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Legal Protection of Land Right Holders Against the Establishment of the *Rechtsverwerking* Institution

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Original Article

Abstract

The purpose of this research is to investigate the implementation of *rechtsverwerking* (waiver of right) institution and to investigate the legal protection for land rights holders because of the implementation of the *rechtsverwerking* institution. The current research approach is a normative-empirical juridical approach. This type of research is live case study research (especially the implementation of *rechtsverwerking* legal institutions in Biak Numfor District), implementing normative legal provisions that refers to certain legal events occurring in a society. The data collection technique carried out by studying literatures with respect to various regulations and other related documents for this current research. Qualitative analysis is employed in analyzing the existing data. The research findings demonstrated that Biak's Regional Land Agency has not fully implemented Law No 5/1960 concerning Basic Agrarian Regulations and Government Regulation No. 24/1997 concerning Land Registration. In addition, some land disputes (customary land) are resolved through traditional law (adat law), holding traditional rituals to honor the ancestors. Traditional dispute resolution is represented to *Rechtsverwerking* institution.

Keywords: *Legal Protection, Land Right Holder, Rechtsverwerking Institution*

Abstrak

Tujuan penelitian ini adalah untuk mengetahui implementasi kedudukan lembaga *rechtsverwerking* (lembaga pelepasan hak atas tanah) dan untuk mengetahui perlindungan hukum bagi pemegang hak atas tanah karena pelaksanaan lembaga *rechtsverwerking*. Pendekatan penelitian ini adalah pendekatan yuridis normatif-empiris. Jenis penelitian ini adalah penelitian studi kasus (khususnya implementasi institusi hukum *rechtsverwerking* di Kabupaten Biak Numfor), menerapkan ketentuan hukum normatif yang mengacu pada peristiwa hukum tertentu yang masih sedang terjadi dalam suatu masyarakat. Teknik pengumpulan data dilakukan dengan studi literatur dengan memperhatikan berbagai peraturan dan dokumen terkait lainnya untuk penelitian ini. Analisis kualitatif digunakan dalam menganalisis data yang ada. Hasil penelitian menunjukkan bahwa Badan Pertanahan Daerah Biak belum sepenuhnya melaksanakan Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Pokok Agraria dan Peraturan Pemerintah Nomor 24 Tahun

1997 tentang Pendaftaran Tanah. Selain itu, beberapa sengketa tanah (tanah adat) diselesaikan melalui hukum adat, yakni mengadakan ritual adat untuk menghormati leluhur. Penyelesaian sengketa tanah adat dilaksanakan oleh Lembaga *Rechtsverwerking*.

Kata kunci: *Perlindungan Hukum, Pemegang Hak Atas Tanah, Lembaga Rechtsverwerking.*

1. INTRODUCTION

Soil is one of the parts and needs of humans to live so that plants have a vital role for life. In particular, most of Indonesian people are very dependent on land, this appears from Indonesia as the agrarian state. In addition, land also functions as a place to live by building houses on it. So that our life very relies on the use of land, even we die afterwards. Land is one of the basic human needs in living and obtaining resources to continue their lives.¹ Based on The National Agrarian Regulations² legally guarantee the community in land disputes, the government recommends registering their land based. The emergence of the 1960's agrarian Law was a major work during the national political conflict and the urgent need for laws to provide guarantees of justice for utilizing agrarian resources.

After carrying out proper land registration, a certificate will then be issued as authentic evidence of ownership with its economic value and equal before the law. The granting of rights to the land is controlled directly by the state to a person or several people or to a legal entity.³ Overlapping land ownership often occurs even though an individual already has a legal certificate, it is possible that someone claim about the land. Presidential Regulation⁴ determines the main task of National Land Agency is to conduct special government duties in the establishment of land issues in the sectoral, regional, or even national authority. The principle of the National Land Agency is to maintain land registration data continuously.

The implementation of land registration is an obligation which is aimed to guarantee legal standing. On the other hand, the benefit of land registration only concerned about ownership rights instead of other interests such as taxation.⁵ Land registration not only serves to protect the owner, but also serves to find out the status of a plot of land, the owner, the ownership rights, the area size, the land use, and so on. Biak Numfor Regency is located in Papua province where land rights are often transferred. It is very important to maintain land data by Biak's Land Office. The general case, for example, was the land already abandoned by the owner, the party who had a legal certificate claim to regain control of the land because it had been abandoned for long.

