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VALIDITY OF LAND RIGHTS RELEASE AGREEMENTS BY FOREIGNERS AND NOTARIAL LIABILITY: DENPASAR DISTRICT COURT DECISION NO. 426/PDT.G/2020/PN DPS

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ABSTRACT

Indonesian agrarian law reserves freehold title (*hak milik*) to Indonesian citizens and treats any transfer to a foreigner, direct or indirect, as void. Nominee arrangements, in which a foreigner uses an Indonesian citizen's name to hold title, circumvent this rule, and notarial deeds often give such arrangements a lawful appearance. This article examines the validity and legal consequences of an agreement to release rights over land in Denpasar District Court Decision No. 426/Pdt.G/2020/PN Dps, which concerned land in Tabanan, Bali, registered in the name of an Indonesian citizen but financed and controlled by an Italian national. Using normative juridical research with statute, case and conceptual approaches, the study tests the agreement against the Indonesian Civil Code and the Basic Agrarian Law, and evaluates the notary's position under the Notary Position Law through the theories of legal certainty and legal liability. The findings show that the release agreement is part of a two-layer nominee scheme that is void because its cause is prohibited, that the deed signed by the heir is voidable for defective consent, and that a deed not read and signed before the notary loses its authentic status. Consequently, no rights arise from the instruments, the foreigner obtains no protected right, the heir may sue in tort and seek annulment of the deeds, and the fate of the land remains inconsistent across decisions, which weakens real legal certainty. The notary may face civil, administrative, ethical and, where intent is proven, criminal liability.

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INTRODUCTION

Land occupies a strategic position in Indonesia's legal and economic order. It is a means of production and a place to live, and it is also bound up with national sovereignty and identity. The Basic Agrarian Law (Law No. 5 of 1960, hereinafter UUPA) therefore requires that control over land bring the greatest possible benefit to the Indonesian people (Sumarja, 2014). Article 21(1) UUPA provides that only Indonesian citizens may hold freehold title (*hak milik*), so foreign nationals can hold

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land only through limited rights such as the right to use (*Hak Pakai*) (Suprijanto, 2017). Article 26(2) UUPA goes further: any legal act intended to transfer *hak milik* to a foreigner, whether directly or indirectly, is void by operation of law, the land falls to the State, the rights of third parties encumbering it remain in force, and payments already made cannot be reclaimed. Government Regulation No. 18 of 2021 (PP 18/2021) follows the same policy by allowing foreigners to obtain only limited rights over land (PP No. 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah, 2021).

This restriction collides with investment interests, particularly in tourist areas such as Bali. Foreign buyers are reported to account for as much as 70 percent of property purchasers in Badung and 60 percent in Denpasar, and land is increasingly converted into villas, resorts and other commercial facilities (Kompas, 2023). Lawful routes exist, such as a foreign-investment company (*PT PMA*) holding building-use rights (*Hak Guna Bangunan*) or *Hak Pakai*, but practice also shows a less lawful route, the nominee arrangement (Sukartha et al., 2026).

In a nominee arrangement a foreign national (the beneficial owner) uses the name of an Indonesian citizen (the legal owner) to be registered as the holder of title, while the foreigner finances, controls and enjoys the land. Nominee arrangements are not regulated expressly in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*, KUHPerdata) or in the UUPA (Gunawan et al., 2024). They are commonly characterised as legal smuggling (*fraus legis*), that is, conduct that complies with the law in form but defeats its purpose (Kindangen, 2019). The arrangement looks valid because it is written and is often put into notarial deeds such as loan agreements, powers of attorney and acknowledgments of debt, yet its aim runs against the nationality principle of agrarian law and against public order (Masithoh et al., 2021).

Notaries are therefore exposed. A notary is a public official authorised to make authentic deeds under the Notary Position Law (UU No. 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2014) and must act trustworthily, honestly, carefully, independently and impartially. Where a notary merely formalises what the parties ask without examining the substance, the deed can lend legitimacy to a prohibited scheme (Masithoh et al., 2021).

Denpasar District Court Decision No. 426/Pdt.G/2020/PN Dps illustrates these problems. The dispute concerned freehold land in Sudimara Village, Tabanan, Bali, registered in the name of an Indonesian citizen but financed and controlled by an Italian national under an arrangement dating from 2003. After the registered holder died, a chain of notarial deeds, including a deed of release of rights, moved the land to another Indonesian citizen and then to several buyers, while the widow and sole heir alleged that she had signed without understanding the documents and without truly appearing before the notary. The case raises questions about the validity of the release agreement, its consequences for the parties and the land, and the responsibility of the notary (Mahkamah Agung Republik Indonesia, 2021).

