

Notary's Responsibility for Changing the Use of Agricultural Land to Non-Agricultural Land for Legal Entity Ownership

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Abstract. Development and investment developments are driving legal entities to increasingly need land for non-agricultural activities, so that changes in the use of agricultural land to non-agricultural land are increasingly frequent. These changes must comply with the provisions of the Regional Spatial Planning (RTRW), the Suitability of Spatial Utilization Activities (KKPR), and the Protection of Sustainable Food Agricultural Land (LP2B), while in practice there is still uncertainty regarding the limits of the authority and responsibility of Notaries in making deeds related to these changes, especially regarding the position and form of the Deed of Release of Rights in the process of acquiring Building Use Rights (HGB) by legal entities. This study aims to analyze the legal regulations regarding changes in the use of agricultural land to non-agricultural land and the authority of Notaries in making their deeds, the responsibility of Notaries if the deeds made are contrary to spatial planning and permits, and the position and form of the Deed of Release of Rights. The study uses a normative legal method with a statutory approach and a conceptual approach, using secondary data analyzed qualitatively with deductive conclusions. The results of the study indicate that changes in land use must comply with the provisions of spatial planning, KKPR, and LP2B, and is a different process from changes in land rights; if the land has a Freehold status, the right must be released first before the legal entity applies for Building Use Rights, and the Notary is not authorized to determine the suitability of spatial planning, KKPR, LP2B status, or grant HGB. The Notary's responsibility is conditional and only arises if there is evidence of error or negligence in carrying out his/her official duties. The Deed of Release of Rights is a party deed (*partij akta*) that proves the termination of Ownership Rights, not a sale and purchase deed, and does not guarantee the acquisition of Building Use Rights.

Keywords: Acquisition; Guarantee; Notary; Responsibilities.

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a state based on law, so that every aspect of social, national and state life must be based on legal provisions in order to create certainty, justice and legal protection for the community.¹One crucial aspect of the rule of law is land management, given its strategic function as an agrarian resource that supports social life, the economy, and national development. Various studies have shown that controlling spatial use is a crucial instrument for maintaining a balance between development interests and the public interest in land, ensuring that land use cannot be separated from the applicable spatial planning legal framework.²

As investment grows, the need for land for legal entities for business and social activities continues to increase, including the need for land previously designated as agricultural land. In practice, legal entities often use agricultural land for non-agricultural activities, such as the development of business areas, industry, warehousing, education, and social facilities. This type of land conversion is a formal legal process that indicates a change in the land's basic function from the agricultural sector to another sector in accordance with the direction of regional development.³so it cannot be done freely, but must follow the applicable spatial planning and land administration provisions.

Control of spatial use in Indonesia is implemented through the Regional Spatial Plan (RTRW), which divides areas into protected areas and cultivated areas, including agricultural areas aimed at maintaining food production. Following the enactment of the Job Creation Law, control of spatial use is implemented through the Spatial Utilization Activity Suitability (KKPR) mechanism, which is part of risk-based licensing reform and places spatial plan suitability as the initial basis for implementing spatial use activities.⁴In addition, Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land⁵provide stricter restrictions on agricultural land whose existence must be maintained, so that changes in the use of agricultural land to non-agricultural use must take into account the suitability of spatial planning, KKPR, and the status of land in the Sustainable Food Agricultural Land (LP2B) area.

¹Boedi Harsono, (2008), Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation, Djambatan, Jakarta, p. 18.

²Pratama, Yosef Ardy, (2019), "Implementation of RTRW in Spatial Control", in Bhumi Journal, Vol. 5, No. 1, pp. 40-52.

³Heryanto and Harsono, (2018), "Land Conversion and its Legal Implications", in Bhumi Journal, Vol. 4, No. 2, p. 113.

⁴Martino, Adriano, (2022), "KKPR and Licensing Reform Post-Job Creation Law", in Journal of Spatial Law, Vol. 3, No. 2, p. 87.

⁵Republic of Indonesia, Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land.

The theory of legal certainty (*rechtszekerheid*) put forward by Gustav Radbruch places legal certainty as one of the main objectives of law besides justice and utility.⁶In the context of land use, legal certainty is realized through the conformity between legal actions, land use status, spatial planning, and the legality of deeds made by public officials. Notaries have an important position in this process because they are authorized to make authentic deeds based on the wishes of the parties, but it is not enough to simply put those wishes into the deed; Notaries are also required to ensure that formal and material requirements are met in accordance with applicable legal provisions and apply the principle of caution in checking land status, suitability of spatial planning, and the completeness of permit documents.⁷

In practice, it is still found that agricultural land is used by legal entities for non-agricultural activities before fulfilling the requirements for changes in land use or suitability for spatial use activities. This condition has the potential to give rise to legal issues, both regarding the legality of land use and regarding the deeds made by Notaries. The problem becomes more complex if the land to be used by the legal entity still has the status of Freehold Rights, while the legal entity in question is not a legal entity that can be a holder of Freehold Rights according to the provisions of laws and regulations, so that the rights are required to be released first before submitting an application for Building Use Rights (HGB). In this mechanism, there is still uncertainty regarding the status of the Deed of Release of Rights made by the Notary and the extent to which the deed can be linked to the Notary's responsibility if the change in land use is later found to be in conflict with spatial planning and licensing provisions.⁸

Research on changes in the use of agricultural land has so far mostly discussed aspects of agrarian law and spatial planning in general, while studies that specifically link the authority and responsibilities of Notaries with the position of the Deed of Release of Rights in the process of acquiring Building Use Rights by legal entities are still limited.⁹Non-conformity with spatial planning can even be the basis for questioning the deed of transfer of land rights.¹⁰Therefore, it is important to clearly define the boundaries between the formal validity of the deed and the legality of the legal acts contained therein. Therefore, this research is important to examine the form of responsibility of Notaries in ensuring the

⁶Rahardjo, Satjipto, (2014), Legal Science, Citra Aditya Bakti, Bandung, p. 19.

