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ACCOUNTABILITIES AND LEGAL CONSEQUENCES FOR NOTARIES CREATING NOMINEE AGREEMENT DEEDS ON LAND

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ABSTRACT

Ownership of land rights in Indonesia could solely owned by Indonesian citizens or legal entities which determined by the Indonesian Government. Based on the practice, there are lots of legal smuggling in the making of a nominee agreement by a Notary. The nominee agreement is a name-borrowing agreement, which commonly consist of the foreign citizens measures in borrowing the names of Indonesian citizens to conduct sale and purchase transactions for proprietary land. Through the nominee agreement, it is stipulated that the status of the land in the land book and certificate of property rights is registered in the name of an Indonesian citizen, yet the ownership or control remains with a foreign citizen. This study aims to examine the validity of the nominee agreement as a form of foreign ownership at once to find out the form of accountabilities and legal consequences for the concerned Notary whose composed the nominee agreement. This research refers to the Decision Number 45/Pdt.G/2020/PNTpg. It uses normative legal research methods, and the type of approach to case legislation is in the form of decisions. Based on the results of this study, it is shows that there are lots of legal smuggling in the making of a nominee agreement by a Notary. The nominee agreement has indirectly violated the provisions of Article 26 Paragraph (2) of Law Number 5 of 1960, since there has been a transfer of ownership in the form of property rights to foreign citizens, and as confirmed on Article 21 Paragraph (1) of Law Number 5 of 1960, only Indonesian citizens have the right to own property rights. As known, foreign citizen may only have usufructuary rights and rental rights. Therefore, the nominee agreement has no legal force at all.

Keywords: *Nominee Agreement; Notary Accountabilities; Land Ownership*

INTRODUCTION

As one of the archipelagic states which located in Southeast Asia, Indonesia throughout its diverse geographic and astronomical positions lead to the sort of different traits in each island, consisting the variety of soil types, rainfall, climate, and so forth. These range of divergency carries the merits of Indonesia as a country with abundant in natural resources such as fertile land, abundant water, diverse both flora and fauna, underwater riches, prospect mining products, and other variety of resources which basically transform this country as internationally recognized potential nation. These assortments of natural resources were the most beautiful blessing that God has bestowed upon all of us who are born in Indonesia, so

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this condition is worth to grateful for and shall be preserved together.[1] The abundance of such richness has resulted in many foreign citizens desiring to move to Indonesia, either to settle down or simply to make use of the land for various purposes.

National regulation in regards with land in Indonesia is fundamentally governed through Law Number 5 of 1960 Concerning Basic Agrarian Principles, or hereinafter mentioned as UUPA. From this point onwards, it regulates various sort of land rights, including ownership rights, land-use rights, building-use rights, usage rights, leasing rights, land opening rights, forest produce collection rights, and so on. The both of Article 20 and Article 21 defined the privileges granted to Indonesian citizens, namely the right to own land. Ownership rights are the strongest, fullest, and hereditary rights over land, which can only be possessed by Indonesian citizens. As known, foreign nationality which residing in Indonesia are only allowed to have usage rights and leasing rights.[2]

In terms of the statement on Article 52 which are mentioned within Government Regulation Number 18 of 2021 Concerning Management Rights, Land Rights, Apartment Units, and Land Registration, usage rights for foreign citizens are possible to be granted in the form of usage rights over both of the state-owned land and managed land for a maximum period of 30 years, extendable for up to 20 years, and renewable every 30 years. Additionally, usage rights over ownership land probably can be granted for a period of 30 years and are renewable. Lease rights for foreign citizens are also granted for a specific period according to the lease agreement.

Thereafter, in order to the provision of renewal, the restriction on land ownership rights for foreign nationality requires them to extend their rights in order to continue utilizing their land in Indonesia. This is frequently seen as a barrier for foreign citizens, leading them to seek the other method in reaching absolute ownership of land in Indonesia. Common method which mostly used is through the process of agreement establishment which contributing the third-party in conducting land transaction, it is called as *Nominee* Agreement. This sort of agreement is a form of bypass to the legal restriction on land ownership by foreign citizens, consisted of certain activity of name borrowing, which dominantly experienced between a foreign citizen, using the name of Indonesian citizen, which by the following *Nominee* Agreement registered as the owner of the property. Wherein the land is registered under the name of the Indonesian citizen while the ownership remains with the foreign citizen.[3]

