

# Notarial Risk Mitigation in Entrusted Income Tax Payments under Land Sale and Purchase Binding Agreements

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## ABSTRACT

This study aims to analyze the role of Notaries in the practice of receiving entrusted payments of Final Income Tax in the context of Sale and Purchase Binding Agreements of land and/or buildings, and to formulate a legal risk mitigation model applicable in notarial practice. This research employs a socio-legal method with statutory, conceptual, and futuristic approaches. Data were obtained through interviews with Notaries in Batu City, East Java, Indonesia, as well as through a review of relevant legislation, legal documents, and academic literature. The findings indicate that the practice of Notaries receiving entrusted tax payments has developed as a response to transactional needs and the fiduciary relationship between Notaries and clients, despite the absence of explicit regulation under the Notary Law or Indonesian tax regulations. This normative gap constitutes a legal vacuum that creates legal uncertainty regarding the authority, responsibilities, and limitations of Notaries in managing entrusted tax funds. The study identifies that such practices pose multidimensional legal risks, including civil liability (breach of contract and tort), criminal liability (embezzlement and breach of trust), administrative sanctions within the notarial system, and tax compliance risks. Therefore, a structured risk mitigation framework grounded in the prudential principle is required. The novelty of this research lies in the development of a legal risk mitigation model for Notaries in handling entrusted Final Income Tax payments in Sale and Purchase Binding Agreements transactions. The model encompasses the strengthening of the prudential principle, the implementation of segregated escrow accounts, standardized documentation-based administrative procedures, and the reinforcement of normative regulation concerning the limits of Notaries' authority in managing entrusted tax funds. This model is expected to enhance legal certainty, provide legal protection for Notaries, and prevent potential misuse of entrusted funds in notarial practice.

**Keywords :** Notarial Risk Mitigation; Final Income Tax; Sale and Purchase Binding Agreement; Entrusted Tax Payment; Legal Certainty.

## 1. INTRODUCTION

Taxation constitutes a primary instrument of state revenue that performs budgetary, regulatory, and redistributive functions in achieving public welfare and sustaining national development. Within the framework of modern public finance, taxation is no longer understood merely as a revenue-generating mechanism, but also as a fiscal policy tool that shapes economic behavior, reduces social inequality, and promotes sustainable development (Mardiasmo, 2023). Constitutionally, the legitimacy of tax imposition is explicitly grounded in Article 23A of the 1945 Constitution of the Republic of Indonesia, which mandates that all compulsory levies for state purposes must be regulated by law. This constitutional principle is operationalized through the self-



assessment system, which assigns taxpayers the responsibility to calculate, pay, and report their tax obligations independently (Negara, 2024).

In land law practice, tax obligations are inherently and simultaneously linked to the transfer of land and/or building rights. Every sale and purchase transaction not only produces civil law consequences in the form of ownership transfer, but also generates fiscal obligations in the form of final income tax on the transfer of land and/or building rights, as regulated under Government Regulation No. 34 of 2016. Accordingly, tax compliance is not merely an administrative requirement, but a legal prerequisite for the registration and legal recognition of land rights transfer (Nugroho, 2017).

Prior to the execution of a Sale and Purchase Deed before a Land Deed Official, parties commonly enter into a Sale and Purchase Binding Agreement before a Notary. The Sale and Purchase Binding Agreement functions as a preliminary legal instrument that binds the parties under certain conditions, such as incomplete land subdivision, encumbered title status, or unpaid purchase price (Putra, Anand, & Moechthar, 2026). In this regard, the Sale and Purchase Binding Agreement serves a dual function as an instrument of legal certainty and legal protection within property transactions.

The development of notarial practice demonstrates an expanded role of Notaries beyond authentic deed drafting, extending into administrative facilitation within transactional ecosystems, including tax-related processes. In practice, sellers as taxpayers frequently entrust income tax payments to Notaries for subsequent remittance to the state treasury. This phenomenon arises from sociological and administrative factors, including limited tax literacy, high public trust in Notaries, and transactional efficiency considerations (Fadil, 2024). However, such practice is not explicitly regulated within the statutory framework governing notarial authority or tax administration.

This condition reveals a legal vacuum concerning the authority of Notaries to receive, hold, and disburse entrusted tax payments. Neither the Notary Law nor tax regulations provide clear normative boundaries regarding the scope of authority, operational standards, or legal liability of Notaries in relation to such entrusted funds. This normative gap creates legal uncertainty for both Notaries and taxpayers and potentially leads to inconsistent practices (Hadjon, 1987).

