

JURIDICAL RESPONSIBILITIES AND ETHICAL IMPLICATIONS OF NOTARIES IN MAKING DEEDS OF SALE AND PURCHASE OF CUSTOMARY LAND WITHOUT CERTIFICATE OF OWNERSHIP IN INDONESIA

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Abstract - This study analyzes the complexity of the juridical responsibilities and ethical implications faced by notaries in the drafting of sale and purchase deeds for customary land lacking land ownership certificates in Indonesia. The phenomenon of customary land transactions without formal proof of ownership presents unique challenges for notaries, particularly in fulfilling their duties to verify the validity of land rights and ensure legal protection for involved parties. Employing a normative juridical and sociological approach, this research elaborates on the distinctions between mechanisms for recognizing land rights under customary law and the national agrarian system, while also identifying the potential legal risks encountered by notaries in the exercise of their authority. The findings reveal that active involvement of notaries is indispensable—not only in documenting the transactional process and engaging with indigenous leaders, but also in ensuring that empirical practices within communities are properly aligned with positive legal requirements. Furthermore, the enforcement of civil, administrative, and criminal sanctions for rule violations is critical to maintaining the integrity of the notarial profession and fostering deterrence. Enhanced synergy among the government, indigenous communities, and notarial institutions is recommended to provide improved legal protection and certainty for parties to such land transactions, and to construct a justice system that is more responsive to societal needs.

Keywords: Notary, sale and purchase deed, customary land, land ownership certificate, juridical responsibility, professional ethics.

INTRODUCTION

Land sale and purchase transactions require strong legal legitimacy through the existence of authentic documents issued by authorized officials, namely notaries. In practice in Indonesia, not all land transactions are supported by formal documents such as land ownership certificates. This situation is especially prevalent with customary land, where transaction mechanisms rely predominantly on community recognition and traditional procedures embedded within local society. The absence of ownership certificates for customary land complicates the process of rights transfer and the legal certainty of such transactions, thereby increasing the risk of ownership conflicts (Kunarti, 2023).

Notaries, as the guardians of deed validity, face a distinct dilemma when required to draft sale and purchase deeds of customary land in the absence of official registration documents. The due diligence process for ensuring the legal status of the land becomes significantly complex, as evidence of ownership is based only on community acknowledgment and local authority recommendations, without the support of certificates issued by the National Land Agency (BPN). This increases the risk for notaries of facing future legal claims or disputes and exposes the parties involved to legal uncertainty (Masriani, 2022).

Juridically, Indonesia's agrarian regulations mandate registered proof of ownership as a prerequisite for the transfer of rights, specifically a land ownership certificate issued by BPN. However, for customary land, the application of modern legal norms often clashes with the customary legal system, which does not recognize ownership certificates but rather emphasizes the authority of communal leadership and collective decisions. This incongruity generates legal and social issues, where transactions may be legitimate according to customary law yet potentially unrecognized by the state (Asriadi et al., 2023).

Beyond legality, notaries' responsibilities encompass ethical and justice dimensions. Notaries are expected to uphold the interests of all parties by adhering to the principles of fairness and informed consent. In the notarial practice of customary land transactions without ownership certificates, professional ethical standards become crucial to prevent notaries from legitimizing fraudulent or abusive acts regarding land status (Sari, 2022). Nevertheless, notaries are often confronted with offers or pressures that may test their integrity and professionalism.

The central role of the notary is further tested when mediating potential disputes or objections from customary communities or external parties claiming rights over the land. The lack of formal documentation creates grey areas of ownership that are difficult to translate into the positive legal system. Under these circumstances, the notary's function extends beyond administration, acting also as a mediator who must assess the validity of local traditions, trace the origins of rights, and educate involved parties about the potential legal risks (Rahman, 2022).

Legal sanctions for notaries who violate procedures in deed-making are also a major concern. Noncompliance with agrarian provisions and professional codes of ethics may result in administrative, civil, or criminal penalties. These risks become more tangible when notaries authorize deeds for land that do not meet formal or material legal requirements (Siregar & Sukarja, 2022). This highlights that notarial responsibility is inherently attached to the deed and the factual legal basis underlying it.

