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LEGAL ANALYSIS OF THE ROLE OF NOTARIES IN PREVENTING ABUSE OF NAME-LOAN AGREEMENTS BETWEEN FOREIGN CITIZENS AND INDONESIAN CITIZENS
(Research Study of Decision Number 129/Pdt.G/2021/PN.Btm)

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Abstract
The use of nominee agreements between foreign nationals and Indonesian citizens is still found in land transactions in Indonesia. Through this arrangement, foreign nationals are able to control land that, under the Basic Agrarian Law, may only be owned by Indonesian citizens. This practice is not in line with the nationality principle under Indonesian land law. Therefore, Notaries have an important role in preventing the misuse of nominee agreements by ensuring that every deed they prepare complies with the applicable laws and regulations. This study examines the role of Notaries in preventing the misuse of nominee agreements based on Decision Number 129/Pdt.G/2021/PN.Btm. This study examines three issues: the legal regulation governing the role of Notaries in preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens, the implementation of the Notary's role in practice, and the obstacles encountered together with the proposed solutions. This is normative legal research using statutory, conceptual, case, and practice-oriented approaches. The research uses primary, secondary, and tertiary legal materials collected through library research and supported by interviews. The data were analyzed qualitatively using a descriptive-analytical method based on legislation, legal literature, and Decision Number 129/Pdt.G/2021/PN.Btm. The study finds that the preventive role of Notaries is regulated under the Law on Notarial Office, the Basic Agrarian Law, and the Indonesian Civil Code. However, there are no specific legal provisions governing nominee agreements. In practice, Notaries prevent the misuse of nominee agreements by applying the prudential principle, verifying the identity of the parties, examining supporting documents, and providing legal advice before preparing an authentic deed. The main obstacles are the limited authority of Notaries to identify the actual legal relationship between the parties and the absence of clear legal rules on nominee agreements. This study recommends improving the existing legal regulations, strengthening the supervision and professionalism of Notaries, and increasing public legal awareness to prevent the misuse of nominee agreements .

Keywords: Notary, Nominee Agreement, Foreign Nationals, Legal Certainty, Land Law.

INTRODUCTION

Land is a resource that has strategic significance for the life of the nation and state because in addition to having economic value, land also has social, cultural, and legal functions. In the Indonesian legal system, regulations regarding land rights are based on the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. This constitutional mandate is then further elaborated in the Basic Agrarian Law (UUPA) which lays down the principle of nationality as the basis for controlling land rights in Indonesia. Based on this principle, only Indonesian citizens can own land ownership rights, while foreign citizens can only obtain land rights in certain forms that are expressly permitted by statutory regulations. (Harsono, 2014; Santoso, 2012)

Restrictions on land ownership rights for foreign nationals are a form of legal protection aimed at safeguarding state sovereignty over land while simultaneously achieving equitable distribution of control over agrarian resources.

However, in practice, the development of investment, tourism, and international economic relations has increased the need for foreign nationals to control or utilize land in Indonesia. This situation has led to the emergence of various legal constructs used to obtain economic benefits from land, one of which is through the practice of nominee agreements between foreign nationals and Indonesian citizens. In this practice, land is registered in the name of the Indonesian citizen, while ownership, control, and economic benefits actually rest with the foreign national based on a series of agreements made between the parties. Normatively, nominee agreements are not specifically regulated in the Indonesian legal system. However, this practice is often used as a means to circumvent the provisions of the Basic Agrarian Law (UUPA) which prohibit foreign nationals from owning land ownership rights. Therefore, the existence of a name-borrowing agreement raises complex legal issues because, although it formally fulfills the elements of freedom of contract as stipulated in the Civil Code, its purpose may substantially conflict with mandatory legal provisions (dwingend recht), the principle of nationality, and public order. Consequently, the practice of nominees not only creates legal uncertainty for the parties but also has the potential to obscure the land rights ownership system established by the UUPA. (Sumardjono, 2010; Hetharie, 2019; Ambarsari & Busro, 2023)

In notarial practice, a Notary Public holds a crucial position as a public official authorized to create authentic deeds concerning various legal acts desired by the parties. This authority is regulated in the Notary Public Law concerning Amendments to Law Number 30 of 2004 concerning the Notary Public. Although a Notary Public essentially only conveys the wishes of the parties into an authentic deed, this authority cannot be understood narrowly as a mere administrative function. The Notary Public's position carries with it a legal obligation to act honestly, thoroughly, independently, and impartially, and to ensure that every legal act outlined in the deed does not conflict with statutory provisions. Therefore, a Notary Public holds a strategic position in preventing the issuance of deeds that could potentially be used as a means of legal smuggling through the practice of borrowed names. (Adjie, 2011; Law Number 2 of 2014)

The principle of prudence is an important aspect that must be applied by a Notary in every deed preparation, especially if there are indications that a legal act is intended to disguise the ownership of land rights by a Foreign National. The application of this principle is not only carried out through checking the identity of the parties and the validity of the documents, but also through an assessment of the legal purpose of the act to be stated in the deed. In this context, a Notary is not sufficient to simply ensure that the formal requirements of an agreement are met, but must also consider whether the substance of the agreement has the potential to conflict with the law, public order, or the principle of nationality that forms the basis of Indonesian land law. (Azzahra, 2025)

Therefore, this research is important to conduct a legal analysis of the role of notaries in preventing misuse of name-borrowing agreements between foreign citizens and Indonesian citizens based on a study of Decision Number 129/Pdt.G/2021/PN.Btm.

Based on this comparison, it can be seen that several previous researchers have conducted research on nominee agreements, land ownership by foreign nationals, and notary responsibilities. However, these previous studies have focused on different areas of emphasis, including the validity of nominee agreements, notary responsibilities, legal protection, and the creation of deeds related to land ownership. (Rani, 2024; Sulistiyani, 2024)

This study has a distinct position because it not only discusses the validity or accountability of Notaries after a dispute occurs, but also emphasizes the preventive role of Notaries in preventing the misuse of name-loan agreements between Foreign Nationals and Indonesian Citizens. Furthermore, this study uses Decision Number 129/Pdt.G/2021/PN.Btm as the object of study to analyze how legal relationships involving differences between economic interests and formal ownership can give rise to legal issues and how Notaries' preventive functions should be implemented. (Ambarsari & Busro, 2023; Alodia, 2026)

Thus, the novelty of this research lies in the integration of an analysis of the preventive role of Notaries, the practice of misusing foreign-Indonesian name-loan agreements, land law, and an analysis of Decision Number 129/Pdt.G/2021/PN.Btm, focusing not only on the legal consequences after a dispute occurs but also on preventive efforts through the careful, professional performance of the Notary's office in accordance with statutory provisions. (Paroto et al., 2026)

Based on these issues, this article focuses its analysis on three questions. First, how does the Indonesian legal framework position the preventive function of Notaries in relation to name-borrowing agreements between Foreign Nationals and Indonesian Citizens? Second, how is this function implemented when Notaries are confronted with formal legal data, as reflected in Decision Number 129/Pdt.G/2021/PN.Btm. Third, what obstacles limit prevention , and what steps can be taken without turning Notaries into investigators of the private relationships of the parties. With this focus, the research objective goes beyond assessing the validity or invalidity of nominee agreements, but rather toward constructing a preventive model consistent with the principles of nationality, legal certainty, official authority, and the principle of prudence.

