

The Responsibility of Notary in Making Nominee Agreements for Foreign Citizens in Indonesia

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Abstract

Law Number 5 of 1960 concerning Basic Agrarian Principles in Article 2 states that every Indonesian citizen has full rights over land, water, and airspace located in Indonesia, so only Indonesian citizens are entitled to have ownership rights over land in Indonesia. This is a principle of nationalism in agrarian law. Foreigners who are in Indonesia are only entitled to land use rights in Indonesia. This regulation sometimes poses difficulties for foreign nationals who want to invest in Indonesia, due to the requirement of land ownership in Indonesia not being fulfilled. This obstacle causes some parties to take illegal actions in land ownership in Indonesia, one of which is by making a nominee agreement. However, nominee agreements in Indonesia have not been clearly regulated in legislation. The issues raised in this research are the validity of nominee agreements according to the Civil Code and Basic Agrarian Law, as well as the role and responsibility of notaries in making nominee agreements, using the case study of the verdict of the Denpasar District Court Number 426/Pdt.G/2020/PN Dps. To answer these issues, normative juridical research method with prescriptive research method is used. The result of the analysis and research is to analyze the nominee agreement and its validity from the perspective of the Civil Code and Basic Agrarian Law. In addition, it analyzes the role and responsibility of notaries in nominee agreements with a case study in the verdict of the Denpasar District Court Number 426/Pdt.G/2020/PN Dps. The suggestion given is that notaries in making a legal product should pay attention to the applicable legal foundations in Indonesia so that the resulting deed is in accordance with the legislation in Indonesia

Keywords: Land Ownership; Notary; Nominee Agreement.

Відповідальність нотаріуса за укладення номінальних угод для іноземних громадян в Індонезії

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Анотація

У статті 2 Закону про основні принципи аграрного права (№ 5, 1960) визначено, що кожен громадянин Індонезії має повні права на сушу, води і повітряний простір, що знаходяться в межах кордонів країни, за яким тільки громадяни країни мають право власності на землю в Індонезії. Відтак, фактично – це принцип націоналізму в аграрному праві. Іноземці, які перебувають в Індонезії, мають право лише на користування землею. Норми цього Закону створюють труднощі для іноземних громадян, які мають бажання інвестувати в Індонезію, через недотримання вимог щодо права власності на землю в Індонезії. Ця перешкода змусила деякі сторони вдатися до незаконних дій щодо набуття права власності на землю в Індонезії, однією з яких є укладення угоди з номінальним власником. Однак такі угоди в Індонезії чітко не врегульовано законом. Метою дослідження є розгляд проблем, що стосуються обґрунтованості договору з номінальним власником за Цивільним кодексом і Основним аграрним законом, а також ролі й відповідальності нотаріусів при укладенні таких договорів, на прикладі рішення, ухваленого Денпасарським окружним судом 426/Pdt. G/2020/PN Dps. У роботі застосовано нормативно-правовий та прескриптивний методи. Результатами дослідження є аналіз договору з номінальним власником та його дійсності з точки зору Цивільного кодексу та Закону про основні принципи аграрного права. Крім того, висвітлено роль та відповідальність нотаріусів при укладанні договорів із номінальним власником на прикладі рішення зі справи, ухваленого окружним судом.

Ключові слова: власність на землю; нотаріус; угода про номіні.

Introduction

Land, its ownership, type, access, and rights over land are often ambiguous, conflicted and fluid in post-colonial and post-socialist states as a myriad of

institutions, and (non) state actors find themselves in a constant struggle with each other. Particularly in post- colonial contexts, there are two major dimensions of control over land: through rights which is concerned with the questions of ownership and access, and the other is institutional, concerning the authority to legitimize such rights and their transcendence. The claim to institutional legitimacy over the sanctioning power of rights does not come automatically but must be actively established [1].

In Indonesia is one of the countries that has extraordinary natural potential. One form of Indonesia's potential natural wealth is in the form of land or land wealth. The existence of land or also called land in this country is available quite widely that can be utilized by all citizens. The regulation on land contained in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles focuses more on land that can be owned by the community and used by the community according to their needs, an example of the social function of land is the purchase of land that will be used for the construction of factories, schools, houses of worship, private houses, or can also be used as rice fields, garden soil, and so on [2].

