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The Limits of a Notary's Authority Regarding Mixed-Marriage Agreements Concerning Land Rights

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Abstract
This research is motivated by legal issues arising in mixed marriages specifically concerning the regulation of marital property particularly when one spouse is a foreign national, as Indonesian law imposes restrictions on foreign nationals regarding the acquisition of land rights. These restrictions are stipulated in Article 21, paragraph (1) of the Basic Agrarian Law. Such restrictions have implications for the drafting of authentic deeds by a notary; furthermore, the exercise of a notary's authority to draft such deeds could potentially constitute a form of "evasion of the law" (legal circumvention). Consequently, it is essential to define the limits of a notary's authority to prevent the circumvention of laws concerning land ownership through mixed-marriage agreements. This study employs a normative legal research methodology, utilizing both statutory and conceptual approaches. Legal materials are analyzed qualitatively, drawing upon the Civil Code, the Basic Agrarian Law, the Marriage Law, the amended Notary Law, Government Regulations on Land Rights, Constitutional Court Decision Number 69/PUU-XIII/2015, as well as relevant legal doctrines and court rulings. The findings indicate that a notary's role in preventing the circumvention of laws regarding land ownership through mixed-marriage agreements lies in their authority to conduct a thorough legal examination of documents and the substance of the agreement, provide legal guidance, and refuse to draft any deed that clearly contravenes statutory regulations. A notary does not, however, have the authority to investigate the hidden intentions of the parties, definitively determine the existence of a legal circumvention, or establish the status of land ownership. Therefore, the exercise of a notary's authority must be carried out proportionally, with due regard for the limits of their professional office and the principle of nationality as enshrined in the Basic Agrarian Law.

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Introduction

The development of globalization has brought significant changes to the patterns of legal relationships within society, including in the field of family law involving individuals of different nationalities. Population mobility, social relationships, and increasing interactions between countries have created opportunities for marriages between Indonesian citizens and foreign nationals. A marriage involving two individuals of different nationalities is commonly referred to as a mixed marriage. [1]

Under the Indonesian legal system, the definition of mixed marriage is stipulated in Article 57 of Law Number 1 of 1974 concerning Marriage ("Marriage Law"), which provides that "a mixed marriage under this Law refers to a marriage between

[1] Gautama, S., 2007, Warga Negara dan Orang Asing: Berikut Peraturan-Peraturan dan Contoh-Contoh. Bandung: PT Alumni, p. 46.

two individuals who are subject to different laws in Indonesia due to differences in nationality, where one of the parties is an Indonesian citizen." This provision establishes that a mixed marriage is a marriage conducted in Indonesia between two individuals who are subject to different legal systems due to their different nationalities, with one party holding Indonesian citizenship.[2] The difference in nationality within such a marriage not only gives rise to legal consequences concerning the personal status of the parties but also has implications for legal relationships involving property acquired both before and during the marriage.

One of the legal issues arising from mixed marriages concerns the regulation of marital property, particularly when one spouse is a foreign national who is legally subject to restrictions on acquiring land rights in Indonesia. Article 35 paragraph (1) of the Marriage Law stipulates that property acquired during marriage constitutes joint marital property. This provision expressly establishes that property acquired during marriage generally becomes joint marital property, whereas property individually owned by each spouse prior to marriage, as well as property acquired through gifts or inheritance, remains under the respective spouse's control unless otherwise agreed upon by the parties. This provision further demonstrates that Indonesian marriage law recognizes a joint marital property regime as a legal consequence of marriage. Accordingly, in the absence of a marriage agreement providing for the separation of property in a mixed marriage, property acquired during the marriage is, in principle, subject to the legal provisions governing joint marital property. [3] This situation may give rise to legal issues when joint marital property includes land assets whose ownership is restricted under Indonesian agrarian law.

This issue is closely related to the principle of nationality, which constitutes one of the fundamental principles underlying Law Number 5 of 1960 concerning Basic Agrarian Principles ("Basic Agrarian Law"). The principle of nationality establishes citizenship as an essential basis for determining which legal subjects are entitled to establish certain legal relationships with land, water, and airspace within Indonesian territory. [4]1 Article 9 paragraph (1) of the Basic Agrarian Law affirms that only Indonesian citizens may have full legal relationships with land, water, and airspace. This principle is further reinforced by Article 21 paragraph (1) of the Basic Agrarian Law, which stipulates that only Indonesian citizens may hold ownership rights over land. These provisions serve as a form of protection of national interests while simultaneously restricting the ownership of land by foreign legal subjects. Nevertheless, Indonesian agrarian law does not entirely prohibit foreign nationals from holding land rights, as certain types of land rights may be held or exercised by foreign nationals in accordance with the requirements prescribed by applicable laws and regulations, such as the Right of Use (Hak Pakai). [5]

Restrictions on land ownership rights for foreign nationals are also specifically regulated under Article 21 paragraph (3) of the Basic Agrarian Law. This provision stipulates that foreign nationals who acquire ownership rights over land through intestate inheritance or the commingling of property as a result of marriage, as well as Indonesian citizens who lose their citizenship after acquiring such ownership rights, are required to relinquish those rights within one year from the date of their acquisition or loss of citizenship, as applicable. Failure to comply with this obligation results in the termination of the ownership rights by operation of law, with the land reverting to the State, without prejudice to the rights of other parties encumbering the land. Furthermore, Article 26 paragraph (2) of the Basic Agrarian Law provides that any sale and purchase, exchange, gift, testamentary disposition, or other legal act intended to directly or indirectly transfer land ownership rights to foreign nationals, except as otherwise permitted by law, shall be null and void by operation of law, and the land shall revert to the State. These provisions demonstrate that restrictions under Indonesian agrarian law are not limited to direct transfers of land ownership rights but also extend to legal acts that are substantively intended to confer ownership rights upon foreign nationals through indirect arrangements.

