

Legal Position of Foreign Citizens Regarding Ownership of Land Ownership Rights by Inheritance Based on Notarial Deeds

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Abstract. *This research aims to understand and analyze the legal position of foreign citizens regarding the ownership of land ownership rights by inheritance based on a notarial deed, as well as analyze the form of notary responsibility for the transfer of ownership rights to land by inheritance to foreign citizens based on the deed he made. The research method used is normative uridis with analytical descriptive research specifications. The data required includes primary data and secondary data using data collection techniques documentation or literature study is then analyzed using qualitative approach. Based on the research results, it shows that the legal position of foreign citizens regarding indirect ownership of land with a notarial deed is that a person's civil rights to inheritance cannot be lost except due to actions that are detrimental to the inheritance of the heir (the person who died) as regulated in Article 838, Article 839, 832 and 852 of the Civil Code. The form of notary responsibility for the indirect transfer of land ownership rights to foreign citizens is that the notary, in carrying out his profession in providing services to the public, must act in accordance with applicable laws and regulations and the notary's code of ethics to guarantee the truth of his actions.*

Keywords: Citizens; Foreign; Heirs; Land; Property; Rights.

1. Introduction

In general, policies regarding land ownership rights are regulated in Articles 20 to 27 of Law no. 5 of 1960 concerning Basic Agrarian Principles (UUPA), in accordance with the general principles governing Land Ownership Rights. Based on the provisions of Article 20 paragraph (2) UUPA states that the form of transfer of ownership rights to land from the owner is divided into two (2),

namely Transfer and Transfer/transfer of rights.¹Transition is the transfer of property rights belonging to one party to another party as a result of a legal development. As long as the land owner is capable of being the subject of property rights, his legal rights will legally transfer to his heirs upon his death. Transfer/transfer of rights indicates that the transfer of ownership rights to land from one party to another is the result of a legal act, for example buying and selling, exchange, auction, investment in business capital, and grants. A deed made by and submitted to a notary or PPAT must be used to show this form of transfer of property rights.

Article 21 paragraph (3) UUPA states that after this law is promulgated, every foreigner obtains ownership rights resulting from an inheritance without a will, or mixing assets resulting from marriage, and every Indonesian citizen who has ownership of objects, enters into a mixed marriage. If you then change citizenship, you must surrender your rights within one year of obtaining or after losing your citizenship. If after that time the ownership rights have been lost, the ownership rights are abolished by law and the land is transferred to the state, provided that the rights of other parties encumbering it remain. Article 26 paragraph (1) UUPA states that, transfer of property rights through sale and purchase, exchange, gift, will, gift due to custom.

Article 26 Paragraph (2) UUPA also means that every sale and purchase transaction, exchange, gift, will and other valid legal acts are intended directly or indirectly to transfer ownership rights to foreign parties, to Indonesian residents who have dual citizenship (WNI and foreigners) or to a Legal Entity, except as regulated in Article 21 paragraph (2), is invalid and null and void at the same time as the land is under state control. Bearing in mind that the rights of other parties attached to objects continue to operate and are resolved according to legal regulations and all profits that have been obtained by the owner cannot be claimed back.

In its simplest form, inheritance can only be said to occur due to the death or demise of the testator. Death is a legal event that must be experienced by all human beings, so the legal consequence of death is the formation of inheritance relationships, which determine the distribution of inherited assets handed over to the heirs by the person who dies. Civil law includes various legal provisions that regulate matters relating to family law, property, persons and inheritance. In Indonesia, inheritance law is a component of civil law and has a very important relationship with human life as a legal consequence of death. Indonesia has

¹Peace be upon you, Amen. (2021). "Transfer of Ownership Rights to Land Derived from Inheritance." *Legality: Scientific Journal of Legal Studies* Volume 5 No. December 2, 2021. p. 117-129. url<http://ejournal.untag-smd.ac.id/index.php/LG/article/view/5166/5057> accessed 01 September 2023.

