

## The Role of Notaries in Drafting Customary Land Utilization Agreements for National Strategic Projects in the Merauke Customary Territory

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**Abstract.** *The utilization of customary land for National Strategic Projects (PSN) in Merauke Regency, South Papua, creates a specific legal problem because communal customary tenure must interact with national land administration, corporate investment, and accelerated development policy. This article updates the earlier journal manuscript by using the final thesis findings as its principal basis. The study applies a juridical-empirical or sociological legal method, combining statutory, conceptual, case, and sociological approaches with interview data from two notarial practitioners in Merauke. The analysis shows that legal uncertainty is concentrated in three areas: uncertainty over the customary representative entitled to consent, uncertainty over the status and boundaries of the customary land object, and the absence of complete institutional and spatial data that can be relied upon before a deed is signed. The article also clarifies the division of authority between a Notary and a Land Deed Official (PPAT). A Notary may draw up a contractual and time-limited Customary Land Utilization Agreement Deed under the Notary Office Law, while a PPAT has special authority to make deeds for certain legal acts concerning registered land rights for land-registration purposes. The utilization deed must therefore be distinguished from a deed of release or transfer of land rights. The regulatory analysis includes the 1945 Constitution, the Basic Agrarian Law, the Civil Code, the Notary Office Law, Papua Special Autonomy legislation, Law No. 6 of 2023, Government Regulations Nos. 24 of 1997 and 18 of 2021, Presidential Regulations on PSN, and Minister of ATR/BPN Regulation No. 14 of 2024. The main solutions are stronger recognition of customary institutions, participatory mapping, clearer verification standards, strict separation of Notary and PPAT functions, and a deed structure that preserves customary rights while providing a certain term, object, compensation scheme, supervision, dispute settlement, and land restoration obligations.*

**Keywords:** Agreement; Authentic; Customary; Strategic; Utilization.

## 1. Introduction

Customary land in Merauke is legally and socially different from ordinary individual landholding. For the indigenous communities of South Papua, especially clan-based communities, land is linked to collective identity, genealogy, history, livelihood, and customary authority. The relationship is communal and intergenerational. Indonesian law recognizes the existence of indigenous legal communities and their traditional rights, while Article 3 of the Basic Agrarian Law recognizes the exercise of customary rights insofar as they still exist and are consistent with national interests and higher law.<sup>1</sup> This legal recognition means that the use of customary land cannot be treated solely as a private transaction between an individual landowner and an investor.

The issue has become more urgent because Merauke is a major location for National Strategic Projects. The thesis identifies three broad project clusters: large-scale sugarcane and bioethanol development involving approximately 500,000 hectares; agricultural land optimization covering approximately 40,000 hectares with plans for expansion to 100,000 hectares; and a new-rice-field and food-security development program reaching approximately one million hectares together with supporting infrastructure.<sup>2</sup> The scale of these programs creates direct interaction with territories that are understood socially as customary land. Development policy requires speed and certainty, while customary decision-making can require clan consultation, proof of genealogy, agreement among neighboring customary groups, and recognition of persons entitled to act for the community. The main legal problem is not simply whether the land may be used for development. The problem is whether the correct customary subject, the correct land object, and the authority to give collective consent can be identified before a legal instrument is made. The thesis records recurring risks of incorrect location, overlapping claims, and later challenges to persons who had previously signed land documents. Examples discussed in the research include the construction of a sports facility on land later said to have been released by a person who was not the actual customary rights holder, problems surrounding the Type B Hospital site, and the Marga Noya dispute involving competing claims to the same land.<sup>3</sup> These cases illustrate how documentary completeness can coexist with material uncertainty.

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<sup>1</sup>The 1945 Constitution of the Republic of Indonesia, Article 18B paragraph (2); Law No. 5 of 1960 concerning the Basic Agrarian Principles, Article 3; Boedi Harsono, *Indonesian Agrarian Law* (Jakarta: Djambatan, 2008).

<sup>2</sup>Presidential Regulation No. 3 of 2016 as amended by Presidential Regulation No. 109 of 2020; Yayasan Pusaka Bentala Rakyat, "National Strategy Project (PSN) for Food & Energy Development in Merauke Regency, South Papua Province," as cited in the thesis.

