

RECONSTRUCTION PRESUMPTION OF RELEASE RIGHT ON LAND (RECHTSVERWERKING) IN LAND REGISTRATION IN INDONESIA

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ABSTRACT

This paper aims to find the regulatory form of the principle of the assumption of the release of rights (rechtsverwerking), which is a principle in customary law, used in land registration as a way to overcome the weaknesses of land registration in Indonesia. Through the regulation in GR No. 24 of 1997 concerning Land Registration, the principle of rechtsverwerking was adapted by national land law, in Article 32 paragraph (2) in the GR, to maintain the position of holders of land rights that have been registered and at the same time also limit claims from other parties who feel they have the right, within a period of 5 years from the issuance of the certificate on behalf of a person or legal entity that has the right to land with goodwill. The method used is juridical doctrinal research with a case approach and legal comparison. The results showed similarities and differences between rechtsverwerking in Indonesia, adverse possession in the UK and verjaring in the Netherlands. Real mastery, the passing of certain times and good faith are the main issues of each case. In several decisions of the Republic of Indonesia Supreme Court, the assumption of the release of rights (rechtsverwerking) is also used as a basis for consideration in deciding a case it faces.

Keywords: Land registration, the assumption of rights release (rechtsverwerking), good faith.

Introduction

A. Background

One of the purposes of the enactment of Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (BAL) is laying the foundations for providing legal certainty regarding rights to land for the people as a whole. Providing guarantees of legal certainty achieved by holding land registration.

Provisions concerning land registration as regulated in Article 19 of the BAL, then to implement the provisions issued Government Regulation No. 10 of 1961 concerning Land Registration (GR No. 10 of 1961). After being valid for 36 years GR No. 10 of 1961 was perfected by Government Regulation No. 24 of 1997 concerning Land Registration (GR No. 24 of 1997) with several new provisions.

One of the new things regulated in GR No. 24 of 1997 is the principle of "assumption of the release of rights" (*rechtsverwerking*) as part of efforts to achieve legal certainty in land registration. *Rechtsverwerking* which was previously known in customary law was adopted as a renewal in land registration. The principle of *rechtsverwerking* is intended as an effort to overcome registration weaknesses.

Indonesia adheres to a negative publication system with a positive tendency, namely a certificate that is only a proof of a strong right and is not a proof of absolute rights. This means that the physical data and juridical data listed in the certificate have legal force and must be accepted by the judge as correct information for as long as there is no other evidence that proves otherwise. Certificates as proof of strong rights contain the understanding that the physical data and juridical data contained in the certificate have the strength of evidence and must be accepted as correct information, as long as it is not proven otherwise with other evidence, in the form of a certificate or other than a certificate (tax receipt earth/quote letter c).

Therefore, in the registration of land in Indonesia, the certificate is not the only proof of land rights and there is no guarantee for the holder of the right to the certificate of land securely from a claim from another party who feels aggrieved over the issuance of the certificate.

The position of the Certificate as proof of the right to be stronger, especially after the issuance of GR. 24 of 1997 concerning Land Registration, the strength of the certificate is seen in the regulation contained in Article 32:

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- 1) A certificate is a proof of the right that applies as a strong evidentiary tool concerning physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data in the measurement letter and the relevant land book.
- 2) In the event that a valid land certificate has been issued in the name of a person or legal entity that has obtained the land in good faith and has real control over it, other parties who feel that they have rights to the land can no longer demand the exercise of this right if a period of 5 years from the issuance of the certificate does not file a written objection to the holder of the certificate and the Head of the Land office concerned or does not file a lawsuit with the Court regarding land ownership or issuance of the certificate.

The Article 32 Paragraph (1) GR No. 24 of 1997 is an elaboration of the provisions of the BAL specifically in Article 19 Paragraph (2) letter c, Article 23 Paragraph (2), Article 32 Paragraph (2) and Article 38 Paragraph (2) of the BAL, it can be concluded from these articles land registration results in a proof of evidence that is valid as a strong evidence.

