



Overlapping Authority to Make Land Deeds in Indonesia (A critical review of the realisation of legal order)

Heppy Trio Ananda¹, Iwan Permadi², Supriyadi³

Universitas Brawijaya Malang, Indonesia

trioanandaheppy@gmail.com¹, iwan_permadi@ub.ac.id², supriyadi@ub.ac.id³

Abstract. The concurrent authority of Notaries and Land Deed Officials (PPATs) in creating land deeds in Indonesia has resulted in legal ambiguity. This research employs a normative juridical approach, scrutinizing existing legal norms to ascertain the extent of authority granted to Notaries and PPATs and to identify potential conflicts. The findings indicate that the Notary Position Law (Law No. 30/2004, amended by Law No. 2/2014) endows Notaries with extensive authority, implying they are not confined by the restrictions in Government Regulation No. 24/2016. The existing ambiguity calls for legislative clarification. The study concludes that Notaries possess broad authority to draft land deeds, mostly unaffected by limitations on PPATs. Legislative measures are required to delineate clearer jurisdictional boundaries, ensuring legal certainty and preventing potential abuses of power. This research examines the realization of legal order in the context of overlapping authority to make land deeds in Indonesia.

Keywords: *Dual Authority; Legal Confusion; Realisation of Legal Order*

Introduction

The concurrent authority of Notaries and Land Deed Officials (PPATs) in the creation of land deeds in Indonesia has led to considerable legal confusion. Both professions assert their jurisdiction based on different legal instruments: the Notary Position Law and Government Regulation No. 24 of 2016. This overlap raises crucial questions about legal certainty and the protection of parties involved in land transactions. The Notary Position Law grants Notaries the power to create authentic deeds for all deeds, agreements, and stipulations required by law, while Government Regulation No. 24 of 2016 grants similar authority to PPAT.¹

The overlapping authority to make land deeds in Indonesia, involving both Notaries and Land Deed Officials (PPATs), has resulted in significant legal confusion and uncertainty. Each profession claims jurisdiction based on distinct legal frameworks, specifically the Notary Position Law and Government Regulation No. 24 of 2016. This dual authority raises critical questions about the legal certainty and protection afforded to parties in land transactions. The Notary Position Law grants Notaries broad powers to create authentic deeds for various legal acts, while Government Regulation No. 24 of 2016 bestows similar authority upon PPATs, leading to jurisdictional overlap.

Previous studies have examined the overlapping jurisdictions of Notaries and PPATs, often highlighting the resultant legal ambiguities and conflicts. For instance, while the Notary Position Law endows Notaries with broad authority, Government Regulation No. 24 of 2016 similarly empowers PPATs. This dual authority has led to legal uncertainties and conflicts, as prior research has not sufficiently clarified the jurisdictional boundaries. The novelty of this research lies in its detailed analysis of legal norms and its proposal for a clearer legislative framework to delineate these boundaries, addressing the identified gap.

To address the overlapping jurisdiction and its consequent legal uncertainties, it is crucial to conduct a comprehensive analysis of the existing legal norms and

¹ Ajeng Fitrah Ramadhan and Iwan Permadi, 'Makna Alasan-Alasan Tertentu Dalam Kode Etik Notrais Terkait Kewajiban Menjalankan Jabatan Notaris Di Kantornya', *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (30 June 2019): 15, <https://doi.org/10.17977/um019v4i1p15-28>.

Heppy Trio Ananda, Iwan Permadi, Supriyadi

Overlapping authority to make land deeds in Indonesia (A critical review of the realisation of legal order)

frameworks governing Notaries and PPATs. This research aims to provide a detailed examination of the legal instruments that grant authority to both professions, identifying the points of conflict and proposing a legislative solution to delineate their respective jurisdictions clearly. By establishing a more precise legislative framework, the research intends to enhance legal certainty and provide better protection for parties involved in land transactions. This clarity is particularly important to ensure that the legal processes surrounding land deeds are transparent, efficient, and equitable, thereby fostering trust and stability in the property market.

The urgency of this research arises from the need to resolve the legal uncertainties and potential for abuse of power resulting from the overlapping authorities of Notaries and PPATs. Given the critical importance of land in human life and its economic value, ensuring legal certainty in land transactions is paramount. The current ambiguity undermines legal protection for parties involved in these transactions, necessitating immediate legislative intervention to enhance legal clarity and security.

The primary legal issue this research addresses is the vague norms between the Notary Position Law and the regulations governing PPATs. These ambiguities create legal uncertainties and the potential for abuse of power in the processes of forming, discovering, and applying the law. The study investigates whether Notaries can broadly create deeds related to land, or if their authority should be limited to exclude the specific domain of PPATs. Clarifying these norms is essential for protecting legal subjects and ensuring legal certainty.

