

LEGAL ANALYSIS OF THE SALE OF INHERITED FAMILY LAND

Iyam Irahlatmi Kaharu¹, Gamar Muhdar², Arief Budiono^{3*}

Universitas Khairun Ternate, Ternate, Indonesia

Universitas Muhammadiyah Surakarta, Surakarta, Indonesia

E-mail: irahatmikaharu@gmail.com¹, gamar.muhammad@unkhair.ac.id², ab368@ums.ac.id^{3*}

Author Correspondence: Arief Budiono, ab368@ums.ac.id^{3}

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Abstract

This study analyzes the sale of inherited family land in Ternate City to enhance understanding of the legislative framework governing inheritance—specifically regarding legal issues arising from the sale of inherited family land that complicate the distribution of the estate. This study employs a normative-juridical legal research methodology, which involves the analysis of documents and secondary data sources such as legislation, court rulings, legal theories, and scholarly opinions. The study utilizes statutory, conceptual, and legal instrument approaches. The research findings indicate that: 1) The sale of inherited family land by a single heir without the written consent of all other heirs is null and void by operation of law. This is because the transaction violates the requirements for a valid agreement under Article 1320 of the Indonesian Civil Code as the transfer of rights to jointly owned land requires the participation of all rights holders. 2) Legal protection for aggrieved heirs can be pursued through civil litigation by filing a lawsuit in the District Court to annul the sale and transfer of rights on the grounds of an Unlawful Act pursuant to Article 1365 of the Civil Code, as well as by exercising the right to reclaim the estate as stipulated in Article 834 of the Civil Code.

Keywords: inheritance, judicial analysis, land, law.

INTRODUCTION

Land ownership is pursued because land is a high-value commercial asset; its supply is limited (scarcity), while demand continues to rise. The objective of owning land is to generate financial gain through appreciation in value (capital gains), rental income, or use as loan collateral (Harsono, 2008). Land is a valuable asset often passed down within families, serving both as a source of income and as a symbol of historical and cultural value (Na'mah, 2019). In many cases, inherited land becomes a focal point in family relationships and can influence the dynamics among family members. The inheritance process is governed by various legal provisions, based on customary law, civil law, or Islamic law (Subekti, 2014). This creates complications when heirs attempt to sell inherited land, particularly when multiple parties with varying rights are involved. The sale of land that forms part of an inheritance requires the consent of all the heirs (Purnawan, 2020). In the absence of an agreement, the sale may be deemed invalid and could potentially give rise to legal disputes (Afandi, 2010). It is crucial to analyze this matter to ensure that the sale process is conducted fairly and in accordance with applicable legal provisions. Without a clear understanding of the rights and obligations involved in the sale of inherited land, conflicts among heirs may arise. Such disputes often stem from dissatisfaction regarding the distribution of assets or ambiguity concerning the legal status of the land being sold. Amidst ongoing social and economic developments, the need to manage inherited assets has become increasingly urgent. Many families face a difficult choice between retaining inherited assets and selling them to meet financial needs. Therefore, an in-depth legal analysis is essential to provide heirs with a clear understanding regarding the sale of inherited land.

An inheritance consists of all assets left behind by a person upon their death, including land, buildings, money, and other assets. Such assets may be passed on to heirs in accordance with applicable legal provisions. The regulations governing eligibility to inherit—whether testamentary (via a will) or intestate (without a will)—are set forth in the Indonesian Civil Code (Syafi'i, Marpaung, Damanik, & Sitanggang, 2022), the same applies to the affirmation that an inheritance encompasses assets, rights, and obligations (Suryaningtyas, 2018). Furthermore, the distribution of the inheritance of a married couple—including assets acquired during the marriage—is governed by

the Marriage Law (Usman, 2017). Furthermore, the importance of a death certificate for the distribution of an inheritance is emphasized in the Population Administration Law (Kamalludin, 2019). The sale of inherited land without the knowledge of other heirs refers to an act wherein one heir sells land—part of the inheritance—without obtaining the consent of, or providing notice to, the other heirs. All heirs possess rights to the inherited land; consequently, a sale conducted without such consent may be deemed an infringement upon the rights of the other heirs. A deed executed without the involvement of all parties is potentially invalid or void by operation of law. Heirs who were excluded from the process may file a lawsuit to annul the sale. Such unauthorized sales can result in financial loss for the uninvolved heirs. Therefore, it is crucial to involve all parties in the sale process to ensure fairness and transparency regarding the sale of family-inherited land. Based on the foregoing, the issue selected for analysis in this study is "A Juridical Analysis of the Sale of Family-Inherited Land." This paper aims to analyze: (1) What is the legal process carried out in selling inherited land in the family? And (2) What is the legal protection for heirs who suffer losses due to the sale of inherited land in the family?

