

## The Validity of Land Ownership Granted by Fellow Indonesian Citizens Based on a Name-Loan Agreement (Case Study at the Sharia Savings and Loans Cooperative and Financing Baitul Maal Wat Tamwil Dinar Rahmat Insani Muamalat, Tegal Regency)

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**Abstract.** *This research aims to analyze the legal validity of land ownership based on nominee agreements between Indonesian citizens, with a case study at KSPS BMT DRI Muamalat in Tegal Regency. Nominee agreements, although not explicitly regulated in the Indonesian Civil Code (KUHPerdara), are commonly practiced to circumvent legal restrictions on land ownership. This study uses a normative juridical approach with descriptive-analytical specifications. Data were collected through literature studies and interviews, then analyzed qualitatively. The findings show that nominee agreements may lead to legal uncertainty and violate the principle of good faith, especially when used to conceal actual ownership. Notaries involved in such agreements remain responsible for ensuring that the legal documents they prepare comply with prevailing laws and do not facilitate unlawful arrangements.*

**Keywords:** Agreement; Citizens; Notary; Ownership.

### 1. Introduction

Land plays a very strategic and fundamental role in the life of the nation and state in Indonesia, because land is not only related to economic aspects alone, but also includes social, cultural, and political dimensions that are interrelated in a complex manner. In an economic context, land is an essential resource for the development and welfare of society, becoming the main capital for agricultural, industrial, and housing activities. From a social and cultural perspective, land often has historical and cultural values that are strongly attached to the identity of a community or community group, so that its management must consider existing customary rights and cultural heritage. Politically, land regulation is an important tool in maintaining the stability and sovereignty of the state, because land ownership and

control can have a direct impact on social equity and justice.<sup>1</sup>Therefore, legal regulations governing land ownership and utilization are very crucial, because with a clear and firm legal framework, it is expected to provide legal certainty for land owners while guaranteeing the protection of their rights from various risks of misuse, disputes, and agrarian conflicts that often occur in the field. In this case, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) emerged as the main legal basis that became the basis for regulating all aspects related to agrarian matters in Indonesia. This UUPA firmly adheres to the principle of nationality, which means that land ownership rights can only be given to Indonesian Citizens (WNI), so this confirms the protection of national sovereignty over agrarian resources that are very vital for this nation.

This provision is specifically stated in Article 21 paragraph (1) of the UUPA, which clearly states that land ownership rights can only be owned by Indonesian citizens. This shows that the state strictly limits land ownership to ensure that land as a strategic asset does not fall into the hands of foreign parties, which could potentially threaten national sovereignty and interests. Thus, this principle of nationality does not only function as a legal mechanism, but also as a manifestation of the spirit of nationalism and people's sovereignty over natural resources which are a shared heritage for present and future generations.<sup>2</sup>However, in the reality of implementation in the field, the dynamics of economic development that continues to move forward and the increasingly urgent need for investment often encourage the birth of various forms of agreements and agreements that are not explicitly or clearly regulated in the positive legal framework applicable in Indonesia. One form of agreement that often appears in this context is known as a name borrowing agreement, or in international legal language called a nominee agreement. This agreement basically occurs when a person or party who actually has the intention and interest to own or control a plot of land, chooses to use the name or identity of another party in legal documents such as deeds of sale and purchase or land title certificates. In other words, the actual owner is not directly recorded in the official document, but rather uses a third party as a "nominee" or name borrower.<sup>3</sup>

Although this type of agreement in principle reflects the freedom of contract that is recognized and protected in the Indonesian legal system, as stated in Article 1338 of the Civil Code (KUHPerdara) which states that all agreements made legally apply as laws for those who make them, the practice of nominee agreements often gives rise to various complex legal issues. In many cases, this name-borrowing

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<sup>1</sup> Rafiqi Zul Hilmi, Ratih Hurriyati, & Lisnawati, "perlindungan hukum bagi para pihak dan notaris dalam praktik perjanjian pinjam meminjam nominee di indonesia"" 3, no. 2 (2018): 91–102.

<sup>2</sup> Rika Widianita et al., "Legalitas Pinjam-meminjam Nama Dalam Perjanjian Jual Beli Tanah (Studi Putusan Pengadilan Negeri Sukabumi Nomor 111/Pdt. H. Sudirman) 21/Pdt.G/2019/PN SKB)," AT-TAWASSUTH: *Jurnal Ekonomi Islam* VIII, no. 1 (2023): 1–19.

<sup>3</sup> Ralph Adolph, "tanggung jawab notaris atas perbuatan pemberian surat pernyataan yang berkaitan dengan perjanjian nominee (studi kasus putusan nomor 181 PK/PDT/2023)" 7, no. 1 (2016): 1–23.

