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The Juridical Analysis of the Application of the *rechtsverwerking* Institution

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Abstract. *This study aims to identify and analyze the mechanism for obtaining land rights through the rechtsverwerking institution and the application of rechtsverwerking in several court decisions that have permanent legal force. The research method used is juridical-normative by tracing secondary data through library research, while the analytical approach is carried out qualitatively with a prescriptive type. The results of the research show that the legal position of the rechtsverwerking institution in the land system in Indonesia is recognized and regulated in Article 32 of Government Regulation Number 24 of 1997 concerning Registration. With regard to the mechanism for acquiring land rights originating from old rights to land, the provisions contained in Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration where rights to land originating from old rights are positioned as written evidence. to the existence of rights to a plot of land with the provision that it must pay attention to the terms of land tenure and also pay attention to the provisions of Article 32 paragraph (2). With regard to the acquisition of land rights through the rechtsverwerking institution, in the case of the Supreme Court Decision Number 1034 PK/Pdt/2019, it shows that there is still a lack of uniformity in understanding by the judges regarding the position of land rights originating from old land rights and the mechanism for obtaining land rights through the rechtsverwerking agency.*

Keywords: Land; Rechtverwerking; National.

1. Introduction

Indonesia as an independent country has a goal that is clearly embedded in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the UUD 1945). These goals include protecting the entire Indonesian nation and all of Indonesia's bloodshed and to

promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice.[1]

Concrete steps to achieve these goals are mandated to the government. The role of government, which most experts argue that today is part of "the age of welfare state", is placed in principled conditions.[2]Guided by the provisions above and correlated with the various purposes for which this country was founded, a concrete form of state management is needed that can guarantee that everyone has the same rights, specifically in the field of law.[3]

A series of concretization efforts were then translated through various methods and actions, one of which was through the development of laws based on Pancasila and the 1945 Constitution, especially legal products needed to support national economic development. National legal products that can guarantee legal certainty, order, enforcement and protection are expected to be able to support the growth and development of the national economy, as well as secure and support the results of national development.[4]

Various breakthroughs, specifically in the field of law, have been rolled out with the main objective of creating a novelty, and one of the most fundamental is related to the land sector.The increasing consumption of land has led to developments in the field of normative land law, both in written and unwritten law. These developments have also influenced people's views of land, both from the aspects of ownership, control and use.[5]

The three aspects above (aspects of ownership, control and use) have become hereditary problems that have always colored the national land system. Quoting the opinion expressed by Maria Sri Wulan Sumardjono, the map of land issues is broadly grouped into cases relating to people's cultivation of plantation, forestry, and other lands; Cases relating to the implementation of land reform provisions; Cases relating to access to provision of land for development; Civil disputes regarding land issues; Issues relating to customary law community customary rights.[6]

The National Land Agency (BPN) then classifies land disputes it handles into 8 (eight), consisting of issues related to land control and ownership, determination of rights and land registration, boundaries or location of land parcels, land acquisition, land reform objects, demands for compensation. loss of private land,

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[1]Iskandar, 2016, Intellectual Conception in Understanding Indonesian Law, Andi Publisher, Yogyakarta, p. 40.

[2]Darmawan Tri Wiowo, 2006, Dream of a Welfare Country, LP3ES, Jakarta, p. 8.

[3]Achmad Ali, 2009, Revealing Legal Theory and Judicial Prudence Including Interpretation of Laws (Legisprudence), Kencana, Jakarta, p. 181.

[4]Sutaji Djojokusuma, 1994, "Law Enforcement In State Policy Insights". Journal of the Faculty of Law UII, Vol. 14, No. 22, Faculty of Law, Indonesian Islamic University, Yogyakarta, p. 9.

[5] Mukmin Zakie, 2013, State Authority in Land Acquisition for Public Interests in Indonesia and Malaysia, Buku Litera Yogyakarta, p. 4.

