



THE CONCEPT OF PROTECTION OF LAND RIGHTS CERTIFICATE HOLDERS IN REALIZING LEGAL CERTAINTY

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ABSTRACT

Land registration is carried out to regulate the legal relationship between the landowner and the land itself. Land registration has the aim of creating legal certainty. Landowners do land registration has a strong evidentiary tool that is in the form of a certificate of land rights. The intention of proving a strong land certificate is that the land certificate can still be cancelled, with the possibility of land certificates being cancelled; then, the cancellation harms the holder of land rights. In addition, people who have controlled the land for more than 20 years must be evicted due to losing the lawsuit for ownership rights. Hence, people who have utilized and maintained the land get losses because they cannot control the land anymore. The research method used is normative juridical with a statutory and conceptual approach. The result of this research is the Concept of Protection of Certificate Holders of land rights in realizing legal certainty is done by applying the Social Tenure Domain Model, acquisitive perjurying someone to get land with acquisitive verjaring for 20 years of controlling the land in good faith, rechtverwerking due to 20 years of not using and utilizing the land will be deprived of land rights. So, a person who has obtained a certificate of land rights is protected because the state guarantees it.

A. INTRODUCTION

The right to control the state, reflected in Article 33, paragraph (2) of the 1945 Constitution, does not mean ownership. However, the state as an organization is given the authority from which rights can arise, such as the right of management, the right of exploitation, and the right of ownership.¹ The authentic interpretation of the provisions of this article is formulated through the elucidation of the 1945 Constitution that "The earth and water and the natural resources contained in the earth are the mainstays of the people's prosperity. Therefore, they shall be controlled by the state and utilized for the greatest prosperity of the people."²

In a broad sense, control by the state refers to the authority of the Indonesian people over all sources of wealth, including the land, water, and natural resources within it. This concept also encompasses the idea of public ownership, where these sources of wealth are collectively owned by the people. The 1945 Constitution establishes the people as a collective entity with the authority to empower the state in formulating policies and implementing measures for the overall well-being of the population. This includes activities such as governance, regulation, administration, and oversight.³

Article 2 of Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles, among others, affirms that under the right of the nation, the right of control by the state is known. The right of control of the state contained in Article 2 of Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles, at the highest level, authorizes the state to regulate and organize the use, provision, maintenance of the earth, water and natural resources contained therein; determine and regulate legal relations between people and the earth, water and natural resources contained therein; determine and regulate legal relations between people and legal acts concerning the earth, water and natural resources contained therein.⁴

The government's power to regulate the land sector, particularly in terms of legal transactions and land utilization, is derived from Article 2 Paragraph (2) of the Basic Agrarian Law. This provision grants the government the authority to oversee and manage the allocation, use, provision, and maintenance of land. It also empowers the government to establish and regulate legal relationships between individuals and land, as well as legal relationships between individuals and any actions related to land. According to this authoritative source, Article 4 of the Basic Agrarian Law specifies the types

¹ Muhamad Azhar, "Hak Menguasai Negara Atas Sumur Minyak Melalui Pendirian Mini Refinery Plant Di Kabupaten Bojonegoro," *Administrative Law & Governance Journal* 1, no. 2 (2018): 10.

² Marilang Marilang. "Ideologi Welfare State Konstitusi: Hak Menguasai Negara Atas Barang Tambang." *Jurnal Konstitusi* 9, no. 2 (2012): 263.

³ Mokhammad Najih Fifik Wiryani, "Konflik Agraria: Sebuah Refleksi Hak Menguasai Negara Atas Tanah," *Widya Yuridika: Jurnal Hukum* 6, no. 3 (March 31, 2023): 520, doi:10.1017/9781108590372.005.

⁴ Marulak Pardede, "Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (December 9, 2019): 407, doi:10.30641/dejure.2019.v19.405-420.

of land rights that the government can give to and be owned by legal entities.⁵

The State's Right to Control, in its implementation, concerns the ownership of individual rights that must be properly maintained. On the other hand, it will also concern the collective rights of indigenous peoples and their customary rights, which are also respected by the 1945 Constitution.⁶ Such individual and collective rights need to be registered.

