

The Authority of a Notary in Drafting a Deed of Sale and Purchase of Uncertified Land

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Abstract. *Land, due to its high economic and social value, often becomes a source of legal disputes, particularly in transactions involving unregistered land. In practice, the public frequently engages a Notary to draft a deed as evidence of a legal act, even though the actual authority to transfer land rights lies with the Land Deed Official (PPAT). This study aims to examine the Notary's authority in drafting deeds of sale and purchase of unregistered land and analyze the legal consequences of such deeds. Using a normative legal research method with statutory, conceptual, and case approaches, the study finds that a Notary's authority in these transactions is limited: the Notary may prepare a deed as evidence of an agreement or obligation but cannot directly effect the transfer of land rights. The Notary's responsibility primarily concerns the formal correctness of the deed, yet civil, administrative, ethical, or even criminal liability may arise if negligence or professional misconduct occurs. The study emphasizes the importance of prudence, thorough verification, and legal counseling by Notaries to protect parties' interests and uphold the integrity of the Notarial profession in unregistered land transactions.*

Keywords: *Deed of Sale and Purchase; Land Certificate; Notary Authority.*

1. INTRODUCTION

The authority of a notary in drafting a deed of sale and purchase of uncertified land in Indonesia cannot be separated from the spirit of the 1945 Constitution, particularly Article 33 paragraph (3). This provision serves as the foundation of national land management, under which the State is responsible for ensuring legal certainty in land transactions in order to prevent conflicts and support socio-economic welfare. The authority of a notary is also grounded in the principle of the rule of law (*rechtsstaat*) as stipulated in Article 1 paragraph (3) of the 1945 Constitution (Arianto, Agustiani, Shalzabilla, & Mayangsari, 2025). This is particularly relevant to uncertified land, where the notary functions as a balancing agent between individual and state interests, ensuring that transactions do not violate the principle of social justice (Isnaini & Lubis, 2022).

As a consequence, communities especially in rural areas and indigenous communities

whose land has not yet been certified—tend to rely on deeds drawn up by notaries (either in the form of a Deed of Sale and Purchase or a Sale and Purchase Binding Agreement) (Sutedi, 2018). Although such deeds are civilly valid and possess authentic evidentiary force pursuant (Wardhani & Fania, 2020), their legal force remains limited and merely obligatoir in nature, as they do not fulfill the principle of publicity and do not result in a constitutive transfer of rights Without being followed by registration and transfer of title at the Land Office/National Land Agency, such notarial deeds cannot provide complete legal certainty and therefore may give rise to ownership disputes in the future (Wahyuni, 2021).

The urgency of a juridical analysis of the notary's authority in drafting deeds of sale and purchase of uncertified land has become increasingly pressing amid the growing number of land disputes in Indonesia, which often originate from informal transactions lacking official proof of ownership (Siregar, 2020). With millions of hectares of land still unregistered under the Complete Systematic Land Registration Program, communities remain vulnerable to land grabbing by irresponsible parties, particularly in customary and rural areas where notarial deeds are often used as the sole basis of transactions (Sadi, 2020). This phenomenon not only triggers prolonged social conflicts but also hinders access to bank credit and national infrastructure development. Moreover, the disharmony between notarial regulations and agrarian law has the potential to cause economic losses for good-faith buyers, as notarial deeds executed without thorough verification may be declared null and void by the courts (Nabil & Kurniati, 2023).

The Government has sought to accelerate land registration through mass certification programs such as the Complete Systematic Land Registration, which aims to cover the entire territory of Indonesia within a relatively short period (Parapat & Kurniawan, 2021). This initiative reflects the State's commitment to ensuring that every parcel of land possesses strong and official proof of title, so that land tenure no longer depends on informal evidence vulnerable to manipulation. However, problems arise when, in practice, there remains room for notaries to draw up deeds relating to uncertified land, even though such actions should ideally function only as a transitional step toward formal registration (Adawiyah, 2020). This situation raises fundamental questions regarding the degree of harmonization between agrarian law and notarial law, and whether the current legal framework is sufficiently comprehensive to regulate such practices.

The panel of judges, chaired by Endang Sri Gewayanti Latutuaparaya, declared that the defendant had committed breach of contract (*wanprestasi*) and ruled that the documents in the form of the Power of Attorney Deed, the Sale and Purchase Binding Agreement Deed, Deed of Sale and Purchase Number 49/2020, and the certificate issued therefrom were invalid and without legal force. The decision affirms the legal consequences attached to deeds made over land objects that do not fulfill administrative land requirements. This case is significant because it highlights the limits of authority of notaries and Land Deed Officials (PPAT) in drafting deeds related to uncertified land, as well as the legal implications for the certainty of rights of the parties involved.