Provisions Article 32 Paragraph (1) GR No. 24 of 1997 has weaknesses, namely the state does not guarantee the truth of the physical data and juridical data presented and there is no guarantee for the owner of the certificate because at any time it will get a lawsuit from another party who feels aggrieved over the issuance of the certificate. To cover the weaknesses in the provisions of Article 32 Paragraph (1) GR No. 24 of 1997 and to provide legal protection to the owner of the certificate from the claim of another party, the provisions of Article 32 Paragraph (2) GR No. 24 of 1997 are made.

However, in the implementation of land registration, the regulation of the institution of the presumed release of rights (*rechtsverwerking*) still faces several obstacles including:

- a. The lack of understanding of the application by the land office is still giddy in maintaining certificates that have been issued for more than 5 years by using the article as a defence, in the event of a lawsuit.
- b. the existence of confusion in understanding equality, differences in concepts, principles and justification of application, the assumption of the release of rights (*rechtsverwerking*) in the judge's decision;
- c. The legal arrangement of the institution regarding the release of rights is still in question in terms of its substance and substance.

B. Problem Formulation

Based on the above background, the formulation of the problem in this paper is as follows:

1. Is the assumption of the release of rights (*rechtsverwerking*) applied in the process of obtaining land rights and land registration?
2. How is the assumption of the release of rights (*rechtsverwerking*) applied in the Judge's Decision?
3. How should the regulation form the assumption of the release of rights (*rechtsverwerking*) in the National Land Law so that legal certainty is achieved in land registration?

C. Literature Review

1. The concept of Assumption of Rights (*rechtsverwerking*)

The concept of "the assumption of the release of rights" *rechtsverwerking* is known in customary law by indigenous Indonesians, namely a process of loss of rights because of the attitude or actions of someone who shows that he will not use his rights again not because of the passing of time. In customary law this method can be found, only the period of time is not determined mathematically, but enough if the person who controls the land is working on the land continuously, then over time the authority/utilization of the land by the community is recognized as the owner of the property the land in question.⁵

In the explanation of GR No. 24 of 1997 concerning Land Registration, especially Article 32 paragraph (2), an institution was adopted from customary law, known as *rechtsverwerking*, namely the lapse of time as a result of losing the right to exercise rights, if the land concerned for a long period of time is not cultivated by the rights holders and controlled by other parties through the acquisition of rights in good faith.⁶

According to Lutfi Nasution,⁷ the *Rechtsverwerking* institution, as a rights recognition agency due to past influences of time is not independent, but is a unified concept with the institution 'Adverse Possession' or 'verjaring' with the institution 'title insurance'. Even substantially the institution of *Rechtsverwerking*, is the same as the institution of 'Adverse Possession' or the institution obtaining rights due to expiration (*verjaring*), even though in connotation with good faith. The only difference lies in the use of the institution. The institution "*rechtsverwerking*", which is the time lag that causes people to lose their land rights they originally owned, to maintain ownership of land that has been registered in the public register. Whereas "Adverse Possession" especially "in good faith" or "verjaring" is the lapse of time which causes people to obtain rights to land that was originally owned by another person, with the aim of obtaining registration in the public register.

⁵Nurhasan Ismail, "*Rechtsverwerking*" dan Pengadopsiannya Dalam Hukum Tanah Nasional. *Mimbar Hukum* Volume 19 Nomor 2, Juni 2007. hlm. 185

⁶Boedi Harsono, 2003, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Cetakan Kesembilan (Edisi Revisi), Penerbit Djambatan, Jakarta. hlm. 67

⁷Lutfi Ibrahim Nasution dalam Muchtar Wachid. *Memaknai Kepastian Hukum Hak Milik Atas Tanah*. Republika. Jakarta, hlm. 94

To obtain property rights according to customary law, in addition to opening new land, there is also another method called the release of rights (*rechtsverwerking*). According to Nurhasan⁸ the institution or the principle of the assumption of the release of rights (*rechtsverwerking*) is a principle known and applicable in Customary Law, especially relating to the occurrence and acquisition of land rights by citizens. Furthermore, it was said that the principle of *rechtsverwerking* was mainly related to the weakening process and the loss of legal relations, relating to the acquisition of land by indigenous peoples. The duration of land ownership/control will also affect birth, strength, weakening and even the termination of land rights.⁹ Further he said that *Rechtsverwerking* is a principle in Customary Law, which stipulates that an owner of a plot of land who leaves his land abandoned within a certain period of time and does not take action when someone else occupies and takes advantage of it, it will result in the original owner losing the right on the land.

