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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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AFFIRM ROLE OF EXISTENCE *RECHTSVERWERKING* TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION

Rofiq laksamana¹, Setiono,²I Gusti Ayu Ketut Rachmi Handayani,³
Oloan Sitorus⁴

ABSTRACT

The purpose of this research was to examine the principle of *rechtsverwerking* were formulated in the national land law, primarily on the Government Regulation concerning land registration and its application on the Court's decision. *Rechtsverwerking* is a principle in adat law which states that owner of a parcel of land that leaves his land abandoned in certain period of time and lets other people to occupy and take advantage will cause the original owner to lose his right of the land, is established to overcome the weakness of the land registration system.

This study uses normative legal research methods, with statute approach, and conceptual approach. Legal materials were analyzed by syllogism of induction, deduction and interpretation.

The results show the principle of *rechtsverwerking* is embodied in the regulation of land registration called GR No. 24 of 1997. The Regulation provides that the issuance of a certificate for an applicant who has mastered the ground in a certain period of time has been acquired in good faith and registered in his name, then others who feel have an interest, then by law only given the opportunity during the time period of five years. However in law enforcement inside the court this principle tends to be deserted therefore creates an uncertainty in law and unfairness to people who have occupied a land in a long period of time.

A. Introduction

Act 1945, Article 33 (3) states, "The earth and water and natural resources contained therein, controlled by the state and utilized for the welfare of the people". It is this provision which later became the philosophical foundation for the government in managing natural resources and regulate tenure rights to land, which was then poured in Law No. 5 of 1960 on the Basic Principles of Regulation Agrarian (hereinafter referred BAL). In the explanation of the BAL stated:⁵ In the Republic of Indonesia, the composition of people's lives, including the economy, especially the still patterned agrarian, earth, water and air space, as a gift of God Almighty has a function that is very important to build a society that is fair and prosperous as which we all aspire.

¹ Doctoral student of Law, Faculty of Law UNS and Agrarian Law Lecturer of The National Land Institute (STPN), email: laksamanarof@gmail.com

² Professor Doctor of Law, Faculty of Law UNS.

³ Associate Professor Doctor of Law, Faculty of Law UNS. Email: ayu_igk@yahoo.com

⁴ Associate Professor Doctor of Law, email: stp.oloan@gmail.com

⁵ Boedi Harsono, 1996. Hukum Agraria Indonesia. Himpunan Peraturan-Peraturan Hukum Tanah. Djambatan. Jakarta. p. 25

The National Agrarian Law should provide the possibility of the achievement function of earth, water and space sangkasa as contemplated above and shall be in compliance with the interests of the Indonesian people and the country as well as meeting its requirements according to demand agrarian ages in all matter. Another of the national agrarian law must embody the principles of spiritual incarnation than the State and the ideals of the Nation is on God, Humanity, Nationality, Democracy and Social Justice, and in particular must be an implementation rather than the provisions of Article 33 of the Constitution. Further in the BAL explanation that mentions the principles of law agrarian development:

'The fourth base is placed in section 6, that: "All the land rights with social functions". This means, that the land rights existing in one can not be justified, that the land would be used (or not used) solely for their own interests, especially if it causes damage to the community. Land use must be adapted to the circumstances and nature rather than their rights, beneficial to both the well being and happiness have one or beneficial to society and the State.

Owing to its social function, it is a matter of course that it must be maintained well, in order to increase fertility and prevent damage. Liabilities preserve this land not only be borne by the owner or right holder in question, but also a burden on any person, legal entity or institution which has a legal relationship with the land (Article 15). In implementing this provision will be considered the interests of the economically weak parties'.

In fact, there is the possibility that a landowner let his land as if it does not care or does not need more land - abandoned - so come someone who needs to master the land, work or use the land as an owner. Then there is abandonedland by the land owners on the one hand and on the other hand there are people who mengusai utilized the land.

As a rule derived from customary law, although such provision is not written yet live in indigenous peoples. In the later development of the provisions shall be adopted by the BAL (Articles 27, 34 and 40) by asserting that the abolishment of land rights can occur because abandoned. Provisions of the law had a provision of customary law (rather than creating new laws), which in the current legal system is part of the Indonesian national land law and provide concrete manifestation in the application of the provisions of the

BAL especially regarding the abandonment of land. BAL try to establish the fundamentals for achieving legal certainty, as a general explanation:⁶

'The effort leading to certainty of land rights turn out of the provisions of the articles governing land registration. Article 23, 32 and 38 addressed to the holders of the rights concerned, with a view to their gain certainty about that right. While article 19 addressed to the Government as an instruction, so that in the whole of Indonesia held land registration that is "rechts-Cadastre", meaning that aims to ensure legal certainty.

