

Legal Protection for Buyers of Inherited Land Who Have Not Been Certified in Islamic Law

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Abstract

The urgent need for legal protection for buyers of uncertified inherited land under Islamic law is critical. This study employs a normative juridical approach, supported by an extensive literature review, to examine the complexities of buying and selling inherited land within the framework of Islamic inheritance law, known as farāid. This system delineates specific shares for each heir as guided by syara'. The process of purchasing inherited land mirrors that of individual land transactions, with significant distinctions concerning certification status. Key findings reveal that all heirs listed on the heir certificate, issued by the District Head or Notary, must consent to any sale. If the seller is later found to lack rightful ownership or if the documentation is fraudulent, a buyer acting in good faith is entitled to legal protection. This framework safeguards buyers from potential legal repercussions stemming from the seller's misrepresentation or lack of ownership. The study underscores the necessity for robust legal frameworks to protect buyers and uphold justice in land transactions, particularly in situations where certification is absent. This research analyzes the legal protections available to buyers of uncertified inherited land, emphasizing the importance of awareness and due diligence in transactions to mitigate risks associated with unclear legal aspects.

Keywords: *Good intention; Inheritance Law; Land; Legal Protection*

1. INTRODUCTION

Every society in a country has its own laws which are different from each other. This difference shows that each community has unique characteristics, such as a national identity related to local wisdom. In Indonesia, customary law is a set of regulations or rules for humans who live in a community. Ancestry law in Indonesia differs from one region to another, some adopt the Burgerlijk Wetboek (BW) law of descent (civil law) and Islamic descent law.¹ This research will focus on using an Islamic legal perspective to answer problems related to inheritance.

Islamic law in Indonesia has experienced quite a long dynamic process from the Dutch colonial era to the current contemporary era. The application of Islamic law in the Indonesian nation's structure has only been contained in Law No. 1 of 1974 concerning marriage and in Law No. 7 of 1989 concerning the judiciary. This has also become a fairly long process of struggle for Muslims.² Inheritance issues in Islamic law are based on the principle of justice. Islamic inheritance law or *faraidh law*, namely the law that regulates the methods of transferring rights from people who have died to people who are still alive, is based on the provisions of the Quran and Sunnah of the Prophet Muhammad.³ This law regulates the transfer of assets from deceased people to living people with detailed

¹ Amri Panahatan Sihotang, "Reposition of Widow By Death Divorce in Bataknesse Inheritance Law From Gender Perspective," *Diponegoro Law Review* 3, no. 1 (2018): 84, <https://doi.org/10.14710/dilrev.3.1.2018.85-103>.

² Syarief Husien and Akhmad Khisni, "Islamic Inheritance Law in Indonesia (Study of the Development of Inheritance Law in the Compilation of Islamic Law and Practice in Religious Courts)," *Deed Journal* 5, no. 1 (2017): 76, <https://doi.org/10.30659/akta.v5i1.2533>.

³ Badrah Uyuni, As-syafiiyah Islamic University, and Mohammad Adnan, "Application of Islamic Inheritance Law Among the Islamic Ummah," *El-Arabah* 5 (2021): 19, <https://doi.org/10.34005/elarbah.v5i1.1543>.

calculations and distribution. So, the assets left behind do not immediately change hands without clear rules, the Islamic religion has regulated it in such a way.⁴

Regarding the distribution of inherited assets, they must be distributed as soon as possible to the rightful heirs, this is to avoid the transfer of the heirs' rights by one of the heirs while the inherited assets have not been divided. The existence of a buyer of inherited land is based on the land buying and selling process itself. In the Agrarian Regulation Law (UUPA) Number 5 of 1960, article 16 paragraph 1, it is explained that buying and selling is a consensual agreement, which means that to create an agreement, it is enough just to agree and the agreement has been created at the time or second of the fulfillment of 1 Law. Agrarian Regulation (UUPA) Number 5 of 1960 Article 16 paragraph 1 consensus. The object is everything that has the value of wealth, not just tangible objects, but all objects. If the inherited assets have not been divided, then each heir still has the same rights to the inherited assets. If there is more than one heir then the inheritance is *mede eigendom* (joint property rights).

Islamic inheritance law or in Arabic is called *al-Miras*, which is the *masdar* (infinitive) form of the words *warisa-yarisu-mirasan*, then according to language it is referred to as the transfer of something from one person to another.⁵ In Article 49 letter b Law No. 3 of 2006 concerning Amendments to Law No.7 of 1989 concerning the Religious Courts, it is explained that what is meant by "inheritance" is the determination of who is the heir, the determination of the inheritance, the determination of the share of each heir and the implementation of the division of the inheritance as well as the court's decision on a person's request regarding the determination who is the heir, determining the share of each heir. System law Islamic inheritance, the most dominant adopted in Indonesia is teachings *Ahlussunnah Wal Jama'ah* from *School of thought Shafi*, here applies to Indonesians who are Muslim.

