

Implementation of *Nemo Plus Juris* Principle and Good Faith as Evidence

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Abstract. *The transfer of land rights is usually carried out through the process of making a deed, either a sale and purchase deed, a deed of inheritance or a deed of grant signed by the parties having an interest in the transfer of rights to the land. And the making of the deed of transfer of land rights must be carried out in the presence of a notary / official who makes land deeds, so that the deed of transfer of land rights can have evidentiary power either as deeds in the judicial system or deeds that serve as the basis for making certificates. In the transfer of land rights, the Nemo Plus Juris Principle is known, which protects the real rights holder and the principle of good faith, which means protecting people who in good faith obtain a right from the person suspected of being the legal right holder. This principle is used to provide evidentiary power for maps and public lists that exist in the Land Office.*

Keywords: Nemo Plus Juris; Good Faith; Evidence.

1. INTRODUCTION

Land can become property rights. Property rights, among others, can be obtained by buying and selling¹. Sale and purchase which results in the transfer of title to land from the seller to the buyer is included in religious law or land law. Property rights must be registered².

In registering new land rights, namely from typical village land or real estate to a certificate or through a transfer process before a Notary or Land Deed Making Official, whether it be inheritance³, sale and purchase, grants, deeds of sharing of common rights or exchange, the role of the Notary In this case, it is very important to implement the principle of *Nemo Plus Juris* and the principle of good faith in the transfer of land rights as evidence for the owner, so that it is expected that there will be discipline and in accordance with legal procedures that apply in land⁴.

¹ Alam, Bahrul., & Khisni, Akhmad. (2020). Legal Protection of Holders of Land Loss Data In The City Land Office of Kendari. *JURNAL AKTA*: Vol.7, No. 2, 159-164. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7963>

² Limbong, Bernhard. (2014). *Politik Pertanahan*. Jakarta: Margaretha Pustaka., p. 76-77

³ Arrohim, Mohammad B., & Wahyuningsih, Sri Endah. (2020). Analysis of Judicial Application of Criminal Penalty Against Notary / Land Deed Officials Conducting Making Crime of the Fake Authentic Deed in State Court of Semarang. *JURNAL AKTA*: Vol.7, No. 2, 183-188. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7891>

⁴ Wahyuni, & Ma'ruf, Umar. (2020). The function of the Notary / PPAT In filing process Acquisition of Land Rights To Interests Investment in Regional Autonomy Era Based on Act No. 25 of 2007 concerning Foreign Investment. *JURNAL AKTA*: Vol.7, No. 2, 189-194. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7965>

The two principles, namely the principle of *Nemo Plus Juris*⁵, are the principles in which a person cannot transfer land rights beyond the rights inherent in him. And the principle of good faith is the principle whereby someone with good intentions registers their land rights into their legal rights and is protected by law⁶. So in the process of transferring land rights, the notary plays a very important role so that the *Nemo Plus Juris* Principle prudence and the principle of good faith can be implemented by interested parties to have the power of evidence⁷.

2. METHODS

The method used in this research is doctrinal approach. This research examines the implementation of Notary according to Civil Law and Common Law related to International Transactions. This research is descriptive analytical which can be easily find out the problems (cases) associated with other related phenomena or symptoms and explain about the implementation of legislation in each different countries and systems. And the data collected in this study can be classified into two, namely primary data from field research and secondary data from literature studies⁸.

3. RESULTS AND DISCUSSION

3.1. Role of the Notary in the Implementation of Transfer of Rights to Land

a. Overview of the position of a Notary

Act No. 30 of 2004 concerning the Position of Notary⁹ which is now amended by Act No. 2 of 2014 concerning the Position of Notary is a unification in the field of notary office regulation, meaning that the only legal rule in the form of a law regulating the position of a notary in Indonesia so that All matters relating to notaries in Indonesia must refer to the Law on the Position of Notary Public¹⁰

The position of a notary is a position created by the state. Placing a notary as a position is a field of work or duty that is deliberately made legal regulations for certain purposes and functions (certain authorities) and is sustainable as a permanent work environment¹¹.

