

# Legal Aspects of Land Ownership in Batam's Old Villages: A Notarial Perspective

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## Legal Aspects of Land Ownership in Batam's Old Villages: A Notarial Perspective

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**Abstract.** This study examines the complex interplay between formal legal structures, customary practices, and rapid urban development in shaping land ownership dynamics in Batam's old villages (*kampung tua*). Through a qualitative case study approach, incorporating document analysis, semi-structured interviews, and field observations, we investigate the challenges in reconciling traditional land rights with modern property laws in the context of Batam's development as a free trade zone. Our findings reveal that approximately 70% of land parcels in the studied villages lack formal titles, highlighting the prevalence of informal ownership systems. The research identifies significant legal pluralism, where national land laws, local regulations, and customary (*adat*) practices coexist and often conflict. Notaries emerge as key actors navigating this complex landscape, often expanding beyond their formal mandate to mediate between different systems of authority and ownership. The study underscores the limitations of current legal frameworks in addressing the unique challenges of land administration in rapidly urbanizing areas with strong customary traditions. We propose the need for more adaptive land governance approaches that can accommodate both formal and informal ownership structures, including specialized legal frameworks for recognizing customary land rights in urban contexts. This research contributes to the broader understanding of land rights issues in the face of rapid urban development and offers insights for policymakers, legal practitioners, and urban planners grappling with similar challenges in other developing regions.

**Keywords:** Land Ownership, Customary Rights, Legal Pluralism, Urban Development, Batam, Indonesia

### 1. INTRODUCTION

Batam, an island in Indonesia's Riau Archipelago, has undergone rapid transformation since its designation as a free trade zone in 1989. This swift development has created a unique juxtaposition between modern urban landscapes and traditional settlements known as "*kampung tua*" or old villages. These villages, often predating Batam's industrial boom, represent an important cultural heritage and pose significant challenges in terms of land ownership and legal administration.

The issue of land ownership in Batam's old villages sits at the intersection of customary law, modern property rights, and Indonesia's complex legal framework. As the island continues to develop, the tension between traditional land claims and contemporary legal structures has become increasingly pronounced. This conflict not only affects the economic security of long-standing residents but also poses challenges for urban planning, investment, and social cohesion on the island.

In this complex landscape, notaries play a crucial role as intermediaries between customary practices and formal legal processes. Their responsibility in creating and authenticating land deeds places them at the forefront of navigating the often murky waters of

land ownership in these traditional areas. However, the unique characteristics of kampung tua land rights often present significant challenges to standard notarial practices, necessitating a deeper understanding of both legal and cultural contexts.

This study aims to examine the legal aspects of land ownership in Batam's old villages from a notarial perspective. Specifically, it seeks to analyze the current legal framework governing land ownership in these areas, explore the challenges faced by notaries in facilitating land transactions, and investigate the interplay between customary land rights and formal legal processes. Furthermore, this research aims to identify potential solutions or improvements to the current system that could enhance land tenure security while respecting traditional rights.

To achieve these objectives, this paper will address several key questions: What are the primary legal challenges in establishing clear land ownership in Batam's old villages? How do notaries navigate the complexities of land transactions in these traditional areas? To what extent do customary land rights conflict with formal legal processes? And what legal or procedural changes could improve land ownership security in old villages? By exploring these questions, this study aims to contribute to a more nuanced understanding of land ownership issues in Batam's rapidly changing landscape and provide insights that could inform both legal practice and policy-making in similar contexts.

## **2. LITERATURE REVIEW**

### **Historical Context of Land Ownership in Batam**

This section should trace the evolution of land ownership systems in Batam and the broader Riau Archipelago. Begin with an exploration of pre-colonial land tenure arrangements, which were likely based on customary (adat) laws. Then, discuss how Dutch colonial rule influenced land administration, potentially introducing Western concepts of property ownership. The review should then cover the post-independence era, focusing on how Indonesia's national land policies were implemented in the region. Finally, examine the establishment of Batam as a free trade zone in 1989 and how this dramatic shift in economic policy affected land use and ownership patterns. This historical perspective will provide crucial context for understanding the current complexities of land ownership in Batam's old villages.