On the other hand, some parties do not have legal certificates claiming the land on the grounds that the land has been used for decades to cultivate plantations because the owner has left it. The land in Biak Numfor is often left by the owner to migrate after a long time they return to his village. That is why the need for legal protection for holders of land rights against the *rechtsverwerking*

¹ Mariot P. Siahaan, *Bea Perolehan Hak Atas Tanah Dan Bangunan (Teori Dan Praktek)* (Jakarta: Rajawali Press, 2005).

² Indonesia, "Undang-Undang No. 5, Pasal 19 Ayat 1 Tentang Peraturan Dasar Pokok-Pokok Agraria" (1960).

³ Ali Achmad Chomzah, *Hukum Pertanahan* (Jakarta: Prestasi Pustaka, 2002).

⁴ Indonesia, "Peraturan Presiden No. 63, Pasal 2 Tentang Badan Pertanahan Nasional" (2013).

⁵ AP Parliungan, *Pendaftaran Tanah Di Indonesia* (Bandung: Mandar Maju, 1994).

principle (land release rights). Land registration also needs good administration, which includes systematic and continuous recording of both the subject and object of land rights.

Previous research has been carried out by Muhammad Irfan⁶ related to the existence of the *rechtsverwerking* institution. This study discusses the legal certainty regarding land rights and the existence of *rechtsverwerking* institutions based on Government Regulation No. 24 of 1997 on Land Registration. Research conducted in 2020 by Azmi Fendri⁷ on *rechtsverwerking* in the context of legal certainty for land title certificate holders according to the *rechtsverwerking* institution in the city of Padang. The results obtained are that there is a strong evidence of land ownership. There is still a gap in the possibility of being canceled by the judge through the court by looking at the evidence. Research conducted by Arief Rahman⁸ on *rechtsverwerking* is related to the land registration system in Indonesia. The common thread obtained is related to the registration of land ownership rights and their transfer by looking at the length of time based on Government Regulation No. 24 of 1997.

Although there are a number of studies on the *rechtsverwerking* principle, further research still needs to be conducted given that numerous customary land conflicts often occur, especially in Biak Numfor district, so this research is expected to lay the foundations for providing legal certainty regarding land rights for the whole people. From the background above, there are a number of research questions including: 1) How is the The Legal Standing of *Rechtsverwerking* Institution in Implementing the Waiver of Rights? 2) How protects Land Rights Holders if the condition of *Rechtsverwerking* occurs? In addition, this research seeks to analyze the Legal Standing of *Rechtsverwerking* Institution in Implementing the Waiver of Rights and to analyze the protection for Land Rights Holders if the condition of *Rechtsverwerking* occurs.

2. RESEARCH METHODOLOGY

The current research approach is a normative-empirical juridical approach. This type of research is live case study research (especially the implementation of *rechtsverwerking* legal institutions in Biak Numfor District), implementing normative legal provisions that refers to certain legal events occurring in a society. The data collection technique carried out by the author was studying literatures with respect to various regulations and other related documents for this current research. In this study, the author employed qualitative analysis including collecting data, classifying, connecting with existing theories and research problems, then drawing conclusions to determine the results. It is presented descriptively by explaining according to the closely related research problems.

3. RESULTS AND DISCUSSION

3.1 The Legal Standing of *Rechtsverwerking* Institution in Implementing The Waiver of Rights

⁶ Muhammad Irfan and Nia Kurniati, "Kepastian Hukum Hak Atas Tanah Dan Eksistensi Lembaga *Rechtsverwerking* Dalam Perspektif Peraturan Pemerintah No 24 Tahun 1997 Tentang Pendaftaran Tanah," *Acta Diurnal; Jurnal Hukum Kenotariatan Dan Ke PPAT* 1, no. 2 (2018): 163–74, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/166>.

⁷ Azmi Fendri and Yussy A Manas, "Kepastian Hukum Pemegang Sertifikat Hak Milik Ditinjau Dari Keberadaan Lembaga *Rechtsverwerking* (Studi Beberapa Sengketa Hak Milik Di Kota Padang)," *Jurnal Hukum Acara Perdata ADHAPTER* 6, no. 2 (2020): 151–60, <https://doi.org/10.36913/jhaper.v6i2.132>.

