



Ownership of Land Rights by Foreigners Using the Name of Indonesian Citizens

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ABSTRACT

National land law prohibits land ownership by foreigners, in accordance with Article 9 of the Agrarian Law, which states that only Indonesian citizens can own property rights to land. Meanwhile, Article 26 Paragraph (2) of the Agrarian Law also prohibits the transmission of land ownership rights from Indonesian citizens to foreigners, either directly or indirectly. However, many foreigners control land through certain agreements made before a notary or PPAT. This research is intended to determine and evaluate the validity of land rights acquisition by foreigners and the legal consequences of such acquisition if certain agreements are used. The research method in this research uses a normative legal approach, which focuses on examining legal norms and analyzing library materials to examine the application of positive law. This research indicates that even though formally land ownership by foreigners can be considered legal, it violates Article 26 Paragraph (2) of the Agrarian Law because it is an indirect way to transmit property rights to foreigners. As a legal consequence, land ownership by foreigners through certain agreements is considered null and void, as evidenced in Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin because it does not fulfill the objectual requirements under Article 1320 of the Civil Code.

Keywords: *Foreigners, Land Ownership, Property Rights*

INTRODUCTION

Land has a crucial function in all aspects of human life, including economic, social, political and cultural. During the development era, the requirement for land is increasing due to the importance of land to support various development activities. Land has such an important role in life, which makes land ownership in Indonesia an attractive topic to study. Since the reform era, rapid changes in the land sector have triggered many land disputes that are often reported in the media. Land has become a primary need, both for residential and investment purposes, as its economic value continues to increase every year. This opportunity attracts many expatriate investors to invest in Indonesia, especially in the form of land ownership in potential areas.¹ The property can be used as a residential or investment facility, as investment opportunities are increasingly open in the globalization era. The Omnibus Law No. 11/2020 on Job Creation strengthens the investment climate in Indonesia, including providing space for foreigners to invest.² The existence of the Job Creation Law provides more opportunities for foreigners to invest in Indonesia.³

Foreigners investing in Indonesia often need a place to live for long-term periods. They can own a residential house, either a single house or a flat, by observing the status of the land rights on which the house is built.⁴ The Indonesian government offers foreigners the right to use land as a solution, in accordance with Article 42 of the Agrarian Law. It was based on the “prohibition of land isolation” principle in this system of Indonesian land law.⁵ Foreigners who are authorized to apply rights of use are those who are domiciled in Indonesia and provide benefits, operate a business, work, or invest in Indonesia.⁶

The Indonesian government regulated land ownership by foreigners through the Agrarian Law, which enables them to have the right of use or lease over land for certain time period. Indonesian citizens can own land with a property rights certificate issued by the National Land Agency (BPN). The right of use for foreigners is regulated in Government Regulation No. 40/1996, with a period of 25 years and can be extended for 20 years. Land ownership for foreigners is

¹ Sufyan Ilyas Ismail and Azhari, “Rekonseptualisasi Hak Atas Tanah Dalam Kerangka Pembaharuan Hukum Tanah Nasional,” *Jurnal Ilmu Hukum Litigasi* 14, no. 1 (2013).

² Pemerintah Pusat, *Undang-Undang (UU) Nomor 11 Tahun 2020 Cipta Kerja* (Jakarta, 2020).

³ Lucy Karenina and Yoni Agus Setyono, “Pemberian Hak Milik Atas Satuan Rumah Susun Bagi Warga Negara Asing Di Indonesia,” *Jurnal Ilmu Hukum “The Juris”* 5, no. 2 (2021).

⁴ Martin Roestamy, “Konsep Kepemilikan Rumah Bagi Warga Negara Asing Dalam Rangka Percepatan Peningkatan Investasi Di Indonesia,” *DE RECHTSSTAAT* 2, no. 2 (September 1, 2016): 127–140, <https://ojs.unida.ac.id/LAW/article/view/681>.

⁵ Hana Djaja Waluja, Andy Hartanto, and Herlin Djaja Waluja, “Kepastian Hukum Kepemilikan Rumah Susun Oleh Orang Asing Dalam Undang-Undang Cipta Kerja,” *Rechtidee* 16, no. 2 (December 28, 2021): 267–281, <https://journal.trunojoyo.ac.id/rechtidee/article/view/11850>.

