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The Feud of Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet and Nemo Dat Quod Non Habet (Nemo Dat Rule) Legal Principles Against The Legal Principle of Good Faith (Bona Fides) in Indonesian Courts

Cover Page Footnote

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THE FEUD OF *NEMO PLUS IURIS AD ALIUM TRANSFERRE POTEST QUAM IPSE HABET* AND *NEMO DAT QUAD NON HABET* (*NEMO DAT RULE*) LEGAL PRINCIPLES AGAINST THE LEGAL PRINCIPLE OF GOOD FAITH (*BONA FIDES*) IN INDONESIAN COURTS

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Abstract

A dispute over ownership of land rights between the real Original Owner and a Good Faith Purchaser can be assumed as a dispute over legal principles in the field of civil law, namely: the legal principle of Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet, and the legal principle of Nemo Dat Quad Non Habet (Nemo Dat Rule) against the legal principle of good faith (bona fides). The legal principle of Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet and the legal principle of Nemo Dat Quad Non Habet (Nemo Dat Rule) are legal principles that defend the interests of the Original Owner when suing a Good Faith Purchaser. On the other hand, the legal principle of good faith (bona fides) defends and protects Good Faith Purchaser from claims by the real Original Owner. This article discusses and presents 3 (three) main points, all of which are: firstly, analyzing the legal principle of Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet, the legal principle of Nemo Dat Quad Non Habet (Nemo Dat Rule), and the legal principle of good faith (Bona Fides); secondly, analyzing the types of claims and determine the most appropriate type of claim for disputes over ownership of immovable property between the real Original Owner and the Good Faith Purchaser; lastly, analyzing how to conceptualize good faith. The research method used in this article is normative juridical research with the statutory, case, and conceptual approaches. There are several research findings, namely; first, there has been a shift in the paradigm of judges who are initially more inclined to defend the Good Faith Purchaser than the real Original Owner, to become more neutral in placing the legal principle of Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet and the legal principle of Nemo Dat Quad Non Habet (Nemo Dat Rule) with the principle of good faith (Bona Fides); second, the application of procedural law practices regarding types of claims for ownership disputes between the real Original Owner and the Good Faith Purchaser, which is commonly used in practice, turns out to be inappropriate; finally, conceptualizing good faith is done by conceptualizing bad faith based on the permanent jurisprudence of court decisions.

Keywords: *nemo plus iuris, nemo dat, bona fides, good faith.*

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Abstrak

Dalam sengketa kepemilikan hak atas tanah antara Pemilik Asal (asli) dengan Pembeli Beritikad Baik dapat diasumsikan sebagai persetujuan asas-asas hukum dalam bidang hukum perdata, yaitu: asas hukum 'nemo plus iuris ad alium transferre potest quam ipse habet', dan asas hukum 'nemo dat quad non habet' ('nemo dat rule') berhadapan dengan asas hukum itikad baik ('bona fides', atau 'good faith'). Asas hukum 'nemo plus iuris ad alium transferre potest quam ipse habet' dan asas hukum 'nemo dat quad non habet' ('nemo dat rule') adalah asas hukum yang membela kepentingan dari Pemilik Asal (asli) ketika menggugat Pembeli Beritikad Baik. Di sisi sebaliknya, asas hukum itikad baik ('bona fides', atau 'good faith') membela dan melindungi Pembeli Beritikad Baik dari gugatan Pemilik Asal (asli). Dalam artikel ini mendiskusikan dan menyajikan 3 (tiga) pokok pembahasan yaitu; Pertama, melakukan analisa tentang asas hukum 'nemo plus iuris ad alium transferre potest quam ipse habet', asas hukum 'nemo dat quad non habet' ('nemo dat rule'), dan asas hukum itikad baik ('bona fides', atau 'good faith'); Kedua, melakukan analisa tentang macam-macam gugatan dan menentukan macam gugatan yang paling tepat untuk sengketa kepemilikan benda tidak bergerak antara Pemilik Asal (asli) dengan Pembeli Beritikad Baik; Terakhir, melakukan analisa tentang bagaimana cara untuk melakukan konseptualisasi itikad baik. Metode penelitian yang digunakan pada artikel ini adalah penelitian yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Terdapat beberapa hasil penelitian, yaitu; Pertama, telah terjadi pergeseran paradigma Hakim yang pada mulanya lebih cenderung membela Pembeli Beritikad Baik daripada Pemilik Asal (asli), berubah menjadi lebih netral di dalam mendudukkan asas hukum 'nemo plus iuris ad alium transferre potest quam ipse habet' dan asas hukum 'nemo dat quad non habet' ('nemo dat rule') dengan asas hukum Itikad baik ('bona fides', atau 'good faith'); Kedua, penerapan praktik hukum acara tentang macam gugatan sengketa kepemilikan antara Pemilik Asal (asli) dengan Pembeli Beritikad Baik yang dalam praktiknya lazim digunakan ternyata kurang tepat; Terakhir, untuk mengkonseptualisasi itikad baik dilakukan dengan cara melakukan konseptualisasi itikad tidak baik berdasarkan yurisprudensi tetap putusan-putusan lembaga peradilan.

Keywords: *nemo plus iuris, nemo dat, bona fides, good faith.*

I. INTRODUCTION

The terms good faith and bad faith have often been used in legal science literature. In general, the terms good faith and bad faith are used dominantly in the discussion of civil law actions regarding engagements (contracts), which include; sale-purchase engagement, loan engagement, and others. In a sale and purchase agreement for an object, the parties making the engagement are required to carry out the engagement in good faith, and not in bad faith. For the engagement that has occurred, there is still a potential dispute that does not only come from the internal parties making the engagement but may also from the external parties (third parties that are not in the contract). Thus, the use of the terms good faith and bad faith is not only limited to the scope of the parties contained in the engagement. However, there may be a claim from another third party questioning the validity of the completed engagement on the grounds that the engagement that occurred is not based on good faith.

This other third party, who is not a party to the contract, claims that he is the real Original Owner of the goods that have been transacted, whereas the ownership rights to the object in question have been transferred from the seller to the buyer. On the side of the real Original Owner, he claims that the transfer that has occurred between the seller and the buyer is illegal (against the law) which results in the transaction being null and void. Thus, the object that has been transferred to the name of the buyer is required to be returned to the real original owner. . On the other hand, the buyer (the new owner) will of course retain the object he has purchased, under the

pretext that he is a Good Faith Purchaser who must be protected by law.³

In the discussion of civil disputes over land objects, the terms Good Faith Purchaser⁴ and Bad Faith Purchaser⁵ are often used. The use of term Bad Faith Purchaser is used to express a situation that is the opposite of the term Good Faith Purchaser.