The use of land in the social function of land, there are restrictions on use regulated in Article 9 of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, first, the parties have full authority over the resources on Indonesian soil are only Indonesian citizens without exception. Non-Indonesian citizens are not allowed to own these resources, second, every Indonesian citizen, without exception has a balanced position in the eyes of the law related to the use of resources, this is then called the Principle of Nationality contained in the Basic Agraria Law [3].

The principle of nationality in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles prioritizes the right for the Indonesian people to enjoy full ownership of land. So there is no room for non-Indonesian citizens to be given ownership rights. Such foreigners are only allowed to enjoy the right of use of land in the country, nothing more [4].

The provisions regarding the prohibition of ownership of property rights by foreign nationals are also related to inheritance rights. This is regulated in Article 21 paragraph 3 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which regulates if there is a Foreign Citizen who gets ownership of Indonesian land due to inheritance or property during marriage with an Indonesian citizen, the foreign national is obliged to release it and return it to the state for a period of one year.

The next problem is related to land ownership which is only limited to the right of use, this makes it difficult for a number of foreign nationals who want to

have a business in Indonesia, for example businesses in the hospitality or resort sector, which makes many people who seize this opportunity and want to invest in Indonesia. But then it was bumped with the existence of the Principle of Nationality in the Basic Law on Agraria, which is considered to be a stumbling block for foreign nationals who want to open a business in Indonesia.

Because it collided with the principle of nationality, in the end an idea arose to avoid the principle of nationality and people who could still build hotels or other businesses with land ownership status in the form of property rights. This method is to use a nominee agreement which is one example of an agreement that has not been clearly regulated in the rules of law in Indonesia. This agreement is also often called a name loan agreement because in practice foreigners borrow the name of Indonesian citizens to obtain land ownership status in the form of property rights to avoid time limits as in the right of use. In the nominee agreement, there is an intermediary agreement as a support for the legal owner in the eyes of the law (legal owner) and the actual owner who controls the object (beneficiary owner) [5].

In terms of applicable legal rules in Indonesia, there are no rules that clearly regulate the prohibition of nominee agreements, but in some legal provisions in Indonesia it implicitly prohibits the existence of this type of agreement. The making of nominee agreements in practice is mostly made before a Notary. Even though according to the rules of law it is not clear about the terms of this agreement. Notaries as honorable officials should take legal action in the form of making authentic deeds in accordance with existing legal regulations in Indonesia [6].

The nominee agreement made before the Notary Public is proof that the Notary ignores the rules and code of ethics. Notaries as general officials are obliged to account for the deeds they have made, the authority of notaries besides that is to protect the public so that arbitrariness occurs.

One example of a case that occurs related to the nominee agreement is the Denpasar District Court Decision Number 426/pdt. G/2020/PN Dps. In this case, the agreement made by the Notary Public is a nominee type, where this type has no legal basis that clearly regulates and according to the judge, the content of the nominee agreement violates the content of the Basic Agrarian Law relating to the Principle of Nationalism where a foreign national is prohibited from having the right to land tenure in Indonesia.

Based on the laws applicable in Indonesia, a notary is responsible for creating authentic deeds in accordance with the prevailing regulations. Notaries are expected to perform their duties with integrity, professionalism, and adherence

to the law. They are obligated to ensure that the deeds they create are accurate, lawful, and comply with the legal requirements.

In the context of the research topic, the legal framework relevant to the accountability of notaries in the creation of nominee deeds by foreign citizens and its relation to land ownership in Indonesia includes:

- 1) Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning the Position of Notary: This law governs the responsibilities, obligations, and ethical standards of notaries in Indonesia.
- 2) Law Number 5 of 1960 concerning Basic Agrarian Principles (Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria): This law regulates land ownership, including restrictions on land ownership by foreign citizens and the consequences of violating these regulations.
- 3) Other relevant regulations and legal provisions: There may be additional laws, regulations, and provisions that govern specific aspects related to nominee arrangements, land ownership, and the responsibilities of notaries in Indonesia.