⁸ Arief Rahman, "Lembaga *Rechtsverwerking* Dalam Sistem Pendaftaran Tanah Di Indonesia," *Jatiswara* 27, no. 1 (2017): 72–95, <http://jatiswara.unram.ac.id/index.php/js/article/view/26>.

Before the implementation of land law, legal certainty for a right, the provisions regarding "expired" were used as an effort to obtain *eigendom* rights to land (ecquisitieve verjaring), which were contained in Article 1955 and 1963 *Burgerlijk Wetboek*. The Expired as an effort to obtain *eigendom* rights over land is regulated in Chapter 610, 1955 and 1963 in *Burgerlijk Wetboek*. chapter 610 stipulates that a *bezitter* can obtain *eigendom* rights because of *verjaring*. Chapter 1955, 1963 contain the conditions that the control must be continuous, uninterrupted, publicly known, explicitly acting as *eigenaar* and must be in good faith. The land tenure is obligatory, uninterrupted, undisturbed, publicly known, firmly acting to be *eigenaar* and must be in good faith. Traditional law (hukum adat) does not recognize *verjaring*. Adat law recognizes the *rechtsverwerking* institution. The passage loss about land rights occurs, if the land is no longer controlled in long period of time and no one owns it.⁹

According to the results of the author's exploration in Biak Numfor district, land disputes often occur. some have been brought to and resolved through the District Court. In addition, some cases are settled by a customary court. From 2014 to 2016, 341 land dispute cases occurred, of the 341 cases were submitted to the District Court. The rest of cases include crimes of murder, theft, gambling and others. This shows that the total court's cases of land dispute occurred in Biak Numfor were 49.56%. Biak's land disputes are relatively higher compared to other cases due to the lack of public knowledge about the importance of land registration. Meanwhile, land disputes involving traditional leaders and peaceful settlement are often found particularly in West Biak District, where the settlement was carried out by holding traditional rituals.¹⁰

Unregistered land often provokes disputes in Biak, so people should be aware of the importance of land registration. Based on Government Regulation¹¹, land registration is carried out by the Government continuously with the issuance of certificates. Boedi Harsono states that land registration is defined as government activities in collecting data on land which aims to provide legal guarantees on land for the community.¹² The absence of a land registration generates existing and visible land as unmaintained or abandoned land. The concept of abandoned land can be recognized according to the definitions of land:¹³

- a) Rights holders or owners of land rights
- b) Land with the status of rights (ownership rights, cultivation, building, management rights) which are intentionally left by the owner (the right holder).
- c) Land with rights status (owner rights, cultivation rights, building use rights) is used but breaks the purpose of granting the rights.
- d) It has been happening for 3 years, since the issuance of ownership rights, cultivation, use rights or since the expiration.

⁹ Bakti Trisnawati, "Kajian Hukum Berakhirnya Kontrak Pemborongan Akibat Rechtsverwerking Atau Pelepasan Hak Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 240–51, <https://doi.org/10.14710/jphi.v3i2.240-251>.

¹⁰ Kasim Abdul Hamid, "Pilihan Hukum Adat Dalam Penyelesaian Sengketa Di Tanah Papua," *Jurnal Ilmu Hukum Kyadiren* 1, no. 1 (2019): 54–64, <https://doi.org/10.46924/jihk.v1i1.121>.

¹¹ Indonesia, "Peraturan Pemerintah No. 24 Tentang Pendaftaran Tanah" (1997).

¹² Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanannya* (Jakarta: Djambatan, 2003).

¹³ Eko Yulinggar Permana, "Peralihan Hak Atas Tanah Akibat Tanah Terlantar (Studi Terhadap Keputusan Kepala Badan Pertanahan Nasional RI No 10/PTT-HGU/BPN RI/2012)," *JOM Fakultas Hukum* 2, no. 1 (2015): 1–15, <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/view/4286>.