Establishment of the *Nominee* Agreement is done under the guise to avoid the violation of Article 21 of the UUPA. The agreements itself are possible to made in the form of private agreements yet potentially assigned by Notary. In the process of establishing the agreement, the parties usually involved a Notary, which is closely related to the role of the Notary as a state official who has the authority to create an authentic deed. In regards with the provision on Article 1868 of The Indonesian Civil Code, an authentic deed prescribed by law or before a public official who has the authority in that matter, at the place where the deed is made. An authentic deed has perfect evidentiary power indeed. In practice, the Notary legalize the creation of nominee agreements and proceed to create the desired authentic deed, such as a deed of sale.[4]

This kind of agreement is considered as legal loophole, oftentimes leads to the amounts of internal conflicts, such as one of which involves Indonesian citizens who claim ownership of

[1] Nyoman Ayu Putri Lestari. (2021). *Modul Pendidikan Kewarganegaraan untuk Perguruan Tingg*i. Bali: Nilacakra, p. 19-20.

[2] I Wayan Pebriyana, I Nyoman Putu Budiartha dan I Putu Gede Seputra. (2020). "Penguasaan Hak Atas Tanah Oleh Orang Asing Berdasarkan Perjanjian Pinjam Nama (Nominee)". *Jurnal Analogi Hukum,* 2(3): p. 329.

[3] Annisa Maudi Arsela dan Febby Mutiara Nelson. (2021). "Perjanjian Nominee Dalam Hukum Pertanahan di Indonesia". *Jurnal Pakuan Law Review,* 7(2): p. 506-507.

[4] Yosia Hetharie. (2019). "Perjanjian Nominee Sebagai Sarana Penguasaan Hak Milik atas Tanah oleh Warga Negara Asing (WNA) Menurut Kitab Undang-Undang Hukum Perdata". *Jurnal SASI*, 25(1): p. 27.

the land based on their names being recorded in the certificate of land ownership supported by a deed of sale, disregarding the previously made *Nominee* Agreement. This undoubtedly disadvantages foreign nationality who have invested their funds in the purchase of the land. Similarly, the issue stated by Decision Number 45/Pdt.G/2020/PNTpg which in regards with the case of foreign nationality establishing the *Nominee* Agreement. It started when a Dutch nationality named Dr. Mar Van Loo, or hereinafter referred as the Defendant I, arrived in Tanjung Pinang in 1966 as a tourist. Upon his arrival in Indonesia, he expressed the desire to own land in Indonesia, but preferred to have full ownership rights due to the absence of a renewal or extension period for the rights.

Due to his inadequacy of legal procedures, Defendant I is surely has limited capacity to own property based on the provision of Article 21 of the UUPA. From this point onwards, he then invited Dodi Usman, or hereinafter referred to as the Plaintiff, as a trusted Indonesian with the registered citizenship to formed the *Nominee* Agreement. On November 10th, 2001, the Plaintiff was instructed by Defendant I to purchase a plot of land, which within this case as the disputed object, from Herry Julinus, located at Jalan Malang Rapat RT 003 RW 001, Desa Malang Rapat, Kecamatan Gunung Kijang, Kabupaten Bintan. The object was measured as 20,000 square meters (twenty thousand square meters) with evidence of ownership in the form of Certificate of Land Ownership Number 1438 dated October 4, 1988, with the following boundaries: on the west side, it borders the road; on the east side, it borders Bandono Budiman; on the north side, it borders Mrs. Lily; on the south side, it borders Bandono Budiman/Mrs. Lily. The land was purchased in the name of the Plaintiff, as stated in Deed of Sale Number 333/III/41/AR/2001 dated November 10th, 2001, using funds provided entirely by Defendant I.

In relation to the land purchase, the Plaintiff was instructed to sign a declaration which dated as mentioned, prepared and notarized by Notary H. Abdul Rahman, S.H., or hereinafter referred as Defendant II, which essentially stated that the Plaintiff had indeed purchased the disputed land using funds provided by Defendant I, and Defendant I is the rightful owner of the disputed land. On the same date, the Plaintiff granted power of attorney to Defendant I for the purposes of selling based on the Power of Attorney for Sale Number 34, donating based on the Power of Attorney for Donation Number 35, and handling based on the Power of Attorney for Processing Number 36, either a portion or the entirety of the disputed land, with said power of attorney executed before Defendant II as the Notary. Defendant I also instructed Elias Ola Perlolon, or hereinafter referred as Co-Defendant, to possess, manage, and secure the said disputed land.

