
Legal Validity of Nominee Agreements in Land Ownership by Foreign Nationals and Notary Liability in Indonesia

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Abstract

Foreign investment in Indonesia contributes positively to the country's economic growth but may also pose challenges, particularly in the realm of national land ownership. Indonesian law, under the Basic Agrarian Law (UUPA), recognizes the principle of nationality, which grants ownership rights over land exclusively to Indonesian citizens. To circumvent this restriction, foreign nationals often use nominee agreements with Indonesian citizens, allowing the nominal holder to act as a proxy while the foreign party retains the actual benefits of land ownership. This practice, however, conflicts with the provisions of Article 21 and Article 26(2) of the UUPA, which prohibit the direct or indirect transfer of ownership rights to foreigners, rendering such transactions null and void, with the land reverting to the state. Notaries are frequently involved in formalizing nominee agreements through authentic deeds, raising questions about the legality of such acts and the notary's responsibility. This study examines the legal validity of nominee agreements and the accountability of notaries in facilitating these transactions, using case analysis, including the Denpasar District Court Case No. 325/PDT.G/2014/PN DPS and subsequent appeals. The findings highlight the tension between foreign investment practices and Indonesian land law, emphasizing the role of notaries in upholding legal certainty.

INTRODUCTION

Foreign investment made by Foreign Nationals (hereinafter referred to as FNs) in Indonesia not only provides positive impacts, such as boosting Indonesia's economic growth, but can also have negative effects, particularly in the context of national land control.¹ It is often found that FNs seek ownership rights over land in Indonesia, which conflicts with the provisions set forth in the Basic Agrarian Law (hereinafter referred to as the UUPA). The national land law adheres to the principle of nationality, as explicitly stated in Article 21 of

¹ Febriyanti, Annisa Rahma, Ririn Tri Ratnasari, and Akhmad Kusuma Wardhana. "The effect of economic growth, agricultural land, and trade openness moderated by population density on deforestation in OIC countries." *Quantitative Economics and Management Studies* 3.2 (2022): 221-234.

the UUPA, which serves as the regulatory basis for land in Indonesia, stipulating that only Indonesian Citizens (hereinafter referred to as ICs) may hold ownership rights.²

Therefore, FNs often use a nominee mechanism, formalized through land sale and purchase agreements between the parties, given that ownership rights represent the strongest, hereditary, and full rights over land. Holding land under ownership is considered more advantageous for FNs in making investments. The nominee agreement is a mechanism of agreement between an FN and an IC through the granting of authority, where such authority is irrevocable and grants the FN the power to manage and perform legal acts related to the land with ownership rights. Nominee agreements made between FNs and ICs essentially contain statements that the actual ownership of the land rests with the FN, and they also regulate the legal acts that the FN can perform as the actual owner, even though such acts can legally only be performed by an IC as a legitimate owner.

In addition to Article 21, another manifestation of the nationality principle under the UUPA is found in Article 26 paragraph (2). Land sale and purchase actions by FNs constitute prohibited transfers of ownership under the UUPA, as stipulated in Article 26 paragraph (2), which provides that any sale, exchange, gift, inheritance, or other acts intended to directly or indirectly transfer ownership rights to foreign nationals are null and void by law, and the land shall revert to the state.³ This reflects the state's controlling rights (Hak Menguasai Negara), as mandated by Article 33 paragraph (3) of the 1945 Constitution (UUD 1945), which forms the basis for the state to manage the earth, water, and space for the greatest prosperity of the people. State control over land, water, and space is implemented through fundamental land policies regulated by the UUPA and its derivative regulations.⁴

Rights over land, as regulated under the UUPA, can be transferred or assigned. The transfer of land rights is regulated in Government Regulation Number 24 of 1997 on Land Registration, which sets out procedures for the transfer of land rights through certain legal acts, such as sale and purchase, exchange, donation, incorporation into a company, and other

² Sulistiyani, Nia. "Prohibition of Ownership of Foreign Citizens' Land Through A Nominee Agreement Based on The Principle of Legal Certainty." *International Journal of Latin Notary* 4.2 (2024): 31-34.

