




Legal Protection of Land Rights Ownership Through the Rechtsverwerking Institution

Kim Ahlam¹, Adonia Ivone Laturette^{2*}, Pieter Radjawane³

^{1,2,3} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : kim.ahlam20@gmail.com

Corresponding Author*



Abstract

Disputes related to land always increase in number to cause many cases, one of which is the ownership of land rights through the concept of *rechtsverwerking* (Releasing Rights) who have obtained a certificate of land rights, even though the provisions of laws and regulations and in several Supreme Court Jurisprudence have accommodated it, but the party who obtains land rights through the concept in question has not received legal protection against The application of the concept. The research method used in writing this thesis The author uses a normative juridical research method with an analytical descriptive research type of laws and regulations and uses primary, secondary and tertiary sources of legal materials through the procedure of collecting legal materials and analyzing legal materials to obtain conclusions. The results of the study found that the principle of good faith in the ownership of land rights through the concept of *rechtsverwerking* can be applied to the possession of land by the party who controls the land for a reasonable period of time in a real way with good etiquette, then the person concerned can register it to obtain a certificate of ownership more than 5 (Five) years after it was issued, then the previous owner cannot file an objection and/or claim his rights again, because based on the concept of *rechtsverwerking* the person concerned is considered to have relinquished his rights or relinquished his rights thus his rights are lost and/or deleted, therefore the ownership of land rights through the concept of *rechtsverwerking* must receive legal protection. The form of legal protection for the ownership of land rights based on the concept of *rechtsverwerking* cannot be separated from the issue of justice in the implementation of the law itself. Protection for land rights holders based on *rechtsverwerking* institutions in the form of preventive protection and repressive protection.

Keywords: Legal Protection; Land Ownership; *Rechtsverwerking*.

INTRODUCTION

Indonesia is an agrarian country as stated in the Constitution of the Republic of Indonesia in 1945 (hereinafter written in the 1945 Constitution of the Republic of Indonesia) Article 33 paragraph (3) which contains the homeland, the earth and all space and natural resources contained in it is a gift from God Almighty to all Indonesian people and therefore, it should be used for the function of the earth, water, and space and what is contained therein is intended to achieve the greatest prosperity of all Indonesian people in accordance with Article 33 paragraph (3). The earth in question is land located throughout the territory of the Republic of Indonesia which is a natural wealth as a gift from God Almighty which is used for the welfare of the people. Soil as a primary need is needed by all humans, because soil is the main element used to achieve prosperity in human life. Given the importance of land in human life, the ownership of land rights is a very, very important right, therefore the land must have the status of ownership.¹ As for the ownership of property rights, transferring property rights and the removal of ownership rights over land are regulated in the Articles

¹ Sutedi, A. *Peralihan Hak atas Tanah Dan Pendaftarannya*. (Jakarta: Sinar Grafika. 2006), p. 11



of the Basic Agrarian Law as follows: Article 20 Paragraph (2) of the Basic Agrarian Law stipulates that: "Property rights can be transferred and transferred to other parties".

Everyone who occupies and wants to control the land always tries to own it on the grounds that the person concerned has controlled the land for a long time, even though he knows that the land does not belong to him. Before the Basic Agrarian Law came into effect to determine the level of legal certainty of a right, provisions regarding expiration were used as an effort to acquire land ownership rights (*acquisitive verjaring*. Passage of Time as a Legal Means to Acquire Something is regulated in Article 1963 of the Civil Code (hereinafter referred to as the Civil Code) stipulates that: "A person who in good faith acquires an immovable property, an interest, or any other receivable that is not payable by appointment with a decree for twenty years, acquires property rights thereto by way of time. Lebih further mentioned that, "A person who in good faith controls something for thirty years acquires property rights without being forced to show the basis of his rights". In Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter written Government Regulation 24 of 1997), the period of 5 (five) years has a meaning as a factor to strengthen the sitting attitude of the person who has an interest, he (who was originally entitled) is considered to have relinquished his rights to a plot of land concerned. In addition, in the Basic Agrarian Law, Article 27 letter (a) number (3), Article 34 letter (e) and Article 40 letter (e) which states that the abolition of land rights due to abandonment is in line with the institution or principle or principle and/or concept of *rechtsverwerking*, so that *rechtsverwerking* in customary law provides a concrete form in the application of the provisions in the Basic Agrarian Law regarding land abandonment.² The acquisition of land rights can be obtained in various ways, one of which is the acquisition of land rights through *rechtsverwerking* as embraced in the Basic Agrarian Law which originates from customary law in Indonesia. According to J. Satrio,³ *Rechtsverwerking* as a doctrine of relinquishment of rights is based on the opinion of some scholars who define *rechtsverwerking* as a waiver of rights, or an attitude of ignoring rights that is shown by such behavior, that it would be contrary to good faith, if afterwards, the person concerned still demands the exercise of his rights. Budi Harsono,⁴ mentioning that, *rechverwerking* (Giving Up Rights). Meanwhile, *acquisitive verjaring* is a term that concerns the regulation of property rights related to the past of time (Daluwarsa) the institution of *Rechtsverwerking* (giving up rights) allows a person to acquire ownership of land for a certain period of time (Daluwarsa) even without having the necessary land documents. Expiration is a means to acquire something or to be exempted from an agreement with the passage of a certain time and conditions determined by the Law.

