



LEGAL PROBLEMS IN THE DRAWING UP OF SALE AND PURCHASE DEEDS OVER LAND STILL HELD AS UNDIVIDED INHERITANCE

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Abstract

A substantial proportion of certified land in Indonesia remains registered in the name of a deceased rights holder. When the heirs decide to sell before the estate has been partitioned, the Land Deed Official (Pejabat Pembuat Akta Tanah, PPAT) is confronted with a transaction that is economically ordinary but legally precarious. This article examines the legal position of a sale and purchase deed (Akta Jual Beli, AJB) executed over land that is still held as undivided inheritance, and the specific problems that arise in PPAT practice. Using a normative juridical method with statutory, conceptual, and case approaches, the study finds, first, that before partition the heirs hold an undivided collective right, so that an individual heir may in principle dispose of his own abstract share but never of the parcel itself; a deed purporting to transfer the whole object without the participation of all heirs breaches the *nemo plus iuris* principle and Article 1471 of the Civil Code, and fails the material requirement of the seller's authority to act. Second, it finds that the procedural route prescribed by Article 42 of Government Regulation No. 24 of 1997 and Article 111 of Ministerial Regulation No. 3 of 1997 as amended by Regulation No. 16 of 2021 registration of the inheritance transfer prior to any sale is frequently circumvented, principally to avoid the double tax burden of successive transfers. Third, it identifies eight recurring problem clusters in practice, ranging from concealed heirs and minor heirs to the failure to separate marital property from the estate. The article argues that the PPAT's duty is preventive rather than merely formal, and proposes a verification protocol, harmonisation of the inconsistent paragraphs of Article 111, integration of civil registration data with the land registration system, and fiscal incentives to eliminate dormant estates.

Keywords: Sale and Purchase Deed; PPAT; Undivided Inheritance; Authority To Act; Legal Certainty

INTRODUCTION

In Indonesian land practice, the death of a rights holder does not usually produce an immediate change in the register. Certificates remain in the name of the deceased for years and often for generations, either because the heirs see no urgency, because the cost and tax consequences of registering the inheritance are perceived as burdensome, or because the family has not reached agreement on partition. The estate becomes dormant. It is typically only when a buyer appears that the family confronts the legal state of the land and by then the heirs, sometimes numbering dozens across three generations, want to conclude the sale quickly.

The PPAT sits at the point where this pressure is applied. Article 37(1) of Government Regulation No. 24 of 1997 on Land Registration provides that a transfer of land rights through sale, exchange, gift, or other legal act may only be registered if evidenced by a deed drawn up by a PPAT. The deed is therefore not optional documentation but the legal act itself, in the sense that the transfer is legally recognised through it. Melinda and Djajaputra (2021) emphasise this constitutive character of the AJB in the transfer of land rights, and Kusuma, Seputra, and Suryani (2020) trace its continuity with the customary law requirement that a sale be *terang dan tunai* open before the competent authority and paid.

The difficulty is that a sale of undivided inherited land presents the PPAT with a seller whose entitlement is uncertain and whose authority to dispose is, in most configurations, incomplete. The empirical record shows how often this ends in litigation. Prastyaningrum, Iswanto, and Heniyatun (2023) analyse sales of inherited land conducted without the participation of all heirs and conclude that such agreements are legally defective for want of consent;

Adelia and Wahyuni (2024) reach the same conclusion by reference to Article 1320 of the Civil Code; Putri and Purwaningsih (2024) examine the position of the excluded heirs; and Pinem, Purba, and Suprayitno (2024), studying Supreme Court Decision No. 1572 K/Pdt/2023, document the annulment of a PPAT deed that had already produced a registered transfer. Assagaff and Franciska (2021) approach the same phenomenon from the perspective of the heirs whose rights were transferred without their consent.