⁷Adjie, Habib, (2015), Indonesian Notary Law, Refika Aditama, Bandung, p. 80.

⁸Apianta, Riza, (2023), "Process of Release of Ownership Rights Followed by Application for Building Use Rights at the National Land Agency Office", in Notarius, Vol. 16, No. 3, pp. 1165-1173.

⁹Priyanta, March, (2021), "Implications of the Concept of Suitability of Spatial Utilization Activities for Business Licensing", in Jurnal Wawasan Yuridika, Vol. 5, No. 1, pp. 20-39.

¹⁰Muhtarom, (2021), "Analysis of the Cancellation of Land Transfer Deeds Based on Spatial Planning Inconsistencies", in Jurnal Notarius, Vol. 14, No. 3, p. 201.

legality of land use and the position of the Deed of Release of Rights as one of the instruments in this mechanism.

Based on the description, this study aims to analyze the legal regulations regarding changes in the use of agricultural land to non-agricultural land for ownership of legal entities and the authority of Notaries in making the deeds, the responsibility of Notaries if the deeds made in relation to this matter are in conflict with the provisions of spatial planning and applicable permits, as well as the position and form of the Deed of Release of Rights in the mechanism for obtaining Building Use Rights by legal entities.

2. Research Methods

This study uses a normative legal research method with a statute approach and a conceptual approach. The research specifications are descriptive and analytical. The data used are secondary data consisting of primary legal materials in the form of laws and regulations relating to land, spatial planning, and the position of Notary; secondary legal materials in the form of books, scientific journals, and research results; and tertiary legal materials in the form of legal dictionaries and encyclopedias. Data were collected through library research and analyzed qualitatively using the deductive method of drawing conclusions.

3. Results and Discussion

3.1. Legal Regulations Concerning Changes in the Use of Agricultural Land to Non-Agricultural Land for Legal Entity Ownership and the Authority of Notaries in Making Deeds

Development and investment growth are driving increasing land demand by legal entities for various non-agricultural activities, such as the development of business areas, industrial areas, warehousing, educational facilities, and social facilities. This demand is often directed at land previously designated as agricultural land, particularly in areas experiencing industrial and investment growth. Data from the Central Java Provincial Statistics Agency (BPS) for 2024 shows that agricultural land in various districts in Central Java still has a significant productive function in supporting regional food security.¹¹ Therefore, changes in agricultural land use to non-agricultural use need to be controlled to prevent the uncontrolled elimination of agricultural functions. This situation demonstrates that changes in agricultural land use by legal entities are not solely an economic issue, but also a legal issue involving land status, land use, permits, and agricultural land protection.

¹¹Central Statistics Agency of Central Java Province, (2024), "Harvested Area, Productivity, and Rice Production by Regency/City in Central Java Province, 2024", <https://jateng.bps.go.id>, accessed on June 19, 2026 at 12.00 WIB.

In practice, this complexity is evident in areas experiencing industrial growth, such as those with Special Economic Zones and those close to regional economic growth centers. The existence of such industrial areas drives large-scale land needs for the construction of factories, warehouses, offices, and supporting facilities for business activities, so that agricultural land in strategic locations often becomes a sought-after object for non-agricultural activities. Regional regulations regarding Regional Spatial Planning in the relevant area are an important basis in directing spatial utilization and controlling changes in land use, so that any plan to use agricultural land for non-agricultural activities must still pay attention to compliance with the regional spatial planning applicable in that area, in addition to the provisions of KKPR, PTP, and LP2B that apply nationally.

Legal regulations regarding the change in the use of agricultural land to non-agricultural land cannot be separated from the national agrarian legal system. Law Number 5 of 1960 concerning Basic Agrarian Principles is the main basis for land regulation in Indonesia and places land as part of the earth, water, and airspace controlled by the state for the greatest prosperity of the people, so that land use is not solely subject to the will of the rights holder, but must also pay attention to the public interest and applicable legal provisions.¹² Land rights give the rights holder the authority to use the land according to the type of rights, such as Ownership Rights, Cultivation Rights, Building Rights, and Usage Rights, each of which has different characteristics, subjects, and functions, so that the use of the land must be adjusted to the type of rights attached to it.

Agricultural land has an important position in the agrarian legal system because it is related to food production and the sustainability of agrarian functions, so that the conversion of agricultural land to non-agricultural land must be carried out carefully and cannot be based solely on the economic interests of legal entities that require the land. Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land provides a legal basis for the protection of food agricultural land, so that certain agricultural land must be maintained so that the function of food production continues to run. The conversion of agricultural land is a formal legal process that indicates a change in the basic function of land from the agricultural sector to another sector in accordance with the direction of regional development,¹³ so it should not be understood as a free action, but rather as a legal process that must follow the provisions of spatial planning and land administration.