Possession in this context refers to the authority and ownership rights it acquires over land that is released by its owner over a certain period of time.⁵ Basically, all land rights can be transferred or transferred. Switching is the transfer of land rights by law or by itself, there is no deliberate legal act to transfer the right to another party. So the transfer of land rights is the transfer of land rights from one party to another, either due to an intentional legal act or not due to an accidental legal act.⁶ Human needs for land continue to increase every year

² Andrian Sutendi, *Peralihan Hak atas Tanah*, (Jakarta: Sinar Grafika, 2007), p. 123

³ J. Satrio, *Pelepasan Hak, Pembebasan Hutang, dan Merelakan Hak (Rechtsverwerking)*, (Jakarta: RajaGrafindo Persada, 2016), p. 14

⁴ Harsono Boedi, *Menuju Penyempurnaan Hukum Tanah Nasional*, (Jakarta: Universitas Trisakt, 2007), p. 5

⁵ Beta, S. P. "Perbandingan Sistem Peralihan Hak Milik Menurut KUHPerdota Dan UndangUndang Pokok Agraria No. 5 Tahun 1960" *Jurnal Lex Privatum* 7, no. 5 (2020), p. 18

⁶ Erna Sri Wibawanti dan R. Murjiyanto, *Hak-hak Atas Tanah dan Peralihannya*, (Yogyakarta: Liberty, 2013), p. 119.

due to development activities and population growth that continues to increase. The imbalance of the need for land and the availability of land itself certainly causes problems in various lines of people's lives. Not only regarding social problems, the limitation of land has a great influence on the needs of clothing, food and community board.⁷ A person who occupies someone else's land is no longer strange if the person concerned tries and wants to own and control it, this causes land problems. Land issues. that occur in people's lives, starting from problems that arise due to intentional or unintentional legal acts. If the community occupies a plot of land that is not clear and no one has a problem, then the community will continue to occupy the land even though they already know that the land is not their right. Most people only assume that if they have paid the tax it means that they already have the right to the land and they also assume that if they have occupied a plot of land for a certain period of time then the title to the land can pass to them. They try their best to survive on the land whose status is not clear in the hope that one day the land can become theirs. Basically, all land rights can be transferred or transferred, but the transfer of land rights must be proven through proofs as stipulated in the Law.

Various literature refers to various land problems and/or land cases, for example, a person has occupied land that is not taken care of by the owner, both the land belongs to a private person or belongs to a legal entity including land controlled by the state for a period of 20 (Twenty) to 30 (Thirty) years and considers him as the owner and can even have a certificate for the land, This is what makes many people who take the opportunity to master and own it as property. The concept of *rechtsverwerking* in customary law emphasizes that, if a person abandons his land for a long time, then the land falls back to the customary rights or if a person abandons his land for a certain time and the abandoned land is occupied by another person in good faith, then the landowner can lose his rights to his land. The process to obtain the right to the land is actually clearly regulated in the laws and regulations, that there must be good faith from the owner of a land for a certain period of time that is long enough continuously until the issuance of the certificate of ownership of the land within the time specified in the laws and regulations, then, the party who feels that he has the previous rights to the land cannot claim his rights again or apply for them The lawsuit is good, but through the author's search of various literature, it turns out that although the mechanism or procedure for obtaining land rights through the *rechtsverwerking* (Giving Up Rights) institution is regulated in the Basic Agrarian Law, other laws and regulations, the acquisition of land rights through the *rechtsverwerking* institution still raises problems that result in disputes to the court.

Although the provisions of Government Regulation 24 1997 have expressly stated that after 5 (Five) years the existence of land rights certificates can no longer be demanded, various circles do not have the same perception but there are those who have perceptions about the application of the concept of *rechtsverwerking* that are very varied or different between the ranks of the national land agency, the court, namely there are those who think that, The concept of *rechtsverwerking* cannot currently be applied in Indonesia, because the implementation of the concept of *rechtsverwerking* can eliminate the rights of landowners, so that sometimes related agencies use the concept of expiration for 20 to 30 years which is regulated in the Civil Code and ignore the concept of *rechtsverwerking* regulated in the Basic

⁷ Yunastiti Purwaningsih. "Ketahanan Pangan: Situasi, Permasalahan, Kebijakan, dan Pemberdayaan Masyarakat." *Jurnal Ekonomi Pembangunan* 9, no. 1 (2008): 1-27.

Agrarian Law, so that until now there are still many cases where a person or legal entity who has had a certificate for more than 5 (five) years is still being sued in court where the certificate should not be sued by others. This causes the holder of the land rights or the owner of the certificate to be harmed, so that the location of legal certainty is still questionable. This reality is far from the rule because the court still accepts lawsuits from other parties against a certified land object.