³ Ratu, Ida Ayu Mas, and Ida Bagus Agung Putra Santika. "Implementation of the Granting of Land Ownership Rights by the State for Foreign Citizens Under Article 21 Paragraph 3 of the Basic Agrarian Law." *YURIS: Journal of Court and Justice*(2024): 76-85.

⁴ Salmah, Maria Kristina, et al. "THE LEGAL STATUS OF CERTIFICATES OF CULTIVATION RIGHTS IN THE CONTEXT OF CONSTITUTIONAL LAW: AN ANALYSIS OF CASE DECISION NUMBER 4655 K/Pdt/2023." *Klausula (Jurnal Hukum Tata Negara, Hukum Administrasi, Pidana Dan Perdata)* 3.2 (2024): 105-116.

acts of land rights transfer.⁵ Sale and purchase transactions conducted by FNs using nominee agreements often involve notaries as public officials authorized to make authentic deeds concerning all acts, agreements, and stipulations required by legislation and/or requested by the parties, as outlined in Law No. 2 of 2014 on the Position of Notary in conjunction with Law No. 30 of 2004 concerning Amendments to Law No. 30 of 2004 on the Position of Notary (hereinafter referred to as UUJN).⁶

This is exemplified in the case examined in the Denpasar District Court Decision No. 325/PDT.G/2014/PN DPS, the Denpasar High Court Decision No. 171/Pdt/2015/PT.Dps, and the Supreme Court Cassation Decision No. 321 K/Pdt/2017. The case arose from an agreement among three FNs, Mathias Hubert, Charles Joordy, and V Nee Yeh, to purchase a plot of land measuring 27,850 m² located in Antap Village, Bali, Indonesia, from an IC, intended for investment purposes. Under the agreement, Charles and V transferred the payment for the land to Mathias' account. To execute the land sale and purchase, Mathias made an agreement with an IC named Terry Ananta Kusuma to act as a nominee, which was formalized in Notarial Deed No. 11 dated December 6, 2006, before Notary Ucle Irithrina Sudjateruna, S.H. The deed stated that Terry Ananta Kusuma agreed to act as a nominee using his name in the land ownership certificate, without being the owner, and could not perform any legal acts regarding the land, including selling, mortgaging, donating, or leasing, without Mathias Hubert's consent as the actual owner.

Subsequently, on December 28, 2006, a sale and purchase agreement was executed between Terry Ananta Kusuma as nominee and IC I Wayan Arniata, documented in Notarial Deed No. 337/2006. On January 29, 2007, Notarial Deed No. 29 was made before Notary Ucle Irithrina Sudjateruna, S.H., confirming that Terry Ananta Kusuma as nominee had handed over all documents related to the 27,850 m² land under SHM No. 46 in Antap Village to Mathias Hubert, placing all documents under Mathias' control. Due to Mathias' breach of agreement toward Charles and V, they filed a lawsuit at the Denpasar District Court.

Based on the above case, it is evident that notaries are involved in drafting nominee agreements, formalized in authentic deeds such as the Notarial Statement Deed. Meanwhile,

⁵ Ramadhani, Rahmat. "Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia." *International Journal Reglement & Society (IJRS)* 2.2 (2021): 87-95.

⁶ Annisa, Yusifa Nur, Reka Dewantara, and Arini Jauharoh. "Analysis of the Legal Status of Joint Office in Notary Civil Partnership: Perspective of Article 20 of UUJN-P." *International Journal of Business, Law, and Education* 5.1 (2024): 1162-1170.

under Indonesian land regulations, the transfer of ownership rights to FNs through sale and purchase is prohibited and carries the consequence of being null and void, with the land reverting to the state. However, in practice, notaries are involved in drafting deeds that substantively contain clauses contrary to prevailing laws. Therefore, an analysis is needed on the validity of nominee agreements and the Notarial Statement Deed created by FNs in land sale and purchase agreements in Indonesia, as well as the liability of the notary as a public official in drafting such deeds.