Two problems are formulated. First, what is the legal position of land that remains an undivided inheritance, and what are the legal consequences of an AJB executed over such land? Second, what problems arise in PPAT practice when a sale of undivided inherited land is requested, and how should they be addressed within the existing framework?

RESEARCH METHOD

This is normative legal research using secondary data obtained through documentary study. The **statutory approach** examines the Civil Code (KUHPdata), Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 1 of 1974 on Marriage as amended, the Compilation of Islamic Law (KHI), Government Regulation No. 24 of 1997 on Land Registration, Government Regulation No. 37 of 1998 as amended by Government Regulation No. 24 of 2016 on the Regulations for the Office of PPAT, and Regulation of the Minister of Agrarian Affairs No. 3 of 1997 as amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 16 of 2021. The **conceptual approach** draws on the doctrines of collective ownership, authority to act (*beschikkingsbevoegdheid*), *nemo plus iuris*, and professional liability. The **case approach** uses court decisions as analysed in the published literature. Analysis is qualitative and the presentation descriptive-analytical.

RESULTS AND DISCUSSION

The Legal Status of Land Held as Undivided Inheritance

Indonesian inheritance law is plural. The Civil Code applies to part of the population, Islamic inheritance law codified for the religious courts in the Compilation of Islamic Law to Muslims, and customary law to communities that maintain it. Despite their differences on shares and on who inherits, the three systems converge on the point that matters here: upon death, the estate passes to the heirs collectively, and until partition the individual heir holds an abstract share in the whole rather than ownership of an identified parcel.

Under the Civil Code, Article 1066 provides that no co-owner of an undivided estate is obliged to remain in that state and that partition may be demanded at any time, notwithstanding any agreement to the contrary though the parties may agree to postpone partition for a fixed period. The provision assumes precisely the situation examined here: a temporary community of property whose members may exit but whose object cannot be individually disposed of while it subsists. Islamic law reaches a comparable position: the Compilation of Islamic Law permits heirs to agree on a peaceful settlement of shares and entitles each heir to demand division, while treating the estate before division as jointly held. Icksan (2022), examining the customary regulation of undivided estates, shows that adat likewise treats unpartitioned property as belonging to the family collectivity, with disposal requiring collective deliberation.

The doctrinal consequence is precise and frequently misunderstood in practice. An heir owns *a share*, not *a plot*. He therefore may, in principle, dispose of his own undivided share a transaction known to the civil law tradition and reflected in the practice of *cessie* over inheritance rights but he may not transfer the parcel itself, because he does not own it alone. Two prohibitions follow. The first is the general principle *nemo plus iuris ad alium transferre potest quam ipse habet*: no one may transfer more rights than he holds. The second is Article 1471 of the Civil Code, under which the sale of another person's property is void, and the buyer may claim damages if he was unaware that the object belonged to another.

What is void, on the better view, is not every dealing by a single heir but the purported alienation of the entire object. The distinction matters because it identifies with precision what the PPAT must verify: not whether the seller is *an* heir, but whether the seller is *entitled to dispose of the whole parcel*, which before partition he never is unless the other heirs join or consent.

Material and Formal Requirements of the Sale and Purchase Deed

The validity of a transfer through an AJB depends on two distinct sets of requirements, and it is the confusion between them that produces most of the disputes examined in the literature.

The **material requirements** concern the substance of the transaction: the seller must be the holder of the right and must be authorised to dispose of it; the buyer must be legally qualified to hold the right in question; and the

object must be free of encumbrance, dispute, blocking, or attachment. The seller's authority to act is the element that fails in sales of undivided inheritance. Where it fails, no formal perfection can rescue the transaction: a flawlessly drafted, properly read, correctly witnessed deed executed by a person without authority to dispose transfers nothing.