⁶ Mentari Putri Lijaya, Ni Putu Patsana Anggarawati, and Dewi Rumaissa, “Karakteristik Hak Milik Atas Satuan Rumah Susun Bagi Warga Negara Asing Yang Berkedudukan Di Indonesia,” *Rechtsregel : Jurnal Ilmu Hukum* 4, no. 1 (August 10, 2021): 25, <http://openjournal.unpam.ac.id/index.php/rjih/article/view/12662>.

regulated in Government Regulation No. 103/2015, which only applies to those who are domiciled in Indonesia. The term of land use rights in Government Regulation No. 103/2015 is in contrast to that stipulated in Government Regulation No. 40/1996.⁷ Government Regulation No. 103/2015 stipulates that the right to use land for single houses and flats is valid for 30 years, can be extended for 20 years, and renewed for 30 years. This regulation is more specific than Government Regulation No. 40/1996 regarding the term of use rights.

The Job Creation Law encourages the investment in Indonesia by allowing greater opportunities for foreign investors, including in the ownership of properties such as flats.⁸ Articles 144 and 145 of the Job Creation Law and Government Regulation No. 18/2021 allow foreigners to own ownership rights to apartment units in Indonesia, as a measure to facilitate foreign investment.⁹ This regulation allows foreigners to own apartment units on land with Building Rights or Ownership Rights, even though the Agrarian Law prohibits land ownership by foreigners and adheres to the principle of nationality. This regulation also revokes Government Regulation No. 40/1996 and Government Regulation No. 103/2015.¹⁰

The object of land law is land ownership rights, which are studied as a legal entity. In accordance with Article 9 Paragraph (1) and Article 21 Paragraph (1) of the Agrarian Law, only Indonesian citizens can fully own land rights. The Agrarian Law only allows Indonesian citizens to own land with the right of ownership, while foreigners can only have limited land rights. Property rights in Indonesia are perceived as the most powerful and extensive rights as it cannot be restricted by time and can be used for any purpose, unless otherwise stipulated in the Agrarian Law. Foreigners who come to Indonesia not only for vacation, but also to invest into some kind of property through a lease purchase agreement. According to Article 1457 of the Civil Code, sale and purchase is an agreement in which a party delivers goods and the other party pays the agreed price. Being rich in natural resources, Indonesia attracts many foreigners to live and invest in this country. This foreign investment has the potential to have a positive impact on Indonesia's economic development, as it is an important part of economic development that is related to the global economy.

Currently, land disputes are common regarding large development projects such as real estate and industry, often involving conflicts between local residents

⁷ I Gusti Ngurah Oka Sanditya Pratama Putra, "Kedudukan Hukum Warga Negara Asing Dalam Penguasaan Hak Atas Tanah Untuk Investasi Di Bali" (Universitas Hasanuddin Makassar, 2013).

⁸ Hari Agus Santoso, "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi," *Jurnal Hukum Positum* 6, no. 2 (2021).

⁹ R. Suharto, Siti Malikhatus Badriyah, and Kashadi, "Kepemilikan Rumah Susun Di Indonesia," *Law, Development & Justice Review* 2 (2019).

¹⁰ Farah Herliani, Ida Nurlinda, and Betty Rubiati, "Peralihan Hak Milik Menjadi Hak Pakai Atas Sarusun Di Atas Tanah HGB Kepada Orang Asing Dihubungkan Dengan PP No. 103 Tahun 2015/Kepala BPN No. 29 Tahun 2016," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 2, no. 1 (2018): 69–83.

and outside forces. Customary interests are often disregarded in favor of commercial advantage, and the issue has historical risk since Dutch colonial times, which has been worsened by globalization and foreign investment.¹¹ Foreigners often use nominee agreements to circumvent land ownership restrictions in Indonesia. They buy land with their own money, but the title deeds are in the name of an Indonesian citizen. These agreements involve various documents such as lease agreements and powers of sale drawn up before a Notary Public. However, often one party does not fulfill the agreement and tries to take full control of the land. According to agrarian law, foreign nationals are not allowed to own land in Indonesia based on the principle of nationality in the UUPA. Although the government grants right of use and right of lease, many foreigners still want the right of ownership as it is considered more powerful and hereditary. This practice of borrowing names often leads to legal conflicts that are resolved in court, although property rights remain prohibited for foreigners.

