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ANDALAS BORNEO JUSTICE

Original Article

The Principle of Horizontal Separation and Partial Land Sales: The Legal Status of Buildings and Plants after the Transfer of Land Rights in Indonesia

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Abstract

Indonesian national land law declares that it is based on adat law and, through that foundation, adopts the principle of horizontal separation (*asas pemisahan horizontal*), under which land is legally distinct from the buildings and plants standing on it. The Civil Code, by contrast, follows the principle of accession (*verticale accessie*), under which whatever is attached to land belongs to the owner of the land. The coexistence of the two principles produces uncertainty whenever land is sold without a comprehensive transfer of everything on it, as when a parcel is sold while the coconut trees, the house or the leased building on it remain with another party. This article examines the legal position of such partial land sales and the status of buildings and plants after the sale. It employs normative juridical research with statutory, conceptual and case approaches, drawing on the Basic Agrarian Law, the Civil Code, the Hak Tanggungan Law, land registration regulations, court decisions and recent Indonesian scholarship. The findings show that a sale of land alone is valid where the parties expressly agree on what is and is not sold, but that the separated objects lack their own registration, time limits and evidentiary instruments. The status of buildings and plants after the sale therefore depends on the agreement, on the existence of a recognised right such as a right to build or a lease, and on proof of de jure ownership, while security law and certain statutes increasingly reintroduce accession. The article concludes that legal certainty requires express contractual clauses in sale deeds, registration of separated objects and harmonisation of security and land legislation.

Keywords: Horizontal Separation; Accession; Land Sale; Buildings And Plants; Basic Agrarian Law

Introduction

In many Indonesian villages, a person who buys a plot of land does not necessarily become the owner of the coconut trees, the fruit trees or the house that stand on it. A farmer may sell the land but keep the trees he planted; a family may sell the house but not the land beneath it; a tenant may build a shop on land owned by another and continue to own that shop for years. These arrangements are not anomalies. They reflect a principle deeply rooted in Indonesian customary (adat) law, the principle of horizontal separation, which holds that land and the objects attached to it are distinct legal objects that may belong to different persons.[1] Empirical studies in Pohuwato, Gorontalo, have documented land being sold without the coconut trees on it, with the trees remaining the property

[1] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid 1: Hukum Tanah Nasional* 12th edn (Jakarta: Djambatan, 2008); R. Soepomo, *Bab-Bab tentang Hukum Adat* 16th edn (Jakarta: Pradnya Paramita, 2007).

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of the seller or of a third party.[2] The question that this article addresses arises precisely from this practice: what is the legal position of a sale of land that does not transfer everything on the land, and what becomes of the rights to the buildings and plants after the sale?

The question is neither theoretical nor marginal. Indonesian land law contains two competing principles. Law No. 5 of 1960 on Basic Regulations on Agrarian Principles (the Basic Agrarian Law) declares that the agrarian law applicable to the earth, water and space is adat law, insofar as it does not conflict with national interests, and through this provision it receives the customary principle of horizontal separation.[3] The Indonesian Civil Code, inherited from the colonial period, rests on the opposite principle of accession, under which ownership of land includes ownership of everything above and below its surface, and buildings and rooted plants are treated as immovable objects forming part of the land.[4] Although the Basic Agrarian Law revoked Book II of the Civil Code insofar as it concerns the earth, water and natural resources, the accession principle has not disappeared: it continues to shape the law of contract, the law of security rights and the reasoning of courts.

The coexistence of these principles generates practical uncertainty. Dwiyatmi demonstrates that national agrarian law does not adhere to horizontal separation absolutely, because the accession principle also applies, and that later legislation such as the Hak Tanggungan Law and the Apartment Units Law increasingly gives accession a prominent place.[5] Ganindra and Kurniawan argue that neither the Basic Agrarian Law nor the Civil Code clearly defines the criteria of horizontal separation, so that judges have struggled to determine who owns a building when the land is held by another.[6] Adnyana and Purwanto go further and describe the Hak Tanggungan Law as inconsistent with the Basic Agrarian Law, because its title and its provisions treat land and the structures on it as a single object of security.[7] The law therefore speaks with two voices, and the parties to a land sale cannot always know which voice will govern their transaction.

The uncertainty is felt most acutely in sales of land that do not transfer everything on the land. Andari and Purwoatmodjo show that land rights do not automatically include the ownership of buildings and plants on the land, and that a sale of land without the coconut trees on it is an application of horizontal separation in which the party acting in good faith deserves legal protection.[8] Indarta, Mangar and Ristasaputra conclude that a building on land does not automatically pass in a sale of land unless the parties expressly agree to include it.[9] Nasrullah, however, observes that the separation of land and coconut trees has no clear time limit, unlike the right to build, the right of use or the lease recognised by the Basic Agrarian Law, so that the position of the landholder and the tree

[2] Nasrullah, 'Analisis Hukum secara Analogi Penerapan Asas Pemisahan Horizontal pada Praktek Jual Beli Tanah Tidak Beserta dengan Pohon Kelapa di Atasnya di Kec. Patilanggio Kab. Pohuwato', *Jurnal Hukum Volkgeist*, 2.2 (2018), 135–47 https://doi.org/10.35326/volkgeist.v2i2.90; Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal dalam Kepemilikan Tanah di Kabupaten Pohuwato', *Jurnal Pendidikan Tambusai*, 6.2 (2022), 16160–67 (p. 16160) https://jptam.org/index.php/jptam/article/download/4972/4225.

[3] Law No. 5 of 1960 on Basic Regulations on Agrarian Principles, art. 5; Sri Harini Dwiyatmi, 'Asas Pemisahan Horizontal (Horizontale Scheiding Beginsel) dan Asas Perlekatan (Verticale Accessie) dalam Hukum Agraria Nasional', *Refleksi Hukum: Jurnal Ilmu Hukum*, 5.1 (2020), 125–44 (p. 125) https://doi.org/10.24246/jrh.2020.v5.i1.p125-144.

[4] Indonesian Civil Code, arts 500, 506 and 571; Dyah Devina Maya Ganindra and Faizal Kurniawan, 'Kriteria Asas Pemisahan Horizontal terhadap Penguasaan Tanah dan Bangunan', *Yuridika*, 32.2 (2017), 228–56 https://doi.org/10.20473/ydk.v32i2.4850.

[5] Dwiyatmi, 'Asas Pemisahan Horizontal dan Asas Perlekatan', p. 125.

[6] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'.

[7] Ni Luh Ari Andini Adnyana and I Wayan Novy Purwanto, 'Inconsistency of the Principle of Horizontal Separation in Law Number 4 of 1996 Concerning Mortgage Rights', *Jurnal Notariil*, 10.2 (2025), 81–88 https://doi.org/10.22225/jn.10.2.2025.81-88.

[8] Cicilia Putri Andari and Djumadi Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal dalam Peralihan Hak atas Tanah', *Notarius*, 12.2 (2019), 703–17 (p. 703) https://doi.org/10.14710/nts.v12i2.29010.

[9] Didiek Wahju Indarta, Irma Mangar, and Juventia Imelda Ristasaputra, 'Pemisahan Kepemilikan Tanah dan Bangunan dalam Perjanjian Jual Beli Ditinjau dari Pasal 1320 KUH Perdata', *Jurnal Hukum Sasana*, 11.2 (2025), 345–56 (p. 347) https://doi.org/10.31599/sasana.v11i2.4701.

owner remains uncertain for an indefinite period.[10] Rustam and Nasrullah therefore call for written agreements, separate registration of attached objects and regional regulation.[11]

A related body of literature concerns the formalities of land sales. Under Government Regulation No. 24 of 1997 on Land Registration, the transfer of a land right through sale can be registered only if it is proven by a deed drawn up by a Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT).[12] Yet many sales are concluded privately, by receipt or under a binding sale agreement, and many buyers who hold a PPAT deed never obtain physical possession of what they bought. Studies of such transactions in Depok, Bekasi and Surakarta show that courts recognise the material validity of private sales while the transfer remains blocked at the land office.[13] Septiana, Sudirman and Kencanawati show that a buyer who cannot take possession of the land or building, despite a PPAT deed, has not gained legal certainty.[14] A sale of land may therefore be incomplete in two senses: it may not transfer all the objects on the land, and it may not complete the transfer of the right itself.

International and comparative perspectives reinforce the importance of the question. Horizontal separation is not merely a technical rule of property law; it is a reflection of the social function of land and of the customary conception that land is to be used for the greatest benefit of the people who work it.[15] Rahman and Tista connect the principle with the politics of land law under Article 33(3) of the 1945 Constitution, arguing that it serves expediency and justice.[16] At the same time, modern developments such as apartment ownership, mining, infrastructure and investment on management-right land have tested the limits of the principle and forced the legislature and the courts to decide how far separation can be sustained.[17]

The question also has a distinctly plural character. Indonesian land transactions take place within a legal order in which adat norms, colonial civil law and national statutory law continue to coexist. A villager who sells land before the village head in the customary manner may understand the transaction very differently from the PPAT who later records it, or from the judge who is later asked to resolve a dispute about it. The Gayo Lues study shows that residents frequently do not understand

[10] Nasrullah, 'Analisis Hukum secara Analogi'.

[11] Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal', p. 16160.

[12] Government Regulation No. 24 of 1997 on Land Registration, art. 37(1); Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah* (Jakarta: Kencana, 2010).

