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THE TERMS OF ACQUIRING *EIGENDOM* RIGHT ON LAND THROUGH STATUTE OF LIMITATION (*DALUWARSA*)

Hartini Atikasari
Faculty of Law, Universitas Negeri Semarang (UNNES), Semarang
Email: hartiniatika@students.unnes.ac.id

ABSTRACT : This paper contains about how to apply the law of transfer of right on land as well as the requirements for acquiring *eigendom* right on land through statute of limitation (daluwarsa), both before the enactment of the Law Number 5 of 1960 concerning Basic Agrarian Law (hereinafter referred as BAL) and after the enactment of the BAL. Furthermore, the prerequisites for obtaining *eigendom* right on land will be analysed based on the provisions of the principle of good faith, also describe the reasons for property rights to be nullified and become state land according to the applicable law. There is also in this paper the author uses normative legal research methods by utilizing legal literatures and legal dictionaries. This research resulted in unexpected conclusions because based on literature studies, legal facts were produced if there were differences in the rules for acquiring land right through statute of limitation between the Civil Code and the BAL, so that it had implications for the land law system in Indonesia.

Keywords: Civil Code; *Eigendom* Right; BAL; Statute of Limitation

INTRODUCTION

Before the enactment of the BAL, land law in Indonesia was dualism, meaning that in addition to the recognition of customary land law originating from customary law, it was also recognized that regulations regarding land based on western law. After the enactment of the BAL on September 24, 1960, the end of the dualism of Indonesian land law became a unification of land law. Property rights as a legal institution in land law have been regulated both in the land law before the BAL, as well as in the BAL.

Regarding the way of obtaining property rights over objects, including ownership right to land, has been regulated in Article 584 Civil Code, in which there are four ways to obtain material rights, namely: attachment, statute of limitation, inheritance (both according to law and will), and appointment or surrender. Based on these provisions, it can be concluded that in Indonesia, based on national agrarian law or law related to land, the term conception is statute of limitation

[1] Adrian Sutedi, 2009, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2009, p. 1.

(over time), which is divided into 2 (two) statute of limitation forms, *acquisitive verjaring* and *rechtsverwerking*.

The definition of *verjaring* or statute of limitation in accordance with Article 1946 of Civil Code is as follows:

*"*Over time is a legal means for obtaining something or an excuse to be released from an engagement with the passing of a certain time and by fulfilling the conditions specified in the law*"*.

It should be noted that along with the statute of limitation arrangements known in the Civil Code and BAL which are based on Customary Law, basically the same, there are parties who lose land right and there are parties who obtain land right. What distinguishes it is that BAL does not know the *verjaring* institution (statute of limitation date) as stipulated in the Civil Code, but uses the *rechtsverwerking* (statute of limitation right) institution.[2]

Furthermore, in obtaining and or releasing something right legally has statute of limitation or the time provided by the law will be closed if the party that is supposed to be able to obtain and or release a right does not use the time limit provided by the law properly, so that the rights that have been lost legally. So with the statute of limitation of the specified statute of limitation limit, juridically someone who should have the right to obtain a right cannot be used for his rights, as well as someone who should have the right to give up something rights cannot use his rights because the time limit provided by law has passed , so that the statute of limitation has run.[3]

Next in Article 610 *juncto* Article 1946 Civil Code has also been regulated that in principle, a person can hold property rights over a material because it expires if a person has held the position of authority over him during the time specified by the law and according to the conditions stipulated in the Civil Code.

Statute of limitation (over time) is related to the existence of a certain period of time that can result in someone acquiring an ownership rights (*acquisitive verjaring*) or also because passing time causes a person to be released from a collection or legal claim.[4] In connection with that, the concept of *rechtsverwerking* itself means that with the statute of limitation (passing of time), a person can lose his ownership right. Then, as stipulated in Article 1963 Civil Code, the requirement for this statute of limitation is that there must be good faith from the party who controls the object, as in Article 1963 Civil Code:

[2] M. Isa Arief, 1979, *Hukum Perdata dan Hukum Dagang*, Alumni, Bandung, p. 114.

[3] M. Ainuddin Parampasi, 2018, Skripsi "*Penerapan Asasrechtsverwerking Dalam Perolehan Hak Atas Tanah Menurut Hukum Pertanahan Nasional (Putusan Peninjauan Kembali Mahkamah Agung Nomor: 336 PK/Pdt/2015)*", Universitas Hasanuddin : Pascasarjana Fakultas Hukum, 1 (1), p. 38-39.