three types of inheritance law, namely customary inheritance law, Islamic inheritance law, and Western inheritance law.²The Western inheritance law system regulated in the Civil Code regulates the principles of inheritance. Inheritance can only be given after death as regulated in Article 830 of the Civil Code. Blood relations between the heir and heirs, except for the heir's husband or wife who are bound by marital status, cannot be granted other than after the heir dies as regulated in Article 832 of the Civil Code.³

Land ownership does not immediately transfer to the heirs even though the inheritance has been carried out. There are several stages that need to be completed before land ownership can be transferred from heir to heir. This can be a problem if the successor is a foreign national who inherits an inheritance in privately owned land. Because, according to the UUPA, only Indonesian citizens can have property rights.⁴Property rights should be subject to restrictions, including the requirement that only Indonesian citizens can own them. This means that people from other countries cannot have property rights. This is based on the principle of nationalism in agrarian law and national land law. However, as time goes by, Indonesian residents may have foreign heirs, which could lead to a smooth transfer of land ownership rights to foreign citizens.

In contrast, Article 4 Paragraph (1) of the UUPA states the principle that everyone can own land in Indonesia, regardless of their citizenship status. Foreigners can also own land in Indonesia. The only difference is in the type of land rights attached to the foreign citizen. Based on these provisions, all land rights holders have the right to utilize the land in question as regulated by the laws and regulations in force in Indonesia. Article 42 b and Article 45 b of the UUPA explain that foreign citizens domiciled in Indonesia can hold rights to land in Indonesia with use rights or lease rights. In addition, foreign citizens who obtain property rights through inheritance or a combination of marital assets after the UUPA comes into force must relinquish those property rights within a period of one year.⁵

²Meidina, Shafira. (2020). "Inheritance Certificates that Contain Untrue Information are Relating to Their Proof of Strength as Authentic Deeds." *Adhaper Civil Procedure Law Journal* Volume 6 No. 1 of 2020. p.56. url<https://www.jhaper.org/index.php/JHAPER/article/view/101> accessed March 3, 2023.

³Rondonuwu, Diana. (2019). "Comparison of Inheritance Systems from Heirs to Heirs According to Customary Inheritance Law and Civil Inheritance Law". *Lex Ex Societatis Journal* Volume 7 No. 3 of 2019. p. 180. url<https://doi.org/10.35796/les.v7i3.24692> accessed responsively 03 March 2023.

⁴Trovani, Clarinta. (2021). "Rights of Foreign Citizen Heirs to Inherited Assets in the Form of Freehold Land from Indonesian Citizen Heirs." *Indonesian Notary* Volume 3 No. 1 of 2021. p. 14. url<https://scholarhub.ui.ac.id/notary/vol3/iss1/14/> accessed 01 September 2023.

⁵Son, I Putu Indra Mandhala. (2020). "Ownership of Land Use Rights for Foreign Citizens in Badung Regency, Bali Province". *Unud OJS Journal* Volume 4 No. 6 of 2020. p. 3.

As research conducted by Lynda Chayadi (2020) on "Legal Implications of the Position of Foreign Citizens as Heirs for Land Ownership Rights" concluded that in essence, foreign heirs can inherit land ownership rights as long as the legal actions carried out continue to fulfill their obligations based on Article 21 paragraph 3 UUPA. The reason is, in terms of the steps required by foreign heirs, PPAT and BPN (National Land Agency) as authorized officials still have different opinions regarding whether or not foreign heirs can sign the agreement.⁶As for research by Muhammad Setya Ady Syarifuddin (2021) on "Legal Status and Validity of Ownership of Land Rights of Foreign Citizens Originating from Inheritance" concluded that heirs who have changed their citizenship status to become foreign citizens can also become heirs because of their lineage or blood relationship. . Thus, if property in the form of land is obtained from an inheritance while control of the land is carried out by a party who has become a foreign citizen, then the transfer of ownership rights to the land must be carried out through sale and purchase, grant, exchange or auction of the land within a period of 1 (one year. If such regulations are not implemented until after the time period provided, then the ownership status of the land legally changes to state land.⁷

Relinquishing property rights by foreign citizens within the time period stated in Article 21 paragraph (3) of the UUPA is difficult because they must first transfer their name to transfer ownership rights to land through inheritance. This leads to many variations in how these laws are actually implemented in society. There is no doubt that the individual concerned may suffer as a result. Therefore, researchers want to conduct further research to know and analyze the legal position of foreign citizens regarding the ownership of land ownership rights by inheritance based on a notarial deed as well as the form of responsibility of the notary regarding the transfer of ownership rights to land by inheritance to foreign citizens based on the deed he or she has made.

