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PROFESSIONAL RISKS OF LAND DEED OFFICIALS IN MULTILAYERED ZONES: A COMPARISON OF LAND LAW FRAMEWORKS IN THE BATAM FREE TRADE ZONE AND FREE PORT AND ISKANDAR MALAYSIA

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Abstract

The designation of an area as a special economic zone is generally understood to facilitate investment. This study examines that assumption from a rarely explored perspective: its consequences for deed-preparing officials. This normative legal study compares land law frameworks in the Batam Free Trade Zone and Free Port and Iskandar Malaysia using comparative, statutory, and conceptual approaches. It measures each zone-specific regime's departure from its underlying land law across nine equivalent aspects. Iskandar departs from Johor State law in two of nine aspects, neither affecting legal relationships concerning land. Batam departs in five of nine aspects, all affecting those relationships and their governing institutions. This creates a distinctive professional risk for Land Deed Officials: deed validity depends on Management Right utilisation approval documents whose issuance standards lie beyond the profession's control. A negative land registration system compounds this risk by providing no indefeasibility after registration, unlike the Torrens system, which ends that risk. The study concludes that institutional coordination reform concerns not only ease of doing business but also professional protection. It proposes four mitigation measures that preserve the nationality principle in Indonesian land law.

Keywords: comparative law; Land Deed Officials; legal certainty; Management Right; special economic zones.

A. INTRODUCTION

Indonesian land law categorically prohibits foreign nationals from holding the Right of Ownership (Hak Milik) over land. Article 21(1) of Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) stipulates that only Indonesian citizens may hold Hak Milik. Article 26(2) declares that any act intended to transfer Hak Milik to a foreign national is null and void by operation of law, and that the land reverts to the State.[1] These provisions are not a historical coincidence. They arose from an awareness of agrarian inequality during the colonial period and establish the nationality principle as the foundation of the entire national land law framework.[2]

At the same time, Indonesia needs foreign investment and has therefore established zones subject to special legal treatment. Batam occupies a distinctive position within this policy. Its status as a Free Trade Zone and Free Port (Kawasan Perdagangan Bebas dan Pelabuhan Bebas, KPBPB), whose administration is currently governed by Government Regulation No. 41 of 2021, as amended twice,[3] places it in direct competition with Iskandar Malaysia

[1] Article 21(1), read together with Article 26(2), of Law No. 5 of 1960 on Basic Agrarian Principles.

[2] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, revised edition, Djambatan, Jakarta, 2007, p. 5.

[3] Government Regulation No. 41 of 2021 on the Administration of Free Trade Zones and Free Ports, as amended by Government Regulation No. 25 of 2025 and most recently by Government Regulation No. 23 of 2026.

across the Singapore Strait. The two zones compete for the same investors but operate under fundamentally different land law regimes.

Batam's special treatment extends beyond fiscal measures. Most land in the zone is subject to a Management Right (Hak Pengelolaan, HPL) held by the Batam Concession Agency (Badan Pengusahaan Batam, BP Batam). A Management Right is not a land right within the meaning of Article 16 of the UUPA. Rather, it constitutes a partial delegation of the State's Right to Control (Hak Menguasai Negara), authorising the holder to plan land allocation, use the land itself, and allocate portions to third parties.[4] This arrangement introduces an additional legal relationship between the State and the ultimate rights holder.

One issue that has received limited attention is the effect of this arrangement on the office of Land Deed Official (Pejabat Pembuat Akta Tanah, PPAT). A PPAT is a public official with directly conferred statutory authority to draw up authentic deeds concerning specified legal acts involving land rights. Such deeds are required for the registration of transfers of rights.[5] In most parts of Indonesia, the validity of a PPAT deed depends on checks that fall entirely within the profession's remit. In multilayered zones such as Batam, this situation changes. The questions are how extensive that change is and whether a special zone in the comparator jurisdiction produces the same consequences.

The existing literature generally examines foreign ownership of land within a single legal system or compares two countries without focusing on special economic zones. Almost all of these studies remain confined to the investor's perspective. No study has been identified that systematically measures how far a zone-specific regime departs from its underlying land law, let alone uses that measurement to analyse the professional risks faced by deed-preparing officials. This study seeks to address that gap.

Against this background, the study addresses two research questions. First, how do the land law frameworks in the Batam KPBPB and Iskandar Malaysia depart from their respective underlying land laws? Second, how do these departures affect the professional risks faced by deed-preparing officials in the two zones, and what mitigation measures can be adopted?