METHOD

This study constitutes normative legal research—a form of research involving the analysis of documents—which utilizes various secondary data sources such as legislation, court decisions, legal theories, and the opinions of legal scholars (Wardiono, 2019). The approaches employed in this study are the statute approach and the conceptual approach. The statute approach involves examining laws and regulations relevant to the legal issue at hand. The conceptual approach is utilized when relevant legislation does not yet address, or fails to regulate, the specific issue being examined.

Constructing a robust legal argument requires going beyond mere reliance on statutory provisions; it necessitates a conceptual approach that incorporates scholarly views and legal doctrines found in treatises and court rulings. Accordingly, this research employs both the statutory approach and the conceptual approach to address the legal issues at hand and build a strong legal argument (Nasution, 2008). The types and sources of data used for analysis consist of: (1) Secondary data: data obtained from documents related to the issue under study and (2) Tertiary data: data obtained from a compilation of primary and secondary data.

The techniques for collecting legal materials employed by the researcher are as follows:

First, literature study: A method of gathering legal materials by searching through library resources—specifically collecting and examining legislation, legal treatises, and the opinions of legal scholars—as well as reviewing prior research relevant to the study topic (such as journals and articles), the legal basis for obligations arising from agreements involving acts that contravene the law, and other materials supporting this research.

Second, documentary study: A method of data collection involving the examination of documents that support the aforementioned research topic regarding the juridical analysis of the sale of inherited land within a family. The analysis of legal materials in this study employs a combination of deductive logic and qualitative normative analysis. The deductive logic method involves drawing conclusions about the specific issue under investigation based on general principles. Meanwhile, the qualitative normative analysis method entails a logical discussion and elaboration of the research findings regarding norms, rules, and legal theoretical foundations relevant to the subject matter (Jiwanti & Soponyono, 2022).

RESULTS AND DISCUSSION

Land rights are certainly something everyone desires to possess; given this widespread desire, disputes regarding land rights frequently arise. This is because land plays a crucial role in contemporary human life. Holding land rights signifies the ownership of a valuable asset—an asset of immense worth when viewed from any perspective, whether sociological, anthropological, psychological, political, military, or economic (Ayuningtyas, Candrakirana, & Najicha, 2020). As times change, a country's population continues to grow, significantly increasing the demand for land for housing construction and development, even though the total land area remains relatively constant. Consequently, this situation triggers land conflicts and disputes, making issues regarding land rights a recurring matter within society (Susanto, 2014).

Legal process involved in the sale of inherited family land

In daily life, alongside issues regarding land rights, we also frequently encounter matters concerning inheritance. Inheritance issues affect all levels of society, with a wide variety of cases arising annually—including those involving the inheritance of land rights. Under the Basic Agrarian Law (UUPA), the right of ownership over land is hereditary in nature. This means that a landowner can pass the land on to their descendants without time limits

or restrictions on the number of generations. However, if such an inheritance involves a foreign national, it could result in that foreigner gaining dominance over the country through land ownership (Sangian, 2017). Inheritance law can also be defined as the body of rules governing the succession to the assets—comprising both movable and immovable property—of a deceased person. Inheritance occurs only upon the death of the testator (or the person from whom the inheritance originates). This principle is affirmed in Article 830 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or Burgerlijke Wetboek) (Kolkman, 2012).

