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Notary Responsibilities in the Making of Nominee Arrangement by Foreign Citizens Related to the Ruling of the Laws of Land in Indonesia

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ABSTRACT

The nominee agreement made by a notary public can be said to be a form of legal smuggling that is commonly used in the context of owning land rights by foreign parties. The existence of this nominee agreement in practice is related to the principle of justice given the interests of the parties involved in it. Basically, a nominee agreement is intended to give all authority that may arise in a legal relationship between the party granting authority over a piece of land that according to national land law cannot be owned by a foreign party which is then given to the native population as the recipient of the power of attorney.

The issues raised in this study, namely how the applicable legal provisions related to the making of a name and notary loan, notary responsibility in making a deed is generally associated with legal sanctions in the making of a loan name deed, and the legal consequences arising related to the drafting of the nominee agreement ownership of land rights between local residents and foreign citizens.

KEYWORDS: *Agreement, Borrowing Names, Land, Foreign Residents*

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I. INTRODUCTION

A. Background

Land ownership rights are very important for the state, nation and people as a developing society towards industrial development. Land which is a basic need for humans will be faced with various things such as limited land both in quantity and quality compared to the needs that must be met. Land on the one hand has grown as a very important economic object and has grown as a business material and an object of speculation, on the other hand must be used and utilized for the maximum welfare of the people.

The entire territory of Indonesia is the unity of the land of the people. This principle only gives rights to the community in ownership of land rights, it is possible for foreign citizens to own it. It is clear that certain land ownership rights in Indonesian territory are only for community members. This provision states that only Indonesian citizens can have a full relationship with the earth water and space within the limits of the provisions that have been set.

National land law does not allow foreign nationals to have ownership rights to land in Indonesian territory, and only Indonesian citizens are entitled to own land with ownership rights in all territories in Indonesia. Provisions on the principle of nationality or the principle of nationality provide restrictions on the traffic of this land which results in different treatment of land and non-land objects.

Foreign citizens and foreign investors who are domiciled in the territory of Indonesia are only granted usufructuary rights, where such conditions make the parties concerned look for a way to get around this matter. The method is then used by entering into a nominee agreement between a native citizen and a foreign national, namely by using the name of another party who is a native citizen designated as a nominee to be registered as the owner of the land.

The problem of land availability during development is very broad and involves many aspects of human life that are political, legal, social and economic, in which every development requires land, either as a factor of production or as a space for businesses or settlements. The increasing population, also the increasing amount of development, will also increase the need for land, in terms of land area (area) in a country is very limited, and in the context of national development today, it seems that land issues require the attention and handling of various parties, because in such a situation it is felt once more and more the amount of people's land is involved in various economic activities, so that in relation to this matter the longer the need for a certainty of certainty of land rights is felt.

Notary public is a public official (openbare ambtenaren), because it is closely related to the main authority or duty and obligation which is to make authentic deeds. In addition to

the notary public, the official officials who are authorized to make an authentic deed are burgerlijke stand's soul register employees, deurwaarder bailiffs, judges, court clerks and others.

The nominee agreement made by a notary public can be said to be a form of legal smuggling that is commonly used in the context of owning land rights by foreign parties. The existence of this nominee agreement in practice is related to the principle of justice given the interests of the parties involved in it. Basically, a nominee agreement is intended to give all authority that may arise in a legal relationship between the party granting authority over a piece of land that according to our land law cannot be owned by a foreign party which is then given to the native population as the recipient of the power of attorney.

The Anglo-Saxon legal system recognizes this agreement with the term nominee or better known as the loan name, where the nominee is:

1. A person who is proposed for an office, position or duty.
2. A person is appointed to act in a place of another, usually in a very limited way.
3. A party who holds legal titles for benefits of others or who receives and distributed funds for the benefits of others.

The definition or definition of the nominee trust itself is as follows:

1. A Trust in which the beneficiaries have the power to direct the trust's action regarding the trust property.
2. An arrangement for holding little to real property under which one or more persons or corporations, under a written declaration of trust declares that they will hold any property that they acquire as trustees for one or more undisclosed beneficiaries, also termed realty trusts.

The term realty trust is nominal trust and nominal trust itself is a passive trust. Passive trust is a trust which he trustee has no other duty than to the property to the beneficiary. Based on the understanding given about the nominee it can be seen, that literally, the nominee has two different meanings, namely as follows:

1. Nominee refers to a proposal, or nomination of a candidate or candidate to occupy a certain position, to obtain a certain award, or for other types of nominations.
2. To review and analyze the responsibilities of a notary in making a deed, in general is associated with legal sanctions in the making of a name and loan agreement (nominee arrangement).
3. To study and analyze the legal consequences arising in relation to the drafting of nominee deeds of land ownership agreements between local residents and foreign nationals.