LITERATURE REVIEW

Nominee Agreement, the Principle of Nationality, and the Limits of Freedom of Contract

The theoretical basis of this research is also intended to provide direction in analyzing the extent to which statutory provisions have regulated the preventive role of Notaries in preventing the misuse of name-loan agreements. The analysis is not only conducted on the norms governing the position of Notary, but also on land law provisions that limit land ownership rights for Foreign Citizens, provisions of contract law concerning the requirements for the validity of an agreement, and legal principles that develop in notarial practice. Thus, the theoretical basis becomes the basis for assessing the conformity between legal norms, the practice of making authentic deeds, and the purpose of establishing laws to provide protection for the interests of society and maintain legal order in the land sector. Based on the scope of the research, the theories used are structured in stages to be able to provide a comprehensive analysis. This research uses Roscoe Pound's Social Engineering Theory as a Grand Theory to explain the function of law as a means of renewal and control of community life, particularly in preventing the practice of name-loan agreement abuse. Furthermore, the Legal Certainty Theory developed by Hans Kelsen is used as a Middle Theory to analyze the consistency of the application of legal norms to the practice of nominee agreements. The applied theories in this study consist of the theory of authority, the theory of job responsibility, and the prudential principle, which are used to examine the limits of a notary's authority and responsibility in carrying out their preventive function as a public official. The use of these three levels of theory is expected to provide a comprehensive analysis of the research problem, from a philosophical, normative, and practical perspective. (Marzuki, 2021; Soekanto & Mamudji, 2019)

A Notary is a public official authorized by the state to create authentic deeds and exercise other powers as stipulated in the Notary Law. However, in the development of modern legal practice, the position of a Notary is no longer understood merely as an official who creates deeds, but rather as a legal profession with a strategic function in ensuring the implementation of every legal act in accordance with the provisions of laws and regulations. Therefore, the concept of a Notary in this study is not only understood from the aspect of his authority as a public official, but also from the aspect of his role in creating legal certainty, providing legal protection, and preventing the abuse of law in civil legal relations. The role of a Notary is essentially a form of implementing the authority granted by the state to provide legal services to the public through the creation of authentic deeds. In carrying out this role, a Notary is not only tasked with expressing the will of the parties into a deed, but is also obliged to ensure that the legal act carried out meets the requirements stipulated by law, both from a formal and material aspect. Thus, the role of a Notary cannot be separated from the function of law itself, namely to provide certainty, justice, and legal protection for every legal relationship formed by the community. (Adjie, 2011; Azzahra, 2025)

Preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens is a form of preventive effort to maintain compliance with the national legal system, particularly in the areas of land law and notary law. Prevention in the legal context is understood as a series of actions taken before a legal violation occurs with the aim of avoiding legal consequences that conflict with the provisions of laws and regulations. In contrast to repressive efforts carried out after a violation occurs, preventive efforts emphasize supervision, guidance, and the consistent application of legal norms so that every legal action carried out by the community remains within the applicable legal corridor. Therefore, the concept of prevention has a very important position in realizing legal certainty, legal protection, and orderly administration in every civil legal relationship. In this study, prevention is directed at the practice of misuse of nominee agreements carried out between foreign nationals and Indonesian citizens. A name-borrowing agreement is essentially a legal construct that places Indonesian citizens as the parties legally registered as the rights holders or owners of a legal object, while the ownership, control, or economic benefits of the object actually rest with foreign citizens based on an agreement made by the parties. Such legal relationships are generally formed through several interrelated agreements, such as powers of attorney, debt acknowledgements, debt agreements, sales and purchase agreements, statements of beneficial ownership, or other forms of agreements that are generally intended to provide control to parties who are not legally subject to land rights. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

Viewed from a civil law perspective, everyone is essentially given the freedom to enter into agreements based on the principle of freedom of contract as reflected in the provisions of the Civil Code. However, this freedom is not absolute, but is limited by the conditions for the validity of the agreement, public order, morality, and the provisions of mandatory laws and regulations (dwingend recht). Therefore, an agreement made with the aim of avoiding prohibitions stipulated by law, even though it formally fulfills the elements of an agreement, still has the potential to be considered a legal act that is contrary to the law because the substance and purpose of its formation do not comply with the intent of the law maker. In Indonesian land law, the practice of nominee agreements is closely related to the application of the principle of nationality as stipulated in the Basic Agrarian Law. The principle of nationality emphasizes that land ownership rights can only be owned by Indonesian citizens, while foreign citizens are not permitted to own land ownership rights directly. This prohibition is a form of state protection for land as a national resource that has a social and strategic function for the interests of the Indonesian nation. Therefore, the use of the name of an Indonesian citizen as the land title holder for the benefit of a foreign citizen essentially has the potential to constitute a form of legal smuggling (fraus legis) if it aims to circumvent the provisions stipulated in the Basic Agrarian Law. Misuse of a name-borrowing agreement not only raises questions about the validity of the legal relationship between the parties, but also has the potential to create legal uncertainty, ownership disputes, losses for the parties, and disrupt the national land administration system. In practice, the legal relationship between the party whose name is used (nominee) and the party providing economic benefits (beneficial owner) often does not receive optimal legal protection because it contradicts the purpose of establishing land law norms. This situation shows that the use of civil law construction cannot be used as a means to override mandatory public law provisions, especially those related to the limitation of land rights subjects. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

Recent literature demonstrates consistency on one crucial point: the nominee problem is not merely the absence of a contract name in the Civil Code, but rather the conflict between private contractual forms and coercive agrarian norms. Ambarsari and Busro's study shows that land ownership by foreign nationals can be constructed through a series of deeds such as sales and purchases under a borrowed name, debt acknowledgment, lease, power of attorney, and collateral. Azzahra emphasizes that the principle of prudence must be applied from the pre-deed stage, while research by Rani and Prakoso et al. places the responsibility of the notary on the deed's compliance with the UUPA and the cause of the agreement. A 2026 study even underscores a more structural problem, namely the tension between formal title and effective control or a lack of transparent beneficial interest. These findings reinforce the need to interpret the notary's function as a gateway to legal compliance, not simply as a scribe of the parties' wishes. (Ambarsari & Busro, 2023; Rani, 2024; Azzahra, 2025; Prakoso et al., 2025; Alodia, 2026; Paroto et al., 2026)

Theoretical Framework: Social Engineering, Legal Certainty, Authority, and Prudence

Grand Theory is a basic theory used to provide a philosophical foundation for explaining legal issues that are the object of research. In legal research, grand theory serves as a conceptual framework that provides direction for analysis regarding the purpose of law formation, the function of law in social life, and the relationship between legal norms and social reality. Therefore, the choice of grand theory must be adapted to the characteristics of the problem being studied so that it can serve as a basis for explaining the overall research construction. This research uses the Social Engineering Theory proposed by Roscoe Pound as the grand theory. Roscoe Pound views law as not merely a collection of norms that regulate social behavior, but rather a means for reforming and controlling social life (law as a tool of social engineering). According to Pound, law must be able to balance the various interests that exist in society, including individual interests, public interests , and state interests, so as to create an orderly, just life that provides benefits for society as a whole. (Pound, 1942)