For both buyers and sellers, legal certainty and protection in customary land transactions are crucial. In the absence of ownership certificates, their protection depends largely on the notary's determination in tracing all documents, evidence, and local testimonies. On the other hand, customary communities face situations where their land rights are valid according to custom but may not be protected by national law, which fosters anxiety about potential future disputes (Wardantik & Prawesthi, 2023).

These problems underscore the necessity for a comprehensive evaluation of the notary's roles and responsibilities, the juridical weight of authentic deeds, mechanisms for the recognition of customary rights, and the harmonization between national and customary law. Failure to achieve effective solutions may exacerbate legal disharmony, increase material losses, and even spark social conflict at the community level. This research is thus crucial in dissecting the legal, ethical, and protection challenges in the practice of authenticating customary land sale and purchase deeds without land ownership certificates in Indonesia.

This research aims to: (1) analyze the complexity of juridical responsibilities and ethical implications for notaries in drafting sale and purchase deeds of customary land lacking land ownership certificates in Indonesia, (2) identify the types and consequences of legal sanctions against notaries who violate regulations and codes of ethics in such cases, and (3) examine the forms of legal protection available to buyers and sellers of customary land in notarial practice, based on state legislation and customary law recognition.

RESEARCH METHODS

This study employs a normative juridical approach, focusing on the analysis of statutory regulations, legal doctrines, and the professional ethical code of notaries pertaining to the drafting of sale and purchase deeds for customary land without ownership certificates. Secondary data were collected through literature review, including examination of the Basic Agrarian Law, the Notary Office Law, implementing regulations, as well as pertinent legal scholarship. The analysis of these legal documents aims to construct a clear understanding of the juridical framework governing notarial responsibilities, procedures for deed creation, and forms of legal protection available to parties in customary land transactions.

All collected data were analyzed qualitatively by identifying patterns of issues, comparing positive legal norms with actual practices in the field, and assessing the ethical implications and potential sanctions that may arise. The objective is to provide a comprehensive depiction of the complexities surrounding notarial responsibilities, the relevance of legal norms, and legal protections for buyers and sellers of customary land from juridical and sociological perspectives.

RESULTS AND DISCUSSIONS

Juridical Responsibilities and Ethical Implications of Notaries in Drafting Sale and Purchase Deeds of Customary Land Without Ownership Certificates in Indonesia

The notarial responsibility in drafting sale and purchase deeds for customary land lacking ownership certificates in Indonesia is a complex and multidimensional issue, involving legal, ethical, and social aspects. Customary land, prevalent in various regions, typically lacks formal documentation, which elevates the risk of disputes and controversy. Notaries are obliged to conduct comprehensive due diligence to ensure the validity and legality of such transactions. This includes verifying the authority of the seller to transfer the land, ensuring the absence of overlapping claims, and providing all parties with a thorough understanding of their rights and obligations in the contract. Furthermore, social sensitivity and awareness of the traditional values adhered to by the local society must be primary considerations in drafting the deed. Notaries are required to collaborate with customary leaders and village officials to obtain *de facto* validation of land rights, thereby achieving harmony between positive law and customary law in each transaction (Prihatinah, 2023).

Juridically, land sales are governed by the Basic Agrarian Law (UUPA) and various derivative regulations in Indonesia. The UUPA delineates rights such as ownership, cultivation, building use, and usufructuary rights, all of which must be registered with the National Land Agency (BPN). A land certificate constitutes the legal basis for the transfer of land rights and provides legal certainty for the parties involved. However, customary land generally lacks ownership certificates or official registration, resulting in potential legal gaps and risks for transacting parties. In this context, the role of the notary becomes central to ensuring that, even in the absence of formal documents, transactions are grounded in social recognition and other supporting evidence that may be acceptable in legal interpretation and dispute resolution (Saptomo & Sihombing, 2020).

