

## MAKING A SIMULATED AGREEMENT DEED BY A NOTARY AS THE CAUSE OF A LAND DISPUTE IN GIANYAR BALI (Case Study of Decision Number 259/Pdt.G/2020/PN. Gin)

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### Abstrak

*This study aims to analyze the making of simulated agreement deeds by notaries as the cause of land disputes in Gianyar, Bali. The main focus of this study is to examine the legal impact and potential conflicts that may arise due to the practice of making simulated agreement deeds. This research uses a normative juridical method, which is based on legal research through literature review. The results of the study show that the creation of a simulated agreement deed by a notary has the potential to cause land disputes, especially if it does not meet the applicable legal provisions. Factors such as the validity of the agreement, lack of clarity of information, and potential abuse of position can be a source of dissatisfaction and conflict among the parties involved. This research provides in-depth insight into the complexity of legal and social problems that can arise from the practice of making simulated agreement deeds. The implications of these findings show the need to improve the regulatory system and notary practices to prevent land disputes and increase public trust in the process of making deeds by notaries. The results of the study also stated that the deed of simulated agreement between David John Lock and Anak Agung Gede Oka Yuliartha was declared contrary to the law, so it was invalid, null and void, and did not have binding legal force. As a result of this agreement, the object of sale and purchase in the form of land covering an area of 200M<sup>2</sup> and Certificate of Ownership Number: 2725/Desa Mas covering an area of 1,150 M<sup>2</sup> became a dispute. The study also highlights the importance of a better understanding among notaries of the legal implications of creating simulated deed of agreement, as well as the need for stricter oversight to ensure that each deed made complies with applicable legal standards. Thus, this research is expected to make an important contribution to the development of notary law and the enforcement of justice in the settlement of land disputes.*

**Keywords:** Notary, Gianyar Bali, Preparation of Simulated Agreement Deed

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### Introduction

Law enforcement and legal protection have become very crucial in the current era of globalization along with the contractual needs in society, the demand for authentic deeds is also increasing. Article 1868 of the Civil Code (KUHPperdata) explains that "an authentic deed refers to a deed prescribed by law, made by or in the presence of a Public Officer who has the authority to do so, in the place where the deed is made."

Based on Article 1868 of the Civil Code, a new deed is considered to have a stamp of authenticity if it meets the requirements regulated, namely made "by" (door) or "in front" (ten overstaan) a public official determined by law, and the public official has the authority to make the deed (Tobing L. , 1980). The implementation of Article 1868 of the Civil Code is carried out based on the mandate of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN), especially Article 15, which appoints Notaries as public officials in charge of making authentic deeds, so that they can ensure legal certainty between the parties and prevent disputes. In the event of a dispute between the parties, the authentic deed serves as strong evidence for problem resolution.

Notaries, in the exercise of their duties and powers as public officials, have the main characteristics that lie in their impartial and independent position. The services provided by notaries to the community are mainly related to the drawing up of authentic documents. Basically, a notary plays the role of a party who creates or records the legal acts of the parties involved in a written and formal manner. Therefore, a notarial deed or an authentic deed does not guarantee the correctness of the statements of the parties, but what is guaranteed by an authentic deed is the conformity of the statements of the parties with those recorded in their deed of agreement. (Adjie, 2019).

In exercising its authority, it is undeniable that authentic deeds can have legal defects. In order to avoid these legal defects, notaries use two indicators, namely:

Article 15 paragraph 2 letter e of the Notary Office Law, Notaries are obliged to refuse to testify, Notaries have the authority to conduct legal counseling related to the deeds they make.

- a) Article 16 paragraph 1 letter d of the Notary Office Law, the Notary is obliged to refuse to make a deed if the information and/or formal data submitted is contrary to the rule of law.

The notary deed that is often found today is a simulated agreement that is prepared in the form of an authentic deed. This simulated agreement refers to an agreement in which the parties state conditions that differ from the content of the actual agreement that has been made before. (Budiono H. , 2018). Meanwhile, in accordance with Article 1873 of the Civil Code (KUHPerdata) that "Further consent made in a separate deed that is contrary to the original deed, only provides evidence between the parties, heirs or beneficiaries, but cannot apply to third parties in good faith."