[13] Raden Devina Maulina and Irene Eka Sihombing, 'Analisis Keabsahan Jual Beli Tanah berdasarkan Kwitansi di Kota Depok', *Reformasi Hukum Trisakti*, 4.2 (2022), 487–95 https://doi.org/10.25105/refor.v4i4.14119; Putri Kalingga Hermawan and Mohamad Fajri Mekka Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik terhadap Jual Beli Hak atas Tanah yang Dilakukan Dibawah Tangan (Studi Kasus Putusan Pengadilan Negeri Bekasi Nomor 226/Pdt.G/2021/PN BKS)', *PALAR (Pakuan Law Review)*, 8.1 (2022), 432–45 https://journal.unpak.ac.id/index.php/palar/article/download/5001/2941; Aulia Haura'Aini Abdullah, Ana Silviana, and Ratna Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik dalam Sengketa Perjanjian Pengikatan Jual Beli Tanah di Kota Surakarta', *Notarius*, 19.1 (2026), 73–90 https://doi.org/10.14710/nts.v19i1.81731.

[14] Risa Septiana, M. Sudirman, and Erny Kencanawati, 'Legal Consequences for a PPAT Sale and Purchase Deed's to Buyers Who Dont Own the Object of Sale and Purchase', *Jurnal Gagasan Hukum*, 4.2 (2022), 136–45 https://journal.unilak.ac.id/index.php/gh/article/download/12937/4722.

[15] Adwin Tista, 'Hakikat Asas Pemisahan Horizontal dalam Hukum Adat', *Al'Adl: Jurnal Hukum*, 14.2 (2022), 347–66 https://doi.org/10.31602/al-adl.v14i2.7040; Maria S. W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya* (Jakarta: Kompas, 2008).

[16] Muhammad Ghazali Rahman and Adwin Tista, 'Asas Pemisahan Horisontal dalam Politik Hukum Pertanahan', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 2.6 (2025) https://doi.org/10.5281/zenodo.14842847.

[17] Made Wiwin Dharma Lestari and Made Gde Subha Karma Resen, 'Pengaturan Asas Perlekatan dan Asas Pemisahan Horizontal dalam Kaitannya dengan Rumah Susun di Indonesia', *Kertha Desa*, 10.8 (2022), 765–75 https://jurnal.harianregional.com/kerthadesa/id-84464; Arif Firmansyah, 'Rekonseptualisasi Asas Pemisahan Horisontal dalam Pertambangan Mineral dan Batubara di Indonesia', *Yustitia*, 8.1 (2022), 80–96 https://doi.org/10.31943/yustitia.v8i1.151; Urfani Syamuria Situmorang, 'Analysis of the Application Principle of Horizontal Separation in Jakarta LRT 1B Project: A Legal Review', *Indonesian Journal of Agrarian Law*, 3.1 (2026), 500–24 https://doi.org/10.15294/jal.v3i1.41656; Jordan Anggoro Wicaksono and Supardjo, 'Building Rights, Management Rights, and the Limits of Horizontal Separation Principle in the Sultan Hotel Case Based on UUPA and PP 40/1996', *Law Development Journal*, 8.1 (2026), 124–37 https://jurnal.unissula.ac.id/index.php/ldj/article/download/51961/15803.

the principle of horizontal separation even though their own practice applies it, and that disputes are resolved through deliberation rather than through formal rules.[18] The legal status of buildings and plants after a sale is therefore determined not only by doctrine but by the encounter between different legal understandings of the same transaction.

Despite this scholarship, three gaps remain. First, most studies examine horizontal separation either as a general doctrine or in a single field such as security rights, but few connect the doctrine with the specific problem of land sales that do not transfer everything on the land. Second, the literature on the formal validity of land sales and the literature on horizontal separation have developed separately, although in practice the two problems frequently arise in the same transaction. Third, few studies propose an operational framework for determining the status of buildings and plants after a sale. This article seeks to fill these gaps. Its urgency lies in the fact that, without a clear framework, buyers, sellers, tenants, creditors and the owners of plants and buildings will continue to depend on the uncertain reasoning of individual courts.

The contribution of this article is threefold. Doctrinally, it connects the principle of horizontal separation with the law of land sales, showing how the principle determines the validity of partial sales and the status of the objects that are excluded from them. Analytically, it distinguishes between objectively partial and procedurally incomplete sales and identifies the legal configurations in which buildings and plants stand after a sale. Practically, it proposes measures for PPATs, land offices and courts that would give the separated objects a defined legal position. In doing so, it draws together literature on customary law, land registration, security rights and civil procedure that has hitherto developed in separate streams.[19]

This article therefore addresses three questions. First, how is the principle of horizontal separation received and limited in Indonesian national land law? Second, what is the legal position of a sale of land that does not involve a comprehensive transfer of the rights to the objects on the land? Third, what is the status of the rights to buildings and plants after such a sale, and how can the parties be protected? The article argues that the principle of horizontal separation makes partial land sales legally possible but leaves the separated objects in a condition of legal vulnerability, and that legal certainty depends on express agreement, recognised rights and registration rather than on the principle alone.

Method

This study employs normative juridical (doctrinal) legal research. The research treats law as a system of norms and examines the principles, rules and decisions that govern the relationship between land and the objects attached to it. Three approaches are combined. The statutory approach examines the Basic Agrarian Law, the Civil Code, the Hak Tanggungan Law, the Fiduciary Security Law, the Apartment Units Law, Government Regulation No. 24 of 1997, Government Regulation No. 37 of 1998 and Government Regulation No. 18 of 2021. The conceptual approach examines the doctrines of horizontal separation and accession as formulated in the literature of Indonesian agrarian and customary law.[20] The case approach examines court decisions discussed in the recent literature, including decisions of the Gianyar District Court, the Bandung High Court, the Bekasi District Court and the Surakarta District Court.[21]

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[18] Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa antara Pemilik Tanah dengan Pemilik Benda yang Ada di Atasnya (Studi Kasus di Kecamatan Putri Betung Kabupaten Gayo Lues)', *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIM FH)*, 4.1 (2021), 104–16 https://ojs.unimal.ac.id/jimfh/article/download/4069/pdf.

[19] Harsono, *Hukum Agraria Indonesia*; Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*; Yoga Andrean Ananta and Afif Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal dalam Hukum Pertanahan Indonesia', *Notarius*, 19, special issue (2026), 109–25 https://doi.org/10.14710/nts.v19i0.73289; Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'.

[20] Harsono, *Hukum Agraria Indonesia*; Soepomo, *Bab-Bab tentang Hukum Adat*; Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Kencana Prenada Media Group, 2014).

[21] Calista Putri Tanujaya, Devy Yulyana, and Rigel, 'Analisis Putusan Nomor 89/Pdt.G/2016/PN Gin Berdasarkan Asas Pemisahan Horizontal dalam Hukum Agraria Nasional', *Jurnal Kewarganegaraan*, 7.2 (2023), 637–47 https://doi.org/10.31316/jk.v8i1.6363; Nurvannisa Fajrimustika, Kris Wijoyo Soepandji, and

The legal materials consist of primary, secondary and tertiary sources. Primary materials comprise statutes, government regulations, a Supreme Court circular and court decisions. Secondary materials comprise five seminal books on Indonesian agrarian and customary law and thirty peer-reviewed journal articles published between 2017 and 2026, selected because they address horizontal separation, the transfer of land rights through sale, or the status of buildings and plants on land owned by another. Each journal article was verified against the publisher's website for its authors, title, volume, pages and digital object identifier. News reports and unpublished theses were excluded so that the analysis rests on scholarly sources that can be checked by readers.

The materials were analysed qualitatively through systematic and teleological interpretation. Systematic interpretation was used to read each provision in relation to the structure of national land law, in particular the relationship between Article 5 of the Basic Agrarian Law and the provisions on rights to build, rights of use and leases for buildings. Teleological interpretation was used to determine whether the purposes of legal certainty, justice and expediency are served by the current rules. The findings of the empirical studies in Pohuwato and Gayo Lues were used not as primary data but as illustrations of how the principle operates in practice.[22]

The analysis proceeds in three stages that correspond to the research questions. The first stage reconstructs the reception and limitation of horizontal separation in national law. The second stage examines the validity and legal consequences of land sales that do not transfer all objects or do not complete the transfer of rights. The third stage determines the status of buildings and plants after the sale in the main legal configurations: express exclusion, recognised secondary rights, security rights and the cancellation of certificates. The results are summarised in two tables that serve as an analytical framework for practitioners.

The study has limitations. It relies on court decisions as they are reported and analysed in the scholarly literature rather than on an independent examination of the complete case files, and the empirical illustrations are drawn from a limited number of regions. The findings are therefore offered as a doctrinal framework that can guide further empirical research, not as a statistical account of how partial land sales are concluded across Indonesia. Within these limits, the combination of statutory, conceptual and case approaches allows the study to identify the legal configurations in which the status of buildings and plants is determined and the points at which the law currently fails to provide certainty.

