JIHAD: Jurnal Ilmu Hukum dan Administrasi
Vol. 7 No. 4 Desember 2025
p-ISSN : 2745-9489, e-ISSNl 2746-3842
DOI: *10.36312/jihad.v7i4.9772/https://ejournal.mandalanursa.org/index.php/JIHAD/issue/archive*

Principles of Caution by Notaries Regarding Transfer of Land Rights Based on A Name-Border Agreement from the Perspective of Land Registration Regulations

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Article Info
Article history:
Accepted: 21 November 2025
Publish: 8 December 2025

Keywords:
Prudential Principle;
Notary;
Nominee Agreement.

Abstract
The agreements are one of the types of innominate agreements, namely agreements that are not recognized by the Civil Code but grow and develop in society. This practice has become a fairly common phenomenon, especially in regional areas. a popular tourist area, where many foreigners are interested in owning property but are prevented by applicable legal provisions. Agrarian law strictly prohibits foreigners from owning land with freehold rights. This not only has the potential to harm the country financially, but also creates legal uncertainty that can hamper the long-term investment climate. From a public policy perspective, the existence of name loan agreements reflects a gap between market needs and the existing legal framework. A comprehensive study is needed to formulate policies that can accommodate global economic dynamics without compromising the fundamental principles of national agrarian law. The research method used is normative juridical, the type of approach used is a conceptual approach and a legislative approach, the data analysis method used is a literature study using qualitative analysis. The results of this study are that the position of the nominee agreement also has the potential to cause legal uncertainty and social conflict, especially if there are dual claims to land ownership, in practice, the court tends to reject the Nominee agreement because it violates the principle of nationality which is the main basis of the Basic Agrarian Law. The principle of caution has an important role for Notaries in carrying out their duties and authorities, so that Notaries must play a role in providing legal counseling to the parties regarding the contents that will be stated in the form of a Deed so that in the implementation of the principle of accuracy or caution must be carried out in the process of making a deed.

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1. INTRODUCTION

The concept of the Indonesian state as a state of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which has the philosophical meaning that the state guarantees the supremacy of law, which is reflected in the enforcement of law and justice. In essence, a state of law places law as the basis for rules in the administration of the state, government, and society.

In a state of law, all implementation and actions must be based on applicable laws, to regulate the behavior of society and have firm sanctions, and be binding and coercive in examining problems in a state of law. In its implementation, it is proven by the involvement

of law in all aspects of life in society, including in carrying out agreements with other parties to fulfill their needs.

The importance of legal certainty in the administration of government is formed to be a crucial initial step in realizing the principle of legality in Indonesia. The concept of the State's Right to Control, as stated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as the Basic Agrarian Law), refers to the control of land, water, and natural resources by the state, with the main objective of the prosperity of the people. Therefore, the government has a responsibility to provide justice and legal certainty.

Land is fundamental to every aspect of human life. Land is not only a source of life but also plays a vital role in various economic, social, political, and cultural activities. Economically, land is a vital resource for agriculture, industry, and investment. Socially, land creates community identity and connections and serves as a place for interaction. From a political perspective, land ownership and management are often central issues in government policy and social justice. Culture is also closely tied to land, as many traditions and values of communities are linked to the environment in which they live. Therefore, wise and sustainable land management is very important to ensure that all functions and roles of land can be utilized optimally for the welfare of society.

In an era of increasingly rapid globalization, cross-border economic interactions have become increasingly intense and complex. One manifestation of this phenomenon is the growing interest of foreign nationals in investing and owning assets in Indonesia. However, regulations restricting foreign ownership of land in Indonesia have encouraged the practice of loan agreements between foreign nationals (WNA) and Indonesian citizens (WNI).

A name-borrowing agreement is an example of an innominate agreement, a type of agreement not explicitly regulated in the Civil Code (hereinafter referred to as the Civil Code) but occurring in practice. In this context, such agreements are often made between foreign nationals and Indonesian citizens, where the Indonesian citizen grants the foreign national power to manage or act in a manner that, in reality, the foreign national cannot own land in Indonesia. This practice does raise several legal issues, as it is considered a legal smuggling. This happens because foreign nationals try to circumvent legal provisions that prohibit land ownership by foreigners, and by using a name-borrowing agreement, they can act as if they have rights to the land.