According to Urip Santoso, the provisions of Article 32 paragraph (2) GR No. 24 of 1997 was made to cover the negative publicity system weaknesses as stipulated in Article 32 paragraph (1). According to Urip Santoso, the certificate as proof of rights will be absolute if it fulfills all the following elements:¹⁰

- 1) the certificate is issued legally on behalf of a person or legal entity;
- 2) the land is obtained in good faith;
- 3) the land is done in real time;
- 4) within five years of the issuance of the certificate, people who feel they have the right do not file objections in writing to the holder of the certificate and the Head of the Regency/City Land Office or file a lawsuit to the court regarding the ownership or issuance of the certificate.

Even though this principle of *rechtsverwerking* has been adopted into the National Land Law, so it has, therefore, become part of the land law in Indonesia.¹¹ However, law enforcement tends to deviate, resulting in uncertainty and injustice for people who have controlled the land and meet the requirements as in the institution *rechtsverwerking*. Article 32 Paragraph (2) GR No. 24 of 1997 regulates that:

'in the event that a valid land certificate has been issued in the name of a person or legal entity that has obtained the land in good faith and has clearly mastered it, then other parties who feel that they have rights to the land can no longer demand the exercise of that right if 5 (five) years after the issuance of the certificate does not file objections in writing to the certificate holder and the relevant land office or does not file a lawsuit to the court regarding land ownership or issuance of the certificate '.

In the Explanation of Article 32 paragraph (2) GR No. 24 of 1997, described by the institute as presuming that relinquishment of rights (*rechtsverwerking*) was used to overcome the weaknesses of the negative publication system in land registration, this institution was compared to the adverse possession or acquisitive institution *verjaring* in the jurisdiction of the land registration system in other countries. The provisions of Article 32 paragraph (2) are aimed at:¹² on one party to stick to the negative publication system and on the other hand to balance law certainty to the party, who in good faith controls a piece of land and is registered as the right holder in the land book, with a certificate as proof, according to the BAL as strong proof tool.

In the National Land Law, especially in the Explanation of Article 32 paragraph (2) GR No. 24 of 1997, *rechtsverwerking* should be able to be a solution to land issues, but there are still pros and cons of its implementation in the acquisition and registration of rights and the enforcement of its elements in disputes related to the assumption of the release of rights (*rechtsverwerking*) in the Judiciary.

When compared at a glance between the principle of presumption of rights (*rechtsverwerking*) with *Acquisitiveverjaring* (prescription) and Adverse Possession, there are similarities and differences, the main adverse possession differences are intended to promote legal stability and certainty in landholdings. Terre and Simler, described the institution as "one of the masters of our system of justice".¹³ In the United States Adverse Possession gets greater attention in legal discourse, as a way to promote the use of scarce natural resources (land) more efficiently by encouraging its owners in the use of their land, and periodically always present their ownership to be known by others.¹⁴

The doctrine of Adverse Possession under common law is not much different from that found in most civil law systems, for example in the Netherlands as *Verkrijgendeverjaring* which in English literature is called the acquisitive prescription. Under the law of Adverse Possession, by which one can obtain a right to title through possession which according to

⁸Nurhasan Ismail, 2007. *Ibid.* hlm.186

⁹Nurhasan Ismail, *Loc.cit.*

¹⁰Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, Cet. 2. Jakarta: Kencana. 2000, hlm.261

¹¹Nurhasan Ismail, *Loc.cit.*

¹²Explanation of GR No. 24 Year 1997.

¹³Michael HLM.Lubetsky. *Adding Epicycles: The Inconsistent Use Test in Adverse Possession*, Hall Law Journal, hlm.4

¹⁴*Loc.cit.*

law.¹⁵The main difference between the doctrine of Adverse Possession and acquisitive prescription in the legal system of civil law (Netherlands) and those in the common law system lies in the use of the state of good faith and bad faith.

According to Callahan,¹⁶ the person who controls and utilizes the abandoned land, after a certain period of time has passed in the control of the land, it will be protected from a lawsuit to retrieve land ownership by the previous owner. Do not consider whether the control is obtained in good faith or the absence of a good will (rightfully or wrongfully).