The registration of land rights is necessary to ensure legal certainty and protection. This process is closely linked to the land registration publication system. Legal clarity and protection, which are important goals of land registration, are contingent upon the specific land registration publication system used by a country. Indonesia employs a land registration publication method that is characterized by a negative approach. A negative registration system implies that the government does not provide assurance on the accuracy of the information presented in land certificates and land books.⁷

Land certificates are documents that prove ownership rights to land. They are the final product of the land registration process in Indonesia. The purpose of land registration is to provide legal certainty of land rights and protection of land ownership.⁸ Legal certainty and legal protection as one of the objectives of land registration depends on the land registration system.⁹ Indonesia adheres to a negative publication system, but with positive elements following so that the evidentiary power of a certificate in Indonesia is not absolute or non-absolute but strong.¹⁰ The purpose of proving a strong land certificate is that the land certificate can still be cancelled; with the possibility that the land certificate can be cancelled, the cancellation disadvantages the holder of the land right. In addition, people who have controlled land for more than 20 years must be evicted because they lost a lawsuit over ownership rights. Hence, people who have utilized and maintained the land are disadvantaged because they can no longer control the land.

B. RESEARCH METHODS

This study uses a normative legal research method. Normative legal research is a library of legal research conducted by examining secondary legal materials. This paper uses normative legal research using a statutory approach

⁵ indri Hadisiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah," *AHKAM* 2, no. 1 (2014): 119.

⁶ Akhmadi Yusran and Deden Koswara, "Implementasi Kebijakan Hak Menguasai Negara Dalam Pemanfaatan Sumber Daya Agraria Dalam Perspektif Hak Asasi Manusia," *Jurnal Hukum Samudra Keadilan* 17, no. 2 (2022): 218, <https://ejurnalunsam.id/index.php/jhsk>.

⁷ Desi Apriani and Arifin Bur, "Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (December 8, 2020): 225, doi:10.23920/jbmh.v5i2.11.

⁸ Ana Silviana, "Urgensi sertipikat tanah elektronik dalam sistem hukum pendaftaran tanah di Indonesia," *Administrative Law and Governance Journal* 4, no. 1 (2021): 52.

⁹ I Made Citra Gada Kumara, I Ketut Kasta Arya Wijaya, and Luh Putu Suryani, "Kepastian Hukum Pemegang Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia," *Jurnal Preferensi Hukum* 2, no. 3 (October 31, 2021): 562, doi:10.22225/jph.2.3.4013.560-563.

¹⁰ Fina Ayu Safitri, Lita Tyesta ALW, and Anggita Doramia Lumbanraja Magister Kenotariatan, "Akibat Hukum Penggunaan Sistem Publikasi Negatif Berunsur Positif Dalam Pendaftaran Tanah Di Kota Semarang," *NOTARIUS* 13, no. 2 (2020): 791.

and a conceptual approach. The statutory approach of the Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, while the conceptual approach is related to *rechtverwerking* and *acquisitive Verjaring* and the Social Tenure Domain model. The data analysis technique used is qualitative using legal interpretation.

C. DISCUSSION

1. The Concept of Land Rights Protection Using the Social Tenure Domain Model in realizing legal certainty

Article 19 of Law Number 5 years 1960 regulates land registration, which regulates the legal relationship between landowners and land. This law was made to create a basis for legal certainty for holders of land rights by registering land rights.¹¹ Land registration is a series of continuous and regular actions undertaken by the state or government. It involves collecting specific data or information about specific lands in a particular area and processing, recording, and presenting the physical and juridical data in the form of lists and maps. The state also provides certificates as proof of rights to the land.¹²

The development of land registration systems can be seen as interventions that seek to enhance the effectiveness of current land registration systems, whether they are legally or conventionally constituted. This includes enhancing the connection between individuals, land, and property rights. Advancements in land registration systems have the potential to alter the characteristics of current land rights, although this outcome is only sometimes certain. Developments may pertain to the delineation of land boundaries, the recording of rights, and the management of land rights. Land tenure reform is a deliberate alteration of the terms and circumstances of land ownership. Its purpose is to acknowledge land rights held by local communities and transfer the authority over those rights to the rightful landowners. This reform is a specific sort of land tenure reform. Development of a land registration system This upgrade can encompass a range of modifications, from small adjustments to a comprehensive overhaul or the creation of a new system.¹³

It should be noted that the construction of a land registration system does not automatically replace existing customary land law with official customary land law, arbitrary boundaries with defined bounds, or customary land tenure with registered property rights. The process of developing a land

¹¹ Desi Apriani and Arifin Bur, "Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (December 8, 2020): 227, doi:10.23920/jbmh.v5i2.11.