B. Research Benefits.

This research is expected to contribute both theoretically to the legal disciplines occupied by researchers and practically to legal practitioners. In this case the theoretical and practical use of research can be explained for the development of science as well as the benefits for the world of practice as follows:

1. Theoretical benefit is expected that the results of this study can contribute thoughts in the field of law that will develop the discipline of law
2. The practical benefit is that the results of this study are expected to provide an accurate solution to the problem under study and besides this research can reveal new theories and the development of existing theories.

II. THEORETICAL FRAMEWORK

Neuman argues that theory is a system composed by various abstractions that are oriented towards each other or various ideas that condense and organize knowledge about the world. The framework is etymologically meaningful outline or design. The theory is a whole statement that is interconnected. M. Solly Lubis provides understanding of the theoretical framework:

"Thoughts or points of opinion, theories, theses regarding a case or problem that can be a material for comparison and theoretical grip, which can be an external grip for the writer. The theory serves to explain or explain why the symptoms of certain specifications or processes occur. "

Research in the scope of legal dogmatics, legal issues regarding legal provisions which contain legal understanding relating to the legal facts faced, for research at the level of legal theory, legal issues must contain legal concepts. The concept of law can be formulated as an idea that can be realized in an orderly manner in which the activities of social life in an orderly manner. Therefore, the theoretical framework for a study has the following uses:

A. The theory is useful to sharpen or further specialize the facts to be investigated or tested for truth.
B. Theory is very useful for developing a system of fact classification, fostering the structure of concepts and developing existing definitions.
C. Theory is an overview of the things studied.
D. The theory provides the possibility of predicting future facts, because it has been known the causes of these facts and maybe these factors will arise again in the future.

The theoretical framework in scientific writing functions as a guide to organize, explain and predict phenomena and / or problem objects that are studied by constructing the relationship between concepts deductively or inductively. Preparation of the theoretical framework is a necessity, so that the problem under study can be analyzed comprehensively and objectively. The theoretical framework is structured to be a basis for thinking that shows the point of view of problem solving that has been arranged.

The theory must reveal a thesis or argument about a particular phenomenon that can explain the form of substance or its existence. A theory must be consistent about what is known about the social world by participants and other experts, there must be at least translator rules that can connect theory with science and even other knowledge, while a theoretical framework is a theoretical framework or items of opinion regarding a case or problem to be a material comparison of theoretical grip.

For a researcher, a theory or theoretical framework has various uses, where these uses include at least the following matters:

A. The theory is useful to sharpen or further specialize the facts to be investigated or tested for truth.
B. Theory is very useful in developing a system of fact classification fostering the structure of concepts and developing definitions.
C. The theory is usually an overview of things that have been known and tested for truth regarding the object to be examined.
D. Theory provides the possibility of predicting future facts, because it has been known the reasons for the occurrence of these facts and maybe these factors will reappear in the future.
E. Theory provides clues to deficiencies in the knowledge of researchers.

The theory used in this study is authority where authority theory is considered appropriate in this study with the consideration of knowing the authority of a notary in making the name and loan deed. Legal certainty theory is also used in this study, where the function of using legal certainty theory here is to provide legal certainty and to guarantee the rights of the parties in the loan agreement. The writing of this thesis also uses the theory of legal responsibility in which the use of legal responsibility theory in this thesis is intended to review the responsibility of a notary in making an authentic deed in the form of a name loan certificate, if in practice there is negligence and legal smuggling made by a notary public.

III. RESEARCH RESULTS AND DISCUSSION

A. Legal Provisions Applicable Regarding the Making of a Name and Deed of Credit (Nominee Arrangement) by a Notary Public

Agreement or agreement is a translation from overeenkomst, Article 1313 of the Civil Code states that an agreement is an act by which one or more people commit themselves to one or more other people. The agreement or agreement (overeenkomst) referred to in Article 1313 of the Civil Code only occurs with the permission or will (toestemming) of all those related to the agreement, that is those who enter into the agreement or agreement concerned.

In making an understanding of the agreement, each scholar has a different opinion about the definition of the agreement. Setiawan is of the opinion that an agreement is a legal act whereby one or more people commit themselves or bind themselves to one or more people. Subekti is of the opinion that an agreement is an event where someone promises to another person or where two people promise each other to do something.

Wirjono is of the opinion that an agreement is a legal act concerning assets between two parties, in which one party promises or is deemed not to promise to do something, or does not do something, whereas the other party according to the implementation of something that matter. Mariam believes that an agreement is a relationship that occurs between two or more people, which is located in the field of assets, with which one party is entitled to achievement and the other party is obliged to fulfill that obligation.

Handri said that in general the agreement could be divided into several things, namely:

1. Agreement in the broadest sense, is any agreement that has legal consequences as desired by the parties, for example an anonymous agreement or a new type of agreement.
2. Agreement in the strict sense is legal relations in the field of assets, for example a named agreement.