B. RESEARCH METHOD

This is a normative legal study that treats law as a system of norms. Its research materials therefore consist of legal sources rather than behavioural data. The study is descriptive-analytical and prescriptive: it describes the applicable rules, analyses them, and formulates recommendations concerning what ought to be done.

The study employs three approaches. The comparative approach provides the main framework and follows the functional comparative method, which holds that legal institutions should be compared according to the functions they perform rather than their labels or forms.[6] The statutory approach examines the hierarchy of, and relationships among, legal instruments in both jurisdictions. The conceptual approach is used where terminology is not equivalent across the two systems, for example when comparing Management Rights with the concept of State ownership under Malaysian law.[7]

Primary legal materials include the UUPA; Government Regulation No. 18 of 2021; Government Regulation No. 41 of 2021 and its amendments; Government Regulation No. 37 of 1998, read together with Government Regulation No. 24 of 2016; the National Land Code 1965; the Iskandar Regional Development Authority Act 2007; and judicial decisions interpreting these instruments. Secondary legal materials comprise books and journal articles, while tertiary materials include legal dictionaries.

The analysis follows a qualitative-comparative method in five stages: describing each system independently, identifying similarities and differences, evaluating the systems against the theory of legal certainty, conducting a functional comparison, and synthesising the findings to formulate recommendations. To ensure a balanced examination, both jurisdictions are analysed using an identical nine-aspect framework, allowing the findings to be compared directly and independently reassessed.

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[4] Article 1, point 3, of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration.

[5] Government Regulation No. 37 of 1998 on the Regulation of the Office of Land Deed Official, as amended by Government Regulation No. 24 of 2016.

[6] Konrad Zweigert and Hein Kotz, *An Introduction to Comparative Law*, translated by Tony Weir, third edition, Clarendon Press, Oxford, 1998, p. 34.

[7] Peter Mahmud Marzuki, *Penelitian Hukum*, revised edition, Prenada Media Group, Jakarta, 2021, p. 133.

C. RESULTS AND DISCUSSION

1. Departures of Zone-Specific Regimes from Their Underlying Land Laws

The first research question requires equivalent measurements on both sides. Accordingly, nine aspects representing the principal elements of legal relationships concerning land are identified: the source of authority over land, the principal legislation, the registration institution, approval requirements before acquisition, the types of rights available to foreign nationals, the duration of rights, recurring charges imposed on rights holders, the presence of additional institutions, and deed-preparing officials. These nine aspects are examined twice: first, to compare the Batam KPBPB with Indonesian land law outside the zone, and second, to compare Iskandar with Johor State land law outside the zone. The results are presented in Table 1.

Table 1. Departures of Zone-Specific Regimes from Their Underlying Land Laws

Aspect	Batam KPBPB compared with its underlying law	Iskandar compared with its underlying law
Source of authority over land	**DIFFERENT.** Partial delegation of the State's Right to Control through Management Rights	**SAME.** Remains with the Johor State Authority
Principal legislation	**SAME.** UUPA	**SAME.** National Land Code 1965
Rights registration institution	**SAME.** Land Office	**SAME.** State Lands and Mines Office
Approval before acquisition	**DIFFERENT.** BP Batam's approval for HPL utilisation is mandatory	**SAME.** Only approval under Section 433B for foreign interests
Rights available to foreign nationals	**SAME.** Right to Use, apartment units, and Right to Build through a foreign investment company (PT PMA)	**SAME.** Title with State approval
Duration of rights	**DIFFERENT.** Extension depends on the HPL holder's approval	**SAME.** Perpetual freehold; leasehold for its specified term
Recurring charges on rights holders	**DIFFERENT.** Additional mandatory annual payment	**SAME**
Additional institutions	**DIFFERENT.** Zone Council and BP Batam	**DIFFERENT.** IRDA, without authority over land
Deed-preparing official	**SAME.** PPAT	**SAME.** Advocate and solicitor
Number of differing aspects	5 of 9	2 of 9

The comparison reveals a marked difference. Iskandar departs from Johor State law in only two of the nine aspects, whereas the Batam KPBPB departs from Indonesian land law in five of the nine aspects. These figures are not merely counts; they measure how far a zone-specific regime diverges from its underlying law.

More important than the number of differences is where they occur. All five differences on the Indonesian side concern legal relationships involving land and the institutions governing them. Management Rights alter the source of authority, introduce approval requirements before the acquisition of rights, make extensions contingent on the Management Right holder's approval, add recurring charges in the form of a mandatory annual payment, and introduce additional institutions, namely the Zone Council and BP Batam.

