



Analysis of Notarial Ethical Violations in Drafting Nominee Agreements for Foreigners Land Ownership Deeds

Putu Ferrel Davina Putri Mariawan^{1*}, I Dewa Ayu Dwi Mayasari²

¹⁻² Faculty of Law Udayana University, Indonesia

* Corresponding Author: **Putu Ferrel Davina Putri Mariawan**

Article Info

ISSN (online): 2583-6536

Volume: 05

Issue: 03

May-June 2026

Received: 12-03-2026

Accepted: 10-04-2026

Published: 08-05-2026

Page No: 97-103

Abstract

This research aims to analyze the violations committed by notaries under the Notary Office Law and the Notary Code of Ethics when creating nominee agreements for land ownership deeds for foreign citizens. This journal employs normative legal research, utilizing a conceptual and legislative approach to examine notary agreements and responsibilities. The data obtained was then analyzed with systematic interpretation, connecting the problem to other legal provisions. The results of this study indicate that nominee agreements for land ownership by foreign citizens do not meet the objective requirement of "lawful cause" because they are contrary to positive law; therefore, such agreements can be null and void. The notary who drew up the agreement violated several provisions contained in the Notary Office Law and the Notary Code of Ethics, demonstrating a breach of professionalism and abuse of authority in the preparation of the deed.

DOI: <https://doi.org/10.54660/IJL.2026.5.3.97-103>

Keywords: Nominee Agreement, Responsibility, Notary Code of Ethics

Introduction

Notaries have a legal obligation to perform their duties in accordance with statutory regulations and professional ethical codes. Article 1 Paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary states that a notary is a public official authorized to create authentic deeds and exercise other authorities as regulated by the law or other legislation. Each public official has specific authority regulated by relevant laws and regulations, therefore such authority is limited and may not interfere with the authority of other officials. In general, every profession has a code of ethics that functions as a moral and behavioral guideline in carrying out professional duties. The purpose of a code of ethics is to ensure that every profession is conducted with integrity, responsibility, and respect for public interests. The Notary Code of Ethics is a set of moral norms, ethical standards, and rules of conduct that must be followed by notaries in performing their profession.

As public officials, notaries possess special authority as regulated in Article 15 Paragraph (1) of the Notary Position Law, which states that notaries are authorized to create authentic deeds regarding all legal acts, agreements, and determinations required by legislation and/or requested by interested parties. Authentic deeds, as the strongest and most complete form of evidence, play an important role in legal relationships within society.^[1] Through authentic deeds, rights and obligations are clearly determined, legal certainty is guaranteed, and disputes are expected to be avoided. Therefore, the contents of an authentic deed must be based on actual truth so that it can serve as perfect evidence in court proceedings.

Notaries are required to perform their duties in accordance with statutory regulations while upholding the professional code of ethics that serves as both a moral guideline and a limitation in carrying out their office. However, in practice, various violations of the notarial code of ethics are still found, which may harm certain parties and diminish the dignity of the profession.

¹ Eki Mardiani, Afandi Afandi, and Benny Krestian Heriawanto, "Analisis Yuridis Kepemilikan Hak Atas Tanah Yang Bersumber dari Nominee Akta (Studi Putusan Pengadilan Tinggi Nomor 82/Pdt/2019/PT. Yyk pada tanggal 19 Juli 2019)," *Jurnal Dinamika* 31, no. 1 (2025): 11206.

There are still cases in which notaries create authentic deeds that are inconsistent with applicable laws and regulations, thereby violating both the code of ethics and the Notary Position Law. One example concerns nominee agreements intended to facilitate foreign ownership rights over land in Indonesia.

