

Comparison of The Authority of Notaries And Land Deed Officials (PPAT) In Indonesia And Malaysia Regarding Property Transactions

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Abstract

This study presents a comparison of the authority of notaries in property transactions between Indonesia and Malaysia. The aim of this research is to compare the notarial legal systems of both countries and to identify the differences in the duties and authority of notaries related to property transactions, as well as the factors influencing them. The research method used is comparative legal analysis by collecting data from legal literature and relevant documents. The findings indicate that Indonesia's notarial legal system is based on civil law, whereas Malaysia follows common law with the influence of Islamic law. These differences affect the role of notaries in property transactions. The comparison of the duties and authorities of Notaries/Land Deed Officials (PPAT) reveals variations in the property transaction processes between the two countries, such as in the preparation and legalization of property documents. Factors such as legal regulations, culture, and customary practices also have a significant impact on the role of notaries in property transactions in both countries. This study provides in-depth insights into the differences between the notarial legal systems of Indonesia and Malaysia and their implications for property transactions. The practical implications of this research can be used to improve legal policies and notarial practices in property transactions in both countries. This study also offers a better understanding of the differences in notarial legal systems and practices between Indonesia and Malaysia and provides valuable insights for policymakers to enhance the effectiveness and efficiency of property transactions in both nations.

Keywords: Authority of Notaries, Land Deed Officials (PPAT), Property Transactions

Abstrak

Penelitian ini menyajikan perbandingan kewenangan notaris dalam transaksi properti antara Indonesia dan Malaysia. Studi ini bertujuan untuk membandingkan sistem hukum kenotariatan kedua negara dan mengidentifikasi perbedaan dalam tugas dan kewenangan notaris terkait transaksi properti, serta faktor-faktor yang memengaruhinya. Metode penelitian yang digunakan adalah analisis perbandingan hukum dengan mengumpulkan data dari literatur hukum dan dokumen-dokumen terkait. Hasil penelitian menunjukkan bahwa sistem hukum kenotariatan Indonesia berbasis pada civil law, sementara Malaysia mengikuti hukum common law dengan pengaruh hukum Islam. Perbedaan ini mempengaruhi peran notaris dalam transaksi properti. Perbandingan tugas dan kewenangan Notaris/PPAT mengungkap perbedaan dalam proses transaksi properti antara kedua negara, seperti dalam pembuatan dan legalisasi dokumen properti. Faktor-faktor seperti regulasi hukum, budaya, dan kebiasaan praktik juga memiliki dampak signifikan terhadap peran notaris dalam transaksi properti di kedua negara. Penelitian ini memberikan wawasan yang mendalam tentang perbedaan sistem hukum kenotariatan Indonesia dan Malaysia serta implikasinya terhadap transaksi properti. Implikasi praktis dari penelitian ini dapat digunakan untuk

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memperbaiki kebijakan hukum dan praktik notaris dalam transaksi properti di kedua negara tersebut. Penelitian ini juga memberikan pemahaman yang lebih baik tentang perbedaan sistem hukum kenotariatan dan praktek notaris antara Indonesia dan Malaysia, serta memberikan wawasan yang berharga bagi pembuat kebijakan dalam meningkatkan efektivitas dan efisiensi transaksi properti di kedua negara tersebut.

Kata Kunci: *Kewenangan Notaris, Pejabat Pembuat Akta Tanah, Transaksi Properti*

INTRODUCTION

In the complex realm of property transactions, notaries serve as indispensable public officers who draft and authenticate deeds, thereby conferring legal certainty and evidentiary value. Their responsibilities include verifying the legality of agreements, certifying execution dates, safeguarding original documents, and issuing certified copies to parties and authorities. Because authenticated deeds are prerequisites for the transfer of real estate rights, a notary's authority directly impacts the security and efficiency of property markets. Yet, despite shared Southeast Asian heritage, Indonesia and Malaysia operate under distinct legal frameworks. Civil Law and Common Law respectively, which give rise to divergent notarial roles and powers.

In Indonesia, the notarial profession is governed by Law Number 2 of 2014, amending Law Number 30 of 2004 on the Notary Position, which itself consolidated provisions from the 1860 Notary Ordinance (Stbl. No. 3). A notary must hold a law degree, complete specialized education and apprenticeship, and receive a government appointment to draft authentic deeds for acts, agreements, or determinations mandated by law or requested by parties. Their duties include ensuring the certainty of the deed's date, preserving the original, and issuing grosses, official copies, and excerpts unless another official is statutorily empowered to perform these tasks.¹

By contrast, Malaysia's notarial practice is regulated by the Notaries Public Act 1959 (Revised 1973), embodying Common Law traditions. Appointment as a notary public does not invariably require legal education or apprenticeship. Instead, the Court determines both the process and the scope of authority, which may vary across states. Malaysian notaries primarily authenticate documents and administer oaths, lacking the broad drafting powers and exclusive executorial functions granted to their Indonesian counterparts.²

These systemic differences have clear implications for property transactions, as in Indonesia the Pejabat Pembuat Akta Tanah (PPAT), who must meet specific additional qualifications and may also serve as a notary, holds exclusive authority to draft deeds of transfer, mortgage, and the establishment of land rights, thereby centralizing land registration and conveyancing within a single public office.³

¹ Abdul Kadir and Aditya Bakti Bandung, "Notodisoerjo, R. Soegondo, 1993, Hukum Notariat di Indonesia Suatu Penjelasan, FT. Rajawali Persada, Jakarta,," n.d., p 44.

² Rizka Nurliyantika, Syahri Ramadhan, and Neisa Angrum Adisti, "Studi Komparasi Tugas Dan Wewenang Notaris Di Indonesia Dan Malaysia," 2022, p 198.

³ BF Sihombing, *Sistem Hukum PPAT Dalam Hukum Tanah Indonesia* (Jakarta: Prenada Media Grup, 2019), p 14.

As cross-border investment continues to grow and bilateral relations have deepened since Indonesia's recognition of Malaysia's independence on 31 August 1957, understanding the differences in notarial authority has become increasingly urgent. ASEAN integration and the rising flow of Malaysian capital into Indonesian real estate, alongside Indonesian investments in Malaysia, call for clear procedural guidance, awareness of potential legal risks, and mutual recognition of official documents. Without a comprehensive comparative analysis, practitioners and policymakers are likely to face uncertainty when dealing with two distinct notarial frameworks, which could slow investment activity and erode legal certainty.