Middle Theory is a theory that serves to bridge the main theory with the application of law to the research object. In this study, the Legal Certainty Theory developed by Hans Kelsen is used. Hans Kelsen argues that law is a system of norms that are arranged hierarchically and derive their validity from higher norms, culminating in the Grundnorm. Therefore, every legal action must be based on valid norms and must not conflict with applicable legal provisions. Legal certainty can only be achieved if norms are applied consistently without being influenced by extralegal interests. In the context of this study, the legal certainty theory is used to examine whether the practice of borrowing names is justifiable under the Indonesian legal system. Although formally the parties have the freedom to make agreements as regulated in the Civil Code, this freedom is still limited by objective requirements regarding lawful causes and the prohibition of making agreements that conflict with the law, public order, or morality. Therefore, a nominee agreement that aims to avoid the prohibition on ownership of Property Rights by Foreign Citizens cannot be assessed only from its formal form, but also from the legal objectives it seeks to achieve. (Kelsen, 1967)

Applied theory is a theory used to directly analyze the research object. In this study, applied theory consists of the Theory of Authority, the Theory of Job Responsibility, and the Prudential Principle, because all three are closely related to the implementation of the Notary's office. The theory of authority explains that every authority of a public official is derived from statutory regulations. Therefore, the authority of a Notary in making authentic deeds must be exercised in accordance with the limits determined by the Notary Law. This authority not only grants the right to make deeds, but also requires the Notary to ensure that the legal acts outlined in the deed do not conflict with the law. (Hadjon & Djatmiati, 2014; Adjie, 2013)

Synthetically, social engineering theory is used to explain why the Notary's function has a social prevention dimension; legal certainty theory is used to test the consistency of actions with the hierarchy of norms; authority theory limits how far a Notary can explore the facts; while the precautionary principle serves as an operational standard that links authority with responsibility. This combination is important because demands to prevent nominees must not result in an expansion of authority without legal basis. An appropriate preventive model must still rely on examining the authority to act, the legality of the object, the consistency of documents, explanations of legal consequences, recording the counseling process, and rejection when the stated objectives clearly conflict with the law.

Table 1. Normative Basic Matrix of Notary's Preventive Function

Source of Law	Key Norms	Legal Meaning	Preventive Implications
Notary Public Law	Article 15 paragraph (1) and paragraph (2) letter e	Authority to make authentic deeds and provide legal advice	The notary explains the legal consequences and ensures that the request is within his/her authority.
Notary Public Law	Article 16 paragraph (1) letter a	The obligation to act in a trustworthy, honest, thorough, independent and impartial manner	Checking identity, status, documents, authority to act, and transaction consistency
UUPA	Article 21 paragraph (1)	Ownership rights are in principle only for Indonesian citizens	Schemes that place foreign nationals as beneficial owners must be tested against the principle of nationality.
UUPA	Article 26 paragraph (2)	Direct or indirect transfer of property rights to subjects who do not have rights is prohibited	A series of deeds must not be a means of circumventing imperative prohibitions
Civil Code	Articles 1320 and 1337	Because the agreement must be lawful and not conflict with the law or public order.	The substance and purpose of the transaction must be examined, not just its formal form.

METHOD

The type of research used in this study is normative legal research. Normative legal research is research that makes law a norm or rule that applies in society and places statutory regulations, legal principles, doctrines, and court decisions as the main objects of study. Normative legal research is not oriented towards observing community behavior, but rather focuses on analyzing the system of norms that regulate a legal event so that the conformity between applicable legal norms and the legal problem being studied can be determined. Therefore, normative legal research aims to find legal arguments, provide interpretations of legal norms, and formulate solutions to legal issues based on a scientific and systematic approach. The selection of this type of normative legal research in this study is based on the characteristics of the problem being studied, namely regarding the role of Notaries in preventing the misuse of nominee agreements between Foreign Nationals and Indonesian Citizens. This problem is essentially a legal issue related to the regulation of Notary authority, the validity of an agreement, restrictions on land ownership rights by Foreign Nationals, and the application of the principle of prudence in the implementation of Notary office. Thus, this research focuses on analyzing the legal norms governing the relationship between civil law, land law, and notarial law in order to provide legal certainty regarding the practice of name-borrowing agreements. (Marzuki, 2021; Soekanto & Mamudji, 2019)

The normative legal research in this study was conducted by examining various primary legal materials in the form of laws and regulations related to the position of Notary, land law, and contract law, and supported by secondary legal materials in the form of expert doctrines, previous research results, scientific journals, and relevant court decisions. The analysis of these legal materials is intended to obtain a comprehensive understanding of the applicable legal regulations, find the conformity between legal norms and notarial practice, and identify the forms of legal protection that can be provided to prevent the misuse of name-loan agreements. Although this research is normative legal research, in its implementation the research is also supported by the collection of field data through interviews as supporting data. The interviews were conducted not to change the character of the research into empirical research, but rather to obtain information regarding the application of legal norms in notarial practice, particularly regarding the application of the principle of prudence by Notaries in dealing with indications of name-loan agreements between Foreign Nationals and Indonesian Citizens. Thus, the interview data only serves to strengthen the normative analysis of the legal materials that are the main object of the research. (Marzuki, 2021; Soekanto & Mamudji, 2019)

In this study, an approach method is used to analyze various legal aspects related to the role of Notaries in preventing the misuse of nominee agreements between Foreign Nationals and Indonesian Citizens. This problem is a legal issue that is closely related to various legal fields, including notary law, civil law, land law, and contract law. In addition, the practice of nominee agreements is also related to the application of the principle of nationality in agrarian law, the principle of prudence in the implementation of the Notary's office, and legal protection for the certainty of land rights. Thus, the analysis of this problem requires the use of several complementary approaches to obtain a complete understanding of legal regulations, implementation of norms, and legal arguments that form the basis for solving the research problem. The choice of approach method in this study is also adjusted to the prescriptive nature of the research, namely research that aims to provide arguments regarding how the law should be applied to a problem. Therefore, the approach used is not only aimed at identifying applicable legal norms (ius constitutum), but also at assessing the appropriateness of the application of these norms to the objectives of lawmaking, particularly in preventing the misuse of name-borrowing agreements that could potentially conflict with the provisions of the Basic Agrarian Law and the Notary Law. This approach aligns with the theoretical foundations used in this study, namely the Social Engineering Theory proposed by Roscoe Pound, Hans Kelsen's Legal Certainty Theory, and theories regarding legal protection and the precautionary principle outlined in Chapter II. (Marzuki, 2021; Soekanto & Mamudji, 2019)

The case approach is an approach undertaken through analysis of court decisions relating to the legal issue being researched. This approach aims to determine how judges apply legal norms in resolving a dispute and assess the conformity between applicable legal provisions and judicial practice. Furthermore, the case approach also provides an overview of the development of legal interpretations regarding a problem, thus providing a basis for developing more comprehensive legal arguments. In this study, the case approach is used to examine court decisions relating to the practice of nominee agreements between foreign nationals and Indonesian citizens, as well as disputes regarding land ownership rights involving the use of Indonesian citizens' names as formal parties in the legal relationship. The analysis of these decisions is aimed at identifying the judges' legal considerations, the application of provisions of civil law, land law, and notarial law, and their implications for the implementation of notary obligations. Through this approach, it is hoped that it will be possible to understand how legal norms are applied in practice and the extent to which the role of notaries can be optimized as a form of preventative legal protection against the misuse of nominee agreements. (Marzuki, 2021; Ibrahim, 2013)

