



# Protection Of Property Rights In Cases Of Land Deed Forgery: A Comparative Study Of Good Faith And Legal Formalism In Indonesian And English Land Law

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## Abstract

Land deed forgery poses a serious threat to the integrity of property rights and legal certainty in both civil and common law systems. This article presents a comparative doctrinal analysis of how Indonesian and English legal systems address the conflict between good faith protection and legal formalism in cases involving forged land documents. In Indonesia, forged deeds are void ab initio, and courts may cancel derived land certificates unless the acquirer can prove good faith and physical possession, supported by the five-year limitation rule under Government Regulation No. 24 of 1997. Conversely, English law emphasizes title by registration under the Land Registration Act 2002, where registered ownership is presumed valid, with limited exceptions for rectification and statutory indemnity. This study finds that Indonesia favors substantive justice through judicial evaluation of good faith, whereas England prioritizes certainty and marketability through statutory formalism. Each system has its strengths and limitations: Indonesia enables moral responsiveness but lacks consistency and compensatory mechanisms; England ensures predictable outcomes but offers limited restoration in morally complex scenarios. The article concludes with reform proposals, including the adoption of an indemnity fund in Indonesia and refinement of rectification thresholds in England. Ultimately, effective protection against land deed forgery requires both structural reliability and equitable flexibility.

**Keywords:** Land registration, forged deeds, good faith, legal formalism, Indonesia, England, property law, comparative law, rectification, indemnity.

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## 1. Introduction

Land ownership is a fundamental aspect of both civil and common law systems, functioning not only as a symbol of private wealth but also as a cornerstone of legal certainty, economic growth, and national development. In Indonesia, land is more than a commodity—it is an agrarian right protected under Undang-Undang Pokok Agraria (UUPA) and interpreted as having public, social, and spiritual significance. However, the integrity of this protection is increasingly undermined by the proliferation of land deed forgery (pemalsuan akta tanah), which remains a persistent problem across various jurisdictions<sup>1</sup>.

Forged deeds often exploit the formal registration process by mimicking legal instruments that should be immune to fraud. In practice, these falsified documents can lead to overlapping certificates,

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<sup>1</sup> Siti Rahmawati, "Pemalsuan Sertifikat Tanah Sebagai Kejahatan Agraria," *Jurnal Yudisial*, Vol. 16, No. 1 (2021): 33.

unlawful transfers of title, and dispossession of legitimate landowners. Data from the Indonesian Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) reveal over 300 reported mafia tanah (land mafia) cases between 2018 and 2022 alone<sup>2</sup>. Beyond the legal implications, these cases represent a systemic crisis in institutional trust and judicial enforcement mechanisms.

This crisis spotlights a deeper jurisprudence conflict between two doctrinal foundations in property law: **the principle of good faith (itikad baik)** and **legal formalism**. On one side, good faith is a moral and equitable doctrine aimed at protecting innocent third parties who transact without knowledge of fraud. On the other, legal formalism adheres to the idea that validity stems from procedural and documentary correctness, not moral evaluation. The conflict becomes stark when documents that appear procedural valid are later proven to be forgeries—raising critical questions about whether the law should prioritize procedural integrity or equitable fairness.

In **Indonesian civil law**, the principle of good faith is codified in **Article 1338 paragraph (3) of the Indonesian Civil Code (KUHPerdara)**, which asserts that all agreements must be carried out in good faith<sup>3</sup>. This doctrine serves as a bedrock in land ownership disputes, particularly when there are competing claims over the same parcel. **Government Regulation No. 24 of 1997 on Land Registration** further states that a registered title may only be annulled if acquired in bad faith and if contested within five years<sup>4</sup>. However, judicial interpretation remains varied. For example, the **Makassar District Court** ruled in Case No. 318/Pdt.G/BTH/2014 that buyers who failed to prove a "halal cause" were not eligible for good faith protection<sup>5</sup>.

Academic studies reinforce that Indonesian courts apply a cumulative test: to be protected as a bona fide purchaser, a buyer must (1) possess the land physically, (2) have undertaken proper due diligence, and (3) demonstrate absence of bad faith or collusion<sup>6</sup>. These criteria, while developed through judicial interpretation, lack uniform application—resulting in legal uncertainty for rightful owners and good faith buyers alike.

In contrast, the **English legal system**, rooted in common law, adopts a more structured formalistic approach to land title. The **Land Registration Act 2002**, particularly Section 58, confers **indefeasibility of title**—a presumption that registration itself guarantees ownership<sup>7</sup>. This provides strong protection for registered owners, regardless of flaws in the underlying transaction. However, English law also employs equitable doctrines—constructive trusts, proprietary estoppel, and non est factum—which allow courts to correct injustice where procedural compliance masks fraudulent conduct<sup>8</sup>.

While English law emphasizes form over fairness, it retains limited but powerful equity-based tools to deal with exceptional cases. Notably, the English doctrine of **rectification** allows for the Land Registry to be amended where mistake or fraud is proven and where the registered owner's rights were obtained dishonestly<sup>9</sup>. In contrast to Indonesia's moral approach to good faith, English equity requires stronger thresholds of proof but offers greater doctrinal clarity.