The acquisition of land rights through the concept of *rechtsverwerking* (Releasing rights and or relinquishing rights) Based on the results of the author's search, there are still differences in perceptions between agencies related to the ownership of land through the concept of *rechtsverwerking* can be seen in several cases and court decisions, including the following: 1) The case, between Khairul Nasri and Ratna Juwita (the Plaintiff) and PT. Subur Bros Representative of Pasaman, Tri-Tribute General of Highways of the Department of Public Works of West Sumatra Province (the Defendants). Where the defendant has controlled the land of the object of the case. The object of this case is the Certificate of Right to Use Number 01 March 1977 Decision of the Lubuk Sikaping District Court Number: 8/Pdt.G/2017/PN Lbs, dated April 20, 2018; 2) The case, between Sofyan, BA who in this case acts as the Head of the Heir in the tribe hereinafter referred to as the Plaintiff, and the Department of Forestry c/q the Head of the Forest Stakeholders Unit (Forestry Service) of the South Coast Regency in Painan hereinafter referred to as Defendant I, the Head of the National Land c/q Head of the West Sumatra Land Regional Office c/q the Head of the South Coast Land Office hereinafter referred to as Defendant II. The object of this case is the Certificate of Right of Use no. 01/1981 dated October 2, 1981, recorded in the name of the Department of Forestry c/q the head of the Forest Stakeholders Unit (Forestry Service) of the South Pesisir Regency. According to Retno Nurul Yaumi,⁸ that from the two cases above and the decision, it raises the question of why the Judge did not use Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration as a reference in deciding the case but the judge determined something other than the provision; 3) Case, between Drs. Andi Jindar Pakki Cs/heirs of the late Haji Andi Pakki (the Plaintiffs) and PT. Telekomunikasi Indonesia Tbk (PT Telkom), the South Sulawesi Provincial Government, the Gowa Regency Government (the defendants) and the Head of the Makassar City Land Office (co-defendants). The panel of judges at the review level has its own considerations to adjudicate the case as mentioned above that the land controlled by the defendant in the case of PT. Telkomsel Tbk, argues that: the plaintiff has known that the control over the transfer of the object of dispute occurred since 1976 and only now has a lawsuit been filed (2 lawsuits). The emergence of this land dispute is caused by the recognition and legal protection of land ownership rights that are still vague about who the real rights holder, the issuance of certificates, means of proof, the existence of rights or legal acts carried out to obtain ownership of the land. According to Muh Nabil Falaq,⁹ that the principle of *rechtsverwerking* in obtaining land rights in the land registration system refers to Article 32 paragraph (2) of Government Regulation Number 24 of 1997 is the adoption of customary law Where if the land in question for a long period of time is not cultivated by the right holder and is continuously controlled by another party, then the other party can acquire the

⁸ Retno Nurul Yaumi, *Penerapan Asas Rechtsverwerking Dalam Perolehan Hak Milik Atas Tanah (Studi Putusan Pengadilan Di Sumatera Barat)*, Tesis: Program Studi Magister Kenotariatan Fakultas Hukum Universitas Andalas Padang 2024, p. 5-6

⁹ Muh Nabil Falaq, *Pengaturan Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Terhadap Pemberlakuan Rechtsverwerking*, Skripsi: Fakultas Hukum Universitas Muslim Indonesia, Makassar. 2023, p. 6

land in good faith, then the Government provides protection to the holder of land rights based on the *rechtsverwerking* institution; 4) In addition to the cases mentioned above, there are also various cases of land disputes that occur between the local government and the community where the existence of people who occupy a plot of land for more than 5 (Five) years, dozens of years or even decades, on the land and have obtained a certificate of ownership has been more than 5 (Five) years, but the local government sometimes claims that the rights to the land in question are owned and/or controlled by the local government local.

METHODS OF THE RESEARCH

The research method used in writing this thesis The author uses a normative juridical research method with an analytical descriptive research type of laws and regulations and uses primary, secondary and tertiary sources of legal materials through the procedure of collecting legal materials and analyzing legal materials to obtain conclusions.

RESULTS AND DISCUSSION

A. Ownership of Land Rights Through the Concept of *Rechtsverwerking*

According to A. P. Parlindungan,¹⁰ Land registration comes from the word *Cadaastre* (Dutch *Cadaastre*) a technical term for a *record*, indicating the area, value and ownership (or other rights) of a piece of land, in a strict sense, *Cadaastre* is a *record* on the land, the value of the land and its rights holders and for taxation purposes. *Cadaastre* is the right tool that provides the description and identification of the description and also as a *continuous recording* of land rights. Definition of land registration Although the Basic Agrarian Law regulates land registration, it does not provide an understanding of what is meant by land registration even though Government Regulation Number 24 1979 jo, Government Regulation Number 18 of 2021 stipulates that: "Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land plots and flats, including the issuance of a certificate of proof of rights for plots of land that already have rights and ownership rights to flats and certain rights that burden them". The above definition and/or definition can be understood that the objects are land plots and flats units regarding the location of the area boundary and the buildings on it. Juridical data as referred to in the provisions of Article 1 paragraph (7) of Government Regulation Number 24 1997 is information about the legal status of land plots and registered flats, holders of rights and rights of other parties and other burdens that burden them.¹¹ The legal basis for land registration in Indonesia is regulated in several laws and regulations, namely: a) In Articles 19, 23, 32, and 38 of the Basic Agrarian Law and; b) In Article 1 number 1 of Government Regulation Number 24 of 1979), jo Article 1 number 9 of Government Regulation Number 18 of 2021.

