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Rechtsverwerking as a Remedy for the Weakness of Indonesia's Negative Land Publication System: Judicial Perceptions in Medan and the Problem of Legal Certainty

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ABSTRACT

Indonesia adopts a negative land publication system with positive tendencies, so a land certificate remains open to challenge by anyone claiming a better right. Article 32(2) of Government Regulation No. 24 of 1997 seeks to remedy this weakness through the customary-law doctrine of *rechtsverwerking*, which bars claims filed more than five years after a certificate was issued to a good-faith holder in actual possession. This study examines how the doctrine is regulated, how it can be applied as an instrument of national land law, and what legal certainty it offers for registered land. A normative-empirical design combined statutory, conceptual and case analysis with interviews of ten judges, five each from the Medan State Administrative Court and the Medan High State Administrative Court. All ten accepted that prolonged neglect can extinguish land rights, yet only one had applied the doctrine to registered land. Opinion was split five to five on whether a government regulation is an adequate legal form, and six rejected the five-year period. Reasons for non-application included the ninety-day limit in the State Administrative Court Law, the court's competence over decisions rather than ownership, and the absence of compensation for the true owner. Certainty therefore remains conditional. The study recommends Supreme Court guidance, clearer elements of Article 32(2) and a compensation mechanism such as title insurance.

Keywords: Rechtsverwerking; Legal Certainty; Judicial Perception; Administrative Court

INTRODUCTION

Land is both a finite resource and the platform for almost every economic and social activity, which is why states register land rights to make them certain. In Indonesia, Article 19 of the Basic Agrarian Law (Republic of Indonesia, 1960) requires land registration, and its stated purpose is legal certainty for holders of land rights.[1] Certainty, however, depends on the publication system on which the register is built (Apriani & Bur, 2021; Mecilita et al., 2026).[2] Under a positive system the state guarantees the register, a good-faith acquirer obtains an indefeasible title, and the person wrongly deprived is compensated, typically from an assurance fund. Under a negative system the state does not vouch for the data and nobody can transfer more than they hold. Indonesia has chosen neither in pure form: the certificate is strong but not

[1] Republic of Indonesia, Law No 5 of 1960 on Basic Agrarian Principles, art 19.
[2] D Apriani and A Bur, 'Legal Certainty and Legal Protection in the Land Registration Publication System in Indonesia' (2021) 5(2) *Jurnal Bina Mulia Hukum* 220–239.

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conclusive evidence, a negative system with positive tendencies (Mecilita et al., 2026).[3] A holder can therefore still be sued by anyone claiming a better right, and recent studies agree that this compromise has not delivered full legal certainty (Apriani & Bur, 2021; Kurniati & Mordekhai, 2021; Wahid et al., 2025).[4]

Article 32(2) of Government Regulation No. 24 of 1997 on Land Registration (GR 24/1997) (Republic of Indonesia, 1997) was designed to narrow this weakness.[5] Where a certificate was validly issued to a good-faith acquirer who actually possesses the land, other parties can no longer claim it if, within five years of issuance, they have neither lodged a written objection nor brought a court action concerning possession or issuance. The provision applies *rechtsverwerking*, the customary-law notion that a landholder who lets another use the land in good faith for a long time forfeits the right to reclaim it.[6] Negative systems such as the Netherlands close the same gap through acquisitive prescription (adverse possession in common law); Indonesia, whose land law rests on customary law, turned to an indigenous institution.

More than two decades on, the provision remains contested. Courts still grant claims against certificates older than five years (Mecilita et al., 2026; Suryana & Gemilang, 2026; Zahra et al., 2024).[7] The requirement of valid issuance is read as administrative validity by some courts and as material validity by others (Tirani et al., 2026),[8] and the rule sits in a government regulation, which ranks below the statutes governing judicial power (Suryana & Gemilang, 2026).[9] Government Regulation No. 18 of 2021 (GR 18/2021) (Republic of Indonesia, 2021) has not, according to the literature reviewed here, displaced the five-year rule, and its Article 64 channels the cancellation of administratively defective certificates more than five years old through the courts (Imran & Rizaldi, n.d.).[10]

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[3] I Mecilita, NR Aisyah, JM Aldi and AC Gavrila, 'Conceptual Ambiguity in the Negative Publication System with Positive Tendencies in Realising Legal Certainty of Land Rights in Indonesia' (2026) 41(1) *Jatiswara* 62–72.

