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Implementation of the Granting of Land Ownership Rights by the State for Foreign Citizens Under Article 21 Paragraph 3 of the Basic Agrarian Law

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ABSTRACT

Land or land rights can be obtained by someone as an heir, either a biological child or a living spouse, either individually or jointly between the biological child and the living spouse. The acquisition of property rights over land occurs through inheritance, which is the transfer of land rights due to the death of a person or heir who holds land rights. The objective of this research is to identify and analyze the regulation of land ownership rights for foreign nationals according to Article 21 Paragraph 3 of the Basic Agrarian Law (UUPA) and to identify and comprehend the implementation of land ownership rights by the State for foreign nationals at the Badung Regency Land Office. This research applies empirical legal research method with statutory approach, legal concept analysis and factual approach. The results of this research indicate that the regulation of the acquisition of property rights to land for foreign nationals according to Article 21 Paragraph 3 of the Basic Agrarian Law is that heirs with foreign citizenship are obliged to relinquish the right within a period of 1 year since the loss of Indonesian citizenship. The implementation of the granting of land ownership rights by the State for foreign nationals in the Badung Regency Land Office is that a foreign national may receive inheritance of land and/or buildings with property rights status (such as a house). However, within one year, the foreign national must transfer his/her rights to the land and/or building to another person.

Keywords: Foreign, Implementation, Land, Property Rights

INTRODUCTION

For Indonesian agrarian communities, land is a source of livelihood and a place to earn a living to fulfill the daily needs of themselves and their families. In addition, land also functions as inherited property that can be used as an investment object, providing an economic or business dimension. As inherited property, land can be inherited from parents to children, or vice versa from children to living parents, as well as from husbands to wives or vice versa from wives to deceased husbands.¹ The acquisition of property rights to land through inheritance occurs due to the passing of the holder of the land rights, which then transfers to the rights of their heirs. In most cases, land inheritance comes from joint marital property (gono-gini) between the husband and wife of Indonesian citizens (WNI), thus the inheritance process takes place from the Indonesian heirs to the Indonesian inheritors. On the other hand, land inheritance can also be derived from the joint property of mixed marriages between Indonesian citizens and foreigners, hence the inheritance can occur from Indonesian or foreign parents to their children who are Indonesian or foreigners, or from Indonesian husbands to foreign wives or vice versa from Indonesian wives to foreign husbands.

The case of the inheritance of Indonesian citizens to foreign heirs is a social fact and legal phenomenon that often occurs in Indonesia in recent times.² The intermarriage between Indonesian citizens and foreigners leads to legal impacts on the acquisition, control, or utilization of freehold land in Indonesia. In terms of the object of inheritance, land that is usually inherited from the testator to the heirs may take the form of ownership rights, building use rights, use rights, or lease rights to land. In Law No. 5/1960 on the Basic Regulation of Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 No. 104, Supplement to State Gazette of the Republic of Indonesia No. 20430) (UUPA), Article 21 of the Basic Agrarian Law stipulates that:

1. Only Indonesian citizens are eligible for property rights;
2. The government determines the legal entities that may possess property rights and the conditions thereof;
3. A foreigner who after the coming into force of this Law acquires a property right by inheritance without a will or by marital property intermingling, as well as an Indonesian citizen who acquires a property right and after the coming into force of this Law loses his/her nationality, shall be obliged to relinquish the right within one year after the acquisition of the right or the loss of nationality. If the right of ownership is not relinquished within the specified period, the right shall lapse by

¹ Mega Puspita and Ahmad Rezy Meidina, "Historicity of Islamic Inheritance Law in Indonesia and Turkey," *El-Aqwal* 2, no. 1 (2023).

