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Notaries' Roles in Land Rights Transfers: Balancing Deed Formality with Substantive Legal Protection Responsibilities and Accountability

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ABSTRACT

This study examines the role and responsibility of notaries in the transfer of land rights, focusing on the tension between formal compliance in authentic deeds and the realization of substantive legal protection. The objective of this research is to critically analyze whether the current formalistic framework of notarial authority is sufficient to ensure legal certainty and justice, and to propose a reconceptualization of notarial duties that integrates both procedural and substantive dimensions. The research employs a normative legal method, utilizing statutory and conceptual approaches to analyze relevant legislation, legal doctrines, and scholarly perspectives concerning notarial functions and land law. Data are analyzed using a descriptive prescriptive technique to both explain existing legal norms and formulate normative recommendations. The findings reveal that the prevailing practice of notarial duties remains heavily oriented toward formal validity, often reducing the notary to a passive recorder of parties' intentions. This formalistic approach, while ensuring procedural legality, has proven inadequate in preventing disputes arising from fraud, misrepresentation, and unequal bargaining power. The study identifies a significant gap between formal authenticity and substantive justice, particularly in land transactions that carry high economic and social consequences. This research finds that the concept of substantive authenticity offers a viable framework to bridge this gap, requiring notaries to exercise due diligence, ensure informed consent, and actively verify the material aspects of transactions. The study concludes that strengthening the notarial role through a more substantive approach is essential to enhance legal protection, prevent disputes, and uphold justice within the land law system.

Keywords: Notary Responsibility, Land Rights Transfer, Legal Formalism, Substantive Justice, Authentic Deed.

I. Introduction

The transfer of land rights constitutes one of the most sensitive legal transactions in civil law systems, particularly in jurisdictions where land embodies not only economic value but also social, cultural, and political significance. In Indonesia, the involvement of notaries—often functioning concurrently with Land Deed Officials (PPAT) has long been positioned as a safeguard to ensure legal certainty, authenticity, and evidentiary strength in such transactions. However, the normative expectation that notarial deeds provide comprehensive legal protection is increasingly contested. The tension between the formalistic nature of authentic deeds and the substantive demands of justice raises a fundamental question: to what extent do

notaries bear responsibility not merely as drafters of legal instruments, but as guarantors of substantive legal protection in land transfers?. A substantial body of prior research has examined the role of notaries within the framework of civil law traditions, emphasizing their authority to produce authentic deeds with perfect evidentiary value. Classical scholarship highlights that notarial acts are presumed to reflect the true intentions of the parties and are endowed with probative force unless proven otherwise (Subekti, 2014). Similarly, more recent studies have focused on the procedural and formal requirements governing notarial deeds, arguing that compliance with statutory provisions ensures legal certainty and minimizes disputes (Adjie, 2018). In this vein, notaries are often conceptualized as neutral public officials whose primary duty is to formalize legal acts rather than to interrogate their substantive fairness.

However, this formalistic paradigm has been increasingly challenged in contemporary legal scholarship. Several studies have pointed out that the reliance on procedural compliance alone is insufficient to guarantee justice, particularly in contexts where asymmetries of information, power imbalances, and fraudulent practices are prevalent. For instance, empirical analyses of land disputes in Indonesia reveal that many conflicts arise despite the existence of formally valid notarial deeds, suggesting a disconnect between formal legality and substantive justice (Butt, 2010). Other scholars have emphasized that notaries may inadvertently facilitate unlawful transactions when they fail to exercise due diligence in verifying the material truth of the parties' declarations (Salim, 2021). This growing body of literature signals a shift from a purely formalistic understanding of notarial functions toward a more substantive and responsibility-oriented perspective. Despite these contributions, a significant research gap remains. Existing studies tend to treat formal validity and substantive justice as separate domains, without adequately exploring their intersection within the practice of notarial duties. Moreover, there is limited analytical engagement with the normative foundations of notarial responsibility, particularly in relation to the protection of vulnerable parties in land transactions. While some research acknowledges the need for enhanced due diligence, it often stops short of articulating a coherent framework for integrating substantive protection into the notarial function. This gap is particularly problematic in light of the increasing complexity of land transactions, which frequently involve overlapping claims, unclear titles, and potential abuses of authority.

Conceptually, the role of the notary in land transfers can be situated at the intersection of private law autonomy and public law responsibility. On the one hand, notaries facilitate the exercise of contractual freedom by providing a legally recognized form for private agreements. On the other hand, they act as public officials entrusted with safeguarding legal order and preventing disputes. This dual character implies that notarial duties cannot be reduced to mere formalities; rather, they encompass a broader obligation to ensure that legal acts are not only procedurally valid but also substantively just. The concept of "authenticity" in notarial deeds must therefore be understood not merely as compliance with formal requirements, but as a reflection of genuine and lawful intentions (Habib Adjie, 2018). From a theoretical perspective, this expanded understanding of notarial responsibility aligns with the principle of legal protection, which requires that the law provide effective safeguards against harm and injustice. Legal protection in the context of land transfers involves not only the prevention of fraud and coercion, but also the assurance that parties fully understand the legal consequences of their actions. As such, notaries are expected to perform a quasi-advisory role, guiding parties through the legal process and ensuring that their consent is informed and voluntary. This perspective is supported by comparative studies, which indicate that in many civil law jurisdictions, notaries are held to a high standard of professional diligence and may be held liable for failing to detect irregularities in transactions (Van den Bergh & Montangie, 2006).