Land registration according to the provisions of the Basic Agrarian Law as mentioned above states the following: Article 19: Aya (1) "To ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations". Aya (2) "determining the Land

¹⁰ A. P. Parlindungan, *Pendaftaran Tanah di Indonesia*, (Bandung: Mandar Maju, 1999), p. 1819.

¹¹ *Ibid.* p. 520

Registration includes: a) Measurement, mapping, and land bookkeeping; b) Registration of land rights and transfer of such rights; c) Provision of valid proof of rights as a strong means of proof. Article 23: Paragraph (1) "Property rights, as well as any transfer, deletion and encumbrance of them with other rights shall be registered in accordance with the provisions referred to in Article 19". Paragraph (2) "The registration referred to in paragraph (1) is a strong evidence of the abolition of property rights and the validity of the transfer and encumbrance of these rights". Article 38: Paragraph (1) "The right to use the building, including the conditions for granting it, as well as any transfer and removal of such rights must be registered in accordance with the provisions referred to in Article 19". Paragraph (2) "The registration referred to in paragraph (1) is a strong evidence of the abolition of the right to use the building and the validity of the transfer of the right, except in the case that the right is deleted because the period has expired".

Land registration is in accordance with the provisions of Government Regulation Number 24 1979 jo, Government Regulation Number 18 of 2021. as mentioned above, among others, as follows: The Government Regulation in question is a compulsory regulation of Article 19 of the Basic Agrarian Law where in Government Regulation Number 24 1979 there is a principle and purpose of land registration; Land registration organizers and implementers; Land registration object; Regional units and land registration administration; Implementation of land registration for the first time; Collection and processing of physical data and juridical data; Proof of rights and bookkeeping; Issuance of certificates; Presentation of physical data and juridical data; Storage of general lists and documents; Transitional registration and encumbrance; Registration of changes in other land registration data; Issuance of replacement certificates; Land registration fee; Legal sanctions; Transitional terms and Closing terms.¹²

The function of land registration is to obtain strong evidence of the legality of legal acts regarding land. However, for certain legal acts, land registration has another function, namely to fulfill the legality of the legal act. This means that without registration, the legal act does not occur legally according to the law. This applies for mortgage/dependency registration, for example. Before being registered with the Land Office, the mortgage/dependent rights were not legally binding. The registration of sale and purchase or hibah or exchange does not serve for the validity of the act, but merely to obtain evidence of the validity of the act. The evidence is a certificate in which the legal act is said to have occurred and that the current owner is the buyer or the recipient of the grant or who obtained the exchange. As previously described, land registration or registration of land rights will result in the issuance of a land rights certificate commonly called a land certificate to the party concerned which is valid as a strong means of proof of the land rights he holds. This is where the relationship lies between the purpose and purpose of land registration and the purpose and purpose of the makers of the Basic Agrarian Law, which is towards the ideal of legal certainty regarding land rights that are generally held by the majority of Indonesian people. The concept of *rechtsverwerking* can also be interpreted as the loss of rights or the release of a person's rights because they do not commit certain legal acts. The regulation regarding the concept of *rechtsverwerking* known in customary law is accommodated through Article 32 Paragraph (2) of Government Regulation Number 24 1997 emphasizes that: "In the event that a land plot has been legally issued a certificate in the name of a person or legal

¹² Muhammad Arba, *Hukum Agraria Indonesia*, (Jakarta: Sinar Grafika, 2008). p. 150

entity who acquired the land in good faith and actually controls it, then another party who feels that he has the right to the land can no longer demand the exercise of the right if in the long term within 5 (five) years from the issuance of the certificate, he has not filed a written objection to the certificate holder and the Head of the Land Office concerned, nor has he filed a lawsuit with the Court regarding the possession of the land or the issuance of the certificate".