2. Land Registration and Use of Assignment of Rights (*rechtsverwerking*)

Indonesian customary law recognizes the institution called by its inventors *rechtsverwerking*, the institution is believed to be valid in indigenous communities in Indonesia. The core of the agency's assumption of the release of rights is: the existence of a person will lose the right or someone is deemed to relinquish the right to the land owned, it is indicated if a person who has the right to leave the land within a certain period. Furthermore, if there is another person who controls/utilizes the allowed land within a certain period of time, then the original owner will lose the right and cannot claim his land again.

According to Nurhasan Ismail¹⁷, the institution or principle of *rechtsverwerking* is one of the principles known and applicable in Customary Law, especially in relation to the occurrence and acquisition of land rights by citizens. Furthermore, the principle of *rechtsverwerking* is said to be primarily related to the weakening process and the loss of legal relations. Relating to the control of land parcels by indigenous and tribal peoples.

Mochtar Wahid gave the definition of *rechtsverwerking* as a time lag which caused people to lose their original rights, so this institution was used to retain ownership that was registered in the general list.

The purpose of implementing the *rechtsverwerking* institution is to provide legal certainty to parties who in good faith control a piece of land and are registered as rights holders in the land book with a land certificate as proof of ownership. In customary law, this institution relates to someone who has land rights on one side, and on the other hand, there is a person who is deemed to have relinquished his land rights. While the use of *rechtsverwerking* in the land registration regulations is used to overcome the weaknesses of the publication system adopted in land registration in Indonesia. The legislation only limits the time a landowner submits an action demanding to regain ownership of his land.

The author uses the term assumption of the release of rights (*rechtsverweking*) in this paper specifically relating to the acquisition of land rights to unregistered land parcels, which have been controlled for a long time. On the other hand, the assumption of the release of rights (*rechtsverweking*) is used to defend the rights that have been registered and issued certificates on behalf of a person or legal entity, especially to achieve legal certainty.

Although GR No. 24 of 1997 still uses the same publication system as GR No. 10 of 1961, the legal certainty and legal protection aspects are sought more clearly as stated in Article 32 paragraph (2). In the Explanation of Article 32 paragraph (2), it is stated that the use of the *Rechtsverwerking* institution was used to overcome the weaknesses of the land registration system adopted by Indonesia. Legal certainty is intended to avoid the concerns of landowners with certificates from other parties' claims at any time in the future.

Article 32 paragraph (2) GR No. 24 of 1997 is the basis for the application of the *rechtsverwerking* institution which is known in customary law, namely the lapse of time as a result of loss of land rights, if the land holder is not cultivated for a long period of time and is controlled by the party others through acquisition in good faith.

The provisions in Article 32 paragraph (2) GR 24 of 1997 are actually not a new provision, because the concept of this article is a concept used in resolving land disputes based on customary law. In some jurisprudence of the Supreme Court, before the birth of the BAL No. 5 of 1960, the assumption of the release of rights (*rechtsverwerking*) has been used as a basis for consideration in the judge's decision.

The *rechtsverwerking* institution regulated in this article is used as an effort to overcome the weaknesses of the negative publication system which has a positive tendency adopted in the Land Registry in Indonesia. One of the purposes of land registration is to provide legal certainty to the right holders of a land parcel, apartment unit and other registered rights.

The application of *rechtsverwerking* institutions related to land registration, as stipulated in article 32 paragraph (2) GR No. 24 of 1997, stipulates several conditions of implementation, namely: a) the existence of elements of good faith; b) physical control of real estate; c) a period of five years is elapsed; d) applies to parcels of land that already have rights

¹⁵Callahan dalam Boudewijn Boukaert dan Ben W.F. Depoorter, *Adverse Possession -Title Systems*. hlm.19

¹⁶Nurhasan, loc.cit.

¹⁷Mochtar Wahid. 2008. *Memaknai Kepastian Hukum Hak Milik Atas Tanah*. Penerbit Republika. Jakarta. Lembaga *Adverse Possession* dalam yurisdiksi *common law* atau *acquisitiveveerjaring* (khususnya *in good faith*) dalam yurisdiksi *civil law*, adalah lampaunya waktu yang menyebabkan orang lain menjadi mempunyai hak untuk memperoleh hak atas tanah yang semula dimiliki orang lain, maka lembaga ini digunakan unntuk memperoleh hak atas tanah dan pendaftarannya dalam daftar umum.

and issued certificates; e) people who feel they have the right not to take action claim their rights within the time frame set by the regulations.