Indonesian inheritance law remains pluralistic—meaning multiple legal systems govern it (in terms of formal legality)—namely Customary Inheritance Law, Islamic Inheritance Law, and Civil Inheritance Law (BW). The coexistence of these various inheritance laws stems from the societal needs of the past in addressing diverse interests; their application remains constitutionally sanctioned to this day. However, the unification of inheritance law has not yet been achieved—a step necessary to meet the current and future legal needs of Indonesian society as it strives to build a just and prosperous community based on Pancasila and the 1945 Constitution (Hadikusuma, 2013).

The sale of inherited land within a family often becomes a source of legal conflict if not conducted in accordance with applicable regulations. Despite the familial relationship, such sales transactions remain subject to inheritance and land laws, including the principles governing the validity of agreements as set forth in Article 1320 of the Indonesian Civil Code. Inherited land refers to land that forms part of the estate of a deceased person and is passed on to their heirs (Budiono, Absori, Wardiono, Yuspin, & Gulyamov, 2023). In the context of Indonesian law, regulations concerning inherited land are based on several legislative provisions, including:

1. According to the Indonesian Civil Code

According to Article 830 of the Indonesian Civil Code, inheritance occurs only upon death and applies solely to individuals who are alive at the time of the testator's death—with the exception of a child who was already conceived and subsequently born alive. This article establishes that the transfer of an inheritance cannot take place during the testator's lifetime; in other words, a person can only bequeath their assets after they have passed away. The testator's estate becomes available for distribution only after death has occurred—a concept known as the "opening of the inheritance." Under the Civil Code, legitimate heirs are those who are alive at the time of the testator's death; generally, individuals who predecease the testator cannot qualify as heirs. However, there is a significant exception: a child in the womb retains the right to an inheritance, provided they are born alive. This provision safeguards the rights of the unborn child, as the law deems them to already exist from the moment of conception in the context of inheritance (Maripigi, 2021).

Inheritance cannot be established through an agreement made during the testator's lifetime. If a testator wishes to transfer assets while still alive, such a transfer constitutes a gift rather than an inheritance. The status of an heir is established at the time of the testator's death—for instance, through a birth certificate, the parents' marriage certificate, or other documentation. Similarly, for a child in the womb to be recognized as a legitimate heir, a birth certificate proving a live birth is required (Budiono et al., 2022).

2. According to the Basic Agrarian Law

The national agrarian legal framework governing land rights under the Basic Agrarian Law (UUPA)—Law No. 5 of 1960—includes provisions for inheritance. Article 21, paragraph (3) of the UUPA stipulates that upon the death of a land rights holder, the land rights may be transferred to their heirs, provided the heirs meet the eligibility requirements for holding such rights (for instance, the requirement of Indonesian citizenship for holders of Right of Ownership). Furthermore, the inherited land rights must be registered in the name of the heirs through a title transfer process at the Land Office.

3. Government Regulation Number 24 of 1997 concerning Land Registration

The transfer of title for inherited property is the process of changing the name of the land rights holder on the certificate from the deceased testator to the legitimate heir. Regulations mandate this transfer to ensure the validity of the heir's land ownership status. Without such a transfer, the heir is not recognized as the rights holder within the national land administration system. Consequently, this process is a crucial component of orderly land administration and the protection of inheritance rights.

Inheritance law exists as a body of legal provisions governing the legal consequences arising in the realm of property law upon a person's death—specifically, the transfer of the assets left by the deceased and the implications of such a transfer for the recipients, both in their relationships with one another and in their dealings with third parties (Sudiyat, 2004). In general, society desires regulations governing inheritance and the estate of a deceased person; specifically, legal relationships arising from a person's death require regulation—limited to that individual's assets (*vermogensrechtelijke betrekkingen*). The transfer of the testator's estate (*nalatenschap*) involves assets acquired during their lifetime, which are subsequently distributed or handed over to the rightful heirs (Tutik, 2014). These

assets are usually referred to as inheritance, which is the question of whether and how the various rights and obligations regarding a person's assets when he dies will be transferred to other people who are still alive (Wibowo et al., 2023). Inheritance is fundamentally governed by legal provisions binding the testator and the heirs; specifically, the heirs' entitlements to the estate include what is known as the *legitieme portie* (forced share or statutory reserved portion). Article 913 of the Indonesian Civil Code defines the *legitieme portie* as a portion of the estate that must be allocated to heirs in the direct line of succession as prescribed by law; the legal basis for this mandatory share is intended to prevent the testator from disposing of the estate arbitrarily—such as by transferring a plot of land to a specific heir without the mutual consent of all the heirs.