The provisions of Article 21 paragraph (3) of the Basic Agrarian Law are particularly relevant in the context of mixed marriages, as the commingling of property arising from marriage may give rise to legal issues concerning the status of land ownership rights held by Indonesian citizens. Under certain circumstances, in the absence of a property separation arrangement, land ownership by an Indonesian spouse may be affected by the legal provisions governing the commingling of marital property. Therefore, a marriage agreement plays an important role as a legal instrument for regulating property relations between spouses, including establishing the separation of their respective assets. A marriage agreement may provide legal certainty regarding the status of property owned by an Indonesian citizen, ensuring that such property does not automatically become part of joint marital property, which could otherwise give rise to legal issues under the restrictions imposed by the Basic Agrarian Law. [6] However, it must be emphasized that a marriage agreement does not constitute a legal means of granting land ownership rights to foreign nationals. Rather, it serves as an instrument for regulating marital property relations, the implementation of which must remain subject to the provisions of Indonesian agrarian law.

The legal framework governing marriage agreements in Indonesia underwent a significant development following the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015 (hereinafter referred to as the Constitutional Court Decision). This decision introduced a new interpretation of Article 29 of the Marriage Law, particularly concerning the timing of the execution of marriage agreements. Prior to this decision, marriage agreements were generally understood as agreements entered into before or at the time of marriage. However, through this decision, the Constitutional Court expanded the opportunity for spouses to enter into marriage

[2] Pratama, Gede Ode Angga. 2018. "Pengaturan Perolehan Hak Milik Atas Tanah dalam Perkawinan Campuran." Kertha Patrika, 40(2), 85–98.
[3] Ibid.
[4] Rubiati, B. 2021. "Kepastian Hukum Pemilikan Rumah Susun Oleh Orang Asing Di Indonesia Dikaitkan Dengan Prinsip Nasionalitas". LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria, 1(1), 75-90.
[5] Ade Putra Prima, Busyra Azhrei, Yussey andelina. 2023, Tanggung Jawab Notaris Terhadap Akta Nominee dalam JualBeli Tanah (Studi Kasus Putusan Mahkamah Agung Nomor 1290, Unes Law Review, 6(1), 518.
[6] Yusa, I Gede, I Dewa Gede Atmadja,I Made Arya Utama, I Made Dedy Prianto, Gede Prapta Wiguna, I Gede Tresna Pratama Wijaya, 2026."Akibat Hukum Akta Perjanjian Nominee Terhadap Pihak Ketiga" Acta Comitas, 1 (1), 141-152.

agreements during the course of their marriage, based on mutual consent. Furthermore, marriage agreements may be certified by a marriage registrar or a notary and may be enforceable against third parties insofar as their interests are concerned. This reinterpretation provides greater flexibility for couples in mixed marriages to regulate the separation of marital property, including after the marriage has taken place. [7]

The expansion of these legal provisions has implications for the authority and responsibilities of notaries in the practice of marriage law. Pursuant to Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Notarial Profession, as amended by Law Number 2 of 2014 ("Amended Notary Law"), notaries are authorized to draw up authentic deeds concerning all legal acts, agreements, and stipulations required by laws and regulations and/or requested by interested parties to be formalized in authentic deeds. Such authority also includes ensuring the certainty of the date of execution, maintaining custody of the deeds, and issuing executorial copies, certified copies, and excerpts thereof, provided that the preparation of such deeds has not been assigned or reserved to other officials or persons designated by law [8]. In addition to these powers, Article 15 paragraph (2) letter (e) authorizes notaries to provide legal counseling in connection with the preparation of deeds. Furthermore, Article 16 paragraph (1) letter (a) requires notaries, in performing their official duties, to act in a trustworthy, honest, diligent, independent, and impartial manner, while safeguarding the interests of the parties involved in the relevant legal acts. These provisions demonstrate that the role of notaries extends beyond the preparation of authentic deeds as written evidence and encompasses a professional obligation to consider the legal aspects of the acts formalized in such deeds.

In the context of mixed marriages involving land ownership rights, the authority of notaries is particularly significant, as the substance of marriage agreements may be directly related to the provisions of both marriage law and agrarian law. Notaries are required to understand the relationship between the regulation of the separation of marital property and the restrictions on land ownership rights under the Basic Agrarian Law. This understanding is essential to ensure that marriage agreements not only fulfill the formal requirements of authentic deeds but also contain substantive provisions that comply with applicable laws and regulations. [9] Nevertheless, the authority of notaries remains subject to legal limitations. Notaries are not authorized to confer land ownership rights or determine the legal status of land ownership through marriage agreements, as the determination of eligible legal subjects and types of land rights remains governed by agrarian law. Accordingly, notarial authority in this context must be understood as the authority to draw up authentic deeds and provide legal counseling concerning the regulation of the parties' marital property, rather than as the authority to override statutory restrictions on land ownership rights.