According to Bagir Manan,¹⁸ the principle regulation of *rechtsverwerking* in GR No. 24 of 1997 aims to achieve legal certainty of ownership of land rights that have been registered, stating:

"In agrarian law in Indonesia adheres to the principle of *rechtsverwerking*, this provision stipulates that those who feel that they have rights to land that have been registered in the name of another person, do not file objections in writing, they can no longer claim their rights after 5 years from the issuance of the certificate. *rechtsverwerking* is to guarantee legal certainty for those who own land in good faith."

Boedi Harsono argued that the provisions of Article 32 paragraph (2) GR No. 24 of 1997 aims to provide additional written security facilities, even though there is already a *rechtsverwerking* institution in an unwritten customary law.¹⁹

Meanwhile the Supreme Court Judge, Toton Suprpto and Muchsin²⁰ argued that: First, legal protection and certainty should not cover the rights of third parties in seeking justice especially after the discovery of new evidence (*novum*); Second, the position of GR No. 24 of 1997, especially Article 32 paragraph (2) if faced with the provisions of higher legislation (*lex superior derogat lex inferior*). Therefore, the substance of Article 32 paragraph (2) GR No. 24 of 1997 should be increased to hierarchy into law so that its position becomes strong, because the new law overrides the old law (*lex posterior derogat lex priori*); Third, the provision of Article will cause legal problems, especially in the field of justice. The substance should be returned to GR No. 10 of 1961 or revoked or increased substance into a Law; Fourth, customary law recognizes *rechtsverwerking*, reviewed case by case (depending on the time, place and local indigenous community). The problem of abandoned land in my opinion is the authority of the Law, not the Government Regulation or based on a court decision. Fifth, the state of the community and the quality of human resources from the relevant apparatus are still not possible to give 5 years as stated in the article. The problem is the extent of the effectiveness of the provisions of Article 32 paragraph (2) GR No. 24 of 1997 was able to overcome the weaknesses of our land registration which had been held with a negative publication system?

3. The assumption of the Right to Release (*Rechtsverwerking*) in GR No. 24 of 1997

Land registration in Indonesia follows a negative system with a positive tendency. In a negative system, office workers are passive in accepting registration applications. Positive and negative land registration systems have their advantages and disadvantages in ensuring legal certainty, every legal system must be able to create order. The system of publication in the registration of land adopted by a country is an option. The achievement of the objective of implementing land registration depends on the publication system. Efforts to ensure legal certainty in the registration of land rights in Indonesia are carried out by applying the *rechtsverwerking* institution as outlined in Article 32 paragraph (2) GR No. 24 of 1997 regulates if a situation occurs as follows:

In the event that a valid land certificate has been issued in the name of a person or legal entity that has obtained the land in good faith and has clearly mastered it, then other parties who feel that they have rights to the land can no longer demand the exercise of that right if 5 (five) years after the issuance of the certificate does not submit a written objection to the holder of the certificate and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land ownership or issuance of the certificate.

4. Expired (*Acquisitive verjaring*) - Netherlands

Acquisitive verjaring is a term in Dutch, but in this paper the term expiry (*verjaring*) is used in English which is called a prescription, is a statement using a certain period of time that can be used in accordance with property rights (*verjaring*) and is known as *acquisitive prescription* in English literature. Meanwhile because of the passing of time from someone given from or called law called an ancient prescription.

There are similarities and differences between prescription recipes and receptive recipes. The equation is that there is an obligation exceeding a certain period of time. Whereas the ratio between the two prescriptions is available as a result, effective prescriptions have positive results, namely property rights. Extinctive prescriptions have negative effects such as terminating someone's rights or ending the opportunity to claim to get their rights back.²¹

¹⁸Bagir Manan. *Asas Rechtsverwerking*, Sambutan pada Seminar Nasional Pendaftaran Tanah, Universitas Trisakti - Jakarta, 2002, hlm.2.