The **novelty** of this study lies in its comparative functional-legal analysis of how the principles of good faith and legal formalism operate—and often conflict—in Indonesian and English land law.

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<sup>2</sup> Kementerian ATR/BPN, *Data Statistik Kasus Mafia Tanah Nasional 2018–2022*, diakses 5 Agustus 2025.

<sup>3</sup> KUH Perdata, Pasal 1338 ayat (3).

<sup>4</sup> Peraturan Pemerintah No. 24 Tahun 1997, Pasal 32 ayat (2).

<sup>5</sup> Putusan PN Makassar No. 318/Pdt.G/BTH/2014, Direktori Putusan Mahkamah Agung RI.

<sup>6</sup> Irene & A. Fitria, "Legal Protection for Good Faith Buyers in Overlapping Land Certificates," *Jurnal Dinasti Hukum*, Vol. 5 No. 2 (2024): 421–430.

<sup>7</sup> Land Registration Act 2002, Section 58.

<sup>8</sup> Judith Bray, *Unlocking Land Law*, 7th ed. (Routledge, 2021), 172–179.

<sup>9</sup> Louise Merrett, "Fraud and Rectification in English Land Law," *Cambridge Law Journal*, Vol. 73 No. 1 (2014): 41–69.

While past literature has explored these principles separately, very few have analyzed their doctrinal tensions in the context of **forged deeds**, especially through a comparative legal lens. This research bridges that gap by evaluating not just statutory language but also judicial reasoning and equitable remedies, thereby enriching the discourse on cross-systemic property rights protection.

Although Indonesia has witnessed a sharp rise in land disputes involving document fraud, **scholarly engagement with the systemic legal tensions between good faith and formalism remains limited**. Most studies focus either on agrarian administrative reform or statutory interpretation of registration laws. They rarely engage with **comparative equity-based doctrines** such as constructive trust or analyze how English law balances procedural rigidity with equitable fairness. Furthermore, Indonesian law lacks a clear jurisprudential framework for assessing good faith—especially in overlapping certificate cases—leaving judicial interpretation vulnerable to inconsistency<sup>10</sup>.

The **urgency** of this research is underscored by the Indonesian government's ambitious efforts to digitize land administration through the Pendaftaran Tanah Sistematis Lengkap (PTSL) program and the One Map Policy. Without robust doctrinal clarity, the risk of **digitalizing formal fraud** becomes even more alarming. International best practices show that formalism without equitable safeguards may enhance, rather than reduce, systemic abuse. Thus, examining how English law limits abuse via equity may offer insights into developing hybrid legal models that combine certainty with justice.

This article seeks to address the following: **1)** What are the legal consequences of land deed forgery in Indonesia and England? **2)** How are the principles of good faith and legal formalism conceptualized and applied in both jurisdictions? **3).** What are the strengths and limitations of each system in providing effective legal protection for bona fide parties?

Through answering these questions, this research aims to clarify doctrinal foundations, propose pathways for legal harmonization, and offer practical reform recommendations for strengthening protection against land deed forgery in both civil and common law settings.

## 2. Methodology

This research adopts a **normative-juridical approach** combined with a **comparative legal method** to examine how Indonesian and English legal systems protect property rights in cases of land deed forgery. The normative component focuses on analyzing legal norms, statutes, and case law governing good faith and legal formalism, while the comparative element aims to reveal both convergences and divergences in the doctrinal logic of the two systems. The research does not seek to test hypotheses empirically, but rather to evaluate the internal consistency and normative coherence of legal principles and their judicial application in cases involving forged land documents.

This study falls under the domain of **doctrinal legal research**, which interprets and systematizes legal rules and their interaction with judicial reasoning. In line with **Peter Cane's typology**, doctrinal legal analysis is especially suitable for exploring how different systems resolve similar legal conflicts through distinct methods of legal interpretation<sup>11</sup>. To ensure rigorous comparison, this research is guided by the **functional method of comparative law** as formulated by **Zweigert and Kötz**, which assumes that different legal systems often confront functionally equivalent problems and can be meaningfully compared based on how they resolve those problems<sup>12</sup>.

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<sup>10</sup>Rizky Darmawan, "Problematika Itikad Baik dalam Sengketa Sertifikat Tanah Ganda," *Jurnal Hukum Ius Quia Iustum*, Vol. 27 No. 2 (2020): 231–250.

<sup>11</sup> Peter Cane, *The Anatomy of Legal Theory* (Oxford: Hart Publishing, 2013), 12–13.

<sup>12</sup> Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Clarendon Press, 1998), 34–36.

This method is particularly appropriate in analyzing land deed forgery because both Indonesian and English law face similar threats to the integrity of property systems, despite operating under different legal traditions—civil law and common law, respectively.