The **formal requirements** concern the deed as an instrument: it must be drawn up by the competent PPAT in the prescribed form, in the presence of the parties and at least two witnesses, read aloud and explained, and signed at that moment. Article 39 of Government Regulation No. 24 of 1997 obliges the PPAT to refuse to draw up a deed in defined circumstances, including where the required documents are incomplete, where the land is in dispute, or where the party concerned is not entitled or authorised to perform the legal act. The refusal duty is not discretionary; it is the mechanism by which the material requirements are enforced *ex ante*.

Where a defect arises, its characterisation depends on which requirement failed. A material defect sale by a person without authority renders the transaction void or voidable and exposes the deed to annulment by the court, as occurred in the decisions analysed by Pinem, Purba, and Suprayitno (2024). A formal defect degrades the deed's evidentiary force. And where the PPAT proceeded despite indications that the seller lacked authority, the defect is simultaneously a professional failure: Juniarta and Swardhana (2021), examining the responsibility of notaries and PPATs in connection with sale and purchase deeds, treat verification of the parties' capacity and entitlement as the core rather than the periphery of the office, and Fatih (2022) illustrates the consequences where documentary verification collapses altogether.

The Prescribed Route: Registration of Inheritance Before Sale

The framework provides a clear sequence, which practice frequently compresses.

Article 42 of Government Regulation No. 24 of 1997 requires that a transfer of rights occurring by inheritance be registered, on application of the heirs, by submitting the certificate in the name of the deceased together with proof of death and proof of heirship. Article 111 of Ministerial Regulation No. 3 of 1997, as amended by Regulation No. 16 of 2021, specifies the documents: the certificate in the name of the deceased or other proof of ownership; a death certificate from the competent authority; and evidence of heirship, which may take the form of a statement of heirs made by the heirs themselves before two witnesses and endorsed by the village head and sub-district head, a notarial deed of inheritance rights, a certificate from the Estate Administration Office, or a court decision.

Two features of the 2021 amendment deserve emphasis. First, it removed the classification of the population into ethnic and racial groups that had previously determined which authority could issue a certificate of inheritance a reform of considerable constitutional significance, since the classification perpetuated a colonial distinction incompatible with the principle of equality before the law. Simarmata and Wiryomartani (2021), analysing the implementation of the provision, examine the resulting scope of notarial competence to draw up deeds of inheritance rights. Second, the amendment addressed the allocation stage: where the heirs have agreed that the right shall pass to one of them, the registration follows that agreement; where they have not agreed, the right is registered in the names of all heirs as joint holders, and any subsequent consolidation is effected through a deed of division of joint rights (*Akta Pembagian Hak Bersama*, APHB) drawn up by a PPAT. Commentators have nonetheless identified an internal inconsistency between the paragraphs of Article 111 concerning the instrument that founds the registration, and the resulting uncertainty about whether the registration is being treated as a legal event (inheritance) or a legal act (division), with consequences for tax and for the entries made in the certificate.

From this framework, three lawful routes to a sale emerge:

1. **Registration of the inheritance to all heirs**, followed by an AJB in which every heir appears as seller, either in person or through a valid power of attorney. This is the safest route where the family intends to sell the whole parcel and share the proceeds.
2. **Registration followed by APHB**, consolidating the right in one or several heirs, who then sell. This route is appropriate where the family has agreed on allocation, and it produces a clean chain of title.
3. **Simultaneous processing of the inheritance registration and the transfer** in a single file at the land office, a practice adopted to reduce time and cost. This route is administratively convenient but legally delicate: the AJB may only be executed once the identity and entitlement of the heirs have been definitively established, since a deed executed before that point rests on an unverified premise. Where a PPAT adopts this route, the verification burden increases rather than decreases.

What is never lawful is the execution of an AJB in which the deceased appears as seller, or in which a single heir sells the whole parcel as though he were the sole owner. Both are encountered in practice, and both are the direct antecedents of the annulment cases in the literature.

Recurring Problems in Practice

Eight clusters of problems recur, and they are worth stating separately because each requires a different response.