The existence of marriage agreements may also give rise to legal issues when such agreements are used not merely to regulate marital property relations between spouses but as a means of circumventing or deviating from the provisions of agrarian law. This issue is closely related to the concept of circumvention of law, which refers to a legal act that formally employs a particular legal arrangement or mechanism but is substantively intended to evade mandatory legal provisions [10]. In the context of land ownership rights, circumvention of law may occur when an agreement is structured in such a way that a foreign national obtains benefits or control that substantively resemble land ownership rights, even though such rights are formally registered in the name of an Indonesian citizen. Such practices may be found in the use of nominee agreements or name-lending arrangements, which grant foreign nationals the authority to control, use, or even transfer land formally registered in the name of an Indonesian citizen. The use of such contractual arrangements may contravene Article 21 paragraph (1) and Article 26 paragraph (2) of the Basic Agrarian Law if it is established that they are intended to indirectly transfer or confer control over land ownership rights to foreign nationals. [11]

The issue of circumvention of law becomes increasingly complex when associated with the preparation of marriage agreements in mixed marriages. Marriage agreements, which are fundamentally legitimate legal instruments for regulating the separation of marital property, may potentially be misused if their provisions are designed to confer benefits or control over land upon a foreign spouse by circumventing the restrictions imposed under the Basic Agrarian Law. Therefore, a clear distinction must be made between marriage agreements lawfully executed to regulate the separation of marital property and agreements substantively intended to conceal the control of land rights by foreign nationals. Not every marriage agreement entered into in the context of a mixed marriage can be classified as an act of circumvention of law. The determination of whether circumvention of law has occurred must be based on the substance of the contractual clauses, the intentions and objectives of the parties, and the legal consequences sought to be achieved through the agreement. [12] Accordingly, the validity of an agreement cannot be assessed solely on the basis of its authentic form but must also take into account whether its contents and objectives comply with mandatory legal provisions. This is consistent with Article 1337 of the Indonesian Civil Code (hereinafter referred to as the Civil Code), which stipulates that a cause is unlawful if it is prohibited by law or contrary to morality or public order.

These circumstances place notaries in a significant position while simultaneously imposing professional responsibilities

[7] Hadi, I. Gusti Ayu Apsari, Komang Febrinayanti Dantes, Ratna Artha Windari, Ni Putu Ega Parwati, and Nastiti Lestari. 2025 "Akta Autentik Perjanjian Kawin Berdasarkan Putusan MK No. 69/PUU-XIII/2015: Proses dan Pertanggungjawaban Notaris di Kabupaten Tabanan". Acta Comitas: Jurnal Hukum Kenotariatan 10, (2), 244-261.

[8] Partyani, P.D.M., Sarjana, I.M. and Putrawan, S., 2018. "Penerapan Putusan Mahkamah Konstitusi Nomor: 69/Puu-XIII/2015 jo. Pasal 29 ayat (1) UU Perkawinan Mengenai Pengesahan Akta Perjanjian Perkawinan Oleh Notaris di Kota Denpasar" Kertha Semaya: Jurnal Ilmu Hukum, 7(1), 1-15.

[9] Prebianan, P.R. and Sarjana, I.M., "Fungsi Perjanjian Perkawinan terhadap Status Kepemilikan Harta pada Perkawinan Campuran". Kertha Semaya: Journal Ilmu Hukum, 6, 1-13.

[10] Pemayun, Cokorda Istri Ratih Dwiyanti dan I Made Sarjana, 2021. "Tanggung Jawab Notaris Terkait Penyelundupan Hukum dalam Hal Perjanjian Nominee." Acta Comitas, 6 (1), 142-151.

[11] Devita, A. P., & Dhahri, I. 2026. "Fraus Legis dalam Perjanjian Nominee Warga Negara Asing: Analisis Hukum Perdata Internasional terhadap Putusan Mahkamah Agung dan RUU HPI". *LEXARA: Journal of Law and Legal Studies*, *1*(2), 156-164.

[12] Pemayun, Cokorda Istri Ratih Dwiyanti dan I Made Sarjana, *Op.cit.*, p. 142-151.

upon them to prevent the circumvention of law through the preparation of marriage agreements. Notaries cannot automatically endorse all intentions of the parties merely because an agreement is entered into by mutual consent. In exercising their authority, notaries are required to verify the identity and legal capacity of the appearing parties, ascertain the intentions and objectives underlying the agreement, provide legal counseling regarding the consequences of marital property separation arrangements, and ensure that the clauses incorporated into the deed do not manifestly contravene applicable laws and regulations. The obligation to act diligently, as stipulated in Article 16 paragraph (1) letter (a) of the Amended Notary Law, constitutes an essential legal basis for notaries to consider the substantive legal aspects of the agreements they prepare. Nevertheless, such responsibilities must be exercised proportionately within the scope of notarial authority, as notaries are neither empowered to definitively determine the legal status of land ownership nor authorized to assume the supervisory functions of land administration authorities.

Based on the foregoing discussion, it is essential to conduct research on the limits of notarial authority in the preparation of mixed-marriage agreements concerning land rights. This study is expected to provide a comprehensive understanding of the scope of notarial authority under applicable laws and regulations, while also identifying the limits of notaries' professional responsibilities in preventing the misuse of marriage agreements as a means of circumventing legal restrictions on land ownership rights.