[4] Ibid, p. 39.

"A person who in good faith obtains an immovable property, an interest, or another receivable that does not have to be paid for by a person for twenty years, obtains ownership rights over time. A person who in good faith controls something for thirty years obtains property rightss without being forced to show the basis of his rights".

PROBLEM

Based on the description above, the Author's interest in reviewing the law on how the application of the law on the transfer of land rights as well as the requirement for obtaining eigendom right on land through statute of limitation has resulted in the writing of this article, which will be examined on: first, the principle of rechtsverwerking's ownership right on land (before and after the enactment of the BAL); and second, how are the provisions regarding the principle of good faith in rechtsverwerking.

RESEARCH METHODS

This study uses a normative legal approach that does not intend to test hypotheses, the focus of research is on library research. The normative legal research studied is only library material or secondary data, which includes primary, secondary and tertiary legal materials[5] covers matters relating to legal issues in this paper.

DISCUSSION

The Position of the Rechtsverwerking Principle in Obtaining Land Ownership Right (Before and After the Enactment of the BAL)

The definition related to property rights is regulated in Article 570 Civil Code, which contains the following:

"Property rights is the right to enjoy the usefulness of a material freely, and to act freely on the material with full sovereignty, provided that it is not guilty of laws or general regulations stipulated by a power that has the right to determine it, and does not interfere with people's rights other; all of them by not reducing the possibility of revocation of the rights in the public interest based on the provisions of the law and with payment of compensation".

Provisions relating to the acquisition of ownership rights over objects, including in the case of ownership of land as immovable property, are stipulated in Article 584 Civil Code:

"Property rights to an item cannot be obtained other than by taking to be owned, by attachment, by time, by inheritance, either by law or by will, and by appointment or submission based on a civil event for transfer of ownership rights, which done by people who have the right to act on the item".

[5] Soerjono Soekanto and Sri Mamudji, 2004, *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* PT. Raja Grafindo Persada, Jakarta, p. 6.

In accordance with material law, land is an object that belongs to immovable objects. What is meant by immovable objects is (onroerende zaken) which is an object which is either immovable, and an object which is essentially an object moving, but by law expressed as immovable objects, such as large ships (with volumes under 20 cubic meters), factory machinery or houses which because the designation is considered to have merged with the land (immovable objects) so that by law it is also categorized as immovable objects. Even the rights to movable objects also by law are categorized as immovable objects as well.[6]

Originally in Indonesia, both for movable goods and for immovable property in principle the prevailing law was the Civil Code and the enactment of legislation in the Dutch East Indies for land law, which was mainly sourced from Agrarische Wet (S. 1870-55), other than those originating from customary law. But then, with the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles, or more popularly referred to as BAL (Basic Agrarian Law), then both the Agrarische Wet provisions and the provisions of the second book of the Civil Code as far as land is concerned, both are declared invalid in Indonesia. Although it is still stated that the basis of the BAL is customary law.[7]

As stated above, it can be concluded that in the applicable positive law the term statute of limitation is known. The statute of limitation itself in Indonesian civil law is stipulated in Article 1946, which is written as follows:
"Over time is a legal means for obtaining something or an excuse to be released from an engagement with the passing of a certain time and by fulfilling the conditions specified in the law".

In civil law, the concept of statute of limitation (expiration/passing time) is divided into 2 (two) forms, which is acquisitive verjaring and rechtsverwerking. Rechtsverwerking is an institution that is in customary law which is subsequently reappeared in the current national agrarian law. Rechtsverwerking has an understanding of the time lapse which can result in a person losing ownership of the land he/she previously owned. This institution is different from acquisitive verjaring which has the opposite concept with rechtsverwerking. The acquisitive verjaring institution is a law that deals with the way ownership of material rights is based on the time lapse. Thus the enactment of the BAL, the acquisitive verjaring is no longer enforceable because it is still bound by western land law. The background of the concept of acquisitive verjaring is that it is no longer able to be separated from the enactment of the BAL itself which aims to eliminate the dualistic prevailing in society, especially regarding the national land law system.