1. **Concealed or subsequently discovered heirs.** The statement of heirs is a declaratory instrument built on the heirs' own assertions. Children of a prior marriage, acknowledged children, adopted children entitled to a compulsory bequest under Islamic law, and heirs by representation may be omitted, whether by mistake or design. Anggita (2020), analysing Supreme Court Decision No. 2180 K/Pdt/2017, examines precisely this pathology: a notarial deed of inheritance rights founded on the statements of only some of the heirs. Because both the notary and the PPAT depend on documents whose truth they cannot independently establish, the risk is structural rather than accidental.
2. **Failure to separate marital property from the estate.** Under the Marriage Law, property acquired during the marriage is joint marital property, of which the surviving spouse retains one half in his or her own right. Only the deceased's half enters the estate. Where a certificate stands in the name of a deceased husband, the surviving wife is not merely an heir to a share; she is already owner of half the parcel. Deeds drawn without performing this separation misallocate the object from the outset, and the error is invisible on the face of the certificate.
3. **Minor heirs.** Where an heir is a minor, the parent or guardian may not alienate the minor's property without authorisation from the court, and the marital property and guardianship provisions of the Civil Code and the child protection legislation apply. An AJB executed on behalf of a minor without a court order is defective, and the defect is one the PPAT can and must detect from the family card and birth certificates.
4. **Absent, uncooperative, or unlocatable heirs.** Where an heir is abroad or unwilling to attend, consent may be given through a notarial deed of consent or a legalised written statement, or the heir may grant a power of attorney to sell. Two cautions apply: the power must not be structured as an irrevocable or absolute power operating as a disguised transfer, which is prohibited; and consent obtained from an heir who was not informed of the price or the object is vulnerable to challenge for defect of will.
5. **Pending disputes, blocking, and attachment.** Estates in litigation before the religious or district courts are common, and a blocking request may not yet be recorded when the deed is executed. Verification of the register immediately before execution is therefore indispensable, and where the family history discloses conflict, the refusal duty under Article 39 is engaged even absent a formal entry.
6. **The tax driver.** The economic reason for skipping the inheritance registration is rarely concealed: the family faces duty on the acquisition of rights through inheritance and then, on the sale, both the seller's income tax and the buyer's acquisition duty. Compressing two transfers into one appears to halve the cost. This is the single most powerful incentive behind the malpractice examined in this article, and it explains why exhortation alone has failed to change behaviour.
7. **Generational dormancy.** Where the estate has passed through two or three undivided generations, the number of persons whose consent is required may become impracticably large, and some may be untraceable. The parcel becomes economically immobilised registered, but unsaleable and unusable as collateral. This is a systemic cost of the failure to enforce timely inheritance registration, not merely a private inconvenience.
8. **Pressure on the PPAT.** The transaction is often already agreed, a deposit paid, and the parties present. Refusal is commercially costly and socially awkward. Yet the alternative is a deed that will be annulled, with liability attaching to the official who drew it. Rachman and Syawali (2022), analysing claims arising where one heir controls estate property unlawfully, illustrate how predictably these transactions return as litigation.

Legal Consequences and the Position of the Parties

Where an AJB is executed over undivided inherited land without the participation or valid consent of all heirs, the excluded heirs may bring an action to annul the deed and the subsequent registration, generally framed as an unlawful act. The literature is consistent on the outcome: the transaction fails for want of a valid consent and for want of the seller's authority to dispose, and the parties are restored to their former positions, with damages available to the buyer against the purported seller.

The buyer's position deserves separate treatment. The doctrine of the good-faith purchaser affords protection to a buyer who has acquired the land through the proper channel before a PPAT, with reasonable verification of the register and of the seller's entitlement and the Supreme Court has formulated criteria to that effect. But good faith is not a state of mind alone; it is an evidentiary standard that presupposes diligence. A buyer who knew that the

certificate stood in the name of a deceased person and that the estate had never been partitioned, and who proceeded regardless, will struggle to establish it.

