

The Role of Notarial Deeds in Anticipating Legal Risks in Sale and Purchase Transactions with the Right to Repurchase

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Abstract. *This study aims to analyze the role of notarial deeds in anticipating legal risks in sale and purchase transactions containing the right to repurchase. The study uses normative legal methods with a statutory and conceptual approach. Primary, secondary, and tertiary legal materials are collected through literature studies, then analyzed qualitatively using legal reasoning. The results of the study indicate that the regulation of the right to repurchase in the Civil Code still leaves problems when the object of the transaction is land, especially regarding the relationship with the land legal regime, the formality of the transfer of rights, and the absence of a mechanism for recording clauses in land administration. Notarial deeds can function as a preventive protection instrument through verification of the parties and the object, legal counseling, assessment of transaction motives, and the formulation of clear and proportional clauses. However, notarial deeds cannot replace the authority of PPAT in registering the transfer of land rights or fill regulatory gaps. Notary liability can arise in civil, administrative, and ethical matters if their errors or negligence are proven to cause losses.*

Keywords: Legal; Notarial; Repurchase; Sale.

1. Introduction

A sale and purchase agreement is one of the civil legal relationships most frequently used by the public to transfer control and ownership of an object. In land practice, these transactions become more complex when the parties add a right of repurchase clause, namely a right that allows the seller to reclaim the object that has been sold under certain conditions. Research on the Judicial Review Decision Number 539 PK/Pdt/2020 shows that the use of this clause in a land sale and purchase agreement can cause problems because the form of sale and purchase with the right of repurchase has the potential to be used to disguise the debt-receivable relationship with land collateral.¹ Thus, clauses that textually

¹Elvira. (2021). Smuggling of land ownership law in sales and purchase agreements containing a right to repurchase clause (Case study of Judicial Review Decision Number 539 PK/Pdt/2020). Indonesian Notary, 3(3), Article 4.

appear to be an exercise of freedom of contract can result in legal risks if the form of transaction does not reflect the actual legal relationship.

In the civil law system, the right to repurchase is recognized through Articles 1519 to 1532 of the Civil Code.²Article 1519 provides a basis for the seller to take back the goods sold by returning the original purchase price along with the specified compensation, while Article 1520 limits the time period to a maximum of five years. These provisions provide a normative framework for the parties, but their application to land objects cannot be separated from the agrarian law regime and land registration. The transfer of land rights for registration purposes must in principle be evidenced by a deed from an authorized PPAT.³Therefore, the issue does not stop at whether or not the agreement is valid according to contract law, but also concerns the authority of the official, the form of the deed, and the consequences of the transfer of rights to third parties.

The position of a notary is important because an authentic deed is written evidence that has high evidentiary power in civil cases. Arben and Utama⁴affirms that a notarial deed is authentic as long as it is made in the form prescribed by law by or before an authorized public official. However, this evidentiary power does not mean that every content or motive of the transaction is automatically materially true. Herningtyas et al.⁵shows that incorrect information from the person appearing can influence disputes that arise later, so that the notary's accuracy in identifying the parties, checking documents, and preparing deeds is an important part of risk prevention.

The need for caution is even greater when the seller is in a weak economic position and needs funds quickly. Such a situation can result in an imbalanced bargaining position, a selling price far below the object's economic value, or burdensome redemption requirements. The principle of proportionality requires that the exchange of rights and obligations proceed fairly throughout the pre-contractual, contract formation, and contract execution stages.⁶For notaries, this principle is relevant when assessing whether the right to repurchase clause truly represents the free will of the parties or is instead an instrument for obtaining disproportionate profits through disguised transactions.

Previous research on notary legal protection in land sale and purchase agreements positions notaries as public officials who help create legal certainty through

²Republic of Indonesia. (nd). Civil Code (Articles 1519–1532).

³Republic of Indonesia. (1997). Government Regulation Number 24 of 1997 concerning Land Registration (Article 37 paragraph (1)).

⁴Arben, A., & Utama, AS (2024). The position of notarial deeds as authentic deeds in civil law based on the Notary Law. *ANDREW Law Journal*, 3(1), 1–11. <https://doi.org/10.61876/alj.v3i1.26>

⁵Herningtyas, T., Azrianti, S., Artanto, T., & Riyanto, A. (2022). The legal force of notarial deeds in relation to false statements. *PETITA*, 4(1), 55–64. <https://doi.org/10.33373/pta.v4i1.4353>

⁶Hernoko, AY (2016). The principle of proportionality as a basis for the exchange of rights and obligations of the parties in commercial contracts. *Journal of Law and Justice*, 5(3), 447–466. <https://doi.org/10.25216/jhp.5.3.2016.447-466>

authentic deeds and legal counseling.⁷At the same time, the notary's responsibilities should not be expanded to the extent that the notary guarantees the entire material truth of the information presented by the witness. Liability is only relevant if there is an error or negligence attributable to the notary and results in a loss. This is in line with the study by Arsy et al.⁸and Afifah⁹which places compliance with the provisions for making deeds, caution, and the causal relationship between errors and losses as important elements in assessing the notary's responsibility.