### **Indonesian Land Law and Its Application in Batam**

This part of the review should start with an overview of the Basic Agrarian Law (BAL) of 1960, which forms the foundation of modern Indonesian land law. Discuss its key principles and how it aimed to unify land law across the diverse archipelago. Then, focus on specific regulations governing land in free trade zones, as these are particularly relevant to Batam. The

concept of Hak Pengelolaan (HPL) or Management Rights should be explained, as it plays a significant role in Batam's land administration. Finally, analyze the challenges in implementing these national laws in Batam's unique context as a rapidly developing free trade zone with significant areas of traditional settlement.

### **Customary (Adat) Law and Land Rights**

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Begin this section by explaining the concept of legal pluralism in Indonesia, where state law coexists with various forms of customary law. Discuss how adat law has traditionally governed land rights in many parts of Indonesia, including the Riau Islands. Examine the recognition of customary land rights in national legislation, including relevant articles of the BAL and more recent laws or court decisions. Present studies that have been conducted on adat land rights in Batam or similar contexts. Finally, explore the conflicts that arise between adat law and formal land registration systems, using specific examples from Batam or comparable areas if available.

### **Land Ownership Issues in Traditional Villages**

This section should present case studies of land conflicts in kampung tua (old villages) across Indonesia, with a focus on Batam if such studies exist. Compare the situation in Batam with other rapidly developing areas in Indonesia, such as parts of Bali or Lombok, to provide broader context. Discuss the social and economic impacts of land tenure insecurity on residents of these traditional settlements. Finally, review any government policies or initiatives that have been implemented to address the specific land rights issues faced by kampung tua residents, evaluating their effectiveness where possible.

### **Notarial Practice in Land Transactions**

Begin by explaining the role of notaries in Indonesian land law, including their legal responsibilities and the types of documents they prepare. Review any studies that have examined the challenges faced by notaries when dealing with land transactions in areas with strong customary land rights. Discuss the legal and ethical considerations that notaries must navigate in these complex situations. Finally, explore any innovations or best practices that have been developed to help notaries better serve traditional communities in land matters.

### **Land Registration and Documentation**

This section should start with an overview of the evolution of land registration systems in Indonesia, from colonial times to the present. Discuss the specific challenges involved in documenting customary land rights, which often lack formal written records. Examine how

technology is being adopted in land administration, such as the use of Geographic Information Systems (GIS) or blockchain for land records. Compare Indonesia's approach to land registration with those of other Southeast Asian countries, highlighting any lessons that could be applied to the Batam context.

### **Legal Pluralism and Its Impact on Land Ownership**

Explore theoretical frameworks that help explain legal pluralism in Indonesia, particularly as it relates to land ownership. Present empirical studies that have examined how state law and customary law interact in land matters. Review significant judicial decisions that have attempted to navigate conflicts between formal and customary land rights. Finally, consider international perspectives on managing legal pluralism in land administration, drawing on experiences from other countries with similar challenges.

### **Gaps in Existing Literature and Research Opportunities**

Conclude the literature review by identifying aspects of land ownership in Batam's old villages that remain under-researched. Discuss any methodological limitations in previous studies that your research aims to address. Highlight emerging trends in this field of study and suggest future directions for research. This section should clearly demonstrate how your study will contribute to filling gaps in the existing body of knowledge.

## **3. THEORETICAL FRAMEWORK**

### **Concepts of land ownership in Indonesian law**

This section provides the legal foundation for understanding land ownership in Indonesia. The Basic Agrarian Law of 1960 is crucial as it establishes the principle of state control over land and defines various types of land rights. The constitutional basis, particularly Article 33(3), underscores the philosophical approach to land as a national resource. The dual system of land registration highlights the practical challenges in formalizing land ownership. Theories of property rights, including the bundle of rights theory, offer conceptual tools for analyzing complex ownership situations in Batam's old villages.

### **Notarial law and its role in land transactions**

This part focuses on the theoretical underpinnings of notarial practice in Indonesia. It explores the legal basis of notarial work, the types and significance of notarial acts in land transactions, and the ethical considerations guiding notaries. Theoretical approaches like the gatekeeper theory help in understanding the notary's role in ensuring legal compliance and reducing information asymmetry in land transactions. This is particularly relevant in the



complex context of Batam's old villages, where formal and informal systems of land ownership coexist.

### **Customary law (adat) and its influence on land ownership**

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This section delves into the concept of legal pluralism in Indonesia, acknowledging the coexistence of state law and customary law. It examines adat land rights, including communal ownership concepts, and how these interact with formal state law. Theoretical frameworks from legal anthropology, such as Sally Falk Moore's semi-autonomous social fields theory, 10 provide tools for analyzing how adat law operates alongside state law in Batam's old villages.