By contrast, neither of the two differences on the Malaysian side affects legal relationships concerning land. The establishment of the Iskandar Regional Development Authority (IRDA)[8] does introduce an additional institution, but its directly conferred statutory authority is limited to planning and promotion, with no authority over land matters. Authority over land remains entirely with the Johor State Authority, and rights continue to be registered by the Registrar of Titles at the State Lands and Mines Office.

This finding can be expressed in a single sentence. **Malaysia's special zone operates alongside the land law framework, whereas Indonesia's special zone adds a layer above it.** The former organises the institutional

[8] Iskandar Regional Development Authority Act 2007 (Act 664), Malaysia.

environment surrounding land law without altering it; the latter introduces new legal relationships into the land law framework itself.

Hadjon's theory of authority clarifies this distinction. Hadjon distinguishes three sources of authority: attribution, delegation, and mandate.[9] IRDA's attributed authority is limited to planning and promotion, so there is no overlap of authority that requires resolution. BP Batam, by contrast, simultaneously holds two forms of authority: authority to administer the zone under the KPBPB legislation and authority over land through the partial delegation of the State's Right to Control. The overlap between these two forms of authority and that of the Ministry of Agrarian Affairs and Spatial Planning produces a situation that may be described as quasi-dualism. Previous research has documented how the complexity of offices at the highest level of Batam's institutional structure further undermines the efficiency of land administration in the zone.[10]

2. The Legal Position of Foreign Nationals' Land Rights and Their Duration

It should be emphasised that the departures on the Indonesian side do not affect the types of rights available to foreign nationals. Both inside and outside the zone, foreign nationals may only acquire the Right to Use (Hak Pakai), ownership rights over apartment units, or use the Right to Build (Hak Guna Bangunan, HGB) through an Indonesian legal entity established as a foreign investment limited liability company (PT Penanaman Modal Asing, PT PMA). Hak Milik remains categorically unavailable to foreign nationals.

The duration of these rights also remains unchanged. The Right to Build may be granted for up to 30 years, extended for 20 years, and renewed for another 30 years.[11] Fixed-term Rights to Use over State land and land subject to Management Rights follow exactly the same structure.[12] Accordingly, the maximum period that foreign nationals can legally obtain in relation to land in Indonesia is 80 years.

This is precisely where the problem arises. The 80-year period is a possibility rather than a certainty, because every extension and renewal of rights over land subject to a Management Right requires the Management Right holder's approval. Viewed through the economic theory of property rights, the component that is eroded is abusus, namely the freedom to transfer assets and preserve their value.[13] An 80-year period formally provided for in law is therefore not equivalent to an 80-year period that can reliably be used in investment calculations.

The Malaysian position provides a contrast. Foreign nationals who satisfy the State Authority's approval requirements may obtain full title, either as perpetual freehold tenure or as a State lease for its specified term.[14] This difference is substantial, but it requires a balanced interpretation.

Malaysia's openness is not unlimited. Certain categories of land are categorically unavailable to foreign interests, particularly Malay reservation land protected by State enactments under Article 89 of the Federal Constitution.[15] This prohibition cannot be overridden by State approval because it concerns the status of the land rather than permission to acquire it. Other restricted categories include low-cost and medium-cost housing, as well as units reserved for citizens under Bumiputera quotas. Both countries therefore categorically exclude certain categories. The difference is that Indonesia applies a blanket restriction to one type of right, whereas Malaysia applies selective restrictions to particular categories of property.

The difference in duration described above therefore does not justify recommending that Indonesia make Hak Milik available to foreign nationals. Such a choice would affect the core of State sovereignty over land, which forms the philosophical foundation of the entire system.

3. Registration Systems and the Extent of Professional Risk

The differences between the two systems extend beyond the legal structure of the zones. They also concern their registration systems, and it is at this point that the professional risks faced by deed-preparing officials are determined.

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[9] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta, 2011, p. 130.

[10] Soerya Respationo, "The Mayor of Batam Ex-Officio as Head of The Batam Concession Agency: Cross-Jurisdictional Authority and Legal Problems", *Pena Justisia: Media Komunikasi dan Kajian Hukum*, Vol. 23, No. 1, 2024, pp. 539-553.

[11] Article 37 of Government Regulation No. 18 of 2021.

[12] Article 52 of Government Regulation No. 18 of 2021. This provision increases the term of the Right to Use from 25 to 30 years, compared with the term previously prescribed in the now-repealed Government Regulation No. 40 of 1996.

[13] Harold Demsetz, "Toward a Theory of Property Rights", *The American Economic Review*, Vol. 57, No. 2, 1967, p. 347.

