

THE ROLE OF NOTARIAL DEEDS IN ENSURING LEGAL CERTAINTY FOR FOREIGN INVESTMENT IN BATAM FREE TRADE ZONE: A LEGAL FRAMEWORK ANALYSIS

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Abstract

The Batam Free Trade Zone (FTZ) has emerged as one of Indonesia's most strategic economic corridors, attracting substantial foreign direct investment due to its geographical proximity to Singapore and Malaysia, as well as favorable fiscal incentives. However, the rapid influx of investment necessitates robust legal mechanisms to ensure transactional certainty and protect the rights of all parties involved. This research examines the pivotal role of notarial deeds in providing legal certainty for foreign investment activities within the Batam FTZ. Employing normative juridical methodology with statutory, conceptual, and comparative approaches, this study analyzes the intersection between notarial law frameworks under Law Number 2 of 2014 concerning Notarial Position (UUJN) and the specific regulatory requirements governing the Batam FTZ under Government Regulation Number 62 of 2019. The findings reveal that notarial deeds serve as indispensable instruments for establishing legal certainty through their authentic evidentiary power (*volledig en bindende bewijskracht*), which provides conclusive proof of legal transactions. However, several challenges persist, including regulatory fragmentation between national notarial standards and local FTZ requirements, inadequate harmonization of land rights documentation, and procedural complexities in cross-border transactions. This research proposes regulatory recommendations to strengthen the notarial framework within the Batam FTZ, thereby enhancing investor confidence and facilitating sustainable economic development in accordance with Gustav Radbruch's triadic legal values of justice, utility, and certainty.

Keywords: *Notarial Deed; Legal Certainty; Foreign Investment; Batam Free Trade Zone; Authentic Deed; Land Rights; Investment Protection*

INTRODUCTION

A. Background

The Republic of Indonesia, as a constitutional state (*rechtsstaat*), is fundamentally committed to ensuring legal certainty, order, and protection for all citizens and economic actors within its jurisdiction (Widiyono & Khan, 2023). This commitment is particularly significant in the context of special economic zones, where the intersection of national sovereignty, international commerce, and property rights creates complex legal dynamics requiring sophisticated governance mechanisms. The Batam Free Trade Zone (FTZ-Batam), established under Government Regulation Number 46 of 2007 and subsequently reinforced by Government Regulation Number 62 of 2019, represents Indonesia's flagship initiative to attract foreign direct investment (FDI) through regulatory liberalization and fiscal incentives (Farole & Akinci, 2021). Batam's strategic geographical position, situated along one of the world's busiest shipping lanes and in immediate proximity to Singapore and Malaysia, has transformed it into a critical node in regional supply chains and a preferred destination for multinational manufacturing operations (Yeung, 2022). According to data from Badan Pengusahaan Batam (BP Batam), the zone has consistently attracted billions of dollars in foreign investment, with the electronics, shipbuilding, and logistics sectors serving as primary drivers of economic activity. The implementation of FTZ status has provided investors with substantial benefits, including exemptions from import and export duties, Value Added Tax (VAT), and Sales Tax on Luxury Goods (PPnBM), thereby significantly reducing operational costs and enhancing competitiveness (Trihastuti et al., 2025). However, the success of investment facilitation ultimately depends upon the existence of a coherent legal framework that guarantees the enforceability of contracts, the protection of property rights, and the predictability of regulatory

outcomes (Agrawal, 2021). In this context, the notarial institution assumes paramount importance as the primary mechanism for authenticating legal transactions and establishing documentary evidence with conclusive probative force. Under Indonesian law, notarial deeds constitute authentic instruments (*akta otentik*) that possess perfect evidentiary value (*pembuktian yang sempurna*) and are binding upon the parties and third parties alike, as stipulated in Article 1868 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) and Law Number 2 of 2014 concerning the Position of Notary (*UUJN*). The intersection between notarial law and free trade zone governance presents unique challenges that merit scholarly examination. While national notarial standards provide comprehensive procedural requirements for deed authentication, the specific context of the Batam FTZ introduces additional complexities related to land management authority, investment licensing procedures, and cross-jurisdictional recognition of documents (Krismantoro, 2024). Furthermore, the dual regulatory regime combining centralized national legislation with locally tailored incentives creates potential conflicts and uncertainties that may undermine investor confidence if left unaddressed (Chaisse & Dimitropoulos, 2021).