Problem Formulation

1. How is the authority of notaries in the drafting of mixed-marriage agreements concerning land rights regulated under Indonesian laws and regulations?
2. What are the limits of a notary's authority in preventing the circumvention of the law regarding land ownership rights through mixed-marriage agreements?

Purpose

This study aims to provide an in-depth analysis of the legal framework governing notarial authority in the preparation of mixed-marriage agreements concerning land rights under Indonesian laws and regulations, as well as to examine the limits of notarial authority in preventing the circumvention of legal restrictions on land ownership rights through mixed-marriage agreements.

Method

This study employs normative legal research, which is selected for its suitability in analyzing legal issues. According to Peter Mahmud Marzuki, normative legal research is a process of identifying legal rules, legal doctrines, and legal principles to address the legal issues under examination. [13] These legal principles and rules are applied to analyze the legal framework governing notarial authority in the preparation of mixed-marriage agreements concerning land rights under Indonesian laws and regulations, as well as the limits of notarial authority in preventing the circumvention of legal restrictions on land ownership rights through mixed-marriage agreements. This study adopts two approaches: the statutory approach and the conceptual approach. [14] The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory provisions and legal instruments, such as the Indonesian Civil Code, the Basic Agrarian Law, the Marriage Law, the Amended Notary Law, and Constitutional Court Decision Number 69/PUU-XIII/2015. Secondary legal materials comprise relevant legal literature, scholarly journals, and internet-based sources, while tertiary legal materials include the Kamus Besar Bahasa Indonesia (the Great Dictionary of the Indonesian Language). Legal materials are collected through library research by gathering and examining relevant references concerning the legal issues addressed in this study. The collected legal materials are subsequently examined using a qualitative descriptive analysis method.

Discussion

A. Regulation of Notary's Authority in the Drafting of Mixed-Marriage Agreements

A notary is a public official vested with the authority by law to draw up authentic deeds and exercise other powers as stipulated in Article 1 point 1 of the Amended Notary Law. The position of a notary as a public official plays a significant role in ensuring legal certainty in civil law relationships. Authentic deeds drawn up by notaries serve as written evidence possessing full evidentiary force, provided that they are executed in accordance with applicable legal provisions. [15] Therefore, notaries play an essential role in ensuring legal certainty concerning legal acts intended by the parties, including the preparation of marriage agreements.

The legal basis for notarial authority is stipulated in Article 15 paragraph (1) of the Amended Notary Law, which provides that notaries are authorized to draw up authentic deeds concerning all legal acts, agreements, and stipulations required by laws and regulations and/or requested by interested parties to be formalized in authentic deeds, to ensure the certainty of the date of execution, to maintain custody of the deeds, and to issue executorial copies, certified copies, and excerpts thereof, provided that the preparation of such deeds has not been assigned or reserved to other officials by law. Based on this provision, marriage agreements constitute a form of legal act that may be formalized in authentic deeds drawn up by notaries [16]. This authority has become increasingly relevant following the issuance of the Constitutional Court Decision, which allows married couples to enter into marriage agreements during the course of their marriage. In this context, notaries not only serve as public officials responsible for formalizing the parties' agreements in authentic deeds but also possess the authority to provide legal counseling in connection with the preparation of such deeds, as stipulated in Article 15 paragraph (2) letter (e) of the Amended Notary Law.

The authority to provide legal counseling is particularly significant in the preparation of mixed-marriage agreements. This is because marriage agreements not only regulate property relations between spouses but may also give rise to legal consequences affecting third parties and legal

[13] Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, p.181.
[14] I Made Pasek Diantha, Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum, Prenada Media Group, Jakarta, p. 156-169.
[15] Habib Adjie, 2018, Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No.30 Tahun 2004 tentang Jabatan Notaris, Bandung: Refika Aditama, p. 8.
[16] Dewi, Ni Putu Nadia Puspita, and I. Wayan Novy Purwanto. 2025. "Perjanjian Pranikah Dalam Memberikan Kepastian Hukum Terkait Pembagian Harta Pada Perkawinan.". 306-316.

relationships concerning certain assets, including land rights. Accordingly, notaries must have a thorough understanding of marriage law and agrarian law to ensure that the provisions incorporated into the deeds do not contravene applicable laws and regulations.

In addition to exercising the authority stipulated in Article 15 of the Amended Notary Law, notaries are also subject to professional obligations under Article 16 paragraph (1) letter (a) of the Amended Notary Law, which requires them to act in a trustworthy, honest, diligent, independent, and impartial manner while safeguarding the interests of the parties involved in legal acts. The obligation to exercise due diligence entails that notaries must carefully consider the legal aspects of the agreements they prepare [17]. In the preparation of mixed-marriage agreements, such diligence is demonstrated, among other things, through the verification of the identities and nationalities of the appearing parties, an understanding of the parties' intentions, and the provision of explanations concerning the legal consequences of the agreed marital property arrangements. Accordingly, notarial authority in the preparation of mixed-marriage agreements is founded upon the general authority to draw up authentic deeds as stipulated in the Amended Notary Law, supplemented by the authority to provide legal counseling. Nevertheless, such authority is not unlimited, as notaries remain obligated to observe the legal requirements for the validity of agreements, the provisions of marriage law, and the restrictions imposed under national agrarian law.