In accordance with the objective that would provide the legal certainty required for the registration of the relevant right holders, with the intention that they gain certainty about their rights while article 19 was addressed to the Government as an instruction; order throughout the territory of Indonesia held land registration that is "rechtskadaster" means the objective of ensuring legal certainty.

According Boedi Harsono,⁷ customary law does not recognize the institution "acquisitieve verjaring", conclude in Decision Hoog Gerecht Hof (HGH) on 25 October 1934. What is known in the Customary Law is rechtsverwerking institutions, namely the lapse of time as cause loss of their land, if the land concerned for a long time is not managed by the rights holder and the other parties controlled through the acquisition of rights in good faith.

Furthermore, Article 32 paragraph (2) of Government Regulation No. 24 of 1997 is also an application of the institution of customary law, known as the rechtsverwerking that the lapse of time as cause loss of their land, if the land concerned for long periods of time is not managed by the rights holder and controlled by the other party through the acquisition of rights in good faith.⁸

Certificates issued a letter of proof applicable right as a strong evidence of the physical data and juridical data contained therein, all physical data and juridical data in accordance with the existing data in the measurement certificate and the land book. This means that all can not be proven otherwise, physical data and juridical data contained therein must be accepted as true, both in legal actions everyday and in berperkaran in court.

As a continuation of granting legal protection to the certificate holder stated in the provisions of Article 32 PP 24 of 1997 in Paragraph 1: The certificate is evidence of the

⁶ Boedi Harsono, *Ibid.* p. 35

⁷ Boedi Harsono, 1997. *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1 Hukum Tanah Nasional. Penerbit Jembatan. p. 65.

⁸ Boedi Harsono, 1997. *Ibid.*, p. 67

applicable rights as a means of strong evidence of the physical data and juridical data contained therein.

Paragraph 2: In the case of already issued certificates legally, then the other party feels it has the right to land can no longer demand the implementation of such rights if, within five years from the issuance of the certificate does not raise objections

This paper will discuss the existence of institutions *rechtsverwerking* in the national land law in Indonesia. By looking at the views of academia court judgement, in addition to seeing from the legislation and in the decisions of the judges both before and after enactment of the BAL, GR No. 10 of 1961 on Land Registration and after their GRNo. 24 of 1997 on Land Registration.

B. *Rechtsverwerking*, *Acquisitieve Verjaring* and Adverse Possession

Rechtsverwerking is a principle in customary law which states that a landowner who left derelict land within the specified time and allow others to occupy and take benefit would lead to the original owners lost their land rights.⁹ In customary law known as provisions regarding birth, strengthened and the loss of rights of a person who is known by the term *rechtsverwerking* prevailing in indigenous peoples. In Customary Law if one landowner and so long to let the soil was not done, then the land is done by others who acquire it in good faith, then there goes the rights of landowners.

Construction law is that if a five-year holding the titles fail to control and use the land in accordance with the nature and purpose of their rights, as well as letting the soil controlled and registered by other parties acting in good faith in a certain period of time, whereas the original owner does not file a lawsuit to the court, means concerned is considered to have let go of their land rights and therefore lost his right to sue.

Expiry (*verjaring*) related to the specific period of time which can result in someone getting a property (acquisitive *verjaring*) or also due to the passing of time causes a person released from a billing or lawsuits (*extinctive verjaring*).¹⁰ Additionally arranged also things about the "waiver" or "*rechtsverwerking*" namely the loss of the right not because the passage of time but because of the attitude or actions of a person who shows that he was not going to employ a right.

⁹ Nurhasan Ismail, 2007. "*Rechtsverwerking*" dan Pengadopsiannya Dalam Hukum Tanah Nasional. *Mimbar Hukum* Volume 19 Nomor 2 Universitas Gadjah Mada, Yogyakarta, Juni 2007, p. 1.

¹⁰ *loc.cit*

Assets in ancient Roman law, the technical term *usucapio* and *prescriptio*, then combined into acquisitive prescription in modern civil law (civil law). In the system of Common law then adopted the prescriptions of civil law, to establish institutions commensurate with the name of 'adverse possession' When compared analogy to a limited extent these institutions can also be found in the legal tradition Jewish scriptures called *chazaka* set in the Talmud and in the teachings of Islamic law as *Ihya ul Mawat* (soil turned off).

Acquisitive prescription and adverse possession, has the main purpose to promote stability and certainty in penguasaa/land ownership (landholdings). Scholars from France, *Terre and Simler*, described the institution as 'one of the masterpieces of our system of justice'. Adverse Possession in American institutions received greater attention in the discourse of the law, as a way of promoting the use of scarce natural resources more efficiently by encouraging owners to control the use of land, and periodically make *kempemilikannya* status unknown.

To claim a piece of land (real property), a person must prove that he has acted as the owner and within a certain time period required. Acquisition of rights to the AP depends on the fact mastery, each jurisdiction has developed a different way to organize and access the relevant factors. In civil law work in two parts, namely the requirements of effective control and *animus domini*. While in law commom justice generally choose to apply two, three or five paradigms.