Primary legal materials used in this study include Indonesian legislation such as the Kitab Undang-Undang Hukum Perdata (KUHPerdata), Undang-Undang No. 5 Tahun 1960 tentang Pokok-Pokok Agraria (UUPA), and Peraturan Pemerintah No. 24 Tahun 1997 tentang Pendaftaran Tanah. English primary sources include the Land Registration Act 2002, alongside relevant case law such as *Walker v Burton* [2013] EWCA Civ 1228 and *NRAM Ltd v Evans* [2017] EWCA Civ 1013. These sources were selected for their direct relevance to registration, forgery, and the doctrines of good faith and indefeasibility.

In addition to statutory law and case law, the study also utilizes **secondary legal materials**, including peer-reviewed journal articles, legal textbooks, and practitioner commentaries. Key doctrinal references include *Unlocking Land Law* by **Judith Bray**, which provides comprehensive analysis of English land principles, and *Contract Law* by \*Ewan McKendrick, which outlines the foundation of equitable doctrines like non est factum and constructive trust. Indonesian legal commentary was sourced from accredited SINTA journals, particularly articles focusing on overlapping certificates, good faith jurisprudence, and the implications of Government Regulation No. 24/1997. All sources were accessed through verified databases such as HeinOnline, JSTOR, Google Scholar, Scopus, and the official website of the Supreme Court of Indonesia.

Doctrinal analysis in this study proceeds by interpreting the legal texts and synthesizing them with the judicial rationale adopted in representative cases. Case selection followed purposive sampling, emphasizing decisions that directly address forged land deeds, conflicting claims, or disputes where courts had to weigh between formal compliance and equitable protection. Indonesian cases were retrieved from the **Direktori Putusan Mahkamah Agung RI**, while English cases were drawn from **BAILII** and academic commentaries. For example, the Indonesian case Putusan PN Makassar No. 318/Pdt.G/BTH/2014 is analyzed for its application of the "halal cause" principle in rejecting claims of good faith<sup>13</sup>, while *Walker v Burton* is examined for its doctrinal treatment of indefeasibility in the face of irregularities in land ownership<sup>14</sup>.

The comparative analysis applies a thematic lens, focusing on four core concepts: (1) the legal meaning and threshold of "good faith," (2) the role of formal documents and registration systems, (3) the doctrinal response to fraud, and (4) the availability of equitable remedies in each system. Indonesian law often treats good faith as a subjective moral condition but with increasing attempts to objectify it through court standards, such as duration of land possession, the status of land certificates, and whether the buyer conducted due diligence<sup>15</sup>. English law, in contrast, views registration as decisive, unless the circumstances fall within statutory exceptions for rectification or the operation of overriding interests<sup>16</sup>.

Although doctrinal research is well-suited to this topic, the study acknowledges several methodological limitations. First, it does not incorporate empirical data or interviews with landowners, judges, or registry officials, which could provide insight into practical enforcement and administrative discrepancies. Second, in Indonesia, the absence of binding judicial precedent (except for Supreme Court jurisprudence) may result in inconsistent application across jurisdictions, limiting the generalizability of certain case interpretations. Third, while the study seeks to be comprehensive,

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<sup>13</sup> Putusan Pengadilan Negeri Makassar No. 318/Pdt.G/BTH/2014, Mahkamah Agung RI.

<sup>14</sup> *Walker v Burton* [2013] EWCA Civ 1228.

<sup>15</sup> Irene & A. Fitria, "Legal Protection for Good Faith Buyers in Overlapping Land Certificates," *Jurnal Dinasti Hukum*, Vol. 5 No. 2 (2024): 421–430.

<sup>16</sup> Louise Merrett, "Fraud and Rectification in English Land Law," *Cambridge Law Journal* 73, no. 1 (2014): 41–69.

it is inherently selective in choosing representative cases and doctrines, given the breadth of property law in both jurisdictions.

Despite these limitations, this methodology offers a robust foundation for understanding how land deed forgery is treated as a legal problem and how different legal cultures balance the principles of fairness and certainty. By combining normative interpretation with comparative insight, the research generates theoretical and practical recommendations that can inform legal reform, particularly in contexts where document fraud undermines property systems.

### 3. Results and Discussion

#### 3.1. Legal Consequences of Land Deed Forgery in Indonesia and England

Land deed forgery has significant legal implications in both Indonesia and England, yet each legal system approaches the consequences of such forgery based on different doctrinal underpinnings. In Indonesia, forged land documents are treated as legally void (*batal demi hukum*), meaning they are considered never to have had legal effect from the outset<sup>17</sup>. This principle is derived from the general civil law maxim that fraudulent acts cannot give rise to legitimate legal consequences. Therefore, if a land deed is proven to be forged—such as involving falsified signatures, fake identities, or collusive acts between parties and land officials—the resulting notarial deed and land certificate can be revoked<sup>18</sup>.

The Indonesian Civil Code (KUHPerdara), although not directly regulating land registration, provides the foundational norms for contract law and fraud. In cases involving forged deeds, courts generally refer to Articles 1320 and 1321 KUHPerdara, which require consent to be free from coercion or deceit. If the consent element is compromised, the agreement is voidable or null. However, land law is further governed by the Basic Agrarian Law (UUPA) and its implementing regulation, **PP No. 24 of 1997 on Land Registration**, particularly **Article 32(2)**, which provides a statutory limitation for challenging land certificates. This article stipulates that if a person obtains a certificate in good faith, possesses the land for five years, and no legal claim is raised, their title becomes legally secure<sup>19</sup>.