The purpose of this study is to The research aims to investigate and analyze the legal implications and responsibilities of notaries in the creation of nominee arrangements, particularly in the context of foreign citizens' ownership of land in Indonesia. That analyze the validity of nominee agreements related to Foreign Nationals with ownership of freehold land in terms of the Civil Code and Basic Agrarian Law and the role and responsibility of notaries in making nominee agreements related to land ownership rights, it was proving that a legal event had occurred. Therefore, a deed can be authentic when it meets the requirements set out in the law, one of which is that it is made by an authorized public official so that the deed will become written evidence with perfect evidentiary power. Here the role of the notary profession is significant in fulfilling these requirements because a notary is a public official.

Which is the subject of the first discussion, how is the validity of the nominee agreement relating to Foreign Nationals with ownership of freehold land in terms of the Civil Code and Basic Agrarian Law, second, what is the role and responsibility of notaries in making nominee agreements related to land ownership rights

Materials and Methods

In this study, an in-depth examination was carried out on legal facts which are then used in answering legal issues. Legal issues have a central position in research law as the position of the problem in research others, because it is the legal issue that must be resolved internally legal research as the problems to be answered in in non-legal research. This research begins by formulating problem.

The problem arises because there are two propositions that have relationship, both functional, causal, and one confirms another.

This type of research is normative legal research Normative legal research is legal research that lays down law as a building system of norms regarding principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). Normative legal research must be seen from a juris viewpoint, who conduct research with the aim of legal problem solving which ultimately has benefits and benefits for society. Study normative law is done to generate arguments, theories, or new concept as a prescriptive in solving problems that faced. The answer expected in legal research is right (correct), appropriate, in-appropriate or wrong, so that the results obtained already contain value. The nature of this research is descriptive analysis, which is a method used to depict a current condition or situation with the aim of providing data.

The object of this research is to explore ideal aspects and analyze them based on legal theories or regulations in effect. The descriptive analysis method is employed to provide an overview of a phenomenon related to the study of the legal act of borrowing a name. For academic research, it is essential to search for the ratio legis and the ontological basis behind the enactment of the law so that researchers can grasp the philosophical content underlying the law. By doing so, researchers will be able to draw conclusions regarding the existence or absence of philosophical conflicts between the law and the issues at hand.

The approach used in this research is the case approach and the statute approach. The case approach is employed to understand the application of legal norms/principles in legal practice. It involves examining specific cases to analyze how legal rules are applied and interpreted in real-life situations. On the other hand, the statute approach focuses on studying and analyzing legal statutes and regulations themselves to gain insights into their content, intent, and implications. Both approaches contribute to a comprehensive understanding of the research subject from different angles.

The statute approach is conducted by examining all relevant laws and regulations pertaining to the legal issue being addressed. For research purposes, it involves studying and analyzing the entire body of laws and regulations that are applicable to the subject matter. This approach ensures a comprehensive understanding of the legal framework and provides insights into the specific provisions, requirements, and implications of the laws and regulations related to the research topic. By conducting a thorough analysis of the statutes, researchers can gain a deeper understanding of the legal context surrounding the issue being investigated.

The statute approach provides a practical method for researchers to explore the consistency and compatibility between different laws, as well as between laws and the constitution or regulations. By examining these relationships, researchers can identify any inconsistencies or discrepancies that may exist. The findings of such an analysis can serve as arguments or evidence to address the issues at hand. It enables researchers to critically evaluate the legal framework, identify potential conflicts or gaps, and propose solutions or recommendations to resolve the legal issues being studied. This approach contributes to the development of a more coherent and effective legal system.

Results and Discussion

How the validity of the nominee agreement relating to Foreign Nationals with ownership of freehold land is seen from the Civil Code and Basic Agrarian Law

Indonesia provides an interesting empirical context. With its combination of high- and low-density areas, the country is in some regards structurally similar to many African countries. High-density areas are concentrated in the island of Java, whereas other islands, such as Kalimantan, Sulawesi, and Sumatra, have lower densities. Having already achieved a Green Revolution mainly in rice production (concentrated in Java), Indonesia today is at a relatively advanced stage of structural transformation, in which human capital formation and migration out of agriculture are central to the transformation of the economy. More recently, an over all increase in real wages has been encouraging the labor migration and promoting mechanization to substitute for labor in agriculture, mostly among large farmers who can further increase their operational farm size [9].