<sup>3</sup>Fitri Novita Rahmadany, Master of Notarial Law Thesis, Sultan Agung Islamic University, 2026, discussion of the GOR, Type B Hospital, and Marga Noya disputes based on interview data.

This condition is particularly relevant to notarial practice. A Notary can verify the identity of the persons who appear, examine documents submitted by the parties, explain legal consequences, and record the parties' declarations in an authentic deed. A Notary cannot, however, independently determine the historical truth of clan genealogy, declare which customary institution is the legal representative of a community, or establish cadastral boundaries where no authoritative mapping exists. The thesis describes this gap as a form of pseudo-formal certainty: the deed can be formally valid while the underlying customary subject or object remains open to dispute. The risk is intensified when an administrative letter from a village or district official is treated as if it were a definitive determination of customary ownership, even though administrative officials do not replace customary or land authorities in establishing the material status of customary land.<sup>4</sup> A further source of confusion concerns the legal instrument and the official who is competent to make it. Previous discussions of customary land transactions often mix a Customary Land Utilization Agreement Deed, a deed of release of rights, a statement deed, and deeds made by a PPAT. These instruments have different purposes and legal consequences. The thesis therefore fixes the object of this research as a contractual and time-limited Customary Land Utilization Agreement Deed. The deed is intended to regulate use, not to automatically extinguish, release, or transfer customary rights. This distinction is essential because the authority of a Notary to record a civil agreement is not the same as the special authority of a PPAT to make deeds for particular land-right transactions used in land registration.

Against that background, this article addresses three connected questions. First, how does the Notary perform the public-office role in drawing up a customary land utilization agreement for PSN in Merauke? Second, how should the authority of the Notary be separated from the authority of the PPAT and the land administration authority of ATR/BPN? Third, what legal construction of the utilization deed can reduce the normative, institutional, and technical weaknesses identified in practice? The analysis uses Philipus M. Hadjon's theory of authority, Hans Kelsen's theory of legal responsibility, the concept of customary rights, and the validity requirements of Article 1320 of the Civil Code, particularly consent, capacity, a certain object, and a legal cause.<sup>5</sup>

## **2. Research Methods**

This study uses juridical-empirical or sociological legal research. It does not stop at examining written norms. It also analyzes how those norms operate in notarial

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<sup>4</sup>Interview data of Dr. H. Ahmad Ali Muddin, SH, M.Kn., as analyzed in Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026.

<sup>5</sup>Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2015), pp. 130-135; Hans Kelsen, *General Theory of Law and State* (Harvard University Press, 1949), pp. 143-147; Indonesian Civil Code, Article 1320.

practice in Merauke. The study combines statutory, conceptual, case, and sociological approaches. The statutory approach is used to identify the legal basis of notarial authority, the position of the PPAT, the recognition of customary rights, land administration, and PSN regulation. The conceptual approach examines authority, legal responsibility, customary rights, and the validity of agreements. The case approach is used to read concrete disputes discussed in the thesis, while the sociological approach compares the normative framework with information obtained from practitioners.<sup>6</sup> Primary data were obtained from interviews with Dr. H. Ahmad Ali Muddin, SH, M.Kn. and Dr. Rizal Alamsyah Hadi Saputra, SE, SH, M.Kn., both practitioners in Merauke. The thesis records that research at the office of Dr. H. Ahmad Ali Muddin was conducted on 17 June 2026 in Merauke. The research permission letter from Dr. Rizal dated 22 July 2026 does not state the exact interview date, so the article does not invent that information.<sup>7</sup> Secondary data consists of legislation, court decisions, official legal documents, books, journal articles, and other scholarship. Interview data are treated as empirical data, not as primary legal materials. The analysis is qualitative and descriptive. Interview findings are grouped by issues of Notary authority, PPAT authority, customary representation, certainty of the land object, consent, and legal risk, then compared with the applicable legal norms.