It is common knowledge that an undivided inheritance constitutes a collective asset (or *boedel* in Dutch). Tracing the legal basis for this leads to the concept of the *legitieme portie* (forced share); both the Indonesian Civil Code and Islamic inheritance law recognize this absolute right of heirs—a right that the testator cannot override through a will. During the process of asset succession and transfer, the testator's property becomes the inheritance to be distributed among those entitled to it. As long as the inheritance remains undivided, each heir holds an equal right to the assets; where there are multiple heirs, the inheritance constitutes *mede-eigendom* (joint ownership) (Maripigi, 2021).

Legal protection for heirs who suffer losses due to the sale of inherited land in the family

Human daily life is inseparable from the various issues that surround it. One issue that frequently arises concerns material possessions or wealth, as these are two factors essential for survival. Wealth represents a significant need for people, serving purposes such as fulfilling basic requirements like purchasing food, clothing, and housing (Sotkin, 2007). Wealth offers numerous benefits, including serving as a means to well-being and a medium of exchange, as well as providing other advantages related to worldly affairs.

Wealth offers numerous benefits, serving as a means to achieve well-being, a medium of exchange, and a resource for addressing worldly affairs. Islamic inheritance law is a set of regulations governing the handling of a deceased person's estate among the living; it dictates the transfer of assets from the deceased to the living through precise calculations and distribution methods. Consequently, the assets left behind do not simply change hands without clear guidelines; rather, Islam has established a structured framework to govern this process (Salman, 2002). Inheritance law is defined as the law governing the transfer of assets from a deceased person to their heirs, determining who is entitled to receive such assets, and specifying the amount each heir is to receive, as stipulated in Article 117(a) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) (Noviarni, 2021).

An inheritance consists of all assets left behind by a deceased person—whether movable or immovable property—including borrowed goods or funds, as well as items subject to the rights of others, such as assets pledged as collateral for debts incurred by the deceased during their lifetime (Zuhdi, 1993). The term *waris* (inheritance) can refer to the testator, the heir, or even the inheritance estate itself. The *Kompilasi Hukum Islam* (KHI)—the Compilation of Islamic Law—incorporates specific inheritance laws. The articles formulated within the KHI—particularly in Book II regarding inheritance—are actually more progressive than the provisions found in Law Number 1 of 1974 concerning Marriage. Unlike the general family law framework, the KHI accommodates the socio-cultural realities of Indonesian society, as evidenced by the provisions regarding substitute heirs (Article 185) (Faisal & Miswanto, 2021), and the process of reconciliation or settlement among the heirs (Article 183) (Naim, 2021).

However, under the provisions of Article 834 of the Indonesian Civil Code, an heir is entitled to take possession of the decedent's estate (*boedel*) by virtue of their right as an heir (Izziyana et al., 2019). The distribution of an inheritance or the decedent's estate may occur in two ways: voluntarily or compulsorily. Inheritance matters are also addressed in legislation concerning land, specifically Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) (Lamia, 2014).

In practice, the inheritance of land rights is commonly referred to as "land inheritance." Legally speaking, what is actually inherited is the right to the land, not the physical land itself. However, the transfer of land rights through inheritance frequently gives rise to disputes within the community; cases involving conflicts over inherited land rights are a common occurrence. Beyond the land itself, the deceased's estate comprises tangible assets—specifically, property rights. These property rights include, among others, ownership rights over land, houses, and similar assets. Consequently, it is essential for the public to understand the statutory procedures for transferring land rights via inheritance in order to prevent the recurring disputes that arise in this context, in accordance with the following provisions:

1. Provisions under Civil Law

Heirs aggrieved by the sale of inherited land without consent may pursue civil legal action by filing a lawsuit for an unlawful act pursuant to Article 1365 of the Indonesian Civil Code; they may also seek to annul the sale, while requesting compensation for damages or the restitution of the property. The sale of inherited land without the consent of all heirs is legally flawed and invalid—as it fails to meet legal requirements—and is therefore subject to annulment.