The legal framework governing marriage agreements under the Indonesian legal system is primarily stipulated in Article 29 of the Marriage Law. This provision underwent a significant reinterpretation following the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015. The decision serves as an important legal basis for the development of notarial authority in the preparation of marriage agreements, as it allows married couples to enter into such agreements not only before or at the time of marriage but also during the course of their marriage.

Prior to the issuance of this decision, Article 29 paragraph (1) of the Marriage Law stipulated that marriage agreements could be entered into at or before the time of marriage, based on the mutual consent of both parties, and were required to be certified by a marriage registrar. This legal framework created difficulties for couples in mixed marriages who had entered into marriage without establishing a property separation agreement. Under such circumstances, Indonesian citizens married to foreign nationals faced legal risks concerning the status of property acquired during marriage, particularly where land rights subject to the principle of nationality were involved. [18]

Through the Constitutional Court Decision, Article 29 paragraph (1) of the Marriage Law was reinterpreted to provide that, before the marriage takes place or during the course of the marriage, both parties may, by mutual consent, enter into a written agreement certified by a marriage registrar or a notary, the provisions of which shall also be binding upon third parties insofar as their interests are concerned. This reinterpretation provides a legal basis for couples in mixed marriages to enter into marriage agreements after their marriage has taken place, including agreements regulating the separation of marital property in relation to land ownership rights. [19]

In addition to modifying the timing of the execution of marriage agreements, the Constitutional Court Decision also introduced a new interpretation of Article 29 paragraphs (3) and (4) of the Marriage Law. A marriage agreement takes effect from the date of marriage, unless otherwise stipulated in the agreement. Furthermore, during the course of the marriage, such agreements may regulate marital property or other matters and may not be amended or revoked except by mutual consent of both parties, provided that such amendment or revocation does not prejudice the interests of third parties. [20] Accordingly, couples in mixed marriages are afforded the opportunity to adjust their marital property arrangements according to their needs and the legal circumstances arising during their marriage.

With regard to notarial authority, the Constitutional Court Decision expressly recognizes notaries as officials authorized to certify marriage agreements. This interpretation expands the role of notaries in marriage law, which had previously been understood primarily within the scope of their authority to draw up authentic deeds under the Amended Notary Law. Notaries are not only responsible for formalizing the parties' agreements in authentic deeds but are also granted a recognized role in the certification of marriage agreements as contemplated by the Constitutional Court Decision [21]. Nevertheless, a distinction must be made between the authority of notaries to draw up marriage agreement deeds and the authority of marriage registrars to register such agreements in official marriage records. This distinction is essential because registration in marriage records serves to provide information and legal certainty to third parties regarding the existence of a marriage agreement. Notaries do not automatically assume the authority of marriage registrars to record such agreements in marriage registers or official marriage documents. Accordingly, notarial authority following the Constitutional Court Decision must be understood as encompassing the preparation and certification of marriage agreements within the applicable legal framework, rather than as authority to replace the functions of marriage registrars or competent land administration officials.

The legal framework governing land ownership rights in mixed marriages is inseparable from the principle of nationality adopted under Indonesian agrarian law. This principle establishes citizenship as the basis for determining which legal subjects are eligible to hold certain types of land rights. These provisions are intended to safeguard national interests in the control and utilization of land within Indonesian territory. Therefore, although mixed marriages

[17] Wibowo, W. S., Najwan, J., & Bakar, F. A. 2022. "Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik dalam Undang-Undang Jabatan Notaris". *Recital Review*, *4*(2), 323-352.

[18] Pratama, F. F. 2026. "Akibat Hukum Perjanjian Perkawinan dalam Perkawinan Campuran Terhadap Kepemilikan Hak Milik atas Tanah Bagi WNI". *Arus Jurnal Sosial dan Humaniora*, *6*(2), 1845-1851.

[19] Rohman, M.F., 2017. "Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan". *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, 7(1), p.1-27.

[20] Ibid.

[21] Brata, D. L., Adnyani, N. K. S., & Sudiatmaka, K. 2018. "Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015". *Jurnal Komunitas Yustisia*, *1*(3), 216-227.

constitute legally valid relationships recognized by the State, such marriages cannot override the provisions of agrarian law restricting land ownership rights by foreign nationals.

The principle of nationality is reflected in Article 9 paragraph (1) of the Basic Agrarian Law, which stipulates that only Indonesian citizens may have full legal relationships with land, water, and airspace. Furthermore, Article 21 paragraph (1) of the Basic Agrarian Law expressly provides that only Indonesian citizens may hold the Right of Ownership (*Hak Milik*) over land. These provisions demonstrate that citizenship constitutes a subjective legal requirement determining an individual's eligibility to hold land ownership rights. [22] Accordingly, foreign nationals are not legally entitled to hold the Right of Ownership over land in Indonesia, including through marriage to an Indonesian citizen.

Further provisions concerning land ownership rights held by Indonesian citizens married to foreign nationals are stipulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Strata Title Units, and Land Registration (hereinafter referred to as the Government Regulation on Land Rights). This Government Regulation provides a more specific legal framework governing the status of land rights held by Indonesian citizens in mixed marriages. Article 70 paragraph (1) of the Government Regulation on Land Rights stipulates that Indonesian citizens married to foreign nationals may hold the same land rights as other Indonesian citizens. Furthermore, Article 70 paragraph (2) provides that the land rights referred to in paragraph (1) must not constitute joint marital property, as evidenced by a property separation agreement between the spouses drawn up in a notarial deed.