A dispute over ownership of land rights between the real Original Owner and a Good Faith Purchaser can be assumed as a dissension over legal principles in the field of civil law, namely: the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* (one cannot divert something more than what one has)⁶, and the legal principle of *Nemo Dat Quad Non Habet/Nemo Dat* Rule (no one can give what he doesn't have)⁷ in dealing with the legal principle of good faith (*Bona Fides*)⁸ which in this case is referred to as a Good Faith Purchaser. The legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet/Nemo Dat* Rule are legal principles that defend the interests of the Original Owner when suing a Good Faith Purchaser. On the other hand, the legal principle of Good Faith (*Bona Fides*) defends and protects the Good Faith Purchaser from the claims of the real Original Owner.

³ Business Dictionary, <http://www.businessdictionary.com/definition/purchaser-in-good-fatih.html>, accessed on September 24, 2021. The term purchaser in good faith is explained in 2 (two) understandings, i.e. firstly, a good faith purchaser is "an entity that purchases something for value without notice of another's claim on it, or of any defects in the seller's title, and pays valuable consideration in exchange;" secondly, a good faith purchaser is "a party that buys a property for its own use, and is not representing the interests of a third (known or unknown) party."

⁴ *Surat Edaran Mahkamah Agung Republik Indonesia (Supreme Court Circular, hereinafter the abbreviation "SCC" is used) No. 7/2012, Plenary Meeting of the Civil Chamber point IX, it was formulated that: "Protection must be given to Purchasers in Good Faith even though it is later discovered that the Seller is an unauthorized person (in the object of buying and selling land)." Then, "the Original Owner can only file a claim for compensation against an ineligible Seller."*

SCC No. 5/2014, Plenary Meeting of the Civil Chamber, it was formulated that: "Buyers who should be protected have 2 (two) criteria:

First, carry out the sale and purchase of the land object with legal procedures and documents as determined by the laws and regulations, namely:

- a. Purchase of land through public auctions; or
- b. Purchase of land before a Land Deed Making Official ("PPAT") under Government Regulation Number 24 of 1997 concerning Land Registration; or
- c. Purchase of *adat/unregistered land that is carried out according to the provisions of adat law, which is carried out publicly (in the presence of/known to the local Village Head).*

Second, exercise prudence by examining matters relating to the object of the land being agreed upon, including:

- a. *The seller is the person who has the right/has the right to the land which is the object of the sale and purchase, according to the proof of ownership; or*
- b. *The land/object being traded is not in confiscation status; or*
- c. *The land/object being traded is not in the status of collateral/mortgage; or*
- d. *For the land with the certificate, it has obtained information from the National Land Agency ("BPN") and a history of legal relations between the land and the certificate holder.*

⁵ Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Prenada Media Group, 2015), 171-177. As per Article 533 of the *Civil Code*, good faith is assumed in everyone. And for those who accuse of bad faith, they are the ones who must prove it.

⁶ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia* (Surabaya: Arkola, Print 1, 2013), p. 189.

⁷ Donald J. Kochan, "Dealing with Dirty Deeds: Matching Nemo dat Preferences with Property Law Pragmatism," *Kansas Law Review*, Vol. 64, Number 1 (November 2015): 1.

⁸ Talya Ucaryilmaz, "The Principle of Good Faith in Public International Law," *Estudios de Deusto*, Vol. 68/1 (June 2020): 43-59. Accessed on October 1, 2021. DOI: [http://dx.doi.org/10.18543/ed-68\(1\)-2020](http://dx.doi.org/10.18543/ed-68(1)-2020); pp. 43-59.

The legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet/Nemo Dat Rule* have almost the same meaning and purpose. In terms of the application of the two legal principles, the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* is applied in countries that adhere to the Civil Law legal system, while the legal principle of *Nemo Dat Quad Non Habet/Nemo Dat Rule* is applied in countries with a Common Law legal system.⁹ This is different from the legal principle of Good Faith (*Bona Fides*), where the difference is about the requirements, and/or obligations to fulfill the elements of Good Faith which are not universal (different in each legal system, and/or country). This non-universality is meant because each legal system, and/or state interprets Good Faith separately (not uniform).

In the event where both parties in a dispute between the real Original Owner and the Good Faith Purchaser, basically and in general, are equally innocent parties, but the conflict is due to the actions of another third party (Bad Faith Seller) forcing them to litigate in court, and both parties ask the court to win their legal interests. Such a dispute is dilemmatic for the judge to examine and decide on the case in question, where he is asked to decide a case in which the parties are both innocent (not guilty). Hence, whom shall the court rule in favor of? And, which one of the two principles should be decided as superior?

In general, this paper is hoped to be useful to create legal certainty for cases of civil disputes involving immovable objects (land) whose legal problems are substantially the same or similar so that they can be decided by the judiciary with the same legal settlements.

Based on the background mentioned above, this article will discuss 3 (three) legal issues, namely: (1) a discussion on the paradigm shift of judges on the legal principle of good faith compared to the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet (Nemo Dat Rule)*; (2) discussion on procedural law such as claims for ownership disputes between the real Original Owner and the Good Faith Purchaser; (3) Finally, a discussion on how to conceptualize good faith with a fixed source of jurisprudence on the decisions of the judiciary.

This article uses a normative juridical writing method with the statutory, case, and conceptual approaches. It consists of several parts. The first part is the introduction; the second part is about the paradigm shift of Good Faith Purchaser at the Supreme Court of the Republic of Indonesia; the third part is about procedural law, such as claims for ownership disputes between the real Original Owner and the Good Faith Purchaser; the fourth part is about the conceptualization of good faith; and the last part is the closing part containing the conclusions of the research.

II. A SHIFT IN THE PARADIGM OF GOOD FAITH PURCHASER IN THE SUPREME COURT OF THE REPUBLIC OF INDONESIA

The principle of good faith is a special legal principle in the field of civil law which has been transformed into a general law principle¹⁰. A legal principle can be

⁹ Elham Balavar, "The Doctrine of Nemo Dat Quod Non Habet and Its Exceptions," *Journal of Applied Environmental and Biological Sciences*, 4(5), 2014: 7-14.