Thereafter, on July 3rd, 2020, the Plaintiff filed a lawsuit with the Clerk of the Tanjung Pinang District Court, and the complaint was received and registered on July 6th, 2020. Juridical basis which applied on the lawsuit is to declare that the actions of the Defendants and Co-Defendant constitute unlawful acts, as concerning to the Plaintiff, they are the rightful owner of the disputed land since their name is recorded in the certificate of land ownership. In regards with the statement of Defendant I which claiming the ownership of the land through *Nominee* Agreement made between the Plaintiff and Defendant I, the Plaintiff argues that such agreement is not valid and not legally binding due to Article 21 Paragraph (1) of the UUPA which mentioned that the ownership rights of the land in Indonesia absolutely shall be owned by Indonesian citizen, while by this case, Defendant I is a foreign national of Dutch nationality.

The Plaintiff also believes that the actions of Defendant II in notarizing the declaration and creating the power of attorney are also unlawful acts under Article 21 of the UUPA. Therefore, the Plaintiff requests the Panel of Judges of the Tanjung Pinang District Court to declare the declaration and power of attorney null and void. Based on this condition, the further issues which probably arise concerning to the sort of the validity of *Nominee* Agreement as a form of

ownership for foreign nationals and indeed the kind of accountabilities and consequences for notaries who create nominee agreements.

METHOD

This study applied normative legal research method which refers to the type of research that relies on legal norms in the form of legislation and court decisions.[5] This method purposed to analyze legal issues by relating them to legal norms and rules. The author chose this research method to analyze the validity of *Nominee* Agreements as a form of foreign ownership, both the accountabilities and consequences of notaries who create such agreements, in relation to applicable legislation, particularly the UUPA and the The Indonesian Civil Code.

Regarding to the study, type of approach used is case study approach, which run by analyzing the court decisions. The main goal of this approach is to involves a thorough and systematic inquiry or assessment of real cases that occur in society in connection with applicable legislation. The legal sources used in this research consist of primary legal materials in the form of legislation arranged according to the hierarchy of legislation, namely:

1. The 1945 Constitution of the Republic of Indonesia;
2. The Indonesian Civil Code;
3. Law Number 5 of 1960 Concerning Basic Agrarian Principles;
4. Law Number 30 of 2004 Concerning the Position of Notary, as amended by Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary; and
5. Notary Code of Ethics.

While the secondary legal materials used includes books, scholarly journals which still in the range of the research topic, and tertiary legal materials such as dictionaries and websites. The method of legal analysis used in this research is a normative analysis method using legal interpretation or legal construction. This is done to uncover and provide meaning to the existing phenomena.[6]

ANALYSIS AND DISCUSSION

The validation of *Nominee* Agreement as a form of land ownership in Indonesia by foreign citizenship

Based on the provisions on Article 1313 of the The Indonesian Civil Code, agreement is an act that creates a binding relationship between one or more individuals. According to Subekti, it is consisted by an act of agreement between one person and another, to mutually achieve a specific goal.[7] Article 1320 of the The Indonesian Civil Code governs the four essential requirements for a valid agreement, which are as follows:

1. Consensus[8]

The parties to the agreement shall be attained a mutual understanding and have agreed upon the essential terms which are set forth in the agreement. The context of agreed as said means that there is no fraud or an intentional act of presenting false facts with the purpose of

[5]Kornelius Benuf dan Muhamad Azhar. (2020). "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Jurnal Gema Keadilan,* 7(1): p. 23-24.

[6]Muhammad Rijal Fadli. (2021). "Memahami Desain Metode Penelitian Kualitatif". *Jurnal Humanika,* 21(1): p. 35.

[7]Hartana. (2016). "Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara)". *Jurnal Komunikasi* Hukum, 2(2): p. 156.

[8]Frans Satriyo Wicaksono. (2008). *Panduan Lengkap Membuat Surat-Surat Kontrak.* Jakarta : Visimedia, p.8-9.

achieving an agreement and benefiting one party; mistake, where the parties in the agreement present incorrect facts; coercion, a condition in which one party in the agreement is compelled to accept the agreement under certain threats; and undue influence, that shows a condition in which one party agrees to the agreement by assuming a risk due to the absence of other options at that time, when the party could have chosen otherwise.