Handri is of the opinion that an engagement is a legal relationship between two parties in the field of assets and one party is entitled to achievement and the other party is obliged to excel. Property field is the relationship between legal subjects and legal objects (assets) and can be valued in money. Thus, an agreement contains an agreement between two or more people to carry out a certain thing. The agreement is a provision between them to carry out the achievement.

From some of the notions of agreement that have been described above, it appears that in an agreement that will lead to a legal relationship of the parties who made the agreement. Each party is bound to one another and creates rights and obligations between the parties who made the agreement. However, in practice it is not only individuals who make agreements, but also includes legal entities that are also legal subjects. In addition, in formulating an agreement, there are several elements that must be fulfilled so that it can be said as an agreement, including as follows:

1. There are parties (subjects), at least two parties where the subjects in the agreement are the parties who are bound by the holding of an agreement. The subject of the agreement can be a person or legal entity provided the subject is a capable or authorized person to carry out legal actions.
2. There is an agreement between the parties which is permanent in which an important element in the agreement is an agreement (agreement) between the parties. The nature of the agreement in an agreement here must be permanent, not just negotiating, and the agreement is indicated by the unconditional acceptance of an offer.
3. There are objectives that will be achieved in the agreement, especially to meet the needs of the parties, needs which can only be met if entering into an agreement with another party. That objective cannot be contrary to public order, decency and is not prohibited by law.
4. There are achievements to be carried out where achievements are obligations that must be fulfilled by the parties in accordance with the terms of the agreement.
5. There are certain forms, oral or written, where the form of the agreement needs to be determined, because there is a statutory provision that only with certain forms of an agreement has binding force and proven strength, and in this case certain forms are usually in the form of deeds.
6. There are certain conditions as the contents of the agreement, where these conditions usually consist of basic conditions that will give rise to basic rights and obligations.

Agreement or verbintennis contains the understanding of a legal relationship between wealth or property between two or more people, which gives the strength of the right of one party to obtain achievements and at the same time obliges

the other party to fulfill their achievements. From the brief understanding above, it is found that there are several elements that provide a form of agreement, including legal relations (rechtbetrekking) concerning the law of wealth between two people (persoon) or more, which gives rights to one party and obligations to another party regarding an achievement .

If so, the agreement (verbintennis) is a legal relationship (rechtbetrekking) which by the law itself is regulated and ratified by the way it is related. Therefore agreements that contain legal relations between individuals are things that are located and within the legal environment. That is why the legal relationship in the agreement, not a relationship that can arise by itself as found in family property.

In the relationship of family wealth law, automatically arises the legal relationship between the child and his parents' wealth as regulated in inheritance law. Unlike in an agreement, the legal relationship between one party and another cannot arise by itself. The relationship was created because of legal action (rechtshandeling). Legal actions or actions taken by the parties that give rise to the legal relations of the agreement, so that one party is given the right by the other party to obtain achievements.

Whereas the other party also provides themselves burdened with the obligation to fulfill their achievements. So one party gets the right and the other side bears the obligation to hand over or fulfill the achievement. This achievement is the object or voorwerp of verbintenis. Without performance, legal relations conducted based on legal actions, have absolutely no meaning whatsoever for contract law. The party entitled to achievement has a position as a schuldeiser or creditor. The party that is required to carry out the achievement has the status of a schuldenaar or debtor.

Scholars state that the formulation of Article 1313 of the Civil Code above has many weaknesses, the weaknesses of Article 1313 of the Civil Code are as follows:

1. It only concerns one side only, where it can be known from the formulation of one person only or more binding himself to one or more people. The word binding is only from one party, not from two parties. It should be formulated to be mutually binding so that there is a consensus between the parties.
2. The word act includes without consensus, where the definition of the act includes the act of carrying out the task without power, acts against the law that do not contain consensus should use the word agreement.
3. The understanding of the agreement is too broad, where the understanding of the agreement in Article 1313 of the Civil Code is too broad because it also includes the continuation of marriage and marriage promises arranged in the family law area.
4. Without mentioning the purpose, where in Article 1313 the Civil Code is not mentioned the purpose of entering into an agreement, so the parties that bind themselves do not have a clear purpose for what the agreement was made.

Setiawan is of the opinion that the definition of agreement in Article 1313 of the Civil Code is not yet complete but too broad. The definition is incomplete because it only mentions a one-sided agreement, is too broad because the use of the word action also includes voluntary representation and acts against the law. In this connection, the definition of agreement needs to be improved to:

1. The act must be interpreted as a legal act, which is an action that aims to cause a legal act.
2. Adding words or binding themselves to Article 1313 of the Civil Code.

Civil law scholars generally think that the definition of the agreement contained in the above provisions is neither complete nor too broad. Incomplete because what was formulated was only about a one-sided agreement. The definition is said to be too broad because it can cover actions in the field of family law, such as marriage promises, which are agreements as well, but their nature is different from the agreements stipulated in the Civil Code. The agreement stipulated in the Civil Code can be valued critically, in other words, valued in money.