In Dutch law, the *Hoge Raad*, acknowledges the possibility of a situation in which one party (the agreement) lost hers because of his own actions, this situation is known as *Rechtsverwerking* or equal to *Vervirkung* in Germany.

In civil law, ownership (ownership) is defined as the right to use, enjoy and transfer property fully and freely (fully and freely), with the limits and conditions specified by law.

C. Understanding and the Use of *Rechtsverwerking*.

According to Nurhasan Ismail *rechtsverwerking* principle is one of the principle known and applicable in Customary Law, especially relating to the occurrence and obtaining rights to land by citizens.¹¹ Furthermore it is said *rechtsverwerking* principle of

¹¹ Nurhasan Ismail, 2007, *Rechtsverwerking*.....

existence is primarily concerned with the weakening and loss of legal relations. In connection with the procurement of plots of land by citizens of indigenous peoples.¹²

Meanwhile, according to Algra as quoted by Irawan Soerodjo¹³ *rechtsverwerking* interpreted as consequences arising from a waiver or their effects because it does not perform a legal act which is an obligation that must be carried out by a person by law, so that the right to be missing something.

Rechtsverwerking can be interpreted as the consequences arising from a waiver or *akibat* that arise because not doing anything rubbing legal act which is an obligation that must be done by a legal person, so something is lost.¹⁴ Meanwhile, according to R. Subekti¹⁵ *Rechtsverwerking* mainly based on a person's attitude from which concluded that he was not going to use anymore *sesuatu* rights, other than expired or past time. In this case of five (5) years that only have meaning as a factor to strengthen the attitude domiciled silence of people who have an interest.

While Herman Soesangobeng¹⁶ disagreed *rechtsverwerking* as a legal institution, arguing that the term *Rechtsverwerking* is a concept discussed in *Verjaring* homology to the growing discourse of lawyers and not in the law. According Soesangobeng¹⁷ *Rechtsverwerking* customary law does not recognize as an effort to eliminate especially the removal of land rights, the reason is because the basic principle of customary law is that the right of communion on the ground can not be removed or deleted, although it could be considered to be released by concerned citizens either explicitly or the diameter silent.

Different proposed by Mochtar Wahid,¹⁸ *rechtsverwerking* who defines institutions as the lapse of time cause people to be disenfranchised who originally possessed, however, the organization is used to maintain ownership has been registered in the public register. This opinion is almost as same as understanding *verjaring* or expired.

¹² *Loc.cit.*

¹³ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*. Arkola, Surabaya. 2002. Hlm. 188.

¹⁴ N.E. Algra, et.al, *Kamus Istilah Hukum – Fockemen Andrea Belanda Indonesia*. Bandung. Binacipta, 1983, hlm. 80.

¹⁵ Subekti, R. 1991. *Hukum Adat Indonesia Dalam Yurisprudensi Mahkamah Agung*, Alumni, Bandung. Hlm. 90

¹⁶ Soesangobeng. 2002. *Materi Perkuliahan Hukum Agraria (Lanjutan)*. Jakarta: STIH IBLAM, Kelas BPHN. Hlm 2