From a legal perspective, this ambiguity generates multidimensional risks. From a fiscal standpoint, commingling entrusted funds with a Notary's personal assets may result in reclassification as taxable income or assets. From a civil law perspective, mismanagement may constitute unlawful acts (tort liability). From a criminal law perspective, misuse or misappropriation of entrusted funds may qualify as embezzlement. These risks are exacerbated by



the absence of standardized operating procedures and specific supervisory mechanisms governing client fund management (Kartikawati, 2021).

This issue is not merely domestic in nature but aligns with international discourse on legal risk management and fiduciary responsibility in legal professions. Recent scholarship highlights increasing demands for transparency, accountability, and financial regulatory compliance within legal practice (International Bar Association, 2023). Furthermore, the principle of good governance requires effective risk mitigation mechanisms to protect client interests while maintaining professional integrity (OECD, 2024). In addition, third-party fund management by legal professionals necessitates robust internal control systems to prevent fraud, misuse of authority, and reputational risks (World Bank, 2022).

The urgency of this study is further reinforced by judicial decisions involving Notaries convicted of misappropriating entrusted tax funds. In Decision No. 1035/Pid.B/2021/PN Kis (Kisaran District Court) and Decision No. 210/Pid.B/2022/PN Sby (Surabaya District Court), Notaries were found guilty of embezzling tax payments entrusted by clients. These rulings demonstrate that tax fund entrustment practices, although conducted within professional service contexts, carry significant legal risks when not supported by adequate accountability mechanisms.

Prior studies predominantly focus on criminal liability of Notaries in cases of embezzlement of entrusted tax funds (Lestari, 2020; Pintoko, 2021; Sembiring, 2023; Kawiran, 2025; Marini, 2025). However, they have not comprehensively developed preventive risk mitigation models applicable prior to legal violations. Accordingly, a significant research gap exists regarding the design of preventive mechanisms addressing legal, fiscal, administrative, and ethical risks in tax fund entrustment practices within Sale and Purchase Binding Agreement transactions.

Based on the foregoing analysis, this study aims to examine the normative and conceptual role of Notaries in receiving entrusted income tax payments in land and/or building Sale and Purchase Binding Agreement transactions, and to formulate a risk mitigation model that ensures legal certainty, legal protection, and accountability for all parties involved. Theoretically, this study is expected to contribute to the development of notarial law and tax law, while practically serving as a foundation for more comprehensive regulatory reform regarding Notary-managed tax fund entrustment.

## 2. RESEARCH METHODS

This study employs a socio-legal research design that examines the interaction between legal norms (law in books) and social practices (law in action) concerning the acceptance of



entrusted Income Tax payments in the context of Preliminary Sale and Purchase Agreements of land and/or buildings conducted by Notaries. This approach is utilized to identify the normative empirical gap, particularly regarding the position of Notaries as public officials whose limited statutory authority intersects with practical mechanisms of tax payment handling in property transactions.

The research was conducted in several Notary offices located in Batu City, East Java, Indonesia. The location was selected purposively due to its high intensity of land transaction activities and the increasing complexity of notarial practices involving tax payment arrangements within Sale and Purchase Agreements structures. Accordingly, the site provides a relevant empirical setting to examine the practical development of legal implementation.

The study applies three methodological approaches: the statutory approach, the conceptual approach, and the futuristic approach. The statutory approach is used to examine the coherence of legal norms governing Notarial authority, taxation law, and land administration law. The conceptual approach is applied to analyze key legal doctrines such as legal responsibility, public office authority, and the prudential principle in notarial practice. Meanwhile, the futuristic approach is employed to construct an ideal regulatory framework for the treatment of entrusted tax payments within Sale and Purchase Agreements transactions in order to enhance legal certainty and professional protection for Notaries.

Primary data were obtained through structured interviews with selected Notaries using a purposive sampling technique. The selected informants are Notaries who have direct experience in drafting Sale and Purchase Agreements agreements and handling entrusted tax payments from clients. This sampling strategy ensures the acquisition of in-depth and context-specific information relevant to socio-legal analysis.

Secondary data were collected through documentary and library research comprising primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, the Notary Code of Ethics, and relevant court decisions concerning entrusted tax payment practices in property transactions. Secondary legal materials were selected based on academic authority and substantive relevance to the research issue, particularly in explaining legal risk mitigation, office liability, and Notary legal protection, derived from books, peer-reviewed journals, theses, and dissertations. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting reference sources.

All data were analyzed using qualitative descriptive-analytical methods. Conclusions were drawn through inductive reasoning, progressing from specific empirical findings to broader



conceptual generalizations, thereby producing a systematic, coherent, and academically defensible legal argumentation framework consistent with socio-legal research standards.