Agrarian regulations require registration of the transfer of rights, attachment of supporting documents, and legal validation of the seller before the transfer can be legally recognized. All of these requirements expressly apply to land holding certificates. However, in cases involving customary land without certificates, notaries lack the authority to issue or legalize certificates unilaterally. Therefore, notaries must clearly convey to the parties the existing legal limitations and potential risks, such as the possibility that the rights transfer may not be recognized under positive law. Legal assistance from notaries is thus essential in providing juridical education regarding the implications of customary land transactions, so that parties can make informed decisions, conscious of the legal and social consequences inherent in such transactions (Andiki & Alw, 2020).

Beyond their administrative function, notaries also act as guardians of integrity and justice in all procedures related to the transfer of land. The principles of justice, transparency, and informed consent must serve as fundamental guidelines, particularly in the sale of customary land characterized by communal ownership and ancestral norms. Notaries should involve local communities to identify collective rights and mediate potential conflicts rooted in historical ownership or land use. The legitimacy of such transactions is thus based not only on written law but also on the acceptance and consensus of indigenous communities as key stakeholders (Asriadi et al., 2023).

Risk mitigation is one of the principal responsibilities of notaries in every land transaction, especially concerning customary land with no physical certificate. Notaries are required to meticulously document all terms and conditions of sale, as well as verify the legal identities and capacities of all involved parties. By doing so, the resulting deed can minimize ambiguities and prevent potential disputes in the future. Additionally, notaries function as facilitators of communication and mediators between conflicting viewpoints prior to the transaction's formalization, facilitating peaceful transfers of land rights (Selayar, 2022).

Professional ethics are central to the exercise of notarial authority in the preparation of deeds involving uncertified customary land. Adherence to principles of integrity, honesty, and professionalism is strictly regulated under professional statutes, including Article 1 Number 2 of 2014 and Article 7 Number 2 of 2014 on the Notary Office. Violations such as document forgery or collusion with unauthorized parties constitute criminal acts that can undermine public trust in notarial institutions and the legal system as a whole. In cases of suspected violations, notaries must promptly report to the relevant authorities for further investigation (Athira & Hoesin, 2022).

Thus, the responsibility of notaries in handling sale and purchase deeds of customary land without land ownership certificates transcends mere formal legality. It also encompasses the protection of the public, enhancement of contractual justice, and reinforcement of local wisdom. Notaries must remain vigilant against deception, have a moral obligation to prioritize the public interest, and ensure that decisions documented in the deed genuinely reflect the rights and intentions of all parties without causing harm or discrimination, particularly to those who are socially or economically disadvantaged.

To reinforce protection and legal certainty concerning uncertified customary land, synergy is required among the government, judicial bodies, local communities, and the notarial profession. Continuous education and training on the juridical aspects of customary land are essential for notaries to adaptively address emerging challenges. Responsive legislation and the development of recognition mechanisms for collective rights or interim substitute documents are necessary to bridge customary law and the national land administration system. This approach would ensure that all parties secure legal certainty and substantive justice in customary land transactions, while affirming the function of notaries as protectors of justice and guarantors of transaction integrity.

Legal Sanctions Against Notaries: Juridical Review of Civil, Administrative, and Criminal Liability in Indonesian Notarial Practice

Notaries hold a pivotal role within the Indonesian legal system as public officials vested with the authority to authenticate, certify, and validate various legal documents. Their existence ensures legal protection and certainty for parties engaging in legal acts, such as land sale and purchase agreements, debt arrangements, and other contractual forms (Saptomo & Sihombing, 2020). However, behind such authority lies significant responsibility, stringently regulated by statutory provisions and the professional code of ethics. Violations of these responsibilities carry substantial risk, as notaries are fundamental instruments of legal enforcement, and the honesty and integrity of notarial practice constitute key benchmarks for public legal certainty. National regulations, such as the Notary Office Law, the Indonesian Civil Code (KUHPerdara), and the Indonesian Criminal Code (KUHP), clearly delineate notarial conduct requirements—ranging from procedures for creating authentic deeds to sanctions for violations. Sanctions may be imposed administratively, as well as civilly and criminally, depending on the nature and consequences of the violation. Breaches of these norms may result in fines, suspension or revocation of the notarial license, and even criminal prosecution when acts constitute crimes such as document forgery or embezzlement. Understanding the types of sanctions and their legal basis is essential for notaries to execute their professional duties responsibly.