### **3. Results and Discussion**

#### **3.1. The Legal Problems of Customary Land Utilization in Merauke**

The first problem concerns the legal subject. Customary land in Merauke is generally connected to clans or customary communities, not to individual ownership in the ordinary civil-law sense. The person who appears before a Notary may hold an identity card and may be known locally as a clan leader, but those facts do not automatically prove authority to bind all customary rights holders. The thesis shows that Merauke still faces difficulties in identifying an institution or person whose representative authority is formally recognized and can be relied upon consistently. A signature from a customary figure or organization should therefore be supported by evidence of collective authorization, such as a customary deliberation decision, written mandate, list of consenting parties, and other documents recognized by the relevant community.<sup>8</sup> The second problem concerns the object. Article 1320 of the Civil Code requires the object of an agreement to be certain or at least objectively

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<sup>6</sup> Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, revised ed. (Jakarta: RajaGrafindo Persada, 2020)

<sup>7</sup> Fitri Novita Rahmadany, *Master of Notarial Law Thesis*, 2026, Research Method section; Research Certificate No. 897/No-PPAT/AAM/VII/2026 and Research Permission Letter No. 34/Not-RAHS/VII/2026.

<sup>8</sup> Law No. 5 of 1960, Article 3; interview findings in Fitri Novita Rahmadany, *Master of Notarial Law Thesis*, 2026, concerning customary representation and authority.

determinable. In Merauke, customary boundaries can depend on rivers, vegetation, old paths, hunting areas, sacred places, and oral memory. Some communities also have a history of shifting settlement. These conditions can separate the present location of a community from the historical location of the customary territory it claims. When land clearing removes natural markers, later verification becomes more difficult. The Notary cannot resolve this problem by drafting skills alone. Without maps, coordinates, agreed boundary statements, and verification by competent institutions, an apparently clear deed may still contain an uncertain land object.<sup>9</sup>

The third problem concerns the legal status of the land itself. Before a decision is made, it is necessary to determine whether the land is still communal customary land, whether part of it has become individualized through earlier transactions or long-term personal control, or whether it overlaps with registered rights, state land administration, permits, or other legal interests. A mistake in this classification can create two opposite errors. A deed may treat individually controlled land as communal land, or it may treat land as an individual asset even though the community still regards it as subject to clan authority. The risk is especially serious in project areas that have been cultivated for a long time, because the boundary between communal and individual control may be more difficult to identify. The empirical findings also show that weak documentation can generate repeated claims. When a transaction is based on unilateral statements, reinforced only by an administrative certificate that does not materially verify customary ownership, a later claimant may challenge both the person who signed and the land that was described in the deed. The legal consequences are not automatically the same in every case. A civil dispute over entitlement must be distinguished from conduct that satisfies the elements of document falsification or false information in an authentic deed. The thesis therefore emphasizes careful classification of the legal issue instead of treating every later customary claim as either fraud or a purely administrative problem.<sup>10</sup>

### **3.2. Regulatory Framework Governing Customary Land and PSN**

The regulatory framework analyzed in the thesis begins with Article 18B paragraph (2) of the 1945 Constitution and Article 3 of Law No. 5 of 1960 concerning the Basic Agrarian Principles. These provisions establish the constitutional and agrarian basis for recognizing indigenous law communities and customary rights. Constitutional Court Decision No. 35/PUU-X/2012 strengthens

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<sup>9</sup>Indonesian Civil Code, Article 1320; Sry Wahyuni et al., "Analysis of Notary Authority in Drafting Deeds of Sale and Purchase Agreements for Land Ownership Rights in Makassar City," *Journal of Public Administration Paradigm* 3(2) (2021): 131-137.

<sup>10</sup> Law No. 1 of 2023 concerning the Criminal Code, especially Articles 391-392 and 394 as discussed in the thesis, with adjustments under Law No. 1 of 2026; application depends on the concrete elements of the conduct.

the position of indigenous communities as legal subjects in the context of customary forests and confirms that customary rights cannot simply be absorbed into state control without regard to the existence of the relevant community.<sup>11</sup> For Papua, this framework must be read together with Law No. 21 of 2001 on Special Autonomy for Papua as most recently amended by Law No. 2 of 2021, which gives additional importance to respect for indigenous communities and traditional rights.