¹² Ana Silviana, "Urgensi sertipikat tanah elektronik dalam sistem hukum pendaftaran tanah di Indonesia," *Administrative Law and Governance Journal* 4, no. 1 (2021): 56.

¹³ Simon Hull, Kehinde Babalola, and Jennifer Whittal, "Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa," *Land* 8, no. 11 (2019), doi:10.3390/land8110172.

registration system entails leveraging existing resources and modifying them to align with present requirements.

Land administration and the development of land registration systems are influenced by land policy and land-related theories. There are two sides to the debate surrounding these theories. Replacement theorists favour the substitution of customary land rights (living, uncoded customary law) with property rights (formal, codified customary law, possibly including certificates or records of collective property rights, or individual property rights or certificates or records of limited real rights) to ensure the security of tenure. Titling, therefore, separates land owned by individuals or groups from the wider community. Conservative theorists argue that surviving, uncoded customary tenure systems provide adequate tenure security and that titling reduces tenure security; they advocate preserving most of the customary status quo.

The current development in the land registration system is the Social Tenure Domain Model. The Social Tenure Domain Model is designed to model the ownership relationship between land and people. The two forms of modelling of the Social Tenure Domain Model are (1) describing the ownership relationship between land and people and (2) providing a platform for interaction between different land registration systems. The Social Tenure Domain Model was developed to provide support for the implementation of the land rights continuum concept. The benefits of using the Social Tenure Domain Model are (1) to help record land administration information from various sources, (2) to help broaden the scope of land administration by providing a framework for managing land information, and (3) to support the implementation of the Social Tenure Domain Model.¹⁴

A continuum of ownership types refers to a range of potential kinds of ownership that can be viewed as a continuous spectrum. Every continuum offers various rights and varying degrees of security and responsibility. Each permits varying degrees of enforcement. Various tenure systems can be implemented within a continuum, allowing for changes in the status of land or buildings within a community. For instance, informal settlers may be awarded property rights or leases. Informal and customary tenure systems can maintain their legitimacy even after being replaced by statutory systems, especially when the new systems and regulations are slow to adapt to growing or changing demands. Under such conditions, when authorized channels restrict the poor from obtaining legal rights to property, communities are inclined to rely on informal and/or traditional agreements to gain access to land in regions where it is not easily reachable or unavailable.

To successfully navigate the shift from a legal system to a land registration system, it is crucial to implement a flexible one that can effectively bridge the gap between informal customary law and formal state law. A hybrid technique is employed in an adaptive land registration approach. The hybrid adaption strategy empowers the community to determine the significance of

¹⁴ Kehinde Hassan Babalola and Simon Antony Hulla, "Using a Domain Model of Social Tenure to Record Land Rights: A Case Study of Itaji-Ekiti, Ekiti State, Nigeria," *South African Journal of Geomatics* 8, no. 2 (September 9, 2022): 227, doi:10.4314/sajg.v8i2.8.

rights that should be documented. This collaborative approach fosters a feeling of responsibility for the formalization process. Furthermore, it incorporates adaptability, ingenuity, and suitable technology for storing land tenure data. This strategy results in the development of mixed tenure arrangements that mirror the frequent existence of tenure established by a blend of legislation, customary practices, or informal agreements. Bruce, Migot-Adholla, and Atherton propose transitioning from systematic certification programs to a staged strategy that prioritizes addressing specific contextual requirements. This signifies a transition from a paradigm focused on substitution to one focused on adjustment.¹⁵

Indonesia employs a methodical approach. The systematic approach in Indonesia is seen in the comprehensive land registration program, which follows a methodical and organized process. De Soto argues that implementing systematic titling to replace customary ownership will lead to a rise in economic activity, ultimately benefiting individuals with lower incomes. Land tenure theory posits that the provision of land titles ensures a stable and secure right to occupy and use the land, which can, after that, be utilized as collateral for obtaining financial support. Nevertheless, there exist objections, which encompass that The process of formalization incurs significant expenses and leads to an appreciation in the value of land, making it unaffordable for vulnerable groups and hence not beneficial for poverty alleviation. Additionally, the land market exacerbates disparities in land allocation. The recipients of formalization, sometimes referred to as the 'poor', do not constitute a uniform category. The formalization paradigm needs to acknowledge the intricate nature of overlapping customary rights. Insufficient evidence exists to substantiate the hypothesis that implementing formalization will enhance credit accessibility.¹⁶

In its implementation, the Complete Systematic Land Registration also faced challenges in engaging indigenous peoples and local communities. Several cases of resistance to land registration by indigenous peoples have emerged, as they feel that their land rights are not represented and are threatened by the Complete Systematic Land Registration program. This highlights the importance of respecting and involving indigenous peoples in the land registration process, as well as ensuring equity, sustainability and preservation of local cultures and traditions. Systematic land approaches such as Complete Systematic Registration reflect a replacement approach. A replacement approach is likely to be at the root of future land conflicts. In the protection of land rights certificate holders, it is more suitable to use the Social Tenure Domain Model approach.