The regulation regarding a person can no longer demand the exercise of rights for a period of 5 (five) years as stipulated in Article 32 Paragraph (2) of Government Regulation No. 24 of 1997 which is then also emphasized in Article 64 Paragraph (1) of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Rights to Land, Flats, and Land Registration (hereinafter written Government Regulation Number 18 2021) which is an Amendment to the Government Regulation on Land Registration. This policy is the realization of legal protection and certainty for parties with good intentions.¹³ Pasal 32 ayat (2) Peraturan Pemerintah Nomor 24 tahun 1997 merupakan penerapan dari konsep hukum adat, yang dikenal dengan nama *Rechtsverwerking* yaitu lampaunya waktu sebagai sebab kehilangan hak atas tanah kalau tanah yang bersangkutan selama jangka Article 32 paragraph (2) of Government Regulation Number 24 of 1997 is the application of the concept of customary law, known as *Rechtsverwerking*, which is the lapse of time as a cause of loss of land rights if the land in question for a long period of time has not been cultivated by the right holder and is brushed by other parties through the acquisition of rights in good faith. waktu yang lama tidak diusahakan oleh pemegang haknya dan dikuas pihak lain melalui perolehan hak dengan itikad baik.¹⁴ This concept is taken by our agrarian law as an institution and/or the concept of *rechtsverwerking*. The legal construction is that if for five years the holder of land rights neglects to control and use his land in accordance with the nature and purpose of his rights and allows his land to be controlled and registered to obtain property rights in the form of a certificate by another party in good faith while the original land owner does not file an objection or lawsuit with the court, it means that the person concerned has abandoned his land and lost his right to sue. *Rechtsverwerking* is a principle or principle in agrarian law that explains that a landowner who leaves his land abandoned for a certain time and allows others to occupy, manage and benefit from the land, thus causing the original owner to lose his rights to his land.¹⁵ The definition of *rechtsverwerking* in various literature put forward by several experts includes: Subekti, as quoted by Widodo Dwi Putro, et al,¹⁶ stating that: *rechtsverwerking* is the attitude of a person who shows that he no longer wants to use his rights. J. Satrio,¹⁷ *Rechtsverwerking* is defined as giving up rights, where a person states that he no longer wants to use the rights he has. Meanwhile, according to Algra as quoted by Irawan Soerodjo,¹⁸ *Rechtsverwerking* is defined as a consequence arising from a waiver of rights or consequences arising from not doing a legal act which is an obligation that must be carried out by a person by law, so that a right is lost.

¹³ Desi Apriani dan Arifin Bur, "Kepastian Hukum dan Perlindungan Hukum dalam Sistem Publikasi Pendaftaran Tanah di Indonesia", *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 227, <https://doi.org/10.23920/jbmh.v5i2.11>

¹⁴ Boedi Harsono, *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Bandung: Penerbit Jembatan, 1997), p. 67.

¹⁵ Nurhasan Ismail. "Rechtsverwerkin dan Pengadopsiannya Dalam Hukum Tanah Nasional". *Jurnal Mimbar Hukum* 19, no. 2 (2007), p. 3

¹⁶ Widodo Dwi Putro, et. al. *Penjelasan Hukum : Pembeli Beritikad Baik Dalam Sengketa Perdata Berobyek Tanah*. (Jakarta: LeIP, 2008). p. 66

¹⁷ J. Satrio. *Loc. Cit.* p. 71

¹⁸ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*. (Surabaya: Arkola, 2002), p. 188.

Customary Law is known as a legal concept which was later adopted into national land law, namely *rechtsverwerking*. The concept of *rechtsverwerking* is the lapse of time as a reason for the loss of land rights, when the land in question for a long time, is not cultivated or worked by the rightholder and is controlled by another party through the acquisition of rights in good faith. If a person for a long time leaves his land uncultivated, then the land is cultivated by someone else who acquired it in good faith, it will have the effect of losing his right to reclaim the land.¹⁹ Expiration is related to the existence of a certain period of time that can result in a person obtaining a property right (*acquisitive verjaring*) or also because the passage of time causes a person to be exempted from a collection or lawsuit (*inquisitive verjaring*). In addition, there are also matters regarding "relinquishment" or "rechtsverwerking", which is the loss of rights not due to the passage of time but due to the attitude or actions of a person that shows that he will no longer use a right.²⁰ *Rechtsverwerking* is mainly based on the attitude of a person where it can be concluded that he does not want to use a right again, he (who was originally entitled) is considered to have relinquished his right to a piece of land in question, whereas the person who controls it continuously acquires the right. It is different from expiration (*verjaring*) which is solely based on time.

The conditions for the implementation of the *Rechtsverwerking* concept according to Rini Ardiyanti,²¹ among others, namely: 1) Actually occupying and controlling land that was originally the right of another person in good faith The concept of *rechtsverwerking* was adopted from Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration where if a land has been legally issued a certificate on behalf of the person or legal entity that acquired the land in good faith and actually controls it, So other parties who feel they have rights to the land can no longer demand its implementation. Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration provides an opportunity for parties who acquire and control land in good faith to own the land until the certificate is issued. This article protects parties who acquire and control land in good faith, in other words this article applies restrictions on the prosecution of the exercise of rights by other parties who feel they have rights to the land; 2) Lasts for a long time In connection with what is called *rechtsverwerking* or the loss of the right to sue, the reference time used by the Supreme Court Decision which is jurisprudence varies quite widely, depending on the situation of each case or depending on the nature and circumstances of the occupation and the land concerned and the applicable local customary (customary) law. However, generally in the Supreme Court Decision, the right to sue is lost, if it has been after 14 years, 15 years, 25 years, or 50 years since the transfer of rights. The Supreme Court of the Republic of Indonesia does not rely on the 5-year period determined by Government Regulation Number 24/1997 because there is also a Decision that justifies the lower court to accept lawsuits that have just been filed after 8 years. This means that a person who has controlled a plot of land for 20 years and cultivates the land into productive land, and in good faith and continuously, for example, he has the right to own the land, and a person who has abandoned his land for 20 years, he is considered to have secretly relinquished his rights, in various jurisprudence the length of time is determined in the institution or concept of *rechtsverwerking* namely 15 years, 18 years, 20 years and the longest is 30 years; 3) Continuously and uninterruptedly

¹⁹ Sri Hajati, et al, *Politik Hukum Pertanahan Indonesia*, (Jakarta: Prenada Media. 2021), p. 335.