Inheritance has considerable potential to become a matter of debate or dispute. One example of a problem arises when a buyer of inherited land intends to buy land but the land does not yet have a certificate due to internal conflicts between the heirs. It's important to do it back Name or making binding certificates because only it is the land bond certificate that can be obtained to prove ownership right on land, which is in it includes the subject owner's right on land and all complete data regarding juridical data and physical data from field land.⁶ Land in the juridical sense is the surface of the earth, land rights are rights to a certain part of the earth's surface, which is limited to two dimensions and measures length and width.⁷ Based on the permanent jurisprudence of the Supreme Court of the Republic of Indonesia NO. 32 K/AG/2002 which states "that to divide inheritance which includes joint assets, the joint assets must be divided first, and the heir's rights to the joint assets become inheritance which must be distributed to the rightful heirs."

The risk of disputes over inherited land is quite high, one of the factors being that the land has not changed its name and is still in the name of the heir or person who has died, while the heirs want the land to be sold as soon as possible so that it can be divided among

⁴ Maulana Rialzi, "Case Analysis of Buying and Selling Undivided Inherited Land," *Sharia Economic Law* 3 (2018): 171.

⁵ Dewi Noviarni, "Inheritance in Islamic Law in Indonesia," *Islamic Family Law* 1, no. 1 (2021): 63, <https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/236>.

⁶ Adrian Sutedi, *Legal Power of Certificates as Evidence of Land Rights* (Jakarta: Cipta Jaya, 2006), 207–9.

⁷ Effendi Warinangin, *Practice of Application for Land Rights* (Jakarta: Rajawali Press, 1991), 17.

the heir's family.⁸ Heirs who want to sell the inherited land must ask for approval from the other heirs, because the other heirs also have the right to the land. If one of the heirs does not give consent to the sale and purchase of the inherited land, then he has the right to cancel the sale and purchase of the land and this will give rise to a dispute over the sale and purchase of the land.

Problems arise when the process of buying and selling land occurs without the consent of all the heirs and in this case the land has not been certified to change the name from heir to heir. Therefore, this research has urgency in terms of legal protection for buyers of land that has not been certified and how the process of buying and selling inherited land is carried out in Islamic law. A buyer of inherited land needs to research in detail the land he wants to buy, especially regarding its legality so that there are no legal problems in the future. However, unscrupulous sellers of inherited land who deliberately want to immediately sell the inherited land without the consent of all the heirs or clear legalities can cause buyers of inherited land to be dragged into legal problems.

There are several studies that provide discussions regarding buyers of inherited land who are in dispute or do not yet have clear legality, including research by Purnawan in 2020 explained that the sale of inherited land by an heir must obtain approval from other heirs. With this agreement, there is little possibility of any opportunity for other heirs to dispute or object to the land sale and purchase that has been carried out.⁹ Research by Suwarintiya et al in 2021 explains that the legal consequences of inherited land being controlled without the consent of other heirs will result in the occurrence of disputes between heirs which can take court if the problems that occur cannot be resolved through customary institutions.¹⁰ Research by Asri, et al in 2021 explains that the legal force of transferring land rights by buying and selling land that has not been certified is valid as buying and selling land rights because it has fulfilled the terms of sale and purchase.¹¹

Based on several previous studies, there has been no research that specifically discusses legal protection for buyers of uncertified inherited land. This research has urgency to protect at a time give warranty related information ownership for the buyer land inheritance so as not to happen misunderstanding or dispute with owner or heir previously Because own clarity legality in it. This research endeavors to deliver an in-depth examination of the legal protections available to buyers of uncertified inherited land, with a particular focus on the principles of Islamic law. Despite the significance of this topic, it remains relatively underexplored in existing literature. By investigating the complexities surrounding land transactions under Islamic legal frameworks, this study seeks to highlight the critical gaps in legal safeguards that affect buyers who may find themselves in precarious situations due to the absence of certification.

Through a detailed analysis of relevant legal principles, case studies, and practical implications, this research aims to contribute to the discourse on how Islamic law addresses the rights and protections of buyers in these unique scenarios. The findings will not only

⁸ Puspita Farahdillah et al., "Efforts to Settle Disputes on the Sale and Purchase of Inherited Land Without the Consent of All Heirs Through Mediation," *Justitia* 9, no. 1 (2022): 382.

⁹ Ni Made Eka Yanti Purnawan, "Sale of inherited assets in the form of land without the consent of other heirs," *Acta Comitatus* 5, no. 2 (2020): 309, <https://doi.org/10.24843/ac.2020.v05.i02.p09>.

¹⁰ Ida Ayu Putu Suwarintiya, I Ketut Sukadana, and Ni Gusti Ketut Sri Astiti, "Control of Inherited Land that is Controlled Without the Consent of Other Heirs," *Legal Analogy Journal* 1, no. 2019 (1AD): 95–105.

¹¹ Dewa Ayu Mareyta Astri, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "The Legal Power of Buying and Selling Rights to Land That Have Not Been Certified," *Legal Analogy Journal* 3, no. 3 (2021): 405–10.

illuminate the current state of legal protections but also propose potential improvements and reforms that could enhance buyer security, thereby fostering greater confidence in the transaction processes for inherited land. This comprehensive approach aims to bridge the gap in scholarly research and offer valuable insights into the intersection of property rights and Islamic law.