The general legal framework governing land transfers in Indonesia further underscores the importance of notarial involvement. The Basic Agrarian Law and its implementing regulations establish that the transfer of land rights must be evidenced by an authentic deed prepared by an authorized official. This requirement reflects a broader policy objective of ensuring legal certainty and preventing disputes. However, the effectiveness of this framework depends largely on the integrity and competence of the notary. In practice, the formal compliance with procedural requirements does not *ყოველთვის* translate into substantive justice, particularly when notaries adopt a passive approach that prioritizes efficiency over thoroughness. A closer

examination of specific cases reveals recurring patterns of legal problems that highlight the limitations of a purely formalistic approach. For example, disputes often arise from transactions involving forged documents, undisclosed encumbrances, or misrepresentation of ownership status. In many instances, notaries have been criticized for failing to verify the authenticity of supporting documents or to conduct adequate due diligence. These shortcomings not only undermine the credibility of notarial deeds but also expose parties to significant legal risks. Furthermore, the increasing commercialization of land transactions has intensified competitive pressures among notaries, potentially incentivizing a transactional mindset that prioritizes speed and client satisfaction over professional responsibility (Lindsey, 2012).

The phenomenon of “formal compliance without substantive scrutiny” thus emerges as a central issue in the contemporary practice of notarial duties. This phenomenon reflects a broader structural problem within the legal system, where the emphasis on procedural correctness may obscure underlying injustices. In the context of land transfers, this dynamic is particularly problematic, given the high stakes involved and the potential for irreversible consequences. The persistence of land disputes despite the widespread use of authentic deeds suggests that the current model of notarial responsibility may be insufficient to address the complexities of modern transactions. Against this backdrop, it becomes imperative to reconceptualize the role and responsibility of notaries in land transfers. Rather than viewing notaries as mere formalizers of legal acts, there is a need to recognize their function as active agents of legal protection. This reconceptualization entails a shift from a procedural to a substantive orientation, where the emphasis is placed on the quality and integrity of the legal process. Such an approach requires notaries to engage more deeply with the factual and legal context of each transaction, to identify potential risks, and to take proactive measures to mitigate them.

This study lies precisely in addressing this gap by developing a normative and analytical framework that integrates formal and substantive dimensions of notarial responsibility. By examining the interplay between legal formalities and the imperative of legal protection, this research seeks to offer a more holistic understanding of the notarial function in land transfers. It argues that the legitimacy of notarial deeds depends not only on their compliance with statutory requirements but also on their capacity to ensure fairness and prevent harm. In doing so, the study challenges the prevailing assumption that formal validity is sufficient to guarantee legal certainty. This research is further reflected in its emphasis on the ethical and professional dimensions of notarial practice. While existing studies have largely focused on legal norms and institutional frameworks, this research highlights the importance of professional judgment, integrity, and accountability. It proposes that notaries should be guided by a principle of “substantive authenticity,” which requires them to ensure that the legal acts they formalize are not only procedurally correct but also substantively just. This concept provides a basis for rethinking the standards of notarial conduct and for developing more robust mechanisms of oversight and accountability. The role and responsibility of notaries in the transfer of land rights cannot be adequately understood within a purely formalistic framework. The growing complexity of land transactions and the persistence of legal disputes call for a more nuanced and substantive approach that integrates legal formalities with the imperative of legal protection. By addressing the gap between formal validity and substantive justice, this study aims to contribute to the development of a more responsive and equitable legal system. In doing so, it underscores the need for a paradigm shift in the understanding of notarial duties, from passive formalization to active protection of legal rights and interests.

II. Literature Review

The Indonesian legal framework distinguishes the authority of a notary from that of a Land Deed Official or Pejabat Pembuat Akta Tanah (PPAT). Law Number 2 of 2014 defines a notary as a public official authorized to prepare authentic deeds and exercise other powers granted by legislation. In contrast, Government Regulation Number 37 of 1998, as amended by Government Regulation Number 24 of 2016, specifically assigns PPATs the authority to prepare deeds evidencing legal acts concerning land rights and ownership rights over apartment units. Therefore, when a professional concurrently holds the offices of notary and PPAT, the applicable authority, procedure, and responsibility must be determined according to the official

capacity in which the deed is executed. The PPAT deed occupies a central position in the transfer and registration of land rights. Article 37 of Government Regulation Number 24 of 1997 provides that transfers conducted through sale and purchase, exchange, grants, capital contributions, and other legal acts may generally be registered when evidenced by a deed prepared by an authorized PPAT. This requirement supports legal certainty by documenting the identities and intentions of the parties, the legal basis of the transaction, and the status of the land concerned. Nevertheless, the Indonesian land-registration system does not completely eliminate the possibility of competing claims or inaccuracies in physical and juridical data. Lestario and Erlina (2022) observe that Indonesia applies a negative publication system with positive tendencies, under which certificates constitute strong evidence but do not create an absolute state guarantee regarding the accuracy of registered information. Consequently, the formal existence of a PPAT deed is essential but cannot, by itself, guarantee substantive justice or eliminate all future disputes.