Nominee agreements are generally not prohibited as long as they comply with the principles and conditions of valid agreements in the Civil Code. However, in Indonesian agrarian law, land ownership rights can only be owned by Indonesian citizens, and the use of Indonesian names by foreigners in nominee agreements may violate the provisions of the Agrarian Law and is intended to be used for indirect transfer of ownership rights. Nominee agreements usually involve master agreements such as land ownership agreements, power of attorney, lease agreements, and beneficiary declarations. The process begins with an oral preliminary agreement between the parties wishing to purchase the land at the expense of a foreign national, followed by the purchase of the land by an Indonesian citizen. Although formally legal, nominee agreements often contradict the Basic Agrarian Law (UUPA) because in practice they are an attempt to transmit land rights to foreigners illegally.¹²

According to thesis conducted by Izar Hanif in 2017, the legal consequences of the deed of transmission of ownership rights to land made by nominee and the reason why the panel of judges in their decision as in Number 124/Pdt.G/2014/PN.Cbi actually stated that the Plaintiff who is a foreigners is the buyer and legal owner of the 2 (two) plots of land. The result of this thesis is that the legal consequences of the deed of transmission of ownership rights to land conducted by borrowed name or nominee based on the decision of the panel of judges with Number 124/Pdt.G/2014/PN.Cbi is that the sale and purchase deed is valid. The plaintiff as a foreigners was the actual owner and purchaser of the 2 (two) plots of land and the defendant only borrowed his name. The panel of judges did not decide in their decision that the land should be handed over to the

¹¹ I Made Suwitra, "Eksistensi Hak Penguasaan Dan Pemilikan Atas Tanah Adat Di Bali Dalam Perspektif Hukum Agraria Nasional" (Universitas Brawijaya Malang, 2009).

¹² Ida Ayu Mas Ratu and Ida Bagus Agung Putra Santika, "Implementation of the Granting of Land Ownership Rights by the State for Foreign Citizens Under Article 21 Paragraph 3 of the Basic Agrarian Law," *YURIS: Journal of Court and Justice* 3, no. 2 (2024).

state that the plaintiff was the legal owner and purchaser of the 2 (two) plots of land as the defendant's name was listed on the certificate. Instead, the panel of judges ruled that the Plaintiff was the legal purchaser and owner of the 2 (two) plots of land. The judge decided only on the ownership of the object of land rights without observing the form of land rights or citizenship status.¹³ Then, according to the thesis of Jovita Sonia Prianto, the validity of nominee agreements related to land rights in Indonesia and legal protection for parties and notaries in nominee agreements related to land rights that result in harm to the parties and notaries in Indonesia. The conclusion of this thesis is that the nominee agreement is a form of legal smuggling and violates the validity of the agreement, namely a lawful cause, which is an objective condition for the validity of an agreement as stipulated in Article 1320 of the Civil Code. Violation of the objective requirements of the validity of an agreement results in a nominee agreement related to land rights being null and void. In order to provide legal protection for the parties (Indonesian citizens and foreigners) and notaries, there is a need for preventive legal protection, namely by making special regulations regarding nominee agreements related to land rights in Indonesia. The Indonesian government can follow the steps of the governments of Thailand and the Philippines which specifically prohibit all forms of borrowing names (nominee) in all matters that can only be owned or enjoyed by Indonesian citizens by adding articles in the Agrarian Law that prohibit the use or borrowing of Indonesian identity for matters that are privileges of Indonesian citizens, one of which is related to property rights to land.¹⁴ Thus, the thesis of Nikita et.al showed that the regulation and enforceability of nominee agreements in Indonesian civil law, the consideration of judges and the legal consequences of notarial deeds containing nominees for land ownership for foreign nationals in Indonesia based on Supreme Court Decision Number 787/Pdt.G/2014/PN.DPS, and the responsibility of notaries for deeds made containing nominee agreements for land ownership for foreign nationals in Indonesia based on Supreme Court Decision Number 787/Pdt.G/2014/PN.DPS. The conclusion of this thesis is that nominee agreement is one type of anonymous agreement that is not recognized or regulated in the Civil Code. In Article 1319 of the Civil Code, nominee agreements must be subject to the general provisions of the law of agreements contained in book III of the Civil Code, including the provisions of the valid terms of the agreement in Article 1320 of the Civil Code. The judge's consideration and legal consequences of a notarial deed containing nominee for land ownership for foreigners in Indonesia are declared null and void, due to the purpose of this agreement to smuggle the law, thus contradicting the validity of the agreement. The notary's responsibility for the deed he made