This study employs a normative-juridical research method to examine the legal framework and practice concerning land ownership by foreign nationals in Indonesia, with a particular focus on nominee agreements and the role of notaries. The research analyzes primary legal sources, including the Basic Agrarian Law (UUPA), the 1945 Constitution, Government Regulation No. 24 of 1997 on Land Registration, and Law No. 2 of 2014 on the Position of Notary in conjunction with Law No. 30 of 2004, as well as secondary sources, such as scholarly articles, legal commentaries, and relevant court decisions. A conceptual approach is applied to understand the principles of nationality in land law and the legal consequences of nominee agreements, while a case study approach is used to examine judicial decisions, including Denpasar District Court Decision No. 325/PDT.G/2014/PN DPS, Denpasar High Court Decision No. 171/Pdt/2015/PT.Dps, and Supreme Court Cassation Decision No. 321 K/Pdt/2017, in order to evaluate the implementation of legal norms and the accountability of notaries as public officials.

The study specifically focuses on assessing the validity of nominee agreements executed by foreign nationals, the legal responsibilities and potential liabilities of notaries in drafting deeds that may conflict with applicable regulations, and the broader implications for state control over land and the enforcement of the principle of nationality under Indonesian law, with findings derived from legal interpretation, comparative analysis, and synthesis of statutory provisions, case law, and academic literature to provide a comprehensive understanding of the issue.

DISCUSSION

Validity of the Statement Deed Containing a Nominee Agreement Regarding Land Ownership in Indonesia between Indonesian Citizens and Foreign Nationals

The Indonesian Civil Code (KUHPerdara) regulates the concept of an authentic deed in Article 1868, which states: "An authentic deed is a deed made in the form prescribed by law by or before a public official authorized for that purpose, at the place where the deed is made."⁷ Based on the provisions of Article 1868 of the Civil Code, an authentic deed must fulfill the elements of being made in the form prescribed by law and made before a public official authorized for that purpose.⁸ The form prescribed by law refers to the form determined in the Law on the Position of Notary (hereinafter referred to as UUJN), particularly Article 38, which regulates the form of an authentic deed, consisting of:

1. Beginning of the deed, which includes the deed title, deed number, hour, day, date, month, and year, as well as the full name and office location of the Notary.
2. Body of the deed, which consists of the full identity of the appearing parties, statements regarding their capacity to act, the content of the deed reflecting the parties' intentions, and the complete identity of the witnessing parties.
3. End of the deed, which contains a description of the obligation to read the deed, the description of signing and signing place or translation of the deed, the full identity of each witness, and a description of any amendments made in the deed (*renvoi*).

According to Tan Thong Kie, a primary requirement of an authentic deed is that it must be made in the form prescribed by law, and therefore its creation must comply with statutory provisions, especially those related to notarial law.⁹ An authentic deed possesses perfect evidentiary power, meaning it serves as sufficient evidence without requiring any

⁷ Wulandari, Irvi Wuri, and Anak Agung Istri Ari Atu Dewi. "THE AUTHORITY OF NOTARY SUPERVISORS IN TAKING ACTION AGAINST VIOLATIONS OF THE DISSEMINATION OF DEED OF AGREEMENT ON SOCIAL MEDIA." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23.3 (2024): 2793-2806.

⁸ Erwan, Puti Annisa, and Helfira Citra. "Legal Review of The Legality of Authentic Deeds and Private Deeds According to Law No. 2 of 2014 Concerning the Position of Notary in Land and Building Lease Agreements." *Jurnal Ilmiah Ekotrans & Erudisi* 5.1 (2025): 100-110.

⁹ Reba, William Hendrik, Josner Simanjuntak, and Jeremy Edbert Reba. "LEGAL PROTECTION OF CREDITORS AND DEBTORS THROUGH NOTARIAL DEEDS IN BANKING CREDIT AGREEMENTS." *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2.12 (2023): 4069-4078.

additional proof, allowing judges to resolve disputes solely based on the authentic deed without referring to other evidence.