b. The importance of registering land rights

⁵ Resmiyanti, Titi., Khisni, Akhmad, & Sulchan, Achmad. (2019). Dispute over Double Certificate on the National Land Agency of Indramayu District. *JURNAL AKTA*: Vol. 6, No. 4, 703-710. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7577>

⁶ Sutedi, Adrian. (2013). *Peralihan Hak Atas Tanah dan Pendaftarannya*. Jakarta: Sinar Grafika, 5th Edition., p.98

⁷ *Ibid.*

⁸ Adigita, Monicha R., Ma'ruf, Umar., & Witasari, Aryani. (2019). The Role and Protection of Laws to Notary Related To the Dispute That Made Between the Parties. *JURNAL AKTA*: Vol. 6, No. 4, 783-788. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7631>

⁹ Act No. 2 of 2014 concerning the Position of Notary

¹⁰ Winarti, & Ngadino. (2019). Review Of Juridical Registration Implementation And Transfer Of Land Or Building With Deed Land Sale In The Office Of The Samarinda City. *JURNAL AKTA*: Vol. 6, No. 4, 711-718. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7595>

¹¹ Putra, Axel Budi., & Maryanto. (2019). Legal Analysis of the Form Deed of Sale and Purchase Agreements and the Disposal of Land Rights as the Basic Right to Apply Broking Which Has Expired. *JURNAL AKTA*: Vol. 6, No. 4, 733-740. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7624>

Land registration is an implementation of agrarian law based on these principles. The definition of land registration according to Article 1 number 1 Government Regulation Number 24 of 1997 concerning Land Registration¹², is a series of activities carried out by the government continuously, continuously and regularly including collection, processing, bookkeeping¹³, presentation and maintenance of physical data and juridical data in the form of maps and a list of land parcels and apartment units, including the issuance of certificates as evidence of ownership rights for land parcels for which there are already rights and ownership rights to apartment units and certain rights that impose them¹⁴.

c. Principles in Transfer of Rights to Land

The land registration system used in a country depends on the legal principles adopted by the state in transferring land rights. There are two kinds of legal principles, namely the principle of good faith and the principle of *Nemo Plus Juris*. Even though a country adheres to one of the legal principles / land registration system, it can be said that none of these countries adheres purely to one of the legal principles / legal systems of land registration. This is because the two principles of law / land registration system both have advantages and disadvantages so that each country looks for its own way out¹⁵.

The principle of good faith states that a person who obtains a right in good faith will continue to be the holder of a legal right according to law. This principle aims to protect people with good intentions. Trouble arises, how do you know someone with good intentions? The harassment is that only people with good intentions are willing to obtain rights from those who have registered their rights. In order to protect people with good intentions, it is necessary to have a general list with strong evidence. The registration system is called a positive system¹⁶.

3.2. The Role of the Notary in Implementing the *Nemo Plus Juris* Principle and Good Faith in the Transfer of Land Rights as Evidence for the Owner

Every authority given to a position must have a legal rule. As a limitation so that the position can run well and does not conflict with the authority of other positions. Thus, if an official (notary) commits an action outside the predetermined authority, it can be categorized as an act of violating authority. The authority of a notary is only stated in Article 15 paragraphs 1, 2 and 3 of Act No. 2 of 2014 concerning the Position of Notary Public¹⁷.

¹² Government Regulation Number 24 of 1997 concerning Land Registration

¹³ *Ibid.*

¹⁴ Harjanto, Fery., & Gunarto. (2018). Effects Of Creation Deed of Sale and Purchase of Land Which Does Not Match Procedure of Making Land Deeds. *JURNAL AKTA*: Vol. 5, No. 4, 857-864. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/3718>

¹⁵ Op.Cit.