The objective of this research is to propose a reformulation of the notary authority arrangements in making land deeds. By clarifying the jurisdictional boundaries between Notaries and PPATs, the research aims to enhance legal certainty, prevent abuse of power, and provide better legal protection for all parties involved in land transactions. This reformulation is essential for maintaining the integrity of land deed processes and fostering greater trust in the legal system. The study's findings and recommendations aim to contribute to a more reliable and clear legal framework for land transactions in Indonesia.

Therefore, there is ambiguity regarding the authority of Notaries and Land Deed Officials (PPATs). The question arises whether a Notary can broadly

create deeds related to land, encompassing the authority held by PPATs, or if a Notary's role is limited to creating land deeds outside the scope of PPATs' authority. This uncertainty necessitates further research and analysis to examine and possibly reformulate the regulations governing the authority of Notaries in the creation of land deeds.

Research Methods

The research method used in this research is normative juridical research. This research focuses on solving the problem based on the applicable laws and regulations and finding the truth and responsibility for the case and/or problem being studied based on legal norms and regulations.² The relevance of the research method used in this research is expected to be able to answer how the issue of Vague Notary Authority in making Land Deeds.³ Several approaches were used, including the statutory approach. The statutory approach in law involves a comprehensive review of all relevant laws and regulations pertaining to specific legal issues or challenges and legal concept approach. The methodological approach in legal studies involves a thorough analysis of legal principles and concepts within the legal system.⁴

Discussion

The need to reformulate regulations governing the authority of notaries in making land deeds is critically important. The current legal frameworks must be comprehensively reassessed to ensure clarity and prevent overlapping jurisdictions between notaries and Land Deed Officials (PPATs). This ambiguity in the division of authority not only creates legal confusion but also has the potential to harm parties involved in land transactions.

Future research should focus on developing a clear and precise legislative framework that explicitly defines the roles and limitations of notaries and

² Mukti Fajar ND, *Dualisme penelitian hukum: normatif & empiris* (Yogyakarta: Pustaka Pelajar, 2010).

³ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2008).

⁴ Irwansyah Irwansyah, 'Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel', *Yogyakarta: Mirra Buana Media* 8 (2020).

Heppy Trio Ananda, Iwan Permadi, Supriyadi

Overlapping authority to make land deeds in Indonesia (A critical review of the realisation of legal order)

PPATs. This approach should involve a thorough analysis of the existing legal norms and the identification of areas of conflict. Additionally, legal action should aim to amend existing laws to reinforce the principle that only statutory laws can impose limitations on notarial authority. This is crucial for enhancing legal certainty and ensuring compliance with applicable regulations.

Such reforms would not only create a more cohesive and efficient system for the creation and registration of land deeds but also provide better legal protection for all parties involved in land transactions. With a clearer and well-defined legal framework, the legal processes surrounding land deeds would become more transparent, efficient, and fair. This, in turn, would foster trust and stability in the property market, which is a significant advantage for overall economic development.

The Land Deed Official (PPAT) holds the authority to create authentic deeds for land transactions. This authority is outlined in Article 1, point 1 of Government Regulation No. 24 of 2016, which amends Government Regulation No. 37 of 1998 concerning the Regulations for Land Deed Officials. According to this regulation, a PPAT is defined as "a public official authorized to make authentic deeds regarding certain legal acts concerning land rights or rights to apartment units."

This situation introduces ambiguity within the legal framework, as the Notary Position Law also empowers notaries to draft land-related deeds. Consequently, notaries and PPATs find themselves with overlapping jurisdiction over the creation of land deeds, leading to legal uncertainties and potential conflicts.⁵

Land holds immense importance for human life due to its economic and social value. According to Article 33, paragraph (3) of the 1945 Constitution (UUPA), land utilization should promote social justice for individuals and communities, reflecting the inherent social and economic factors associated with land rights. In the context of land law, the concept of "juridical control" refers to the legal

⁵ Chintya Ainun Khasanah, 'Kewenangan Notaris Dalam Membuat Akta Pertanahan' (Surabaya, Universitas Negeri Surabaya, 2019), https://www.researchgate.net/publication/337905555_KEWENANGAN_NOTARIS_DALAM_MEMBUAT_AKTA_PERTANAHAN.

authority over land without physical possession. For instance, creditors with security rights over land maintain legal control while the physical control remains with the landowner. This distinction is crucial in ensuring that the legal and economic interests of both parties are protected.⁶ According to the explanation of Article 15, paragraph (1) of the Mortgage Rights Law, the power of attorney for the encumbrance of Mortgage Rights must be made through a Notarial deed or a PPAT deed. This requirement underscores the need for clear and precise legal documentation to provide certainty and protection for the interests of the mortgagor.⁷