2. Legally capable[9]

The parties to the agreement indicate that all necessary conditions as legal subjects have been met. Each of them is not classified into the category of minors, individuals under guardianship, or those with mental illness. According to the The Indonesian Civil Code, legal age basically means as being 21 years old or being married. Several things which classified as legal age: firstly, full legal age which means reaching the age of 20 and submitting an application to the head of the state court which further giving consequences in legal status as an adult; secondly, limited legal age, which imply reaching the age of 20 and submitting an application to the head of state court, hereafter giving result in legal status as an adult for specific acts.

3. Certain acts[10]

Stated object in the agreement shall be clear, explained in detail, and determinable in order to provide certainty or assurance to the parties involved in the agreement.

4. Legally valid clause[11]

The agreement shall be confirmed that it is not consist any negating elements of the prevailing laws and regulations, public order, and morality. Article 1336 of the The Indonesian Civil Code arranged the valid consideration which said that if there is no specific consideration is mentioned but there is a valid consideration or other specified consideration, the agreement is considered as valid. Article 1337 of the The Indonesian Civil Code is indeed regulates prohibited consideration, which is deemed invalid if it contradicts the laws and regulations, morality, and public order.

In field of practice, there is a term called *Nominee* Agreement. The word *nominee* originates from Latin and means under the name or by appointment. This agreement commonly known with the name of Lending Agreement, which defined as an agreement whereby dominantly a foreign nationality, agreed to each other to use the name of the Indonesian citizen, to carry out land transaction and any other associated matters. This means that the land, as recorded in legal terms, is registered under the name of the Indonesian citizen, while the ownership remains with the foreigner. The individual borrowing the name of another person is referred to as the beneficial owner, while the person whose name is being borrowed is referred to as the *nominee*.[12]

If it is then associated with Decision Number 45/Pdt.G/2020/PNTpg., it is known that the Defendant I invited the Plaintiff to establishing the *Nominee* Agreement, whereby the Plaintiff was directed to purchase a disputed object from Herry Julinus as said previously using the Plaintiff's name as the registered ownership of the land yet the payment is entirely done by the funds from Defendant I. The mentioned agreement was formed and through the process of *waarmerking* by the Defendant II. Throughout the substance of the *Nominee* Agreement,

[9]Devy Kumalasari dan Dwi Wachidiyah Ningsih. (2018). "Syarat Sahnya Perjanjian Tentang Cakap Bertindak Dalam Hukum Menurut Pasal 1320 Ayat (2) KUH Perdata". *Jurnal Pro Hukum,* 7(2): p. 6.

[10]Henry Halim. (2018). "Asas Keadilan Dalam Syarat Sahnya Perjanjian Dalam Pasal 1320 KUH Perdata". *Jurnal Ilmu Administrasi Negara dan Bisnis,* 3(2): p. 8.

[11]Endi Suhadi dan Ahmad Arif Fadilah. (2021). "Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen". *Jurnal Inovasi Penelitian,* 2(7): p. 1969.

[12]A.A. Ratih Saraswati dan I Ketut Westra. (2018). "Perjanjian *Nominee* Berdasarkan Hukum Positif Indonesia". *Jurnal Ilmu Hukum*, 4(2): p. 5.

it is clearly stated that the Plaintiff actually purchasing the disputed land using funds from Defendant I, and Defendant I is the owner of the disputed object.

Based on the establishment of the *Nominee* Agreement, Defendant II as the on-duty Notary, by the request of Defendant I, prepared several authentic deeds, which consist of:

1. Power of Attorney for Sale dated November 10th, 2001, Number 34 (Evidence TI and TT-2);
2. Power of Attorney for Donation dated November 10th, 2001, Number 35 (Evidence TI and TT-3); and
3. Power of Attorney for Handling Affairs dated November 10th, 2001, Number 36 (Evidence TI and TT-4).

It is clearly known that these theree powers of attorney documents were prepared by Defendant II for the benefit of Defendant I and the Plaintiff, where the Plaintiff respectively granted the power to sell, donate, and handle the disputed subject matter to Defendant I.