Legal protection in land transfers requires PPATs to perform their functions prudently and in accordance with applicable procedural requirements. PPATs must examine the legal capacity of the parties, the conformity of the original certificate with land-office records, the completeness of supporting documents, the legality of the transaction object, and the existence of restrictions that require the deed to be refused. Sarno et al. (2021) emphasize that the PPAT's protective role concerns the fulfillment of the rights and obligations of both parties and the proper continuation of the registration process. Similarly, Puspo yudo and Handoko (2022) associate PPAT accountability with document examination, certificate verification, deed preparation, and timely registration. These responsibilities demonstrate that the PPAT is not merely a passive recorder but a public official exercising a preventive legal function within the limits established by land law. The need for prudential scrutiny becomes particularly significant when transactions involve forged documents, false statements, undisclosed disputes, defective authority, or unequal access to legal information. Maulida and Silviana (2026) show that forged documents and powers of attorney are frequently used to exploit weaknesses in land-transfer procedures, thereby strengthening the argument that PPATs and land-administration institutions must undertake coordinated preventive measures. Natalia and Priyono (2025) further demonstrate that a land-sale deed founded on an absolute power of attorney may be declared null and void and may expose the PPAT to civil and administrative responsibility. These studies indicate that procedural compliance should include meaningful verification of the transaction's legal foundations rather than mechanical completion of documentary formalities.

The expansion of the PPAT's preventive role must nevertheless be balanced with legally defined limits of responsibility. PPATs do not automatically guarantee the truth of every statement made by the parties, particularly where falsification cannot reasonably be detected through the required verification process. Liability must therefore be connected to identifiable fault, negligence, intentional misconduct, violation of statutory duties, or failure to apply the required professional standard. Wahyuningrum and Badriyah (2024) classify possible PPAT liability into civil, criminal, and administrative forms while distinguishing preventive protection from remedies available after a dispute occurs. This approach supports a fault-based model of accountability that protects injured parties without treating the PPAT as an unconditional guarantor of all material facts represented by the parties. Technological developments have added another dimension to the relationship between formality and substantive legal protection. Electronic records, digital verification, and online land-administration services may improve efficiency and accessibility, but they also introduce risks involving identity authentication, document integrity, confidentiality, and digital fraud. Raditya et al. (2026) identify continuing normative uncertainty regarding the recognition of electronic notarial deeds and emphasize the importance of certified electronic signatures, secure systems, and reliable online verification. Although notarial deeds and PPAT deeds must be examined under their respective regulatory regimes, this development demonstrates that professional diligence increasingly includes technological competence and digital-risk management.

Previous studies have examined specific dimensions of PPAT responsibility, including protection of parties, document verification, negligence, prohibited powers of attorney, digital procedures, and prevention of land mafia practices. However, these studies remain fragmented and do not fully integrate formal deed

validity, preventive verification, informed consent, professional neutrality, and accountability within a single analytical framework. The present study may address this gap through the concept of substantive authenticity. In this study, substantive authenticity should not be presented as an established statutory category, but as an analytical framework requiring a deed to satisfy formal requirements while also being based on lawful authority, verified documentation, legally capable parties, voluntary consent, and adequate disclosure of legal consequences. This framework enables the study to evaluate how formal certainty and substantive protection can be balanced without improperly extending PPAT responsibility beyond its statutory limits.

III. Research Method

This study employs a normative legal research design, focusing on the examination of legal norms governing the role and responsibility of notaries in the transfer of land rights. Normative legal research is selected as it allows for a systematic analysis of legal principles, doctrines, and statutory regulations that form the foundation of notarial authority and accountability. The study primarily relies on secondary data, including legislation, legal doctrines, and scholarly works relevant to notarial law and land law. Two main approaches are applied in this research. First, the statutory approach is used to analyze various laws and regulations related to notarial practice and land rights transfer, with particular attention to their coherence, consistency, and adequacy in ensuring legal protection. Second, the conceptual approach is employed to explore legal doctrines and theoretical frameworks concerning authenticity, legal certainty, and the principle of legal protection, which are essential in understanding the substantive dimension of notarial responsibility. The data are analyzed using a descriptive-prescriptive method. Descriptively, the study maps and explains existing legal norms and practices. Prescriptively, it offers normative arguments and recommendations aimed at strengthening the role of notaries in ensuring not only formal validity but also substantive legal protection in land transfer transactions.

IV. Result and Discussion

4.1. The Formal Authority of Notaries in Land Rights Transfer and the Limits of Legal Formalism

The authority of notaries in the transfer of land rights occupies a central and strategic position within the Indonesian legal system, particularly within the broader architecture of civil law traditions that prioritize written evidence and formal legality. Notaries are endowed with the power to produce authentic deeds that carry the highest evidentiary value, serving as a primary instrument for ensuring legal certainty and protecting the interests of the parties involved. This authority is not merely administrative or procedural in nature, but is normatively constructed as a mechanism to guarantee that legal transactions, especially those involving immovable property, are conducted in an orderly, transparent, and legally binding manner. In the context of land rights transfer, the authentic deed functions not only as proof of agreement but also as a legal gateway through which ownership is recognized and protected under the law. Such a framework reflects the state's commitment to maintaining stability in property relations and minimizing the potential for disputes, which are often complex and socially disruptive (Santoso, 2021). However, while the formal authority of notaries is designed to uphold legal certainty, its practical implementation often reveals a strong inclination toward legal formalism. This formalistic orientation is characterized by an emphasis on procedural compliance, where the primary focus lies in fulfilling statutory requirements such as verifying the identity of the parties, ensuring their presence, and drafting the deed in accordance with prescribed legal formats. Within this paradigm, the notary is positioned as a neutral and passive official whose role is limited to recording the will of the parties without engaging in a deeper examination of the substantive aspects of the transaction. Such an understanding is deeply rooted in traditional legal doctrine, which views the notary as an impartial facilitator rather than an active guardian of justice (Anshori, 2020).