This practice has become quite common, particularly in popular tourist areas, where many foreign nationals are interested in owning property but are hindered by regulations that strictly prohibit foreigners from owning freehold land. This prohibition is based on the principle of nationality, a fundamental principle of Indonesian agrarian law, creating a legal loophole exploited through name-borrowing agreements. This has sparked debate and opened up the opportunity for disputes, particularly when agreements are breached or circumstances change unanticipated.

One example of a case related to a problematic nominee agreement is the Gianyar District Court Decision Number 259/Pdt.G/2020/PN. Gin, which has been submitted for legal action to Cassation with Case Number 4223 K/Pdt/2022 and has permanent legal force, which decided that as many as 4 nominee Agreement Deeds made before Notary AABP as Co-Defendant I are invalid, null, and void and have no binding legal force because they are contrary to the law. The Nominee Agreement in this case was made before a Notary so that it is in the form of an authentic deed. The nominee agreement that is null and void in this case is due to a violation of the conditions for the validity of the agreement, namely, a lawful cause.

The purpose of making a nominee agreement in this case is as a fake or simulation agreement where the substance violates Article 9 paragraph (1) of the Basic Agrarian Law in Article 21 paragraph (1) of the Basic Agrarian Law, hereinafter referred to as UUPA. A similar thing happened in 2014 with Decision number 796/Pdt.G/2012/PN.DPS, which was strengthened by the Denpasar High Court Decision Number 12/PDT/2014/PT.DPS, where the court decided that a deed was null and void because it had a similar case in decision number 4223 K/Pdt/2022, namely that the nominee agreement made did not meet the requirements for a valid agreement. This was also caused by the failure to apply the principle of prudence by the notary. Furthermore, there was also a decision stating that a nominee agreement containing an agreement to transfer ownership rights to land from an Indonesian citizen and a foreign citizen was null and void, causing the agreement from the start to be considered as never having existed.

Although nominee agreements are not explicitly regulated in Indonesian positive law, this practice has emerged as a controversial form of legal innovation. On the one hand, nominee agreements are seen as a pragmatic solution to attract foreign investment and boost economic growth. On the other hand, this practice is considered a form of legal smuggling that has the potential to harm national interests and threaten state sovereignty over land. Nominee agreements made in the form of authentic deeds and in substance violate the law because the notary does not apply the principle of caution, causing the notary to be fully responsible for the deeds he makes.

The regulations regarding the application of the principle of prudence in Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning the Position of Notary (hereinafter referred to as the Law on the Position of Notary) and the Code of Ethics mean that notaries have no reason whatsoever not to apply the principle of prudence in carrying out their position and are obliged to uphold this principle considering that the authority held by a notary is a form of attributive authority.

In other words, all notary actions in making deeds must be based on applicable laws and regulations so that they can be legally accounted for. If a violation occurs during the process of making an authentic deed, the notary must be responsible in accordance with what is regulated by law.

2. RESEARCH METHODS

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues. Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions. The approaches used in this research are a conceptual approach through a doctrinal perspective, as well as a statutory approach, which analyzes laws and regulations that correlate and relate legally to the problem under study. The author's data collection method uses a literature study related to the object and cites references, including Legislation, Journals, Books, Articles, and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts, and theories, as well as an understanding of the results of the analysis itself.

3. RESEARCH RESULTS AND DISCUSSION

3.1. The Position of a Name Borrowing Agreement as the Basis for Transfer of Land Rights in Indonesia.

An agreement has the basic word promise, which contains an action between 2 (two) or more people to do a certain thing. According to Subekti, an agreement itself is basically an event where one person makes a promise to another person, or where two people make a promise to each other, or where two people promise each other to carry out something.