Land ownership rights may be transferred from one party to another through an agreement.^[2] The term transfer by operation of law refers to the transfer of rights that occurs without any legal action from the owner, such as inheritance. Meanwhile, transfer through legal action refers to the transfer of rights intentionally conducted by the landowner so that another party obtains rights over the land. The transfer of land rights may occur through various methods, including sale and purchase, exchange, grants, customary transfers, capital participation (*inbreng*) into a company, and testamentary grants. Under Indonesian regulations, land ownership rights are granted exclusively to Indonesian citizens. This provision is stated in Article 9 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which provides that only Indonesian citizens may hold ownership rights over land in Indonesia. Therefore, foreign nationals are prohibited from owning land rights in Indonesia and are limited only to usage rights. Land ownership rights cannot legally be granted to foreign nationals, and any agreement providing such rights may be declared null and void by law.^[3]

Article 1338 Paragraph (1) of the Indonesian Civil Code implicitly recognizes the principle of freedom of contract in determining the contents of an agreement. This principle has created opportunities for certain parties to establish agreements that conflict with prevailing laws and regulations. In practice, notaries often prepare supporting documents for foreign nationals as the actual purchasers, such as debt acknowledgment deeds, powers of attorney to sell, sale and purchase binding agreements, statements, and other related documents.^[4] Formally, such agreements may not directly violate existing regulations; however, materially they constitute a concealed transfer of ownership rights, which clearly represents legal smuggling. In nominee agreements, foreign nationals utilize Indonesian citizens who legally possess land ownership rights in order to bind themselves in a legal relationship. Such conduct exceeds the limits established by Indonesian laws and regulations.

Article 1319 of the Indonesian Civil Code provides that all agreements, whether specifically named or unnamed, are subject to the general provisions contained in the relevant chapters of the Code. Agreements with specific names are known as nominate agreements because they are expressly regulated under the Civil Code, whereas unnamed agreements are those arising from the parties' mutual consent and are not specifically regulated by the Civil Code, commonly referred to as innominate agreements. Nominee agreements are examples of innominate agreements, as they

are not explicitly regulated under the Civil Code but have developed within societal practice.^[5] Nominee agreements are generally embodied in authentic deeds to provide legal force to the parties' agreement. Nevertheless, nominee deeds prepared by notaries may be considered unlawful because the parties involved engage in acts that violate public order. Consequently, such conduct may be categorized as an unlawful act constituting legal smuggling. Foreign nationals circumvent legal restrictions on land ownership by creating nominee agreements, thereby creating the appearance that they are entitled to act as landowners.

Several cases concerning nominee agreements for foreign land ownership have occurred in Indonesia for the purpose of obtaining personal benefit. One notable example is the Decision of the Denpasar High Court Number 247/PDT/2021/PT.DPS. The essence of the case involved a series of authentic deeds prepared by a notary between an Indonesian citizen and a foreign national that contained nominee practices, namely the use of an Indonesian citizen's name to conceal foreign ownership of land. The court declared all such deeds null and void because they violated the provisions of the Civil Code and the Basic Agrarian Law. As a consequence, the foreign national as the beneficiary lost all rights over the land and received no legal protection, including the inability to reclaim the funds used to purchase the land. This case demonstrates that nominee agreements remain widely practiced in order to benefit foreign nationals in obtaining control over land ownership in Indonesia.

Several previous studies have discussed nominee agreements. One study entitled "Nominee Agreements by Foreign Nationals with Land Rights Objects Through National Legal Instruments (Case Simulation Analysis in Denpasar District Court Decision Number 1138/PDT.G/2020/PN DPS)" by Alvi Azzahra examined the permissibility of nominee agreements aimed at enabling foreign nationals to obtain land ownership rights and analyzed the related court decision.^[6] Another study entitled "Juridical Analysis of Notary Responsibility in Registering Private Deeds (*Waarmerking*) Related to Nominee Agreements (Case Study of Decision Number 66/Pdt.G/2020/PNTpg)" by Tiwi Kumala Sari discussed the responsibility of notaries in registering private deeds related to nominee agreements based on the relevant court decision.^[7]

The present study differs from the previous studies because it focuses on normative issues within the Notary Position Law. Since there is no further regulation concerning the permissibility of notaries preparing nominee agreement deeds, this study examines the legality of nominee agreements under Indonesian regulations and analyzes violations committed by notaries based on the code of ethics and the Notary Position Law through several cases in Indonesia, including the Decision of the Denpasar High Court

² Alvi Azzahra Putri, N., "Perjanjian Pinjam Nama Warga Negara Asing Dengan Objek Hak Perjanjian Pinjam Nama Warga Negara Asing Dengan Objek Hak Atas Tanah Melalui Pranata Hukum Nasional (Analisis Simulasi Atas Tanah Melalui Pranata Hukum Nasional (Analisis Simulasi Kasus Dalam Putusan Pengadilan Negeri Denpasar Nomor 1138/ PDT.G/2020/PN DPS)," *Jurnal Indonesian Notary* 6, no. 3 (2024): 2, <https://doi.org/10.21143/notary.vol6.no3.1>.

