



Application of the Nemo Plus Juris Transferre Potest Quam Ipse Habet Principle in the Transfer of Land Rights

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Article Info

ISSN (online): 2583-6536

Volume: 04

Issue: 04

July - August 2025

Received: 20-05-2025

Accepted: 10-06-2025

Published: 10-07-2025

Page No: 59-69

Abstract

This study aims to analyze the role of the Land Titles Registrar (PPAT) in applying the principle of Nemo Plus Juris transferre potest quam ipse habet during land rights transfers in Central Lombok, West Nusa Tenggara Province, Indonesia, and to identify the obstacles to implementing this principle during land rights transfers. The research method employed is empirical legal research, using legislative, sociological, and conceptual approaches. The study concludes that Land Titles Registrar's role in applying the principle of nemo plus juris transferre potest quam ipse habet is to ensure the validity of land rights transfers by verifying the authenticity of certificates, the consistency of legal and physical land data with records at the Land Office, and the identity of the parties involved. Additionally, Land Titles Registrar ensures that the party transferring the rights is indeed the lawful rights holder, based on the certificate and supporting documents. Obstacles to applying the principle of nemo plus juris transferre potest quam ipse habet include both legal and non-legal factors. Legally, these challenges include the lack of integration of land information systems, conflicts between customary law and positive law, and transfers of inheritance without unanimous consent of all heirs. Non-legally, obstacles involve low legal literacy, strong family traditions, inaccurate land data, and internal family conflicts.

DOI: <https://doi.org/10.54660/IJL.2025.4.4.59-69>

Keywords: Nemo Plus Juris Principle, Transfer of Land Rights

1. Introduction

According to In the Big Indonesian Dictionary, land means the surface of the earth or the layer of the earth that is above it. Land in Indonesia is controlled by the State and used for the welfare of the people, as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

In general, land is divided into two types: state land and land with rights. In the UUPA itself, the term used for state land is "land directly controlled by the state." The term "state land" itself appears in land administration practices, where control is carried out by land authorities ^[1]. Meanwhile, land with rights is land that is already attached to a specific right, such as Ownership Rights, Building Use Rights, Cultivation Rights, or other land rights, whether owned by individuals or legal entities ^[2].

The demand for land will always increase, so it is not surprising that land values have increased significantly due to the imbalance between land supply and demand for land, which has given rise to various problems. Currently, land can be obtained in several

¹Julius Sembiring, State Land Revised Edition, Jakarta, Kencana, 2016, p. 9.

²Legianty, Yunanto. & Irawati, " Land Sale and Purchase Agreements That Violate the Nemo Plus Juris Principle in Land Registration " , Notarius Journal, Vol.12 No.2, 2019, p. 6.

ways, namely by applying for rights or transferring rights^[3]. Acquiring land rights in society is often done through the transfer of rights/transfer of rights, The transfer of land rights is the transfer of land rights from the old rights holder to the new rights holder, legally based on laws and regulations.

The legal basis governing land rights transition is outlined in Government Regulation Number 24 of 1997 concerning Land Registration, specifically in Article 37 paragraph 1, which states: "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, company investment, and other legal acts of transfer of rights, except for transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations."

As a material right, land rights can be transferred and transferred. A right to land will be transferred if ownership is transferred to another person without going through a legal action, but is transferred due to the occurrence of a certain event, for example, because someone dies and the inheritance passes to their heirs. A right to land can be transferred if it is through a legal act carried out by the holder of the right to the land. Transfer of land rights can occur due to sale and purchase, gift, exchange or other actions that transfer land rights^[4].

Land is granted and owned by individuals with rights stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, commonly known as the UUPA. To control and utilize a plot of land, a person must have the authority to do so^[5]. Land ownership rights are one of the rights that are often transferred by the community. In the transfer of land rights, the principle of *Nemo Plus Juris transferre potest quam ipse habet* is known, where this principle states that a person cannot transfer land rights beyond what he is entitled to.

Article 19 of the UUPA requires that land registration be carried out first so that someone can own and obtain the benefits from the land they want. Every type of land right must be registered and certified by the Land Office or the National Land Agency/BPN, which has offices in every Regency and City area^[6].

In the context of land rights registration, either through the issuance of a new certificate for village-specific land or through the transfer of rights before a Notary or Land Deed Official (PPAT), such as in cases of inheritance, sale and purchase, grant, division of joint rights, or exchange, the role of the PPAT is very crucial. The PPAT functions as the executor and implementer of the Principle of *Nemo Plus Juris transferre potest quam ipse habet* in the process of transferring land rights, which aims to serve as legal proof of ownership for the owner^[7].

A land title certificate is a document that proves land rights. A certificate is strong evidence of land ownership and is also a legal document. provides legal certainty and protection to

the person whose name is listed on the certificate. A series of land registration activities includes a land registration publication system adopted by a country. There are two types of systems, namely the positive publication system and the negative publication system, both of which have fundamental differences. Two legal principles apply to both systems, namely the Principle of Good Faith and the Principle of *Nemo Plus Juris transferre potest quam ipse habet*^[8].

Negative publication system applies. The principle of *Nemo Plus Juris transferre potest quam ipse habet* states that no person may transfer more rights than they already have. This principle aims to protect rights holders, who can always reclaim their rights registered in any name^[9]. In practice, cases involving land ownership disputes arise from transfers made by individuals who are not the true owners of the land. This problem becomes more complicated when the Land Office issues a Land Title Certificate.