The private-law framework comes from the Indonesian Civil Code and the Notary Office Law. Article 1320 of the Civil Code governs the validity of agreements through consent, capacity, a certain subject matter, and a legal cause. Article 1868 provides the basic concept of an authentic deed. Law No. 30 of 2004 concerning the Office of Notary, as amended by Law No. 2 of 2014, provides the principal basis for the Notary to make authentic deeds and sets the duties of impartiality, accuracy, explanation, reading, signing, and formal deed structure. For this research, Article 15 paragraph (1) is the principal basis for a Notary to record a contractual Customary Land Utilization Agreement, provided the legal act has not been assigned exclusively to another official.<sup>12</sup>

The land-registration framework must be separated from that contractual authority. Government Regulation no. 24 of 1997 concerning Land Registration, particularly Article 37 paragraph (1), deals with PPAT deeds as evidence for registering particular transfers of land rights. It is not a legal basis that converts the Notary into a PPAT or makes every agreement concerning land a PPAT deed.<sup>13</sup> Government Regulation no. 18 of 2021 is also relevant because it regulates land management rights, land rights, apartment units, and land registration within the contemporary national land system. These regulations are important when a utilization arrangement later develops into a legal act that requires the establishment, transfer, registration, or encumbrance of a land right.

The special administrative framework for customary land is Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 14 of 2024 concerning the Administration and Registration of Customary Land Rights of Indigenous Law Communities. The thesis treats this regulation as a central legal development. Its importance to the Notary lies not in giving the Notary authority to determine the existence or boundaries of customary rights, but in providing an administrative framework that must be considered when assessing the subject, object, and documents submitted by the parties. A notarial

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<sup>11</sup> The 1945 Constitution, Article 18B paragraph (2); Law No. 5 of 1960, Article 3; Constitutional Court Decision No. 35/PUU-X/2012; Law No. 21 of 2001 as amended by Law No. 2 of 2021.

<sup>12</sup> Law No. 30 of 2004 concerning the Office of Notary as amended by Law No. 2 of 2014, especially Articles 15 and 16; Indonesian Civil Code, Article 1868.

<sup>13</sup> Government Regulation no. 24 of 1997 concerning Land Registration, Article 37 paragraph (1).

deed cannot replace recognition of the customary community, land measurement, mapping, or registration carried out by the competent land authority.<sup>14</sup>

The development framework includes Presidential Regulation No. 3 of 2016 on the Acceleration of National Strategic Projects, as amended by Presidential Regulation No. 109 of 2020, and Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Law No. 2 of 2022 on Job Creation into Law. The thesis expressly uses Law No. 6 of 2023 rather than the earlier Law No. 11 of 2020. The PSN framework must also be distinguished from Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Where a project uses the statutory land-acquisition regime, public consultation, valuation, compensation, and objection procedures apply according to that regime. Where a private or appointed business entity relies on a civil utilization agreement, the legal protection must be built into the contractual and customary-consent process instead of assuming that PSN status eliminates ordinary civil-law requirements.<sup>15</sup> The thesis also uses regional comparison. Boven Digoel Regency has Regional Regulation No. 2 of 2023 concerning Recognition and Protection of the Rights of Indigenous Law Communities and Regent Regulation No. 14 of 2024 concerning guidelines for their recognition and determination. Merauke does not yet have an equivalent framework that can be used in the same direct manner by a Notary when verifying customary representation. The Boven Digoel instruments therefore operate as a comparative model, not as rules automatically applicable in Merauke. They show that local recognition can provide a clearer institutional reference while still requiring adjustments to the specific customary structure of Merauke.<sup>16</sup>

### **3.3. Distinguishing the Authority of the Notary and the PPAT**

The distinction between a Notary and a PPAT is fundamental to this research. A Notary is a public official whose general authority is to make authentic deeds concerning legal acts, agreements, and determinations that the parties wish or are required to state in authentic form, including as the act is not reserved to another official. In a Customary Land Utilization Agreement, the legal relationship is contractual. The parties agree that a specified customary land area

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<sup>14</sup>Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 14 of 2024 concerning Administration and Registration of Customary Land Rights of Indigenous Law Communities; Government Regulation no. 18 of 2021.

<sup>15</sup>Presidential Regulation no. 3 of 2016 as amended by Presidential Regulation No. 109 of 2020; Law No. 6 of 2023; Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

<sup>16</sup> Regional Regulation of Boven Digoel Regency No. 2 of 2023 concerning Recognition and Protection of the Rights of Indigenous Legal Communities; Boven Digoel Regent Regulation No. 14 of 2024.

may be used for a specified purpose and period subject to conditions. That agreement does not, by itself, transfer a registered land right. The Notary's function is therefore to formulate and authenticate the parties' civil-law relationship, verify formal identity and authority documents, explain the legal consequences, and ensure that the deed complies with the Notary Office Law. A PPAT has a different and special function in the land-registration system. Government Regulation no. 24 of 1997 positions PPAT deeds as evidence for the registration of certain legal acts involving land rights. Consequently, when the parties intend a transfer or another land-right act that the law assigns to a PPAT, the transaction must follow the PPAT regime. The thesis expressly corrects the proposition that Article 37 paragraph (1) of Government Regulation No. 24 of 1997 is a basis for Notary authority. It is instead a provision concerning the use of PPAT deeds for land registration.<sup>17</sup> This separation prevents the same legal instrument from being incorrectly described as a notarial utilization agreement and, at the same time, as a deed transferring a land right.

