Journal of International Islamic Law, Human Right and Public Policy
(JISHUP Journal) | ISSN (e): 3031-2280
Website https://jishup.org/index.php/ojs/index | Volume 4 No. 4 (2026)

JURIDICAL ANALYSIS OF THE ROLE OF NOTARIES IN PREVENTING THE MISUSE OF NOMINEE AGREEMENTS BETWEEN FOREIGN NATIONALS AND INDONESIAN CITIZENS (A Study of Decision No. 129/Pdt.G/2021/PN.Btm)

Akmal Fatayat[1], Erniyanti[2], Agus Siagian[3], Titik Aminah[4], Irpan Husein[5] Markus Gunawan[6], Mania H[7]
[1,2,3,4,5,6,7]Universitas Batam, Indonesia
Email: 94124010@univbatam.ac.id, erniyanti@univbatam.ac.id, ghavaro_adista@yahoo.com, irpan@univbatam.ac.id, markusgunawan@hotmail.com maniah@univbatam.ac.id

Received: 03/08/2026 | **Revised:** 10/08/2026 | **Accepted:** 29/08/2026 | **Published:**25/09/2026

Abstract
Nominee agreements between foreign nationals (WNA) and Indonesian citizens (WNI) continue to be used as a means of controlling land ownership rights (Hak Milik) that, under the Basic Agrarian Law, may be held only by Indonesian citizens. This practice may constitute legal evasion, creating legal uncertainty and conflicting with the nationality principle. In these circumstances, notaries play an important role as public officials authorized to draw up authentic deeds and obliged to apply the prudential principle to prevent legal acts that contravene laws and regulations. This study examines the role of notaries in preventing the misuse of nominee agreements with reference to Decision No. 129/Pdt.G/2021/PN.Btm. The research addresses the legal framework governing the role of notaries in preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens, the implementation of that role in notarial practice, and the obstacles and solutions associated with its implementation. This study employs normative legal research using statutory, conceptual, case-based, and notarial practice-oriented approaches. Data were obtained through library research supported by interviews and were subsequently analyzed qualitatively using a descriptive-analytical method based on laws and regulations, legal doctrine, and Decision No. 129/Pdt.G/2021/PN.Btm. The findings indicate that the preventive role of notaries has a legal basis in the Law on Notarial Office, the Basic Agrarian Law, and the Indonesian Civil Code, although no specific provisions govern nominee agreements. Notaries implement this role by applying the prudential principle, checking the identities of the parties, verifying documents, and providing legal advice. The obstacles include the limited authority of notaries to uncover the parties' legal relationships and the absence of explicit provisions on nominee agreements. Strengthening regulations, improving the professionalism and supervision of notaries, and increasing public legal awareness are therefore necessary to prevent the misuse of nominee agreements.

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

INTRODUCTION

A. Background to the Problem

Land has strategic economic, social, cultural, and legal significance in Indonesia. Article 33(3) of the 1945 Constitution provides that land, water, and natural resources are controlled by the state and used for the greatest prosperity of the people. This mandate is elaborated in the Basic Agrarian Law (UUPA), which adopts the nationality principle. Under that principle, Hak Milik may be held only by Indonesian citizens, while foreign nationals may acquire certain limited rights expressly permitted by legislation. Restrictions on foreign ownership therefore protect national interests and the orderly distribution of control over agrarian resources.[1]

Investment, tourism, and international economic relations have nevertheless increased foreign nationals' demand to use or control land. Nominee agreements respond to that demand by placing land in an Indonesian citizen's name while a foreign national provides funds, exercises actual control, or receives economic benefits. The arrangement may consist of several interconnected agreements rather than a single document. Although these instruments appear formally valid, their combined purpose may circumvent mandatory land law, producing uncertainty for the parties and obscuring the distinction between registered ownership and actual economic interests.[2]

Notaries occupy a strategic position because they prepare authentic deeds and provide legal advice when legal relationships are formed. Their role cannot be reduced to recording the parties' wishes: the Law on Notarial Office requires honesty, diligence, independence, and impartiality. Prudence consequently involves examining identities, documents, authority to act, and the purpose of a proposed agreement. The central issue is how notaries can prevent deeds from facilitating legal evasion while acting within their statutory powers, particularly when a nominee relationship is concealed behind formally valid documents.[3]

The prudential principle is particularly important where an agreement may conceal foreign control of land rights. Examining an agreement's form is different from understanding its legal purpose: documents can be complete while the intended result conflicts with mandatory norms or public order. Prevention therefore requires attention to the substance of the proposed act as well as its formal requirements. This study examines that issue through a dispute in which a separation between financial contributions and registered ownership became significant after the properties were used in subsequent legal transactions.[4]

B. Research Questions

1. How is the role of notaries in preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens regulated under Indonesian laws and regulations?
2. How is the role of notaries in preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens implemented in Indonesian notarial practice?
3. What obstacles arise in the implementation of the role of notaries in preventing the misuse of nominee agreements between foreign nationals and Indonesian citizens, and what solutions are available?

C. Research Objectives

This study analyzes the legal framework governing notaries' preventive role, its implementation in notarial practice, and the obstacles and solutions associated with preventing nominee agreement misuse. Decision No. 129/Pdt.G/2021/PN.Btm provides the case through which statutory duties, formal documentation, and the parties' underlying relationship are examined. The objective is to identify preventive measures consistent with land law, contract law, and the limits of notarial authority.