The provisions of Article 70 of the Government Regulation on Land Rights are particularly significant in clarifying the relationship between marriage law, agrarian law, and notarial law. These provisions expressly recognize the rights of Indonesian citizens married to foreign nationals to retain the same land ownership rights as other Indonesian citizens, provided that such rights do not form part of joint marital property. To establish the existence of a separation of property, the regulation specifically requires a property separation agreement between the spouses executed in the form of a notarial deed. Accordingly, a notarial deed serves not only as written evidence of the parties' agreement but also as an evidentiary instrument expressly required under agrarian regulations to demonstrate that the land rights concerned are excluded from joint marital property.

In addition to regulating the land rights of Indonesian citizens in mixed marriages, the Government Regulation on Land Rights also provides for the possibility of foreign nationals owning residential houses or dwelling units in Indonesia, subject to certain requirements. Article 69 of this Government Regulation stipulates that foreign nationals eligible to own residential houses or dwelling units must possess immigration documents in accordance with applicable laws and regulations. Furthermore, Article 71 regulates the types of land rights that may serve as the legal basis for foreign nationals to own residential houses or dwelling units, including the Right of Use and other legally recognized forms of land tenure. These provisions demonstrate that restrictions on land ownership by foreign nationals should not be interpreted as an absolute prohibition on all forms of land rights. Rather, a distinction must be made based on the type of land right and the legal eligibility requirements applicable to its holder.

B. The Limits of Notarial Authority in Preventing the Circumvention of Legal Restrictions on Land Ownership Rights Through Mixed-Marriage Agreements

The discussion concerning the limits of notarial authority in preventing the circumvention of legal restrictions on land ownership rights through mixed-marriage agreements is closely related to the interplay between notarial law, marriage law, and agrarian law. This issue arises because marriage agreements are fundamentally legitimate legal instruments for regulating marital property relations between spouses. However, in the context of mixed marriages, such agreements may also intersect with the restrictions on land ownership rights imposed on foreign nationals under the Basic Agrarian Law.

Notaries occupy a significant position, as they are authorized to draw up authentic deeds concerning marriage agreements and provide legal counseling to the parties involved. However, such authority cannot be interpreted as granting unrestricted discretion to incorporate all intentions of the parties into a deed without considering whether the substance of the agreement complies with applicable laws and regulations. Notaries remain bound by their professional obligations, the principle of due diligence, and the prohibition against facilitating legal acts that contravene statutory provisions. [23] Therefore, the limits of notarial authority in this context must be analyzed through several aspects, namely the concept of circumvention of law in relation to land ownership rights, the obligations of notaries to identify indications of circumvention of law, the limits of notarial authority to refuse to draw up deeds, and the forms of notarial liability that may arise when deeds they have prepared are used as instruments to circumvent the provisions of agrarian law.

Conceptually, circumvention of law refers to a legal act carried out by employing a particular legal form or mechanism to evade legal provisions that would otherwise be applicable. In the context of private international law, the concept of circumvention of law relates to the use of a legal arrangement to avoid the application of the law that should properly govern a particular legal relationship. [24] Meanwhile, within the framework of agrarian law, circumvention of law may be understood as the use of contractual instruments or specific legal acts that formally appear to satisfy legal requirements but are substantively intended to evade restrictions on land ownership rights

[22] Ardhana, A. P., & Raditya, I. B. Y. 2025. "Kepemilikan Hak Milik Atas Tanah Akibat Terjadinya Perkawinan Campuran". *Acta Comitas: Jurnal Hukum Kenotariatan*, *10*(02), 386-398.

[23] Warsito, H., & Adriansyah, H. 2022. "Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris". *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, *11*(1), 24-33.

[24] Hetharie, Y. 2022. "Kepemilikan tanah oleh warga negara asing melalui perjanjian pinjam nama sebagai bentuk penyelundupan hukum dalam hukum perdata internasional". *Balobe Law Journal*, *2*(1), 12-20.

imposed on foreign nationals. [25]

In the context of mixed marriages, the issue of circumvention of law may arise when marriage agreements are used not merely to regulate the separation of marital property between spouses but also to conceal the legal status or control of land rights by a foreign spouse. One legal arrangement frequently associated with this issue is a nominee agreement or name-lending arrangement.[26] Under such an arrangement, land is formally registered in the name of an Indonesian citizen, while a separate agreement grants certain benefits, control, or powers to a foreign national, thereby placing the foreign party in a position that substantively resembles that of a landowner. Nominee agreements essentially demonstrate a distinction between the formal holder of land rights and the party who substantively derives benefits from or exercises control over the land. Under such circumstances, the name of an Indonesian citizen is used as the registered holder of land rights for administrative purposes, while the foreign national enjoys the economic benefits or exercises control over the land pursuant to a separate agreement. Such arrangements may contravene the principle of nationality and the provisions of Article 26 paragraph (2) of the Basic Agrarian Law if their purpose and legal effect are to indirectly confer or transfer the Right of Ownership over land to a foreign national. Furthermore, an authentic deed cannot serve as a legal justification for acts that contravene agrarian law provisions. [27] In other words, the authentic form of a deed does not automatically render the substance of the agreement contained therein legally valid. The assessment of an agreement must take into account whether its contents, objectives, and legal consequences comply with applicable laws and regulations.