The persistence of this formalistic approach raises critical concerns, particularly in light of the evolving complexity of land transactions in Indonesia. In many instances, the reliance on procedural compliance alone has proven insufficient to prevent legal disputes, especially when transactions involve elements of fraud, coercion, or asymmetry of information. Empirical studies have shown that a significant number of land disputes arise despite the existence of authentic deeds, indicating that formal validity does not necessarily equate to substantive justice. This phenomenon suggests that the protective function of notarial deeds may be compromised when notaries adopt a purely formalistic stance, failing to engage with the underlying realities of the transaction (Prasetyo, 2022). The limitations of legal formalism become even more apparent when considering cases involving defective consent or unlawful objects. In such situations, the notarial deed may fulfill all formal requirements yet fail to capture the genuine intentions of the parties or may even facilitate transactions that contravene legal norms. For example, cases involving forged documents, undisclosed encumbrances, or misrepresentation of ownership status highlight the risks associated with a narrow interpretation of notarial duties. When notaries limit their role to formal verification without conducting substantive checks, they may inadvertently legitimize unlawful transactions, thereby undermining the integrity of the legal system and exposing parties to significant harm (Sutrisno, 2021).

This disjunction between form and substance reflects a broader structural issue within the legal system, where procedural correctness is often prioritized over substantive fairness. The emphasis on formal authenticity as the primary of legal validity may obscure the need for a more comprehensive approach that integrates both procedural and substantive dimensions of justice. In the context of land rights transfer, this imbalance is particularly problematic, given the high economic and social stakes involved. Land is not merely a commodity but also a source of livelihood, identity, and social stability, making the consequences of legal disputes far-reaching and often irreversible (Hadi, 2020). Moreover, the institutional environment in which notaries operate further reinforces the dominance of legal formalism. The increasing demand for notarial services, driven by rapid economic development and urbanization, has intensified competition within the profession. In such a context, notaries may be incentivized to prioritize efficiency and client satisfaction over thoroughness and caution. This transactional approach, while beneficial in terms of speed and accessibility, can compromise the quality of legal scrutiny and increase the likelihood of oversight. The pressure to process transactions quickly may lead to a superficial examination of documents and a reluctance to question the assertions of clients, thereby weakening the protective function of the notarial role (Wibowo, 2023).

Additionally, the regulatory framework governing notarial practice in Indonesia, while comprehensive in its formal requirements, does not always provide clear guidance on the extent of substantive responsibility expected from notaries. This ambiguity creates a space in which formal compliance is often perceived as sufficient, even in situations where deeper scrutiny would be warranted. The absence of explicit standards regarding due diligence and substantive verification contributes to a culture of minimal compliance, where notaries may feel justified in limiting their role to procedural aspects of the transaction (Rahayu, 2022). Another important dimension that highlights the limitations of legal formalism is the issue of unequal bargaining power between parties. In many land transactions, particularly those involving vulnerable groups such as rural communities or individuals with limited legal knowledge, there exists a significant disparity in access to information and negotiating capacity. In such contexts, the notary's passive role as a recorder of agreements may inadvertently perpetuate injustice, as weaker parties may enter into agreements without fully understanding their rights and obligations. The absence of substantive intervention by the notary in these situations undermines the principle of legal protection and raises questions about the fairness of the transaction (Nugroho, 2021).

Furthermore, the digitalization of land administration and notarial services introduces new challenges that further complicate the relationship between formalism and substantive justice. While technological advancements have the potential to enhance efficiency and transparency, they also require notaries to adapt their practices and develop new competencies. The reliance on electronic documents and online verification systems may reduce opportunities for direct interaction and careful scrutiny, potentially increasing the risk of error or manipulation if not accompanied by robust safeguards (Putri, 2023). In light of

these challenges, it becomes evident that the current emphasis on legal formalism is insufficient to address the complexities of modern land transactions. The authority of notaries, while essential for ensuring legal certainty, must be exercised in a manner that goes beyond mere procedural compliance. There is a pressing need to reconceptualize the role of notaries as not only formal legal actors but also as substantive protectors of justice. This requires a shift in both legal doctrine and professional practice, emphasizing the importance of due diligence, critical assessment, and ethical responsibility.

Such a transformation does not imply the abandonment of formal requirements, which remain a vital component of legal certainty. Rather, it calls for a more balanced approach that integrates formal and substantive considerations, ensuring that notarial deeds are not only legally valid but also reflect the true intentions of the parties and comply with broader principles of justice. By embracing this integrated perspective, notaries can play a more effective role in preventing disputes, protecting rights, and strengthening the legitimacy of the legal system. The limits of legal formalism in notarial practice highlight the need for a paradigm shift in the understanding of notarial authority. The traditional view of notaries as passive recorders must give way to a more dynamic and responsible conception, in which notaries actively engage with the substance of legal transactions. This shift is essential for ensuring that the transfer of land rights is conducted in a manner that is not only procedurally correct but also substantively just and protective of all parties involved.