As in the case that occurred in Central Lombok, Chandru Nebhraj Topandasani, who owned a PT named PT. Panji Mara, purchased several plots of land. on behalf of PT. Panji Mara from Razyendrina Samisara Ranggaloli, and obtained the approval and knowledge of the company in this case are the legitimate shareholders, the total amount of land traded is ±300,000 M2 (30 hectares), located in Dusun Rujak Tengah, Selong Belanak Village, Praya Barat District, Central Lombok Regency, NTB, where one of the objects of the sale and purchase carried out is recorded in the land certificate in the name of Mamiq Seterah. The problem is that the land that is still recorded in the name of Mamiq Seterah is based on the land certificates owned, namely ± 3,300 M2, but after re-measuring the land, the area was found to be ± 5,100 M2, different from that stated in the land certificate. Chandra Nebhraj Topandasani obtained the disputed object with the correct procedures and procedures as outlined in the provisions of applicable laws and regulations, and against the payment obligations as agreed in the Deed The sale and purchase agreement has been paid, but at that time it was not accompanied by a certificate as proof of legal ownership of the disputed object, however Razyendrina Samisara Ranggaloli showing other authentic documents regarding the disputed land, it is very clear that the object of the sale and purchase is an object that can be transferred, and Razyendrina Samisara Ranggaloli promised and was obliged to issue a Certificate for the disputed object. However, some time after the sale and purchase, Razyendrina Samisara Ranggaloli did not respond regarding her obligations regarding the issuance of the certificate. It was found that Razyendrina Samisara Ranggaloli had secretly sold the disputed object without the knowledge of Chandra Nebhraj Topandasani to a person named Lalu Kertayasa, even though Mr. Lalu Kertayasa knew exactly and was directly involved in every stage of the sale and purchase between Mr. Chandra Nebhraj Topandasani and Mrs. Razyendrina Samisara Ranggaloli, so that the sale and purchase carried out by Razyendrina

³ Raka Agustra, "Registration of Transfer of Land Ownership Rights Based on Private Sale and Purchase", Thesis, Sriwijaya University, Palembang, 2023, p. 76.

⁴ Andy Hartanto, *Land Law: Characteristics of Land Purchase and Sale for which Land Rights Have Not Been Registered*, Lakhsang Justitia Surabaya, Surabaya, 2019, p. 66.

⁵ Tri Wahyoe Haryanti, *The Role of PPAT in the Implementation of the Nemo Plus Juris Principle in the Registration of Transfer of Land Rights Due to Sale and Purchase*, Vol.11 No.3, September Edition, 2023, p. 1.

⁶ Ibid

⁷ Syarifah Hasna Ritonga *et al.*, "Implementation of the Nemo Plus Juris Principle Regarding Legal Actions on Land Before the PPAT (Case Study of Supreme Court Decision Number 2678 K/PDT/2015)", *Journal of Law & Policy Review*, Volume.01, Number.2, 2023, p. 196.

⁸ Legianty, Yunanto. & Irawat, Op. Cit.

⁹ Ibid

Samisara Ranggasoli with Lalu Kertayasa was invalid/null and void by law, in addition, Lalu Kertayasa unlawfully entered and controlled the disputed object and had submitted an application for the issuance of a certificate of ownership in his name^[10].

As is known, a certificate is a proof of ownership of land rights. Therefore, the actual land owner will be disadvantaged by the issuance of the certificate. By transferring land rights by someone who is not the actual owner of the transferred land, their actions violate the principles applicable to land registration activities, namely the Principle of Nemo Plus Juris *transferre potest quam ipse habet*. This will also certainly have an impact on the validity or invalidity of the agreement made between the parties^[11]. From this background, it is known that there is an imbalance between *das Sollen* and *das Sein* regarding the application of the Principle of Nemo Plus Juris *transferre potest quam ipse habet*.

Based on the background description above, there are several main problems examined in this study, namely 1) What is the role of PPAT in the implementation of the principle of Nemo Plus Juris *transferre potest quam ipse habet* in the transfer of land rights in Central Lombok? and 2) What are the obstacles in the implementation of the principle of Nemo Plus Juris *transferre potest quam ipse habet* in the transfer of land rights?

2. Research method

The type of research used in this study is Empirical Legal Research. Empirical legal research, in English, is called empirical legal research; in Dutch, it is called *empirisch juridisch onderzoek*^[12], and is a type of legal research that analyzes and examines the operation of law in society. Empirical legal research examines law conceptualized as actual behavior, as an unwritten social phenomenon experienced by everyone in social life^[13]. In empirical legal research, the focus of the study is the application of law in society.

The approaches used in this research include:

- a) Statute Approach. The statute approach is carried out by examining all laws and regulations related to the legal issue being discussed (researched)^[14].
- b) Sociological Approach; The sociological approach to law is an approach that analyzes how reactions and interactions occur when the normative system operates in society. In addition, there is also a sociological approach to law. This approach is constructed as a stable, institutionalized, and socially legitimate social behavior^[15].
- c) Conceptual Approach; The conceptual approach starts from the views and doctrines that have developed in legal science^[16].

Data analysis is a process of arranging data sequences, organizing them into patterns, categories, and basic descriptive units. Data analysis in this study was carried out by collecting field data obtained from interviews. The author then analyzed the problems using legal materials or secondary and tertiary data (if necessary) that had been selected qualitatively and then linked to the results of interviews or field data in the form of interview results obtained by the author. Then, the data was analyzed and described systematically. Furthermore, the data was selected and processed and then stated descriptively so that in addition to describing and revealing the research results, it could also provide solutions to the legal problems in question.

The data techniques and tools used by the author are data collection through interview techniques, namely collecting data directly through questions and answers based on a list of questions that have been prepared and conducting structured interviews regarding the application of the principle of Nemo Plus Juris *transferre potest quam ipse habet* in the transfer of land rights in Central Lombok.

3. Discussion

3.1. The Role of PPAT in the Implementation of the Principle of Nemo Plus Juris *Transferre Potest Quam Ipse Habet* in the Transfer of Land Rights in Central Lombok Regency

In the implementation of a *sas Nemo Plus Juris transferre potest quam ipse habet*, the role and responsibility of the Land Deed Making Officer (PPAT). The legal basis for the PPAT's responsibilities has been regulated in Government Regulation Number 24 of 1997. Based on Article 1 paragraph (24) of Government Regulation Number 24 of 1997, the PPAT is a Public Official who is given the authority to make certain land deeds^[17].

