Legal Certainty of Land Sale and Purchase Agreements Carried out Through Name Loans (Nominee)

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Abstract
An agreement made before a notary has strong legal force as an authentic deed. However, in other cases, there is a hidden agreement that is not revealed in front of the notary regarding the land purchase and sale agreement that uses the name loan. This condition creates a legal dilemma because an agreement that seems legitimate and authentic in the eyes of the law, in fact, contains elements of dishonesty or concealment of facts that can affect the validity of the agreement. This raises fundamental questions about legal certainty and how the law should handle these kinds of practices, the author tries to identify the problem based on the above background, first, how is the legal certainty of the land sale and purchase agreement carried out through name borrowing? Second, what is the responsibility of the notary if he knows the application for making a land sale and purchase agreement made through a name loan? The research method used in this thesis research is to use a normative juridical research type with a problem approach, namely a legislative, conceptual and case approach. The result of the research from this thesis is that the legal certainty of land purchase and sale agreements carried out through name borrowing according to Article 1320 of the Civil Code requires four conditions, namely agreement, proficiency, certain objects, and halal causa. Although it meets the formal requirements, this agreement violates the requirements of halal causa, especially if it aims to grant land rights to parties prohibited by the Basic Agrarian Law (UUPA), such as Foreign Citizens (WNA). This violation causes the agreement to be null and void because it is contrary to the principle of freedom of contract as stipulated in Article 1337 of the Civil Code, which prohibits agreements with the aim of going against the law, public order, or morality. The notary's responsibility in making a name loan agreement through an authentic deed for an unlawful agreement can be subject to administrative, civil, or criminal sanctions.

Keywords: legal certainty, agreement, land sale and purchase, borrow name (Nominee)

Introduction
Humans as social beings have various needs that must be fulfilled in their daily lives. One of the basic needs that is important for humans is the need for land to support their lives, whether for housing, agriculture, or business. Land ownership is very important because land is a high-value asset and can provide a guarantee of economic and social stability for its owners. Therefore, humans naturally have the desire and need to own land as part of fulfilling their basic needs.

Humans in fulfilling their basic needs cannot live alone and always need help and interact with others. In meeting these needs, humans are often involved in various kinds of social and economic interactions, such as buying and selling, renting, or borrowing. Interaction in various economic and social activities causes humans to often form legal relationships to regulate the rights and obligations of each party. This legal relationship is needed to provide certainty and legal protection for each party involved, especially in transactions involving high-value assets such as land. A good and clear legal relationship is needed so as not to cause disputes or conflicts in the future [1].

The legal relationship begins with an offer process (*aanbod*) from the party who wants to sell the land to another party who is interested in buying. After the offer is made, the other party can give approval (*acceptance*) to the offer. If there is an agreement between the two parties regarding the terms and conditions of the transaction, then the land sale and purchase agreement can be considered valid and legally binding [2]. where the agreement that has been agreed upon must be implemented by both parties. This is also regulated in the Civil Code (KUHPerdata), which states that a valid agreement has the legal force to demand the implementation of obligations from the parties.

The agreement itself is derived from the root word promise which means an action between two or more people to do something. The subject in his book entitled The Law of Treaties states that an agreement is an event where a person promises to another person or where two people promise each other to carry out something [3], in the context of 1338 of the Civil Code gives freedom for the parties to make a treaty, and the agreement if it is in accordance with the law and meets the terms of the agreement, it applies as law.

Article 1313 of the Civil Code which explains that an agreement is an act with one or more persons binding themselves to one or more persons. Article 1338 paragraph (1) stipulates that "all agreements that are lawfully entered into shall be valid as law for those who make them". The event of the agreement then creates an engagement that connects two or more people so that it is then referred to as the engagement itself. An agreement is an agreement between two or more parties that is legally binding and governs the rights and obligations of the parties. The agreement is made with the intention of creating legal certainty in the legal relationship that is built. Therefore, with the many laws made in the context of agreements, it becomes a binding bond for the makers, but in making an agreement, the parties often make the agreement with the intention of deviating or modifying the law by borrowing names, often done by the parties when buying and selling land with the aim of transferring ownership of land from one party to another in exchange for a certain reward [4], For example, restrictions on land ownership by certain parties, so that the agreement looks valid in the eyes of the law, but actually hides the interests of other parties who are not officially registered as land owners. Legal certainty and openness between sellers and buyers must exist because it is to protect the parties and/or parties who buy and sell land in good faith.

Good faith must exist in an agreement, including in buying and selling because according to Article 1338 paragraph (3) of the Civil Code, an agreement must be carried out in good faith. Good faith must exist in order to prevent improper acts in the implementation of the sale and purchase. Good faith is also a condition for the validity of the agreement stated in Article 1320 of the Civil Code, namely:
1. There is an agreement between the parties;
2. Ability to make an engagement;
3. A certain thing;
4. A halal cause.

The definition of a name loan agreement or *nominee arrangement* is a condition where a person borrows another person's name to be listed as the legal owner of an asset. This research discusses the name loan agreement related to land in legal documents. *Nominee* literally has two meanings, namely: First, *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 candidacy [5] and second, *a nominee* is defined as someone who represents the interests of another party [6].

The practice of land purchase and sale agreements, in fact, many people make a name loan agreement *(nominee)* that is unknown to the Notary who made the agreement. Generally, borrowing this name occurs when someone uses the other party's name in an agreement with the aim of hiding the identity of the real owner or to circumvent certain legal provisions. This raises the issue of legal certainty because official documents do not reflect the actual conditions or agreements [7].