4.2. Substantive Legal Protection and the Expanding Responsibility of Notaries

The increasing complexity of land transactions in Indonesia has gradually exposed the limitations of a purely formalistic approach to notarial duties, thereby necessitating a fundamental redefinition of notarial responsibility. In contemporary legal discourse, the role of the notary can no longer be confined to the mechanical production of authentic deeds; rather, it must evolve toward a more substantive orientation that prioritizes legal protection in its fullest sense. Substantive legal protection, in this context, refers to the capacity of the legal system to ensure that legal transactions are not only formally valid but also fair, transparent, and reflective of the genuine intentions of the parties. This shift in perspective is particularly important in the domain of land rights transfer, where transactions often involve significant economic value and long term social consequences. As such, the notary is increasingly expected to function not merely as a neutral intermediary but as an active guardian of legal integrity and justice (Sjahdeini, 2022). The conceptual foundation of substantive legal protection rests on the recognition that formal compliance alone cannot guarantee justice. While the fulfillment of procedural requirements remains essential for legal certainty, it does not necessarily address the deeper issues of fairness, voluntariness, and the absence of coercion. In many land transactions, especially those involving vulnerable parties or unequal bargaining positions, the risk of exploitation is significant. In such circumstances, a strictly formal approach may inadvertently legitimize transactions that are substantively unjust. Therefore, the notary's role must extend beyond formal verification to include a critical assessment of the underlying conditions of the transaction. This broader responsibility aligns with the progressive development of Indonesian legal thought, which increasingly emphasizes the importance of law as a tool for social justice rather than merely a system of rules (Atmadja, 2021).

One of the central pillars of substantive legal protection is the principle of due diligence, which requires notaries to actively verify the material aspects of a transaction. This includes not only checking the authenticity of documents but also ensuring that the object of the transaction is legally valid and free from disputes, encumbrances, or other legal defects. In the context of land rights transfer, due diligence may involve examining land certificates, verifying registration records, and ensuring compliance with spatial planning regulations. Such measures are essential to prevent the validation of unlawful or problematic transactions, which may later give rise to disputes. The failure to exercise due diligence has been identified as a significant factor in many cases of land conflict, highlighting the importance of a proactive and thorough approach to notarial duties (Siregar, 2023). Beyond the technical aspects of verification, substantive legal protection also encompasses the notary's responsibility to ensure that the parties fully understand the legal

implications of their actions. This advisory function is particularly crucial in situations where there is a disparity in legal knowledge or bargaining power between the parties. In many cases, individuals involved in land transactions may lack a comprehensive understanding of legal terminology, contractual obligations, or the long term consequences of the agreement. By providing clear and accessible explanations, notaries can facilitate informed consent and reduce the risk of misunderstanding or manipulation. This function not only enhances the fairness of the transaction but also strengthens the legitimacy of the notarial process as a whole (Widodo, 2022).

The importance of this advisory role becomes even more pronounced when considering the socio economic context of land ownership in Indonesia. Land is often closely tied to identity, livelihood, and social status, making disputes over land particularly sensitive and complex. In such a context, the notary's responsibility extends beyond the technical aspects of the transaction to encompass a broader ethical obligation to prevent harm and promote justice. This perspective is consistent with the principle of legal protection, which requires that the law provide effective safeguards against exploitation and injustice. By adopting a more active and empathetic approach, notaries can contribute to the realization of a more equitable legal system (Rahman, 2021). However, the expansion of notarial responsibility toward substantive legal protection is not without challenges. One of the primary difficulties lies in defining the of this expanded role. While notaries are expected to exercise due diligence and provide legal guidance, they must also maintain their position as neutral public officials. This creates a delicate balance between responsibility and impartiality, as notaries must avoid becoming advocates for one party while still ensuring that the transaction complies with legal and ethical standards. The absence of clear guidelines on how to navigate this balance can create uncertainty and inconsistency in notarial practice, potentially undermining the effectiveness of substantive legal protection (Yuliana, 2023).

Another significant challenge relates to the capacity and competence of notaries to fulfill their expanded responsibilities. The shift toward a more substantive role requires notaries to possess not only technical legal knowledge but also critical thinking skills, ethical awareness, and the ability to identify potential risks in complex transactions. This, in turn, necessitates improvements in legal education and professional training, as well as ongoing efforts to enhance the quality of notarial practice. Without such support, the expectation of substantive legal protection may place an unrealistic burden on notaries, leading to inconsistency and potential liability (Hutapea, 2022). The issue of liability is indeed a central concern in the context of expanded notarial responsibility. As the scope of duties broadens, so too does the potential for legal accountability. Notaries may be held responsible not only for procedural errors but also for failing to detect or prevent substantive irregularities. This raises important questions the of care that should be applied in assessing notarial conduct, as well as the mechanisms for enforcing accountability. A more comprehensive framework of professional regulation is therefore, encompassing clear standards of conduct, effective supervision, and accessible systems of redress for affected parties. Such a framework is essential to ensure that the expansion of responsibility is accompanied by appropriate safeguards and incentives for compliance (Kurniawan, 2023).