agreement actually creates legal uncertainty, because official documents do not reflect the actual owner, making it difficult to enforce full and legal ownership rights. In addition, this agreement is also very vulnerable to potential abuse, both by the nominee and by other interested parties, which can ultimately harm the parties who actually have rights to the land. As analyzed by Budiono (2009), the unclear legal status of this nominee agreement has caused many disputes that are difficult to resolve legally, while also creating challenges for enforcing justice and protecting land rights in Indonesia. Therefore, although in essence, a name-borrowing agreement is part of the freedom of contract, its existence must be addressed with caution and clearer regulations so as not to cause legal uncertainty and potential conflicts that are detrimental to various parties. The phenomenon of the practice of name-borrowing agreements is not only found in the context of relationships between individuals and other parties with foreign backgrounds or outside a certain environment, but also occurs frequently between fellow Indonesian citizens (WNI). This is especially evident in the environment of microfinance institutions such as cooperatives or Baitul Maal wat Tamwil (BMT), which are often the main forum for people to access financial services on a small and medium scale. In this context, asset management mechanisms, including land procurement and ownership, are often regulated through name-borrowing agreements, where land assets are purchased or controlled in the name of a particular individual, while the institution that actually uses and manages the land is not officially registered as the legal owner.<sup>4</sup>

As a concrete illustration, in a case study that occurred at the Sharia Savings and Loans Cooperative (KSPS) BMT DRI Muamalat located in Tegal Regency, a fairly serious legal problem was found related to land ownership status. In this case, the land that had been purchased by the cooperative was officially registered in the name of an individual named Khasan Bisri. However, the reality on the ground shows that the land has been used and controlled by the cooperative as an institution, not by the owner of the name listed on the certificate. This condition gives rise to a complex and difficult to resolve legal conflict, because formally the land title certificate only lists one name as the rights holder, namely the name of the individual, while the cooperative as the entity that actually utilizes the land does not have clear legal recognition of ownership of the land. This situation is a serious problem that not only concerns legal certainty and clarity of land rights, but also raises the risk of disputes that can harm all parties involved, especially the cooperative institution and its members who use the assets as capital or collateral in their business activities. This case received attention in the Tegal District Court decision Number 46/Pdt.G/2019/PN Date, which emphasized the importance of the aspect of legal clarity in recognizing land rights to prevent conflict and ensure fair legal protection. Thus, the phenomenon of name-borrowing agreements in the microfinance institution environment like this requires stricter regulation and

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<sup>4</sup> Abdul Manan, "Reformasi Hukum Islam" 28, no. 2 (2006): 270–76.

supervision as well as a comprehensive legal solution so as not to cause uncertainty and widespread losses in the future.

According to the view expressed by Herlien Budiono in 2009, a name borrowing agreement or often called a nominee agreement can be categorized as a form of innominate agreement. This innominate agreement is a type of agreement that is not specifically or specifically regulated in the provisions of applicable laws, but its existence is still recognized and permitted in legal practice as long as the contents and objectives of the agreement do not conflict with the norms written in the laws and regulations and do not violate the principles of morality that are part of the legal values in Indonesia.<sup>5</sup>In other words, this name lending agreement has a conditional legal space, where its validity and enforceability are highly dependent on the goals and intentions of the parties involved in it.

However, the problem that often arises and becomes a crucial point is when this name-borrowing agreement is used with the intent and purpose of deceiving the law. For example, one party who actually has the right to the land deliberately hides his identity by using the name of another party in order to avoid certain applicable legal restrictions, such as the provisions in Law Number 5 of 1960 concerning Basic Agrarian Principles which regulates that ownership rights can only be given to Indonesian citizens. In this situation, the validity and validity of the name-borrowing agreement are very worthy of being questioned and criticized, because this act can be considered an attempt to manipulate the law that is not in accordance with the spirit and purpose of the applicable regulations. The act of hiding the identity of the true owner by using a name-borrowing agreement to avoid the provisions of the law clearly contradicts the principle of good faith, which should be the spirit and soul of every contract or agreement in Indonesian civil law. As stated by Khairandy (2017), the principle of good faith requires every party who enters into an agreement to act honestly, transparently, and not abuse their rights or obligations for personal interests that harm other parties or damage the applicable legal order. Therefore, if a name lending agreement is used as a tool to commit fraud or legal manipulation, then the agreement will not only lose its legal force, but may also be subject to sanctions or cancellation by the court because it is contrary to the basic principles of law that uphold justice and honesty in every legal transaction.<sup>6</sup>

In the context of land law, the validity of the certificate as evidence of land rights has a very important position. Article 32 paragraph (1) of Government Regulation Number 24 of 1997 states that a certificate is strong evidence of ownership. However, if the name on the certificate does not match the party who actually

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<sup>5</sup> Cokorda Istri Ratih Dwiyantri Pemayun & I Made Sarjana, "Tanggung Jawab Notaris Terkait Hukum Penyelundupan dalam Perjanjian Nominee," *Acta Comitatus* 6, no. 01 (2021): 142, <https://doi.org/10.24843/ac.2021.v06.i01.p12>.