[6]Maria SW Sumarjono, Nurhasan Ismail and Isharyanto, 2008, Mediation of Land Disputes Potential Implementation of Alternative Dispute Resolution (ADR) in the Land Sector, Kompas, Jakarta, p. 2.

customary land, implementation of court decisions.[7]A similar view was also expressed by Boedi Harsono quoted by Arie S. Hutagalung if the land issues that could become disputed were regarding the intended land parcel, the boundaries of the land parcel, the area of the land parcel, the status of the land whether it was state land or private land, the right holder. , rights that burden them, transfer of rights, location instructions, land acquisition, land clearing, compensation, cancellation of rights, revocation of rights, issuance of certificates and means of proving the existence of rights or legal actions taken.[8]

Calls for increasing legal certainty guarantees regarding land ownership for the community are of course very much awaited, in order to reduce the level of disputes in the future so that there is a need for an institution that can meet these needs. Muhammad Yamin is of the opinion that joint ownership of land is in fact increasingly moving towards individual ownership within the community, thus land registration is increasingly becoming a requirement in order to maintain the continuity of protected ownership of the community's ownership rights.[9]The actual causes of land disputes regarding the actual rights holders, issuance of certificates, means of proving the existence of rights or legal actions taken to obtain legalization of land, lead to the implementation of land registration, especially in the case of a negative publication system adopted in Act No. 5 of 1960 regarding the Basic Agrarian Regulations (UUPA) and their implementing regulations, namely Government Regulation Number 10 of 1961 concerning Land Registration.

Throughout the implementation of the negative publication system in the statutory provisions, a fundamental weakness was found in the form of the possibility of a lawsuit against the rights holder. The holder of a right to a land as evidenced by documents of ownership is meaningless if the right has absolute power over the land. The system then underwent a change into a negative publication system with a positive tendency as embedded in the provisions of Government Regulation Number 24 of 1997 concerning Land Registration (PP 24/1997). The negative publication system has a positive tendency implying that the State and its executor are the government as the organizer of the land registration must maximally produce the correct data in the land book and registration map, so long as it cannot be proven otherwise,[10]

The shift from a negative publication system to a negative publication system with a positive tendency was marked by the emergence of the *rechtsverwerking*

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[7] *Ibid*, Thing. 6

[8]Arie S. Hutagalung (1), 2005, Distributed Thoughts Regarding Land Law Issues. Indonesian Legal Empowerment Institute, Jakarta, LPHI, p. 370.

[9]Mohammad Yamin, 2006, "Problematics of Realizing Legal Certainty Guarantees on Land in Land Registration," Professor's Inauguration Speech, delivered before the Open Meeting of the University of North Sumatra, Medan, p. 3.

[10]Boedi Harsono, 1997, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Content and Implementation, Djbatan, Jakarta, p. 83

institution[11]as contained in the provisions of Article 32 paragraph (2) PP 24/1997. The main provisions of the article state that if other parties feel entitled and object to the issuance of the certificate, they have the right to file a lawsuit for cancellation of the certificate within a span of 5 (five) years. The right to sue will be lost if it is not used within five years. This institution implies that the passage of time causes people to lose their rights to the land they originally owned. The provisions of Article 32 paragraph (2) PP 24/1997 are affiliated with land rights after the implementation of the UUPA and on the other hand, there is also a provision in Article 24 PP 24/1997 (following the explanation) which contains recognition of old rights to land (before the enactment of the UUPA).

The existence of the provisions of Article 24 PP 24/1997 is a sign as well as an acknowledgment that ownership of land after the enactment of the LoGA is not necessarily absolute, in this case it refers to the position of a certificate of ownership. There is space given to each person to 'recognize' a parcel of land as his own provided that there is evidence of ownership and control whose quality can be confirmed juridically and physically. Based on this juridical basis, researchers have conducted a search of several court decisions that have permanent legal force with the focus on the issue being that one of the reasons for the rights known in the case is the old land rights on which land rights were issued after the enactment of the BAL (new rights).

Although not all of the cases that the authors have explored negate old rights over new rights, there are also circumstances where old rights are declared to have no power as proof of ownership of land and at the same time place new rights as proof of legal ownership. This fact is the reference for further research regarding the position of old land rights in relation to the existence of *rechtsverwerking* institutions in the national land system.

2. Research Methods

The research approach method used in this research is the juridical-normative research method. The specification of the research used is Descriptive-Analytical which is intended to provide an overview as well as an analysis regarding the implementation of provisions in regulations based on applicable legal provisions. With regard to the type of data, this study uses secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The method of data collection that supports and relates to the presentation of this legal writing is a literature study and the data analysis method in this study uses the principle of deductive logic, namely drawing conclusions from a problem that is general in nature to the concrete problems faced.[12]

[11] *Ibid*, Thing. 502.

