



Optimization Of Legal Aid Institution Functions in Regards Nominee Agreement Through Civil Law And Criminal Law Perspektif In Tibubiu-Tabanan Village

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Abstract

Most villages in Bali have characteristics of "Tri Hita Karana" and "Sad Kerthi" as philosophical local wisdom values. In this case, these characteristics may be used as philosophical and sociological pillars in implementing regional investment with the ultimate ending being community welfare in line with the spirit of Pancasila as the ground norm for every legal regulation in Indonesia. Community service activities should be carried out by conveying various information in the field of legal science by providing legal counseling and consultation to the community in various areas of life in the fields of civil and criminal law. One of the things that should be concerned with is the understanding of legal science to the environment in Tibubiu Village, with this legal counselling program so most every part of Tibubiu village will get more knowledge about nominee agreement as borrowing a name based on a statement or power of attorney made by both parties, as tends to be exploited by foreign nationals using the name of an Indonesian citizen to be included as the land owner on the certificate. In order to increase knowledge and find solutions to the matters caused by nominee agreements, efforts need to be made to convey more in-depth and consistent information regarding the impact of using nominee agreements. Through this community service, the people of Tibubiu village can find out and describe the impact of the use of nominee agreements.

Keywords: Nominee agreement; Legal aid institution; Tibubiu village



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Introduction

Regional economic growth requires long-term investment from both domestic and foreign investment. Foreign investment will only be accepted when the investment provides benefits. In order to benefit the country's economic development, regulations on foreign investment need to be carried out to ward off and overcome the negative impacts of foreign investment. The important role of investment is to increase community income, absorb labor, empower local resources, improve public services, increase gross regional domestic product and develop micro, small and cooperative businesses. In line with achieving sustainable development goals, it cannot be separated from the role of investment in each district/city area. The investment in question is investment made by investors, both foreign and domestic investors, in various business fields which are open for investment, with the aim of making a profit. As a village which has a lot of tourism potential with the rice fields and beaches view, Tibubiu Village has great interest to many investors to invest for the tourism development. Investors have many ways to invest both through legal and illegal means. One way of illegal investment that often occurs is through nominee agreements. In order to prevent the occurrence of investment models with nominee agreements in Tibubiu Village, the community service team identified the weaknesses of Tibubiu Village regarding the Legal Aid Institute's optimization of nominee agreements from the perspective of civil law and criminal law. Based on this description, the basic problems are:

Inventory and classification of partners' concerns regarding existing tourism developments related to nominee agreements as an avoidance of investment obligations in the region.

Public awareness efforts are needed regarding the negative impacts of nominee agreements.

Based on the description of the problem, legal education activities were carried out which are expected to be useful in increasing insight and in-depth information regarding the impact of nominee agreements.

The objectives of carrying out this activity are: (i) Inventory and increasing awareness of the Tibubiu Village community regarding the negative impact of nominee agreements on economic growth in the region; (ii) to develop a plan to regularly refresh and raise public awareness about the negative impacts of nominee agreements; (iii) Fulfillment of IKU 2 students gaining experience outside campus and also fulfillment of IKU 3 lecturers having activities outside from the class.

The targets aimed at this community service activity are ongoing guidance, assistance and legal education for village administrators and communities, by providing legal education about the negative impacts of nominee agreements from the perspective of civil law and criminal law in Tibubiu Village.

Method

The implementation method used in the community service program:

Table 1. The implementation method

No	Program	Implementation method
1	Partner problem mapping	Conduct interviews with the Tibubiu Village Government and Village Community Legal education regarding the regulation and impact of nominee agreements on regional economic growth;
2	Legal counselling and education	Socialization of Law Number 25 of 2007 concerning Capital Investment; Socialization of Law Number 8 of 2010 concerning Prevention and Eradication of the Money Laundering.
3	Coaching session	To inviting Tibubiu Village krama adat and village Community.

Partner Contribution to Community Service Implementation

Partners also participated in supporting service programs, including:

Village Perbekel provides activity direction regarding the importance of understanding the function of Legal Aid Institutions related to civil law and criminal law;

Tibubiu Village Perbekel, Head of LPM and his staff, core administrators and 18 of STT members actively participated in this legal education activities.