¹³ Izar Hanif, "Akibat Hukum Peralihan Hak Atas Tanah Yang Dilakukan Berdasarkan Perjanjian Pinjam Nama Atau Nominee" (Universitas Islam Indonesia Yogyakarta, 2017).

¹⁴ Jovita Sonia Prianto, "Perlindungan Hukum Bagi Para Pihak Dan Notaris Dalam Praktik Perjanjian Pinjam Nama (Nominee) Di Indonesia" (Universitas Brawijaya Malang, 2018).

containing a nominee agreement for land ownership for foreigners in Indonesia based on the Supreme Court Decision Number: 787/Pdt.G/2014/PN.DPS is that notaries are authorized to make authentic deeds, as public officials who are authorized to make authentic deeds, notaries must be responsible for the deeds they make. Parties who feel harmed by the notary's actions outside the authority, so that the notary can be held accountable both civilly, criminally, and administratively.¹⁵

In the Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin in 2020, there was a case of a nominee agreement where the land was registered in the name of an Indonesian citizen, but the costs and capital were provided by a foreigner. The nominee agreement was made before a Notary on September 20, 2005, stating that the actual owner was a foreigner. The disputed land is located in Mas Village, Ubud Sub-district, Gianyar Regency, Bali, where the Indonesian citizen only borrowed his/her name for legal and administrative purposes. Therefore, this research is intended to determine and evaluate the validity of land rights acquisition by foreigners and the legal consequences of such acquisition if certain agreements are used.

RESEARCH METHODOLOGY

The research method in this research uses a normative legal approach, which focuses on examining legal norms and analyzing library materials to examine the application of positive law. This research also applies an analytical descriptive method to systematically describe legal conditions. Normative legal research aims to find legal rules, principles, and doctrines to answer the legal problems encountered.¹⁶ The research approach includes a statutory approach, a case approach, and a conceptual approach. The statutory approach examines positive law, while the case approach examines court decisions, such as the Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin. The conceptual approach uses legal doctrine to solve problems if positive law is inadequate. Sources of legal materials include primary, secondary, and tertiary legal materials, which are collected through literature studies. The analysis technique uses descriptive and qualitative approaches to process and combine legal data and draw final conclusions.

¹⁵ Nikita Caesar Putri Chandra and Febrian Febrian, "Perjanjian Nominee Antara Warga Negara Asing Dan Warga Negara Indonesia Dalam Praktik Jual Beli Hak Milik Atas Tanah (Studi Putusan Mahkamah Agung Nomor: 787/PDT.G/2014/PN.DPS)" (Sriwijaya University, 2023).

¹⁶ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, Cet.2. (Depok: Prenada Media Group, 2018).

RESULT AND DISCUSSION

Validity of Land Ownership by Foreigners

“Tenure” and “control” can include physical and juridical meanings and have civil and public aspects. Boedi Harsono argues that juridical control of land provides the right to control the land physically, although the physical land can be controlled by other parties, such as creditors in a mortgage, while public control is regulated in the Agrarian Law and the 1945 Constitution.¹⁷ In Article 2 Paragraph (1) of the Agrarian Law, it is stated that the state controls the earth, water, airspace, and natural resources contained in it, and has the authority to regulate their usage. This authority must be used for the greatest prosperity of the people, in accordance with Article 2 Paragraph (3) of the Agrarian Law.¹⁸ Land ownership can mean both physical and juridical control, and includes both private and public aspects. Juridical acquisition is a right that is covered by law and allows the right holder to control the land physically, but it can also be conducted by other parties, such as tenants. Meanwhile, juridical acquisition of public nature is contained in the provisions of Article 33 Paragraph (3) of the 1945 Constitution and Article 2 of the Agrarian Law.