Results and Discussions

The Principle of Horizontal Separation in Indonesian Land Law: Customary Roots, Statutory Reception and Its Limits

The principle of horizontal separation originates in Indonesian customary law. In the adat conception, land is a distinct object from the houses and plants that stand on it, and transactions concerning land are distinguished from transactions concerning the objects on the land. Soepomo's classic account of adat law describes transactions over houses and plants that may be concluded separately from the land, and the customary sale of land as a transaction that is cash, clear and real (*tunai, terang* and *riil*), concluded before the customary head and completed at the moment of payment and delivery.[23] Harsono explains that national land law, being based on adat law, adopts this principle, so that the buildings and plants on land are not part of the land and rights over land do not by themselves include ownership of the buildings and plants on it.[24]

Hendriani Parwitasari, 'Asas Pemisahan Horizontal pada Hak Sewa untuk Bangunan di Atas Tanah Hak Milik yang Diperjanjikan secara Lisan dan Tanpa Batas Waktu (Studi Putusan Nomor 107/Pdt/2021/PT Bdg)', *Indonesian Notary*, 5.4 (2023), article 10 https://doi.org/10.21143/notary.vol5.no4.143; Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'; Abdullah, Silviana, and Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik'.

[22] Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'; Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.

[23] Soepomo, *Bab-Bab tentang Hukum Adat*.

[24] Harsono, *Hukum Agraria Indonesia*.

Tista explains that the essence of horizontal separation in adat law lies in the philosophy that land should be used to provide the greatest benefit to the people, including customary communities, in pursuit of social justice.[25] In practice, the principle is visible in arrangements where landowners cooperate with persons who provide capital or labour to plant and cultivate the land, with each party retaining a distinct interest. The principle is therefore not a mere technicality but an expression of a social order in which several persons may hold different interests in the same parcel. Rahman and Tista place it within the politics of national land law and argue that it is consistent with Pancasila, the 1945 Constitution and the Basic Agrarian Law because it promotes expediency and justice.[26]

The statutory reception of the principle occurs primarily through Article 5 of the Basic Agrarian Law, which makes adat law the foundation of national agrarian law.[27] Lestari and Resen locate the principle in Articles 3 and 16 of the Basic Agrarian Law, which recognise customary rights and list the types of land rights, while locating the attachment principle in Book II of the Civil Code.[28] The clearest expression of separation is found in the rights that allow a person to own a building on land owned by another. Article 35 of the Basic Agrarian Law defines the right to build (*hak guna bangunan*) as the right to construct and own buildings on land that is not one's own, while Article 44 recognises the lease for buildings (*hak sewa untuk bangunan*).[29] In both cases the law presupposes that the building and the land may belong to different persons.

The historical background explains why the two principles coexist. Before 1960, Indonesian land law was dualistic: land held by Europeans and persons assimilated to them was governed by the Civil Code and its accession principle, while land held by Indonesians was governed by adat law and its separation principle.[30] The Basic Agrarian Law sought to end this dualism by creating a single national land law based on adat, and it revoked Book II of the Civil Code insofar as it concerns the earth, water and the natural resources contained in them, except for the provisions on mortgage.[31] The revocation was partial, however, and the provisions of the Civil Code on movable and immovable objects, on contracts and on unjust enrichment remained in force. Accession thus survived in the interstices of the national system.

The meaning of adat as the basis of national land law has also been qualified. Article 5 of the Basic Agrarian Law receives adat law only insofar as it does not conflict with national and state interests, with Indonesian socialism, with the provisions of the Basic Agrarian Law itself and with other legislation, and insofar as it respects elements based on religious law.[32] Harsono therefore describes the adat law received by the Basic Agrarian Law as an adat law that has been 'cleansed' of its particularistic features and adapted to the needs of a modern national legal order.[33] The principle of horizontal separation is one of the concepts and institutions of adat that survived this process, but its operation is subject to the statutory framework of registered rights.

The rights recognised by the Basic Agrarian Law give the principle a concrete statutory shape. The right to build is granted for a limited period and may be extended, and it may be established over state land, management-right land or land held under a right of ownership.[34] The lease for buildings, by contrast, arises from an agreement with the owner of the land and is governed largely by the terms agreed by the parties.[35] Both rights presuppose that the building and the land may belong to different persons, and both define the period, the content and the termination of the building owner's interest. They are therefore the statutory forms through which horizontal separation acquires legal certainty,

[25] Tista, 'Hakikat Asas Pemisahan Horizontal'.
[26] Rahman and Tista, 'Asas Pemisahan Horisontal dalam Politik Hukum Pertanahan'.
[27] Basic Agrarian Law, art. 5.
[28] Lestari and Resen, 'Pengaturan Asas Perlekatan'.
[29] Basic Agrarian Law, arts 35 and 44; Santoso, *Hukum Agraria.*
[30] Harsono, *Hukum Agraria Indonesia.*
[31] Basic Agrarian Law, first dictum; Santoso, *Hukum Agraria.*
[32] Basic Agrarian Law, art. 5.
[33] Harsono, *Hukum Agraria Indonesia.*
[34] Basic Agrarian Law, arts 35–37; Government Regulation No. 40 of 1996; Santoso, *Hukum Agraria.*
[35] Basic Agrarian Law, art. 44.

and their absence in customary arrangements over plants explains much of the uncertainty discussed below.

Djerahu, Nubatonis and Dju Bire summarise the practical consequence of the two principles. Under horizontal separation, land rights may be transferred without transferring the objects attached to the land; under vertical attachment, those objects follow the land automatically. They conclude that Indonesian land law leans toward horizontal separation and that the Basic Agrarian Law clearly regulates the legal relationship between land and the objects on it.[36] Ganindra and Kurniawan agree that, under national land law, buildings and plants are not part of the land, so that owning the land does not automatically mean owning what stands on it, whereas under the Civil Code the opposite rule applies.[37]

Yet the reception is not absolute. Dwiyatmi traces the two principles through the Basic Agrarian Law and its implementing regulations and concludes that adherence to horizontal separation 'is not absolute, because the principle of attachment or *verticale accessie* also applies'.[38] She shows that the accession principle has become increasingly prominent in later legislation, including the Hak Tanggungan Law, the Apartment Units Law and the land registration regulations. The result is a mixed system in which horizontal separation remains the foundational principle, but accession is applied where the legislature considers that the unity of land and building better serves legal certainty or the interests of creditors.

The Hak Tanggungan Law is the most significant example. Article 4(4) permits a security right over land to cover existing or future buildings, plants and works that form a unity with the land and belong to the holder of the land right, provided that this is expressly stated in the deed granting the security right. Article 4(5) provides that, where the buildings or plants do not belong to the holder of the land right, their owner must sign the deed.[39] Ananta and Mahfudh read these provisions in line with horizontal separation: a security right covers the land only, and covers the buildings only if they are clearly included in the deed.[40] Adnyana and Purwanto, by contrast, argue that the title of the law, which speaks of security rights over land 'and land-related objects', and its provisions treat land and buildings as one object, so that the law conflicts with horizontal separation and leaves building owners who do not own the land poorly protected.[41]

The Apartment Units Law illustrates the coexistence of the two principles within a single statute. Lestari and Resen show that horizontal separation applies where apartment units are built on state or regional property land or on leased waqf land, with ownership evidenced by a building ownership certificate (SKBG Sarusun), while the ownership certificate of an apartment unit (SHM Sarusun), which combines the unit with a share of the common land, reflects the attachment principle.[42] The legislature has therefore not chosen one principle over the other; it has assigned each principle to a distinct legal configuration.

The limits of the principle are also visible outside traditional land transactions. Firmansyah argues that horizontal separation in mining should go beyond the separation of land from buildings and plants and should also separate land from minerals and coal, relying on the provision of the Mining Law under which licence holders own the minerals and coal they produce once the required fees are paid.[43] He notes that the Mining Law regulates neither horizontal separation nor vertical attachment, leaving the relationship between mineral ownership and land ownership unclear. The principle thus

[36] Evodius Eron Djerahu, Orpa J. Nubatonis, and Chatryen M. Dju Bire, 'Analisis Yuridis Penerapan Asas Pemisahan Horisontal dan Pelekatan Vertikal terhadap Peralihan Hak atas Tanah Ditinjau dari Hukum Perdata', *Artemis Law Journal*, 3.2 (2026), 498–511 https://doi.org/10.35508/alj.v3i2.22538.
[37] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'.
[38] Dwiyatmi, 'Asas Pemisahan Horizontal dan Asas Perlekatan', p. 125.
[39] Law No. 4 of 1996 on Security Rights over Land and Land-Related Objects, art. 4(4)–(5).
[40] Ananta and Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal'.
[41] Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.
[42] Lestari and Resen, 'Pengaturan Asas Perlekatan'; Law No. 20 of 2011 on Apartment Units.
[43] Firmansyah, 'Rekonseptualisasi Asas Pemisahan Horisontal'; Law No. 4 of 2009 on Mineral and Coal Mining, as amended by Law No. 3 of 2020.

expands in some fields while it contracts in others, a dynamic that reflects the absence of a single legislative theory.

The principle of horizontal separation must also be understood in relation to the social function of land. Article 6 of the Basic Agrarian Law declares that all rights over land have a social function.[44] Sumardjono's analysis of land from the perspective of economic, social and cultural rights shows that land is not merely an object of property but the basis of livelihood and cultural identity.[45] Seen from this perspective, horizontal separation allows the person who cultivates or builds on land to retain the fruits of that work even where the land belongs to another. The principle therefore has a protective dimension that goes beyond the technical allocation of ownership.

Infrastructure development provides another test. Situmorang examines land acquisition for the Jakarta Light Rail Transit Phase 1B project and finds that the principle has not been applied consistently, particularly in compensation for buildings and utilities standing on state land and on land rights, which may lead to legal uncertainty and agrarian disputes.[46] Under the law on land procurement for public purposes, compensation is given for land, space above and below ground, buildings, plants and objects related to land.[47] The listing of buildings and plants as separate objects of compensation presupposes that they may have owners distinct from the owner of the land, which is an application of horizontal separation; yet the practice of valuation does not always follow that logic.