² L.Elly AM Pandiangan, "An Analysis Of Heritage Legal Law For Foreign National Heirs On The Permanent Object (Property) Based On Civil Law," *Advances in Social Sciences Research Journal* 7, no. 4 (April 24, 2020): 186–96, <https://doi.org/10.14738/assrj.74.8080>.

operation of law and the land shall revert to the State, provided that the rights of other parties encumbering it shall continue;

4. As long as a person, in addition to an Indonesian citizenship, holds a foreign citizenship, such person cannot hold land under the title of ownership and the provisions of Paragraph (3) of this Article shall apply to such person.³

Based on the above provisions, only Indonesian citizens and legal entities that meet the requirements set by the government can own land with property rights. Meanwhile, foreigners (WNA) who obtain property rights through inheritance or property mixing due to marriage after the enactment of the Basic Agrarian Law (UUPA), as well as Indonesian citizens who lose their citizenship following the enactment of this law, are obliged to relinquish the rights within one year of the acquisition of the rights or the loss of citizenship. If the right of ownership is not relinquished within this period, the right will be legally nullified and the land will fall to the state. This provision also emphasizes that the rights of other parties encumbering it remain in force.

The regulation also implies that foreigners can acquire land with ownership rights through inheritance without a will originating from mixed marital property. In other words, the state can grant property rights to foreigners acquired through inheritance. Although there is a provision that the land title must be relinquished within one year of acquisition, this means that the Basic Agrarian Law recognizes the right of foreigners to own freehold land in Indonesia. Therefore, land ownership rights for foreigners are often referred to as limited land ownership rights, because they are only valid for one year and must be relinquished to Indonesian citizens through a legal action as referred to in Paragraph 2 of Article 21 of the Basic Agrarian Law.⁴

Referring to the foregoing explanation regarding the acquisition of land ownership rights for foreigners through inheritance from joint property between Indonesian citizens and foreigners in mixed marriages is the main topic of this research. In particular, the focus of the research is on the process of acquiring a freehold land for a foreigner through an application for inheritance, where the foreigner refuses inheritance through a Statement of Inheritance Refusal. The purpose is that the inheritance rights are only obtained by Indonesian heirs, such as their children born in the marriage, resulting in land certificates only in the name of Indonesian heirs. This concept arises from the understanding that foreigners are excluded and even prohibited from owning property rights to land in Indonesia.

On the other hand, the application for inheritance is carried out jointly between the foreign heirs and other Indonesian heirs. Therefore, on the certificate,

³ Pemerintah Pusat, “Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria” (Jakarta, 1960).

⁴ Pusat.

their names are listed together. However, if the foreigner rejects the inheritance, the certificate only lists the Indonesian heirs, which actually shows that the foreigner is indirectly considered to own the inheritance rights. This is because foreigners are unable to reject property that they do not yet own. Therefore, this research aims to analyze the regulation of the acquisition of inheritance rights for foreigners, especially land ownership rights, as stipulated in Article 21 Paragraph (3) of the Basic Agrarian Law, along with its implementation at the Badung Regency Land Office.

RESEARCH METHODOLOGY

In terms of types used, legal research is categorized into two, normative legal research and empirical legal research.⁵ This research is an empirical legal research. One of the characteristics of legal research with empirical aspects is the gap between *das sollen* (the theory or provisions of the applicable laws and regulations) and *das sein* (the reality of its implementation in the field). Descriptive research aims to provide an overview of various conditions, circumstances, and situations that arise in the community which is the object of research, as well as analyze various legal issues and legal facts found in this research. In this research, an analytical descriptive method will be used.

The data sources to support this research are obtained from two sources, which are primary data and secondary data. Primary data is data sourced from field data directly obtained from informants and respondents. Meanwhile, secondary data is data sourced from literature in the form of legal materials. Primary legal materials, which are sourced from state legal regulations, include relevant laws and regulations according to the hierarchy.⁶ Meanwhile, secondary legal materials are source texts related to the legal issues under study. The legal materials used are the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Agrarian Law, theses, articles, and books related to the legal issues being studied.