Agreements made by parties before a Notary can be documented as either authentic deeds or private deeds. There are two types of authentic deeds made by Notaries: *authentic deeds relaas* and *authentic deeds partij*. A relaas deed contains everything heard, witnessed, and experienced by the Notary in a particular event, while a partij deed records the intentions of the parties appearing directly before the Notary. Nominee agreements can be made in either authentic or private deed form; however, in practice, they are often made as authentic deeds before a Notary due to their perfect evidentiary power. A Notary deed is an authentic deed that can contain agreements binding on the parties who made it. Thus, the validity of an authentic deed, in addition to fulfilling formalities prescribed by law, must also meet the requirements of a valid agreement as regulated in Article 1320 of the Civil Code, which states:

“To establish a valid agreement, four conditions must be met:

1. Consent of the parties binding themselves;
2. Capacity to make an agreement;
3. A specific object;
4. A lawful cause.”¹⁰

The first and second conditions are subjective requirements, while the third and fourth are objective. Failure to meet the requirements in Article 1320 results in the invalidity of the agreement. If subjective requirements are not met, the agreement may be annulled or requested to be annulled by the interested party.¹¹ Failure to meet objective requirements results in an agreement being null and void.

To analyze the validity of the Statement Deed made by the Notary, which contains a declaration that Terry Ananta Kusuma (an Indonesian citizen) agreed to act as a nominee for a land sale and purchase conducted by a foreign national, all elements in Article 1320 of the

¹⁰ Kumaralo, Irma Shintia, and Risdalina Risdalina. "The Legal Force of the Cooperation Agreement Letter in a Cooperation Agreement is Reviewed According to Article 1320 of the Civil Code." *Journal of Social Research* 2.3 (2023): 917-923.

¹¹ Diffania, Brigitta, and Wiwin Yulianingsih. "Juridical review of abuse of condition (Misbruik Van Omstandigheden) as reason for cancellation of a debt agreement." *Josar (Journal of Students Academic Research)* 7.2 (2022): 479-491.

Civil Code will be applied, and the legal consequences will be determined if any validity requirement is not fulfilled.¹²

The first element that must be fulfilled in making an agreement concerns the consent of the parties binding themselves. Subekti explains that consent means that the parties forming the agreement have agreed on the agreement made, particularly regarding the essential points of the agreement. Subekti also explains that the consent necessary for an agreement to arise occurs when a declaration of intent by one party is accepted by the other party. The declaration of intent must be explicit and produce legal consequences once communicated from one party to the other. Referring to the aforementioned case, the parties made an agreement regarding the nominee, then appeared before Notary Ucle Irithrina Sudjateruna, S.H., and requested that their intentions be documented in Statement Deed No. 11 dated December 6, 2006. The deed stated that Terry Ananta Kusuma agreed to act as a nominee whose name is used in the Land Ownership Certificate, without being the owner, and could not perform any legal acts regarding the land, including selling, mortgaging, donating, or leasing to anyone without the consent of Mathias Hubert as the owner of the land. Therefore, it can be concluded that the parties in the deed, namely Terry Ananta Kusuma acting as the nominee and Mathias Hubert as the owner who appointed the nominee, clearly expressed their consent regarding the agreed matter, which was then documented in Statement Deed No. 11. Thus, the subjective requirement of consent is fulfilled.

The second subjective requirement is capacity, which, according to Subekti, means that a person is of adult age and of sound mind. The criteria for incapacity are regulated in Article 1330 of the Civil Code, including minors, persons under guardianship, and married women (which is no longer applicable following Supreme Court Circular No. 3 of 1963 in conjunction with Article 31 of Law No. 1 of 1974).¹³ The parties making the Statement Deed before the Notary were legally competent under the Civil Code and UUJN. The minimum age requirement under UUJN is eighteen years old (Article 39 paragraph 1). Based on case information, there are no facts indicating that the parties were incompetent, so it can be

¹² Kumaralo, Irma Shintia, and Risdalina Risdalina. "The Legal Force of the Cooperation Agreement Letter in a Cooperation Agreement is Reviewed According to Article 1320 of the Civil Code." *Journal of Social Research* 2.3 (2023): 917-923.