[4] Apriani and Bur (n 2); N Kurniati and J Mordekhai, 'Strengthening the Land Registration System through the Implementation of the Domain Approach in Manifesting Legal Certainty and Community Justice' (2021) 23(3) *Sosiohumaniora* 330–338; A Wahid, IGA KR Handayani and L Karjoko, 'Reform of the Land Registration System in Indonesia: A Max Weberian Rational-Legal Bureaucracy Approach' (2025) 20(2) *Pandecta Research Law Journal* 717–756.

[5] Republic of Indonesia, Government Regulation No 24 of 1997 on Land Registration, art 32(2).

[6] FA Zahra, R Syadza, MJ Natanegara, SC Wiratmoko and F Adliman, 'The Function of Rechtsverwerking Regulation as an Instrument for the Acquisition of Land Rights' (2024) 4(2) *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*.

[7] Mecilita et al (n 3); A Suryana and K Gemilang, 'A Juridical Review of Government Regulations on Land Registration in Providing Legal Certainty for Land Certificate Holders' (2026) 6(2) *Jurnal Integrasi dan Harmoni Inovatif Ilmu-Ilmu Sosial*; Zahra et al (n 6).

[8] NKFD Tirani, IKD Hartawan and NKIA Sukmaningsih, 'The Validity of Land Rights Certificates under Article 32(2) of Government Regulation No 24 of 1997: Between Administrative Validity and Substantive Validity' (2026) 6(3) *Jurnal Ilmu Hukum Sui Generis*.

[9] Suryana and Gemilang (n 7).

[10] Republic of Indonesia, Government Regulation No 18 of 2021 on Management Rights, Land Rights, Apartment Units and Land Registration, art 64; Imran and M Rizaldi, 'The Authority of the National Land Agency to Revoke Certificates of Ownership over Land Due to Administrative Defects Based on the Principle of Contrarius Actus', in *Proceedings of the Current Legal Seminar: Problems Concerning the Facilitation of National Strategic Projects* (Universitas Islam Indonesia) 83–92.

Much existing work is doctrinal or confined to individual decisions, yet the application of Article 32(2) is ultimately a matter of judicial interpretation, so divergent perceptions among judges translate into divergent outcomes. This study therefore examines the perceptions of judges at the State Administrative Court (PTUN) and the High State Administrative Court (PTTUN) in Medan, a large city with high-value land and many disputes; the PTTUN hears appeals from several Sumatran provinces. The analysis is framed by legal certainty, which requires rules that are clear, not open to competing readings and consistent with other norms (Kartabrata et al., 2025),[11] and which must be balanced against justice and utility (Kartabrata et al., 2025; Mecilita et al., 2026).[12] Three questions guide the study: (1) how is *rechtsverwerking* regulated in national land law; (2) how can it be applied as an instrument of national land law, judging from the perceptions of administrative judges in Medan; and (3) what legal certainty follows for registered land? Fieldwork was carried out in 2025; later developments are noted under Limitation.

METHODS

Research design

The study used a normative-empirical (socio-legal) design with a descriptive orientation. The normative component examined legal materials through statutory, conceptual and case approaches (Negara, 2023).[13] The empirical component consisted of interviews with judges at the administrative courts in Medan, read against the structure of the applicable rules. Primary legal materials were the Basic Agrarian Law, GR 24/1997 and its implementing regulation, GR 18/2021, the State Administrative Court Law, the Judicial Power Law and Supreme Court decisions on *rechtsverwerking*.[14] Secondary materials were books and articles, updated with peer-reviewed literature from 2021 to 2026.