The theoretical foundation for analyzing legal certainty in investment contexts may be derived from Gustav Radbruch's triadic conception of law, which posits that any legitimate legal system must balance three essential values: justice (*Gerechtigkeit*), utility or purposiveness (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) (Alexy, 2015). According to Radbruch, while these values may occasionally conflict, legal certainty serves as the foundational prerequisite for effective governance and economic development, as it enables parties to organize their affairs with reasonable expectations regarding legal consequences (Bix, 2011). In the context of investment facilitation, this theoretical framework suggests that notarial institutions must be designed and implemented to maximize certainty while remaining flexible enough to accommodate the dynamic requirements of international commerce.

B. Problem Formulation

1. How does the existing notarial legal framework in Indonesia provide legal certainty for foreign investment transactions within the Batam Free Trade Zone?
2. What are the primary legal challenges and regulatory gaps affecting the implementation of notarial authentication procedures for investment-related transactions in the Batam FTZ?
3. What regulatory reforms and institutional improvements are necessary to strengthen the role of notarial deeds in ensuring legal certainty and promoting sustainable foreign investment in the Batam FTZ?

C. Theoretical Framework

1. Legal Certainty Theory

The concept of legal certainty constitutes one of the foundational pillars of modern jurisprudence, particularly within civil law traditions that emphasize codification and systematic legal ordering. Gustav Radbruch's philosophical framework provides the most influential articulation of legal certainty's relationship to other legal values. According to Radbruch, "The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as flawed law, must yield to justice" (Alexy, 2015). This formulation establishes legal certainty as the default operational principle of legal systems, subject only to extreme circumstances involving fundamental injustice.

Radbruch identified four essential characteristics of legal certainty: (1) law must be positive, meaning formally enacted through recognized procedures; (2) law must be certain, providing clear guidance for conduct; (3) facts must be formulated clearly, enabling predictable application; and (4) positive law should not change easily, ensuring stability of expectations (Berteau, 2008). These characteristics directly inform the requirements for valid notarial authentication, as authentic deeds must satisfy precise formal requirements to acquire their special evidentiary status under Indonesian law. Contemporary scholars have expanded upon Radbruch's framework to address the specific challenges of economic regulation and investment protection. Braithwaite (2002) argues that legal certainty in commercial contexts requires not merely formal predictability but substantive coherence across regulatory domains, such that parties can reasonably anticipate how multiple legal requirements will interact in practice. This insight is particularly relevant to the Batam FTZ context, where investors must navigate overlapping jurisdictions between national notarial standards, local land management authorities, and zone-specific licensing requirements.

2. Authentic Deed Theory

The theory of authentic deeds finds its foundation in Article 1868 of the Indonesian Civil Code, which defines an authentic deed as "a deed made in the form prescribed by law, by or before public officials authorized to do so at the place where the deed is made." This definition establishes three cumulative requirements for authenticity: formal compliance with statutory requirements, creation by or before authorized public officials, and territorial jurisdiction of the authenticating official (Budiman et al., 2025). Notarial deeds satisfying these requirements acquire three distinct forms of evidentiary power: external evidentiary power (*uitwendige bewijskracht*), formal evidentiary power (*formele bewijskracht*), and material evidentiary power (*materiele bewijskracht*). External evidentiary power relates to the deed's outward appearance as an authentic instrument, establishing a presumption of validity that opponents must rebut through contrary proof. Formal evidentiary power confirms that the statements recorded in the deed were actually made by the parties before the notary on the date specified. Material evidentiary power extends to the truth of the substantive matters stated in the deed, subject to proof of untruth by opposing parties (Adjie, 2017). The combination of these evidentiary qualities renders authentic deeds "perfect and binding" (*volledig en bindende bewijskracht*), meaning that courts must accept their contents as proven absent successful challenge to authenticity.