¹³ Anand, Ghansham, et al. "Legal Implications on Cancellation of Agreements Made Prior to Custody for Good Faith Land Buyers." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 9.2 (2022): 253-275.

assumed that the parties in making the Statement Deed containing the nominee agreement were legally competent.

The third element, an object specific to the agreement, is an objective requirement. Subekti explains that a specific object refers to the matters agreed upon in the agreement, so that in the event of a future dispute, the type of agreement can be identified. In the nominee agreement made before the Notary, the parties agreed that Terry Ananta Kusuma would act as a nominee in the Land Ownership Certificate and could not perform legal acts without the approval of Mathias Hubert, a foreign national as the actual landowner. The object of the agreement in the Statement Deed is clearly defined, satisfying the requirement for a specific object.

The fourth element, a lawful cause, is regulated in Article 1336 of the Civil Code: "If no cause is stated, but there exists a cause that is not prohibited, or if there is another cause not prohibited other than the one stated, the agreement is valid."¹⁴ According to Subekti, a lawful cause refers to the content of the agreement, not the motive for entering into it. Article 1337 further explains that a cause is unlawful if it violates the law, decency, or public order.¹⁵ The consequence of an agreement containing an unlawful cause is that it has no legal force, as stated in Article 1335 of the Civil Code.¹⁶ Nominee agreements are not specifically regulated in the Civil Code and are considered unnamed agreements. When linked to land ownership, nominee agreements can create legal circumvention, as they constitute an agreement between a foreign national and an Indonesian citizen whereby authority is granted to the Indonesian citizen, allowing the foreign national to exercise acts over land legally owned by the Indonesian citizen. According to Sunaryo, nominee agreements allow foreign nationals to grant authority to Indonesians to purchase land, providing an opportunity for the foreign nationals to perform legal acts over land that is juridically owned by the Indonesian citizen.

The agreement contained in the Statement Deed establishes that Terry Ananta Kusuma (Indonesian citizen) acts as the nominee in the Land Ownership Certificate in Bali and cannot perform any legal acts, including selling, mortgaging, donating, or leasing the land without

¹⁴ Darmawan, Leidiyane Rheizquita, and Pieter E. Latumeten. "Legal Issues in Sales and Purchase Agreements Involving Land Rights Entered into Before a Notary." *Asian Journal of Engineering, Social and Health* 4.8 (2025): 1346-1359.

¹⁵ Siahaan, Nomensen Freddy, and Agustina Wati. "Green turtles illegal trade based on commercial law and state administrative law perspectives." *Indonesian Journal of Multidisciplinary Science* 3.5 (2024).

¹⁶ Paath, Christy Giana. "Analysis of Breach of Contract Agreement in a Company and Handling of Violations (Case Study on PT. Indo Rice Unggul)." *LEGAL BRIEF* 14.4 (2025): 820-826.

the consent of Mathias Hubert as the landowner. To determine the validity of the cause in the nominee agreement, reference is made to land ownership regulations under Law No. 5 of 1960 concerning the Basic Agrarian Principles (UUPA). Article 21 paragraph (1) UUPA states that only Indonesian citizens may own land, and this provision is absolute. The prohibition for foreign nationals to own land in Indonesia is reinforced in Article 26 paragraph (2) UUPA, which declares null and void any acts intended to directly or indirectly transfer ownership to foreign nationals, including sale, exchange, gift, inheritance, or other acts, with the consequence that the land reverts to the state.¹⁷ According to Maria SW Sumardjono in *Regulasi Pertanahan dan Semangat Keadilan Agraria*, “Agreements intended to indirectly transfer ownership to foreign nationals violate Article 26 paragraph (2) of the UUPA, resulting in the agreement being null and void and the land reverting to the state, and foreign nationals receive no legal protection.”¹⁸

The concepts of annulment (*can be cancelled*) and nullity (*null and void*) in agreements have distinct meanings. Nullity applies when objective requirements are unmet, while annulment applies when subjective requirements are unmet. According to Habib Adjie, the implications for notarial deeds are as follows:

1. A Notarial deed may be annulled if subjective requirements are unmet, upon request of interested parties. The legal effect of the deed remains until annulled.
2. A Notarial deed is null and void if objective requirements are unmet, meaning the deed never legally existed and binds no one.