Participants and sampling

Participants were serving judges at the PTUN Medan and the PTTUN Medan, which hear disputes over land certificates as administrative decisions; civil-court judges, who decide ownership, fell outside the scope. Five of the 12 judges at each court were interviewed, a sample of ten (about 42% of the population of 24). Respondents are identified as J1 to J5 (PTUN) and J6 to J10 (PTTUN); demographic details are omitted as they could identify individuals.

[11] FR Kartabrata, ME Ernawan and IA Dwinanda, 'Harmonisation of the State Administrative Court Legal System in Achieving Legal Certainty Regarding the Time Limit for Filing Claims' (2025) 26(2) *Jurnal LITIGASI* 1–36.
[12] Kartabrata et al (n 11); Mecilita et al (n 3).
[13] TAS Negara, 'Normative Legal Research in Indonesia: Its Origin and Approaches' (2023) 4(1) *Audito Comparative Law Journal* 1–9.
[14] Full citations of the statutes, regulations and Supreme Court decisions are given in the References.

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Data collection and measures

Data were collected through interviews combining structured and unstructured questions put orally and in writing, together with secondary data held by the courts. The guide covered six items: (a) whether prolonged neglect of land can extinguish the right to it, and why; (b) whether the judge has applied *rechtsverwerking* to registered land; (c) whether the five-year period is appropriate; (d) whether regulation by government regulation is adequate; (e) whether the judge would apply the doctrine in a case on the holder of a land right; and (f) whether the doctrine is Western or customary in origin. Responses were coded as agree, disagree, conditional or not stated.

Ethical clearance and data analysis

Participation was voluntary and respondents are anonymised; identifying details recorded in the author's master's thesis, from which this article derives, are not reproduced. Analysis was qualitative, following data reduction, data display and conclusion drawing.[15] Responses were coded per item and tabulated by respondent and court; given the small sample, results are reported as counts and not generalised.

RESULTS

Regulation of rechtsverwerking in national land law

The Basic Agrarian Law anchors national land law in customary law (Article 5) and makes the certificate strong, but not absolute, evidence of title (Articles 19(2)(c), 23, 32 and 38) (Republic of Indonesia, 1960).[16] It also provides that rights lapse through abandonment (Articles 27, 34 and 40). In Karo society an empty village plot could become individual property once worked intensively (Supreme Court Decision No. 59/K/Sip/1958), and abandoned rice fields in Padang Lawas reverted to uncultivated land (Supreme Court Decision No. 329 K/Sip/1957).[17] Both pre-date the Basic Agrarian Law, so courts applied the doctrine before it was regulated.

Article 32(1) of GR 24/1997 confirms the certificate as strong evidence so long as the physical and juridical data match the survey document and land book, and Article 32(2) adds the five-year bar.[18] Three of its elements are left open. First, good faith is presumed and bad faith must be proven by the claimant; buyers and creditors are expected to verify title beforehand, which makes the land deed official (PPAT) central.[19] Second, it is unclear whether actual possession requires the holder to live on the land, and whether leasing, permissive

[15] Matthew B Miles, A Michael Huberman and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook* (3rd edn, SAGE Publications 2014).
[16] Law No 5 of 1960 (n 1) arts 5, 19(2)(c), 23, 32 and 38.
[17] Supreme Court of the Republic of Indonesia, Decision No 59/K/Sip/1958 (7 February 1959); Supreme Court of the Republic of Indonesia, Decision No 329 K/Sip/1957 (24 September 1958).
[18] Government Regulation No 24 of 1997 (n 5) art 32(1)–(2).
[19] Apriani and Bur (n 2); Kurniati and Mordekhai (n 4).

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occupation or mere maintenance suffices. Third, the five years run from issuance, but the rule does not say what follows when the land has been transferred several times and one transaction was tainted by fraud.

The legal form of the rule is also disputed. One position holds that Article 32(2) merely confirms an existing customary institution and may sit in a government regulation; the other holds that it restricts property rights, which only a statute may do, a view strengthened by the observation that a government regulation ranks below the statutes on judicial power (Suryana & Gemilang, 2026).[20] Compensation is a further gap. In positive systems an owner who loses land to a registered holder is compensated through title insurance or an assurance fund; Indonesia has no equivalent.[21] Insurers would likely shun registers of uncertain accuracy and the state budget cannot underwrite a guarantee, so the study proposes funding from a share of the land and building acquisition duty (BPHTB), land deed officials' fees, or a charge on certificate applicants.