The limits of notarial authority in preventing the circumvention of law are also closely related to the authority of notaries to determine whether an agreement may be formalized in an authentic deed or whether its preparation must be refused. In performing their official duties, notaries are obligated to provide services to the public, as stipulated in Article 16 paragraph (1) letter (e) of the Amended Notary Law. However, this obligation is subject to an exception, whereby notaries may refuse to provide such services if there are legitimate grounds for refusal.

In the context of mixed-marriage agreements, grounds for refusal may arise when the substance or purpose of an agreement manifestly contravenes applicable laws and regulations. For instance, the parties may request a notary to draw up an agreement that explicitly grants a foreign national full control or authority over land held under the Right of Ownership, while the Indonesian citizen is merely designated as the formal holder of the land rights.[28] Under such circumstances, the notary should refrain from formalizing the agreement in an authentic deed, as its substance may contravene Article 21 paragraph (1) in conjunction with Article 26 paragraph (2) of the Basic Agrarian Law.

In the context of mixed-marriage agreements, the principle of freedom of contract allows spouses to determine their marital property arrangements based on mutual consent. However, such freedom cannot be exercised to establish legal relationships that contravene the principle of nationality under the Basic Agrarian Law. Accordingly, notaries must distinguish between contractual clauses intended to lawfully regulate the separation of marital property and those substantively designed to circumvent restrictions on land ownership rights. Notaries cannot invoke the principle of freedom of contract as a justification for drawing up every form of agreement requested by the parties. Where the purpose of an agreement manifestly contravenes statutory provisions, notaries must consider refusing to draw up the deed.

A notary's refusal to draw up a deed must be based on objective and legally justifiable grounds. Not every marriage agreement involving an Indonesian citizen and a foreign national should be refused merely because it concerns land. On the contrary, a property separation agreement entered into by mutual consent of the parties and in compliance with Article 70 of the Government Regulation on Land Rights constitutes a legally recognized instrument for ensuring certainty regarding the status of marital property in mixed marriages. Therefore, notaries must carefully assess the substance of the contractual clauses proposed by the parties. Where such clauses merely stipulate that property owned or acquired by each spouse shall not constitute joint marital property, such arrangements may, in principle, be incorporated into a marriage agreement, provided that they comply with applicable legal provisions. However, where the clauses grant a foreign national the authority to control, transfer, or enjoy the benefits of the Right of Ownership (Hak Milik) over land by using the name of an Indonesian citizen as the formal holder of the rights, there are indications of circumvention of law that should constitute grounds for the notary to consider refusing to draw up the deed.[29]

Where doubts arise concerning the intentions or legal consequences of the requested clauses, notaries may seek clarification and supporting documents from the parties, provide legal counseling, and recommend amendments to ensure compliance with applicable laws and regulations. If the parties insist on retaining clauses that manifestly contravene the law, the notary may refuse to draw up the deed by providing reasons for such refusal based on the relevant legal provisions. Accordingly, the authority of notaries to refuse to draw up deeds constitutes an important preventive legal mechanism against the circumvention of law. Nevertheless, such authority must be exercised proportionately, while respecting the rights of the parties to enter into legally valid agreements that do not contravene applicable laws and regulations.

The limits of notarial authority in preventing the circumvention of law through mixed-marriage agreements must be understood as the distinction between the authority to draw up authentic deeds and the obligation to ensure that the legal acts incorporated into such deeds do not manifestly contravene applicable laws and regulations. Notaries are

[25] Harahap, N. A., & Purba, H. 2025. " Penyelundupan Hukum dalam Transaksi Tanah oleh WNA: Studi Putusan PN Gianyar No. 259/2020". *Indonesian Journal of Humanities and Social Sciences*, *6*(2), 269-280.

[26] Rumahorbo, R.G.V., Zazili, A., Oktaviana, S., Febrianto, D. and Ramadhan, H.W., 2026. "Kedudukan Hukum dan Tanggung Gugat Notaris atas Akta Nominee yang Mengandung Fraus Legis". *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *4*(3), 10160-10170.

[27] Ibid.

[28] Saraswati, A. R., & Westra, I. K. 2016. "Perjanjian Nominee Berdasarkan Hukum Positif Indonesia". *Jurnal Kertha Semaya*, *4*(2), 1-10.

[29] Azzahra, S. 2025. "Prinsip Kehati-hatian Notaris Dalam Pembuatan Perjanjian Nominee Bagi Warga Negara Asing Sebagai Dasar Peralihan Hak Atas Tanah". *Acten Journal Law Review*, *2*(1), 72-98.

authorized to formalize agreements between the parties concerning the separation of marital property; however, they have no authority to override the restrictions on land ownership rights established under the Basic Agrarian Law. In this regard, several limitations on notarial authority must be taken into consideration.

First, limitations on the authority to assess the substance of agreements. Notaries are obligated to consider the substantive provisions of the agreements they prepare, particularly when such agreements concern arrangements involving land assets in mixed marriages. This obligation derives from Article 16 paragraph (1) letter (a) of the Amended Notary Law. Nevertheless, such an obligation does not empower notaries to conduct comprehensive investigations into all activities and undisclosed intentions of the parties. A notary's assessment must be based on the documents, statements, and circumstances that can reasonably be ascertained during the process of drawing up the deed.