¹⁰ Siti Ismijati Jenie, *Itikad Baik, Perkembangan dari Asas Hukum Khusus Menjadi Asas Hukum Umum di Indonesia* (Yogyakarta: Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Gadjah Mada, 2007), p. 3.

transformed because it has a dynamic nature that develops according to its legal rules. Meanwhile, the rule of law itself is dynamic as well, which is always changing following the development of society.¹¹ Therefore, the principle of good faith has its own normative appeal, which many legal observers claim has a very important role in all legal systems (Civil Law System and Common Law System).¹²

The Civil Law System derives from Roman law, as codified in Emperor Justinian's '*Corpus Iuris Civilis*'. Due to the influence of this '*Corpus Iuris Civilis*', the civil law system developed rapidly in continental Europe and many other countries in the world. The distinctive feature of the Civil Law System is a systematic, authoritative, and intact law that is codified in statutory regulations.¹³ The Common Law System comes from English law which develops from the provisions or laws set by the Judge in decisions that have been decided previously (judge-made law). The Common Law System adheres to a legal principle called 'the rule of precedent', which means that the previous judge's decisions must be used as a guide, or in other words that the current judge's decision must refer to the previous judge's decision. The 'rule of precedent' legal principle is often referred to as the doctrine of '*stare decisis*', which means 'to stand by the previous decisions'. The principle of '*stare decisis*' was never legislated, but was deemed binding by the court. The court may also decide to modify an existing precedent based on appropriate considerations.¹⁴

The principle of good faith in the Civil Law System is heavily influenced by the Roman and Canon law traditions. However, the formulation of the obligations over good faith, from one country to another, is not the same.¹⁵ In the Civil Law System, the principle of good faith has started since the pre-contract. Meanwhile, for the Common Law System, the principle of good faith lies in the principle of freedom of contract, which only begins when the contract has been made.¹⁶ In Indonesian civil law, especially in material and engagement law, good faith is divided into 2 (two) types, namely: subjective good faith (qualitative)¹⁷ and objective (normative) good faith.¹⁸ Subjective good faith is reflected in the Second Book of the Civil Code concerning Materials in Article 531,¹⁹ and objective good faith is contained in the Third Book of the Civil Code concerning Engagement in Article 1338 paragraph (3).²⁰ In addition,

¹¹ Sudikno Mertokusumo, *Penemuan Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2009), p. 9.

¹² Andrew D Mitchell, "Good Faith In WTO Dispute Settlement." *Melbourne Journal of International Law*, Volume 7, 2006: 340.

¹³ Caslav Pejovic, "Civil Law and Common Law: Two Different Path Leading to the Same Goal," *Victoria University Wellington Law Review*, Vol. 32, 2001: 818-819.

¹⁴ Hardijan Rusli, *Hukum Perjanjian Indonesia dan Common Law* (Jakarta: Pustaka Sinar Harapan, Cetakan Kedua, 1996). Lihat juga, Caslav Pejovic, *Ibid.*, pp. 819-820.

¹⁵ Aris Setyo Nugroho, "Penerapan Asas Itikad Baik Pada Fase Pra Kontrak Dalam Hukum Civil Law dan Common Law," *Jurnal Repertorium*, Ed. 1 (January-June 2014), pp. 74-82.

¹⁶ A. F. Mason, "Contract, Good Faith and Equitable Standards in Fair Dealing," *The Law Quarterly Review*, Vol. 116, January 2000: 66-94.

¹⁷ R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 1984), p. 41. Subekti stated that subjective good faith (*subjectieve goede trouw*) is associated with the law of objects (*bezit*). Meanwhile, objective good faith is found in the implementation of the contract.

¹⁸ Martin Willem Hessenlink, "The Concept of Good Faith," In A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, & C. E. du Perron (Eds), *Toward a European civil code. 4th rev. and exp. Ed.*, pp. 619-649. Kluwer Law International. <http://ssrn.com/abstract=1762630>. Accessed on October 1, 2021.

¹⁹ *Code of Civil Law*, translated by R. Soebekti and R. Tjtrostudibio, article 531. *Subjective good faith is associated with the law of objects (bezit), namely: the position of ruling over objects/controlling objects as if they were their own, or controlling, or maintaining, or enjoying an item that is under their control either on their own personal efforts/efforts, or through the intercession of another person as if the object were his own.*

²⁰ *Code of Civil Law*, article 1338 paragraph (3).

Article 1339 of the Civil Code regulates the implementation of agreements that are not only binding on what is expressly stated in the agreement but must be based on reasonableness and fairness.²¹ In other words, reasonableness and fairness are not only the basis for binding contractual power but also have to be considered mandatory standards and norms of behavior that are useful in making decisions in court.²²

There are also those who divide good faith into 2 (two) kinds of theories: classical theory and modern theory.²³ The difference between classical theory and modern theory is in the event when the obligation of the element of good faith occurs. In classical theory, the principle of good faith can only be applied in situations where the agreement has fulfilled certain conditions, meaning that the agreement is clear and definite (the contract has already occurred). As a result of this classical theory, it does not protect the party who suffers losses in the pre-contract stage (still in the negotiation stage), because at this stage the agreement has not yet fulfilled the requirements of 'a certain thing'. Meanwhile, the modern theory states the opposite, namely: the principle of good faith already exists and applies at the pre-contract stage, or at the stage where the element of 'a certain thing' does not yet exist (has not happened/has not been fulfilled).²⁴

Although the principle of good faith has existed for thousands of years and has become an important principle in civil law (contracts) hitherto the meaning of good faith is still being debated in which the term good faith is easier to describe than to define.²⁵ Good faith is in the inner attitude, but it can be judged from a person's actions when the act occurs. Good faith is also the highest norm of civil law (contract)/law of obligations in all aspects of private law.²⁶ Good faith is considered the highest value which is very difficult to derive in the form of a concrete norm or, in other words, it is abstract in nature and is only made by means of a judge's decision (*Rechtsvinding*) which has permanent legal force (Dutch: *Jurisprudentie*, French: *Jurisprudence*).²⁷

Good faith is an expression of *aequitas* (equity).²⁸ *Aequitas* is a Roman legal concept that describes justice, equality, and honesty. Oftentimes in practice, the principle of good faith overlaps with the concept of *aequitas*. Due to its abstractness, when the legal concept of *aequitas* is equated with the principle of good faith, the act of good faith cannot be measured (abstract). Thus, when good faith is made into a norm, its

²¹ *Code of Civil Law*, article 1398.

²² Bakker, P.S. "Redelijkheid en billijkheid als gedragsnorm," Kluwer, 2012, 147-154.

²³ Imelda Martinelli, "Asas Itikad Baik Sebagai Unsur Dalam Hukum Perikatan atau Hukum Perjanjian", proceeding Asosiasi Pengajar Hukum Keperdataan IV, Mencari Model Pembaruan Hukum Perikatan: Penormaan Prinsip dan Langkah Legislasi (Palembang 9-11 Oktober 2017): 273-284.

²⁴ *Code of Civil Law.*, article 1320, states that: "For the validity of an agreement, four conditions are required: 1. The agreement that binds themselves; 2. The ability to make an engagement; 3. A certain thing; 4. A lawful cause."

²⁵ WD. Duncan, *Joint Ventures Law in Australia* (Sydney: The Federation Press, 3rd edition, 2012), p. 109.