Judicial perceptions in Medan

Table 1 summarises the responses of the ten judges, and Table 2 their distribution by court. All ten accepted that prolonged neglect can lead to loss of the right to land, citing legal certainty (J1, J2, J3, J4, J5 and J10), optimal land use (J3 and J5), the social function of land rights (J6), preventing speculators and land mafias (J8), making neglected land available to landless citizens (J9), and harm to spatial planning and community interests (J7).

Table 1
Responses of Judges at the PTUN and PTTUN Medan

Judge	Loss of right accepted	Applied in practice	Five-year period	Government regulation as legal form	Would apply in a case on the holder of a right	Perceived origin
J1 (PTUN)	Yes	No	Not appropriate: too short	Inadequate	No	Western
J2 (PTUN)	Yes	No	Appropriate	Adequate	Yes	Western
J3 (PTUN)	Yes	No	Appropriate; review advised	Adequate; technical rules needed	Yes	Both
J4 (PTUN)	Yes	No	Not appropriate: too short	Inadequate	Case by case	Customary
J5 (PTUN)	Yes	No	Appropriate	Adequate; supporting institutions needed	Not stated	Western
J6 (PTTUN)	Yes	Yes	Not appropriate: too short	Adequate	Yes	Both

[20] Suryana and Gemilang (n 7).
[21] Apriani and Bur (n 2); Kurniati and Mordekhai (n 4).

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Judge	Loss of right accepted	Applied in practice	Five-year period	Government regulation as legal form	Would apply in a case on the holder of a right	Perceived origin
J7 (PTTUN)	Yes	No	Appropriate; count from knowledge	Adequate as interim measure	No	Customary
J8 (PTTUN)	Yes	No	Not appropriate: conflicts with Article 55 and justice	Inadequate	No	Western
J9 (PTTUN)	Yes	No	Not appropriate: at least ten years	Inadequate	No	Customary
J10 (PTTUN)	Yes	No	Not appropriate: needs statutory form	Inadequate	No	Western

Note. PTUN = State Administrative Court; PTTUN = High State Administrative Court. Respondents are anonymised. Both = regarded as both Western and customary, or as showing similarities between the two.

Acceptance in principle did not translate into practice. Only J6 (PTTUN) had applied the doctrine, in a dispute over neglected registered land. J7 had decided a case on a freehold certificate more than five years old and declined to apply Article 32(2), reasoning that a government regulation cannot override the ninety-day limit for suing under Article 55 of the State Administrative Court Law (Republic of Indonesia, 1986), and that the provision shields the certificate from judicial correction by entering the field of procedural law.[22]

Views on the five-year period were divided. Four judges considered it appropriate (J2, J3, J5 and J7), although J3 advised a review and J7 proposed counting from the claimant's knowledge of the certificate. Six rejected it. Four found it too short (J1, J4, J6 and J9): J1 pointed to owners with several parcels who cannot use them all within five years, J4 argued that five years is too short to extinguish a subjective right, and J9 argued for at least ten years. J8 and J10 objected to the legal basis rather than the length, citing conflict with Article 55, the negative registration system, human rights and justice (J8) and the need for statutory form (J10).

The judges were evenly split on whether a government regulation is an adequate legal form: five said yes (J2, J3, J5, J6 and J7) and five no (J1, J4, J8, J9 and J10). J3 added that technical implementing rules were needed, J5 that supporting institutions must keep land data consistent, and J7 accepted the regulation only as an interim solution pending a new land statute. Those who rejected it argued that the doctrine concerns fundamental norms and belongs in a statute because it conflicts with Article 55 and with human rights legislation.

Willingness to apply the doctrine in a case on the holder of a right was lower than acceptance in principle. Three judges would apply it (J2, J3 and J6), one would decide case by case (J4), five would not (J1, J7, J8, J9 and J10) and one did not state a position (J5). Reasons

[22] Law No 5 of 1986 on State Administrative Courts, as amended by Law No 9 of 2004 and Law No 51 of 2009, art 55.