Normatively, the issue relates to the provisions of the Notary Office Law, Government Regulations concerning the Office of PPAT, the Civil Code regarding the validity requirements of agreements, and the Basic Agrarian Law concerning the obligation of land registration.

The novelty of this research lies in its focus on legal protection and the responsibility of notaries in transactions involving uncertified land, an aspect rarely discussed in depth within land and notarial legal literature. This study emphasizes that deeds made over uncertified land possess limited legal certainty and carry the risk of disputes, both between the contracting parties and with third parties. In doing so, it provides a comprehensive understanding of the formal limits of notarial responsibility, the principle of professional prudence, and the potential civil, administrative, and criminal consequences. Thus, this study offers a new contribution to understanding the interaction between authentic deeds, legal certainty over uncertified land, and legal protection for members of the public who utilize notarial services (Pakpahan, Prisilla, Dicky, & Malau).

Drafting deeds beyond the scope of established authority not only has the potential to create disputes among parties but may also result in administrative sanctions, such as reprimands from the Notary Supervisory Council, civil liability in the form of compensation, and even criminal sanctions if elements of fraud or forgery are proven. Therefore, notaries are required to consistently adhere to professional ethics and applicable regulations, including coordinating with Land Deed Officials in every transaction relating to land (Andriyani, Wahyuningsih, & Rahman, 2022). The imposition of such sanctions is fundamentally designed to safeguard the integrity of the profession, prevent procedural errors, and protect the public from harmful practices. In this context, the Notary Office Law serves as the principal legal foundation governing the limits of notarial authority, while ensuring that every deed executed genuinely contributes to national legal certainty. Accordingly, effective enforcement of the objectives of the Notary Office Law is key to minimizing legal risks in the notarial field and strengthening public trust in the process of land title transfer (Wulansari, Junarto, & Mujiburohman, 2021).

2. RESEARCH METHODS

This research constitutes normative legal research with a descriptive-analytical nature, focusing on the examination of positive legal norms concerning the authority of notaries in drafting deeds of sale and purchase of uncertified land (Hamzah, 2018). The analysis was carried out to assess normative consistency, the limits of notarial authority, and the legal implications for legal certainty and the protection of public rights, using Gustav Radbruch's theory of legal certainty as an evaluative framework (Ali, 2021).

3. RESULT AND DISCUSSION

3.1. The Authority of a Notary in Drafting a Deed of Sale and Purchase of Uncertified Land

A notary is a public official authorized by the State to draw up authentic deeds as stipulated within the Indonesian legal system, the notary's position is attributive in nature, as his or her authority derives directly from statutory provisions. An authentic deed executed by a notary possesses perfect evidentiary value insofar as it fulfills the formal requirements prescribed by law. Nevertheless, such authority is not absolute; it is limited by other legal provisions, particularly those governing land law (Pakpahan & Suhaila, 2025).

Article 19 of the Basic Agrarian Law emphasizes the importance of land registration in ensuring legal certainty. This provision is further elaborated in Government Regulation Number 24 of 1997, which requires that the transfer of land rights be evidenced by a deed drawn up by a PPAT as the basis for registration. Accordingly, from a normative standpoint, the constitutive authority to transfer land rights lies with the PPAT, not with the notary. In the Indonesian land system, a deed of sale and purchase has a constitutive character only when it fulfills both formal and material requirements and has been registered at the Land Office. Without registration, the transfer of rights does not possess full legal force against third parties. Therefore, a deed made by a notary concerning uncertified land is, in principle, merely obligatoir in nature that is, it serves as evidence of a legal relationship or contractual bond between the parties, rather than as a final instrument effecting the transfer of rights (Lukman, 2020).

With respect to uncertified land, a notary may still play a role in drafting supporting deeds, such as a Sale and Purchase Binding Agreement or a power of attorney, provided that such actions do not exceed the authority granted by law. A notary is obliged to verify the identities of the parties, examine the history of the land, and ensure that no legal defects exist that may give rise to disputes in the future (Widianto, 2020). Juridical issues arise when a notarial deed concerning uncertified land is misconstrued as constituting perfect proof of ownership. The disharmony between notarial law and land law often creates ambiguity in practice. Conceptually, notarial law emphasizes the evidentiary strength of authentic deeds, whereas agrarian law underscores the principle of publicity through land registration as a prerequisite for the validity of the transfer of rights (Heriyanti, Rajagukguk, Sitinjak, & Pakpahan, 2023).