Changes in land use from agricultural to non-agricultural use must be distinguished from changes in land rights. Changes in land use relate to changes

¹²Boedi Harsono, (2008), *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation*, Djambatan, Jakarta, p. 18.

¹³Heryanto and Harsono, (2018), "Land Conversion and its Legal Implications", in *Bhumi Journal*, Vol. 4, No. 2, p. 113.

in the function of land use, for example from agricultural activities to industrial, commercial, or social facilities, while changes in land rights relate to changes in the type of rights, for example from Ownership Rights to Building Use Rights. These two things can be interrelated, but not identical, because changes in land use do not automatically change the status of land rights, and conversely, changes in land rights do not automatically make land use legal if it does not comply with spatial planning. In practice, these two processes often occur simultaneously when land that was originally held Ownership Rights status will be used by a legal entity that is not a legal entity that can hold Ownership Rights, so that a mechanism is needed to release rights and apply for new rights that are appropriate to the status, one of which is Building Use Rights.

Spatial planning compliance is a crucial instrument in converting agricultural land use to non-agricultural use. The Regional Spatial Plan (RTRW) is the primary instrument determining spatial allocation at the regional level, containing spatial structures and patterns, including the division of protected areas and cultivated areas.¹⁴The Detailed Spatial Plan (RDTR) provides more detailed regulations regarding zones, subzones, and activity provisions in an area, thus becoming a more operational instrument in determining whether or not an activity may be carried out in a particular location. Agricultural land located in areas that according to the RTRW and/or RDTR are still designated as agricultural areas cannot be used for non-agricultural activities, so any planned change in land use must be checked for compliance with the applicable spatial pattern.

The existence of the RDTR serves to reduce subjectivity in granting permits. Without the RDTR, the assessment of land use suitability often relies on general interpretations of the RTRW, which can create uncertainty for applicants, including legal entities that will use the land. With the availability of the RDTR, legal entities can know from the outset whether the planned activities to be carried out comply with zoning provisions, so the existence of the RDTR can strengthen legal certainty in the process of changing agricultural land use to non-agricultural. For Notaries, the existence of the RTRW and RDTR is important as a basis for caution; Notaries are not authorized to determine the suitability of spatial planning, but need to understand that deeds related to the release of rights, land acquisition, or land use plans by legal entities can cause problems if the land object does not comply with the applicable spatial planning.

Following the enactment of the Job Creation Law, control over spatial utilization was emphasized through the Spatial Utilization Activity Compliance (KKPR) mechanism as stipulated in Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning.¹⁵which is part of risk-based licensing reform and places spatial planning suitability as the initial basis for

¹⁴Pratama, Yosef Ardy, (2019), "Implementation of RTRW in Spatial Control", in Bhumi Journal, Vol. 5, No. 1, pp. 40-52.

implementing spatial utilization activities.¹⁵The KKPR serves to ensure that the spatial utilization activity plan to be implemented by a legal entity is in accordance with the applicable RTRW and/or RDTR, thus providing a legal basis for the legal entity before carrying out activities on the land in question. Without the KKPR, the use of agricultural land for non-agricultural activities can be questioned because it does not have a basis for spatial suitability, even if the land has been physically controlled or has been bound by an agreement with the previous rights holder.

In addition to the RTRW, RDTR, and KKPR, changes in agricultural land use to non-agricultural use are also related to the Land Technical Considerations (PTP), which provide technical analysis regarding land control, ownership, use, and utilization, as well as the Land Use Change Permit (IPPT) or similar regional licensing products that are still relevant based on the legal regime in effect before simplification through the KKPR. Each of these instruments has a different legal function: the RTRW and RDTR serve as the normative basis for spatial planning, the KKPR states the conformity of activity plans with spatial planning, the PTP serves as a technical consideration and not a permit, while the LP2B status relates to the control and protection of agricultural land. The completeness of the required documents is not always the same for each land object, but is determined by the location, type of activity, land status, and the provisions applicable to the area concerned.

In land practice, there are differences in the status of spatial planning instruments, technical land instruments, agricultural land protection instruments, legal deeds, and decisions on granting land rights. The RTRW and/or RDTR serve as the normative basis for spatial planning that determines the spatial structure, spatial patterns, and zoning of activities that are permitted, conditionally permitted, or prohibited in an area. KKPR serves as a statement of conformity between the spatial utilization activity plan and the spatial plan, and serves as a reference before implementing activities or acquiring land. PTP serves as a technical consideration regarding control, ownership, use, and utilization of land, not as a permit or decision on granting rights. The status of Raw Paddy Land, Protected Paddy Land, LP2B, and Sustainable Food Agriculture Area serve as databases and protection instruments for food agricultural land, which limit, reject, or only allow conversion based on specific requirements. The synchronization between these instruments shows that the legality of land acquisition and use by legal entities must be checked in stages, because the conformity of activity plans to spatial planning does not replace the process of acquiring land rights, and conversely, the release of rights and the granting of

¹⁵Republic of Indonesia, Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning.