The legal system that applies in Indonesia generally does not recognize the concept of *nominee*, where the concept *of nominee* is not expressly and specifically regulated in the laws and regulations applicable in Indonesia [8]. This practice is usually done for a variety of reasons, such as circumventing certain legal restrictions, maintaining privacy, or for tax reasons. Nonetheless, the practice of borrowing names can have a variety of complex legal and social implications, especially related to legal certainty and protection of rights.

An agreement made before a notary has strong legal force as an authentic deed. However, in other cases, there is a hidden agreement that is not revealed in front of the notary regarding the land purchase and sale agreement that uses the name loan. This condition creates a legal dilemma because an agreement that seems legitimate and authentic in the eyes of the law, in fact, contains elements of dishonesty or concealment of facts that can affect the validity of the agreement. This raises fundamental questions about legal certainty and how the law should handle these kinds of practices, the author tries to

[1] Mochtar Kusumaatmadja, Law, Society, and National Legal Development (Bandung: Binacipta, 1976), 89.
[2] Salim HS, The Development of Innominal Contract Law in Indonesia (Jakarta: RajaGrafindo Persada, 2003), 55.
[3] Subekti, 2004, Law of Agreements, Intermasa, Jakarta, p. 1
[4] Sudikno Mertokusumo, Chapters on Legal Discovery (Yogyakarta: Liberty, 1991), 114
[5] Gunawan Widjaja, "Nominee Shareholders in the Perspective of the New Law and the New Investment Law and Its Problems in Practice", Journal of Law and Capital Market, Volume III, Edition 4, August-December, 2008, p. 43.
[6] Ibid.
[7] Maria SW Sumardjono, Land in the Perspective of Socio-Economic and Cultural Rights (Jakarta: Kompas, 2008), 127.
[8] G.H.S Lumban Tobing, Regulation of Notary Position, Erlangga, Jakarta, 2009, p. 41

identify the problem based on the above background, first, how is the legal certainty of the land sale and purchase agreement carried out through name borrowing? Second, what is the responsibility of the notary if he knows the application for making a land sale and purchase agreement made through a name loan?.

Methodology

The research in this thesis proposal is a type of normative juridical research, which is a legal research using legal norms as the object of research to produce legal arguments when conflict, ambiguity, or legal emptiness are found [9]. This type of normative juridical research was chosen in accordance with the issue of legal problems in this study that exist at the normative level or laws and regulations, namely the existence of legal uncertainty in land purchase and sale agreements carried out through name loans, the role of notaries if they know the application for making a land sale and purchase agreement carried out through name loans, and the legal consequences of making land sale and purchase agreements carried out through name loans.

Discussion

Legal Certainty of Land Sale and Purchase Agreements Carried Out Through Name Borrowing

An agreement in its implementation certainly involves more than 1 (one) person so that the engagement can be realized, in accordance with the content of article 1313 of the Civil Code (KUH Perdata) which states that "An agreement is an act in which one or more people bind themselves to one or more other people", one of which is in the form of buying and selling land.

The implementation of the agreement by the parties is included as one of the formation of the agreement, namely a name loan agreement. In accordance with Article 1233 of the Civil Code which states "An alliance is born because of an agreement or because of the law". The law of engagement in its implementation holds an open system that can be interpreted, namely everyone is able to undergo an engagement, both those whose names have been determined and those whose names have not been determined by law.[10]

An agreement that arises because of an agreement will also give rise to a right and obligation that arises because it is desired by the subjects of law [11]. An agreement will be carried out, of course, with a condition that follows it, as well as related to the name loan agreement. Regarding the conditions in the procurement of an agreement, it can be seen in Article 1320 of the Civil Code which states: "In order for a valid agreement to occur, it is necessary to fulfill 4 (four) conditions:

1. Their agreement that binds him;
2. The ability to make an alliance;
3. A particular subject matter;
4. A cause that is not forbidden.

From these requirements, there are subjective conditions, namely in numbers 1 and 2 and objective conditions in numbers 3 and 4, where if subjective conditions are not complied with, the agreement can be canceled. In number 1, it states that it is related to an agreement that refers to the fulfillment of negotiations between related parties which in terms can be carried out either orally or in writing and accompanied by an authentic deed or a deed under hand [12].

Therefore, if the parties reach a mutual agreement, the terms of the agreement can be passed. Furthermore, in number 2 related to proficiency in implementing an agreement, the parties who participate in an agreement, namely the subject of law, of course have the authority, rights and obligations in carrying out a legal act, which has bound them so that they can be said to be capable. Numbers 3 and 4 of the article are included in the objective requirements that require the existence of an object of agreement and the agreement that is implemented does not violate existing laws and regulations.

A name loan agreement that has been established between the parties if reviewed from the conditions contained in Article 1320 and meets all of these conditions, it can be said to be an agreement. However, in a name lending agreement implemented in Indonesia, if it is associated in terms of ownership of land ownership, the agreement implemented is said to be invalid because it is not in accordance with the requirements of article 1320, namely in number 4 which implicitly states that an agreement that is implemented does not violate existing regulations.

Referring to Article 1320 of the Civil Code the fourth point and linked to the Gianyar District Court Decision Number 259/Pdt.G/2020/PN. As such, it can be categorized that the deed of agreement made has a purpose that is not in accordance with the applicable rules. The fourth point, Article 1320 of the Civil Code, is not a requirement for making a deed, but a principle of benchmark to examine whether a deed is made with a purpose that is in accordance with the applicable rules.

Deed of name loan agreement in the decision of the Gianyar District Court Number 259/Pdt.G/2020/PN. Gin contains non-halal causal which is the causal that foreigners aim to obtain land rights in the State of Indonesia. Meanwhile, in the study of the decision used, namely the decision of the Sukabumi District Court Number 21/Pdt.G/2019/PN SKB, it was declared by the panel of judges to be valid according to the law against the name loan agreement in the a quo case.

