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## Article Title

### **Professional Liability of Land Deed Officials and the Evidentiary Degradation of Materially Defective Grant Deeds: An Examination of Religious Court Decisions**

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## **ABSTRACT**

*The transfer of land rights through a grant instrument is absolutely limited to a maximum of one-third of the estate to protect the heirs' legitime (legitieme portie). The violation of this material limitation strongly correlates with the negligence of Land Deed Officials and culminates in judicial disputes, as reflected in the jurisdictional anomaly between the Lumajang Religious Court Decision and the Surabaya High Religious Court Decision. This research aims to analyze the construction of the public official's juridical liability and examine the degradation of the deed's evidentiary value due to material defects. Through normative legal research employing case, statute, conceptual, and philosophical approaches, this study finds that the Land Deed Official's failure to apply the prudential principle is qualified as negligence, implicating the emergence of administrative, civil, and ethical liability. Furthermore, exceeding the grant limit renders the legal act null and void, thereby degrading the deed's evidentiary value to a private deed and nullifying its validity in state administrative affairs. However, the appellate court decision was rigidly bound by procedural formalism, refusing to adjudicate the case (déli de justice) on grounds of administrative jurisdiction. As a legal prescription, the religious court should annul the material act of the grant to revert the object into the undivided whole estate (boedel waris). This object's status serves as a basis for requesting restoration to the original state (restitutio in integrum) at the Land Office. Supreme Court intervention through jurisprudence is required to align administrative certainty with the value of justice in wealth preservation (hifz al-mal).*

**Keywords:** *Evidentiary Degradation; Grant Deed; Land Deed Official; Legal Liability; Undivided Whole Estate.*

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## **INTRODUCTION**

The transfer of land rights is an inevitable legal event within the dynamics of societal life. One instrument for such a transfer is a grant. A grant is fundamentally an irrevocable, unilateral obligation involving the gratuitous transfer of an object by a grantor to a grantee (Sari, 2022). To ensure protection for the parties, the transfer of land rights must be executed as an authentic deed. Land Deed Officials act as public officials authorized by the state to facilitate the execution of such written evidentiary documents (Pitlo, 1958).

The regulation governing the transfer of rights through grants to the Islamic community imposes strict normative limitations. The Islamic Law of Succession establishes material norms for the protection of the family estate, explicitly codified in Article 210 section (1) of the Compilation of Islamic Law. This provision imposes an absolute quantitative restriction, stipulating that a grant must not exceed one-third of the grantor's total estate. This limitation functions as a preventive measure to protect the legitimate (*legitieme portie*) of other lawful heirs who possess a legitimate right to the inheritance. A violation of this one-third threshold disrupts the proportional justice system upheld within Islamic civil law (Sabiq, 2018).

The execution of document instruments for the transfer of rights subject to these material limitations places the Land Deed Official in a central position. These public

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officials are not permitted to act passively when recording the intent of the appearers in writing. Both the Head of the National Land Agency Regulation Number 1 of 2006 and the Code of Ethics of the Indonesian Association of Land Deed Officials mandate the application of the prudential principle. This obligation requires relevant officials to act meticulously and to refuse to draft a deed that explicitly contains clauses in violation of civil law norms. Negligence in implementing this prudential obligation directly results in personal legal liability for the authenticated document (Arsy et al., 2021; Agustini & Djaja, 2024).

A structural legal gap arises when these prudential instruments are not applied in notarial service practices, culminating in litigation. This anomaly is evident in the legal act transferring the rights to three inherited land parcels measuring 20,240 square meters out of the deceased's total estate of 39,970 square meters. The transfer of assets, which factually exceeded half of the total estate, was facilitated by a public official through the issuance of Grant Deed Number 225/2008. This dispute culminated in Lumajang Religious Court Decision Number 480/Pdt.G/2024/PA.Lmj, which invalidated the deed document as it was proven to contain material defects. Nevertheless, the court of first instance's decision was overturned by the Surabaya High Religious Court through Decision Number 385/Pdt.G/2024/PTA.Sby, which is based on the assumption that the public official's obligation is strictly limited to recording the parties' intent without the necessity to examine the substantive agreement.