Second, limitations on the authority to determine the legal status of land ownership rights. In this regard, notaries are not authorized to determine or confer the Right of Ownership over land upon foreign nationals. The determination of eligible holders and types of land rights remains subject to the provisions of agrarian law. Accordingly, a marriage agreement cannot be used to alter the legal status of a foreign national into that of a person legally entitled to hold the Right of Ownership over land.

Third, limitations on the authority to accommodate the intentions of the parties. Notaries cannot invoke the principle of freedom of contract as a legal basis for drawing up agreements that contravene mandatory legal provisions. Where contractual clauses are manifestly intended to conceal the exercise of control over the Right of Ownership by foreign nationals, notaries must provide appropriate legal explanations and may refuse to draw up the deed. [30]

Fourth, limitations on the authority to determine the existence of circumvention of law. Notaries may identify indications of circumvention of law based on the substance of an agreement and the circumstances known at the time the deed is drawn up. [31] However, a definitive determination as to whether a particular act constitutes circumvention of law, as well as its legal consequences for land ownership rights, may require an assessment by a court or other competent authority in accordance with applicable laws and regulations. These limitations demonstrate that the role of notaries is more appropriately understood as primarily preventive in nature, exercised through the application of the principle of due diligence, the provision of legal counseling, and the refusal to draw up deeds that manifestly contravene applicable laws and regulations.

In relation to Article 70 of the Government Regulation on Land Rights, notaries play a significant role in providing legal protection to Indonesian citizens who enter into mixed marriages with foreign nationals. This provision allows Indonesian citizens to hold the same land rights as other Indonesian citizens, provided that such rights do not constitute joint marital property and that the separation of property is evidenced by a property separation agreement drawn up in the form of a notarial deed. Accordingly, a lawfully executed marriage agreement constitutes an instrument of legal protection rather than a form of circumvention of law. Therefore, it must be emphasized that the separation of property in mixed marriages cannot be interpreted as conferring land ownership rights upon foreign nationals. Such agreements merely regulate property relations between spouses, whereas the legal eligibility of persons to hold land rights remains governed by agrarian law. In this regard, notaries must ensure that property separation clauses are not formulated in a manner that contravenes the principle of nationality. [32]

By way of illustration, where an Indonesian citizen marries a foreign national and enters into a marriage agreement stipulating that the property of each spouse shall remain their respective separate property, such an agreement is, in principle, legally permissible. However, if the same agreement contains clauses granting the foreign spouse the authority to control, transfer, and enjoy the benefits of the Right of Ownership over land formally registered in the name of the Indonesian spouse, such clauses must be assessed in accordance with the provisions of the Basic Agrarian Law. If it is established that these arrangements are intended to circumvent the prohibition on foreign nationals holding the Right of Ownership over land, they may constitute indications of circumvention of law that must not be facilitated by notaries. Accordingly, the limits of notarial authority extend beyond the formal authority to draw up authentic deeds and encompass the obligation to ensure that such deeds do not become instruments for violations of the law. Notaries must be able to distinguish between the legitimate use of marriage agreements as instruments for protecting marital property rights and their misuse as a means of circumventing the provisions of agrarian law.

Closing

Conclusion

Based on the foregoing discussion, it can be concluded that the limits of notarial authority in preventing the circumvention of legal restrictions on land ownership rights through mixed-marriage agreements encompass the authority to conduct a thorough legal examination of the relevant documents and the substance of the agreements, provide legal counseling, and refuse to draw up deeds that manifestly contravene applicable laws and regulations. However, notaries are not authorized to investigate the undisclosed intentions of the parties, definitively determine whether circumvention of law has occurred, or confer or determine the legal status of land ownership rights. Therefore, notarial authority must be exercised proportionately, with due regard to the statutory limits of the notarial office and the principle of nationality embodied in the Basic Agrarian Law.

Suggestion

Based on the foregoing conclusions, it is recommended that the Government, particularly the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Law, promptly establish a more comprehensive regulatory framework defining the limits of notarial authority in drawing

[30] Setyowati, Winda Ayu. 2025. "Ownership of land through nominee agreement by foreign citizens." *Legal Spirit* 9 (3), 587-596.
[31] Pemayun, Cokorda Istri Ratih Dwiyanti dan I Made Sarjana, *Op.cit*., p. 142.
[32] Adi, K.P.P. and Putrawan, S., 2013. "Akibat Hukum Terhadap Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Berlangsung". *Kertha Semaya*, 1(11), 1-5.

up authentic deeds concerning mixed-marriage agreements, with the aim of preventing the circumvention of legal restrictions on land ownership rights. The establishment of such a comprehensive regulatory framework would provide legal certainty for both notaries and the appearing parties in the preparation of mixed-marriage agreements concerning the Right of Ownership (Hak Milik) over land. Furthermore, continuous public legal awareness initiatives should be undertaken to emphasize the importance of marriage agreements as legal instruments for ensuring certainty regarding property rights in mixed marriages. Notaries, in exercising their authority, should adhere to the principle of due diligence by refusing to draw up deeds that are substantively intended to circumvent the provisions of Article 21 and Article 26 paragraph (2) of the Basic Agrarian Law. Notaries should also provide legal counseling to the parties concerning the legal consequences of acts constituting circumvention of law.

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