2. Research Methods

This research uses an approach method Normative Juridical. The research specification is analytical descriptive. The data used includes primary data and secondary data. Primary data is collected directly from the public and secondary

url <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/4693/3562> accessed 26 February 2023.

⁶Chayadi, Lynda. (2020). "Legal Implications of the Position of Foreign Citizens as Heirs for Land Ownership Rights". Law Enforcement Scientific Journal Volume 7 No. December 2, 2020. p. 156-168. url <https://doi.org/10.31289/jiph.v7i2.3977> accessed February 21, 2023.

⁷Syarifuddin, Muhammad Setya Ady. (2021). "Legal Status and Validity of Ownership of Land Rights of Foreign Citizens Originating from Inheritance" Notaire Volume 4 No 3 of 2021. p. 373-398. url <https://www.jhaper.org/index.php/JHAPER/article/view/101> accessed 01 September 2023.

data comes from primary, secondary and tertiary legal materials. Data collection is carried out by documentation or literature study approach to carrying out literature study tasks. Data resulting from literature studies are categorized and selected for analysis using a qualitative approach, namely classifying and selecting information based on its quality and truth. The results of the analysis are presented descriptively to produce an overview of research findings that are qualitative descriptive in nature and expressed in the form of sentences which are then arranged and presented methodically into a thesis.

3. Results and Discussion

3.1. Legal Position of Foreign Citizens Regarding Ownership of Land Ownership Rights by Inheritance Based on Notarial Deeds

The death of a person has legal consequences, namely the continuation of rights and obligations as a result of legal events resulting from the death of a person is regulated by the transfer of assets in inheritance law. One of these assets is ownership rights to land that are transferred from a deceased person to his descendants or to the deceased person's blood relatives or known as heirs. A person's civil rights to inheritance cannot be removed, unless an act has directly occurred which threatens the rights and interests of the deceased heir based on the provisions of Articles 838, 839, 832 and 852 of the Civil Code. The heirs have the legal authority to carry it out the rights and obligations of the giver of the inheritance.⁸

Therefore, all heirs, except those prohibited under Article 838, can absolutely obtain their rights from the moment the testator dies, because inheritance only occurs after the testator dies. Regarding inheritance in the form of ownership rights to land, specific legal provisions take precedence over general legal provisions (*lex specialist derogat lex generalis*). General legal provisions include the Civil Code, while special legal provisions include the UUPA. Specifically, Article 21 paragraph (1) of the UUPA states that only Indonesian citizens have the right to have ownership rights to land.⁹

Until now, national inheritance law in Indonesia has not been specifically determined because Indonesia consists of several layers of customary law society, each of which has its own inheritance law which differs from one tribe to another. Currently, Indonesia still applies inheritance law according to

⁸Pitlo, Adriaan. (2019). Development of Inheritance Law Inheritance Dispute Resolution Practices in Indonesia, East Jakarta: Intermasa. p. 7.

⁹TA, Siregar. (2005). Maintaining Land Rights, Medan: Faculty of Law, University of North Sumatra. p. 35.

population classifications established since the Dutch East Indies era.¹⁰Based on Article 838 of the Civil Code, in principle all heirs have the right to inheritance, except for parties who are prohibited from receiving an inheritance due to exceptions in inheritance law, for example people who have committed crimes or crimes, have committed violations or crimes against the heir, and have embezzlement or falsification of the will of a deceased heir. All other heirs, except those prohibited by Article 838 of the Civil Code, have absolute rights to their rights from the moment the heir dies, because inherited property exists only with the death of the owner of the heir or heir.