If these circumstances subsequently laid as the cornerstone, it is illustrated that the *Nominee* agreement between the Plaintiff and Defendant I clearly violated the provisions of the applicable laws and regulations in Indonesia. Firstly, it contravenes the statement of Article 21 Paragraph (1) of the UUPA, which obviously states that only Indonesian citizens are entitled to ownership rights. According to Article 26 Paragraph (1) of Indonesian Constitution, Indonesian citizens refers to the individuals with pure Indonesian nationality, or indeed known as indigenous and individuals of other nationalities who have been lawfully recognized as Indonesian citizens according to the provisions of the law. It is proven to be true that Defendant I is a citizen of the Netherlands based on the information filled via his Identity Card Number S2711742B, on behalf of Marc Paul Josef Van Loo (Evidence TI and TT-1a), who is based on Indonesian law are not entitled to own land in the form of ownership rights in Indonesia.

Secondly, this agreement implies an infringement of Article 26 Paragraph (2) of the UUPA, which mentioned that sort of legal actions as well as buying, exchanging, donating, testament granting, and any other actions that directly or indirectly aim to transfer ownership rights in the form of ownership to foreign citizens, dual citizens of Indonesia, or legal entities designated by the government, shall be void and the land shall revert to the State. However, the rights of other parties encumbering the land shall remain in effect, and any payments received by the owner cannot be claimed back.

In the context of Article 1792 on the The Indonesian Civil Code, granting power of attorney is a form of agreement which giving authority to another person, in the terms of carrying out specific purposes on behalf of the grantor. Granting power of attorney shall be clearly mentioned in a written or oral agreement, including authentic deed and private deed.[13] In the case at hand, it is known that the three powers of attorney were made by the Defendant II, who accountably held a role as a Notary, authorized to create an authentic deed, explicitly stating that the grant of authority has occurred for the sale, donation, and handling of the disputed object from the Plaintiff to the Defendant I who happens to be a foreign citizen. This fulfills the requirements of Article 26, Paragraph (2) of the UUPA, which covers legal actions such as buying and selling, donating, and acts that directly transfer ownership rights to foreign citizens.

Thirdly, it failed to comply one of the elements of the agreement, which is a valid cause. If we pointed to the case examined case, it is described that the *Nominee* Agreement between the Plaintiff and the Defendant I was made in the intention of transferring ownership rights to a foreign citizen, thereby violating the provisions of regulations, namely Article 21, Paragraph (1) and Article 26 Paragraph (2) of the UUPA. Lastly, it contravenes the substance of Article

[13]A.A Gede Cahya Pratama, I Nyoman Sumardika dan I Wayan Arthanaya. (2020). "Tinjauan Yuridis Terhadap Kuasa yang Diberikan WNI Kepada WNA Untuk Mengalihkan Hak Atas Tanah". *Jurnal Konstruksi Hukum,* 1 (1): p. 4.

1338 of the The Indonesian Civil Code concerning freedom to contract, as said it was made in bad faith to contravene the regulations in Indonesia.

The validity of this agreement as a form of foreign ownership is invalid, and even void, due to the fact that the agreement is prohibited by legal regulations in Indonesia, particularly the UUPA as the fundamental for national land regulation.[14] The *Nominee* Agreement made will undoubtedly be detrimental to both parties involved and the state indeed. The land subject to this agreement will be possessed by the state, and the Defendant I as a foreign citizen will suffer losses by providing funds for an illegal land transaction without receiving any benefits in return.

On-duty notary's accountability and consequences in creating *Nominee* Agreement

Notary known as an official who authorized to perform certain legal functions, primarily related to the certification and authentication of documents, such as creating an authentic deed and other crucial role in promoting the enforceability of relevant laws and regulations.[15] In performing their role to creating an authentic deed, a notary is also obliged to adhere to the requirements stated in Article 1320 of the The Indonesian Civil Code, such as:[16]

1. Consensus: means that the parties agree to the content of the agreement made without any coercion or other undue influence by furtherly appear before the notary. The appearing parties shall be known by the notary by firstly presenting their identification, such as an Identity Card, or by being introduced to the notary.
2. Legally capable: means that when the appearing parties come to forms a deed, the notary is obliged to check the competence of the parties through their identification, where the appearing party or the identity stated in the deed shall correspond to the identification document.
3. Certain acts: means that the notary must ensure that the object mentioned in the agreement is clear, detailed, and determinable. This is necessary to provide certainty and assurance for the parties involved in the agreement.
4. Legally Valid Clause: means that the Notary must ensure that the content of the deed created does not contradict applicable laws and regulations, public order, and morality.