The nominee agreement in the Statement Deed appointing a foreign national as the landowner in Indonesia contravenes Article 21 and Article 26 of the UUPA, rendering the cause unlawful.¹⁹ Consequently, the objective requirement is not met, and the agreement is null and void. Therefore, Statement Deed No. 11 of 2006 is also null and void, returning the land to the original owner, I Wayan Arniata, and invalidating any subsequent sale and purchase based on the nominee agreement.

¹⁷ Sulistiyani, Nia. "Prohibition of Ownership of Foreign Citizens' Land Through A Nominee Agreement Based on The Principle of Legal Certainty." *International Journal of Latin Notary* 4.2 (2024): 31-34.

¹⁸ Noor, Aslan. "Case Settlement of Nominee Agreement as A Mode of Land Tenure for Foreign Nationals in Indonesia." *International Journal of Criminal Justice Sciences* 16.2 (2021).

¹⁹ Magviro, Dani Lailatul, Yasid Amali, and Lucky Dafira Nugroho. "Analisis Yuridis terhadap Kepemilikan Tanah oleh WNA Melalui Pinjam Nama: Studi Perbandingan Hukum Perdata Internasional." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3.3 (2025): 2127-2133.

The nullity of a notarial deed may have different legal consequences for the parties:

1. Loss of authenticity, rendering the deed entirely void if the act must be in an authentic deed by law.
2. The deed remains valid, but the legal act contained is not void if the act does not require an authentic deed.
3. The authentic deed remains valid, but the legal acts within it are null and void if the agreement contains unmet requirements or defective cause.

In the case at hand, the Statement Deed retains its authenticity, but the nominee act contained therein is null and void, as the cause is unlawful, contradicting statutory regulations. As a result, the legal act is void ab initio, based on court decisions with permanent legal force.

The Responsibility of a Notary in Making a Statement Deed Containing a Nominee Agreement Related to the Sale and Purchase of Land by Foreign Nationals

A Notary, in carrying out their duties and office, is obliged to comply with the provisions regulated in the UUJN (Law on the Position of Notary) and the Notary Code of Ethics.²⁰ When parties appear before a Notary to have an authentic deed prepared, their purpose is to obtain legal protection and certainty regarding the legal acts they perform, which will then be documented in an authentic deed. As a public official authorized to do so, a Notary has the obligation to take full responsibility for the deeds they create to ensure that the authentic deed does not contravene applicable laws. Essentially, a Notary prepares a deed based on the statements and intentions of the parties, which is based on the Notary's authority under Article 15 of the UUJN, which states:

“Notaries are authorized to make authentic deeds regarding all acts, agreements, and stipulations required by statutory regulations and/or requested by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the deed's creation date, preserving the deed, providing grosses, copies, and excerpts of the deed, provided that the creation of the deed is not also assigned or excepted to another official or person as determined by law.”²¹

²⁰ Chandra, I. Gusti Ayu Widya, and I. Wayan Novy Purwanto. "The Role And Responsibilities of A Notary In Public Services Based on Professional Ethic Morals and Law." *Journal of Law, Politic and Humanities* 4.6 (2024): 1937-1945.

²¹ Asti, Natasya Rizki, and Fransiscus Xaverius Arsin. "Duties And Authority Of A Notary In Producing Land Deeds." *Awang Long Law Review* 6.1 (2023): 74-82.

Based on the Notary's authority under Article 15 of the UUJN, it can be said that a Notary is a public official authorized to make authentic deeds, whether required by statutory regulations or based on the intentions of the interested parties, which are then documented in an authentic deed. However, there are limitations to the Notary's authority in making authentic deeds. Even though a Notary as an authorized official prepares deeds based on the parties' intentions, there is a prohibition against making a deed in certain circumstances, such as when the legal subjects of the appearing parties are prohibited, making it impermissible to create a deed regarding the substance or cause of the acts intended by the parties.