The emerging gap is that the power of an authentic deed is often understood as a comprehensive solution to transaction risks, whereas in a sale with the right to repurchase, there are structural issues that cannot be resolved simply by formulating a deed. The right to repurchase clause lacks a specific recording mechanism in the land registration system, so its existence may remain unknown to third parties. Furthermore, notaries and Land Deed Officials (PPAT) have different authorities, although in practice, one person can hold both positions. Therefore, it is important to position the notarial deed as a preventive protection instrument within its authority, not as a substitute for the transfer of rights procedures that fall under the purview of PPATs and land administration.

This study aims to analyze the role of notarial deeds in anticipating legal risks in sales and purchase transactions containing the right to repurchase, by outlining the legal regulations, preventive functions and evidentiary power, as well as the form of notary responsibility in providing legal certainty and protection to the parties.

2. Research Methods

This research is a normative legal research with a statutory and conceptual approach. The research specification is descriptive-analytical, focusing the analysis on norms regarding sale and purchase agreements, repurchase rights, notary authority, PPAT authority, the evidentiary power of authentic deeds, and job responsibilities. The data used are secondary data consisting of primary legal materials in the form of the Civil Code, the Basic Agrarian Law, the Notary Law, land registration regulations, and relevant court decisions; secondary legal materials in the form of books and scientific journal articles; and tertiary legal materials as supporting materials. Legal materials are collected through literature studies, identified based on their relevance to the problem formulation, then

⁷Permana, Y.S. (2022). Notary legal protection in land sale and purchase agreements. *The Jurist*, 6(1), 225–237.

⁸Arsy, EA, Widhiyanti, HN, & Ruslijanto, PA (2021). Notary's responsibility for deeds that are legally flawed and do not comply with the provisions for making deeds in the Notary Law. *Jurnal Bina Mulia Hukum*, 6(1), 130–140. <https://doi.org/10.23920/jbmh.v6i1.324>

⁹Afifah, K. (2017). Civil responsibilities and legal protection for notaries for the deeds they make. *Lex Renaissance*, 2(1). <https://doi.org/10.20885/JLR.vol2.iss1.art10>

analyzed qualitatively with legal interpretation and reasoning to connect positive law with the theory of legal certainty, legal protection, and job responsibilities.¹⁰

3. Results and Discussion

3.1. Legal Provisions for the Right to Repurchase in a Sale and Purchase Agreement

The right to repurchase (*recht van wederinkoop*) is a special clause that can be agreed upon in a sales and purchase agreement. Normatively, Article 1519 of the Civil Code gives the seller the right to take back the goods that have been sold by returning the original purchase price and compensation as stipulated in Article 1532. In this construction, the sale and purchase has occurred, but the seller retains a contractual right to return the state of ownership if the agreed conditions are met. This clause must be distinguished from a mere promise to make a new transaction, because it is attached to the agreed sales and purchase relationship and has consequences for the parties since the agreement was made.

A time limit is crucial to prevent ownership from remaining indefinitely uncertain. Article 1520 of the Civil Code stipulates that the right to repurchase may not be agreed upon for more than five years; if a longer period is agreed upon, the term is shortened to five years. Article 1521 emphasizes the strict nature of this time limit, which cannot be extended by a judge. This provision is important because it establishes a predictable end point: if the seller fails to exercise the right within the specified time limit, the buyer's position as owner becomes stronger. Therefore, a deed containing a right to repurchase must explicitly state the start and end dates, rather than using open-ended terms such as "until circumstances permit" or "after the seller has the ability."

In addition to the time limit, Article 1532 provides guidance regarding the seller's financial obligations when exercising their rights. The seller is essentially obligated to return not only the original purchase price but also certain expenses related to the purchase, delivery, necessary repairs, and value enhancement of the goods. In practice, these elements can become a source of dispute if the deed does not specify measurable cost components. Therefore, the formulation of the redemption price requires a separation of the cost price, reimbursable costs, the method of proving expenses, and the timing of payment. This approach aligns with the principle of proportionality, which emphasizes a fair and predictable distribution of rights and obligations.¹¹

¹⁰Sunggono, B. (2016). Legal research methodology. RajaGrafindo Persada.