The practice-oriented approach is an approach used to understand how the legal provisions governing the position of Notary are applied in the implementation of Notary duties and authorities in the field. This approach is not only oriented towards the analysis of applicable legal norms, but also pays attention to the professional practices of Notaries in carrying out their official obligations in accordance with the provisions of laws and regulations, professional codes of ethics, and the principles of prudence that are part of the implementation of the Notary office. Through this approach, research can provide an overview of the relationship between legal norms (das sollen) and their implementation in practice (das sein), so that the analysis conducted becomes more comprehensive and applicable. In this study, the notary practice approach is used to examine the implementation of the authority and responsibilities of Notaries in dealing with the practice of borrowing names (nominee agreements) between Foreign Citizens and Indonesian Citizens. This approach is directed at understanding how Notaries apply the principle of prudence, conduct identity checks of the parties, assess the substance of the legal relationship to be stated in an authentic deed, and provide legal counseling to the parties before a legal act is carried out. Thus, this research not only examines whether this authority has been regulated in legislation but also analyzes how this authority is exercised in the practice of the Notary profession as a form of preventative legal protection. (Soekanto, 2015; Ali, 2021)

In addition to literature review, data collection in this study was also conducted through interviews with parties related to the research object. The interviews were conducted in a targeted manner to obtain information regarding notarial practices, the process of misuse of name-loan agreements between foreign nationals and Indonesian citizens, and the obstacles faced in efforts to prevent legal abuse. Interviews were conducted with notaries and other parties deemed to understand land and notarial law practices. This interview technique was used to obtain empirical data that could support the normative analysis in the study, particularly regarding the implementation of notaries' preventive functions in practice. Through these interviews, researchers were able to obtain an overview of the implementation of notaries' obligations to act honestly, thoroughly, and cautiously as stipulated in the Notary Law. (Soekanto, 2015; Ali, 2021)

Data analysis in legal research is a stage carried out after all legal materials have been successfully collected, including primary, secondary, and tertiary legal materials. The analysis aims to obtain answers to the research problem formulation regarding the role of Notaries in preventing the misuse of name-loan agreements by foreign nationals and Indonesian citizens. In this study, data analysis was conducted qualitatively, namely by systematically describing, interpreting, and connecting various legal provisions, legal theories, and expert opinions to obtain a conclusion that is in accordance with the research objectives. This study uses a descriptive-analytical analysis method, namely by first describing the legal provisions governing the position of Notary, the acquisition of land rights, and the position of foreign nationals in the Indonesian legal system, followed by an analysis of legal practices that occur in the field. The analysis was conducted to see the conformity between normative provisions and their implementation in practice, particularly regarding the possibility of legal abuse in name-loan agreements between foreign nationals and Indonesian citizens through certain legal constructions that formally appear valid, but substantially have the potential to conflict with the objectives of agrarian law. In analyzing these problems, this study uses a statutory and conceptual approach. The statutory approach examines various legal provisions related to the position of notary, land law, and regulations regarding corporate legal entities. Meanwhile, the conceptual approach examines relevant legal theories as a basis for analyzing the problems studied. (Marzuki, 2021; Soekanto & Mamudji, 2019)

The primary legal materials analyzed include Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014, the Civil Code, and Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm. Secondary legal materials include books, journal articles, and previous research on nominee agreements, notary authority, land law, and the precautionary principle. The analysis was conducted qualitatively using a norm inventory flow, identification of legal facts in decisions, comparison of das sollen and das sein, assessment of the limits of notary authority, and formulation of prescriptive preventive measures.

RESULTS AND DISCUSSION

Legal Framework for the Preventive Role of Notaries in Name Borrowing Agreements

In Indonesian positive law, the term "nominee agreement" is not explicitly found as a type or form of agreement specifically regulated in legislation. There is no single provision in the Civil Code or Law Number 5 of 1960 concerning Basic Agrarian Regulations that specifically regulates nominee agreements as a separate form of agreement. Therefore, the existence of a nominee agreement cannot be assessed solely based on the presence or absence of the term in legislation, but must be examined in light of the substance, purpose, and legal consequences of the agreement made by the parties. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

Conceptually, a nominee agreement is a legal relationship that places one party as the party formally registered or appearing as the rights holder, while the actual economic interests or benefits reside with another party. In the land context, such a construction becomes problematic when used by foreign citizens to obtain or control land ownership rights through Indonesian citizens as the party formally registered as the rights holder. The problem lies not in the use of the term nominee alone, but rather in the possibility that the agreement is used to transfer or conceal actual control of the land from a party who, according to law, cannot be the holder of ownership rights. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

This construction must be distinguished between agreements that are legally valid because they are ordinary agreements between the parties and agreements whose substance or purpose is used to avoid mandatory legal provisions. In this case, Article 1320 of the Civil Code provides the basis for the validity of an agreement, while

Article 1337 of the Civil Code stipulates that a cause is prohibited if it is prohibited by law or contrary to morality or public order. Thus, the assessment of a nominee agreement must be directed at the cause or goal intended by the parties, not solely on the form or name of the agreement. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

This issue becomes increasingly important in legal relations involving foreign nationals and Indonesian citizens. The UUPA adheres to the principle of nationality which imposes restrictions on the control of land ownership rights. Article 21 paragraph (1) of the UUPA stipulates that only Indonesian citizens can hold ownership rights. Furthermore, Article 26 paragraph (2) of the UUPA imposes legal consequences for the transfer of ownership rights to parties who do not meet the requirements as holders of ownership rights. Therefore, using the name of an Indonesian citizen as the rights holder, while the interests and control are actually intended to be given to foreign citizens, has the potential to conflict with the objectives of the restrictions stipulated in national agrarian law. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

Thus, the absence of explicit provisions regarding the term nominee agreement cannot be interpreted as providing unlimited freedom for the parties to enter into name-borrowing agreements. Freedom of contract, as recognized in contract law, remains limited by statutory provisions, public order, and the legal objectives to be protected. If an agreement formally uses the name of an Indonesian citizen but is substantially intended to grant control or benefits of property rights to a foreign citizen, then the agreement must be analyzed based on legal provisions governing land ownership and prohibitions on legal smuggling. (Hetharie, 2019; Sudini & Utama, 2018; Saputra & Sudiro, 2024)

A notary is a public official authorized by the state to create authentic deeds and exercise other powers as stipulated in laws and regulations. The position of a notary as a public official is not only intended to provide legal services to the public, but also as an instrument of the state in ensuring the creation of legal certainty, legal order, and legal protection for every legal act committed by the public. Therefore, every action taken by a notary in carrying out his/her office must always be guided by the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries (UUJN), the Notary Code of Ethics, and the general principles of the implementation of public office. (Law Number 2 of 2014; Azzahra, 2025; Rani, 2024)

In addition to these authorities, Article 15 paragraph (2) letter e of the UUJN also grants the Notary the authority to provide legal counseling to the parties in connection with the creation of deeds. This provision has an important meaning because it shows that the Notary's function is not only limited to pouring the will of the parties into an authentic deed, but also provides an understanding of the legal consequences of the legal actions to be carried out. In the context of a name borrowing agreement (nominee agreement), the authority to provide legal counseling becomes a preventive instrument that allows the Notary to explain that the use of the name of an Indonesian Citizen for the purposes of land control by a Foreign Citizen is contrary to the principle of nationality in Indonesian agrarian law and has the potential to result in legal consequences in the form of null and void. (Law Number 2 of 2014; Azzahra, 2025; Rani, 2024)