RESULT AND DISCUSSION

The implementation of granting land ownership rights to foreigners due to inheritance is normatively based on the provisions of Article 2 Paragraph 2 letter b of the Basic Agrarian Law. Based on this provision, the right is granted through the granting of an application by the State, which is carried out by the National Land Agency through the City/Regency Land Office where the land that is the object of the inheritance is located. Article 2 of the UUPA determines:

⁵ Ni Nyoman Sukerti, I Gusti Ayu Agung Ariani, and Gst. A. A. Ari Krisnawati, "Implikasi Ideologi Gender Dalam Hukum Adat Bali (Studi Di Kota Denpasar)," *Jurnal Magister Hukum Udayana* 5, no. 4 (2016).

⁶ I Ketut Sudantra, "Identifikasi Lingkup Isi Dan Batas-Batas Otonomi Desa Pakraman Dalam Hubungannya Dengan Kekuasaan Negara," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 4, no. 1 (April 27, 2015), <https://doi.org/10.24843/JMHU.2015.v04.i01.p16>.

1. On the basis of the provisions of Article 33 Paragraph (3) of the Basic Law and the matters referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the State, as the organization of the power of the entire people;
2. The right of control of the State referred to in Paragraph (1) of this Article grants the authority to:
 - a. regulate and organize the allotment, use, supply and maintenance of the earth, water and airspace;
 - b. determine and regulate legal relationships between people and the earth, water and space;
 - c. determine and regulate legal relationships between people and legal acts concerning the earth, water and airspace.
3. The authority derived from the State's right to control as referred to in Paragraph (2) of this Article shall be used to achieve the greatest prosperity of the people, in the sense of happiness, welfare and independence in an independent, sovereign, just and prosperous Indonesian legal society and State;
4. The right of control of the State mentioned above may be delegated to the independent regions and customary law communities, as necessary and not contrary to the national interest, in accordance with the provisions of the Government Regulation.

As an implementation of the provisions of Article 2 Paragraph 2 letter b of the Basic Agrarian Law, registration of land rights is carried out. Government Regulation No. 24/1997 Article 11 stipulates that land registration includes the activities of registering land for the first time and maintaining land registration data, including the registration of applications for foreigners' inheritance rights. Land registration activities for the first time include collecting and processing physical data; proving rights and bookkeeping; issuing certificates; presenting physical and juridical data; and keeping public registers and documents. Meanwhile, land registration data maintenance activities include registration of transfer and encumbrance of rights, as well as registration of changes to other land registration data.

The implementation of land registration data maintenance activities, which include registration of transfers, encumbrance of rights and registration of changes to other land registration data as mentioned above, is a step in registering applications for inheritance rights by foreigners as heirs.⁷ The purpose is to provide legal certainty and protection in accordance with Article 3 letter a, as land

⁷ Stefani Margareta and Miftakhul Huda, "The Legal Footing of Petok D as the Evidence of Land Ownership and Rights," *Journal Of Law Theory And Law Enforcement*, March 10, 2023, 30–46, <https://doi.org/10.56943/jlte.v2i2.284>.

registration is intended to provide legal certainty and legal protection to holders of rights to a land parcel, apartment unit, and other registered rights, thus the right holder can easily prove themselves as the legitimate right holder.

Evidence of Rights and its Bookkeeping, in accordance with Article 23 of Government Regulation No. 24 of 1997, for the purpose of registering rights:

1. New land rights are evidenced by:
 - a. Determination of the granting of rights from the official authorized to grant the relevant rights according to the applicable provisions if the granting of rights originates from State land or management rights land;
 - b. The original deed of the local government official (PPAT) granting the right by the holder of a freehold right to the recipient of the right in question, in the case of a right to use a building and a right of use on freehold land.
2. Management rights are evidenced by the determination of the granting of management rights by the authorized official;
3. *Waqf* land evidenced by a *waqf* pledge deed;
4. Right of ownership over a unit of flats is evidenced by a deed of separation.⁸

The above explanation, especially regarding the evidence of rights and its bookkeeping, refers to Article 23 of Government Regulation No. 24/1997. New land rights are evidenced by the determination of the granting of rights from the authorized official in accordance with the applicable provisions, especially if the granting of rights comes from state land or land with management rights. This is closely related to the subject of this sub-chapter, concerning the implementation and provision of evidence of ownership rights to land obtained through the application for inheritance by foreigners due to their inheritance.