¹¹Hernoko, AY (2016). The principle of proportionality as a basis for the exchange of rights and obligations of the parties in commercial contracts. Journal of Law and Justice, 5(3), 447–466. <https://doi.org/10.25216/jhp.5.3.2016.447-466>

The issue becomes more complex when the object of the sale and purchase is land. UUPA¹² Establish a national land law regime and establish customary law as the basis, while registration of land transfers is regulated through a separate mechanism. In the land registration system, transfers of rights through sale and purchase can in principle only be registered if evidenced by a deed drawn up by an authorized PPAT.¹³ As a result, there is a functional difference between a notarial deed, which regulates the obligatory relationship between the parties, and a PPAT deed, which serves as the basis for registering the transfer of rights. This distinction must be read carefully to prevent the parties from assuming that a notarial deed automatically replaces processes that fall specifically within the authority of the PPAT.

In practice, an official can simultaneously hold the status of notary and PPAT, but the two positions still have different authority bases and deed forms. When drafting a PPJB or additional agreement containing the right to repurchase, the official acts in the capacity of a notary; when drafting a deed of sale that serves as the basis for registering the transfer of rights, the official acts in the capacity of PPAT. This distinction of capacity is important for determining formal standards, job responsibilities, and the legal consequences of the document. Mistaking the authority of a notary and a PPAT can create the impression that every notarial deed concerning land is also a registerable transfer of rights.

The absence of a specific mechanism for recording repurchase clauses in land registers raises publicity issues. The contractual relationship between the parties may be clearly identified in the deed, but a third party viewing the land registration data may not necessarily be aware that there is a repurchase agreement between the seller and buyer. Simarmata¹⁴ This demonstrates the importance of protecting good faith parties in an incomplete transfer of rights. In this context, the further the object passes to a third party, the more complex the position of the seller seeking to exercise the right of repurchase becomes, as the dispute is no longer solely internal between the seller and the original buyer.

The thesis underlying this article posits the absence of a clause as a gap that undermines legal certainty. This analysis is tenable as long as it is understood that the problem is not simply the absence of a column in the land register, but rather the absence of a public mechanism specifically notifying third parties of the existence of such contractual rights. Therefore, a clause prohibiting transfer during the repurchase period can be used as contractual protection, but its effectiveness against third parties remains dependent on legal construction, good faith, and evidence in disputes.

¹²Republic of Indonesia. (1960). Law Number 5 of 1960 concerning Basic Agrarian Regulations.

¹³Santoso, U. (2020). Agrarian law: A comprehensive study. Kencana.

¹⁴Simarmata, YS (2021). Legal status of parties controlling land rights objects related to the incomplete transfer of rights process. Indonesian Notary, 3(2), Article 8.

Judicial Review Decision Number 539 PK/Pdt/2020¹⁵ is important because it shows how disputes can arise from PPJBs that contain a right to repurchase clause. Elvira¹⁶ assessed the construction in this case as a form of legal smuggling because the sale and purchase rights were used to circumvent the debt mechanism with collateral. This finding indicates that assessing a transaction is not sufficient based on the title of the deed. Notaries need to consider the actual economic substance and legal relationship, especially if the object's price, the amount of funds received, the time period, and the "redemption" burden indicate a pattern more akin to secured financing.

Legal smuggling poses a serious risk because it can result in the party needing funds losing land through a sale and purchase mechanism, even though they were actually seeking a loan. In a collateral system, the debtor is protected through regulated encumbrance and execution procedures. If the collateral relationship is disguised as a sale and purchase, this protection can be bypassed. Therefore, freedom of contract cannot be used to justify transactions that conflict with lawful causes, good faith, or coercive provisions. Notaries must examine the entire transaction situation and not stop at the formal statements of the parties.

From a legal certainty perspective, the provisions of Articles 1519-1532 of the Civil Code provide some predictable elements, such as the existence of rights, time limits, and repayment obligations. However, for land, this certainty conflicts with the registration regime and the authority of Land Deed Officials (PPAT), which are not specifically designed to publicize repurchase clauses. Thus, the root of legal risk lies at the intersection of contractual and land norms. A good deed can reduce ambiguity between the parties, but it cannot create a publicity system that is not already provided by regulations.

Resolving this issue requires a two-tier approach. First, at the contractual level, the clause must specify the object, redemption price, time limit, procedures for exercising the rights, proof of payment, obligations for reassignment, and consequences for non-exercise. Second, at the regulatory level, clarity is needed regarding how the clause is treated when the object is land, including whether and how information about its existence can affect third parties. Until a comprehensive second-tier provision is available, notaries can only maximize protection at the first level through careful drafting and legal counseling for the parties.

¹⁵Supreme Court of the Republic of Indonesia. (2020). Judicial Review Decision Number 539 PK/Pdt/2020.

¹⁶Elvira. (2021). Smuggling of land ownership law in sales and purchase agreements containing a right to repurchase clause (Case study of Judicial Review Decision Number 539 PK/Pdt/2020). Indonesian Notary, 3(3), Article 4.