[14] Sections 433A to 433E of the National Land Code 1965 (Act 56), Malaysia.

[15] Article 89 of the Federal Constitution of Malaysia and the State-level enactments concerning Malay reservation land.

Malaysia follows the Torrens system, under which registration creates title rather than merely serving an administrative function. Registered title is indefeasible under Section 340 of the National Land Code, except in cases of fraud, forgery, defective instruments, or unlawful acquisition.[16] In Tan Ying Hong v Tan Sian San & Ors, the Federal Court affirmed that Section 340 adopts deferred indefeasibility: the immediate transferee under a defective instrument does not acquire an indefeasible title, whereas indefeasibility protects a subsequent purchaser in good faith and for value.[17]

Indonesia follows a negative land registration system with positive elements. A land certificate constitutes strong, but not conclusive, evidence, so a party claiming entitlement may still challenge it. The positive element is limited to a five-year limitation period benefiting certificate holders who acquire land in good faith and exercise actual possession.

The implications for the profession are fundamental. In Malaysia, a solicitor's risk ends upon registration, except where defects expressly covered by the exceptions in Section 340(2) are involved. In Indonesia, a PPAT's risk never fully ends because a deed may be challenged many years after it was drawn up. Table 2 compares these two positions.

Table 2. Professional Risks of Deed-Preparing Officials in the Two Zones

Risk dimension	PPAT in the Batam KPBPB	Solicitor in Iskandar
Basis of authority	Directly conferred statutory authority under Government Regulation No. 37 of 1998, read with Government Regulation No. 24 of 2016	Licensed profession under the Legal Profession Act 1976
Nature of the deed or instrument	Authentic deed required for the registration of a transfer of rights	Form 14A transfer instrument, registered by the Registrar of Titles
Checks on the parties	Nationality, residence permit, legal entity form, and shareholding structure	Citizenship or foreign-interest status under Section 433A
Checks on the land	Status of rights, existence of HPL, utilisation agreement, and arrears of mandatory annual payments	Land category, restrictions in interest, and State price threshold
Documents beyond the official's control	BP Batam's approval for HPL utilisation	State Authority approval
Consequences of defects in those documents	The deed may be challenged; the negative land registration system provides no indefeasibility	Registration cannot proceed; indefeasibility under Section 340 attaches only after registration
Duration of risk	Open-ended, because a certificate is not conclusive evidence	Ends upon registration, except for defects under Section 340(2)

It must be acknowledged that this study does not measure how often such circumstances actually occur. That would require an empirical research design with access to case files and accounts from those involved, which falls outside the scope of this normative study. What can be demonstrated normatively is that the legal framework itself permits this possibility, whereas the comparator jurisdiction does not. The study's claim extends no further.

The table shows that multilayered zones introduce an additional layer of risk for PPATs. In addition to conducting the usual checks on the legal eligibility of the parties and the legal status of the property,[18] PPATs in the Batam KPBPB must verify the existence and validity of BP Batam's approval documents for the utilisation of Management Rights. Yet the standards for issuing these documents, the processing periods, and the conditions for granting approval lie beyond the profession's control.

Consider the following situation. A PPAT in Batam draws up a sale and purchase deed for a Right to Build over land subject to a Management Right. All documents are complete, the certificate is clear, the parties have legal capacity, and BP Batam's utilisation approval is attached. The deed is registered and the certificate is transferred into the new holder's name. Eight years later, a dispute arises over the validity of the utilisation approval itself, for

[16] Section 340 of the National Land Code 1965 (Act 56), Malaysia.

[17] *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 MLJ 1 (Federal Court, Malaysia).

[18] Article 55 of Government Regulation No. 18 of 2021 concerning the obligation to conduct checks before drawing up a deed.

example because its issuance is alleged to have failed to comply with the issuing institution's internal procedures. The PPAT never had access to examine those procedures, and no provision required such an examination. Nevertheless, the legal basis of the deed is now called into question.

This illustrates the more deeply layered nature of professional risk. A PPAT is expected to ensure the validity of a deed whose requirements are partly determined by another institution, while the registration system does not bring that risk to an end once the deed has been registered. These two conditions combine and reinforce one another.

Assessed against Fuller's eight principles of legality, Batam's system meets the requirements of generality, promulgation, and clarity because its principal rules are written, promulgated, and accessible.[19] Its weaknesses concern the principles of non-contradiction and congruence between declared rules and official action, the latter being the principle Fuller himself regarded as the most decisive. Assessed against Jan Michiel Otto's conditions for real legal certainty, the weakness lies in the second condition: consistent application by the government.[20]

4. Risk Mitigation without Altering the Nationality Principle

A reasonable question is whether reform requires the relaxation of restrictions on foreign nationals. The answer is no. All identified sources of the problem arise from the structure of Management Rights and the allocation of institutional authority, rather than from the nationality principle. Reform can therefore proceed through procedural improvements without changing either Article 21 or Article 26 of the UUPA.