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for refusal were an expected reform of the legal system (J1), the conflict with Article 55 and the continuing negative system (J8), the view that the object of a State Administrative Court dispute is the certificate and not the land (J9), the view that the court assesses authority and procedure and does not determine who holds the right (J7), and the concern that certainty is favoured over justice (J10).

The judges also differed on origin: five regarded the doctrine as Western (J1, J2, J5, J8 and J10), three as customary (J4, J7 and J9), and two as both (J3 and J6). Perceived origin did not predict views on legal form: two of the five who saw it as Western found a government regulation adequate, as did one of three who saw it as customary and both who saw both.

Table 2
Distribution of Responses by Court

Item	PTUN (n = 5)	PTTUN (n = 5)	Total (N = 10)
Accepts that neglect can extinguish the right to land	5	5	10
Has applied the doctrine to registered land	0	1	1
Five-year period appropriate	3	1	4
Government regulation adequate as legal form	3	2	5
Would apply in a case on the holder of a right (yes / case by case / no / not stated)	2 / 1 / 1 / 1	1 / 0 / 4 / 0	3 / 1 / 5 / 1
Perceived origin (Western / customary / both)	3 / 1 / 1	2 / 2 / 1	5 / 3 / 2

Note. Counts of respondents. Percentages are not reported because of the small sample.

Legal certainty for registered land

The legal certainty analysis rests on the distinction between the period before and the period after the fifth year. Before five years the system is negative: the true owner may still prove a better right. After five years, if the statutory conditions are met, the opportunity to challenge the certificate closes, and for that land the system behaves as a positive one.[23] The result is a dual-phase certainty that depends on whether the holder can show good faith, actual possession and the absence of timely objection.

Three conditions weaken this certainty in practice. First, certificate accuracy is not yet satisfactory: land cases reaching the courts, including requests for cancellation, remain frequent, which indicates that some certificates were issued to persons without the right.[24] The land authority has no power of material testing and registration officials play a passive role, so prudence depends on their integrity.[25] Second, *rechtsverwerking* would bar the true owner without compensation, which the study argues is unjust before an insurance or guarantee scheme exists. Third, the judges' perceptions are divided, so parties in similar situations may receive different decisions. The holder thus bears the risk of relying on registered data, and the

[23] Government Regulation No 24 of 1997 (n 5) art 32(2); Mecilita et al (n 3).
[24] Tirani et al (n 8); Suryana and Gemilang (n 7).
[25] Imran and Rizaldi (n 10).

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person named in the certificate is treated as the true owner only so long as nobody proves otherwise.

The study also identifies opportunities: GR 24/1997 lists land information among the objectives of registration, invites public participation in data collection, accepts different kinds of evidence of rights, and strengthens the land deed official's position.[26] A move towards a positive system would, however, require reliable land data, integrated spatial and textual records supported by information technology, and professional surveyors and land deed officials.[27]

DISCUSSION

This study examined how *rechtsverwerking* is regulated, how it can be applied as an instrument of national land law, and what certainty it offers for registered land, using the perceptions of administrative judges in Medan. Its main finding is that the doctrine's weakness lies less in the judges' view of its purpose than in its legal form, period and procedural setting.

On the first question, the normative analysis shows a rule with a clear aim and open elements. Good faith, actual possession and the starting point of the five years are not specified, matching the finding that valid issuance is read in competing ways (Tirani et al., 2026) and that the blend of negative and positive features is undefined (Mecilita et al., 2026). Open elements and an uncertain relationship to other norms fall short of the requirement of clarity and consistency (Kartabrata et al., 2025).