This research highlights a legal issue concerning the ambiguous norms governing the authority of Notaries and Land Deed Officials (PPAT) in creating land deeds. The overlap in authority between these two roles, as authorized by the Notary Position Law and the regulations for PPATs under the National Land Agency (BPN), results in legal uncertainty. Such ambiguity can lead to potential abuse of power in the formation, discovery, and application of the law, undermining the protection of legal subjects. The current legal framework does not provide clear boundaries between the roles of Notaries and PPATs, thereby failing to ensure the legal certainty necessary for the effective protection of parties involved in land transactions. Addressing this vagueness is crucial for maintaining the integrity and reliability of the legal process.

Notaries first entered Indonesia in the early 17th century with the arrival of the Dutch East India Company (Oost-Indische Compagnie). On March 4, 1621, Melchior Kerchem, who served as Secretary of the "College Van Schepen" in Jacatra, was appointed as the first Notary in Indonesia. His duties were performed in accordance with the oath of allegiance taken during his appointment at Batavia Castle before Baljuw. He was required to register all

⁶ Iwan Permadi, *Hak Atas Tanah Bagi Warga Negara Asing* (Malang: Gunung Samudra, 2014).

⁷ Dinne Diaren Dizan, Iwan Permadi, and Hariyanto Susilo, 'Tanggungjawab PPAT Pengganti Terhadap Surat Kuasa Membebankan Hak Tanggungan Berobjek Izin Membuka Tanah Negara', *Jurnal Cakrawala Hukum* 12, no. 3 (1 December 2021): 263–73, <https://doi.org/10.26905/idjch.v12i3.4966>.

Heppy Trio Ananda, Iwan Permadi, Supriyadi

Overlapping authority to make land deeds in Indonesia (A critical review of the realisation of legal order)

documents and deeds that he prepared, ensuring that his work adhered to the legal standards of the time.

After Indonesia's independence on August 17, 1945, the government did not immediately develop a new regulatory framework for Notaries. Instead, the existence of Notaries continued to be recognized under Article 2 of the Transitional Rules (Aturan Peralihan) of the 1945 Constitution, which states, "All existing laws and regulations remain in force as long as a new one has not been made according to this Constitution." Consequently, the Reglement op Het Notarisambt in Nederlands-Indie (Stbl. 1860: 3) remained in effect, and the Notary Position Regulations established in 1860 continued to govern Notaries in Indonesia until 2004. Over time, it became evident that these regulations were outdated and no longer aligned with modern legal and business practices.

Unlike the Notariswet in the Netherlands, which has undergone several amendments to align with legal and business developments, the Indonesian Notary Position Regulations remained static for an extended period. Recognizing the necessity for modernization, the authority to appoint Notaries was transferred to the Minister of Justice (now the Minister of Law and Human Rights) under Government Regulation No. 60 of 1948, issued on October 30, 1948. This regulation outlined the scope of work, organizational structure, leadership, and duties of the Ministry of Justice, marking a significant advancement in the development of notarial law in Indonesia. Subsequently, on November 13, 1954, the Government of the Republic of Indonesia enacted Law Number 33 of 1954 concerning Deputy Notaries and Temporary Deputy Notaries, further refining the notarial system. Article 2 paragraph (1) of the Law states that:

- a. In the absence of a Notary, the Minister of Justice may appoint a person who is required to perform the duties of a Notary;
- b. Pending the provision of the Minister of Justice, the President of the Court may appoint a person who is temporarily required to perform the duties of a Notary referred to in paragraph (1).

Changes to the Notary Position Regulations were only implemented with the enactment of Law Number 30 of 2004, concerning the Notary Position, on October 6, 2004. This law replaced the Notary Position Regulations established by Ord. Stbl 1860 Number 3, which had been in effect since July 1, 1860. The

General Elucidation of Law Number 30 of 2004 emphasizes that this legislation represents a comprehensive renewal and reorganization of notarial regulations into a single law applicable to all residents within the Republic of Indonesia. This effort aimed to unify the legal framework for notarial positions across the country. Subsequently, this regulation was further updated with the enactment of Law Number 2 of 2014 concerning Notary Position (UUJN), which remains in effect today.