Moreover, globalization and digital commerce introduce new challenges, such as remote authentication and electronic deeds, which test traditional notarial paradigms. Indonesia's recent discussions on e-notary services under its Notary Law contrast with Malaysia's nascent e-authentication initiatives within its Common Law framework. A comparative study illuminates how each system adapts (or resists) technological change, offering lessons for harmonizing cross-border property transactions and strengthening legal infrastructures.

Despite geographic proximity and shared cultural legacies rooted in centuries of Srivijaya and Malacca Sultanate interactions, legal transplantation between Indonesia and Malaysia is neither automatic nor straightforward. Civil Law's codified statutes and Common Law's jurisprudential flexibility create distinct regulatory environments. Recognizing these differences is crucial for academics, notaries, and legislators aiming to streamline ASEAN's legal landscape and foster investor confidence.

This research is therefore guided by two main problem statements. First, it aims to understand the differences and similarities between the notarial legal systems of Indonesia and Malaysia ?. Second, it examines the differences and similarities in the duties and authorities of notaries and PPAT's in Indonesia and Malaysia in relation to property transactions, as well as the factors that influence these roles ?. By addressing these questions, the study will provide structured insights that are valuable for both theoretical development and practical application, ultimately contributing to more predictable and efficient cross-border property transactions within the ASEAN region. Using a descriptive-analytical and comparative legal method, it objectively examines legal systems in both countries. The normative juridical approach focuses on analyzing, interpreting, and evaluating relevant legal norms.

DISCUSSION AND RESULT

1. The differences and similarities between the notarial legal systems of Indonesia and Malaysia:

Every governmental action must be based on legitimate authority. Without such legitimate authority, neither the official nor the State Administrative Body has a legal basis to carry out governmental actions. Under the Indonesian Notary Law (UUJN), a notary is granted the status of a public official, so that deeds drawn up by the notary have authentic standing and executorial power. The legal force of a Notarial Deed does not

solely derive from its form as prescribed by law but also because the deed is drawn up by or in the presence of an authorized official.⁴

However, the authority conferred upon an office must have a clear legal basis as a boundary so that the office can function properly without overlapping with the authority of other offices. A notary holds a unique role as a public official, the notary carries out certain public functions of the state, particularly in the field of law, yet does not receive a salary from the state.⁵

There are four aspects of authority that a notary, as a public official, must possess; the notary must have authority appropriate to the type of deed made, the notary must have authority concerning the parties for whom the deed is made, the notary must have authority related to the location where the deed is drawn up, and the notary must have authority in accordance with the time of the deed's execution.⁶

According to Article 1866 of the Indonesian Civil Code and Article 165 of the HIR, notarial deeds serve as primary written evidence in court. The authority of notaries, defined in Article 1 point 1 and Article 15 of the Notary Law (UUJN), includes drafting authentic deeds for all legal acts, guaranteeing certainty of date, safekeeping, and issuing copies and excerpts. Notaries also certify signatures, record private deeds, verify document copies, provide legal counsel, and draft deeds related to land and auctions. Article 1939 of the Civil Code emphasizes written evidence as documents created to prove legal acts, aligning with notaries' duty to produce authentic deeds with stronger evidentiary value than private documents. Authentic deeds, signed by involved parties and the notary, serve as conclusive evidence unless proven otherwise (Article 1868 KUHPdata), ensuring stronger legal protection in disputes.

These deeds also have cross-border relevance. If legalized or apostilled, they are admissible abroad—such as powers of attorney for inheritance cases. Following Indonesia's accession to the Hague Apostille Convention, certain documents can now be used internationally without further legalization. Notaries also validate foreign documents for use in Indonesia, ensuring compliance through sworn translations, legalizations, or signature authentications, making them admissible evidence domestically. Indonesian notaries have territorially limited authority, restricted to the legal jurisdiction of the Republic of Indonesia as stipulated in Law No. 30 of 2004 (amended by Law No. 2 of 2014). According to Article 15(1), notaries are authorized to draft authentic deeds for actions, agreements, and stipulations required by law or requested by parties, but only within Indonesia. They are not permitted to perform notarial functions or draft deeds outside Indonesian territory, although they may be involved in certain foreign-related matters under specific circumstances.

⁴ M.Luthfan Hadi Darus, *Hukum Notariat dan Tanggungjawab Jabatan Notaris*, Cet. 1 (Yogyakarta : UII Press Indonesia., 2017).

⁵ Habib Adjie, *Hukum Notaris Indonesia : Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Cet. 4, 347.016 598 (Bandung: Refika Aditama, 2014).

⁶ Nurliyantika, Ramadhan, And Adisti, "Studi Komparasi Tugas Dan Wewenang Notaris Di Indonesia Dan Malaysia," p 202.

In certain situations, documents drawn up by Indonesian notaries are used for purposes abroad. These documents, such as powers of attorney, agreements, or inheritance documents, require additional procedures to be legally recognized in the destination country.⁷ Indonesia began implementing the apostille system after joining the Hague Apostille Convention in 2022.⁸ This system allows documents made by Indonesian notaries to be used in member countries of the convention without requiring additional legalization at the embassy of the destination country.⁹ Examples of documents that can be apostilled include birth certificates, powers of attorney, and educational documents. The implementation of the apostille system makes the process of document recognition simpler and more efficient.

Notaries in Indonesia hold crucial authority in drafting authentic deeds with full evidentiary strength, primarily within Indonesian territory as mandated by Law No. 30 of 2004 (amended by Law No. 2 of 2014). For international matters, documents they produce require legalization or apostille to be recognized abroad. In specific cases, Indonesian consular officials can act as Acting Notaries or PPAT to assist citizens overseas, such as authenticating powers of attorney or preparing inheritance and land documents. Notaries, as trusted public officials, are bound by obligations of integrity, impartiality, and precision (Article 16 UUN) to protect parties' interests and maintain deed protocols. Their role is vital in property transactions, ensuring legal certainty, transparency, and protection for all parties.