D. Significance of the Research

The study contributes to notarial, agrarian, and contract law by explaining the relationship between authentic deeds, legal certainty, and preventive legal protection. Practically, it informs notaries' application of prudence, legislators' consideration of clearer regulation, and professional organizations' guidance and supervision. It also improves public understanding of the risks of nominee arrangements and provides a basis for further research into legal evasion and the protection of parties in land transactions.

LITERATURE REVIEW

A. Theoretical Foundations

1. Grand Theory

Roscoe Pound's Social Engineering Theory serves as the Grand Theory. Law is understood not merely as a collection of rules but as an instrument for directing social behavior and balancing individual, public, and state interests. Prevention is therefore as important as resolving disputes after violations occur. In this study, notaries

[1] Article 33(3) of the 1945 Constitution of the Republic of Indonesia; The Basic Agrarian Law; Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, 2014, pp. 220–235.

[2] Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya, Jakarta: Kompas, 2010, pp. 67–73; Urip Santoso, Hukum Agraria dan Hak-Hak Atas Tanah,* Jakarta: Kencana, 2012, pp. 104–109.

[3] The Law on Notarial Office; Habib Adjie, Hukum Notaris Indonesia: *Tafsir Tematik terhadap UU Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Bandung: Refika Aditama, 2011, pp. 34–46.

[4] G.H.S. Lumban Tobing, Peraturan Jabatan Notaris, Jakarta: Erlangga, 2013, pp. 45–53; Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, Bandung: Refika Aditama, 2013, pp. 88–95.

contribute to social control by examining proposed legal acts and preventing authentic deeds from being used to circumvent restrictions on foreign land ownership. Their work connects private transactions with the public purposes of national agrarian law.[5]

2. Middle Theory

Hans Kelsen's Theory of Legal Certainty serves as the Middle Theory. Law is a hierarchical system of norms in which lower norms and legal acts must remain consistent with higher norms. Accordingly, contractual freedom does not justify an agreement contrary to mandatory legislation. Legal certainty in notarial practice requires consistency between the procedure used to prepare a deed, the substance of the agreement, and the legal framework governing the transaction. Authentic form alone cannot justify an unlawful purpose.[6]

3. Applied Theory

The Applied Theory comprises the theory of authority, the theory of official responsibility, and the prudential principle. Authority originates in legislation and must be exercised within prescribed limits. Responsibility accompanies that authority and may involve administrative, civil, or criminal consequences when the relevant violation is proven. Prudence requires notaries to identify the parties, verify documents, understand the proposed act, and refuse to prepare a deed known to serve an unlawful purpose. These concepts guide the assessment of professional conduct without treating notaries as investigators of every undisclosed relationship.[7,8]

These applied concepts also explain the relationship between public authority and professional accountability. The power to confer authentic form is not a license to disregard restrictions governing the underlying legal act. Equally, the existence of a later dispute does not remove the need to establish the relevant basis of responsibility. The study uses authority, responsibility, and prudence together to examine what notaries are legally empowered to do, how those powers should be exercised, and the limits within which their preventive performance can be assessed.[9]

B. Conceptual Framework

The principal concepts are notaries, authentic deeds, nominee agreements, foreign nationals, Indonesian citizens, legal evasion, and the prudential principle. A nominee arrangement separates the formally registered rights holder from the person exercising actual control or receiving economic benefits. In land matters, it may combine powers of attorney, loan agreements, acknowledgments of debt, preliminary sale and purchase agreements, leases, or declarations of control. Its legality must therefore be assessed through its substantive purpose and the connections among its documents, rather than through its title alone.[10]

Notaries are public officials who exercise state-conferred authority rather than represent one party's interests. Preventive legal protection begins before a dispute arises, through examination of the proposed relationship and explanation of its legal consequences. Within the study's framework, notarial authority, the nationality principle, contract validity, and prudence are interconnected: a formally complete deed must not become a means of conferring prohibited control over Hak Milik on a foreign national.

C. Conceptual Review

The conceptual review links the separation between formal ownership and actual interests to the notary's preventive function. The nationality principle determines eligibility to hold Hak Milik, while contract law limits the parties' freedom to establish contrary arrangements. Notaries apply these rules when checking identities, authority, documents, and the purpose of a transaction. Their preventive role depends both on professional diligence and on the information available during deed preparation. This relationship provides the basis for comparing the applicable legal norms with the dispute examined in this study.

RESEARCH METHODS

A. Type of Research

This study employs normative legal research with a descriptive-analytical and prescriptive orientation. Its principal objects are legislation, legal principles, doctrine, and judicial decisions concerning notarial office, contract

---

[5] Roscoe Pound, *Social Control Through Law*, Yale University Press, New Haven, 1942, pp. 65–81.

[6] Hans Kelsen, *Pure Theory of Law*, University of California Press, Berkeley, 1967, pp. 193–205.

[7] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta, 2011, pp. 129–137.

[8] Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik,* Refika Aditama, Bandung, 2017, pp. 39–58.

[9] Article 15 and Article 16 of the Law on Notarial Office; Article 21 and Article 26(2) of the Basic Agrarian Law; Habib Adjie, *Hukum Notaris Indonesia, Refika* Aditama, Bandung, 2015, pp. 90–104.