One of the reasons for the discrepancy between wishes and statements is that the parties do not want the legal consequences of what they declare. This is then manifested in the form of a simulation agreement. It can be concluded that among the parties there is an attempt to secretly and deliberately carry out legal actions that deviate from what should have happened (Budiono., 2010).

A simulated agreement is a type of agreement in which the parties establish or state circumstances or intentions that are different from what they actually want or intend to do. That is, in a simulated agreement, the parties agree to make an agreement that seems to describe a transaction or agreement, but in fact the actual purpose or true intention is not expressed in the agreement.

In some cases, simulated agreements can be used to conceal certain information or intentions from third parties or legal authorities. While simulation agreements can meet the specific needs of the parties involved, their use often raises ethical and legal issues. In some jurisdictions, a simulation agreement may be declared invalid or void if it is deemed to violate the principles of honesty, transparency, or harm a third party. Therefore, before creating or signing a simulation agreement, it is critical to understand the legal and ethical implications associated with this practice in a particular jurisdiction..

The simulation agreement made by the notary has caused a dispute, in the case of a land dispute in Gianyar, the notary has responsibility for the deed that he has made because it causes a dispute. This is because the notary is suspected of having made a fake agreement deed (simulation) known as the Nominee agreement, in terms of ownership of

land rights by foreign nationals which is prohibited by law to have land rights or building use rights. The agreement agreed that the land rights used the name of the foreign citizen and there was a statement from the Indonesian citizen that the land rights actually belonged to the foreign citizen.

The Australian plaintiff named David John Lock purchased two plots of land according to Certificate of Ownership No. 2659/Desa Mas with an area of 200 m<sup>2</sup> and Certificate of Ownership No. 2725/Desa Mas with an area of 1,150 m<sup>2</sup> registered in the name of the defendant named Anak Agung Gede Oka Yuliartha. Where in 2005, the Convention Plaintiffs transferred a sum of money to the Convention Defendants to be used as money for the purchase of land and the construction of a building thereon known as Vilia Puncak Bukit (Hilltop Hideaway), which is located in Banjar Tegal Bingin, Mas Village, Ubud District, Gianyar Regency, Bali Province. But actually, the defendant here is only using or borrowing his name for the benefit of the plaintiffs..

After the trial, based on the decision of the Gianyar District Court No. 259/Pdt.G/2020/PN. Gin, the plaintiff's claim that the Deed of Nominee Agreement executed before Notary AB was contrary to law and therefore invalid, null and void, and of no binding legal effect was upheld. Followed by the Court at the Denpasar High Court level number 149/PDT/2021/PT. DPS by correcting the decision of the Gianyar District Court that the Nominee Agreement Deed executed before AB Notary is null and void. Followed by the Court at the Supreme Court level number 4223 K/Pdt/2022 correcting the decision of the Denpasar High Court number 149/PDT/2021/PT DPS. That the Nominee Agreement Deed executed before AB Notary, is contrary to law and therefore invalid, null and void and has no binding legal effect (legal effect applies).

The role of notary as one of the causes of disputes in the case of land disputes in Gianyar is to make a simulated agreement deed or also known as nominee agreement, the agreement is carried out notarially as if it does not violate the applicable laws and regulations because it does not violate the applicable laws and regulations because it is not in the form of direct transfer but in practice the agreement is actually intended indirectly transfer the land to the foreigner, the foreigner is the one who has provided funds for the purchase of the land and the building. So that it results in land disputes.

Based on the above background, the case taken by the author is a new case and based on the latest law, while with the previous research there is a difference in the case studied. It is known that this study intends to analyze the position of simulation agreement made by a notary in a land case in Gianyar Bali has become an example of how a simulated agreement that causes a land dispute, this case is also a criticism of notaries in Indonesia, where there are still many notaries who make agreements that should not be allowed, but are still made in the form of a notary so as to cause losses to the party who makes the deed.