Only Indonesian citizens (WNI) can have ownership rights to inheritance. The definition of citizen is regulated in Article 26 paragraph 1 of the 1945 Constitution which states that "citizens are people who come from the Indonesian nation and people from other countries who are authorized by law." Foreign citizens (WNA) cannot have ownership rights to land. Restrictions on foreign ownership of land by foreign citizens are based on the principles of agrarian law, such as the principle of nationalism.¹¹ A foreign citizen is someone who lives and works in a country but is not a citizen of that country or is not officially registered as a foreign citizen. Foreign citizens have various goals, such as pursuing education, business, and so on. However, Article 7 of Law no. 12 of 2006 concerning Indonesian Citizenship regulates that even though a person's status in Indonesia is a foreign citizen, they still have rights and obligations towards the country where the citizen resides.

Apart from violating the principles of nationalism, granting property rights to foreigners also violates the National Land Policy. Restrictions on land ownership for foreigners are clearly visible in the provisions that land acquisition by sale and purchase, gift, exchange, or by will, without government stipulation, is null and void by law.¹²However, it turns out that control of property rights by foreign nationals has not been completely closed, in accordance with paragraph 21 paragraph (3) of the UUPA which states that foreign citizens who, after the enactment of this law, obtain property rights due to inheritance without a will, or because of marriage, and Indonesian citizens who have property rights and lose their citizenship, are obliged to relinquish their rights within one year after obtaining those rights or after losing their citizenship.

¹⁰SM, Subeitan. (2021). "Inheritance Provisions and Problems in Indonesian Muslim Society." *Al-Mujtahid: Journal of Islamic Family Law*, Volume 1 No. 2 of 2021, p. 113-124. url<http://journal.iain-manado.ac.id/index.php/almujtahid/article/view/1780> accessed March 1, 2023.

¹¹Gatot Supramono. (2012). *Law on Foreigners in Indonesia*, Edition, Cet. 1. East Jakarta: Rineka Cipta. p. 15.

¹²Chayadi, Lynda. *Op. cit.* p. 159.

If after that period of time, the property rights in question have not been handed over, then the rights will become invalid or be abolished because the law and rights to the land are in the hands of the state, as long as the other party's rights to the land are still fulfilled. In line with these regulations, as heirs, foreign citizens have ownership rights to land which cannot be obstructed by the Government. However, there are juridical consequences for foreign citizens who are obliged to hand over the property rights they have acquired within 1 (one) year of obtaining those rights.

The following are several stages or processes that foreign citizens must go through to re-register HM's name for inherited land at the BPN Office. The names of heirs of foreign nationals can be included in the Certificate of Ownership of land that has been transferred from the name of the heir to his name as heir. If the joint ownership rights to the land are to be transferred to the buyer by other heirs, the foreign heirs can sign a sale and purchase deed of transfer of Ownership Rights to the land, made by/before the PPAT before the validity period of the deed is 1 (one) year. However, if the 1 (one) year period stipulated in Article 21 paragraph 3 of the UUPA has expired, then the foreign citizen can no longer sign the land purchase deed and loses ownership rights to the land.¹³

Ownership rights to land are transferred due to inheritance, which once registered will be guided by Article 36 PP No. 24 of 1997 concerning Land Registration, whereas ownership rights to land have been transferred due to inheritance and have not been registered, the holder of land rights is obliged to submit supporting documents as regulated in Article 39 paragraph (1) letter b PP No. 24 of 1997 concerning Land Registration. Regarding signing the sale and purchase deed of transfer of ownership rights to land under PPAT, foreign heirs do not participate in signing the sale and purchase deed of transfer of ownership rights to the land, however, after the ownership rights to the inherited land are successfully sold, the foreign heirs will receive a share of the land The inheritance is equal to the rights that should be paid to him.¹⁴

Until now, special action is still needed to implement Article 21 paragraph (3) UUPA and further examine the implementation of the regulations in Article 21 paragraph (1) UUPA. Referring to the components ordered by Article 21 paragraph (3) of the UUPA, officially foreign parties are not permitted to sign deeds of sale and purchase of ownership rights and control rights over the land,

¹³Iqbal Sunaryo, Muhammad Sofyan Pulungan. (2018). "Cancellation of a Will and the Legal Consequences on Inheritance Assets According to Article 834 of the Civil Code." *Lex Privatum* Volume 6 No. April 2, 2018. p. 129-135. url<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/19989> accessed February 21, 2023.