²⁶ Hesselink, "The concept," pp. 619-649.

²⁷ Purnadi Purbacaraka & Soerjono Soekanto, *Perundang-undangan dan Yurisprudensi* (Bandung: Alumnus, 1979), p. 56. "From the aspect of terminology, jurisprudence comes from the Latin word '*Jurisprudentia*', which means knowledge of law (*Rechtsgeleerdheid*). As a juridical technical term in Indonesia, the word '*Jurisprudentie*' in Dutch is the same with 'Jurisprudence' in French, namely: whichever means judicial law or permanent judiciary. In English, the terminology of 'Jurisprudence' is defined as the theory of legal science, which is used in the Common Law System family (Case Law or Judge-made Law)."

²⁸ Simon Whittaker and Reinhard Zimmermann, "Good Faith in European Contract Law: Surveying The Legal Landscape," Cambridge University Press, 2000, 17.

nature becomes an open legal norm.

The legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* is defined as a person cannot transfer more rights than he has (or no one can transfer rights greater than his own).²⁹ More firmly and harder, the principle is interpreted as 'a thief cannot divert his stolen goods'.³⁰ Then, the meaning of the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat* Rule) in a free translation is: no one can give what he does not have.³¹ Although the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat* Rule) is used in the Common Law System,³² implicitly this principle is reflected in the Civil Code in Article 584.³³ On the other hand, the legal principle of a purchaser in good faith is interpreted differently, but similar in understanding, as an honest buyer who does not know at all that there are defects inherent in the object he buys,³⁴ a buyer who does not know at all that he is dealing with a person who is not

²⁹ Widodo Dwi Putro, et. al., *Pembeli Beritikad Baik Dalam Sengketa Perdata Berobyek Tanah* (Jakarta: LelP, 2016), pp. 9, 63, and 182. The word 'nemo' is a Latin word, which means: no one. Meanwhile, the Latin word 'plus' means 'more than.' The meaning of 'iuris' is 'justifiable', and the meaning of 'ad' is 'so that'. The meaning of 'alium' is 'the other side', and the meaning of 'transferee' is 'one who accepts the transfer'. The meaning of 'potest' is 'power', the meaning of 'ipse' is he/she, and the meaning of 'habet' is: 'have or possessed'.

³⁰ James A.R. Nafziger, "Repose Legislation: A Threat to The Protection of The World's Cultural Heritage," *California Western International Law Journal*, Vol. 17, No. 2, 1987: 261-262. <https://scholarlycommons.law.cwsl.edu/cwilj/vol17/iss2/3>.

³¹ Robert Hoge, *Rome: A Cultural, Visual, and Personal History* (New York: Alfred A. Knopf, 2011), p. 30. The word 'nemo' is translated in Latin, as 'no one'. The word 'dat' is defined as 'can give'. The word 'quad' is defined as 'from what'. The word 'non' is defined as 'not', and the word 'habet' is defined as 'have or possessed'. See also *The Sale of Goods Act 1979* (United Kingdom, Chapter 54, article 21 paragraph (1) about *Transfer of Title, Sale by a person who is not the owner*).

³² Tran Thang Long, "The Application of Estoppel in International Law and Experiences for Vietnam," *Vietnamese Journal of Legal Sciences*, Vol. 01, No. 1, 2019: 91. DOI: 10.2478/VJLS-2020-0006. Exceptions from the *Nemo Dat* Rule can occur for 2 (two) things, namely: First, objects are purchased on the open market/free market/official market; Second, by using the estoppel doctrine. The estoppel doctrine is a common law doctrine, i.e. a doctrine that prevents someone from denying the words/actions that have been done by him before. The party who declares through his words and/or actions can no longer deny anything that he has stated before, and/or that he has promised before. As an illustration, if any Authorized Person has given Power of Attorney to the Authorized Person (agent/representative) to sell objects owned by the Original Owner (original), based on the power of attorney he already has, the Authorized Person (agent/representative) has the right to sell objects that have been authorized by him from the real Original Owner. Once in a while, the Authorizer cannot revoke the Power that has been given to the Authorized. For the Buyer who buys objects from the Authorized Person, he must be protected by law. Therefore, this estoppel doctrine is called a barrier for those who use the *Nemo Dat* Rule. See also, I. C. Mac Gibbon, "Estoppel in International Law," *The International and Comparative Law Quarterly*, Vol. 7. No. 3, 1958: 468-513. <http://www.jstor.org/stable/755277>.

Panizzon, Marion. *Good Faith in the Jurisprudence of the WTO: The Protection of Legitimate Expectations, Good Faith Interpretation and Fair Dispute Settlement*. London: Bloomsbury Publishing Plc, 2006, 24-25, accessed on December 8, 2021. ProQuest Ebook Central. Estoppel is a basic concept of contract law, derived from the Anglo-American Common Law System. The purpose of this concept is to protect against inconsistent human behavior. Thus, the concept of estoppel is often likened to a vest to ward off inconsistencies in human behavior that may result in denial of statements, and/or actions that have been carried out in the past. Hence, the estoppel concept is considered a useful guarantee so that the other party does not change its position in the future.

³³ *Code of Civil Law*, article 584 concerning the method of obtaining property rights, states that: "Property rights to an object cannot be obtained in any other way, but by ownership, because of attachment, because of expiration, because of inheritance, either according to law or according to a will, and because of appointment or submission based on a civil event to transfer property rights, is carried out by someone who has the right to act freely on the object."

³⁴ Woi Pei Yee (2001), "Protecting Parties' Reasonable Expectations: A General Principle of Good Faith," *Oxford University Commonwealth Law Journal*, Published Online 27 April 2015, 1:2, p. 221, accessed on

the actual owner;³⁵ a buyer who purchases goods with full confidence that the seller, from whom he buys, is the real owner of the goods he is selling;³⁶ and an honest buyer who is not aware of the inherent defects in the goods being sold to him.³⁷

The Original Owner considers that he/she is the proprietor of the object being controlled, and/or owned by the Good Faith Purchaser.³⁸ The Original Owner assumes that he is the owner of the object that is being controlled, and/or owned by the Good Faith Purchaser. According to jurisprudence, it is sufficient for the Original Owner to only prove that the object he is suing (which he is seeking to return) is his property, whereas the Original Owner does not need to prove how he first obtained the property.³⁹ On the part of the Good Faith Purchaser, he feels that the object, which he purchased from another party in good faith and was later sued by the Original Owner, belongs to him and therefore he feels that he must be protected by law.⁴⁰

The legal dispute of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet*⁴¹ and The legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*) against the legal principle of Good Faith Purchaser in courts in Indonesia has been going on for quite a long time. It often happens and sometimes there is a disparity in decisions

September 27, 2021, DOI: [10.1080/14729342.2001.11421393](https://doi.org/10.1080/14729342.2001.11421393).