3. Investment Protection Theory

International investment law has developed sophisticated frameworks for protecting foreign investors against host state interference with their legitimate expectations. The doctrine of legitimate expectations, as articulated in numerous investment tribunal awards, provides that investors are entitled to rely upon the legal and regulatory framework existing at the time of investment, and that subsequent changes adversely affecting investment value may constitute treaty violations (Chaisse & Dimitropoulos, 2021). This doctrine intersects with notarial practice through the requirement that investment-related transactions be documented in ways that clearly establish the parties' rights and the regulatory context within which those rights were acquired. Special Economic Zones present unique challenges for investment protection frameworks, as noted by Chaisse and Dimitropoulos (2021) in their analysis of SEZ governance and international economic law. SEZs operate as "jurisdictions-within-jurisdictions," applying distinct regulatory regimes that may deviate from national standards. This fragmentation creates uncertainties regarding which rules apply to specific transactions and how zone-specific incentives will be treated in the event of disputes. Notarial authentication can mitigate these uncertainties by clearly documenting the regulatory basis for transactions and the specific incentives upon which investors have relied.

D. Research Methods

This research employs normative juridical methodology (*penelitian hukum normatif*), which examines law as a system of norms, principles, and doctrines through analysis of legal texts, judicial decisions, and scholarly literature (Marzuki, 2021). The normative approach is appropriate for investigating the adequacy of existing legal frameworks and identifying regulatory gaps, as it focuses on the internal coherence and external effectiveness of legal rules rather than empirical observation of social phenomena. The research utilizes three complementary analytical approaches. First, the statutory approach (*pendekatan perundang-undangan*) examines relevant legislation including Law Number 2 of 2014 concerning Notarial Position, Law Number 5 of 1960 concerning Basic Agrarian Law, Government Regulation Number 62 of 2019 concerning Batam FTZ, and related implementing regulations. Second, the conceptual approach (*pendekatan konseptual*) draws upon legal doctrines and scholarly interpretations to illuminate the meaning and application of statutory provisions. Third, the comparative approach (*pendekatan perbandingan*) analyzes analogous regulatory frameworks in other Special Economic Zones to identify best practices and potential improvements for the Batam context. Data sources consist primarily of secondary legal materials, including statutory texts, ministerial regulations, government decisions, court judgments, and academic publications from indexed journals. Data analysis employs qualitative legal interpretation techniques, including grammatical interpretation (examining textual meaning), systematic interpretation (analyzing relationships between provisions), historical interpretation (considering legislative intent), and teleological interpretation (assessing purposes and objectives) (Ibrahim, 2012).