## Research Problems

Based on the background of the problem, the problem in this study can be formulated, first, "What is the role of the notary in dealing with the party who wants to make a simulated agreement deed?"

## Research Methods

This research is normative juridical which conducts legal research on the enactment or application of normative legal provisions in real behavior in every event that occurs in society and research is based on literature research

## Pembahasan

### 1. The Position of Notaries as Public Officials in Making Authentic Deeds

Notaries, as officials who carry out their profession in the legal field, are expected to have consistency in doing their work professionally and with high ethics. This diversity can be achieved through the adoption of standards or fixed operational procedures (SOPs) that apply to Notaries, both in the performance of their duties and in daily life. A notary is a public official who reflects the principles of truth and justice, and even functions as a guarantor of legal certainty for the community (Handayana, 2014). In carrying out his duties, a Notary is expected to be meticulous and careful when making authentic deeds, so that the documents he produces are free from legal defects and can be accounted for to the community without harming other parties (Damara, 2015). Before starting his duties, a Notary is required to take the oath of office, which among other things includes the obligation to maintain the confidentiality of the information of clients who use his services (Widiada, 2018).

The position of a Notary includes two roles, namely as a State official with responsibilities and functions other than as a maker of land deeds or authentic deeds. The duties and functions of Notaries in making land deeds have been regulated in the Notary Position Law. As a Notary, his responsibility involves providing services to ensure legal certainty through the preparation of land deeds or authentic deeds, which involve two main functions, namely:

1. Giving responsibility for legal certainty to the community in the ratification of bindings and to provide legal reinforcement on the binding of laws given by the Law.
2. In addition, the Notary has the authority to carry out his duties, namely to legalize legal bindings carried out by the community, especially in the land sector.

In carrying out his duties as a public official, a notary acts passively, meaning that the notary waits for the public who comes to them to get services, not the other way around, namely a notary who approaches the community (Tobing Y. J., 2020). Another task performed by a Notary involves the creation of an authentic deed. The authentic deed is made by a notary in accordance with the format and procedures that have been regulated by the Law. Details regarding the forms of deeds, especially those of an administrative nature, are regulated in the Government Regulation and the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, which provides technical guidance for their implementation in the field. (Darusman, 2016)

Judging from their duties and positions, notaries have the responsibility to exercise part of the government's authority. This is based on the Notary Position Law which stipulates notaries as General Officials who are mandated by law to make authentic deeds according to the actual provisions. Thus, the essence of the Notary Office Law is that the duties and authority of notaries are limited to making deeds, legalizing deeds under hand,

making grosse deeds, and having the right to issue copies or derivatives of deeds to the parties concerned.

In addition to the responsibilities of a Notary that have been described earlier, a Notary can function as a legal discovery expert and legal advisor. This is because, in addition to his duties in making authentic deeds, Notaries are also given the task and responsibility to register and certify the papers or deeds made under their hands. A Notary is not only a deed maker or individual who has the job of making deeds, but a Notary, in carrying out his duties, is based on or equipped with various legal knowledge and other sciences that must be mastered in an integrated manner. Deeds made before or by a Notary have the status of valid evidence (Adjie, 2019). The role of a notary is as a public official who carries out a profession to provide legal services to the community. Notaries are required to carry out their duties properly and correctly in accordance with laws and regulations and the notary code of ethics. This is so that people who use notary services can obtain protection and guarantees to achieve legal certainty.

## **2. Gianyar Bali Land Dispute**

The dispute that occurred in Gianyar Bali began in 2017 where the plaintiff, David John Lock, and his wife requested that the top hideway villa be sold on the grounds that since 2009 the reporting of the results of the villa management had never been reported, but the defendant, Anak Agung Gede Oka Yuliartha, was uncooperative and obstructed the sales process. Based on David's information, John Lock owns 2 (two) plots of land as follows:

- a) Deed No. 10 dated September 20, 2005 which confirms that the land plot of 200M<sup>2</sup> based on the Certificate of Ownership Number: 2659/Desa Mas, in fact the Defendant is only used/borrowed his name for the benefit of the Plaintiffs.
- b) Deed No. 12 dated September 20, 2005 which confirms that the purchase of a land plot of 1800M<sup>2</sup> based on SPPT PBB Number: 51.04.050.003.014-0022.0 from I Made Marisa based on the Deed of Sale and Purchase Number: 289/2004 dated 8-12-2004 made before Notary/PPAT Ni Made Arini, Bachelor of Law which was then recorded in the name of the Defendant as the Certificate of Ownership Number: 2725/Desa Mas covering an area of 1150M<sup>2</sup>, Actually, the Defendant is only used/borrowed for the benefit of the Plaintiffs.