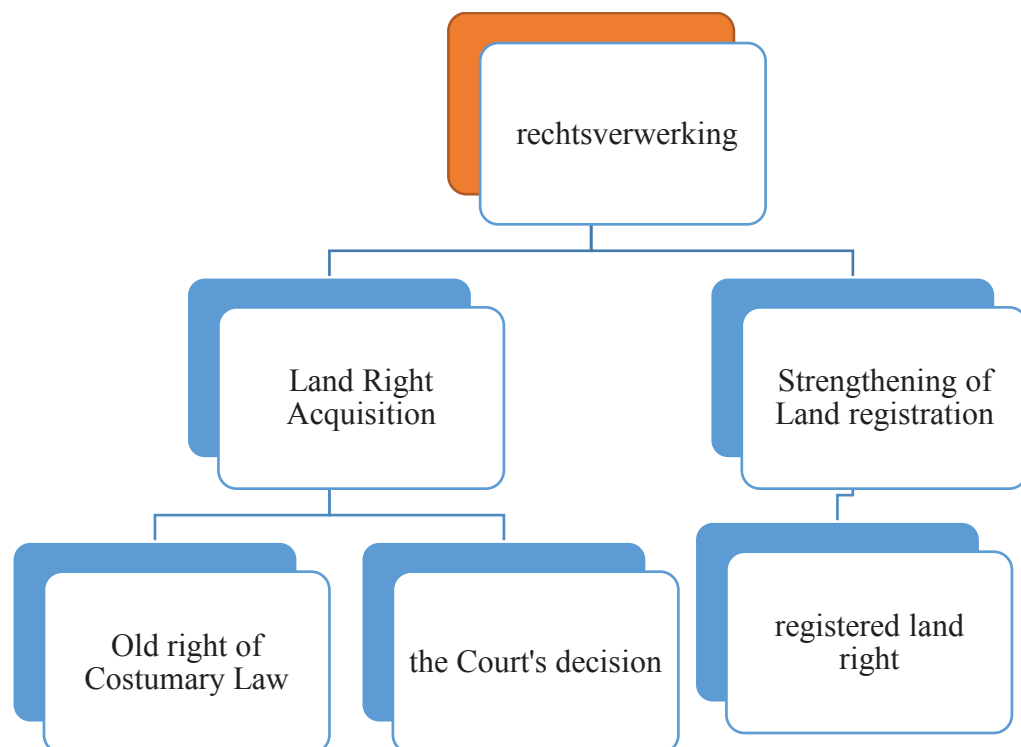
¹⁷ Soesngobeng. *Ibid*.hlm 14

¹⁸ Mochtar Wahid. 2008. *Memaknai Kepastian Hukum Hak Milik Atas Tanah*. Republika. Jakarta. Membandingkan dengan lembaga *adverse possession* (khususnya *in good faith*) atau *verjaring*, adalah lampunya waktu yang menyebabkan orang lain menjadi mempunyai hak atas tanah yang semula dimiliki orang lain, maka lembaga ini digunakan unntuk memperoleh pendaftarannya dalamdaftar umum.

According to Lutfi Nasution,¹⁹ Rechtsverwerking institution, as an institution under the influence of past recognition right time does not stand alone, but into one unified concept of the agencies 'adverse possession' or 'verjaring' institutions 'title insurance'. Even substantially Rechtsverwerking institution, together with the institutions 'adverse possession' or agency acquisition rights due to expire (verjaring), despite the connotations of good faith (good faith).

The difference lies in the use of these institutions. Institutions "rechtsverwerking", ie the lapse of time causes people to become lost rights over land which was originally his, and on the other hand these institutions are used to retain ownership of the land that has been registered in the public register. In contrast to "adverse possession" in particular "in good faith" or "verjaring" is the lapse of time that causes people to obtain land rights previously owned by another person, for the purpose of obtaining registration in the public register.

Table 1 : function rechtsverwerking in GR No. 24 of 1997 on Land Registration



¹⁹ Ibid. Hlm. 94.

D. *Rechtsverwerking* in indigenous communities.

Rechtsverwerking is a principle in the Agrarian Law which states that the owner of a plot of land left derelict land within a certain period and allow others to occupy and take the benefits will lead to the original owner loses his right to the land.²⁰ So the owner of a plot of land to abandon their land within a certain time, so that the displaced and even allow others to dominate others and work as well as taking on the land, then the original owner of the land will lose the right to their land. Thus invent a process of loss of land rights of the original owner and is followed by obtaining the land rights for people who were then occupying and using the land. So that said²¹*Rechtsverwerking* is one of the principle known and applicable customary law mainly deals with the occurrence and obtaining rights to land by citizens.

The intensity of a determining factor for the sustainability of the legal relationship is strengthened. Conversely, if the intensity factor possession and use of land is not met because concerned citizens to leave and let the land is not used or exploited, then the operator from the legal principle "*rechtsvetwerking*": that was the legal relationship such as that in question is deemed to have relinquish control over the land after not being used or earned the land by its owner.

Boedi Harsono essentially argued that their labor and investment costs by people who have legal relationships within a framework preserve the land. A citizen who constantly invest effort and money to maintain and use or utilize the land, the legal relationship between himself and the ground will continue. The person will be declared and recognized as the owner of the land. On the contrary. if one is no longer invest the effort and cost to utilize the land and it lasted until the land *membelukar* since grown reed plants that show no longer conducting land use, then this person can be interpreted has waived his right and the means to be declared have lost their rights to the land.²²

In the Indonesian Indigenous communities *rechtsverwerking* implementation was based on the facts of natural phenomena that occur on land, as the basis for determining the relationship became stronger or otherwise weakening or even loss of one's rights over the land, so it applies the principle of *rechtsverwerking*.

²⁰ Nurhasan Ismail, 2007. Hlm 183. Ibid. Halm 3.

²¹ Ibid. hal.188-189.

²² Boedi Harsono, 1971. Bagian 11. Loc.Cit

According Nurhasan natural physical signs that can be used as the basis to be the intensity of land ownership is as follows:²³

First, the maintenance condition of land owned and used them. Second, the stake-stake used to pick fruit from the trees on the land or building huts used by concerned citizens to rest when spelling land. Third, the existence of large trees are deliberately planted by the person concerned. Fourth, the development or manufacture of embankments ground (mounds of earth which runs across the edge of the ground) as limiting soil dihacki by one with the land that belongs to someone else.