The PPAT's responsibility is to create and issue land transfer deeds, which must comply with applicable regulations. In addition, the PPAT has the following responsibilities^[18]:

- a. Must swear.
- b. Must immediately submit the deed that has been made and published as well as other documents required for the making and publication of another deed to the local Regency/City National Land Agency to be registered in the "land book" and included in the relevant "land title certificate.";
- c. It is mandatory to maintain a "list of deeds" that have been made and published, according to the form specified in the applicable regulations.
- d. Must carry out the instructions given by the National Land Agency and the officials who supervise it;
- e. Every month, it is mandatory to submit a "monthly report" made for one month to the Head of the Regency/City National Land Agency Office.

In carrying out tasks in the agrarian sector, particularly those related to land by Government Regulation Number 24 of 1997, the Land Deed Official (PPAT) has a very important

¹⁰ <https://insidelombok.id/berita-utama/jual-lahan-orang/> accessed on March 7, 2025

¹¹ Fanny Amelia Legianty *et al.*, "Land Sale and Purchase Agreements that Violate the Principle of Nemo Plus Juris in Land Registration", *Notarius*, Vol.12 No.2, 2019, p. 8.

¹² Salim HS and Erlies Septiana Nurbani, "Application of Legal Theory in Thesis and Dissertation Research", RadjaGrafindo Persada, Jakarta, 2022, p. 20.

¹³ Muhaimin, "Legal Research Methods", Mataram University Press, Mataram, 2020, p. 80.

¹⁴ *Ibid*

¹⁵ Salim HS and Erlies Septiana Nurbani, *Op. Cit.* p. 23.

¹⁶ Peter Mahmud Marzuki, "Legal Research", 4th Edition, Kencana, Jakarta, 2016, p. 172.

¹⁷ Iftitah, A, The Authority of Land Deed Making Officials (Ppat) in Making Land Sale and Purchase Deeds and Their Legal Consequences, *Lex Privatum Journal*, 2019, p. 3.

¹⁸ Ismaya, S, Land Administration Law, 1st Edition, No. 1, Graha Ilmu, 2013, p. 167.

role. As a public official, the PPAT plays a role in the land registration process by preparing deeds that serve as legal evidence that certain legal acts have occurred regarding land rights. Every transaction aimed at transferring, assigning, mortgaging, or making land as collateral for debt must be set out in a deed drawn up by and before the PPAT. In this capacity, the PPAT is authorized to prepare authentic deeds for each such legal act, as long as the object is within its jurisdiction.

registration is the documentation of a reality that can become a fact about a person's ownership of the land they own. This documentation includes events related to a person's ownership of a plot of land, which can be seen by people and serves as proof of ownership. The purpose of land registration is simply that if someone needs land, they will legally know how to obtain it and what evidence they need^[19].

A series of land registration activities includes a land registration publication system adopted by a country. There are two types of systems: a positive publication system and a negative publication system, both of which have fundamental differences. Two legal principles apply to both systems: the Principle of Good Faith and the Principle of Nemo Plus Juris transferre potest quam ipse habet.

Based on UUPA and Government Regulation No. 24 of 1997, the publication system used is a negative system that contains positive elements. This applicable system adheres to two kinds of principles, namely the Principle of Good Faith and the Principle of Nemo Plus Juris transferre potest quam ipse habet. The principle of Nemo Plus Juris transferre potest quam ipse habet states that a person cannot transfer rights beyond the rights he has. In other words, a person who does not have the right to a certain plot of land cannot automatically carry out a legal act of registering the land, *let alone* transferring it to another party^[20].

Therefore, any transfer of land rights carried out by a party without legal authority is considered invalid and null and void. A person who does not hold the rights to a plot of land has no legal basis to register, *let alone* transfer, the rights to that land to another party. The application of this principle aims to guarantee legal protection to the legitimate rights owner, so that their rights are not lost due to unlawful acts by another party. Thus, the true rights holder still has the right to reclaim their land, even if the land has been registered or certified in another person's name.

If a dispute or problem arises regarding ownership of land rights that involves a violation of the principle of Nemo Plus Juris transferre potest quam ipse habet, then in principle, legal protection is available for legitimate rights holders. The government provides legal protection in two forms: preventive and repressive. Preventive legal protection is realized through the provisions of Article 1320 of the Civil Code, which regulates the conditions for a valid agreement, including the legal consequences if these conditions are not met. However, these provisions are often violated, resulting in losses for those who should have land rights. As a follow-up measure, aggrieved rights holders can file a petition to

revoke an illegally issued land certificate and simultaneously request that the party acting arbitrarily be sanctioned. This sanction is a form of repressive legal protection from the government to ensure the rights of the true landowner remain protected^[21].

In everyday life, land is a very valuable asset legally and economically. Any trading or transfer of land rights must be carried out correctly and in accordance with applicable regulations. The Land Deed Drafting Officer (PPAT) is very important in this process. The PPAT ensures that all matters related to the transfer of land rights are carried out legally and do not cause future problems. To buy, sell, or transfer land rights, several documents must be prepared, including^[22]:

1. Original land certificate or deed
2. Data of rights holders or transferors
3. Buyer data such as KTP and KK.
4. Marriage certificate (for those who are married)
5. NPWP (Taxpayer Identification Number)
6. NJOP Information
7. Tax Payment, PPH for sellers 2.5%, BPHTB for buyers 5% of the Taxable Object Sales Value
8. PBB (Land and Building Tax)
9. SPPT (Tax Payable Notification Letter) must be checked again at Bapenda to see if there are any arrears or not.

Land Deed Officials (PPAT) are responsible for drafting deeds related to the transfer of land rights, such as deeds of sale, grant, or exchange. Not only does a sale and purchase transaction result in the transfer of land rights, but when someone gives their land to another as a gift, this process also requires an official document prepared by a PPAT. This ensures that land rights are transferred legally and registered, avoiding future disputes or ownership claims. Furthermore, a notary helps ensure that supporting documents such as land certificates, ID cards, and other documents are authentic. This process ensures that the land being donated or sold truly belongs to the parties concerned and that there are no disputes or legal issues associated with it^[23].