3.2. The Role and Power of Notarial Deeds in Anticipating Legal Risks

A notary has the status of a public official who has the authority to make authentic deeds regarding deeds, agreements and stipulations that are desired by the parties or required by statutory regulations, as long as this authority is not given to other officials.¹⁷ This position makes a notarial deed an important instrument for creating certainty regarding who appeared, when the deed was made, what was explained, and what was agreed upon.¹⁸ Arben and Utama¹⁹ affirms that authenticity arises because the deed is drawn up in the form prescribed by law by or before an authorized official. Therefore, the power of the deed derives not only from the signatures of the parties, but also from the formal process inherent in the notary's office.

A notary's preventive function begins before the deed is signed. In the initial phase, the notary must identify the parties appearing, ensure their competence and authority to act, and assess whether there are any other parties whose consent is required. Identity verification goes beyond simply matching names, but also ensures that the person appearing is the correct party and that the documents used are relevant to the legal action being undertaken. Consistent application of the principle of prudence in the preparation of authentic deeds is considered essential to prevent false statements and legal losses.²⁰

For land, verification must extend to ownership documents and the legal status of the property. Notaries or Land Deed Officials (PPAT), in their respective capacities, must verify certificate data, the identity of the rights holder, and the existence of encumbrances, blocks, or known disputes through available inspection mechanisms. However, the principle of prudence should not be interpreted as a notary's obligation to guarantee all material facts beyond their authority and means. A notary's responsibility primarily relates to the formal accuracy of the deed-making process and the obligation to not ignore any reasonably identifiable irregularities.

The most crucial role in a sale and purchase transaction with the right to repurchase is detecting the motive behind the transaction. Risks arise when the sale and purchase format is used for a relationship that is essentially a debt-receivable relationship. Indications may include a selling price that is very low

¹⁷Republic of Indonesia. (2014). Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

¹⁸Adjie, H. (2017). Indonesian Notary Law: A Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary. Refika Aditama.

¹⁹Arben, A., & Utama, AS (2024). The position of notarial deeds as authentic deeds in civil law based on the Notary Law. ANDREW Law Journal, 3(1), 1–11. <https://doi.org/10.61876/alj.v3i1.26>

²⁰Saniswari, PAN, & Darma, IMW (2024). Application of the principle of prudence by notaries in providing legal services for making authentic deeds. Martabe: Journal of Community Service, 7(8), 2966–2976. <https://doi.org/10.31604/jpm.v7i8.2966-2976>; Rostarum, T. (2024). The principle of prudence of notaries in the digital era: Implementation in realizing perfect deeds. Scientific Journal of Batanghari Jambi University, 24(3), 2302–2307. <https://doi.org/10.33087/jjubj.v24i3.5681>

compared to the value of the object, the seller retaining control and using the object like a debtor, an inflated "redemption" price that resembles interest, a very short timeframe, or economic pressure that leaves one party with no reasonable room for negotiation. Elvira²¹ shows that the right to repurchase clause can be an instrument of legal smuggling when the formal form of the agreement is used to avoid the institution of guarantee.

If a notary finds such indications, legal counseling is the first step in restoring the transaction to its proper form. The parties should be provided with an explanation of the differences between a sale and purchase agreement, a sales contract (PPJB), a loan, and the imposition of collateral. The notary must also explain that the parties' wishes cannot be expressed if they conflict with the law, public order, or morality. If, after the explanation, the parties still desire a construction that clearly violates the law, the notary must consider refusing to draw up the deed in accordance with their official duties and the limits of their authority.

The next phase is the formulation of the clauses. In a transaction that is truly a sale with a right of repurchase, the clauses must be drafted to eliminate any room for interpretation. The first element is the complete identification of the object consistent with the title documents. The second element is the definitive sale and redemption price, including any additional costs and necessary evidence. The third element is the deadline, which can be determined using a definite date or an objective formula. These three elements form the basic framework for ensuring that the parties understand each other's performance from the outset.

The fourth element is the mechanism for exercising the right. The deed must specify the form of notification, the correspondence address, the time at which the notification is considered valid, the account or place of payment, and whether payment must be made in one lump sum. The fifth element is the mechanism for returning the object after the seller fulfills its obligations, including the time for signing the required documents. The sixth element is the consequences of failing to exercise the right within the specified timeframe and the consequences of the buyer's default if they refuse to return the object after the conditions are met. The more detailed the mechanism, the less room for conflicting interpretations.