[6] Munir Fuady, 2015, *Konsep Hukum Perdata*, PT. Raja Grafindo, Jakarta, p. 29.
[7] Ibid, p. 35.

Rechtsverwerking is a term that refers to the statute of limitation (expiration/passing time) of land law, that is, in order to obtain ownership rights to a land, it can be used as a way to expire (passing time) as a way of obtaining it. *Rechtsverwerking* itself is actually an institution born of customary law, but it is still implemented in the current Indonesian legal system in obtaining ownership rights to land. The acquisition of land rights will be obtained if:

1. A person who has an *eigendom* right on a land, he/she will lose the land if during the period determined by legislation he/she does not cultivate or use the land;
2. If there is a person in good faith who controls and seeks and utilizes the land, then he/she has the right to obtain *eigendom* right to the land under his conditions as long as the period stipulated by statutory provisions.[8]

Before The Enactment of The BAL

Referring to Article 1963 Civil Code, which states that:

"Who is in good faith, and based on a legitimate basis of rights, obtains an immovable object, an interest, or another receivable that does not have to be paid for, obtains ownership rights over it, by statute of limitation, with a tenure of twenty year. Who in good faith has mastered it for thirty years, obtains ownership rights, by not being forced to demonstrate the basis of his rights".

Article 1963 Civil Code is the main article that mentions that *rechtsverwerking* is a means of acquiring ownership rights over immovable objects through statute of limitation (expiration/passing time), in this case--land, which is owned by a *bezitter* who has good faith in an immovable object, which if he/she can show a certificate of land rights that is legal (Certificate of Cultivation, Right to Build, etc.) provided that it has passed for twenty years from the commencement of control over the object then he/she is entitled to a property rights (*eigendom* right) the object. Likewise if the person cannot prove that he/she has a legal certificate for the land, so that by statute of limitation (expiration/passing time) he/she can have ownership rights to the land after controlling the land for thirty years.

In matters related to the law of material, *bezitter* is a person who holds power over an object, both movable and immovable objects. In connection with that, what is meant by *bezitter* or the holder of a position of authority in which a good intention is the person who obtains the material, which he/she has mastered in the way he/she uses in obtaining an *eigendom* right, but outside his knowledge he/she does not know that there is a defect in the material.[9] Prof. Subekti, S.H. in his book also gives an example, if at a place or at a time there is someone who conducts buying and selling activities, if he/she applies as a buyer, buys a land so that he/she then has *eigendom* right to the land. Then, it turns out the seller is essentially not someone who has the right to sell the land. Furthermore, for the passage of twenty years if there is no one who

[8] Putri Gracia Lempoy, 2017, "*Kajian Hukum Hak Atas Tanah Tanpa Sertifikat Yang Diduduki Seseorang Menurut Pasal 1963 KUHPerdata*", Jurnal Lex Crimen, 6 (2), p. 103.

[9] Ibid.

protests against his rights that have been held unilaterally without his knowledge, the buyer will obtain legal eigendom right to the object.[10]

In addition to Article 1963 Civil Code as a condition that must be fulfilled by someone in order to obtain property rightss based on statute of limitation, there is also Article 1955 Civil Code which also regulates that:
"In order to obtain ownership rights over something over time, one must act as the appropriate owner by mastering it continuously and uninterruptedly, openly in public and expressly".

Based on the provisions as stated above, Article 1963 Civil Code added Article 1955 is known that both are statutory regulations that are used as the axis for obtaining *eigendom* right based on statute of limitation on the principle of *rechtsverwerking* or in other words the release of property rightss through statute of limitation (passing time) with the condition that the land must be controlled by the *bezitter* continuously and uninterruptedly, as well as being carried out openly and without cover so that the public knows and expressly acknowledges that it acts as a *bezitter*.

By Riduan Syahrani, he also stated that the conditions that must be fulfilled by someone who will obtain land ownership rights by statute of limitation are[11]:
a. There must be continuous *bezit*;
b. Mastery there is no interference from other parties during the specified time;
c. *Bezit* must be known to the public;
d. *Bezit* must be trour or good faith;
e. *Bezitter* must feel like the real owner;
f. And has mastered over 20 years or 30 years.