Notaries/PPAT (Land Deed Officials) in Indonesia have several key responsibilities in property transactions, primarily preparing and verifying the necessary legal documents. These include the land certificate, identity cards (KTP) of the parties involved, tax identification numbers (NPWP), proof of payment of the seller's income tax (PPh), and the buyer's Land and Building Rights Acquisition Duty (BPHTB). The Sale and Purchase Agreement (Akta Jual Beli or AJB) can only be drafted by a Land Deed Official (PPAT), who is typically also a notary officially appointed as a PPAT by the National Land Agency (Badan Pertanahan Nasional, BPN).¹⁰ Before a property transaction can be finalized, the notary is responsible for verifying property ownership. This involves examining the land certificate and other relevant documents to ensure that the seller has the legal right to sell the property and that there are no unresolved disputes or encumbrances.¹¹ By conducting this due diligence, the notary helps prevent fraudulent transactions and protects the interests of both the buyer and the seller.

⁷ "Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-01.AH.09.01 of 2009 Concerning Procedures for the Legalization of Public Documents Abroad," n.d.

⁸ "Konvensi Apostille Den Haag 1961," accessed January 18, 2025, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>.

⁹ "Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2022," accessed January 18, 2025, <https://www.kemenkumham.go.id/>.

¹⁰ "LetsMoveIndonesia. (n.d.). Notary Public Services for Property Transactions," n.d., <https://www.letsmoveindonesia.com/notary-public-services-for-property-transactions-a-guide-to-notarial-services-in-indonesia/>.

¹¹ "LetsMoveIndonesia. (n.d.). Notary Public Services for Property Transactions."

Once all required documents have been prepared and ownership has been verified, a notary who also serves as a PPAT is authorized to prepare and draft the Sale and Purchase Agreement (AJB) for the property transaction. In carrying out their duties, the Notary/PPAT ensures the validity of documents, compliance with applicable laws, and the protection of the rights and interests of both parties involved. This deed serves as valid evidence of asset transfer and is signed by the buyer, seller, and two witnesses in the presence of the notary. The notary ensures that the deed accurately reflects the terms of the transaction and that all parties understand and agree to the contents of the document. The notary's signature and seal on the deed provide the necessary legal authority and authenticity for the asset transfer to be recognized by the relevant authorities.¹²

After the Sale and Purchase Agreement is executed, the PPAT is responsible for registering the transfer of ownership with the National Land Agency (BPN). This process, known as "Name Transfer" (Balik Nama), officially transfers property ownership from the seller to the buyer. The notary submits the required documents, including the Sale and Purchase Agreement, to the BPN and ensures that the transfer is completed in accordance with applicable regulations. This step is crucial in securing the buyer's legal ownership of the property.¹³

In the event of a dispute related to the property transaction, the notary can play a role in the resolution process. The official deeds of the PPAT and the documentation they maintain can serve as evidence in any legal proceedings, helping to protect the rights and interests of the parties involved. Additionally, the notary may be called upon to provide expert testimony or clarification regarding the transaction, as their impartial and authoritative role in the process can be valuable in resolving disputes.¹⁴

2. The Differences And Similarities In The Duties And Authorities Of Notaries/Ppats In Indonesia And Malaysia In Relation To Property Transactions

The role of the notary in property transactions is not only vital to ensure legality and regulatory compliance but also to protect the rights and interests of consumers, particularly prospective buyers. There are several key considerations for notaries, including providing access to accurate information, preventing fraudulent or harmful practices, ensuring clear and transparent consent, protecting against third-party claims and encumbrances, and ensuring the complete execution of the transaction.

¹² "Pertama Property. (n.d.). The Role of Notary Public in Property Transactions in Bali.," n.d., <https://www.pertamaproperty.com/article/do-i-need-to-engage-a-notary-public-when-completing-property-transactions-in-bali>.

¹³ "Realiste. (n.d.). What Is the Role of a Notary in Bali's Real Estate Transactions? - Realiste.," accessed June 25, 2024, <https://realiste.ai/faq/bali/role-of-notary-in-bali-real-estate-transactions>.

¹⁴ Sanny Estera and Benny Djaja, "Analysis of the Role of Notaries in Consumer Protection in Property Transactions," *Jurnal Indonesia Sosial Sains* 4, no. 07 (July 5, 2023): p 603, <https://doi.org/10.59141/jiss.v4i07.847>.

In Indonesia, there is a distinction between the roles of a notary and a Land Deed Official (PPAT), although they often work together in property transactions. A notary is responsible for drafting and authenticating various legal documents, including those related to property transactions, such as the Sale and Purchase Agreement (AJB). Notaries are appointed by the Ministry of Law and Human Rights and are governed by Law No. 30 of 2004 concerning the Notary Office.

On the other hand, the Land Deed Official (PPAT) is specifically authorized to draft and execute deeds related to the transfer of land rights, such as the Sale and Purchase Agreement (AJB) and Mortgage Deeds (Deed of Encumbrance). PPATs are appointed by the National Land Agency (BPN) and are subject to regulations governing land transactions. Although notaries and PPATs have distinct roles, their assistance is often jointly required in property transactions, as the Sale and Purchase Agreement (AJB) must be drafted by a PPAT and the document must also be notarized to ensure its validity and authenticity.¹⁵

Land plays an essential role in human life. Therefore, people strive as much as possible to own and utilize land. Land ownership can be acquired through various means such as grants, inheritance, exchange, or sale and purchase transactions.¹⁶ According to R. Subekti, “a sale and purchase agreement is a mutual agreement in which one party (the seller) promises to transfer ownership rights of an item, while the other party (the buyer) promises to pay the agreed price in return for acquiring ownership rights.”¹⁷ Land sale and purchase transactions in Indonesia are governed by Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA). According to customary law, land sales must be conducted based on the principles of “terang” (clear) and “tunai” (cash). “Terang” means the transaction must be conducted before an authorized official, namely the Land Deed Official (PPAT). Meanwhile, “tunai” refers to the permanent transfer of ownership rights from the seller to the buyer, where the buyer makes full payment to the seller.