A clause prohibiting transfer to a third party during the repurchase right period can also serve as contractual protection. However, the notary must clarify that such a prohibition is primarily binding on the parties and does not automatically result in publicity in land administration. Therefore, this clause should be accompanied by an obligation for the buyer to disclose the existence of the repurchase right to potential third parties and an obligation to bear losses if the transfer is carried out in violation of the agreement. This approach does not

²¹Elvira. (2021). Smuggling of land ownership law in sales and purchase agreements containing a right to repurchase clause (Case study of Judicial Review Decision Number 539 PK/Pdt/2020). Indonesian Notary, 3(3), Article 4.

eliminate all risk, but it does strengthen the evidentiary basis in the event of default.

An authentic deed has external, formal, and material evidentiary power within the meaning established by civil evidence law. The deed provides assurance that the document appears to be an authentic deed, that the formal events as described by the notary have taken place, and that the parties' statements have been stated as stated. Herningtyas et al.²²This shows that the presence of false testimony from the witness does not necessarily make the notary guilty, but it can trigger a dispute over the deed. Therefore, the quality of the evidence depends heavily on formal compliance and the thoroughness of the drafting process.

It should be clarified that not every notarial deed has the power to be immediately executed. Executorial power is only inherent in certain deeds that are designated as such by law or contain the required form of execution. For agreements in general, their primary power is as authentic, binding evidence within the limits of the law of evidence. This correction is important to prevent the parties from receiving the impression that any violation of a clause can be immediately executed without further legal action.

The strength of the deed can also be degraded if the formal requirements required by the Notary Public Law are not fulfilled. Arsy et al.²³This demonstrates that violations of the provisions for deed preparation can give rise to liability and affect the legal standing of the deed. Therefore, the reading of the deed, signing, the presence of witnesses, the identity of the parties, the structure of the deed, and the storage of the minutes should not be treated as mere administrative matters. These formal procedures are actually part of ensuring authenticity and legal certainty.

Beyond formal issues, the parties' freedom of will must be a priority. A deed that appears administratively perfect can still be disputed if the agreement was created through coercion, fraud, error, or abuse of circumstances. In transactions with a right of repurchase, this risk increases when the seller experiences an urgent need for funds. The notary must provide sufficient space for the parties to understand the contents of the deed, ask questions about any unclear aspects, and ensure that no party significantly dominates the signing process.

The principle of proportionality can be used as a practical testing tool in drafting. Hernoko²⁴explains that contractual equity does not necessarily mean equal

²²Herningtyas, T., Azrianti, S., Artanto, T., & Riyanto, A. (2022). The legal force of notarial deeds in relation to false statements. *PETITA*, 4(1), 55–64. <https://doi.org/10.33373/pta.v4i1.4353>

²³Arsy, EA, Widhiyanti, HN, & Ruslijanto, PA (2021). Notary's responsibility for deeds that are legally flawed and do not comply with the provisions for making deeds in the Notary Law. *Jurnal Bina Mulia Hukum*, 6(1), 130–140. <https://doi.org/10.23920/jbmh.v6i1.324>

²⁴Hernoko, AY (2016). The principle of proportionality as a basis for the exchange of rights and obligations of the parties in commercial contracts. *Journal of Law and Justice*, 5(3), 447–466. <https://doi.org/10.25216/jhp.5.3.2016.447-466>

distribution of proceeds, but rather demands a proportional exchange of rights and obligations throughout the contract process. A notary is not authorized to override the parties' agreement based on their own judgment, but they can identify unequal clauses and explain the risks. Therefore, the notary's role is to ensure that agreements are formed consciously and do not legitimize relationships that clearly demonstrate an abuse of legal form.

The difference in authority between a notary and a Land Deed Official (PPAT) must always be clarified when the object of the transaction is land. A notarial deed can serve as a vehicle for a PPJB (Supply and Purchase Agreement), preliminary agreement, permitted power of attorney, or certain contractual arrangements, while registration of a transfer of rights through a sale and purchase requires a PPAT deed in accordance with land registration regulations.²⁵ emphasizes the importance of proper documents and procedures in the transfer of land rights. This explanation is part of legal counseling to ensure that parties do not equate the evidentiary power of a notarial deed with the administrative function of a PPAT deed.

Another limitation is publicity. A notarial deed can provide very strong evidence of the existence of a clause between the parties, but it doesn't automatically inform the outside world. Simarmata²⁶ This demonstrates the importance of registration status and the protection of good faith parties in the transfer of land rights. Therefore, even if a notary drafts a non-transfer clause, there is still a risk if the buyer transfers the object and the third party is unaware of the prior contractual relationship. This is where drafting improvements are no longer sufficient and regulatory support is needed.

The following table summarizes the typology of legal risks found in the thesis and places the role of notarial deeds more proportionally, namely as an instrument of prevention and proof within the limits of its authority.