The *ratio decidendi* of the appellate court panel that overturned the first-instance decision creates a fundamental doctrinal conflict between the enforcement of formal procedures and the pursuit of substantive justice (Radbruch, 1950). The appellate judges based their arguments on the administrative court's absolute competence and on established precedents that exempt public officials from the obligation to examine material documents. This judicial approach ignores the doctrinal fact that a legal document containing a defect of consent from its inception will suffer a degradation of evidentiary value when used in land registration (Ayudiatratri & Cahyono, 2022). The appellate court's dismissal of the lawsuit as inadmissible (*Niet Ontvankelijk Verklaard*) results in a denial of justice (*deni de justice*), ultimately leaving the heirs without legal protection.

The discourse concerning the validity of deeds of transfer of rights and inheritance disputes has been examined in various prior literature. Several studies comprehensively analyzed comparative cases of the annulment of grant deeds containing defects of consent within the general civil court regime (Budify et al., 2020; Amelia et al., 2025). Other studies highlighted the importance of protecting the heirs' legitimate by affirming the absolute competence of religious courts in executing disputes subject to Islamic family law (Bashori & Ichsan, 2021; Rahmawati & Zuhdi, 2022). Furthermore, the existing literature has highlighted differences in the evidentiary

regime for deeds and the revocation of the object of transfer of rights between the Western civil system and the Islamic legal system (Sari, 2022). Despite the wealth of these literary findings, no research has specifically examined the logical flaw in the appellate court decision that absolutely protects Land Deed Officials on jurisdictional grounds. Therefore, the originality and novelty of this research lie in the dogmatic examination of the evidentiary value degradation phenomenon in a deed that exceeds the one-third estate limit, while simultaneously formulating legal liability for public officials who use their recording function as grounds for immunity.

Aligned with the identified structural legal gaps, this research is designed to comprehensively resolve two core legal issues. The study focuses on a thorough analysis of the construction of the juridical liability of Land Deed Officials for professional negligence in facilitating the drafting of a grant deed that exceeds the maximum limit of one-third of the estate. Based on this analysis, the research proceeds to critically examine the legal implications of the material defect arising from exceeding the grant limit, including its impact on the deed's evidentiary value. This study proposes an ideal judicial prescription to resolve the jurisdictional conflict, ensuring that certainty in land administration aligns with the fulfillment of heirs' material rights. Ultimately, this research is expected to provide theoretical benefits through the development of the evidentiary value doctrine, the limitation of public official immunity, and the epistemological enrichment of inheritance dispute resolution, while simultaneously offering practical benefits as a reference for Supreme Court panels.

## **METHOD**

This research is normative legal research focused on dogmatic legal studies through a critical examination of judicial decisions (Qamar & Rezah, 2020). The primary approach employed is the case approach, which is comprehensively integrated with the conceptual, statute, and philosophical approaches. The primary material objects in this study rest upon two conflicting judicial decisions, namely Lumajang Religious Court Decision Number 480/Pdt.G/2024/PA.Lmj and Surabaya High Religious Court Decision Number 385/Pdt.G/2024/PTA.Sby, concerning the dispute over exceeding the maximum limit of a grant over an inherited estate.

The selection of these two decisions is based on the characteristics of a fundamental structural legal gap, in which there is an anomaly in jurisdictional logic and a conflict in law enforcement between the protection of material justice for the heirs and the formal certainty of the procedure for issuing authentic deeds by public officials. To dissect this anomaly, this research constructs a multi-layered theoretical framework (Sampara & Husen, 2016; Setiawan & Samosir, 2023). The first layer relies on the Civil Code and Government Regulation Number 24 of 1997 to examine the validity of the requirements for forming an obligation and the consequences of

nullity (*nietig*) on the degradation of the deed's evidentiary value in the realm of state administrative affairs. Within this layer, the principles of civil procedural law are also employed to examine the validity of the formulation of the claims and the *ratio decidendi* of the appellate judges.