According to Prof. Boedi Harsono, land sales under customary law are not considered obligatory agreements but legal acts of rights transfer carried out with cash payment. This means the sale and purchase process is completed when the agreed price is fully paid by the buyer. Therefore, no juridical transfer (delivery) is necessary as fulfillment of the seller’s obligation. Consequently, under customary law, land sales directly fall under the realm of land law.¹⁸

Notaries play an important role in drafting authentic deeds related to land affairs. This is stipulated in Article 15 paragraph 2 letter f of Law of the Republic of Indonesia No. 30 of 2004, as amended by Law No. 2 of 2014 concerning the Notary Position (UUJN). In performing their duties, notaries provide legal services to the public, particularly in drafting authentic deeds that record various acts, agreements, and stipulations required by law or requested by the parties concerned to be stated in

¹⁵ Nyoman Edy Febriana et al., “Role of Notaries and PPAT Officer in Collecting Duties on Land & Building Rights Acquisition on the Making of Sale & Purchase Deeds,” n.d., p 135-136.

¹⁶ Karolus K Medan, “Jual-Beli Tanah 01 Bawah Tangan Ditinjau Dari UUPA,” n.d., p 128.

¹⁷ R Subekti, *Aneka Perjanjian* (Bandung: Citra Aditya Bakti, 1995), p 2.

¹⁸ Boedi Harsono, *Undang-Undang Pokok Agraria*, Jilid III, Bagian II (Djambatan, 1981), p 27-28.

authentic deed form. One of the notary's tasks is to create authentic deeds related to land sale and purchase transactions.

Land sale and purchase transactions in Indonesia are regulated by Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA), which, based on customary law, requires land sales to be conducted clearly and in cash. "Clear" means that the transaction must be conducted before an authorized public official, namely the Land Deed Official (PPAT). Meanwhile, "cash" means that the seller permanently transfers possession of the land to the buyer, and the buyer fully pays the land price to the seller.

The meaning of sale and purchase according to Article 1457 of the Indonesian Civil Code (KUHPERdata) is "*Suatu perjanjian dengan mana pihak yang satu mengikatkan dirinya untuk menyerahkan suatu kebendaan dan pihak lain untuk membayar harga yang telah dijanjikan*". According to the Civil Code, a sale and purchase agreement is obligatory in nature, meaning that the act of sale does not automatically transfer ownership rights. The sale and purchase agreement only grants rights and imposes obligations on both parties, namely giving the buyer the right to demand delivery of ownership rights over the purchased item. The transfer of ownership only occurs when a juridical delivery (levering) is performed. For immovable objects, such as land, delivery is carried out through the execution of a sale and purchase deed.

According to M. Yahya Harahap, a sale and purchase is "*suatu persetujuan yang mengikat antara penjual untuk menyerahkan suatu barang/benda (zakat) dan pihak lain sebagai pembeli mengikat diri dan berjanji untuk membayar harganya*".¹⁹ However, in the case of land sale and purchase transactions, the provisions do not follow the rules of the Civil Code but are subject to customary law. This is in accordance with Article 5 of the Basic Agrarian Law (UUPA), which states that the agrarian law applicable to land, water, and space is customary law.²⁰ As explained earlier, land sale and purchase transactions based on customary law must be conducted under the principles of "terang" (clear) and "tunai" (cash).

For the smooth administration of land sale and purchase activities, a notary is authorized to draft a deed of sale and purchase agreement, which aims to bind both parties involved. The deed of sale and purchase agreement, or the Agreement on Sale and Purchase Commitment (Perjanjian Pengikatan Jual Beli — PPJB), is prepared by the notary prior to the deed of sale being executed by the Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT). The PPJB serves as a preliminary requirement before any land and/or building transaction can be conducted.²¹ According to R. Subekti, the PPJB is an agreement between the seller and the buyer made before the execution of the land sale due to certain elements that have yet to be fulfilled. A notary prepares the PPJB when the requirements for selling or purchasing land such as land title certificates that

¹⁹ Yahya Harahap, *Segi-Segi Hukum Perjanjian*, Cet. 2 (Bandung: Alumni, 1986), p 181.

²⁰ "The Basic Agrarian Law, Law Number 5 of 1960, State Gazette Number 104 of 1960, TLN No. 104, Article. 5," n.d.

²¹ I Gusti Ayu Agung Devi Maharani Ariatmaj, "Kewenangan Notaris Dalam Transaksi Jual Beli Tanah Dan Bangunan: Studi Kasus Penahanan Sertipikat Hak Guna Bangunan," *Kertha Patrika* 40, no. 2 (August 31, 2018): p 113, <https://doi.org/10.24843/KP.2018.v40.i02.p05>.

are still in process or unsettled payments and applicable taxes have not yet been completed, thus necessitating a delay in the sale and purchase transaction. This situation arises because agreements concerning land require the fulfillment of essential elements before the main agreement the deed of sale can be executed. The ultimate goal of this agreement is to safeguard the interests of both parties. The notary's authority to prepare the PPJB is stipulated under Article 15 paragraph 1 letter (f) of the Notary Position Act (Undang-Undang Jabatan Notaris/UUJN).

Property lease transactions, whether of land or buildings, are an integral part of the economy and social life of society. This process involves rights and obligations between the property owner (lessor) and the tenant (lessee). In the context of Indonesian law, the involvement of a notary in such transactions is crucial to ensure legal certainty, protect the rights of both parties, and prevent future disputes. The notary, as an authorized public official, holds the responsibility of drafting, legalizing, and safeguarding lease agreement documents, thereby adding validity and legal force to the agreement. In this regard, understanding the duties and authority of a notary is essential to ensure that land and building lease transactions are conducted lawfully and legally protected.

The role and authority of the notary in property lease transactions (land and buildings) are vital in ensuring legal certainty for both parties, namely the property owner (lessor) and the tenant (lessee). Several duties of the notary/PPAT in executing property lease transactions include drafting the lease agreement, verifying the validity of documents, preparing authentic deeds, and providing legal advice.