³⁵ R. Subekti, *Aneka Perjanjian* (Bandung: PT. Aditya Bakti, 2014), p. 15. A Good Faith Purchaser is defined by Subekti as "A buyer who does not know at all that he is dealing with a person who is not actually the owner."

³⁶ Ridwan Khairandy, *Iktikad Baik Dalam Kebebasan Berkontrak* (Jakarta: UI Press, 2004), p. 194. A purchaser in good faith is defined by Ridwan Khairandy as "A person who buys goods with full confidence that the seller is really the owner of the goods he sells."

³⁷ Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Yogyakarta: Mediatama, 2008), p. 25. A good faith purchaser is defined by Agus Yudha Hernoko as: "a person who is honest and who does not know the defects inherent in the goods he buys."

³⁸ Sri Soedewi Asjchoen Sofyan, *Hukum Perdata: Hukum Benda* (Yogyakarta: Liberty, 1974), pp. 59-60. '*Revindicatie*' claim is a claim regulated in the CCL in article 574. '*Revindicatie*' claim is a material claim against immovable objects that can only be made by the owner of the immovable object in question. According to the '*Hoge Raad*' (Dutch Supreme Court), the '*Revindicatie*' claim is filed by the owner of the object against the '*bezitter*' as well as against the '*houder*' of the object in question. In the practice of Indonesian courts, the '*Revindicatie*' claim (property claim) is often not used. Practitioners and the general judiciary use civil claims against the law based on CCL in article 1365 more often rather than '*Revindicatie*' claims based on CCL in article 574. As a result, '*Revindicatie*' claims are rarely found (or the term '*Revindicatie*' claims are rarely recognized) in public courts. In fact, oftentimes disputes over land that use the basis of a claim against the law are actually the material of the '*Revindicatie*' claim. According to the author, this was due to concerns on the part of the Plaintiff in using the term and the main legal basis of the '*Revindicatie*' claim in his lawsuit, that is to say: concerns that the Plaintiff's legal standing will be questioned in the '*Revindicatie*' claim, which is obliged to acknowledge, and/or state that the Plaintiff is the owner of the object of the lawsuit/object of a dispute as stipulated in CCL article 574, i.e. "Every owner of an object has the right to demand from whoever controls it, the return of the object in the state it is in."

³⁹ Sri Soedewi Asjchoen Sofyan, *Hukum Perdata*.

⁴⁰ Putro et. al., pp. 86-87.

⁴¹ Listyowati Sumanto, "The Future on Publication System of Land Registration In Indonesia," *International Journal of Scientific & Technology Research*, Vol. 6, Issued 03 March 2020: 1400. Basically, there are 2 (two) land registration publication systems; those are: a negative publication system and a positive publication system. In the negative publication system, land owners who have land rights due to receiving land transfers from other parties, even though they are registered with the land office (state), will always face the risk of being sued for their ownership rights by other parties. The other party who sued the landowner asked the court to cancel the previous legal act of transfer. The court will cancel the previous legal act of land transfer that has occurred in the event that the seller of the land is not the seller who has the right/authority to sell. The legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* is applied in this case.

among judges in the application of the legal principles in question.⁴² The existing phenomenon has become a concern and is considered important by the Supreme Court of the Republic of Indonesia. Thus, in 2012 a Circular Letter of the Supreme Court of the Republic of Indonesia Number 7 of 2012 was issued based on the Plenary Meeting of the Civil Chamber on point IX which formulated that Good Faith Purchasers should be given legal protection.⁴³ According to the author, initially, the Supreme Court was more inclined to protect the legal interests of Good Faith Purchasers than the real Original Owners. However, over time it turns out that the Supreme Court has updated its legal view on the Original Owner who must be given legal protection as well as related to disputes with Good Faith Purchaser. It is made concrete with the issuance of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 5 of 2014, as a result of the Plenary Meeting of the Civil Chamber regarding the criteria for Good Faith Purchasers, which in the second criterion letter a) states that “A seller is a person who has the right/has rights to the land that becomes a Buy-Sell object.”⁴⁴ The existing statement implicitly tends to put forward the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*).

Based on the information described above, it is clear that there has been a paradigm shift in the Supreme Court, which at first was more inclined to protect the legal interests of Good Faith Purchasers than the Original Owners, shifting to become more neutral in viewing their respective legal positions in the case. This can be seen from the statement in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 7 of 2012, which states “Original Owners can only file a claim for compensation to sellers who are not entitled.” Regarding this matter, the author interprets that it is never possible for a Good Faith Buyer to be asked for compensation (losses) for the transaction that has occurred in question. From the statement in the Circular Letter, it is very clear that there is a dominance of legal protection given to Good-Faith Purchasers compared to the real Original Owners. This contrasts with the interpretation that the author concludes on the object of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 5 of 2014, i.e. the Original Owner can never be harmed by a transaction that has occurred between a Seller who is not entitled (not authorized) to sell a land object to the Good Faith Purchaser. Thus, a Good Faith Purchaser can only claim the loss that has occurred to him, only to the Seller who is not entitled (not authorized) to sell the land object in question.

Based on what has been explained, it cannot be wrong if the author concludes that there has been a paradigm shift in the Supreme Court of the Republic of Indonesia, which at first tended to prioritize the legal principle of Good Faith (Good Faith Purchaser) rather than the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*), shifting to be more neutral, and/or prioritizing the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*) rather than the principle of Good Faith (Good Faith Purchaser).

⁴² Putro, *et. al.*, p. 163. In several court decisions, some Buyers are declared by the courts that they are Buyers who do not have good faith.

⁴³ SCC, No. 7/2012, Results of the Plenary Meeting of the Civil Chamber on Item IX.

⁴⁴ SCC, No. 5/2014, Results of the Plenary Meeting of the Civil Chamber on the Criteria of the Buyer in Good Faith, on the Second criterion, letter a.

III. PROCEDURAL LAW FOR TYPES OF CLAIMS OF OWNERSHIP DISPUTES BETWEEN THE REAL ORIGINAL OWNERS AND GOOD-FAITH PURCHASERS

As previously explained above, there is a dispute over the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet (Nemo Dat Rule)* with the legal principle of Good Faith (Good Faith Purchaser) in disputes over the ownership of non-moving goods or land objects. The legal principles used by the real Original Owner to sue the Buyer of land objects which are claimed to belong to the Original Owner (original) *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet (Nemo Dat Rule)*, and on the side of the land object Buyer as the Defendant will always use the argument that he is a Good Faith Purchaser.