The legal implication of a deed made by a notary over uncertified land is that no constitutive transfer of rights occurs prior to registration. This means that the buyer has not yet obtained full legal certainty over the land object. Potential risks include ownership disputes, third-party claims, and annulment of the deed through a court decision if procedural defects or breach of contract are proven. The authority of a notary in drafting deeds of sale and purchase of uncertified land is therefore limited and does not extend to directly transferring land rights. The notary's role is primarily preventive and protective

in nature—ensuring that the parties’ agreement is properly and clearly embodied in a lawful instrument, while simultaneously encouraging land registration to achieve legal certainty. Clarifying these limits of authority is essential to safeguarding the integrity of the notarial profession and ensuring orderly land administration in Indonesia (Masriani, 2022)

3.2. Legal Consequences of a Deed of Sale and Purchase of Uncertified Land

A deed of sale and purchase of uncertified land gives rise to complex legal consequences because it intersects with two legal regimes simultaneously: civil law and agrarian law. From the perspective of civil law, a sale and purchase agreement is valid if it fulfills the essential elements of consent, legal capacity, a certain object, and a lawful cause. Once these four elements are satisfied, a legal relationship between the seller and the buyer is validly established and binds the parties as law (Yenny, 2023). However, civil validity does not automatically result in the juridical transfer of land rights. Under the national land system, the transfer of land rights requires registration as a manifestation of the principle of publicity. Without registration, the transfer of rights has no legal force against third parties. Therefore, a deed of sale and purchase concerning uncertified land occupies an imperfect legal position (Sunarto, Adnan, & Khair, 2025).

Land registration constitutes the primary instrument for creating legal certainty and legal protection. A land certificate functions as strong evidence of both the physical and juridical data of a parcel of land. If land remains uncertified, ownership status is often based on traditional title documents, *girik*, or other administrative records that do not possess evidentiary strength equal to a certificate. Consequently, the deed of sale and purchase merely proves the existence of an agreement to transfer rights, rather than confirming ownership certainty. This condition creates the potential for future disputes, especially if another party asserts a stronger claim. Thus, the legal consequence is uncertainty regarding the legitimacy of the buyer’s ownership. This situation underscores the importance of synchronizing contractual aspects with land administrative requirements (Naja, 2022).

The sale and purchase of uncertified land may be classified as an obligatoir agreement rather than a real (property) agreement. In other words, the agreement only creates rights and obligations to transfer land rights, but does not itself effectuate the transfer. The transfer of rights is considered legally complete only after registration in accordance with applicable procedures. Consequently, if registration is not promptly carried out, the buyer remains in a legally vulnerable position. Although in practice the buyer may have taken physical possession of the land and fully paid the purchase price, juridically the buyer is not yet recorded as the rightful owner. This condition opens the possibility of both civil and administrative disputes in the future.

Another legal consequence concerns the evidentiary strength of the deed executed by a notary or authorized official. Such a deed possesses perfect evidentiary value regarding the matters contained therein, unless proven otherwise. Nevertheless, this evidentiary

force is limited to the formal and material aspects of the agreement between the parties. The deed does not automatically serve as absolute proof of ownership if the land has not been registered. In land disputes, judges will also consider the history of possession, proof of tax payments, and relevant witness testimony. Therefore, a buyer cannot rely solely on the deed of sale and purchase as the basis for an absolute ownership claim. Completion of land administrative procedures remains essential to obtain stronger legal protection (Lukman, 2020).

A buyer of uncertified land faces potential losses if third-party claims arise. If a third party can prove ownership through valid registration or a court decision, the buyer's legal position becomes weak. In such circumstances, the buyer generally can only seek compensation from the seller on the basis of breach of contract (*wanprestasi*). This risk increases if the land is under dispute or has been encumbered or pledged without the buyer's knowledge. The resulting legal consequences may include not only the loss of land rights but also financial losses and wasted time. This reality demonstrates that prudence in land transactions is a principle that cannot be ignored (Dharsana, 2021).

The seller likewise bears significant legal consequences. The seller is obliged to guarantee that the object sold is free from legal defects and not under dispute. If it is proven that the land has juridical problems, the seller may be held civilly liable. Such liability may include refunding the purchase price, paying damages, or cancellation of the agreement. In certain circumstances, the seller may even be sued for an unlawful act if it is proven that material facts regarding the land's status were intentionally concealed. Thus, the seller's legal consequences are not limited to contractual obligations but may expand into broader legal responsibility (Isnaini & Lubis, 2022).

The land registration system adheres to the principle of publicity, which grants priority to the party who first registers their rights. If the buyer does not promptly register the transfer, another good-faith party who subsequently acquires and registers the right may obtain stronger legal protection. This condition implies that unregistered ownership is vulnerable to being displaced by parties who comply with administrative procedures. Therefore, the legal consequences extend beyond the relationship between seller and buyer, encompassing competition of rights with third parties. This affirms the preventive protective function of registration.