Meanwhile, the notary's authority in implementing lease transactions includes supervising and ensuring the validity of documents, certifying signatures, guaranteeing date certainty, providing copies of deeds, amending and updating agreements, resolving disputes, and offering legal counsel.²²

The role of notaries in property transactions in Indonesia is crucial in ensuring legal validity, transparency, and protection for all parties involved. Notaries are responsible for preparing and verifying legal documents, validating ownership, drafting and executing deeds, registering property transfers, and even assisting in dispute resolution. By fulfilling these responsibilities, notaries play a vital role in protecting consumer rights, preventing fraudulent practices, and providing legal certainty in property transactions. A comprehensive legal framework and the distinct roles of Notaries and Land Deed Officials (PPAT) work in tandem to safeguard the interests of both buyers and sellers in Indonesia's property market.

Several key factors influence the role and authority of notaries in property transactions in Indonesia, including the legal basis and framework. The authority of notaries in Indonesia is detailed in Law Number 30 of 2004 concerning the Position of Notary, as amended by Law Number 2 of 2014 (UUJN). This law regulates the primary duties of notaries in drafting authentic deeds required in property transactions and provides the legal framework governing the limitations to which notaries must adhere.

²² Tri Jata Ayu Pramesti, "Lingkup Kerja Notaris," *Hukum Online.Com*, n.d., <https://www.hukumonline.com/klinik/a/lingkup-kerja-notaris-cl4598/>.

The law defines a notary as a "public official authorized to create authentic deeds and other authorities."²³

Further aspects include the duties and responsibilities of notaries, limitations of authority, their role as public officials not salaried by the state (independence and impartiality), the requirements and procedures for drafting deeds, ethical obligations and standards of professionalism, consumer rights protection, the role in legal education and dispute resolution, as well as the distinction between the roles of notaries and land deed officials (PPAT). These factors are interrelated and form the legal foundation and practices governing notary involvement in property transactions in Indonesia.²⁴

In Malaysia, a notary public under the common law system is a public officer appointed under law to serve the public in non-contentious matters, typically related to estates, deeds, powers of attorney, and foreign and international business affairs. The primary functions of a notary public include administering oaths and affirmations, taking affidavits and statutory declarations, witnessing and authenticating the execution of certain documents, acknowledging deeds and other conveyances, noting protests and bills of exchange, notifying foreign bills, preparing marine or ship protests in cases of damage, providing notarial exemplifications and copies, and performing certain other official acts depending on the jurisdiction. Such acts are collectively known as notarial acts. The term "notary public" refers specifically to notaries under common law and differs from civil law notaries.²⁵

All blanks (other than for signatures) must be properly filled out before a document can be notarized. The notary public has blank jurat and acknowledgment forms available for use but cannot provide any advice on the wording of the document or complete any forms. Please note that the notary public cannot certify any civil documents (e.g., birth, marriage, and death certificates) or any documents issued by Malaysian or U.S. government authorities (e.g., driver's licenses) except through authentication, which is a complicated and time-consuming process. The notary public also cannot certify any educational documents, such as diplomas or transcripts.²⁶

To become a notary public in Malaysia, an application may be submitted to the Attorney General's Chambers (AGC) by sending a letter to the Civil Division of the AGC. The required documents to be attached include a copy of the Identity Card (IC), an official copy of the High Court Order recognizing the applicant as an Advocate and Solicitor, a valid Practicing Certificate, and a valid Annual Certificate. In addition, the application must state the location where the applicant seeks to be appointed as a Notary Public, details of the applicant's firm demonstrating the need for a Notary Public, an

²³ "Law Of The Republic Of Indonesia Number 30 Of 2004 On Office Of Notary Public.Pdf," n.d.

²⁴ Estera and Djaja, "Analysis of the Role of Notaries in Consumer Protection in Property Transactions," p 605.

²⁵ Trubus Wahyudi and Ong Argo Victoria, "The Comparison Notary in Indonesia & Malaysia with Two Differences Law System (Civil Law & Common Law)," n.d., p 473.

²⁶ Chooi and Chooi Clara, "Putrajaya Laporkan Peningkatan Jumlah Non-Bumiputera Di PNS" (Orang Dalam Malaysia, n.d.), p 45.

explanation that there are no other advocates and solicitors in the applicant's firm already appointed as a Notary Public, a statement confirming the applicant's continuous or scheduled practice as an advocate and solicitor, an explanation of the length of time the applicant has practiced as an advocate and solicitor, and how long they have practiced in the area or region where the appointment is sought.²⁷

The distinct role of notaries under the Laws of Malaysia, Notaries Public Act 1959, incorporating all amendments up to 1 January 2006, is regulated as follows;

*Privileges of notaries public*²⁸

--4. -(1) *Every notary public shall have and may exercise within his place of practice all the powers and functions which are ordinarily exercised by notaries public in England*:*

Provided that, except for the purposes of and to the extent necessary to give effect to subsection -(2), such powers shall not include power to administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed for the purpose of being used in any court or place within Malaysia, or to take or attest any such affidavit or statutory declaration.

((NOTE—A note on the powers and functions ordinarily exercised by notaries public in England is to be found at page 1119 of Vol. 23 of the 3rd Edition of Halsbury's Statutes of England.))

Furthermore, Section 4(2) stipulates that;²⁹

-(2) *Without prejudice to the generality of the powers and functions conferred by subsection (1), a notary public may—*

--(a) *administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed—*

-(i) for the purpose of confirming or proving the due execution of any document;

-(ii) by any master or member of the crew of any vessel in respect of any matter concerning that vessel; or

-(iii) for the purpose of being used in any court or place outside Malaysia,

and may take or attest any such affidavit or statutory declaration; and

--(b) *have and exercise such other powers and functions as may be prescribed.*

The National Land Code (NLC) is the principal legislation governing land ownership and land transactions in Malaysia, specifically in Peninsular Malaysia. The NLC came into force on 1 January 1966, with the objective of standardizing the

²⁷ "Attorney General's Chambers, Voice of Audience, n.d.," accessed June 20, 2024, <https://www.agc.gov.my/agcportal/frontend/web/index.php?r=portal%2Ffaq&menu=alRzRCtFVldBYm03WldIRVEvVU9HZz09&id=c2pCaFBGWnVsdlpMRzFIS2o4T1hVZz09>.

²⁸ "Laws of Malaysia, Notaries-Public-Act-1959, Incorporating All Amendments up to 1 January 2006.Pdf," n.d., Article 4, Paragraph (1).