The scheme listed in the name loan agreement, based on the law *(de jure)* Indonesian citizens are registered as owners on the certificate of ownership of the land, but in fact (*de facto*) foreigners who own and control the rights to the land. The name loan agreement scheme that is implemented contains legal elements such as lease agreements followed by indefinite extensions and land tenure agreements, these mechanisms have the purpose of enabling foreigners to be able to rule or have land rights in the State of Indonesia, even if it is implemented directly or indirectly.

The name loan agreement made by the parties in accordance with the decision of the Gianyar District Court as explained contains non-halal causality where the agreement is made with a purpose that is contrary to laws and regulations. The

[9] Johnny Ibrahim, Normative Legal Research Theory & Methodology, (Malang: Bayumedia Publishing, 2008), p. 27

[10] Andina Damayanti Saputri, 2015, Nominee Agreement in Land Ownership for Foreign Citizens Domiciled in Indonesia, Faculty of Law, Sebelas Maret University, Surakarta, p. 132.

[11] Djamali, Abdoel, 2016, Introduction to Indonesian Law, Rajagrafindo Persada, Jakarta, p. 163.

[12] Hetharie, Yosia, 2019, "Nominee Agreement as a Means of Controlling Land Ownership Rights by Foreign Citizens (WNA) According to the Civil Code." Sasi 25, no. 1, 30.

name loan agreement is contrary to the rules in the Basic Agrarian Law, namely Article 21 Paragraph (1) of the Basic Agrarian Law which regulates that only Indonesian citizens can have land rights and Article 26 Paragraph (2) of the Basic Agrarian Law stipulates that every legal act that aims to transfer property rights to foreigners either directly or indirectly can be said to be legally null and void [13].

Referring to Article 21 Paragraph (3) and Article 21 Paragraph (4) of the Basic Agrarian Law, if there is a land owner who does not meet the criteria as a land right owner, within a period of 1 (one) year, the subject who does not meet the conditions is required to release or transfer to a subject who is qualified as a land right owner. However, if it is not implemented and has passed the stipulated period, then the land will be abolished because of the law so that the land becomes state-owned land. When linked to the Deed of Name Loan Agreement as a form of ownership of land rights by foreigners contained in the decision of the Gianyar District Court, it can be said that it has been null and void since the agreement was made so that the agreement made is considered to have never existed. Considering that the content of the Agreement made by the Parties contains an unhalal causa, namely the content of the agreement that: The Indonesian citizen acknowledges that the Land of Property Rights registered in his name does not belong to him, but belongs to a foreigner who has provided funds for the purchase of the Land of Property Rights and its buildings. As a legal subject in entering into an agreement, it is clear that it does not meet the requirements for the validity of an agreement to fulfill Article 1320 paragraph (4) of the Civil Code on halal causa, so that the deed of name loan agreement made by the parties does not provide legal certainty, does not bind the parties as a law, if a dispute arises that creates losses for a party, the deed of agreement cannot be enforced to be implemented in front of the court.

It is reaffirmed in Article 1338 of the Civil Code which states "All agreements made in accordance with the law apply as laws for those who make them." based on this statement, the meaning is implied, namely that the agreement that reaches an agreement in the agreement causes the arising of rights and obligations which later when the agreement is still valid will be a binding for the parties who promise to be able to carry out their rights and obligations in accordance with the initial agreement. However, article 1338 also states that "Consent must be carried out in good faith." so that of course, in making an appropriate name loan agreement based on the provisions of the Civil Code, it must also be based in good faith so that it can be a binding bond with the parties involved. The relationship between articles 1320 and 1338 can reflect an open system that has been described earlier, which means that everyone is free to enter into an agreement if they meet the conditions that have been stated under the Civil Code [14].

Agrarian Law which has a "dualism" meaning with the Civil Code which is mediated by the establishment of Law Number 5 of 1960 concerning Agrarian Principles is expected to be able to eliminate the "dualism" of this meaning in the future and can complement legal policies related to agrarian in Indonesia [15].

Land-related name loan agreements can be reviewed within the scope of Law Number 5 of 1960 concerning Agrarian Principles, which is summarized in Article 9 explaining the ownership of a land right which is stated as follows: "Only Indonesian citizens can have a full relationship with the earth, water and space, within the limits of the provisions of articles 1 and 2" so that it can be interpreted that a land is possible to fully whether it is in terms of use and ownership only by Indonesian citizens which is clarified again regarding the ownership of the land in article 21 paragraph (1) which states "only Indonesian citizens can have property rights".

The Basic Agrarian Law precisely in Article 26 paragraph (2) states "Every sale, exchange, grant, gift with a Will and other acts intended to directly or indirectly transfer property rights to a foreigner, to a citizen who, in addition to his Indonesian citizenship, has foreign citizenship or to a legal entity, except as stipulated by the government in Article 21 paragraph (2), is null and void because the law and the land falls to the state, provided that the rights of the other party who burden him continue and all payments that have been received by the owner cannot be recovered."