Some areas are not the same in using a certain time limit as the basic loss of a person's right to land he once had. Thus after passing a certain period of the landowners who do not use or megusahakan his estate, then the question will lose the right to astas land. According Ardiwilaga²⁴ in communities Customary Law Tapanuli, abolishment of land rights occur after the owner no longer seek or use of land within 5 (five) years, while in the Madison area after the expiration of 20 (twenty) years.

E. Institutions *Rechtsverwerking* in the National Land Law (BAL and PP No. 24/1997).

Shrimp agrarian principal Act (BAL) is based on customary law, adopt provisions such *rechtsverwerking* institutions. And do not use *verjaring* institution or adverse possession, because the agency is not known the customary law. In customary law as well as in the national land law, land is common property of all members of indigenous communities, or in the national land law, land is the property of the people of Indonesia. Ownership by individuals are also allowed, admittedly, that will be used to meet the needs of life and the lives of himself and his family, or even to capital in the economy that are cultivated, otherwise the land should not be merely dimiliki someone but not used, or left unused, even abandoned.

Reaffirmation of negative publicity in the application of the system adopted in the land registration PP 10 of 1961 and Government Regulation No. 24/1997 followed by application *rechtsverwerking* institute aims to strengthen the position of certificates as evidence of their ownership rights. Used in other countries expiration institutions, for

²³ Nurhasan Ismail. 2007. Ibid.

²⁴ Ardiwilaga. 1962, Hukum Agraria Indoensia: Dalam Teori dan Praktek. NV. Masa Baru Jakarta, hal 53

example *Acquisitieveverjaring* - the Netherlands or adverse possession²⁵ in the United Kingdom and some other countries.

Background use *rechtsverwerking* institutions drawn from customary law in Indonesia over the reality of the needs that are real and interconnected nature of the limit (tapered-inflate) between the corporate power alliance with the relationship of indigenous possession and use of land by members of the alliance.²⁶ According Boedi Harsono provisions²⁷ of article 32 paragraph (2) pp No. 24 of 1997 that has the purpose, to provide an additional means of securing the written form, although there are institutions *rechtsverweking* the unwritten customary law.

According to Bagir Manan,²⁸ about using the principle *rechtsverwerking* states: "In the agrarian law in Indonesia adheres to the principle of *Rechtsverwerking*, this provision provides that the parties believed that they had the right to land that has been registered on behalf of others, did not file a written objection then no longer be able to demand their rights after 5 years since the certificate in *terbitkannya*, *Rechtsverwerking* purpose of this is to ensure legal certainty to those who own the land in good faith".

According to Irawan Soerodjo,²⁹ five-year term that does not apply where a legal act of transfer of rights over the land is not followed by the issuance of certificate / *baliknama*, because the provisions of article 32 paragraph (2) requires the submission of objections or appeals before (italics by author) issued certificates land, so that if a legal act of transfer of rights to land are not registered / behind the name, then this provision provides protection for rights holders at real ground to make demands without limitations on the duration.

Interest *rechtsverwerking* adoption agency is to provide legal certainty to the parties in good faith controls the land and registered as holders of rights in land books with the title deed as proof of ownership.

The settings in the GR No. 24 // 1997 on Land Registration directly related to this *rechtsverwerking* outlined in Article 32 Paragraph (2) which states that: in the event that a

²⁵ *Black's Law Dictionary* defines adverse possession as, "A method of acquisition of title to real property by possession for a statutory period under certain conditions." It goes on to note, "In order to establish title in this manner, there must be proof of nonpermissive use which is actual, open, notorious, exclusive and adverse for the statutorily prescribed period."

²⁶ Muchtar Wahid. *Ibid.* Hlm 95

²⁷ Boedi Harsono, *Kelemahan Pendaftaran tanah Dengan Sistem Publikasi Negatif* (Makalah disampaikan pada Seminar Nasional "sejauh Mana Kemungkinan Ke-efektifan Pasal 32 PPNomor 24 Tahun 1997 Dalam mengatasi Kelemahan Pendaftaran Tanah Dengan Sistem publikasi negative). PSHA Fakultas Hukum Universitas Trisakti Jakarta, 20 Maret 2002), Jakarta; 5-6.

²⁸ Bagir Manan. *Asas Rechtsverwerking*, Sambutan pada Seminar Nasiona l Pendaftaran Tanah, Universitas Trisakti - Jakarta, 2002, hlm. 2.

²⁹ Irawan Soerodjo, 2002. *Kepastian Hukum Hak Atas Tanah di Indonesia*. Arkola, Surabaya, hlm 190.

plot has been legally issued certificates on behalf of the person or legal entity who obtained the land in good faith and are real hang of it, then the other party that they had a right to the land was no longer able to demand the implementation of these rights if within 5 (five) years since the issuance of the certificate is not filed a written objection to the Holders of the certificates and the land office concerned or not filed a lawsuit concerning land ownership or the issuance of the certificate.