Nominee agreement has the meaning of an agreement containing a borrowing name between the parties. This agreement is usually carried out between foreigners and Indonesians by borrowing the name of a local citizen but the control of the object remains by the foreigner. This agreement usually relates to Land Rights.

The problem that occurs when many foreign nationals come to Indonesia who have their own goals, such as wanting to invest their business capital in Indonesia by opening a new business in Indonesia and being able to absorb a number of workers in the place of business. When foreigners want to invest in Indonesia, they are obliged to follow the rules that apply in Indonesia. Foreign countries investing in Indonesia must comply with applicable Foreign Direct Investment regulations. Foreign Investment in Indonesia is given a number of certain conditions, namely that foreign investors must have a business that has

been registered, the foreign company is required to have a business in the form of a limited liability company with shareholders in it both company shareholders and individuals and Investors must pay attention to the classification of their business whether the business is open or closed [10].

According to the author, there are regulations regarding the ownership of residential houses for expatriates that must be built on Right of Use. Foreign countries are prohibited from owning land/buildings in Indonesia with freehold status. If there are no restrictions by the government on foreign ownership, it becomes a fear that one day the ownership of land in Indonesia can be controlled by foreign countries and citizens themselves will not be able to enjoy the results. Like colonized in one's own country. This restriction of ownership by foreign countries is in accordance with the principle of nationalism.

Regarding the principle of nationalism also applies to the Indonesian state marrying a foreign country without a marriage agreement, then automatically the foreign country gets an inheritance or mixture of property with its spouse who lives in the Indonesian state, If so, then after the promulgation of the Basic Agrarian Law, the foreign country must relinquish its rights for a period of 1 (one) year since the citizen has obtained his rights, if during that period it has not been done then the land that is the object of mixing property will be regained control by the State and the status of his property rights will also be automatically legally erased [11].

The prohibition on ownership of property rights by foreign countries is then circumvented by the parties by making a nominee agreement. This agreement has not been specifically regulated in any laws and regulations, even in the civil code, for that it is carried out by the parties as an example in the decision of the Denpasar District Court Number 426 / Pdt.G / 2020 / PN Dps.

In the decision of the Denpasar District Court, there is an element of a nominee agreement in it, namely the parties bind themselves to a loan agreement, as collateral then a nominee agreement is made with the title Right to Use Agreement where the agreement contains the transfer of use rights to a piece of land that is the object of dispute. For a more in-depth analysis, the following will be described the nominee agreement arrangements in terms of the Civil Code and Basic Agrarian Law.

According to the author, if reviewed from the Civil Code, the existence of a nominee agreement in the legal system in Indonesia is rarely used by the public in making an agreement, this is because usually the legal subjects in the nominee agreement are foreign nationals and Indonesian citizens, while Indonesian people rarely have contact with foreign nationals except those who do have business

with these foreigners and only certain areas that have business contacts with foreigners, say in the area of Bali where many foreigners come, or settle and even have business on the island of Bali.

The nominee agreement is an alternative to circumvent the laws and regulations in this country, besides that the existence of this agreement is also intended to make it easier for foreign investors to invest in Indonesia. The foreign country is convinced by an agent or local citizen to make this agreement together with the Indonesian state who if he believes to smooth the business path of the foreign country. Sometimes the nominee structure is followed by a debt receivable agreement or other agreement to provide investment security but there are still risks.

Usually this agreement is used for the management of resorts or tourist attractions in tourism areas in Indonesia. The Nominee Agreement is used as a shortcut so that many Foreign Nationals invest in Indonesia, because related to ownership of land rights, it conflicts with regulations contained in the Basic Agrarian Law that Foreign Nationals are prohibited from having land rights in the form of property rights. This type of agreement is widely found in the Bali area [12].

Bali, is one of the islands in Indonesia located between Java Island and Lombok Island. Bali officially became a province in Indonesia in 1958, with its provincial capital being Singaraja. In 1960 the provincial capital of Bali moved from Singaraja to Denpasar. Bali Province consists of the main island and also several small islands around the main island, such as Nusa Penida Island, Nusa Lembongan, Nusa Ceningan, and Serangan Island, in total Bali has 85 islands including islands that have no inhabitants. Bali is famous for having a very exotic natural beauty, because it is surrounded by the sea. The island of Bali is famous for having a very extraordinary sea beauty.