2. METHOD

The research method used is a normative juridical approach, namely doctrinal legal research which usually only uses primary data sources, namely statutory regulations and court decisions, and secondary data, namely articles, scientific journals, and books that are related to the research.¹² Apart from that, the research is also based on literature studies, namely some data obtained from searches of previous scientific works. The author studies the literature and other scientific works related to the problem being researched in order to obtain a theoretical and legal basis related to the discussion or problems being researched.¹³

3. RESULT AND DISCUSSION

3.1 The inheritance distribution system in Islamic inheritance law

Inheritance law according to linguistic terms is destiny (qadar/provisions), and in *the syara'* are the parts that are qadared/determined for the heirs. Thus *faraidh* is specifically regarding the portion of the heir whose size has been determined by *the syara'*.¹⁴ At the normative level, the distribution of Community inheritance is carried out according to Islamic inheritance law which is called *farāid* as the plural of the word *farāidah* because the share of each heir has been determined by *syara'*. Islamic inheritance law is also often called the science of *mawāris* as the plural of the word *mīrās* because it talks about transfer. inheritance of a person who has died to a person who is still alive.¹⁵

The distribution of inheritance in Islamic law is governed primarily by the principles outlined in *farāid*, which delineates specific shares for each heir based on their relationship to the deceased. This system is rooted in Quranic verses and Hadiths, which collectively provide a framework for equitable distribution among heirs. The distribution of inheritance based on *faraid'* can be seen in the translation of the Quran, Surah al-Nisa/4: 11 which reads: "*Allah has prescribed for you regarding (distribution of inheritance to) your children. Namely: the share of one son is equal to the share of two daughters; and if the children are all more than two daughters, then to them two-thirds of the property left behind; if there is only one daughter, then she gets half the property, and for two parents, for each of them one-sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents (only), then the mother gets one third; if the deceased has several siblings, then the mother gets one sixth. (The distributions mentioned above) after fulfilling the will he made or (and) after paying his debts. (Regarding) your parents and your children, you do not know which of them is closer*

¹² Soekanto and Mamuji, *Normative Legal Research A Brief Overview*, 17th ed. (Jakarta: Rajawali Press, 2015), 13.

¹³ Soerjono and Abdurrahman, *Legal Research Methods* (Jakarta: Rineka Cipta, 2003), 106.

¹⁴ Kadir Johan's Putra Nainggolan Verawati, Anzward Bruce, "Judicial Review of the Legality of Buying and Selling Inherited Land by Minors," *Lex Suprema Journal* 2 (2020): 557.

¹⁵ Asni Zubair, "Actualization of Islamic Inheritance Law (Study of Community Legal Awareness in Wollangi Village, Barebbo District Regarding Islamic Inheritance Law)," *Ar-Risala: Journal of Islamic Family Law* III, no. 2 (2017): 198.

(of much) benefit to you. This is a decree from Allah. Indeed, Allah is All-Knowing, All-Wise.”¹⁶

Farāid refers to the obligatory shares assigned to heirs, ensuring that the deceased's estate is divided fairly. For instance, a son typically receives a larger share compared to a daughter, reflecting traditional roles and responsibilities within the family structure. This distribution system aims to uphold justice and prevent disputes among heirs. In contemporary contexts, particularly regarding uncertified inherited land, issues often arise that can complicate the application of farāid. Buyers of such land may face legal uncertainties, especially if disputes occur among heirs about ownership rights. For example, if multiple heirs exist and one sells the land without the consent of others, the legitimacy of the transaction may be challenged, leading to potential legal conflicts.

Rasulullah SAW said, "O Abu Hurairah, learn the science of farāid and teach it. Because he is half of knowledge and forgotten by people. And he will be the first to be uprooted from my people." (HR Ibnu Majah and Daraqutni) The knowledge of inheritance is 1/3 of the knowledge of religion.¹⁷ Islamic inheritance law is regulated in a very regular form, the provisions of inheritance science are in the Al-Quran Surah An-Nisa verses 11, 12, 13, 14, and 176. In Islamic law, the transfer of the assets of a person who has died to his surviving heirs life occurs automatically according to God's decree, without being dependent on the efforts and will of the heirs or heirs.¹⁸

The distribution of inheritance in Islamic law should be based on the Al-Qur'an and Hadith. However, there are several models of inheritance distribution that are carried out outside the provisions of the *Shari'a*, namely: (1) *Takharruj*, namely the removal of one or more people from a group of heirs with other compensation in exchange for their right to inheritance. (2) *Tasaluh*, namely the distribution of inherited assets by means of an agreement between the heirs and carried out outside the provisions of the *Shari'ah* with the understanding that rewards will be given to heirs who waive their rights in certain matters. The provisions of inheritance law often do not run smoothly according to the ideals of inheritance law, where inheritance provisions aim to create harmony and order in society regarding the transfer of inherited assets.¹⁹

In QS An-Nisa Paragraph 7 it is stated in the provisions regarding the distribution of inheritance that sons have the right to share in the assets inherited from their mother, father, and relatives and give women rights to the assets left by their mother, father, and relatives in accordance with the applicable provisions.²⁰

¹⁶ Ahmad Haries, "Division of Inheritance Assets in Islam. Case Study of the Banjar Ulama Family in North Hulu Sungai Regency, South Kalimantan Province," *Islamic Discourse* 2, no. 2 (2014): 195.