Article 1313 of the Civil Code itself defines an agreement as an act by which one or more people bind themselves to one or more people. Based on this agreement, a bond arises between the two parties. This bond then gives rise to rights and obligations between the parties, which must be fulfilled in accordance with their promises or performance.

Based on Article 1234 of the Civil Code, an agreement can also take the form of an agreement not to do something. An agreement can also be called an agreement, because basically, both parties mutually agree to do something. One party can sue the other party if the contents of the agreement or agreement are not fulfilled. Based on Article 1233 of the Civil Code, an agreement can also arise other than because of an agreement, in which case an agreement can also arise because of a Law. The conditions for a valid agreement are that it has fulfilled the conditions stipulated in Article 1320 of the Civil Code, namely:

1. Agree among those who make the agreement.
2. Ability to make agreements
3. The existence of a certain thing
4. There is a legitimate reason

The conditions in points one and two are subjective because they are basically related to the person or subject who is a party to an agreement, which, if these subjective conditions are not met, then the agreement can be annulled by application to a judge. Furthermore, the conditions in points three and four are objective conditions, which, if not met, then an agreement will automatically be null and void by law. The conditions in points three and four are conditions that focus on the object of the agreement.

The first condition, namely the condition of agreement, indicates that the parties have agreed to the main points of the agreement. Regarding this, several theories explain when agreement occurs in an agreement, namely:

1. Theory of will (*wills theory*), an agreement occurs when there is a match of will between the parties agreeing.
2. Statement theory (*expression theory*), the occurrence of an agreement is when the parties declare the making of an agreement by speaking or announcing the agreement.
3. Trust theory (*trust theory*), the occurrence of an agreement is due to the trust in the words of the parties expressed in a society.

Furthermore, Article 1321 of the Civil Code also regulates matters relating to this agreement, the contents of which are as follows: *"There is no valid agreement if the agreement is given due to error, or is obtained by force or deception"*. An agreement becomes invalid if there is an element of mistake, duress, or fraud in it. If there is a mistake, then an agreement does not become invalid unless the mistake occurs regarding the nature of the goods promised or regarding the person with whom the agreement is made, and in the case of duress and fraud, the agreement will become invalid.

Then in point two regarding the competency requirements, this focuses on the parties who make the agreement or the subjects in the agreement. Basically, every

person who is considered competent to make an agreement is regulated in the legislation. Those who are not competent are:

1. People who are not yet adults;
2. Those who are placed under guardianship;
3. Women, in this case defined by law, and in general, all those to whom the law has prohibited making certain agreements.

If these conditions are not met, one of the parties to an agreement can demand cancellation of the agreement. Then, regarding point three, the specific conditions relate to the object of the agreement. In this case, the type, quantity, status, quality, and so on of the object in the agreement must be clear. Based on the provisions of Article 1332 of the Civil Code, the objects that can be the subject of an agreement are goods that can be traded, and their type must be determined.

Finally, the fourth point concerning the requirements for a lawful cause state that the purpose and content of an agreement must not conflict with existing statutory provisions, morality, or general provisions. The purpose of the prohibition in this provision is to protect the public interest; any violation will endanger the public interest itself. Based on these principles, many parties claim that a Nominee Agreement can be legally valid because it was made by agreement of both parties. However, this is contrary to the spirit of the Basic Agrarian Law.

Based on the definition outlined above, it can be concluded that a nominee is a party appointed by another party to represent the party appointing the nominee. The party appointing the nominee can also be referred to as the beneficiary. In this case, the nominee represents the interests of the beneficiary, and therefore, the implementation of these specific actions must be in accordance with what was agreed upon by both parties and must be in accordance with the obligations given by the beneficiary. In this case, it can be concluded that a nominee is a person appointed or appointed to represent another person, in this case, the beneficiary, in carrying out a certain legal action. It can be said that a nominee agreement contains the following elements:

1. There is an agreement granting power of attorney from the beneficiary as the grantor of power to the nominee as the recipient of power.
2. The power granted is specific; in other words, the types of legal actions that can be carried out are limited.
3. The nominee does not act as a representative of the beneficiary before the law.