The second analytical layer operates in parallel by comparing the normative limitations of the Compilation of Islamic Law with the laws and regulations concerning the Office of the Land Deed Official. This analysis is intended to audit the obligation to apply the prudential principle by the Land Deed Official. Its primary focus is to prove the occurrence of negligence in the acts of the public official who continued to facilitate the drafting of the deed of transfer of rights even though, factually, the act exceeded the absolute limit of one-third of the estate. Through a philosophical approach, the epistemology of Islamic Law of Succession, grounded in the objectives of Islamic law (*Maqashid Syariah*), specifically the preservation of wealth (*hifz al-mal*), is presented as the supreme criterion for assessing the justice of the judge's decision.

The data collected from judicial decision documents and positive law instruments are subsequently analyzed using a descriptive-analytical qualitative method (Irwansyah, 2020). A deductive syllogism is applied to establish a logical correlation between the doctrinal postulates on legal certainty, justice, and utility and the concrete fact of the grant document's ineffectiveness at the level of state administrative implementation. The results of this forensic examination subsequently yield a prescriptive evaluation of the formulation of an ideal, compromising holding (*dictum*), which not only resolves the jurisdictional dispute but also ensures the restoration of the heirs' rights through the instrument of *restitutio in integrum*.

## **RESULTS AND DISCUSSION**

### **A. The Construction of Land Deed Officials' Liability for Exceeding the Maximum Grant Limit**

The drafting of authentic deeds for the transfer of land rights is not merely an administrative routine, but a legal act possessing dogmatic consequences. Land Deed Officials, as public officials appointed by the state, bear the authority and attribute of trust to stipulate facts and the intent of the parties into an instrument possessing perfect evidentiary value (Aliffa & Wiryawan, 2021). This central position places the public official not only as a facilitator but as the primary preventive filter in ensuring that the parties' intent does not contradict prevailing legal norms. This aligns with the postulate that public officials are bound to maintain a balance of interests, particularly when the requested action may violate the subjective rights of third parties protected by law.

Within the context of the Islamic Law of Succession, the protection of third-party subjective rights is tangibly manifested in the regulation of the absolute limitation on the estate that can be granted. The fundamental principle underlying this limitation is the absolute necessity of preserving the heirs' legitime so that it is not reduced by the grantor's unilateral intent during their lifetime (Sabiq, 2018). Although the one-third estate limitation is frequently strictly associated with a terminal illness leading to death (*maradl al-maut*), the essence of Islamic legal protection remains universally binding to prevent evasion of law acts intentionally designed to disadvantage other heirs. This quantitative limitation is subsequently explicitly accommodated into positive norms through Article 210 section (1) of the Compilation of Islamic Law. This legal construction affirms that the freedom of contract underlying the grant obligation must be subject to intra-family proportional justice.

The disregard of this proportional limitation frequently results in severe family disputes, in which the Land Deed Official is often in a vulnerable position when facilitating the parties' defect of consent. Public officials occasionally consciously permit bad faith in deed applications, where one party exploits the grantor's negligence to unilaterally control the estate (Rafli et al., 2024). Negligence in identifying potential inheritance disputes during the drafting of deed clauses constitutes a fundamental failure in the preventive function that should be inherent in the notarial office (Solehah et al., 2025). A deed issued without objective verification of such bad faith is essentially a legal product defective from the inception of the obligation.

This conflict between the protection of justice and procedural negligence was empirically confirmed by the trial facts in Lumajang Religious Court Decision Number 480/Pdt.G/2024/PA.Lmj. The panel of judges verified the material fact that the total area of the deceased's inherited estate was 39,970 square meters. Against this accumulated estate, a legal act transferring rights was executed through the instrument of Grant Deed Number 225/2008, which unilaterally recorded the transfer of 20,240 square meters of land. Mathematically, this transfer of rights facilitated by the public official exceeded half of the total estate. This factual legal act absolutely violated the provisions of Article 210 section (1) of the Compilation of Islamic Law and degraded the position of substitute heirs who possessed legal rights.