³ Dewi Masithoh, Dominikus Rato, dan Ermanto Fahamsyah, "Tanggung Jawab Notaris dalam Pembuatan Perjanjian Nominee sebagai Dasar Peralihan Hak Milik Atas Tanah," *Jurnal Syntax Transformation* 2, no. 7 (2021): 938, <https://doi.org/10.46799/jst.v2i7.327>.

⁴ Amelia, Rizki Putri, dan Ali Abdullah, "Analisis Yuridis Pembatalan Kuasa yang Mengandung Unsur Nominee yang Menimbulkan Hak Kepemilikan Hak Atas Tanah (Studi Kasus Putusan Mahkamah Agung Nomor: 433K/PDT/2016)," *Jurnal Kemahasiswaan Hukum & Kenotariatan Imanot* 2, no. 1 (2022): 29.

⁵ Syifa Azzahra, "Prinsip Kehati-hatian Notaris Dalam Pembuatan Perjanjian Nominee Bagi Warga Negara Asing Sebagai Dasar Peralihan Hak Atas Tanah," *Acten Journal Law Review*, 2, no. 1 (2025): 74, <https://doi.org/10.71087/ajlr.v2i1.30>.

⁶ Alvi Azzahra Putri, N., *op.cit.*, (1).

⁷ Tiwi Kumala, S., "Analisis Yuridis Tanggung Jawab Notaris dalam Mendaftarkan Akta di Bawah Tangan (*Waarmerking*) terhadap Pinjam Nama (nominee) (Studi Kasus Putusan Nomor 66/Pdt.G/2020/PNTpg)", *Skripsi Fakultas Ilmu Sosial dan Ilmu Politik Universitas Maritim Raja Ali Haji, Tanjungpinang*: 2023.

Number 247/PDT/2021/PT.DPS and other related decisions. Therefore, this study is entitled “Analysis of Notarial Ethical Violations in Drafting Nominee Agreements for Foreigners Land Ownership Deeds”.

Problem Formulation

1. How is the drafting of nominee agreement deeds regulated under Indonesian law?
2. How are violations committed by notaries in drafting nominee agreement deeds analyzed?

Purpose

The aim is to explain the drafting of nominee agreement deeds regulated under Indonesian law and analysis of violations committed by notaries in drafting nominee agreement deeds.

Discussion

A. Regulations on Drafting Nominee Agreement Deeds under Indonesian Law

Nominee agreements are a form of innominate agreement that is not specifically regulated under the Indonesian Civil Code. According to *Black's Law Dictionary*, a nominee is defined as “one designated to act for another as his representative in a rather limited sense. It is used sometimes to signify an agent or trustee. It has no connotation, however, other than that of acting for another, in representation of another, or as the grantee of another.”^[8] In this context, a nominee refers to a person appointed to act on behalf of another party in a limited capacity, meaning that the nominee does not necessarily possess actual ownership rights over an object but merely acts in the name of or represents the true owner. Therefore, nominee agreements have developed in Indonesia as unnamed agreements (innominate agreements), and their legal basis is derived from the provisions of the Indonesian Civil Code. The elements of a nominee agreement include:^[9]

1. The existence of a power of attorney agreement between two parties, namely the beneficial owner and the nominee, based on mutual trust;
2. The authority granted is specific and limited; and
3. The nominee acts as if representing the beneficial owner before the law.

Innominate agreements are recognized under Article 1339 of the Indonesian Civil Code, which provides that agreements without a specific designation remain subject to general contractual provisions. Accordingly, innominate agreements are governed by the general rules concerning contracts. This principle is closely related to the principle of freedom of contract as stipulated in Article 1338 Paragraph (1) of the Indonesian Civil Code, which states that “all legally executed agreements shall bind the parties as law.” As a result, parties are free to determine the type of agreement they wish to establish. Such agreements create binding rights and obligations for the parties as determined within the contract itself. Although the form of an agreement may be freely determined by the parties, it must still comply with the legal

requirements for a valid agreement as set forth in Article 1320 of the Indonesian Civil Code. Therefore, even though innominate agreements are not explicitly regulated in the Civil Code, their implementation must remain consistent with the legal principles and contractual provisions contained therein.