One source of engagement is agreement. The agreement creates an agreement that gives rise to the rights and obligations of the parties to the agreement. The meaning of the agreement according to the provisions of Article 1313 of the Civil Code is an act by which one or more people commit themselves to one or more other people.

In agreement law, there are several principles that must be implemented in the agreement, as follows:

1. The principle of freedom of contract
2. The principle of consensualism
3. Principle of Trust
4. The Principle of Binding Strength
5. Principle of Legal Equality
6. Principle of Balance
7. Principle of Legal Certainty
8. Moral Principle
9. Principle of Decency
10. The principle of habit

The definition of a nominee can be found in a dictionary which basically gives the same meaning, where in general, a nominee can be interpreted as one who has been nominated to an office or for a candidacy or a person organization in whose name a security is registered even though true ownership is held by another party. Another definition given by the dictionary in relation to a business transaction that uses the nominee concept is person or firm into whose name securities or other properties are transferred in order to facilitate transactions, while leaving the customer as the actual owner.

Based on the above meanings, nominee understanding can be drawn as a party appointed by another party to act on behalf of and on behalf of the party that appoints the nominee, and from the understanding given about the nominee it can be seen that the nominee literally has two meanings different. First, nominees refer to a proposal, or nomination of a candidate or candidate to occupy a certain position, to obtain a certain award, or for other types of nominations.

Second, the nominee gives the meaning as someone who represents the interests of other parties, in this second sense, a nominee is distinguished from an authority in a situation where the nominee is the owner of an object

(including the interests or rights born of an agreement) that is in the management, while the power of attorney has never been the owner of the objects (including interests) that are managed by this nominee.

In the case of land ownership and share ownership by foreign parties using the nominee concept, in general the names and identities of those registered as legitimate owners of land certificates or parties who are legally registered as shareholders, and in the register of company shareholders are only the name and identity from the nominee party.

The name and identity of the beneficiary does not appear in any form whatsoever in the land certificate or in the register of company shareholders, with the name and identity of the nominee being registered legally, the beneficiary provides compensation in the form of nominee fees. The amount of the nominee fee is based on mutual agreement between the nominee and the beneficiary, after the mutual agreement is reached, the amount and procedure for payment of the nominee fee will be stated in the form of a written agreement signed by the nominee and beneficiary as a form of agreement.

Based on this, it can be seen that the structure used in the nominee concept is the existence of an agreement made by and between the nominee and the beneficiary, known as the nominee arrangement. The nominee and beneficiary will determine what things will be stated in the nominee arrangement. In the agreement, in addition to regulating the amount and procedure for payment of the nominee fee, it will also regulate the provisions that require and / or prohibit the nominee from doing something relating to the use of the nominee concept.

The problem of legal smuggling in the agrarian sector often occurs, because there are residents who are still foreigners who indirectly obtain ownership rights to land in the state, namely by using a mask called strooman, by using property rights to land. For example, a foreigner wants to buy a piece of property, he does not buy it directly but uses the name of his friend who is an Indonesian citizen.

Usually the act is bound by a debt and credit agreement whose amount includes the price of the land used as collateral for the debt of the strooman, if this is known by agencies authorized to regulate and administer agrarian matters, it is decided to declare that the sale and purchase is null and void due to the law and the land fell to the state.

In practice, the interest of foreign parties to own land (without or with buildings) with ownership rights or building use rights is pursued in ways that are actually legal smuggling, in which the legal smuggling is a legal act that violates the law.

In practice, the interests of foreign parties to own land (without or with buildings) with ownership rights or building use rights are pursued in ways that are actually legal smuggling, in which the legal smuggling is a legal act that violates the law. The principal agreement followed by other agreements related to the control of land rights by foreign citizens shows that indirectly through a notary agreement, legal smuggling has taken place, because the name loan agreement (nominee) is completely unknown in the legal system, especially in treaty law, and there is no specific and explicit regulation, so it can be said to contain empty meaning or empty norms.

The name loan agreement (nominee) as long as it is done with an agreement by both parties will not cause significant problems, namely the borrowed local residents are as guarantors of foreign citizens, but if the formalities are not met then that is where there has happened law smuggling, which in this case violates one of the agreements made by the parties in making a nominee agreement.

Nominee agreements are legally formal does not violate the rules, but there are clear rules in Article 26 Paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which states that:

"Every sale and purchase, exchange, gifts, gifts with wills and other acts intended to directly or indirectly transfer ownership rights to a foreigner, to a citizen who in addition to his Indonesian citizenship has a foreign nationality or to a legal entity, except stipulated in Article 21 Paragraph (2) of Law Number 5 of 1960 Concerning Basic Regulations on Agrarian Principles, is null and void because the law and land fall to the state, provided that the rights of other parties that burden it continue as well as all payments made has been received by the owner and cannot be sued again.