The issuance of the grant deed violating this absolute limit proves the failure to implement the prudential principle at the level of notarial services. Dogmatically, the public official's failure to apply the standard of care to prevent legal violations is considered negligence (Kelsen, 1999). The attribution of liability for this negligence is not merely a moral construction but has been limitatively regulated

in Article 55 of the Head of the National Land Agency Regulation Number 1 of 2006. This provision imposes the burden of personal liability on the deed drafter for any errors arising from the execution of their official duties. Therefore, the relevant official may be sued in civil court, subjected to administrative sanctions, and even receive a dishonorable discharge for professional ethics violations (Agustini & Djaja, 2024).

Despite this highly comprehensive limitation of juridical liability in positive law, the defense of public officials is frequently based solely on rigid formalism. In the *ratio decidendi* of Surabaya High Religious Court Decision Number 385/Pdt.G/2024/PTA.Sby, this formality argument was affirmed by the appellate judges, who stated that the public official merely records the appearers' intent and holds no obligation to verify material truth. This judicial approach constitutes a dogmatic misinterpretation that reduces the authority of legal officials to the status of passive administrative subjects. There is a strict dogmatic limitation wherein public officials possess absolutely no legal immunity when facilitating acts that manifestly violate statutory provisions (Bintang et al., 2025). If the act requested for authentication is found to violate the norms of family estate protection, the deed official has a professional obligation to provide legal education and must absolutely refuse to process the deed instrument (Azizah et al., 2025).

## **B. The Degradation of the Authentic Deed's Evidentiary Value Due to Defect of Consent**

The juridical consequence of the Land Deed Official's negligence in applying the prudential principle does not merely stop at the attribution of personal liability but directly implicates the existence of the legal product it generates. Civil law requires that a legal act transferring rights must be absolutely evidenced by an authentic deed instrument. The provisions of Article 1868 of the Civil Code guarantee that a deed drafted in the form prescribed by law before a public official will possess perfect evidentiary value. However, this perfection is not an independent entity possessing legal immunity. If the formal container of the instrument is utilized to represent a material legal act that substantively contradicts the norms protecting the heirs' rights, the document's validity status is absolutely nullified.

Based on the dogmatic postulates of the law of evidence, a document's authenticity is not solely measured by the perfection of its physical appearance and the formal procedure of the official's signature. The actual binding force rests upon the substantive truth or material evidentiary value (*materiële bewijskracht*) of the legal act described therein (Pitlo, 1958). Although this grant obligation dispute is subject to the Islamic Civil Law regime, the validity of its written evidentiary

instrument remains absolutely bound to the Civil Code as the general provision (*lex generalis*) (Sari, 2022). Therefore, if the recorded material intent is proven to violate the absolute statutory prohibition, namely exceeding the one-third estate grant limit, the legal act violates the objective requirement of an obligation in the form of a lawful cause. Referring to Article 1869 of the Civil Code, the violation of this objective requirement renders the legal act null and void (*nietig*), rather than merely voidable (*vernietigbaar*), which instantly degrades the deed instrument into a mere private deed (Arsy et al., 2021; Ayudiatratri & Cahyono, 2022).

The theoretical construction regarding the loss of the obligation and evidentiary value is precisely validated in the holding of Lumajang Religious Court Decision Number 480/Pdt.G/2024/PA.Lmj. The first-instance panel of judges did not merely order the defendant to return the remaining 8,240 square meters of land but explicitly declared that Grant Deed Number 225/2008 possesses no binding legal force. This *ratio decidendi* constitutes a highly accurate manifestation of legal discovery, in which the court essentially invalidates the material legal act of the grant obligation, as it is proven to involve the deprivation of the heirs' legitimate (*legitieme portie*). The loss of legal force in the deed instrument is an absolute logical consequence of the invalidation of the legal act it contains. Jurisprudential trends and comparative studies across various judicial jurisdictions also demonstrate a consistent pattern: a document transferring rights that is proven to contain bad faith or violations of objective norms during the precondition period of the obligation will always result in the loss of the document's binding force (Budify et al., 2020).

The degradation of the document's authenticity due to this material defect linearly induces administrative stagnation when the document is confronted with the land registration regime. State administrative law, through the provisions of Article 37 section (1) of Government Regulation Number 24 of 1997, has established the requirement that any transfer of rights can only be registered if proven by a deed drafted by an authorized deed official. When a deed has been reduced to a private deed due to its legal act being null and void, the document loses its function as a valid title base for executing the mutation of land data at the Land Office. The absence of a valid formal instrument in this transfer of property rights renders the land occupation by the grantee illegal and juridically indefensible (Putri & Silviana, 2022).