Earlier studies discuss nominee agreements and notarial liability in general terms (Kindangen, 2019; Masithoh et al., 2021). This article differs in that it analyses a release-of-rights chain executed after the nominee's death in a concrete decision, and links validity, the position of each party, the fate of the land and the notary's liability in one framework. Two research questions guide the study: (1) What is the validity of the agreement to release rights over land held through a foreign national in Decision No. 426/Pdt.G/2020/PN Dps? (2) What are the legal consequences of that agreement? Notarial liability is analysed as part of the second question. Two theories are used. Legal certainty theory, in Otto's distinction between normative and real legal certainty (Bedner & Oomen, 2018), assesses whether the prohibition in the UUPA operates consistently in practice. Legal liability theory, following Kelsen, as cited in (Asmara et al., 2020), assesses when the notary is answerable for failing to exercise the care that the law requires.

METHOD

This research is normative juridical legal research. It examines legal principles, positive legal norms and legal doctrine to answer a legal issue and to produce arguments that serve as a prescription for the problem at hand (Marzuki, 2017; Soekanto & Mamudji, 1986). It is descriptive-analytical: it first describes the facts of the decision and the relevant doctrine systematically, and then evaluates the validity of the agreement and the responsibility of the notary critically (Soemitro, 1990).

Three approaches are used. The statute approach examines Articles 21 and 26 UUPA, Articles 1320, 1335, 1337 and 1868 KUHPerdata, the provisions of the UUJN on the duties of notaries and on sanctions, and PP 18/2021. The case

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approach analyses Decision No. 426/Pdt.G/2020/PN Dps, in particular the facts and the court's assessment of the name-lending scheme and of the notary's role, and compares it with Gianyar District Court Decision No. 259/Pdt.G/2020/PN Gin. The conceptual approach clarifies concepts that statutes do not define, namely the nominee agreement as an innominate contract, the legal owner and the beneficial owner, and *fraus legis*.

Primary legal materials are statutes, the Notary Code of Ethics and court decisions. Secondary materials are books and journal articles. Tertiary materials are legal dictionaries and directories of decisions and legislation. The materials were collected by library research and document study, including the Supreme Court decision directory and the official legislation database. The analysis is qualitative and juridical, using grammatical, systematic, historical and teleological interpretation and deductive reasoning, in which legal norms form the major premise, the facts of the decision the minor premise, and the legal assessment the conclusion. The study examines the first-instance decision of 12 July 2021. The plaintiff lodged an appeal to the Denpasar High Court, and the outcome of that appeal is outside the scope of this article.

RESULT AND DISCUSSION

The Case and the Court's Assessment

The dispute concerned freehold land in Sudimara Village, Tabanan Regency, Bali. The claim was brought by Ann Elizabeth Sihombing, the widow and sole heir of Fransio Laung Sihombing, the Indonesian citizen who held the freehold certificate. Five actors shaped the dispute: Luciano Lazzarin, an Italian national who wished to control the land; Fransio Laung Sihombing, whose name was used as formal owner; Ann Elizabeth Sihombing, the heir; Desak Nyoman Karmini, an Indonesian citizen who later became the formal owner; and the notary who made the deeds. Table 1 summarises the sequence of instruments and Figure 1 shows the two-layer structure of the scheme.

Table 1. Sequence of instruments in Decision No. 426/Pdt.G/2020/PN Dps

Time	Instrument or event	Role in the scheme
4 March 2003	Statement Letter (Exhibit P.7), Loan Agreement (Exhibit P.8) and Right of Use Agreement (Exhibit P.9)	Layer 1. The foreign national finances and controls the land, and the Indonesian citizen's name is used to meet the requirement for a holder of freehold title
2010	Death of the registered holder	The land stands in his name and formally enters his estate; his widow is the sole heir
After 2010	Deed of Statement, Deed of Release of Rights and Deed of Power of Attorney made by the notary	Layer 2. The heir signs documents releasing rights, allegedly without understanding them or truly appearing before the notary; rights move to a new nominee
Later	Deeds of sale and purchase (AJB)	The land passes from the new nominee to several Indonesian citizens on the basis of defective deeds

Source: Decision No. 426/Pdt.G/2020/PN Dps; authors' summary.