<sup>6</sup> Annisa Maudi Arsela & Febby Mutiara Nelson, "Perjanjian Nominee dalam Hukum Tanah Indonesia" *Palar | Pakuan Law Review* 7, no. 2 (2021): 505–24, <https://doi.org/10.33751/palar.v7i2.4370>.

controls and pays for the land, then the potential for conflict will be very large. This is where the role of a Notary becomes crucial. A Notary as a public official has the responsibility to ensure that the deed made reflects the actual legal situation and does not violate the principles of legality or legal certainty (Mamminanga, 2008). The problems that arise in the practice of name borrowing agreements or nominee agreements are actually not only limited to the realm of civil legal relations between the parties who make and agree to the agreement.<sup>7</sup> Moreover, this problem also extends to the realm of land administration which is the domain of governance and regulation of land rights by the state through related agencies, and directly touches on the authority of land deed making officials who have a strategic role in issuing and recording legal documents of land ownership. In some cases, the discrepancy between the actual facts of the legal relationship and the contents of the official documents made, such as deeds of sale and purchase or land title certificates, poses a risk of loss not only for the parties directly involved, but can also have a negative impact on the interests of the state which has the function of supervising and regulating agrarian resources.<sup>8</sup>

This discrepancy may be in the form of the fact that the name listed in the official document does not reflect the actual owner, or that the agreement made is contrary to the legal provisions governing land ownership rights, thus causing administrative and legal chaos that ultimately harms all interested parties, including the wider community and the state as the holder of sovereignty over the land. Therefore, it is very important that legal protection is given firmly and clearly to the parties involved in the name borrowing agreement, so that their rights can be guaranteed and legally recognized. However, such protection should not lead to the tolerance or justification of practices that can be misused as a *modus operandi* to circumvent the law or carry out legal smuggling that has the potential to damage the land administration system and cause injustice. Thus, such legal protection must be balanced with strict supervision and control from the authorities, including land deed officials and land administration institutions, to ensure that every transaction and document issued is in accordance with the actual legal facts and is not misused for detrimental interests. This step is crucial to maintain the integrity of the agrarian legal system in Indonesia, while also providing certainty and justice for all people who depend on the sustainability of fair and transparent land resource management.

Previous research conducted by Lubis in 2022 comprehensively revealed that the practice of borrowing names or nominee agreements that are often found in the property and land sectors often give rise to various legal conflicts that are quite complex and difficult to resolve. These conflicts often arise in crucial situations, for example when one of the parties involved in the agreement dies or when there

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<sup>7</sup> Achmad Hariyadi, Achmad Hariyadi, & Rusdianto Sesung, "Berdasarkan Perjanjian Nominasi Antara Rekan," *Jurnal Selat* 9, no. 1 (2021).

<sup>8</sup> Prospects In & ERA Digital, "Metode Pendahuluan Jurnal Ilmiah Multidisiplin," *Metode Pendahuluan Jurnal Ilmiah Multidisiplin* 1, no. 3 (2023): 160–64.

is a default, namely the inability or failure of one party to fulfill its obligations in accordance with the contents of the agreement.<sup>9</sup>In such conditions, the complexity and uncertainty of the law become increasingly apparent, especially in relation to claims for land ownership rights that are the object of the agreement. Furthermore, in many cases analyzed, the party lending its name as a nominee often faces great difficulty in proving its rights to the land in question. This is because administratively and legally, their names are not officially listed in legal documents such as land title certificates or deeds of sale and purchase. As a result, in court or legal disputes, the nominee party has difficulty in showing strong and valid evidence that can prove their claim to ownership of the land, so that they have the potential to lose their rights and position in the dispute that occurs.<sup>10</sup>

These facts emphasize how important it is to have clearer and more structured legal provisions regarding the legal status and evidentiary force in name-borrowing agreements, especially in relation to land ownership and control. Such clarity is not only needed to protect the rights and interests of the parties involved, but also to create legal certainty that can prevent disputes and losses that are detrimental to the parties concerned in the future. Thus, clearer and more stringent law enforcement and regulations regarding nominee agreements are a must in order to maintain the stability of agrarian law and the protection of land rights in Indonesia as a whole.

Based on the description above, it can be concluded that the practice of name-borrowing agreements in land ownership between fellow Indonesian citizens still leaves complex legal issues. On the one hand, the community exploits legal loopholes in the name of freedom of contract. On the other hand, the state is obliged to provide certainty and legal protection for land ownership. Therefore, this study is important to be conducted to clarify the legal position of name-borrowing agreements and the responsibilities of notaries in making related deeds. This study aims to. Analyze the legal validity of name-borrowing agreements made between fellow Indonesian citizens, Explain the status of land ownership and the responsibilities of notaries in making deeds related to the agreement.

## 2. Research Methods

This study uses a normative legal approach method, which is an approach that specifically focuses on the study and analysis of legal norms applicable in the national legal system. This normative legal approach emphasizes an in-depth study of various formal legal sources, including but not limited to relevant laws and regulations, academically recognized legal doctrines, and court decisions that have

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<sup>9</sup> Oriza Imanda Pratama Ismi Putri & Fatma Ulfatun Najicha, "Keabsahan Perjanjian Peminjaman Nama Antara Warga Negara Asing dengan Warga Negara Indonesia," *UNES Law Review* 4, no. 2 (2021): 190–97, <https://doi.org/10.31933/unesrev.v4i2.222>.

<sup>10</sup>T Sakti, "Penelitian tentang Penguasaan Kepemilikan Tanah oleh Warga Negara Asing," 2019, 1–53, <https://osf.io/preprints/inarxiv/bq9ng/%0Ahttps://osf.io/preprints/inarxiv/bq9ng/download>.



precedent value or relevance to the problem being studied. Thus, this approach prioritizes the study of the content and substance of legal norms as the main basis for building strong and systematic legal arguments.