In the process of applying for inheritance by heirs, both foreigners and Indonesian citizens together with foreigners, in practice based on the results of research at the research location of this thesis, at the Badung Regency Land Office, shows that there are two models of applications that can be taken to obtain property rights to land for foreigners due to inheritance.

The application for the granting of inheritance rights, the acquisition of land ownership rights for foreigners due to inheritance originating from joint property between Indonesian citizens and foreigners in mixed marriages, is carried out through an application for inheritance. This application can be submitted jointly by the heirs of the foreigner and the heirs of the Indonesian citizen, or through an application in which the foreigner refuses inheritance by making a letter of

⁸ Pemerintah Pusat Indonesia, "Peraturan Pemerintah (PP) Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah" (Jakarta, 1997), <https://peraturan.bpk.go.id/Details/56273/pp-no-24-tahun-1997>.

inheritance refusal. The aim is that the right to inherit is only obtained by Indonesian heirs, such as children born in the marriage, resulting in the certificate as evidence of land ownership only stating the name of the Indonesian heir.⁹

This process is completed with a letter of inheritance refusal by foreigners, signed on a stamp duty of IDR 10,000, witnessed by two adult family witnesses, and recognized and signed by officials at the level of *Kelian Adat* and *Kelian Dinas Banjar* or Head of Neighborhood, *Perbekel* / Village Head or *Lurah*, and Sub-District Head in *Banjar*, village or *kelurahan*, and sub-district where the legal residence of the testator is. This model of letter of inheritance refusal was created from the understanding that foreigners are excluded and even prohibited from owning property rights to land in Indonesia as stipulated in Article 21 Paragraph 1 of the Basic Agrarian Law which stipulates that only Indonesian citizens can own property rights to land, in accordance with the principle of nationality.¹⁰

In an interview with the Head of the Land Rights Section at the Badung Regency Land Office, it was stated that an application for inheritance that involves a foreigner as one of the heirs can be submitted by attaching a Statement of Refusal of Inheritance from the foreigner. This is to ensure that the certificate issued will only include the name of the Indonesian heir.¹¹ Furthermore, it is explained that this effort is usually made considering that the land ownership rights that can be owned by foreigners from inheritance are limited to a period of one year and must eventually be transferred to Indonesian citizens. If the land title derived from the inheritance will not be sold or transferred to a third party and remains owned by the Indonesian heirs, then the legal step is through a grant from the foreign heirs to other Indonesian heirs within one year at the latest since the title was obtained. This principle also means that the foreign heirs will never actually own a land title in Indonesia, and such legal steps will incur costs, such as the cost of registering the transfer of rights through grants and taxes on the acquisition of land rights.¹²

On further review, it can be understood that in order to apply the legal principle that foreigners are not allowed to own property rights to land permanently, the application for inheritance is often conducted with the refusal of inheritance by foreigners. This is due to the fact that foreigners are only allowed to hold a limited property right, i.e. for one year, over land in Indonesia. The aim is to shorten the process and procedure of direct inheritance and save costs incurred by Indonesian heirs.

⁹ Hayyik Lana Lie Ulin Nuha, "Peralihan Hak Atas Tanah Warisan Tanpa Persetujuan Ahli Waris (Studi Kasus Putusan Mahkamah Agung No. 2525 K/PDT/2018)," *Indonesian Notary* 3, no. 37 (2021),

https://scholarhub.ui.ac.id/notary/vol3/iss4/37?utm_source=scholarhub.ui.ac.id%2Fnotary%2Fvol3%2Fiss4%2F37&utm_medium=PDF&utm_campaign=PDFCoverPages.

¹⁰ Pusat, "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria."

¹¹ Ida Ayu Mas Ratu and Ida Bagus Agung Putra Santika, "Wawancara Dengan Kepala Seksi Hak-Hak Atas Tanah Kantor Pertanahan Kabupaten Badung" (Badung, 2021).