The use of the nominee concept in Indonesia is a principle of freedom of contract regulated in Book III of the Civil Code. Article 1319 of the Civil Code identifies two groups of agreements: agreements that are given a special name by law, called a nominated contract agreement in the Law that have not been regulated Innominate Contract.

The principle of freedom of contract is closely related to the binding force of an agreement based on the Civil Code. In this case, the Law gives the parties the freedom to regulate their own legal relationships between them, including determining the cause, object, terms, and conditions with an agreement that gives binding legal force to the parties who make it (*Agreements must be kept.*). The limitations in the principle of freedom of contract are limitations on the validity of an agreement and limitations on the contents of the agreement. The limitation in terms of validity is that an agreement is considered valid by the parties who made it if, in its creation, they have fulfilled the four elements required by Article 1320 of the Civil Code, while the limitations on the

contents of the agreement are matters regulated in Article 1339 of the Civil Code. Thus, it can be concluded that the Nominee agreement is an agreement born from freedom of contract and*pact sun The* provisions contained in the nominee agreement are binding on the parties who make it as per the Law.

A nominee agreement is basically an agreement granting authority by the grantor, called the beneficiary, to the nominee as the recipient of the power. Nominee agreements in the field of land law in Indonesia are generally made to grant authority to the nominee to represent the party beneficiary in the name of the nominee itself. This means that the party beneficiary borrowing the name of a nominee party to be able to represent them legally to have rights to land.

If examined from the provisions contained in the Civil Code, the nominee agreement in land law in Indonesia is valid and binding. However, a legal problem arises if, in the nominee agreement, there is a party that, based on the Basic Agrarian Law, is a party that cannot be the subject of the right to the land that is agreed upon. For example, the use of a nominee agreement in the ownership of land by foreign citizens as *beneficiaries* and Indonesian citizens as nominees. The use of the nominee agreement is carried out so that foreign nationals can control and own land rights legally. In fact, according to the facts, but in jure or a condition recognized by law, the land title is in the name of an Indonesian citizen as a nominee, or in other words, the purpose of using a nominee agreement in ownership of land title rights is so that the foreign national can control and own the land title legally. However, de jure, the land is owned by an Indonesian citizen. In other words, the Indonesian citizen's name is borrowed by a foreign national to act as the owner of the land rights on the land title documents, even though in reality the foreign national owns the land.

The situation above clearly constitutes legal smuggling. This is because Article 26 paragraph (2) of the Basic Agrarian Law has stated that ownership of land rights with a freehold title cannot be owned by foreigners or citizens other than Indonesian citizens, which, if this provision is violated, can cause ownership to be null and void by law so that the land falls to the state. Therefore, if a nominee agreement is made by a foreign national as *beneficiary* and Indonesian citizens as nominees with the intention of controlling the rights to land with a title of ownership, then the nominee agreement has violated the valid conditions of the agreement as stated in Article 1320 of the Civil Code, namely a lawful cause and therefore the nominee agreement is null and void by law.

Although the Civil Code grants parties the freedom to enter into agreements through the principle of freedom of contract as stipulated in Article 1338, where all legally made agreements are valid as laws for those who make them, this principle has limitations when it conflicts with more specific laws. In the context of a Nominee agreement, two parties, namely a foreign national and an Indonesian citizen, can agree to agree on land ownership. In theory, the agreement is valid if it meets the requirements for a valid agreement according to Article 1320 of the Civil Code, including the existence of an agreement, capacity, a clear object, and a lawful cause. However, even though the Nominee agreement is valid under civil law, it conflicts with specific provisions in the Basic Agrarian Law. The Basic Agrarian Law expressly limits land ownership rights to Indonesian citizens only, as regulated in Article 9 paragraph (1), which prohibits foreign nationals from owning land ownership rights. The purpose of this limitation is to protect limited land resources from foreign control and to maintain national sovereignty. Therefore, although the Nominee agreement may be valid in the context

of the Civil Code, its implementation in the realm of agrarian law is considered contrary to the national objectives promoted by the Basic Agrarian Law.