Investment on management-right land is a further field in which the limits of separation are tested. Wicaksono and Supardjo examine the Sultan Hotel case and conclude that the extension of the rights to build granted over management-right land in 2002 was legally defective because it lacked the consent of the holder of the management right, and that the rights expired in 2023 without renewal.[48] They argue that the absence of indemnity clauses in arrangements involving rights to build over management-right land exposes investors to risk. The case demonstrates that the separation between land and building is only as secure as the time-limited right that supports the building: once the right to build expires, the building owner's position becomes precarious.[49]

Finally, the principle interacts with the administration of former Western rights. Pratiwi examines land formerly held under Western (colonial) rights that, after Government Regulation No. 18 of 2021, is adjusted to state land, and the status of land or buildings linked to a person declared absent (*afwezig*) but occupied by others.[50] She finds that persons who possessed the land have priority, that occupants must first obtain a court decision on the absence of the former owner, and that they may then complete the purchase through the probate office under the horizontal separation principle before applying for land rights.[51] Here the principle operates as a bridge that allows the building and the land to be regularised through distinct legal steps.

The foregoing analysis shows that the principle of horizontal separation in Indonesian law has three characteristics. First, it is foundational, because it derives from adat law through Article 5 of the Basic Agrarian Law and is embodied in the rights to build and leases for buildings. Second, it is relative, because the accession principle continues to operate in security law, apartment law and contract law. Third, it is underdetermined, because neither statute nor doctrine clearly defines the

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44 Basic Agrarian Law, art. 6.

45 Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*.

46 Situmorang, 'Analysis of the Application Principle of Horizontal Separation'.

47 Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, art. 33.

48 Wicaksono and Supardjo, 'Building Rights, Management Rights'.

49 Government Regulation No. 40 of 1996 on Rights to Cultivate, Rights to Build and Rights of Use over Land; Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units and Land Registration.

50 Yulita Dwi Pratiwi, 'Principle of Horizontal Separation in Registration of the Former Western Rights Land as the Object of Afwezigheid', *Jurnal Ilmiah Kebijakan Hukum*, 16.1 (2022), 135–52 https://doi.org/10.30641/kebijakan.2022.V16.135-152.

51 Pratiwi, 'Principle of Horizontal Separation in Registration'.

criteria by which a building or plant is treated as separate from or attached to the land.[52] These characteristics form the background against which the validity of partial land sales must be assessed.

The absence of criteria can be addressed by identifying the factors that the literature and the decisions implicitly employ. Three factors are recurrent. The first is the identity of the person who brought the object into existence: a building constructed or a tree planted by a person other than the landholder is more readily treated as separate. The second is the legal basis on which that person used the land, such as a right to build, a lease, a build-operate-transfer agreement or a customary arrangement. The third is the intention of the parties as expressed in their agreement or inferred from their conduct.[53] Where all three factors point toward separation, the object should be treated as separate; where they are absent, the presumption that the landholder owns what stands on the land becomes stronger in practice, even within a system formally based on separation.

These characteristics also explain why the literature reaches divergent conclusions. Authors who emphasise the customary foundation of national land law, such as Djerahu, Nubatonis and Dju Bire, and Rahman and Tista, conclude that horizontal separation is the governing principle.[54] Authors who examine specific statutes, such as Dwiyatmi and Adnyana and Purwanto, emphasise the inroads made by accession.[55] Both views are correct within their own frame of reference. The task for legal analysis is not to choose between them in the abstract but to determine which principle governs a particular transaction and on what legal basis. That task is especially pressing in sales of land that do not transfer everything on the land.

The Legal Position of a Land Sale without a Comprehensive Transfer of Rights

A land sale may be incomplete in two distinct senses. In the first, which may be called an objectively partial sale, the parties transfer the land but deliberately exclude some or all of the buildings or plants on it. In the second, which may be called a procedurally incomplete sale, the parties intend to transfer the land and its objects but the transfer of the right is not completed because the sale was not made before a PPAT, was not registered, or was not followed by delivery of possession. Both situations involve a sale 'without a comprehensive transfer of rights', and both are common in Indonesian practice. They are examined here in turn, since their legal consequences differ.

The validity of an objectively partial sale must first be assessed under the general law of contract. Under the Civil Code, a sale is an agreement by which one party binds himself to deliver a thing and the other to pay the agreed price, and it is concluded as soon as the parties agree on the thing and the price.[56] A valid agreement requires consent, capacity, a certain object and a lawful cause.[57] Indarta, Mangar and Ristasaputra analyse the separation of land and building ownership in sale agreements under Article 1320 and conclude that, under horizontal separation, a land sale does not automatically carry over the building or other objects on the land, which transfer only if this is 'expressly agreed by the parties'.[58] The requirement of a certain object is decisive: the agreement must identify with

[52] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'; Dwiyatmi, 'Asas Pemisahan Horizontal dan Asas Perlekatan'.

[53] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'; Rahmat Ramadhani, 'Konstruksi Hukum Kepemilikan Bangunan di Atas Tanah Hak Milik Orang Lain Berdasarkan Perjanjian Build Operate and Transfer (BOT)', *Jurnal EduTech*, 4.1 (2018), 21–29 https://jurnal.umsu.ac.id/index.php/edutech/article/download/1885/1934; Made Helena Putri Laksmi and I Gede Yusa, 'Perlindungan Hukum terhadap Penyewa Bangunan yang Berdiri diatas Tanah yang Hendak di Eksekusi', *Jurnal Magister Hukum Udayana*, 12.1 (2023), 165–77 https://doi.org/10.24843/JMHU.2023.v12.i01.p13.

[54] Djerahu, Nubatonis, and Dju Bire, 'Analisis Yuridis Penerapan Asas Pemisahan Horisontal'; Rahman and Tista, 'Asas Pemisahan Horisontal dalam Politik Hukum Pertanahan'.

[55] Dwiyatmi, 'Asas Pemisahan Horizontal dan Asas Perlekatan'; Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.

[56] Indonesian Civil Code, arts 1457–1458.

[57] Indonesian Civil Code, art. 1320.

[58] Indarta, Mangar, and Ristasaputra, 'Pemisahan Kepemilikan Tanah dan Bangunan', p. 347.

sufficient precision whether the object of sale is the land alone, the land together with all objects, or the land together with only some of them.

The customary law of land sales leads to the same conclusion through a different route. In adat, a sale of land is a transaction that is clear (*terang*), because it is performed before or with the knowledge of the customary or village head, cash (*tunai*), because the transfer and payment occur simultaneously, and real (*riil*), because the transaction is completed by actual delivery.[59] Because adat law recognises the separate character of houses and plants, the object of the transaction is whatever the parties clearly declare before the village head. A sale of land without the trees on it is therefore a recognised customary transaction, provided that the exclusion is made known at the time of the sale.

The interpretation of the agreement is therefore central. Where the deed of sale describes the object only by reference to the land certificate, which records the land right and the parcel but not the buildings or plants, it may be unclear whether the parties intended to include the objects on the land. Under the Civil Code, agreements must be performed in good faith and bind the parties as law.[60] A court called upon to interpret such a deed must examine the intention of the parties, the price paid, the condition of the land at the time of the sale and the subsequent conduct of the parties. Indarta, Mangar and Ristasaputra's emphasis on express agreement reflects the difficulty of reconstructing that intention after the event.[61]

The empirical literature confirms that this practice continues. Andari and Purwoatmodjo examine a sale of land without the coconut trees on it and conclude that it is an application of horizontal separation, and that land rights 'do not by themselves include ownership of the buildings and plants on them'.[62] Nasrullah, studying the same practice in Patilanggio, Pohuwato, characterises it as an analogical application of horizontal separation in which the landholder and the tree owner are different legal subjects.[63] Rustam and Nasrullah report that, in Pohuwato, land and coconut trees are frequently owned by different persons, a pattern that fits the principle but lacks clear regulation and therefore produces legal uncertainty.[64]

The difficulty is that the separated objects acquire no defined legal form. Nasrullah identifies the key difference between the separation of trees and the secondary rights recognised by the Basic Agrarian Law: the right of use, the right to build and the lease all have clear time limits and restrict the use of the land by the landholder during their term, whereas the separation of coconut trees has no clear time limit and the landholder may continue to grow other crops on the land.[65] The tree owner therefore holds an interest that is recognised by custom but not classified by statute. It is not a right to build, not a right of use and not a lease, and it is not recorded in the land register.

Rustam and Nasrullah state the consequence directly: what is needed is clear regulation 'as in the concept of rights to cultivate, rights to build and rights of use contained in the Basic Agrarian Law'.[66] They propose written agreements between the landowner and the owner of the trees or buildings, separate registration of attached objects, and a regional regulation. Tista similarly proposes that the government regulate the registration of plantation crops and buildings alongside the existing land registration under Government Regulation No. 24 of 1997.[67] The convergence of these proposals indicates that the problem lies not in the validity of the partial sale but in the absence of a registration instrument for the separated object.