In the current research, the land concurrency is registered in Biak's Court, the land dispute between Martinus Aprombis (the prosecutor) and Drs. Albert Kaisepo (Defendant 1), Yola Yambise (Defendant 2) and Yusuf Yembise (Defendant 3). The dispute object is 22,143 m² (sqm) land located in Swandiwe, West Biak District. Martinus Aprombis claims the land ownership as the inheritance from his late grandfather Stefanus Aprombis. This land has been cultivated by several people for generations, but the accusation was only a few square meters already occupied by Defendant 1 who used 702 m² (39 m x 18 m) land area, Defendant 2 for 507 m² (39 m x 13 m) land area, and Defendant 3 for 585 m² (39 m x 15 m) land area. Based on the history of the disputed land, the land is not the personal property of the prosecutor's late grandfather but Keret Kaisepo's who got the division of land other than Keret Aprombis after winning the war.

Furthermore, to perpetuate the relationship between the Kaisepo clan and the Aprombis clan, who had jointly won the war to receive the parcels of land, child exchange between Kaisepo and Aprombis clan are intended for maintaining and supervising the land parcels. Both clans' children moved each other to guard and oversee the plots of land. Stefanus Aprombis as the son of Aprombis clan became a member of Kaisepo clan and enables him to control and maintain Kaisepo's inheritance.¹⁴ This cross-exchange process is well recognized by them till now. Biak's traditional rules stipulate that a person can lose the land right if he leaves his land uncultivated (left) over long period, and the land can be possibly owned by another. It refers to the traditional law as a *rechtsverwerking* principle as a result arising from the transfer of right or a consequence of illegal action which is ignored by someone.

Despite the development of civilization, the existing traditional law is still well recognized by the national state and the rights attached to the traditional law, especially land rights (hak ulayat). The position of *rechtsverwerking* court in the national law is legally recognized because it is one of the institutions established by traditional law whose constitution cannot be separated from the applicable traditional law. The legal basis for the *rechtsverwerking* institution is stipulated in:

- a) The National Supreme Court Jurisprudence No. 329 K/Sip/1957, stating that those who have been leaving their land for 18 years and are protected by someone else means that they have relinquished their rights to the land (*rechtsverwerking*).
- b) The National Supreme Court Jurisprudence No.200 K/Sip/1974, stating that the objection about the expiration date of inheritance which is not recognized by the traditional law is not justified. The lawsuit is rejected because of leaving the land uncultivated for more than 30 years, and nothing to do with the expiration date.¹⁵
- c) The National Supreme Court Jurisprudence No. 783 K/Sip/1973, stating that supreme court consider that the traditional law that applies to both parties denies "*verjaring*" rules even though the Plaintiff has occupied the land for 27 years.¹⁶ If the Plaintiff has no land rights while the defendant has waited long enough, the defendant has the right to demand the return of the land.

¹⁴ Muslim Lobubun, "Upaya Peningkatan Status Bandara Frans Kaisiepo Biak Sebagai Bandara Internasional," *Jurnal Ilmu Hukum Kyadiren* 1, no. 1 (2019): 1–13, <https://doi.org/10.46924/jihk.v1i1.117>.

¹⁵ Nara Rebrisat, Kahar Lahae, and Sri Susyanti Nur, "Implementasi Asas *Rechtsverwerking* Dalam Memperoleh Hak Atas Tanah Dalam Sistem Pendaftaran Tanah Di Indonesia," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 5 (2021): 1201–13, <https://doi.org/10.31604/justitia.v8i5.1201-1213>.

¹⁶ Abdul Hamid Usman, "Perlindungan Hukum Hak Milik Atas Tanah Adat Setelah Berlakunya Undang-Undang Pokok Agraria," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 2 (2020): 60–76, <https://doi.org/10.32502/jurnal%20khdk.v1i2.2593>.

- d) The National Supreme Court Jurisprudence No. 783 K/Sip/1973, stating that the high court consider that The Plaintiff who has occupied the land for a long period, without disturbance and acts as an honest owner (*rechtbebbende te goeder trouw*) must be protected by law.¹⁷ From the previous case, it can be examined according to the Government Regulation No. 24/1997 on Land Registration.
- e) The Government Regulation No. 24/1997 Article 32 paragraph (2) on Land Registration, stating that the other party has no power to demand the implementation of that right: land certificate obtained in good faith, the holder of land rights must have real control over the land, certificates have been issued more than five years, and if no objection demanded by the third party the land certificate cannot be contested anymore since five years after the issuance of certificate.¹⁸ The decision shows that the government rule is not applicable during the dispute resolution process by the judge by granting the plaintiff's request. The concept of *rechtsverwerking* in this Article has also been ignored.