Article 32 paragraph (2) of Government Regulation No. 24 of 1997 is the application of the institution of customary law, known as the *rechtsverwerking* that the lapse of time as cause loss of their land, if the land concerned for long periods of time is not managed by the rights holder and controlled by others through the acquisition of rights in good faith.³⁰

The provisions in Article 32 paragraph (2) is actually not a new provision, because the concept of this article is a concept that is used in resolving land disputes on customary law before the entry into force of Regulation No. 24 in 1997. The concept used in this article is "*rechtsverwerking*" already be applicable before Regulation 24 of 1997 applies even before the BAL there.

Rechtsverwerking institutions set out in that article seeks to overcome negative publicity system flaws positive bertenden adopted by Indonesia, to achieve the purpose of registration of land, which is legal certainty to the control / ownership rights to land.

Enforceability *rechtsverwerking* institutions as stipulated in Article 32 paragraph (2) PP 24/1997, requires several things: a) there is an element of good faith; b) acquisition of real physical; c) the time-elapsed; d) to plot the existing rights and published certificate; e) a person who feels have the right not staged to demand their rights within the period prescribed by the regulations.

Until now Article 32 paragraph (2) Regulation No. 24 of 1997 which should have been a solution to the above problems are still getting a lot of pros and cons. Given the existence of this article is not in accordance with the system adopted by the negative publicity of registration of land in Indonesia, where the certificate is not an absolute but evidence that the certificate is strong evidence.

If a plot has been published sertipikatnya legally on behalf of the person or legal entity (as a subject of rights over land) who obtained the land in good faith and a real master of the land, then the other party that they had a right to the land can no longer sue right, if within 5 (five) years since the issuance of the certificate, do not file a written

³⁰ Boedi Harsono, op.cit., p 67

objection to the certificate holder and to the land Office or file a lawsuit to the court concerning land ownership or the issuance of certificates. This is what is referred to as 'rechtsverwerking'.

This provision is an improvement and affirmation of the positive tendency of negative publicity system of land registration which governed the Basic Agrarian Law (BAL). In a land registration system with negative publicity, the state does not guarantee the integrity of the data at the registration office, so people are listed by name in the certificate is always faced with the possibility of a lawsuit from the other party that they had a right to the land field. But with the determination of this deadline, the persons listed by name in the certificate will be free from the possibility of a lawsuit after the expiration of 5 (five) years and its status as the owner of the land will continue to be protected throughout the land was acquired in good faith and controlled significantly by the rights holder or proxy.

An explanation of rechtsverwerking this is described in Article 32 Paragraph (2) of Government Regulation No. 24 of 1997 which states that: 'in the event that a plot already issued certificates validly on behalf of the person or legal entity who obtained the land in good faith and in real hang of it, then the other party that they had a right to the land was no longer able to demand the implementation of these rights if within 5 (five) years since the issuance of the certificates were not filed a written objection to the Holders of the certificates and offices piertanahan concerned or not, or file a lawsuit to court over control of the land or the issuance of such certificates'.

Provisions of the Regulation No. 24/1997 has been to reassert that the land registration system in Indonesia does not use pure negative publicity (The state does not guarantee the correctness of the data presented in evidence right), but incorporates the positive tendency of negative publicity, meaning that although the State does not guarantee the correctness of the data presented the right evidence, but evidence such rights are categorized as evidence of the strong (as long as no decision of the judge to the contrary, the data presented in evidence right proficiency level is the correct data, valid and recognized and guaranteed by law). Furthermore, the presence of soil inspection process in the establishment of the rights of data collection and research juridical examination of the land so that the results are expected to be closer to the truth than the right base material on which to base the determination of his rights.

Rechtsverwerking Institutions in the judge's decision before the enactment of the BAL until after the Government Regulation No. 24 of 1997 on Land Registration.

Rechtsverwerking institutions used in the legal system of land in Indonesia both before and after the enactment of BAL. It is evident from the number of cases rechtsverwerking which has been decided by the Supreme Court and the High Court in Indonesia. Land abandoned by jurisprudence can not be separated from the opinion of the judges in Indonesia based on their authority to give a decision on the events that occurred and went to court. The judge's opinion is summarized in the considerations given in deciding on the case law of abandoned land. In court decisions in various cases of land affected, to give a decision on the status of Property Rights of land that is left for a period of time not worked by the rights holder, the attitude of the judges in making decisions many choose to use agencies rechtsverweking known in customary law that is deemed to have waived rights.

According Boedi Harsono,³¹ in several decisions of the Supreme Court showed rechtsverwerking institutions and the ordinance apply. Meanwhile, according to Wahid stated Muchtar the reality that a judicial decision shows that the institution rechtsverwerking not bind the judges in deciding cases.