According to the judge's judgment in the district court ruling, it was said that the existence of a nominee agreement was a legal smuggling, for example, if the foreign country laundered money in Indonesia by buying land in Indonesia through an Indonesian citizen he trusted, so technically the foreigner transferred a sum of money to the Indonesian to be used for land purchases which will later also be on behalf of the Indonesian. Then came the Deed of Sale and Purchase and there began to be a nominee agreement for foreigners, mandated the processing of land that actually belonged to the foreigner funds [13].

According to the author, this can be a legal loophole and money laundering media because the Indonesian National Land Agency in matters of buying and selling never asks about the origin of funds obtained for payment for the purchase of buying and selling objects. Many cases like this occur in Bali as an area that

has the main income in the field of tourism. Many foreigners in Bali make ways to circumvent the law in this way, and not a few also turn out that the funds used are the proceeds of money laundering.

According to Article 1320 of the Civil Code, it is stated that an agreement is said to be valid after fulfilling the conditions, one of which is regarding lawful causes, meaning that the substance raised in a nominee agreement does not contain anything good according to law, because from the beginning this agreement was made with the intention to avoid the Basic Agrarian Law relating to the prohibition of control of property rights by foreign countries. In addition, the existence of this agreement also violates the provisions regarding one of the terms of the agreement is said to be valid, namely that there is an object that is agreed. The object in this nominee agreement ultimately falls into the hands of foreign countries, even though in this regulation it is prohibited then the existence of the land will change to its status is a prohibited object, this violates the provisions of the legal terms of the agreement regarding condition number 3, which is the object of the agreement must be in accordance with legal rules.

In this nominee agreement, from the beginning it was made, it did not have good faith because it aimed to cheat or circumvent the legal provisions in the Basic Agrarian Law. So that the element of good faith in this agreement was not fulfilled. So with the description above, it can be said that even in the Civil Code, the nominee agreement does not meet the objective requirements as a condition of the agreement is said to be valid, so this agreement can be null and void because the objective conditions are not met. In addition, the elements of the agreement containing good faith were also not fulfilled, so it can be said that in the Civil Code this agreement is also doubtful of its validity.

The validity of the nominee agreement can also be reviewed from the Basic Agrarian Law. The ownership of a piece of land in the form of property rights by foreigners is a legal mess, considering that this violates the provisions in the Basic Agrarian Law, apa committed by both parties in the case clearly violates the provisions of Article 9 paragraph (1), Article 21 paragraph (1), and Article 26 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, But with the nominee agreement made, it is said that this is a legal smuggling incident.

The law does not know about this type of agreement even the rule of law does not exist until now. The agreement that uses Indonesian citizens as borrowed names by foreigners is an evil agreement because the contents are completely contrary to those stipulated in the Law No. 5 of 1960 Concerning the Basic Principles of Agrarian Regulation.

Based on this, it is concluded that according to the Basic Agrarian Law, the witness of this agreement is invalid because its substance is also intended to avoid the provisions of Article 9 paragraph (1) and Article 21 paragraph (1) concerning regulations regarding foreigners are prohibited from having ownership rights over land in the Indonesian state, because these property rights are rights for Indonesian citizens.

The Role and Responsibility of Notaries in Making Nominee Agreements Relating to Land Ownership Rights to judgments

A notary has the capacity to make regulations on every conduct or contract that is stipulated by the law to be documented into an authentic deed. A notary has the right to make an authentic deed, only if it is demanded by interested parties and not by the demand of the notary himself/herself. A notary is also granted an authority to ensure conducts. These conducts are divided into two types. The first type includes a condition where a notary ensures actual conducts in the making of regular deed; for example the declaration and signing of a deed, the statement of formality regulated in a deed. The second type is where a notary ensures certain conducts separately; an example of this is reports or investigation reports on a stakeholder meeting of a company. The role of a notary as an official has to be based on the oath of notary profession, the Law Number 30 of 2004 concerning Notary Positions which was later updated by Law Number 2 of 2014, and the Code. Article 1 paragraph (1) of the Code states that in carrying out of his/her duty, a notary has to prioritize social service for the nation and the people; while Article 16 of the Law Number 30 of 2004 concerning Notary Positions which was later updated by Law Number 2 of 2014, paragraph (1) point(a) demands a notary to be honest, detailed, impartial, and independent in carrying out his/her duty, in order to protect the legal interests of all parties. Thus, there are two sides in performing the notary profession. First, a notary should be passive by only formulating what is wished by the parties of an agreement into a deed; second, a notary has to be educative and active to ensure a legal protection to every interested parties in the deed [13].