¹⁹Budi Harsono, *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid 1 Hukum Tanah Nasional*. Penerbit Jembatan, 1997. hlm. 67

²⁰Toton Suprpto dan Muchsin, *Kepastian Dan Perlindungan Hukum pada Landasan Kedalam Dan Kebenaran* (Makalah disampaikan pada Seminar Nasional "Sejauh Mana Kemungkinan Ke-efektifan Pasal 32 GR Nomor 24 Tahun 1997 Dalam Mengatasi Kelemahan. Pendaftaran Tanah Dengan Sistem Publikasi Negatif), PSHA Fakultas Hukum Universitas Trisakti Jakarta 20 Maret 2002), Jakarta, hlm.13 - 15.

²¹J.E. Jansen, *Thieves and Squatters: Acquisitive and Extinctive Prescription in European Property Law*. De Gruyter. Electronic Property Law Journal, 2012; 1 (1): hlm. 153.

The definition of prescription is the right by which one will obtain ownership for reasons of possession a piece of land that is continuous for a period of time determined by law.

Book IV Burgerlijk Wetboek (BW), regulates the aquisitive network as a legal effort to disclose it as eigenaar (Articles 610-1955 jo 1963). The program is called "eigendom-uitwijzing" (Article 621, 622 and Article 623). In addition, eigendom rights can be obtained through expired institutions (Article 584).²²

Good faith becomes a reference in determining the time that must be passed. If someone has mastered for a period of 10 years continuously and in good faith, then he can exercise rights in his name (Article 3:99 (1)). If there is no good faith someone will be used for that 20 years of continuous mastery (Article 3: 105 (1)). Good intentions are fairly denied, while the lack of good faith must be proven.²³

Civil law in Indonesian, for example in the Netherlands, programming languages, which are used in context, work with two parts that are needed namely real mastery (fact of ownership) and the intention to possess (*animodomini*)²⁴

5. Adverse Possession in England

Adverse Possession began to be known in England in the Common Law system in 1632 which was regulated in the Statute of Limitation Act. Adverse Positioning is in line with the general doctrine of restrictions (limitation),²⁵ which stipulates a certain period of time in which the parties must follow it if they will object or prosecute. After this period has passed and a person who has gained control of a piece of land, rightly or wrongfully, is protected from the actions of the party who will regain land rights.²⁶

Land acquisition by way of Adverse Possession, as Park and Williamson define adverse possession:²⁷

'Adverse possession is the occupation of land inconsistent with the rights of the true or documentary owner. Such adverse possession entitles the occupier's possession to be protected against all who cannot show a better title. Further, if the occupier remains in possession for a sufficient period of time, the occupier's possession is protected against the true owner who is barred or deprived of his right of action to recover his property, and consequently, the occupier becomes the owner'

A person who controls land that is abandoned by the owner, after being exceeded by a certain term as determined by law, the possessor will obtain land rights by means of adverse possession. In general, adverse possession is indicated by actual possession of certain parcels of land during the period as required by the statutory period, which limits landowners from taking actions to regain control of their land ownership, and during the term this time mastery by the possessor is done by:²⁸

- a) Open and contrary to the owner (Open and notorious): in real terms, the possession (physical) provides exclusive evidence of using land parcels as an owner.
- b) Without permission from the owner and acting as an owner (related to the state of mind + claim of right)
- c) Continuous control, not terminated during the period required by law.
- d) Conducted for self-interest (Exclusive) as landowners by the act of controlling the land in question (in a manner that reflects the possessor's dominance and control over the land).
- e) Adverse or Hostile, which is contrary to the wishes of the previous landowner.

6. The Presumption of Release of Rights (Rechtsverwerking) in GR No. 24 of 1997

Land registration in Indonesia adheres to a negative system that has a positive tendency. In a negative system the registration office officer is passive when accepting applications for registration. Conversely in the Positive Land Registration System active registration officials. However, in both positive and negative systems each has advantages and disadvantages in ensuring legal certainty, every legal system must be able to create order. The publication system in

²²Henry Campbell Black, *Black's Law Dictionary*, Sixth Edition 1991, hlm.930.

²³KUHPerdara Pasal 610 : Hak milik atas suatu barang didapatkan seseorang karena lewat waktu, bila ia memegang (*bezit*) atas barang itu selama waktu yang ditentukan undang-undang dan sesuai dengan persyaratan dan pembedaan seperti termaksud dalam Bab VII Buku keempat KUHPerdara ini.