¹⁴Chayadi, Lynda. Loc. cit.

because foreign parties do not have the right to control and prosecute land rights in Indonesia. If a foreign citizen can sign a Deed of Sale and Purchase transferring ownership rights to the land, then de facto it is said that Indonesia's land policy considers that foreign citizens are the legal owners of land with Ownership Rights status.

Only the person whose name is listed on the Land Ownership Certificate or the party who has rights to the land may sign the Land Ownership Sale and Purchase deed before the PPAT. After a foreigner obtains his rights as an heir, he is obliged to fulfill his obligations as an heir by representing the heir to notify the PPAT if there is a change in the basis of the rights he has because the right holder has died. This is in line with the provisions of Article 36 UUPA.

All sales and purchases, exchanges, gifts, gifts by will and other legal acts intended to transfer property rights either directly or indirectly to foreign citizens, citizens who have foreign citizenship other than Indonesian citizenship (dual citizenship), or to legal entities, unless stated otherwise by the Government as intended in Article 21 paragraph (2), then it is said to be null and void, then the land becomes the property of the State, as long as the rights encumbering the land remain intact and all payments made by the owner cannot be withdrawn. Land and buildings that may be acquired by foreign citizens or foreign legal entities in Indonesia can only have rental rights and use rights over the land for a limited time.¹⁵

3.2. Form of Notary's Responsibility for the Transfer of Land Ownership Rights by Inheritance to Foreign Citizens Based on the Deed He Made

The position of Notary is not included in the judiciary, executive or legislative institutions.¹⁶Therefore, notaries in carrying out their public service duties must comply with positive law and their professional code of ethics. This is important, because the notary exercises his authority not only for personal interests, but also for the public interest and the obligation to provide guarantees of the validity of legal actions carried out by the notary. Therefore, notary sensitivity is required. Honest, fair and open or full of transparency in the preparation of documents to provide guarantees for all elements that participate directly in the preparation of authentic deeds.¹⁷

¹⁵Asriansyah, Muhammad Faniawan. Land Ownership for Foreign Citizens of Land in Indonesia. Accessed from <https://www.djkn.kemenkeu.go.id/article/baca/15842/Kepemilikan-Tanah-bagi-Warga-negara-Asing-Atas-Tanah-di-Indonesia.html>. on: 26 July 2023, at 21.43 WIB

¹⁶Pramudya, Kelik and Widiatmoko, Ananto. (2010). Guidelines for Professional Ethics for Legal Officials, Library. Yogyakarta: Yusticia.p. 69.

¹⁷Notodisoerjo, Raden Soegondo. (2012). Notarial Law in Indonesia (An Explanation). Jakarta: Raja Grafindo. p. 55.

Notary duties are bound by Law no. 30 of 2004 with amendments to Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notary. (UUJN) which essentially regulates the authority, obligations and prohibitions for the Notary profession. Notaries, in carrying out their duties, are obliged to comply with the code of ethics for the notary position, because without upholding this code of ethics, the honor and dignity of the notary profession will fade and the public's trust will be lost. High moral values are also required of a notary, because with high morals a notary does not abuse his power, thereby enabling the notary to maintain his dignity as an official by carrying out his services in line with positive legal policies without damaging the good image of the notary himself.

Article 15 paragraph (1) UUJN determines that a Notary has the authority to make authentic deeds regarding all legal actions, stipulations and agreements that are required by law and/or those whose interests wish to be expressed in authentic deeds, store deeds, prepare draft deeds, providing guarantees of date certainty, providing grosses, extracts of deeds and copies, all of which can only be done as long as the making of the deeds is not delegated to another party or without exception to another official or other person as determined by law.