The Gayo Lues study reveals the consequences of this gap at the level of dispute resolution. Desi, Herinawati and Nasrianti found that, in Putri Betung, the principle was not fully applied, largely

[59] Soepomo, *Bab-Bab tentang Hukum Adat*; Harsono, *Hukum Agraria Indonesia*.
[60] Indonesian Civil Code, art. 1338.
[61] Indarta, Mangar, and Ristasaputra, 'Pemisahan Kepemilikan Tanah dan Bangunan'.
[62] Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal', p. 703.
[63] Nasrullah, 'Analisis Hukum secara Analogi'.
[64] Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal', p. 16160.
[65] Nasrullah, 'Analisis Hukum secara Analogi'.
[66] Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal', p. 16160.
[67] Tista, 'Hakikat Asas Pemisahan Horizontal'.

because residents did not understand it, and that disputes between landowners and the owners of objects on the land were usually settled through customary deliberation.[68] The main obstacles were the refusal of parties to accept agreements, bad faith, difficulty in finding witnesses and limited public awareness, which village heads sought to address through binding decisions, personal persuasion and the recruitment of knowledgeable witnesses.[69] In the absence of documentation, the existence and scope of the exclusion depend on oral testimony, which weakens with time.

The same problem appears in litigation. Tanujaya, Yulyana and Rigel analyse Gianyar District Court Decision No. 89/Pdt.G/2016/PN Gin, a case involving unlawful acts and breach of contract over a disputed property, and apply the distinction between vertical attachment under the Civil Code and horizontal separation under the Basic Agrarian Law to the dispute.[70] The case shows that, where a lease of land is combined with the construction of a building, the question of who owns the building after the relationship ends is frequently resolved only by the court, because the parties failed to address it in their agreement.

The partial sale must also be distinguished from the sale of a building alone. Under horizontal separation, a building or a plant may itself be the object of a sale, separately from the land on which it stands. Such a sale transfers ownership of the object but no right to the land, so that the buyer of the building must rely on an existing secondary right, a new agreement with the landowner or the removal of the building. Ramadhani's analysis of buildings erected on another's land under build-operate-transfer agreements, and Laksmi and Yusa's analysis of buildings on leased land, show that the value of a building separated from the land depends entirely on the legal basis for its continued presence.[71] A sale of a building without regard to that basis transfers an object whose economic value may be illusory.

A further question concerns the moment at which ownership passes. The Civil Code distinguishes between the sale, which is concluded by agreement, and the transfer of ownership, which requires delivery.[72] Customary law, by contrast, treats the sale of land as a real and cash transaction in which the transfer occurs at the moment of payment and delivery before the village head.[73] National land law has adopted the customary concept of sale but requires a PPAT deed and registration for the transfer to be registered and to bind third parties.[74] The result is a layered structure: the sale may be complete in the customary sense, valid in the contractual sense and yet incomplete in the registration sense.

The layered structure matters for the separated objects. If the land is sold in the customary manner while the trees are excluded, the exclusion is effective between the parties as soon as the transaction is concluded. When the transfer is later recorded before a PPAT and registered, the exclusion should be carried into the deed. If it is not, the registered buyer may appear, on the face of the register, to own the land free of any interest of the tree owner, and a subsequent buyer who relies on the register may claim to be a purchaser in good faith. The failure to carry the exclusion into the formal instruments thus converts a valid customary arrangement into a source of conflict.[75]

The sale of land without the plants on it is not confined to coconut trees. The same structure appears where fruit trees, rubber, coffee or other perennial crops are retained by the seller, and where a house is retained while the land beneath it is sold. In each case, the retained object is of significant economic value and may outlast several transfers of the land. The Pohuwato and Gayo Lues studies

[68] Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.
[69] Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.
[70] Tanujaya, Yulyana, and Rigel, 'Analisis Putusan Nomor 89/Pdt.G/2016/PN Gin'; Gianyar District Court Decision No. 89/Pdt.G/2016/PN Gin.
[71] Ramadhani, 'Konstruksi Hukum Kepemilikan Bangunan'; Laksmi and Yusa, 'Perlindungan Hukum terhadap Penyewa Bangunan'.
[72] Indonesian Civil Code, art. 1459.
[73] Soepomo, *Bab-Bab tentang Hukum Adat*.
[74] Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*; Harsono, *Hukum Agraria Indonesia*.
[75] Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal'; Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'.

show that the practice is embedded in rural economies where land and crops are managed by different persons over long periods, often within families.[76] The legal analysis must therefore accommodate a practice that is socially accepted and economically rational, rather than treat it as an irregularity to be eliminated.

The role of the village head deserves attention in this respect. In the customary sale, the presence of the village or customary head makes the transaction clear and public, so that the community knows what has been sold and what has been retained.[77] In the national system, this function has been transferred largely to the PPAT and to the land office. Yet the PPAT deed is based on the certificate and on the declarations of the parties, and it records the land right rather than the objects on the land. The public knowledge that the customary sale produced is not fully reproduced by the formal instruments. A PPAT who inspects the land, asks about the buildings and plants and records the answers in the deed would restore the clarity that the customary requirement of *terang* was meant to secure.[78]

Table 1. Horizontal Separation and Accession in Indonesian Land Law

No.	Aspect	Horizontal Separation and Accession Compared
1	Source and basis	Horizontal separation derives from adat law and is received through Basic Agrarian Law, arts 5, 16, 35 and 44. Accession derives from the Civil Code, arts 500, 506 and 571.
2	Relationship between land and objects	Under horizontal separation, buildings and plants are distinct objects that may belong to a person other than the landholder. Under accession, they form part of the land and belong to its owner.
3	Effect on a sale of land	Under horizontal separation, objects pass only if they are expressly included; exclusion is valid. Under accession, objects follow the land automatically unless the law provides otherwise.
4	Security rights	Hak Tanggungan Law, art. 4(4)–(5): buildings and plants are covered only if expressly stated in the deed, and a non-landholder owner must sign. Fiduciary security may cover buildings that cannot be encumbered with a Hak Tanggungan.
5	Apartment units	SKBG Sarusun on state, regional or leased waqf land reflects horizontal separation; SHM Sarusun, combining the unit with common land, reflects accession.
6	Main weakness	Horizontal separation leaves separated objects without registration, time limits or criteria. Accession may disregard the interests of persons who planted or built on land owned by another.

Table 1 shows that Indonesian law does not apply a single principle to the relationship between land and the objects on it. Horizontal separation is the foundational principle and governs the validity of a partial sale, while accession continues to operate in security law and in the statutory configuration of apartment ownership. The comparison also shows that the weakness of horizontal separation is not normative but institutional: the principle permits the separation of objects but provides no registration instrument, time limit or evidentiary criterion for the separated object.[79]

The second form of incomplete sale is procedural. Under Government Regulation No. 24 of 1997, the transfer of a land right through sale may be registered only if it is proven by a deed drawn

[76] Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'; Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.
[77] Soepomo, *Bab-Bab tentang Hukum Adat*.
[78] Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*; Ananta and Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal'.
[79] Dwiyatmi, 'Asas Pemisahan Horizontal dan Asas Perlekatan'; Lestari and Resen, 'Pengaturan Asas Perlekatan'; Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.

up by an authorised PPAT.[80] Government Regulation No. 37 of 1998 assigns PPATs the task of drawing up deeds as evidence of certain legal acts concerning land rights, including sale.[81] Santoso explains that the PPAT deed serves as evidence of the sale and as the basis for registering the transfer, while registration provides the buyer with evidence of the right that binds third parties.[82] A sale that is not made before a PPAT is therefore not necessarily void, but its transfer cannot be registered.

Maulina and Sihombing examine a 2004 land sale in Depok that was documented only by a receipt and a statement of sale, without a PPAT deed. They conclude that the transaction met the material requirements of the Civil Code but that the court's reasoning did not align with Government Regulation No. 37 of 1998 on PPAT duties.[83] The decision illustrates the tension between the material validity of a sale, assessed under contract law and adat principles, and its formal registrability, assessed under the land registration regime. A sale may be valid between the parties yet incapable of producing a registered transfer.

Hermawan and Putra analyse Bekasi District Court Decision No. 226/Pdt.G/2021/PN Bks and find that a good-faith buyer under a private land sale may still obtain legal protection, since the court found the sale valid, but that registration remains blocked without an authentic PPAT deed.[84] They argue that the court's refusal to authorise the buyer to sign the deed and to arrange the transfer of the certificate made the ruling difficult to use, and that the judges should have considered existing case law. A judgment that declares a sale valid without enabling its registration leaves the buyer with a right that cannot be asserted against third parties.

Herry reaches a similar conclusion for private sales of land and buildings that remain encumbered under a home-ownership loan. Such sales generally cannot be registered at the land office unless a PPAT draws up the sale deed, but a binding district court ruling may authorise the buyer to complete the sale before a PPAT when the seller cannot be located.[85] The court thus functions as the mechanism that converts a materially valid but procedurally incomplete sale into a registrable transfer. Where the object of the sale includes a building, the court order must also identify the building with sufficient precision, otherwise the separation problem resurfaces at the registration stage.