In addition, it also refers to the Sukabumi District Court Number 21/Pdt.G/2019/PN SKB which was decided by the panel of judges. The verdict is as follows:

1. Accept and grant the Plaintiff's Claim in its entirety;
2. Declaring that the Plaintiff is the legal heir of the deceased Effendi Budiman according to the law;
3. Declared valid according to the law Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, Notary in Sukabumi;
4. Declaring that the deceased Effendi Budiman was the legal owner of the land with Certificate of Ownership Number 366 with an area of 1226 m2 located in Karangtengah Village, Sukabumi Regency District, which is now known as Jl. Tanjungsari (Merbabu) No. 40 Rt. 02 Rw. 04 Karangtengah Village, Gunung Puyuh District, Sukabumi.
5. Declaring that the Defendant has committed an unlawful act against the Plaintiff;
6. Ordering the Co-Defendant to receive and carry out the process of changing the name of the Certificate of Property No. 366 submitted by the Plaintiff and/or the heirs of the deceased Effendi Budiman;
7. Ordering the Co-Defendants to submit and comply with the content of the decision of the a quo case;
8. Sentence the Defendant to pay the case fee of Rp 4,086,000.00 (four million eighty-six thousand rupiah);

From the two decisions above, there is a very striking difference. In the Gianyar District Court Decision, the name loan agreement does not meet the halal causal, thus violating the provisions of laws and regulations. Meanwhile, the Suka Bumi District Court Decision stated that the name loan agreement made by the parties was valid by law and binding for both parties.

As is known, the decision of the Sukabumi District Court

[13] Hanif, The Consequences of the Law on the Transfer of Land Rights Carried Out Based on a Name Loan Agreement or Nominee, Islamic University of Indonesia, 2017, p. I

[14] Hetharie, Yosia, 2019, "Nominee Agreement as a Means of Controlling Land Ownership Rights by Foreign Citizens (WNA) According to the Civil Code." Sasi 25, no. 1, p. 163.

[15] Committee I of the Regional Representative Council of the Republic of Indonesia, 2014, Agrarian Legal Politics, Secretariat General of the Regional Representative Council of the Republic of Indonesia, Jakarta, p.65.

Number 21/Pdt.G/2019/PN SKB was decided verstek. This means that the Defendant is not present for an invalid reason or does not send a representative to the Court, even though the Defendant has been officially and properly summoned according to the law. However, in fact, the Panel of Judges still stated that the authentic deed in which it contained the borrowing of the name (joint statement) was legally valid as seen in the decision of the Panel which declared it valid according to the law of the Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, a Notary in Sukabumi.

In general, it is known that there are 4 (four) forms of verstek decisions that may be decided by the Judge, namely granting the Plaintiff's lawsuit, granting part of the Plaintiff's lawsuit, declaring the lawsuit unacceptable and finally rejecting the Plaintiff's lawsuit. In fact, in the a quo decision, the Panel of Judges granted the Plaintiff's lawsuit in its entirety, meaning that the Panel of Judges did not find that the lawsuit violated rights or was unreasonable. Based on this, it is known that the Panel of Judges considers the joint statement (borrowing names between Indonesian citizens) in the a quo agreement to be considered valid and does not contradict the law.

Based on the above, there is basically a difference between the two court decisions. The difference is that the decision of the Denpasar District Court No.82/PDT. G/2013/PN. DPS cancels a name lending agreement made by a foreigner with an Indonesian citizen because it is considered that it does not meet the halal causal as one of the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code. The Panel of Judges in the decision of the Sukabumi District Court Number 21/Pdt.G/2019/PN SKB stated the validity of the Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, a Notary in Sukabumi, because both are Indonesian citizens.

Based on the decision of the Sukabumi District Court Number 21/Pdt.G/2019/PN SKB, it is known that when the Plaintiff and the Defendant made the agreement, both were not careful in anticipating the occurrence of problems/conflicts because of the joint statement in the future, that the act could potentially cause an act that is contrary to the law both by the Plaintiff and the Defendant.

The fact is that not all acts and actions that will be carried out by legal subjects are regulated by laws and regulations. Therefore, a legally valid document is needed that can bind the parties who will enter into an agreement so that the existence of this document is also an important foundation in creating legal certainty, protecting the rights of the parties, and ensuring that every agreement is carried out transparently, fairly, and in accordance with the provisions of the applicable laws.

The agreement is required to meet four criteria for the validity of the agreement, namely as explained in the provisions of Article 1320 of the Civil Code, namely there is a word of consensus, proficiency in carrying out the agreement, the existence of a certain thing, and a cause that is halal. With the fulfillment of the four criteria for the validity of an agreement, an agreement is legally binding for the parties who prepare it. However, this is not able to avoid certain events, events related to legal disputes may arise in the future [16].

The process of making an agreement that has met the four criteria for the validity of an agreement as stipulated in Article 1320 of the Civil Code must also be based on the good faith of the parties who bind themselves to the agreement. Good faith is one of the crucial aspects of contract law that gives the judge the power to supervise the actions of a contract so as not to violate propriety and fairness [17].

This shows that the Judge has authority over the contract if the implementation of the contract is contrary to the sense of fairness between the two parties. The principle of good faith forces the implementation of justice and propriety, in the sense that the demand for legal certainty in the form of the application of a contract is not allowed to violate the values of justice and the norms of propriety, so that the role of the Judge is important in ensuring that the implementation of the contract remains in line with the principle of justice without ignoring the principle of legal certainty that has been agreed upon by the parties [18].

In the Decision of the Sukabumi District Court, it was stated that the name loan agreement made by the parties was in the form of a deed of Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, a Notary in Sukabumi is valid according to the law and binding for both parties. In the provisions of Article 41 of the Notary Office Law, it has been emphasized that if the provisions of Article 38, Article 39 and Article 40 of the Notary Office Law are not fulfilled in the making of the deed, then the deed only has the power of proof as a deed under hand. Therefore, the deed of Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, a Notary in Sukabumi has perfect or authentic evidentiary power.