The regulation regarding land ownership rights in Indonesia is one of the fundamental aspects of the national agrarian legal system. This regulation is not only related to the legal relationship between legal subjects and land as the object of rights, but also reflects the implementation of the constitutional mandate as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water, and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people. This constitutional provision is the philosophical basis for the birth of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which regulates the system of control, ownership, use, and utilization of land rights in Indonesia. One of the main principles adopted by the UUPA is the principle of nationality, namely the principle that places Indonesian citizens as the main subjects who have the right to have a full legal relationship with land in the territory of Indonesia. This principle is reflected in Article 9 paragraph (1) of the UUPA which states that only Indonesian citizens can have a full relationship with the earth, water, and space within the boundaries determined by law. Furthermore, Article 21 paragraph (1) of the UUPA expressly stipulates that only Indonesian citizens can have ownership rights to land. This regulation shows that the legislators consciously limit ownership of ownership rights in order to maintain the social function of land and protect national interests from control by foreign parties. Restrictions on land ownership by foreign citizens are not a form of discrimination, but rather a legal policy based on the characteristics of land as a resource that has economic, social, cultural, and strategic value for the life of the nation. From the perspective of national agrarian law, land is not viewed solely as an economic commodity, but also as a means to realize the welfare of society and maintain state sovereignty. Therefore, restrictions on the subjects holding ownership rights are a consequence of the application of the principle of nationality which is one of the main principles in the Indonesian land law system. (Law Number 5 of 1960; Ambarsari & Busro, 2023; Sulistiyani, 2024)

Nevertheless, Indonesian law still allows foreign nationals to acquire certain rights over land in accordance with statutory provisions. These rights are not in the form of Ownership Rights, but rather limited rights, such as Use Rights, with certain conditions and time periods as stipulated in the UUPA and its implementing regulations. These regulations indicate that the state continues to provide opportunities for foreigners to utilize land to support economic activities or as a place of residence, while ensuring that ownership of Ownership Rights, as the strongest and fullest right, remains in the hands of Indonesian citizens. In practice, these restrictions are not always adhered to. As foreign investment and the need for land control increases, various legal constructions have developed to circumvent the prohibition on Ownership Rights by foreign nationals. One of the most frequently encountered forms is a nominee agreement, a legal relationship in which an Indonesian citizen acts as the formal rights holder, while control and economic benefits are vested in the foreign citizen based on a specific agreement. This construction is essentially intended to circumvent the provisions of Article 21 of the UUPA, allowing foreign nationals to control land without being legally registered as rights holders. (Law Number 5 of 1960; Ambarsari & Busro, 2023; Sulistiyani, 2024)

The use of nominee agreements in land practices raises legal issues because they substantially contradict the purpose of the UUPA. Although formally land title certificates are issued in the name of Indonesian citizens, the legal relationships established through various additional agreements, such as powers of attorney, debt agreements, debt acknowledgements, or statements of asset control, indicate that control over the land is actually in the hands of foreign citizens. This situation can be classified as legal smuggling (fraus legis), namely the use of a legal form that appears legitimate to avoid the application of mandatory legal norms. Therefore, the practice of nominee agreements cannot be viewed simply as an ordinary contractual relationship, but rather as a legal construction that contradicts the national agrarian legal system. Article 26 paragraph (2) of the UUPA emphasizes this prohibition by stating that any act intended to directly or indirectly transfer ownership rights to foreign citizens is null and void and the land falls to the state. This provision shows that the legislators not only prohibit direct transfers, but also anticipate various forms of indirect transfers carried out through legal manipulation, including through the use of name-borrowing agreements. Thus, any form of legal relationship aimed at granting ownership rights to foreign nationals, even if packaged in a different form of agreement, still violates the provisions of the UUPA. (Law Number 5 of 1960; Ambarsari & Busro, 2023; Sulistiyani, 2024)

One of the main objectives of establishing law is to create legal protection before violations or disputes occur. Therefore, the Indonesian legal system not only recognizes repressive law enforcement mechanisms after violations occur, but also develops preventive legal protection mechanisms. In the field of notary, this preventive function is realized by granting authority to Notaries to ensure that every legal act to be included in an authentic deed has fulfilled the provisions of laws and regulations, legal principles, and the principle of prudence. Thus, Notaries not only function as makers of authentic deeds, but also as public officials who play a role in ensuring that legal relationships arising from a deed do not conflict with positive Indonesian law. The preventive function of Notaries has a legal basis in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Article 15 paragraph (2) letter e gives authority to Notaries to provide legal counseling to parties in connection with the creation of deeds. This provision demonstrates that the legislators do not merely position the Notary as a party who records the wishes of the parties, but also as an official who has the responsibility to provide an understanding of the legal consequences of the legal act to be carried out. In the context of a nominee agreement, legal counseling is an initial instrument to explain to the parties that the use of the name of an Indonesian citizen to grant control of land rights to a foreign citizen is contrary to the principle of nationality in Indonesian agrarian law and has the potential to result in the annulment of the legal act. (Law Number 2 of 2014; Azzahra, 2025; Rani, 2024)

Furthermore, the preventive function of a Notary is also realized through the authority to refuse to make a deed if it is known that the content or purpose of the legal act is contrary to statutory regulations. Although the UUJN does not explicitly regulate the phrase "right to refuse" for all forms of legal acts, the obligation of a Notary to act in accordance with the law has the consequence that a Notary cannot be forced to make a deed that is clearly contrary to the law. Such refusal does not constitute a violation of the principle of public service, but rather a form of implementing a legal obligation to maintain legal certainty, protect the interests of the parties, and maintain the dignity of the Notary's position as a public official. When linked to the practice of misuse of name-borrowing agreements, the Notary's preventive function does not stop at the deed preparation stage, but begins with the legal consultation process with the parties. At this stage, the Notary is obliged to explore the purpose of the transaction, explain the applicable legal provisions, provide alternative legal acts, and refuse to provide legitimacy to legal relationships that are contrary to the UUPA and other statutory regulations. Thus, the existence of a Notary not only provides certainty regarding the authentic form of a deed, but also functions as a legal filter that prevents the emergence of legal relationships that are inconsistent with the national legal system. (Law Number 2 of 2014; Azzahra, 2025; Rani, 2024)

Two important limitations can be drawn from this normative construction. First, a notary does not have adjudicatory authority to determine the true beneficial owner when that fact is not stated or reflected in the document. Second, this limitation does not negate the obligation of due care. When the combination of facts, documents, and the parties' intentions objectively demonstrate an intention to circumvent the prohibition of the UUPA, the notary has the right to provide counseling, request additional clarification, postpone the issuance of the deed until the requirements are met, or refuse services that violate the law. Therefore, the principle of formal correctness must be understood alongside the obligation of due care, not as an excuse to ignore obvious red flags. (Azzahra, 2025; Prakoso et al., 2025; Alodia, 2026)

Implementation of Decision Number 129/Pdt.G/2021/PN.Btm

Before analyzing the implementation of the Notary's role in preventing the misuse of nominee agreements, it is first necessary to understand the construction of the legal relationship that underlies the dispute in Decision Number 129/Pdt.G/2021/PN.Btm. Understanding the identities of the parties, the object of the dispute, the chronology of the case, and the legal relationship formed is important because all of these facts form the basis for the Panel of Judges in assessing the existence of an unlawful act and also serve as the basis for analyzing the position and role of Notaries in notarial practice. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Case Number 129/Pdt.G/2021/PN.Btm was filed by Michael Stoddart, a British citizen, as Plaintiff against Mirta Febrianty, an Indonesian citizen, as Defendant. In addition to the Defendant, this case also involves several Co-Defendants consisting of banking institutions and other parties who have legal relationships with the disputed object because they received collateral in the form of land and building rights which were then pledged by the Defendant. The involvement of the Co-Defendants indicates that the disputed legal relationship does not only concern the personal relationship between the Plaintiff and Defendant, but has developed into a legal relationship with a third party through the imposition of mortgage rights on the disputed object. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