The main focus of the normative legal approach in this study is to identify and find legal provisions that form the basis of arguments for the issues raised, namely regarding the validity of land ownership obtained through a nominee agreement mechanism between Indonesian citizens. This approach is used to explore how legal norms regulate and respond to the practice of such agreements, whether such nominee agreements are legally acceptable, and what their legal implications are for land ownership status.

By prioritizing the study of existing legal norms, this normative legal approach allows the research to provide a clear picture of the legal position of the name-borrowing agreement in the Indonesian agrarian legal system, while also outlining the legal consequences for the parties involved. This approach also helps in examining the legal responsibilities of land deed officials in the context of issuing documents related to the agreement. Therefore, this approach is very relevant in providing a strong legal basis and logical arguments to support the analysis and conclusions produced in the research.

#### a. Research Specifications

The specification of this research is classified as analytical descriptive research, which has dual objectives and a structured approach in exploring a legal phenomenon in depth. Descriptive research focuses on efforts to provide a systematic, detailed, and comprehensive description of a particular legal phenomenon that is the object of study. This approach emphasizes the presentation of facts, conditions, and characteristics inherent in the phenomenon without providing subjective judgments, so that readers gain a clear and complete understanding of the legal situation being studied.

Furthermore, the analytical aspect in this study plays a role in conducting a review and analysis of the legal data obtained, whether in the form of laws and regulations, legal doctrines, or court decisions, in order to produce relevant and applicable legal conclusions. This analysis not only examines the contents of legal norms textually, but also explores the meaning, context, and implications of these norms in legal practice, so that it can provide a deeper understanding and appropriate recommendations related to the legal problems faced.

In the context of this study, the author specifically analyzes legal norms related to land and agreements, which are the main basis for regulating legal relations between parties related to land ownership and control. In addition, the study also highlights the aspect of the legal responsibility of notaries as land deed officials, based on the provisions of applicable laws and regulations, considering the strategic role of notaries in the preparation and ratification of legal documents

that serve as authentic evidence in land transactions. Thus, this study not only describes the existing legal phenomena, but also provides an in-depth critical analysis of the implementation of these legal norms in practice, as well as their legal implications for the protection and legal certainty of the parties involved.

#### b. Types and Sources of Data

The type of data used is secondary data which consists of:

##### a) Primary legal materials

In this study, the primary legal materials used include various laws and court decisions that have direct relevance to the problems studied, especially related to aspects of land law, agreements, and the authority of land deed officials. First, Law Number 5 of 1960 concerning Agrarian Principles (UUPA) is the main source of law that regulates the basics of land ownership and control in Indonesia. UUPA establishes fundamental principles in the management of agrarian resources, including provisions regarding land ownership rights that can only be granted to Indonesian citizens, thus becoming the main basis for analyzing the validity of name-borrowing agreements between Indonesian citizens.

In addition, the Civil Code (KUHPerdata) is also an important primary legal material, especially in terms of examining the principles of contract law in general, including the principles of freedom of contract and good faith which are the foundation of contractual legal relations between the parties. The Civil Code provides a normative framework that discusses the rights and obligations of the parties in an agreement as well as dispute resolution mechanisms.

Furthermore, Law Number 2 of 2014 concerning the Position of Notary is an important reference in assessing the responsibility and authority of a notary as an official making land deeds. This law regulates the procedures, obligations, and code of ethics of notaries in making authentic documents that function as valid legal evidence, so that it is relevant in analyzing the role of notaries in making deeds of sale and purchase and documents related to nominee agreements.

Government Regulation Number 24 of 1997 concerning Land Registration is also a crucial reference that regulates the administrative procedures for land registration in Indonesia. This PP provides guidance on the recording of land rights which is the administrative basis for ensuring legal certainty over land ownership.

Finally, the Decision of the Tegal City District Court Number 46/Pdt.G/2019/PN Date is a primary legal material in the form of jurisprudence that provides a concrete picture of the application of legal norms in practice and the legal implications arising from disputes over name-borrowing agreements in real contexts. This decision is an important source for understanding how judicial institutions assess and decide similar cases, so that it can be used as a reference in the legal analysis of this study.



All primary legal materials are integrated to provide a strong and comprehensive foundation for understanding and analyzing the legal issues raised in this study.

b) Secondary legal materials:

In this study, secondary legal materials that are important sources consist of legal literature and doctrines, various scientific books, academic journals, and scientific writings that are relevant to the theme of nominee agreements and aspects of the validity of land ownership. The literature and legal doctrines provide a deep theoretical basis as well as a conceptual understanding of various legal principles that underlie civil and agrarian legal relations, including analysis of agreements that are not explicitly regulated in laws and regulations, but develop in community practices.

The scientific books used include works by experts in agrarian law, civil law, and contract law that discuss in detail the provisions of land law, property rights, and special agreements such as nominee agreements. In addition, various academic journals published both domestically and abroad are important references for obtaining the latest perspectives and research results that have been published in a peer-reviewed manner, so that they can provide scientific validity and contextual relevance to the legal problems analyzed.

Academic writings, such as these, dissertations, seminar articles, and scientific papers are also utilized to enrich the study with various views and interpretations of law, which help to strengthen the arguments and legal analysis in this study. These secondary sources are very important to strengthen the theoretical basis, examine the latest legal developments, and provide a broader picture of the dynamics of law related to name-borrowing agreements and the validity of land ownership in the context of the Indonesian legal system.