In terms of effect, the statute of limitation has an equation with *rechtsverwerking*. Statute of limitation refers to the length of time that causes the right to be lost on the one hand or the rights obtained on the other. Likewise *rechtsverwerking* as in customary law refers to the release of rights based on a certain long period of time. While on the other hand obtain/cause something right. Both substances are the same, namely: 1) depending on the length of time; and 2) the legal consequences are the same namely on the one hand, the abolition of rights (civil law) or the release of rights (customary law), and on the other hand obtain the rights[12].

After The Enactment of The BAL

Imam Sudiyat said that in order to obtain one's property can be done by: 1) opening forest land (shrubs); 2) inherit land; 3) receiving land through purchases, exchanges, gifts, etc; 4) expired

[10] Subekti, 2003, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, p. 185.
[11] Riduan Syahrani, 2000, *Seluk-Beluk dan Asas-Asas Hukum Perdata*, Alumni, Bandung, p. 131.
[12] Putri Gloria Ginting, 2018, "*Pemberlakuan Asas Rechtsverwerking (Pelepasan Hak) Terhadap Pemegang Hak Atas Tanah di Kabupaten Deli Serdang*)", Jurnal Ilmiah Dunia Ilmu, 4 (1), p. 18.

(network)[13]. Considering that *rechtsverwerking* was born from customary law which was then still used in national land law (after the enactment of the BAL), the weakness was then followed by BAL which was enhanced by the holding of land registration provisions to ensure legal certainty for rights holders.

Land registration itself has been regulated in Article 19 of the BAL, which basically stipulates that: *first*, land registration is carried out to ensure legal certainty; *second*, registration includes: ground measurements and bookkeeping, registration of land rights and the transfer of rights, and the granting of proof of rights documents, which apply as a strong evidentiary tool; *third*, registration is held in the consideration of the Minister of Agrarian Affairs; *fourth*, people who are not able to be released from payment of these costs.

Regarding the legal certainty of land rights, there are also provisions in Article 32 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. On the basis of the birth of that regulation, the *rechtsverwerking* institute was adopted to overcome the weaknesses of the negative publication system related to land registration, which for the issuance of legitimate certificates obtained by a person or legal entity in the presence of goodwill and holding the position of authority, so *eigenaar* on the land cannot sue its rights if within 5 (five) years since the issuance of the said right does not file an objection to the holder of the certificate and the Head of the Land Office and the claim to the Court.

In the process of transferring land rights through buying and selling, there are 2 (two) procedures that must be implemented, namely: 1) registration of transfer of rights; and 2) certificate submission. Requirements in making Land Titles Registrar deeds: 1) must be attended by the seller or the buyer or person authorized; 2) the existence of documents, such as: photocopy of the identity of the seller or buyer, photocopy of the seller's or buyer's family card, seller's and buyer's marriage certificate, and land and building tax tax payable (*Surat Pemberitahuan Pajak Terutang*) notification for the seller; and 3) a minimum of 2 (two) witnesses.

The deed is then made into 2 (two) original sheets, one is given to the Head of the Land Office for registration of rights and the other is given to the parties involved (seller and buyer) given a copy of.[14]In the case of the submission of registration documents for transfer of rights, the Land Titles Registrar official must submit the document no later than seven working days from the signing of the deed. The documents submitted, among others:

[13] Iman Sudiyat, 1981, *Hukum Adat (Sketsa Adat)*, Liberty, Yogyakarta, p. 8
[14] Sahat H.M.T. Sinaga, 2007, *Jual Beli Tanah dan Pencatatan Peralihan Hak*, Pustaka Sutra, Bekasi, p. 36.

1. Letter of application for registration of transfer of rights that has been signed by the buyer or represented by his proxy;
2. A written power of attorney from the buyer if he/she submits the application for registration of transfer of rights not the recipient of the right (buyer);
3. Sale and purchase orders by Land Titles Registrar;
4. Proof of seller's identity;
5. Proof of buyer's identity;
6. Certificates of transferred original land rights (sold);
7. Proof of repayment of payments for the acquisition of land and building rights (*Bea Perolehan Hak Atas Tanah dan Bangunan*);
8. Proof of repayment of income tax payments (*Pajak Penghasilan*).[15]

Then, the certificate of land rights that has been changed the name of the ownership is submitted by the Land Titles Registrar official to the buyer as well as through his proxy.