Civil sanctions are imposed specifically in civil cases, with the objective of restoring or providing restitution for losses caused to victims as a result of unlawful acts (*onrechtmatige daad*). Under the Indonesian legal system, the basis for civil sanctions refers to Article 1365 of the Indonesian Civil Code (*Burgerlijk Wetboek/BW*), which stipulates that every act that causes loss to another person, due to fault, obliges the perpetrator to compensate for such loss. This principle emphasizes that the responsibility of notaries does not end when a document is signed; they must also be accountable for damages arising from negligence in fulfilling authentication duties (Noor et al., 2021). For instance, should a notary neglect procedures—such as preparing a deed for the sale of customary land without ownership certificates—the aggrieved party may claim civil damages. Compensation may encompass financial losses, emotional distress, or loss of property rights. The amount of damages is typically assessed based on the quantum of loss, the impact of the act, and the degree of notarial fault. These sanctions also serve a preventive function, encouraging notaries to exercise greater prudence and accountability in professional conduct (Anindyajati et al., 2016). In summary, civil sanctions reinforce the prudent principle in notarial duties, serving as a caution against negligent actions that may harm others.

Beyond the civil sphere, Indonesian law also imposes administrative sanctions upon notaries found in breach of statutory or professional ethical provisions. Administrative sanctions are typically issued by supervisory bodies—Regional, Provincial, or Central Notarial Supervisory Councils, or the Ministry of Law and Human Rights—depending on the nature and hierarchy of the offense. Forms of administrative sanctions are manifold, ranging from written warnings and reprimands, administrative fines, temporary suspension of the license, to permanent revocation of notarial commission. Such sanctions are imposed for substantive violations as well as for administrative infractions, such as failure to record documents, improper representation of parties, or drafting deeds contrary to procedural rules. The core aim of administrative sanctions is corrective—ensuring the notary returns to compliance, and serving as a deterrence mechanism to prevent recurrence. According to Article 6 of the Notary Code of Ethics (2015), administrative sanction arrangements also prohibit conduct undermining the dignity and integrity of the notarial profession. The enforcement of administrative sanctions helps maintain public trust and ensures transparent and accountable notarial administration (Yani, 2021).

In practical terms, the implementation of administrative sanctions is critical for maintaining professional order and integrity, notably in the authentication of significant documents such as land sale deeds. Administrative sanctions operate dually: as tools for disciplining professional notarial conduct and as protective measures for the public against fraudulent or unethical practices. These sanctions are proportionate—minor infractions may warrant minor penalties, such as warnings, while severe violations may result in license revocation. This proportionality is grounded in the principle of preventive justice, ensuring all violations are promptly remedied to prevent escalation into more severe civil or criminal matters. Often, the imposition of administrative sanctions serves as a preliminary basis for further legal investigation in more serious cases, such as fraud, forgery, or abuse of authority. Effective administrative oversight consequently enhances the quality of notarial legal services and fortifies public confidence in legal institutions (Annas et al., 2022).

Criminal sanctions represent the most severe consequences for notaries, as these pertain to offenses regarded as crimes, such as document forgery or manipulation of the legal status of transactional objects. Under both the Notary Office Law and KUHP, criminal acts by notaries result in harm not only to specific parties but also impact the public interest, warranting state intervention. In cases such as the illegal sale of land, involved notaries may be charged with forgery, perjury, or complicity in fraud. Applicable criminal penalties may include imprisonment, substantial fines, or lifelong revocation of the right to practice. Criminal sanctions function as the “ultimum remedium,” the last resort when administrative or civil measures are insufficient to prevent or penalize serious violations. The imposition of such penalties aims both to deter offenders and to send a strong message to the notarial community regarding the gravity of undermining the justice system and public trust (Setiawati, 2023).

The enforcement of criminal sanctions against notaries requires implementation through fair, transparent, and equitable legal mechanisms. Investigation and prosecution are conducted by law enforcement authorities, based on sufficient evidence and comprehensive examination. Criminal sanctions are regulated under the Criminal Code and laws governing the notarial office. Judicial proceedings consider the degree of fault, motive, resulting harm, and the notary’s professional record. Sanctions are imposed proportionally, reflecting the gravity of the offense and losses incurred. In line with contemporary penal trends, imprisonment and fines may be supplemented or substituted by rehabilitation, professional restrictions, or community service, depending on case complexity. Criminal law enforcement underscores the state’s role in upholding the dignity of the notarial institution while protecting society from serious and public office-related crimes (Badriyah, 2023).