Thus, the integration of secondary legal materials becomes an integral part of the research methodology that enables a more comprehensive, critical and evidence-based understanding of the legal issues being studied.

c) Tertiary legal materials:

In this study, tertiary legal materials are also used as complementary sources that are very important to strengthen and clarify the conceptual understanding of the legal terms used in the discussion. These tertiary legal materials include legal dictionaries, such as Black's Law Dictionary, which is one of the most authoritative references and is widely used as a reference in the world of international and national law. The legal dictionary provides clear, detailed, and precise definitions of complex legal terms, thus helping researchers and readers to understand the meaning and use of terms accurately in a legal context.

In addition, the legal encyclopedia is also part of the tertiary legal materials used in this study. The legal encyclopedia provides a comprehensive and systematic

overview of various legal concepts, principles, and doctrines relevant to the object of research, including aspects related to land law, agreements, and the responsibilities of land deed officials. By utilizing the legal encyclopedia, this study obtains a strong conceptual foundation and a comprehensive explanation of the background and normative development of the legal issues studied.

The use of tertiary legal materials is very important, especially in providing a consistent definition framework and understanding of standard legal terminology, so as to minimize ambiguity in legal interpretation and analysis. Thus, tertiary legal materials complement primary and secondary legal materials in providing strong conceptual support, which overall enriches the quality and depth of legal studies in this study.

#### c. Data Collection Methods

Data were obtained through library research, namely by reviewing legal literature, documents, laws and regulations, legal journals, and court decisions. In addition, supplementary data were obtained from limited interviews with legal practitioners, especially notaries, who have experience handling similar cases.

#### d. Data Analysis Method

The data obtained in this study were analyzed using a descriptive-qualitative method, which is a data analysis approach that emphasizes the presentation, organization, and understanding of data systematically according to the focus of the problems studied. In the descriptive analysis process, the collected legal data are neatly arranged and classified based on certain categories that are relevant to the object of research, making it easier to describe legal phenomena comprehensively and in detail.

Next, the data interpretation stage is carried out with the aim of exploring the meaning and implications of the legal data, and connecting it with the applicable theoretical framework and legal norms. In this case, the analysis does not use quantitative methods or statistical formulas, but rather focuses more on legal arguments derived from existing legal norms, legal principles, and rational and coherent legal logic. With this approach, researchers are able to compile in-depth explanations and analyses related to the validity of the name-borrowing agreement and its legal implications in land practices.

The conclusion is drawn based on the results of interpretations based on the provisions of laws and regulations, legal doctrines, and relevant court precedents, so that the conclusions produced are valid and can be scientifically and legally accounted for. Thus, this descriptive-qualitative analysis method allows research to provide a comprehensive picture as well as an in-depth critical analysis of the legal problems that are the focus of the study.

### 3. Results and Discussion

#### 3.1. Legal Validity of Name Borrowing Agreements Between Indonesian Citizens

A name-borrowing agreement, often known as a nominee agreement, is a legal practice that has clearly developed and is widely found in society, especially in the context of land ownership and control. However, this practice has not yet received clear and firm regulations in the Indonesian positive legal system, so that its existence is in a normative gray area. In its implementation, a name-borrowing agreement involves an agreement between two parties, where one party voluntarily agrees to include his name as the official owner on legal documents such as land title certificates or deeds of sale and purchase, even though in reality the rights of ownership and control of the land are actually in the hands of another party who is not listed in the formal document.<sup>11</sup>

The practice of nominee agreements is generally carried out based on reasons related to high trust between the parties, close personal or family relationships, or as a strategy to overcome legal constraints imposed by laws and regulations. One of the main motives behind the use of this agreement is an effort to avoid various legal restrictions that explicitly regulate land rights, such as restrictions on ownership only for Indonesian citizens, or other restrictions that can hinder investment and control of property by certain parties.<sup>12</sup> Thus, nominee agreements are often an alternative chosen by the community to meet their legal and economic needs, although they pose various legal risks and uncertainties related to the actual status of land ownership. The existence of this nominee agreement practice poses its own challenges for law enforcement and legal certainty in the agrarian sector, considering the potential for ownership conflicts, misuse, and losses for the parties involved and the state in general.<sup>13</sup> Therefore, it is important to understand in depth this legal phenomenon, including its normative basis and legal implications, in order to formulate effective solutions in dealing with the dynamics of land ownership in Indonesia.

In the framework of civil law in Indonesia, a name lending agreement or nominee agreement can generally be viewed as a valid agreement and its existence can be justified based on the principle of freedom of contract which is explicitly regulated in Article 1338 paragraph (1) of the Civil Code (KUHPerdota). This principle gives the parties the freedom to regulate the content, form, and contents of the agreement according to their wishes and needs, as long as it does not conflict with the provisions of applicable laws and regulations. Thus, as long as the parties agree

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<sup>11</sup> Juridical Review et al. (2025). "Tinjauan Yuridis atas Keabsahan Perjanjian" 4, no. 1.