[12]Soetiono, 2005, Understanding of Legal Research Methodology. Sebelas Maret University Postgraduate Program, Surakarta, p. 8

3. Results and Discussion

3.1 Legal Position of the *rechtsverwerking* Institution in Laws and Regulations

The issuance of Government Regulation Number 24 of 1997 concerning Land Registration in relation to the acquisition of rights through registration of land rights is the presence of the *rechtsverwerking* institution. The emergence of this institution was initiated by demands for improvement of the negative publication system which is felt to have weaknesses, especially in terms of legal certainty for holders of land rights whose names are registered in certificates and third parties who have good intentions.[13]

The negative publication system is usually followed by an expiration institution in land ownership regulations, but UUPA which originates from Customary Law does not recognize an expiration institution, which originates from western law. The land system in the perspective of customary law incidentally recognizes the existence of an institution similar to the *rechtsverwerking* institution, that is, if a person owns land but for a certain period of time lets his land go unmanaged, and the land is used by another person in good faith, he cannot claim any more returns.[14]This institution is in line with customary law which states that land is jointly owned by indigenous peoples and must be used for the benefit of the community/members, and may not simply be owned but not used, as is the case with abandoning land in the National Land Law. According to Arie S. Hutagalung, explicitly a similar institution exists in the LoGA, namely the abolition of land rights due to neglect.[15]

The simplest terminology for a *rechtsverwerking* institution is defined as a condition of 'losing the right to sue'. If a person owns land but within a certain period of time has left the land neglected and the land is used by another person in good faith, then that person cannot demand the return of the land from the person who uses the land. This institution was adapted from the principle contained in the national customary law system where land belongs to indigenous peoples whose use is intended for the common good and is not allowed to be owned without being used.[16]

From a positive legal perspective, specifically in the main provisions of the national land regulations, the *rechtsverwerking* institution can be found explicitly

[13]Arie S. Hutagalung (1), op. cit, p. 82.
[14]Sri Hajati et.al, 2017, Textbook of Land Law, Airlangga University Press, Surabaya, p. 16.
[15]Ibid., p. 89.
[16]Arie S. Hutagalung (3, 2000, "The Application of the Rechtsverwerking Institute to Overcome Weaknesses in the Negative Publication System in Land Registration (A Sosio Juridical Study)", Journal of Law and Development, Vol. 30, No. 4, Faculty of Law, University of Indonesia, Jakarta, p.337.

in Article 27 of the UUPA which basically regulates the abolition of property rights due to neglect, Article 40 regarding the elimination of building use rights due to neglect, Article 45 of the UUPA concerning the elimination of rights For Business because it was abandoned.(2) In the event that the means of proof as referred to in paragraph (1) are not available or are no longer available, proof of rights can be carried out based on the fact that the physical possession of the land parcel concerned has been for 20 (twenty) years or more consecutively by the applicant for registration and its predecessors, provided that: (a). The control is carried out in good faith and openly by the person concerned as the owner of the land, and is supported by the testimony of a trusted person; and (b). Such control, both before and during the announcement as referred to in Article 26, is not disputed by the customary law community or the village/kelurahan concerned or other parties."

The regulatory formulation contained in Article 24 of the Registration PP above indicates that land rights originating from old rights must first be proven. The evidence referred to in these provisions is reaffirmed in the Elucidation of Article 24 PP on Land Registration, as follows[17]: Grosse deed of eigendom rights issued based on*Overschrijvings Ordonnatie*(Staatsblad 1834-27), which has been noted, that the eigendom rights in question are converted into property rights; or Grosse eigendom rights deed issued based on*Overschrijvings Ordonnatie*(Staatsblad 1834-27), from the enactment of the UUPA until the date when land registration was carried out according to Government Regulation Number 10 of 1961 in the area concerned; or Letter of proof of ownership rights issued based on the relevant Swapraja Regulations; or Certificate of ownership rights issued based on the Regulation of the Minister of Agrarian Affairs Number 9 of 1959; or a decree granting property rights from an authorized official, either before or since the UUPA came into force, which is not accompanied by an obligation to register the rights granted, but has fulfilled all the obligations mentioned therein; or Deed of transfer of rights made privately signed with testimony by the Traditional Head/Village/Kelurahan Head made before this Government Regulation comes into force; or Deed of transfer of land rights made by the PPAT, whose land has not been recorded; or Deed of waqf pledge/waqf pledge made before or since the implementation of Government Regulation Number 28 of 1977; or Minutes of auction made by the authorized Auction Officer, whose land has not been recorded; or Letter of appointment or purchase of land plots to replace land taken by the Government or Regional Government; or Land Tax Petuk/Landrente, girik, pipil, kekitir and Indonesian Verponding before the enactment of Government Regulation Number 10 of 1961; or a certificate of land history that was made by the Land and Building Tax Service Office; or m. other forms of means of written evidence under any name as referred to in Articles II, VI and VII of the UUPA Conversion Provisions.