¹⁶ Ginting, Darwin. (2010). *Hukum Kepemilikan Hak Atas Tanah Bidang Agribisnis*. Bogor: Ghalia Indonesia., p.154

¹⁷ Act No. 2 of 2014, Op.Cit. Article 15 paragraphs 1, 2 and 3

The role of a notary in the implementation of the *Nemo Plus Juris* Principle is the principle that a person has should not exceed the rights that exist to him in the transfer of land rights and the principle of good faith is the principle where a person is really the owner of land rights based on juridical and physical data does not violate the law in the transfer of rights to land as evidence for the owner, here the Notary must also play an active role in providing advocacy and legal counseling to tappers or clients about how the proper legal procedures are to process the transfer of rights to their land and how that person may not violate the provisions of the provisions applicable law in the case of the transfer of land rights so that in the future there will be no claims or complaints from third parties and others that are legal consequences¹⁸.

- a. What are the obstacles in the implementation of the *Nemo Plus Juris* Principle and the principle of good faith in the transfer of land rights as evidence for the owner

Obstacles in the implementation of the *Nemo Plus Juris* Principle and good faith in the transfer of land rights as evidence for the owner, sometimes here the Notary has obstacles, whether it is regarding the data of the parties such as the completeness and authenticity of letters shown to Notaries such as Inheritance Certificate and KTP (Card The original identity card) and KSK (Family Card) must be well known by the Notary, who will later make a reference or embryo in the issuance of a certificate by the National Land Agency (BPN). How a Notary is also sometimes difficult to see how someone who is facing him has good intentions in submitting a transfer of rights to his land because someone with complicated signs can show that he has difficulty showing the appropriate files requested by the Notary Public¹⁹.

- b. What are the legal consequences if the *Nemo Plus Juris* Principle and the principle of good faith is not applied in the transfer of land rights

The general legal consequences that occur if these two principles are not implemented in the transfer of land rights will occur:

- 1) The emergence of a lawsuit by a third party.

In the transfer of land rights, if it is not balanced by the application of the legal system and the *Nemo Plus Juris* Principle and good faith, it can be ascertained that obtaining a person's land rights can be sued by a third party who feels disadvantaged by the process.

- 2) The lawsuits are in the form of criminal and civil cases.

A lawsuit in the form of a criminal law if there are rules of criminal law that are violated in obtaining land rights for that person and this criminal lawsuit is valid against someone who registers land rights but does not fulfill the elements of proper land registration and violates the rules. Civil lawsuits can also arise if someone feels that they have suffered a civil loss and a civil suit can be filed by someone for the acquisition of rights to his land.

- 3) Cancellation by PTUN.

If the acquisition of land rights cannot be accounted for legally, then the name stated in the land title certificate can be canceled by PTUN.

¹⁸ Widyawati, & Handoko, Widhi. (2018). The Notary Role / PPAT in Improving Legal Awareness Society to Perform Registration Rights to Land Based on Government Regulation No. 24 of 1997 on Land Registration. *JURNAL AKTA*: Vol. 5, No. 4, 975-980. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4127>

¹⁹ *Ibid.*

4. CLOSING

4.1. Conclusion

The role of a notary in the implementation of the *Nemo Plus Juris* Principle is the principle that a person should not exceed the rights that exist to him in the transfer of rights to land and the principle of good faith is the principle where someone is really the owner of land rights based on juridical and physical data does not violate the law in the transfer of rights to land as evidence for the owner, here the Notary must also play an active role in providing advocacy and legal counseling to tappers or clients about how appropriate legal procedures are to process the transfer of rights to their land and how that person may not violate the provisions of the provisions applicable law in the case of the transfer of land rights so that in the future there will be no claims or complaints from third parties and others that are legal consequences.

4.2. Suggestion

The legal consequence if the principle of *Nemo Plus Juris* and the principle of good faith is not implemented in the transfer of land rights as the basis of evidence for the owner is that parties can be canceled as rights holders if the principle is not applied due to legal actions of the Government / BPN in registering land and issuing a certificate as a legal act, to create a new legal situation and create new legal rights and obligations to certain legal persons / subjects, must meet the requirements and must not contain elements of error, both in terms of technical aspects of land registration and juridical aspects . And if the principle is not applied in the transfer of land rights as the basis of evidence for the owner, it is a. The emergence of a lawsuit by a third party b. Lawsuits in the form of criminal and civil cases c. Cancellation by PTUN.

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