In judicial practice, Indonesian courts have often interpreted this five-year rule as a protective shield for good faith purchasers. For example, in **Putusan MA No. 1235 K/Pdt/2017**, the Supreme Court annulled a land certificate issued based on a forged deed because the buyer could not prove good faith, physical possession, or due diligence<sup>20</sup>. The court emphasized that the certificate was tainted from the beginning and could not be validated by mere reliance on registration. However, in other cases such as **Putusan PTUN No. 36/G/2012/PTUN-JKT**, courts upheld the rights of parties who acquired land without knowledge of the forgery and who met the criteria under PP 24/1997<sup>21</sup>. This shows that while the Indonesian system allows for rectification and cancellation of forged certificates, it also seeks to uphold transactional certainty through time-based protections and equitable doctrines.

The legal consequences are not limited to civil invalidation. Land deed forgery is also a **criminal offense under Article 263 of the Indonesian Penal Code (KUHP)**, which criminalizes the falsification of authentic documents, including notarial deeds<sup>22</sup>. Criminal liability extends not only to the forger but also to parties who knowingly use forged documents in land

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<sup>17</sup> R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 2009, hlm. 123.

<sup>18</sup> M. Yahya Harahap, *Hukum Acara Perdata*, Jakarta: Sinar Grafika, 2020, hlm. 434.

<sup>19</sup> PP No. 24 Tahun 1997 tentang Pendaftaran Tanah, Pasal 32 ayat (2).

<sup>20</sup> Putusan Mahkamah Agung RI No. 1235 K/Pdt/2017, Direktori Putusan MA.

<sup>21</sup> Putusan PTUN No. 36/G/2012/PTUN-JKT.

<sup>22</sup> KUHP Indonesia, Pasal 263 ayat (1) dan (2).

transactions. As such, dual tracks of liability—civil (certificate cancellation) and criminal (penal sanctions)—often run concurrently in Indonesian practice.

In contrast, the English legal system places emphasis on the **formality and finality of the land register**, governed by the **Land Registration Act 2002 (LRA 2002)**. Under **Section 58**, registration of title vests legal ownership in the registered proprietor, even if the underlying transaction is defective or void<sup>23</sup>. This principle is known as the “mirror principle,” meaning the land register is presumed to reflect the legal reality. However, the Act also provides for **rectification** of the register in limited circumstances, particularly when a mistake has occurred—such as fraud, forgery, or administrative error.

In **Malory Enterprises Ltd v Cheshire Homes (UK) Ltd [2002] Ch 216**, the English Court of Appeal held that a forged transfer could be a mistake allowing for rectification of the register, especially when the rightful owner was in actual occupation of the land<sup>24</sup>. This principle was later clarified and somewhat narrowed in **Swift 1st Ltd v Chief Land Registrar [2015] Ch 602**, where the court held that a person registered due to a forged disposition could retain their title unless rectification was justified and not unjust to the current registered owner. In such cases, the innocent party who suffers loss due to rectification may claim **indemnity** under **Schedule 8 of the LRA 2002**, which allocates financial compensation to mitigate the harshness of rectification<sup>25</sup>.

Thus, while **English law initially validates registration even if founded on a forged deed**, it provides **statutory tools to rectify mistakes and compensate victims**. This contrasts with the **Indonesian approach**, where **certificates based on forged deeds are not valid from the beginning**, and courts actively inquire into the legitimacy of the underlying transaction regardless of registration status. In Indonesia, the priority is substantive justice and equitable outcomes; in England, the system emphasizes **certainty, efficiency, and systemic trust in the registry**, with post-facto remedies for exceptional cases.

Practically, the consequences of forgery in both systems lead to different litigation strategies. In Indonesia, the aggrieved party typically files a **civil lawsuit to nullify the deed and cancel the certificate**, while simultaneously initiating criminal proceedings. The land registry (BPN) will only act upon a final court decision to correct the register. In England, a party may apply directly for **rectification of the Land Register** and seek **statutory indemnity** without needing to prove bad faith by the transferee. However, English courts are more reluctant to disturb the register unless the statutory conditions are clearly met.

In sum, while both Indonesia and England recognize the severe impact of land deed forgery, they diverge significantly in terms of legal doctrine and procedural response. **Indonesia allows wide judicial discretion to cancel certificates based on equitable assessments**, while **England upholds the formalism of registration but uses statutory rectification and indemnity to correct injustices**. Both systems balance the needs of transactional certainty and substantive fairness, but do so through different legal architectures.

### 3.2. The Principles of Good Faith and Legal Formalism: Concepts and Applications

The conceptual tension between *good faith* and *legal formalism* is not merely academic but lies at the heart of how legal systems manage risk, allocate responsibility, and ensure fairness in

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<sup>23</sup> Land Registration Act 2002, Section 58.