The sale and purchase deed carried out by the defendant turned out to be a deed of a simulated name loan agreement made by the plaintiff and the defendant in front of the Notary / PPAT AB. The defendant bought the land using funds from the plaintiff. There is a fact that the defendant also admitted that for the sale and purchase of 2 plots of land with Certificate of Ownership Number: 2659/Desa Mas, covering an area of 200M<sup>2</sup> and Certificate of Ownership Number: 2725/Desa Mas covering an area of 1150M<sup>2</sup>, by using and borrowing the name of the Defendant (Nominee) and followed by a notarial binding between the Plaintiffs and the Defendant based on Deed of Agreement No. 10 dated September 20, 2005 and Deed of Agreement No. 12 dated September 20, 2005 as well as Power of Attorney Number 11 and Power of Attorney Number 13, clearly shows that there is legal smuggling carried out by the Plaintiffs in order to circumvent the purchase of the land mentioned above so that the land control is in the hands of the Plaintiffs.

As mentioned above, the object of dispute in the case is Deed No. 10 dated September 20, 2005, Deed No. 12 dated September 20, 2005, and the building that has been built on

the land is in the form of a hilltop hideaway villa, where in the implementation of the sale and purchase there is a Nominee simulation agreement between foreigners and Indonesian citizens. This is in line with article 21 of the UUPA or the right to use buildings Article 36 paragraph (1), foreigners are prohibited from owning land rights in Indonesia, so that it causes disputes over the ownership of the land rights, then in the case above, the notary in making the agreement also causes a lot of losses to the parties, while the notary in making an agreement or authentic deed should not cause losses to the party because the deed will continue to be questioned in the future if there is a problem in the agreement or deed so that in making the deed or agreement, the notary must be able to be responsible for the deed that he has made.

Based on the explanation of the above case from the perspective of the theory of validity, it can be concluded that a simulated agreement does not meet the legal requirements of an agreement and can be considered null and void according to law. Related to this, an agreement is categorized as a defect of will if there are elements such as negligence, coercion, and fraud, as stipulated in Article 1321 of the Civil Code (Saffanah, 2021). There is a fraud where the plaintiff is a foreigner who is not allowed to have land rights in Indonesia, but the plaintiff entered into an agreement with the defendant, namely an Indonesian citizen, under the pretext of wanting to borrow the defendant's name so that he can have land rights in Indonesia.

### **3. The role of a notary in dealing with parties who want to make a simulated agreement deed**

Role refers to the behavior expected of an individual who occupies a position in society. This position can be at various levels, whether high, medium, or low. The position serves as a framework that governs certain rights and obligations, where those rights and obligations can be considered part of the role. Thus, a person who occupies a certain position can be referred to as a role actor. Rights are basically the ability to do or not do something, while obligations are responsibilities or duties that must be fulfilled. (Bakir, 2022).

Sociologically, role refers to the dynamic aspect in the form of actions or behaviors carried out by individuals who occupy a position and carry out rights and obligations in accordance with their position. If a person performs the role well, then it is naturally expected that his actions are in accordance with his own expectations and his environment. In general, role is an important presence in determining the course of a process or continuity. (Soekanto, 2020). Peranan merupakan dinamisasi dari statis ataupun penggunaan dari pihak dan kewajiban atau disebut subyektif. The role is the dynamism of static or the use of parties and obligations or called subjective. Role is defined as a task or assignment to a person or a group of people, roles have the following aspects:

1. Role includes norms that are related to a position or a person in society, role in this sense is a series of rules that guide a person in community life.
2. Role is a concept that can be carried out by individuals in society as an organization.
3. Role can also be interpreted as individual behavior that is important for the social structure of society (Soekanto, 2020).