The PPAT's own exposure is threefold. Administratively, the failure to observe the refusal duty and the verification requirements may attract sanction under the regulations governing the office. Civilly, an action lies under Articles 1365 and 1366 of the Civil Code where negligence in verification caused loss the framing adopted in the analyses of PPAT responsibility discussed above. Criminally, liability arises only where the PPAT participated knowingly in the falsification of documents or of the deed's content; the mere annulment of a deed does not establish criminal fault. The distinction matters, because the PPAT who is deceived by a fabricated statement of heirs is a victim of the fraud rather than its author, provided the deception could not have been detected through the diligence the office requires.

RECOMMENDATIONS

At the level of practice, PPATs should apply a documented verification protocol before accepting any instruction involving land registered in the name of a deceased person: reconstruct the family composition from the family card, marriage and divorce certificates, and birth certificates rather than from the statement of heirs alone; establish the date of acquisition to identify marital property requiring separation; identify minor heirs and require the appropriate court authorisation; obtain consent in notarial form from any heir who cannot attend; re-check the register immediately before execution; and refuse, in writing, where doubt persists. The protocol should be retained as evidence of diligence.

At the level of regulation, four measures are proposed. First, the paragraphs of Article 111 concerning the instrument founding the registration of inherited rights should be harmonised, so that the characterisation of the registration and its tax consequences are unambiguous. Second, the land registration system should be integrated with civil registration data, allowing heirship to be verified against population records rather than against a self-declaration the single most effective structural remedy for concealed heirs. Third, the simultaneous processing of inheritance registration and sale should be expressly regulated, with a clear rule that the AJB may only be executed after heirship has been established. Fourth, fiscal relief or amnesty for the registration of long-dormant inheritances would remove the principal incentive to bypass the lawful route and would return immobilised parcels to the formal economy.

CONCLUSION

Land held as undivided inheritance belongs to the heirs collectively. Each heir holds an abstract share and none holds the parcel, so that a sale of the whole object by fewer than all of them offends both the *nemo plus iuris* principle and Article 1471 of the Civil Code, and fails the material requirement that the seller be authorised to dispose. A sale and purchase deed executed on that basis is exposed to annulment however impeccable its form, because formal perfection cannot cure a defect of entitlement.

The lawful route is sequential: registration of the inheritance under Article 42 of Government Regulation No. 24 of 1997 and Article 111 of Ministerial Regulation No. 3 of 1997 as amended by Regulation No. 16 of 2021, allocation among the heirs where they have so agreed, and only then the sale. Practice compresses this sequence chiefly because successive transfers attract successive taxes, and the resulting shortcuts generate the litigation documented across the recent literature.

The problems that arise in PPAT practice concealed heirs, unseparated marital property, minor heirs, absent heirs, latent disputes, tax avoidance, generational dormancy, and transactional pressure are not incidental irregularities but predictable products of a system in which entitlement is proved by self-declaration and in which delay carries no cost. The PPAT's role in that system is preventive: the office exists to test entitlement before the transfer occurs, and the duty to refuse is the instrument of that function. Reform should therefore address the incentives and the verification infrastructure together, by harmonising the inheritance registration provisions, connecting the land system to civil registration data, regulating simultaneous processing explicitly, and removing the fiscal penalty that currently rewards leaving the dead on the register.