²⁰ I Lutfi Nasution, *Sambutan Ka. BPN pada Seminar Tentang Efektivitas Lembaga "Rechtsverwerking" Dalam Mengatasi Kelemahan Sistem Publikasi Pendaftaran Tanah Negatif*, Pusat Studi Hukum Agraria Universitas Trisakti, 2002.

²¹ Rini Ardiyanti. *Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Terhadap Pemberlakuan Asas Rechtsverwerking (Pelepasan Hak)*. Skripsi: Universitas Hasanuddin. 2014, p. 38

The enforcement of this institution or concept of *rechtsverwerking* is not only carried out in good faith, because the person must also control the land in real terms. This means that a person can be said to have authority over a piece of land when for a long time it lasts continuously and has never been interrupted and in a position of power the person does not get a reprimand, complaint, request to leave, vacate the location or hand over the land in any form from the party who was originally entitled.

There are several examples of Supreme Court Decisions that recognize the existence of ownership of land rights through the concept of *rechtsverwerking*, including the following:²² 1) Decision of the Supreme Court of the Republic of Indonesia No.200 K/Sip/1974: "The objection filed by the Plaintiff to the cassation that the Customary Law does not recognize expiration in terms of inheritance, cannot be justified, because the lawsuit has been rejected not on the grounds of the expiration of the lawsuit, but because by remaining silent for more than 30 years, the Original Plaintiffs are considered to have waived their rights (*rechtsverwerking*); 2) Decision of the Supreme Court of the Republic of Indonesia No.210/K/Sip/1055: "The lawsuit is declared unacceptable, because the plaintiffs by keeping their land silent for up to 25 years must be considered as depriving them of their rights (*rechtsverwerking*); 3) Decision of the Supreme Court of the Republic of Indonesia No.329 K/Sip/1957: "A person who allows his land to be his right for 18 years to be controlled by another person, is considered to have relinquished his right to the land (*rechtsverwerking*).\" Based on the description of the procedure for ownership of land rights through the concept of *rechtsverwerking* that has been described above, the author is careful that if it is guided by the provisions contained in Article 32 of Government Regulation Number 24 of 1979, then to obtain a certificate of ownership rights, in relation to the acquisition of land rights through the concept of *rechtsverwerking* What must be proven first is: 1) the existence of proof of ownership of the land in the form of a "certificate" in which there is evidence of physical data and juridical data that is in accordance with the data in the survey letter and land book; 2) the issuance of the certificate on the land in question obtained in good faith and expressly controlled; 3) There is no objection/lawsuit from the party who feels that they have the right to the land within a period of more than 5 (five) years after the title certificate is issued.

B. Legal Protection of Land Rights Holders through the Concept of Rechtsverwerking

Land is one of the most basic assets of the State of Indonesia, because the State and the nation live and develop on the land. The Indonesian people position land in a very important position because it is a major factor in increasing agricultural productivity. For this reason, the regulation of land ownership rights is regulated in the provisions of Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia of 1945 (hereinafter abbreviated as the Constitution of the Republic of Indonesia of 1945) which gives power to the State to control the land explaining that: The earth, water and natural resources in it are controlled by the state and are used as much as possible for the prosperity of the people.

Based on the content of Article 33 paragraph (3) it explicitly explains that the right to ownership of land is in all Indonesian people and the State is only given an authority to control which means that it is only limited to power over something or holding power or something while ownership is in all Indonesian people, in regulating the ownership of land

²² Tri Prasetyo Wahyu, et. al. *Konsep Rechtsverwerking Dalam Putusan Pengadilan*.[https://cfpmknuns.com/wp-content/uploads/2020/04/TRI-Prasetyo Wahyu Santoso.Pdf](https://cfpmknuns.com/wp-content/uploads/2020/04/TRI-Prasetyo%20Wahyu%20Santoso.Pdf). 2015.

rights, the government issued Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles by itself. The creation of a unified land law for all regions of Indonesia that is simple, easy, modern and in favor of the Indonesian people and the essence of the Basic Agrarian Law lays the foundations for national agrarian law that will be able to bring prosperity, happiness, justice and legal certainty to the nation and state.²³ The rights to land regulated in Article 16 paragraph 1 and Article 53 of the Basic Agrarian Law are described into three (3) parts, namely: 1) Land rights of a permanent nature; 2) Land rights to be determined by law; 3) Land rights are temporary.²⁴ Boedi Harsono,²⁵ declares that the right of possession of land contains a series of authorities, obligations and/or prohibitions for the holder of the right to do something about the land that is granted. Something that is allowed, obligatory, or forbidden to be done that is the content of the right of possession is the criterion or benchmark of differentiation between the rights of possession of land regulated in the land law. The concept of law, the relationship between people and objects is a relationship called 'Rights'. the meaning of the designation is the right of ownership of an object called the right of ownership of that object or known as the term "property right". The word property itself in the legal sense emphasizes more on rights than on objects, in using Property Rights over land must pay attention to the social function of land, namely in using land must not cause losses to others, the use of land must be adjusted to the circumstances and nature of the rights, there is a balance between private interests and public interests, and land must be well maintained in order to increase fertility and prevent damage. The term legal protection in English is known as *legal protection*, while in Dutch it is known as *Rechts bescherming*. Etymologically, legal protection consists of two syllables, namely protection and law.