RESULTS

1. The Notarial Legal Framework Applicable to Batam FTZ Investment Transactions

The notarial legal framework governing investment transactions in the Batam FTZ operates through multiple regulatory layers that must be harmoniously integrated to achieve legal certainty. At the national level, Law Number 2 of 2014 (UUJN) establishes the fundamental requirements for notarial authentication, including the qualifications and appointment of notaries, the procedures for deed creation, and the legal consequences of authentic deeds. Article 15 of UUJN delineates the primary authorities of notaries, including the power to create authentic deeds regarding all actions, agreements, and provisions required by law or desired by interested parties. Within the Batam FTZ context, notarial practice intersects with zone-specific regulations administered by Badan Pengusahaan Batam (BP Batam), which holds delegated authority over land management, investment licensing, and infrastructure development. Government Regulation Number 62 of 2019 concerning the Free Trade Zone and Free Port of Batam establishes BP Batam as the primary regulatory body with authority to issue business licenses, allocate land use rights, and coordinate investment facilitation services through the Indonesia Batam Online Single Submission (IBOSS) system. This regulatory architecture requires notaries operating in the zone to coordinate their authentication activities with BP Batam procedures. The research findings indicate that notarial deeds serve essential functions in multiple categories of investment-related transactions within the Batam FTZ. For company establishment, foreign investors must execute notarial deeds documenting the articles of association (*akta pendirian perseroan terbatas*), shareholder agreements, and capital contribution arrangements. For property transactions, notarial authentication is required for land lease agreements, building ownership transfers, and mortgage registrations. For commercial contracts, notaries authenticate distribution agreements, joint venture arrangements, and technology licensing contracts that form the operational foundation of investment activities.

2. Regulatory Challenges and Implementation Gaps

The research identifies several significant challenges affecting the implementation of notarial authentication procedures in the Batam FTZ context. First, regulatory fragmentation between national notarial standards and local FTZ requirements creates interpretive uncertainties regarding applicable procedures. While UUJN establishes uniform national standards for deed creation, the specific context of the Batam FTZ introduces additional documentation requirements related to zone-specific business licenses, land allocation certificates, and import-export permits that must be integrated with standard notarial procedures. Second, the land rights regime applicable in Batam presents unique complications for notarial practice. Unlike other Indonesian territories where land rights derive from the Basic Agrarian Law (UUPA) administered by the National Land Agency (BPN), land allocation in the Batam FTZ is primarily managed by BP Batam under the framework of Management Rights (*Hak Pengelolaan*). This dual authority structure creates potential conflicts regarding the appropriate documentation procedures for land-related transactions and the respective roles of PPAT (Land Deed Officials) and notaries in authenticating property transfers (Widiyono & Khan, 2023). Third, cross-border transaction requirements impose additional burdens on notarial authentication procedures. Foreign investors frequently require powers of attorney, corporate authorizations, and supporting documents originating from their home jurisdictions, which must be authenticated through consular legalization or Apostille certification under the Hague Convention. The procedural requirements for recognizing foreign documents within Indonesian notarial practice remain inadequately harmonized, creating delays and uncertainties for international investment transactions (Gregory, 2019).

3. Electronic Integration and Digital Transformation

Recent regulatory developments have introduced electronic elements into the notarial framework, creating both opportunities and challenges for investment facilitation in the Batam FTZ. Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 1 of 2021 concerning Electronic Certificates has established a framework for digital land documentation that promises enhanced accessibility and reduced transaction costs. Similarly, Article 15 paragraph (3) of UUJN authorizes notaries to certify electronic transactions, providing a legal basis for cyber notary practices that could streamline cross-border investment documentation (Permadi & Herlindah, 2023). However, the findings reveal that electronic notarial practices remain inadequately harmonized with the requirements for authentic deed creation under UUJN. The fundamental requirement that authentic deeds be read by the notary before the parties (*verlijden*) poses conceptual challenges for fully electronic transactions, as physical presence requirements are not easily reconciled with remote communication technologies (Nasution et al., 2023). This tension requires legislative clarification to enable the full benefits of digitalization while maintaining the evidentiary qualities that distinguish authentic deeds from private instruments.