The distinction also affects legal consequences. A contractual utilization agreement creates obligations between the parties, such as the right to use the land for an agreed term, payment of compensation, community benefits, environmental obligations, reporting, and restoration. It should not be drafted as if it automatically creates a Right of Ownership, Right of Cultivation, Right to Build, Right of Use, Management Right, or mortgage security. If the project later requires the establishment or transfer of a specific land right, the parties must enter a separate legal and administrative process involving the official and land authority designated by law. In that later stage, a PPAT deed may be required for the particular registrable act, and ATR/BPN remains responsible for land administration and registration. This division of authority protects both legal certainty and customary rights. It protects the Notary from being treated as an official who certifies cadastral facts or transfers land rights outside the office's competence. It protects the PPAT function from being displaced by a general contractual deed. It also protects the customary community because a time-limited permission to use land cannot be silently converted into a permanent release or transfer merely because the agreement was made in authentic form. Authenticity strengthens evidence of what the parties declared. It does not change the legal nature of the act recorded in the deed.<sup>18</sup>

### **3.4. Use and Legal Construction of the Customary Land Utilization Agreement Deed**

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<sup>17</sup> Government Regulation No. 24 of 1997, Article 37 paragraph (1); Kholidah et al., *Notaries and PPAT in Indonesia: Application of Theory and Practice in Making Deeds* (Yogyakarta: Semesta Aksara, 2023).

<sup>18</sup> Law No. 30 of 2004 as amended by Law No. 2 of 2014; Government Regulation no. 24 of 1997, Article 37 paragraph (1).

The thesis proposes the Customary Land Utilization Agreement Deed as the appropriate object of analysis when the parties' real intention is temporary and limited use. Its central clause must state that the object is utilization, not sale, permanent release, or transfer of customary rights. The customary right remains with the indigenous law community for as long as it continues to satisfy the requirements of applicable law. The receiving party obtains only the contractual entitlement described in the deed. This formulation is important because the payment of compensation or customary contribution must not be interpreted automatically as a purchase price or proof that the community has permanently severed its relationship with the land.<sup>19</sup> Certainty of the subject should be constructed before certainty of the contractual obligations. The deed should identify the indigenous law community, the customary institutions or persons acting for it, the source of their authority, and the decision of the customary deliberation that specifically approves the transaction. A title such as clan head or customer leader should not stand alone. It should be linked to a written mandate, minutes of deliberation, attendance or consent records, and, where available, regional recognition or registration documents. This approach does not make the Notary the judge of customary legitimacy. It gives the Notary a documented basis for accepting representation and makes the chain of authority visible if a dispute later arises. Certainty of the object requires more than a broad description of customary territory. The utilization area should be stated by location, area, boundaries, coordinates where available, a map, boundary markers, and a joint boundary record. Areas that must remain outside the project, such as settlements, burial sites, places of worship, water sources, sacred areas, traditional access routes, protected forest areas, or community gardens, should be expressly excluded where relevant. Before physical activity begins, the boundaries should be confirmed in the field with customer representatives and neighboring groups. Until a definitive map is available, the thesis proposes an agreed sketch map signed by affected and neighboring clans as an interim evidentiary safeguard.<sup>20</sup>

The deed should also regulate the purpose and terms of utilization, compensation and benefit-sharing, employment or community-development commitments where agreed, environmental and social protection, access to culturally important locations, reporting, supervision, complaints, default, force majeure, dispute resolution, and the consequences of termination. There should be no automatic extension. Any material extension of the term, area, or type of activity should require a new customary deliberation and a written amendment. Most importantly, the deed should prohibit unilateral transfer, re-leasing,

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<sup>19</sup>Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, proposed construction of the Customary Land Utilization Agreement Deed, Chapter III.

