

Obyek perjanjian nominee yang dimasukkan dalam akta wasiat: studi kewenangan dan tanggung jawab notaris ditinjau dari hukum Indonesia = Object of nominee agreement which write down into testament deed: study of notary authority and responsibility based on Indonesia law

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Abstrak

Asas kebebasan berkontrak menyebabkan timbulnya beraneka ragam perjanjian, salah satunya perjanjian nominee. Terdapat 2 (dua) pihak berdasarkan perjanjian nominee yaitu nominee dan beneficiary sehingga memunculkan suatu pertanyaan mengenai status kepemilikan obyek yang diikat dengan perjanjian nominee dan permasalahan mengenai kewenangan dan tanggung jawab notaris terhadap obyek perjanjian nominee yang dimasukkan dalam akta wasiat karena berdasarkan peraturan perundang-undangan perjanjian nominee tidak diperkenankan. Metode penelitian yang digunakan yaitu metode yuridis normatif dengan tipe deskriptif analitis. Berdasarkan hasil penelitian diperoleh yaitu, pertama status kepemilikan obyek yang diikat dengan perjanjian nominee yaitu milik pihak yang tercatat secara legal (nominee) sepanjang belum ada putusan pengadilan yang membatalkannya. Kedua, yaitu Notaris bertanggungjawab terhadap obyek perjanjian nominee yang dimasukkan dalam akta wasiat sehingga dapat dimintakan pertanggungjawaban secara administrasi, perdata maupun pidana, oleh karena itu peneliti menyarankan notaris memberikan penyuluhan hukum berdasarkan Pasal 15 ayat (2) huruf e Undang-Undang No. 2 Tahun 2014 (UUJNP) dan apabila client memaksa obyek perjanjian nominee dimasukkan dalam akta wasiat, maka notaris menolak dengan didasarkan Pasal 16 ayat (1) huruf e UUJNP.

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Principle of contract freedom caused many kind of contract such as nominee agreement. There are 2 (two) parties based on nominee agreement, there are nominee and beneficiary, so come a question about ownership status of the object which tied by nominee agreement and about notary authority and responsibility to the object which write down into testament deed because based on the rules nominee agreement is not permitted. Research method that used is juridische normative method with descriptive analitis type. Based on this research conclusion are, first, ownership status for the object which tied by nominee agreement is own by the party who write as legal owner (nominee) as long as there`s not decision by the court that declare nominee agreement is null and void. Second, notary be responsible for the object which write down into testament deed, so, notary can be ask for resposibility by administrative, civil or criminal. If client wants to write down object of nominee agreement into testament deed, researcher give advise for notary to give legal advice based on article 15 paragraph (2) letter e Law Number 2 Year 2014 (UUJNP) and if client force then notary refuse to write down object of nominee agreement into testament deed based on article 16 paragraph (1) letter e UUJNP.