Law enforcement (agencies rechtsverwerking) according Satjipto Rahadjo is a process to realize the desires of law becomes a reality. Which is referred to as the desires of the law in this case are the thoughts agency shrimp legislators formulated in law.

F. Here are some Supreme Court decisions relating to the use of agency rechtsverwerking customary law:

a. The Supreme Court verdict before the BAL, among others, as follows:

1) Decision of the Supreme Court dated January 10, 1956 No. 210 / K / Sip / 1055 in a case in Pandeglang, West Java. The suit can not be accepted because of the Plaintiff with silence because up to 25 years should be considered to eliminate the right (rechtsverwerking).

In the above-mentioned decision relates to the attitude of a person (the plaintiff) to silence the ground that he considered his own in the long term (25 years), the attitude of silence is enough to determine that he waived his right.

2) Decision of the Supreme Court dated August 1, 1956 No. 34 K / Sip / 1956. Buyers of land in good faith should be protected, purchases made light in front of the authorities, while in this case it is really difficult to know who the owner of that land, because the owner had control over the land since 1932, while the land before

³¹ Soebekti Tamara, *Kumpulan Putusan Mahkamah Agung Mengenai Hukum Adat*, (Jakarta: Gunung Agung, 1961), p. 31.

it was purchased by the buyer has been bought and sold by people other than their owners.

The element of good faith as a basis for action to protect someone buys the land. The apparent good faith in the execution of sale and purchase of land is done publicly before an official.

- 3) The Supreme Court Decision Number 329 K / Sip / 1957. That is based on the prevalence of the custom prevailing in the region of Padang Lawas, fields were abandoned five years in a row is considered back into the clearing, so that its control by others after the course of the past 5 years is valid, if the land was acquired from the mine to give.
- 4) The decision of the Supreme Court dated January 10, 1957 No. 210 / K / Sip / 1955. This is the case in Pangdeglang regency, West Java. The lawsuit stated is not acceptable, because the plaintiffs to silence because up to 25 years, should be considered to eliminate the right (*rechtsverwerking*). The Supreme Court found that the buyer of rice fields now should be protected, because it may be considered that he was acting in good faith in buying paddy from someone heirs of the deceased owner of the fields.
- 5) Surabaya High Court decision dated May 27, 1958 No. 132 / 1953.Pdt. Cases occur in Sleman, Yogyakarta. Waiver ("*rechtsverwerking*") the claimant is considered relinquish their rights to two plots of land, because for 20 years let the fields tilled others dispute.
- 6) The decision of the Supreme Court on 24 September 1958 Number 239 / K / Sip / 1957. Cases occur in South Tapanuli, that although the original claimant who is still under age, is entitled to the rice field, but his mother is obligated as a trustee to preserve the rights of the original claimant until he becomes an adult, and in this case looks omission mother original claimant with no acting at all so that the land can be controlled by the original defendant for about 18 years, and due to negligence on the basis *penganggapan* waive the right (*rechtsverwerking*) original claimant deemed to have waived the right to the disputed land.
- 7) The decision of the Supreme Court dated March 7, 1959 No. 70 / K / Sip / 1959. Cases occurred in the municipality, Malang, with the Chairman of the Assembly wirjono prodjodikoro. An expiry defense in civil lawsuits about land, was rejected on the grounds that the claimant has repeatedly requested from the defendant, to hand over the land to the plaintiff, which meant that it had retained expiry.

b. The Supreme Court ruling After promulgated BAL

- 1) Decision of the Supreme Court dated March 27, 1975 No. 1192 K / Sip / 1973. Cases occur in Mulberry, that according to customary regulatory local person's right to land business become void if he is long enough not / do not do more land, then he was given a reprimand by the Head Guild / village to do it but the rebuke ignored, in this case the so-so ground the Head of Kampung Persekutuan given to someone else who needs it.
- 2) Decision of the Supreme Court dated January 29, 1976 No. 783 K / Sip / 1973. That the plaintiff compa has occupied the land continuously for 27 years without being sued. It is true that the customary laws for both parties do not recognize the institution "verjaring" but the customary law recognized institute "the influence of past time". That if indeed the plaintiff compa not entitled to the land, the fact that the defendant until a long time to wait to claim the land returned minimbulkan legal presumption that they have relinquished their rights (rechtsverwerking). That Plaintiffs compa who had occupied the land for a long time without interruption and act as an honest owners should be protected by law.
- 3) The decision of the Supreme Court dated January 21, 1974 No. 659 K / Sip / 1973. The loss of rights due to expiration. Considerations High Court justified the Supreme Court, that even grant lands disputed by the defendant one was without the consent of the plaintiff, but because he let his land in such circumstances for so long, which began October 23, 1962 samapai lawsuit filed ie June 18, 1971, the attitude of Claimant considered to justify these circumstances, given that the defendant one as the wife of the plaintiff is entitled also on the part of gono-gini, the grant and also the sale of the land from the defendant two to the defendant three because it has met the provisions of the applicable law, the BAL jo PP numbers 10 1961 is valid.
- 4) The decision of the Supreme Court dated December 9, 1975 No. 408 K / Sip / 1973. The loss of rights due to expiration. High Court justified consideration of the Supreme Court. Because the plaintiff-compa has been for 30 years to let the lands occupied by the deceased mistress dispute Ratiem and then by their children, of their rights as the other heirs of the deceased Atma to prosecute those lands have been greatly over time (rechtverwerking).