There is a conflict of principle between the freedom of contract upheld in the Civil Code and the protection of national agrarian rights in the Basic Agrarian Law. The principle of freedom of contract gives individuals the right to enter into agreements freely, but this freedom cannot be used to avoid more specific rules, namely restrictions on land ownership by foreigners in the Basic Agrarian Law.

The Basic Agrarian Law as *special law* set aside the Civil Code as a special *law*. Indonesian courts, in several decisions, have also affirmed that nominee agreements intended to grant foreign control over land are invalid because they violate the Basic Agrarian Law. The use of nominee agreements has several serious legal implications, particularly in terms of legal certainty and the protection of the rights of the parties involved.

In many cases, Nominee Agreements also create legal risks regarding the validity of land ownership and the potential for prolonged disputes if disputes arise at a later date. Therefore, it is necessary to conduct an in-depth analysis regarding the suitability of the Nominee Agreement with the 2 (two) main legal bases in Indonesia, namely the Civil Code and the Basic Agrarian Law.

Nominee agreements also have the potential to create legal uncertainty and social conflict, particularly if there are multiple claims to land ownership. The Basic Agrarian Law, designed to provide legal certainty in land ownership, can be undermined by practices such as nominee agreements that circumvent the law. In practice, courts tend to reject nominee agreements because they violate the principle of nationality, a key foundation of the Basic Agrarian Law. Therefore, it is important for the parties involved to understand the legal implications of nominee agreements and consider other legally compliant alternatives, such as establishing a legal entity or establishing a formally recognized partnership. Thus, although formally the Nominee agreement has a legal basis in the Civil Code, this practice often contradicts the basic principles and objectives of the Basic Agrarian Law, which prioritizes justice and legal certainty in land management in Indonesia.

3.2. Principles of Notary Caution in Making Name Borrowing Agreements for Foreign Citizens.

Everyone needs legal certainty and written evidence in the form of a deed for every civil legal act carried out. A deed is a letter that is signed, made, and used as evidence for use by the parties who need it. An authentic deed is a deed in the form determined by law, made by or before a public official who has the authority to do so, where the deed is made, and where it is made. In this case, a notary is an official who is authorized to make deeds based on the applicable regulations.

Deeds can be divided into two forms, namely authentic deeds and private deeds. An authentic deed is a deed made by or before a public official who has the authority to make the deed, with the intention of being used as evidence. A private deed is a deed deliberately drawn up by the parties themselves for proof without the assistance of a public official. These two deeds differ in their method of preparation, form, and evidentiary power. Therefore, agreements made by the parties, whether legally binding, will certainly require the assistance of a notary. A notary is a public official authorized by the state to create authentic deeds. In carrying out their duties, notaries must be meticulous and adhere to applicable legal provisions to ensure that the deeds they create

are free from future problems. This is because notaries can provide legal protection to the parties agreeing.

The existence of Notaries is closely related to the needs of the Indonesian people regarding the importance of strong evidence in a legal event. Therefore, notaries must carry out their duties and positions in public service properly. This can only be achieved if notaries behave and adhere to the principles outlined in the Notary Law and the Notary Code of Ethics.

A notary is a public official appointed by the state who has an important role in serving the legal interests of the community, as stated in Article 1, paragraph 1. Notary Department Law. The state grants attributive authority to Notaries who are given the task and authority to issue authentic deeds for the benefit of the community. In carrying out their duties, they must submit to and comply with the obligations and prohibitions stipulated in these regulations.. Notaries as public officials, receive recognition philosophically, juridically and sociologically, it is said that they receive recognition philosophically because the existence of their position provides services to the community, juridically because their existence has been measured in various laws and regulations and receive recognition sociologically because the existence of their position is very helpful to the community.

In light of this, a notary is required to carry out their duties with care, precision, thoroughness, and thoroughness. This obligation is crucial to ensure the deed is valid and legally accountable. Notaries must understand all aspects related to land transactions, including agrarian law, to avoid mistakes that could give rise to legal liability in the future.