Civil law in Indonesia adheres to the principle of good prejudice against everyone (Good Faith must be considered in everyone). In the event that a sale and purchase transaction occurs over a land object, the Buyer must be deemed to have Good Faith until there is a court decision stating otherwise. This situation has forced the real Original Owner to sue the Buyer in court so that the court states that the Buyer is not a Good Faith Purchaser.

In Indonesian civil procedural law, as stated in Article 102 *Reglement op de Rechtsvordering* ("RV"), there are 3 (three) types of claims, namely: first, claims that are individual in nature; Second, claims that are material in nature; Third, mixed claims.⁴⁵ Out of the three types of claims, individual claims are the most frequently used in court practice in Indonesia. The individual claim is divided into 2 (two), namely: an individual claim based on an engagement/contract relationship which is commonly referred to as a breach of contract claim (default claim)⁴⁶, and an individual claim based on an unlawful act (lawsuit tort). Since there is no engagement (contractual) relationship between the real Original Owner and the Good Faith Purchaser, the lawsuit filed by the real Original Owner is an individual lawsuit that constitutes an unlawful act.

Responding to the current state of legal practice, regarding the use of individual lawsuits against the law to resolve land object ownership disputes between the real Original Owner and the Good Faith Purchaser, the question arises as to whether or not the individual lawsuit used is appropriate and legally correct. Moreover, the object of the lawsuit in dispute is an immovable object i.e., land. Thus, instead of using an individual lawsuit, why do not we just use a material lawsuit?

In an individual lawsuit for an unlawful act, several elements must be met. First of all, there must be action; secondly, the act must violate the law; thirdly, there are losses; fourthly, there is a causal relationship between the unlawful act and the losses; and lastly, there is a fallacy.⁴⁷

In a claim over land object ownership between the real Original Owner and the Good Faith Purchaser in court, several irregularities are found, which include: first, the real Original Owner only asks for the object to be returned to its possession without asking for compensation from the Defendant (Good Faith Purchaser); second, the real Original Owner always accuses the Defendant (Good Faith Purchaser) of

⁴⁵ *Reglement op de Rechtsvordering* ("RV"), article 102.

⁴⁶ *Code of Civil Law*, article 1243.

⁴⁷ *Code of Civil Law*, article 1365.

having committed an unlawful act by controlling the property of the real Original Owner without rights, regardless of the sale and purchase of the land object occurred has been carried out following the procedure and the Purchaser's unawareness of a dispute over the object he purchased; third, in the event of a dispute over the ownership of the object, the claim should be based on the violation of the absolute right to the object (focusing on the object). Therefore, proving before the court is about testing the truth about whether or not there are absolute rights to the thing that is violated. This is in stark contrast to a tort claim which is based on the argument that a legal subject has committed an unlawful act (focusing on the subject). Finally, often the plaintiff (the real Original Owner) only postulates that he is the owner of the disputed object without proving the existence of an unlawful act committed by the defendant (Good Faith Purchaser), but in the *petitum* of the lawsuit, the plaintiff asks the court to declare that the defendant (Good Faith Purchaser) had committed an unlawful act.

In the case of a material claim, the said claim is based on the existence of an absolute right to the infringed object. These property rights will follow the object in the hands of wherever the object is. Protection of property rights will be given absolutely to the owner of the object from all kinds of disturbances that may exist and may occur. Therefore, a material claim has the sole purpose of returning objects that are controlled by people who are not entitled to these objects so that they could return them to their original owners. Thus, the goal of a material claim is not for compensation.

Claims to return objects controlled by unauthorized persons are called revindication claims. These claims are regulated in article 574 of the Civil Code. If the claim for revindication is related to confiscation of revindication in article 226 paragraph (1) of the *Herzien Inlandsch Reglement* ("HIR")⁴⁸, the claim for revindication is interpreted only for movable objects. In this paper, the interpretation stating that the claim for revindication is only for movable objects is rebutted by the author, with the following reasons: first, the claim for revindication is contained in article 574 of the Indonesian Civil Code, where article 574 referred to is part of the third chapter on property rights (*eigendom*) which specifically regulates land; second, the revindication confiscation regulated in article 226 HIR in paragraph (3) connects with article 197 HIR, and in the elucidation of article 197 paragraph (3), it is stated that not only movable property can be confiscated, but immovable property can also be confiscated; Third, if a claim for revindication is filed against a movable object, the claim will be hindered by Article 1977 paragraph (1) of the Civil Code which states that whoever controls a movable object is considered the owner. So with the provisions of the existing norms, what else is there to sue for movable objects when the law has determined so? Based on what has been described above, a revindication claim can be used to sue immovable goods or land objects.

The reason for revindication claims rarely used in disputes over the ownership of immovable land objects between the real Original Owner and the Good Faith Purchaser is that there is a condition stating that only the owner of the object can sue whoever owns the object. Meanwhile, for immovable objects (land objects) there is no provision stating that the owner controls the immovable object, so it is not certain that the owner controls the immovable object.⁴⁹ This means that it is possible for

⁴⁸ *Herzien Inlandsch Reglement* ("HIR"), article 226 paragraf (1).

⁴⁹ Indonesian adheres to the concept of '*Rechtsverwerking*', i.e. the concept contained in the *Basic Agrarian Law and its derivative regulations*. This concept adopts the concept contained in customary law, but it is

people who are not landowners to have the right to control the land and have the potential to become landowners.

Based on the explanation described above, in the case of a land object ownership dispute between the real Original Owner and a Good Faith Purchaser, it is more appropriate to use a material lawsuit compared to an individual lawsuit in an unlawful act.

IV. VARIOUS KINDS OF ACTIONS WHICH MAKE THE GOOD FAITH POSTULATE FAILS (REVIEWED FROM DECISIONS OF INDONESIAN JURISDICTIONS)

Due to the difficulty in conceptualizing good faith, the way to make it easier is to do the other way around, i.e., by conceptualizing all kinds of actions that are acts of bad faith.⁵⁰ The conceptualization referred to is carried out by annotating decisions of judicial institutions that have permanent legal force in the form of permanent jurisprudence (landmark decisions). One of the applicable law sources in Indonesia is jurisprudence so the existence of jurisprudence has a very important role for judges in deciding a case. The Supreme Court of the Republic of Indonesia continuously continues to categorize decisions that are considered important every year. A decision of a judicial institution can be categorized as a landmark decision if it fulfills the following requirements: first, the decision of the judiciary has permanent legal force (*inkracht van gewijsde*); second, the decision that has permanent legal force contains new legal findings (*Rechtsvinding*); third, the decision can answer the social dynamics that grow in society; fourth, the decision reflects the direction of future legal developments; finally, this decision is made for the first time and has never been followed by other judges.⁵¹

In a dispute over ownership of a land object between the real Original Owner and a Good Faith Purchaser in Court which is a dispute based on the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*) against the Good Faith legal principle (Good Faith Purchaser). The real Original Owner requests the court that the object that has been transferred to the name of the new buyer (Good Faith Purchaser) is returned to him. Meanwhile, the new owner (Good Faith Purchaser) tries to defend the object that is already his.