<sup>20</sup> Indonesian Civil Code, Article 1320; Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, discussion of participatory mapping and sketch-map attachments.

encumbrance, or use of the customary land as security where those acts would reduce or extinguish the community's customary rights.<sup>21</sup> The proposed construction also uses conditions precedent. Physical use should not begin until the authority of the customary representatives has been documented, the status of the customary community and territory has been supported by available recognition documents, the land status has been checked with the Land Office, the map and excluded areas have been agreed, and the project holder has obtained the spatial, business, environmental, and sectoral approvals required by law. If an overlap, objection, or inconsistency in land data appears, activities on the disputed part should be suspended until the issue is addressed. This sequencing places land and customary verification before irreversible land clearing.

Statement deeds and safeguard clauses remain useful but only as supplementary protection. The thesis records that Notaries in practice ask appearers to acknowledge responsibility for the truth of genealogy, entitlement, boundaries, and other facts supplied by them. Such clauses can clarify evidentiary responsibilities, but they cannot transform uncertain facts into verified facts and cannot eliminate statutory duties of the Notary. A clause that protects the Notary while leaving the community's underlying rights unresolved merely transfers risk. The more durable approach is to combine careful clauses with prior recognition, mapping, collective consent, and institutional verification.<sup>22</sup> When the agreement ends, the legal relationship must return to its starting principle. The project holder should cease use, return physical control according to the agreement, remove or transfer facilities according to an agreed closure plan, clean waste, restore damaged soil or water, and complete any outstanding compensation or rehabilitation duties. The deed should expressly state that the project holder has no right of retention over customary land. If the parties later decide to create or transfer a land right that falls within the PPAT and land-registration regime, that decision must be made through a separate instrument and procedure. The utilization deed must not contain an automatic consent to that later transfer.

### **3.5. Obstacles and Legal Solutions**

The first obstacle is normative, but after Minister of ATR/BPN Regulation No. 14 of 2024 it is no longer accurate to describe the problem simply as an absence of rules. The more precise problem is synchronization. Recognition of the

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<sup>21</sup> Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, Customary Land Utilization Agreement Deed model, especially clauses on terms, compensation, prohibition of transfer and encumbrance, environmental protection, supervision, dispute settlement, and restoration.

<sup>22</sup> Interview findings of Dr. H. Ahmad Ali Muddin and Dr. Rizal Alamsyah Hadi Saputra, as analyzed in Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026; Law No. 30 of 2004 as amended by Law No. 2 of 2014.

indigenous law community, certainty of its representatives, identification of customary territory, land administration, PSN requirements, and the chosen civil-law instrument do not always operate as one coordinated process. A Notary may receive a request to draw up a deed before the administrative prerequisites have been completed. The solution is to implement Regulation No. 14 of 2024 together with regional recognition mechanisms, land-status checks, and a clear separation between temporary utilization and permanent release or transfer.<sup>23</sup> The second obstacle is structural and institutional. The research shows difficulty in identifying the institutions or persons legally entitled to represent customary communities in Merauke. The Boven Digoel model demonstrates that local government can create a formal recognition procedure. Merauke therefore needs a regional framework that identifies customary communities and their institutions without freezing the diversity of living customary law into an artificial single model. Until such a framework is complete, Notaries should demand more concrete evidence of authority, including customary deliberation decisions, mandates, lists of consenting persons, and documents showing the agreed customary basis of representation.<sup>24</sup> The third obstacle is technical and spatial. Definitive customary maps are not yet available for every relevant area, while natural boundary markers can disappear after land clearing. This directly affects the requirement of a certain object under Article 1320 of the Civil Code. The principal solution is participatory mapping before the PSN enters the land-clearing stage. ATR/BPN, local government, customary authorities, neighboring clans, and affected communities should participate. Technical accuracy alone is insufficient if the map lacks customary legitimacy, while customary consensus alone is insufficient if the object remains impossible to identify within formal land administration.<sup>25</sup> The fourth obstacle is practical pressure. National Strategic Projects operate under schedules, investment expectations, and political attention. The thesis identifies different pressures in different project clusters. Private-investment projects can create commercial pressure for rapid land control. Agricultural optimization requires precise verification of boundaries between communal and individualized land. Large state-led food-security projects can generate political pressure to accelerate civil documentation even though the validity requirements of Article 1320 remain unchanged. These pressures can encourage minimal verification. The solution is a standardized minimum verification procedure that cannot be reduced merely because a

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<sup>23</sup> Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 14 of 2024; Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, Chapter III discussion of normative synchronization.