In the Social Tenure Domain Model, any rights, duties, or limits within the formal system are seen as social tenure relationships. The Social Tenure

¹⁵ Lina Jamilah and Arif Firmansyah, "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia," *Jurnal Hukum Unissula* 39, no. 2 (December 1, 2023): 175, doi:10.26532/jh.v39i2.32516.

¹⁶ Simon Hull, Kehinde Babalola, and Jennifer Whittal, "Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa," *Land* 8, no. 11 (2019), doi:10.3390/land8110172

Domain Model prioritizes the connection between individuals and land, irrespective of the degree of formalization and legality of the connection. The Social Tenure Domain Model encompasses the definition of rights, obligations, and constraints associated with a party's relationship to a specific unit of space. This relationship is established and validated through either official or informal documentation. These ties encompass ownership, leasing, licensing, and other forms of association that establish the foundation for land utilization. The Social Tenure Domain Model approach is highly flexible in implementing land administration, hence effectively mitigating land conflicts. Registering the land will enhance the establishment of legal certainty.

2. The Concept of Protection of Land Rights with the Passage of Time in Realizing Legal Certainty

Land registration is an administrative process carried out by the Land Office in collecting and processing physical and juridical data presenting land parcels that already have rights and issuing proof of rights that function as strong evidence. The purpose of registration is to ensure legal certainty about the object (land), the status of the right and certainty about the subject (the right holder). The implementation of land registration realizes administrative order and ease of conducting policies in the land sector.¹⁷

There are three main principles in land registration. Firstly, the mirror principle states that the Land Register is an accurate and conclusive reflection of the ownership of land rights as well as relevant interests affecting the land concerned. Secondly, in the curtain principle, the purchaser of land is not concerned with matters behind the entries in the Register, for example, trusts affecting the land. The purchaser is not concerned with whether the beneficiaries' interests in the land are satisfied after the sale. Thirdly, according to the insurance principle, the accuracy of the Register is guaranteed, and if the Register is found to be inaccurate, it will be amended or corrected. Any person affected by such amendment or rectification is entitled to some compensation.¹⁸ The principles of land registration are applied to the publication system in land registration.¹⁹

Land registration has two central publication systems: the positive publication system and the harmful publication method. Under the positive publication method, when a person's name is recorded in the land book, they become the rightful owner of the land. This system always relies on the rights registration system to ensure the perfect accuracy of the data in the register. Consequently, individuals whose names are documented in the land book must have entitlements. It can be contested in the future if the evidence or information is discovered to be false. The parties that have been wronged will

¹⁷ Ana Silviana, "Kajian Tentang Kesadaran Hukum Masyarakat Dalam Melaksanakan Pendaftaran Tanah," *Pandecta* 7, no. 1 (2012): 115, <http://journal.unnes.ac.id/nju/index.php/pandecta>.

¹⁸ Judith Bray, *Unlocking Land Law*, 6th ed. (New York, : Routledge, 2019).

¹⁹ Kehinde Hassan Babalola and Simon Antony Hulla, "Using a Domain Model of Social Tenure to Record Land Rights: A Case Study of Itaji-Ekiti, Ekiti State, Nigeria," *South African Journal of Geomatics* 8, no. 2 (September 9, 2022): 232. doi:10.4314/sajg.v8i2.8.

receive reparation differently.²⁰ In the harmful publicity method of Land Registration, the State, acting as the registrar, does not assure that the individual registered as the right holder is indeed the lawful owner. This system does not see registration as a means of establishing ownership. Nevertheless, the legitimacy of the legal action undertaken is in the transfer of rights to the purchaser. In this approach, the State merely assumes a passive role by accepting whatever is declared by the party seeking registration without objection. Thus, it is susceptible to being contested by others who believe they have a more extraordinary claim to the property. An individual who obtains land from a registered owner does not have a warranty of ownership, even if they acquire the land in good faith.²¹