In the examination of court cases, the real Original Owner is required to prove that the new owner of the object is not a figure that can be classified as a Good Faith Purchaser. The real Original Owner must have sufficient initial evidence (*prima facie evidence*)⁵² to cancel the ownership rights of the Good Faith Purchaser before the

not exactly the same as the concept contained in customary law. The concept of 'Rechtsverwerking' means: If a person abandons his land (leaving his land uncultivated), the land is then cultivated by another person who obtains it in good faith, the land owner who has abandoned his land lost his land rights (lost the right to demand to return the land). The land owner who has abandoned his land is considered to have relinquished his rights silently. See explanation of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 juncto Articles 27, 34, and 40 of the Basic Agrarian Law Number 5 of 1960.

⁵⁰ Bad faith according to Black's Law Dictionary is "The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive."

⁵¹ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*, (Jakarta: Kencana, 2018), pp. 98-99.

⁵² Black's Law Dictionary, 8th ed. West, Thomson business, 2004, 598-1228. "Evidence will establish a fact

court. The evidence built by the real Original Owner must point to the actions of the New Owner (Good Faith Purchaser) which are not justified and not permitted by law. In this case, the law can prove that transactions that have taken place between the parties (seller and buyer) are based on bad intentions,⁵³ and then the transaction is declared null and void by law.⁵⁴ Therefore, when the real Original Owner faces the law with the Good Faith Purchaser, the real Original Owner must be able to prove that the transaction which has resulted in the transfer of ownership rights to the disputed object has been based on bad faith.⁵⁵

To make it easier for Judges to decide on a dispute between the real Original Owner using the argument of the *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* legal principle and *Nemo Dat Quod Non Habet (Nemo Dat Rule)* legal principle, with new owners who use the argument of good faith legal principle (Good Faith Purchaser), Judges need to conceptualize bad faith in an effort to get good faith conceptualization, i.e. by using sources of jurisprudence law. From the existing jurisprudence, there will be examples of various kinds of actions that can invalidate the good faith argument, some of which can be characterized as follows:

- a. The New Owner of the object in dispute has known everything, and/or has had a suspicion that the object to be transacted is not a perfect object to be traded. However, for certain reasons (reasons originating from the New Buyer's side) the transaction in question continues;⁵⁶
- b. The New Owner of the object in dispute has acknowledged that there are conflicting data. However, the process of buying and selling continues for certain reasons;⁵⁷
- c. Before the transaction occurs, the New Owner of the object in dispute has known the circumstances and conditions that the object to be transacted is being controlled by another third party for certain reasons. However, New Buyer still makes the transaction;⁵⁸
- d. The new owner of the object in dispute has purchased the object of the transaction based on evidence that is not authentic (not original), or is only based on photocopy evidence, or knows that the evidence provided by the Seller is evidence of suspected validity. However, for some reason, the transaction continues;⁵⁹

or sustain a judgment unless contradictory evidence is produced.”

⁵³ Henry Soelistyo, *Bad Faith Dalam Hukum Merek* (Jakarta: Maharsa Artha Mulia, 2017), p.34.

⁵⁴ David E. Pozen, “Constitutional Bad Faith,” *Harvard Law Review*, Vol. 129, No. 4, 2016, 890. “Concern with bad faith is visible everywhere in the law”.

⁵⁵ Merriam-Webster Dictionary defines oxymoron as “a word or group of words that is self-contradicting, as in ‘bittersweet’ or ‘plastic glass’.” Oxymoron is often used in literature”. <https://www.merriam-webster.com/dictionary/oxymoron>. Accessed on December 10, 2021. Oxymoron is a figurative language that contains contradictions; in this case, there is a conflict in the meaning of the word ‘faith’ with ‘bad’.

⁵⁶ Supreme Court of Republic of Indonesia, “Decision No. 1816 K/PDT/1989,” in 1989 (Supreme Court Decision, hereinafter the acronym “SCD” is used).

⁵⁷ SCD No. 4340 K/PDT/1986, in 1986.

⁵⁸ SCD No. 1923 K/PDT/2013, in 2013.

⁵⁹ SCD No. 2191 K/PDT/2000, in 2001, states that: “The defendant in the trial process of the district court has submitted documentary evidence in the form of a “photocopy of the Right to Use Certificate” which cannot be adjusted to the original, so, legally, the photocopy of the Right to Use Land Certificate cannot be accepted as legal evidence.” In juncture with SCD No. 701 K/Sip/1974, in 1976, it is stated that: “In submitting ‘photocopies of letters’ as evidence in the trial of the lawsuit in court, a photocopy of the letter by an official must be declared to be in accordance with the original. If this is not the case, the documentary evidence in the form of a photocopy is invalid in the trial. In juncture with SCD No. 3609 K/PDT/1985, in 1987, it is stated that: “A proof that is only in the form of a photocopy and there has never been an original document, for which reason, the proof must be set aside.”

- e. There are suspicions that the object to be transacted is not 'clean and clear'. However, the New Owner continues the transaction for some reason;⁶⁰
- f. Pretending to buy and sell (pro forma);⁶¹
- g. Buying from Legal Subjects who are not independent (joint assets of husband and wife), or who do not have the consent of their married partners;⁶²
- h. Purchasing from some of the heirs (not all heirs), or there is no agreement from other heirs through a court order that the other heirs have rejected the inheritance;⁶³
- i. Purchasing from an Heir who sells more than his share of the inheritance;⁶⁴
- j. Purchasing from incompetent people (not old enough/mentally ill/under the guardianship (*curatele*));⁶⁵
- k. Purchasing when there is still a legal dispute over the object being traded;⁶⁶
- l. At the time of the transaction, the object of the transaction is being confiscated by the Court;⁶⁷
- m. There are data that are not true (false). However, the transaction continues;⁶⁸
- n. The Seller is only the owner on paper (does not have control over the physical object he sells or the physical object is controlled by the real Original Owner, or by other Third Parties). This means the seller only has property rights without objects, or only has the rights but the objects are controlled by the real Original Owner, or by other Third Parties;⁶⁹
- o. Making a careless purchase;⁷⁰
- p. Finding information in the document whose contents contradict each other. Thus,

⁶⁰ SCD No. 14 PK/PDT/2008, in 2008, states that: "Anyone who buys a land which is known to him that it is in a state of dispute, is considered a bad faith purchaser, and therefore all rights obtained by him on the object become invalid and null and void."