[10] Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya,* Jakarta: Kompas, 2010, pp. 82–91; Urip Santoso, Hukum Agraria: Kajian Komprehensif, Jakarta: Kencana, 2017, pp. 231–238.

validity, and foreign nationals' land rights. Interviews support the normative analysis by providing information about the application of legal norms in notarial practice; they do not change the study into empirical research. The analysis seeks both to explain the applicable framework and to formulate legally grounded preventive measures.[11]

B. Research Approaches

The statutory approach examines the relationships among the Law on Notarial Office, the Indonesian Civil Code, the UUPA, and implementing regulations. The conceptual approach applies the theories of social engineering, legal certainty, authority, responsibility, and prudence. The historical approach considers the development and purposes of the nationality principle and notarial regulation. The case approach examines Decision No. 129/Pdt.G/2021/PN.Btm, particularly the parties' relationship, the documents involved, and the judicial treatment of the dispute. A notarial practice-oriented approach connects these norms with the exercise of notarial duties, including identity verification, documentary examination, legal advice, and the practical difficulty of detecting concealed nominee relationships.

The historical inquiry gives particular attention to the reasons underlying restrictions on foreign land ownership and the development of notarial duties. Understanding the origins of the nationality principle helps connect the wording of the UUPA with its protective purposes. The notarial practice-oriented inquiry then considers the relationship between legal requirements (das sollen) and their implementation (das sein), including how legal advice and documentary examination operate when proposed transactions contain indications of nominee arrangements. These perspectives supplement, rather than replace, the statutory and case analyses.[12]

C. Data Sources

Primary legal materials consist of relevant legislation and judicial decisions concerning land acquisition and notarial responsibility. Secondary materials include books, scholarly doctrine, academic journals, and previous studies in notarial law, agrarian law, contract law, and legal theory. Tertiary materials include legal dictionaries, encyclopedias, and indexes used to clarify terminology and locate relevant sources. These categories supply complementary normative and conceptual foundations for examining the title's central issue, with Decision No. 129/Pdt.G/2021/PN.Btm providing the principal case discussed.

The materials are selected according to their relationship with the research questions. Legislation establishes the boundaries of notarial powers and land control; doctrine explains the principles used to interpret those provisions; and judicial decisions show their application in concrete disputes. The legal materials also include Supreme Court Decision No. 351 PK/Pdt/2018, while the substantive case discussion centers on Decision No. 129/Pdt.G/2021/PN.Btm. Their role in the method is to support legal analysis, not statistical generalization about all notarial practice.

D. Data Collection Techniques

Materials were collected through library research and a descriptive examination of legislation, legal theory, and relevant practice. Supporting interviews concerned notarial duties, nominee agreement misuse, and obstacles to prevention. The research population comprised parties connected to notarial practice and land-rights transactions. Purposive sampling selected notaries with relevant experience and knowledge of land deed preparation and the acquisition of land rights. Interview information was used to support, rather than replace, the analysis of legal materials.[13,14]

E. Data Analysis

Qualitative analysis involved systematically describing, interpreting, and connecting the collected legal provisions, doctrines, and case material. The descriptive-analytical method compared the normative framework with the exercise of notarial authority apparent in the case. Pound's theory explained the preventive social function of notarial practice, while Kelsen's theory provided the basis for assessing consistency with higher legal norms. The resulting conclusions address the legal basis, implementation, obstacles, and solutions identified in the research questions.[15]

The prescriptive dimension concerns how the identified norms should be applied to prevent misuse. Describing existing positive law (ius constitutum) is therefore followed by consideration of measures that remain compatible with notarial powers, the nationality principle, and contractual validity requirements. Interview

---

[11] Peter Mahmud Marzuki, *Penelitian Hukum, revised edi*tion, Jakarta: Kencana, 2021, pp. 55–61; Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, 2019, pp. 13–18.

[12] Peter Mahmud Marzuki*, Penelitian Hukum*, revised edition, Jakarta: Kencana, 2021, pp. 166–170.

[13] Amiruddin and Zainal Asikin*, Pengantar Metode Penelitian Hukum,* Jakarta: RajaGrafindo Persada, 2012, p. 82.

[14] Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif,* Malang: Bayumedia Publishing, 2013, p. 221.

[15] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat,* Jakarta: Rajawali Pers, 2011, p. 13.

information is treated as supporting context for that inquiry, while legislation, doctrine, and the judicial material remain the principal bases of the legal argument. The method consequently connects analysis of the existing framework with recommendations for its more effective implementation.[16]

RESEARCH FINDINGS AND DISCUSSION

A. Legal Regulation of Notaries' Role in Preventing the Misuse of Nominee Agreements

The preventive role of notaries rests on the combined operation of land law, contract law, and the law governing notarial office. These fields address different aspects of the same transaction: eligibility to hold land rights, the validity of contractual arrangements, and the duties of the official preparing an authentic deed. Their interaction explains why a transaction cannot be assessed only through administrative completeness. It also provides the normative basis for preventing legal evasion before the parties' relationship develops into a dispute.

1. **Legal Regulation of Nominee Agreements within the Indonesian Legal System**

The study uses nominee agreement to describe a name-lending arrangement rather than a distinct contractual type specifically regulated in the Indonesian Civil Code or the UUPA. In such an arrangement, one person is presented as the legal rights holder while another holds the actual interests or economic benefits. In the context examined here, the difficulty arises when a foreign national uses an Indonesian citizen's name to obtain control over Hak Milik that the foreign national cannot lawfully hold.