Notaries and PPATs assist in the process of transferring land rights, and can be done more easily and safely, not only helping to prepare documents, but also providing legal protection. That way, there is no need to worry about problems such as fake documents, land disputes, or inappropriate legal procedures. By using PPAT services not only get legal certainty but also protection against potential problems in the future. To buy, sell, or transfer land rights, be sure to involve a notary and PPAT for a smooth and safe process. Both notaries and PPATs are authorized to make authentic deeds. The concern of PPATs is specifically for land deeds, which guarantee that the deeds they make have valid law. PPATs & notaries are required to keep documents related to transactions and report them to the BPN, namely the National Land Agency. Where the relationship between notaries and PPATs both maintains and stores archives of the parties they serve for future legal purposes^[24].

Land Deed Making Officer (PPAT) is a public official who

¹⁹ Boedi Harsono, Loc. Cit. P. 113.

²⁰ Fanny Amelia Legianty *et al.*, Loc., Cit. p. 27

²¹ Tri Wahyoe Haryanti, Location. Cit.

²² Interview with Lalu Daud Nurjadi, SH.,M.Kn, Notary and PPAT Central Lombok, Notary and PPAT Office of Lalu Daud Nurjadi, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, March 5, 2025, 10:15 WITA.

²³ Shaelyndra Weantana Oenady, The Role of Notaries and PPAT in the Transfer of Land Rights and Their Duties, Authorities, and Obligations, Faculty of Law, University of August 17, 1945 Surabaya, 2025, p. 6.

²⁴ *Ibid.*

is authorized to make authentic deeds as evidence of certain legal acts regarding land rights or Ownership Rights for Apartment Units. One of the important roles of PPAT in the transfer of land rights is to ensure that the transfer is carried out by a legally authorized party, by the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet*, which means that a person cannot transfer rights greater than what he has. The Land Deed Official (PPAT), as a guarantor of legal certainty in the transfer of land rights, has a strategic role in ensuring that the principle of *Nemo Plus Jus Transferre Potest Quam Ipse Habet* is applied consistently and effectively to create legal certainty. This role can be analyzed in three aspects according to Jan Michiel Otto's framework:

a) Ensuring Clarity of the Legal Status of Subjects and Objects

The PPAT is obliged to ensure that the party carrying out the transfer of rights truly has the rights to the land in question. This is done through checking the land title certificate, checking data at the land office (through legal and physical checks), and ensuring there are no disputes or objections from other parties to the land. Thus, the PPAT creates clarity regarding the status of the legal subject (owner) and the legal object (land). To ensure that the party carrying out the transfer of rights to the land truly has the legal rights to the land in accordance with the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet* PPAT in order to carry out the task of making authentic deeds for legal acts that are part of land registration activities, the obligations that must be carried out by the PPAT at the time of making the deed that must be fulfilled by the PPAT are that before making the deed, the PPAT is obliged to check or examine the validity of the land certificate and other records at the local BPN office and explain its intent and purpose.

b) Maintaining Consistency in Law Implementation

Consistency is one of the three main elements in building effective legal certainty. Legal consistency means that laws and regulations must be applied uniformly, repeatedly, and non-contradictorily, thus creating certainty for the public in knowing and predicting the legal consequences of an action. In other words, the law must be predictable, its application not changing from one case to another without a legitimate and rationally acceptable reason^[25]. In this context, PPAT plays an important role as a party at the forefront of land law practices, particularly in the transfer of land rights. The consistency of the implementation of the law by PPAT is reflected in the extent to which he:

- 1) Carry out duties in accordance with applicable legal procedures and norms strictly, for example by always referring to:
 - a. Law Number 5 of 1960 concerning Agrarian Principles;
 - b. Government Regulation Number 24 of 1997 concerning Land Registration;
 - c. Regulation of the Head of BPN or Regulation of the Minister of ATR/BPN regarding the implementation of PPAT duties;
 - d. PPAT code of ethics.
- 2) Applying legal principles and principles uniformly, such as the principle of *Nemo Plus Juris Transferre*

Potest Quam Ipse Habet, the principle of prudence, the principle of legality, the principle of legal protection, and the principle of justice. When the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet* is applied consistently, there will be no loophole for someone to transfer rights to land that is not theirs. This is important to avoid conflicts between the contents of the deed made by the PPAT and the basic principles of land law itself.

Therefore, as an official whose signature is capable of resulting in the transfer of rights, it is only natural that the PPAT acts with great caution in carrying out his/her duties. The PPAT as an official authorized to make deeds in the land sector must carry out his/her duties in accordance with the PPAT Job Regulations. If we look at the entire provisions in the PPAT Job Regulations both in Government Regulation Number 37 of 1998 concerning PPAT Job Regulations and in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning PPAT Job Regulations, there is only one article that shows the principle of caution for PPAT in carrying out his/her job duties, but from that one article we must understand the norms contained therein.

In the PPAT Job Regulations there are provisions that order PPATs to apply the principle of caution in carrying out their job duties, namely in Article 22 of the PPAT Job Regulations which states that "The contents of the PPAT Deed must be read/explained to the parties in the presence of at least 2 witnesses before being signed immediately by the parties, witnesses and PPAT^[26]." The provisions in Article 22 of the PPAT Job Regulations, if explained, will reveal the formulation that the PPAT deed must be^[27]:

- 1) The contents are read or explained;
- 2) In making it, 2 witnesses must be present;
- 3) Signed by the parties, witnesses and PPAT.

The obligation to read and explain the contents of the deed is to ensure that the parties have fully understood what is stated in the deed. This reading must be done clearly so that it can be understood by the parties and witnesses. The PPAT's obligation to read and explain the contents of the deed is very important because not all parties are able to read or understand the contents of the deed well. By reading this, the parties can clearly understand their respective rights and obligations before signing. It is hoped that the reading of the deed by the PPAT will make the parties better understand what is stated in the deed they will sign and will be able to avoid lawsuits from one of the parties in the future due to differences in interpretation of the matters written in the deed. The preparation of a PPAT deed must be attended by two witnesses. The presence of these two witnesses is a formal aspect of the PPAT deed. Violating this requirement will render the deed merely a private deed. The presence of two witnesses is an absolute requirement that cannot be avoided so that the deed has authentic characteristics. The presence of witnesses in making an authentic deed is useful if a case arises regarding coercion (*dwang*) or fraud (*bedrog*) during

²⁵Jan Michiel Otto, Op. Cit

²⁶Article 1 number 1 of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials

²⁷R. Soegondo Notodisoerjo, Notary Law in Indonesia, An Explanation, Rajawali Pers, Jakarta, 1982, p. 164.

the making of the deed^[28].