<sup>12</sup> I Dewa Agung Dharma Jastrawan & I Nyoman Suyatna, "Keabsahan Perjanjian Nominee oleh Warga Negara Asing dalam Penguasaan Hak Milik Atas Tanah di Indonesia," *Kertha Semaya: Jurnal Ilmu Hukum* 7, no. 2 (2019): 1, <https://doi.org/10.24843/km.2019.v07.i02.p13>.

<sup>13</sup> J Beno, AP Silen, & M Yanti, "Kepemilikan hak atas tanah terdaftar yang bersumber dari akta nominee," *Braz Dent J.* 33, no. 1 (2022): 1–12.

and fulfill the elements of a valid agreement, the contract is considered binding and has legal force that binds the parties.

However, the principle of freedom of contract is not absolute or without limits. The Civil Code strictly regulates the existence of limits that must be observed so that an agreement can be considered valid and not null and void. This is reflected in the provisions of Article 1337 and Article 1335 of the Civil Code, which state that an agreement made contrary to law, morality, and public order is null and void (*nichtig*). In other words, if an agreement contains elements that violate positive legal norms, moral norms prevailing in society, or disrupt public order, then the agreement has no legal force and is considered never to have existed legally.

Therefore, although nominee agreements are basically permitted based on the principle of freedom of contract, the validity and legal force of such agreements depend greatly on whether the content and purpose of the agreement are in accordance with applicable legal, moral, and order norms. If a name-borrowing agreement is used to circumvent the law, avoid restrictions stipulated by law, or carry out unethical and unlawful actions, then the agreement has the potential to be null and void and cannot be upheld in court. Therefore, a study of such agreements must pay close attention to the aspects of legality, ethics, and compliance with applicable regulations in order to provide legal certainty and protection for all parties involved.<sup>14</sup>

Name-borrowing agreements become a problematic and controversial phenomenon when used as a means to avoid or disguise certain legal intentions, especially in the context of the provisions regulated by Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). UUPA strictly limits and regulates who has the right to own land in the territory of Indonesia, by granting exclusive land ownership rights to Indonesian citizens. When name-borrowing agreements are used to violate or bypass these restrictions, then this agreement is no longer merely an administrative tool, but has the potential to become a tool of legal manipulation that can damage the principles of justice and legal certainty in the agrarian sector.<sup>15</sup>

Furthermore, if in its implementation the name borrowing agreement is not based on good faith, which is one of the fundamental principles in every contractual relationship, but is instead used with the intention of hiding the identity of the true owner or deceiving the law for the benefit of a certain party, then legally the agreement can be qualified as an agreement that is void by law. This is based on the views of legal experts, including Khairandy (2017), who emphasized that agreements that are contrary to the principle of good faith and are used for

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<sup>14</sup> Base Fish, "praktik jual beli tanah nominee milik warga negara asing dan perlindungan hukum bagi pembeli tanah nominee tesis" 2507, no. February (2020): 1–9.

<sup>15</sup> Rizki Putri & Ali Abdullah Amelia, "Analisis Hukum Pembatalan Surat Kuasa yang Menimbulkan Hak Milik Atas Tanah (Studi Kasus Putusan Mahkamah Agung Nomor:433K/PDT/2016)," *Jurnal Mahasiswa Hukum dan Notaris Imanot* 2, no. 01 (2022): 1–23.

purposes that violate applicable legal provisions cannot be legally maintained and have no binding force. Thus, the use of a name borrowing agreement without good faith not only creates legal uncertainty for the parties involved, but can also have broader negative impacts, such as potential land ownership conflicts, losses for third parties, and reduced public trust in the national agrarian legal system. Therefore, it is important to conduct an in-depth and comprehensive study of the supervision and regulation mechanisms for the practice of nominee agreements in order to ensure that the agreement is only used in a legitimate context and does not harm broader legal interests.

In the context of land law practices in Indonesia, there is an interesting and complex case study that occurred in KSPS BMT DRI Muamalat Tegal Regency, which clearly illustrates the problems that can arise from the use of a nominee agreement. In this case, the cooperative institution purchased a plot of land as part of the organization's assets. However, for some reason, the name listed on the land title certificate was not the name of the cooperative as the legal entity that actually made the purchase, but rather the name of an individual, namely Khasan Bisri. This practice reflects a common phenomenon in nominee agreements, where a person's name is borrowed to become a formal rights holder in land documents, while the real ownership and control are with another party.

The legal problem that then arose was when Khasan Bisri unilaterally claimed ownership rights to the land, ignoring the interests of the cooperative which had actually financed the purchase and used the land as an organizational asset. This unilateral claim gave rise to a serious legal dispute, because the cooperative as a party with economic interests and management of the land was not officially recorded in the applicable land documents. This caused the cooperative to not have sufficient legal power to defend or reclaim the rights to the land in the eyes of the law, considering that formal land ownership is under the name of the individual listed on the certificate.