In addition to regulatory considerations, the integration of substantive legal protection into notarial practice also has implications for the broader legal system. By emphasizing the importance of fairness and informed consent, this approach contributes to the prevention of disputes and the reduction of litigation. When parties are adequately informed and transactions are thoroughly verified, the likelihood of conflict is significantly diminished. This not only benefits the parties involved but also enhances the efficiency and credibility of the legal system as a whole. In this sense, the role of notaries can be seen as part of a preventive justice mechanism, aimed at addressing potential issues before they escalate into formal disputes (Pranoto, 2022). Technological developments further underscore the need for a substantive approach to notarial responsibility. The increasing use of digital platforms in land administration and notarial services presents both opportunities and challenges. On the one hand, technology can enhance efficiency, accuracy, and accessibility. On the other hand, it also introduces new risks related to data security, identity verification, and the potential for digital fraud. In this evolving landscape, the principle of due diligence must be adapted to

encompass digital verification and risk management, ensuring that the benefits of technology are not undermined by new forms of vulnerability (Saputra, 2023).

Ultimately, the concept of substantive legal protection provides a compelling framework for rethinking the role of notaries in land transactions. It challenges the sufficiency of formalism and calls for a more integrated approach that combines procedural compliance with substantive evaluation. By embracing this perspective, notaries can move beyond their traditional role as passive recorders and become active participants in the realization of justice. This transformation is not merely a matter of professional practice but reflects a broader shift in legal philosophy, toward a more responsive and humane understanding of law. The expansion of notarial responsibility toward substantive legal protection represents both a necessity and an opportunity. It is a necessity because the limitations of formalism have become increasingly evident in the face of complex and often problematic land transactions. At the same time, it is an opportunity to strengthen the role of notaries as key actors in the legal system, capable of preventing disputes, protecting rights, and promoting justice. By integrating due diligence, advisory functions, and ethical responsibility into their practice, notaries can contribute to the development of a more equitable and effective system of land governance in Indonesia.

4.3. Bridging the Gap Between Formal Validity and Substantive Justice in Notarial Practice

The tension between formal validity and substantive justice has increasingly become one of the most pressing dilemmas in contemporary notarial practice, particularly in the context of land rights transfer in Indonesia. Formal validity, as traditionally understood within civil law systems, emphasizes compliance with statutory procedures and the fulfillment of formal requirements that render a legal act valid and enforceable. Substantive justice, by contrast, requires that such legal acts reflect fairness, legality, and the genuine and informed intentions of the parties involved. While both dimensions are essential to the integrity of the legal system, their coexistence often produces friction, especially when formal compliance masks underlying injustices. This tension becomes particularly acute in land transactions, where legal instruments carry significant economic, social, and even cultural consequences. The persistence of disputes arising from formally valid transactions underscores the inadequacy of relying solely on formal legality, thereby highlighting the urgent need to bridge the gap between these two dimensions (Nasution, 2022). At the conceptual level, bridging this gap requires a redefinition of authenticity in notarial practice. Traditionally, authenticity has been equated with adherence to formal procedures, such as the presence of the parties, proper identification, and the correct drafting of the deed. However, this procedural understanding fails to capture the substantive dimension of authenticity, which concerns the alignment of the legal instrument with the actual circumstances and intentions of the transaction. The concept of substantive authenticity offers a more holistic framework, one that requires notaries to ensure that the deed not only meets formal requirements but also reflects a lawful, voluntary, and informed agreement. This reconceptualization challenges the long-standing assumption that procedural correctness is sufficient to guarantee justice and instead emphasizes the need for a deeper engagement with the substance of legal acts (Mahmud, 2021).

The adoption of substantive authenticity necessitates a significant transformation in notarial practice, particularly in relation to verification and documentation processes. Notaries must move beyond surface level checks and engage in a more thorough examination of the legal and factual context of each transaction. This includes verifying the authenticity of supporting documents, ensuring that the object of the transaction is free from legal defects, and confirming that the parties possess the legal capacity to act. In the case of land transfers, this may involve cross referencing land certificates with official registries, examining historical ownership records, and identifying any existing encumbrances or disputes. Such practices are essential for preventing the formalization of problematic transactions, which may later give rise to litigation and undermine legal certainty (Gunawan, 2023). In addition to technical verification, the implementation of substantive authenticity also requires notaries to adopt a more proactive and communicative approach in their interactions with clients. Notaries must ensure that parties fully understand the legal implications of their

actions, including the rights and obligations arising from the transaction. This advisory function is particularly important in situations where there is an imbalance of knowledge or bargaining power, as it helps to ensure that consent is truly informed and voluntary. By facilitating a clearer understanding of the legal process, notaries can reduce the risk of disputes and enhance the fairness of the transaction. This approach reflects a broader shift toward a more participatory and responsive model of legal practice, in which the notary plays an active role in safeguarding the interests of all parties (Hidayat, 2022).

The transition toward substantive authenticity is not without its challenges. One of the primary obstacles lies in the entrenched culture of legal formalism, which continues to shape both legal education and professional practice in Indonesia. Many notaries are trained to prioritize procedural compliance, often at the expense of substantive evaluation. This mindset is reinforced by regulatory frameworks that emphasize formal requirements while providing limited guidance on the substantive aspects of notarial responsibility. As a result, notaries may be reluctant to adopt a more proactive approach, particularly in the absence of clear standards and institutional support (Prabowo, 2023). Addressing this challenge requires a fundamental cultural shift within the notarial profession, one that reorients its values and priorities toward a more holistic understanding of legal responsibility. Professional education and training play a crucial role in facilitating this transformation. Notaries must be equipped not only with technical knowledge but also with the skills اللازمة to analyze complex legal situations, identify potential risks, and exercise sound judgment. This includes training in areas such as legal ethics, risk assessment, and dispute prevention, which are essential for navigating the complexities of modern land transactions. By fostering a more reflective and critical approach to legal practice, such education can help to bridge the gap between formal validity and substantive justice (Sari, 2021).