The first measure is a one-stop service linking BP Batam and the Land Office. Both institutions would retain their respective powers but deliver services through a shared access point, with standard procedures and published service-time standards. An interinstitutional cooperation agreement accompanied by joint implementation guidelines would provide a sufficient legal instrument, without amending substantive legislation. The need for this measure is not unique to Batam. The World Bank reports that fewer than one-quarter of the economies surveyed have a single online platform covering the entire process of transferring land rights.[21]

The second measure is a standard-form agreement that provides certainty regarding extensions on clearly defined terms. What would be constrained is not the State's Right to Control, but the manner in which the Management Right holder exercises its management authority. The State could still refuse an extension, but only on objective grounds agreed in advance, such as land abandonment, use contrary to the designated purpose, or outstanding obligations. Such legally constrained authority is common in administrative law and would also restore the previously eroded abusus component.

The third measure most directly addresses the issue examined in this article: issuing specific technical guidelines for Notaries and PPATs practising in areas subject to Management Rights. The guidelines need not be complex. They should contain a document checklist, procedures for verifying the validity of utilisation approvals, and guidance on the action to take when required documents are unavailable. To date, the profession has operated without such official guidance and has borne the consequences of its absence.

Finally, all cost components associated with acquiring rights should be presented in a single publicly accessible official document, including mandatory annual payments and non-tax State revenue charges for land services. This transparency would address the weaknesses identified against the conditions for real legal certainty. It also has strategic significance. On 7 January 2025, Malaysia and Singapore signed an agreement establishing the Johor-Singapore Special Economic Zone[22], and the zone across the strait is now moving more rapidly to organise its institutional environment.

These four measures address procedures, coordination, and transparency. None expands the categories of persons eligible to hold rights, so the nationality principle remains intact. This exemplifies adopting a function without replicating its form, as prescribed by the functional comparative method.[23]

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[19] Lon L. Fuller, *The Morality of Law*, revised edition, Yale University Press, New Haven, 1969, p. 39.

[20] Jan Michiel Otto, "Toward an Analytical Framework: Real Legal Certainty and Its Explanatory Factors", in Jianfu Chen et al. (eds.), *Implementation of Law in the People's Republic of China*, Kluwer Law International, The Hague, 2002, p. 26.

[21] World Bank Group, *Business Ready 2025*, World Bank Group, Washington, D.C., 2025.

[22] Economic Development Board Singapore, *Agreement between Singapore and Malaysia on the Johor-Singapore Special Economic Zone*, 7 January 2025.

[23] Teo Keang Sood and Khaw Lake Tee, *Land Law in Malaysia: Cases and Commentary*, third edition, LexisNexis, Petaling Jaya, 2012, p. 89.

D. CONCLUDING

1. Conclusion

The land law frameworks in the two zones depart from their underlying laws to different degrees. Iskandar departs in two of nine aspects, neither of which affects legal relationships concerning land. The Batam KPBPB, by contrast, departs in five of nine aspects, all of which affect those relationships and their governing institutions. Malaysia's special zone operates alongside the land law framework, whereas Indonesia's special zone adds a layer above it.

These departures intensify the professional risks faced by Land Deed Officials in a distinctive way. Deed validity depends on Management Right utilisation approval documents whose issuance standards lie beyond the profession's control, while the negative land registration system does not bring the risk to an end after registration. These two conditions combine and reinforce one another, unlike the position of solicitors in Johor, whose risk ends upon registration under Section 340 of the National Land Code.

2. Recommendations

Policymakers are advised to establish a cooperation agreement for a one-stop service between BP Batam and the Ministry of Agrarian Affairs and Spatial Planning, introduce standard-form Management Right utilisation agreements with objective extension conditions, and publish an integrated document specifying fees and service times.

The Ministry of Agrarian Affairs and Spatial Planning, together with professional organisations, is advised to issue specific technical guidelines for Notaries and PPATs practising in areas subject to Management Rights, because professional protection is an integral part of legal certainty in land matters.

Future researchers are encouraged to complement these normative findings with empirical research measuring the actual time and costs involved in acquiring rights in both zones, and to examine developments in practice following the operation of the Johor-Singapore Special Economic Zone.

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