Article 1338(1) of the Indonesian Civil Code gives lawfully concluded agreements the force of law between the parties, expressing pacta sunt servanda and freedom of contract. That freedom remains subject to Article 1320, which requires consent, capacity, a definite subject matter, and a lawful cause. Article 1337 treats a cause as unlawful when it is prohibited by legislation or conflicts with morality or public order. Formal agreement between the parties therefore cannot displace mandatory restrictions governing land rights.[17,18]

An arrangement designed to circumvent a statutory prohibition must be assessed according to its actual purpose. Failure to satisfy an objective requirement, including a lawful cause, renders an agreement null and void. Where an Indonesian citizen is the registered owner but related agreements are intended to place prohibited ownership or control with a foreign national, the legal issue concerns the substance of the overall relationship. The absence of an express contractual category called nominee agreement does not create an unrestricted right to use such a structure.

Legal evasion, or fraus legis, occurs when an apparently valid legal form is used to avoid mandatory rules. A nominee arrangement may be divided into several deeds, each appearing independently compliant, while their combined purpose contradicts the nationality principle. Notaries must therefore distinguish ordinary lawful agreements from arrangements intended to achieve a prohibited result. The relevant inquiry concerns the agreement's cause, the parties' eligibility, and the intended legal consequences, not merely the terminology chosen by the parties.

2. **Notarial Office, Authority, Obligations, and Responsibilities**

Law No. 2 of 2014 amending Law No. 30 of 2004 concerning Notarial Office (UUJN), together with professional ethics, governs the exercise of notarial duties. Notaries are public officials entrusted with providing legal certainty and protection in civil transactions. They do not act as representatives of one party, and their independence is essential to the exercise of authenticating authority. The office combines a power to provide legal services with obligations intended to protect all parties and maintain compliance with legislation.[19]

Article 15(1) authorizes notaries to prepare authentic deeds concerning acts, agreements, and determinations required by legislation or requested by the parties. It also covers certainty regarding the deed's date, retention of the original deed, and issuance of executorial copies, copies, and extracts. These powers provide formal certainty but must be exercised lawfully. Article 15(2)(e) additionally authorizes legal advice concerning deed preparation,

---

[16] Philipus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum*, Yogyakarta: Gadjah Mada University Press, 2014, pp. 18–27; Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif,* Malang: Bayumedia Publishing, 2012, pp. 295–301.

[17] Article 1320 and Article 1337 of the Indonesian Civil Code; Subekti, *Hukum Perjanjian,* Jakarta: Intermasa, 2014, pp. 17–29.

[18] Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2014, pp. 1–8; Article 1338(1) of the Indonesian Civil Code.

[19] Article 1, point 1 of the Law on Notarial Office; Habib Adjie, *Hukum Notaris Indonesia (Tafsir Tematik terhadap Undang-Undang Jabatan Notaris),* Bandung: Refika Aditama, 2015, pp. 1–25.

enabling notaries to explain the consequences of nominee arrangements before the parties undertake the proposed act.[20,21]

Article 16(1)(a) requires integrity, honesty, diligence, independence, and impartiality while safeguarding the parties' interests. Although the UUJN does not expressly use the term prudential principle, the study derives its substance from those duties. Prudence involves verifying identities, legal capacity, authority, and documents, as well as considering whether the proposed relationship serves a lawful purpose. When documents indicate a concealed or prohibited arrangement, administrative completeness alone is insufficient to justify proceeding without further examination.[22]

Authority and responsibility must nevertheless be considered together with the limits of the office. The duty of diligence does not grant unlimited investigative powers or justify presuming misconduct in every transaction involving a foreign national. It requires professional examination within the information and authority available. The effectiveness of the UUJN's preventive framework therefore depends on integrity, independence, and willingness to question indications of legal evasion, while any assessment of responsibility must remain connected to a proven breach of duty.

3. Land Ownership Rights Held by Foreign Nationals in Indonesia

The UUPA implements the constitutional objective of using land and natural resources for public prosperity. Article 9(1) expresses the nationality principle, while Article 21(1) restricts Hak Milik to Indonesian citizens. The study understands these restrictions as protection of land's social, economic, cultural, and strategic functions. The issue is not simply the nationality of a contracting party but whether the legal right being acquired may lawfully be held by that party.

Foreign nationals may obtain certain limited rights, including the Right of Use (Hak Pakai), subject to applicable requirements and periods. These rights permit lawful use of land for residence or economic activities without granting Hak Milik. The existence of permitted rights is important to the advisory role of notaries: parties should understand the distinction between a legally available land-use arrangement and a name-lending arrangement intended to circumvent ownership restrictions.[23]

Article 26(2) of the UUPA addresses acts intended directly or indirectly to transfer Hak Milik to foreign nationals, declaring the prohibited transfer null and void, with the land passing to the state. The provision is central to the study because it extends beyond direct transfers and encompasses attempts to achieve a prohibited result indirectly. Registering land in an Indonesian citizen's name does not, by itself, remove the legal problem when the associated agreements are intended to transfer prohibited control to a foreign national.[24]

These provisions reinforce the need to examine the type of right involved and the substance of each transaction. Private contractual arrangements cannot override the statutory eligibility requirements applicable to Hak Milik. In the theoretical framework, Kelsen explains the required consistency with higher norms, while Pound explains the balance between investment interests and protection of national agrarian interests. Notaries' preventive role operates at the point where those requirements must be applied to a proposed private legal relationship.

Land is treated in the study as more than an economic commodity. Its social and strategic functions explain why agreements concerning land can implicate public interests even when concluded privately. Restrictions on the holders of Hak Milik accordingly form part of the legal framework within which investment and residential needs must be accommodated. The availability of lawful limited rights does not authorize a contractual structure whose actual objective is to bypass the different requirements governing ownership. This distinction is relevant when notaries explain the available legal consequences to the parties.