The professional responsibility of deed-making officials both PPAT is fundamental in ensuring legal certainty and protection for the parties. Both officials perform public functions and are entrusted by the State to execute authentic deeds; therefore, professionalism and adherence to the prudential principle are mandatory legal obligations. This principle requires comprehensive verification of the parties' identities, authority to act, authenticity of documents, and the legal status of the object concerned. In land transfers, this includes examination of certificates or underlying title documents, land history, potential disputes, and consistency between physical and juridical data. Failure to conduct such verification may result in disputes and may render the deed legally defective if procedural or substantive violations are proven (Siregar, 2020).

The practice of selling and purchasing uncertified land remains common due to various factors, including financial limitations, lack of legal awareness, or the perception that administrative processes are complicated. However, such practices do not eliminate the inherent legal risks. Information asymmetry between the parties often becomes the root of future disputes. In many cases, land conflicts originate from initial transactions that were not followed by official registration. Therefore, enhancing public legal awareness is essential to minimizing adverse legal consequences. Education regarding the importance of land certification and registration must continue to be strengthened. Ultimately, the legal consequence of a deed of sale and purchase of uncertified land lies in the fact that the transfer of rights is not juridically complete, even though the agreement is civilly valid. This condition creates vulnerability to disputes, weakens the buyer's position vis-à-vis third parties, and exposes the seller and deed-making officials to potential legal liability. Legal certainty is only achieved once the registration process is completed in accordance with applicable regulations. Consequently, any transaction involving uncertified land should be regarded as an initial stage that must be followed by further administrative procedures. Without such steps, the expected legal protection cannot be optimally realized (Ananda, Nazhimah, & Prianto, 2024).

3.3. Legal Protection and Dispute Resolution Concerning Deeds of Sale and Purchase of Uncertified Land

Although an authentic deed possesses perfect evidentiary value unless proven otherwise, such strength applies only when formal and material requirements are fulfilled. If procedural defects occur, the deed may be declared invalid or reduced to the evidentiary value of a private deed. The court's reasoning in this case illustrates that while a notary's responsibility is generally limited to formal aspects, formal negligence can still give rise to legal consequences. A notary does not guarantee absolute material truth of ownership, yet remains obligated to conduct maximum administrative verification. In transactions involving uncertified land, the risk of dispute is significantly higher than in certified land transactions. Therefore, a notary must also provide legal explanation to the parties regarding potential risks. Failure to provide adequate legal advice may constitute professional negligence. This underscores that the notary's responsibility does not end with the signing of the deed, but includes an educational and preventive function (Purba, Nababan, & Simamora, 2025).

Legal protection for a good-faith buyer in transactions involving uncertified land remains inherently vulnerable. The law mandates that the government conduct land registration throughout Indonesia to ensure legal certainty. Even if an authentic deed has been executed by a notary or PPAT, the absence of a certificate or the failure to register the transfer means that the buyer has not yet acquired a complete real (proprietary) right (*zakelijk recht*). The deed merely establishes an obligatoir relationship between seller and buyer. Consequently, if a third-party claim or dispute arises, the buyer's position is weakened due to the lack of registered title (Naja, 2022).

In terms of accountability, a notary may also be subject to administrative sanctions

imposed by the Notary Supervisory Council if proven to have violated statutory provisions or the professional code of ethics. Sanctions may include verbal warnings, written reprimands, temporary suspension, or permanent dismissal. Such sanctions aim to uphold discipline, professionalism, and service quality. Supervisory mechanisms also function as legal protection for the public as users of notarial services. Moreover, a notary's liability may extend to criminal responsibility if intentional misconduct, forgery, or false statements causing legal consequences are proven. In such circumstances, the notary is no longer regarded merely as negligent but as a legal subject committing a criminal offense. Criminal accountability emphasizes that the notarial office does not confer legal immunity, and any abuse of authority may be prosecuted in accordance with criminal law (Abdillah, 2023).

4. CONCLUSION

The authority of a notary in drafting deeds of sale and purchase of uncertified land is which requires notaries to act carefully, honestly, and independently while examining supporting documents; which emphasizes that uncertified land possesses limited legal certainty; which stresses prudence, document verification, and boundary recording; and which establishes authentic deeds as formal evidence for subsequent registration. A deed executed by a notary over uncertified land does not automatically result in a legally valid transfer of rights under land law, but rather serves as written evidence of a legal relationship or agreement between the parties. Consequently, full legal certainty has not yet been achieved, and the potential for disputes remains, whether between the contracting parties or with third parties. Its evidentiary strength depends on formal completeness, the good faith of the parties, and additional proof such as physical possession or community recognition. The notary's responsibility is limited to formal aspects ensuring the identities of the parties, verifying supporting documents, and properly recording statements in accordance with legal procedures without guaranteeing the material truth of land ownership. Nevertheless, a notary may incur civil liability if negligent, for example by failing to verify identities, disregarding non-certified documents, or neglecting to provide adequate legal advice resulting in loss.

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