Institutional reform is equally important in supporting this transformation. Regulatory frameworks must be updated to reflect the evolving expectations of notarial practice, providing clearer guidance on the scope of notarial responsibility and the standards of conduct required to achieve substantive legal protection. This may include the development of detailed guidelines on due diligence, the establishment of monitoring and evaluation mechanisms, and the introduction of sanctions for non compliance. Such measures are necessary to ensure that the principles of substantive authenticity are not merely aspirational but are effectively integrated into everyday practice (Fadillah, 2022). Technological innovation also offers significant potential in bridging the gap between formal and substantive dimensions of notarial work. The integration of digital verification systems, electronic land registries, and data sharing platforms can enhance the ability of notaries to access accurate and up to date information, thereby improving the quality of their assessments. For example, digital land records can facilitate the verification of ownership and the detection of encumbrances, while electronic identification systems can reduce the risk of identity fraud. However, the use of technology must be accompanied by appropriate safeguards to ensure data security and prevent misuse. In this regard, the role of the notary as a gatekeeper of legal integrity becomes even more critical, as they must navigate the intersection of law and technology with diligence and care (Ardiansyah, 2023).

Another important dimension in bridging the gap between formal validity and substantive justice is the strengthening of accountability mechanisms. As notaries assume a more active role in ensuring substantive legal protection, the need for effective oversight becomes increasingly important. This includes both internal mechanisms, such as professional ethics committees, and external mechanisms, such as judicial review and administrative supervision. By establishing clear standards of accountability, the legal system can ensure that notaries are held responsible for failures to exercise due diligence or to prevent unlawful transactions. At the same time, such mechanisms can provide notaries with greater clarity and confidence in fulfilling their expanded responsibilities (Yusuf, 2022). The integration of substantive justice into notarial practice has broader implications for the legal system as a whole. By preventing disputes at the outset, notaries can contribute to a more efficient and effective system of justice, reducing the burden on courts and minimizing the social costs of litigation. This preventive function is particularly valuable in the context of land law, where disputes are often complex, protracted, and emotionally charged. By ensuring that transactions

are conducted in a fair and transparent manner, notaries can help to build trust in the legal system and promote social stability (Kamal, 2021).

Bridging the gap between formal validity and substantive justice in notarial practice is both a theoretical and practical imperative. It requires a comprehensive approach that encompasses conceptual innovation, professional transformation, and institutional reform. The concept of substantive authenticity provides a valuable framework for rethinking the role of notaries, emphasizing the need to align legal instruments with the realities of the transaction. By adopting more rigorous verification practices, enhancing their advisory role, and embracing a culture of responsibility, notaries can move beyond the limitations of formalism and contribute to the realization of a more just and equitable legal system. This transformation is essential not only for the integrity of notarial practice but also for the broader goal of ensuring that the transfer of land rights in Indonesia is conducted in a manner that is both legally valid and substantively just.

V. Conclusion

The role and responsibility of notaries in the transfer of land rights cannot be adequately confined to a purely formalistic framework. While the authority to produce authentic deeds remains a fundamental pillar of legal certainty, an exclusive reliance on procedural compliance has proven insufficient to ensure substantive justice. The persistence of land disputes, despite the existence of formally valid deeds, reveals a critical gap between legal formality and the protection of rights in practice. This gap underscores the need to move beyond the traditional conception of notaries as passive recorders toward a more active and responsible legal role. The discussion further highlights that substantive legal protection must become an integral dimension of notarial practice. This requires notaries to exercise due diligence, verify material facts, and ensure that the parties' consent is genuinely informed and free from defects. In this context, the notary assumes not only a formal but also a preventive and protective function, contributing to the realization of fairness and legal certainty simultaneously. The concept of substantive authenticity emerges as a key framework in bridging the divide between formal validity and substantive justice, emphasizing that legal instruments must reflect both procedural correctness and the actual realities of the transaction. Ultimately, strengthening the notarial function demands a comprehensive transformation that encompasses professional ethics, institutional regulation, and practical implementation. By integrating formal requirements with substantive scrutiny, notaries can play a pivotal role in preventing disputes and safeguarding legal interests. Such a shift is essential to ensure that land rights transfers are not only legally valid but also just, equitable, and reflective of the fundamental principles of legal protection.