The disputed objects in this case consist of two plots of land and buildings located in Batam City, namely a house in the Palm Spring Orchard Complex Block D Number 248 which has a Freehold Certificate in the name of Mirta Febrianty and a house in the Bellavista Complex Block G Number 3 which has a Building Use Rights Certificate in the name of Mirta Febrianty. In his lawsuit, the Plaintiff explained that all funds for the purchase of the two houses came from him, but legal ownership was recorded in the name of the Defendant. Furthermore, the Plaintiff knew that the two objects had been used as collateral for debt to the bank by the Defendant without the Plaintiff's consent, resulting in losses and becoming the basis for filing a lawsuit for unlawful acts. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

The chronology suggests that the legal relationship between the parties resembles a nominee agreement, a situation where the party providing the funds and controlling the economic benefits of an asset differs from the party formally registered as the rights holder. Although this ruling does not explicitly use the term nominee agreement, the facts revealed during the trial demonstrate the separation between economic control and legal ownership, which is a key characteristic of the nominee agreement practice. Therefore, this case holds strong relevance as a research object in examining the implementation of the role of Notaries in preventing the misuse of nominee agreements between Foreign Nationals and Indonesian Citizens. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

In constructing these legal relationships, the role of a notary is crucial because every legal act related to the transfer of rights, the assignment of mortgage rights, or the creation of supporting agreements generally involves an authentic deed drawn up or legalized by a notary or a land deed official (PPAT). This decision indicates the existence of several notarial deeds and documents that serve as evidence, including the Deed of Sale and Purchase, the Deed of Credit Agreement, the Deed of Grant of Mortgage Rights, and documents legalized by a notary. The existence of these deeds demonstrates the strategic position of the notary in every stage of the legal relationship between the parties, making the application of the principle of prudence crucial to prevent the misuse of legal instruments in the practice of borrowing names. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Furthermore, the Panel of Judges in its ruling stated that the Defendant had committed an unlawful act and granted the Plaintiff's lawsuit in part. This ruling serves as an important basis for assessing how a legal relationship initially built on trust develops into a civil dispute when formal ownership of the land object does not align with the interests of the party providing the purchase funds. Therefore, the analysis of the Notary's position and role in this case is not only directed at the formal aspects of the deed creation, but also on the extent to which the Notary's preventive function can prevent the emergence of legal relationships that have the potential to give rise to disputes due to the practice of misusing the name loan agreement. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

The implementation of the notary's role in notarial practice regarding the misuse of name-loan agreements can be analyzed through the legal facts revealed in Decision Number 129/Pdt.G/2021/PN Btm. This case demonstrates the existence of a legal relationship between a foreign citizen as the Plaintiff and an Indonesian citizen as the Defendant, which began with a personal relationship between the two parties. The lawsuit explains that the Plaintiff purchased two houses, the payment for which was made using the Plaintiff's own funds, but both objects were registered in the name of the Defendant, who is an Indonesian citizen. The Plaintiff argues that the use of the Defendant's name was carried out because he is a foreign citizen and therefore cannot have land rights as stipulated in the provisions of applicable laws and regulations in Indonesia. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Problems then arose when the two objects were legally controlled by the Defendant as the rights holder stated in the certificate. According to the Plaintiff's lawsuit, without his knowledge, the two objects had been used as collateral to a banking institution. One of the objects, namely the Building Use Rights Certificate Number 01918/Taman Baloi, was used as collateral to PT BPR Danamas Simpan Pinjam, while the Ownership Rights Certificate Number 00589/Taman Baloi was used as collateral to PT BPR LSE Manggala. This situation became the beginning of the dispute because according to the Plaintiff, the action was carried out without his consent even though the funds for the purchase of all the objects came from him. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

These facts demonstrate that in notarial practice, notaries exercise their authority based on legal data presented by the parties. The collateral is land administratively registered in the name of the Defendant as the rights holder. Therefore, the notary executed the credit agreement deed based on the ownership documents formally registered in the name of the party present as the debtor. This decision does not specify that the notary was a party involved in the unlawful act or a party being sued in the case. Instead, the decision only mentions the notary as a public official who drafted the credit agreement deed based on the legal relationship between the Defendant and the bank. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

From these facts, it is clear that the practice of borrowing names has significant legal consequences. When an asset is registered in the name of an Indonesian citizen, the party named on the certificate legally has the authority to take various legal actions against the asset, including using it as collateral for a loan. This situation later became the source of the dispute in case 129/Pdt.G/2021/PN Btm, because the Plaintiff claimed to have provided all the purchase funds, while formally all ownership documents were in the Defendant's name. The resulting dispute demonstrates the difference between economic control and legal ownership, as reflected in land documents and deeds drawn up in notarial practice. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

The legal analysis of the implementation of the notary's role in this study was conducted by examining the legal facts and legal considerations contained in Decision Number 129/Pdt.G/2021/PN.Btm. The decision shows that the dispute originated from a relationship between a foreign national and an Indonesian citizen, which then had implications for the control and use of land rights administratively registered in the name of the Indonesian citizen. During the examination of the case, the Panel of Judges focused more on the legal relationship between the parties and the legal consequences of the actions taken against the object of the dispute, while the notary was not placed as a party being sued or as a party declared to have committed an unlawful act. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

These facts demonstrate that the notary's authority was exercised based on formal legal data held by the parties. At the time the deed was drawn up, the land title certificate was still registered in the Defendant's name, thus legally granting the Defendant the authority to take legal action against the property. Based on the verdict, the Panel of Judges did not find any evidence that the notary was aware of the name-loan agreement between the Plaintiff and the Defendant or that he played a role in the abuse of the legal relationship between the two parties. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Furthermore, Decision Number 129/Pdt.G/2021/PN.Btm indicates that the dispute that arose was not caused by the deed-making process before a notary, but rather due to a dispute regarding the control and use of rights to an object that had been administratively registered in the name of the Defendant. During the trial, it was revealed that the object was then used as collateral to a banking institution based on an authentically drawn up credit agreement. This condition is one of the reasons behind the emergence of a dispute between the Plaintiff and the Defendant regarding the rights to the object which, according to the Plaintiff, was obtained using his own funds, but legally is under the control of the Defendant. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

When linked to the research focus on the misuse of name-loan agreements, Decision Number 129/Pdt.G/2021/PN.Btm illustrates that using the name of an Indonesian citizen as the land title holder has the potential to have broad legal consequences. As long as the land title certificate is still registered in the name of an Indonesian citizen, that party has the legal authority to take various legal actions against the object in question, including binding the object to a credit agreement through a deed drawn up before a notary. This situation indicates that the existence of a formal document serves as the basis for a notary in exercising their authority, while civil relationships not reflected in the document fall outside the scope of formal evidence used in the deed-making process. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Based on this description, it can be understood that Decision Number 129/Pdt.G/2021/PN.Btm does not place the notary as the party committing a legal violation, but rather shows that the dispute arose from the use of a name-borrowing mechanism, which then created a difference between the party who economically provided the purchase funds and the party legally registered as the holder of the land rights. Therefore, this decision illustrates that the implementation of the notary's role in notarial practice is highly dependent on the formal accuracy of the documents submitted by the parties, while the legal risks of the name-borrowing relationship ultimately become the responsibility of the parties forming the legal relationship. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm)