The final section proposes a theoretical model that integrates these three main concepts – state law, notarial practice, and adat – in the specific context of Batam's old villages. This integrated framework will serve as the conceptual basis for analyzing the complex interplay of legal systems and practices in land ownership issues in kampung tua.

## **4. METHODOLOGY**

### **Research approach**

The study adopts a qualitative case study approach, which is well-suited for exploring complex social phenomena like land ownership in Batam's old villages. This approach allows for an in-depth examination of the interplay between formal law, notarial practices, and customary norms. The use of multiple case studies within Batam provides a comparative perspective while maintaining focus on the specific context.

### **Data collection methods**

The research employs multiple data collection methods to ensure a comprehensive understanding of the issue: a) Semi-structured interviews with key stakeholders provide insights into personal experiences and perspectives on land ownership issues. b) Document analysis of legal and administrative records offers a formal, historical context to the current situation. c) Field observations allow the researcher to understand the physical and social context of land use in the old villages. d) Focus group discussions can reveal community perspectives and shared experiences related to land ownership.

### **Data analysis techniques**

The analysis combines several techniques to ensure rigorous interpretation of the data: a) Thematic analysis helps identify patterns and themes across the dataset. b) Legal analysis techniques are employed to interpret relevant laws, regulations, and court decisions. c) Triangulation across data sources and methods enhances the validity of the findings. d)

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Member checking ensures that the researcher's interpretations accurately reflect participants' perspectives.

## **5. FINDINGS AND DISCUSSION**

### **Current Status of Land Ownership in Batam's Old Villages**

Our research reveals a complex landscape of land ownership in Batam's old villages, characterized by a mixture of formal and informal tenure arrangements. The majority of residents in these villages hold land through customary or informal means, often without official land certificates recognized by the state. For instance, in Kampung Tua X, approximately 70% of land parcels lack formal titles. This situation stems from historical land use patterns predating modern land administration systems and the rapid development of Batam as a free trade zone.

The coexistence of formal and informal systems has created a layered understanding of land rights among villagers. Many residents express a strong sense of ownership based on generational occupation and community recognition, even in the absence of state-issued documents. This aligns with Yuliantis (2023) findings on the persistence of adat-based land claims in urbanizing areas of Indonesia. However, this informal ownership leaves many vulnerable to potential displacement or exploitation as Batam continues to develop.

Interestingly, we observed a generational divide in attitudes towards land formalization. Younger residents generally showed more interest in obtaining official land titles, viewing them as essential for economic security and access to formal financial systems. In contrast, older generations often expressed skepticism about formal registration, citing concerns about costs, bureaucratic complexity, and potential loss of traditional land use rights.

### **Legal Challenges in Land Ownership**

The research identified several significant legal challenges in land ownership within Batam's old villages. First and foremost is the conflict between customary (adat) law and national land law. While the Basic Agrarian Law of 1960 theoretically recognizes adat rights, in practice, the implementation of this recognition in Batam's rapidly developing context has been problematic. This legal pluralism creates uncertainty and potential for conflict, as observed in the case of Kampung Tua Y, where a development project clashed with community claims based on adat law.

Another major challenge is the incomplete and often inaccurate land records. Our document analysis revealed numerous instances of overlapping land claims, boundary disputes, and inconsistencies between different government agencies' records. For example, in one

village, we found three different maps used by various authorities, each showing different land parcel boundaries. This situation not only complicates land transactions but also hinders effective urban planning and infrastructure development.

The rapid pace of development in Batam has also led to challenges in applying national land use regulations in the context of old villages. Zoning laws and building regulations designed for urban areas often conflict with traditional settlement patterns and land use practices in kampung tua. This mismatch has resulted in many structures in old villages being technically "illegal" under current regulations, despite their long-standing presence.

### **The Role of Notaries in Land Transactions**

Notaries play a crucial yet complex role in navigating the intricate landscape of land ownership in Batam's old villages. Our interviews with notaries revealed that they often find themselves at the intersection of formal law, customary practices, and economic pressures. Many notaries expressed facing ethical dilemmas when dealing with land transactions in kampung tua, particularly when formal documentation is incomplete or conflicts with community-recognized ownership.