²⁹ "Laws of Malaysia, Notaries-Public-Act-1959, Incorporating All Amendments up to 1 January 2006.Pdf," Article 4, Paragraph (2).

previously diverse systems of land ownership and land administration among the states of Peninsular Malaysia.³⁰

Before the implementation of the NLC, there were two distinct land systems in Peninsular Malaysia. The Straits Settlements (Penang and Malacca) applied a land system based on English legal principles, while the other nine Malay states adhered to land systems founded on Malay customary law. These differences in systems created difficulties in the administration and coordination of land matters at the national level. Therefore, the Malaysian government deemed it necessary to establish a uniform land law applicable throughout Peninsular Malaysia. The enactment of the NLC was based on Article 76(4) of the Federal Constitution of Malaysia, which empowers Parliament to legislate on matters relating to land and mining.

The NLC (KTN) governs various aspects of land ownership and transactions in Malaysia, including the land title registration system, the process of land transfers, the creation of land charges, land leases, and other rights and interests in land.³¹

In general, the NLC (KTN) adopts the principles of the Torrens system, which is a land registration system that provides guaranteed legal certainty for registered landowners.³² The key provisions of the NLC include; all land rights must be registered to obtain legal certainty (indefeasibility of title), all land transactions must be conducted using instruments prescribed by the NLC and witnessed by an authorized officer, various types of land rights may be held, such as freehold, leasehold, usufruct, and others.³³ The government has the authority to regulate various aspects of land for the public interest, including restrictions on land ownership, land acquisition, and other related matters.³⁴

A Notary Public in Malaysia plays a crucial role in land transactions under the provisions of the National Land Code. The roles and authorities of the notary public in land transactions in Malaysia include; witnessing the signing of land instruments, administering oaths or affirmations from parties involved in property transactions, such as affidavits of truth, powers of attorney, and other declarations.³⁵

Another important role of the notary public is in the preparation of official copies (notarial copies) of documents related to property transactions, the safekeeping of document copies (minuta of the deed), and the provision of legalization services (attestation) for land-related documents intended for use abroad. The notary public also

³⁰ Wikipedia, "National Land Code (Malaysia)," *National Land Code (Malaysia)* (blog), n.d., https://en.wikipedia.org/wiki/National_Land_Code_%28Malaysia%29.

³¹ "Portal Resmi, Pejabat Tanah Dan Galian Negeri Selangor," accessed June 25, 2024, <https://ptg.selangor.gov.my/index.php/pages/view/324?mid=152>.

³² "Apa Itu Kanun Tanah Negara (KTN) 1965?," accessed June 25, 2024, <https://www.jkptg.gov.my/my/soalan-lazim-3/43-faq/pengurusan-tanah/pengurusan-tanah-2/1041-apa-itu-kanun-tanah-negara-ktn-1965>.

³³ Wan Zahari Sulong, "Pengenalan Undang-Undang Berkaitan Urusan Tanah, PPD (Pembangunan Tanah)" (PDT Kuala Langat, 2012).

³⁴ Portal Resmi, Pejabat Tanah dan Galian Negeri Selangor, <https://ptg.selangor.gov.my/index.php/pages/view/324?mid=152>, accessed 25 June 2024

³⁵ "Notary Public Malaysia," accessed July 5, 2014, <https://www.notarypublicmalaysia.com/our-services/>.

provides legalization services outside the country to ensure the authenticity and validity of documents before foreign authorities. In addition, the notary public may offer translation services for land-related documents into foreign languages. These services help facilitate property transactions involving foreign parties.

Furthermore, the notary public can provide attestation services for signatures on documents related to property transactions, as well as offer legal advice and information. With these roles and authorities, the notary public in Malaysia becomes an essential party to be involved in any land transaction that involves foreign parties or documents intended for use abroad. The involvement of a notary public ensures legal certainty and protection for the parties involved in such transactions.

A Notary Public is an official vested with the authority to carry out specific duties related to the preparation and authentication of legal documents, including those involved in property sales and purchases in Malaysia. In the context of real estate transactions involving land and buildings, the role of the notary public is crucial in ensuring that the documents prepared, signed, and submitted for authentication are legally valid.

In every sale and purchase transaction of land and buildings, the role of the notary public is to ensure the validity of documents involving ownership, transfer of rights, and contract legalization. In Malaysia, not all land is owned outright by individuals. There is a distinction between Native Customary Rights (NCR) land, which holds customary rights for indigenous communities, and titled land, which can be transferred through formal transactions. The notary public, in this context, plays a role in ensuring that every transaction complies with the applicable regulations based on the type of land being sold.³⁶

One of the primary duties of the notary public in property sale and purchase transactions in Sarawak is to verify the documents involved in the transaction. This verification includes examining the authenticity of documents, the legality of the land, and the identities of the parties involved. Some of the documents that must be verified by the notary public include the land title, the sale and purchase agreement, and the identification documents of the parties.³⁷

Upon completion of the verification process, the next task of the notary public is to draft and authenticate the sale and purchase deed. This deed is an authentic document that records the agreement between the seller and the buyer regarding the transfer of rights to the land and building. In Malaysia, the authentication of the deed is of critical importance due to the legal validity and legal protection it affords to the parties.³⁸

In addition to preparing and authenticating the deed, the notary public in Sarawak is also responsible for storing and registering the transaction deed with the relevant legal

³⁶ Akmal Saufi, "Land Title Transfer in Malaysia: Procedures, Documents and Costs Involved," accessed October 12, 2024, <https://www.iproperty.com.my/guides/land-title-transfer-malaysia-70290>.

³⁷ Nur Hafiyah Nordin, "Proses Jual Beli Rumah Di Malaysia," accessed October 12, 2024, <https://datahartanah.com/proses-jual-beli-rumah-di-malaysia/>.

³⁸ "LAW OF SARAWAK, LAND CODE, CHAPTER 81, (1958 EDITION), Incorporating All Amendments up to 31st December 2022," n.d., Article 135.

authority. The sale and purchase deed authenticated by the notary public will be submitted to the Land and Survey Department to be registered within their system. Several steps must be undertaken by the notary public in this process, including registering the transfer of ownership and preserving the deed.³⁹

In property sale and purchase transactions in Malaysia, the payment of taxes and administrative fees also constitutes a crucial aspect overseen by the Notary Public. Several taxes and fees must be paid, such as the Real Property Gains Tax (RPGT) and Stamp Duty, both regulated under Malaysian law. The Notary Public ensures that all these taxes and fees have been duly settled by the parties prior to the authentication of the deed.