G. Conclusion

The concept *Rechtsverwerking* has been adopted of customary law and norms used in positive law, especially in the Land Registration in Indonesia. Enactment of legal norms in Article 32 (2) of Government Regulation No. 24 of 1997 on Land Registration, so the certificate of land rights can gain a strong foothold for interested parties and can be used as a secure foundation in legal actions.

In the Court's Decision on ownership of land tenure dispute should also consider and decide case by institutions / norms *rechtsverwerking*. Thus ensuring legal certainty in the control / ownership of land can be accessed in a fair society. Furthermore, with the adoption of these institutions in higher level legislation is expected to address weaknesses in the land registration system adopted by GR 24 of 1997 on Land Registration.

BIBLIGRAPHY

- Bagir Manan.** 2002. *Asas Rechtsverwerking, Sambutan pada Seminar Nasional Pendaftaran Tanah*, Universitas Trisakti – Jakarta.
- Badan Pertanahan Nasional**, Direktorat Hukum Pertanahan, 2005. *Himpunan Peraturan Bidang Pendaftaran Tanah*, Pasal 32 (2) PP No. 24/1997 tentang Pendaftaran Tanah.
- Boedi Harsono**, 1997. *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid 1 Hukum Tanah Nasional*. Penerbit Jembatan.
-, 1996. *Hukum Agraria Indonesia. Himpunan Peraturan-Peraturan Hukum Tanah*. Djambatan. Jakarta.
-, *Kelemahan Pendaftaran tanah Dengan Sistem Publikasi Negatif* (Makalah disampaikan pada Sentinar Nasional "sejauh Mana Kemungkinan Ke-efektifan Pasal 32 PP Nomor 24 Tahun 1997 Dalam mengatasi Kelemahan Pendaftaran Tanah Dengan Sistem Publikasi Negative). PSHA Fakultas Hukum Universitas Trisakti Jakarta, 20 Maret 2002), Jakarta; 5-6.
- Guiding Principles of European Contract Law.** Hlm 156. http://www.legiscompare.fr/site-web/IMG/pdf/19._Guiding_Principles.pdf
- Irawan Soerodjo**, 2002. *Kepastian Hukum Hak Atas Tanah di Indonesia*. Arkola, Surabaya,
- Nurhasan Ismail**, 2007 "*Rechtsverwerking*" dan Pengadopsiannya Dalam Hukum Tanah Nasional. *Mimbar Hukum* Volume 19 Nomor 2 Universitas Gadjah Mada, Yogyakarta, Juni 2007.

- Mahkamah Agung Republik Indonesia**, *Hukum Adat Yurisprudensi Mahkamah Agung Republik Indonesia*, (on line), ([www.kennywiston.com/hukum adat htm.](http://www.kennywiston.com/hukum%20adat%20htm.%20)), diakses 11 Mei 2014.
- Mahkamah Kostitusi, 2013.** **Putusan Sidang No. 10 PHPU.D - 2013.**
- Michael H. Lubetsky.** *Adding Epicylces:The Inconsistent Use Test in Adverse Possession Law.*
- Mochtar Wahid.** 2008. *Memaknai Kepastian Hukum Hak Milik Atas Tanah.* Republika. Jakarta
- N.E. Algra, et.al,** 1983. *Kamus Istilah Hukum – Fockemen Andrea Belanda Indonesia.* Bandung. Binacipta.
- Ardiwilaga.**1962, *Hukum Agraria Indoensia: Dalam Teori dan Praktek.* NV. Masa Baru Jakarta.
- Satjipto Rahardjo,** 1984. *Masalah Penegakan Hukum, Suatu Tinjauan Sosiologis.* Sinar Baru, Bandung.
- Soebekti Tamara,** *Kumpulan Putusan Mahkamah Agung Mengenai Hukum Adat,* (Jakarta: Gunung Agung, 1961),
- Soesangobeng, Herman.** 2002. *Materi Perkuliahan Hukum Agraria (Lanjutan).* Jakarta: STIH IBLAM, Kelas BPHN.
- Subekti, R.** 1991. *Hukum Adat Indonesia Dalam Yurisprodensi Mahkamah Agung,* Alumni, Bandung.
- The Civil Code of Quebec:** *‘the right to use, enjoy and dispose of property fully dan freely, subject to the limits and conditions for doing so determined by law.’*