[17]Explanation of Article 24 PP of Land Registration.

The twelve proofs of land ownership as referred to in the provisions of Article 24 PP Land Registration, and if none of the twelfth pieces of evidence are mentioned, then the proof must be carried out with the testimony of the witness or the statement of the person concerned whose truth can be trusted in the opinion of the Adjudication Committee during registration land in a systematic manner or by the Head of the Land Office in sporadic land registration.

In connection with this explanation, it is associated with the mechanism for acquiring land rights through institutions *rechtsverwerking* as stipulated in the provisions of Article 32 paragraph (2) PP Land Registration which reads[18]: "In the event that a certificate has been issued on a parcel of land legally in the name of a person or legal entity that has acquired said land in good faith and actually controls it, then other parties who feel they have rights over said land, can no longer demand the implementation of said rights, if within 5 years since the issuance of the certificate does not submit a written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit with the Court regarding the ownership of the Land or the issuance of the certificate.

Regarding this provision, the phrase 'has land rights' when correlated in the context of old rights to land then also falls within the scope of the provisions of Article 24 PP Land Registration. This provision, in the view of the author, is a concretization of efforts to protect rights and legal certainty for holders of land rights, both those that have been converted (new rights) and those that are still based on old rights.

Land rights in the current national land system are regulated in provision 16 paragraph (1) of the UUPA with a negative land registration system with a positive tendency as reflected in PP Land Registration. The selection of the system then 'gives birth' to a special feature, namely the presence of an institution *rechtsverwerking* whose position is recognized and regulated in Article 32 PP Land Registration. Institution *rechtsverwerking* as one of the instruments for obtaining land rights in the national land system regulated in the PP Land Registration as previously described, if examined from the perspective of legal certainty theory as conveyed byGustav Radbruch, legal certainty is present to guarantee a person to carry out behavior in accordance with applicable legal provisions, otherwise without legal certainty, a person does not have standard provisions in carrying out behavior. Legal certainty in the view of Gustav Radbruch as quoted by Satjipto Rahardjo as previously explained by examining the existence of aspects of legal certainty in the context of regulating land rights with the conclusion that all principles have been fulfilled, but in the context of the position of *rechtsverwerking* , the author describes it on this occasion.

[18]Article 32 paragraph (2) PP Land Registration.

- The law is positive, meaning that positive law is legislation.
- The law is based on facts, meaning it is based on reality.
- Facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides being easy to implement.
- Positive law should not be easily changed.

The simplification of the four postulates from the elements of legal certainty above is then interpreted in the availability of positive law or written regulations that regulate human interests in society and must be obeyed even if these regulations are considered or considered unfair. Legal certainty requires efforts to regulate law in legislation made by the competent authority, in this case, of course, the government, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.[19]

In line with this meaning, Maria SW Sumardjono is of the view that legal certainty requires the availability of a set of statutory regulations that operationally support their implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consistently by supporting human resources.[20]

Based on the explanations above, the element of 'legal certainty' is associated with the context of land, where everyone has the same opportunity to acquire land, in this case referring to land rights. In line with these provisions, the considerations of the UUPA rigidly stated that 'the need for a national agrarian law through the presence of the UUPA which is based on customary law regarding land, which is simple and guarantees legal certainty for all Indonesian people'. The objectives contained in the considerations of the UUPA are then translated into the provisions of Article 4 paragraph (1) which basically states that all kinds of rights to the surface of the earth, which in this case are referred to as land, can be given to and owned by people, both individually and collectively with other people and legal entities'.