¹⁷ Uyuni, As-syafiiyah, and Adnan, "Application of Islamic Inheritance Law Among the Islamic Ummah," 21.

¹⁸ Afidah Wahyuni, "The Inheritance System in an Islamic Perspective and Legislation in Indonesia," *SALAM: Syar-I Social and Cultural Journal* 5, no. 2 (2018): 147–60, <https://doi.org/10.15408/sjsbs.v5i2.9412>.

¹⁹ Adi Nur Rohman, "Shifting the Role of Mediation in Islamic Inheritance Disputes: An Overview of Islamic Legal Philosophy," *Diponegoro Law Review* 7, no. 2 (2022): 234, <https://doi.org/10.14710/dilrev.7.2.2022.230-244>.

²⁰ Gisca Nur Assyafira, "Inheritance Based on Islamic Law in Indonesia," *Islamic Law and Islamic Social Institutions* 08, no. 01 (2020): 75.

Table 1: Divided of Inheritance

TABEL AHLI WARIS DAN BAGIAN WARIS HUKUM WARIS ISLAM INDONESIA MENURUT KOMPILASI HUKUM ISLAM oleh : Nasichun Amin, M.Ag (Penghulu Muda di KUA Kec. Gresik)

SEBAB / HUBUNGAN	AHLI WARIS	SYARAT	PEROLEHAN HARTA WARIS	DASAR HUKUM	
				Al-Qur'an / Hadits	Pasal KHI
A. PERKAWINAN (yang masih terikat status)	1. Istri / Janda	Bila tidak ada anak/cucu Bila ada anak/cucu	1/4 1/8	An-Nisa' 12	180
	2. Suami / Duda	Bila tidak ada anak/cucu Bila ada anak/cucu	1/2 1/4	An-Nisa' 12	179
B. NASAB / HUBUNGAN DARAH	1. Anak Perempuan	Sendirian (tidak ada anak dan cucu lain) Dua atau anak perempuan tidak ada anak atau cucu laki-laki	1/2 2/3	An-Nisa' 11	176
	2. Anak Laki-Laki	Sendirian atau bersama anak / cucu lain (laki-laki atau perempuan) Keterangan : Pembagian antara laki-laki dan perempuan 2 banding 1	Ashobah (sisa seluruh harta setelah dibagi pembagian lain)	An-Nisa' 11 dan Hadist 01	
	3. Ayah Kandung	Bila tidak ada anak / cucu Bila ada anak / cucu	1/3 1/6	An-Nisa' 11	177
	4. Ibu Kandung	Bila tidak ada anak/cucu dan tidak ada dua saudara atau lebih dan tidak bersama Ayah Kandung Bila ada anak/cucu dan / atau ada dua saudara atau lebih dan tidak bersama Ayah Kandung Bila tidak ada anak/cucu dan tidak ada dua saudara atau lebih tetapi bersama Ayah Kandung	1/3 1/6 1/3 dari sisa sesudah diambil istri/janda atau suami/duda	An-Nisa' 11	178
	5. Saudara laki-laki atau perempuan seibu	Sendirian tidak ada anak / cucu dan tidak ada Ayah Kandung Dua orang lebih tidak ada anak / cucu dan tidak ada Ayah Kandung	1/6 1/3	An-Nisa' 12	181
	6. Saudara perempuan kandung atau seayah	Sendirian tidak ada anak / cucu dan tidak ada Ayah Kandung Dua orang lebih tidak ada anak / cucu dan tidak ada Ayah Kandung	1/2 2/3	An-Nisa' 12	182
	7. Saudara laki-laki	Sendirian atau bersama saudara lain dan tidak	Ashobah (sisa seluruh	An-Nisa' 12	

	kandung atau seayah	ada anak / cucu DAN tidak ada ayah kandung Keterangan : Pembagian antara laki-laki dan perempuan 2 banding 1	harta setelah dibagi pembagian lain)	dan Hadits 01	
	8. Cucu / keponakan (anak saudara)	Menggantikan kedudukan orang tuanya yang menjadi ahli waris. Persyaratan berlaku sesuai kedudukan ahli waris yang diganti	Sesuai yang diganti kedudukannya sebagai ahli waris	Tidak ada / Ijtihad	185

Catatan :