The land registration system under Indonesian law follows the negative publication system. The land registration system incorporates beneficial aspects outlined in Article 3 and Article 4 of Government Regulation No. 24 of 1997. These provisions expressly establish juridical principles with the objective of ensuring legal certainty and protection for individuals who possess property rights. Suppose a certificate of title has been issued for a piece of land in the name of someone who acquired the land in good faith and is currently in possession of it. In that case, any other party claiming a right to the land can only enforce that right if they submit a written objection to the certificate holder and the relevant Land Office or file a lawsuit within five years of the certificate being issued. Nevertheless, the government needs to ensure the accuracy of the data presented through the negative publication system, so failing to offer legal certainty to individuals with registered rights.²² A certificate issued by the National Land Agency and referred to as a State Administrative Decree serves as proof of ownership of land rights. As a state administrative decree, the certificate is considered a strong evidentiary tool. However, it does not apply absolutely, which means that the certificate can be cancelled if a party can prove otherwise.²³

The government must improve the land registration system to realize the legal certainty of land registration. The land system in Indonesia is based on customary law, which adheres to the principle of *Rechtsverwerking*. The *Rechtsverwerking* principle states that land must be actively utilized, and if it is not utilized, the landowner is considered to have relinquished his rights.

In customary law, a legal concept exists known as "*rechtsverwerking*" or "losing the right to demand." This concept entails that if an individual owns a piece of land but neglects it for a specific period, and another person uses

²⁰ Rahayu Subekti, Sungkowo Raharjo, and Hadhika Afghani Imansyah, "Sistem Pendaftaran Tanah Yang Memberikan Kepastian Hukum Hak Atas Tanah," *Jurnal Komunikasi Hukum* 8, no. 2 (2022): 395, <https://ejournal.undiksha.ac.id/index.php/jkh>.

²¹ Arie S Hutagalung, "Penerapan Lembaga *Rechtsverwerking* Untuk Mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah," *Jurnal Hukum & Pembangunan* 30, no. 4 (2000): 328.

²² Suharyono, "Weaknesses Of The Negative Publication System With Positive Elements In Agrarian Law In Indonesia," *Nurani* 21, no. 2 (2021): 232.

²³ Jawakil Butarbutar, "Kepastian Dan Perlindungan Hukum Terhadap Pemegang Sertifikat Hak Milik Atas Tanah Berdasarkan Undang-Undang No.5 Tahun 1960 Tentang Peraturan Pokok-Pokok Agraria," *Jurnal Hukum Kaidah* 19, no. 1 (2019).

the land in good faith, the original owner forfeits their right to reclaim the land from the other person. This institution adheres to the principle established by customary law that land is the collective property of the customary community, intended for the community's benefit and not merely for ownership without utilization. This principle is akin to the prohibition of land abandonment outlined in the National Land Law. Furthermore, it has obtained validation from Jurisprudence. Specifically, the Decision of the Supreme Court dated 10-1-1957 number 210/K/Sip/1955 (Case in Pandeglang Regency, West Java). The action was deemed invalid due to the plaintiff's failure to utilize the land for 25 years, resulting in the forfeiture of their rights (*rechverwerking*). Furthermore, the Supreme Court Decision dated 24-5-1958 with the number 329/K/Sip/1957 (about a case in South Tapanuli Regency): Relinquishment of rights (*rechtsverwerking*): In South Tapanuli, if an individual who has been foraging on a piece of land for a continuous period of five years decides to abandon it, the entitlement to the land is seen to have been relinquished.

Supreme Court Decision No. 979/K/Sip/1971. In that case, the Supreme Court ruled in favour of the defendant, who had been acting as the owner for a long time (more than 30 years) in good faith. The plaintiff did not win because it was based on customary law, namely that if a person leaves land in a state of not being cultivated, it is contrary to the purpose of the social function of the land. The above case teaches that if a person abandons his land for a certain period and the abandoned land is occupied by another person in good faith, then the landowner can lose his land rights.