The acknowledgment contained in the UUPA above is the beginning of the translation of 'legal certainty' in the context of land affairs where the first postulate requires the existence of a written standard rule and is commonly referred to as statutory regulations. Search for institutional positions *rechtsverwerking* in national land law from the perspective of legal certainty is embodied in the provisions as previously mentioned, namely in PP Land Registration. As one of the mechanisms for obtaining land rights, the existence of institutions *rechtsverwerking* which is recognized and imitated from the

[19]Ibid.
[20]Maria SW Sumardjono, 1997, "Legal Certainty in Land Registration and its Benefits for the Banking and Property Business, Paper at a seminar in Jakarta, 6 August 1997, p. 1.

conception of customary land law becomes the marker of the second and third postulates namely that law is based on facts and those facts must be clear. The explanation for these two postulates is based on the fact that this institution has been recognized for a long time and is a 'crystallization' of indigenous peoples' lives that existed long before written regulations existed, in this case PP Land Registration.

Based on the description as stated above, the position of the institution *rechtsverwerking* in the land system in Indonesia originates from customary land law which is then transplanted into the provisions of national laws and regulations, namely PP Land Registration, specifically in Article 32. There are clear arrangements related to the existence of institutions *rechtsverwerking* in national land law is a presentation of one of the objectives of the law, namely legal certainty.

3.2 Juridical Analysis of Acquisition of Land Rights through the *rechtsverwerking* Institution in the Supreme Court Decision Number 1034 PK/Pdt/2019.

The explanation regarding the existence and regulation of the *rechtsverwerking* institution in the national land system as stated in the previous section, is substantially a manifestation of the formulation contained in the BAL, among all land rights has a social function and the principle of obligation to maintain land as formulated in Article 6 and Article 15 UUPA. Everyone who has a legal relationship with the land and then forms land rights is burdened with the obligation to maintain the land. This obligation implies that the person concerned must use or cultivate the land on an ongoing basis so as to create a legal relationship, if this obligation is not fulfilled, then the rights that have been obtained will be null and void.[21]

Guided by juridical provisions is a logical consequence of the choice of legal system adopted, including in the context of land affairs and in further detail, in relation to the implementation of the a quo institution. As a form of complete presentation, apart from positive legal aspects, the author will also describe and analyze the pattern of application of these institutions in cases that have been decided by courts which then lead to an analysis of the Supreme Court decision No. 1034 PK/Pdt/2019.[22]

[21]Nurhasan Ismail, 2007, "Rechtsverwerking and its Adoption in National Law", Mimbar Hukum, Vol. 19, No. 2, Gadjah Mada University, Yogyakarta, p. 194.
[22]Decision of the Supreme Court Number 1034 PK/Pdt/2019 in conjunction with Decision of the Supreme Court Number 2576 K/Pdt/2018 in conjunction with Decision of the Banten High Court Number 118/PDT/2017/PT.BTN in conjunction with Decision of the Tangerang District Court Number 197/Pdt.G/2016. Mr.

The parties involved in the a quo case are PT. Bumi Serpong Damai (as Petitioner for Review/Petitioner for Cassation/Appeal/Plaintiff) against Heirs of Ketie Sentana including Netty, John, Leontine, Costansia, Bernardus, Kitty and Jenny (as Respondents for Judicial Review I-VII/Defendant for Cassation I-VII/Comparators I-VII/Defendant I-VII), Lurah (former Village Head) of Rawa Buntu (as Respondent for Judicial Review VIII/Respondent for Cassation VIII/Appellant VIII/Defendant VIII) and Community Empowerment Institute for Rawa Buntu Village (as Respondent for Judicial Review IX/Respondent for Cassation IX/Comparator IX/Defendant IX).

The object of dispute in this case is a plot of land located in Cicentang village, Rawa Buntu Village, formerly Rawa Buntu Village, Serpong District, South Tangerang City with an area of 28,030 M2 (twenty eight thousand thirty square meters). With regard to the statements of the parties involved in the a quo case and the objects that are in dispute, the Plaintiff argued that on September 19 2005, the Plaintiff had received the transfer of land rights over the ex-assets of Rawa Buntu Village from Defendant VIII on the basis of a Statement of Transfer of Land Rights Ex Asset Village for Private Interest Number: 593/527-SPH/2005 dated 19 September 2005.