Binding sale agreements (*perjanjian pengikatan jual beli*, PPJB) present a further variant. Abdullah, Silviana and Hartanto examine Surakarta District Court Decision No. 100/Pdt.G/2024/PN Skt and the subsequent appellate and cassation rulings. They find that buyers who act in good faith, satisfy the requirements for a valid agreement and complete a clear and fully paid transaction under a PPJB deserve legal protection, but that the courts have not applied this protection consistently: the first-instance court annulled the PPJB and recognised the heir's ownership, while the High Court reversed the decision.[86] The Supreme Court's guidance on the criteria of a good-faith purchaser provides a reference point, but its application remains case-specific.[87]

The incompleteness of a sale may also concern possession rather than registration. Septiana, Sudirman and Kencanawati show that, where a buyer cannot take possession of the purchased land or building, the buyer has not gained legal certainty over the property even though the sale was made

[80] Government Regulation No. 24 of 1997, art. 37(1).
[81] Government Regulation No. 37 of 1998 on the Regulations on the Position of Land Deed Officials, as amended by Government Regulation No. 24 of 2016, art. 2.
[82] Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*.
[83] Maulina and Sihombing, 'Analisis Keabsahan Jual Beli Tanah'.
[84] Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'; Bekasi District Court Decision No. 226/Pdt.G/2021/PN Bks.
[85] Ayni Suwarni Herry, 'Peralihan Hak atas Tanah dan Bangunan terhadap Jual Beli yang Dilakukan di Bawah Tangan dengan Jaminan Kredit Pemilikan Rumah', *PALREV: Journal of Law Review*, 1.2 (2018), 19–28 https://openjournal.unpam.ac.id/index.php/palrev/article/view/5323.
[86] Abdullah, Silviana, and Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik'; Surakarta District Court Decision No. 100/Pdt.G/2024/PN Skt.
[87] Supreme Court Circular Letter No. 4 of 2016 on the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chambers as Guidelines for the Courts.

before a PPAT.[88] The buyer must pursue the right through litigation and enforcement, and the seller or heirs who retain possession may be liable for unlawful acts and compensation.[89] This finding is significant for the separation problem: where the seller remains in possession of a building on the land, it may be unclear whether he does so unlawfully or because the building was never sold.

The use of sale deeds for purposes other than a genuine sale is a further source of incomplete transfers. Tricahyani and others conclude that a PPAT may be held liable for drawing up a land sale deed based on a debt default, because doing so is professional negligence that leaves the deed misrepresenting the actual legal transaction.[90] A sale deed used to settle a debt has no legal force as a transfer of title, since land may be encumbered for a debt only through a Hak Tanggungan.[91] The finding confirms that the formal instrument of sale cannot cure a defect in the underlying cause of the transaction.

The procedurally incomplete sale and the objectively partial sale frequently coincide. A villager may sell land by receipt while retaining the trees, and the buyer may later seek a PPAT deed or a court order to register the transfer. At that stage, the scope of the original sale must be reconstructed, often from oral testimony. The studies from Depok, Bekasi and Pohuwato thus describe two aspects of a single problem: the informality of the sale and the informality of the exclusion reinforce each other.[92] A legal framework that addresses only one aspect will leave the other unresolved.

The role of good faith requires particular attention. Courts protect buyers who acted honestly, paid the price and had no reason to suspect a defect in the seller's title.[93] In the context of horizontal separation, good faith should also include reasonable inquiry into the ownership of buildings and plants on the land. A buyer who sees coconut trees, a house or a shop on the land cannot ordinarily claim to have assumed that these belong to the seller without making inquiry, particularly in regions where the separation of land and plants is a known customary practice. The physical presence of the objects is itself a warning that another person may hold an interest in them.[94]

The home-ownership loan cases identified by Herry add a further dimension, because the interests of a creditor are involved. Where land and a building encumbered under a home-ownership loan are sold privately, the seller remains the debtor and the registered holder, the bank retains its security right and the buyer holds only a contractual claim.[95] If the seller defaults, the creditor may execute the security right against the land and the building, and the buyer's position depends on whether the private sale can be asserted against the creditor. Under the Hak Tanggungan Law, it ordinarily cannot, since the security right follows the object into whoever's hands it passes. The incomplete sale thus exposes the buyer not only to the seller but also to the seller's creditors.[96]

These findings indicate that the courts perform an indispensable function in completing incomplete sales, but that this function is exercised case by case. In the Bekasi decision, the court declared the sale valid but declined to authorise the buyer to complete the transfer, whereas Herry

88 Septiana, Sudirman, and Kencanawati, 'Legal Consequences for a PPAT Sale and Purchase Deed's'.
89 Septiana, Sudirman, and Kencanawati, 'Legal Consequences for a PPAT Sale and Purchase Deed's'; Indonesian Civil Code, art. 1365.
90 Wulan Tricahyani and others, 'Pertanggungjawaban Hukum Notaris/PPAT dalam Pembuatan Akta Jual Beli Tanah yang Dibuat karena Adanya Wanprestasi dalam Perjanjian Utang Piutang', *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan*, 9.1 (2025), 77–89 https://doi.org/10.23920/acta.v9i1.2647.
91 Tricahyani and others, 'Pertanggungjawaban Hukum Notaris/PPAT'.
92 Maulina and Sihombing, 'Analisis Keabsahan Jual Beli Tanah'; Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'; Nasrullah, 'Analisis Hukum secara Analogi'.
93 Abdullah, Silviana, and Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik'; Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'.
94 Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'; Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.
95 Herry, 'Peralihan Hak atas Tanah dan Bangunan'.
96 Hak Tanggungan Law, art. 7; Ananta and Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal'.

describes court orders that authorise the buyer to appear before a PPAT in place of an absent seller.[97] A consistent practice, in which a court that declares a private land sale valid also authorises its completion before a PPAT and identifies precisely which objects on the land are included, would substantially reduce uncertainty.

The distinction between material validity and registrability also affects the allocation of risk between the parties. Until the transfer is registered, the seller remains the registered holder and may, whether deliberately or not, sell or encumber the land again. The buyer who has paid the price but not registered the transfer bears the risk that a third party will acquire a registered right first. The land registration system was designed to eliminate precisely this risk by making the register the authoritative record of rights, and its evidentiary force increases with time.[98] Incomplete sales thus leave buyers outside the protection that the system offers, and partial sales leave the owners of excluded objects outside it altogether.

Taken together, these studies show that the legal position of a sale without a comprehensive transfer depends on which element is missing. Where the parties validly agree to exclude certain objects, the sale is valid and the exclusion is effective, but the excluded objects remain outside the registration system. Where the sale is valid but not made before a PPAT, it binds the parties but cannot be registered without a PPAT deed or a court order. Where the sale is formally complete but possession is not delivered, the buyer holds title but must enforce it through the courts. Where the sale deed conceals another transaction, it has no force as a transfer. In each configuration, the decisive factor is the clarity of the agreement and the evidence of what was sold.

The Status of Buildings and Plants after the Sale: Ownership, Secondary Rights and Protection of the Parties

The status of buildings and plants after a sale of land must be determined according to the legal basis on which they stand. Four configurations can be distinguished. In the first, the objects belong to the landholder and are sold together with the land, either expressly or by necessary implication. In the second, the objects are expressly excluded from the sale and remain the property of the seller or a third party. In the third, the objects stand on the land on the basis of a recognised secondary right, such as a right to build, a lease for buildings or a build-operate-transfer agreement. In the fourth, the objects are affected by a security right, an execution or the cancellation of the certificate of the land.

In the first configuration, the status of the objects is straightforward. If the deed of sale states that the object of sale is the land together with the buildings and plants on it, ownership of those objects passes to the buyer together with the land. The position is less clear if the deed is silent. Under horizontal separation, silence does not automatically include the objects, because land rights do not by themselves include ownership of what stands on the land.[99] In practice, however, a sale of a house and land is ordinarily understood to include the house, and courts may infer such inclusion from the price, the description of the parcel and the conduct of the parties. Silence is therefore a source of risk rather than a rule of exclusion.

In the second configuration, the excluded objects remain the property of the seller or of the third party who owns them. The buyer of the land acquires the land subject to the presence of those objects. Andari and Purwoatmodjo conclude that the party who acts in good faith is the one who deserves protection.[100] The difficulty lies in the duration and content of the excluded owner's interest. As Nasrullah shows, the owner of coconut trees on land sold to another has no statutory time limit, while the landholder may continue to use the land for other crops.[101] The relationship must therefore be governed by agreement: the parties should specify how long the trees may remain, whether they

[97] Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'; Herry, 'Peralihan Hak atas Tanah dan Bangunan'.
[98] Government Regulation No. 24 of 1997, art. 32; Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*.
[99] Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal', p. 703; Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'.
[100] Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal'.
[101] Nasrullah, 'Analisis Hukum secara Analogi'.

may be replanted, who bears the cost of maintenance and whether the buyer has a right of first refusal to purchase them.

The excluded owner's interest also raises questions about the use of the land. The owner of trees on land sold to another needs access to the land to maintain and harvest the trees, while the buyer of the land may wish to build, cultivate other crops or sell the land again. Without an agreement, these competing uses must be reconciled by custom or by the court. The Gayo Lues study shows that village heads frequently resolve such conflicts through binding decisions and persuasion, which may be effective locally but do not produce a record that binds subsequent buyers.[102] A written agreement defining rights of access, harvesting and eventual removal of the trees would provide a more durable basis for coexistence.

The question of what happens when the excluded objects come to the end of their natural life is particularly difficult. If coconut trees die or are cut down, does the tree owner have a right to replant? Nasrullah's observation that the separation of trees has no clear time limit suggests that, absent agreement, the interest may be understood as lasting for the life of the existing trees.[103] Such an interpretation would be consistent with the customary conception of separation, in which the interest attaches to the specific object rather than to the land. Replanting would then require a new agreement with the landowner, which would bring the relationship closer to a lease or right of use.