This situation shows the weakness of the land administration system in ensuring legal certainty and protection of land rights, especially when nominee agreements are used without clear regulations and adequate supervision. Tegal District Court Decision Number 46/Pdt.G/2019/PN dated [date of decision] is an important reference in this case, which confirms that official land documents remain the main basis for recognizing land ownership rights, so that parties who are not officially registered face the risk of losing their legal rights. This case highlights the urgency of stricter regulations and comprehensive legal protection to prevent misuse of name-borrowing agreements and ensure justice for all parties involved in land transactions.<sup>16</sup>

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<sup>16</sup> Izar Hanif. (2017). "Akibat Hukum Pengalihan Hak Atas Tanah Berdasarkan Perjanjian Pinjam Meminjam Atas Nama atau Nominee",

This shows that in terms of formal legality, a name-borrowing agreement that is not legally notarized and is not accompanied by strong evidence of the intent of the agreement does not have sufficient legal force to be used as a basis for a claim of ownership. This is in line with the opinion of Herlien Budiono (2009) who emphasized that a name-borrowing agreement is an agreement with weak evidence if it is not stated in writing and is not registered with the authorized agency. Thus, in terms of positive Indonesian law, a name-borrowing agreement between fellow Indonesian citizens can be considered invalid if it is used to circumvent the law and avoid applicable statutory provisions. Agreements like this not only create legal uncertainty, but also have the potential to harm one of the parties who have good intentions in the transaction.

### **3.2. Ownership Status and Notary's Responsibilities in Name Borrowing Agreements**

Land ownership status in the context of nominee agreement practices is one of the most crucial and complex legal issues in the land law system in Indonesia. This is due to the applicable legal provisions, which place written evidence in the form of land certificates as the main and strongest basis for recognizing land rights. Land certificates are not just ordinary administrative documents, but rather are evidence that has high legal force in showing physical and legal data on a plot of land. This provision is clearly regulated in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which emphasizes that land certificates are authentic evidence that is very decisive in every dispute or claim of land ownership.

In practice, the situation becomes more complicated when a name-borrowing agreement occurs, where the name listed on the certificate is not the name of the actual owner who controls and uses the land substantially. Although factually and economically, another party not listed in the official document actually manages and utilizes the land, legally and juridically, the party whose name is listed on the certificate is still recognized and treated as the legitimate rights holder of the land by the national legal system. This condition creates tension between the reality of use and ownership of formal rights that are legally recognized, so that it often triggers ownership conflicts and complicated legal disputes.<sup>17</sup>

Thus, the Indonesian land law regulation that prioritizes certificates as the main evidence has significant implications in the context of name-borrowing agreements. The mismatch between the actual land ownership facts and the legal status reflected in the certificate becomes a source of legal uncertainty and potential losses for parties who actually have an interest in the land. Therefore, this phenomenon requires serious attention from policy makers, law enforcement officers, and legal practitioners to create more effective legal regulation and

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<sup>17</sup> Arsela & Nelson, "Nominee Agreements in Indonesian Land Law."



protection mechanisms in order to bridge the gap between the formal aspects of legality and the substantive reality of land use in community practices.<sup>18</sup>

In the realm of notary professional responsibility, it is very important to understand that a notary is not merely a recorder or maker of ordinary deeds, but rather a public official who has a strategic role in ensuring the validity and legal certainty of a legal act. Therefore, a notary is required to carry out his duties with full integrity, neutrality, and professionalism, and always adhere to the provisions of applicable laws and regulations. This is expressly regulated in Law Number 2 of 2014 concerning the Position of Notary, especially Article 16 paragraph (1) letter a, which requires every notary to act honestly, carefully, independently, and impartially in carrying out his duties. Notaries must also always maintain and protect the interests of all parties involved in a legal act so that their rights are not harmed.

Furthermore, the notary's obligation is not only limited to the technical implementation of the making of the deed, but also includes a preventive function in ensuring that the deed made does not conflict with the law or is used to hide the actual legal facts. If in the process of making the deed the notary obtains information or a strong indication that the agreement or legal act to be stated in the deed has the potential to violate applicable legal provisions, or is used as a means to deceive the law and harm other parties, then the notary is morally and legally obliged to refuse the making of the deed. This attitude of rejection is a real manifestation of the professional responsibility and ethics of the notary's position as a guardian of public trust as well as a protector of legal certainty.<sup>19</sup>

Thus, the role of a notary in maintaining the legal validity of documents should not be underestimated, because a notary's decision to accept or reject the making of a deed can have a significant impact in preventing practices of legal abuse, including in cases of name-borrowing agreements that risk causing land ownership disputes. The notary's vigilance and assertiveness in carrying out this function is one of the important instruments to maintain the integrity of the legal system and ensure that the documents produced have valid legal force and can be legally accounted for. However, in practice, not a few notaries only base the making of deeds on information provided by the parties, without further verification of the intent and purpose of the agreement. In the event of a dispute later on, if it is proven that the notary has acted carelessly or negligently in carrying out his duties, the notary can be held legally accountable, both civilly and administratively.

However, in carrying out his duties, if a notary has carried out all his obligations carefully and in accordance with the provisions of applicable laws and regulations,

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<sup>18</sup> Jaya Kesuma, Jaya Kesuma, "Perjanjian Nominee Antara Warga Negara Indonesia dengan Warga Negara Asing dalam Praktik Jual Beli Tanah Dikaitkan dengan Undang-Undang Pokok Agraria Nomor. 05 of 1960," 2016, 3.