Therefore, the degradation of the grant deed's evidentiary value is a dogmatic inevitability if the formulation of intent within it is not free from potential statutory violations (Solehah et al., 2025). Grant Deed Number 225/2008 no longer possesses executory force or administrative value in the eyes of land law. However, despite the absolute clarity regarding the material defect of this legal act, the problem

arises precisely at the level of institutional competence. The question regarding the extent of the judiciary's authority to formulate a declaration of nullity for such an administrative document becomes a highly acute realm of jurisdictional polemic, which ultimately is utilized as a pretext by the appellate panel of judges to abort the pursuit of substantive justice for the heirs.

### **C. Examination of Court Decisions: The Collision between Formal Legal Certainty and Substantive Justice**

The problematization of institutional authority that terminates the deed's binding force becomes the central point of judicial conflict in this dispute. The Lumajang Religious Court, through Decision Number 480/Pdt.G/2024/PA.Lmj, attempted to conduct progressive legal discovery to restore the heirs' rights by declaring the materially defective deed to possess no legal force. However, this effort to enforce substantive justice was absolutely annulled by the Surabaya High Religious Court through Decision Number 385/Pdt.G/2024/PTA.Sby. The appellate judges annulled the first-instance decision by rendering a *Niet Ontvankelijke Verklaard* decision. This appellate court decision creates an immediate legal vacuum for the heirs whose legitimate (*legitieme portie*) has been deprived.

The primary *ratio decidendi* of the appellate panel of judges is based solely on Supreme Court Circular Number 10 of 2020, which affirms that the annulment of instruments in the form of certificates or authentic deeds falls within the absolute jurisdiction of the Administrative Court. In civil procedural law, the appellate judges' stance is not entirely erroneous when viewed from the flawed formulation of the lawsuit, wherein the plaintiff demanded the physical annulment of the deed, which dogmatically binds the judges to the principle of deciding according to what is demanded (*secundum allegata iudex iudicare debet*). However, this judicial approach becomes flawed because the court failed to separate the state administrative instrument from the material legal act of the grant obligation. The dogmatic fact is that disputes rooted in the law of succession and the validity of grants among Muslims constitute the absolute jurisdiction of the religious court, as mandated by statutory regulations (Bashori & Ichsan, 2021). The panel of judges should have been able to explore the material substance of the claim through the instrument of requesting a decision that is as fair as possible (*ex aequo et bono*), rather than merely aborting the case.

The appellate court's erroneous dogmatic interpretation of the fact of material right deprivation generates a fundamental conflict between the enforcement of formal legal certainty and the pursuit of substantive justice. Written and procedurally valid positive law must indeed be maintained for the upholding of public order, but the enforcement of such formal rules absolutely

must not disregard substantive rights to the point of reaching an intolerable level of injustice (Radbruch, 1950). Maintaining the existence of a grant instrument that manifestly exceeds the one-third estate limit solely based on the fulfillment of administrative legal certainty is a denial of the intrinsic purpose of the law itself.

Furthermore, the appellate panel of judges ignored the doctrinal fact that imposing intent in violation of civil provisions constitutes a qualification of an unlawful act (Amelia et al., 2025). In the epistemology of the religious court's legal system, violating the limit of the heirs' absolute share is not merely an unlawful act within the secular spectrum of Western civil law, but an oppressive act that fundamentally injures the principles of *Maqashid Syariah*, specifically in the aspect of *hifz al-mal*. The appellate court should have conducted an in-depth examination of the bad faith and material violation, rather than merely dismissing the principal case on procedural grounds (Dewi et al., 2025). The act of *déni de justice* based on the pretext of administrative jurisdictional limits constitutes a disregard of the primary function of the judicial institution in family law.