The legal requirements for a valid agreement under Article 1320 of the Indonesian Civil Code include:

1. Mutual consent of the parties

Consent refers to the conformity of the parties' statements of intention within an agreement. In this context, consent must be expressed through a declaration because intention itself cannot be directly seen or known by others. The existence of consent indicates that there has been a meeting of minds and mutual agreement between the parties regarding the agreement to be made. The elements of consent consist of an offer (*offerte*), which is a statement made by the offering party, and acceptance (*acceptatie*), which is a statement from the party agreeing to the offer. Therefore, consent represents the final approval of the parties concerning the contents of the agreement.

Such consent must be given freely, meaning that the parties have the freedom to determine the contents of the agreement without coercion. Article 1321 of the Indonesian Civil Code provides that consent is valid only if it is given without mistake, coercion, or fraud. Therefore, in drafting a deed, the contents of the deed must reflect the genuine intention of the parties without any element of coercion.

2. Legal capacity to enter into an agreement

Legal capacity refers to a person's ability under the law to perform legal acts. According to Article 1330 of the Indonesian Civil Code, persons lacking legal capacity include minors, persons under guardianship, and other persons determined by law. Although every legal subject possesses rights and obligations in carrying out legal acts, such acts must also be supported by legal competence and authority. Legal capacity constitutes the authority to independently conduct legal actions. In notarial practice, legal capacity is not limited solely to the age requirement but also considers whether the parties possess the authority to enter into the agreement. Even if all parties fulfill the legal requirements to perform a legal act, they may still lack the authority to carry out that specific legal action. Therefore, proper legal authority is also required.^[10]

3. A specific object

A specific object within an agreement refers to the subject matter being agreed upon (*Onderwerp van de Overeenkomst*). Pursuant to Article 1333 of the Indonesian Civil Code, an agreement must contain a definite object, either in the form of goods or performance. Performance, as the obligation to be fulfilled within an agreement, may consist of giving something, doing something, or refraining from doing something. If the agreement does not involve a physical object, the object of the agreement may consist of rights

⁸ Bryan A. Garner, 1999, cited from Jovita Sonia, P., “Perlindungan Hukum Bagi Para Pihak dan Notaris dalam Praktik Perjanjian Pinjam Nama (Nominee) di Indonesia”, Thesis Fakultas Hukum Universitas Brawijaya, Malang: 2018.

⁹ Natalia, C., “Keabsahan Perjanjian Innominat dalam Bentuk Nominee Agreement”, Thesis Fakultas Hukum Universitas Indonesia, Depok: 2006.

¹⁰ Ningrum, P., “Kecakapan Bertindak dalam Melakukan Perbuatan Hukum Setelah Berlakunya Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris,” Thesis Fakultas Hukum Universitas Diponegoro, Semarang: 2008.

and obligations mutually agreed upon by the parties.^[11] Such rights and obligations must be clearly described so that they may constitute a valid object of the agreement.

4. A lawful cause

A lawful cause refers to the purpose intended to be achieved by the parties entering into the agreement. In this regard, the clauses of an agreement must be based on a lawful cause and must not violate statutory regulations. Article 1335 of the Indonesian Civil Code provides that “an agreement without cause, or made based on a false or prohibited cause, shall have no legal force.” Furthermore, Article 1337 stipulates that a cause is prohibited if it is contrary to law, morality, or public order. Based on these provisions, an agreement must be made for a lawful purpose and must not conflict with legislation or moral principles.

Since there are no specific regulations governing nominee agreements, such agreements are often categorized as innominate agreements, resulting in various practices by parties in conducting sale and purchase transactions through nominee arrangements. Innominate agreements are agreements that develop and evolve within societal practice.^[12] Therefore, under the Indonesian Civil Code, nominee agreements are not expressly prohibited within contract law, even though they are not specifically regulated. However, if the object of the agreement conflicts with Indonesian laws and regulations, particularly the legal requirements for agreements under Article 1320 of the Indonesian Civil Code, legal problems may arise from the agreement. The legal consequences of failing to fulfill the requirements under Article 1320 include:^[13]

1. Voidable agreements (*vernietigbaar*), meaning that if an agreement does not satisfy the subjective requirements, namely mutual consent and legal capacity, the agreement may be annulled.
2. Null and void agreements (*nietig*), meaning that if an agreement fails to fulfill the objective requirements, namely a specific object and a lawful cause, the agreement is automatically void by law and considered never to have existed.