2.1 The Legal Protection for Land Rights Holders Caused by The Condition of *Rechtsverwerking*.

The land registration system based on the Land law means a negative land registration system which contains positive elements. The existing chapter means government rules can be implemented if the certificate is owned during less than five years, then the certificate is powerful evidence in accordance with chapter 19. In addition, chapter 32 paragraph 1 mentions that a certificate is a letter and proof of rights that provides legal reinforcement. The certificate also represents physical and juridical data.¹⁹ However, is the implementation of chapter 32 paragraph (2)/1997 in fact provides justice when implemented to land disputes according to the judge's consideration? As the application of this article, it means if the plaintiff is really the owner and the defendant is on the right lines with obtaining the rights to his land, the chapter in the government regulation applies to the dispute resolution which is the authority of the judge who hears the case. It is the judge who weighs the severity of the interests of the parties.

In addition, according to the article, it is stipulated that the party who claims the right cannot claim the exercise of that right if the land has been legally issued a certificate in the name of a legal entity or individual and on the right lines with obtaining the right. The enactment of the regulation is valid for 5 years since the certificate is issued and there is no written objection to the certificate holder or the land office as for *rechtsverwerking* strengthens the negative system. This refers to the negative land registration issuance system with a positive tendency. The *rechtsverwerking* institution is a traditional law institution where its emergence has existed for long before the enactment of the Land Law. So that the judge's consideration refers to government regulations, whether they will provide justice if applied in the community as disputes occur if the plaintiff is the real owner and the other parties have owned the land properly for five years and have no objection.²⁰

¹⁷ Nabila Kamal, "Perlindungan Hukum Pemegang Hak Atas Tanah Terhadap Penyimpangan Pelaksanaan Pengadaan Tanah Untuk Kepentingan Umum Dengan Instrumen Pinjam Pakai Tanah," *Jurnal Hukum Kenotariatan* 3, no. 1 (2021): 81–99, <https://doi.org/10.35814/otentik.v3i1.2127>.

¹⁸ Rahman, "Lembaga Rechtsverwerking Dalam Sistem Pendaftaran Tanah Di Indonesia."

¹⁹ Irene Eka Sihombing, "Lembaga Rechtsverwerking Solusi Mengatasi Sengketa Tanah," *Jurnal Hukum Prioris* 2, no. 1 (2016): 50–67, <https://doi.org/10.25105/prio.v2i1.323>.

²⁰ Widyarini Indriasti Wardani, "Eksistensi Lembaga Rechtsverwerking Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *Magistra Law Review* 2, no. 2 (2021): 99, <http://jurnal.untagsmg.ac.id/index.php/malrev>.

According to Boedi Harsono, the regulation enforcement is aimed for a party to stick to the negative publicity system. On the other hand, it is also aimed to provide legal certainty in a balanced way to the parties to control a plot of land and register a certificate as strong evidence recognized by law.²¹ Based on the research findings, Biak's District Court has not implemented the Government Regulation which regulates the idea of *rechtsverwerking*. The legal protection for land rights holders is found unfair especially the land which is left uncultivated due to climate changes (mostly coral soil structure). In addition, people in general are more interested in earning income outside their homeland than managing the land inherited from their ancestors as land disputes occur. On the one hand, they claimed that the land was inherited from their ancestors and had been managed for decades.

4. CONCLUSION

In the first case, the land dispute occurred in Biak Numfor Regency was resolved by legal means and was won by the plaintiff as the legal owner. The defendant felt very harmed because he had worked on the land for years. In the second case, the resolved disputes through customary deliberations are implemented with an agreement obtained that the disputed land is still owned by the party who worked on it on the condition that traditional rituals were carried out to honor the ancestors and to avoid prolonged illness. Until now, Biak's Regional Land Agency, has not fully realized Land Law No 5/1960 concerning Basic Agrarian Regulations and Government Regulation No 24/1997 concerning Land Registration, so that a lot of land still have overlapping ownership. It is hoped that Biak's Regional Government is more serious in disseminating the rules related to land, especially the land law and government regulation No 24/1997 concerning Land Registration.

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²¹ Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanannya*.

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