In addition to the provisions of the above laws and regulations, in the national agrarian legal system, Article 26 Paragraph (1), the BAL is regulated on how land ownership with the right of ownership which contains:
"Buying and selling, exchanging, granting, giving with a will, giving according to adat and other actions intended to transfer ownership rights and supervision are regulated by Government Regulation".

Then, Article 27 of the BAL:
"Property rights are deleted if:
a. The land falls to the state,
   1. because of revocation of rights under article 18;
   2. because of voluntary submission by the owner;
   3. because it is abandoned;
   4. because of the provisions of Article 21 Paragraph (3) and 26 Paragraph (2).
b. the land is destroyed".

Thus in point a) number (3) states that for the abandonment of land, the property rightss to delete apparently still have a relationship with the social functions that exist on the land, which is regulated in Article 6 of the BAL. Article 6 is intended to contain the following:
"All land rights have a social function".

In the General Explanation of the BAL, it is described that social functions themselves, meaningful:
"This means, that any land rights in a person cannot be justified, that the land will be used (or not used) solely for his personal interests, especially if it causes harm to the community. Land

[15] Urip Santoso, 2005, *Hukum Agraria dan Hak-Hak Atas Tanah*, Kencana, Jakarta, p. 337.

use must be adapted to its circumstances and the nature of its rights, so that it benefits both the welfare and happiness that has it and benefits the community and the state. But in that case the provision does not mean, that individual interests will be pushed at all by the public interest.
The Basic Agrarian Law also considers individual interests. The interests of the community and individual interests must balance each other, so that in the end the ultimate goal will be achieved: prosperity, justice and happiness for the whole people [Article 2 Paragraph (3)].
Due to its social function, it is only natural that the land must be maintained properly, so that fertility increases and damage is prevented. The obligation to maintain this land is not only borne by the owner or the right holder concerned, but also a burden for every person, legal entity or agency that has a legal relationship with that land (Article 15). In implementing this provision, it will be noted that the interests of those who are economically weak".

The right to control land from the state means the state (government) is not the owner of the land. However, the government has the right to regulate land use, inventory and maintenance, regulate legal relations between people and land, and regulate legal actions against land while taking into account the social functions of land rights as referred to in Article 6 of the BAL.[16]

Therefore, it was concluded that the position of the principle of rechtsverwerking in the acquisition of rights to land ownership based on applicable civil law and national agrarian law was aimed at protecting the rights of citizens in terms of land rights. where all land rights have social functions. So, if someone leaves the land in a state that is not cultivated, it certainly contradicts the purpose of social functions on land.

Thus, what needs to be understood above is that the land *eigeneer* has an obligation to use the land so that it is not only to be owned. When they heeded the social function of his land which was left abandoned then there were *bezitters* who occupied his land and cared for and cultivated and did not allow the land to be displaced again in a period of at least twenty years with ownership of the land certificate and thirty years without ownership the land certificate, which is carried out continuously and uninterrupted, then the *bezitter* will then become an *eigeneer* of the land.

Principle of Good Faith in *Rechtsverwerking*

In civil law it is known as *bezit* (tenure). What is meant by bezit rights is a mastery of objects to enjoy the results of these objects which are considered by law as their own, so that their rights can be maintained to everyone, without questioning who actually owns the object.[17] As Subekti put it in his book, *bezit* is a state of birth, in which a person controls an object as if it were his own, the situation in which the law is protected, by not questioning the ownership rights of the object which is actually in.[18]

[16] Hardianto Djanggih and Salle, 2017, "*Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*", Journal Pandecta, 12 (2), p. 170.
[17] Munir Fuady, *Op. Cit*, p. 33.
[18] Subekti, *Op. Cit*, p. 63.

In accordance with the provisions contained in the Civil Code, the notion of *bezit* in Civil Code is contained in Article 529, as follows:
"What is meant by bezit is the position of mastering or enjoying an item that is in someone's power in person or through other people, as if the item is his own".

Some *bezit* holders have good intentions and some are not in good faith. A *bezit* holder is said to have good intentions if the object of the *bezit* rights object is obtained such as obtaining ownership rights without knowing if the right in that right or in the procedure for obtaining these rights is legally flawed. On the contrary, a *bezit* holder is said to be a holder of bad intentions if he/she really knows that the object of the *bezit* right is not his own, or because there is a judge's decision stating that he/she is not the owner of the object.[19]

Then, it is also complemented by normative rules contained in Article 530 Civil Code which state that:
"Bezit is in good faith and some are in bad faith".