- ✓ Harta peninggalan sebelum dibagi sebagai harta waris terlebih dahulu harus diselesaikan masalah hutang piutang pewaris (yang meninggal) dan biaya pemakaman serta wasiat yang dibolehkan (bila ada). Disamping itu bila si mayit meninggalkan istri (janda) atau suami (duda) dan masih terikat perkawinan perlu dipisahkan lebih dahulu antara harta bawaan (harta yang dipunyai sebelum menikah) dan harta bersama (harta yang diperoleh setelah pernikahan atau harta gono-gini). Sesuai dengan hukum adat bahwa harta bersama/gono-gini dibagi menjadi dua bagian, separuhnya adalah milik suami dan separuhnya milik istri.
- ✓ Jadi yang menjadi Harta warisan adalah harta bawaan ditambah bagian dari harta bersama setelah digunakan untuk keperluan pewaris selama sakit sampai meninggalnya, biaya pengurusan jenazah(tajhis), pembayaran hutang dan pemberian kerabat (Pasal 171 butir e KHI).
- ✓ Kerabat yang tidak memperoleh bagian waris, ANAK ANGKAT atau ORANG TUA ANGKAT dapat memperoleh bagian sebagai HIBAH (ketika pewaris masih hidup) atau sebagai WASIAT WAJIBAH, atau diberi bagian yang tidak boleh lebih dari 1/3 harta warisan sesuai ketentuan pasal 194 s/d 214 KHI.
- ✓ Para ahli waris dapat bersepakat melakukan perdamaian dalam pembagian harta warisan, setelah masing-masing menyadari bagiannya. (pasal 183)
- ✓ Para ahli waris baik secara bersama-sama atau perseorangan dapat mengajukan permintaan kepada ahli waris yang lain untuk melakukan pembagian harta warisan. Bila ada diantara ahli waris yang tidak menyetujui permintaan itu, maka yang bersangkutan dapat mengajukan gugatan melalui Pengadilan Agama untuk dilakukan pembagian warisan. (pasal 188)

Source: Nasichun Amin²¹

The way to divide inheritance is based on the Al-Quran Surah An-Nisa, the percentage consists of half (1/2), one-fourth (1/4), one-eighth (1/8), two-thirds (2/3), one-third (1/3), and one-sixth (1/6).²² (1) Half (1/2): those entitled to half are one group of men and four women. namely husband, daughter, granddaughter from son's descendants, female sibling, and father's sister. (2) One-quarter (1/4): those who are entitled to a quarter are the heirs whose position is husband or wife. (3) One-eighth (1/8): the person entitled to one-eighth is the wife who inherits her husband's legacy, whether she has children or grandchildren from her womb or the womb of another wife. (4) Two-thirds (2/3): the heirs who are entitled to two-thirds, namely 4 women. Biological daughters, granddaughters of sons, biological sisters, and father's sisters. (5) One-third (1/3): there are only 2 heirs entitled to one-third, namely the mother and two brothers or sisters from one mother. (6)

²¹ M. Ag Nasichun Amin, "Table of Heirs and Parts of Inheritance in Indonesian Islamic Inheritance Law According to the Compilation of Islamic Law by: Nasichun Amin, M.Ag (Young Penghulu at KUA Kec. Gresik)," nd, 182–83, <https://www.bimoprasetio.com/document/web-bimo-tabel-ahli-waris-dan-besar-waris-khi.pdf>.

²² Kholidha Qotrunada, "Rules for the Distribution of Inheritance Assets According to Islam," March 16, 2022, <https://finance.detik.com/berita-ekonomi-bisnis/d-5985837/aturan-pembagi-harta-warisan-menurut-islam>.

One-sixth (1/6): There are 7 heirs entitled to one-sixth share, namely father, grandfather, mother, granddaughter, son's descendants, father's sister, grandmother, and mother's brothers and sisters. Inheritance can occur if 3 requirements are met, namely: (1) there is someone who dies who then becomes the heir, (2) there is someone who is still alive as an heir who will receive a certain amount of inheritance when the testator dies, and (3) There are a number of assets left by the heirs.²³

3.2 Terms and Conditions for Buying and Selling Inherited Land

Sale and purchase of land as a form of transfer of land rights according to Government Regulation Number 10 of 1961 which has been updated with Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 must be proven by a deed made by a Land Deed Making Officer (PPAT). The deed made by PPAT is used as a strong basis for registering the rights in question. With this Government Regulation, land sales and purchases must be carried out with a PPAT deed.²⁴

Islamic law provides an explanation regarding *muamalah*, which is a science that discusses practical Sharia laws taken from postulates relating to all human actions. One of them is explaining the transfer of property rights to goods from one person to another, for example through buying and selling or *al ba'i*.²⁵ Buying and selling in everyday use means "mutual exchange" or in the Al-Quran the word *bai'* is mentioned. Terminologically, buying and selling is defined as the exchange of property in a like-for-like manner or the transfer of ownership by means of replacement according to a permitted form. According to existing scholars and legal sources, selling inheritance or inheritance is permitted. Because inherited property has become the right of the heirs, whether it is donated, gifted or sold is completely the right of the heirs.

The definition of buying and selling in the book of Fathul Qorib is having something as an asset (money) by replacing something with the permission of *the Sharia'*, or simply having the benefits that are permitted *by the Sharia'*. This must be paid in the form of money.²⁶ Inherited land sale and purchase agreement, the procedure is the same as buying and selling individual land, but the difference is whether the land is certified or not yet certified, only on inherited land the sale and purchase must be approved by all the heirs whose names are in the list of heir certificates. issued by the District Head or Notary.²⁷ Etymologically, buying and selling comes from the *Al-Ba'i language* which basically means selling, replacing and exchanging something for something else. In practice, this language is sometimes used to mean its opposite, namely the word *as-syira'* (buy).