Table Typology of Legal Risks and the Role of Notarial Deeds in Anticipation

Types of Risk	Potential Losses	Role of Deed/Notary
Legal smuggling	Buying and selling is used to disguise debts; sellers risk losing their land without proper collateral mechanisms.	Identify the motive for the transaction, explain the appropriate legal form, and reject the deed if the will is contrary to the law.
Multi-interpretable clause	Disputes regarding the redemption price, time, method of notification, payment, or return of the object.	Formulate the object, price, time, procedures for implementing rights, and consequences of default with certainty.
Transfer to third party	The right to repurchase becomes difficult to exercise because the object has moved and the third party is not aware of the clause.	Includes prohibitions or restrictions on transfers and explains the limitations of publicity clauses in the land system.

²⁵Permana, Y.S. (2022). Notary legal protection in land sale and purchase agreements. *The Jurist*, 6(1), 225–237.

²⁶Simarmata, YS (2021). Legal status of parties controlling land rights objects related to the incomplete transfer of rights process. *Indonesian Notary*, 3(2), Article 8.

Defect of will	An agreement may be cancelled due to coercion, fraud, error, or abuse of circumstances.	Ensuring free will, providing legal advice, reading deeds, and documenting agreements.
Procedural negligence	The deed may lose its authentic quality or give rise to notary liability.	Fulfilling all formal requirements of UUJN, checking identity, authority to act, documents, witnesses, reading and signing.
Overdue	The seller loses the right to repurchase because the time limit has expired.	Explicitly state the deadline and explain the legal consequences of exceeding the deadline.

Source: Processed from the results of Rifqi Yusuf Apriandi's thesis research (2026).²⁷

The table shows that the function of notarial deeds is multidimensional, but not limitless. Risks arising from unclear clauses, parties' ignorance, and formal non-compliance can be relatively mitigated through the work of notaries. Conversely, risks stemming from the structure of the land system, such as the lack of a mechanism for public registration of clauses, cannot be addressed simply by extending the deed's contents. This distinction is important to ensure that notaries' responsibilities remain proportionate and legal reform is not burdened with the practices of individual officials.

Thus, the role of a notarial deed in anticipating legal risks lies not in its ability to "guarantee the absence of disputes," but rather in its ability to reduce the likelihood of disputes, clarify the parties' positions, and provide strong evidence if disputes do arise. This function will be effective if the notary exercises caution from the pre-contractual phase, drafts clauses precisely, and explains the deed's limitations to the parties. This model aligns with preventative legal protection: preventing issues before they escalate into litigation.

3.3. Notary's Responsibility in Providing Legal Certainty

A notary's responsibility must be situated within the relationship between authority, obligations, errors, and legal consequences. A notary holds a public office in the civil law field, and therefore, their actions are bound by the Notary Law and the code of ethics. However, a notary is not a party to the contract and receives no economic benefit from the transaction other than a service fee. Therefore, a notary's responsibility is not identical to the seller's or buyer's responsibility for contractual performance. The assessment must begin with whether the notary violated the obligations of his or her position within his or her control.

The Notary Law requires notaries to act with integrity, honesty, due diligence, independence, impartiality, and to safeguard the interests of all parties involved in legal actions. The "due diligence" standard forms an essential basis for the principle of prudence. In transactions with the right of repurchase, this standard includes checking identity, competence, authority to act, completeness of documents, consistency of objects, and clarity of statements by the parties. Study

²⁷Apriandi, RY (2026). The role of notarial deeds in anticipating legal risks in sale and purchase transactions with the right to repurchase [Master's thesis, Sultan Agung Islamic University].

by Sanisswari and Darma²⁸ and Rostarum²⁹ both emphasize that verification and thoroughness of the process are key to preventing legal problems with authentic deeds.

Civil liability may arise if a notary commits an unlawful act or breaches certain professional obligations and the error results in a loss. Afifah³⁰ emphasizes that compensation requires the existence of a loss, an unlawful act, a causal relationship, and an error that can be accounted for by the notary. Imania et al.³¹ It also shows that civil liability must be based on proof of the notary's fault, not solely on the fact that the deed was later disputed. This principle is important to avoid a disproportionate expansion of liability.

In the context of the right to repurchase, examples of errors that can give rise to liability include a notary providing identity data that does not correspond to the documents that have actually been examined, ignoring the formal requirements for making a deed, failing to read the deed when such an obligation must be carried out, or knowingly including clauses that are prohibited by law without providing an explanation and taking appropriate action. Conversely, if the parties provide false documents that are outwardly reasonable and the notary has conducted an examination according to standards, the resulting dispute does not automatically constitute the notary's fault.

Arsy et al.³² This demonstrates that a legally flawed deed due to non-compliance with the provisions for its preparation can give rise to notary liability. This confirms the direct relationship between formal procedures and the quality of legal protection. A well-formulated deed is insufficient if authentication procedures are ignored. Therefore, risk prevention must be understood as a combination of the quality of the clause's substance and procedural discipline.