4. Notaries' Preventive Function in Addressing Nominee Agreement Misuse

Prevention begins during consultation, not only when a deed is drafted. Legal advice should explain restrictions on foreign land ownership, the possible invalidity of an unlawful arrangement, and the risks created by separating the registered rights holder from the party claiming economic interests. It should also identify lawful

[20] Article 15(1) of the Law on Notarial Office.

[21] Article 15(2)(e) of the Law on Notarial Office; Habib Adjie, *Hukum Notaris Indonesia,* Bandung: Refika Aditama, 2015, pp. 84–91.

[22] Article 16(1)(a) of the Law on Notarial Office; Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia,* Yogyakarta: UII Press, 2018, pp. 67–78.

[23] Government Regulation No. 18 of 2021; Urip Santoso, *Hukum Agraria: Kajian Komprehensif,* Jakarta: Kencana, 2017, pp. 215–225.

[24] Article 26(2) of the Basic Agrarian Law.

Published by **Radja Publika**

alternatives within the relevant land-rights framework. In this way, notarial services provide preventive legal protection rather than merely formal documentation after the parties have selected their preferred structure.

Where several documents form one transaction, they must be understood in relation to one another. Loans, acknowledgments of debt, powers to sell, irrevocable powers of attorney, preliminary sale and purchase agreements, and declarations of control may have ordinary legal functions when considered separately. Their combined effect may nevertheless indicate an attempt to confer prohibited control over land. The examination therefore concerns the relationship among the documents and their intended result, rather than the formal completeness of each deed alone.[25]

Prudential examination includes the parties' citizenship, their relationship, the purpose of land control, the source of transaction funds, and the connections among the documents submitted. These inquiries support an understanding of the transaction's legal background. They must remain within the notary's authority and do not amount to a guarantee that every concealed agreement will be discovered. Their preventive value lies in identifying indications that require clarification before an authentic deed is prepared.[26]

When the content or purpose of a requested act is known to conflict with legislation, notaries should refuse to prepare or continue preparing the deed. The study does not treat the UUJN as establishing an unrestricted universal right to refuse all services. Rather, refusal of a clearly unlawful act follows from the obligation to exercise authority lawfully. It protects legal certainty, the parties' interests, and the dignity of the office, while preventing authentic form from being used to legitimize legal evasion.[27]

The preventive function thus operates alongside the evidentiary function of an authentic deed. In Pound's framework, screening an unlawful proposed relationship helps protect public and state interests before harm occurs. In Kelsen's framework, the notary's authority remains legitimate only when exercised consistently with the governing legal norms. Together, these perspectives explain why refusal of a known unlawful purpose is part of lawful professional service, while also requiring that preventive measures remain grounded in the powers actually conferred on the office.

B. Implementation of Notaries' Role in Indonesian Notarial Practice

Decision No. 129/Pdt.G/2021/PN.Btm provides the basis for comparing the preventive duties described above with the formal information available in an actual dispute. The analysis distinguishes the parties' allegations and relationship from the court's findings concerning responsibility. This distinction is important because a later dispute over land does not, by itself, establish that the notaries who prepared related deeds knew of a concealed nominee arrangement or violated their duties.

1. The Parties, Disputed Property, and Underlying Legal Relationship

The case was brought by Michael Stoddart, a British national, as Plaintiff against Mirta Febrianty, an Indonesian citizen, as Defendant. Banking institutions and other parties connected to the disputed properties were also involved as Co-Defendants. Their involvement resulted from the subsequent use of the land and buildings as security, extending the dispute beyond the personal relationship between the Plaintiff and Defendant to credit arrangements and land security rights (Hak Tanggungan).[28]

The disputed assets were two residential properties in Batam. The house in Palm Spring Orchard Complex, Block D No. 248, was held under a Hak Milik certificate in the Defendant's name. The house in Bellavista Complex, Block G No. 3, was held under a Right to Build (Hak Guna Bangunan) certificate, also in her name. The Plaintiff alleged that he supplied all purchase funds, although the ownership documents identified the Defendant as the rights holder.

According to the claim, the Palm Spring Orchard house was purchased in 2007, and payments for the properties were made in installments until fully settled. The Plaintiff stated that the Defendant's name was used because of restrictions associated with his foreign citizenship and because the parties trusted each other. The relationship therefore separated the person claiming to have financed the purchases from the person formally authorized to act concerning the properties.

---

[25] G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 2013, pp. 55–70; Maria S.W. Sumardjono, *Kebijakan Pertanahan: Antara Regulasi dan Implementasi*, Jakarta: Kompas, 2019, pp. 121–135.

[26] Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik,* Bandung: Refika Aditama, 2017, pp. 90–104.

[27] Article 15 and Article 16 of the Law on Notarial Office; Habib Adjie, *Hukum Notaris Indonesia,* Bandung: Refika Aditama, 2015, pp. 95–102.

[28] Batam District Court Decision No. 129/Pdt.G/2021/PN.Btm.

The study characterizes this separation as resembling a nominee arrangement. The decision does not expressly use the term nominee agreement, so that characterization is an analytical description of the reported relationship rather than terminology attributed to the court. The case is relevant because it illustrates the legal risks arising when economic interests and registered rights do not coincide, especially when the registered holder later undertakes transactions with third parties.