The history of Land Deed Officials (PPAT) in Indonesia reveals their crucial role and significant position in the nation's legal framework. In English, PPAT is referred to as Land Deed Officials, and in Dutch, it is known as land titles registrar. These officials hold substantial authority, granted by the state, to execute deeds related to the transfer of land rights and other pertinent legal documents within the Republic of Indonesia and abroad.⁸ This authority underscores the importance of PPATs in maintaining the integrity and legality of land transactions, reflecting their vital contribution to the nation's legal and administrative systems.⁹

Land Deed Officials (PPAT) have been recognized since the enactment of Government Regulation No. 10 of 1961 concerning Land Registration. This regulation serves as the implementation of Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). Within this framework, PPATs are designated as officials responsible for creating deeds related to the transfer of land rights, the granting of new rights, or the encumbrance of land rights. This regulatory basis highlights the essential role of PPATs in formalizing land transactions and ensuring the legal certainty of land rights in Indonesia.¹⁰

Land Deed Officials (PPAT) are appointed and dismissed by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. They are assigned to specific working areas to serve the public by drafting PPAT

⁸ Ilham Wahyu Wicaksana, Djunaedi Djunaedi, and Andi Aina Ilmih, 'The Role of PPAT in Making the Deed of Sale and Purchase and the Authorized to Sell Certified Land', *Sultan Agung Notary Law Review* 4, no. 2 (1 August 2022): 555, <https://doi.org/10.30659/sanlar.4.2.555-569>.

⁹ HS Salim, *Teknik Pembuatan Akta Pejabat Pembuat AKta Tanah (PPAT)/Salim HS* (Jakarta: Raja Grafindo Persada, 2016).

¹⁰ Budi Harsono, ed., *Hukum agraria Indonesia: himpunan peraturan-peraturan hukum tanah*, rev. Aufl. 2007 (Jakarta: Djambatan, 2008).

Heppy Trio Ananda, Iwan Permadi, Supriyadi

Overlapping authority to make land deeds in Indonesia (A critical review of the realisation of legal order)

deeds. In regions where there are insufficient PPATs, or to cater to specific groups requiring certain PPAT deeds, the Minister has the authority to appoint Temporary PPATs or Special PPATs. These appointments ensure that the needs of the community for land-related legal services are adequately met, maintaining the integrity and accessibility of land administration processes.¹¹ In article 8 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulation of Land Deed Officials.

Historically, notaries in Indonesia did not enjoy the freedoms they do under current positive law. Initially, they operated merely as employees of the Dutch East India Company (*Oost-Indische Compagnie*).¹² Over time, the role of notaries evolved, and they became recognized as public officials. This transformation was formally regulated by Law Number 30 of 2004 concerning Notary Position Regulations (PJN), which was later amended by Law Number 2 of 2014 concerning Notary Position (UUJN). According to Article 1, point 1 of UUJN, a notary is defined as a public official authorized to create authentic deeds and endowed with additional authorities as specified by this law or other applicable laws.

This establishes the foundation that Notaries are public officials authorized to create authentic deeds. Similarly, PPATs (Land Deed Officials) are also public officials with the authority to draft authentic deeds, as stipulated by Government Regulation Number 24 of 2016 concerning the Regulation of Land Deed Making Officials. Article 1, point 1, defines a PPAT as a public official authorized to make authentic deeds for certain legal acts related to land rights or property rights over apartment units.¹³ From this definition, it is clear that a PPAT's authority is specifically limited to creating deeds concerning land rights and apartment units.

¹¹ Ngadino, *Ketentuan Umum Tata Cara Pembuatan Dan Pengisian Akta PPAT* (Semarang: UPT Penerbitan Universitas PGRI Semarang Press, 2019).

¹² Christiana Sri Murni, 'Peran Pejabat Pembuat Akta Tanah Dalam Proses Peralihan Jual Beli Hak Atas Tanah', *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (22 March 2021): 25, <https://doi.org/10.19184/jkph.v1i1.23384>.

¹³ Reni Margiyanti, Tunggal Anshari Setia Negara, and R. Imam Rahmat Sjafi'i, 'Confidentiality of the Notary Deed in the Freedom of the Academic Pulpit', *Jurnal Cakrawala Hukum* 13, no. 2 (1 August 2022): 182–93, <https://doi.org/10.26905/idjch.v13i2.5735>.

However, among academics such as Habieb Adjie and Urip Santoso, PPAT still goes through a long debate regarding the status of the deed it makes, whether the deed is authentic or not. This is in accordance with the basis of the academics regarding the provisions of Article 1868 of the Civil Code, which basically means that the form and procedure of the authentic deed must be regulated by law.

According to Article 1, point 3 of Law Number 12 of 2011 concerning the Formation of Legislation, a Law is a regulation formed by the House of Representatives with the joint approval of the President. Additionally, Article 1, point 2 of the same law defines legislation as written regulations containing binding legal norms, created or stipulated by authorized state institutions or officials following prescribed procedures.