¹⁶Martino, Adriano, (2022), "KKPR and Licensing Reform Post-Job Creation Law", in Journal of Spatial Law, Vol. 3, No. 2, p. 87.

land rights also do not replace the obligation to fulfill spatial planning provisions and the protection of agricultural land.

The interests of legal entities in land are generally related to the implementation of business activities, so that legal entities require large plots of land, strategic locations, and in accordance with the planned activities to be carried out. Article 21 paragraph (1) of the Basic Agrarian Law stipulates that only Indonesian citizens can have Property Rights, while paragraph (2) provides an exception in the form of the Government's authority to determine certain legal entities that can have Property Rights along with the conditions, as further regulated in Government Regulation Number 38 of 1963.¹⁷¹⁸ Thus, if the legal entity in question is not a legal entity that can be the holder of Ownership Rights according to the provisions of statutory regulations, while the land to be used still has Ownership Rights status, then it is necessary to release the Ownership Rights first before submitting an application for new rights that are in accordance with the status of the legal entity, one of which is the Building Use Rights which gives the authority to construct and own buildings on land that is not one's own for a certain period of time.

Within this entire mechanism, a notary holds a crucial position as a public official authorized to draw up authentic deeds. Notaries are not only tasked with documenting the parties' wishes in the deed, but are also required to ensure that the legal actions taken meet the formal and material requirements in accordance with applicable law.¹⁹ Based on the theory of authority, a notary's actions must be carried out based on the authority granted by law, which also limits the notary from acting beyond his authority. In the context of changing the use of agricultural land to non-agricultural use, the notary is authorized to draw up a deed containing the wishes of the parties, including a deed containing a statement or power of attorney requesting a change in land use, and to provide legal counseling to the parties.

However, a Notary is not authorized to determine spatial suitability, issue KKPR, determine LP2B status, provide Land Technical Considerations, or grant Building Use Rights, because these authorities lie with government agencies determined by statutory regulations. Notaries must also differentiate their authority from Land Deed Officials and Land Offices, so that Notarial deeds in changing the use of agricultural land to non-agricultural land must be positioned as legal documents that support the actions of the parties, not as a substitute for permits

¹⁷Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Article 21 paragraph (1) and (2).

¹⁸Republic of Indonesia, Government Regulation Number 38 of 1963 concerning the Designation of Legal Entities that May Have Ownership Rights to Land.

¹⁹Adjie, Habib, (2015), Indonesian Notary Law, Refika Aditama, Bandung, p. 80.

or land decisions.²⁰If a Notary makes a deed that appears to stipulate a change in land use or grant rights to land, then the Notary has acted beyond his authority.

In the practice of making deeds, the limited authority of a Notary requires the Notary to apply the principle of caution by checking supporting documents before the deed is made. If supporting documents in the form of spatial planning compliance, KKPR, PTP, or LP2B status information are incomplete, the Notary can postpone the making of the deed, provide legal counseling regarding the risks that may arise, include a clause that the use of land for non-agricultural activities can only be carried out after all permits have been fulfilled, or refuse to make the deed if the legal act requested is clearly contrary to the law. Refusal to make a deed in such circumstances is a form of responsibility of the Notary, not a neglect of legal services, because the Notary is not a tool for the parties to legalize acts that are contrary to the law.

Legal counseling provided by a Notary also serves to limit the parties' understanding of the function of deeds. In practice, parties often assume that once a legal act is recorded in a deed, all legal issues are resolved, whereas a Notarial deed only proves the existence of a statement, agreement, or will of the parties and does not replace permits, spatial planning decisions, or determination of land rights from the authorized agency. Therefore, the Notary needs to explicitly explain to the parties that the deed drawn up is not a permit for a change in land use, not a KKPR, not a PTP, not a determination of LP2B status, and not a decision to grant land rights, to avoid misunderstandings regarding the legal consequences of the signed deed.

Inconsistencies between land use and spatial planning provisions can have legal consequences at several levels. At the administrative level, activities that do not comply with spatial planning can be subject to control measures or administrative sanctions, ranging from written warnings to building demolition. At the civil level, such inconsistencies can give rise to disputes between parties based on breach of contract or unlawful acts. At the land level, inconsistencies with spatial planning can hinder the process of applying for Building Use Rights, because the release of Ownership Rights does not automatically guarantee the acquisition of new rights if spatial planning and land requirements are not met. At the notary level, deeds drawn up without considering such inconsistencies have the potential to become part of the dispute, although the formal validity of the deed must still be assessed separately from the validity of the legal act contained therein.

²⁰Sari, I Gusti Agung Dhenita, Wairocana, I Gusti Ngurah, & Resen, Made Gde Subha Karma, (2018), "The Authority of Notaries and PPAT in the Process of Granting Building Use Rights on Freehold Land", in *Acta Comitatus: Journal of Notary Law*, Vol. 3, No. 1, pp. 56-58.

It should be emphasized that not every violation of spatial planning automatically invalidates a notarial deed. A notarial deed must still be assessed based on whether or not the formal and material requirements for its creation are met; if the deed is made in accordance with the form and procedures stipulated by law, then the deed still has evidentiary force as an authentic deed. However, the legal act that forms the basis or purpose of the deed can be questioned if it conflicts with the law, spatial planning, or permits. Therefore, the analysis of the deed must clearly distinguish between the formal validity of the deed as evidence and the validity of the legal act contained therein, because issues of permits or non-compliance with spatial planning are more appropriately assessed as issues concerning the validity and implementation of the legal act contained in the deed, rather than as issues that automatically eliminate the authenticity of the deed itself.