Good faith is closely related to the governance of social life because it will concern the legal awareness of the community that requires guidance and regulation. In the legal traffic it is desirable that the community always act with good faith, so that it can support the effort to realize a just and prosperous society.[20]

The principle of good faith is one of the principles contained in an agreement or agreement. In the case of Indonesia as a country that adheres to the civil law system, this is so that the principle of good faith in contractual relations is contained in Civil Code Book III, in Article 1338 Paragraph (3) which contains:
"The agreement must be carried out in good faith".

Furthermore, the meaning of the principle of good faith itself is associated with the next article, namely Article 1339 Civil Code which states that in principle:
"An agreement is not only binding on matters expressly stated in it, but also for everything that according to the nature of the agreement is required by propriety, custom or law".

The normative law as stated above is related to the provisions concerning the principle of good faith contained in Article 1338 Paragraph (3) *juncto* Article 1339 Civil Code actually not only regulates substantially about the contents or in terms of the substance of the agreement, but also must consider the norms of decency and public order, and must not conflict with the Law. According to Yahya Harahap, proper implementation of the contract means carrying out

[19] Munir Fuady, Op. Cit, p. 33-34.
[20] Djaja S. Meliala, 1987, *Masalah Itikad Baik dalam KUHPerdata*, Binacipta, Bandung, p. 1.

obligations according to the proper, harmonious and appropriate according to what should be in accordance with the provisions agreed in the contract.[21]

In the case of *rechtsverwerking* or the acquisition of *eigendom* right to land through statute of limitation can only be carried out because the *bezitter* is a person in good faith. The provisions of the legislation governing *bezitter* in good faith are contained in Article 531 Civil Code, which contains:
"Bezit in good faith occurs if the *bezit* holder obtains the item by obtaining ownership rights without knowing there are defects in it".

Based on the above provisions, the principle of good faith here can be interpreted as in the event that he/she as a *bezitter* does not know the defect or reproach of the process of obtaining the object. Furthermore, the good faith principle mentioned in Article 1963 Civil Code also proves that there is a legal protection for buyers with good intentions (in this case land buyers). This legal protection is given even though the seller of the object (land) is not the person who has the right to transfer the material rights.

Legal protection related to *bezit* is not only contained in *bezit* in good faith, but also in terms of *bezit* in bad faith. What is meant by *bezit* in bad faith is if the legal subject who controls the object knows that the object under that power is the ownership of another person. In connection with this, the understanding related to *bezit* in its own bad faith has also been stated in Article 532 Civil Code, which contains that:
"Bezit in bad faith occurs when the holder knows that the goods held by him are not his property. If the bezit holder is sued before the Judge and in this case defeated, then he/she is deemed to have a bad intention since the case was filed".

However, related to this bad faith, according to the Civil Code the *bezit* holder will not be able to obtain ownership rights to the land he/she controls through statute of limitation institutions, even though with the passing of time he/she may take refuge behind the removal of lawsuits.[22] The provisions as stated above are strengthened by the existence of Article 1967 Civil Code which states that:
"All lawsuits, both material and individual, are deleted because time passes with the passage of thirty years, while the person who designates the passing of the time, does not need to show a basis for rights, and against which a dispute based on in bad faith".

What is the basis for distinguishing between *bezit* in good faith and *bezit* in bad faith is about knowledge related to the legitimacy of the property rightss acquired. The provisions regarding

[21] Yahya Harahap, 1992, *Segi-Segi Hukum Perjanjian*, Alumni, Bandung, p. 57.
[22] Widodo Dwi Putro, dkk, 2018, *Penjelasan Hukum: Pembeli Beritikad Baik Dalam Sengketa Perdata Berobyek Tanah*, LeIP, Jakarta, p. 66.

the distinction between *bezit* in good faith and bad faith are also increasingly strengthened by the existence of Article 533 Civil Code, which basically contains that:
"Bezit holders must always be considered good-will whoever accuses them of bad intentions, must prove it."