The court considered that the name-lending agreement was legal engineering contrary to law because its aim was to avoid the prohibition on land ownership by foreigners. On the basis of the agreements submitted in evidence, the court found that real control over the land lay with the foreign national. It also noted manipulation in the transfer of rights, including the issue of deeds without the sufficient presence or understanding of the heir, which it regarded as a breach of the principle of prudence. Even so, the heir's claim was not granted in full.

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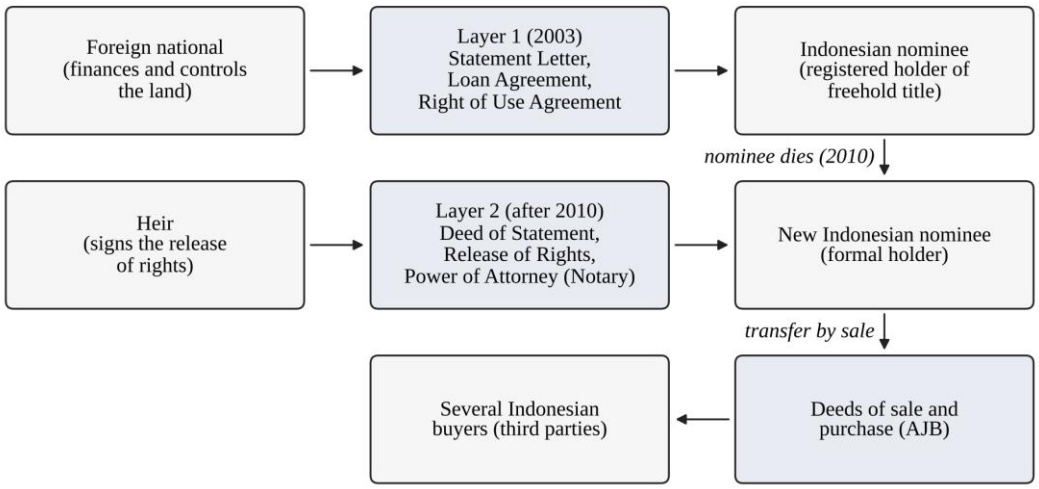


Figure 1. Two-layer structure of the nominee scheme in Decision No. 426/Pdt.G/2020/PN Dps
Source: Authors' Analysis, 2026

Validity of the Release Agreement

The release agreement does not stand alone. It is the second layer of a scheme whose first layer is the nominee arrangement between the foreign national and the registered holder, consisting of the Statement Letter, the Loan Agreement and the Right of Use Agreement. The deeds of the second layer continue the control created by the first, because they move the land to a new nominee after the first nominee died. The validity of the second layer therefore cannot be judged separately from the first, and both are tested against the four conditions of a valid agreement in Article 1320 KUHPerdata (Subekti, 2005). Table 2 summarises the test.

Table 2. Validity test under Article 1320 KUHPerdata

Condition	Assessment in the case	Result
Consent	Genuine between the foreign national and the registered holder; defective for the heir (language, no understanding, no conscious consent)	Voidable (Article 1321)
Capacity	Parties were adults and not under guardianship (Article 1330)	Met
Specific object	A parcel of freehold land identifiable through its certificate (Article 1332)	Met
Lawful cause	The scheme gives a foreigner control of freehold land, contrary to Articles 21(1) and 26(2) UUPA and Articles 1335 and 1337 KUHPerdata	Not met; null and void

Source: Authors' Analysis, 2026

Between the foreign national and the registered holder, consent was genuine: both signed documents regulating control of the land, and nothing indicates duress, mistake or fraud between them. The problem arises with the deed of release signed by the heir. Article 1321 KUHPerdata provides that there is no valid consent if it is given by mistake or obtained by duress or fraud. The heir did not master Indonesian, signed without understanding the substance and consequences of the documents, and stated that she had not given conscious consent. These facts point to mistake (*dwaling*), which becomes fraud (*bedrog*) if someone is proven to have misled her deliberately. The notary's duties aggravate the problem. Article 43 UUJN requires deeds to be made in Indonesian and, where an appearer does not understand the language, requires the notary to

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translate or explain the deed or to have an official translator do so. A failure to do this supports the inference that the heir's consent was neither free nor conscious.