Agreements are divided into two categories, the first one stood as named agreements and the second one known as unnamed agreements. Named agreements are those clearly-defined consent regulated in Book III of the The Indonesian Civil Code, the Commercial Code, and other specific laws. The examples of named agreements includes sale and purchase agreements, lease agreements, barter agreements, and so forth. While the unnamed agreements are those which are not precisely stated in a regulation, such as profit-sharing agreements, franchise agreements, and so on.[17] One of the mostly-known unnamed agreement is a *Nominee* Agreement. As roughly said, a *Nominee* Agreement is a form of legal smuggling since it involves the transfer of ownership rights, specifically ownership rights to foreign nationality. This is forbidden as foreign nationality are not allowed to have ownership rights, as stated in Article 21 Paragraph (1) of the (UUPA).

14 Ni Made Dinda Meisya Saraswati dan Anak Agung Sri Indrawati. (2022). "Kekuatan Hukum Perjanjian Nominee Dalam Kepemilikan Tanah Oleh Orang Asing Berdasarkan Peraturan di Indonesia". *Jurnal Kertha Wicara,* 11(3): p. 677.

15 Edwar, Faisal A. Rani dan Dahlan Ali. (2019). "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep *Equality Before The Law". Jurnal Hukum dan Pembangunan,* 49(1): p. 181.

16 Endah Pertiwi. (2018). "Tanggungjawab Notaris Akibat Pembuatan Akta *Nominee* yang Mengandung Perbuatan Melawan Hukum oleh Para Pihak". *Jurnal IUS,* 6(2): p. 248.

17 Azahery Insan Kamil, Pandji Ndaru Sonatra dan Nico Pratama. (2014). "Hukum Kontrak Dalam Perspektif Komparatif (Menyorot Perjanjian Bernama dengan Perjanjian Tidak Bernama)". *Jurnal Serambi Hukum,* 8(2): p. 147.

Through the Decision Number 45/Pdt.G/2020/PNTpg., it is known that Defendant II, knowingly created and do the process of *waarmerking* to a statement letter dated November 10th, 2001, which essentially stated that the Plaintiff had indeed purchased the disputed object using money from the Defendant I, and he was the owner of the said disputed object. Subsequently, the Defendant II then created power of attorney documents in which the Plaintiff granted authority to the Defendant II, a foreign nationality, to sell, donate, and handle the disputed object by (Power of Attorney Letter Number 34, Evidence TI and TT-2), donation (Power of Attorney Letter Number 35, Evidence TI and TT-3), and handling (Power of Attorney Letter Number 36, Evidence TI and TT-4). The actions of the Defendant II as a Notary undoubtedly violated the provisions of the applicable legislation, which consist of:

1. Law Number 30 of 2004 Concerning the Notary Profession, as amended by Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Notary Profession
   a. Article 4, in the connection to the oath of a notary. Regarding to the case, Defendant II did not comply with the provisions of the applicable laws and regulations, specifically to the Indonesian Constitution, Article 21 Paragraph (1) UUPA, Article 26 Paragraph (2) UUPA, Indonesian Law Concerning Notary Profession or hereinafter called as UUJN, and the Notary Code of Ethics. Defendant II did not fulfill the duty of honesty in carrying out the profession since they were aware that the deed they made constituted as a violation of the law. Defendant II also failed to fulfill their obligations according to the professional code of ethics, honor, dignity, and accountability as a Notary.
   b. Article 15 Paragraph (2) Letter e. In relation to the case, Defendant II as a Notary shall provide legal advice to the parties involved, informing them that the deed they were going to make violated the law, and if Defendant I as a foreign nationality wanted to use land in Indonesia, they should do so through officially permitted rights such as right of use and leasehold. Defendant II indeed should notify the parties involved that the risks of making the *Nominee* Agreement not only affect them but also the disputed object, which would be transferred to the State, and the notary themselves as a public official entrusted by the community to create authentic deeds.
   c. Article 16 Paragraph (1) Letter e and Article 17 Letter i. It has been explained that as a public official, the notary has an obligation to refuse work or provide services that contradict to norms, ethics, decency, and may affect the quality, honor, and dignity of the notary.

2. Notary Code of Ethics

Article 3. Defendant II as a notary has violating the Code of Ethics by failing to demonstrate honesty, trustworthiness, and accountabilities towards the laws and the content of the notary's oath of profession.