If a Notary creates a nominee agreement that violates the principles of nationality and applicable provisions in the UUPA, the Notary, as a public official, can be considered to have violated both the UUJN and the Notary Code of Ethics. The specific UUJN provision violated by the Notary is Article 15 paragraph (2) letter e, which regulates the Notary's authority to provide legal counseling in relation to the preparation of deeds. A Notary, as a public official authorized to create authentic deeds, is given the authority to provide legal counseling before making the relevant deed, considering that a deed made by a Notary serves as perfect evidence.²² When an appearing party expresses their intention to create a deed containing clauses regarding a nominee agreement related to land ownership, the Notary, as the authorized party, should provide legal counseling regarding the definition of nominee agreements, potential legal violations, and the resulting legal consequences.

Furthermore, based on Article 16 paragraph (1) letter a of the UUJN, a Notary must act faithfully, honestly, diligently, independently, impartially, and protect the interests of the relevant parties in carrying out their duties. There is no precise measurement for the extent to which a Notary must act faithfully, honestly, and diligently. Article 16 paragraph (1) letter a of the UUJN embodies the principle of due diligence for Notaries. Therefore, when a Notary is not careful in performing their duties, it constitutes a violation of the Notary's obligations under Article 16 paragraph 1 letter a of the UUJN.²³ Creating a deed containing a nominee agreement can be considered a form of negligence on the part of the Notary, where the Notary knowingly acts dishonestly, aware that the legal act to be documented constitutes legal

²² Miftahurrahmah, Nishfi. "Implementation of Article 9 Paragraph (1) Letter D of Law Number 2 of 2014 regarding the Position of Notaries (a Study in West Lombok Regency)." *JL Pol'y & Globalization* 139 (2024): 44.

²³ Safara, Anada, and Amad Sudiro. "Legal Consequences of Notarial Deeds Made Not In Accordance with The Provisions of Article 16 Paragraph (1) Letter M UUJN." *Jurnal Syntax Transformation* 5.10 (2024): 1209-1215.

circumvention violating statutory regulations, yet still proceeds to make the deed. If an authentic deed does not meet the formalities specified in the UUJN or contains legal defects, it may be annulled by a court decision with permanent legal force.

In addition, a Notary may refuse to provide services to appearing parties if providing such services would violate their oath or constitute an unlawful act. This is stipulated in Article 16 paragraph (1) letter e. In relation to the case described above, the Notary could refuse to make a deed if it contains clauses involving unlawful acts and violates applicable statutory regulations. The nominee act concerning land ownership in Indonesia by foreign nationals constitutes an act that indirectly transfers ownership rights to foreign nationals, violating statutory provisions, particularly Article 26 paragraph (2) of the UUPA.²⁴ Consequently, the agreement is null and void, the land reverts to the state, and foreign nationals receive no legal protection. Since this act contradicts the law, the Notary, as a public official fully responsible for the deed, should not create a deed containing clauses contrary to the law.

In addition to obligations regulated in the UUJN, the Notary Code of Ethics also governs the duties of Notaries and their sanctions as a form of accountability for ethical violations. Article 3 of the Notary Code of Ethics stipulates the Notary's obligations in performing their duties, including the requirement to possess moral integrity, good character, respect and uphold the dignity of the Notary office, act honestly, independently, impartially, faithfully, diligently, and responsibly. In relation to the above case, the Notary in creating an authentic deed containing a nominee agreement has violated Article 3 of the Code of Ethics, particularly regarding moral integrity, good character, upholding the dignity of the office, and acting honestly. Sanctions for Notaries violating the Code of Ethics may include reprimands, warnings, temporary dismissal, honorable dismissal, and dishonorable dismissal.

As previously explained, the legal consequence of a Notary creating an authentic deed containing an unlawful cause is that the legal acts documented in the deed become null and void. The Notary, as the authorized party fully responsible for the deed, can be held accountable for the deed. Since the deed is considered null and void and reverts to its original state, sanctions imposed on the Notary may include administrative or civil sanctions. Civil sanctions may involve lawsuits by third parties who suffer losses from the deed. In the case

²⁴ Hidayanti, Sugina, Indra Koswara, and Yopie Gunawan. "The land legal system in Indonesia and land rights according to the basic agrarian law (UUPA)." *Legal Brief* 11.1 (2021): 366-378.

described above, with the creation of a Statement Deed containing a nominee agreement, a subsequent sale and purchase agreement was made with a third party, an Indonesian landowner. If the legal consequences of the Statement Deed containing the nominee agreement cause harm to third parties, they may file a civil lawsuit against the responsible Notary.