The legal effect is that failure of a subjective condition makes the agreement voidable (*dapat dibatalkan*) rather than void by law, so annulment must be requested by the injured party, here the heir. Capacity is generally met because the parties were adults not under guardianship (Article 1330 KUHPerdata). The foreign national's difficulty is not capacity but his lack of entitlement to hold freehold title, which belongs to the objective conditions.

The condition of a specific object is met in form. The object is a parcel of freehold land in Sudimara Village that can be identified physically and legally through its certificate, and land is tradable under Article 1332 KUHPerdata. The condition of a lawful cause is not met. Article 1335 KUHPerdata states that an agreement made for a false or prohibited cause has no force, and Article 1337 defines a prohibited cause as one forbidden by law or contrary to morality or public order. The purpose of the chain of instruments was to enable a foreign national to control and enjoy freehold land through an Indonesian citizen's name. That purpose contradicts Article 21(1) UUPA and falls within Article 26(2) UUPA as an indirect transfer of *hak milik* to a foreigner.

The Loan Agreement and the Right of Use Agreement should be read together. The first makes the foreign national the financier of the acquisition and the second gives him the power to use the land, so that together they give benefits equivalent to ownership to a person who cannot hold freehold title. The events began in 2003, so the applicable norm is the UUPA. PP 18/2021 is not retroactive, but it confirms the same policy, namely that foreigners may obtain only limited rights over land. Because the objective condition is not met, the agreement is null and void (*batal demi hukum*), as though it had never existed (void *ab initio*).

Legal smuggling is the use of a lawful-looking form to reach a result prohibited by a mandatory rule (*dwingend recht*). Its three elements are present here: an explicit prohibition (Articles 21(1) and 26(2) UUPA); a lawful-looking form, namely a freehold certificate in an Indonesian citizen's name and notarial deeds; and a purpose of avoiding the prohibition, which appears from the financing and control that remained with the foreign national. The court's view that the name-lending agreement was legal engineering accords with this construction. The relation between the foreign national and the registered holder also shows features of simulation (*simulatie*), meaning a formal owner who differs from the real one. However, the parties truly agreed to run the name-lending scheme, so what was feigned was ownership on the surface and not the consent itself. The strongest ground of invalidity is therefore the prohibited cause, rather than simulation alone.

The validity of the notarial deed follows the same logic. An authentic deed under Article 1868 KUHPerdata must be made in the form prescribed by law by or before a competent public official. Article 16(1)(m) UUJN requires the notary to read the deed before the appearers and at least two witnesses, and requires that it be signed at that moment by the appearers, the witnesses and the notary. Under Article 16(9) UUJN, if this requirement is not met, the deed has only the evidentiary force of an underhand deed. If the heir did not appear before the notary, the deed of release is defective in form and loses its authenticity. If she appeared but did not understand the content, it is defective in will and voidable. Whichever applies, the deed continued the foreigner's control by passing the land to a new nominee, so its cause remained prohibited and it is void. The rights of the new nominee derived from the deed are tainted, and the defect follows the later sale and purchase deeds to third parties.

The decision accords with this analysis in recognising the name-lending agreement as legal engineering. It does not, however, fully restore the heir's position, and it acknowledges the foreign national's factual control. In terms of Otto's legal certainty, normative certainty exists, since the UUPA prohibits the practice clearly, but real legal certainty is weakened because the prohibition is not followed by consistent legal consequences (Bedner & Oomen, 2018). The certificate in the name of the deceased holder is strong administrative evidence, while the trial showed funding and control by a foreigner; the decision stays between the two without applying the consequence in Article 26(2) UUPA. By contrast, Gianyar District Court Decision No. 259/Pdt.G/2020/PN Gin, which concerned an explicit written nominee agreement, declared the agreement null and void and left the land in the name of the Indonesian citizen. The different directions of the two decisions show a lack of uniformity in applying the UUPA prohibition to nominee schemes.

Legal Consequences for the Instruments, the Parties and the Land

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The nominee agreement is null and void because of a prohibited cause (Articles 1335 and 1337 KUHPerdata). Nullity means that the agreement is treated as never having existed and creates no rights and obligations. This differs from the voidable deed of release signed by the heir, which stands until it is annulled at her request. For the notarial deeds there are two possible effects. If the requirements of reading and signing are not met, Article 16(9) UUJN reduces the deed to an underhand deed. If the deed is void for a prohibited cause, it has no legal effect at all, including as a basis for transferring rights. In both cases the Deed of Statement, the Deed of Release of Rights and the Deed of Power of Attorney cannot be a valid basis for moving the land to the new nominee. Table 3 summarises the position of each party.