<sup>19</sup> Linda Vianty et al., "Perjanjian Nominee dan Akibat Hukumnya Menurut Sistem," Jurnal Preferensi Hukum 2, no. 2 (2021): 365–70.

and has verified and examined the documents and information submitted by the parties carefully, then the legal responsibility for the validity of the statement or document is entirely the responsibility of the parties who provide the information. In this context, the notary acts as a public official who acts as a recorder and witness to the legal statements submitted by the parties who come to make a deed or legal document. This means that the notary can only be responsible as long as the process of making the deed is carried out in accordance with the procedures that have been set, including efforts to prevent acts of abuse of the law.<sup>20</sup>

If it turns out that the information or documents submitted by the parties are false, misleading, or used for unlawful purposes, then the error and legal consequences of this cannot be charged to the notary. In this case, the notary does not have the authority to assess the truth of the substance of the legal statement material provided, but is only tasked with ensuring that the documents and statements are recorded formally and procedurally in accordance with job standards.<sup>21</sup> This opinion is confirmed by Mamminanga (2008), who explains that a notary acts as a neutral party who may not take sides and only serves as a witness and recorder of legal acts carried out by the parties, so that the responsibility for the truth of the contents of the legal statement is the full responsibility of the parties who appear before the notary. Thus, the role of a notary is administrative and formal, not as an assessor of the substance of the truth or motive behind the legal statement.

Therefore, it is important for notaries to understand the essence of the name loan agreement and be aware of potential deviations from the agreement. Notaries need to carefully explore the intentions of the parties and ensure that the deed made will not be used as a tool to avoid the law. This preventive step not only protects the parties to the agreement, but also maintains the integrity of the notary's position as a public official who guarantees legal certainty in society.

#### 4. Conclusion

Based on the results of the research that has been conducted and an in-depth discussion of various legal aspects related to nominee agreements between fellow Indonesian citizens, it can be concluded that the practice of this type of agreement is legally included in the category of innominate agreements. This means that this agreement is a form of contract that is not explicitly regulated or accommodated in the current positive legal system of Indonesia. However, from the perspective of the legal principles of agreements, nominee agreements can still be within the framework of freedom of contract guaranteed by Article 1338 of the Civil Code, as long as the contents and objectives of the agreement do not conflict with

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<sup>20</sup> Siti Maemunah & Study Program. (2024). "Analisis Hukum Kepastian Hukum Hak Milik Atas Tanah Bagi Warga Negara Asing (WNA) di Indonesia,"

<sup>21</sup> Maria Ulva. (2019). "Pola Kepemilikan Tanah Oleh Warga Negara Asing di Kabupaten Simeulue (Studi Kasus di Kecamatan Teupah Barat dan Teupah Tengah)," *UIN Ar-Raniry Repository*,.

applicable legal norms. However, if this nominee agreement is used to circumvent the law or contradicts fundamental provisions such as the principle of nationality regulated in Law Number 5 of 1960 concerning Agrarian Principles (UUPA), which emphasizes that land ownership rights can only be owned by Indonesian citizens, then the agreement cannot be legally upheld. In addition, this agreement must also be based on the principle of good faith as reflected in contract law in general; If this agreement is used dishonestly or by hiding important facts that could be detrimental to another party, then its validity becomes questionable and could be considered null and void by law.

The case that occurred at KSPS BMT DRI Muamalat Tegal Regency is a concrete illustration of how the ambiguity and lack of transparency in the implementation of the name loan agreement can lead to serious legal disputes. In this case, the land that was actually used and controlled by the cooperative institution was registered in the name of an individual, so that when a unilateral claim of ownership arose from the individual, the cooperative had difficulty in asserting its rights because it did not have official proof of ownership that was legally recognized. This caused real losses both legally and economically for the cooperative.

Formally and legally, based on the applicable land administration provisions, a land certificate containing a certain name remains valid proof of ownership in the eyes of the law. Thus, even though another party substantively controls the land, legal ownership remains attached to the name listed on the certificate. This situation creates tension between the legal formality aspect and the reality of land control, which further requires serious attention from policy makers and law enforcement to create more effective legal protection and clarity of land ownership status in the practice of name-borrowing agreements.

Regarding the responsibility of notaries in the context of making deeds, it should be emphasized that as public officials who have a strategic position in the Indonesian legal system, notaries bear a very important obligation to ensure that every deed made is not used as a means or tool to circumvent applicable legal provisions or to hide the actual legal facts. In other words, notaries not only act as formal recorders of legal agreements or transactions, but also have a moral and professional responsibility to carefully verify the intent and purpose of the parties who come before them. Therefore, due diligence must be the main principle held by notaries in carrying out their duties, by deeply exploring the background and substance of the agreement to be stated in the deed, and carrying out objective and professional examinations without any bias towards either party. Furthermore, considering the complexity and potential legal risks arising from the practice of nominee agreements, especially those related to land ownership, the government has an important role in formulating and implementing regulations that specifically regulate and provide limitations on the validity and mechanisms of such agreements within the framework of national law. Clear and firm

regulations are needed to provide legal certainty for all parties involved, as well as to prevent abuse or practices that can harm one party or the public interest. In addition, comprehensive regulations will be an important instrument in protecting the rights of the parties fairly and equally, while improving the quality of supervision of the implementation of agreements in the field, so as to prevent recurring legal conflicts and strengthen public trust in the land law system in Indonesia.

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