More specifically, PPATs are governed by Government Regulation Number 24 of 2016. Article 1, point 5 of this regulation states that Government Regulations are legal instruments issued by the President to implement laws appropriately. This regulation details the authority of PPATs, emphasizing their role in creating authentic deeds related to land rights and property rights over apartment units, as stipulated in the relevant legislation. So based on this, laws, regulations, and government regulations are different things. Laws and Government Regulations are part of laws and regulations but government regulations are lower than laws. So, this basis is the basis of the academics mentioned above that notaries are authorized to make authentic deeds while PPATs are still questionable about the status of the deeds they make.

Article 15, paragraph 2, letter f of Law No. 2 of 2014 concerning UJN stipulates that Notaries are authorized to make deeds related to land. Article 15, paragraph 1 of the UJN outlines that Notaries are authorized to create authentic deeds for all deeds, agreements, and stipulations required by laws and regulations, or those requested by the concerned parties to be stated in an authentic deed. They ensure the certainty of the date of the deed, store the deed, and provide a grosse, copy, and quotation of the deed, as long as the creation of the deed is not assigned or excluded to other officials or persons as stipulated by law.

According to Article 2, paragraph 1 of Government Regulation No. 37 of 1998 concerning PPAT, Land Deed Officials (PPATs) have the primary task of

facilitating the land registration process by creating deeds that serve as evidence of specific legal actions related to land rights or property rights over flat housing units. These deeds are essential for registering changes in land registration data that result from these legal actions. Article 2, paragraph 2 of the same regulation further details the types of legal actions covered, ensuring clarity and legal certainty in land transactions and property rights over flat units.

Based on the above, the authority of Notaries to make deeds related to land is extensive, as outlined in Article 15, paragraph 1 and paragraph 2, letter f of Law No. 2 of 2014 concerning Notary Position (UUJN). In contrast, the authority of PPATs is specifically delineated in Article 2, paragraphs 1 and 2 of Government Regulation No. 37 of 1998 concerning PPAT. This distinction highlights that while Notaries have broad authority in creating land-related deeds, the authority of PPATs is more narrowly focused on specific legal actions within the scope of land registration. Based on the theory of legal certainty that the author uses to analyze the issue of the limitation of Notary authority in making land deeds based on positive law in Indonesia, it is divided into 2, namely the first school of natural law with its theory of seeing law as an instrument to achieve justice. While the school of legal positivism with its theory views the law only as a sovereign order, thus creating legal certainty.

A notary must guarantee legal certainty to the public as service users. In this context, legal certainty means the establishment of laws that are permanent, clear, consistent, and consequential, ensuring that their implementation is not influenced by subjective circumstances. This consistency in the application of the law helps to maintain trust and reliability in legal processes, providing the public with a dependable framework for legal transactions.¹⁴

The school of natural law relies on morals, ethics, and justice so that based on this, if using the theory of legal certainty from the school of natural law where this law is not only an instrument to create security and order in relations between individuals and other individuals in society, but becomes an instrument of morality that must create justice. Hans Kelsen argues that justice is social

¹⁴ Ramadhan and Permadi, 'Makna Alasan-Alasan Tertentu Dalam Kode Etik Notaris Terkait Kewajiban Menjalankan Jabatan Notaris Di Kantornya'.

happiness, he also argues that law is part of morality, and justice is an important part of positive law.¹⁵

As for the relationship between law and morals according to K.Bertens,¹⁶ states:

"As there is a very close connection between morals and law. Starting with looking at the connection from a legal perspective: Law requires morals. There are several reasons for this. First, in imperial Rome there was an expression that read *Quid leges sine moribus*"

"which means laws, if not accompanied by morality? Laws do not mean much if they are not imbued with morality. Without morality the law would be empty. The virtue of the law is largely determined by its moral quality. Therefore, morality must be the basis for judging the law. Immoral laws should be replaced when moral consciousness has reached a mature stage in a society."

So based on the opinion of K.Bertens, immoral laws should be replaced, if in a society moral awareness has reached a mature stage.¹⁷ Based on this, the authority of notaries cannot be limited by government regulations in terms of making land deeds, because positive law has regulated the authority of notaries to be able to make land deeds and this authority can only be limited by laws, not government regulations or lower regulations.¹⁸ The theory of legal certainty, according to the school of legal positivism, views law as a tool to achieve legal certainty, where law is seen as a sovereign command. John Austin posited that law is positive law created by higher authorities for lower authorities, with the "command" being the essence of law. Without a "command," it is not considered law. Based on John Austin's perspective, Article 15, paragraphs 1 and 2, letter f of the Notary Position Law serves as the command for notaries, particularly in the creation of land deeds.¹⁹

¹⁵ Subiharta Subiharta, 'Moralitas Hukum Dalam Hukum Praksis Sebagai Suatu Keutamaan, Jurnal Hukum Dan Peradilan', *Jurnal Hukum Dan Peradilan* 4, no. 3 (30 November 2015): 385, <https://doi.org/10.25216/jhp.4.3.2015.385-398>.