The role of notaries in making nominee agreements between Foreign Nationals and Indonesian Citizens is quite large, because the notary concerned is tasked with making an authentic deed related to the ownership of the land, and the legal product made by this notary is to certify. The action between the two parties is valid in the eyes of the law. In addition, notaries also carry out legal acts for making other authentic deeds in accordance with the will of both parties who are still concerned with the nominee agreement [14].

Notaries in issuing an authentic deed must always pay attention to the limitations in the rules in the community. When a notary drafts a deed, there arises the authority of the notary but there will also arise a legal responsibility carried by the Notary concerned.

Responsibility based on the definition of responsibility is a responsibility that is an obligation that arises to a person based on applicable legal regulations. Notaries in carrying out their duties are also charged with a great responsibility, or responsibility. Responsibility is an expression of responsibility in a broad sense, where the notary charged with this is obliged to carry out his duties based on the provisions of applicable law in Indonesia, if he experiences a claim for compensation, the notary is obliged to compensate in accordance with the agreed nominal.

In the legal world, several theories of responsibility are known according to the versions of some experts, namely the theory of responsibility according to Hans Kelsen and according to Abdulkadir Muhammad. Here the author will focus more on the theory of accountability according to Abdulkadir Muhammad, this is because the theory of accountability according to Abdulkadi Muhammad is considered more in accordance with the application of accountability to notaries in the Nominee Agreement. In the implementation of the duties and positions of an official, the responsibility is also inherent in his position, this also applies to the authority of obligations that are also attached to the official concerned. Notaries are general officials, therefore in carrying out their duties in notaries, responsibilities are also attached [15].

In carrying out the duties of his office, a notary must be based on the provisions in the Notary Office Law. Notaries are responsible for exercising authority in accordance with Article 15 of the Law Number 2 of 2014 concerning the Position of Notary Public, carrying out Notary obligations under Article 16 Law Number 2 of 2014 concerning the Position of Notary Public and making authentic deeds (Notary Deed) in accordance with the provisions of Chapter VII Law Number 2 of 2014 concerning the Position of Notary Public concerning authentic Deeds.

Anominee agreement that is formed, in addition to being made unnotarily can also be done before a notary, the product is in the form of an authentic deed. Actually, notaries have a role to make authentic deeds that are tailored to the wishes of the parties. However, the meaning of according to the will of the parties here is not necessarily interpreted as a freedom that is not based on the rule of law, still what is stated must be adjusted to existing regulations and is obliged to direct the parties so that what is agreed remains based on existing legal rules so that the agreement is made in accordance with the terms of the validity of the agreement [16].

According to the author, the substance in the nominee agreement violates the majority of legal provisions in Indonesia, so this agreement has bad things. The things agreed in this nominee agreement since the beginning of its formation are full of bad intentions because they aim to avoid the provisions in the Basic Agrarian Law. Therefore, an authentic deed containing a nominee agreement can be said that the authentic deed is not a valid agreement, this is because it violates the provisions in the objective conditions, therefore the authentic deed is said to be null and void. An authentic deed with such status has the potential to cause problems one day, even problems that are expected to arise as a result of this are included in an act that violates the law.

Such notary acts according to Hans Kelsen's version of legal liability theory above are included in an act that can be held accountable individually and based on errors, because notaries commit wrong acts from themselves and are done consciously and know if the act is wrong. Meanwhile, according to Abdulkadir Muhammad's theory of responsibility, the notary's actions can be held absolutely responsible, because mistakes made by this notary, whether consciously or unconsciously, intentionally or not, still cause harm to others [17].