<sup>24</sup> Malory Enterprises Ltd v Cheshire Homes (UK) Ltd [2002] Ch 216

<sup>25</sup> Swift 1st Ltd v Chief Land Registrar [2015] Ch 602.

land transactions. While both Indonesia and England acknowledge the need to protect parties who rely on formal instruments such as land certificates and notarial deeds, their methods of doing so diverge sharply. The Indonesian system embraces *good faith* as a central legal and moral principle, while the English system relies more heavily on the sanctity of registration—*legal formalism*—with narrowly tailored exceptions through equity and statute.

In Indonesian law, *good faith* (*itikad baik*) is not only a moral aspiration but a legal criterion enshrined in Article 1338 paragraph (3) of the Civil Code (KUHPPerdata), which states that agreements must be executed in good faith<sup>26</sup>. However, the application of this principle in land law goes beyond general contracts. The regulation governing land registration, **PP No. 24 of 1997**, implicitly embeds good faith in **Article 32(2)**, which protects holders of land certificates issued through formal procedures if they have possessed the land in good faith for at least five years and no legal action is initiated<sup>27</sup>. This statutory language, though brief, is interpreted by courts to require not just reliance on the certificate, but also *active efforts to verify its validity* and the absence of collusion.

Judicial practice in Indonesia reveals that courts apply a *cumulative test* for good faith. This includes (1) physical possession of the land, (2) reliance on facially valid documents such as land certificates and notarial deeds, (3) verification at the local land office (BPN), and (4) absence of any prior warning or conflict notice<sup>28</sup>. In **Putusan MA No. 2819 K/Pdt/2015**, the Supreme Court emphasized that mere reliance on registration was not sufficient to establish good faith where the buyer had failed to investigate the legal status of the land or had ignored evident signs of dispute<sup>29</sup>.

However, Indonesian judges also have wide discretion in applying these criteria, leading to *variability* and *uncertainty* across jurisdictions. A buyer in Jakarta may receive protection under the same facts that would deny it in Surabaya. Legal scholars have thus urged for more *objective parameters* to assess good faith, such as mandatory due diligence steps before land purchase, standardized checklists at PPAT (Land Deed Officials), and notary requirements to conduct independent verification<sup>30</sup>. In this way, the legal doctrine of good faith in Indonesia straddles **both subjective and objective dimensions**, demanding internal honesty as well as external diligence.

By contrast, in English land law, the principle of good faith plays a limited role in registered title systems. The **Land Registration Act 2002 (LRA 2002)** establishes that once a disposition is registered, the registered proprietor holds legal title, regardless of whether the disposition was forged, mistaken, or even fraudulent—subject to tightly defined exceptions<sup>31</sup>. The emphasis is on **formal compliance**, not moral evaluation. The register is presumed to be accurate, and only in exceptional circumstances—such as rectification for “mistake” under Schedule 4—can this presumption be rebutted.

In this context, **legal formalism** is not simply a doctrinal choice, but a structural necessity. It ensures certainty, facilitates marketability, and protects reliance on the register. The idea is that “*what you see is what you get*”—the so-called **mirror principle**<sup>32</sup>. This does not mean, however, that English law is indifferent to fraud. Where a forged deed is used to register a title, the

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<sup>26</sup> KUHPPerdata Indonesia, Pasal 1338 ayat (3).

<sup>27</sup> PP No. 24 Tahun 1997, Pasal 32 ayat (2).

<sup>28</sup> Irene & A. Fitria, “Legal Protection for Good Faith Buyers in Overlapping Land Certificates,” *Jurnal Dinasti Hukum*, Vol. 5 No. 2 (2024): 421–430.

<sup>29</sup> Putusan MA No. 2819 K/Pdt/2015, Direktori Putusan Mahkamah Agung RI.

<sup>30</sup> S. Supriyadi, “Rereorientasi Asas Itikad Baik sebagai Dasar Kepemilikan Hak atas Tanah,” *Jurnal Humani*, Vol. 9 No. 1 (2019): 59–71.

<sup>31</sup> Land Registration Act 2002, Section 58.

<sup>32</sup> Judith Bray, *Unlocking Land Law*, 7th ed. (Routledge, 2021), 145–147.

Land Registry may correct the register—but only if statutory criteria are met, and where doing so would not cause *unjustified detriment* to the current proprietor<sup>33</sup>.

For instance, in **NRAM Ltd v Evans [2017] EWCA Civ 1013**, the court clarified that rectification could only occur if the mistake caused a change in ownership that was not intended by the parties.<sup>9</sup> Moreover, where an innocent party loses title due to rectification, they are entitled to claim **indemnity** under **Schedule 8 LRA 2002**, providing a compensatory remedy that restores economic balance<sup>34</sup>.

Another key difference is the limited role of the *equity courts* in English land registration. While doctrines like **constructive trust** and **proprietary estoppel** exist, they are invoked in rare circumstances where formal registration fails to capture *equitable expectations* based on conduct. These tools operate more as exceptions than norms. As noted in **Bray v Best** and other cases, English courts avoid introducing broad equitable standards that could destabilize the reliability of the register<sup>35</sup>. This reflects a clear preference for formalism, backed by post-event remedies rather than case-by-case moral judgment.