In general, legal entities, both domestic legal entities and foreign legal entities and also foreign citizens are only allowed to control and use land, if those rights are expressly made possible by the relevant regulations. Articles in Law Number 5 of 1960 concerning Basic Rules for Agrarian Principles that make it possible are Article 30 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles:

"For legal entities, only legal entities established under Indonesian law and domiciled in Indonesia, may become holders of business use rights and building rights, while foreign citizens and foreign legal entities are granted rights according to what is stipulated in Article 41, 42, 45 , and Article 55 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. "

According to Article 26 Paragraph (2) of Law Number 5 of 1960 Regarding Basic Regulations on Agrarian Principles, property rights to foreigners are prohibited and violations of this article contain null and void sanctions, however the law does not cover citizens' opportunities at all foreign countries and foreign legal entities to have land rights only in the form of building rights, use rights and lease rights.

Nominee agreements made between foreign nations and local residents are based on false causa, ie agreements made with pretense to hide causa that are actually not allowed, because nominee agreements are invalid agreements because they have violated the provisions of the laws and regulations. invitation, especially in this case is the provisions of Article 21 Paragraph (1), Article 26 Paragraph (2) of Law Number 5 of 1960 Regarding Basic Agrarian Regulations, the nominee agreement is a null and void agreement, because the nominee agreement is made illegally, then has no binding legal force.

A. Notary Responsibilities in Deed Making Generally Associated with Legal Sanctions in the Making of Deed of Name (Nominee Arrangement).

1. Aspects of Civil Notary Responsibility

Civil sanctions are sanctions that are imposed if against mistakes that occur, both because of default or unlawful acts (onrechtmatigedaad). This sanction in the form of reimbursement, compensation and interest is a result that will be received by a notary from the claimants if the deed is degraded which results in having proof as a deed under the hand or deed canceled by law.

In an act of law by law it is not required to be stated in an authentic deed, so that if the deed loses its authenticity due to not fulfilling the formal requirements referred to in Article 1869 of the Civil Code Jo Article 38 of Law Number 2 of 2014 concerning Amendments to the Law Number 30 of 2004 concerning the position of notary, the deed still functions as a deed made under the hand if the deed is signed by the parties, and as long as the degradation of the authentic deed into a deed under the hand does not cause harm, the notary concerned cannot be held liable the law regarding acts against the law.

Article 1365 of the Civil Code adheres to a form of liability based on an error (liability based fault), in this case an error attached to a notary to the deed he made. The validity of the power of proof of notary deed has become a underhanded deed in general since the court ruling which has permanent legal force (inkracht). A deed declared null and void by law, then the deed is deemed to never exist or was never made, thus the notarial deed null and void by law has the effect of providing compensation, compensation or interest to the party mentioned in the deed.

A form of civil sanction can arise from default in the form of compensation which is usually in the form of a sum of money, besides that a sanction arises due to an unlawful act, which is open to the possibility of compensation in other forms other than a sum of money, that is determined by the plaintiff, and the judge considers it corresponding. Regarding compensation in other forms other than an amount of money can be seen in the consideration of a hoge raad, which formulates the perpetrators of unlawful acts can be punished to pay a sum of money as compensation for the harm caused to the injured party, but if the injured party demands compensation in the form others and the judge considers it as an appropriate form of compensation, then the perpetrator may be punished for making another achievement for the benefit of the injured party who is suitable for removing the loss suffered.

In a nominee agreement made by a notary public, a civil liability sanction will be imposed on the notary public, because the notary has committed an illegal act against the nominee agreement made in a notary form. The notary liability in the form of compensation is based on a legal relationship between the notary and the registrar, namely a foreign citizen.

The loss of foreign citizens is due to unlawful acts by a notary who made a nominee agreement which consequently the deed was null and void, then the deed was considered non-existent or never made, thus the notarial deed null and void causes the compensation due to the said party in deed, to the injured party can make a civil suit against the notary.

2. Aspects of the Responsibility of a Criminal Notary Public

In practice, if there is a notarial deed at issue by the parties or the authorities, the notary is drawn as a party participating in carrying out or assisting in committing a criminal act, namely making or giving false information into the notary deed, and in this case the notary is not immune to the law, the notary can be convicted if it can be proven in court that the notary intentionally or unintentionally together with the parties that made the deed with the intent and purpose to benefit certain parties or harm other parties, and if the court is proven then the notary it must be punished.

Penalties against the notary can be carried out with restrictions, namely:

A. The legal actions of a notary on the outward, formal and material aspects of the deed are deliberate, full of awareness and conviction, and it is planned that the deed to be made before a notary public or by a notary together (agreeing) between the parties is the basis for committing a criminal act.
B. There is a legal action by a notary in making a deed before or by a notary who is not in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.
C. The notary action is also not appropriate according to the authorized institution to evaluate the actions of a notary public, in this case the Notary Supervisory Board.