This aligns with Ridwan H.R., who cites the *Teori Fautes Personelles* according to Kranenburg and Vertig, stating that losses to third parties can be attributed to officials whose actions cause harm. A deed made by a Notary is personal, and the responsibility for losses arising from the deed is attached to the Notary as a public official who is considered fully aware of the legal acts contained in the deed. Civil sanctions may include compensation and interest. Administrative sanctions may include verbal or written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal, as regulated in Article 85 of the UUJN, if the Notary violates Articles 7, 16 paragraph (1) letters a to k, 20, 27, 32, 37, 54, 58, or 59.²⁵

Furthermore, the Notary's accountability extends beyond the mere formal creation of the deed to include the duty of ensuring that the content of the deed does not contravene public policy, statutory regulations, or fundamental legal principles. In the context of nominee agreements related to land ownership by foreign nationals, the Notary is expected to verify the legality of the transaction, including assessing whether the intended legal acts may result in indirect violation of the principle of nationality under the UUPA. Failure to perform such due diligence not only exposes the Notary to administrative and civil sanctions, but also undermines the legal certainty and protection that the authentic deed is supposed to provide to the parties involved. The lack of such precaution can be considered a breach of the Notary's duty to act diligently and in good faith, as mandated by Article 16 paragraph (1) of the UUJN.

In addition, the Notary may face reputational and professional consequences if found complicit in facilitating acts that are considered unlawful or in violation of statutory provisions. This includes potential liability for damages to third parties who suffer losses as a result of the creation of deeds that enable circumvention of legal restrictions, such as the indirect transfer of land ownership to foreign nationals prohibited by the UUPA. The principle of personal responsibility for acts performed by Notaries underscores that the Notary cannot

²⁵ Dianputri, Carissa, and Rasji Rasji. "Responsibilities of a Notary Public Violating the Code of Ethics Based on Decision Number 501/Pdt/2020/Pt. Dki And Decision Number 294 K/Tun/2021." *Eduvest-Journal of Universal Studies* 4.8 (2024): 6746-6756.

shift accountability to the parties requesting the deed, particularly when the Notary knowingly drafts or authorizes provisions that contravene the law. Therefore, Notaries must exercise rigorous ethical and legal judgment, provide thorough legal counseling to the parties, and, if necessary, refuse to prepare deeds that involve unlawful clauses, ensuring both the legality of the act and the protection of their professional integrity.

CONCLUSION

In conclusion, nominee agreements concerning land ownership by foreign nationals in Indonesia, formalized through a Notary Deed, are subject to both formal and substantive legal scrutiny. While such agreements may fulfill the subjective requirements of a valid contract namely the parties' consent and legal capacity the objective requirements, particularly a lawful cause, are violated because Indonesian Agrarian Law (UUPA) prohibits foreign nationals from holding ownership rights over land, as stipulated in Articles 21 and 26. Consequently, these nominee agreements are deemed null and void by law, rendering all legal acts performed under them ineffective and restoring the property to the original owner or state. The Notary, as a public official authorized to draft authentic deeds, bears full legal and ethical responsibility for creating a deed containing clauses that contravene statutory provisions, and should have either provided proper legal counseling or refused to execute the deed.

Failure to exercise such due diligence constitutes a breach of the Notary's obligations under the Notary Law (UUJN) and the Notary Code of Ethics, potentially exposing the Notary to administrative sanctions such as warnings or dismissal, as well as civil liability for damages suffered by third parties. Therefore, while the deed itself may retain formal authenticity, the legal acts contained therein are null and void, emphasizing that Notaries must exercise caution, act in good faith, and ensure that the deeds they draft comply with both statutory law and ethical standards to protect the integrity of legal transactions and the parties involved.

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