Rechtsverwerking as a doctrine of relinquishment of rights is based on the opinion of several scholars who define *Rechtsverwerking* as a relinquishment of rights or a disregard for rights shown from behaviour in such a way that it would be contrary to good faith if, afterwards, the person concerned still demands the exercise of his rights. The introduction of the principle of *Rechtsverwerking* in Indonesia comes from the context of agrarian law, which is explicitly contained in Article 32 paragraph (2) of Government Regulation No. 24 of 1997 in the phrase "... other parties who feel they have a right to the land can no longer demand the exercise of that right if within a period of (5) five years after the issuance of the certificate they do not file a written objection to the certificate holder and the head of the Land Office concerned or do not file a lawsuit with the Court regarding the control of the land or the issuance of the certificate". This article explicitly states that the relinquishment of land rights is recognized and applied, and *Rechtsverwerking* can be interpreted as the transfer of land rights due to the lapse of time over land ownership that is not cultivated by the right holder and is controlled by another party based on the acquisition of rights in good faith.²⁴

Article 64 of Government Regulation Number 18 of 2021 addresses distinct matters compared to Article 32, paragraph (2) of Government Regulation Number 24 of 1997. Government Regulation No 18 of 2021, specifically Article 64, governs the revocation of land rights due to

²⁴ Togi Marolop Pangaribuan Joseph Noviandri, "Perbandingan *Rechtsverwerking* Sebagai Doktrin Hukum Di Indonesia Dan Doktrin *Estoppel* Di Amerika Serikat Pada Bidang Hukum Perjanjian," *Lex Patrimonium* 2, no. 2 (2023): 3.

administrative flaws. Canceling Land Rights owing to administrative faults is only permissible within 5 (5) years after issuing the Land Rights certificate. This applies to Land Rights that were first issued and have not been transferred and Land Rights that have been transferred. However, the parties needed to fulfill their obligations to transfer rights per the terms of laws and regulations. If the duration of 5 years is surpassed, the cancellation is conducted via a legal process. Article 64 introduces an element of unpredictability to land registration, as the land rights holder is susceptible to being legally challenged and subsequently deprived of their rights.²⁵

Western civil law is also referred to as acquisitive verjaring, in addition to *rechverwerking*. Acquisitive prescription is a legal principle outlined in the Civil Code that governs the expiration of property rights, especially rights to land, as a means of obtaining ownership. Verjaring, as defined by Article 1946 of the Civil Code, refers to the valid acquisition of something or the release from an obligation through the passage of a specific period and the fulfilment of legally stipulated requirements. Moreover, according to Article 610 and Article 1946 of the Civil Code, it is generally possible for someone to acquire ownership of an object over time if another person has held a position of authority over them within the legally specified timeframe and in accordance with the conditions outlined in the Civil Code. *Rechtsverwerking* can be defined as the following: Verjaring, as defined in Article 1946 of the Civil Code, refers to the expiration or passage of time. It is divided into two forms: acquisitive verjaring and expiration. Acquisitive verjaring refers to the acquisition of a property right that occurs after a certain period. On the other hand, expiration refers to the release of a person from a collection or legal claim due to the passage of time. *Rechtsverwerking* refers to the idea that, over time, an individual might forfeit their ownership rights. According to Article 1963 of the Civil Code, the condition for this time limit is that the party in control of the object must act in good faith. The article states that if a person acquires an immovable object, an interest, or another receivable in good faith, and the payment for it is not required by anyone for twenty years, they acquire the property right over time. An individual who acquires anything in good faith for thirty years obtains the right of ownership without the obligation to demonstrate the foundation of their rights.²⁶ Article 1967 of the Civil Code All legal claims, both material and personal, are extinguished by lapse of time with the lapse of thirty years, while the person who points out the lapse of time does not need to show a right base, and against him cannot be filed a complaint based on bad faith.

To achieve legal certainty, it is necessary to consider various aspects while protecting land rights, including the land registration system and the potential loss of land rights. Safeguarding land rights begins with establishing

²⁵ Jamilah and Firmansyah, "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia." *Jurnal Hukum Unissula* 39, no. 2 (December 1, 2023): 179.

²⁶ Hartini Atikasari, "The Terms Of Acquiring Eigendom Right On Land Through Statute Of Limitation (Daluwarsa)," *UNTAG Law Review (ULREV)* 5, no. 1 (2021): 25–38, www.fakhukum.untagsmg.ac.id.

a comprehensive approach to land registration. The suggested land registration system involves a hybrid adaption approach rather than complete replacement or substitution. The hybrid adaption approach highlights that the primary method of defining rights, obligations, or constraints in the Social Tenure Domain Model is through a social tenure connection between a party and a geographical unit, backed by formal or informal documentation. These ties encompass ownership, leasing, licensing, and other arrangements that establish the foundation of land utilization. The government systematically records every evidence of the connection between individuals and the land to establish a comprehensive database of land tenure in Indonesia.²⁷