The provisions of Article 266 of the Criminal Code regulate the issue of falsification of a letter, which is to order false information to be entered into an authentic deed:

1. Whoever asks to include a false statement regarding an item in an authentic deed whose truth must be stated by the deed with the intent to use it as if the statement is in accordance with the truth, is punished with imprisonment for a period of seven years, if the use of it can lead to something loss.
2. In a criminal with the same criminal, whoever intentionally uses the deed as if the content is in accordance with the truth, if its use can cause a loss.

The elements in the above consist of subjective elements with a view to using it or having others use it as if the statement is in accordance with the truth. The objective element consists of the element of whoever, the element of asking to include a false statement of a matter, the truth of which must be stated by the deed, the element in an authentic deed, and the element if its use can cause a loss.

In the formulation of the criminal provisions stipulated in Article 266 Paragraph (1) of the Criminal Code above, the law does not require the criminal offenses referred to in that they must be done intentionally or not, so it is necessary to ask whether the criminal act is a criminal act that must be carried out intentionally or not, with the intention of a further intention in the form of the intention to use it or to order others to use it as if the statement is in accordance with the truth in the formulation of the criminal provisions stipulated in Article 266 Paragraph (1) of the Criminal Code.

It is clear that the criminal act intended therein is a crime that must be done intentionally, because it is clear that the criminal act intended in the provisions of Article 266 Paragraph (1) of the Criminal Code is a criminal act that must be done intentionally, by itself both the prosecutor the public and the judge must be able to prove the existence of the element of intent on the person who by the public prosecutor has been charged with committing the crime, for this purpose in front of a court hearing examine and try the defendant, the public prosecutor and judge can prove about:

A. The will of the defendant to order to include a false statement regarding a matter in an authentic deed whose truth must be stated by the authentic deed.
B. The knowledge of the defendant that the deed is an authentic deed.
C. The intention was for the defendant to use it or have someone else use it as if the statement contained in the deed was in accordance with the truth.

Regarding criminal liability, in relation to a nominee agreement made by a notary in the form of an authentic deed, the nominee agreement constitutes a criminal act as stipulated in Article 266 Paragraph (1) of the Criminal Code concerning the problem of falsifying a letter, i.e. instructing to enter false information into an authentic deed. Notary as a public official who is given the authority to make an authentic deed actually makes the deed he made becomes legally flawed.

The nominee agreement made by a notary contains false statements by the deed with the intention to use it as if the statement is in accordance with the truth, even though the nominee agreement made by the notary on the basis of the interests of foreign citizens to be able to control the land of ownership rights by borrowing the name of the local resident, and as a result of his actions the notary can be prosecuted for up to seven years in prison.

Imposition of criminal sanctions against a notary can be carried out as long as the limits are violated, meaning that besides fulfilling the formulation of the violation mentioned in Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, the Notary Code of Ethics must also fulfill the formula stated in the Criminal Code.

3. Aspects of Notary Responsibility Based on Notary Ethics

In addition to referring to Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, the notary public must also uphold the notary code of ethics, because as a respected profession (officium nobile), the notary in carrying out his post office must act independently, honestly and responsibly. The values in the notary code of ethics constitute the dignity of the notary as a professional, if the code of ethics is violated, the dignity of the notary will be lost.

Notaries in carrying out their positions must behave professionally, have good personalities and uphold the dignity of the notary's honor and are obliged to respect partners and maintain and defend the honor of the corps or organization, and as a profession, the notary is responsible for the profession he does, in this case the code of ethics profession.

Notaries in carrying out their functions and responsibilities as general officials, not infrequently deal with legal proceedings. In this legal process the notary must provide information and testimony regarding the contents of the deed he made, and with the placing of legal and ethical responsibility to the notary public, the errors that often occur in the notary are mainly caused by the negligence of the notary, because it does not heed the legal rules and ethical values.

B. Legal Results Arising Regarding the Making of Deed of Nominee Agreement on Ownership of Land Rights Between Local Residents and Foreign Citizens.

Juridical reasons are generally outside the rules of law which results in the cancellation and cancellation of the notary deed which are generally the same as the legal reasons for the cancellation of the agreement. The notary deed can cause cancellation for a notarial deed and result in the legal action being invalid or not having legal consequences, and for these reasons, namely:

1. Does not meet the objective conditions of an agreement.
2. Absolute incompetence.
3. Unwillingness to act.
4. Contrary to law, public order or decency.
5. The fulfillment of legal events in the agreement with the terms canceled.
6. Relative incompetence.
7. Defects of the will
8. Misuse of circumstances (misbruik van omstandigheiden).
9. Default as a condition is canceled.
10. Non-fulfillment of formal agreement forms.