¹² Ratu and Santika.

Upon further consideration, when the application for inheritance for foreigners with refusal of inheritance is studied carefully, it results in an understanding that with the refusal of inheritance by foreigners, which results in only Indonesian heirs being listed on the certificate, the foreigners are in fact indirectly recognized as having their inheritance rights earlier. In fact, such action recognizes that the foreigner actually has ownership rights to the land without the need to go through the process of recognition or approval from the State, which in this case is represented by the authorities at the National Land Office where the land is located. This model violates the intent and purpose of the provisions of Article 2 Paragraph 2 letter b of the Basic Agrarian Law, which basically stipulates that the State has the authority to regulate legal relations between individuals and legal entities over land, water, space, and the natural resources contained therein.

In terms of the refusal of inheritance rights by foreigners, the State should be authorized to carry out its duties, however, this authority is ignored by the refusal of inheritance from foreigners. This is due to the fact that legally, it is impossible for someone to refuse an inheritance that they do not yet have. Meanwhile, in the application for inheritance, both Indonesian and foreign heirs submit it together, with the aim that the property rights to land inherited by foreigners or together with Indonesian citizens can be approved. In this case, if the foreigner's application for inheritance rights is approved, even though it is temporary for a period of one year, this is an implementation of the provisions of Article 2 Paragraph 2 letter b of the Basic Agrarian Law, in accordance with the provisions of Article 21 Paragraph 3 of the Basic Agrarian Law.

Referencing John Locke's view on the concept of natural law, which states that humans have an inherent right to survive, including the right to use or manage land as a means for survival. This includes the concept of occupation (land use) and creation (land development) to fulfill the needs of life. Meanwhile, according to Mochtar Kusumaatmadja's perspective, high awareness is required from the Indonesian people in the management of the State, especially by the Land Office, to pay attention to agrarian resources (land) for the welfare of the people.¹³ In this context, it is necessary to ensure that ownership of land rights can only be obtained by Indonesian citizen legal subjects.

Referring to the concept of land in the Decree of the People's Consultative Assembly No. IX/MPR/2001, land is considered an agrarian resource with an important value. In this context, land, along with the earth, water and natural resources contained therein, is controlled by the state and utilized to the greatest extent for the prosperity of the people.

¹³ Widhiana H. Putri, "Pluralisme Hukum Sebagai Strategi Pembangunan Hukum Progresif Di Bidang Agraria Di Indonesia," *Bhumi* 3, no. 1 (2017).

CONCLUSION AND SUGGESTION

Conclusion

The regulation on the acquisition of land ownership rights for foreigners due to mixed marital property togetherness and due to inheritance without a will is regulated in Article 21 Paragraph 3 of the Basic Agrarian Law. Land ownership rights for foreigners are temporary, i.e. for one year, within which period the foreigner is obliged to relinquish their rights to Indonesian citizens, either to fellow Indonesian heirs or to third parties of Indonesian citizens. The implementation of granting property rights to land by the State for foreigners in the Badung Regency Land Office is carried out by granting the application of foreigners and Indonesian citizens together as heirs, resulting in the certificate containing the names of foreigners and Indonesian citizens together. In addition, the implementation of granting property rights due to inheritance can also be conducted by using a Statement of Refusal of Inheritance by foreigners, thus the certificate is only in the name of Indonesian heirs.

Suggestion

It is recommended that the National Land Agency (BPN) implement the granting of land ownership rights to foreign nationals (WNA) through inheritance, by paying attention to the provisions of Article 21 Paragraph 3 of the Basic Agrarian Law. This is conducted by first granting the rights in accordance with the provisions of Article 2 Paragraph 2 letter b of the Basic Agrarian Law. In addition, further research is necessary regarding the procedures for foreigners' land titles that are obtained through inheritance and fall into the hands of the State after one year has passed without being transferred to Indonesian citizens (WNI).

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