<sup>24</sup> Regional Regulation of Boven Digoel Regency No. 2 of 2023; Boven Digoel Regent Regulation No. 14 of 2024; Soembari and Yandendai, *Jurnal Hukum Cassowary* 2(2) (2025): 94-110.

<sup>25</sup> Soembari, R., & Yandendai, L. (2025), *Cassowary Law Journal*, 2(2), 94-110; Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, discussion of participatory mapping before land clearing.

project is commercially important or nationally strategic. The proposed standard should require the Notary to identify the requested legal act before drafting; confirm that a utilization agreement is not being used to disguise a transfer; examine identity and authority documents; require evidence of customary deliberation and mandate; record the basis of genealogy and representation without claiming to certify historical truth; attach an agreed map or sketch and boundary documents; check available land information with the Land Office; record the terms, purpose, compensation, restrictions, environmental obligations, and return of land; and refuse or postpone the deed when essential elements cannot responsibly be formulated. Professional standardization by the regional notarial organization and supervision that examines more than formal completeness would reduce inconsistent practice among Notaries.<sup>26</sup>

Finally, the solution requires a clear distribution of institutional responsibility. The Notary authenticates and structures the contractual relationship. The PPAT performs the special deed-making function for registrable land-right acts assigned by land law. ATR/BPN conducts land administration, measurement, mapping, registration, and other functions within its legal competence. Local government provides the regional recognition framework and coordinates public policy. Customary institutions determine collective legitimacy through their own valid procedures. PSN authorities must not shift all unresolved land questions to the notarial stage. Legal certainty is strongest when each institution completes its own function before the deed is asked to carry the entire burden of certainty.<sup>27</sup>

#### **4. Conclusion**

The updated thesis findings show that the Notary has an important but limited role in customary land utilization for National Strategic Projects in Merauke. The Notary provides formal legal certainty by identifying appearers, examining documents, explaining legal consequences, formulating the agreement, and producing an authentic deed in accordance with the Notary Office Law. The Notary does not have the authority to determine the material truth of clan genealogy, establish customary institutions, or create cadastral boundaries. The central weakness therefore lies in the gap between formal authenticity and the institutional facts that should already be certain before the deed is signed. The distinction between the Notary and the PPAT must remain explicit. A contractual, time-limited Customary Land Utilization Agreement Deed belongs to the Notary's

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<sup>26</sup>Wijaya, Tahta Fortuna Maharani, & Ery Agus Priyono, "Application of the Principle of Professionalism by Notaries in Making Authentic Deeds," *Lex Renaissance* 9(2) (2024): 229-255; Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026.

<sup>27</sup> Fitri Novita Rahmadany, Master of Notarial Law Thesis, 2026, conclusions and recommendations on institutional recognition, participatory mapping, notarial verification standards, and division of authority among Notary, PPAT, local government, and ATR/BPN.

civil-law function when it does not itself transfer a registered land right. Article 37 paragraph (1) of Government Regulation No. 24 of 1997 concerns PPAT deeds for the registration of certain transfers of land rights and is not the basis of Notary authority. If a project later requires a registrable transfer, establishment, or encumbrance of a land right, the relevant PPAT and ATR/BPN procedures must be investigated separately. This separation prevents temporary utilization from being converted into permanent loss of customary rights through ambiguous drafting. A legally sound utilization deed should state that the object is utilization rather than release or transfer; identify the legal customary representatives and the deliberation authorizing them; define the land by boundaries, maps, and coordinates; regulate the purpose and duration; set compensation and benefit-sharing; prohibit unauthorized transfer and encumbrance; protect social, cultural, and environmental interests; provide supervision and dispute mechanisms; and require return and restoration of the land after expiration. The principal obstacles are normative synchronization, weak recognition of customary institutions, uncertain spatial and genealogical data, and project pressure. Their solutions must be implemented together through stronger regional recognition, participatory mapping, consistent implementation of Minister of ATR/BPN Regulation No. 14 of 2024, standardized notarial verification, and a strict division of responsibilities among Notaries, PPATs, local government, ATR/BPN, customary institutions, and PSN authorities.

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