Results and Discussion

Definition and the Regulation Related to Nominee Agreement

An agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences. Agreement is one source of engagement. Agreements give rise to obligations, which create obligations on one or more parties to the agreement. A nominee or trustee agreement is an agreement that uses power of attorney, namely an agreement that uses the name of an Indonesian citizen and the Indonesian citizen hands over a power of attorney to the foreign citizen to be free to carry out legal actions on the land he owns. A nominee agreement is often referred to as representation or borrowing a name based on a statement or power of attorney made by both parties, a foreigner borrows the name of an Indonesian citizen to include his name as the land owner on the certificate.

Nominee agreements arise from the principle of freedom of contract in contract law, and therefore include agreements that are not regulated in law because there is no specific regulation regarding the concept of nominee. Implicitly, a nominee agreement has the following elements:

There is a power of attorney agreement between two parties, namely the Beneficial Owner as the power of attorney and the Nominee as the power of attorney which is based on the trust of the Beneficial Owner in the Nominee.

The power granted is specific with limited types of legal action, and

Nominees act as if they are representatives of the Beneficial Owner before the law.

The validity and binding force of nominee agreements cannot be separated from the provisions of Article 1320 and Article 1338 of the Civil Code, so the author is interested in researching whether verbal nominee agreements are in accordance with statutory regulations.

The meaning of agreement is also regulated in article 1313 of the Civil Code which states "an agreement is an act by which one or more parties bind themselves to one or more people". The birth of an agreement does not actually require that it be made in writing (contract) or verbally (verbal), as long as it does not conflict with statutory regulations and public order.

A nominee agreement is a form of legal smuggling to avoid the regulation that a person does not meet the requirements as a holder of property rights to land in Indonesia in Article 21 Paragraph (2) and Article 26 paragraph 2 of the Basic Agrarian Law which prohibits foreigners from owning land with freehold status. in Indonesia.

Violations of law caused by the Nominee Agreement

A nominee agreement is a form of legal smuggling to avoid regulations which stipulate that foreigners do not meet the requirements as subjects holding property rights to land in Indonesia in accordance with the provisions in Article 9 paragraph (1) jo. Article 21 paragraph (1) of the Basic Agrarian Law clearly states that only Indonesian citizens can have full connection with the

earth, air and space, and with clear regulations that only Indonesian citizens can have property rights.

Article 33 paragraph (1) of Law Number 25 of 2007 concerning Capital Investment reads, "Domestic investors and foreign investors who invest capital in the form of limited liability companies make prohibited and/or statements stating that ownership of shares in limited liability companies is for and in someone else's name." Article 33 clearly states that nominees are prohibited. Furthermore, in paragraph (2) of Article 33 it is stated, "In the event that domestic investors and foreign investors make agreements and/or statements as intended in paragraph (1), the agreements and/or statements are declared null and void." In Article 4 of Law No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering: "every person who hides or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of assets that he knows or reasonably suspects is the result of a criminal act as intended in Article 2 paragraph (1) shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion Rupiah)." That there is an agreement - the agreement made by the Notary with the aim of securing the assets which are the object of the Nominee is essentially motivated by bad faith so it can be said that the Agreement made by the Notary has actually injured the authority of the Notary profession itself and of course is very contradictory with Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries which states that "In carrying out his office, Notaries are obliged to act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of parties involved in legal actions." Fake agreement does not have binding force as stipulated in Article 1335 of the Civil Code which states that "an agreement with false causes or contents is not legally binding" which encumbering an object with mortgage rights based on fictitious debts and receivables is a legal defect.

Conclusion

A nominee agreement is an unlawful act. The incompatibility of nominee agreements with positive law in Indonesia is based on Law Number 05 of 1960 concerning basic agrarian provisions. Even though Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations does not explicitly regulate nominee agreements, Article 21 states that foreign citizens are prohibited from owning freehold land in Indonesia. Through this legal education and counselling, the Tibubiu village community may find out more comprehensively about the influence of the practice of nominee agreements in the perspective of civil law and criminal law.

Tibubiu Village Government should intensively collaborates regarding optimizing the role and function of the Legal Aid Institute regarding the practice of nominee agreements in the region. The community should supports village government programs to increase regional economic growth in accordance with shared expectations.

References

Indonesian Civil Code

Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations

Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering

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