Legal protection is divided into 2 (Two) forms, namely preventive legal protection and repressive legal protection. Preventive legal protection is focused on prevention efforts while repressive legal protection is focused on settlement efforts.²⁶ The law functions as a protection of human interests, in order for human interests to be protected, the law must be implemented professionally. This means that protection is an act or deed that is carried out in certain ways according to the applicable laws or laws and regulations. Legal protection is the right of every citizen, and on the other hand legal protection is an obligation for the country itself, therefore the state is obliged to provide legal protection to its citizens. In principle, legal protection of society rests on and is sourced from the concept of recognition and protection of dignity and dignity as human beings. Legal protection according to Satjipto Raharjo,²⁷ is to provide a protection of human rights that are harmed by others whose purpose is so that people can enjoy their rights in the eyes of the law. It can be concluded that legal protection is an effort to protect the dignity and dignity of human beings and human rights in the field of law. Legal protection facilities consist of 2 (Two) types, namely: 1) Preventive legal protection facilities: preventive legal protection, legal subjects are given the opportunity to submit their objections or opinions before a government decision gets a definitive form. The existence of this objection aims to be a means of preventing disputes. Preventive legal protection is important in government actions based on freedom of action because with preventive legal protection, the government is encouraged to be careful in making decisions based on discretion; 2) Means of repressive legal protection: the purpose

²³ Hasan Wargakusumah, *Loc. Cit.*, p. 9-10

²⁴ Urip Santoso. *Hukum Agraria dan Hak-hak Atas Tanah*. (Jakarta: Kencana. 2005), p. 110

²⁵ Boedi Harsono, *Loc. Cit.* p. 24

²⁶ Saptosih Ismiati, *KDR dan HAM*, (Yogyakarta: Deepublish, 2010). p. 14

²⁷ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 53

of repressive legal protection is to resolve disputes handled by the General and Administrative Courts in Indonesia. The principle of legal protection of government actions is based on and derived from the concept of recognition and protection of human rights. The second principle that underlies legal protection of government actions is the principle of the rule of law. It is associated with the recognition and protection of human rights and can be associated with the purpose of the rule of law.

The preventive legal protection provided to land rights holders based on the concept of *rechtsverwerking* is regulated in Article 32 Paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration. Where it is emphasized in the Regulation that a certificate that has arisen for 5 years with an element of good faith, then the certificate cannot be contested. Other parties who feel that they have the right to the land, can no longer sue if within 5 (five) years from the issuance of the certificate they do not submit a written objection to the certificate holder and to the Head of the Land Office concerned or do not file a lawsuit with the Court regarding the possession of the land or the issuance of the certificate.²⁸ Holders of land rights based on *the concept of rechtsverwerking* are also given repressive protection against lawsuits in court. This provision is a refinement and affirmation of the negative publication system with a positive tendency from land registration mandated by the Basic Agrarian Law (Basic Agrarian Law). Legal protection of land rights holders based on the concept of *rechtsverwerking* cannot be separated from the issue of justice in the implementation of the law itself. As the goal of the land law system is the creation of a just, prosperous and prosperous society. Therefore, the choice of the use of the land law system in negative publicity stelsel with positive elements should be oriented to the basic values of law, namely realizing order and order, peace and justice.

Based on the above description in relation to the legal protection of the ownership of rights of rights through the concept of *rechtsverwerking*, the writer is frugal, if a person owns land but for a certain period of time he leaves his land abandoned unmanaged and the land is used by another person in good faith for a long period of time in real terms and if the owner of the land is within the time frame mandated in the laws and regulations does not file an objection either through the local National Land Agency or does not file a lawsuit with the court, then the person concerned cannot demand the return of the land from the person who controls it, because it is considered that he has relinquished his rights or has given up his rights therefore another person who is considered in good faith as the right to own the land, through the concept of *rechtsverwerking*, must receive legal protection, both preventive legal protection. Preventively, for holders of land ownership certificates in good faith, preventive legal protection provided for holders of land ownership certificates in good faith has been regulated in the provisions of Article 32 Paragraph (1) and Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration which states that: Paragraph (1): "A certificate is a valid proof of rights as a strong means of proof of physical data and juridical data that contained in it, as long as the physical data and juridical data are in accordance with the data contained in the survey deed and the relevant land book". Paragraph (2): "In the event that a land parcel has been legally issued a certificate in the name of a person or legal entity that acquired the land in good faith and in real control of it, then another party who feels that he has the right to the land can no longer demand the exercise

²⁸ Annisa Aulia dan I Made Auliana. *Perlindungan Hukum Bagi Pemegang Sah Hak Atas Tanah Dengan Adanya Sertifikat Ganda Hak Atas Tanah*. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/20548/13484/>

of the right if within a period of (5) five years from the issuance of the certificate does not submit a written objection to the certificate holder and the head of the relevant Land Office or not file a lawsuit to the Court regarding land possession or issuance.