Administrative liability relates to violations of the terms of office and can result in sanctions in accordance with the notary oversight mechanism. The form of sanctions depends on the type and severity of the violation. In analyzing repurchase rights transactions, administrative aspects are relevant if the notary violates formal obligations, acts beyond his authority, or fails to perform his official

²⁸Sanisswari, PAN, & Darma, IMW (2024). Application of the principle of prudence by notaries in providing legal services for the preparation of authentic deeds. *Martabe: Journal of Community Service*, 7(8), 2966–2976. <https://doi.org/10.31604/jpm.v7i8.2966-2976>

²⁹Rostarum, T. (2024). The principle of notarial prudence in the digital era: Implementation in realizing perfect deeds. *Scientific Journal of Batanghari University, Jambi*, 24(3), 2302–2307. <https://doi.org/10.33087/jiubj.v24i3.5681>

³⁰Afifah, K. (2017). Civil responsibilities and legal protection for notaries for the deeds they make. *Lex Renaissance*, 2(1). <https://doi.org/10.20885/JLR.vol2.iss1.art10>

³¹Imania, D., Ngadino, N., & Prasetyo, MH (2020). Civil liability and legal protection for notaries for the deeds they make. *Notarius*, 13(1), 250–265. <https://doi.org/10.14710/nts.v13i1.30394>

³²Arsy, EA, Widhiyanti, HN, & Ruslijanto, PA (2021). Notary's responsibility for deeds that are legally flawed and do not comply with the provisions for making deeds in the Notary Law. *Jurnal Bina Mulia Hukum*, 6(1), 130–140. <https://doi.org/10.23920/jbmh.v6i1.324>

duties as prescribed. Gotama et al.³³ emphasizes that the position of a notary as a public official must be read together with legal protection for notaries when exercising their authority properly, so that the accountability mechanism must not ignore the principle of due process.

Ethical responsibilities arise because the notary's position is a position of trust. Dishonest behavior, bias, exploiting the ignorance of certain parties, or intentionally assisting in the construction of detrimental transactions can be assessed not only by positive law but also by professional standards. Ethics become an important layer when written law does not regulate the entire situation in detail. In transactions with unequal bargaining positions, the obligation to be impartial does not mean passivity; notaries must ensure that the weaker party understands the legal consequences and has the opportunity to make informed decisions.

Criminal liability must be clearly distinguished from civil, administrative, and ethical liability. A notary can only be held criminally liable if there are acts and elements of wrongdoing that meet the definition of a criminal offense, such as conscious involvement in forgery or the inclusion of false information. Not every drafting error or administrative violation constitutes a crime. This distinction is important because the tendency to criminalize civil disputes can compromise the independence of the office and obscure proper resolution mechanisms.

Formal and material truth must also be distinguished. A notary is responsible for verifying what formally occurred before him and fulfilling the deed-making procedures, while material truth regarding all external facts is essentially derived from the statements and documents of the parties, unless the law specifically requires verification. Herningtyas et al.³⁴ shows that the issue of false statements requires an assessment of the notary's knowledge and actions. The principle of fairness is: a notary is not an absolute guarantor of material truth, but must not turn a blind eye to obvious irregularities that can be identified through a reasonable examination.

In land transactions, the division of authority between a notary and a PPAT determines the scope of responsibility. A notary should not be held accountable for registering transfers of rights beyond the scope of the notarial deed unless they are acting as a PPAT. Conversely, when the same official also acts as a PPAT, their actions must be assessed based on their official capacity at the time the deed was

³³Gotama, A., Nofrial, R., Fadlan, Respationo, S., & Erniyanti. (2023). A legal analysis of legal protection for notaries as public officials in the criminal justice system regarding the authority to make authentic deeds. *UNES Law Review*, 6(1), 3731–3742. <https://doi.org/10.31933/unesrev.v6i1.1172>

³⁴Herningtyas, T., Azrianti, S., Artanto, T., & Riyanto, A. (2022). The legal force of notarial deeds in relation to false statements. *PETITA*, 4(1), 55–64. <https://doi.org/10.33373/pta.v4i1.4353>

drawn up. Poetra et al.³⁵ shows that the authority of a notary is determined by the legal system and the limits of the function of the position; this concept is relevant to prevent mixing of standards of responsibility between officials.

Legal certainty for the parties also requires clarity regarding when a notary can refuse services. Refusal is justified when the parties' request is unlawful, beyond their authority, documents are inadequate, or there are other legitimate reasons. In transactions involving sales under the guise of loans, refusal is not a form of favoritism toward one party, but rather an obligation to ensure that the authentic deed is not used to legitimize illegal acts. This action also protects the notary from the risk of future disputes.