In this regard, nominee agreements may create legal issues, including being declared null and void when the object of the agreement violates Indonesian statutory regulations.

Nominee agreements generally begin with an arrangement between the nominee and the beneficial owner, in which the owner grants authority to the nominee to legally conduct transactions on their behalf, so that a sale and purchase transaction is carried out under the nominee’s name. Therefore, nominee agreements are used to regulate substantive ownership indirectly, indicating that the property actually belongs to the beneficial owner rather than the person whose name is being borrowed. This nominee agreement system is frequently used by foreign nationals in purchasing land in Indonesia because Indonesian regulations

prohibit foreign nationals from owning land rights.

The principle that land ownership is reserved only for Indonesian citizens is implicitly reflected in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that “the land, waters, and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.” This provision emphasizes that natural resources are intended solely for the welfare of the Indonesian people and therefore may not be controlled by foreign nationals. This article also serves as one of the foundations for the establishment of the Basic Agrarian Law as an instrument to achieve prosperity and justice for the State and its people.^[14] Such regulation is based on the principle of nationality, which prioritizes Indonesian citizens in owning agrarian assets.^[15]

The concept of the nationality principle is reflected in several provisions of the Basic Agrarian Law, including Article 1 Paragraph (2), which states that:

“All land, waters, and airspace, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift from Almighty God, constitute the land, waters, and airspace of the Indonesian nation and are national wealth.”

Based on this provision, all resources mentioned therein belong to the Indonesian people and constitute national wealth. Under Indonesian National Land Law, the term “land” refers to the surface of the earth, as explained in Article 1 of the Basic Agrarian Law. Furthermore, regarding parties entitled to obtain and possess land rights, Article 9 Paragraph (1) of the Basic Agrarian Law provides that “only Indonesian citizens may have a full relationship with the earth, water, and airspace.” The explanation of this article further confirms that only Indonesian citizens, aside from certain legal entities, may become holders of ownership rights over land. In addition, Article 21 Paragraph (1) of the Basic Agrarian Law expressly stipulates that only Indonesian citizens may hold ownership rights over land in Indonesia. Based on these provisions, it can be concluded that foreign nationals are prohibited from possessing ownership rights over land.

This prohibition is further regulated in Article 26 Paragraph (2) of the Basic Agrarian Law concerning foreign ownership, which states: “Any sale and purchase, exchange, grant, testamentary grant, or other acts intended directly or indirectly to transfer ownership rights to a foreign national, to an Indonesian citizen who also possesses foreign nationality, or to a legal entity, shall be null and void by law, and the land shall revert to the State, provided that the rights of other parties burdening the land shall remain in effect and all payments received by the owner may not be reclaimed.” Regulations concerning foreign ownership are also contained in Government Regulation Number 41 of 1996 concerning Ownership of Residential Houses or Dwellings by Foreigners Residing in Indonesia. Article 2 Paragraph (1) provides that houses or residences that may be owned by foreign nationals are limited to standalone houses or buildings constructed on

¹¹ Ahmad Jalaludin Arrodli, et.al, “Konsekuensi Hukum Cacat Kehendak dalam Pembentukan Perjanjian Sesuai Pasal 1320 KUHPerdata”, LETTERLIJK: Jurnal Hukum Perdata 1, no. 2 (2024): 6, <https://doi.org/10.25134/jise.v1i2.xx>.

¹² Nur Jantra Hidayanto, et.al, “Analisis Konsep Perjanjian (NOOMINAT) Bernama dalam Perspektif Hukum Perdata,” Jurnal Media Hukum Indonesia 2, no. 4 (2024): 477, <https://doi.org/10.5281/zenodo.14211281>.

¹³ Muskibah. Hukum Perjanjian di Indonesia. Deepublish Digital. Yogyakarta (2022), 58.

¹⁴ Rahmat Ramadhani. Hukum Pertanahan Indonesia dan Perkembangannya. UMSU Press. Medan (2022), 24.