If the nominee agreement is proven to be a civil law violation, the notary can be held civilly liable. The form of sanctions that can be imposed on notaries civilly can be in the form of compensation for a certain nominal amount and the deed made will be null and void. Article 16 paragraph (12) of Law Number 2 of 2014 concerning the Position of Notary Public contains a type of legal responsibility imposed on notaries who commit violations. The regulation stipulates that Notaries who violate their duties and positions or related to the nominee agreement can be subject to a civil sanction in the form of compensation for the principal and interest in accordance with the agreement of both parties, in addition to the provision of civil sanctions can be imposed together with administrative sanctions against the notary concerned.

The sanctions provided by paragraph (12) are civil sanctions, civil sanctions are different in application from administrative sanctions. In civil sanctions it is possible for a notary who incurs a loss to make compensation against the injured party. Although this rule is not clearly regulated in Article 41 of the Law Number 2 of 2014 concerning the Position of Notary Public, if the party who feels aggrieved due to an authentic deed of legal product from the Notary, the party can claim compensation, while the authentic deed made before a notary will change status to an underhand deed. When the injured party claims a compensation, the notary concerned is obliged to account for his actions by fulfilling the claim for compensation.

Article 1243 of the Civil Code stipulates that in an engagement if the implementation arises a loss received by one party, then the party who feels aggrieved has the right to claim compensation against the other party. It is an obligation for the party who caused the loss in the engagement to compensate the amount of the value of the loss suffered by the other party. The total value depends on the results of each party's discussion.

This nominee agreement violates several legal rules in Indonesia, notaries should be recognized as legal milestones in Indonesia knowing that this agreement is prohibited by law. When the notary knows that this agreement is prohibited but the notary does so anyway, it means that it can be said that the notary facilitates an unlawful act to be committed by the parties. If it is prohibited, the notary should not facilitate it, if it continues to do so, the notary is said to participate in doing.

Conclusions

The applicable legal provisions regarding the creation of a nominee arrangement by a notary are generally allowed in formal legal terms, especially in shareholder agreements. However, when it comes to land ownership within the country, the creation of a nominee arrangement (nominee arrangement) by a notary is considered an act of circumventing agrarian laws, and nominee agreements related to land ownership are prohibited by the law. Foreigners are not allowed to have land ownership rights, and any violation of this provision carries the legal consequence of nullity. Nevertheless, the law does provide opportunities for foreigners and foreign legal entities to have rights over land, limited to the rights of building use, business use, and leasehold. The nominee agreements made between foreign citizens and local residents are based on false causa, meaning that the agreements are made under the pretense of hiding the true causa, which is not permitted. Thus, nominee agreements are invalid because they contravene the provisions of the laws and regulations, specifically Article 21 Paragraph (1) and Article 26 Paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles. Consequently, nominee agreements are null and void from a legal perspective and lack the binding force of law.

The responsibilities of a notary in the creation of deeds are generally associated with legal sanctions. In the case of the creation of a nominee arrangement, these sanctions can be categorized into three types of accountability: civil liability, criminal liability, and responsibility under the notarial code of ethics. Civil liability can be sought against a notary who commits unlawful acts, based on the provisions of Article 1365 of the Civil Code. In this case, the notary is obligated to compensate for all damages arising from the unlawful acts committed by the

notary. Criminal liability can be pursued against a notary who forges a document or instructs someone to insert false information into an authentic deed, according to the provisions of Article 266 of the Criminal Code. A notary who engages in document forgery can be subject to criminal prosecution or imprisonment. Responsibility under the notarial code of ethics can be sought against a notary who acts negligently or intentionally violates the provisions of Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notarial Code of Ethics. Violation of these provisions can result in sanctions such as reprimands, warnings, temporary dismissal from association membership, expulsion from association membership (onzetting), or dishonorable discharge from association membership. It is important to note that the specific consequences and penalties for notaries may vary depending on the jurisdiction and the specific circumstances of each case.

Recommendations

The advice that can be given related to this conclusion is to avoid the practice of name lending agreements or nominee agreements in owning land title because such actions can harm many parties and violate the law. If you are involved in such an agreement, it is best to immediately stop such actions and consult a legal expert to find out legal alternatives to owning title to land. In addition, the notary engaged in the conclusion of such an agreement must also be responsible for his actions and take the necessary measures to correct the error. This can be done by sanctioning notaries or parties involved in making the agreement and resolving losses arising from the practice of name lending agreements or nominee agreements.

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