The Plaintiff alleged that the Defendant pledged both properties to banks without his knowledge or consent, causing losses and leading to a claim based on an unlawful act. As reported in the study, the panel of judges declared that the Defendant had committed an unlawful act and granted the claim in part. The operative outcome concerned the parties' dispute; it did not identify the notaries as parties who committed an unlawful act.

The study describes several categories of documents associated with the dispute, including sale and purchase deeds, credit agreement deeds, deeds granting Hak Tanggungan, and documents legalized by notaries. Transfers of rights, security transactions, and supporting agreements involve officials acting in their respective notarial or PPAT capacities. Their documentary involvement explains why the case is relevant to professional prudence, but it must be distinguished from a judicial determination of wrongdoing. The existence of authentic documents establishes the importance of documentary proof in the parties' transactions, not an automatic conclusion that their makers participated in a concealed arrangement.

2. Credit Agreements, Security Rights, and the Formal Basis of Deed Preparation

The property under Right to Build Certificate No. 01918/Taman Baloi was pledged to PT BPR Danamas Simpan Pinjam. The property under Hak Milik Certificate No. 00589/Taman Baloi was pledged to PT BPR LSE Manggala. The Plaintiff challenged these transactions because he maintained that he had financed the purchases. Administratively, however, the certificates remained in the Defendant's name, which provided the formal basis for her dealings with the banks.

Co-Defendant I identified three credit agreement deeds involving the Right to Build property: Deed No. 84 dated 29 September 2017, executed before Andreas Timothy, S.H., M.Kn.; Deed No. 100 dated 25 November 2019, executed before Soehendro Gautama, S.H., M.Hum.; and Deed No. 46 dated 18 June 2020, also executed before Soehendro Gautama, S.H., M.Hum. The deeds used Right to Build Certificate No. 01918/Taman Baloi as credit security with successive ranks of Hak Tanggungan.

The notaries prepared the credit agreement deeds on the basis of the parties' identities and ownership documents formally identifying the appearing debtor as the rights holder. The decision mentions the notaries as officials who prepared deeds arising from the relationship between the Defendant and the bank. It does not state that they were sued, participated in an unlawful act, or knew of a nominee arrangement between the Plaintiff and Defendant.

The documentation shows the practical consequences of registering an asset in another person's name. The certificate holder can appear as the party entitled to undertake acts concerning the property, including its use as credit security. A private claim based on financing or trust may not be apparent in the documents presented for deed preparation. When that concealed relationship later becomes contentious, transactions already concluded on the basis of formal ownership may also become involved in the dispute.

3. Juridical Analysis of the Implementation of Notaries' Role

The panel of judges focused on the parties' relationship and the consequences of the Defendant's acts concerning the disputed properties. The study reports no judicial finding that the notarial deeds themselves constituted unlawful acts or that the notaries bore responsibility for the dispute. Their role must therefore be analyzed according to the formal circumstances and information available when the deeds were prepared, rather than by attributing to them knowledge that emerged only during litigation.

The case reveals a tension between notaries' preventive responsibilities and the limits of formal proof. Authentic deeds are prepared from information and documents submitted by the parties, while a private nominee relationship may not be reflected in those materials. The duty to act carefully requires attention to indications of misuse, but it does not convert a notary into an investigator of every undisclosed arrangement. In this case, the decision does not establish that the underlying relationship was disclosed during deed preparation.

The practical lesson is therefore not that every deed connected to a nominee dispute demonstrates notarial fault. Rather, the case shows how formal ownership can support later transactions despite disagreement about who financed the property or should receive its benefits. The parties' openness is important to effective prevention. Where relevant information is withheld and the documents are formally valid, the notary's ability to identify the actual relationship is necessarily limited.

Viewed through Pound's theory, earlier legal advice and careful examination support the prevention of disputes before rights are encumbered in favor of third parties. Kelsen's framework requires that those preventive measures remain consistent with the statutory authority governing notarial office. Together, the theories support stronger prudence without replacing the decision's actual findings with an assumption of notarial liability. The risks of the nominee relationship must remain distinct from any separately proven violation of official duties.

C. Obstacles and Solutions in Implementing Notaries' Preventive Role

The case illustrates obstacles arising from both the legal framework and the information supplied by the parties. The proposed solutions seek to optimize existing notarial authority, rather than confer powers beyond legislation. They address the difficulty of preventing concealed arrangements while maintaining the formal certainty on which notarial and land-related transactions depend.

1. Obstacles to Preventing the Misuse of Nominee Agreements

The first obstacle is limited authority to uncover the parties' actual relationship. Notaries do not possess investigative powers comparable to law enforcement authorities. They examine identities, capacity, authority, and legally required documents, but cannot necessarily discover a private arrangement deliberately concealed by both parties. In the case examined, the decision does not establish that the nominee relationship was disclosed to the notaries. The relationship became apparent in litigation, whereas earlier transactions relied on the registered ownership documents.

The second obstacle is the predominance of formal truth in authentic deed preparation. Identity documents, land rights certificates, land records, and supporting documents provide legally recognizable grounds for acting. Where those materials are complete and contain no apparent defect, they support the exercise of notarial authority. They may nevertheless fail to disclose the distinction between the registered holder and the person claiming economic interests. Formal completeness therefore assists legal certainty but does not necessarily reveal every underlying civil relationship.