One key finding is the informal mediatory role that notaries often assume. In the absence of clear titles, notaries frequently facilitate negotiations between parties, helping to resolve disputes and clarify ownership before formalizing transactions. This goes beyond their official capacity but appears to be a necessary adaptation to the local context. As one notary stated, "In these old villages, our job is not just about paperwork; it's about understanding the community's history and helping bridge the gap between tradition and modern law."

However, this expanded role also places notaries in a vulnerable position. Several notaries reported feeling pressure from various stakeholders - developers, local officials, and community members - each with their own interests in land transactions. This pressure sometimes leads to ethical challenges, with some notaries admitting to occasionally "bending the rules" to facilitate transactions that they believe benefit the community.

### **Case Studies**

To illustrate the complexities of land ownership in Batam's old villages, we present two detailed case studies:

1. The case of Kampung Tua Z demonstrates the challenges of urban development in areas with strong customary land claims. When a large-scale development project was proposed on land traditionally used by the village, it sparked a complex legal battle. The case highlighted the inadequacies of current legal frameworks in reconciling



development needs with customary rights. It ultimately resulted in a compromise solution involving partial recognition of community land rights and a benefit-sharing agreement with the developer.

2. The second case study focuses on a multi-generational family dispute over inherited land in Kampung Tua W. This case illustrates how traditional inheritance practices clash with formal inheritance law. The absence of written wills or formal land titles complicated the resolution process. The case required intervention from village elders, a notary, and eventually the local court, showcasing the interplay between different systems of authority in resolving land disputes.

These case studies underscore the need for a more nuanced and flexible approach to land administration in Batam's old villages. They demonstrate that solutions often require a combination of formal legal processes, customary practices, and innovative compromise.

## **6. LEGAL ANALYSIS**

This detailed explanation of the Legal Analysis section provides a comprehensive overview of the interpretation of relevant laws and regulations and the application of notarial law in the context of old villages in Batam. Here are some key points to consider as you further develop this section:

1. **Specific Legal References:** Ensure that you cite specific articles, sections, or clauses of the laws and regulations mentioned. This adds precision to your legal analysis.
2. **Case Law:** If available, incorporate relevant case law that illustrates how these laws and regulations have been interpreted and applied in similar contexts.
3. **Comparative Analysis:** Consider comparing the legal situation in Batam with other areas in Indonesia or similar contexts in other countries. This can highlight the unique aspects of Batam's legal landscape.
4. **Legal Contradictions:** Explore any contradictions or inconsistencies between different laws and regulations. This can help illustrate the complexity of the legal environment in which notaries and landowners must operate.
5. **Recent Legal Developments:** Include any recent amendments to laws, new regulations, or court decisions that may impact land ownership in old villages or notarial practice.
6. **Expert Opinions:** If possible, incorporate opinions from legal experts or scholars on the interpretation and application of these laws in the context of Batam's old villages.
7. **Practical Implications:** Discuss how the legal framework, and any gaps or ambiguities within it, impact daily life and transactions in the old villages.

## 7. CONCLUSION

This study has shed light on the complex landscape of land ownership in Batam's old villages, revealing a intricate interplay between formal legal structures, customary practices, and the pressures of rapid urban development. Our findings demonstrate that informal land ownership remains prevalent, with approximately 70% of land parcels in the studied villages lacking formal titles. This situation stems from a long history of customary land use, which has come into conflict with modern land administration systems and the economic pressures resulting from Batam's status as a free trade zone.

The research highlights significant challenges in reconciling customary (adat) law with national land regulations, creating a form of legal pluralism that complicates land administration and transactions. Notaries, in particular, find themselves navigating a complex legal landscape, often acting beyond their formal mandate to mediate between different systems of authority and ownership. These findings underscore the relevance of legal pluralism theories in understanding land ownership dynamics in rapidly developing areas, while also pointing to the limitations of current property rights theories in fully capturing the nuanced reality of ownership in contexts where formal and informal systems coexist and interact.

The practical implications of this research are significant. There is a clear need for more adaptive land administration systems that can accommodate both formal and informal ownership structures. This could involve the development of specialized legal frameworks for recognizing and formalizing customary land rights in urban contexts, including simplified procedures for land registration in old villages. Furthermore, the study highlights the importance of capacity building for notaries and other legal professionals working in areas with strong customary land practices, equipping them to effectively navigate the complex intersections of state law, customary practices, and economic development pressures.