However, the proof of a deed before the court is handed over to the Judge as the principle of *Res Judicata Pro Veritate Habetur* which means that the judge's decision must be considered correct. Court decisions cannot be canceled through court decisions, court decisions have a final and binding nature that is absolute. This shows that an authentic deed submitted before the court is not automatically recognized as true, but can still be tested based on existing evidence and facts. The judge has full authority to assess the evidentiary strength of the deed, including reviewing its formal and substantial validity. In the event that a legal defect or irregularity is found, the deed may lose its evidentiary force, although in principle, the judgment produced by the court still has final and binding legal force for the parties.

That a court decision that establishes, abolishes or changes the legal relationship is a source of material law even though there may be errors in the decision. This decision is also the authority of the process and this decision is evidence of what is stipulated in the decision so that it has binding force. This means that court decisions not only serve as an affirmation or enforcement of the applicable law, but can also create new legal norms that govern legal relations between the parties. Although there is a possibility of error in the decision, it does

[16] M. Tumilaar, The Function of Seals in Providing Legal Certainty to Letters of Agreement, Lex Privatum, 2015, p. 3 (1). https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7026

[17] Harun, R. S., Dungga, W. A., & Tome, A. H, Implementation of the Principle of Good Faith in Online Sale and Purchase Transaction Agreements, Journal of Legality, 12(2), 2019, pp. 90-99. DOI.https://doi.org/10.33756/jelta.v12i2.5796.

[18] Muhammad Syaifuddin, Contract Law, Mandar Maju Bandung 2012, p. 94.

not eliminate its binding force as long as there is no other legal remedy to cancel or change the decision. The court decision thus becomes a valid basis in determining the rights and obligations of the parties, as well as a recognized reference in the legal system for resolving disputes.

The binding to the decision also has a positive meaning in the sense that what has been decided by the judge must be considered correct *(res judicata veritate habetur).* Therefore, the Decision of the Sukabumi District Court Number 21/Pdt.G/2019/PN SKB which decided to accept the lawsuit in its entirety is correct because the deed of Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, a Notary in Sukabumi has perfect or authentic evidentiary power and does not violate laws and regulations.

Responsibility of Notary If Knowing the Application for Making a Sale and Purchase Agreement on Land Carried Out Through Name Loan

Legal responsibility is an important concept in assessing how individuals or entities should act in accordance with the norms that apply in society. Every act committed by a legal subject has the potential to cause legal consequences, either in the form of an obligation to fulfill an achievement or receive sanctions. Therefore, an understanding of legal responsibility is needed to maintain order in society and provide protection for the rights of the aggrieved parties. Legal responsibility according to Hans Kelsen states that "a person is legally responsible for a particular act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a contrary act" [19]. According to Hans Kelsen, the theory of responsibility based on pure legal theory books is divided into several parts, namely;

1. Individual accountability, i.e. an individual is responsible for violations committed by himself;
2. Collective liability means that an individual is responsible for an offense committed by another person;
3. Accountability based on mistakes that mean that an individual is responsible for the violations committed by him or her because of the purpose of causing losses;
4. Absolute liability which means that an individual is responsible for the offense he commits because it was unintentional and unforeseen [20].

The authority of the Notary in making an authentic deed includes legal actions that can be held legally accountable if a deed he makes intersects or contradicts laws and regulations. So that a Notary who carries out his position if not based on the Notary Position Law, the Amendment Notary Position Law, the Code of Ethics and other laws and regulations can be held administrative, criminal, and civil liability based on the acts that have been committed.

Assets owned by the party on the basis of a deed because the act to be carried out is unlawful as stipulated in the provisions of Article 16 paragraph 1 letter e of the Law on the Appointment of a Notary of the Amendment which stipulates that "providing services in accordance with the provisions of this Law, unless there is a reason to refuse it". This is also related to the oath of office of a Notary, where the Notary swears to obey and be loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the State of the Republic of Indonesia, the Law on the Notary Office, the Code of Ethics and other laws and regulations. Borrowing a name is an act that is opposed by law. The Notary should be able to refuse not to make a deed of name loan agreement if there is an indication of bad faith.

The forms of liability to notaries are as follows

Aspects of Notary Responsibility Based on the Notary Code of Ethics

In addition to being guided by the Notary Position Law, notaries must also adhere to the Notary Code of Ethics (referring to the Amendment of the Notary Code of Ethics of the Extraordinary Congress of the Indonesian Notary Association Banten, May 29-30, 2015). Because as an honorable profession (*officium nobile*), notaries in carrying out their duties must act independently, honestly and responsibly. The values in the Notary Code of Ethics are the dignity and dignity of a notary as a professional, if the code of ethics is violated, the dignity of the notary will be lost. In carrying out his or her position, a notary must behave professionally, have a good personality and uphold the honorary dignity of a notary and is obliged to respect colleagues and protect and defend the honor of the good name of the corps or organization. As a profession, notaries are responsible for the profession they perform, in this case the professional code of ethics [21].

The Honorary Council is one of the tools of the INI organization which consists of the central, regional and regional levels. The Hall of Honor has the following duties:

1. Coaching, guiding, supervising, and improving members in upholding the code of ethics;
2. Examining and making decisions on alleged violations of the provisions of the code of ethics that are internal or that are not directly related to the community;
3. Providing suggestions and opinions to the Supervisory Council for violations of the code of ethics and notary positions.

In carrying out its duties, the Honorary Council can conduct an examination of members of the organization who are suspected of violating the code of ethics and if found guilty, the Honorary Council also has the right to impose sanctions. Sanctions for violations of the code of ethics whose impact is not directly related to the community or in other words the authority of the Honorary Council are only internal.