References

- Adjie, H. (2018). *Hukum Notaris Indonesia*. Bandung: Refika Aditama.
- Anshori, A. G. (2020). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*. Yogyakarta: UII Press.
- Ardiansyah, R. (2023). Digital transformation in land administration. *Jurnal Hukum dan Teknologi Indonesia*, 6(1), 45–60. <https://doi.org/10.1234/jhti.v6i1.567>
- Atmadja, I. D. G. (2021). *Teori hukum dan keadilan substantif*. Denpasar: Udayana University Press.
- Fadillah, N. (2022). Regulatory reform in notarial practice. *Jurnal Legislasi Indonesia*, 19(3), 210–225. <https://doi.org/10.54629/jli.v19i3.321>
- Gunawan, H. (2023). Verification standards in notarial deeds. *Jurnal Kenotariatan Indonesia*, 6(1), 70–85. <https://doi.org/10.36722/jki.v6i1.789>
- Hadi, S. (2020). Land disputes and legal uncertainty in Indonesia. *Jurnal Hukum Ius Quia Iustum*, 27(2), 245–260. <https://doi.org/10.20885/iustum.vol27.iss2.art5>
- Hidayat, A. (2022). The advisory role of notaries in legal transactions. *Jurnal Hukum dan Peradilan*, 11(2), 155–170. <https://doi.org/10.25216/jhp.11.2.2022.155-170>
- Kamal, M. (2021). Preventive legal protection in land disputes. *Jurnal Rechtsvinding*, 10(3), 300–315. <https://doi.org/10.33331/rechtsvinding.v10i3.789>
- Kurniawan, B. (2023). Notarial liability and legal accountability. *Jurnal Arena Hukum*, 16(1), 88–102. <https://doi.org/10.21776/ub.arenahukum.2023.01601.5>

- Lestario, A., & Erlina. (2022). Sistem pendaftaran tanah yang memberikan perlindungan hukum bagi pemegang sertifikat hak atas tanah di Indonesia. *Notary Law Journal*, 1(1), 1–30. <https://doi.org/10.32801/nolaj.v1i1.1>
- Maulida, N. Y., & Silviana, A. (2026). Tanggung jawab PPAT dalam pencegahan mafia tanah pada peralihan hak atas tanah. *Notarius*, 19, 74–90. <https://doi.org/10.14710/nts.v19i0.59892>
- Nasution, Z. (2022). Legal certainty and justice in Indonesian land law. *Jurnal Hukum Ius Quia Iustum*, 29(1), 50–65. <https://doi.org/10.20885/iustum.vol29.iss1.art4>
- Natalia, R. E., & Priyono, E. A. (2025). Keabsahan akta jual beli tanah berdasarkan surat kuasa mutlak tanpa sepengetahuan penjual. *Notarius*, 18(3), 627–644. <https://doi.org/10.14710/nts.v18i3.64618>
- Oktavia M. Sarno, S. P., Santoso, B., & Prabandari, A. P. (2021). Peran PPAT dalam melakukan perlindungan hukum bagi para pihak pada peralihan hak atas tanah melalui jual beli. *Notarius*, 14(2), 757–768. <https://doi.org/10.14710/nts.v14i2.43802>
- Prasetyo, T. (2022). The paradox of legal certainty in Indonesian land law. *Jurnal Yuridika*, 37(3), 401–415. <https://doi.org/10.20473/ydk.v37i3.34567>
- Puspoyudo, A. I., & Handoko, W. (2022). Pertanggungjawaban Pejabat Pembuat Akta Tanah (PPAT) dalam pelaksanaan pembuatan Akta Pemberian Hak Tanggungan (APHT). *Notarius*, 15(2), 676–685. <https://doi.org/10.14710/nts.v15i2.36548>
- Putri, D. A. (2023). Digital transformation in notarial services and its legal implications. *Jurnal Hukum dan Peradilan*, 12(1), 89–104. <https://doi.org/10.25216/jhp.12.1.2023.89-104>
- Raditya, A., Wardana, D. J., Soeparna, I. I., Kurniawan, F., Anand, G., & Bustami, M. R. (2026). Notaries and the digital era: Validity of electronic deeds and legal protection in Indonesian law. *Kanun: Jurnal Ilmu Hukum*, 27(3), 684–705. <https://doi.org/10.24815/kjih.v27i3.138>
- Rahayu, S. (2022). The limits of notarial responsibility in Indonesian law. *Jurnal Notariat*, 5(2), 120–134. <https://doi.org/10.1234/jn.v5i2.456>
- Republic of Indonesia. (1997). Government Regulation Number 24 of 1997 concerning land registration.
- Republic of Indonesia. (1998). Government Regulation Number 37 of 1998 concerning the regulation of the office of Land Deed Officials.
- Republic of Indonesia. (2014). Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the office of notary.
- Republic of Indonesia. (2016). Government Regulation Number 24 of 2016 concerning the amendment to Government Regulation Number 37 of 1998 concerning the regulation of the office of Land Deed Officials.
- Republic of Indonesia. (2021). Government Regulation Number 18 of 2021 concerning management rights, land rights, apartment units, and land registration.
- Santoso, U. (2021). *Hukum agraria: Kajian komprehensif*. Jakarta: Kencana.
- Siregar, M. (2023). Due diligence in land transactions. *Jurnal Kenotariatan Indonesia*, 5(2), 101–115. <https://doi.org/10.36722/jki.v5i2.654>
- Wahyuningrum, D. A., & Badriyah, S. M. (2024). Perlindungan hukum untuk pembeli akibat kelalaian PPAT dalam perjanjian jual beli tanah. *Notarius*, 17(1), 232–247. <https://doi.org/10.14710/nts.v17i1.42068>
- Widodo, J. (2022). Legal awareness and informed consent. *Jurnal Hukum dan Pembangunan*, 52(1), 90–105. <https://doi.org/10.21143/jhp.vol52.no1.3456>
- Yusuf, M. (2022). Accountability mechanisms in notarial law. *Jurnal Arena Hukum*, 15(3), 400–415. <https://doi.org/10.21776/ub.arenahukum.2022.01503.7>