According to the author, the presence of two witnesses in the making of a PPAT deed is not only a complement, but an important part that determines the validity of the deed, without witnesses, the deed will lose its authentic power and will only be considered as an ordinary deed. The function of witnesses is also very crucial if a dispute arises later, because they can provide information regarding the signing process, including if there is an element of coercion or fraud. Therefore, the presence of witnesses is an integral part in ensuring the authenticity and fairness in the making of the deed.

C. Supporting Law Enforcement (Enforceability)

The enforceability of the law is an essential element in realizing a legal system that is not only normative and theoretical, but also operational in practice. According to Otto, the existence of written and clear laws will be meaningless if not accompanied by mechanisms that allow these legal rules to be implemented and enforced effectively. Law enforcement in question is not only in the form of sanctions for violations, but also in the context of preventing violations of the law through a functional and credible law enforcement system and apparatus^[29] In the context of the transfer of land rights, PPAT plays a direct role in supporting law enforcement, especially in two main areas^[30]:

1. As a preventive actor in preventing legal violations

PPAT carries out the function of preventing legal violations by ensuring that the entire process of transferring land rights is carried out according to procedures and that all parties involved have valid legal authority. In this case, the PPAT applies the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet* as a benchmark for the validity of legal acts, if the transferor is not the legal owner, then the PPAT may not continue making the deed. For example, before making a land sale and purchase deed, the PPAT is required to do the following:

 - a. Verification of ownership documents, such as certificates and letters issued by the Land Office;
 - b. Checking the status of the land to see whether it is in dispute, encumbered by a mortgage, or in the process of legal proceedings;
 - c. Confirm the identity of the parties, through KTP, NPWP, and other relevant data.

These steps demonstrate that the PPAT acts as the first legal filter to ensure that the law is implemented properly. This is a concrete form of preventative law enforcement, namely preventing violations or disputes from occurring from the outset.
2. As a Provider of Authentic Evidence

In the event that the law has been violated or a dispute arises, the authentic deed made by the PPAT serves as the main evidence in the legal settlement process, both in court and in administrative procedures at the Land Office. According to Article 1868 of the Civil Code, an authentic deed is a deed made by a public official

authorized to do so, and has perfect evidentiary force as long as it cannot be proven otherwise^[31] For example, if a party sues for land ownership because they believe the land has been transferred without rights, the PPAT deed will be the first legal document to be tested before a judge. If the deed was made without considering the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet*, then the judge will most likely declare the deed legally flawed and not legally binding. Conversely, if the PPAT has carried out his duties professionally and accurately, the deed will be strong evidence that helps resolve the dispute fairly and quickly. Furthermore, the PPAT deed also serves as the basis for subsequent administrative actions, namely registering changes to land rights at the Land Office. If the PPAT deed is reliable and valid, enforcing land rights through the registration system will proceed smoothly and in accordance with the principle of legal certainty^[32].

Legal enforcement also includes legal consequences for officials who are negligent or abuse their authority. If a PPAT does not implement the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet*, and makes a deed for land that is not legally owned by the transferor, then he can be subject to^[33]:

- a. Administrative sanctions, in the form of warnings, guidance, freezing, or revocation of permits as PPAT by the Ministry of ATR/BPN;
 - b. Civil liability, namely compensating the party who is harmed due to a legally defective deed;
 - c. Criminal liability, if it is proven that there was an element of intent, fraud, or falsification of documents in the process of making the deed.
- For example, in Supreme Court Decision Number 2678 K/Pdt/2015, the PPAT deed was declared null and void because it was proven that the PPAT made a sale and purchase deed for land that was not legally owned by the seller, and the PPAT did not conduct a thorough check on the land status. This shows that the PPAT deed is not only an administrative instrument, but also a legal product that can be tested and legally accounted for if necessary.

3.2. Obstacles in Implementing the Nemo Plus Juris Transferre Potest Quam Ipse Habet Principle in the Transfer of Land Rights

Application of the principle of *Nemo Plus Juris Transferre Potest Quam Ipse Habet* This does not always take place effectively, there are various obstacles faced, both legal and non-legal obstacles.

a. Juridical Obstacles in Implementing the Nemo Plus Principal Juris transferre potest quam ipse habet

Legal obstacles in the application of the principle of *Nemo plus juris transferre potest quam ipse habet* are studied using the theory of effectiveness according to Lawrence M Friedman. To understand these obstacles comprehensively, an approach through Lawrence M. Friedman's legal system

²⁸R. Soesanto, *Duties, Obligations and Rights of Notaries, Deputy Notaries (Temporary)*, Pradnya Paramita, Jakarta, 1978, p. 94.

²⁹Jan Michiel Otto, *Loc. Cit*

³⁰Adrian Sutedi, *Loc. Cit*

³¹Civil Code Article 1868

³²Interview with Lalu Daud Nurjadi, SH.,M.Kn, Notary and PPAT Central Lombok, Notary and PPAT Office of Lalu Daud Nurjadi, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, March 5, 2025, 10:15 WITA.

³³*Ibid*

theory is relevant, because in this theory there is a systemic analysis framework that includes three main components of the legal system, namely structure, substance, and legal culture.

1. Legal Structure (Structure)

Legal structure relates to legal institutions. In Indonesia, the institutions authorized to enforce the law include the police, the prosecutor's office, and the courts. The legal system structure consists of^[34]:

- a. Elements of the number and size of courts, their jurisdiction (i.e., the types of cases they hear and how and why);
- b. How to appeal from one court to another; and
- c. How the legislature is structured, how many people sit on the federal trade commission, what is allowed and not allowed, the procedures that must be followed.