The legal basis for buying and selling is the Qur'an and al-hadith, as stated in the Word of Allah SWT: " *People who eat (take) usury cannot stand but stand like those who have been possessed by the devil because of (the pressure of) insanity in their condition. That, is because they say (opinion), In fact buying and selling is the same as usury, even*

²³ Tatik Arjiati, "The Role of Notaries/Pats in Making Deeds of Sharing Shared Rights (Aphb) Regarding the Distribution of Heirs of Different Religions on Land and Buildings," *Jurnal Akta* 4 (2017): 75.

²⁴ Putri Wijayanti, "National Land Law is composed of Earth, Water, Space, which is a National Land Law Law that the Government Needs Number 24 of 1997 Article 37 Must Be Proved," *Diponegoro Law Journal* 6, no. 2 (2017): 2.

²⁵ Muhammad Ala'uddin and Mukhtar Syafaat, "Review of Islamic Law on the Practice of Buying and Selling Land in Karangdoro Village, Tegalsari District, Banyuwangi Regency," *Darussalam Sharia Economic Journal* 1, no. 1 (2020): 49, <https://doi.org/10.30739/jesdar.v1i1.634>.

²⁶ Ala'uddin and Syafaat, 51.

²⁷ Nam Rumkel et al., "The Legal Position of Sale and Purchase Agreements Made by Heirs Regarding Undivided Inheritance," *Hermeneutics* 5, no. 2 (2021): 359.

though Allah has permitted buying and selling and forbidden usury. People who have reached the prohibition of their Lord, then continue 243 Buying and Selling in Islamic Views Business, Vol. 3, no. 2, December 2015 stopped (from taking usury), then for him what he had taken previously (before the prohibition came); and its affairs are (up to) Allah. Those who return (take usury), then those people are the inhabitants of hell; they will abide therein.” (QSAI.Baqarah: 275).²⁸

Buying and selling has pillars and conditions including: *Sighat* (statement), namely the agreement of *qabul* (handover) between the seller and the buyer with clear pronunciation (*sarih*) not insinuatingly (*kinayah*) which must require interpretation so that it will cause differences. The conditions for people who enter into a contract are: *Aqil* (reasonable), *Tamyiz* (able to differentiate), *Mukhtar* (free or empowered to choose), *Mu'qud 'alai*, namely the thing being bought and sold (object), namely holy, useful, can be handed over, belongs to the seller, the content is known. The dimensions of the properties are known so that there is clarity regarding the item so that it is far from elements of *gharar*. The levels are known both from the quantity and quality of the goods.²⁹

The practice of buying and selling is also explained in the words of Allah SWT in QS An-Nisa'(4) verse 29: " O you who believe, do not consume your neighbor's wealth in a false (false) manner, unless it is in the form of commerce on the basis of like-mindedness." like among you. Do not kill yourselves. Indeed, Allah is Most Merciful towards you. "According to a number of scholars, there are four pillars of buying and selling, namely:³⁰ (1) a contract (*ijab qobul*) is defined as a bond that exists between the ends of an item. Meanwhile, according to the term, *ijab qobul* is according to the method prescribed so that the results are visible. Buying and selling is not said to be valid before the *ijab* and *qobul* are carried out because the *ijab qobul* shows willingness (*ridhaan*). Consent to *qobul* can be done verbally or in writing. (2) The person who enters into an agreement (subject) between two parties consists of *bai'* (seller) and *mustari* (buyer). Also called *aqid*, namely the person who enters into a contract for buying and selling. The conditions are being Muslim, mature, intelligent, of one's own will, and both are not wasteful. (3) *Ma'qud 'alaih* (object) for a sale and purchase to be valid, there must be *ma'qud alaih*, namely the goods that are the object of the sale and purchase or that are the cause of the sale and purchase agreement. (4) There is a substitute exchange value for goods, a substitute exchange value for goods, namely something that meets three conditions; can store value (*store of value*), can assess or price an item (*unit of account*) and can be used as a medium of exchange (*medium of exchange*)

An heir must ask for approval from the other heirs if he wants to sell his inherited land, because the other heirs also have rights to the land.³¹ The procedure for buying and selling inherited land is the same as buying and selling individual land, the difference being whether the land has been certified or not. In buying and selling inherited land, all heirs on the list of Heir Certificates issued by the District Head or Notary must agree. If the sale and purchase of inherited land is carried out without the knowledge of one of the entitled Heirs, then the sale and purchase agreement for the inherited land becomes legally flawed, and the

²⁸ Shobirin, "Buying and Selling from an Islamic View," *Business: Journal of Islamic Business and Management* 3, no. 2 (2016): 243, <https://doi.org/10.21043/bisnis.v3i2.1494>.

²⁹ Ghufron A Mas'adi, *Contextual Fiqh Muamalah* (Jakarta: PT Raja Grafindo Persada, 2002), 74.

³⁰ Shobirin, "Buying and Selling in an Islamic View," 247–50.

³¹ Clara Helmy Sihite-, "Case Analysis of the Sale and Purchase of Inherited Land (Case Study of Ma's Decision Number 680 K/Pdt/2009) Between Aston Purba et al. Against Patar Simamora and Gomar Purba," 2009, 1–20.