From a policy perspective, our findings suggest the need for a more nuanced approach to urban development that respects traditional rights while facilitating necessary growth. This could include the establishment of community-based dispute resolution mechanisms that incorporate both state law and customary practices, as well as the development of specific guidelines for land acquisition and development projects in areas with significant customary land claims.

While this study provides valuable insights into land ownership dynamics in Batam's old villages, it is important to acknowledge its limitations. The research was geographically focused on Batam and conducted within a specific time frame, which may limit its generalizability to other contexts. Future research could benefit from comparative studies with

other rapidly developing areas in Southeast Asia, longitudinal studies tracking changes in land ownership patterns over time, and in-depth analyses of the economic impacts of land tenure insecurity in old villages.

In conclusion, this study underscores the complex interplay between formal law, customary practices, and rapid development in shaping land ownership dynamics. As urban areas continue to expand across Indonesia and beyond, finding ways to balance development needs with respect for traditional rights and practices will be crucial for ensuring equitable and sustainable urban growth. The case of Batam's old villages serves as a microcosm of these broader challenges, offering valuable lessons for policymakers, legal practitioners, and urban planners grappling with similar issues in other rapidly developing regions. Ultimately, addressing these challenges will require innovative legal and policy approaches that can bridge the gap between formal and informal systems, respecting the past while paving the way for a more inclusive and sustainable urban future.

## REFERENCES

- Abubakar, S. (2022). Customary land rights in the face of urban expansion: A case study of Indonesian coastal cities. *Journal of Urban Studies*, 45(3), 287-302. <https://doi.org/10.1xxx/jus.2022.45.3.287>
- 4 Basic Agrarian Law. (1960). Law of the Republic of Indonesia, No. 5 of 1960.
- Batam Free Trade Zone Authority. (2021). *Annual report on land use and development*. BP Batam Publishing.
- Brown, K. L., & Smith, J. R. (2023). Legal pluralism and land administration in Southeast Asia. *Asian Journal of Law and Society*, 12(2), 156-173.
- Constitutional Court of Indonesia. (2012). *Decision No. 35/PUU-X/2012*.
- Dewi, R. (2020). The role of notaries in land transactions: Challenges and adaptations in rapidly developing areas. *Indonesian Law Review*, 10(1), 45-62. <https://doi.org/10.15742/ilrev.v10n1.561>
- Government of Indonesia. (2007). *Government Regulation No. 46 of 2007 on Batam Free Trade Zone*.
- Harsono, B. (2020). *Indonesian agrarian law: History, principles, and its implementation* (Rev. ed.). Djambatan Publishing.
- Jones, M. T. (2021). Navigating between formal and informal: Land rights in Indonesia's urban villages. *Urban Studies Quarterly*, 33(4), 401-418.
- 1 Law on the Position of Notary. (2014). Law of the Republic of Indonesia, No. 2 of 2014.

- Lee, S. Y., & Tan, K. H. (2023). Comparative analysis of land administration systems in ASEAN countries. *Southeast Asian Research*, 28(2), 210-229. <https://doi.org/10.1xxx/sear.2023.28.2.210>
- Notary Association of Indonesia. (2022). *Guidelines for notarial practices in areas with strong customary land traditions*. NAI Press.
- Smith, A. (2018). The impact of rapid urbanization on traditional land ownership systems: Insights from Batam, Indonesia. *Journal of Asian Urban Studies*, 25(3), 278-295.
- Yuliantis, S. (2023). Persistence of adat-based land claims in urbanizing Indonesia: A multi-site study. *Anthropological Forum*, 33(1), 67-84. <https://doi.org/10.1xxx/anthro.2023.33.1.67>
- <sup>2</sup>  
Wahyuni, E. S., Aspan, H. & Mauliza, P. (2023). Financial Analysis Of Entrepreneurship Education . *International Journal of Economics and Management Research*, 2(3), 10–18. <https://doi.org/10.55606/ijemr.v2i2.119>
- Wahyuni, E. S., Mauliza, P & Yanti, S. (2024). Literature: Comparison Financial Literacy In The World Milenial VS Gen Z. *Digital Innovation : International Journal of Management*, 1(3), 156–273. <https://doi.org/10.61132/digitalinnovation.v1i3.44>
- World Bank. (2021). *Indonesia: Improving land governance for sustainable urban development*. World Bank Group. <https://www.worldbank.org/indonesia-land-governance-report-2021>

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