Based on Article 16 paragraph (1) UUJN, Notaries must have an attitude of acting honestly, independently and thoroughly, not taking sides with any party (neutrality), protecting the interests of the parties against legal treatment (unless the party has reasons to refuse it), the Deed must be kept confidential. , the deed must fulfill an oath (unless otherwise provided in the law), and the deed must be read in the presence of the parties present (Article 16 paragraph (1) states that two witnesses must be present and the deed must be signed by the party submitting the deed (the person presenting the deed).), witnesses and notaries). High moral values are also required from a notary,

If the contents of the deed are known and can be proven to be contrary to the law, the Notary has the right to refuse to serve the deed. This is in accordance with Article 16 paragraph 1 Letter e of Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning Notary Positions. The Notary's duty is to guarantee the correctness of the contents of the deed and that it does not conflict with the law. Therefore, if the contents of an authentic deed contain elements that are not in accordance with applicable law, then a Notary can be held accountable as a public official.

The notary has an obligation to protect the parties if the parties feel disadvantaged by the deed they have made or have contributed to the creation of an authentic deed, thereby giving rise to rights and obligations for both parties. Parties have the right to obtain legal certainty regarding deeds made by and before a Notary. As a public official who serves the general public in making

authentic deeds and as perfect proof of a legal act, a good Notary is bound by a professional code of ethics and regulations. The responsibility for prudence rests with a good Notary if the application for making a deed is inappropriate or violates positive law, causing harm to other parties.

In accordance with Article 52 paragraphs 1 and 53 UUJN, Notaries are not allowed to make deeds under certain circumstances. This prohibition only applies if the facing legal subject violates the provisions, then the substance (legal act) of the deed cannot be drawn up. Even though the Notary only acts according to the wishes of the parties to the deed, if the Notary does not heed the provisions referred to above, legal officials may be subject to sanctions. The strength of the deed made by the notary concerned will be affected if the regulated provisions are violated.

The sanctions for violations committed include civil ones. Civil sanctions are sanctions imposed if an error occurs, either due to a breach of contract (Default) or PMH (Unlawful Act). This sanction is in the form of reimbursement of costs, compensation and interest which is a penalty that will be borne by the Notary as a result of the plaintiff's actions if the deed is damaged, meaning that it only has evidence as a private deed or the deed has the effect of being null and void.

If the deed is declared null and void, it is deemed to have never been made or has never existed, then a notarial deed which is null and void by law gives the party named in the deed the right to obtain compensation for costs, compensation or interest in the amount of money determined by the plaintiff and judges. An indirect transfer of land ownership rights to a foreigner if carried out by a notary is a deed that is null and void because it violates Article 21 paragraph 3 of the UUPA. Indirect transfer of a foreign citizen's ownership rights to land is considered an unlawful act if it harms the rights of other people. This is contrary to legal regulations and requires that the notary must demonstrate an attitude of neutrality and impartiality, and that the notary must provide some form of legal assistance to foreign nationals.

If the court proves that the notary violated legal provisions, the notary can be given criminal sanctions. Penalties can be applied to Notaries only with certain limitations. There are sanctions for the Code of Ethics where the Honorary Council can examine members of the organization who are suspected of violating the Code of Ethics and if proven guilty can impose sanctions. For Notaries who violate the Professional Code of Ethics, the honorary board coordinates with the supervisory board. The supervisory board then has the authority to investigate violations and can impose sanctions on violators. Notaries who become INI members may be subject to sanctions in the form of a warning, then a warning, temporary disqualification, dismissal from membership.

4. Conclusion

The legal position of foreign citizens regarding indirect ownership of land with a notarial deed is that a person's civil rights to inheritance cannot be removed, unless there has been a legal act that threatens the rights and interests of the deceased heir based on the rules of Articles 838, 839, 832, and 852 Civil Code. Land ownership rights cannot be transferred to foreign nationals (WNA). Ownership of land through sale and purchase, gift, exchange, will without government determination is prohibited by law and is null and void. The Notary's responsibilities in transferring ownership rights to land indirectly to foreign citizens are regarding the implementation of his duties and profession in service to the community, A Notary must act in accordance with applicable laws and regulations to guarantee the correctness of the property rights of the parties, the validity of the legal actions taken. Indirect transfer of land ownership rights if carried out by a notary is null and void because it violates Article 21 paragraph (3) of the UUPA.

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