¹⁶ Subiharta.

¹⁷ Margiyanti, Negara, and Sjafi'i, 'Confidentiality of the Notary Deed in the Freedom of the Academic Pulpit'.

¹⁸ Jasmine R. Silver, 'Binding Morality and Perceived Harm as Sources of Moral Regulation Law Support Among Political and Religious Conservatives', *Law & Society Review* 54, no. 3 (September 2020): 680–719, <https://doi.org/10.1111/lasr.12487>.

¹⁹ Johannes Pangeran Ls, Eka Kristinna Baene, and Yusuf Hanafi Pasaribu, 'Legal Protection of Children as Victims of Associal Crimin1wal at the Binjai Police (Police Report

One of the primary objectives of law is to ensure legal certainty. Whether the law is perceived as fair or unfair, it must be obeyed. Therefore, notaries cannot be restricted from making land deeds, as this legal certainty is established in Indonesian positive law.²⁰ This law is binding because it represents an order derived from sovereign legal norms. Thus, the authority granted to notaries under Article 15 underscores the legal framework that supports their role in ensuring legal certainty through the creation of authentic deeds, including land deeds. So based on the theory of legal certainty of the school of natural law and the theory of legal certainty of the school of positivism regarding the basic concept of notary authority in making land deeds based on positive law in Indonesia, it is not limited and no clear limits are given regarding the basic limitations in making land deeds because Article 15 paragraph 2 letter f of the UUJN gives notaries the authority to make land deeds which can be limited by other laws, but it should be underlined that only laws can limit the authority of notaries in making land deeds, not government regulations.

It has been mentioned in the formulation of the first problem that based on the theory of legal certainty of the school of natural law and the theory of legal certainty of the school of positivism regarding the basic concept of notary authority in making land deeds based on positive law in Indonesia, it is not limited and is not given clear limits regarding the basic limitations in making land deeds because Article 15 paragraph 2 letter f of the UUJN gives notaries the authority to make land deeds which can be limited by other laws, but it should be underlined that only laws can limit the authority of notaries in making land deeds not government regulations.

In its development, Article 15, paragraph 1 of Law No. 30 of 2004 concerning the Position of Notary (PjN) states that Notaries are authorized to make authentic deeds for all acts, agreements, and stipulations required by laws and regulations. This suggests that the scope of notarial authority is limited to matters explicitly governed by legal statutes. Consequently, notaries are permitted to draft deeds only for acts, agreements, and provisions that are

Study Lp/b/447/Iv/2022/Spkt), *LEGAL BRIEF* 11, no. 6 (28 February 2023): 3542–51, <https://doi.org/10.35335/legal.v11i6.697>.

²⁰ Torben Spaak, 'Legal Positivism, Conventionalism, and the Normativity of Law', *SSRN Electronic Journal*, 2017, <https://doi.org/10.2139/ssrn.2978561>.

specifically mandated by existing laws, ensuring their actions comply with legal requirements. This compliance guarantees that the deeds produced by notaries are legally valid and enforceable.

Article 15, paragraph 1 of Law No. 2 of 2014 regarding the Position of Notary empowers Notaries to draft authentic deeds for all acts, agreements, and stipulations required by laws and regulations. This suggests that their authority is not confined to statutory provisions alone. Notaries are permitted to create authentic deeds for any legally recognized acts and agreements that necessitate formal documentation. This view is consistent with Jimly Asshiddiqie's distinction between "regulation," "decision/decreed," and "determination" in legal processes. According to Asshiddiqie, these terms should be accurately used to represent various legal actions and decisions, underscoring the broad scope of notarial authority in documenting different legal acts and agreements. The term "regulation" is used to refer to the results of regulatory activities that produce regulations (*regels*).

Moreover, Article 15, paragraph 2, letter f, of both Law No. 30 of 2004 and Law No. 2 of 2014 concerning the Position of Notary consistently affirms the authority of notaries to create land deeds. These laws indicate that notaries possess broader authority to make determinations rather than decrees, as outlined in Article 15, paragraph 1 of Law No. 2 of 2014. Consequently, notaries are authorized to handle all legal acts related to land deeds. So the author argues that, notaries have broader authority than PPATs in making land deeds because the authority possessed by notaries is regulated by law while the authority of PPATs is regulated by Government Regulations.