From a legal standpoint, the imposition of civil, administrative, and criminal sanctions upon notaries embodies the principle that “no one is above the law.” Notaries, as public officers, bear a high degree of public trust, where every violation produces far-reaching implications for both direct victims and the legal system’s overall integrity. Consistent law enforcement is vital as an index of progress in Indonesia’s legal bureaucracy reform, where clean and just legal practice is the collective aspiration. Discipline and compliance with procedures are the main pillars for notaries in fulfilling professional mandates with high moral responsibility. Sanctions serve not only as preventive tools but also as mechanisms for victim redress and as deterrents for future offenders (Rinaldi et al., 2022). Therefore, the formulation, enforcement mechanisms, and oversight of such legal sanctions must be continuously evaluated and refined to ensure effectiveness and fairness.

Efforts to improve the quality and integrity of the notarial profession must be pursued continuously through systems of training, supervision, and integrated ethical and juridical education. Harmonization of oversight between regulators, professional associations, and the public are critical in establishing effective internal and external control. The actualization of ethical values and legal compliance not only shields notaries from sanctions but assures legal certainty for society. In today’s era of legal digitalization, new challenges have emerged—such as electronic document forgery and cybercrimes—necessitating further legal adaptation. Progressive regulation and technology-based supervisory tools must therefore be prioritized, without undermining the foundational principles that sustain the notarial profession. Synergy among law enforcement, academia, and professional associations is essential for ensuring the continuity, quality, and credibility of notaries as a pillar of justice within the Indonesian legal system.

Legal Protection for Sellers and Buyers of Land Based on Customary Law and the Uniform Unincorporated Nonprofit Association Act: A Comparative Law Perspective

Legal protection for individuals engaging in land sale and purchase transactions is a crucial aspect in the development of both national and international land systems. Customary law and the Uniform Unincorporated Nonprofit Association Act (UUNAA) offer distinct protective frameworks, each shaped by the jurisdictional context and the respective socio-cultural characteristics of the community. Customary law is a set of unwritten norms and practices that evolve within specific societies, governing ownership, control, and the transfer of land rights. The pluralistic nature of legal systems in Indonesia and other countries ensures the ongoing relevance of customary law, which in many jurisdictions is also recognized within national legislation. Nevertheless, customary law faces significant challenges when interfacing with formal legal systems. In practice, customary land ownership often lacks formal documentation such as certificates, thus creating potential for disputes and legal uncertainty in land transactions (Asriadi et al., 2023).

In many countries—including Indonesia—land rights based on customary law are recognized and legally protected, though the mechanisms of implementation differ. For instance, Indonesia's Basic Agrarian Law explicitly acknowledges the existence of *ulayat* (communal or customary) land and the rights of indigenous peoples therein. The transfer of customary land is generally subject to communal deliberation or collective consent, along with certain restrictions to preserve the integrity of customary holdings. Legal recognition and protection of customary rights are critically important, since they serve as the basis for both legitimizing transactions and providing safeguards for buyers and sellers. However, not all jurisdictions offer comparable recognition; some may limit or even abolish customary land rights in favor of national interests or economic priorities, thereby weakening substantive legal protection, which then applies only in specific locales or under certain conditions (Andiki & Alw, 2020).

The Uniform Unincorporated Nonprofit Association Act (UUNAA) is a model statute in the United States that provides legal recognition and protection for unincorporated nonprofit associations. UUNAA is designed to grant such associations legal standing equivalent to that of legal entities, including rights to contract, own property, and pursue legal actions. Nevertheless, UUNAA does not expressly govern detailed regulations on the ownership or transfer of land. Its principal focus is on shielding association members from personal liability and affirming the association's rights in business transactions. In practice, land transactions involving nonprofit associations are also subject to state-specific land and contract laws. This results in variation in the nature and extent of legal protections provided, depending on the existence of supplementary rules beyond UUNAA itself (Septiana et al., 2023).