The issuance of the waiver of land rights over ex-asset Village a quo is based on Girik C No.I and Girik C No.II and is recorded in Book C of Rawa Buntu Village. Previously, Defendant IX had also issued a Decree of the Rawa Buntu Village Representative Body, Serpong District, Tangerang Regency, Banten, Number: 1/SK/Ds.Ru/2005 dated 19 July 2005 concerning Relinquishment of Land Owned by Rawa Buntu Village in Cicentang Village, Rawa Village Buntu with an area of approximately 28,000 M2, in which in this decision Defendant IX has decided to agree to the release of village-owned land in the form of land in Cicentang village, Rawa Buntu village with an area of ± 28,000 M2 to the plaintiff.

Regarding these matters, Defendants I-VII claim that the object of the a quo dispute belongs to Mrs. Ketie Sentana with evidence in the form of Girik C.117. On this basis, Defendant I filed a claim for ownership of the land, Defendant VIII, besides that in 2012 Defendant I submitted an application to certify the a quo land to the Land Office of the Tangerang Regency and around 2014 also submitted an application to certify the a quo land to the Office Land of the City of South Tangerang.

In the request for the issuance of the certificate submitted by Defendant I, the Plaintiff has submitted an objection letter to the Tangerang District Land Office and the South Tangerang City Land Office not to issue a certificate in the name of Defendant I on the land belonging to the Plaintiff. In fact, in 2015 Defendant I also submitted a request for cancellation of the transfer/transfer of a quo land rights to the Ministry of Home Affairs.

The Defendant also questioned the relinquishment of village land rights from Defendant VIII to the Plaintiff by stating that the actions of Defendant VIII contravened the provisions of the Statutory Regulations. The defendant stated that the relinquishment of the village land rights which took place on 19 July 2005 was subject to the provisions contained in Act No. 32 of 2004 concerning Regional Government, in accordance with the provisions of Article 206 which essentially regulates the authority of the Village Head, among others regarding existing government affairs based on village origin rights; government affairs which are the authority of the regency/municipality which are handed over to the village; co-administration from the Government, provincial government, and/or district/city government; other government affairs which by laws and regulations are handed over to the village. On this basis, the Defendant stated emphatically that the Village Head did not have the authority to relinquish rights or sell village-owned land, in this case the land that was the object of the dispute.

Based on the chronological description and the sitting of the case above, the two litigants submitted claims on the object of the case where the Plaintiff (Petitioner PK) stated the basis of control over the object of the case on the basis of the Statement of Transfer of Ex Asset Village Land Rights for Private Interests Number: 593/527- SPH/2005 dated 19 September 2005, while the Defendants (Respondent PK) stated the basis of ownership of the land as the object of the case on the basis of ex Girik C.117 on behalf of the parents of the Defendants.

The arguments presented by the two litigants above are based on written evidence, in this case the Statement of Transfer of Land Rights to Ex Village Assets for Private Interests Number: 593/527-SPH/2005 from Petitioner PK and ex Girik C .117 of the Respondent PK. Based on the provisions contained in Article 32 of PP Land Registration, in relation to the acquisition of land rights through a *rechtsverwerking* institution that requires proof first, first, there is proof of land ownership in the form of a 'certificate' in which there is evidence of appropriate physical data and juridical data. with the data in the measurement certificate and land book. Second, the issuance of a certificate on the land in question was obtained in good faith and is actually controlled. Third,

Examining the facts of the case as mentioned above, the provisions contained in Article 32 PP Land Registration cannot be applied because the evidence on land presented by both parties is still based on the old land rights. For Private Interests Number: 593/527-SPH/2005 issued on the basis of Girik C Number I and Girik C Number II on behalf of Rawa Buntu Village and ex Girik C.117. Regarding this fact, referring to the provisions contained in the PP on Land Registration, if the evidence on land is still based on old rights, the provisions used are Article 24 which basically requires the existence of written evidence, statements or

statements of witnesses whose degree of truth can be recognized and/or if both points are not there,

It is the two articles contained in the PP on Land Registration that are used as the main reference if there is a dispute in terms of obtaining rights over a plot of land and if one or both of the available evidences are still based on the old land rights, then all the conditions specified in Article 24 must be proven first, and if these conditions have been fulfilled followed by the issuance of a certificate of the land under control (the application for land rights has been approved) followed by objections or lawsuits against the land, then the provisions of Article 32 become the next prerequisite.