¹⁵ Bianca Prithresia, “Kajian Perbandingan Asas Nasionalitas Hukum Agraria dalam Konteks Internasional,” UNES Law Review 6, no. 2 (2024): 7306, <https://doi.org/10.31933/unesrev.v6i2.1259>.

land with usage rights and/or land controlled through an agreement with the holder of land ownership rights. This provision reflects that foreign nationals are only permitted to possess usage rights over land and are not entitled to ownership rights over land in Indonesia.

Based on the foregoing provisions, it can be concluded that nominee agreements intended to facilitate land ownership by foreign nationals do not comply with the legal requirements for agreements as stipulated in Article 1320 of the Indonesian Civil Code. Specifically, the objective requirement concerning a lawful cause is not fulfilled, because agreements must be based on purposes permitted under statutory regulations. Since land ownership by foreign nationals is prohibited under the Basic Agrarian Law and ownership rights are granted exclusively to Indonesian citizens, any nominee agreement intended to provide ownership rights to a foreign national may be declared null and void by law. Nevertheless, because there are no specific regulations expressly prohibiting the creation of nominee agreements in relation to land ownership by foreign nationals, such practices continue to occur among certain parties and notaries, resulting in numerous cases of foreign control over land ownership that may disadvantage Indonesian society.

B. Analysis of Violations Committed by Notaries in Drafting Nominee Agreement Deeds

Since nominee agreements in the context of land ownership by foreign nationals are inconsistent with statutory regulations, a notary who drafts such agreements may be considered to have facilitated or assisted the parties in carrying out actions that violate the law. As a result, the notary fails to comply with several provisions contained in the Notary Position Law and the Notary Code of Ethics. In this context, legal smuggling occurs through the use of an Indonesian citizen's name as a means of circumventing the provisions of the Basic Agrarian Law concerning land ownership rights.^[16] Such conduct is inconsistent with Article 3 Point 6 of the Notary Code of Ethics, which requires notaries to devote themselves to the interests of society and the State, because land ownership by foreign nationals does not protect public interests, particularly the principle that land should be utilized for the greatest prosperity of the Indonesian people. Furthermore, the drafting of nominee agreements is also inconsistent with Article 3 Point 4 of the Notary Code of Ethics, which obliges notaries to act honestly, independently, impartially, responsibly, carefully, and in accordance with statutory regulations and the notarial oath of office. Drafting nominee agreements intended to provide land ownership rights to foreign nationals clearly violates the provisions of the Basic Agrarian Law, and therefore such conduct is contrary to the standards established under the Notary Code of Ethics. The provisions contained in the Notary Code of Ethics are intended to preserve the integrity of notaries and provide legal protection to society, thereby maintaining public trust in notaries in carrying out their professional duties.^[17]

Several legal provisions under the Notary Position Law are also violated when a notary drafts nominee agreements related to land ownership by foreign nationals. Such conduct

constitutes a violation of the oath of office as stipulated in Article 4 Paragraph (2) of the Notary Position Law, which requires notaries to obey and remain loyal to the State and prevailing laws and regulations, to perform their duties honestly, carefully, independently, and impartially, and to fulfill their obligations in accordance with the professional code of ethics and the responsibilities of the office. When a notary engages in legal smuggling by drafting nominee agreements for foreign land ownership, this demonstrates noncompliance with the notarial oath, particularly the obligation to adhere to statutory regulations. Violations of the oath of office may undermine public trust in notaries as public officials responsible for guaranteeing legal certainty for parties utilizing their services.

Article 16 Paragraph (1) letter a of the Notary Position Law further provides that "a notary is obliged to act honestly, carefully, independently, impartially, and to protect the interests of parties involved in legal acts." In the context of honesty as a notarial obligation, a notary must accurately record legal facts in an authentic deed without engaging in deception or concealing the legal truth for the benefit of certain parties, even at the request of the parties involved. In nominee agreements, the principle of honesty is violated because the notary is aware that the agreement is intended to conceal land ownership by a foreign national while disguising the legal facts under the name of an Indonesian citizen. In addition, the notary disregards the provisions of the Basic Agrarian Law prohibiting foreign nationals from holding ownership rights over land. Therefore, the drafting of nominee agreements by a notary diminishes public trust and violates the integrity of the office because it assists other parties in committing unlawful acts. Violations of the principle of honesty also indicate the existence of intentional elements in committing unlawful conduct.