Table 3. Legal Position of the Parties After the Nullity of the Scheme

Party	Legal position
Foreign national	No protected right to the land despite financing and factual control; under Article 26(2) UUPA payments received by the owner cannot be reclaimed
Registered holder and new nominee	Formal title holders without substantive interest; the certificate does not cure the defective legal relationship behind it; the new nominee's title derives from defective deeds
Heir	Standing as heir (Article 833 KUHPerdata); may sue in tort (Article 1365), seek annulment of the deeds and complain against the notary
Third-party buyers	Position depends on good faith; Article 32(2) PP 24/1997 protects a good-faith certificate holder in actual possession if no objection or claim is lodged within five years after the certificate is issued
Notary	Potential civil, administrative, ethical and criminal liability (Section 3.4)

Source: Authors' Analysis, 2026

The foreign national bears the economic risk of the scheme. Although he financed the acquisition and controlled the land, he acquires no right that the law protects, and Article 26(2) UUPA adds that payments already received by the owner cannot be reclaimed. The court's acknowledgment of his factual control cannot be read as recognition of a right, because the governing norm closes that possibility.

The heir's position needs a more careful basis. Article 833 KUHPerdata vests the estate in the heir at the moment the deceased dies. Because the deceased was the holder named in the certificate, the land formally forms part of the estate, so the heir has standing to sue. The proper cause of action is tort (Article 1365 KUHPerdata) and not default, because default presupposes a valid agreement, whereas here the legal relationship arises from a void agreement (Fuady, 2002). The elements can be described as follows: an act, namely the making and use of deeds that moved the land without the heir's presence and conscious consent; unlawfulness, namely breach of Article 16(1)(m) UUJN and of the UUPA prohibition; fault, namely the intent or negligence of those who drafted and used the deeds; loss, namely loss of the heir's rights over the land; and causation between the deeds and the loss.

The hardest question is the fate of the land. Three solutions appear in the sources. Article 26(2) UUPA provides that the land falls to the State. The Gianyar decision leaves the land in the name of the Indonesian citizen shown on the certificate. The Denpasar decision acknowledges the foreign national's factual control without declaring that the land falls to the State and without returning it fully to the heir. This article takes the view that the third solution is the hardest to defend normatively, because it gives factual protection to a person whom the UUPA bars from holding freehold title. Of the other two, restoring the land to the heir, provided that the heir is an Indonesian citizen, accords better with the aim of the UUPA to protect Indonesian control of land, whereas forfeiture to the State is the consequence that the text of Article 26(2) prescribes once a transfer to a foreigner is proven. The decision as described in this study does not state the heir's nationality, so the first solution cannot be assumed.

This inconsistency shows that real legal certainty about the fate of land in nominee disputes is still lacking. Litigants cannot predict whether the land will fall to the State, return to the registered Indonesian citizen or stay under the foreigner's

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control. Otto's fourth and fifth conditions, namely consistent application of the rules by independent judges and concrete enforcement of their decisions, are therefore not satisfied (Bedner & Oomen, 2018).

Liability of the Notary

Kelsen explains that a person is legally liable for an act when he can be subjected to a sanction for a contrary act, and that failure to exercise the care the law requires is negligence, a kind of fault of Kelsen, as cited in (Asmara et al., 2020). The liability of the notary is assessed in three domains: civil, administrative and ethical, and criminal. The court did not impose a sanction on the notary, so this section concerns the notary's potential liability on the facts as alleged, and each domain requires its own elements to be proven. Table 4 summarises the analysis.

Table 4. Liability of the Notary

Domain	Legal basis	Alleged breach in the case	Consequence
Civil	Article 1365 KUHPerdata; Articles 16(9) and 84 UUJN	Deed made without the heir's presence and conscious consent; deed used for a scheme prohibited by the UUPA	Deed loses authenticity or is void; claim for costs, compensation and interest
Administrative and ethical	Articles 16(1)(a), 16(11) and 85 UUJN; Notary Code of Ethics	Lack of care and independence; failure to ensure that the deed complies with the law	Written warning up to dismissal; ethical sanction by the professional organisation
Criminal	Criminal Code provisions on forgery of documents and participation; anti-money-laundering law if proven	Only if intent or false statements in the deed are proven	Criminal sanction under the provision proven

Source: Authors' Analysis, 2026

Civil liability rests on Article 1365 KUHPerdata and Article 84 UUJN. Article 84 gives an injured party the right to claim reimbursement of costs, compensation and interest when a notary's breach of certain provisions causes a deed to have the force of an underhand deed only or to be void. The requirement to sign the deed at once after it is read, stated in Article 44 UUJN, is among the provisions to which Article 84 refers. If the heir proves that she did not appear and sign before the notary, the loss of her rights over the land may be claimed from the notary.