Table 2. Facts of the Decision and Implications for the Preventive Function of Notaries

Relevant Facts	**Legal Meaning**	**Preventive Implications**
Economic financing is claimed to come from foreign nationals, while land rights are registered in the name of Indonesian citizens.	There is a separation between economic interests and formal legal status.	The notary needs to ask about the basis of the relationship between the parties if the transaction pattern raises a red flag
The holder of an Indonesian citizen certificate carries out legal actions on objects that are formally within his/her authority.	The certificate becomes the basis of formal truth and authority to act.	Formal verification remains important, but must be accompanied by checks of consistency of objectives and supporting documentation.
The name borrowing relationship is not reflected transparently in the documents used in making the deed.	Notaries have limited ability to know hidden agreements	Prevention depends on the openness of the complainant, adequate questioning, and documentation of legal counseling.
The decision does not place the Notary as the perpetrator of the unlawful act in the main dispute.	The main problem lies in the relationship between the parties and the use of formal land status	The standard of prevention must be proportionate: strict on legality but not turning notaries into investigators.
The object is then linked to other legal acts and banking institutions.	The impact of nominees can spread to third parties and material collateral	Early prevention is more efficient than correction after a dispute has developed.

This ruling is important not because it directly establishes a new standard for Notaries, but because it exposes a structural weakness in prevention: formal documents can display one ownership configuration, while the claimed economic relationship between the parties lies elsewhere. In such circumstances, the Notary's preventive function should be directed toward establishing a verifiable compliance trail, for example, recording the identification of the parties, examining their authority to act, the basis for acquiring the object, the source of power, the relationship between the deeds, explaining nominee risks, and the reasons for refusals or requests for corrections. This process trail is more realistic than requiring Notaries to prove beneficial ownership that is actively concealed by the parties.

Obstacles to the Implementation of Preventive Functions

Based on Decision Number 129/Pdt.G/2021/PN.Btm, the dispute demonstrates that the misuse of the name-loan agreement not only creates problems for the parties involved but also impacts various legal actions taken after the land rights are registered in the name of an Indonesian citizen. In this case, the disputed object, which was administratively registered in the name of the Defendant, was subsequently used as collateral for several credit facilities through deeds drawn up before a notary. This fact demonstrates that the role of notaries in notarial practice is often faced with various obstacles stemming from legal conditions and facts presented by the parties. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

The role of a notary as a public official is crucial in providing legal certainty, order, and protection through the creation of authentic deeds. In exercising this authority, a notary is not only tasked with translating the wishes of the parties into a deed but also with ensuring that any legal acts undertaken do not conflict with applicable laws and regulations or legal principles. However, the implementation of this role does not always run ideally. In notarial practice, various obstacles remain that can reduce the effectiveness of a notary's preventive function, particularly in preventing the misuse of name-loan agreements between foreign nationals and Indonesian citizens. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

The first obstacle faced by notaries is their limited authority to uncover the true legal relationship between the parties. The position of notary does not inherently grant them the authority to conduct investigations, as law enforcement officers do, or to examine all civil relationships underlying a legal act. In practice, notaries can only examine the identities of the parties, their capacity to act, the parties' authority, and the completeness of the legally required documents. Therefore, if the parties jointly conceal the existence of a name-borrowing agreement, it becomes extremely difficult for the notary to ascertain the truth. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

The second obstacle relates to the dominant principle of formal truth in the performance of the notary's duties. As public officials, notaries operate on data that can be legally verified through the identities of the parties, land title certificates, land documents, and other supporting documentation. As long as all administrative requirements are met and no formal defects are found, the notary has the authority to issue authentic deeds. This principle is a consequence of the notary's role, which is to provide formal evidence for a legal act, rather than to examine all civil relationships that may exist behind the documents presented by the parties. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

The third obstacle is the difficulty of detecting bad faith on the part of the parties. The practice of borrowing names generally arises from closed agreements based on trust, family ties, business relationships, or personal relationships. Therefore, these relationships are often not documented in documents presented to the notary. In such circumstances, the notary faces limitations in determining whether the requested legal action truly reflects the actual legal situation or is merely part of a series of legal actions designed to circumvent provisions prohibiting land ownership by foreign nationals. This obstacle becomes even more complex if all submitted documents meet administrative requirements and there is no discrepancy between the identities of the parties and the documents presented. (Batam District Court Decision No. 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

In addition to the obstacles stemming from the parties' behavior, there are still obstacles stemming from legal aspects. To date, there are no specific provisions governing the mechanism for preventing the practice of borrowing names in the performance of notary duties. The Notary Law regulates the authorities, obligations, and prohibitions for notaries, but does not provide specific guidelines for the steps to be taken if a notary is faced with indications of misuse of a borrowing name agreement. Consequently, the implementation of a notary's preventive function relies more on the application of the principles of prudence, professionalism, and integrity of each notary in carrying out their duties. (Batam District Court Decision Number 129/Pdt.G/2021/PN.Btm; Azzahra, 2025)

These obstacles can be grouped into four layers. First, the epistemic obstacle: Notaries only know facts that can be verified or disclosed by the parties. Second, the authority obstacle: The UUJN does not provide for an open investigative function like law enforcement officers. Third, the behavioral obstacle: nominees are often established through trust, separate agreements, or a series of actions that each appear reasonable. Fourth, the regulatory obstacle: there is no specific protocol for addressing nominee red flags. Therefore, prudential standards must be designed as risk-based legal scrutiny, not unlimited material evidence. (Rani, 2024; Azzahra, 2025; Alodia, 2026)