The term "careful" in this provision means that a notary is obliged to conduct a thorough examination of documents, identities, and the legal basis of the parties' actions, ensure that the object and purpose of the agreement are lawful, and refuse to draft a deed if there are elements that are inconsistent with or contrary to the law. Carefulness as a notarial obligation reflects the professionalism and intellectual responsibility of a notary in carrying out their office. A notary must possess moral integrity in performing their duties, act honestly toward both the parties and themselves, understand the limits of their authority, and not act solely for personal gain.^[18] A notary may be considered not careful in drafting nominee agreements concerning land ownership by foreign nationals because the notary fails to ensure that the legal purpose of the agreement complies with statutory regulations. Furthermore, the notary continues to approve the drafting of such agreements despite the prohibition contained in the Basic Agrarian Law. Therefore, the notary disregards the principle of prudence that forms the basis of the office, creating the possibility of being regarded as negligent or as assisting an unlawful act, while also reflecting a lack of professionalism.

In drafting agreements, a notary is also obliged to protect the legal interests of the parties involved. Protecting such interests includes providing legal counseling so that the

¹⁶ Anita Dewi Anggraeni Kolopaking. *Penyelundupan Hukum Kepemilikan Hak Milik Atas Tanah di Indonesia*. PT. Alumni. Bandung. (2013), 33.

¹⁷ Ikhsan Lubis dan Duma Indah Sari Lubis. *Pengawasan dan Penegakan Kode Etik Notaris*, Setara Press. Malang. (2024), 106.

¹⁸ Wahyu Satya Wibowo, Johni Najwan, dan Firdaus Abu Bakar, "Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik dalam Undang-Undang Jabatan Notaris," *Recital Review* 4, no.2 (2022): 337, <https://doi.org/10.22437/rr.v4i2.18861>.

parties understand the legal consequences of their actions, refusing to draft deeds if the agreement harms one of the parties or violates the law, and ensuring that every deed created provides legal certainty and valid legal protection. In the context of nominee agreements for land ownership rights by foreign nationals, the notary agrees to prepare the agreement even though legal smuggling is being carried out to enable foreign nationals to obtain land ownership rights in Indonesia. Such conduct fails to protect the legal interests of the parties because proper legal counseling is not provided, resulting in the parties not fully understanding the legal consequences that may arise and potentially causing disputes in the future. In this situation, the notary fails to carry out the preventive role of preventing unlawful legal acts, thereby neglecting the social function of the notarial office.

Related to the obligation to protect the legal interests of the parties, notaries are authorized to provide legal counseling during the drafting of deeds as stipulated in Article 15 Paragraph (2) letter e of the Notary Position Law. This authority also constitutes an obligation because it is important for notaries to explain the contents and legal consequences of agreements to the parties involved. A violation occurs when a notary fails to provide proper legal counseling, meaning that the notary does not give accurate legal explanations regarding the contents of the agreement and neglects the duty to provide legal education, acting merely as a deed drafter without performing the function of legal guidance. In this context, the notary approves the unlawful conduct committed by the parties in creating a nominee agreement, thereby facilitating land ownership by foreign nationals and enabling legal smuggling. Such conduct demonstrates that the notary fails to protect the interests of the parties, particularly because the agreement may later be declared null and void for violating applicable laws.

Article 16 Paragraph (1) letter e of the Notary Position Law, which states that “a notary shall provide services in accordance with this law, unless there are reasons to refuse them,” emphasizes that notaries are obliged to provide services to the public in drafting deeds, but within clear legal limitations.^[19] In this regard, the obligation to provide services does not mean that a notary must accept every request without legal consideration. If the parties request the drafting of a deed that conflicts with statutory regulations, the notary is obliged to refuse such services in order to maintain legal validity and the integrity of the office. This provision reflects two aspects of notarial responsibility: providing lawful legal services in accordance with the law and refusing services that violate the law or potentially constitute legal smuggling. In the context of nominee agreements concerning land ownership by foreign nationals, a violation of this provision occurs when the notary continues to provide services to draft nominee agreements despite knowing that ownership rights over land by foreign nationals are prohibited under the Basic Agrarian Law. In doing so, the notary fails to exercise the right to refuse services when indications of legal violations are present. Such conduct is contrary to the oath of office taken upon appointment and may indicate an abuse of authority.