REFERENCES

Journal Articles

- Adelia, A., & Wahyuni, R. (2024). Keabsahan perjanjian jual beli tanah dari objek tanah warisan yang belum dibagi berdasarkan KUHPperdata. *Jurnal Interpretasi Hukum*, 5(1), 691–698.
- Anggita, R. P. (2020). Kedudukan akta keterangan hak mewaris yang dibuat oleh notaris berdasarkan keterangan sebagian ahli waris (Studi kasus Putusan Mahkamah Agung Nomor 2180 K/Pdt/2017). *Indonesian Notary*, 2(3), Article 27.
- Assagaff, S. A., & Franciska, W. (2021). Perlindungan hukum bagi ahli waris terhadap harta warisan yang beralih tanpa persetujuan seluruh ahli waris. *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan*, 1(1), 279–290.
- Fatih, A. M. (2022). Pemalsuan dokumen oleh PPAT: Tinjauan hak kepemilikan tanah dari akta hibah. *Kertha Smaya: Jurnal Ilmu Hukum*, 10(8), 1957–1969.
- Icksan, M. (2022). Pengaturan pembagian harta warisan terhadap objek waris yang belum dibagi menurut hukum adat. *HUKMY: Jurnal Hukum*, 2(1), 1–13. <https://doi.org/10.35316/hukmy.2022.v2i1.1-13>
- Juniarta, A. A. B., & Swardhana, G. M. (2021). Tanggung jawab notaris dan PPAT terkait dengan akta jual beli tanah. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 6(2), 340–352. <https://doi.org/10.24843/AC.2021.v06.i02.p10>
- Kusuma, I. M. K. D., Seputra, I. G. P. G., & Suryani, L. P. (2020). Peralihan hak atas tanah melalui jual beli berdasarkan hukum adat. *Jurnal Interpretasi Hukum*, 1(2), 213–217. <https://doi.org/10.22225/juinhum.1.2.2478.213-217>
- Melinda, S., & Djajaputra, G. (2021). Memahami pentingnya akta jual beli (AJB) dalam transaksi pemindahan hak atas tanah karena jual beli tanah. *Law, Development & Justice Review*, 3(2).
- Pinem, L. A. S., Purba, H., & Suprayitno. (2024). Pembatalan akta jual beli PPAT yang mengakibatkan peralihan hak atas objek sengketa tanah (Studi kasus Putusan Mahkamah Agung Republik Indonesia Nomor 1572 K/Pdt/2023). *Jurnal Intelek Insan Cendikia*, 1(9).
- Prastyaningrum, H., Iswanto, B. T., & Heniyatun. (2023). Kajian yuridis jual beli tanah waris yang tidak dilakukan oleh semua ahli waris. *Borobudur Law and Society Journal*, 2(1), 9–15.
- Putri, D. R. K., & Purwaningsih, S. B. (2024). Jual beli tanah warisan tanpa persetujuan ahli waris. *Indonesian Journal of Law and Justice*, 2(1), 1–12. <https://doi.org/10.47134/ijlj.v2i1.2994>
- Rachman, M. F. F., & Syawali, H. (2022). Gugatan akibat penguasaan harta warisan oleh salah satu ahli waris secara melawan hukum berdasarkan KUHPperdata dan hukum Islam. *Bandung Conference Series: Law Studies*, 2(2), 1–5. <https://doi.org/10.29313/bcsls.v2i2.2584>
- Simarmata, Y. S., & Wiryomartani, W. (2021). Implementasi Pasal 111 ayat (1) huruf c angka 5 Permen ATR/KBPN RI Nomor 16 Tahun 2021 terhadap kewenangan notaris membuat akta keterangan waris. *The Juris*, 5(1), 286–295.

Statutes and Regulations

- Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).
- Law No. 5 of 1960 on Basic Agrarian Principles.
- Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019.
- Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law.
- Government Regulation No. 24 of 1997 on Land Registration.
- Government Regulation No. 37 of 1998 on the Regulations for the Office of Land Deed Officials, as amended by Government Regulation No. 24 of 2016.
- Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997, as amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 16 of 2021.
- Instruction of the Minister of Home Affairs No. 14 of 1982 on the Prohibition of the Use of Absolute Powers of Attorney as a Means of Transferring Land Rights.

Court Decisions

- Supreme Court Decision No. 2180 K/Pdt/2017.
- Supreme Court Decision No. 1572 K/Pdt/2023.