On the second question, the interviews show consensus in principle and divergence in application: all ten judges accepted loss of rights through neglect, yet only one had applied the doctrine. Three explanations emerge. The first is hierarchical: judges relying on Article 55 saw the regulation as inferior to the statute (Suryana & Gemilang, 2026). The second is jurisdictional: judges who described the object of dispute as the certificate rather than the land read Article 32(2) as concerning ownership, yet its text covers claims on both possession and issuance. The tension is best understood as a clash between two limitation clocks, a ninety-day period that, under later Supreme Court circulars, runs from the claimant's first knowledge of the decision (Kartabrata et al., 2025), and a five-year period running from issuance; J7's proposal to count from knowledge fits that logic. The third is substantive: judges who weigh justice above certainty find applying the bar unjust without compensation for the true owner, echoing the argument that a balance of certainty, justice and utility has not been reached (Kurniati & Mordekhai, 2021; Mecilita et al., 2026).

Three results were unexpected. First, perceived origin did not predict the view on legal form, suggesting that hierarchy and human rights, not the institution's pedigree, drive judges' views. Second, appellate judges were more sceptical: four of five PTTUN judges would not apply the doctrine, against one of five at the PTUN. With five judges per court this is only

[26] Government Regulation No 24 of 1997 (n 5) art 3 and General Explanation.
[27] Wahid et al (n 4); Kurniati and Mordekhai (n 4).

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indicative, but it fits an appellate focus on hierarchy and the statutory time limit. Third, the dual-phase certainty exists mainly on paper, because courts continue to accept claims against certificates older than five years (Mecilita et al., 2026; Suryana & Gemilang, 2026; Zahra et al., 2024).

On the third question, certainty for registered land is conditional on the holder's good faith and possession, the accuracy of the certificate, and whether the court applies the bar. The study's position that the doctrine should not be fully applied until a compensation scheme exists is consistent with proposals for title insurance or a state guarantee, Supreme Court guidance and a clearer statutory footing (Mecilita et al., 2026), and with the view that certainty must not be pursued at the expense of the true owner's sense of justice (Kurniati & Mordekhai, 2021). Several policy implications follow. First, the Supreme Court could issue a circular settling the relationship between Article 32(2) and the limitation rules of the administrative courts and clarifying whether valid issuance means administrative or material validity, as has been urged for counting time limits in third-party claims (Kartabrata et al., 2025). Second, the elements of Article 32(2) should be defined and its placement in a statute considered. Third, a compensation mechanism should be examined using the funding sources proposed here. Fourth, data accuracy, digitisation and the role of land officials need investment, since a positive tendency is not credible on weak data (Kurniati & Mordekhai, 2021; Mecilita et al., 2026; Wahid et al., 2025). Fifth, an outer time limit with a knowledge-based starting point deserves study.

Future research could include civil-court judges, decisions issued after GR 18/2021, and the feasibility of title insurance.

CONCLUSION

Rechtsverwerking has a firm foothold in national land law, but Article 32(2) of GR 24/1997 has not yet made registered land certain. The judges interviewed accept the doctrine as a matter of principle; what stands in its way is the combination of open elements in the rule, its placement in a government regulation, its collision with the time limits of administrative procedure, and the lack of compensation for the true owner. Because these obstacles are institutional rather than conceptual, they can be addressed.

The Supreme Court should harmonise Article 32(2) with the limitation rules of the administrative courts. The legislature or executive should clarify the elements of the rule and consider raising its legal form. A compensation mechanism, such as title insurance, should be designed before the bar is enforced strictly, and the land authority should improve certificate accuracy and inform the public about the five-year rule. Until then, the person named in a certificate is protected only so long as nobody proves a better right in a court willing to hear it.

LIMITATION

This study has several limitations. First, the sample is small (ten judges) and drawn from two administrative courts in one city, so the findings describe these judges' perceptions

and cannot be generalised; the comparison between first-instance and appellate judges is indicative only. Second, the respondents were administrative judges, whose jurisdiction concerns the legality of decisions rather than ownership; civil judges are not covered, so the results may understate willingness to apply the doctrine.

Third, the data are self-reported and not triangulated with a systematic analysis of decisions, so stated willingness may differ from actual decisions. Fourth, the interviews were conducted in 2025 and may not reflect later developments, namely the Supreme Court regulation and circulars on administrative remedies and time limits, and more recent case law; the empirical findings should be treated as a baseline. Fifth, the sampling and respondent profile are not fully documented, which limits replicability.

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