Optimization: A Precautionary and Compliance-Based Prevention Model

Given the obstacles faced by notaries in preventing the misuse of name-loan agreements, measures are needed to strengthen the notary's preventive function in carrying out their duties. This solution is not intended to add new authority to notaries beyond the provisions of laws and regulations, but rather to optimize the implementation of existing authority to minimize the misuse of name-loan agreements. This is important considering that Decision Number 129/Pdt.G/2021/PN.Btm indicates that the disputes that arise not only harm the parties but also give rise to various legal consequences for the land rights object, which has become the basis for the birth of a number of legal acts. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The first solution is to strengthen the application of the prudential principle in every exercise of notarial authority. The prudential principle is an inseparable part of the professionalism of the notary office because every authentic deed created has perfect evidentiary force as long as it meets applicable legal provisions. Therefore, before expressing the will of the parties in a deed, the notary must conduct a careful examination of the identity of the parties, the legal status of the parties, the ownership documents that form the basis of the legal act, and the conformity between the will of the parties and the provisions of laws and regulations. This examination is not intended to find fault with the parties, but rather to ensure that the legal act to be reflected in the deed does not contain any indication of abuse of law. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The second solution is to optimize the identification and verification process for parties appearing. In notarial practice, identification is not only defined as matching identities based on identity cards or population documents, but also includes examining the parties' authority to perform the requested legal act. This verification is crucial to ensure that the notary is confident that the parties appearing are truly acting in their own interests and have a clear legal relationship to the object serving as the basis for the deed. Through a more in-depth identification and verification process, notaries can reduce the risk of someone's identity being used only as a formal party in a legal relationship that is actually controlled by another party. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The third solution is to strengthen the notary's role as a legal counselor to parties. The Notary Law authorizes notaries to provide legal counsel regarding the preparation of deeds. This authority is a crucial preventive measure to prevent the misuse of name-borrowing agreements. Before a deed is drawn up, the notary must explain to the parties the legal consequences of each action, including the legal risks if a legal relationship is formed to circumvent statutory provisions. Adequate legal counseling will help the parties understand that using the name of an Indonesian citizen as the land title holder for the benefit of a foreign citizen has the potential to give rise to disputes, as outlined in Decision Number 129/Pdt.G/2021/PN.Btm. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The fourth solution is to increase information gathering regarding the intent and purpose of the parties during the deed-making process. In practice, a notary public is not sufficient to simply listen to the wishes expressed by the parties; they also need to investigate whether the purpose of the legal act is in accordance with applicable legal provisions. This information gathering can be conducted through open communication with the parties so that the notary public obtains a more comprehensive understanding of the legal relationship underlying the deed-making. This step is important because the practice of borrowing names is generally built on a basis of trust and is not always reflected in the documents presented to the notary. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The fifth solution is to adopt a professional and independent attitude in carrying out their duties. Notaries must maintain their independence, regardless of whether the parties are related by family, business, or close personal ties. This independence is necessary to ensure that notaries adhere to applicable legal provisions and are not influenced by the interests of either party. In the context of Decision Number 129/Pdt.G/2021/PN.Btm, the dispute began with a relationship of trust between the parties, which then escalated into a dispute over land rights. This case demonstrates that personal relationships cannot always guarantee that a legal relationship will proceed according to the initial agreement. Therefore, notaries must maintain objectivity in every exercise of their official authority. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

The sixth solution is the need to strengthen regulations regarding the prevention of name-lettering practices in the land and notary sectors. Although the Notary Law regulates the authorities and obligations of notaries, there are no provisions specifically providing guidance on the steps to be taken if a notary finds indications of name-lettering practices. Therefore, it is necessary to improve regulations and guidelines for the implementation of the position, providing clearer direction regarding preventive measures that notaries can take without exceeding their authority as public officials. More comprehensive regulations will provide legal certainty for both notaries and the public who use notary services. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

In addition to strengthening regulations, it is also necessary to improve public legal understanding regarding the prohibition on using name-borrowing agreements as a means to control land rights that are legally ineligible to foreign nationals. Decision Number 129/Pdt.G/2021/PN.Btm shows that name-borrowing relationships ultimately lead to lengthy disputes involving various parties, including banking institutions. This situation demonstrates that resolving disputes through the courts is not an ideal solution compared to early prevention efforts. Therefore, legal education for the public regarding the legal risks of name-borrowing practices needs to be continuously improved so that the public understands the potential legal consequences of such actions. (Azzahra, 2025; Alodia, 2026; Paroto et al., 2026)

Based on all the findings, a preventive model that can be implemented proportionally consists of five stages. The first stage is screening of subjects and objects, including citizenship status, capacity to act, type of land rights, and history of primary documents. The second stage is a consistency check of the stated source of funds, legal relationships, power of attorney, debt acknowledgment, accompanying agreements, and the intended use of the object. The third stage is enhanced legal counseling when red flags are found, such as economic control by foreigners over property rights, excessively broad powers, or a series of contracts that diminish the freedom of formal rights holders. The fourth stage is documentation of the prudent process and statements by the parties regarding the intent of the transaction. The fifth stage is a refusal protocol if the stated purpose clearly conflicts with imperative norms. This model maintains a balance between protecting legal certainty and the limits of a notary's authority (Azzahra, 2025; Prakoso et al., 2025; Paroto et al., 2026).

CONCLUSION

Legal regulations regarding the role of notaries in preventing the misuse of loan agreements between foreign nationals and Indonesian citizens have basically been regulated through various provisions of laws and regulations relating to the office of notary, land, and citizenship. The Notary Law authorizes notaries to make authentic deeds, provide legal counseling to the parties, and carry out their duties honestly, independently, impartially, and responsibly. Meanwhile, the Basic Agrarian Law limits ownership of land rights to Indonesian citizens only, so the practice of using loan agreements as a means to control land rights by foreign nationals is contrary to the objectives of national land law regulations. However, there are no regulations specifically governing the mechanism for preventing the misuse of loan agreements in notarial practice, so that the implementation of the notary's preventive function still relies on the application of the principle of prudence, compliance with the provisions of laws and regulations, and professionalism in carrying out their duties.

The implementation of the notary's role in notarial practice regarding the misuse of borrowed name agreements is essentially carried out based on the authority granted by the Notary Law, guided by data and documents that have formal evidentiary force. Based on Decision Number 129/Pdt.G/2021/PN.Btm, the dispute that arose showed that the object of land rights administratively registered in the name of an Indonesian citizen then became the basis for various legal actions through authentic deeds. The decision did not state that the notary committed an unlawful act or was jointly responsible for the dispute that occurred, but rather showed that the problem arose from the borrowed name relationship that was not reflected in the formal documents used when making the deed. Thus , the implementation of the notary's role in preventing the misuse of borrowed name agreements still depends heavily on the formal accuracy of the documents submitted by the parties and the openness of the parties in providing information regarding the actual legal relationship.

Obstacles to the implementation of the notary's role in preventing the misuse of name-loan agreements stem from the limited authority of notaries to reveal the true legal relationship between the parties, the dominant application of the principle of formal truth in the preparation of authentic deeds, the difficulty of identifying the existence of name-loan agreements conducted behind closed doors, and the absence of regulations that specifically provide guidelines for preventing the practice of name-loan in the performance of notary duties. Decision Number 129/Pdt.G/2021/PN.Btm shows that the true legal relationship is only revealed after the dispute is examined in court, while when various legal actions are carried out, all actions are based on formal documents that identify Indonesian citizens as holders of land rights. Therefore, preventive efforts need to be carried out by optimizing the application of the principle of prudence, improving the quality of legal counseling for parties, gathering more comprehensive information regarding the intentions and objectives of the parties, and strengthening regulations that provide clearer guidelines for notaries in dealing with indications of name-loan agreement misuse without exceeding the limits of authority granted by laws and regulations.

Conceptually, the research findings confirm that notaries should be positioned as gatekeepers of legal compliance, operating through the authority granted by the UUJN, rather than as investigators of all economic relationships between parties. Decision Number 129/Pdt.G/2021/PN.Btm demonstrates that formal truth remains the foundation of notarial practice, but is insufficient when separated from the principles of due diligence and legal counseling. Therefore, strengthening preventive measures needs to be directed at risk-based protocols, documentation of the examination process, increased professional oversight, and more explicit guidelines regarding red flags of name-borrowing agreements. These regulations must maintain the principle of nationality of the UUPA while providing certainty regarding the limits of notary obligations.

As recommendations, policymakers need to develop more explicit guidelines regarding nominee risk indicators in land transactions; professional organizations and supervisory boards need to strengthen prudent documentation standards; and notaries need to optimize identification, legal counseling, and rejection of requests whose legal objectives clearly conflict with imperative provisions. Further research could develop more operational red flag indicators and test their consistency across other court decisions.

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