For notaries who violate the professional code of ethics, the Honorary Council coordinates with the Supervisory Council which is then authorized to conduct an examination of violations of the code of ethics. As well as being able to impose sanctions on violators. The sanctions imposed on notaries as members of INI are in accordance with the provisions of Article 6 paragraph (1) and paragraph (2) of the Notary Code of Ethics, namely:

Paragraph (1), Sanctions imposed on members who violate the Code of Ethics can be in the form of:

[19] Hans Kelsen, as translated by Somardi, 2007, General Theori of Law and State, Theory of Law and State, Fundamentals of Normative Law as Empirical Descriptive Law, BEE Media Indonesia, Jakarta, p: 81

[20] Hans Kelsen, as translated by Raisul Mutaqin, 2006, Pure Legal Theory of Nuasa and Nusa Media, Bandung, p:140

[21] Gnatius Ridwan Widyadharma, Professional Law on the Legal Profession, Ananta, Semarang, 1994, pp. 133-134.

1. Rebuke.
2. Commemoration.
3. Temporary dismissal from the membership of the Association (Schorsing).
4. Dismissal from membership of the Association (Onzetting).
5. Dishonorable dismissal from membership of the Association.

Paragraph (2), The imposition of sanctions as described above against members who violate the code of ethics is adjusted to the quantity and quality of violations committed by the member. Thus, for notaries who are proven to have violated the code of ethics, there are sanctions given to the notary. Sanctions for violations of the code of ethics can be in the form of; reprimands, warnings, temporary dismissals, dismissals from membership and disrespectful dismissal from membership.

Notary officials must act fairly and honestly for all parties, do not discriminate between parties who need their services, the position they hold is not for their personal needs but for general needs as mandated by the Notary Office Law, and Notary officials have the obligation to guarantee all formal truths written on the deed products made. As a Notary official, when carrying out the duties of his position as a Notary, he must be under the supervision of an impartial and independent body.

The supervision of Notaries aims to make Notaries serious in fulfilling the criteria and carrying out their duties in line with existing rules and the Code of Ethics so that security is realized for the benefit of the people. The Notary Code of Ethics was created with the aim of protecting the nobility and honor of the dignity of a Notary's position, This supervision also serves to ensure that Notaries do not abuse their authority or violate the principles of professionalism that can be detrimental to the parties they serve. With strict supervision, it is hoped that every action of Notaries is always based on the principles of honesty, responsibility, and compliance with the law, so that public trust in the Notary profession can be maintained.

Criminal Liability of Notaries

In practice, if there is a notary deed that is disputed by the parties or the authorities on the notary, it is withdrawn as a party that participates in committing or assisting in committing a criminal act, namely making or providing false information into the notary deed. In this case, the notary is not immune to the law, the notary can be punished if it can be proven in court that the notary intentionally or unintentionally together with the opposing parties made the deed with the intention and purpose of benefiting a certain opposing party or harming another opposing party. If it is proven by the court, the notary must be punished. The punishment of the notary can be carried out with the following limitations:

a. There is a legal action from the notary against the outward, formal and material aspects of the deed that is intentional, full of awareness and conversion, and it is planned that the deed to be made before the notary or by the notary together (agrees) the witnesses is used as the basis for committing a criminal act.
b. There are legal actions from notaries in making deeds in front of or by notaries that are not in accordance with the Notary Position Law.
c. The notary's action is also not appropriate according to the agency authorized to assess the actions of a notary, in this case the Notary Supervisory Council [22].

The provisions of Article 266 of the Criminal Code in paragraphs (1) and (2) also regulate the issue of the crime of forgery of letters, namely ordering the inclusion of false information in an authentic deed. Here's the explanation:

6. Whoever orders the inclusion of a false information about a matter in an authentic deed whose truth must be stated by the deed with the intention of using it as if the statement is in accordance with the truth, shall be punished with imprisonment for a maximum of seven years, if its use may cause any harm.
7. Convicted of the same crime, whoever deliberately uses the deed as if its contents are in accordance with the truth, if its use can cause some loss.

The elements in the provisions of Article 266 paragraph (1) of the Criminal Code consist of:

1. Subjective elements, with the intention of using them or having others use them as if their statements were in accordance with the truth;
2. Objective elements:
3. whose goods; ordering the inclusion of a false information about a matter, the truth of which must be stated by the deed in an authentic deed if its use may cause a loss.

In the formulation of the criminal provisions regulated by Article 266 paragraph (1) of the Criminal Code above, the law does not require the necessity of the criminal act referred to in it, namely whether it must be done intentionally or not. So it needs to be questioned whether the criminal act is a criminal act that must be committed intentionally or not.

By hinting at a further intention in the form of an intention to use it or to tell others to use it as if the statement is in accordance with the truth in the formulation of the criminal provisions regulated in the provisions of Article 266 paragraph (1) of the Criminal Code, it is clear that the criminal act intended in it is a criminal act that must be committed deliberately.

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 committed deliberately, by itself both the public prosecutor and the judge must be able to prove the existence of the element of intentionality in the person who has been charged by the public prosecutor with committing the criminal act. for this purpose in front of the court to examine and prosecute the defendant, the public prosecutor and the judge can prove about:

a. The existence of a will on the part of the defendant to order the inclusion of false information about a matter in an authentic deed whose truth must be stated by the authentic deed;
b. The existence of knowledge in the defendant that the deed is an authentic deed;
c. There is an intention on the defendant to use it or to tell

[22] Op Cit

others to use it as if his information contained in the deed is in accordance with the truth.

Regarding criminal liability, in relation to the 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 of the Criminal Code in paragraph (1) regarding the issue of the crime of forgery of letters, namely ordering the inclusion of false information in an authentic deed. Notaries as public officials who are given the authority to make authentic deeds actually make the deeds they make legally defective.