Land ownership can be defined in two forms, there are physical authority and juridical authority. The right to own land does not always mean physical control, and the right to control is not always derived from the right to own. Tenure is physical authority, while hak milik, according to Article 20 of the Agrarian Law, is the strongest and fullest hereditary right. Ownership rights are the strongest rights because they do not have a specific time limit, are easy to defend, and are not easily removed. The right of ownership also provides broader authority than other land rights. A land certificate is strong evidence of ownership, providing legal certainty and security for the owner. In addition to certificates, proof of ownership rights can also take the form of agreements in civil law. Article 2 of the Agrarian Law states that the supreme right of control over land belongs to the Indonesian people, covering the earth, water and space. This means that the territory of Republic Indonesia is the right of the entire nation, both individuals and as a whole.

Land ownership rights are stipulated in Article 4 and Article 16 Paragraph (1) of the Basic Agrarian Law, which Article 9 Paragraph (1) focuses on the assertion that only Indonesian can have full rights of property over the earth, water and airspace. According to Article 1 Paragraph (2) of the Agrarian Law, the principle of nationality in land ownership in Indonesia is demonstrated, whereby only Indonesian citizens can obtain full ownership rights. The principles of Agrarian Law include nationality, supreme control by the State, national interest,

¹⁷ Dr. Isnaini and Anggraeni A. Lubis, *Hukum Agrari: Kajian Komprehensif* (Medan: Pustaka Prima, 2022).

¹⁸ Suparman, “Peranan Undang-Undang Pokok Agraria Bagi Masyarakat Indonesia Yang Bersifat Agraris,” *Jurnal Warta* 54 (2017).

social function of land rights, and equality. Article 26 Paragraph (2) of Agrarian Law prohibits the transmission of land ownership rights to foreigners, losing the land to the State if they violate this provision. However, Agrarian Law allows foreigners to control land through the use right, regulated in Article 42 of the Agrarian Law and Article 49 of Government Regulation No. 18/2021. The use right is a non-full relationship between the subject and object of the land, with only Indonesian citizens having full ownership rights. Article 41 Paragraph (1) of Agrarian Law explains the use right as the right to use land controlled by the State or owned by others, not a lease. Article 42 of Agrarian Law regulates the parties who can obtain the use right, including Indonesian citizens, foreigners residing in Indonesia, and foreign legal entities with representatives in Indonesia. Meanwhile, in Article 50 of Government Regulation No. 18/2021, it specifies the types of land that can be granted with the use right, such as State land, ownership rights, and management rights. The term of the right of use is regulated in Article 52 of Government Regulation No. 18/2021, with different provisions for State land, management right land, and freehold land.

Although the Agrarian Law prohibits foreigners from owning land rights, the Indonesian legal system allows foreigners to own residential houses. The Agrarian Law is further regulated in Government Regulation No. 18/2021 on Management Rights, Land Rights, Flat Units, and Land Registration. The Articles 69 and 71 of Government Regulation 18/2021 stipulate that foreigners domiciled in Indonesia can own a house on the use right or management right land with an agreement made by a Land Deed Officials (PPAT). Under Article 69, foreigners must hold the appropriate immigration documents and the house can be transmitted to a beneficiary who must also have immigration documents. Meanwhile, Article 71 regulates the types of land where foreigners can own a house, including Leasehold land, Management Rights, and Freehold land if there is an agreement.

According to the Agrarian Law, foreigners can have a right of use over land but not a right of ownership. Leasehold land only gives limited authority compared to Freehold land, which is the strongest and fullest right. A residential house for foreigners can be obtained by purchasing Freehold land, paying the Fees for Acquisition of Rights on Land and Building (BPHTB), and applying for a Building Construction Permit (IMB) and Value Added Tax (PPN) if self-building.