Obstacles to the implementation of the electronic land registration system in Indonesia have the potential to create legal uncertainty regarding land ownership status, which is closely related to the principle of *Nemo plus juris transferre potest quam ipse habet*. This principle asserts that a person cannot transfer rights greater than those they possess. In the context of land registration, this principle serves to ensure that only the legitimate rights holder can transfer land rights to another party^[35].

However, the implementation of the electronic land registration system faces various obstacles that can disrupt its implementation. According to research by Sy. Arifin Habibi *et al.*, the main challenges in implementing electronic certificates include uneven information technology infrastructure, low digital literacy among the public and government officials, and issues of data security and privacy. Limited infrastructure and digital literacy make it difficult to access and operate electronic systems optimally, while issues of data security and privacy can raise doubts about the validity of electronic documents^[36].

In addition, research by M. Arief Rahmat Putra identified four main factors that hamper the Complete Systematic Land Registration Program (PTSL), namely human resources, facilities and infrastructure, budget, and community participation. Limited trained human resources and the lack of adequate facilities and infrastructure cause the land registration process to be slow and inefficient. In addition, budget limitations hinder optimal program implementation, and low community participation leads to a lack of support for this program^[37].

Thus, these obstacles can cause uncertainty regarding the status of land ownership, which risks violating the principle of *Nemo plus juris transferre potest quam ipse habet*. Therefore, efforts are needed to overcome these obstacles, such as improving information technology infrastructure, digital literacy training, improving human resources,

providing adequate facilities and infrastructure, allocating sufficient budget, and increasing community participation in the PTSL program. Thus, the implementation of the electronic land registration system can run effectively and by the principle of *Nemo plus juris transferre potest quam ipse habet*, thus providing legal certainty for land rights holders.

1. Legal Substance

Legal substance concerns applicable rules and norms that are binding and serve as guidelines for law enforcement officials. Substance serves as a benchmark for implementation, ensuring measurable and targeted measures to achieve goals^[38]. Substance relates to the content of legal norms. These legal norms are either created by the state (state law) or laws that exist and develop within society (living law, also called non-state law).

Government Regulation Number 24 of 1997 establishes the legal basis governing the responsibilities of Land Deed Officials (PPAT) in drafting land-related deeds. PPAT plays a crucial role in the land registration process, particularly in drafting deeds that serve as legal evidence of the transfer of land rights^[39]. The principle of *Nemo plus juris transferre potest quam ipse habet*, which states that a person cannot transfer rights exceeding those they already possess^[40], is an important basis in this context. In the context of land sale and purchase transactions in Indonesia, this principle affirms that a person does not have the authority to transfer or assign land rights to another party if the ownership rights are not fully under their control. In other words, only the party who legally and fully owns the land is authorized to transfer ownership rights.

As part of his responsibilities, the PPAT is obliged to ensure that every agreement aimed at transferring or assigning land rights as in a sales transaction where land is the object must be supported by an authentic deed made by and before the PPAT^[41]. In addition, the PPAT has the authority to make official deeds for certain legal acts in accordance with its work area^[42]. Therefore, the application of the principle of *Nemo plus juris transferre potest quam ipse habet* in practice places PPAT as a party that plays an important role in ensuring that every land transaction takes place in accordance with the boundaries of legal ownership rights, as well as supporting legal certainty in land sales and purchases in Indonesia.

Regarding the legality of land transfers under Indonesian positive law, we can consider several sources of regulation. First, provisions originating from the state, namely the Civil Code and the Basic Agrarian Law (UUPA), both of which are created by the authorities to regulate the transfer of land rights in Indonesia. Second, customary law, which is a norm with sanctions that has grown and developed within society. Nearly all legal academics in Indonesia share the opinion that the only applicable law in the land sector is Law Number 5 of 1960, commonly known as the UUPA. This recognition

³⁴ Salim and Erlies Septiana Nurbani, Op. Cit.

³⁵ Sy. Arifin Habibi, Ghally Sukma Prambudi, Tuti Trisnawati, *et al.*, *Digital Transformation of Land Administration: Implementation and Challenges of Electronic Certificates in Indonesia*, Rio Law Journal Vol.1 No.2, 2025, p. 501.

³⁶ Ibid.

³⁷ Yazied Fahma Wijaya Muhammad, Haryanto, Amiludin *et al.*, *Journal of Innovation and Creativity (JIKa)*, Vol. 2 No. 1, 2022, p. 57.

³⁸ Lawrence M Friedman's Legal System Theory - Law Home, accessed on September 5, 2024.

³⁹ Article 1 number 24 and Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration.

⁴⁰ Edi Suroso, Loc. Cit. p. 165.

⁴¹ Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration

⁴² Ministry of Agrarian Affairs and Spatial Planning/BPN, Article 2 and Article 3 Head of BPN Regulation No. 1 of 2006 concerning Provisions for Implementing PPAT

applies not only to general land regulations but also to the legality of land transfer procedures^[43].

UUPA is indeed recognized as the main legal basis for the transfer of land rights in Indonesia. The UUPA provides legal certainty and the formal framework needed for the national land system. However, we cannot ignore the role of customary law, which is still alive and practiced by communities in various regions. Customary law reflects local values that are often more widely accepted and respected in everyday practice. Therefore, it is crucial for the national legal system to continue to accommodate customary law, as long as it does not conflict with the basic principles of the UUPA. Harmonization between the two is necessary to create a land system that is just, legally valid, and remains relevant to the socio-cultural conditions of the community.

From a customary law perspective, customary law does not recognize the concept of land registration and does not recognize the concept of transferring land rights through registration. Customary law emphasizes the validity of the transfer of land rights not from a formal perspective but rather from the material aspect of a transfer of land rights. Therefore, in the transfer of land rights according to customary law, the agreement is not only consensual but also must be concrete. Therefore, words alone cannot bind agreement of understanding, but must be concrete^[44]. This means that in practice, there is indeed a transfer of land and acceptance of the land so that these actions are categorized as real, tangible, open and not hidden. Concrete in this case is also interpreted not only for the transfer of land, but also for the payment, even though it is in the form of a deposit^[45].