The third obstacle is difficulty detecting bad faith in arrangements based on trust, family ties, business connections, or personal relationships. Such understandings may never appear in the documents shown to the notary. This difficulty increases when the parties' identities correspond with the documents and administrative requirements are satisfied. Personal trust also does not prevent the relationship from later deteriorating, as the use of the disputed properties as security illustrates.

The fourth obstacle is the absence of specific preventive guidance identified in the study. The UUJN establishes powers, duties, and prohibitions but does not prescribe detailed mechanisms for handling indications of nominee agreement misuse. Prevention consequently depends heavily on individual prudence, professionalism, and integrity. These regulatory and practical obstacles operate together: concealed intentions limit what can be known, while the lack of specific guidance makes the appropriate response less certain.

2. Solutions for Strengthening Notaries' Preventive Role

First, notaries should strengthen prudential examination of identities, legal status, ownership documents, and the consistency of the proposed act with legislation. The purpose is not to find fault with appearing parties but to identify indications of legal evasion before an authentic deed is prepared. Attention to the background of a transaction is particularly important where the person financing an asset may differ from the registered rights holder.

Second, identification and verification should extend beyond matching a name to an identity card. Notaries should clarify the appearing party's authority and relationship to the property underlying the deed. Third, legal advice should explain the restrictions on foreign land ownership, the possible invalidity of arrangements intended to circumvent them, and the risks of subsequent disputes. The case provides an illustration of how a relationship based on trust can affect later credit and security transactions.

Fourth, open communication should clarify the parties' intentions, objectives, and the legal relationship underlying the proposed act. Notaries should consider whether connected agreements collectively seek a result contrary to law. Fifth, professionalism and independence must be maintained regardless of close personal, family, or business relationships. The wishes of one party cannot replace the legal standards governing notarial office, and a clearly unlawful purpose cannot be legitimized through authentic form.

Sixth, regulation and professional practice guidelines should clarify preventive measures available within existing authority. Greater harmonization of notarial and land regulation would support consistent responses to indications of nominee misuse. Professional guidance and supervision should reinforce diligence and independence, while legal education should help the public understand the consequences of using another person's name to obtain prohibited land control. Effective prevention therefore requires not only careful notaries but also cooperative parties, clearer regulation, and improved public legal awareness.

Public legal education should also explain that personal trust cannot eliminate the legal consequences of registered ownership. The Batam dispute developed beyond the initial parties because the properties had already become security for banking transactions. Preventive guidance is therefore relevant before rights are acquired and before subsequent encumbrances are created. Professional organizations and supervisory bodies can support that guidance by strengthening notaries' understanding of nominee risks and the appropriate limits of inquiries. These institutional measures complement individual diligence without making notaries responsible for information that the parties have deliberately concealed.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. The preventive role of notaries has a normative basis in the UUJN, the UUPA, and the Indonesian Civil Code. Authority to prepare authentic deeds and provide legal advice is accompanied by duties of honesty, diligence, independence, and impartiality. Nominee arrangements intended to circumvent restrictions on Hak Milik conflict with the purposes of national land law. However, the study identifies no specific mechanism governing their prevention in notarial practice.
2. Implementation relies on formal documents and the information submitted by the parties. Decision No. 129/Pdt.G/2021/PN.Btm illustrates how property registered in an Indonesian citizen's name became the basis for credit and security transactions despite a foreign national's claim to have financed its purchase. The decision does not find that the notaries committed an unlawful act or shared responsibility for the dispute. Their preventive role must therefore be assessed within the facts and limits of their authority.
3. The principal obstacles are limited investigative authority, reliance on formal truth, concealed private relationships, difficulties detecting bad faith, and the absence of specific preventive guidelines. Stronger prudence, identity and document verification, legal advice, and inquiries into the parties' intentions can reduce risks. These measures must be supported by clearer regulation, professional supervision, public legal awareness, and the parties' openness, without extending notarial powers beyond legislation.

B. Recommendations

1. For legislators and law enforcement authorities, regulations should clarify the preventive measures available to notaries and improve harmonization between notarial and land law. Courts and competent land authorities should develop a shared understanding of nominee disputes, considering both formal ownership and the underlying relationship. Coordination is important because such disputes may affect banks and other parties whose legal relationships depend on registered land rights.
2. For notaries, continued professional development should strengthen prudence, independence, and legal advice. Examination should address not only document completeness but also adequate information about the purpose and background of the proposed act. Advice should clearly explain ownership restrictions and the consequences of nominee arrangements so that authentic deeds remain instruments of legal certainty and protection rather than means of legal evasion.[29]
3. For academics, further empirical research involving notaries, land officials, legal practitioners, and law enforcement authorities should complement normative case analysis. Such research can clarify the factors sustaining nominee arrangements and support the development of professional guidelines, policy recommendations, and educational curricula responsive to land and notarial practice.

REFERENCES

A. Books

Adjie, Habib. Hukum Notaris Indonesia: Tafsir Tematik terhadap UU Nomor 30 Tahun 2004 tentang Jabatan Notaris. Bandung: Refika Aditama, 2011.

[29] Vabianes Stuart Wattimena, S.H. Head of Public Relations, Batam Court.