Heirs who feel disadvantaged can claim their rights, even though the land sale and purchase has been carried out before the Land Deed Making Officer (PPAT).) which has fulfilled the clear requirements. Heirs who are not aware of the sale and purchase of inherited land can cancel the sale and purchase of inherited land by showing evidence.³²

3.3 Legal Protection for Buyers of Uncertified Inherited Land

Legal protection is a form of actualization of protecting human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.³³ A land purchaser or new recipient of rights is obliged to register the transfer of ownership rights to the land they receive in order to provide protection of rights to the new land rights holder for the sake of orderly land registration administration. Legal protection in the context of property rights refers to the mechanisms and laws designed to safeguard the interests of buyers and sellers in land transactions. For buyers of uncertified inherited land, this protection becomes vital. It encompasses various legal principles, including the requirements for valid sales, the necessity for agreement among heirs, and the implications of government regulations.

Inherited land should immediately carry out the process of changing the name from heir to heir. Any transfer of land ownership rights must be carried out in front of the PPAT. The deed of sale and purchase of land is part of the requirements for the transfer of land ownership which is registered at the "National Land Agency Office."³⁴ Article 1 of Government Regulation number 37 of 1998 concerning Position Regulations for Land Deed Making Officials explains that: "Land Deed Making Officials, hereinafter referred to as PPAT, are public officials who are given the authority to make authentic deeds regarding certain legal acts regarding land rights or property rights. Over Flat Units."

In article 832 and article 833 of the Civil Code, it is stated that the heirs automatically obtain ownership rights to all the goods of the deceased person, so that the heirs have rights to the inherited assets but are not included in the transfer carried out by the deceased. An heir must receive preventive legal protection against inherited objects that are transferred without his knowledge and result in the transfer of inherited assets being declared null and void because the transfer of inherited assets is carried out by one party only.³⁵ One critical piece of legislation is Government Regulation No. 24 of 1997, which outlines the procedures for land registration and the rights associated with land ownership.

This regulation mandates that all land transactions should be documented and that proper certificates must be issued to confirm ownership. In the context of uncertified inherited land, the regulation emphasizes the need for sellers to provide valid proof of ownership and highlights the risks associated with failing to do so. For example, if a buyer purchases land that is not certified and later discovers that the seller did not have the right to sell it, they may find themselves without legal recourse unless they can prove good faith in the transaction. Relevant court cases have shown that buyers who acted in good faith—believing they were purchasing legitimate property—may be entitled to compensation or other remedies.

³² Muhammad Afri Ramadhan and Wira Franciska, "Legal Protection for Heirs Against Inheritance Assets That Are Transferred Without the Consent of All Heirs," *Imanot: Journal of Law & Notary Student Affairs* 1, no. 1 (2021): 289.

³³ Ramadhan and Franciska, 288.

³⁴ Muchamad Satria Endriana and Widhi Handoko, "Transfer of Names of Land Ownership Certificates in Land Buying and Selling at the Batang Regency National Land Office," *Notarius* 15, no. 1 (2022): 206.

³⁵ Ramadhan and Franciska, "Legal Protection for Heirs Against Inheritance Assets That Are Transferred Without the Consent of All Heirs," 165.

The conditions for registering the transfer of land rights through inheritance are material requirements and formal requirements. Formal requirements are that the heir must have an inheritance certificate and the testator's death certificate. The material requirement is that the heir meets the requirements as the holder of rights to the inherited land. Registration of land rights obtained from inheritance is important to obtain legal protection for heirs and also to comply with applicable land regulations in order to update physical and juridical data on land administration. Registration of the transfer of land rights that occurs due to inheritance is free of charge and is registered within 6 months of the testator's death.³⁶

The legal basis that ownership rights to land can be inherited is implicitly contained in article 10 of Law no. 16 of 1985,³⁷ namely that ownership rights to an apartment as referred to in article 8 paragraph 3 can be transferred by inheritance or by transfer of rights in accordance with applicable legal provisions. The transfer of rights as intended in paragraph (1) is carried out by means of an APHT deed and registered at the relevant Regency or Municipality office according to the PP as intended in article 19 of Law no. 5 of 1960.³⁸ Buying and selling land without certification is a legal act in the form of handing over ownership rights (handing over the land in perpetuity) by the seller to the buyer, at which time the buyer also hands over the price to the seller.³⁹

As strong evidence, certificates have a very important meaning in protecting the legal certainty of land rights holders. In a sale and purchase agreement, the law is obliged to provide legal protection for buyers who have good intentions so that buyers who have good intentions are not harmed. There are two types of good faith, namely good faith when entering into legal relations or agreements, secondly, good faith when carrying out the rights and obligations arising from these legal relations or agreements.⁴⁰

The meaning of good faith (*te goerden troe*) according to Article 1963 of the Civil Code is the person's good will or honesty when he begins to control the goods, where he thinks that the conditions necessary to obtain ownership rights to the goods have been fulfilled. This kind of good faith is also protected by law. Because, good faith as a condition for obtaining property rights is not dynamic but static.⁴¹