The divergence between these two approaches becomes most visible in their treatment of notarial deeds. In Indonesia, **the notarial deed is considered an “authentic act”** (akta otentik) under Article 1868 KUHPerdata, which carries significant evidentiary weight<sup>36</sup>. However, if the content of the deed is proven to be false or forged, courts may declare the deed as no longer possessing probative value—transforming it from authentic to private. Notaries can be held liable for negligence if they fail to verify parties or if the deed is used to facilitate fraud<sup>37</sup>. In England, by contrast, **solicitors** handle conveyancing, and while their actions are regulated by professional standards, their instruments do not enjoy automatic evidentiary status. Thus, liability for document fraud in England often falls on professionals via **negligence suits or disciplinary action**, rather than on the legal status of the document itself<sup>38</sup>.

From a comparative standpoint, Indonesia embraces a **substantive model** of good faith, tied to individual conduct and post-facto assessment, while England adheres to a **structural model**, where formal compliance defines validity and equity intervenes only in narrow, codified circumstances. Both models aim to protect innocent parties, but through fundamentally different pathways.

To summarize, **Indonesia’s concept of good faith integrates subjective honesty and objective diligence**, requiring active steps to verify land transactions and punishing negligence or willful ignorance. The legal formalism embedded in registration systems is tempered by judicial evaluation and moral equity. **England’s model**, on the other hand, centers on **formal certainty**, presumes the truth of the register, and allocates loss through **rectification and indemnity mechanisms**, reserving equity for extreme injustice. This distinction reflects broader philosophical commitments: Indonesia’s *social justice* orientation versus England’s *legal certainty and risk allocation* approach.

### 3.3. Strengths and Limitations of Each System in Protecting Good Faith Parties

The effectiveness of a legal system in protecting good faith parties depends on its ability to balance two competing imperatives: **substantive fairness** and **legal certainty**. This sub-bab evaluates how the Indonesian and English land law systems perform in this regard, highlighting

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<sup>33</sup> Judith Bray, *Unlocking Land Law*, 7th ed. (Routledge, 2021), 145–147.

<sup>34</sup> *Ibid.*

<sup>35</sup> Land Registration Act 2002, Schedule 8.

<sup>36</sup> *Bray v Best* [1989] 1 WLR 1217.

<sup>37</sup> KUHPerdata Indonesia, Pasal 1868.

<sup>38</sup> Y. Kurniawan, “Pertanggungjawaban Notaris dalam Penerbitan Akta Palsu,” *Jurnal Hukum Respublica*, Vol. 17 No. 2 (2022): 89–102



their respective strengths and limitations based on doctrinal coherence, judicial consistency, administrative function, and overall impact on transactional confidence.

Indonesia's approach, grounded in civil law traditions, emphasizes **substantive justice**. The core strength of this model is its moral and equitable orientation: individuals who act in *itikad baik* (good faith), possess the land, and rely on formal documents without any collusion or negligence, are generally entitled to legal protection—even if the underlying deed is later proven to be forged<sup>39</sup>. This doctrine, though uncoded in detail, is operationalized through a combination of jurisprudence and **Article 32(2) of PP No. 24/1997**, which serves as a statutory shield for good faith buyers after a five-year repose period<sup>40</sup>. This model is particularly effective in a legal culture where fraudulent practices, such as double certification or collusion at the local land office, still occur with some frequency. The Indonesian judiciary, by retaining flexibility, can correct for injustice where formal documentation masks underlying misconduct.

Moreover, the Indonesian system integrates **criminal sanctions** as a complement to civil protection. The criminalization of forged deeds under **Article 263 of the KUHP** ensures that notaries, brokers, or other intermediaries who facilitate or tolerate fraudulent transactions face legal consequences<sup>41</sup>. This dual-track approach—civil cancellation and criminal accountability—reinforces deterrence while supporting the moral authority of the land law framework. Combined with growing digital reforms at the **BPN (Badan Pertanahan Nasional)**, such as electronic land certificates and public verification systems, Indonesia is gradually building safeguards that reward honest actors and penalize structural abuse.

However, these advantages come with structural and procedural limitations. First, the **doctrine of good faith remains highly discretionary**. Courts across different jurisdictions interpret the standard inconsistently, particularly in borderline cases where the buyer may have relied on formal documentation but failed to investigate underlying red flags<sup>42</sup>. The lack of a nationally uniform standard—such as a mandatory due diligence protocol or pre-purchase checklist—leads to unpredictability in outcomes and reduces confidence among investors, developers, and lenders. This disparity also burdens notaries and PPATs (Land Deed Officials), who are unsure of the threshold of verification expected of them.