CONCLUSION

Referring to the provisions of Article 32 of the Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration, the procedure for ownership of land rights through the concept of *rechtsverwerking* that must be proven first is: that the person who controls the land continuously and in real terms with good etiquette and for as long as years or at least within a reasonable period of time, then the person concerned can register it to obtain a certificate of ownership of the land in question, in relation to the legal protection of the ownership of the right to the land through the concept of *rechtsverwerking*, then the ownership must have good etiquette and have a certificate of ownership of the land through the concept of *rechtsverwerking*, with a period of 5 (five) years or more and the party who feels that he has the right to the land does not object to the relevant institution for the issuance of the certificate and does not file a lawsuit with the court, thus he has waived his rights or waived his rights, therefore the party who controls the land in question must receive legal protection

REFERENCES

- A P Parlindungan, *Pendaftaran Tanah di Indonesia*, Bandung: Mandar Maju, 1999.
- Annisa Aulia dan I Made Auliana. *Perlindungan Hukum Bagi Pemegang Sah Hak Atas Tanah Dengan Adanya Sertifikat Ganda Hak Atas Tanah*.
<https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/20548/13484/>
- Andrian Sutendi, *Peralihan Hak atas Tanah*, Jakarta: Sinar Grafika, 2007.
- Beta, S. P. "Perbandingan Sistem Peralihan Hak Milik Menurut KUHPerdota Dan UndangUndang Pokok Agraria No. 5 Tahun 1960" *Jurnal Lex Privatum* 7, no. 5 (2020).
- Boedi Harsono, *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Bandung: Penerbit Jembatan, 1997.
- Desi Apriani dan Arifin Bur, "Kepastian Hukum dan Perlindungan Hukum dalam Sistem Publikasi Pendaftaran Tanah di Indonesia", *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 227, <https://doi.org/10.23920/jbmh.v5i2.11>.
- Erna Sri Wibawanti dan R. Murjiyanto, *Hak-hak Atas Tanah dan Peralihannya*, Yogyakarta: Liberty, 2013.
- Harsono Boedi, *Menuju Penyempurnaan Hukum Tanah Nasional*, Jakarta: Universitas Trisakti, 2007.
- I Lutfi Nasution, *Sambutan Ka. BPN pada Seminar Tentang Efektivitas Lembaga "Rechtsverwerking" Dalam Mengatasi Kelemahan Sistem Publikasi Pendaftaran Tanah Negatif*, Pusat Studi Hukum Agraria Universitas Trisakti, 2002.
- Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*. Surabaya: Arkola, 2002.

- J. Satrio, *Pelepasan Hak, Pembebasan Hutang, dan Merelakan Hak (Rechtsverwerking)*, Jakarta: RajaGrafindo Persada, 2016.
- Muhammad Arba, *Hukum Agraria Indonesia*, Jakarta: Sinar Grafika, 2008.
- Muh Nabil Falaq, *Pengaturan Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Terhadap Pemberlakuan Rechtsverwerking*, Skripsi: Fakultas Hukum Universitas Muslim Indonesia, Makassar. 2023.
- Nurhasan Ismail. "Rechtsverwerkin dan Pengadopsiannya Dalam Hukum Tanah Nasional". *Jurnal Mimbar Hukum* 19, no. 2 (2007).
- Retno Nurul Yaumi, *Penerapan Asas Rechtsverwerking Dalam Perolehan Hak Milik Atas Tanah (Studi Putusan Pengadilan Di Sumatera Barat)*, Tesis: Program Studi Magister Kenotariatan Fakultas Hukum Universitas Andalas Padang 2024.
- Rini Ardiyanti. *Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Terhadap Pemberlakuan Asas Rechtsverwerking (Pelepasan Hak)*. Skripsi: Universitas Hasanuddin. 2014.
- Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2000.
- Saptosih Ismiati, *KDRT dan HAM*, Yogyakarta: Deepublish, 2010.
- Sri Hajati, et al, *Politik Hukum Pertanahan Indonesia*, Jakarta: Prenada Media. 2021.
- Sutedi, A. *Peralihan Hak atas Tanah Dan Pendaftarannya*. Jakarta: Sinar Grafika. 2006.
- Tri Prasetyo Wahyu, et. al. *Konsep Rechtsverwerking Dalam Putusan Pengadilan*. <https://cfpmknuns.com/wp-content/uploads/2020/04/TRI-PrastyoWahyuSantoso.Pdf>. 2015.
- Widodo Dwi Putro, et. al. *Penjelasan Hukum : Pembeli Beritikad Baik Dalam Sengketa Perdata Berobyek Tanah*. Jakarta: LeIP, 2008.
- Yunastiti Purwaningsih. "Ketahanan Pangan: Situasi, Permasalahan, Kebijakan, dan Pemberdayaan Masyarakat." *Jurnal Ekonomi Pembangunan* 9, no. 1 (2008): 1-27.