The legal basis for the protection of heirs is found in Article 833 of the Indonesian Civil Code, which establishes that the inheritance becomes the collective property of the heirs; they hold rights to the estate in its entirety, meaning no single heir may sell a specific portion without the consent of the other heirs. Consequently, the sale of inherited land without the consent of all heirs is invalid, and the buyer will not acquire full rights to the land.

2. Unlawful Act

An aggrieved heir may file a civil lawsuit based on Article 1365 of the Indonesian Civil Code, which stipulates that any unlawful act causing loss or damage obliges the perpetrator to provide compensation.

3. Legal protection measures are as follows:

- a. Requesting the annulment of the sale and the return of the land; this action may be taken by the heir who sold the inherited land and/or the buyer. In such a lawsuit, the heir can request that the sales transaction be voided and the land returned to the rightful heirs.
- b. Lawsuit to annul the land certificate; if the inherited land has already been certified in the buyer's name, the heirs may file a lawsuit seeking the annulment of said certificate. This process aims to ensure that the heirs' rights to the land are legally recognized once again.
- c. Dispute resolution via the Land Deed Official (PPAT); heirs may report the matter to the National Land Agency (BPN) or to the Land Deed Official (PPAT) involved in the sale. Such a report can assist in annulling the sale and purchase deed for the undivided land and prevent the registration of ownership rights in the buyer's name.

Alleged fraud; if criminal elements are present—such as the sale of inherited land involving fraud or document forgery—the heirs may report the matter to the police for criminal proceedings.

Based on the provisions outlined above, it can be analyzed—with reference to the Indonesian Civil Code—that a sale of inherited property by an heir acting individually, or without the knowledge of the other heirs, is deemed void. This is stipulated in Article 1471 of the Civil Code, which dictates that if some heirs sell inherited property without the knowledge of the other heirs, the sale is legally void. Furthermore, an heir whose rights have been infringed upon because the inherited property is being controlled by another heir may file a lawsuit based on an unlawful act, as provided for in Article 1365 of the Civil Code.

The act of a person taking control of inheritance rights constitutes a violation of the subjective rights of the heirs and qualifies as an unlawful act; this position is supported by Article 834 of the Civil Code. Consequently, heirs are entitled to file a lawsuit to assert their inheritance rights against individuals who have taken control of all or part of the estate. A sale of inherited property is considered legally void if executed without the knowledge of the other heirs—meaning the sale is deemed never to have occurred—in accordance with the provisions of Article 1471 of the Civil Code.

Undivided inheritance cannot be validly sold because the rights of other heirs remain attached to the estate, and the specific ownership of the assets is not yet clearly established. The principles governing sale and purchase transactions stipulate that the seller must be the original or absolute owner of the item being sold. However, if all heirs mutually agree to the sale of the undivided inheritance, the transaction becomes valid. Conversely, if a sale is conducted without the knowledge or consent of the other heirs, it is considered invalid, as the rights of those other heirs are still involved in the estate (Rialzi, 2016).

CONCLUSION

From the analysis above, it can be concluded that, first, the legal process involved in the sale of inherited family land entails the transfer of ownership rights regarding the decedent's estate and the determination of eligible beneficiaries—both in terms of heir status and the decedent's property rights. Adherence to inheritance laws and statutory regulations is mandatory and must be executed through proper procedures to prevent protracted disputes and preserve harmonious family relationships.

Second, legal protection is available for heirs disadvantaged by the sale of inherited family land, as such a sale constitutes a violation of the heirs' subjective rights. Article 834 of the Indonesian Civil Code grants heirs the right to file a lawsuit to assert their inheritance claims against individuals in possession of all or part of the estate,

regardless of whether such possession is based on a competing claim of right or lacks any legal basis whatsoever regarding the estate.

The authors recommend that family members and the prospective seller should consistently prioritize the principle of prudence and transparency in every legal action regarding the management of the inherited estate. Then, the parties may first pursue an amicable settlement or mediation to reach a peaceful agreement. If the path of deliberation fails to yield a resolution, the aggrieved heirs should promptly take decisive legal action by filing a lawsuit.

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