After all land use relationships are consolidated into one database, the government can only utilize *recthverwerking* or *acquisitive verjaring* by referring to the Social Tenure Domain Model data. The concept of acquisition prescription is clearly seen in the explanation of Article 24 of Government Regulation Number 24 of 1997. This provision offers a solution when the owner of the rights cannot show real proof of ownership, such as written documentation or other reliable forms. In this case, the determination of rights can be done not by providing proof of ownership but by showing proof of physical control that the applicant and his predecessors have carried out. Recording of rights must meet the criteria that the control and use of the land in question have been carried out seriously and in good faith for 20 (twenty) years or more continuously; that the control and use of the land have never been prohibited and is considered recognized and permitted by the customary law community or the village/sub-district concerned; that statements from trusted people confirm these things; that they have given other parties the opportunity to submit approval that research has also been carried out on the truth of the above matters; that in the end the conclusion regarding the status of the land and its rights holders is stated in a decision in the form of recognition of the rights concerned by the Adjudication Committee in systematic land registration and by the Head of the Land Office in sporadic land registration.

The existing system of acquisitive prescription, as described in Article 24 of Government Regulation Number 24 of 1997, is linked to the land registration system that follows the social tenure domain model, as stated in Articles 95 and 96 of Government Regulation Number 18 of 2021. The written documentation regarding the old western land rights is considered null and its classification is now changed to Land Directly Controlled by the State. The official recording of persons' former ownership of customary land must be documented within a maximum period of 5 (five) years from the implementation of this Government Regulation. Once the 5-year period has passed, any recorded evidence of prior customary land ownership loses its legal validity. It lacks validity in establishing property rights and solely functions as a point of reference within the framework of land registration.

²⁷ Jamilah and Firmansyah, "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia." *Jurnal Hukum Unissula* 39, no. 2 (December 1, 2023): 179.

In addition, the application of *rechtverwerking* in Article 27, Article 34, and Article 40 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles related to the nullification of land rights due to abandonment. The regulation of abandoned land is regulated in Government Regulation Number 20 of 2021. Article 7 regulates related to the object of abandoned land, including ownership rights, business use rights, building use rights, use rights and management rights. Property rights become abandoned land objects if they are utilized for less than 20 years. Meanwhile, business use rights, building use rights, use rights and management rights become abandoned land objects if they are not cultivated or not used for two years. The concept of land rights protection in realizing legal certainty is carried out by combining the concepts of the social tenure domain model, *acquisitive verjaring*, and *rechtverwerking*. So the data base collection is carried out with a social tenure domain model or the relationship between humans and land. Based on this data, it becomes a reference for someone to obtain land by *acquisitive verjaring* for 20 years of controlling the land in good faith or someone who relinquishes his rights (*rechtverwerking*) due to 20 years of not using and utilizing the land. It should be strengthened by Article 1967 of the Law of a person who has lapsed due to the passage of time with the passage of thirty years, while the person who points out the lapse of time does not need to show a right base. Thus, the concept of protection of land rights will further ensure legal certainty.

D. CONCLUSION

The concept of Land Certificate Holder Protection in realizing legal certainty is carried out by implementing the Social Tenurial Domain, acquisition *verjaring*, and *rechtsverwerking* in the land registration system. The concept of *rechtsverwerking* (release of rights due to negligence) and acquisition *verjaring* (acquisition of ownership rights due to the passage of time) affects land rights; acquisition *verjaring* will have legal consequences for someone to obtain land by controlling the land for 20 years in good faith while *rechtverwerking* has legal consequences when someone does not use the land for 20 years then the land will be revoked or will lose their land rights. So, the concept of *rechtsverwerking* and acquisition *verjaring* provide legal certainty to people who control the land and use the land in good faith. Further research will focus on the effectiveness of implementing the social tenurial domain model in the context of Indonesian law and its impact on the legal certainty of land rights.