The nominee agreement made by the notary contains false information that the deed intends to use as if the information is in accordance with the truth, even though the nominee agreement made by the notary is based on the interest of foreign citizens to be able to control the property rights land by borrowing the name of an Indonesian citizen. As a result of his actions, the notary can be criminally prosecuted with imprisonment for up to seven years. However, the imposition of criminal sanctions against notaries can be carried out as long as the Limits as violated are violated, meaning that in addition to meeting the formulation of violations mentioned in the Notary Office Law, the Code of Ethics for Notary Positions must also meet the formulation mentioned in the Criminal Code [23].

Civil Liability of Notary

Civil sanctions are sanctions imposed when mistakes that occur either due to Default or Unlawful Acts *(onrechtmatigedaad).* This sanction in the form of reimbursement of costs, compensation and interest is the result that the notary will receive from the plaintiffs' lawsuit if the deed in question is degraded which results in only having proof as a deed under hand or a deed is null and void.

In a legal act by law, it is not required to be stated in an authentic deed, so that if the deed loses its authenticity due to the non-fulfillment of the formal requirements referred to in the provisions of Article 1869 of the Civil Code jo Article 38 of the Law on the Office of Notary. So the deed still functions as a deed made under the hand if the deed is signed by the parties. As long as the degradation from an authentic deed to a deed under the hand does not cause any loss, the notary concerned cannot be claimed for legal liability through Article 1365 of the Civil Code regarding Unlawful Acts [24].

The form of liability embraced by Article 1365 of the Civil Code is liability *based fault*, in this case the fault inherent in a notary to the deed he made. The enactment of the degradation of the evidentiary power of a notary deed into a deed under the hand in general since a court decision that has permanent legal force (*inkracht*).

A deed that is declared null and void, then the deed is considered to have never existed or never been made. Thus, a notary deed that is null and void has the effect of providing reimbursement of costs, compensation or interest to the party in the deed. The form of civil sanctions can arise from acts of default in the form of compensation which is usually in the form of a sum of money. In addition, sanctions arising from unlawful acts apply, which are open to the possibility of compensation in other forms other than a sum of money, namely; determined by the plaintiff, and the judge deems it suitable [25].

Based on Article 4 of the Notary Position Law, it is stipulated that every Notary when carrying out his duties must comply with the Notary Position Law along with all applicable rules in Indonesia and each individual has the same position in the eyes of the law, as well as the oath of office for every person who will hold the position of Notary. One of the laws and regulations that must be complied with by a Notary is the Civil Code. Observing the preparation of a deed of name loan agreement by a Notary, you can refer to Article 1365 of the Civil Code which contains a provision that a person who commits an act and from the action taken causes losses to others, then the person who performs the act is obliged to compensate for the losses caused. In 1919 in the Dutch Court regarding the decision of *Hoge Raad* at the level of cassation decision, an unlawful act means not only violating written provisions, but also entering into a definition that is contrary to decency. The elements that can be categorized as unlawful actions include: [26].

a. Acts that violate the rights of others who are guaranteed by law. The rights that are violated are the rights of a person who are protected by law, and these rights are not limited by the rights owned by a person, namely personal rights, the right to honor and good name, property rights, and material rights.
b. An act that is contrary to the legal obligation of the perpetrator. Every individual must fulfill everything regarding the law that has been regulated in the law, both in writing and unwritten.
c. Acts or actions that are not in accordance with morality (*goede zeden*). The law that is born, grows, develops, and applies in society which is used as a guideline in community life, hereinafter referred to as unwritten law, if it has caused losses to other parties, then the losing party has the right to submit a demand for compensation for damages, as stipulated in the provisions of Article 1365 of the Civil Code.
d. Actions that are contrary to good behavior in the community to pay attention to the interests of other parties.

Based on the above, the elements of the act are unlawful, so that the Notary fulfills the elements in point 2 (two). That the Notary's act by giving birth to an authentic deed in the form of a name loan agreement is contrary to the obligation of the perpetrator. As a person who holds the position of Notary, he should be able to make a deed of agreement in accordance with the formal requirements, material requirements and the conditions for the validity of an agreement. So it is able to provide legal protection, certainty, and justice for the parties concerned. Regarding the making of a name loan deed made with an authentic deed, it can be categorized as a notary action that realizes the name loan agreement deed, including unlawful acts. The requirements for the validity of an agreement are one of which is halal. The elements of the

[23] Habib Adjie, Indonesian Notary Law, PT. Refika Aditama, Bandung, 2018, p. 209
[24] Sjaifurrachman, Habib Adjie, Aspects of Notary Accountability in Making Deeds, Mandar Maju, Bandung, 2011, p. 107.
[25] Nieuwenhuis, Hoofdstukken Verbintenissenrecht, Translation of Djasadin Saragih, Surabaya, 1985, p. 34
[26] Munir Fuady, The Concept of Civil Law, Rajawali Pers, Jakarta, 2016, pp. 266-267.

agreement in the name loan agreement are contrary to the provisions of Article 21 paragraph (1) of the Basic Agrarian Law and Article 26 paragraph (2) of the Basic Agrarian Law, then the name loan agreement is declared legally invalid.

A name loan agreement that is declared legally invalid cannot provide legal protection, certainty or justice for the parties who made it or for related parties. So that the name loan agreement that has been made with an authentic deed does not have binding force. And the party who feels aggrieved must not force in an effort to fulfill the content of the agreement addressed to the opposing party before the trial.

The notary who has a role in making an authentic deed regarding the name loan agreement should be able to direct the parties not to do so, because the name loan agreement where the purpose is that foreigners have land rights in the State of Indonesia is contrary to the Basic Agrarian Law. If the Notary continues to make a deed of name loan agreement and ignores the provisions of the Basic Agrarian Law. As a result, if one day a dispute arises and there is a loss to the foreigner or public order, the Notary can be held accountable based on the provisions of Article 1365 of the Civil Code.