Observing the revealed facts where the Cassation Respondent argued that the object of the case based on ex Girik C.117 on behalf of the parents of the Cassation Respondent had been in control long before 1959 and since the same year, a house had been built on the land which was the object of the case -the a quo house, school and land have become the assets of Rawa Buntu Village and the Cassation Respondent has not raised any objections and is no longer under control. This was also conveyed by the Panel of Judges in consideration of the PK Decision which stated as follows: "Defendant I to Defendant VII (Respondents PK) have never controlled the object of the dispute, because on the land claimed by Defendant I as his own houses have been built, school (SMP), which land becomes the asset of Rawa Buntu Village based on Girik C Number 1 and Girik C Number II,

This fact then becomes the basis for whether or not the provisions contained in Article 24 PP on Land Registration are met, in this case regarding physical possession of land in good faith. The legal meaning of these prerequisites is that land that is controlled must be used in accordance with its designation and has a social function. The Panel of Judges then stated in its considerations: "Even if it was true that previously the object of the dispute belonged to the parents of Defendants I to Defendants VII, because Defendants I to Defendants VII have never filed an objection to the control exercised by the community and the Rawa Buntu Village, Ny. Keti sentana and Defendants I to Defendants VII, according to permanent jurisprudence, the Supreme Court has relinquished its rights to the object of dispute (*rechtsverwerking*).

The considerations of the Panel of Judges in the a quo PK Decision, in the author's view, are in accordance with the provisions of Article 24 in conjunction with Article 32 of PP Land Registration, where the *rechtsverwerking* institution has been implemented in accordance with applicable provisions. The Supreme Court decision at the PK level which stated that the PK Petitioner was the legal owner of the land that was the object of the case also reflected the element of justice as conveyed by John Rawls. One of the principles of justice according to

John Rawls's version is the principle of fair equality of opportunity or the principle of fair equality of opportunity, in this case, refers to the opening of opportunities for all people regardless of disadvantaged positions or positions to improve their life prospects.[23]

The availability of opportunities for everyone to reach the principle of fair equality of opportunity in Rawls' view is a reflection of the implementation of rights and obligations that are manifested in a constitution or law that contains minimum equality for everyone. The embodiment of the principle of justice in Rawls' view as previously mentioned in the case above can be traced through the fact that the Respondent PK did not carry out its obligations where the object of the case had not been controlled for a long time and was not used according to its designation.

4. Conclusion

The legal position of the *rechtsverwerking* institution in the land system in Indonesia is recognized and regulated in Government Regulation Number 24 of 1997 concerning Registration, specifically in the provisions of Article 32. In relation to the mechanism for obtaining land rights, specifically those originating from old rights to the main land to the provisions contained in the provisions of Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration where rights to those originating from old rights are positioned as written evidence of the existence of rights to a plot of land with provisions that must pay attention to land tenure requirements and also pay attention to provisions Article 32 paragraph (3) Government Regulation Number 24 of 1997 Concerning Land Registration. Acquisition of land rights through the *rechtsverwerking* institution in cases where one of the grounds for the rights originates from the old land rights in the Supreme Court Decision Number 1034 PK/Pdt/2019 has reflected the principle of justice. Acquisition of land rights in the concept of justice through the *rechtsverwerking* institution must meet the conditions whereby tenure within a '5 (five) year' period can negate the tenure of land rights originating from old rights (proof of ownership). Each land must be controlled and used in accordance with its designation and has a social function and if this is not fulfilled, everyone is given the same opportunity to own each land provided that it is in accordance with the provisions of Article 32 in conjunction with Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration.

[23]Rosalinda Elsina Latumahina, 2014, "Embodiment of Justice for Children Out of Wedlock Through the Decision of the Constitutional Court Number 46/PUU-VIII/2010", Yuridika, Vol. 29. No. 3, Faculty of Law, Airlangga University, Surabaya, p. 372.

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