Administrative and ethical liability follow from Article 16(1)(a) UUJN, which requires the notary to act trustworthily, honestly, carefully, independently and impartially. Breaches of Article 16(1)(a) to (l) may be sanctioned under Article 16(11) UUJN with a written warning, temporary dismissal, honourable dismissal or dishonourable dismissal. Sanctions are imposed by the Notary Supervisory Board (*Majelis Pengawas Notaris*), while breaches of the Notary Code of Ethics are examined by the Honorary Council of the Indonesian Notaries Association (INI). The Notary Honorary Council (*Majelis Kehormatan Notaris*) has a different function: it approves the summoning of notaries by investigators, public prosecutors or judges.

A notary must also act preventively. The duty to give legal counselling (Article 15(2)(e) UUJN) and the duty to serve the public unless there is a reason to refuse (Article 16(1)(e) UUJN) are the basis for refusing to make a deed that is clearly intended to circumvent the UUPA prohibition. In notarial doctrine, a notary is responsible for the formal truth of the deed and not for the material truth of the parties' statements. When the notary knows that a series of deeds forms part of a scheme prohibited by statute, however, the question shifts from the material truth of statements to the notary's own compliance with the law, so the defence of merely recording the will of the parties cannot be maintained (Masithoh et al., 2021). In practice the warning signs are a loan agreement, a right of use agreement, a power of attorney and an acknowledgment of debt appearing in one series together with the purchase of land by an Indonesian citizen with a foreigner's money.

Criminal liability arises only if intent is proven, for example inserting false statements into an authentic deed or taking part in a prohibited act as an accomplice, with the Criminal Code provisions on forgery of documents and on

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participation as the usual reference. From the perspective of anti-money-laundering law (Law No. 8 of 2010), notaries must apply customer due diligence in certain transactions. This matters because a nominee scheme hides who actually controls the land and where the money comes from. The decision studied, however, does not state that the foreign national's funds came from a crime, so this domain is a potential rather than a finding (UU No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, 2010).

The decision highlights the notary's role but imposes no civil or criminal sanction on the notary. The notary's liability therefore remains open through a separate civil suit, a complaint to the Notary Supervisory Board and the professional organisation, and a criminal report. The decision also serves as a warning that notaries must prevent the deeds, they make from being used to circumvent the law.

CONCLUSION

This article has examined the validity and consequences of an agreement to release rights over land held through a nominee in Denpasar District Court Decision No. 426/Pdt.G/2020/PN Dps. First, the release agreement is part of a two-layer nominee scheme and is invalid. Consent between the foreign national and the registered holder was genuine, but the heir's consent was defective, so the deed she signed is voidable. The condition of a lawful cause is not met, because the scheme aims to give a foreigner control of freehold land contrary to Articles 21(1) and 26(2) UUPA; the agreement is therefore null and void under Articles 1335 and 1337 KUHPerdata and amounts to *fraus legis*. A deed made without observing Article 16(1)(m) UUJN loses its authenticity under Article 16(9) UUJN.

Second, the legal consequences are fourfold. The agreement and the deeds create no rights and cannot support the later transfers. The foreign national acquires no protected right, while the heir may sue in tort and seek annulment of the deeds. The fate of the land is still decided inconsistently, because Article 26(2) UUPA, the Gianyar decision and the Denpasar decision point to different results. The notary may be held liable in civil, administrative and ethical terms and, if intent is proven, in criminal terms.

These findings imply that no instrument enabling a foreigner to control freehold land through an Indonesian name can serve as valid title, even if it is made before a notary. They also imply that nominees and their heirs are left vulnerable, and that notaries face a heightened duty of care. Notaries are advised to ensure the presence and understanding of appearers, to use official translators, to trace the real cause of a series of deeds and to refuse where circumvention is indicated. The Indonesian Notaries Association should issue technical guidelines listing the warning signs of nominee schemes. Policymakers, namely the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the legislature, should regulate the prohibition and sanctions for nominee practice explicitly and define the consequence for the land, whether forfeiture to the State or restoration to the entitled party, so that decisions no longer diverge. Early detection at registration and transfer, such as checking the source of funds and the actual control of land in transactions involving foreign parties, should also be considered. Future research should examine the outcome of the appeal in this case.