⁶¹ SCD No. 3201 K/PDT/1991, in 1996 states that: "the act of buying and selling carried out under pretense (pro forma) only binds the party making the agreement, and does not bind at all to third parties who purchase in good faith."

⁶² SCD No. 114 K/PDT/2013, in 2013, states that: "The purchase of land which is a '*gono-gini*' property (joint property) without the approval of one of the parties who owns it is considered an unlawful act."

⁶³ SCD No. 112 K/Sip/1955, in 1956, in juncture with SCD No. 1091 K/Pdt/2010, in 2010, in juncture with Kutai Barat District Court of Republic of Indonesia, "Decision No. 22/Pdt.G/2013/PN.KUBAR," in 2013.

⁶⁴ SCD No. 52 K/Sip/1975, in 1975.

⁶⁵ SCD No. 3699 K/PDT/1996, in 2000 states that: "Good faith is considered non-existent if the purchaser has known that the certificate in the name of the minor was carried out by the father; therefore, the legal defects have been identified," in juncture with SCD No. 1237 K/Sip/1973, in 1973.

⁶⁶ SCD No. 1861 K/PDT/2005, in 2005, states that: "The seller sells to the buyer at the time the case is in progress (not yet decided)."

⁶⁷ SCD No. 1671 K/PDT/2008, in 2009 states that: "Buyers who do not know the object of land purchased is in a state of confiscation in another case that has permanent legal force first is not protected."

⁶⁸ SCD No. 143 K/PDT/2011, in 2011, states that: "Good faith is considered non-existent because even though the sale and purchase are carried out before a notary and there is a certificate, the buyer's data turns out to be falsified."

⁶⁹ SCD No. 1847 K/PDT/2006, in 2006, states that: "The land buyer is declared to be in bad faith because he knows who is in control of the land, but still purchases it from people who have no control of the land." Regarding this matter, it is often referred to as property rights without objects ('*Dominium Sine Re*').

⁷⁰ SCD No. 1816 K/PDT/1989, in 1989, states that: "A reckless purchase means that, at the time of purchase, he did not examine the rights and status of the Sellers on litigation land. Therefore, he does not deserve to be protected in the sale and purchase."

- raises suspicions/doubts;⁷¹
- q. The object being transacted is still occupied by another party;⁷²
 - r. Conducting transactions illegally, such as; the signature is not on legal stamp duty (which brings consequences that all legal actions are considered invalid);⁷³
 - s. The transaction is before the authorized officials;⁷⁴
 - t. Purchasing an object which the Court has declared that the object in question is no longer the property of the seller (belongs to the party who won in a case in question/in the said court's decision);⁷⁵
 - u. The object sold by the Seller is not the property of the Seller anymore (has become the property of the state);⁷⁶
 - v. The transactions occur without witnesses;⁷⁷
 - w. The transaction does not pay attention to the *Billijkheids Beginsel* principle (Principle of Propriety).⁷⁸

In the event that the real Original Owner can prove that the New Owner has committed an act from one of the examples mentioned above, the proof of Bad Faith on the part of the New Owner has complied with Article 532 of the Indonesian Civil Code, which states:

"It is in bad faith such position if he knows who holds it, that he is not the owner of the property.

If the man in position, because of his standing is being sued before a judge and he is defeated in the case, it is considered that he has bad faith, from the moment the case is brought forward."

V. CONCLUSION

Good faith is the highest value which is no longer the domain of an engagement (contract). This is because good faith has transformed from a specific principle in the field of civil law to a general principle in civil. In addition, the type of individual

⁷¹ SCD No. 4340 K/PDT/1986, in 1986, states that: "The purchaser finds information whose contents contradict one another, giving rise to suspicions or doubts. However, the transaction continues, even though in the future it turns out that the land does not belong to the seller. Therefore, such a buyer is a bad faith buyer and will not be protected by law."

⁷² SCD No. 1923 K/PDT/2013, in 2013, states that: "The buyer is declared to have no good faith because, based on the witness's statement, it is known that the buyer knows that someone is living in the object of the dispute, but does not ask first and just buys it immediately."

⁷³ SCD No. 2255 K/PDT/2014, in 2014, states that: "The seller made a transaction illegally (signed without legal stamp), resulting in all legal consequences that arise being declared invalid"

⁷⁴ SCD No. 2318 K/PDT/2009, in 2009, in juncture with SCD No. 710 PK/PDT/2011," in 2011, in juncture with SCD No. 1210 K/PDT/2011, in 2011, in juncture with SCD No. 2831 K/PDT/2011, in 2011, in juncture with SCD No. 561 K/PDT/2012, in 2012.

⁷⁵ SCD No. 1068 K/PDT/2008, in 2008.

⁷⁶ SCD No. 429 K/PDT/2003, in 2007, states that: "The National Land Agency has clearly stated that the '*girik*' land (object of dispute) originates from private land and the land is declared to be state land."

⁷⁷ SCD No. 691 K/PDT/2013, in 2014, states that: "There is no witness who directly sees the sale and purchase, thus the conditions of clarity and in public are not fulfilled."

⁷⁸ SCD No. 1498 K/PDT/2006, in 2008, states: "to prove whether the sale and purchase of disputed land occur in the right way, based on the '*Billijkheid Beginsel*' principle, the buyer must prove it."

claim in an unlawful act which in practice is commonly used for ownership dispute cases between the real Original Owner and the Good Faith Purchaser is actually less appropriate, where it would be more appropriate to use a material lawsuit.

Regarding the difficulty of conceptualizing good faith, it can be done in reverse, by carrying out the conceptualization of bad faith first by using various kinds of examples of acts contained in the permanent jurisprudence of court decisions (landmark decisions).

Furthermore, good faith is a legal norm that has an open nature (open legal norms) whose application is very dynamic, and cannot be generalized to every situation. The legal norms that have an open nature are confirmed in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 7 of 2012 as a result of the Plenary Meeting of the Civil Chamber concerning Good Faith Purchaser, which later underwent renewal, and/or changes in substance with the Circular Letter of the Supreme Court of the Republic of Indonesia Number 5 of 2014, results of the Plenary Meeting of the Civil Chamber on the criteria of Good Faith Purchasers. Legal norms that have an open nature have created a paradigm shift in the Indonesian legal system which at first tended to prioritize the principle of Good Faith (Good Faith Purchaser) over the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*). At this moment, it has become more neutral in establishing the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*) along with the legal principle of Good Faith (Good Faith Purchaser). Thus, the legal principle of *Nemo Plus Iuris Ad Alium Transferre Potest Quam Ipse Habet* and the legal principle of *Nemo Dat Quad Non Habet* (*Nemo Dat Rule*) juxtaposed with the legal principle of Good Faith (*Bona Fides*) is still very relevant to answer current and future legal needs.