### 3. RESULTS AND DISCUSSION

#### **The Role of Notaries in Handling Entrusted Income Tax Payments in Land and/or Building Sale and Purchase Binding Agreement Transactions**

The role of Notaries in receiving entrusted payments of Income Tax in transactions involving Land and/or Building Sale and Purchase Binding Agreements has evolved in practice as a social necessity arising from the complexity of tax and land administration procedures. Based on interviews conducted in May 2026 with Notaries Prawiastuti Retno Endah, S.H., Novitasari Dian Phra Harini, S.H., M.Kn., and Lenny Wibowo, S.H., M.Kn., in Batu City, it was found that most sellers prefer to entrust the payment of Income Tax to Notaries because they perceive Notaries as having a better understanding of tax procedures and as being capable of ensuring the smooth completion of the transaction process. This practice reflects the existence of a trust relationship between the public and Notaries that has developed beyond the normative authority of the notarial office as stipulated in the Notary Office Law. This condition is consistent with Arthadana's (2021) view that, in practice, Notaries frequently perform legal service functions that evolve in response to societal needs, despite not being explicitly regulated by legislation.

The role of Notaries in receiving entrusted payments of Income Tax in the context of a Land and/or Building Sale and Purchase Binding Agreement has evolved as a socio-legal practice driven by the increasing complexity of taxation administration and land transaction procedures. Based on interviews conducted in May 2026 with Notaries Prawiastuti Retno Endah, S.H., Novitasari Dian Phra Harini, S.H., M.Kn., and Lenny Wibowo, S.H., M.Kn. in Batu City, it was found that sellers frequently entrust PPh payments to Notaries due to perceived procedural expertise and administrative reliability. This practice reflects a trust-based relationship (trust relationship) between clients and Notaries that extends beyond the formal statutory authority of Notaries as regulated under the Indonesian Notary Act.

From a normative standpoint, Article 15 of Law No. 2 of 2014 concerning the Notary Position does not explicitly grant authority to Notaries to receive, manage, or remit tax payments on behalf of clients. Consequently, the practice of receiving entrusted PPh payments constitutes a factual function (*de facto practice*) rather than an attribution of authority (*de jure authority*). This condition indicates a normative gap that generates legal uncertainty for both Notaries and taxpayers. In the framework of legal certainty theory, law must provide clear boundaries regarding rights, obligations, and authority to ensure effective legal protection (Radbruch, 1973). The



absence of explicit regulation therefore creates regulatory ambiguity that may compromise legal predictability and accountability.

Empirical findings indicate that entrusted Income Tax payments are made to ensure compliance with tax obligations prior to the transfer of land and/or building rights. Government Regulation No. 34 of 2016 stipulates that final income tax obligations arise at the time of Sale and Purchase Binding Agreement execution; however, it does not regulate the involvement of third parties, including Notaries, in the collection or management of tax funds. This regulatory omission demonstrates that the current legal framework remains taxpayer-centered and has not yet accommodated intermediary roles in tax payment processes.

Interviews with Terry Maharani Wibowo, S.H., M.Kn., and Fardatul Laili, S.H., M.Kn. further reveal that entrusted payments are primarily driven by taxpayers' limited understanding of digital tax systems, including Coretax implementation, tax validation mechanisms, and electronic payment procedures. In this context, Notaries function as administrative facilitators rather than statutory tax agents. According to Soekanto (2019), legal effectiveness is strongly influenced by societal factors, which often generate adaptive practices beyond formal legal texts.

From the perspective of legal protection theory, the entrustment of tax payments to Notaries may be interpreted as a form of preventive legal protection aimed at ensuring transactional continuity (Hadjon, 1987). However, such protection is not accompanied by adequate legal safeguards for Notaries themselves. In cases of delay, administrative error, or misuse of entrusted funds, Notaries may be exposed to civil, administrative, or even criminal liability, despite the absence of explicit statutory authority governing such financial custody functions. This reflects an asymmetry in legal protection that requires legislative attention.

Judicial analysis of Decision No. 1035/Pid.B/2021/PN Kis and Decision No. 210/Pid.B/2022/PN Sby demonstrates that misuse of entrusted tax funds by Notaries may constitute embezzlement. This indicates that the fiduciary trust placed in Notaries carries significant legal risk in the absence of structured financial governance mechanisms. Marini (2025) similarly emphasizes that tax fund misappropriation in land transactions not only harms taxpayers but also reduces state revenue efficiency.

This study further identifies internal tax risk as a critical issue. Entrusted Income Tax funds are not part of Notaries' taxable income; however, the absence of clear fund segregation and transparent bookkeeping may lead tax authorities to reclassify such funds as taxable income. This may result in fiscal correction, tax audits, and administrative sanctions. This finding aligns with Fadil (2024), who highlights the importance of financial segregation and accountability mechanisms to prevent tax disputes.