One of the key elements related to this duty is the Real Property Gains Tax (RPGT), which is imposed on profits derived from the sale of property. The Notary Public assists in calculating and ensuring that this tax is paid in accordance with prevailing regulations. Additionally, there is the Stamp Duty, which is levied for the purpose of legalizing documents. The Notary Public is responsible for ensuring that documents are properly stamped by the tax office before they are submitted to the Land and Survey Department for registration.

In general, in Malaysia and specifically in the state of Sarawak, land categorized under Native Customary Rights (NCR) is subject to different legal treatment compared to titled land. The Notary Public has an important duty to ensure that transactions involving NCR land comply with local customary regulations as well as state laws.⁴⁰ Key aspects that must be observed by the Notary Public include the verification of customary rights, as transactions involving NCR land typically require approval from the authorities, such as the head of the local community or local government bodies. The Notary Public must ensure that such approvals have been obtained before proceeding with the transaction.

The Notary Public manages documents under the Notaries Public Act 1959, which includes verifying, recording, archiving, and safeguarding minuta. These preserved minuta can serve as authentic evidence in cross-border transactions and international legal proceedings. While the Notary Public's role is limited to authentication, their duty to maintain the integrity and confidentiality of documents ensures legal certainty. Additionally, authentic deeds prepared by the Notary Public can aid in dispute resolution, either through mediation or as evidence in court.

In Malaysia, the leasing of land and buildings involves legal procedures that require the drafting of a valid lease agreement and compliance with local land regulations. There are various types of land in Malaysia, including land governed by Native Customary Rights (NCR) owned by indigenous communities, and titled land, which is more easily tradable.

³⁹ "LAW OF SARAWAK, LAND CODE, CHAPTER 81, (1958 EDITION), Incorporating All Amendments up to 31st December 2022," Article 114, Paragraph 1 and 2.

⁴⁰ Zamhari Awang, "NCR BASIC," accessed October 12, 2024, https://landsurvey.sarawak.gov.my/web/subpage/webpage_view/614#:~:text=Native%20customary%20land%20as%20defined,section%206%20of%20the%20Land.

NCR land requires special permissions to be leased or sold, and here, the role of the Notary Public is particularly important.⁴¹

A lease agreement is a legal contract that governs the relationship between the lessor (land or building owner) and the lessee (tenant). In such agreements, the Notary Public acts as a neutral party to ensure that the rights and obligations of both parties are clearly articulated and understood.

The first duty of the Notary Public in property lease transactions in Malaysia is to verify documents and ensure the legality of the land or building to be leased. This verification process includes the land title, property ownership documents, checks on the land's status (Native Customary Rights/NCR), and checks on existing leases and mortgages. Once document verification is completed, the Notary Public is responsible for drafting a legally valid lease agreement. This agreement must include all terms and conditions agreed upon by the lessor and lessee, such as lease duration, rental amount, rights and obligations of both parties, property conditions, as well as termination and renewal clauses.⁴²

The authentication of the agreement by the Notary Public provides legal certainty that the agreement is valid and binding on both parties. After the agreement is authenticated, it becomes an authentic deed with strong legal force. In some cases, the Notary Public may need to authenticate additional documents besides the lease agreement itself. This may include approvals from relevant authorities and proof of payment documents.⁴³

After the lease agreement is authenticated, the Notary Public has a duty to assist both the lessor and lessee in the process of registering the agreement with the Land and Survey Department Sarawak. In Malaysia, long-term lease agreements, especially those involving land, often need to be registered so that the lessee's lease rights are legally recognized by the government. The Notary Public also plays a key role in providing legal protection for both parties in property lease transactions. The authentic deed prepared by the Notary Public can be used as evidence in court if a dispute arises between the lessor and lessee. Some forms of legal protection provided by the Notary Public include legal certainty and dispute resolution.⁴⁴

From this study, it can be analysed that several factors influence the role and authority of notaries in property transactions in Malaysia compared to Indonesia. These factors include differences in legal systems, statutory regulations, jurisdictional boundaries and local governance, appointment and supervision of notaries, the scope of notary authority, the notary's role in property transactions, protection of third-party

⁴¹ Wfyaulawyers.com.au, "Ensuring Legally Binding Documents with Notary Public," accessed October 27, 2024, <https://wfyaulawyers.com.au/en/legalisation-notarisation-and-authenticity-of-international-transactions/notary-public-for-malaysian-legal-documents/>.

⁴² Wfyaulawyers.com.au, *Ibid*

⁴³ "Notaries Public Manual; Malaysian Lay Person's Guide (Updated 2021/2022)," accessed October 27, 2024, <https://www.liewchambers.com/notarymanual.html>.

⁴⁴ Notaries Public Manual, *Ibid*

rights and administrative obligations, limitations of authority in dispute resolution, and international regulations and document legality for use abroad.

These factors reflect the vital role and limitations of the Notary Public's authority in Malaysia in supporting legal certainty, both in domestic transactions and those involving foreign parties. The involvement of the Notary Public ensures validity and security for all parties in property transactions within jurisdictions governed by land regulations and local customs. These factors affect the role and authority of notaries in property transactions in Malaysia. Differences in legal systems, statutory regulations, appointment and supervision of notaries, as well as notary authority and administrative obligations between Indonesia and Malaysia result in differences in the role and authority of notaries in property transactions in both countries.

A Comparative Table of the Duties and Authorities of Notaries/PPAT in Indonesia and Notary Publics in Malaysia Regarding Property Transactions and the Influencing Factors.

Variable	Indonesia	Malaysia	Differences	Similarities	Advantages	Disadvantages
Legal System	Civil Law	Common Law	Indonesia adopts Civil Law, while Malaysia adopts Common Law.	Both regulate the role of notaries in providing legal certainty.	Indonesia : Civil Law system provides a comprehensive legal structure.	Indonesia: Less flexible in legalizing international documents.
	<i>Legal Basis</i>		Indonesia: Article 1868 Civil Code, UUPJN Article 15. Malaysia: Law of Malaysia, National Land Code 1965.			
	<i>Influencing Factors</i>		Legal tradition, adaptation of colonial legal systems (Dutch in Indonesia, British in Malaysia).			