The legal implications regarding the cancellation and cancellation of a notarial deed based on Act Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position are as follows:

1. Notary Deed Can Be Canceled

Notarial deeds can be canceled are sanctions for a legal act containing juridical defects (the cause of the cancellation) in the form of cancellation of a legal act at the wish of a particular party and the legal consequences of the cancellation that the legal act has no legal effect since the cancellation, and cancellation or ratification of legal actions it depends on the particular party, which causes the legal actions can be canceled or approved.

At the beginning of the deed making, especially the conditions of the parties facing the notary do not meet the subjective requirements, then at the request of certain people the deed can be canceled. An irrevocable deed can be caused by not meeting the subjective elements in the agreement.

The notarial deed must contain the agreement of the parties who will make the agreement in the notarial deed. Their binding agreement occurs freely or with freedom. Freedom of agreement can occur expressly (say words / written) or silently (with an attitude or gesture) with no element of coercion, error and elements of fraud between the parties.

Someone said to be capable of law in civil law is not being put in the possession, namely an adult who is considered

incapable because of drunkenness, insanity, or wasteful, other than that it does not meet the provisions in Article 39 of Law Number 2 of 2014 concerning Amendments to the Law Law Number 30 of 2004 concerning the Position of Notary governing the subjective conditions of prosecutors and witnesses, namely:

A. The parties must be at least 18 (eighteen) years old or have been married and are capable of carrying out legal actions.
B. The depositor must be known by a notary or introduced to him by two identifying witnesses who are at least 18 (eighteen) years old or have been married and are capable of carrying out legal actions or were introduced by two other registrants.

The effective date of cancellation in a notarial deed that can be canceled is that the notary deed will still be binding on the parties concerned as long as there is no court decision that has permanent legal force, but the notary deed becomes non-binding since there is a court decision that has permanent legal force stating the notary deed it becomes invalid and not binding.

2. Notary Deed is Canceled by Law

Notary deed is null and void if a notary deed does not meet the objective elements of the agreement, the notarial deed may become null and void. Cancel by law is a civil sanction for a legal action that causes the cancellation to contain a juridical defect (the cause of the cancellation), in the form of a legal action carried out that has no legal effect since the occurrence of the legal action or the legal action becomes invalid since the deed was signed and the legal action referred to the deed is considered never to have happened.

The things that can cause a notarial deed to be null and void are if the violation of the provisions of the law is as follows:

A. Violation of Article 16 Paragraph (1) Letter I of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position in the form of not making a will and not sending a report within the specified time period.
B. Violation of Article 16 Paragraph (1) Letter K of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary concerning the notary stamp / stamp.
C. Violation of Article 44 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which regulates the signing of a notarial deed and notary obligation to explain to the parties.
D. Violation of Article 48 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which regulates the prohibition on changes to the contents of the deed.
E. Violation of Article 49 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which regulates the location of the deed.
F. Violation of Article 50 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which governs the deletion of words, letters and numbers.
G. Violation of Article 51 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which regulates the notary's authority to correct written errors.

3. Notarial Deed That Has the Power of Proof as a Deed Under the Hand

Article 1869 of the Civil Code sets limits on a notary deed that has the power of proof as underhand deed can occur if it does not meet the provisions because:

A. Defect in its form even though such deed still has the power of proof as a deed under the hand if the deed is signed by the parties.
B. No authority of the general official is concerned.
C. Don't have the general official concern.

The provisions mentioned below are explicitly stated in certain articles that state if violated by a notary, so the notary deed has the power of proof as a deed under the hand, namely:

A. Violating Article 16 Paragraph (1) Letter I of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position.
B. Violating Article 16 Paragraph (7), Paragraph (8) of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary.
C. Violating Article 41 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.
D. Violating Article 52 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.

Violation of the provision results in a notary deed having the power of proof as a deed under the hand, and thus it can be concluded that the notary deed that has the power of proof as a deed under the hand, if stated explicitly in the relevant article, and which is not stated explicitly in the relevant article comes into effect as a deed under the hand as long as there is no decision of a judge who has permanent legal force the deed remains valid and binding, and the notarial deed becomes non- binding after there is a judge's decision that has permanent legal force stating that the deed has the evidentiary power as deed under the hand.

Based on the foregoing, the legal consequences of the deed which contains an element of fraud is that the notary deed can be canceled because there is no agreement in making the deed. The notarial deed must contain the agreement of the parties who will make the agreement in the notarial deed. Freedom of agreement can occur expressly (say words / written) or silently (with an attitude or gesture) with no elements of coercion, error and elements of fraud between the parties.