Adjie, Habib. Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik. Bandung: Refika Aditama, 2013.
Amiruddin and Zainal Asikin. Pengantar Metode Penelitian Hukum. Jakarta: RajaGrafindo Persada, 2012.
Anshori, Abdul Ghofur. Lembaga Kenotariatan Indonesia. Yogyakarta: UII Press, 2010.
Harsono, Boedi. Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya. Jakarta: Djambatan, 2014.
HS, Salim. Teknik Pembuatan Akta Satu (Konsep Teoretis, Kewenangan Notaris, Bentuk dan Minuta Akta). Jakarta: RajaGrafindo Persada, 2015.
Ibrahim, Johnny. Teori dan Metodologi Penelitian Hukum Normatif. Malang: Bayumedia Publishing, 2013.
Kelsen, Hans Kelsen. General Theory of Law and State. Cambridge: Harvard University Press, 1945.
Khairandy, Ridwan. Hukum Perseroan Terbatas. Yogyakarta: FH UII Press, 2014.
Lumban Tobing, G.H.S. Peraturan Jabatan Notaris. Jakarta: Erlangga, 2013.
Marzuki, Peter Mahmud. Penelitian Hukum. Jakarta: Kencana, 2011.
Mertokusumo, Sudikno. Penemuan Hukum: Sebuah Pengantar. Yogyakarta: Liberty, 2010.
Muhammad, Abdulkadir. Hukum dan Penelitian Hukum. Bandung: Citra Aditya Bakti, 2014.
Nasution, Bahder Johan. Metode Penelitian Ilmu Hukum. Bandung: Mandar Maju, 2016.
Pound, Roscoe Pound. An Introduction to the Philosophy of Law. New Haven: Yale University Press, 1954.
Pound, Roscoe Pound. Social Control Through Law. New Haven: Yale University Press, 1942.
Pound, Roscoe Pound. The Spirit of the Common Law. New Brunswick: Transaction Publishers, 2011.
Prodjodikoro, Wirjono. Hukum Perdata tentang Hak atas Benda. Bandung: Sumur Bandung, 2011.
Rahardjo, Satjipto. Hukum dan Perubahan Sosial. Yogyakarta: Genta Publishing, 2015.
Rahardjo, Satjipto. Ilmu Hukum. Bandung: Citra Aditya Bakti, 2012.
Santoso, Urip. Hukum Agraria dan Hak-Hak atas Tanah. Jakarta: Kencana, 2012.
Soekanto, Soerjono. Pengantar Penelitian Hukum. Jakarta: UI Press, 2010.
Soekanto, Soerjono and Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta: Rajawali Pers, 2011.
Soemitro, Ronny Hanitijo. Metodologi Penelitian Hukum dan Jurimetri. Jakarta: Ghalia Indonesia, 2013.
Subekti. Hukum Perjanjian. Jakarta: Intermasa, 2014.
Sumardjono, Maria S.W. Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya. Jakarta: Kompas, 2010.
Usman, Rachmadi. Hukum Agraria. Jakarta: Sinar Grafika, 2015.

B. Laws and Regulations

Indonesian Civil Code.
The 1945 Constitution of the Republic of Indonesia.
Law on Notarial Office.
Law on Notarial Office amending Law No. 30 of 2004 concerning Notarial Office.
Law concerning Limited Liability Companies.
Basic Agrarian Law concerning Basic Agrarian Principles.
Government Regulation concerning Land Registration.
Regulation of the Minister of National Education of the Republic of Indonesia No. 17 of 2010 concerning the Prevention and Handling of Plagiarism in Higher Education Institutions.

C. Journals

Aminah, Siti. “Peran Notaris dalam Menjamin Kepastian Hukum Peralihan Hak atas Tanah.” Jurnal Hukum Kenotariatan, Vol. 5, No. 2, 2021.
Firmansyah, Ade. “Penyalahgunaan Kepemilikan Tanah oleh Korporasi dalam Perspektif Hukum Agraria.” Jurnal Rechtsvinding, Vol. 10, No. 1, 2021.
Hidayat, Rahmat. “Prinsip Kehati-hatian Notaris dalam Pembuatan Akta Pertanahan.” Jurnal Notarius, Vol. 13, No. 1, 2020.
Kusuma, Andri. “Implementasi Teori Social Engineering dalam Praktik Hukum Indonesia.” Jurnal Ius Constituendum, Vol. 6, No. 2, 2021.
Prasetyo, Dimas. “Kepastian Hukum dalam Perolehan Hak atas Tanah oleh Badan Hukum.” Jurnal Arena Hukum, Vol. 14, No. 3, 2021.
Putri, Nabila. “Tanggung Jawab Notaris terhadap Akta yang Mengandung Penyalahgunaan Hukum.” Jurnal Acta Comitas, Vol. 7, No. 2, 2022.

Santika, Rian. “Fungsi Sosial Tanah dalam Perspektif Undang-Undang Pokok Agraria.” Jurnal Media Hukum, Vol. 28, No. 1, 2021.

Wijaya, Fajar. “Peran Preventif Notaris dalam Sengketa Pertanahan.” Jurnal Lex Renaissance, Vol. 8, No. 1, 2023.

D. Other Sources

Kurniawati, Rina. Tanggung Jawab Notaris terhadap Akta yang Berkaitan dengan Peralihan Hak Atas Tanah. Master's thesis. Master of Notarial Law, Universitas Gadjah Mada, Yogyakarta, 2019.

Putra, Andi Pratama. Peran Notaris dalam Pembuatan Akta Perjanjian Terkait Kepemilikan Tanah oleh Badan Hukum. Master's thesis. Master of Notarial Law Program, Universitas Airlangga, Surabaya, 2020.

Batam Court Decision. Batam District Court Decision No. 129/Pdt.G/2021/PN.Btm.

Vabianes Stuart Wattimena, S.H. Head of Public Relations, Batam Court.