Good faith when entering into a legal relationship is an expectation in the hearts of the parties who make an agreement to buy and sell inherited assets with the terms and procedures based on the law. A person who wants to buy inherited property thinks in his heart that the seller of the item is truly the legal owner. If at a later date it turns out that the seller of the goods is not the owner of the goods being bought and sold, or the legality that has been provided is indicated as a fake document, then the buyer is entitled to legal protection because he has good intentions. Article 1338 paragraph 3 of the Civil Code states that all agreements must be carried out in good faith. "In making and implementing an

³⁶ Ni Komang Evic Triani, I Ketut Sukadana, and Luh Putu Suryani, "Inheritance of Rights to Land Imposed by Rights," *Journal of Legal Analogies* 3, no. 1 (2021): 54, <https://doi.org/10.22225/ah.3.1.2021.52-56>.

³⁷ Government of Indonesia, "Law Number 16 of 1985," 1985, www.djpp.depkmham.go.id.

³⁸ Government of Indonesia, "Law Number 5 of 1960 Concerning Basic Regulations on Agrarian Principles," *Law No. 5 of 1960*, no. 1 (1960): 1–5, [https://jdih.bumn.go.id/unduh/UU Number 5 of 1960.pdf](https://jdih.bumn.go.id/unduh/UU%20Number%205%20of%201960.pdf).

³⁹ Syaik Abdillah, "Islamic Economic Law Perspective Regarding Buying and Selling Uncertified Land (Case Study in Jayamukti Village, Cihurip District, Garut Regency)," *JHesy* 1, no. 1 (2022): 5.

⁴⁰ Rialzi, "Case Analysis of Buying and Selling Undivided Inherited Land," 174.

⁴¹ Rumkel et al., "Legal Status of Sale and Purchase Agreements Made by Heirs Regarding Undivided Inheritance," 357.

agreement, you must pay attention to the substance of the contractual agreement based on the firm trust or confidence or good will of the parties."

Article 531 of the Civil Code explains that the position is in good faith when the party holding it obtains the object by obtaining ownership rights, in which case he is not aware of the defects contained therein. To protect parties who have good intentions in an agreement, a law is needed that can provide legal certainty, one of which can be to submit legal action to a judicial institution for buyers who feel disadvantaged.⁴²

If the certificate used in buying and selling is a fake certificate, it can be said that the certificate is legally defective. Namely, the certificate making data used is fake or falsified, the signature of the head of the district/municipality land office is forged, the form used to make the certificate is not one issued by BPN. A certificate can be said to be fake or not based on the land book contained in the local Land Office. This can be seen if the data on the certificate does not match the data contained in the land book.⁴³

Documents that prove the existence of land rights in inheritance as stated in Article 39 paragraph (1) of the PP on Land Registration. This must be given because registration of the transfer of rights can only be carried out after the first registration of the rights in question is carried out in the name of the inheritor. if there is more than one recipient of the inheritance and at the time the transfer of rights is registered, it is accompanied by a deed of distribution of inheritance containing information on land rights. However, if the recipient of the inheritance consists of one person, registration of the transfer of rights is carried out to that person based on a letter of proof as the heir concerned.⁴⁴

If the seller does not want to bear all the losses suffered by the buyer who has good intentions, then the buyer who has good intentions can file a civil lawsuit against the seller, as well as the notary and PPAT who are the public officials involved in the process of making the deed of sale and purchase of inherited land. The legal reason that can be used as a basis for filing a lawsuit is that the buyer has suffered losses as a result of the seller's actions and for this reason the buyer has the right to request or claim back the purchase price of the inherited land from the seller.

4. CONCLUSION

The procedure for buying and selling inherited land is the same as buying and selling individual land, the difference being whether the land has been certified or not. If the sale and purchase of inherited land is carried out without the knowledge of one of the entitled Heirs, then the sale and purchase agreement for the inherited land becomes legally flawed, and the Heirs who feel disadvantaged can claim their rights, even though the land sale and purchase has been carried out before the Land Deed Making Officer (PPAT).) which has fulfilled the clear requirements. Meanwhile, a land buyer or new recipient of rights is obliged to register the transfer of ownership rights to the land they receive in order to provide rights protection to the new land rights holder for the sake of orderly land registration administration. If at a later date it turns out that the seller of the goods is not the owner of the goods being bought and sold, or the legality that has been provided is indicated as a fake document, then the buyer has the right to obtain legal protection. For further

⁴² Fadhila Restyana Larasati and Mochammad Bakri, "Implementation of Supreme Court Circular Letter Number 4 of 2016 on Judges' Decisions in Providing Legal Protection for Buyers in Good Faith," *Journal of the Constitution* 15, no. 4 (2019): 833, <https://doi.org/10.31078/jk15410>.

⁴³ Siti Maghfirotnun Nimah, "Transfer of Inherited Land Ownership Rights in Islamic Law," *Media Iuris* 2, no. 2 (2019): 219–20, <https://doi.org/10.20473/mi.v2i2.13413>.

⁴⁴ Nimah, 228.

research, the research process and data collection can be developed by conducting analysis on certain cases to enrich research studies related to legal protection for buyers of inherited land.

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