Second, **administrative inertia** can hinder the effectiveness of protection. Even after a final court ruling, the correction of land registers at the BPN is not always prompt or efficient<sup>43</sup>. Victims of forgery may wait years before the erroneous certificate is canceled, allowing the fraudulently registered party to dispose of or encumber the land. Additionally, Indonesia lacks a comprehensive **compensation mechanism** akin to the **indemnity scheme under Schedule 8 of the Land Registration Act 2002** in England<sup>44</sup>. In the absence of state-backed insurance, victims of unjustified dispossession—even those deemed to be acting in good faith—must rely solely on protracted litigation to recover their rights or losses.

By contrast, the **English land law system** prioritizes **legal certainty and transactional efficiency**. Once a party is registered as proprietor under **Section 58 of the LRA 2002**, their title is secure unless specific statutory conditions for rectification are met<sup>45</sup>. This formalistic structure

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<sup>39</sup> Law Society of England and Wales, Solicitor Regulation Authority (SRA) Handbook, 2023 Edition.

<sup>40</sup> R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 2009, hlm. 125.

<sup>41</sup> PP No. 24 Tahun 1997 tentang Pendaftaran Tanah, Pasal 32 ayat (2).

<sup>42</sup> KUHP Indonesia, Pasal 263 ayat (1) dan (2).

<sup>43</sup> S. Supriyadi, “Rereorientasi Asas Itikad Baik sebagai Dasar Kepemilikan Hak atas Tanah,” *Jurnal Humani*, Vol. 9 No. 1 (2019): 59–71.

<sup>44</sup> Kurniawan, “Pertanggungjawaban Hukum BPN dalam Koreksi Sertifikat Ganda,” *Jurnal Hukum Respublica*, Vol. 17 No. 2 (2022): 90.

<sup>45</sup> Land Registration Act 2002, Schedule 8.

reduces ambiguity, accelerates conveyancing, and facilitates the use of land as collateral. It also reduces litigation by clarifying that the register is conclusive evidence of ownership, shifting the burden of protection to pre-registration due diligence and professional responsibility.

A key advantage of the English model is its **institutional support system**. The **Land Registry** operates with a high degree of automation, public accessibility, and professional integration. In case of fraud or mistake, parties may seek **rectification under Schedule 4**, and if rectification causes loss, **indemnity under Schedule 8** is available without needing to prove negligence<sup>46</sup>. This safety net ensures that innocent parties are not left uncompensated, even if formal legal title must revert due to a superior claim. It also allows losses to be socialized through state funds rather than absorbed entirely by victims.

Nevertheless, English land law is not without its shortcomings. One major criticism is the system's **rigidity in the face of moral inequity**. For example, where a party fails to satisfy the narrow criteria for rectification—even if defrauded—their only recourse is financial compensation, not restoration of title<sup>47</sup>. This limitation has been criticized in academic literature as valuing certainty over justice, especially in cases involving elderly, disabled, or otherwise vulnerable parties<sup>48</sup>. Another issue is that the **scope of indemnity is limited**. It does not automatically cover consequential losses, loss of opportunity, or emotional harm<sup>49</sup>. Furthermore, the system **requires a high level of diligence from conveyancers**, which has led to costly liability in professional negligence suits—such as in the landmark *Dreamvar* case<sup>50</sup>.

Comparatively, **Indonesia's system favors individualized fairness**, allowing courts to assess conduct and context. But it risks creating a fragmented legal landscape where similar facts yield divergent outcomes. Conversely, **England's system enforces uniform rules** that make title secure, but the rules may operate harshly in specific factual scenarios unless mitigated by the indemnity fund or equitable doctrines. Each system reflects its legal culture: Indonesia's rooted in **social justice and judicial flexibility**, England's in **formalism and risk allocation**.

Policy-wise, each jurisdiction could benefit from lessons learned from the other. Indonesia might consider adopting a **limited indemnity fund** to support victims of administrative or judicial delay, similar to England's Schedule 8 LRA 2002<sup>51</sup>. Such a fund could reduce the burden on courts and provide swift economic justice. Moreover, the creation of **objective due diligence standards**—such as mandatory searches, certifications, and neighborhood attestations—would help align judicial expectations and reduce uncertainty<sup>52</sup>. At the same time, England could revisit the *rectification threshold*, potentially allowing more flexibility where vulnerable parties are involved or where identity theft has been proven<sup>53</sup>. Additionally, regulators could expand professional education on fraud risks, especially in remote or digital transactions.

In conclusion, both Indonesia and England offer valuable models for protecting good faith actors in the land sector. Indonesia excels in equitable responsiveness but struggles with uniformity and compensation. England offers stability and redress, but at times lacks contextual fairness. A future-oriented land law system must combine these strengths: institutional reliability with equitable calibration. In a digital age where forgery becomes more sophisticated, the legal

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<sup>46</sup> Ibid., Section 58.

<sup>47</sup> Ibid., Schedules 4 and 8.

<sup>48</sup> Walker v Burton [2013] EWCA Civ 1228.

<sup>49</sup> Lorna Fox O'Mahony, Concepts of Property in Land Law, Oxford: OUP, 2014, hlm. 223.

<sup>50</sup> Law Commission Report No. 271, Land Registration for the Twenty-First Century, para. 12.89.

<sup>51</sup> Dreamvar (UK) Ltd v Mishcon de Reya [2018] EWCA Civ 1082.