After the UUPA confirmed that the transfer of land rights must be carried out by registration, as strong proof of the transfer of land rights, the UUPA then with Government Regulation Number 24 of 1997 Article 37 paragraph (1) stipulates that in order to register a transfer of land rights, it must be done with a PPAT deed.

Therefore, harmonization is needed between customary law and positive law so that customary-based land ownership status obtains strong legal certainty and does not conflict with fundamental principles such as the principle of *Nemo plus juris transferre potest quam ipse habet*, which means a person cannot transfer more rights than the rights he has.

2. Legal Culture

Legal culture is the attitudes and values related to law and the legal system, including attitudes and values that have both positive and negative influences on behavior related to law. Legal culture is divided into two types, namely^[46]:

- a. external legal culture is the legal culture that exists in the general population.
- b. Internal legal culture is the legal culture of members of a society who carry out specialized legal tasks. All societies have a legal culture, but only societies with legal specialists have an internal legal culture.

In land practice in Indonesia, legal issues often arise regarding the transfer of rights to inherited land that has not been legally divided among the heirs. One such issue that frequently arises is when one of the heirs, usually the eldest child, dies. registered as the rights holder of a plot of inherited land in the land title certificate, on the grounds that at the time the certificate was issued, his other siblings were still not legally competent (minor adults or under guardianship)^[47].

Even though the name listed on the land title certificate is that of the eldest child, this does not automatically grant the person full rights to transfer all land objects which are actually undivided inheritance assets (*boedel waris*). In inheritance law, before the legal division of the inheritance, all heirs jointly own the assets of the testator. Therefore, any legal action related to the transfer of rights to the inheritance must obtain the approval of all heirs or be carried out by them collectively. The provisions regarding the division of inheritance (*boedel-scheiding*) as stated in Article 1069 of the Civil Code, actually do not only concern the division of inheritance, but also mean the separation of *boedel* assets, namely undivided joint assets, namely joint marital assets, inheritance assets. In the case of inheritance, if all heirs can act freely with their property and the heirs are all present, then the division of the inheritance is carried out in such a way by the heirs themselves^[48].

When an heir whose name is listed on the certificate unilaterally transfers the rights to the land to a third party, without involving or obtaining the consent of other heirs who also have rights to the land object, then this action has exceeded his authority as the rights holder. This is contrary to the principle of civil law known as the principle of *Nemo plus juris transferre potest quam ipse habet*, which means a person cannot transfer more rights than the rights he has.

In this context, the Land Deed Official (PPAT) has a strategic role and legal responsibility to ensure that every sale and purchase transaction involving land rights is conducted legally and does not give rise to future legal disputes. The PPAT is required to conduct a thorough examination of^[49]:

- 1) Land ownership status, including history of acquisition;
- 2) The existence of other heirs, if the land is inherited;
- 3) A legal document that shows that the transfer of rights was carried out with the consent of all interested parties, such as a Certificate of Inheritance or Deed of Distribution of Inheritance.

Then there are legal obstacles in the application of the principle of *Nemo plus juris transferre potest quam ipse habet*, in the transfer of land rights, reviewed using the theory of legal effectiveness according to Soerjono Soekanto, which states that the effectiveness or ineffectiveness of a law is determined by 5 (five) factors^[50], namely :

- a) The legal factor itself (Law).

The existence of dualism in the land registration system has a negative tendency positive, Indonesia adheres to a

⁴³M. Yazid Fathoni, Legal Position of Customary Land Rights Transfer in the Perspective of Indonesian Positive Law, *Jurnal Ius Kajian Hukum dan Keadilan*, Vol. VIII, No. 1, 2020, p. 199.

⁴⁴ Ibid

⁴⁵Iman Sudiyat, *Principles of Customary Law*, Liberty, Yogyakarta, 1981, p 1m.35

⁴⁶ Salim and Erlis Septiana Nurbani, *Loc. Cit.*

⁴⁷ Interview with Saiful Bahri, SH.,M.Kn, Notary and PPAT of Central Lombok, Office of Notary and PPAT of Saiful Bahri, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, May 2, 2025, 10:30 WITA.

⁴⁸Muhammad Rizki Siregar, Legal Protection for Heirs Against Unlawful Acts in Undivided Estates, Medan Area University, 2022, p. 5.

⁴⁹ Interview with Saiful Bahri, SH.,M.Kn, Notary and PPAT of Central Lombok, Office of Notary and PPAT of Saiful Bahri, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, May 2, 2025, 10:30 WITA.

⁵⁰Soerjono Soekanto, *Factors Influencing Law Enforcement Law*, PT. Raja Grafindo Persada, Jakarta, 2011, p. 8.

negative publication system that contains positive aspects, as regulated in Law No. 5 of 1960 And PP No. 24 of 1997, meaning, although the land title certificate is strong evidence, it does not rule out the possibility of a lawsuit from another party who feels they have a more legitimate right to the land. This condition creates a legal loophole where someone who is not the legal owner can transfer land rights to another party, as long as the legal and administrative data is recorded correctly in the land book. This contradicts the principle of *nemo plus juris transferre potest quam ipse habet*, but is administratively permissible, as long as there has been no cancellation or court decision stating otherwise.

- b) Law enforcement factors, namely the parties who form and implement the law.

PPAT, as the executor of state duties in making authentic deeds for the transfer of land rights, is a key factor in the implementation of the principle of *Nemo plus juris transferre potest quam ipse habet*. Obstacles arise when PPATs fail to perform their verification functions optimally, either due to a lack of caution, pressure from other parties, or indications of abuse of authority. In addition to PPATs, Land Office officials also play a role in verifying registration documents.

- c) Factors of facilities or infrastructure that support law enforcement.

Supporting tools for implementing this principle include an accurate and accessible land information system, an integrated system between Land Deed Officials (PPAT) and the Land Office, and a comprehensive and transparent legal database. In the field, obstacles still exist, including:

- The digitalization of land data in many regions is not yet optimal.
- There is no early warning system for land objects that are in dispute or have special legal status.

These shortcomings make it difficult for PPATs to carry out maximum verification, especially in areas that still use manual systems, as a result, the principle of *Nemo plus juris transferre potest quam ipse habet* cannot be used as an effective filter in preventing transfers from unauthorized parties.