Each individual has the freedom to enter into an agreement with anyone, including the freedom to determine the terms and conditions of the agreement. However, many less

experienced people do not realize that an agreement must meet the legal requirements regulated by Article 1320 of the Civil Code. In this situation, if one of the parties suffers a loss in the agreement, it is very difficult to file a lawsuit due to the invalidity of the agreement they made. For this reason, the role of the Notary is very important in drafting the Deed of Notary Agreement, in order to ensure that all parties can meet and achieve their objectives, as well as prevent future defaults. As long as the agreement is in force, all parties are expected to comply with the terms that have been agreed in the agreement until the expiration period. In compiling these provisions, notaries have an important role to provide directions so as not to violate laws, public order principles, and moral norms. As for the principles of agreement regulated in the Civil Code, the contracting process can be divided into three stages (H.S, 2011). Precontractual stage, which is the stage before the agreement is made, where there is acceptance and offer. At this stage, the principle of freedom of contract and the principle of good faith are subjective; 2) Contractual stage, which is the stage when the agreement is made, here there is a conformity of the statement of will between the parties. At this stage comes the basis of consensualism, the basis of *pacta sunt servanda*; 3) Past Contractual Stage, namely the implementation of the agreement, here applies the principle of good faith which is objective.

The Gianyar Bali case above shows that the role of notaries in dealing with parties who want to make a simulated agreement deed is very important to ensure validity, clarity, and fairness in the process. Some aspects of the role of a notary in this context include: 1) Verification and Validation of Information The notary is responsible for verifying the identity of the parties involved and ensuring that the information provided is accurate. However, because the deed of simulation agreement is prohibited in Indonesia, the notary should provide counseling to the party who wants to make the simulation agreement. 2) Legal Explanation The notary has the role of a legal advisor who provides a detailed explanation to the party who makes the simulation agreement. They must explain the legal consequences of making a simulation agreement, so that the notary can solve the problem for the party who wants to make the simulation agreement and switch to making another deed, of course the deed does not cause losses to the party who wants to make the agreement or for the notary himself.

The case of Gianyar Bali shows that foreigners want to have the right to land that can be owned in Indonesia, by making a simulation agreement by borrowing the name of an Indonesian citizen (Nominee). However, this is of course not allowed because if it is allowed, it can threaten the sovereignty and interests of the state. The role of a notary here is needed to overcome these problems, notaries can provide information related to what rights foreigners can have over land in Indonesia. Foreign Nationals (WNA) and Foreign Legal Entities (BHA) in Indonesia can own land rights through certain forms of ownership. Here are some land rights that can be owned by foreigners or BHAs in Indonesia:

1. Business Rights (Business Rights) based on article 29 of the UUPA on the form of ownership of Business Rights give the right to foreigners or BHAs to use land and/or airspace on it for certain business purposes. The time limit of business rights can be granted for 35 years and can be extended again for 25 years, with a minimum land area of 5 hectares and a maximum area of 25 hectares, for agricultural, fishery or livestock businesses
2. Building Rights (HGB) is a form of ownership of HGB is the right to land to build and own a building on it. The provision of HGB to foreigners and BHAs aims to support investment and property development. HGB time limits are generally

- given with specific time limits, such as 25 or 30 years, and can be extended in accordance with applicable regulations.
3. Right of Use The form of ownership of the right to use gives the right to foreigners or BHAs to use and utilize state land or land of ownership for a certain period of time. The time limit of the right to use can be granted with a certain time limit, and can be extended in accordance with applicable regulations.
  4. Ownership of Flats (Strata Title Ownership) Forms of Ownership Foreigners or BHAs can have ownership rights to house units or apartments in buildings that use the strata title ownership system. The time limit of strata title ownership is given without time limit.
  5. Right to Use Services A form of ownership of use rights that gives the right to foreigners or BHAs to use the land and/or airspace on it for certain business purposes. The time limit of the right to use the service can be given with a certain time limit, and can be extended in accordance with applicable regulations.