In the third configuration, the status of the building depends on the secondary right. A right to build allows its holder to construct and own buildings on land owned by another for a limited period, and a lease for buildings permits the use of land for construction against payment of rent.[104] If the land is sold while such a right subsists, the buyer acquires the land subject to the right, and the building remains the property of the holder of the secondary right. Laksmi and Yusa show that a building erected on leased vacant land under a fixed-term lease can be owned by a party other than the landowner, and that even when the leased land is later encumbered by the landowner, the position of the building owner can still be protected.[105]

The protection of the building owner, however, depends on proof. Fajrimustika, Soepandji and Parwitasari examine Bandung High Court Decision No. 107/Pdt/2021/PT Bdg concerning an oral lease of unlimited duration for a building on land held under a right of ownership. They conclude that the lease was not legally binding because the claimant could not prove de jure ownership of the house on the landowner's land, so that the building leasehold is subordinate to the landowner's right of ownership.[106] The decision reveals the practical limit of horizontal separation: separation protects the building owner only if the building owner can prove both the ownership of the building and the legal basis on which it stands.

Build-operate-transfer arrangements illustrate how contract determines the status of the building. Ramadhani concludes that ownership of a building erected on another's land under such an agreement depends on its terms, which typically transfer the building to the landowner when the agreement ends, and that the agreement must be reviewed first because horizontal separation allows land and buildings to be owned by different parties.[107] If the land is sold during the term of the agreement, the buyer steps into the landowner's position and acquires the right to receive the building at the end of the term, while the operator retains ownership until then. The sale deed should therefore disclose the agreement.

The Sultan Hotel case shows the vulnerability of buildings supported by time-limited rights. When a right to build over management-right land expires or is extended without the consent of the

[102] Desi, Herinawati, and Nasrianti, 'Penerapan Asas Pemisahan Horisontal dalam Penyelesaian Sengketa'.
[103] Nasrullah, 'Analisis Hukum secara Analogi'.
[104] Basic Agrarian Law, arts 35, 36 and 44; Santoso, *Hukum Agraria*.
[105] Laksmi and Yusa, 'Perlindungan Hukum terhadap Penyewa Bangunan'.
[106] Fajrimustika, Soepandji, and Parwitasari, 'Asas Pemisahan Horizontal pada Hak Sewa untuk Bangunan'; Bandung High Court Decision No. 107/Pdt/2021/PT Bdg.
[107] Ramadhani, 'Konstruksi Hukum Kepemilikan Bangunan'.

management-right holder, the building owner loses the legal basis on which the building stands.[108] The status of a building after a sale of the underlying right, or after the expiry of that right, is therefore inseparable from the validity and duration of the right. Under the implementing regulations on rights to build, the regulation of the status of buildings at the end of the right becomes decisive for the parties.[109]

Table 2. Status of Buildings and Plants after a Sale of Land

No.	Configuration	Status after the Sale and Key Requirement
1	Objects expressly included in the sale	Ownership passes to the buyer together with the land. Requirement: express clause in the PPAT deed identifying the objects.
2	Objects expressly excluded (e.g. coconut trees retained by the seller)	Objects remain with the seller or third party; the buyer takes the land subject to them. Requirement: agreement on duration, use and removal, as no statutory time limit exists.
3	Building on a right to build, lease for buildings or BOT agreement	Building remains with the holder of the secondary right; the buyer takes the land subject to that right. Requirement: proof of de jure ownership and of the right; disclosure in the deed.
4	Land subject to a Hak Tanggungan	Buildings and plants pass to the auction buyer only if included in the deed granting the security right with the owner's signature; otherwise they remain with their owner.
5	Building owned separately and used as fiduciary collateral	Building remains with its owner, encumbered by fiduciary security. Requirement: written statement of the landowner to protect the creditor.
6	Certificate of the land cancelled	Good-faith building owner may claim compensation for the value of the building, including on the basis of unjust enrichment.

Table 2 shows that the status of buildings and plants after a sale of land is not determined by the principle of horizontal separation alone but by the legal configuration in which the objects stand. In every configuration, the protection of the owner of the objects depends on an express agreement, a recognised right or a document that proves ownership. Where none of these exists, the owner of the separated objects is exposed to the claims of the buyer of the land and of creditors.[110]

The fourth configuration concerns security rights and execution. Under the Hak Tanggungan Law, a security right over land covers the buildings and plants on it only if this is expressly stated in the deed granting the security right, and if they belong to another, their owner must sign the deed.[111] Ananta and Mahfudh emphasise that notaries and PPATs must verify valid ownership and that the deed must clearly specify the rights being encumbered.[112] A buyer at an execution sale therefore acquires the buildings only if they were included in the security right. Where they were not, the building owner retains ownership even after the land has been sold at auction.

Where a building is owned by a person who does not own the land, the building cannot be encumbered with a Hak Tanggungan on its own, and creditors turn to fiduciary security. The Fiduciary Security Law expressly extends fiduciary security to buildings that cannot be encumbered

[108] Wicaksono and Supardjo, 'Building Rights, Management Rights'.
[109] Government Regulation No. 40 of 1996; Government Regulation No. 18 of 2021.
[110] Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal'; Fajrimustika, Soepandji, and Parwitasari, 'Asas Pemisahan Horizontal pada Hak Sewa untuk Bangunan'; Hatta Isnaini Wahyu Utomo, 'Perlindungan Hukum bagi Kreditur atas Obyek Jaminan Berupa Bangunan Tanpa Tanah dalam Perspektif Asas Pemisahan Horizontal', *Jurnal Selat*, 7.1 (2019), 50–64 https://doi.org/10.31629/selat.v7i1.1521; Syaira Chairunissa, Rembrandt, and Yasniwati, 'Putusan MA Membatalkan Sertifikat, Memulihkan Status Tanah serta Perlindungan Hukum Pemilik Atasnya', *Jurnal Niara*, 19.1 (2026), 240–48 https://journal.unilak.ac.id/index.php/nia/article/view/32399.
[111] Hak Tanggungan Law, art. 4(4)–(5).
[112] Ananta and Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal'.

with a Hak Tanggungan.[113] Utomo shows that, under horizontal separation, land and buildings have separate legal status, so that one can be pledged without automatically binding the other, and that creditors can secure their position through a written statement from the landowner that the land will not be pledged to other creditors.[114] Alyan likewise argues that, because 'the principle of horizontal separation in the Basic Agrarian Law separates the right to the land from the property', creditors holding a building as collateral face difficulties when the land belongs to another, and that a written statement from the landowner is required.[115]

Adnyana and Purwanto warn that the structure of the Hak Tanggungan Law can complicate execution and leave building owners who do not own the land poorly protected, and recommend harmonising the law with the Basic Agrarian Law.[116] The status of the building after an execution sale thus depends on the configuration of security rights: if the building was included with the consent of its owner, it passes to the auction buyer; if it was excluded, it remains with its owner, but the owner's continued use of the land must rest on a right that binds the buyer of the land.

A further situation, which overlaps with the others, arises where the certificate of the land is cancelled. Chairunissa, Rembrandt and Yasniwati analyse a Supreme Court decision that cancelled a certificate and restored the status of the land. They argue that, although the plaintiff lost the administrative challenge, the plaintiff could still file a civil suit as a good-faith possessor, and that, since building ownership can be separated from land ownership under national agrarian law, the doctrine of unjust enrichment could support a claim for compensation for the value of the building.[117] Horizontal separation thus provides a basis for protecting the economic value of a building even where the land right on which it stood is lost.

The same logic applies in land procurement for public purposes. Because compensation is assessed separately for land, buildings, plants and other objects, the owner of a building or plant on land held by another is entitled to compensation for that object.[118] Situmorang's finding that the principle has been applied inconsistently in the Jakarta LRT 1B project, particularly for buildings and utilities on state land, shows that the entitlement exists in law but is not always realised in valuation.[119] Strengthening the technical standards for land acquisition so that they explicitly incorporate horizontal separation would give owners of separated objects a clearer path to compensation.

The apartment units regime offers a model for the registration of separated buildings. Under the Apartment Units Law, ownership of units built on state or regional land or on leased waqf land is evidenced by a building ownership certificate that exists separately from the land right.[120] This instrument demonstrates that Indonesian law is capable of registering ownership of a building independently of the land. Extending a comparable instrument to buildings constructed under long-term leases or build-operate-transfer agreements on land held under a right of ownership would give those buildings a documentary basis and would facilitate their use as collateral, which Utomo and Alyan identify as a persistent problem for creditors.[121]

A related question concerns the remedies available when the buyer of the land wishes to remove the separated objects. If the trees or buildings belong to another person by virtue of a valid exclusion or a subsisting right, the buyer cannot simply remove them, since doing so would infringe the owner's property and could constitute an unlawful act.[122] Conversely, if the owner of the objects has no

[113] Law No. 42 of 1999 on Fiduciary Security, art. 1(2).
[114] Utomo, 'Perlindungan Hukum bagi Kreditur'.
[115] Rizka Ananda Alyan, 'Kedudukan Prinsip Pemisahan Horizontal dalam Melindungi Kreditur atas Objek Jaminan Berupa Bangunan', *Jurnal Paradigma: Jurnal Multidisipliner Mahasiswa Pascasarjana Indonesia*, 4.1 (2023), 29–40 (p. 38) https://journal.ugm.ac.id/paradigma/article/view/77744.
[116] Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.
[117] Chairunissa, Rembrandt, and Yasniwati, 'Putusan MA Membatalkan Sertifikat'.
[118] Law No. 2 of 2012, art. 33.
[119] Situmorang, 'Analysis of the Application Principle of Horizontal Separation'.
[120] Lestari and Resen, 'Pengaturan Asas Perlekatan'.
[121] Utomo, 'Perlindungan Hukum bagi Kreditur'; Alyan, 'Kedudukan Prinsip Pemisahan Horizontal'.
[122] Indonesian Civil Code, art. 1365.