In carrying out his/her duties, a notary must have high professional skills by paying attention to legal norms based on high integrity. In carrying out his/her duties, a notary has a role in creating authentic written evidence called a deed. The Deed made by a Notary is so valuable in providing Legal Certainty for the parties, making the Notary Office a position full of trust; everything stated in the Deed made by a Notary is true.

A notary is essentially an official who can obtain reliable advice regarding everything written down, including legal acts and provisions required by the interested parties to be stated in an authentic deed. The notary guarantees the certainty of the date of making the deed, provides a copy of the deed, and an excerpt from the deed as long as the making of the deed is not assigned to another public official.

Notaries, as a noble profession, play an important role in social life, especially in modern society, which requires documentation of legal events or certain legal acts carried out by legal subjects, whether individuals or legal entities. In the preparation of an authentic deed by a notary, there are several legal subjects, namely the parties, witnesses, and the notary. In preparing a deed, the notary must be neutral and impartial. The notary may not intervene in any way that could affect changes to the deed, so that the deed's evidentiary force can be considered complete.

The existence of notaries is inseparable from the needs of society. Therefore, in carrying out their duties and positions, notaries must adhere to the principle of prudence, which can be understood as a basis for acting with caution, both towards themselves and others. This principle emphasizes the importance of considering the consequences of every action, both short-term and long-term. In practice, the precautionary principle requires individuals or entities to take action only after ensuring sufficient evidence exists. Without such evidence, certain actions should not be taken.

The primary purpose of this principle is to anticipate and prevent unintended consequences from an activity. Thus, applying the precautionary principle helps maintain safety, reduce risks, and ensure that decisions are made based on the best available information. This principle is crucial in various fields, including law, business, and healthcare, where the consequences of actions can have a significant impact.

The principle of prudence is a way to control the occurrence of consequences through the application of applicable laws and regulations, carried out continuously, and having an internal monitoring system that is optimally capable of carrying out its duties, meaning by adopting a cautious attitude both for oneself and for others by paying attention to things that may arise, both now and in the future.

Land ownership rights are rights that give the holder the authority to use and utilize the land in accordance with legal provisions. In this context, rights are powers that are recognized and protected by law, which regulate the relationship between a person and the object to which he has rights. When a person acquires rights to land, he not only gains the power to manage the land, but is also obliged to fulfill obligations stipulated by law.

Land ownership rights grant the holder broad authority over the use of the land. Ownership rights are inviolable and absolute. Land ownership rights give the owner the authority to grant other rights over the land in question, either in the form of building use rights or usage rights, where this authority is similar to the state's authority to grant land rights to its citizens.

Nominee agreements also raise issues related to asset ownership transparency and their potential impact on the tax system. When actual ownership is hidden behind the names of Indonesian citizens, it becomes difficult to track capital flows and ensure compliance with applicable tax obligations, creating legal uncertainty that can hinder the long-term investment climate. From a public policy perspective, the existence of name-borrowing agreements reflects a gap between market needs and the existing legal framework. A comprehensive study is needed to formulate policies that can accommodate global economic dynamics.

As in the case of Decision Number 4223 K/Pdt/2022, this case occurred between the Plaintiffs, an elderly Australian couple aged 80 and 79, while the Defendant is an Indonesian citizen currently aged 36. The Plaintiff and the Defendant began with a trust in terms of land purchase in 2005. In this case, the plaintiffs transferred a sum of money to the defendant to purchase land and construct a building. It is important to ensure that this transaction meets all applicable legal requirements, including legal ownership of the land, building permits, and compliance with regional regulations.

If a dispute arises regarding the use of money or land ownership, plaintiffs should consider seeking resolution through mediation or legal channels to protect their rights. Clear documentation, such as written agreements and proof of transfer, will also be very helpful in this process. The amount of funds provided by the Plaintiff was used to pay the required costs by transferring it through the Defendant's account and/or the Defendant's father's account, totaling AUD 460,000. (four hundred and sixty thousand Australian Dollars) plus operational costs and other costs amounting to AUD 400,000. (four hundred thousand Australian Dollars) invested by the Plaintiffs.