The Right to Rent for Building (HSUB) is different from Leasehold land, as HSUB only applies to buildings on Freehold land. Government Regulation No. 18/2021 aims to regulate land ownership by foreigners in accordance with Article 42 of the Agrarian Law and prevent legal smuggling. This regulation provides an opportunity for foreigners to have the right to use land and buildings, but with various requirements to protect the rights of Indonesian citizens. The justice and benefit aspects of GR 18/2021 can be seen from the opportunity for foreigners to

fulfill their housing and investment needs, and the economic benefits for the state through taxes.

Article 33 Paragraph (3) of the 1945 Constitution confirms that the state has authority over the earth, water and natural resources for the prosperity of the people. National Land Law must be in accordance with the interests of the Indonesian people, not for foreigners. According to Article 2 of the Agrarian Law, the state has the authority to use natural resources for the prosperity of the people. Meanwhile, Article 21 Paragraph (1) of the Agrarian Law only allows Indonesian citizens to have ownership rights over land. The Agrarian Law also emphasizes that Indonesia's land, water and natural resources are national property and cannot be owned by foreigners. However, the Agrarian Law still allows foreigners to have limited rights to land, such as Leasehold land. Freehold land cannot be transmitted to foreigners, although foreigners are allowed to own houses on Leasehold land according to Government Regulation No. 18/2021. Foreigners' home ownership is very limited, provided that the land must be Leasehold land, there is a recorded agreement, and the house is not a type of simple or very simple house.¹⁹

National land law prohibits foreigners from acquiring property rights over land in Indonesia. According to Article 21 of the Agrarian Law, only Indonesian citizens (WNI) can own a freehold land rights. Meanwhile, Article 26 Paragraph (2) of the Agrarian Law prohibits the transmission of property rights from Indonesian citizens to foreigners, either directly or indirectly. Any violation of this provision will render the agreement null and void and the land will go to the state. Although these rules exist, there are still many foreigners who try to acquire land in Indonesia through agreements with Indonesian citizens, which often involve the use of "nominees" or borrowed names. Under these arrangements, Indonesian are only borrowed under their name when buying a property, while foreigners are fully financed. They often involved agreements that provided full control of the land to foreigners, even though they were prohibited by the Agrarian Law. Maria S.W. Sumardjono states that this type of agreement is unlawful and can be voided.

A "nominee" agreement is considered a simulation agreement that can be null and void if it contradicts applicable legal provisions. Under Article 1337 of the Civil Code, agreements that are contrary to public order or decency are voidable. The Agrarian Law clearly stipulates that only Indonesian citizens can own property rights over land, and violations of this rule can be null and void. The practice of "nominees" violates the principle of nationality in the Agrarian Law and contradicts the objectives of the Welfare State which seeks to protect Indonesia from foreign domination, including in the land sector.

¹⁹ Apriansyah Abdullah N, Ridwan Nirwana, and Anita Kamilah, "Tinjauan Hukum Kepemilikan Rumah Bagi Orang Asing Dalam Rangka Rumah Kedua Di Indonesia," *JLBP: Journal of Law and Border Protection* 4, no. 2 (2022).

Legal Consequences of Land Ownership by Foreigners using Certain Agreements

A foreign legal smuggling case in Gianyar concerns the use of an agreement bearing the name of an Indonesian, which was drawn up by a notary. The purpose of this legal smuggling was to allow the foreign national to acquire the land ownership rights. The legal consequence of this kind of agreement is the cancellation of the agreement. The legal effect of such an agreement is the invalidation of the agreement because the agreement contradicts the legal provisions that prohibit foreigners from owning property rights to land in Indonesia.

This case involved the purchase of two plots of land in Ubud, Bali, by foreigners David John Lock and his wife, Ann Lilian Lock, through transferring money to Anak Agung Gede Oka Yuliartha. Because Indonesian law prohibits foreigners from owning property rights to land, the land was named to Indonesian citizen Anak Agung Gede Oka Yuliartha. The Puncak Bukit Villa was built on the land worth IDR 9,113,336,200. In order to secure ownership, David and Ann made a notarized agreement stating that Anak Agung Gede Oka Yuliartha's name was only borrowed for their purposes. This agreement aimed to protect their ownership of the land and villa. In the Deed of Agreement Number 10 and Number 12 on September 20, 2005, it is stated that the Second Party is the actual owner of the land, while the First Party only lends its name voluntarily and cost-free. All risks and benefits of the land are fully the responsibility and rights of the Second Party, without any burden on the First Party. Furthermore, to facilitate the exercise of the Second Party's rights, the First Party has granted a full, broad, and absolute power of attorney that cannot be revoked or canceled, in accordance with Deed Number 11 and 13 made by a notary on the same day.