The actions taken by Defendant II who knowingly and intentionally made the *Nominee* Agreement can be classified as an unlawful act. Unlawful acts are regulated by Article 1365 of the The Indonesian Civil Code, which states that any act that causes harm to another party requires the party at fault to compensate for their actions. It is known that there are five elements of an unlawful act, which are as follows:[18]

1. Existence of an act: Act basically turn into the initial occurrence of the unlawful act, which can be categorized as doing something or refraining from doing something. In this case,

[18]Indah Sari. (2020). "Perbuatan Melawan Hukum (PMH) dalam Hukum Pidana dan Hukum Perdata". *Jurnal Ilmiah Hukum Dirgantara,* 11(1) : 67-68.

Defendant II through his role as a notary did a fundamental component which is interpreted as unlawful act by creating an authentic deed in accordance with their obligations under the UUJN.

2. The act is against the law: This part refers to an act which are violates the provisions of applicable laws and regulations, breaches the legal obligations of the perpetrator, or violates moral standards. In this case, Defendant II as a Notary was fully aware that creating the *Nominee* Agreement was a violation of the law, specifically violating Article 26 Paragraph (2) of the UUPA.
3. The presence of fault: In this case, Defendant II as a Notary possesses extensive knowledge regarding the creation of various types of agreements, both named and unnamed agreements. Defendant II was well-aware from the beginning that creating this sort of agreement classified as legal violation. Therefore, they committed an intentional fault (not negligence or justifiable or excusable reasons).
4. The presence of harm: The legal act performed by Defendant II as a Notary in creating the *Nominee* agreement has clearly caused harm, primarily to the State and the Indonesian society. This is because the State has established regulations prohibiting foreign nationals from owning property rights. This is intended to protect the interests and welfare of all Indonesian citizens. The accountabilities for the damages caused by the actions and negligence of Defendant II as a Notary is also regulated under Article 1366 of the The Indonesian Civil Code.
5. The connection between the act and the harm: The actions of Defendant II as a Notary in creating the *Nominee* agreement have resulted in harm to the State and the Indonesian society.

The consequences of the actions taken by the Defendant II as a Notary in creating a *Nominee* Agreement can result in the following forms of accountability:

1. Civil liability: Based on the principle, the Defendant II, as a Notary, can be sued to pay compensation for the damages caused by the *Nominee* Agreement;
2. Administrative accountability: The actions of the Defendant II can lead to administrative sanctions, including verbal or written warnings, temporary suspension, honorable discharge, or dishonorable discharge (including expulsion from the Indonesian Notary Association);
3. Criminal liability: The Defendant II can be prosecuted on the basis of criminal offenses such as fraud refers to Article 378 of The Indonesian Criminal Code and forgery based on Article 263 of The Indonesian Criminal Code due to knowingly creating an agreement that is clearly prohibited by the laws and regulations in Indonesia.

CONCLUSION

The *Nominee* Agreement is an agreement which in significant extent held by a foreign nationality, using the name of another person which dominated by Indonesian citizen, to carry out certain actions, usually for the purpose of buying or selling land and the assets on it. Legally, the land is registered under the name of an Indonesian citizen, but the ownership remains with the foreigner. In Indonesia, this agreement considered as a form of legal smuggling in regards with the statement on Article 21(1) of the (UUPA) which mentioned that only Indonesian citizens are entitled to the ownership rights, while foreigner are only permitted to have rights of use and lease. Article 26 (2) of the UUPA prohibits legal actions aimed at transferring ownership rights in the form of property to foreign nationality since it will lead to the consequences of land restoration to the state. Therefore, the validity of a *Nominee* Agreement as a form of ownership

for foreign nationals has no legal force whatsoever, as it is prohibited by Indonesian laws and regulations, especially the UUPA, which is the foundation of land regulation in Indonesia.

A notary is an official who held the authority to create authentic deeds and perform other duties as prescribed by relevant laws and regulations. In the process of forming an authentic deed, they shall be exercising due diligence, means that the deed must meet the requirements for a valid agreement. The actions of a notary in creating a *Nominee* Agreement clearly violate the provisions of Article 4, Article 15 (2)(e), Article 16 (1)(e), and Article 17 (i), as well as the Code of Ethics for Notaries. A Notary can also face a claim for wrongful act under Article 1365 of the Indonesian Civil Code. The consequences of creating a nominee agreement can hold the notary accountable both civilly, criminally, and administratively.

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