

ORIGINAL ARTICLE



Legal Consequences of the Transfer of Undivided Joint Property on the Validity of the Deed Made by the Land Deed Official (PPAT)

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Abstract

This study analyses the legal consequences of the transfer of undivided marital property on the validity of a sale and purchase deed made by a Land Deed Official (PPAT). The research focuses on the legal implications arising when one party in a marriage transfers joint property without the consent of the other spouse. Using a normative and empirical juridical approach, this paper examines statutory provisions, legal doctrines, and judicial precedents, including the Decision of the Banda Aceh Sharia Court No. 185/Pdt.G/2021/MS.Bna. The findings reveal that any transfer of joint property conducted without mutual consent violates Article 36 of Law No. 1 of 1974 on Marriage and Article 92 of the Compilation of Islamic Law (KHI), rendering the resulting PPAT deed legally invalid and void by law. Moreover, the PPAT may be held civilly, administratively, and ethically responsible for negligence in verifying the legal status of the property. This study highlights the importance of legal certainty and professional accountability in land registration and transfer processes to protect the rights of all parties involved.

1. Introduction

Marriage, as recognized within Indonesian family law, is not only a socio-cultural institution but also a legal bond that generates rights and obligations for both spouses, including the management and disposition of property. The legal regime governing marital assets operates on the principle that all property acquired during marriage automatically becomes joint property unless otherwise stipulated through a prenuptial agreement [1,2]. This principle, codified under Article 35 of Law No. 1 of 1974 and reinforced by Articles 85–97 of the Compilation of Islamic Law (KHI), establishes a clear boundary on how marital property may be controlled and transferred [3,4]. However, despite this seemingly firm framework, disputes relating to the unauthorized transfer of joint marital property have become increasingly common before Indonesian courts [5].

Empirical data from several judicial bodies particularly religious courts (*peradilan agama*) and general courts demonstrate a consistent rise in cases involving the sale of land or buildings by one spouse without the required consent of the other. Many of these disputes arise after the non-consenting spouse discovers the transfer only when the buyer asserts ownership, or when the National Land Agency (BPN) issues a new certificate [6]. The upward trend in these disputes reflects widespread gaps in legal awareness among married couples, inadequate preventive legal counseling, and structural challenges within Indonesia's land registration system [7].

These problems become more complex at the level of deed formation. Land transfer transactions in Indonesia require the involvement of a Land Deed Official (PPAT), who is legally mandated to verify the parties identities, marital status, legal capacity, and the status of the property before drafting and signing a deed [8]. As the public official entrusted with creating authentic deeds, the PPAT plays a critical role in ensuring that land transactions comply with statutory requirements. Yet, numerous court decisions have revealed recurring failures among PPATs to adequately verify whether an asset constitutes joint marital property or whether spousal consent has been properly obtained [9,10].

Such failures often stem from incomplete administrative checks, reliance solely on the name listed in the land certificate, or pressure from transaction parties seeking rapid processing. When PPATs fall short in fulfilling their legal obligations, the resulting deed becomes defective and exposes all parties including good-faith buyers to significant legal risk [11]. Defective deeds, once challenged in court, frequently lead to the invalidation of the deed and the revocation of the resulting land certificate [12].

Despite the importance of this issue, scholarly work on Indonesian marital property law has largely focused on doctrinal aspects of joint marital assets or on the rights of spouses upon divorce [13]. The specific question of PPAT liability in the context of undivided joint-property transfers remains one of the least explored areas. This gap is problematic because the intersection between family law and land administration is crucial for ensuring legal certainty in property transactions. Weaknesses in PPAT verification procedures have become a structural source of disputes, placing strain on the judicial system and undermining public trust in the reliability of land documents [14].

This study seeks to fill that gap by examining the legal and administrative failures surrounding the unauthorized transfer of joint marital property. Using Decision No. 185/Pdt.G/2021/MS.Bna of the Banda Aceh Sharia Court as a case study, this research investigates how PPAT negligence, inadequate verification, and discrepancies between legal norms and administrative practice contribute to disputes over joint property ownership. The study applies a normative–empirical juridical method, supported by interviews with practitioners and an analysis of relevant administrative documents.

To evaluate the issue conceptually, this research adopts Jan Michiel Otto’s theory of legal certainty, which emphasizes clarity, consistency, and effective implementation of legal norms. Otto’s perspective is particularly relevant because property transactions require high levels of predictability and strict compliance with procedural requirements. By assessing the Banda Aceh case through this theoretical lens, the study provides insight into how failures in administrative governance at the PPAT level disrupt legal certainty and affect the security of land ownership in Indonesia.

Overall, this study contributes to the ongoing scholarly debate on legal certainty, PPAT accountability, and the administration of marital property. It highlights structural challenges in Indonesia’s land registration system and proposes reforms to strengthen preventive oversight, improve verification mechanisms, and enhance legal protection for parties engaging in land transactions.

2. Methods

This research applies a normative–empirical juridical method [15–17]. The normative component examines relevant laws and regulations, including the Marriage Law, the KHI, Government Regulation No. 24 of 1997, and Ministerial Regulation No. 2 of 2018. Jurisprudence from the Supreme Court is also analysed to understand the doctrinal foundation of joint-property transactions. The empirical component involves a case study approach, using in-depth interviews with legal practitioners, access to case files, and analysis of PPAT administrative

documents [18]. These data were triangulated to assess the consistency between legal norms and actual practice.