- d) Social factors, namely the environment in which the law applies or is implemented.

The public, as legal entities transferring rights, often fail to understand the importance of formal legality and the principle of prudence in land transactions. Many parties focus solely on economic aspects without ensuring the validity of the land's status, forcing the transfer of rights even without a certificate or legal ownership. Furthermore, the public often fails to understand the role of Land Deed Officials (PPAT) as protectors of legal certainty and treats them merely as administrative complements.

The permissive culture of society towards informal transactions (for example, the transfer of inherited land without a deed of inheritance distribution, or buying and

selling with a receipt without a deed) also contributes to the neglect of the principal *Nemo plus juris transferre potest quam ipse habet*. This often places PPATs in a dilemma, between carrying out their duties according to the law or facing socio-economic pressure from the community who demand that deeds be made quickly and easily.

- e) Cultural factors, namely as a result of work, creativity and feeling which are based on human will in social life. Cultural factors refer to the value systems, thought patterns, and outlooks on life adopted by a society in relation to law. Soerjono Soekanto emphasized that legal culture encompasses the values that live and develop in society, which serve as the basis for understanding, using, or even avoiding the law^[51].

b. Non-judicial obstacles in implementing the principle of Nemo Plus Juris Transferre Potest Quam Ipse Habet

a) Low Public Legal Literacy

Most people, especially in rural areas or indigenous communities, do not fully understand the legal concept of land rights, including the importance of formal proof of ownership such as land title certificates. As a result, many land transactions are carried out based on trust or informal evidence such as receipts, statements, or even just verbally. When people do not understand that only the legal owner may transfer land rights, transactions are often carried out by people who do not have legal standing, thus violating the principle of *Nemo plus juris transferre potest quam ipse habet*^[52].

b) Patrimonial and Family Legal Culture

In many communities, land tenure systems based on custom or kinship still thrive, where land rights are considered the collective property of the extended family or are inherited without formal legal procedures. This results in land rights sometimes being transferred by one family member without the consent of the others, even though, according to formal law, such rights cannot be transferred without a valid legal document. This situation often triggers disputes and violates the principle of *Nemo plus juris transferre potest quam ipse habet*, because the transfer was carried out by a party who was not fully entitled^[53].

c) Absence of Accurate and Integrated Land Data

Many areas in Indonesia remain incompletely mapped and systematically registered at the Land Office. The lack of data integration between plot maps, owner identities, and land legal status creates loopholes for unauthorized transfers of land. Under these conditions, unauthorized parties can easily claim and transfer land. The lack of an accurate land information system is a major obstacle to upholding the principle of *Nemo plus juris transferre potest quam ipse habet*, because identifying the rightful owner becomes difficult^[54].

d) Unresolved Internal Family or Inheritance Disputes

Many cases of land transfers occur before the inheritance

⁵¹ Ibid

⁵² Interview with Saiful Bahri, SH.,M.Kn, Notary and PPAT of Central Lombok, Office of Notary and PPAT of Saiful Bahri, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, May 2, 2025, 10:30 WITA.

⁵³ Ibid

⁵⁴ Interview with Lalu Daud Nurjadi, SH.,M.Kn, Notary and PPAT of Central Lombok, Notary and PPAT Office of Lalu Daud Nurjadi, SH.,M.Kn, Central Lombok Regency, West Nusa Tenggara, May 21, 2025, 10:30 WITA.

process is legally complete. Heirs immediately sell inherited land without a valid inheritance deed. As a result, the Land Deed Official (PPAT) issues a sale and purchase deed for land that is still under "communal inheritance ownership" status without any certainty about the legal owner. Such transactions are legally voidable due to a violation of the principle of *Nemo plus juris transferre potest quam ipse habet*. but it continues to occur due to economic pressures and legal ignorance^[55].

4. Conclusion

Land Deed Officials play a strategic role in ensuring the consistent and effective implementation of the *Nemo Plus Juris* principle to create legal certainty, which can be observed from three main aspects. First, ensuring clarity of the legal status of subjects and objects: the Land Deed Official (PPAT) must verify that the party transferring rights is the true legal owner of the land. This verification includes examining the certificate, data from the National Land Agency (BPN), the identities of the parties, and confirming legal and physical data at the land office, while also ensuring there are no disputes. This process provides clarity about the legal status of both the owner (subject) and the land (object). Second, maintaining consistency in law enforcement: PPAT plays a vital role in ensuring the uniform application of land law, especially during land rights transfers. This is demonstrated through adherence to applicable legal procedures and norms, such as Law No. 5 of 1960, PP No. 24 of 1997, BPN technical regulations, and the PPAT code of ethics. Additionally, PPAT must apply legal principles consistently, including the principles of prudence and *Nemo Plus Juris Transferre Potest Quam Ipse Habet*, to prevent unlawful transfers and ensure that deed contents align with land law principles. Third, supporting law enforcement (enforceability): In land rights transfers, PPAT actively supports law enforcement in two main ways—preventing violations of law and providing authentic evidence.

Obstacles in implementing the principle of *Nemo plus juris transferre potest quam ipse habet* in land rights transfer include three main components of the legal system: the legal system's structure, the legal substance, and legal culture. Structural obstacles involve the absence of an integrated and transparent legal information system, such as the electronic land registration system, which causes delays or inaccuracies in ownership data. Substantive obstacles include conflicts between customary law and positive law, which can create uncertainty about ownership status. For example, land is often held based on customary rights but is not formally registered, making it vulnerable to transfer by parties who are not the rightful owners. Under customary law, the legality of land transfers does not depend on the formality of the agreement. Lastly, legal culture issues arise when rights to inherited land that has not been legally divided among heirs are transferred without the consent of all heirs. This violates the principle that a person cannot transfer rights exceeding what they legally possess, which is expressed as *Nemo plus juris transferre potest quam ipse habet*. Non-legal obstacles include low legal literacy, patrimonial and family legal culture, the lack of accurate and integrated land data, and unresolved internal family or inheritance disputes.

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