David John Lock and his wife, Ann Lilian Lock, who are Australian Citizens, attempted to strengthen their control over the land owned by Anak Agung Gede Oka Yuliartha through the creation of a Deed of Agreement and Deed of Authorization. The Deed of Authorization was absolute and provided David John Lock and his wife with full authority over the land. In Deed of Authorization No. 11, they were authorized to lease, sell or hand over 200 m² of land in Mas Village, Ubud, Bali, with Title Certificate No. 2659. Deed of Authorization No. 13 also granted similar authority over 1,150 m² of land in the same location, with Certificate of Title No. 2725. Both deeds entitle them to take various legal actions on the lands, including for their own benefit. These deeds were drawn up before a notary on September 20, 2005. The lands governed by these deeds are located in Ubud Sub-district, Gianyar Regency, Bali. The authority granted in these two deeds covers any legal action on the mentioned lands. The lands were previously registered in the name of Anak Agung Gede Oka Yuliartha, acting as the Grantor.

Agreements Number 10 and 12, as well as Deed of Authorization Number 11 and 13, are categorized as pretend or simulated agreements, also known as Nominee agreements. In this case, Anak Agung Gede Oka Yuliartha (Defendant) acted as Nominee for David John Lock and Ann Lilian Lock (Plaintiffs), who are foreign nationals, in relation to the purchase of two plots of land in the Mas Village, in violation of laws and regulations. Indonesian Law No. 5/1960 on Agrarian Principles, specifically Article 9(1) and Article 21(1), states that only Indonesian citizens have the right to own land. Therefore, this agreement is considered null and void and invalid, in accordance with Article 26 Paragraph (2) of the Agrarian Law. The agreement is considered unlawful because it uses the name of a foreign national as the owner of the land, which is a violation that causes the land to fall to the state without the right to reclaim the payments that have been made. In addition, this agreement also contains a prohibited causa in accordance with Article 1335 of the Civil Code.

Although Deeds of Agreement No. 10 and No. 12 formally appear to comply with the law, they implicitly transfer land rights to the foreigner. In the agreement, the Indonesian acknowledges that the land registered in his name actually belongs to the foreigner who provided the funds for the land purchase. The Indonesian then grants an inalienable authorization to the foreigner to manage the land and building.

The agreement made in this case involved an unlawful clause, in which the Indonesian party admitted that the freehold land registered in his name actually belonged to the foreigner who provided the funds for the purchase of the land and building. This contradicts the validity of an agreement according to Article 1320 Paragraph (4) of the Civil Code, which requires a causa that is lawful or permitted by law. Indonesian land law does not allow foreigners to own land rights, which violates the principle of nationality in Article 21 Paragraph (1) of the Basic Agrarian Law, and can be detrimental to the state. In this case, two parcels of land with Title Certificates Number: 2659 and Number: 2725, governed by Deed No. 10 and Deed No. 12 on 20 September 2005, showed legal smuggling. David John Lock and Ann Lilian Lock (foreigners) manipulated the law by borrowing the name of Anak Agung Gede Oka Yuliartha (Indonesian citizen) to purchase the land so that it legally appeared in their hands. Article 1 and Article 2 of the agreement show that the Indonesian was only borrowed by name and the land was actually controlled by the foreigner. Article 1 of Agreement No. 12 and Article 2 state that Anak Agung Gede Oka Yuliartha is only the owner of the name, while David John Lock and Ann Lilian Lock are the actual owners. This violates the validity of the agreement based on Article 1320 of the Civil Code because it contradicts the prevailing laws and norms. Foreigners buy freehold land in Indonesia by borrowing the name of Indonesian citizens, which violates land law and the Nationality Principle.