DISCUSSION

1. Analysis of Legal Certainty Provision Through Notarial Deeds

Applying Radbruch's theoretical framework to the research findings, the analysis demonstrates that notarial deeds provide substantial legal certainty for investment transactions in the Batam FTZ, though significant improvements remain necessary. The positivity requirement is satisfied through the comprehensive statutory framework established by UUJN, which prescribes detailed procedural requirements for deed creation and establishes clear consequences for non-compliance. The certainty requirement is addressed through the doctrine of perfect evidentiary power, which ensures that properly authenticated deeds are treated as conclusively proven unless successfully challenged on authenticity grounds. However, the analysis reveals weaknesses regarding the clarity of fact formulation and stability requirements. The regulatory fragmentation between national notarial standards and local FTZ requirements creates interpretive uncertainties that undermine clarity, while the ongoing evolution of zone regulations introduces instability that may affect investor expectations. These deficiencies suggest that while the notarial framework provides a necessary foundation for legal certainty, supplementary measures are required to achieve optimal investment protection within the specific Batam FTZ context. The comparative analysis with other Special Economic Zones provides instructive examples of enhanced notarial integration. China's experience with pilot Free Trade Zones demonstrates the benefits of establishing zone-specific notarial procedures that coordinate national authentication standards with local investment facilitation requirements (Leandro & Li, 2020). Similarly, Singapore's approach to notarial recognition facilitates cross-border transactions by establishing clear procedures for authenticating foreign documents within the domestic legal system. These comparative examples suggest that targeted regulatory reforms could significantly enhance the effectiveness of notarial practice in the Batam FTZ.

2. Recommendations for Regulatory Reform

Based on the research findings and analysis, several recommendations emerge for strengthening the notarial framework within the Batam FTZ. First, regulatory harmonization should be pursued through the issuance of integrated guidelines that clearly specify how national notarial requirements interact with zone-specific documentation procedures. These guidelines should be developed through collaboration between the Ministry of Law and Human Rights, BP Batam, and the Indonesian Notary Association (INI) to ensure practical applicability. Second, the land rights documentation framework should be clarified through explicit regulations governing the respective roles of PPAT and notaries in Batam FTZ property transactions. Given the unique Management Rights (Hak Pengelolaan) structure applicable in the zone, specialized procedures may be necessary to ensure that land-related transactions receive appropriate authentication while coordinating with BP Batam administrative requirements.

Third, electronic notarial practice should be enabled through legislative amendments that reconcile traditional authenticity requirements with digital transaction modalities. These amendments should establish clear standards for remote identity verification, electronic signature validation, and digital deed storage while maintaining the evidentiary qualities essential for investor protection. Implementation should prioritize integration with the IBOSS system to facilitate seamless electronic processing of investment-related transactions. Fourth, cross-border document recognition procedures should be streamlined through bilateral arrangements with key investor countries and enhanced implementation of Apostille Convention requirements. Establishing expedited authentication procedures for investment-related documents would reduce transaction costs and processing times, thereby enhancing Batam's competitiveness as an investment destination.

CONCLUSION

This research has examined the critical role of notarial deeds in providing legal certainty for foreign investment within the Batam Free Trade Zone, revealing both substantial achievements and significant areas requiring improvement. The Indonesian notarial framework, grounded in UUJN and the Civil Code doctrine of authentic deeds, provides a robust foundation for transaction authentication that satisfies the essential requirements of legal certainty articulated in Radbruch's theoretical framework. Notarial deeds' perfect evidentiary power ensures that properly authenticated investment transactions receive conclusive legal recognition, thereby protecting investor rights and facilitating dispute resolution. However, the specific context of the Batam FTZ introduces complexities that challenge effective notarial practice. Regulatory fragmentation between national standards and zone-specific requirements, unclear land rights documentation procedures, and inadequate harmonization of electronic transaction frameworks create uncertainties that may undermine investor confidence. These challenges require targeted regulatory reforms to achieve optimal legal certainty and maintain Batam's competitive position as a premier

investment destination in Southeast Asia. The recommendations proposed in this research—regulatory harmonization, land rights clarification, electronic practice enablement, and cross-border procedure streamlining—collectively address the identified gaps while maintaining the authentic deed framework's essential integrity. Implementation of these recommendations would strengthen the notarial contribution to investment facilitation, enhance legal certainty for foreign investors, and support sustainable economic development in the Batam FTZ consistent with Indonesia's broader development objectives.

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