One of the regulations governing the authority of notaries to make deeds regarding land is found in Article 15, paragraph 1 of Law Number 4/1996 concerning Land Mortgages and Objects Related to Land. This article stipulates that a Power of Attorney to Impose Mortgage Rights must be created as a notarial deed or PPAT deed and must meet the following requirements: it does not include the authority to perform any legal actions other than to encumber the Mortgage, it does not grant the power of substitution, and it clearly specifies the object of the Mortgage, the amount of the debt, the name and identity of the creditor, and, if the debtor is not the grantor of the Mortgage, the name and identity of the debtor as well.

Furthermore, the Sale and Purchase Agreement (PPJB) is addressed in Article 1, point 2 of the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019. This regulation pertains to the preliminary agreement system for the sale and purchase of houses and outlines the agreement between the developer and individuals for the sale and purchase of houses or apartment units. This transaction can take place before construction for apartment units or during the development process for single houses and row houses, and must be stated in a notarial deed. According to Herlien Budiono, this type of agreement serves as a preliminary agreement, functioning as an initial, free-form agreement prior to the main agreement. Therefore, the PPJB can be categorized as a preliminary agreement established before the finalization of the main contract ²¹.

Based on the theory of authority, the author analyzes the issue of reformulating regulations on the limitation of notary authority in making land deeds, particularly in Article 15, Paragraph 2, Letter (F) of Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Position of Notary.

J.G. Brouwer and Schilder, as quoted by Indroharto on authority, argue that:

1. Attribution is the authority given to an organ (institution) of government or state agency by an independent legislative body. This authority is original, which is not taken from a pre-existing authority.
2. Delegation is the authority transferred from the attribution authority of one government organ (institution) to another organ so that the delegator (the organ that has given the authority) can test the authority on its behalf.
3. A mandate (mandator) authorizes another organ (mandatary) to make a decision or take an action on its behalf.

The authority assigned to PPAT's originates from the National Land Agency (BPN), as outlined in Government Regulation No. 24 of 1997 on Land Registration and Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flats, and Land Registration. These regulations indicate

²¹ Dewi Kurnia Putri, 'Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas', *Jurnal Akta* 4, no. 4 (2017): 623–34, <http://dx.doi.org/10.30659/akta.v4i4.2505>.

that the Head of the Land Office, while performing land registration duties, is supported by PPATs and other officials who are tasked with specific activities according to these regulations and relevant laws.

In the above case, notaries derive their authority from Law No. 2 of 2014 concerning Notary Position Regulations, which provides them with attribution authority. On the other hand, the authority of PPATs is defined in Government Regulation No. 24 of 2016 concerning PPATs, as an extension of the National Land Agency (BPN). This indicates that the authority of PPATs is a mandate authority delegated from the BPN, which operates under the Ministry of Agrarian Affairs and Spatial Planning.

This is in line with the opinion of Habieb Adjie who states that the deed must be made in the form prescribed by law (*wet*), *which* means that the authority must be obtained by law (attribution), not from Government Regulations (delegation), where the Notary has attribution authority where the authority is directly from the Law while the PPAT has delegation authority where the authority comes from the Land Agency.

Based on this, the author suggests reformulating the regulation of notary authority in making land deeds. According to Article 1, paragraph 1 of Law No. 12 of 2011 concerning the Formation of Legislation, the process involves several stages: planning, preparation, discussion, ratification or stipulation, and promulgation. This comprehensive approach ensures that the creation of legislation is thorough and systematic, addressing the need for clear and effective regulations governing notary authority in land deed matters.

Based on the explanation above, notaries derive their attribution authority from the law, not from government regulations. This is supported by Article 5 of Law No. 12 of 2011, letters b and c, which states that notaries, as officials who meet the requirements outlined in Article 1868 of the Civil Code, are authorized to create deeds. The principle of *Lex Superior Derogat Legi Inferiori*, meaning higher regulations override lower ones, applies here. Consequently, the BPN should be required to accept land deeds prepared by notaries.

Conclusion

Addressing the existing issues requires a thorough reassessment of the current legal frameworks to identify and resolve ambiguities and conflicts. Developing

new legislative measures that clearly define the roles and limitations of notaries and PPATs is essential to ensure there is no overlap in their jurisdictions. Additionally, amending existing laws should focus on reinforcing the principle that only statutory laws can impose limitations on notarial authority, thereby enhancing legal certainty and compliance with regulations.

Preventing the misinterpretation and misuse of notarial powers necessitates the implementation of clear statutory guidelines. This approach will foster a more transparent and reliable legal environment. Consequently, the process for creating and registering land deeds can be streamlined, reducing the likelihood of disputes and providing better legal protection for all parties involved. These improvements will enhance the efficiency of the system, ensure clarity in land deed creation, and ultimately increase trust and stability in the property market.