The obligation dispute arising from the regulatory disharmony between the Western civil evidentiary system and the family estate protection system in Islamic law requires precise harmonization of legal discovery (Sari, 2022). Although the physical appearance of the document is subject to civil evidentiary law, the substance of its estate distribution must not deviate from Islamic legal doctrine. The religious court bears the absolute responsibility to maintain a fair and balanced inheritance proportion in its final decision, regardless of the complexity of the land administration bureaucracy surrounding it (Rafli et al., 2024).

Therefore, the rationalization of protecting substitute heirs whose rights are unilaterally reduced must be prioritized over absolute obedience to the formality of a defective document from its inception (Rahmawati & Zuhdi, 2022). The religious court is not permitted to allow the party in bad faith to enjoy the results of a transfer of rights that consciously violates the norm limiting the one-third estate. The absence of a firm stance from the appellate judges instead perpetuates the violation of the property rights of third parties who hold a lawful status under the law of succession.

As an ideal legal prescription to resolve this jurisdictional problem, the appellate panel of judges should still have accepted the principal case and adjudicated its material dispute. If the lawsuit's claim (*petitum*) regarding the physical annulment of the deed administratively is deemed to violate the absolute competence of state administrative affairs, the religious court solely needs to render a holding declaring that the material legal act of the grant is null and void and return the disputed object into the form of the undivided whole estate (*boedel*

*waris*). The declaration of nullity of this legal act will, in principle, eliminate the deed's material binding force without the need to annul its physical form judicially. The object's status as a *boedel waris* can subsequently be utilized by the heirs as a valid title base to request *restitutio in integrum* at the Land Office institution. Such a compromise in decision-making will align the strictness of formal legal certainty with the full realization of substantive justice.

## **CONCLUSIONS AND SUGGESTIONS**

This research produces a comprehensive synthesis of the two fundamental legal dogmatic issues formulated. First, the Land Deed Official's negligence in facilitating the drafting of a grant deed that factually exceeds the absolute limit of one-third of the estate constitutes a fatal violation of the prudential principle. The public official's passive stance, based on the pretext of merely recording the appearers' intent, absolutely does not negate their proactive legal obligation to prevent the evasion of the law. The act of omission threatening the heirs' legitimate portion is considered negligence. Dogmatically, this omission entails the attribution of personal juridical liability, enforceable through the spectrum of administrative sanctions, civil lawsuits, and the enforcement of professional codes of ethics.

Second, the material defect in the form of depriving the heirs of their property rights results in the loss of the obligation's validity at the objective level. The violation of the objective requirement of the legal act renders the transfer of rights act null and void. The nullification of this material legal act linearly implicates the authentic deed instrument representing it, thereby degrading its *materiële bewijskracht*. The consequence of this collapse in evidentiary value is administrative stagnation when the deed is represented as a state administrative instrument, thereby rendering the grantee's occupation of the disputed object illegal and devoid of juridical legitimacy before the land agency.

In responding to this nullification of validity, the rigid formalistic approach of the appellate judicial institution in rendering an inadmissible decision has created a *déni de justice*. To provide a resolution to the administrative competence and restore material justice, the religious court should declare the nullity of the material legal act of the grant. The declaration of nullity of this material act is necessary to revert the status of the disputed object into the form of a *boedel waris*. This pure estate legal status can subsequently be used as a basis for the heirs to request *restitutio in integrum* administratively, harmonizing the strictness of procedural law without infringing on the jurisdiction of the administrative court.

Based on these dogmatic conclusions, this research formulates several strategic recommendations as policy implications and concrete follow-ups. The Supreme

Court of the Republic of Indonesia is recommended to immediately issue a binding jurisprudence or formulate a Supreme Court Circular providing technical guidelines for the execution of the nullification of the material act of transferring land rights within the religious court's jurisdiction. This aims to unify the judges' perceptions so that the certainty of Islamic civil law aligns with the state administrative mechanism. Furthermore, the Central Supervisory Board of Notaries, alongside the Ministry of Agrarian Affairs and Spatial Planning, is required to impose administrative sanctions that are measurable on deed officials found to have facilitated defects of consent in family law disputes. At the level of academic exploration, further discourse is essential to formulate the integration of the *hifz al-mal* philosophy into the operational standards of rights registration, ensuring that the value of substantive justice is not hindered by the rigidity of formal procedures.

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