Providing legal counseling is an essential tool for ensuring informed consent in transactions. Counseling should cover the consequences of lapses, failure to pay the redemption price, the differences between contractual relationships and land transfers, the limitations of clauses on third parties, and the risks if the transaction is actually intended as a loan. Good counseling should also be reflected in the deed reading process and relevant communication documentation, providing evidence that the parties received an explanation before signing.

The responsibilities of a notary cannot be separated from the legal protection of notaries. Afifah³⁶ and Imania et al.³⁷ emphasizes that a protection mechanism is necessary to ensure that notaries who have properly carried out their duties are not easily burdened with responsibility for any disputes between the parties. This protection does not provide immunity, but rather a guarantee that notary examinations are conducted based on objective procedures and evidence. This balance is crucial to the notary's function as an independent official who must be unafraid to make professional decisions, including rejecting problematic deeds.

From the perspective of legal certainty theory, the responsibilities of the position must be predictable. Notaries need to know the standards they must meet, while the public needs to understand the limits of protection afforded by the deed. Uncertainty arises when the public assumes that notaries guarantee the entire economic substance of a transaction, while the law places the parties primarily responsible for the accuracy of their statements. Therefore, legal education for the public and affirmation of the limits of responsibility in notarial practice are as important as sanctions for violations.

³⁵Poetra, DS, Setyawan, F., & Prakoso, B. (2024). A comparison of the legal duties and authorities of notaries in countries with civil law and common law legal systems. *As-Syar'i: Journal of Family Guidance & Counseling*, 6(3), 1465–1477. <https://doi.org/10.47476/assyari.v6i3.6796>

³⁶Afifah, K. (2017). Civil responsibilities and legal protection for notaries for the deeds they make. *Lex Renaissance*, 2(1). <https://doi.org/10.20885/JLR.vol2.iss1.art10>

³⁷Imania, D., Ngadino, N., & Prasetyo, MH (2020). Civil liability and legal protection for notaries for the deeds they make. *Notarius*, 13(1), 250–265. <https://doi.org/10.14710/nts.v13i1.30394>

From the perspective of preventive legal protection, the quality of a deed must be assessed based on its ability to prevent disputes through clarity and proper process. From the perspective of official responsibility, this quality must be linked to the notary's concrete actions: verification, counseling, drafting, reading, and formal compliance. These three perspectives are interconnected. Legal certainty without preventive protection will be formal, while responsibility without clear boundaries will become a disproportionate burden for officials.

Therefore, recommendations for legal reform should not be solely aimed at increasing sanctions for notaries. The issue of land repurchase rights also requires harmonization between contract law and land law, as well as mechanisms that clarify the position of clauses regarding third parties. As long as these structural issues remain unresolved, notaries will continue to face the risk of lawsuits for weaknesses that actually stem from incomplete regulations. Reform must be two-pronged: improving professional standards of prudence while improving the rules underlying transactions.

Overall, a notarial deed is an important but not absolute instrument of protection. A deed is most effective when the transaction has a legitimate legal purpose, the parties act in good faith, the documents are verifiable, and the clauses are clearly formulated. When any of these elements are not met, the notary must exercise increased caution, provide additional explanations, request supporting documents, or refuse to execute the deed. With this approach, the notary's responsibility is positioned as a consequence of the performance of his or her duties, rather than as unlimited liability for all business risks and the parties' conduct.

4. Conclusion

Based on the research results, it can be concluded that the right to repurchase has a normative basis in Articles 1519 to 1532 of the Civil Code, but its application to land transactions raises problems because it interacts with the UUPA regime, the authority of the PPAT, and the land registration system that does not provide a specific mechanism for publishing the clause. In this condition, notarial deeds have an important function as preventive legal protection through verification of the identity and authority of the parties, document examination, legal counseling, detection of transaction motives, and the formulation of clear clauses regarding the object, redemption price, time limit, procedures for exercising rights, and consequences of default. The main strength of notarial deeds is as authentic evidence; however, the deed cannot replace the function of the PPAT deed in registering the transfer of land rights and cannot alone overcome the limitations of publicity. Notary responsibilities can arise in civil, administrative, and ethical matters if their errors or negligence within the scope of their authority are proven to have legal consequences for the parties. It is recommended that policymakers clarify the relationship between the right to repurchase provisions in civil law and the land law system, including the possibility of a recording mechanism or

notification form that can provide certainty to third parties. Notaries need to strengthen prudential standards by documenting inspections, providing adequate legal counseling, drafting clauses that are open to multiple interpretations, and rejecting transactions that show indications of legal smuggling. Parties must also understand that the use of an authentic deed does not eliminate the obligation to choose a transaction form that is appropriate to the actual legal relationship and to follow applicable land procedures.

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