Based on the above description, the legal regulations regarding changes in the use of agricultural land to non-agricultural land for legal entity ownership are cross-sectoral, encompassing agrarian law, spatial planning law, sustainable food cropland protection, and spatial utilization permits. Changes in land use are different from changes or granting of land rights, and both must be fulfilled in stages, not as interchangeable requirements. Notaries have the authority to make authentic deeds related to the wishes of the parties, including deeds containing statements or powers of attorney for requests for changes in land use, but are not authorized to issue permits, technical land considerations, spatial planning decisions, or land rights. Therefore, Notaries are required to exercise their authority carefully, examine supporting documents, provide legal counseling, and refuse to make deeds if the requested legal action clearly conflicts with applicable legal provisions.

3.2. Notary's Responsibility If the Deed Made in Relation to the Change of Use of Agricultural Land to Non-Agricultural Land Contradicts the Applicable Spatial Planning and Licensing Provisions

The position of a Notary in making deeds related to the change of use of agricultural land to non-agricultural must be understood within the framework of the authority of the position as well as the obligation to bear the legal consequences if the authority is carried out negligently, not carefully, or contrary to the duties of the position. Legal responsibility arises from the existence of legal obligations imposed on certain legal subjects, so that if these obligations are violated and give rise to legal consequences that are detrimental to another party, the party committing the violation can be held accountable.²¹ Therefore, the discussion regarding the formal legality of the deed becomes an important

²¹Adjie, Habib, (2017), Indonesian Notary Law: Thematic Interpretation of the Notary Law, Refika Aditama, Bandung, p. 77.

basis for assessing whether the Notary has carried out his/her obligations properly or can be held accountable for the deed he/she made.

The notary's obligation to maintain the formal legality of the deed is closely related to the official obligation to act in a trustworthy, honest, thorough, independent, impartial manner and to protect the interests of the parties involved in the legal act.²²The principle of due diligence implies that a Notary must conduct a thorough examination of the data and documents provided by the parties, including the identity of the parties, the basis for their authority to act, the legal entity status, the legal entity's organ documents, and documents explaining the land object. This examination does not mean that the Notary takes over the authority of the land agency or licensing agency, but rather is part of his official duties to ensure that the deed drawn up is not based on unclear, incomplete, or unlawful data.

Examining the authority of legal entity organs is important because legal entities do not act physically like humans, but rather through organs or managers who are authorized by the articles of association and laws and regulations. In a Limited Liability Company, legal actions are carried out by the Board of Directors by taking into account the provisions of the articles of association and the approval of other organs if necessary, while in a Foundation, legal actions are carried out by the Management by taking into account the position of the Advisors and Supervisors. If the required organ approval is not obtained, the actions of the legal entity representative can be deemed to exceed their authority (*ultra vires*) and thus potentially invalidate the legal acts set out in the deed. Therefore, a Notary is required to examine the latest composition of the board of directors, meeting decisions, approval of related organs, and the limitations of authority in the articles of association before the deed is made.

Examining the legality of a legal entity is also an important part of the precautionary principle, because not all legal entities can own or control land with the same type of rights. Notaries need to ensure that the legal entity that is a party to the deed actually exists, has obtained legal approval or legal status, and has the intent and purpose in accordance with the land use plan. This examination can be carried out through the deed of establishment, the legal entity's ratification decision, amendments to the articles of association, the latest management structure, and other documents that demonstrate the legal entity's existence and activities. Considering that not all legal entities can hold Ownership Rights, Notaries also need to ensure that the legal entity that will benefit from the release of rights meets the requirements as the subject of the rights being applied for, namely Building Use Rights or other rights appropriate to its status.

²²Lumban Tobing, GHS, (1999), Regulations on the Position of Notary, Erlangga, Jakarta, p. 48.

The Notary's duty of care also includes examining documents related to spatial planning and land, namely the Land Use Change Permit (IPPT) or similar documents if still required, Land Technical Considerations (PTP), Suitability of Spatial Utilization Activities (KKPR), and the status of Sustainable Food Agricultural Land (LP2B).²³ This examination does not authorize the notary to issue or substantively assess the documents, but rather serves as a precautionary measure to ensure that the deed is not based on a land use plan that lacks a legal basis. The notary must verify the data in the document with the land certificate, plot map, applicant's identity, area, and location of the land. If any discrepancies are found, the notary must request clarification before the deed is drawn up.

A notary's negligence in this context can be in the form of drafting a deed without considering the required land use change documents, even though the land subject to the deed is agricultural land to be used for non-agricultural activities. Negligence can also occur if the deed is drafted without considering Land Technical Considerations, even though the legal action requested requires such considerations, or without considering the LP2B status of land included in a protected agricultural area.²⁴ The notary does not assess the technical accuracy of the substance of the document himself, but is obliged to ensure that the document shown is in accordance with the land object, interested parties, and land use plan contained in the deed.