The provisions of Article 1335 and Article 1337 of the Civil Code state that an agreement without a cause or with a prohibited cause has no legal force. In this case, Agreement No. 10 and Agreement No. 12 contain forbidden causes because they are contrary to Indonesian Law No. 5/1960 on Basic Agrarian Principles and decency norms. Therefore, Agreement No. 10 and Agreement No. 12 must be declared null and void and invalid. This agreement has no binding legal force because it violates the provisions of the applicable laws and regulations. It reflects the existence of legal smuggling by foreigners who use Indonesian citizens to circumvent the rules of land ownership in Indonesia. This legal manipulation is damaging to the state and violates the provisions set by land law. The declaration of this agreement null and void will hopefully serve as an important lesson to prevent similar practices in the future. Strict law enforcement is needed to maintain the integrity of the legal system and land ownership rights in Indonesia.

Legal consequences are the impact of legal actions committed by legal entities on legal objects or certain incidents that are determined by law as legal consequences. It involves rights and obligations created by legal events or legal acts. There are three categories of legal consequences, which consist of (1) the existence, amendment, or elimination of a legal situation; (2) the creation, amendment, or elimination of a legal relation; (3) the emergence of legal sanctions that are not intended by the legal subject. The legal consequences of a change in legal status include the transition from incapable of acting to capable of acting when a person reaches the age of 21 or a change in legal capacity due to guardianship. Other examples of legal effects in regards to changes in legal relationships include the emergence of a debt and credit relationship after a credit contract or the cessation of a sale and purchase relationship after a transaction is completed. Legal sanctions can be categorized into public and private sanctions. Public sanctions include basic and additional penalties, while private sanctions include damages for unlawful acts and claims for default.

The acquisition of property rights to land by foreigners through the name of Indonesian citizens is prohibited and violates the provisions of land regulations, so the legal relationship between the parties is invalid. The conditions for the validity of an agreement according to Article 1320 of the Civil Code include agreement, capability, a specific object, and a lawful cause. If the objective requirements are not fulfilled, the agreement is declared null and void. Legal protection in Indonesia involves preventive and repressive protection, with the main focus on protecting the rights of Indonesian citizens over the interests of foreigners. The principle of nationality in the Agrarian Law emphasizes that all legal interests must prioritize national interests and protect the rights of Indonesian citizens.

CONCLUSION AND SUGGESTION

Conclusion

Referring to the discussion, the conclusions obtained from this research are summarized in detail as follows: (1) the validity of the acquisition of land rights by foreigners formally does not contradict the rules, implying that it is not an acquisition of land rights (through sale and purchase) from Indonesian to foreigners. However, it does violate materially, which means that the substance is an indirect acquisition from an Indonesian citizen to a foreigners in violation of the provisions in Article 26 Paragraph (2) of the Basic Agrarian Law; and (2) the legal consequences of the acquisition of property rights to land by foreigners using certain agreements related to the analysis of the Decision of the Gianyar District Court Number 259/Pdt.G/2020/PN.Gin are null and void because the objective requirements are not met as determined by Article 1320 of the Civil Code. Therefore, since the beginning, the agreement was never born and there was never an obligation. The purpose of the parties having the agreement to make a legal obligation failed. Indeed, the control of land ownership rights by foreigners, either directly or indirectly, does not promise legal protection for those concerned.

Suggestion

Based on the results of the discussion, the suggestions that researchers can offer regarding this research are as follows: (1) the Notary/PPAT should refuse of making an agreement which substance is an indirect acquisition of land ownership rights from Indonesian citizens to foreigners, it should be able to prevent the acquisition of land ownership rights indirectly by foreigners by using the instrument of agreement. It can be implemented with good cooperation between the Notary and the National Land Agency because the acquisition of land ownership rights indirectly by foreigners ignores the principles of the National Land Law and violates the provisions of the existing laws and regulations; and (2) the Regional Supervisory Council as the main point of Notary supervision must monitor intensively by examining the deeds made by the Notary and take firm action if the deed made by the Notary is an attempt to smuggle the law to acquire land ownership rights from Indonesian citizens to foreigners because it is against the law.

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