Bibliography

- Dizan, Dinne Diaren, Iwan Permadi, and Hariyanto Susilo. 'Tanggungjawab PPAT Pengganti Terhadap Surat Kuasa Membebaskan Hak Tanggungan Berobjek Izin Membuka Tanah Negara'. *Jurnal Cakrawala Hukum* 12, no. 3 (1 December 2021): 263–73. <https://doi.org/10.26905/idjch.v12i3.4966>.
- Fajar ND, Mukti. *Dualisme penelitian hukum: normatif & empiris*. Yogyakarta: Pustaka Pelajar, 2010.
- Harsono, Budi, ed. *Hukum agraria Indonesia: himpunan peraturan-peraturan hukum tanah*. Rev. Aufl. 2007. Jakarta: Djambatan, 2008.
- Irwansyah, Irwansyah. 'Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel'. *Yogyakarta: Mirra Buana Media* 8 (2020).
- Khasanah, Chintya Ainun. 'Kewenangan Notaris Dalam Membuat Akta Pertanahan'. Universitas Negeri Surabaya, 2019. https://www.researchgate.net/publication/337905555_KEWENANGAN_NOTARIS_DALAM_MEMBUAT_AKTA_PERTANAHAN.
- Ls, Johannes Pangeran, Eka Kristinna Baene, and Yusuf Hanafi Pasaribu. 'Legal Protection of Children as Victims of Associal Crimin1wal at the Binjai Police (Police Report Study Lp/b/447/Iv/2022/Spkt)'. *LEGAL BRIEF* 11, no. 6 (28 February 2023): 3542–51. <https://doi.org/10.35335/legal.v11i6.697>.
- Margiyanti, Reni, Tunggal Anshari Setia Negara, and R. Imam Rahmat Sjafi'i. 'Confidentiality of the Notary Deed in the Freedom of the Academic

- Pulpit'. *Jurnal Cakrawala Hukum* 13, no. 2 (1 August 2022): 182–93. <https://doi.org/10.26905/idjch.v13i2.5735>.
- Marzuki, Peter Mahmud. *Penghantar Ilmu Hukum*. Jakarta: Kencana Prenada Media Group, 2008.
- Murni, Christiana Sri. 'Peran Pejabat Pembuat Akta Tanah Dalam Proses Peralihan Jual Beli Hak Atas Tanah'. *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (22 March 2021): 25. <https://doi.org/10.19184/jkph.v1i1.23384>.
- Ngadino. *Ketentuan Umum Tata Cara Pembuatan Dan Pengisian Akta PPAT*. Semarang: UPT Penerbitan Universitas PGRI Semarang Press, 2019.
- Permadi, Iwan. *Hak Atas Tanah Bagi Warga Negara Asing*. Malang: Gunung Samudra, 2014.
- Putri, Dewi Kurnia. 'Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas'. *Jurnal Akta* 4, no. 4 (2017): 623–34. <http://dx.doi.org/10.30659/akta.v4i4.2505>.
- Ramadhan, Ajeng Fitrah, and Iwan Permadi. 'Makna Alasan-Alasan Tertentu Dalam Kode Etik Notrais Terkait Kewajiban Menjalankan Jabatan Notaris Di Kantornya'. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (30 June 2019): 15. <https://doi.org/10.17977/um019v4i1p15-28>.
- Salim, HS. *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)/Salim HS*. Jakarta: Raja Grafindo Persada, 2016.
- Silver, Jasmine R. 'Binding Morality and Perceived Harm as Sources of Moral Regulation Law Support Among Political and Religious Conservatives'. *Law & Society Review* 54, no. 3 (September 2020): 680–719. <https://doi.org/10.1111/lasr.12487>.
- Spaak, Torben. 'Legal Positivism, Conventionalism, and the Normativity of Law'. *SSRN Electronic Journal*, 2017. <https://doi.org/10.2139/ssrn.2978561>.
- Subiharta, Subiharta. 'Moralitas Hukum Dalam Hukum Praksis Sebagai Suatu Keutamaan, Jurnal Hukum Dan Peradilan'. *Jurnal Hukum Dan Peradilan* 4, no. 3 (30 November 2015): 385. <https://doi.org/10.25216/jhp.4.3.2015.385-398>.
- Wicaksana, Ilham Wahyu, Djunaedi Djunaedi, and Andi Aina Ilmih. 'The Role of PPAT in Making the Deed of Sale and Purchase and the Authorized to Sell Certified Land'. *Sultan Agung Notary Law Review* 4, no. 2 (1 August 2022): 555. <https://doi.org/10.30659/sanlar.4.2.555-569>.