One example of a nominee agreement case related to violations of the Notary Code of Ethics and the Notary Position Law can be found in the Decision of the Denpasar

High Court Number 247/PDT/2021/PT.DPS. In this case, the notary carried out actions by drafting deeds that supported nominee agreement practices which substantively aimed to transfer land ownership to foreign nationals, even though such ownership is prohibited by law. The deeds were created to facilitate legal smuggling, whereby the ownership rights were formally registered under the name of an Indonesian citizen while the foreign national acted as the actual owner of the land. In this case, the notary violated Article 3 Point 4 of the Notary Code of Ethics, which requires notaries to act in accordance with statutory regulations and the notarial oath of office. The notary clearly failed to carry out professional responsibilities in accordance with applicable laws, particularly Article 21 Paragraph (1) of the Basic Agrarian Law, which provides that land ownership rights in Indonesia may not be held by foreign nationals. Furthermore, the notary also violated Article 16 Paragraph (1) letter a of the Notary Position Law by failing to perform duties honestly and by participating in actions that harmed the interests of society and the State. Therefore, the drafting of nominee deeds by the notary in this case was contrary to both the Notary Code of Ethics and the Notary Position Law.

Based on the analysis under the Notary Code of Ethics and the Notary Position Law, the actions of a notary in drafting nominee agreements related to land ownership by foreign nationals clearly violate regulations governing the notarial profession and may result in sanctions against the notary involved. Nominee agreements constitute a violation of the notarial oath of office and an abuse of authority that may create losses and legal uncertainty for the parties involved. Such conduct is inconsistent with one of the primary obligations of notaries as public officials, namely to provide proper legal services to the public as a reflection of professionalism and responsibility in carrying out their duties.

Closing Conclusion

Innominate agreements are unnamed agreements referred to in Article 1339 of the Indonesian Civil Code, in which the specific type of agreement is not expressly regulated under the Civil Code. The formation of innominate agreements remains subject to the general provisions of contract law, meaning that such agreements must fulfill the legal requirements for validity as stipulated in Article 1320 of the Indonesian Civil Code. Nominee agreements concerning land ownership rights constitute one form of innominate agreement that does not satisfy the requirements set forth in Article 1320, particularly the objective requirement of a lawful cause, because such agreements conflict with Article 21 Paragraph (1) of the Basic Agrarian Law. The ethical violations committed by notaries in drafting nominee agreements for land ownership by foreign nationals include violations of Article 3 Points 4 and 6 of the Notary Code of Ethics, as the notary prepares agreements that conflict with statutory regulations. In addition, the actions of the notary are also contrary to Article 4 Paragraph (2), Article 16 Paragraph (1) letter a, and Article 16 Paragraph (1) letter e of the Notary Position Law because the notary fails to properly carry out the obligations attached to the office.

¹⁹ Endah Pertiwi, “Tanggung Jawab Notaris Akibat Pembuatan Akta Nominee yang Mengandung Perbuatan Melawan Hukum oleh Para Pihak,” *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 1, no. 1 (2019): 47, <https://doi.org/10.52005/rechten.v1i1.5>.

Suggestion

Based on the findings of this study, the Indonesian government should establish clearer and more comprehensive regulations regarding nominee agreements, particularly those related to land ownership by foreign nationals, in order to prevent legal smuggling and provide stronger legal certainty. The Indonesian Notary Association is also expected to strengthen supervision and enforcement of the Notary Code of Ethics against notaries involved in drafting nominee agreements that conflict with statutory regulations. In addition, notaries should exercise greater prudence, professionalism, and integrity in carrying out their duties by refusing to draft deeds that potentially violate the law and by providing proper legal counseling to the parties involved. Through stricter regulation and stronger ethical enforcement, the dignity of the notarial profession and legal protection for society can be better maintained.

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How to Cite This Article

Mariawan PFPD, Mayasari IDAD. Analysis of notarial ethical violations in drafting nominee agreements for foreigners land ownership deeds. *International Journal of Judicial Law*. 2026 May-Jun;5(3):97-103. doi:10.54660/IJLL.2026.5.3.97-103.

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