Based on the above explanation, it is explained about the role where the role has a dynamic aspect in the form of actions or behaviors carried out by a person who occupies or holds a position and carries out rights and obligations in accordance with his position, in the above case, the role of the notary is to make a name lending simulation agreement between the plaintiff and the defendant, where the plaintiff is a foreigner and the defendant is an Indonesian citizen. Where the notary should understand that the simulation agreement contains a prohibited cause (Article 1335 of the Civil Code) so that the notary in his obligation should not make the deed of agreement. Based on the case, there is an inconsistency in the role theory that a notary in carrying out his role should carry out his rights and obligations correctly in accordance with his duties in making the deed and making it so that the deed he makes does not cause a legal problem. The role of the notary in the Gianyar Bali case is to provide legal consultation first so that the parties who want to make a deed to the notary understand what the consequences of making a simulated agreement deed, then the notary can offer to make an agreement which of course allows foreigners to have the right to make a business in Indonesia.

In the case of Gianyar Bali above, foreigners want to use the right to land and build a villa as an object of lodging management, the role of the notary here can provide legal consultation to make a deed where foreigners can have land rights without harming others and of course not violating the law in making a deed. However, the granting of land rights to foreigners or BHAs must be in accordance with applicable regulations and may involve special requirements. In addition, the type of land rights that can be owned by foreigners or BHAs can vary depending on the land designation, geographical location, and applicable legal provisions. Before starting the land ownership process, it is recommended to get legal guidance and consultation with a notary or legal expert who is experienced in Indonesia.

## Conclusion

Based on the description above, the conclusion that can be drawn is that the implementation of land purchase and sale using a simulated agreement in the form of a Nominee agreement made before the AB Notary is considered invalid, null and void, and does not have binding legal force. This is due to the existence of an unhalal causa in the content of the agreement, where the Indonesian citizen admits that the Hak Milik land does not belong to him, but belongs to a foreigner who provides funds for the purchase of land and its building. In addition, the agreement is considered not to meet the



requirements for the validity of an agreement according to Article 1320 paragraph (4) of the Civil Code because the *halal causa* is not fulfilled. The prohibition of ownership of land rights of the type of property rights by foreigners is also considered to violate the Principle of Nationality Article 21 paragraph (1) of the UUPA, and is a loss to the state. As a consequence, a piece of land registered in the name of the cassation applicant will be auctioned, and the auction proceeds will be paid as compensation to the cassation applicants. Furthermore, the defendant is required to pay material and immaterial damages to the plaintiffs in the amount of Rp15.311.846.200,00.

Notary/PPAT is a profession that plays an important role in the process of buying and selling land and making simulation agreements such as Nominee agreements. Although the *Pacta Sunt Servanda* principle which emphasizes treaty compliance is generally applied to real legal consequences, in simulated agreements, this principle is more of a moral and ethical guide. In this context, the parties involved should respect their moral commitments, reflecting ethical attitudes and integrity, even though the agreement may not meet the formal requirements of the law. Referring to the Gianyar Bali case, the parties involved are reminded to consider the values of honesty, openness, and integrity. They must be aware of the legal consequences and consequences of the case, including the obligation to pay material and immaterial damages in accordance with the court ruling.

## Suggestion

To overcome the problem of making deeds and land disputes caused by Notaries/PPAT so that they do not recur, the government needs to do several things, including: (1) Providing strict sanctions to Notaries/PPAT who violate laws and regulations. (2) Conducting strict supervision of Notaries/PPAT. Notaries should also be more careful in accepting clients who want to use their services to make a deed, because notaries have responsibilities related to the validity of the deed. It is advisable for a notary to avoid accepting clients who are involved in dubious and unlawful actions and to provide legal advice on the consequences of the deed he or she will make so that the resulting deed does not cause problems in the future. Notaries need to understand how important it is to follow the correct procedures in drafting the deed in order to ensure the truth and evidentiary power of the deed.

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