In the practice of deed preparation, this caution is manifested through several concrete steps. The notary first verifies the identity and authority of the parties, including the basis for the authority of the person appearing for and on behalf of the legal entity. The notary then verifies the status of the land object through certificates, physical data, and legal data, and examines its compliance with the spatial planning and land documents presented by the parties. Once these documents have been reviewed, information regarding permits and legal explanations provided to the parties can be included proportionally in the premises of the deed, without positioning the notary as a guarantor of the material accuracy of all documents issued by other agencies. The notary also has the authority to refuse to make a deed if the requested legal action is clearly intended to circumvent spatial planning provisions, ignore KKPR, or process LP2B land for non-agricultural activities without a valid legal basis, as part of the responsibility to maintain the dignity of his position.

Based on the type and level of violation, a notary's liability can take the form of civil, administrative, ethical, or criminal liability. Civil liability can arise if the notary's negligence results in losses for another party, associated with unlawful

²³Martino, Adriano, (2022), "KKPR and Licensing Reform Post-Job Creation Law", in *Journal of Spatial Law*, Vol. 3, No. 2, p. 87.

²⁴Muhtarom, (2021), "Analysis of the Cancellation of Land Transfer Deeds Based on Spatial Planning Inconsistencies", in *Jurnal Notarius*, Vol. 14, No. 3, p. 201.

acts if there is an act, error or omission, loss, and a causal relationship. Administrative liability relates to the notary's compliance with the Notary Law.²⁵ and can take the form of a written warning or dismissal, while the responsibility of the code of ethics is related to the dignity and integrity of the Notary's position which can be assessed by a professional organization.²⁶ Criminal responsibility can only be imposed if the elements of a criminal act are fulfilled based on the provisions of applicable criminal law, for example the element of intent in forgery or the use of false documents, so that it does not arise solely because the deed that was made is then disputed by the parties.

A notary's responsibility remains limited. If the parties provide false documents or false information, while the documents appear formally valid and there is no reasonable reason for the notary to doubt them, the notary's responsibility cannot be automatically imposed. The notary is responsible for the formal truth related to the deed-making process, such as the presence of the parties, the identity shown, the reading of the deed, the signing, and the inclusion of the parties' statements, while the material truth of documents issued by other agencies remains with the party issuing or using the document, as long as the notary has conducted a proper examination.

The Notary's responsibility in the context of changing the use of agricultural land to non-agricultural land is conditional on whether or not there is a change in land use. Legal implications in the field of spatial planning arise due to changes in land function, so as long as the deed drawn up by the Notary is not related to or does not cause a change in land function, the Notary has no responsibility for that aspect. In the event of a change in land function, the Notary's responsibility only arises if there is evidence of error or negligence in carrying out his/her official duties, and the Notary is not automatically responsible simply because the deed is disputed or the application for Building Use Rights is rejected by the land agency. If the Notary has properly examined the documents and found no obvious discrepancies, but the parties then use the deed for a different purpose or violate the permit after the deed is drawn up, such responsibility cannot be assigned to the Notary.

Based on the description, a Notary can be held accountable if proven negligent in making a deed related to the change of use of agricultural land to non-agricultural without paying attention to land documents, legal entity documents, spatial planning compliance, KKPR, technical land considerations, and relevant LP2B status. This responsibility can take the form of civil, administrative, code of ethics, and/or criminal responsibility according to the type of violation proven,

²⁵Republic of Indonesia, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

²⁶Ngadino, (2019), "Law Violation Effects of Codes Conducted by Notary", in Sultan Agung Notary Law Review (SANLaR), Vol. 1, Issue 1, p. 23.

but is conditional and only relevant if the deed made is clearly related to the occurrence of a problematic change in land use, not arising solely because the deed he made was later disputed by the parties or rejected by the land agency.

3.3. Position and Form of Deed of Relinquishment of Rights

The limits of the Notary's responsibility are closely related to the position of the Deed of Release of Rights as one of the instruments in the mechanism for changing the use of agricultural land to non-agricultural land for ownership by a legal entity. If the legal entity concerned is not a legal entity that can be a holder of Ownership Rights according to the provisions of laws and regulations, while the land to be used still has Ownership Rights status, the legal relationship between the Ownership Rights holder and the land must first be terminated through the release of rights so that the land returns to state land, before the legal entity submits an application for the granting of Building Use Rights to the Land Office.²⁷ This mechanism begins with an examination of the land status and the subject of the rights, followed by an examination of the suitability of spatial planning and permits, the release of Ownership Rights, the granting of Building Use Rights, and ends with the registration of rights, with each stage having a different legal function so that they cannot be separated from each other.

It should be explained that land regulations actually also recognize Building Use Rights which are granted directly on Freehold Land, which occurs through a granting agreement between the Freehold Land holder and the prospective Building Use Rights holder which is stated in a deed made by the Land Deed Making Officer.²⁸ This construction is different from the mechanism of release of Ownership Rights which is the focus of this research, because the granting of Building Use Rights on Land with Ownership Rights is placed in a condition where the holder of Ownership Rights maintains his position as the holder of the rights and only burdens the Building Use Rights to another party, while the mechanism of release of Ownership Rights is placed in a condition where the legal entity as a prospective new rights holder is not a subject of Ownership Rights, so that the Ownership Rights concerned must be terminated first and the Building Use Rights requested originate from State Land, not burdened directly on the Ownership Rights of another party. Consequently, the deeds used in the two constructions are also different: the granting of Building Use Rights on Land with Ownership Rights uses a deed of the Land Deed Making Officer, while the release of Ownership Rights which is the object of this research is set out in a Deed of Release of Rights made by a Notary, so that the Notary's authority in this context

²⁷Apianta, Riza, (2023), "Process of Release of Ownership Rights Followed by Application for Building Use Rights at the National Land Agency Office", in Notarius, Vol. 16, No. 3, pp. 1165-1173.