continuing right to keep them on the land, the buyer may demand their removal, but fairness may require compensation for their value where the owner acted in good faith. Chairunissa, Rembrandt and Yasniwati's reliance on unjust enrichment to support compensation for a building on land whose certificate was cancelled points toward the same solution.[123]

The analysis therefore suggests that horizontal separation operates most fairly when it is combined with a duty of disclosure and a principle of compensation. The seller should disclose which objects on the land belong to whom; the buyer should inquire; the PPAT should record the answers; and, where an object must be removed, its owner should be compensated if he acted in good faith. Such a combination would preserve the customary insight that labour invested in land creates a distinct interest, while giving that interest the certainty that modern land administration requires.[124]

The interaction between execution and lease is illustrated by Laksmi and Yusa's study of tenants of buildings standing on land that is about to be executed. They show that, where the landowner encumbers the land after the tenant has erected a building on it, the building owner's position can still be protected, so that neither the building owner nor the landowner is harmed.[125] The protection rests on the prior existence of the lease and on the separation between land and building. A creditor who accepts land as collateral without inquiring into the buildings on it, and without obtaining the signature of the building owner as Article 4(5) of the Hak Tanggungan Law requires, cannot extend the security right to the building.[126]

The question of creditors also arises in the second configuration. Where the seller retains trees or a building on land sold to another, the seller may wish to use the retained objects as collateral. Since the objects are not covered by the land certificate, they cannot be encumbered with a Hak Tanggungan without the participation of the landholder, and the absence of any registration instrument makes fiduciary security over plants difficult in practice.[127] The economic value of the retained objects therefore cannot easily be mobilised, which reduces the attractiveness of partial sales and encourages informal arrangements. Registration of separated objects would also serve to unlock their value as collateral.

From these configurations, a coherent framework can be derived. The status of buildings and plants after a sale of land is determined, first, by the express terms of the sale; second, by the existence of a recognised secondary right that binds the buyer; third, by the inclusion or exclusion of the objects in any security right; and fourth, by the availability of evidence of ownership. Horizontal separation makes each of these outcomes possible but does not itself determine which outcome applies. The principle is a permission rather than a rule of allocation.[128]

This framework has practical implications for PPATs. A sale deed should state expressly whether the buildings and plants on the land are included, list any excluded objects with their owners, and record any secondary right, lease or build-operate-transfer agreement that affects the land. Where the excluded objects belong to the seller, the deed or a separate agreement should define the duration and content of the seller's continuing interest. Ananta and Mahfudh's emphasis on the PPAT's duty to verify ownership in security transactions applies equally to sales.[129] A carefully drafted deed transforms the uncertainty of separation into a defined contractual relationship.

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[123] Chairunissa, Rembrandt, and Yasniwati, 'Putusan MA Membatalkan Sertifikat'.
[124] Tista, 'Hakikat Asas Pemisahan Horizontal'; Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*; Andari and Purwoatmodjo, 'Akibat Hukum Asas Pemisahan Horizontal'.
[125] Laksmi and Yusa, 'Perlindungan Hukum terhadap Penyewa Bangunan'.
[126] Hak Tanggungan Law, art. 4(5); Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.
[127] Utomo, 'Perlindungan Hukum bagi Kreditur'; Alyan, 'Kedudukan Prinsip Pemisahan Horizontal'; Adnyana and Purwanto, 'Inconsistency of the Principle of Horizontal Separation'.
[128] Djerahu, Nubatonis, and Dju Bire, 'Analisis Yuridis Penerapan Asas Pemisahan Horisontal'; Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'.
[129] Ananta and Mahfudh, 'Tinjauan Hukum tentang Asas Pemisahan Horizontal'; Tricahyani and others, 'Pertanggungjawaban Hukum Notaris/PPAT'.

The framework also has implications for registration. The current land register records land rights and, in the case of apartment units, building ownership certificates, but it does not record ownership of plants or buildings owned separately from the land outside those configurations.[130] The proposals of Tista and of Rustam and Nasrullah for the registration of plantation crops and buildings would close this gap.[131] A notation on the land certificate indicating that certain objects on the land belong to another person would at least warn buyers and creditors. Without such a notation, the buyer of land relies on physical inspection and on the honesty of the seller, which is precisely the situation that the land registration system was designed to overcome.[132]

The framework bears, too, on the work of the courts. Courts deciding disputes over buildings and plants after a sale should begin by identifying the configuration, then examine the agreement, the secondary right, the security right and the evidence of ownership. The Gianyar, Bandung, Bekasi and Surakarta decisions show that courts already engage in this analysis, but without a consistent method.[133] Ganindra and Kurniawan's call for clearer criteria to protect parties acting in good faith remains apt.[134] The social function of land, which Sumardjono places at the centre of Indonesian land law, requires that the person who has invested labour and capital in planting or building on land should not lose the fruits of that investment merely because the land has changed hands.[135]

The analysis also clarifies the relationship between horizontal separation and inheritance. Where the excluded objects belong to the seller, they pass on the seller's death to his heirs, who acquire the same interest that the seller held. The heirs may be unaware of the exclusion, and the buyer of the land may seek to treat the objects as abandoned. The Surakarta decision shows that disputes between buyers and heirs are frequent and that courts at different levels may reach opposite conclusions.[136] Documentation of the exclusion is therefore essential not only for the immediate parties but for their successors.

Taken as a whole, the findings support a reconstruction of horizontal separation as a principle that requires institutional support. Its normative foundation in adat law and in Article 5 of the Basic Agrarian Law is secure, and the courts and the literature consistently accept that land may be sold without the objects on it. What is lacking is an institutional framework that gives the separated objects a defined legal form, a time limit, a mode of registration and a clear position in security transactions. Until such a framework is established, the status of buildings and plants after a sale will continue to depend on the drafting of individual agreements and on the discretion of individual courts.[137]

Conclusion

This article has examined the principle of horizontal separation, the legal position of land sales without a comprehensive transfer of rights, and the status of buildings and plants after such sales. It finds that the principle of horizontal separation, derived from adat law and received through Article 5 of the Basic Agrarian Law, is the foundational principle of Indonesian land law, but that it is neither absolute nor fully defined. The accession principle continues to operate in security law, apartment law and contract law, and neither statute nor doctrine provides clear criteria for determining when an object is separate from the land.

A sale of land that excludes the buildings or plants on it is valid where the parties expressly agree on the object of the sale, since horizontal separation permits the transfer of land without the objects

[130] Lestari and Resen, 'Pengaturan Asas Perlekatan'; Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*.
[131] Tista, 'Hakikat Asas Pemisahan Horizontal'; Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'.
[132] Government Regulation No. 24 of 1997, art. 32; Harsono, *Hukum Agraria Indonesia*.
[133] Tanujaya, Yulyana, and Rigel, 'Analisis Putusan Nomor 89/Pdt.G/2016/PN Gin'; Fajrimustika, Soepandji, and Parwitasari, 'Asas Pemisahan Horizontal pada Hak Sewa untuk Bangunan'; Hermawan and Putra, 'Perlindungan Hukum bagi Pembeli yang Beritikad Baik'; Abdullah, Silviana, and Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik'.
[134] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'.
[135] Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*.
[136] Abdullah, Silviana, and Hartanto, 'Perlindungan Hukum Pembeli Beriktikad Baik'.
[137] Ganindra and Kurniawan, 'Kriteria Asas Pemisahan Horizontal'; Tista, 'Hakikat Asas Pemisahan Horizontal'; Rustam and Nasrullah, 'Penerapan Asas Pemisahan Horisontal'.

attached to it. A sale that is valid between the parties but not made before a PPAT, not registered or not followed by delivery of possession remains incomplete: it binds the parties but cannot be asserted against third parties until it is converted into a registrable transfer through a PPAT deed or a court order. The status of buildings and plants after the sale depends on the express terms of the sale, the existence of a recognised secondary right, the configuration of security rights and the availability of evidence of ownership.

The analysis further shows that partial and incomplete sales frequently coincide in practice and reinforce each other. Informal sales by receipt, exclusions recorded only orally and the failure to carry exclusions into PPAT deeds and certificates expose both the buyer of the land and the owner of the separated objects to the claims of third parties, heirs and creditors. Horizontal separation is therefore best understood as a permission rather than a rule of allocation: it makes the separation of land and objects possible, but the outcome in each case is determined by agreement, by recognised rights and by evidence.

Legal certainty therefore requires three measures. First, PPAT sale deeds should contain express clauses stating whether buildings and plants are included, identifying excluded objects and their owners, and disclosing secondary rights that affect the land. Second, the land registration system should provide for the registration of, or at least a notation concerning, buildings and plants owned separately from the land. Third, the Hak Tanggungan Law and related legislation should be harmonised with the Basic Agrarian Law so that the interests of owners of separated objects are protected in security transactions and in land procurement. Future research should examine the operation of these measures empirically, particularly in rural areas where the separation of land and plants remains a living customary practice.

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"This study used artificial intelligence (AI) tools and methodologies in the following capacities:

1. **Manuscript writing support**: AI-based language models, such as Claude (Anthropic), were employed to:
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