²⁴Arie Sukanti Hutagalung et.al. *Hukum Pertanahan di Belanda dan Indonesia*. Ed.1. –Denpasar: Pustaka Larasan; Jakarta:Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012. hlm.142

²⁵British Institute of International and Comparative Law. 2006. *Adverse Possession*, hlm. 6

²⁵*Ibid.* hlm.5. Bandingkan dengan yang terjadi dalam praktek diperadilan *commom law* secara umum memilih menerapkan dua, tiga atau lima paradigma.

²⁶Callahan C, (1961). *Adverse Possession* . Columbus, Ohio: State University Press. hlm. 5

²⁷Malcolm Park dan Ian Williamson, *The effect of adverse possession to part on a future Australian cadastre*, (1999), hlm. 3. Diakses dari <http://ssrn.com/abstract=1537967>.

²⁸Boudewijn Bouckaert dan Ben W.F. Depoorter. *Adverse Possession-Title Systems*, hlm.18, diakses dari <http://encyclo.findlaw.com/1200book.pdf>. Tgl 2 Januari 2014.

registering land that is adopted by a country is a choice. The achievement of the objectives of land registration is carried out depending on the system of publication adopted. Efforts to ensure legal certainty in registering land rights in Indonesia are carried out by applying the *rechtsverwerking* institution as outlined in Article 32 paragraph (2) GR No. 24/1997 which regulates when a situation occurs as follows:

In the event that a land certificate has been issued legally in the name of a person or legal entity that acquires the land in good faith and has mastered it clearly, then the other party who feels that he has the right to the land can no longer demand the exercise of rights if in time 5 (five) years since the issuance of the certificate does not file a written objection to the holder of the certificate and the Head of the relevant Land Office or does not file a claim to the Court regarding land ownership or issuance of the certificate.

7. Rechtsverwerking in Supreme Court Decisions

Following a number of cases related to *rechtsverwerking*, the judge, for example, argued that land tenure by a good-intentioned buyer for 25 years could no longer be disputed (Decision of the Supreme Court No. 112 K/Sip/1955). The same period of time also seems to be used in another case, in which the plaintiffs who allowed the control of their land by another party for 25 years, must be deemed to eliminate their rights (Supreme Court Decision No. 120 K/SIP/1957). However, in other cases, the Plaintiff who has just submitted a trial to court after 14 (fourteen) years since the transfer of rights occurred (by another party), has also been deemed to have waived his rights (Supreme Court Decision No. 2370 K/Pdt/1992)

In a more actual verdict, a lawsuit filed approximately 15 years after the transfer of rights occurred, is considered as a form of covert *rechtsverwerking* by the Plaintiff (Decision of the Supreme Court No. 1091 K/Pdt/2010). Interestingly, unlike the previous decision, the Supreme Court seems to only pay attention to the passing of time - that is 15 years, without looking at the attitude of the original rights holders, although it still calls it a form of *rechtsverwerking*.

D. Conclusion

As the end of this paper, conclusions drawn based on the results of research to answer the problems raised.

- a. The assumption of the release of rights (*rechtverwerking*) originating from the customary law has become part of the National Land Law, in maintaining the land title certificate after passing a period of 5 years;
- b. As a result of comparing the implementation of the assumption of the release of rights (*rechtverwerking*) in the National Land Law with the Acquisitive Verjaring in the Netherlands and Adverse Possession in the United Kingdom, the conclusion is that there is an application equality related to the requirements of a certain period of time in the control of land by someone. While a very clear difference is: in the assumption of the release of rights (*rechtverwerking*) required acquisition/mastery is done in good faith. In contrast to Acquisitive Verjaring in the Netherlands which allows the mastery requirements in good faith and bad faith and requires to occupy (*bezit*) term difference. While the adverse possession does not question the intention.
- c. Setting Assignment (*rechtverwerking*) as set forth in GR No. 24 of 1997 and also became a material consideration of the judge to take a decision. In order to further confess all so that legal certainty is reached, the presumption of rights release (*rechtsverwerking*) should be regulated in law and contained in several more detailed articles.

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