The factor that caused the cancellation of the notary deed is the cancellation as referred to in the provisions of Article 1320 of the Civil Code, the provisions of this article regulate the legal conditions of the agreement in general, and furthermore the provisions of the article detail the conditions for the validity of the agreement, which consists of the following conditions:

A. Agree those who commit themselves.
B. Ability to make an agreement.
C. A certain thing.
D. A lawful cause.

The conditions for the validity of the agreement as regulated in the article above can be distinguished from subjective conditions and objective conditions, in this case it must be

able to distinguish between subjective conditions and objective conditions, subjective conditions are the first two conditions, while the second objective conditions are the last conditions. Legitimate agreements are recognized and given legal consequences while agreements that do not meet these conditions are not recognized by law, but if the parties acknowledge and comply with the agreement they made, do not meet the conditions set by law but the agreement still applies between them , but if one day there is a party who does not recognize that a dispute arises, the judge will cancel or declare the agreement canceled.

With the failure to fulfill one of the above conditions, it can result in a legal flawed agreement, the validity of which can be questioned, in the sense that it can be canceled or null and void, by not fulfilling the first and second conditions as subjective conditions, then an agreement can result in being canceled, then for non-fulfillment of the third and fourth conditions as objective conditions, resulting in an agreement will be null and void.

With regard to the nominee agreement made by a notary with an authentic deed, it can be seen from the contents of the agreement whether it contradicts or not with the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, in which the foreigner has an interest in controlling the private land by borrowing the name of the local population (nominee) when buying it, so that actually the land purchased is owned by foreigners, local residents only borrow the name only.

The legal consequences arising from the making of the nominee deed of the agreement on ownership of land rights between local residents and foreign citizens, namely the nominee agreement is null and void, this is because the nominee agreement made by the notary is an act of legal smuggling that is contrary to the provisions of Article 9, Article 21 and Article 26 Paragraph (2) of Law Number 5 of 1960 Concerning Basic Regulations on Agrarian Principles, which states that ownership rights to land are fully attached to Indonesian citizens and only Indonesian citizens can have ownership rights, Furthermore, the nominee agreement made does not fulfill the objective requirements in the provisions of Article 1320 of the Civil Code, which is about halal causes, which results in the nominee agreement being null and void.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

1. Legal provisions relating to the making of a name loan (nominee arrangement) by a notary are basically legally permitted, especially in a shareholder agreement, but in the case of domestic land ownership, the making of a name loan agreement (nominee arrangement) by a notary is an act smuggling of agrarian laws and nominee agreements in the case of land ownership is prohibited by law. Land ownership rights for foreigners are prohibited and violations of this article contain null and void sanctions, however the law does not cover the opportunity for foreign nationals and foreign legal entities to have land rights only in the form of building use rights, business use rights and rental rights. Nominee agreements made between foreign nationals and local residents are based on false causa, ie agreements made with pretense to hide causa that are actually not allowed, because nominee agreements are invalid agreements because they have violated the provisions of the laws and regulations. invitation, especially in this case is the provisions of Article 21 Paragraph (1), Article 26 Paragraph (2) of Law Number 5 of 1960 Regarding Basic Agrarian Regulations, the nominee agreement is a null and void agreement, because the nominee agreement is made illegally, then has no binding legal force.

2. Notary liability in making a deed is generally associated with legal sanctions in making a name loan deed (nominee arrangement) divided into three types of liability, namely civil liability, criminal liability and liability through a notary code of ethics. Civil liability can be requested from a notary who commits an act against the law based on the provisions of Article 1365 of the Civil Code, where the notary is obliged to compensate for all losses arising from unlawful acts committed by a notary. Criminal liability can be requested from a notary who commits the falsification of a letter or has someone insert false information into an authentic deed under the provisions of Article 266 of the Criminal Code, where a notary who falsifies a letter can be convicted or imprisoned.

Responsibility through a notary code of ethics can be requested from notaries who commit acts of negligence or intentionally violate the provisions of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, Notary Ethics Code, and notaries who violate this provision may liable to sanctions in the form of reprimands, warnings, temporary dismissal from membership of the association, dismissal from membership of the association (onzetting), and dishonorable dismissal from membership of the association.

3. Legal consequences arising related to the making of a nominee deed of ownership of land rights agreement between local residents and foreign nationals, that is, the nominee agreement is null and void, this is because the nominee agreement made by the notary is an act of legal smuggling that is contrary to the provisions of Article 9, Article 21 and Article 26 Paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which states that land rights are fully attached to Indonesian citizens and only Indonesian citizens can have rights property, furthermore the nominee agreement made does not fulfill the objective requirements in the provisions of Article 1320 of the Civil Code, namely regarding halal causes, which results in the nominee agreement being null and void by law.

B. Suggestions

1. The notary should not conduct legal smuggling in the making of an authentic deed, especially in the nominee agreement on land ownership for foreign citizens, because the notary public should uphold its dignity and dignity in making an authentic legal deed.
2. It is best for the notary to be responsible and professional in making an authentic deed by observing all existing legal rules and not abusing authority and smuggling the law.
3. It is recommended that the Notary Honorary Council and the Notary Supervisory Board crack down on notaries who carry out legal smuggling, especially in nominee land ownership agreements, this is so that land ownership rights do not fall to foreign citizens.

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