Wirjono Prodjodikoro in his book also argues that good faith is needed because the law cannot reach conditions in the future. He explained:
"There is no fruit of perfect human actions. Because the rules mentioned above are only made, by human beings, those rules are not perfect. These regulations can only cover circumstances which at the time of the formation of the regulations are known to be possible. It was only later that there was a situation that if the possibility had also been known in the past, certainly or if it had been included in the regulatory environment. In the case of such conditions, it seems important that honesty is the factor of interested parties".[23]

Furthermore, in order to provide legal protection for *bezitter* in good faith, of course a legal effort is needed. In this case, the *bezitter* need a public register so that they have a strength of evidence that is recognized as valid. Therefore, again to the provisions of Article 1963 Civil Code which states that:
"Who is in good faith, and based on a legitimate basis of rights, obtains an immovable object, an interest, or another receivable that does not have to be paid for, obtains ownership rights over it, by statute of limitation, with a tenure of twenty year. Who in good faith has mastered it for thirty years, obtains ownership rights, by not being forced to demonstrate the basis of his rights".

The definition of abandoned land in civil law is not explained so that it does not have a legitimate understanding. Even so, in the National Land Agency Regulation No. 4 of 2010 concerning the Procedures for Neglected Land Control, an understanding of abandoned land was stated:
"Land that has been granted rights by the State in the form of Ownership Rights, Cultivation Rights, Building Utilization Rights, Use Rights, and Management Rights, or basic tenure of cultivated land, not cultivated, not used, or not utilized in accordance with the circumstances or objectives granting rights or basic tenure".[24]

Determination of land status into abandoned land must meet the criteria contained in the Head of the National Land Agency Number 4 of 2010 concerning Procedures for the Control of Neglected Land Article 17 Paragraph (2) is not using the land in accordance with the nature and purpose of granting rights according to a decree or ground tenure, there is still land whose use is not in accordance with the decree or the basis of its ruling, there is no follow-up to settle development, and has not submitted a request for the right to land ownership.[25]

[23] Wirjono Prodjodikoro, 2006, *Asas-Asas Hukum Perjanjian*, Sumur, Bandung, p. 56.
[24] National Land Agency Regulation Number 4 of 2010 concerning Procedures for Land Control.
[25] Ibid.

The purpose of giving land ownership rights through statute of limitation or commonly called *rechtsverwerking* is only provided that the principle of good faith to *bezitter*s is none other than for the creation of social functions on all existing land rights, so that the land and natural resources on earth can be beneficial for all Indonesian people.

The principle of good faith in the concept of *rechtsverwerking* here is to highlight the lands that have been abandoned by the owner of the right to own the land. Land use itself is an implementation of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as follows:
"Earth and water and the natural wealth contained in them are controlled by the state and are used for the greatest prosperity of the people".

Regarding Article 33 Paragraph (3) The 1945 Constitution of the Republic of Indonesia has clearly stated that the position of the people is a basic matter so it must be prioritized (substantially).

Thus in the article it can also be found the element of economic democracy in the sentence:
"...the interests of society are more important than the interests of people..."

Based on these provisions, of course it can be understood that land as a substantial material in a national agrarian law holds a crucial role so that the use of the land is expected not only to benefit the owners, but also to the wider community.

CONCLUSION

The position of the principle of *rechtsverwerking* before the enactment of the BAL refers to Article 1963 Civil Code, which basically states that upon statute of limitation (expiration/passing time), a person can lose *eigendom* right over immovable objects, if where on the land he/she has abandoned there is someone in good faith who holds a position of power over the land. for a period of 20 years on condition that he/she has a legal title over it and 30 years if he is unable to show the legal basis for the land. In the other side, the position of *rechtsverwerking* after the enactment of the BAL itself was adopted on the basis of the provisions in Government Regulation Number 24 of 1997 concerning Land Registration in order to overcome the weaknesses of the negative publication system related to land registration, due to the issuance of a valid certificate obtained by a person or legal entity in good faith and has held a position of power over it, then the party who feels that he is responsible for the land cannot contest his rights if within 5 (five) years since the issuance of the reason for this right, he/she does not file an objection to the certificate holder and the Head of the Land Office or the lawsuit to the Court. However, what is meant by the principle of good faith in the *rechtsverwerking* process itself is that at the time of the sale and purchase, the buyer does not

knowingly know that there is a flaw in the process of acquiring the object. It is an absolute prerequisite that must be fulfilled for someone to obtain rights to a land through statute of limitation (expiration/passing time).

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