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Main Authority	Draft authentic deeds, including Sale and Purchase Deed (AJB), and register land title transfer at the National Land Agency (BPN).	Authenticate documents, oaths, and legalizations for international documents.	Indonesian notaries can create authentic deeds. Malaysian Notary Public focuses more on document authentication.	Both provide legal services related to property.	Indonesia : Authentic deed guarantees strong legal certainty and validity in court.	Malaysia: Limited to document legalization without authentic deed creation.
	Legal Basis		Indonesia: Law No. 30 of 2004, Law No. 2 of 2014 Article 15. Malaysia: Notaries Public Act 1959 (Revised-1973) Act 115 (Incorporating all amendments up to 1 January 2006), Article 4			
	Influencing Factors		National regulations and local property market needs.			
Position Requirements	Appointed by the Minister of Law and Human Rights, must have a law degree and notary certification.	Appointed by the Attorney General's Chambers (AGC), must be a registered lawyer and meet administrative requirements.	Appointment process in Indonesia is conducted by the Minister of Law and Human Rights, while in Malaysia by the AGC.	Both require official appointment by national authorities.	Indonesia : More inclusive appointment process with strict requirements.	Malaysia: Requirements limit the number of appointed notary publics.
	Legal Basis		Indonesia: UJN Article 1(1), Malaysia: Notaries Public Act 1959 (Revised-1973) Act 115 (Incorporating all amendments up to 1 January 2006), Article 4			

	<i>Influencing Factors</i>		Legal education systems and bureaucratic structures of each country.			
Responsibilities	Document verification, ensuring transaction legality, registering land title transfer, and dispute resolution.	Document verification, signature authentication, and document legalization for international purposes.	Indonesia has additional responsibilities in dispute resolution and land registration.	Both play a role in verifying property transaction documents.	Indonesia: Provides more comprehensive legal protection through authentic deeds.	Malaysia: Focuses on international documents without involving local disputes.
	<i>Legal Basis</i>		Indonesia: Law No. 5 of 1960, UUN Article 15. Malaysia: Notaries Public Act 1959 (Revised-1973) Act 115 (Incorporating all amendments up to 1 January 2006), Article 4 (2).			
	<i>Influencing Factors</i>		Administrative needs and legal certainty in property transactions.			
Jurisdiction Limits	Limited to the jurisdiction where the notary is based and only for parties recognized by law.	Cannot handle documents related to disputes in Malaysian courts.	Indonesian notaries have territorial limits, while Malaysian limits are more about involvement in disputes.	Both must operate within legal and jurisdictional limits.	Indonesia: Reduces jurisdiction conflicts with other authorities within a legal territory.	Malaysia: No authority over cross-jurisdictional disputes in other countries.
	<i>Legal Basis</i>		Indonesia: UUN Article 19, Malaysia: Notaries Public Act 1959 (Revised-1973) Act 115 (Incorporating all amendments up to 1 January 2006), Article 4 (1).			
	<i>Influencing Factors</i>		Regulations and division of authority among government agencies.			

International Document Legality	Does not directly handle international document legalization .	Has the authority to legalize documents for foreign purposes.	Notary Public in Malaysia is more internationally oriented compared to Indonesian notaries.	Both aim to provide legal certainty for documents produced.	Malaysia: Fulfills international document needs with globally recognized validation .	Malaysia: Does not include the creation of complex authentic documents.
	<i>Legal Basis</i>		Indonesia: BW Civil Code Internasional Article 1939. Malaysia: Notaries Public Act 1959 (Revised-1973) Act 115 (Incorporating all amendments up to 1 January 2006), Article 4(2).			
	<i>Influencing Factors</i>		The existence of international legal needs in cross-border transactions.			

CONCLUSION

Although both Indonesia and Malaysia regard notaries as public officers responsible for ensuring legal certainty in property transactions, fundamental differences arise from their distinct legal heritages and institutional needs. In Indonesia's Civil Law system, notaries and PPATs hold exclusive authority to draft authentic deeds and oversee land rights registration, subject to rigorous legal education requirements and formal appointment by the Minister of Law and Human Rights. Conversely, under Malaysia's Common Law framework, notaries public are confined to document authentication and international legalization, with appointments made by the Attorney General's Chambers and contingent on one's status as a registered solicitor. Both systems mandate official appointment and protect parties by verifying document legality; however, Indonesia's emphasis on creating authentic deeds contrasts with Malaysia's focus on legalization for cross-border use, reflecting the differing priorities of their domestic and global property markets. Legal traditions, institutional design, and the push toward digitalization continue to shape the evolution of notarial duties and authorities in both countries, making a comparative understanding essential for facilitating more efficient and secure cross-border transactions.

Indonesia can enhance flexibility by expanding notaries' authority to handle international documents through targeted training and adaptive policies. The establishment of ASEAN regional standards is also essential to harmonize notarial

regulations, facilitate joint training, and support international certification. In addition, leveraging digital technology can strengthen oversight, with Indonesia accelerating the evaluation of the Notary Supervisory Council (MPN) and Malaysia establishing additional oversight structures to support the Attorney General's Chambers (AGC). Collaboration through comparative studies and regional forums will further strengthen the role of notaries in addressing global challenges. The digitalization of supervision under Indonesia's Notary Supervisory Council needs to be optimized to improve efficiency and reduce the risk of disputes. Malaysia should consider expanding the authority of notaries public to include the drafting of authentic deeds, thereby enhancing legal protection in domestic transactions. The use of technology should also be increased to support oversight through the Attorney General's Chambers. ASEAN regional collaboration is a strategic step towards harmonizing notarial regulations, including joint training and regional certification. Cross-border forums can be used to share best practices, enhance legal integration, and strengthen bilateral relations. The prioritization of digital technology in both countries is crucial to promote transparency and administrative efficiency. These measures will contribute to the creation of a modern, responsive, and adaptive notarial system that can effectively meet global challenges.

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