Compared to prior studies by Marsica Lestari (2020), Edi Suranta Sembiring (2023), Kawiran (2025), and Marini (2025), this research introduces a novel contribution in the form of risk mitigation-oriented analysis. While previous studies predominantly focus on authority limitations and post-violation liability, this study emphasizes preventive legal risk management prior to the occurrence of legal violations, thereby contributing to the development of both notarial law and tax law.

Based on interviews with Hermawan, S.H., M.Kn., Prasetyo Cahyo Utomo, S.H., M.Kn., and Dwi Endah Lestari, S.H., M.Kn., risk mitigation practices currently implemented include the use of escrow-style receipts, segregated bookkeeping systems, separate bank accounts, formal receipt issuance, and immediate tax remittance upon fund receipt. These measures reflect the prudential principle mandated under Article 16 of the Notary Act and the Indonesian Notary Code of Ethics. Purnayasa, Widiati, and Suryani (2021) argue that prudential principles are essential to minimizing notarial legal liability.

Critically, the core issue does not lie in the practice of tax entrustment itself but rather in the absence of explicit regulatory recognition of Notaries' legal status in handling entrusted tax funds in Sale and Purchase Binding Agreement transactions. This normative void contradicts the principles of legality and legal certainty. Therefore, regulatory reform is required either through amendments to the Notary Act or the issuance of implementing regulations that clearly define authority limits, fund management procedures, liability frameworks, and standard operating procedures for Notaries. This approach is consistent with Wiradipradja (2023), who argues that law must remain responsive to social developments to ensure effective legal protection and certainty.

### **Risk Mitigation Strategies for Notaries in Handling Entrusted Income Tax Payments in Land and/or Building Sale and Purchase Binding Agreement Transactions**

Based on interviews conducted with Notaries in Batu City, it was found that the practice of accepting entrusted payments of Income Tax in Land and/or Building Sale and Purchase Binding Agreement transactions has evolved into a social necessity arising from the complexity of tax and land administration procedures. Although such authority is not explicitly regulated under the Notary Office Act, the parties continue to entrust tax payments to Notaries because they are perceived as possessing adequate knowledge of legal and tax-related procedures. This finding demonstrates the existence of a gap between normative law and practical needs (law in books versus law in action), which constitutes a primary characteristic of socio-legal research (Marzuki, 2010).

Based on interviews with Notaries in Batu City, it was found that the practice of receiving entrusted Income Tax payments in land and/or building Preliminary Sale and Purchase Agreements



has evolved into a functional social practice. This practice emerges as a response to the increasing complexity of taxation and land administration systems, particularly under digitalized governance frameworks. Although such authority is not explicitly regulated under the Notary Law, parties continue to entrust tax payments to Notaries due to their perceived technical competence in legal and taxation procedures.

This finding demonstrates a persistent gap between law in books and law in action, which is characteristic of the socio-legal approach (Marzuki, 2010). It indicates that formal legal norms have not fully accommodated the practical demands of modern transactional efficiency. From a theoretical perspective, the role of Notaries has functionally expanded from being merely public officials authorized to draw up authentic deeds to becoming administrative legal facilitators in private transactions. However, such functional expansion cannot be interpreted as an expansion of legal authority, since Notaries' powers remain strictly bound by the principle of legality (Rudi Indrajaya et al., 2020).

Within the framework of Legal Certainty Theory, the entrustment of tax payments to Notaries reveals a normative vacuum concerning the legal status of entrusted funds. This includes critical legal aspects such as fund classification, financial segregation mechanisms, and the scope of Notary liability in cases of delayed or failed tax remittance. Such ambiguity generates legal uncertainty and increases potential exposure to litigation risks (Moh. Fadli & Hadi, 2023).

The study further shows that the dominant factor driving this practice is the limited public literacy regarding increasingly complex digital tax administration systems, particularly following the implementation of Coretax. Accordingly, the entrustment practice is not merely contractual in nature but is largely based on a trust relationship between parties. In this context, trust functions as social capital; however, it simultaneously increases the professional risk exposure of Notaries (Pasaribu, 2021).

From a legal protection perspective, this practice does not provide optimal protection for either Notaries or taxpayers. The absence of specific regulations results in a predominantly ex post legal protection model, where legal remedies are activated only after harm occurs. This reflects a reactive legal system that is not yet adaptive to the evolving dynamics of modern notarial practice (Hadjon, 1987).

