud would enrich understanding of how widespread these practices are, particularly in smaller or less well-resourced foundations.

In closing, this research underscores that nominee-based fraud in educational foundations is not a series of isolated scandals but a pattern of institutional misuse underpinned by gaps in both civil and criminal law. Addressing this requires coordinated reform: legislative clarification, judicial awareness, and robust governance safeguards. Only by treating foundations as a non-profit but professional entity would keep it safe from evil hand. If the foundations only serve as a non-profit then it can't operate professionally (managing it's courses), but if it's only focuses in the professional part then it couldn't keep it's non-profit roots. The law should serve as the midde or regulatory function of this problem. The government should be able to keep it's goal of teaching the nation passively by making sure the educational foundations keep their way straight

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