Both under customary law and UUNAA, parties involved in land transactions are, in principle, entitled to legal protection on par with those under modern statutory systems. They have the right to contract, to enforce contracts before the courts, and to seek compensation in the event of rights violations. However, the effectiveness of such protection hinges on the recognition and implementation of relevant legal provisions in each jurisdiction. For example, in some regions, courts will enforce customary land sale contracts recognized by the state, while elsewhere such contracts may be invalidated if found to contravene national regulations. This disparity necessitates careful consideration of contract substance and the involvement of authorized notaries or officials to ensure orderly and lawful land transactions (Ardiansyah et al., 2020).

The interplay between customary and national legal systems often generates friction, especially when indigenous community interests diverge from state or investor priorities (Laturette, 2021). States may impose limitations, such as requirements for administrative compliance, land registration with official agencies, or even the expropriation of customary land for public purposes. If inadequately regulated with fair protective mechanisms, such practices can diminish indigenous rights and undermine their bargaining power in land transactions. The roles of courts, land agencies, and local authorities are thus essential as mediators tasked with ensuring equal access to legal standing for all citizens—whether they transact under customary law, UUNAA, or other modern legal regimes (Suskendariani & Karmila, 2022).

Legal protection for sellers and buyers of land under customary law and UUNAA is heavily influenced by jurisdiction and the specific circumstances of each transaction. Recognition of customary rights, national regulatory frameworks, and harmonization with statutes such as UUNAA form the basis for achieving legal certainty. Frequently, customary rights are recognized and upheld through legislation and judicial decisions, while in certain situations, such rights may be restricted or even disregarded by the state. UUNAA provides a primary framework for the legal recognition and protection of nonprofit associations, yet does not specifically regulate land issues. Thus, substantive protection depends on a combination of local regulation, contractual substance, and the recognition mechanisms established by courts and administrative authorities. The establishment of fair legal protection strengthens both indigenous communities and associations in the context of land transactions.

CONCLUSIONS

Based on the preceding discussion and analysis, it can be concluded that the juridical responsibilities of notaries in drafting sale and purchase deeds for customary land without ownership certificates in Indonesia encounter considerable challenges both from legal and ethical perspectives. The absence of land ownership certificates for customary land places notaries in both a strategically important and vulnerable position, as they are obligated to ensure the validity and

authenticity of documents primarily grounded on customary recognition, community deliberation, and recommendations from local officials. In such contexts, the notary serves not only as an administrative officer but also as a social mediator and guarantor of legal protection for all parties involved. The complexity and lack of full harmonization between customary law and national law regulations give rise to ambiguity, rendering the deeds susceptible to future disputes. Furthermore, positive law provisions and the notarial code of ethics require absolute caution, integrity, and transparency to prevent any deviation or collusion detrimental to the parties.

This study also demonstrates that legal protection for buyers and sellers of customary land heavily depends on the proactive role of the notary in verifying identities, legitimizing rights, and ensuring comprehensive documentation of transactions. The weakness of formal legal foundations and the absence of certificates necessitate the pursuit of written recognition mechanisms and thorough involvement of customary communities to minimize potential disputes and reinforce the legal standing of the parties. Meanwhile, the imposition of civil, administrative, or criminal sanctions on notaries who are negligent or violate procedures must remain a priority, both to safeguard public interests and to uphold the dignity of the profession.

As a recommendation, there is an urgent need to harmonize and refine regulations related to the recognition of rights over customary land, including the development of legalization mechanisms that are adaptive to social realities. Continuous education and training for notaries should be prioritized to enhance their awareness of social contexts, professional ethics, and evolving land law. Additionally, collaboration among government institutions, village authorities, indigenous communities, and professional associations is essential to build a just, transparent legal protection system that ensures legal certainty in every sale and purchase transaction of customary land without ownership certificates. Ultimately, notarial performance characterized by integrity, sensitivity to local values, and a high degree of professionalism will be the key to establishing public trust and upholding justice within Indonesia's notarial system.

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