The land plots purchased from the plaintiffs' money include a plot of land with freehold rights based on the Land Ownership Certificate Number: 2659/Mas Village, Ubud District, Gianyar Regency, Bali Province, Measurement Letter dated 30-03-2005,

Number: 550/2005, with an area of 200 M^2registered in the name of the Defendant, and a plot of Land Ownership Rights based on the Tax Payable Notification Letter (SPPT) PBB Number: 51.04.050.003.014- 0022.0, located in Mas Village, Ubud District, Gianyar Regency, Bali Province, previously registered in the name of I Made Meriasa, with an area of 1800 M^2, the same plot of land.

This case shows that the conflict between the plaintiffs and the defendants began when the plaintiffs proposed the sale of Villa Puncak Bukit (*Hilltop Hideaway*) with the hope that their capital would be returned first before sharing the proceeds. The defendant's refusal to sell the villa and its threat to block access indicate a serious dispute that is detrimental to the plaintiffs. In 2018, the plaintiffs requested a non-litigation settlement, but this was rejected because the defendant did not want the property sold. The plaintiffs did not give up, and their struggle continued in 2019, this time seeking a family settlement. *(win-win solution),* But no agreement was found.

A land sale and purchase deed is a document that proves the transfer of land rights from the seller to the buyer. As an authentic deed, this document has strong evidentiary force in the law. However, if during the process of making it a legal defect is found, for example, the requirements stipulated by law are not met, the deed can be cancelled by the court. As mentioned above, the court decision regarding the cancellation of a deed of sale and purchase is Decision Number 4223 K/Pdt/2022. In this case, the court declared the sale and purchase deed involving an Indonesian citizen and a foreign national null and void.

Based on the above case, there has been legal smuggling to circumvent the purchase of land in violation of the provisions of Article 21 of the Basic Agrarian Law, which regulates land ownership rights, where only Indonesian citizens can have land ownership rights. As a public official carrying out his duties guided by the application of Article 16 Paragraph (1) letter a of the Notary Law, namely, acting carefully in carrying out his official duties. The principle of prudence plays a crucial role in the performance of a notary's duties and authorities. In general, the application of the principle of prudence assists notaries in making decisions that balance ethical and moral considerations with regulatory compliance requirements.

Although ethically a Notary has the authority to listen to both parties and then record all actions desired by the parties, the Notary also has the discretion to determine the extent to which the actions to be recorded in the authentic deed are unlawful or not. This discretion allows the Notary to balance ethical and practical interests. The Notary must apply the principle of prudence and have a policy in making decisions related to their authority. The considerations that must be made by the Notary provide the basis for determining what is morally right or wrong, while compliance ensures conformity to legal standards or rules. In addition, the policy allows the Notary to exercise judgment in applying ethical principles and compliance requirements in certain situations, which aims to make decisions that are appropriate both morally and legally. Notaries have a role in determining an action that can be stated in the form of a deed, so that, in implementing the principle of accuracy or caution, it is mandatory to do so in the process of making a deed.

4. CONCLUSION

The position of nominee agreements also has the potential to cause legal uncertainty and social conflict, especially if there are dual claims to land ownership, in practice, courts tend to reject Nominee agreements because they violate the principle of nationality which is the

main foundation of the Basic Agrarian Law, so that even though formally Nominee agreements have a legal basis in the Civil Code, this practice often contradicts the basic principles and objectives of the Basic Agrarian Law, which prioritizes justice and legal certainty in land management in Indonesia. The principle of prudence has an important role in the implementation of the duties and authorities of a Notary.

In general, the application of the principle of prudence assists notaries in making decisions that balance ethical and moral considerations with regulatory compliance requirements. As exemplified in decision number 4223 K/Pdt/2022, the notary who drafted the nominee agreement did not appear to apply the principle of prudence to the fullest extent because the resulting legal product was an agreement whose object was unlawful. Therefore, notaries must play a role in providing legal counsel to the parties regarding the contents to be incorporated into the deed, ensuring that the principle of due care is mandatory in the deed-making process.

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