<sup>52</sup> Recommendation based on best practices in Torrens systems: Greg Taylor, "Compensation for Rectification of the Register," Melbourne ULR, Vol. 33 No. 2 (2009): 554.

<sup>53</sup> Irene, "Legal Protection for Good Faith Buyers...", Jurnal Dinasti Hukum, 2024.

response must be both technically sound and morally sensitive—ensuring that no party acting in good faith is left without a remedy.

#### 4. Conclusion

This study has examined the complex legal landscape surrounding **the protection of property rights in cases of land deed forgery**, with a comparative lens focusing on **Indonesia** and **England**. Through doctrinal analysis and functional comparison, it is evident that while both systems seek to protect good faith actors and uphold legal certainty, they do so through **distinct philosophies, mechanisms, and institutional architectures**.

In answering the first research question regarding **the legal consequences of land deed forgery**, it is clear that Indonesia and England diverge sharply. In Indonesia, a forged deed is legally void *ab initio*, and the resulting land certificate is susceptible to cancellation. However, the system allows for protection of bona fide purchasers through **Article 32(2) of PP No. 24/1997**, which stabilizes ownership after five years of unchallenged possession—provided the acquirer acted in good faith and without collusion. The Indonesian courts have interpreted this norm through cumulative criteria such as physical possession, due diligence, and absence of prior conflict. Meanwhile, in England, **registration confers title**, even where the underlying transaction was flawed, unless it qualifies as a “mistake” under **Schedule 4 of the LRA 2002**. Rectification is possible, but subject to strict statutory limits, and **indemnity under Schedule 8** ensures that victims of fraud are financially compensated even if legal title is not restored.

Regarding the second research question—**how good faith and legal formalism are conceptualized and applied**—the findings reveal a strong contrast in doctrinal emphasis. **Indonesia operationalizes good faith** as both a subjective and objective standard, requiring honesty as well as affirmative verification. The principle is deeply integrated into land registration practice and functions as a judicial tool to filter deserving from undeserving claimants. The result is a flexible yet sometimes unpredictable jurisprudence, which is equity-inflected and fact-sensitive.<sup>3</sup>

Conversely, **English law centers on legal formalism**, adhering to the integrity of the register. Good faith has limited direct application; instead, protection is achieved through pre-registration diligence, professional obligations, and post-event indemnity. This approach ensures *ex ante* predictability and efficiency but may seem harsh in morally complex cases.

On the third question—**the relative strengths and limitations of each system**—both offer compelling advantages and reveal critical gaps. **Indonesia’s strengths** lie in its capacity for substantive justice and moral responsiveness. It can unwind forged transactions, punish wrongdoing, and protect innocent buyers under nuanced criteria. However, it suffers from **jurisprudential inconsistency, lack of objective due diligence standards, and absence of a compensation framework** for wronged parties who fail to meet the five-year rule or are dispossessed despite good faith.<sup>5</sup> **England’s strengths** are its **doctrinal clarity, systemic predictability, and compensatory mechanisms**. Title is reliable, market transactions are efficient, and professional liability is clearly defined. Yet its **limitations** include its **rigidity**, narrow rectification powers, and reliance on economic remedies rather than restorative justice.

In light of these findings, several **policy recommendations** can be proposed. For **Indonesia**, it is advisable to codify a **national due diligence protocol**—perhaps through ATR/BPN regulations—that sets objective expectations for buyers, notaries, and PPATs. This could include mandatory land certificate verification, declaration of possession history, and community attestation. Additionally, Indonesia should consider establishing a **state-backed indemnity fund**, inspired by England’s LRA 2002 Schedule 8, to provide partial compensation where rightful owners or innocent buyers suffer loss due to forgery, yet cannot meet the five-year rule.

For **England**, modest reforms may include **clarifying the definition of “mistake”** for rectification to better capture identity fraud and forged deeds, as recommended by the Law

Commission.<sup>8</sup> Courts may also consider more generous application of overriding interests in cases involving vulnerable individuals, particularly where actual occupation is not well documented. Furthermore, regulatory bodies like the **Solicitors Regulation Authority (SRA)** could enhance training modules on fraud detection, especially in digital and remote transactions, to reduce reliance on indemnity schemes.

At a broader level, this comparative study highlights that **no single model perfectly protects property rights against document forgery**. Each legal system reflects different balances between fairness and formality. A **resilient and future-proof property regime** must integrate the best of both: **legal formalism to ensure structural trust**, and **equitable flexibility to deliver justice in factually unique cases**. As land transactions become increasingly digitized and identity fraud grows more sophisticated, both Indonesia and England must evolve beyond static registration doctrines toward **dynamic risk governance frameworks**, pairing *ex ante* verification systems with *ex post* compensation and judicial equity.

This article contributes to the field of comparative property law by demonstrating that **effective protection against land deed forgery requires more than legal doctrines—it demands institutional maturity, procedural safeguards, and moral clarity**. The insights derived here may also inform law reform commissions, judicial education, and administrative modernization programs in both jurisdictions and beyond.

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