²⁸Republic of Indonesia, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Article 38.

is limited to proving the statement of release of rights and does not extend to the burden or granting of land rights to another party.

Judging from its form, the Deed of Release of Rights is an authentic deed whose authenticity depends on the fulfillment of the requirements of form, procedure, and authority for its creation. GHS Lumban Tobing explains that an authentic deed has three evidentiary powers, namely external power which shows that the deed is considered authentic from its external form, formal power which proves that the parties have provided information as stated in the deed, and material power which shows that the information stated in the deed binds the parties as long as it cannot be proven otherwise.²⁹ Applied to the Deed of Release of Rights, these three evidentiary powers mean that the deed is considered valid in terms of its external form as long as it is made by an authorized Notary, proving that the Ownership Rights holder has truly stated the release of his rights before the Notary, and binding the parties regarding the truth of the statement until there is proof to the contrary. The evidentiary power is only related to the truth of the statement of release of rights submitted by the appearer, not a guarantee regarding the material truth of the ownership status or physical condition of the land object itself, because the examination of this matter remains part of the authority of the land agency. In terms of classification, the Deed of Release of Rights is classified as a party deed (*partij akta*), because its contents contain information or statements of the will of the Ownership Rights holder submitted before the Notary, not a description of events seen or experienced by the Notary, in line with the distinction between the authority of the Notary and the Land Deed Making Officer in the process of granting Building Use Rights.³⁰ As a party deed, the Deed of Release of Rights at least contains a comparison explaining the identity and legal status of the parties, a description of the land object being released along with the basis of ownership, a statement of release of rights as the core of the deed, and a closing section containing witness statements and signatures, without needing to include clauses that promise or guarantee the acquisition of new rights for the legal entity concerned.

In notarial practice, the release of Ownership Rights is stated in a Deed of Release of Rights made by a Notary as authentic evidence explaining the statement of release of rights from the Ownership Rights holder. However, the Deed of Release of Rights does not have legal consequences in the form of the birth of Building Use Rights; the deed only proves that the Ownership Rights holder has released his rights, while the granting of Building Use Rights remains the authority of the state through a decision by the authorized land official.³¹ The release of ownership rights cannot be equated with the transfer of rights as

²⁹Lumban Tobing, GHS, (1999), *Regulations on the Position of Notary*, Erlangga, Jakarta, p. 48.

³⁰Sari, I Gusti Agung Dhenita, Wairocana, I Gusti Ngurah, & Resen, Made Gde Subha Karma, (2018), "The Authority of Notaries and PPAT in the Process of Granting Building Use Rights on Freehold Land", in *Acta Comitatus: Journal of Notary Law*, Vol. 3, No. 1, pp. 56-58.

occurs in the sale, purchase, gift or exchange of land, because after the release of rights is carried out, the land first returns to state land before new rights are given to the legal entity.

The release of ownership rights is a crucial transition point in the overall mechanism of land use change. At this stage, the legal relationship between the owner of the ownership rights and the land has ended, but a new legal relationship between the legal entity and the land has not yet been created, so there is a transition period when the land has the status of state land before the issuance of the decision to grant Building Use Rights. This condition indicates that the Deed of Release of Rights has an important function as the legal basis for the termination of Ownership Rights, but cannot be interpreted as the basis for the birth of Building Use Rights. Understanding this legal position is important to avoid the mistaken assumption that the creation of a deed by a Notary has automatically changed the status of land rights.

The position of the Deed of Release of Rights in the series is only as one of the supporting documents that proves the legal termination of the legal relationship between the Ownership Rights holder and the land, not as the basis for the birth of Building Use Rights, because new rights are only born since the issuance of the decision to grant rights by the authorized official. Even if the Deed of Release of Rights has been made legally, the application for granting Building Use Rights still has the potential to be rejected if the land use plan does not comply with the spatial planning, KKPR, PTP, or LP2B status applicable to the land object. Thus, the success of obtaining Building Use Rights depends heavily on the administrative assessment of the Land Office, not solely on the existence of the Deed of Release of Rights.

This mechanism reflects the implementation of the principle of legality in the administration of government, because every grant of land rights must be based on the authority granted by statutory regulations and carried out through predetermined procedures. Therefore, even though the parties have agreed to release rights and all documents have been prepared by a Notary, the granting of Building Use Rights remains the exclusive authority of the state which cannot be replaced by a deed or agreement between the parties. The stages of granting Building Use Rights are the fundamental difference between the release of Ownership Rights and the transfer of land rights in general, because in the sale and purchase of land the rights are transferred directly from the seller to the buyer, while in the release of Ownership Rights for the benefit of a legal entity there is no transfer of rights, but rather the termination of Ownership Rights followed by the birth of new rights based on a state decision.