Further analysis reveals that Notaries face multi-dimensional legal risks, including civil, administrative, tax-related, and criminal liabilities. Civil risk arises from the inability to account for entrusted funds. Administrative risk is associated with violations of professional prudence standards. Tax risk emerges when entrusted funds are not properly segregated, potentially being



classified as taxable income. Criminal liability may arise if elements of misappropriation are proven under Article 372 of the Indonesian Criminal Code (Fadil, 2024).

These findings indicate that the absence of standardized mechanisms for managing entrusted tax funds constitutes the primary source of legal risk exposure. From a critical legal perspective, this reflects regulatory lag, where legal norms fail to keep pace with evolving social practices. The state continues to rely on a self-assessment taxation paradigm, while failing to provide adequate legal instruments governing third-party involvement such as Notaries in tax compliance processes (Wijaya, 2021).

Risk mitigation in this context must adopt a risk-based legal governance approach, starting from risk identification, risk assessment, and risk control. Risk identification involves mapping sources of risk, transaction characteristics, fund values, and potential disputes. Risk assessment is then required to determine probability and legal impact as a basis for effective control mechanisms (Zuleha, 2022).

Subsequently, risk control and monitoring must be implemented through the principles of prudence, transparency, accountability, and strict segregation between entrusted funds and personal assets of the Notary. Therefore, a specific Standard Operating Procedure (SOP) is urgently required to regulate fund receipt, recording, safekeeping, remittance, and reporting. Such Standard Operating Procedure (SOP) serves both as a risk mitigation instrument and a legal safeguard mechanism.

Overall, this study argues that long-term solutions cannot rely solely on professional prudence but require the establishment of a specific regulatory framework governing the legal status of Notaries in receiving entrusted Income Tax payments in Sale and Purchase Binding Agreement transactions. The novelty of this study lies in its identification that the core problem is not the existence of the practice itself, but the absence of a normative framework regulating authority boundaries, legal protection mechanisms, and liability structures. Therefore, the establishment of new legal norms is urgently required to ensure legal certainty, legal protection, and accountability in modern notarial practice.

#### **4. CONCLUSION**

This study concludes that the practice of Notaries receiving entrusted payments of Final Income Tax in Preliminary Sale and Purchase Agreements for land and/or buildings is a sociologically developed practice driven by transactional necessity and the trust-based relationship between clients and Notaries. While functionally this practice contributes to the efficiency of tax compliance and facilitates land transaction processes, normatively there is no explicit legal



provision granting Notaries the authority to receive, hold, manage, or remit such entrusted tax funds. This situation reflects a legal vacuum that generates legal uncertainty regarding the scope of authority, professional liability, and legal protection for both Notaries and taxpayers.

From a juridical perspective, the absence of specific regulation places this practice within a legal grey area, exposing it to multidimensional legal risks, including civil liability for breach of contract or unlawful acts, administrative disciplinary sanctions, potential tax law violations, and even criminal liability in cases of fund misappropriation. These risks are exacerbated by the lack of standardized procedures for managing entrusted funds, insufficient segregation between client funds and a Notary's personal assets, and the absence of adequate supervisory and audit mechanisms. Accordingly, the core issue does not lie in the existence of the practice itself, but rather in the absence of a comprehensive, coherent, and accountable regulatory framework.

The novelty of this research lies in the formulation of a preventive legal risk mitigation model for Notaries in handling entrusted Final Income Tax payments. This model emphasizes the prudential principle, the segregation of funds through dedicated escrow or separate accounts, transparent and standardized bookkeeping practices, formal legal documentation through fund custody agreements, and the implementation of standardized Standard Operating Procedures. In contrast to prior studies that predominantly focus on ex post legal liability, this research introduces a preventive legal risk management approach aimed at protecting both Notaries and clients prior to the emergence of disputes or misconduct.

Theoretically, this study contributes to the development of notarial and tax law by highlighting the normative gap between positive law (*das Sollen*) and socio-legal practice (*das Sein*) in notarial services. Practically, it offers an operational governance model for entrusted funds that may serve as a guideline to enhance legal certainty, professional accountability, and risk minimization in notarial practice.

As a policy implication, regulatory intervention is required from both the legislator and the Notary professional organization to establish a specific legal framework governing the legal status, scope of authority, fund management mechanisms, and liability regime of Notaries receiving tax-related entrusted funds. Furthermore, the development of national technical guidelines and standardized, Standard Operating Procedures is necessary to ensure legal certainty, legal protection, transparency, and accountability in future notarial practice. In this way, a proportional and sustainable balance can be achieved between state interests in tax revenue optimization, societal needs in legal transactions, and the protection of the Notarial profession.

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