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REFERENCES

Asmara, T. T. P., Murwadji, T., & Nugroho, B. D. (2020). Tanggung Jawab Pemilik Koperasi Pada Saat Terjadi Kredit Macet Ditinjau Dari Teori Kepastian Hukum. *Jurnal IUS Kajian Hukum dan Keadilan*, *8*(1), 109–126. https://doi.org/10.29303/ius.v8i1.712

Bedner, B., & Oomen, B. (2018). *Real Legal Certainty and Its Relevance: Essays in Honour of Jan Michiel Otto*. Leiden University Press (LUP). https://hdl.handle.net/1887/66819

Fuady, M. (2002). *Perbuatan Melawan Hukum: Pendekatan Kontemporer*. Citra Aditya Bakti.

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Gunawan, M. R. S., Fathullah, K. E., & Dluha, M. (2024). Tinjauan Yuridis Kepastian Hukum Pemilikan Rumah oleh Orang Asing Yang Berkedudukan di Indonesia Menurut Peraturan Pemerintah Nomor 103 Tahun 2015 Tentang Pemilikan Rumah Tempat Tinggal atau Hunian Orang Asing yang Berkedudukan DI Indonesia. *Justness : Jurnal Hukum Politik Dan Agama*, *4*(2). https://doi.org/10.61974/justness.v4i2.72

Kindangen, A. P. (2019). Tinjauan Yuridis Terhadap Kasus Warga Negara Asing yang Memiliki Hak Milik Atas Tanah Melalui Perjanjian Nominee menurut Undang-Undang Pokok Agraria No. 5 Tahun 1960. *Lex Et Societatis*, (Vol 7, No 2 (2019): Lex Et Societatis). http://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/24656/24367

Kompas, T. H. (2023, August 25). *Kepemilikan Asing Dipermudah, Properti Bali Paling Diincar*. Kompas.id. https://www.kompas.id/artikel/kemudahan-kepemilikan-asing-dorong-properti-bali-paling-diincar

Mahkamah Agung Republik Indonesia. (2021). *Direktori Putusan PN DENPASAR Perdata*. https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-denpasar/kategori/perdata-1.html

Marzuki, P. D. M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.

Masithoh, D., Rato, D., & Ermanto Fahamsyah. (2021). Tanggung Jawab Notaris dalam Pembuatan Perjanjian Nominee Sebagai dasar Peralihan Hak Milik Atas Tanah oleh Warga Negara Asing di Indonesia. *Jurnal Syntax Transformation*, (Vol 2 No 07 (2021): Jurnal Syntax Transformation), 937–948.

PP No. 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah, Pub. L. No. PP Nomor 18 Tahun 2021 (2021). https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021

Soekanto, S., & Mamudji, S. (1986). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Penerbit CV. Rajawali.

Soemitro, R. H. (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia.

Subekti. (2005). *Hukum Perjanjian*. (Original work published Intermasa)

Sukartha, L. G. I. P. P., Adnyani, N. K. S., Lasmawan, I. W., & Dantes, K. F. (2026). Problematika Penguasaan Tanah oleh Warga Negara Asing dalam Usaha Pariwisata di Bali Perspektif Hukum Agraria Indonesia. *Hukum Inovatif : Jurnal Ilmu Hukum Sosial dan Humaniora*, *3*(3), 52–62. https://doi.org/10.62383/humif.v3i3.3234

Sumarja, F. X. (2014). Larangan Pengasingan Tanah Dan Peluang Investasi Asing di Indonesia. *Jurnal Media Hukum*, *21*(1), 13–13. https://doi.org/10.18196/jmh.v21i1.1163

Suprijanto, A. (2017). Peran Pejabat Pembuat Komitmen Sebagai Pengendali Fungsi Dalam Pembangunan Lanjutan Laboratorium B2P2TOOT Tawangmangu. *Civis : Jurnal Ilmiah Ilmu Sosial Dan Pendidikan*, *6*(2). https://doi.org/10.26877/civis.v6i2.1902

UU No. 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2 (2014).

UU No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, Pub. L. No. 8 (2010). https://peraturan.bpk.go.id/Details/38547/uu-no-8-tahun-2010