The analysis incorporates Jan Michiel Otto's theory of legal certainty to evaluate whether applicable laws are clear, consistent, and effectively implemented [19]. This theory is relevant because property transactions require predictable and reliable administrative procedures. Otto's framework is used to assess whether PPAT practices align with the principle of legal certainty and whether deviations from these norms contribute to disputes over joint property [20].

3. Results and Discussion

The results of this study confirm that the transfer of joint marital property without the consent of both spouses violates core provisions of Indonesian family law. Under Article 36 (1) of Law No. 1 of 1974 and Article 92 of the KHI, both spouses must agree to any legal act affecting joint property. These provisions are substantive in nature and serve to protect the economic interests of each spouse. Any transaction that deviates from these mandatory requirements is legally invalid and cannot produce lawful rights [21].

In the case examined, the PPAT drafted and executed a deed transferring property that was jointly acquired during marriage, despite having no written or verbal consent from the wife. The court found that the PPAT failed to verify the marital status of the seller and did not ensure the presence of both spouses as legally required. This omission constitutes a clear breach of PPAT duties under Articles 37 and 39 of Government Regulation No. 24 of 1997, which require PPATs to confirm the identity and legal standing of all parties involved in a transaction.

Supreme Court jurisprudence reinforces this interpretation. Several decisions have consistently held that unilateral transfers of joint marital property are invalid and that any land certificates issued based on such deeds must be revoked to maintain the integrity of the land registry. These decisions establish a coherent doctrinal foundation that affirms the central role of spousal consent in ensuring the legality of land transfers involving joint assets.

This study's empirical findings also highlight broader systemic challenges. Interviews with PPATs revealed that verification procedures are often treated as routine administrative tasks rather than substantive legal requirements. Many PPATs rely heavily on the name on the land certificate and do not request proof of marital status unless explicitly instructed by the parties. Some practitioners reported that time pressure, client expectations, and the desire to expedite transactions contribute to inadequate verification.

These findings point to a pattern of institutionalized administrative shortcuts that compromise the integrity of land transactions. They also reveal a significant gap between legal theory and administrative practice. Although the law clearly requires spousal consent, inconsistent implementation by PPATs undermines its effectiveness. This gap between normative rules and administrative behavior lies at the core of many disputes over joint property.

From the perspective of Jan Michiel Otto's theory of legal certainty, the case demonstrates a breakdown in several key dimensions. First, although the legal rules governing marital property are clear, their practical application is far from consistent. Second, the institutions responsible for implementing these rules PPAT offices and BPN do not always enforce the required checks. Third, citizens cannot rely on predictable outcomes if the legality of a land transaction depends on the diligence of individual PPATs rather than a standardized, enforceable verification process.

This inconsistency creates insecurity in land markets and undermines public trust in land administration. It also exposes good-faith buyers to legal risks, as they may unknowingly purchase property that is jointly owned and subject to future claims. The Banda Aceh case illustrates how such disputes escalate when administrative failures intersect with family law obligations.

The findings also underscore the preventive value of prenuptial and postnuptial agreements in defining property boundaries within marriage. These agreements can reduce ambiguity regarding asset ownership and provide a clear legal basis for transactions. However, the low prevalence of such agreements in Indonesia means that most couples rely on statutory rules, making proper PPAT verification even more critical.

In summary, the results show that failures in PPAT verification procedures not only violate legal requirements but also disrupt legal certainty in property transactions. The study demonstrates the need for stronger regulatory oversight, improved legal literacy, and the integration of marital status information within land administration systems to prevent similar disputes.

4. Conclusions

The study concludes that the transfer of joint marital property without spousal consent is legally invalid, and any deed executed under such conditions is void. PPATs hold a critical responsibility to ensure compliance with legal requirements, including verification of marital status and written consent from both spouses. Negligence in fulfilling these duties exposes PPATs to administrative sanctions, civil liability, and ethical consequences. This case underscores the importance of consistent enforcement of legal norms to promote legal certainty and trust in Indonesia's land administration system.

The recommendations proposed in this study emphasize the need for systemic improvements to strengthen legal certainty in land transactions involving joint marital property. First, supervision of PPATs must be reinforced through more rigorous oversight and periodic evaluations conducted by the Ministry of Agrarian Affairs and the National Land Agency (BPN). Stronger monitoring is essential to ensure that PPATs consistently comply with procedural and ethical standards in the preparation of land deeds. Second, legal literacy programs for married couples should be intensified, particularly concerning the rules governing joint property, the function of prenuptial agreements, and the legal consequences of property transactions within marriage. Increasing public awareness is crucial to preventing disputes that arise from a lack of understanding of marital property law.

In addition, the regulatory framework governing land registration requires harmonization with marriage and family law to create a more integrated system in which spousal consent is automatically recognized as a prerequisite for transfers involving joint assets. To further prevent conflicts, couples should be encouraged to prepare prenuptial or postnuptial agreements that clearly define asset ownership throughout the marriage. The study also highlights the importance of enhancing legal protection for good-faith third parties. Future regulations should articulate clearer guidelines to safeguard buyers who unknowingly acquire property affected by undisclosed marital property issues. Finally, BPN should consider integrating marital status information into the national land administration system to facilitate more accurate verification processes by PPATs and to prevent unauthorized transfers of joint marital property. These recommendations collectively aim to improve administrative reliability, minimize disputes, and strengthen public trust in Indonesia's land governance system.

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