³¹Ratnawati, Dwi Heny, Asmaranti, Anita Dyah, & Djauhari, (2018), "Implementation of Deed of Release of Rights as a Basis for Submitting Applications for Transfer and Change of Building Use Rights Whose Term Has Expired in Brebes Regency", in *Jurnal Akta*, Vol. 5, No. 1, pp. 247-260.

In relation to the responsibilities of a Notary, the responsibilities of a Notary are in principle limited to obligations and actions that are within the scope of his/her authority in making a Deed of Release of Rights, namely ensuring that the deed is made in accordance with legal provisions and all documents that form the basis for preparing the deed have been examined based on the principle of caution, while the process of examining the application for rights, issuing a decision on granting Building Use Rights, up to registration of rights is the authority of land administration which is in the hands of government agencies.³² Therefore, the failure of a Building Use Rights application due to failure to fulfill administrative requirements or technical land considerations does not automatically give rise to liability for the Notary, as long as the Notary has carried out his/her obligations in accordance with the provisions of laws and regulations and the code of ethics of the position. A different situation applies if in preparing the Deed of Release of Rights the Notary is proven to have neglected his/her legal obligations, such as not checking the identity of the parties, not examining the status of the land, or intentionally entering data that does not correspond to the actual situation, so that there is a causal relationship between the Notary's negligence and the losses incurred.

The final stage of this mechanism is the registration of rights and the issuance of a Building Use Rights certificate by the Land Office, which provides legal certainty regarding the status of rights, the subject of the rights holder, and the land object that forms the basis of the legal relationship between the legal entity and the state. The Building Use Rights Certificate has strong evidentiary power, but is not absolute, so it can still be proven otherwise if there is a court decision that has permanent legal force or legal defects are found in the issuance process. Linked to the implementation of the Notary's office, this registration stage also indicates the final limit of the Notary's responsibility, because the quality of the examination carried out by the Notary at the stage of preparing the Deed of Release of Rights still influences the smooth process of granting and registering rights, even though the registration authority is entirely with the Land Office.

In this context, a Notary holds a strategic position because he is the public official who prepares the Deed of Release of Rights as the basis for the termination of Ownership Rights, even though the Notary's authority does not include the granting of Building Use Rights or the determination of changes in land use. A Notary is only authorized to make an authentic deed based on the wishes of the parties after ensuring that all legal requirements that form the basis for the deed have been fulfilled. Therefore, the Notary's responsibilities cannot be extended to include land administration authority which is the responsibility of the Land Office, but the Notary remains obliged to apply the principle of prudence so that

³²Adjie, Habib, (2017), Indonesian Notary Law: Thematic Interpretation of the Notary Law, Refika Aditama, Bandung, p. 77.

the deed drawn up does not become a means to override applicable spatial planning provisions or land provisions. The Deed of Release of Rights must therefore be understood as one link in the entire national land administration system, not as an instrument that directly changes the status of land rights or changes the use of agricultural land to non-agricultural.

Based on the description, the Deed of Release of Rights is positioned as an authentic deed that proves the termination of Ownership Rights, not a deed of sale and purchase, and does not provide a guarantee of obtaining Building Use Rights, because the granting of these rights remains the authority of the Land Office in accordance with the provisions of applicable laws and regulations. Viewed from its form, the Deed of Release of Rights is classified as a party deed (*partij akta*) which contains a comparison, description of the land object, statement of release of rights, and closing of the deed, and has the power of external, formal, and material evidence as an authentic deed in general, without containing a guarantee of obtaining new rights for the legal entity concerned.

4. Conclusion

Based on the results of the research and discussion, it can be concluded that the change in the use of agricultural land to non-agricultural land for legal entity ownership must comply with land law, spatial planning, permits, and LP2B protection, and is a different process from the change or granting of land rights. If the land has the status of Freehold Rights, the rights must be released first before the legal entity submits an application for Building Use Rights to the land agency. A notary is authorized to make a Deed of Release of Rights and a deed containing a statement or power of attorney for the application for change of land use, but is not authorized to determine spatial suitability, issue KKPR or PTP, determine LP2B status, or grant Building Use Rights. The responsibility of a notary is conditional on the existence or absence of a change in land use and only arises if there is proven error or negligence in carrying out his/her official duties, so that it can give rise to civil, administrative, code of ethics, or criminal liability; Meanwhile, the Deed of Release of Rights is an authentic deed in the form of a party deed (*partij akta*) which proves the termination of the Ownership Rights, not a deed of sale and purchase, and does not guarantee the acquisition of Building Use Rights because the granting of these rights remains the authority of the land agency. Based on these conclusions, it is recommended that Notaries apply the principle of caution by carefully examining the documents of the parties and the land object, and explaining to the parties that the Deed of Release of Rights does not guarantee the acquisition of Building Use Rights, so that the creation of the deed should be postponed or rejected if the documents are incomplete or there is a clear legal conflict. Legal entities need to check the status of rights, spatial planning, KKPR, land technical considerations, and the status of LP2B before releasing rights, and understand that the Deed of Release

of Rights does not automatically create Building Use Rights. Local governments are advised to improve coordination and provision of information regarding spatial planning, KKPR, and LP2B, while the Notary Supervisory Board and the professional organization of the Indonesian Notary Association need to provide regular guidance regarding developments in land and spatial planning law so that Notaries understand the limits of their authority and responsibilities appropriately.

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