The product of the notary deed regarding the name loan agreement as a form of ownership of land rights by the foreigner can be categorized as an unlawful act, if it has fulfilled the elements of an unlawful act as per Article 1365 of the Civil Code. Notaries when carrying out their duties or positions in making authentic deeds are required to comply with the Law on the Notary Position, besides that they are also required to comply with the provisions of the Civil Code, the Basic Agrarian Law and other rules enforced in Indonesia. The category of Notary acts that meet the elements of unlawful actions is that the Notary still makes a deed of name loan agreement which is a form of ownership of land rights by foreigners. Even though it is clear that the material of the name loan agreement is contrary to the Basic Agrarian Law.

The unlawful act of the Notary caused a loss to the parties who made the name loan agreement. The mistakes made by Notaries as public officials are caused by negligence and intentionality. The negligence committed by the Notary is negligence in negating the knowledge that in the provisions of the Basic Agrarian Law there is a rule regarding the prohibition of ownership of land rights by foreigners in Indonesia.

Furthermore, the intention carried out by the Notary is in the form of a situation where the Notary actually knows that the name loan agreement with the purpose that foreigners have land rights in Indonesia is still made a name loan agreement deed in the form of an authentic deed. So that negligence and intentionality committed by Notaries can be classified as unlawful actions by creating losses for others [27].

Therefore, a Notary can be categorized as committing an unlawful act by creating losses for other parties. so the Notary can be held accountable for the actions taken, based on Article 1365 of the Civil Code and Article 84 of the Notary Office Law which regulates, "the act of violation committed by the Notary against the provisions as referred to in the provisions of Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed only having the power of proof as a deed under hand or a deed becomes null and void can be a reason for the party who suffers losses to demand reimbursement of costs, damages, and interest to the Notary."

Therefore, regarding the deed of name loan agreement made by the Notary, it can be subject to civil liability. The Notary has given birth to an authentic deed in the form of a name loan agreement that violates Article 21 paragraph (1) of the Basic Agrarian Law, Article 26 paragraph (2) of the Basic Agrarian Law, and the Notary does not meet the principle of meticulousness in making authentic deeds as stated in Article 16 paragraph (1) letter a of the Law on the Amendment of the Notary Office, namely when carrying out his duties, the Notary must carry it out carefully. The notary is obliged to ensure that the authentic deed he makes will run well and can protect the parties.

Civil liability by the Notary is strengthened by the theory of factual relations, where something happens due to the existence of an effect, while an effect will not occur if the cause does not exist. So according to this theory, a person who commits an act that is not in accordance with the rule of law will always be required to be held responsible if his actions have caused harm to others. In addition, Notaries when carrying out their duties are obliged to uphold the two things stipulated in the Notary Position Law, namely Notaries are authorized to carry out counseling related to the law so that the legal acts that the parties want to do are in line with the regulations. The notary must reject the making of a deed for legal actions that are contrary to the rules [28].

Joint Statement Letter Number 10 dated June 10, 1985 made before Ibrahim Barsya, Notary in Sukabumi is included in the deed of partij, namely the deed of the parties where the procedure for a notary in making a partij deed begins with an introduction to the witness, based on his identity shown to the Notary, then listening and observing the will of the witness, examining the evidence of the letter related to the will of the witness, Then the Notary provides advice and makes a deed framework to fulfill the wishes or will of the witness, fulfills all administrative techniques for making notary deeds, such as reading, signing, providing copies, and filing for minuta and performing other obligations related to the implementation of the duties of the Notary position.

The notary's responsibility for the correctness of the contents of this party deed is not entirely the responsibility of the notary, because the notary's position in the party deed is not as a party. Based on the provisions of the Notary Position Law, each deed is required to include the name of the notary who made the deed, because the deed is the will of the parties present, so that if in the future there is a problem between the parties or with other parties who question the deed, then there is no need to withdraw the Notary as a defendant/co-defendant in a dispute in court.

The Notary concerned deliberately made the deed for the personal benefit of the Notary then the Notary was proven to have included false information or false statements that had never been conveyed by the witnesses before in the deed

[27] Aditya, R, due to the law of the name loan agreement (nominee) in land ownership by foreign citizens (Doctoral Dissertation, http://repository.unpas.ac.id/id/eprint/47541. Faculty of Law, Unpas), 2019, DOI.

[28] utra, A. P, Notary Liability for Formally Defective Deeds. Jurtama, 1(1), 2019, pp. 1-11. DOI. https://doi.org/10.31090/jurtama.v1i1.800.

which was directly related to the minuta of the attached deed. If this condition occurs, the Notary concerned can be held accountable.

Conclusion

1. The legal certainty of land purchase and sale agreements carried out through name borrowing according to Article 1320 of the Civil Code requires four conditions, namely agreement, proficiency, certain objects, and halal causa. Although it meets the formal requirements, this agreement violates the requirements of halal causa, especially if it aims to grant land rights to parties prohibited by the Basic Agrarian Law (UUPA), such as Foreign Citizens (WNA). This violation causes the agreement to be null and void because it is contrary to the principle of freedom of contract as stipulated in Article 1337 of the Civil Code, which prohibits agreements with the aim of going against the law, public order, or morality.
2. The responsibility of the notary in making a name loan agreement through an authentic deed for an agreement that violates the law can be subject to administrative, civil, or criminal sanctions. Criminally, the act of including false information in an authentic deed based on Article 266 of the Criminal Code can lead to a criminal penalty of up to seven years in prison. In addition, civilly, the deed can be declared null and void, and the notary concerned can be sued for compensation by the aggrieved party.

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