BIBLIOGRAPHY

Journals:

- Apriani, Desi, and Arifin Bur. "Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia." *Jurnal Bina Mulia Hukum* 5, no. 2 (December 8, 2020): 220–239.
- Atikasari, Hartini. "The Terms Of Acquiring Eigendom Right On Land Through Statute Of Limitation (Daluwarsa)." *Untag Law Review (Ulrev)* 5, no. 1 (2021): 25–38.
- Azhar, Muhamad. "Hak Menguasai Negara Atas Sumur Minyak Melalui Pendirian Mini Refinery Plant Di Kabupaten Bojonegoro." *Administrative Law & Governance Journal* 1, no. 2 (2018): 9–21.
- Babalola, Kehinde Hassan, and Simon Antony Hulla. "Using a Domain Model of Social Tenure to Record Land Rights: A Case Study of Itaji-Ekiti, Ekiti State, Nigeria." *South African Journal of Geomatics* 8, no. 2 (September 9, 2022): 221–237.
- Butarbutar, Jawakil. "Kepastian Dan Perlindungan Hukum Terhadap Pemegang Sertifikat Hak Milik Atas Tanah Berdasarkan Undang-Undang No.5 Tahun 1960 Tentang Peraturan Pokok-Pokok Agraria." *Jurnal Hukum Kaidah* 19, no. 1 (2019).
- Hadisiswati, Indri. "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah." *AHKAM* 2, no. 1 (2014): 118–146.
- Hull, Simon, Kehinde Babalola, and Jennifer Whittal. "Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa." *Land* 8, no. 11 (2019).
- Hutagalung, Arie S. "Penerapan Lembaga Rechtsverwerking Untuk Mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah." *Jurnal Hukum & Pembangunan* 30, no. 4 (2000): 328.
- Jamilah, Lina, and Arif Firmansyah. "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia." *Jurnal Hukum Unissula* 39, no. 2 (December 1, 2023): 174–91.
- Kumara, I Made Citra Gada, I Ketut Kasta Arya Wijaya, and Luh Putu Suryani. "Kepastian Hukum Pemegang Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia." *Jurnal Preferensi Hukum* 2, no. 3 (October 31, 2021): 560–63.
- Marilang, Marilang. "Ideologi Welfare State Konstitusi: Hak Menguasai Negara Atas Barang Tambang." *Jurnal Konstitusi* 9, no. 2 (2012): 259–286.
- Noviandri, Joseph, and Togi Marolop Pangaribuan. "Perbandingan Rechtsverwerking Sebagai Doktrin Hukum Di Indonesia Dan Doktrin

- Estoppel Di Amerika Serikat Pada Bidang Hukum Perjanjian." *Lex Patrimonium* 2, no. 2 (2023): 1–18.
- Pardede, Marulak. "Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya." *Jurnal Penelitian Hukum De Jure* 19, no. 4 (December 9, 2019): 405–420.
- Safitri Ayu, Fina, Lita Tyesta ALW, and Anggita Doramia Lumbanraja Magister Kenotariatan. "Akibat Hukum Penggunaan Sistem Publikasi Negatif Berunsur Positif Dalam Pendaftaran Tanah Di Kota Semarang." *Notarius* 13, no. 2 (2020): 788–802.
- Silviana, Ana. "Kajian Tentang Kesadaran Hukum Masyarakat Dalam Melaksanakan Pendaftaran Tanah." *Pandecta* 7, no. 1 (2012): 112–122.
- Silviana, Ana. "Urgensi sertipikat tanah elektronik dalam sistem hukum pendaftaran tanah di Indonesia." *Administrative Law and Governance Journal* 4, no. 1 (2021): 51–68.
- Subekti, Rahayu, Sungkowo Raharjo, and Hadhika Afghani Imansyah. "Sistem Pendaftaran Tanah Yang Memberikan Kepastian Hukum Hak Atas Tanah." *Jurnal Komunikasi Hukum* 8, no. 2 (2022): 394–405.
- Suharyono. "Weaknesses of the Negative Publication System with Positive Elements in Agrarian Law in Indonesia." *Nurani* 21, no. 2 (2021): 231–248.
- Wiryani, Fifik, and Mokhammad Najih. "Konflik Agraria: Sebuah Refleksi Hak Menguasai Negara Atas Tanah." *Widya Yuridika: Jurnal Hukum* 6, no. 3 (March 31, 2023): 519–234.
- Yusran, Akhmadi, and Deden Koswara. "Implementasi Kebijakan Hak Menguasai Negara Dalam Pemanfaatan Sumber Daya Agraria Dalam Perspektif Hak Asasi Manusia." *Jurnal Hukum Samudra Keadilan* 17, no. 2 (2022): 216–226.

Books:

- Judith Bray. *Unlocking Land Law*. 6th ed. New York,: Routledge, 2019.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana Prenada Media, 2013.
- Peter Mahmud Marzuki., *Penelitian Hukum*, Jakarta, Kencana Prenada Media, 2013.

Regulation:

- Kitab Undang-Undang Hukum Perdata
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah
- Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah